

Office of the Chicago City Clerk



F2011-366

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date:

12/14/2011

Sponsor(s):

Mendoza, Susana A. (Clerk)

Type:

Communication

Title:

Chicago Department of Aviation/O'Hare Modernization

Program Agreement with Canadian Pacific

Committee(s) Assignment:



CHICAGO DEPARTMENT OF AVIATION CITY OF CHICAGO

November 29, 2011

The Honorable Susana Mendoza Office of the City Clerk 121 North LaSalle Street, Room 107 Chicago, Illinois 60602

Subject:

The Chicago Department of Aviation/O'Hare Modernization Program

Agreement with Canadian Pacific

Dear Ms. Mendoza:

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Transmitted herewith is a copy of the following document:

• The Canadian Pacific Easement Agreement

This agreement was executed by the Commissioner of the Chicago Department of Aviation and is being forwarded to you pursuant to all applicable ordinances. Please put this document on file in your office and make it available to members of the public who wish to review it in accordance with your customary practices.

Sincerely,

Jonathan D. Leach General Counsel

Enclosures:

1. The Canadian Pacific Agreement with the Chicago Department of Aviation/O'Hare Modernization Program at Chicago O'Hare International Airport

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DOCUMENT NUMBER					
EASEMENT AGREEMENT RUNWAY 10C-28C ALSF					
This instrument was drafted by:		······································			<u> </u>
Real Estate Department Canadian Pacific 501 Marquette Ave., Suite 1525 Minneapolis, MN 55402		RESERVED F	OP PECOPI	DINIC DATA	
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Return to:

O'Hare Modernization Program 10510 West Zemke Road Chicago, Illinois 60666 Attention: General Counsel

03-12-509-002
PARCEL IDENTIFICATION NUMBER

EASEMENT NUMBER 35/430/

Date: November 2, 2011

1. PARTIES, CONSIDERATION AND EASEMENT GRANT:

SOO LINE RAILROAD COMPANY, a corporation under the laws of the State of Minnesota, having its principal place of business at 501 Marquette Avenue, Minneapolis, Minnesota 55402, and doing business as Canadian Pacific, ("Grantor")

In consideration of the sum of

Fifty One Thousand Two Hundred Seventy Five Dollars and No Cents (\$51,275.00).

the receipt whereof is hereby acknowledged, hereby grants, conveys and transfers unto

CITY OF CHICAGO, an Illinois municipal corporation, ("Grantee"),

a perpetual easement ("Easement") described and conditioned as follows:

2. <u>DESCRIPTION OF PROPERTY:</u> The Easement is granted over, across and through the following two (2) parcels of land in

Du Page County, Illinois

described as follows:

PARCEL 1:

THAT PART OF the Soo Line Railroad Company property located at the West Half of the Southwest Quarter of Section 12, Township 40 North, Range 11 East of the Third Principal Meridian, in Du Page County, Illinois, described as follows:

Commencing at the Southwest Corner of the Southwest Quarter of Section 12 Township 40 North, Range 11 East of the Third Principal Meridian in Du Page County, Illinois; thence North 89 degrees 25 minutes 54 seconds East, 50.00 feet along the south line of said Southeast Quarter of Section 12 to the westerly line of the Canadian Pacific Railroad; thence North 00 degrees 43 minutes 47 seconds West, 280.20 feet along said westerly line of the Canadian Pacific Railroad to the Point of Beginning; thence continuing along said westerly line North 00 degrees 43 minutes 47 seconds West, 153.50 feet; thence North 89 degrees 35 minutes 38 seconds East, 20.59 feet; thence South 00 degrees 24 minutes 22 seconds East, 153.50 feet; thence South 89 degrees 35 minutes 38 seconds West, 19.73 feet to the Point of Beginning.

"Parcel 1" contains 3095 square feet or 0.071 acres, more or less.

PIN: 03-12-509-002 (Parent Parcel);

AND

PARCEL 2:

THAT PART OF the Soo Line Railroad Company property located at the West Half of the Southwest Quarter of Section 12, Township 40 North, Range 11 East of the Third Principal Meridian, in Du Page County, Illinois, described as follows:

Commencing at the Southwest Corner of the Southwest Quarter of Section 12 Township 40 North, Range 11 East of the Third Principal Meridian in Du Page County, Illinois; thence North 89 degrees 25 minutes 54 seconds East, 50.00 feet along the south line of said Southeast Quarter of Section 12 to the westerly line of the Canadian Pacific Railroad; thence North 00 degrees 43 minutes 47 seconds West, 280.20 feet along said westerly line of the Canadian Pacific Railroad; thence North 89 degrees 35 minutes 38 seconds East, 19.73 feet; thence North 00 degrees 24 minutes 22 seconds West, 93.00 feet to the Point of Beginning; thence continuing North 00 degrees 24 minutes 22 seconds West, 20.00 feet; thence North 89 degrees 35 minutes 38 seconds East, 79.64 feet to the easterly line of the Canadian Pacific Railroad; thence South 00 degrees 43 minutes 47 seconds East, 20.00 feet along said easterly line of the Canadian Pacific Railroad; thence South 89 degrees 35 minutes 38 seconds West, 79.75 feet to the Point of Beginning.

"Parcel 2" contains 1,594 square feet or 0.037 acres, more or less.

PIN: 03-12-509-002 (Parent Parcel)

Parcel 1 and Parcel 2 are shown upon the survey map labeled "Exhibit A" that is attached hereto and is made a part hereof and are collectively referred to herein as the "Easement Area."

The Easement Area and other land or property belonging to Grantor adjacent to, or in the vicinity of the Easement Area is referred to herein as the "**Property**".

3. PURPOSE: The Easement shall be limited to

- (a) The exclusive right to construct, install and maintain navigational aid facilities known as Approach Lights – Sequenced Flashing (ALSF) for Runway 10C28C at O'Hare International Airport upon and across Parcel 1, including foundation, superstructure, and conduit all in substantial compliance with Exhibit B which is attached and incorporated (the "Tower Structure");
- (b) the non exclusive right to construct, install, maintain and replace pipes, wires and conduits in and below Parcel 2 for the benefit of the Tower Structure (the "Conduit").

The Tower Structure and the Conduit are collectively referred to herein as the "Improvements."

- 4. RESERVATIONS: Grantor reserves unto itself, and its successors and assigns:
 - (a) fee title to the Easement Area to itself; Grantee's maintenance and use of the Easement Area, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Agreement;
 - (b) the right and privilege to use Parcel 2 (the Non-Exclusive Easement) for the maintenance, construction, and operation of railroad tracks and facilities;
 - (c) the right to permit other parties to use Parcel 2 (the Non-Exclusive Easement) to the extent that such uses do not interfere with the Grantee's use of the Easement Area pursuant to this Agreement:
 - (d) the right of incidental use of Parcel 2 (the Non-Exclusive Easement) in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area pursuant to this Agreement;
 - (e) the right and privilege to use Parcel 2 (the Non-Exclusive Easement) for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this Agreement or which unreasonably interferes with or restricts the rights granted to Grantee; and
 - (f) the right to prevent the placement or maintenance of any Tower Structure and Conduit facility upon said Non-Exclusive Easement in a manner which would unreasonably interfere with the maintenance and safe and continuous operation of railroad tracks and facilities on the Property other than the Parcel 1.

5. TERM, TERMINATION AND EXPIRATION:

- (a) This Easement is intended to remain in effect only so long as required by Grantee for Tower Structure and Conduit purposes as provided in this Section 5. However, release or termination of this Agreement may not be inferred and shall be effective only as explicitly provided herein.
- (b) <u>Abandonment or Removal</u>: In the event that, prior to an Assignment described in subsection f. below, the Easement Area is not used for a period of Five (5) consecutive years, or if Grantee substantially removes the Tower Structure and discontinues use of the Conduit with the perceived

intent of not, replacing the Improvements, then Grantee, following receipt of a written request from Grantor, agrees to release the easement. However, Grantee shall be under no obligation to release the easement If Grantee has a reasonable basis for not doing so. Grantee shall, following receipt of such a request from Grantor, use its best efforts to respond to Grantor within 90 days advising whether it will release the easement, or to provide an explanation for its basis to deny Grantor's request.

- (c) <u>Breach</u>: Prior to an Assignment, this Agreement may be deemed terminated if a court having jurisdiction finds that Grantee has failed to cure a material breach of any of the provisions of this Agreement that adversely impacts the safety or use of Grantor's Property and that Grantee does not cure within sixty (60) days (or such longer period as may be reasonably required if Grantee promptly initiates the cure and diligently prosecutes the cure to completion) following receipt of a written notice from Grantor detailing such breach.
- (d) Upon termination or expiration of this Easement for any reason, Grantee shall, its sole expense, promptly remove the Improvements from the Parcel 1and restore the area to a clean and level condition.
- (e) Following termination or expiration of this Easement, Grantee agrees to execute and deliver to Grantor, at no cost to Grantor, a release of its Easement rights in a form that may be reasonably requested by Grantor.
- (f) Notwithstanding the foregoing, after any lease, license or assignment to the Federal Aviation Administration or successor agency of the United State Government of some or all of the rights of Grantee under this Easement Agreement, ("Assignment"), the Easement shall not terminate except by mutual written agreement of the parties and such agency of the United States Government.

6. IMPROVEMENTS CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:

- (a) Grantee shall, at its sole expense and in accordance with applicable law, construct, install and thereafter maintain the Tower Structure and Conduit upon and across the Easement Area and underneath or across any railroad tracks located thereupon, in a manner reasonably satisfactory to Grantor.
- (b) Prior to any construction, maintenance or removal of the Improvements Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions existing prior to the construction of the Improvements and shall indemnify, hold harmless and defend the Grantor from and against any and all liability for damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, caused by the construction or maintenance of the Improvements. Grantor makes no representation by the granting of this indenture that the Easement Area is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.
- (c) Grantee shall not carry on any work in connection with the installation, maintenance, repair, changing or renewal of the Improvements within 25 feet of the center line of any Grantor – owned track until:
 - (i) it shall have given Grantor at least three (3) days' written notice, and
 - (ii) an authorized representative of Grantor shall, at Grantor's election, be present to supervise same. Upon bills being rendered for the authorized representative's supervision, Grantee shall promptly reimburse Grantor for all expenses directly and reasonably incurred by it in connection with such supervision, including all labor costs for flagmen supplied by Grantor to protect railroad operations.

(d) Grantee, at Grantee's sole expense, whenever notified to do so, shall promptly make such repairs to or changes in the to those portions of the Tower Structure and Conduit located in the Non-Exclusive Easement, including changes in location, as the Grantor shall reasonably deem necessary for its use of the Property other than the Parcel 1 and Parcel 3 for railroad purposes. Provided, however, that in no event shall Grantee require any change or relocation of the portion of the Tower Structure and Conduit located in Parcel 1.

7 TAXES AND ASSESSMENTS:

Grantee shall assume and pay any fee, tax, assessment or other charge or expense levied against the Property or incurred by the Railroad proximately caused by the installation, use or existence of the Tower Structure and Conduit upon the Property

8. LIABILITY:

- (a) <u>Generally</u>: The Grantee assumes all risk of damage to or destruction of the Tower Structure and Conduit which are not caused by Grantor or persons granted rights by Grantor upon and across the Property.
- (b) <u>Assignment to Federal Aviation Administration</u>, or other agency: The parties acknowledge that it is the intent of Grantee to assign some or all of its rights under this Grant of Easement to the Federal Aviation Administration or other appropriate agency of the federal government ("Government"), after completion of the construction and installation of the Tower Structure and Conduit. In the event of such an assignment, the indemnification in this Easement Agreement shall be limited as follows:

Government will be liable only to those persons damaged by any personal injury, death or injury to or loss of property if caused by the negligent and wrongful act or omission of an employee of the Federal Government while acting within the scope of his or her office or employment under circumstances where a private person would be liable in accordance with and subject to the conditions, limitations and exceptions set forth in the Federal Tort Claims Act of 1948, as amended (28 USC 2671 et. seq.).

9. ENVIRONMENTAL:

(a) The Grantee:

- (i) shall be familiar with the requirements of, comply with, and secure at the Grantee's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws, related to the use of the Easement Area;
- (ii) shall, upon written request by the Grantor (but only in such circumstances where Grantor has reasonably reliable information that the Easement Area has been contaminated), provide the Grantor with the results of appropriate reports and tests from a qualified engineer to demonstrate that the Grantee has complied with all Environmental Laws relating to the Easement Area;
- (iii) shall not in any manner cause or allow the Easement Area to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance;
- (iv) shall not, without prior written disclosure to and approval by the Grantor, Use or authorize the Use of any Hazardous Substance on the Easement Area, in accordance with applicable law;
- (v) shall not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Easement Area;

- (vi) shall promptly notify the Grantor of any actual Release of any Hazardous Substance on, to, or from the Easement Area of which the Grantee has actual notice, regardless of the cause of the Release;
- (vii) shall promptly provide the Grantor with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response, actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, delivered to or served on Grantee concerning any Release of a Hazardous Substance on, to or from the Easement Area, or any alleged violation of or responsibility under any Environmental Law on the Easement Area; and
- (vii) shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance on the Easement Area by Grantee that gives rise to any liability, claim, cause of action, obligation, demand, fine, penalty, loss, judgment or expense under any Environmental Law to, against, of or by Grantor or Grantee.
- (b) To the extent permitted by applicable law, the Grantee hereby releases and agrees to indemnify, hold harmless and defend the Grantor and its directors, officers, stockholders, divisions, agents, subsidiaries, successors and assigns ("Grantor Parties"), from and against any and all Claims (including without limitation any Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) of every kind arising from any injury to persons, including injuries resulting in death, and damage to property whatsoever, to the extent proximately caused by any act or omission of the Grantee (or the Grantee's employees, agents, or representatives) in connection with the exercise of the right and privilege herein granted, including without limitation the Use or Release of Hazardous Substances by the Grantee in or on the Easement Area and the breach by the Grantee of any of its obligations in this Section 9, except to the extent proximately caused by a Grantor Party. The Grantee's obligations hereunder shall survive the termination or expiration of this easement.
- (c) As used in this Section, the following terms have the following definitions:
 - (i) "Claim" or "Claims" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);
 - (ii) "Environmental Law" or "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other applicable governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted;
 - (iii) "Hazardous Substance" or "Hazardous Substances" means any petroleum product, distillate, or fraction, radioactive material, chemical known to the Federal Government or the State of Illinois to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by an Environmental Law of

the United States or the State of Illinois including but not limited to Federal or Illinois hazardous waste laws:

- (iv) "Release" or "Released" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "Environment" is defined in CERCLA;
- (v) "Response" or "Respond" means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance:
- (vi) "**Use**" means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon a Hazardous Substance.

10. MISCELLANEOUS:

- (a) <u>Grantee/Grantor</u>: As used in this Agreement, the terms "Grantee" and "Grantor" shall include the parties first named above and their respective successors or assigns.
- (b) <u>Headings</u>: The paragraph headings used in this Agreement are used solely for the purpose of convenience. They are not intended to, and do not, modify or limit the wording of the paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.
- (c) <u>Severability of Terms</u>: Each provision, paragraph, sentence, clause, phrase, and word of this Agreement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.
- (d) No Waiver: Any act or omission constituting a breach of this Agreement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof;
- (e) <u>Notices</u>: Any notice given by a party pursuant to this Agreement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.
- (f) Merger: This Agreement completely outlines all of the rights, responsibilities, and obligations of the parties hereto and said indenture may not be amended or altered except by an instrument in writing signed by both parties. Furthermore, this Agreement merges all prior oral representations and negotiations of the parties hereto.
- (g) No Warranty: Grantor does not warrant title to the Property, and makes no representations or warranties, express or implied, as to the habitability of the Easement Area or the fitness of the Property for Grantee's purpose or any other particular purpose.

11. GRANT AND ACCEPTANCE:

This Agreement shall run with the land and inure to the benefit of and be binding upon the successors and assigns of the Grantor and the Grantee.

[The remainder of this page is intentional blank and the following page contains the signatures of the parties hereto.]

GRANT:	By: David S. Drach Its: Director, Real Estate U.S.		
STATE OF MINNESOTA) ss: COUNTY OF HENNEPIN)			
I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that David S. Drach, Director, Real Estate U.S., of Soo Line Railroad Company, a corporation under the laws of the State of Minnesota, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument, as the free and voluntary act of such corporation, for the uses and purposes therein set forth. Given under my hand and official seal, this 215 day of November 1, 2011.			
ACCEPTANCE: State of Minnesota My Commission Expires 1/31/20	CITY OF CHICAGO, an Illinois home rule municipality By Commissioner of Aviation		
	APPROVED AS TO FORM AND LEGALITY: Special Assistant Corporation Counsel		
STATE OF ILLINOIS) ss:			
that Rosemarie Andolino personally known to Chicago appeared before me this day in personal	aid County, in the State aforesaid, DO HEREBY CERTIFY of me to be the Commissioner of Aviation of the City of on and acknowledged that she signed the said instrument and voluntary act of such City, for the uses and purposes this 2 day of 2011.		

DuPage County, Illinois - Easement Number 32614 ALSF Lights and Conduit -O'Hare Runway 10L28R

Page 8 of 8

Soo Line Railroad Company, Grantor City of Chicago, Grantee



