

July 27

From the Corporation Counsel
July 27, 1937.

To the Honorable, the Common Council:
Gentlemen — In accordance with Section 9, Chapter XXIII, Title IV of the Charter of the City of Detroit, I beg to advise you of the pendency of the following cases in which the City of Detroit is interested:

Wayne Circuit Court:

Marie McWha v. City of Detroit. No. 202,899. Damages, personal injuries.

John C. Tear, doing business as The Tear Nurseries v. Mary Walker, Principal Defendant, City of Detroit, Garnishee Defendant. No. 28939, Garnishment.

Helen Pastusiak v. Robert Crego, No. 202,847. Damages to property and personal injuries.

In the Matter of the Petition of Estate of William Livingstone, No. 202,106. Petition for vacation of Plat. Order entered by Circuit Court vacating plat. Closed.

Union Guardian Trust Company v. Harold Wagner, Principal Defendant and City of Detroit, Garnishee Defendant, No. 29,682. Garnishment.

John Price v. Louis Sak, et al, and City of Detroit, No. 269,550. Re: condemnation award.

Charles A. Lorenzo v. Emma Balla, Principal Defendant and City of Detroit, Garnishee Defendant. No. 203,184. Garnishment re: condemnation award.

Ella Weisgram and Charlotte Beau-bien v. City of Detroit. No. 269,847. Re: condemnation proceedings.

United States District Court:

In the matter of William C. Guensche, No. 21372. Tax claim of City. Order entered disallowing tax claim. Closed.

Michigan Supreme Court:

In the matter of widening Gratiot Avenue from Townsend Avenue to Pennsylvania Avenue. Appeal from the Recorder's Court to the Michigan Supreme Court, in recondemnation proceedings, Parcel No. 80.

Respectfully submitted,
RAYMOND J. KELLY,
Corporation Counsel.

Received and placed on file.

From Department of Public Works
July 26, 1937.
To the Honorable, the Common Council:

Gentlemen — In conformity with resolution of your Honorable Body (J. C. C., 1936, pp. 2674-5) an agreement between the Michigan State Highway Department, Grand Trunk Western Railroad and the City of Detroit has been perfected covering the construction and distribution of the costs of proposed grade separations on John R Street and Seven Mile Road with the Grand Trunk,

copy of which agreement is submitted herewith.

The agreement has been reviewed and approved by the engineering and legal staffs of each of the parties hereto and is now ready for execution.

The work which the City is to do is the same as previously outlined. However, it is anticipated, because of increase in prices, that the City's cost will be about \$16,000.00 more than as set forth in the previous communication to your Honorable Body, making an estimated total cost for the City of about \$240,000.00. On the same basis, the Grand Trunk's share of the cost has been increased about \$40,000.00, due both to an increase in the amount of work to be assumed by the Railroad and increase in prices.

Attention is called to paragraph 7-A-(2) wherein the State Highway Department will do the excavation in Seven Mile Road and John R and will be reimbursed by the City, and dispose of the fill on the railroad right-of-way. This clause was put in the agreement as being the most expeditious way of performing the two classes of work and also relieving the City of liability, because of fill placed on the railroad right-of-way.

I therefore recommend that your Honorable Body adopt the accompanying resolution and that the agreement be printed in the Council proceedings, as a matter of record.

Respectfully submitted,
L. G. LENHARDT,
Commissioner.

THIS AGREEMENT made and entered into this.....day of....., A. D. 1937, by and between the MICHIGAN STATE HIGHWAY DEPARTMENT, acting through Murray D. Van Wagoner, State Highway Commissioner of the State of Michigan, hereinafter called the HIGHWAY DEPARTMENT; CITY OF DETROIT, a municipal corporation of the State of Michigan, hereinafter called the CITY; and GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation, hereinafter called the RAILROAD:

WITNESSETH:

WHEREAS, near their intersection with each other, the highways known as Seven Mile Road and John R Street cross at grade the right-of-way and tracks of the Railroad within the corporate limits of the City, and the separation of railroad and highway grades at said crossings, as a matter of public safety and convenience, has been approved by the Federal Bureau of Public Roads as a project for construction by the use of emergency funds provided by the United States Government, to be expended under the provisions of the several Acts of Congress applicable thereto; and the City

has completed condemnation proceedings to provide the right-of-way necessary for the widening and sloped embankments in and for the highways, and the Railroad has acquired or will acquire by purchase or condemnation, additional right-of-way for embankment slopes made necessary by the elevation of its tracks; and

WHEREAS, the parties hereto have reached an understanding with each other respecting such construction, including the preparation and approval of plans and specifications, the depression of the highways, the elevation of the tracks of the Railroad, the temporary construction work necessary to provide for the operation of trains of the Railroad during the construction period, the construction of the permanent grade separations, the related and incidental work made necessary by such construction, and the payment of the cost thereof, and desire to set forth their understanding in the form of a written agreement:

NOW, THEREFORE, in consideration of the premises and the performance of the mutual undertakings of the parties hereto, and subject to the condition that the total contribution by the Highway Department, inclusive of the cost of engineering, shall not exceed the sum of Five Hundred Thousand Dollars, it is agreed as follows:

1. The general plans of the project are shown on the following Exhibits which are attached to and made a part of this agreement:

Exhibit A—General plan of grade separation structure on Seven Mile Road.

Exhibit B—General plan of grade separation structure at John R Street.

Exhibit C—Plan and profile of railroad showing present and proposed changes in grades, widths of right-of-way, track layout, including changes required to rehabilitate industries, right-of-way walls, fences, etc., consisting of five sheets.

Exhibit D—Plan and profile of Seven Mile Road and John R Street showing present and proposed changes in grades, widths of highways, pavements, sidewalks, retaining walls, intersecting streets, side drives, etc., consisting of two sheets.

2. The City shall by proper action, in the manner provided by law, adopt the lines shown upon Exhibits A, B, C, and D as the plans and profiles permanently fixing the levels to which said Seven Mile Road and John R Street shall be depressed, the gradients thereto, and the minimum underclearance of the bridges to provide for the separation of grades and carry the tracks of the Railroad over the highways.

3. The City shall acquire all property (except property owned or controlled by the Railroad) necessary for additional right-of-way for said Seven Mile Road and John R. Street, as required for the grade separation and shown on Exhibit D, and shall also arrange for the payment of all abuttal and consequential damages, if any there be, to property, businesses, or persons (other than the property of the Railroad) in any way arising from the changes in grades of highways within the limits of said grade separation work including Greendale Avenue, State Fair Avenue, and all intersecting streets and from the construction of said bridge structures to carry the tracks of the Railroad and the highway approaches thereto. The Railroad shall acquire by purchase or condemnation all property (except property owned or controlled by the City) necessary for additional right-of-way to accommodate its embankment slopes made necessary by the elevation of its tracks, as shown on Exhibit C. The cost of the acquisition, by the City or Railroad, of all such additional property and the payment of all abuttal and consequential damages in connection with this grade separation project shall be shared equally by the City and the Railroad, subject, however, to the limitation and condition that the participation of the Railroad in such acquisition of additional right-of-way and in the payment of such abuttal and consequential damages shall not exceed the total sum of One Hundred Thousand Dollars (\$100,000.00). Any and all property owned or controlled by either the City or the Railroad necessary to and required for the carrying out of this grade separation project, shall be dedicated thereto without compensation therefor.

4. The Railroad, at its own expense, will make preliminary surveys, engineering investigations and studies, prepare and furnish all designs, detail plans, specifications, and estimates of cost for the temporary falsework structures to support its tracks during the construction period, and for the construction of the permanent grade separation structures and all of the Railroad facilities, the same to be subject to the approval of the Highway Department, the City, and of the Federal Bureau of Public Roads. Said work shall be designed, detailed and constructed in accordance with the current standard specifications and standards of the Highway Department, except that the American Railway Engineering Association specifications shall govern the design of such portions of the work as carry railroad loading. The grade separation structures shall be designed commonly based on the live loading known as Cooper's E-72.

5. The City, at its own expense,

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will prepare all designs and specifications for all highway for temporary and permanent traffic; said work shall be subject to approval of the City; same shall be commenced and the Railroad shall commence the awarding of work contracts therefor.
6. The Railroad consents to the construction of grade separation structures on its tracks and across its right-of-way, without compensation other than the performance of this contract in accordance with the profiles, maps and plans hereinbefore referred to and Exhibits A, B, C, and D; and in consideration of the completion of the project herein provided, and pursuant to all terms and conditions of the agreement, hereby grants to the City an easement and franchise for highway purposes across its right-of-way as shown on Exhibit C, said easement and franchise to continue in force as long as Seven Mile Road and John R. Street remain open and are used as a part of the public term of highways or streets. It is understood that the performance of the agreement on the part of the Railroad shall release and discharge from any and all assessments or charges, including assessments for grade separation benefits, and any other charges, damages or liability incurred by the Railroad under this agreement, and be accepted as a fulfillment of all obligations of the Railroad, present or future, arising therefrom; and the City shall assume, and indemnify and hold harmless the Railroad from and against all the aforesaid assessments, including assessments for grade separation benefits, damages, construction expenses other than such as are actually assumed by the Railroad in accordance therewith, or recharge over said Railroad.
7. To expedite the accomplishment of the complete grade separation project, the performing of the work shall be divided between the parties hereto, and they hereby agree to perform and cause to be performed with all due diligence, in accordance with the plans and specifications approved for the project, and allocated to them by the agreement. The work to be performed by the City shall be as follows:
(A) Work to be performed by the City shall be as follows:
1. The City shall acquire all property (except property owned or controlled by the Railroad) necessary for additional right-of-way for said Seven Mile Road and John R. Street, as required for the grade separation and shown on Exhibit D, and shall also arrange for the payment of all abuttal and consequential damages, if any there be, to property, businesses, or persons (other than the property of the Railroad) in any way arising from the changes in grades of highways within the limits of said grade separation work including Greendale Avenue, State Fair Avenue, and all intersecting streets and from the construction of said bridge structures to carry the tracks of the Railroad and the highway approaches thereto. The Railroad shall acquire by purchase or condemnation all property (except property owned or controlled by the City) necessary for additional right-of-way to accommodate its embankment slopes made necessary by the elevation of its tracks, as shown on Exhibit C. The cost of the acquisition, by the City or Railroad, of all such additional property and the payment of all abuttal and consequential damages in connection with this grade separation project shall be shared equally by the City and the Railroad, subject, however, to the limitation and condition that the participation of the Railroad in such acquisition of additional right-of-way and in the payment of such abuttal and consequential damages shall not exceed the total sum of One Hundred Thousand Dollars (\$100,000.00). Any and all property owned or controlled by either the City or the Railroad necessary to and required for the carrying out of this grade separation project, shall be dedicated thereto without compensation therefor.
2. The Railroad, at its own expense, will make preliminary surveys, engineering investigations and studies, prepare and furnish all designs, detail plans, specifications, and estimates of cost for the temporary falsework structures to support its tracks during the construction period, and for the construction of the permanent grade separation structures and all of the Railroad facilities, the same to be subject to the approval of the Highway Department, the City, and of the Federal Bureau of Public Roads. Said work shall be designed, detailed and constructed in accordance with the current standard specifications and standards of the Highway Department, except that the American Railway Engineering Association specifications shall govern the design of such portions of the work as carry railroad loading. The grade separation structures shall be designed commonly based on the live loading known as Cooper's E-72.
3. The City, at its own expense,

will prepare all designs, detail plans and specifications for all street work, including the approaches and facilities for temporary and permanent highway traffic; said work shall be designed and constructed in accordance with the current standard specifications of the City; same to be subject to approval of the Highway Department and the Railroad before the commencement of work thereon and before the awarding of construction contracts therefor.

6. The Railroad consents to the construction of grade separations under its tracks and across its right-of-way, without compensation other than the performance of this contract, in accordance with the profiles, maps and plans hereinbefore referred to as Exhibits A, B, C, and D; and in consideration of the completion of the project herein provided, and pursuant to all terms and conditions of this agreement, hereby grants to the City an easement and franchise for highway purposes across its right-of-way, as shown on Exhibit C, said easement and franchise to continue in force as long as Seven Mile Road and John R. Street remain open and are used as a part of the public system of highways or streets. It is understood that the performance of this agreement on the part of the Railroad shall release and discharge it from any and all assessments of every nature and description, arising from the performance of this agreement, including assessments for grade separation benefits, and any and all charges, damages or liability other than such as are specifically assumed by the Railroad under this agreement, and be accepted as a full discharge of all obligations of the Railroad, present or future, arising out of this agreement and the performance thereof; and the City hereby assumes to itself and agrees to pay and assume, and indemnify and save harmless the Railroad from and against all the aforesaid assessments, including assessments for grade separation benefits, damages, costs and expenses other than such as are specifically assumed by the Railroad under this agreement, without charge, recourse to, or recharge over against said Railroad.

7. To expedite the accomplishment of the complete grade separation project, the performing of the work and the furnishing of the materials therefor, shall be divided between the parties hereto, and they hereby respectively agree to perform and complete, in accordance with the approved plans and specifications therefor, the portions of said work hereby allocated to them respectively, to-wit:

(A) Work by the Highway Department: The Highway Department shall

furnish, or cause to be furnished, at its expense, except as specified in (2) below, all material, labor, and equipment required, and agrees to undertake and perform, through contractors, all work necessary to the completion of this project as described and included herein, as follows:

(1) The complete construction of the permanent subway structures to carry the highways under the Railroads tracks at Seven Mile Road and John R. Street, including backfilling behind abutments.

(2) All general grading and filling for the elevation of the tracks of the Railroad and of the industries as shown on Exhibit C; it being understood that the expense of placing in the railroad fill all the general excavation for the depression of Seven Mile Road and John R. Street for the underpasses and the highway approaches thereto, including intersecting streets, side drives, etc., will be reimbursed to the Highway Department by the City on the basis of the actual quantities of earth so moved at the unit price bid by the Highway Departments contractor for this item of work.

(3) The construction, maintenance and later removal of temporary false-work trestles for two tracks required to maintain railroad traffic during the construction period, over and across Seven Mile Road and John R. Street.

(4) Railroad right-of-way retaining walls and fencing.

(5) Sodding embankment slopes on Railroad right-of-way.

(6) All of the work not allocated to and undertaken or performed by the City or the Railroad, necessary for the completion of this grade separation, subject, however, to the limitation of Five Hundred Thousand Dollars (\$500,000.) heretofore provided.

(B) Work by the City: The City shall furnish, or cause to be furnished, at its expense, all material, labor and equipment required, and agrees to undertake and perform with its own forces or through contractors, all work necessary to complete this project as described and included herein, as follows:

(1) Highway detours and the maintenance of highway traffic, including necessary barricades and temporary lighting facilities.

(2) All street work necessary to the completion of this grade separation project, including sidewalks, curbs, pavement, drainage, sodding of embankment slopes, street retaining walls, relocation and reconstruction of existing municipally-owned and public utilities, parallel side drives and connections for intersecting streets and private drives, permanent lighting facilities and all other related work.

pense incident thereto, arising out of the work to be performed hereunder by it.

12. It is expressly understood and agreed that insofar as the operations and contributions of the Highway Department are involved, the project herein contemplated is to be financed from funds appropriated by the Federal Government and expended under Federal laws and regulations, which laws and regulations are hereby incorporated in and made part of this agreement; and that in the event delays or difficulties occur in securing necessary Federal approval, or acquiring necessary right-of-way, or settling damage claims, which in the opinion of the Highway Department render it impracticable to utilize Federal funds from the current appropriation, for the construction of the project, and such event occurs before the commencement of work hereunder, the Highway Department may serve written notice thereof upon the other parties hereto, and this agreement shall thereupon terminate forthwith.

13. The City agrees that during the construction period it will temporarily close Seven Mile Road and John R Street in the vicinity of the respective crossings with the railroad to all highway and pedestrian traffic, and that it will provide suitable detours across the railroad tracks at grade for the highway traffic at Greendale and State Fair Avenues and other suitable points which will not unduly interfere with construction operations. Throughout the periods when the detours are being used by and for highway traffic during the construction of the grade separation project, the City agrees, at its own expense, to provide adequate police supervision to direct highway traffic using the said detours and their temporary crossings of the railroad tracks. The City further agrees that all temporary and permanent lighting facilities for the grade separation and the detours shall be connected into its lines, and that it will pay the cost of the electricity used thereby.

14. In the event of accidents occasioning loss of, or damage to property, or injury to, or death of persons, including the property and employees of any of the parties hereto, arising out of or during the course of, or resulting from, the performance of this agreement by the Highway Department, the Railroad and the City, either happening on the right-of-way of the Railroad Company or on the highways, or elsewhere, including accidents occurring on any highway detours provided hereunder, the loss of, or damage to property, and injury to, or death of persons, on account thereof, for which any of the parties hereto shall be liable, or be damaged, shall be considered the sole obliga-

tion of the party responsible therefor; provided, however, that to the extent that any such loss, damage or liability is caused by a contractor, of any of the parties hereto, then in such event, the loss, damage, or liability shall be borne by said contractor, but if caused by the joint or concurring negligence of two or more of the parties hereto, it shall be borne by such negligent parties equally.

15. In connection with the work to be performed hereunder, the Highway Department and City shall require their contractors to carry the following insurance in a form and with insurers acceptable to the Railroad:

- (1) Workmen's Compensation Insurance.
- (2) Public Liability Insurance covering injury to and death of persons in the amount of not less than Fifty Thousand Dollars (\$50,000.) for any one person and not less than Five Hundred Thousand Dollars (\$500,000.) for any one accident, and Property Damage Insurance covering the loss of, or damage to property in the amount of not less than Fifty Thousand Dollars (\$50,000.).
- (3) Owner's Risk Insurance insuring the Highway Department, the City and the Railroad, parties to this agreement, with above mentioned limits of liability.

16. The Highway Department and the City agree that they will cause to be inserted in any contracts that they award for the doing of any of the work herein, a provision whereby it shall be agreed that the contractor accepts exclusive liability for all contributions under any unemployment compensation, or insurance law of the State of Michigan and of the United States, which may be in force and effect at any time during the construction period, and further agrees to meet all requirements that may be specified under any regulations of the Board, Commission or Administrative Official of the State of Michigan, having in charge the administration of any such State unemployment compensation, or insurance law, and of the Federal Social Security Board.

17. If, at any time, without fault of the parties hereto, the work is hereunder agreed to be done, shall cease and not be resumed within sixty days, the parties hereto shall then agree upon and perform such work as is reasonably necessary to place the railroad tracks and the highways in satisfactory permanent operating condition and the City and Railroad shall assume and pay the cost thereof, equally, provided that the aforesaid sixty-day limitation shall not apply to the temporary suspension of

work under order of a court of competent jurisdiction, in which event the work shall be resumed and completed as soon as may be, in accordance with the terms of this agreement.

18. When the work of construction of said grade separation project has been completed, the Railroad shall, at its own cost and expense, maintain and keep in repair, the structures supporting its tracks and shall repair, or replace, at its own expense, any portion, or portions, of the structures, which may be damaged or destroyed by accidents, or collision, resulting from railroad traffic and the City shall, at its own cost and expense, operate, maintain, repair and renew, when necessary, all of the municipally owned utilities which have been constructed, reconstructed, or relocated in connection with this project, including the street lighting facilities incorporated in the grade separation structures, and the street retaining walls, the paving and sidewalks, curbs and drainage structures, including main sewers; and the City shall, at its own expense, repair and replace any portion, or portions, of the structures which may be destroyed by highway traffic.

19. Any of the parties hereto may now, or at any time hereafter, and from time to time, at their option, and at their sole cost and expense, construct or provide additional facilities and betterments, together with the necessary construction and expenditures to adapt the same to the new physical conditions occasioned by such additional facilities and betterments, provided that all future construction shall maintain the minimum underclearance for the highways, and shall conform to and harmonize with the general appearance and architectural treatment of the project as shown on Exhibits A and B.

20. It is specifically understood and agreed that this agreement shall become and be binding upon the parties hereto, their successors and assigns, when, but not until, the Michigan Public Utilities Commission has entered an order authorizing, permitting and approving the foregoing improvement and the United States Department of Agriculture, Bureau of Public Roads, has approved the project and allocated thereto the amount of Five Hundred Thousand Dollars (\$500,000.) to pay the estimated cost of the work to be performed by the Highway Department in accordance with and subject to the limiting condition of Paragraph 7 (A) hereof; and the State Administrative Board of the State of Michigan has, by resolution, authorized and directed the State Highway Commissioner to execute this agreement on behalf of the State of Michigan; and the Common Council of the City has, by reso-

lution, authorized and directed the Mayor and City Clerk to execute this agreement in behalf of the City.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers thereunto duly authorized, the day and year first above written.

MICHIGAN STATE HIGHWAY DEPARTMENT

By State Highway Commissioner of the State of Michigan.

Approved by the Michigan State Highway Department as to Form:

By Its Director of Land and Legal Division.

CITY OF DETROIT

By Its Mayor.

Attest:

By Its City Clerk. GRAND TRUNK WESTERN RAILROAD COMPANY

By Its President.

Attest:

By Its Secretary.

Approved by the City of Detroit as to Form:

By WALTER BARLOW, Its Acting Corporation Counsel. Approved by the Grand Trunk Western Railroad Company as to Form:

By Its General Counsel.

By Councilman Castator:

Whereas, Formal agreements have been prepared between the Michigan State Highway Department, the City of Detroit and the Grand Trunk Western Railroad Company, with reference to the construction of grade separations on John R. Street and Seven Mile Road at the Grand Trunk railroad; and

WHEREAS, Such arrangements have been approved by the Corporation Counsel, on behalf of the City, therefore, be it

RESOLVED, That the Mayor and the City Clerk are hereby authorized and directed to execute said agreement for and on behalf of the City of Detroit.

Adopted as follows:

Yeas—Councilmen Bradley, Castator, Jeffries, Kronk, Lodge, Van Antwerp, and the President—7.

Nays—None.

From Department of Purchases and Supplies

July 13, 1937.

To the Honorable, the Common Council:

Gentlemen—In response to our advertisement for proposals for furnishing the Division of Motor Transportation with Motorcycles and

windshields, in accordance with specifications on file in the bids were received as per attached tabulation, and opened July 8th.

The lower bid in accordance with specifications was submitted by Brown Motor Co., and the price of same is recommended as follows:
60 "Indian" 2 Cyl. Motorcycles at \$398.55 each.
60 Motorcycle windshields at \$8.10 each.

The above prices are F. O. B. delivered. The approval of your Honor's Body is requested.
Respectfully,
W. M. WALKER,
Commissioner

By Councilman Bradley:
Resolved, That the Department of Purchases and Supplies be authorized and directed to enter into contract with the Brown Motor Co. for furnishing the Department of Police with 60 2-cylinder motorcycles at \$398.55 each and 60 motorcycle windshields at \$8.10 each, F. O. B. delivered. Adopted as follows:
Yeas—Councilmen Bradley, Castator, Jeffries, Kronk, Lodge, Van Antwerp, and the President—7.
Nays—None.

From Department of Purchases and Supplies

July 27,

To the Honorable, the Common Council:
Gentlemen—In response to our advertisement for proposals for furnishing the City of Detroit with 152 tons of Lump and Run of Michigan Lignite for use in the various departments in this office, bids were received per the attached tabulations and opened on July 23.

It is recommended that the bids in accordance with specifications on the respective kinds, be accepted as follows:

Smokeless Fuel Corp.:
One (1) year's requirements, guaranteed at approx. 1,250 Tons of Lump, guaranteeing 152 T. U., per net ton f. o. b. \$2.75.
United Coal Sales Co.:
One (1) year's requirements, guaranteed at approx. 7,000 tons of Lump and Run of Mine, guaranteeing 1,490 B. T. U., per net ton f. o. b. \$1.87.
The approval of your Honor's Body is requested.
Respectfully,
W. M. WALKER,
Commissioner