

fendant, No. 188,806, in the Wayne Circuit Court.

Adopted as follows:

Yeas—Councilmen Bradley, Castator, Engel, Ewald, Jeffries, Lindsay, Lodge, Van Antwerp, and the President—9.

Nays—None.

City Treasurer

March 30, 1936.

To the Honorable, the Common Council:

Gentlemen—I submit herewith for your approval, the cancellation of balance due on accounts receivable bill, Controller's No. 59153, issued by the Fire Department against John M. Bulkley, covering repairs to a Fire Hydrant damaged in accident on December 9th, 1935, in a total amount of \$66.07.

The office of the Corporation Counsel approves the settlement of the claim in the amount of \$49.56, and request is herewith made that cancellation of \$16.51 be approved by your Honorable Body, in order to adjust the matter.

Respectfully submitted, ALBERT E. COBO, City Treasurer.

Approved: RAYMOND J. KELLY, Corporation Counsel.

City Treasurer

April 6, 1936.

To the Honorable, the Common Council:

Gentlemen—The office of the Corporation Counsel has this day effected settlement of a damage claim against the Kull & Bullen Beef Company, Controller No. 59156. This bill was issued by the Fire Department covering repairs to a Fire Hydrant which was struck by a Ford truck, in a total amount of \$70.32.

The Traveler's Insurance Company have submitted a check in settlement in the amount of \$56.26, and this office asks your approval of the settlement, and the cancellation of the balance, in the amount of \$14.06.

Respectfully submitted, ALBERT E. COBO, City Treasurer.

Approved: RAYMOND J. KELLY, Corporation Counsel.

Department of Public Works (Division of Motor Transportation) March 31, 1936.

To the Honorable, the Common Council:

Gentlemen—Cancellation of accounts receivable, Controller No. 59955, Dept. No. 10702, in the amount

of \$47.76 against Robert Charboneau is requested.

Settlement in the amount of \$23.88 has been made for which amount new accounts receivable has been issued.

Very truly yours, FRANK OLDFIELD, Superintendent.

By Councilman Bradley:

Resolved, That the City Controller be and he is hereby authorized and directed to cancel accounts receivable bills in accordance with the foregoing communications.

Adopted as follows:

Yeas—Councilmen Bradley, Castator, Engel, Ewald, Jeffries, Lindsay, Lodge, Van Antwerp, and the President—9.

Nays—None.

Department of Public Works

April 2, 1936.

To the Honorable, the Common Council:

Gentlemen—I herewith submit in quadruplicate, copies of an agreement between the Michigan State Highway Department, the City of Detroit, the New York Central and Michigan Central Railroad Company, respecting the reconstruction of the grade separation bridge at Livernois Avenue and Southern Avenue.

The agreement has been reviewed and approved by the Corporation Counsel's office and has been endorsed correct as to form.

Briefly, this agreement provides that the State Highway Department will reconstruct the existing grade separation structure, with Federal funds, provided, however, as set forth in Article X, the City agrees to undertake, at its own expense, the construction of retaining walls, property entrances, sidewalks, curbs, pavements and the necessary changes to municipally owned public utility facilities, occasioned by the project. The cost of this obligation is estimated to be approximately \$100,000.00. The financing of these funds is explained in a letter hereto attached.

The agreement, in Article XII, also commits the City to grant permission to the Railroad to occupy a portion of Southern Avenue and Military Avenue, with its tracks to be carried upon temporary trestles and fill during the construction period. The City is further obligated to procure a temporary easement over privately-owned property abutting the Railroad right-of-way on the east side of Livernois Avenue, in order to provide for two temporary trestles carrying the tracks, leading to and from the Railroad's engine house.

It is to be pointed out that Article XII of the agreement provides that

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This day of between Departm Murray way Co Michigan hereinaf way Dep tral Rail corporati tral Rail of Michi of, and of The Mich pany, pa hereinafte Railroad; municipal Michigan, hereinafter Witnesse

Whereas, street, cross tracks of th underpass Wayne Cou Whereas, improvement as a matter venience, at has been app reau of Publ emergency through the by the Unite be expended the Fourth D 1933, as ame by, and subj the Act of Emergency R of 1935; and Whereas, th reached an ur other respecti cluding the pr of plans and removal and dis structure; the t work necessary operation of tr during the con struction of separation of made nec st

April 7

the City shall close Livernois Avenue to all forms of vehicular traffic within the grade separation zone, during the construction period.

However, in view of the fact that such an agreement makes possible a very modern construction, with the elimination of the present bottleneck condition, and its attendant traffic hazards, I recommend the adoption of the accompanying resolution by your Honorable Body, and the printing of the agreement in the Council proceedings, as a matter of record.

Respectfully submitted,

L. G. LENHARDT,
Commissioner.

This Agreement, made this..... day of....., A. D. 1936, between the Michigan State Highway Department, acting by and through Murray D. Van Wagoner, State Highway Commissioner of the State of Michigan, party of the first part, hereinafter referred to as the Highway Department; the Michigan Central Railroad Company, a Michigan corporation, and The New York Central Railroad Company, a corporation of Michigan and other states, lessee of, and operating the railroad of said The Michigan Central Railroad Company, parties of the second part, hereinafter jointly referred to as the Railroad; and the City of Detroit, a municipal corporation of the State of Michigan, party of the third part, hereinafter referred to as the City;

Witnesseth:

Whereas, Livernois avenue, a city street, crosses under the roadway and tracks of the Railroad by means of an underpass in the City of Detroit, Wayne County, Michigan; and

Whereas, the reconstruction and improvement of this grade separation, as a matter of public safety and convenience, at the location above noted, has been approved by the Federal Bureau of Public Roads as a project for emergency highway construction through the use of funds provided by the United States Government, to be expended under the provisions of the Fourth Deficiency Act, fiscal year 1933, as amended and supplemented by, and subject to the provisions of, the Act of June 18, 1934 and the Emergency Relief Appropriation Act of 1935; 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 removal and disposal of the existing structure; 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 separation structure; the drainage 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, it is agreed:

1. That, in accordance with the plans hereinafter mentioned, the Highway Department may and shall reconstruct the grade separation structure under the tracks of the Railroad at the location aforesaid, without compensation to the Railroad other than the performance of this agreement by the Highway Department and the City; and, for the purpose of said construction, said Highway Department and its contractors may enter upon and occupy the property of the Railroad, provided that immediately upon completion of said work, such railroad property shall be restored to a condition deemed by the Chief Engineer of the Railroad to be suitable for railroad purposes.

2. That the City shall, by proper action, in the manner provided by law, adopt the lines shown upon the profiles, maps and plans (hereto annexed as Exhibit A), as the profiles fixing the levels to which it is planned said Livernois avenue and the other streets and alleys within the grade separation area, shall be depressed, and the said Railroad grade elevated; the minimum underclearance of the bridges required to carry the tracks of the Railroad; and the grades of the approach tracks to provide for such grade separation.

3. That the general plans of the project are shown on the following exhibits, which are attached to and made part of this agreement:

Exhibit A—General Plan of Site, showing present bridge and present and proposed widths of street and profiles of street and railway.

Exhibit B—General Plan, showing proposed grade separation structure.

Exhibit C—Plans showing temporary track changes.

4. That the Railroad shall prepare all detail plans and specifications for temporary work to support its tracks during the construction period, provided, such plans and specifications shall receive the approval of the Highway Department, the City, and the United States Department of Agriculture, Bureau of Public Roads, before the commencement of such temporary work, and before the awarding of construction contracts therefor. The current American Railway Engineering Association specifications shall govern the design and construction of such work.

5. That the Railroad shall prepare and furnish all designs, detail plans and specifications for the removal and disposal of the existing

structure and the construction of the permanent structures, the same to be subject to the approval of the Highway Department, the City, and the United States Department of Agriculture, Bureau of Public Roads, before the commencement of work thereon and before the awarding of construction contracts therefor. Said work shall be designed, detailed and constructed in accordance with the current standard specifications and standards of the Highway Department, except that the current American Railway Engineering Association specifications shall govern the design of such portions of the work as carry railroad loading.

6. That the City Hall shall, at its own expense, prepare all designs, detail plans and specifications for the retaining walls, property entrances, sidewalks, curbs and pavements on the approaches and the necessary changes to the municipally owned public utility facilities, including highway drainage facilities where required. All construction covered by this paragraph shall be designed and constructed in accordance with the current standard specifications and standards of the Highway Department and of the City, and shall be subject to the approval of the Highway Department and the Railroad.

7. That all necessary temporary and permanent changes in railroad telegraph lines and signals lines shall be made by the Railroad, at its own expense, except that, after said lines have once been removed to a temporary location, any additional temporary changes required by the contractor in the prosecution of his work shall be deemed part of the cost of the project. The Railroad shall also provide and pay the wages of temporary operators, switch tenders, conductors, flagmen, and other employes by it deemed necessary for the safe and proper operation of the railroad during the entire period of construction of the grade separation.

8. That the contractors shall not be permitted to occupy any portion of the operating tracks of the Railroad, nor to move their construction plant, equipment, et cetera, across the said operating tracks, nor to conduct their work in such a manner that workmen are required to cross said tracks, except with special approval by the Chief Engineer of the Railroad, together with full compliance with all of the Railroad's rules, regulations and requirements pertaining thereto. In case such approval is granted, the contractor shall bear the entire expense incidental to such operations, including necessary conductors, flagmen, watchmen, et cetera. It is further expressly understood that no provisions of this paragraph, nor approval by the Railroad as to

construction operations, shall relieve the contractors of any responsibility or liability under this contract.

9. That the Highway Department will undertake and perform, through contractors, the removal of the existing grade separation structure; the construction of the new grade separation structure, including the elevation of the railroad; the temporary diversion and support of the Railroad's tracks during the construction period; the furnishing and erection of the structure, both temporary and permanent, to carry the Railroad's tracks over and across the highway; the removal of said temporary structures when the Railroad's tracks are removed therefrom to the permanent structure; and all work incidental thereto. The Highway Department shall advertise the work in accordance with its regulations, considering bids therefor only from contractors prequalified by it for such work, and approved by the Chief Engineer of the Railroad and shall award the contracts therefor. The Highway Department shall exercise complete supervision and control over such construction.

10. That the City shall, at its own expense, furnish all materials therefor, and construct, all retaining walls, property entrances, sidewalks, curbs, pavements, and the necessary changes to the municipally owned public utility facilities, including highway drainage facilities where required, and all work incidental to any of the foregoing, occasioned by the project, provided, the construction of the grade separation outlet sewer shall be part of the work to be performed by the Highway Department, under contract, as set forth in paragraph 9 hereof.

11. That the City will cause all public utility companies, and other persons and corporations, including any municipal corporations, having wires, pipes, conduits, sewers (except the grade separation outlet sewer mentioned in paragraph 10 hereof), tracks or other facilities which would be affected by the work hereunder, to remove the same, to provide such temporary arrangement as may be necessary, and to make final installation in the permanent construction, at such times and in such manner as will permit the proper and expeditious performance of all the work contemplated by this agreement.

12. That the City shall permit the Railroad (for the purpose and during the period of construction of the project), to occupy a portion of Southern avenue and Military avenue, with its tracks and its telephone, telegraph and signal wires, said tracks to be carried upon the temporary structure mentioned in paragraph 9 hereof. Further, the City shall procure for the Railroad a temporary easement over privately-owned prop-

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erty situated in the southeast quadrant, in order to provide for the construction of two temporary pile trestles carrying the tracks leading to and from the Railroad's enginehouse. The City shall close Livernois avenue to all forms of vehicular traffic within the grade separation zone, during the whole period of construction of the project, and shall arrange for the detouring and necessary policing of such traffic.

13. That the Railroad's Chief Engineer and the City may respectively place on the work competent engineers, who, together with necessary assistants, shall assist the field representatives of the Highway Department to the fullest extent in order to coordinate the work and to obtain the greatest progress with the minimum of delay and interference in carrying out the general grade separation project; and who shall have the right to inspect the erection and construction of all steel work, masonry and other parts of the project.

14. That, except as otherwise specifically provided herein, the Railroad shall bear all costs necessary to and incurred by it in connection with its performance of the provisions of paragraphs 4, 5 and 7 hereof; the City shall bear all costs necessary to and incurred by it in connection with its performance of the provisions of paragraphs 6, 10, 11 and 12 hereof; and each party shall bear the salary and expense of the engineer and assistants assigned by it under paragraph 13 hereof; all without recourse to or reimbursement by the Highway Department.

15. That it is expressly understood and agreed that the project herein contemplated is to be financed from funds appropriated by the Federal Government and to be 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 settling 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 his agreement shall thereupon terminate forthwith.

16. That the reconstruction and improvement of said grade separation hereunder shall be executed without damage, and, insofar as is possible, without delay, to the trains of the Railroad, and that the Highway Department and its contractors will observe such restrictions as the

Chief Engineer of the Railroad, or his representative on the ground, may impose to insure the safety and dispatch of persons, and property of, or in care of, the Railroad and the safe and expeditious operation of its trains.

17. That in consideration of the completion of the project herein provided, and pursuant to all of the terms and conditions of this agreement, the Railroad hereby grants to the City an easement and franchise for street and highway purposes over and across its right of way as shown on Exhibit A.

18. That the City shall, and hereby does, assume the payment of all abuttal damages, if any there be, to property, business, or persons, other than the property of the Railroad, arising in any way from the general grade separation project as shown on Exhibit A, and all costs, expenses, charges, or liability in any proceedings which may be instituted in effecting such project, or which may be instituted to prevent the performance of this agreement (it being understood that the performance of this agreement on the part of the Railroad shall release and discharge the Railroad 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, and be accepted as a full discharge by the Railroad of all obligations, present or future, to abutting owners, or arising from the failure of the City to adjust or pay such damages, costs, or expenses in connection with such grade separation project, and the change in grades of said Livernois avenue, Southern avenue, and the other streets and alleys within the grade separation areas). Said 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, damages, costs and expenses without charge, recourse to, or recharge over against the Railroad; and the Railroad hereby waives any and all claims for damages by reason of the change of grade of said highways to any abutting property owned or controlled by it within the district shown on Exhibit A.

19. That, 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 contract, either happening on the right of way of the railroad or on said streets, alleys, or elsewhere, any and all payments of damages on account thereof, for which any of the parties

hereto shall be or become liable, or shall suffer damage, shall be considered a part of the cost of the project; and if, in the first instance, it shall be recovered against the Railroad in a court of competent jurisdiction, or shall be assumed by the Railroad with the consent of the City, it shall be reimbursed to the Railroad by the City, within sixty days from the rendition of proper bills therefor; provided, however, that to the extent that any such loss, damage or liability shall be borne by contractors, or caused by the sole negligence of the Railroad, it shall not be reimbursed by the City nor charged to the project.

20. That in connection with the work to be performed by the Highway Department as outlined hereunder, said Department shall require its contractors to carry the following insurance in a form and with an insurer acceptable to the Railroad and the City:

(1) Workmen's Compensation insurance.

(2) Public Liability insurance covering injuries to and death of persons in the amount of not less than fifty thousand dollars for any one person and not less than five hundred thousand dollars for any one accident, and Property Damage insurance covering loss of, or damage to, property in the amount of not less than fifty thousand dollars.

(3) Owner's Risk insurance with above mentioned limits of liability.

21. That if, at any time, without fault of the parties hereto, the work which is hereunder agreed to be done by the Highway Department 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's tracks and the highways, streets and alleys in satisfactory permanent operating condition, and the City shall assume and pay the cost thereof, 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.

22. That, when the work of reconstruction of said grade separation has been completed, the Railroad, at its own expense, shall maintain the structure supporting its tracks, and grade separation structure which may be damaged or destroyed by accident or collision resulting from railroad traffic; and the City, at its own expense, shall maintain the roadway, street retaining walls, paving and sidewalks, curbs, and drainage structure, and repair or replace any portions of the grade separation struc-

ture which may be damaged or destroyed by highway traffic.

23. That each, the Railroad and the City, may now, or at any time hereafter, and from time to time, at its option, and at its 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 Livernois Avenue as shown on Exhibit B.

24. That 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; the United States Department of Agriculture, Bureau of Public Roads, has approved the project and allocated thereto an amount sufficient to pay the estimated cost thereof; the State Administrative Board of the State of Michigan has, by resolution, approved the project and authorized the State Highway Commissioner to proceed therewith; and the Common Council of the City of Detroit has by resolution approved the project and authorized and directed the Mayor and the City Clerk to execute this agreement on 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.

THE MICHIGAN CENTRAL RAILROAD COMPANY,

By.....
Vice President.

THE NEW YORK CENTRAL RAILROAD COMPANY,
Lessee of the Michigan Central Railroad.

By.....
Vice President and
General Manager.

CITY OF DETROIT,

By.....
Mayor.

Attest:.....
City Clerk.

March 25, 1936.
O. K. as to form;
W. E. VASHAK,
Assistant Corporation Counsel.
RAYMOND J. KELLY,
Corporation Counsel.

By Council
Whereas,
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State Highway
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To the Hon
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Approved:
LEO J. MONAHAN
Acting Controller

By Councilman
Resolved, That
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April 7

By Councilman Ewald:
Whereas, Formal agreements have been prepared between the Michigan State Highway Department, the City of Detroit, the Michigan Central and New York Central Railroad Companies, with reference to the reconstruction of the grade separation at Livernois Avenue and Southern Avenue; 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, Engel, Ewald, Jeffries, Lindsay, Lodge, Van Antwerp, and the President—9.

Nays—None.

Department of Public Works

April 2, 1936.

To the Honorable, the Common Council:

Gentlemen—I herewith request the transfer of \$21,000.00 from available balances in present grade separation accounts, to a new account to be known at No. 507—Livernois Avenue-M.C.R.R. grade separation. This will provide for the necessary funds to take care of the estimated expenses of the Water Board and the Public Lighting Commission, and the leasing of property necessary for the construction, as follows:

| | |
|---------------------------------------|-------------|
| Water Board work..... | \$ 8,000.00 |
| Public Lighting Commission work | 12,000.00 |
| Lease of private property..... | 1,000.00 |
| | <hr/> |
| | \$21,000.00 |

We had planned on doing considerable repair work on the paving underneath the viaduct in this forth coming year, as it was not anticipated at the time the budget was made up that the Livernois grade separation agreement could be accomplished. With these funds available and with W.P.A. and relief labor, we can construct the new paving under the viaduct and the walks and retaining walls made necessary with this grade separation.

Respectfully submitted,
L. G. LENHARDT,
Commissioner.

Approved:
LEO J. MONAHAN,
Acting Controller.

By Councilman Ewald:
Resolved, That the City Controller be and he is hereby authorized and directed to transfer the sum of \$15,000.00 from Account No. 510—

Grand Trunk Railroad Jay Street Project; also the sum of \$6,000.00 from Account No. 506—New York Central, Michigan Central Railroad Green and Central project, a total of \$21,000.00, to a new Account No. 507—Michigan Central Railroad Livernois project, all within the Grade Separation funds.

Adopted as follows:

Yeas—Councilmen Bradley, Castator, Engel, Ewald, Jeffries, Lindsay, Lodge, Van Antwerp, and the President—9.

Nays—None.

Department of Public Works

April 3, 1936.

To the Honorable, the Common Council:

Gentlemen—The emergency existing because of escaping gas forced the Detroit City Gas Company to work twenty-four hours a day, which necessitated per diem employees of the Inspection Division working overtime.

I, therefore, request approval of a payroll for the week ending March 28, 1936, in the amount of \$848.40, computed on time and one-half basis.

Respectfully submitted,

L. G. LENHARDT,
Commissioner.

Department of Public Works

April 3, 1936.

To the Honorable, the Common Council:

Gentlemen—The emergency existing because of escaping gas forced the Detroit City Gas Company to work twenty-four hours a day, which necessitated per diem employees of the Inspection Division working overtime.

I, therefore, request approval of a payroll for March 28, 1936, which was the sixth day, in the amount of \$420.68.

Respectfully submitted,

L. G. LENHARDT,
Commissioner.

Department of Public Works

April 3, 1936.

To the Honorable, the Common Council:

Gentlemen—The emergency existing because of escaping gas forced the Detroit City Gas Company to work twenty-four hours a day, which necessitated per diem employees of the Inspection Division working overtime.

I, therefore, request approval of a payroll for March 28, 1936, which was the seventh day, in the amount of \$743.36, computed on double time basis.

Respectfully submitted,

L. G. LENHARDT,
Commissioner.