



**CANADIAN
PACIFIC
RAILWAY**

Business Development

Suite 800
501 Marquette Avenue (55402)
PO Box 530 (55440-0530)
Minneapolis Minnesota

Tel (612) 904-5920
Tel (Toll Free)
1-800-777-4499, Ext. 5920
Fax (612) 904-5962

January 11, 2005

FILE: City Project I.D. 2984-25-02/02
Canal Street Spur
Milwaukee, WI

Mr. David Windsor, P.E.
Project Engineer
City Of Milwaukee
Room 919
Frank P. Zeidler Building
841 North Broadway
Milwaukee, WI 53202

Dear Mr. Windsor:

This is in reference to the relocation of the Canal Street Spur in Milwaukee, Wisconsin. Enclosed, for your files, please find signed originals of Private Siding Agreements # 20831, St. Marys Cement, and #20842, Lone Star Cement, both dated December 15, 2004 covering the maintenance, operation and ownership of the new infrastructure serving Lone Star Cement and St. Marys Cement.

With respect to the turnout at point C, the governing agreement will be the St. Marys Cement agreement.

It has been a pleasure working with you on this project and all of us at Canadian Pacific Railway wish you success with the extension of Canal Street.

Please feel free to contact me at 612-904-5921 if you should have any questions.

Sincerely,

Judy Mitchell
Director, Business Development

Enclosure

cc: Ray Strelesky

**SOO LINE RAILROAD COMPANY
INDUSTRY TRACK AGREEMENT**

Agreement No. #20831
R/E Lease No. #31531
City Project I.D. 2984-25-02/03

THIS TRACK AGREEMENT, made and entered into as of the 15th day of December 2004 by and between SOO LINE RAILROAD COMPANY, d/b/a Canadian Pacific Railway, hereinafter called "Railroad Company", St. Marys Cement, 712 West Canal Street, Milwaukee, Wisconsin 53223, hereinafter called "St. Marys" and the City of Milwaukee, hereinafter called "City".

WITNESSETH:

WHEREAS, the City and the Railroad Company entered into a Memorandum of Understanding dated September 4, 2003 (approved in October 2003) outlining various actions both parties will undertake to facilitate the City's Canal Street Reconstruction and Extension project.

WHEREAS, the City wishes to remove the Railroad's Canal Street Spur (hereinafter "Existing Spur Track") from 20th Street to the end of Railroad Company ownership at St. Marys to improve safety and allow construction of Canal Street roadway improvements by the City as shown on Exhibit "A", and

WHEREAS, it is necessary to reconstruct the Canal Street rail spur in a new location between Track 17 of the Railroad Company's Muskego Yard and the Canal Street corridor that segment between letters A-B-C-E1-E on Exhibit A), hereinafter called the "City Spur."

WHEREAS, it is necessary to construct an at-grade crossing to St. Marys on that segment between letters C-D, to connect to existing segments D-L and D-M on Exhibit A all of which is hereinafter called the "St. Marys Spur".

NOW, THEREFORE, in consideration of the premises, the parties hereto agree as follows:

1. Grading and Drainage

The City, at its sole risk and expense, shall arrange to perform all grading required for the construction of the City Spur and St. Marys Spur. Where any grading is to be performed on the Railroad Company's right-of-way, the City and its contractor shall first obtain a construction easement before entering upon the right-of-way. The Railroad Company may require the presence of a flagman, at the City's expense, during operations on the right-of-way. The City shall also, at its sole risk and expense, furnish and install any drainage structure which may now be required to properly drain the City Spur and St. Marys Spur. St. Marys shall, at its sole risk and expense, furnish and install any drainage structure which may in the future be required to properly drain the St. Marys Spur. Any work performed by the City or St. Marys or its contractor in connection with such drainage structures on the Railroad Company's right-of-way shall be subject to the same requirements applicable in the case of grading operations. All work shall be done in accordance with the Railroad Company's "Specifications for Industry Tracks."

2. Purchase

The Railroad Company has sold to the City the Existing Spur Track and the track materials between 20th Street and approximately 6th Street as shown in Exhibit A. The City has paid to the Railroad Company \$1 for the purchase of the Existing Spur Track.

3. Construction

A. The Railroad Company shall construct that portion of the City Spur between the letters A-B with its own means and forces at the City's expense. Once said portion of the Railroad Company's work is completed the Railroad Company shall bill the City for the remainder of the completed work. The City agrees to pay the Railroad Company within 30 days of billing.

- B. When the City has complied with Section 1 of this Agreement, the Railroad Company, at the earliest practicable date, shall furnish all necessary materials, labor and supervision, and construct its portion of the City Spur including necessary appurtenances, except for grading and drainage structures.
- C. The City, with its own means and forces, or by means of a competent contractor, and at its sole cost and expense, shall construct that portion of the City Spur and St. Marys Spur.
- D. The City, with its own means and forces or by means of a competent contractor, and at its sole cost and expense, will also construct a concrete grade crossing through Canal Street.
- E. The City shall notify the Railroad Company Area Manager, Business Development three (3) working days in advance of the beginning of its portion of the track construction.

4. Taxes and Assessments

- A. The City shall assume and pay all taxes and assessments that may be lawfully levied or assessed by any public authority against the City Spur or on account of the maintenance and operation of the City Spur.
- B. St. Marys shall assume and pay all taxes and assessments that may be lawfully levied or assessed by any public authority against the St. Marys Spur that lies on St. Marys property or on account of the maintenance and operation of the St. Marys Spur.

5. Railroad Maintenance

Except for the turnout having point of switch at point C on Exhibit A, the Railroad Company shall furnish, at its expense, all necessary materials, labor and supervision, and perform all work that may be required for, or in connection with the maintenance, weed control, snow removal, repair and renewal of the City Spur, its roadbed, drainage structure and appurtenances, so as to conform with the standards of the Railroad Company and the requirements of public authority.

6. Industry Maintenance

St. Marys shall furnish all necessary materials, labor and supervision and perform all work that may be required for, or in connection with, the maintenance, weed control, snow removal, repair, renewal and changing of the St. Marys Spur, its roadbed and appurtenances, including all grade crossings and the complete turnout having point of switch at point C on Exhibit A. St. Marys shall maintain the St. Marys Spur in compliance with at least Federal Railroad Administration Class 1 standards. St. Marys shall notify the Railroad Company three (3) working days in advance of the beginning of maintenance or repairs of the St. Marys Spur. Upon completion of repairs, St. Marys shall notify the Railroad Company so that a final inspection can be made and the St. Marys Spur released for service.

7. St. Marys Operations

- A. The Railroad Company grants to St. Marys permission to use its own employees and equipment to move railroad cars over the St. Marys Spur between the letters D-L and D-M whenever necessary, for the purpose of setting in cars to be delivered to, and taking cars received from the Railroad Company. St. Marys does not have the right to move cars across the Canal Street spur crossing. Any switch moves that require occupancy of track between C and D will be performed by the Railroad Company. The Railroad Company will minimize switching operations over the Canal Street crossing (C-D) between the hours of 6 a.m. to 9 a.m. and 3 p.m. to 6 p.m.
- B. St. Mary's use of the St. Marys Spur shall not interfere with the operation of the Railroad Company.
- C. For safety reasons, St. Marys shall cease moving cars over the St. Marys Spur when the Railroad Company's train crew is operating in the vicinity of the St. Marys Spur.
- D. St. Mary's operations shall not involve movements across public grade crossings.
- E. St. Marys shall not leave cars or engines standing nearer than one hundred (100) feet to the edge of a road or bicycle trail crossing.
- F. St. Marys shall comply with all applicable statutes, regulations and ordinances regarding blocking public crossings.
- G. St. Marys shall keep the area along the St. Marys Spur in a level and neat condition, filling all holes and ruts that may develop as a result of St. Mary's operations.

H. When moving cars, St. Marys shall keep them under control at all times and shall set hand brakes, as necessary, to keep cars from moving on their own. Cars must not be switched into each other at speeds faster than four (4) mph.

I. St. Marys has the right to and responsibility to maintain the St. Marys spur including the Canal Street crossing (C-D). St. Marys may undertake urgent and emergency repairs of the Canal Street crossing without obtaining right-of-way occupancy permits from the City of Milwaukee. Scheduled maintenance must be scheduled through the City of Milwaukee Department of Public Works. .

8. Insurance

A. The City acknowledges that it is self-insured for up to \$2,000,000 in liability.

B. St. Marys shall, at its own expense, take out and keep in full force and effect during the term of this Agreement the following insurance coverage:

(a) a Comprehensive General Liability Insurance policy with an inclusive limit of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence, or such other increased amount as CPR may reasonably require from time to time, in respect of bodily injury, including injury resulting in death, and property damage. This policy will provide the following additional coverage

i include Soo Line Railroad Company d/b/a Canadian Pacific Railway Company as an additional insured,

ii contain a "severability of interest" clause which will have the effect of insuring each person, firm or corporation named in the policy as an Insured in the same manner and to the same extent as if a separate policy had been issued to each,

iii include a non-owned auto endorsement,

iv extend to cover all liabilities assumed by St. Marys under this Agreement,

(b) a Motor Vehicle Third Party Liability Insurance Policy with an inclusive limit of not less than TWO MILLION DOLLARS (\$2,000,000) for any one occurrence in respect of the use or operation of owned, leased or controlled by St. Marys.

C. The above-mentioned policies shall provide that thirty (30) days prior written notice shall be given to Soo Line Railroad Company d/b/a Canadian Pacific Railway Company by the insurer in the event that the policy is materially altered or canceled. Certificates of insurance, renewals thereof, or notices concerning the policies shall be sent to:

Canadian Pacific Railway Company
Attention: Risk Management Department
Suite 600, 401 9th Avenue S.W.
Calgary, Alberta T2P 4Z4
Fax: 403-319-7937

And a copy of the Certificates of Insurance shall be faxed to:

Fax: 612-904-5962

D. It is further provided and agreed that any insurance coverage acquired hereunder by St. Marys will in no manner restrict or limit the liabilities assumed by St. Marys hereunder.

9. Definitions

A. "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 attorneys fees, consultants fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);

B. "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. ' 9601 et seq., the Federal Water Pollution Control Act, 33 U.S.C. ' 1201 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, 33 U.S.C. ' 1251 et seq., all as amended from time to time, and any other federal, state, local or other 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;

C. "Hazardous Substance" or "Hazardous Substances" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law;

D. "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;

E. "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 or a Hazardous Substance;

F. "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. Railroad Ownership

The Railroad Company shall own the track between the letters A-B, as shown on Exhibit A.

11. Industry Ownership

St. Marys shall own the turnout between the point of switch (point C) and the last switch tie (point E1) and the track between the letters C-D, D-L and D-M as shown on Exhibit A. In the event that rail operations into the St. Mary's facility are abandoned, St Marys will be responsible for removing the turnout located at Point C and restoring the track between Points C and E-1. This newly constructed portion of track in the City Spur will then be owned by the City and maintained by the Railroad Company.

12. City Ownership

A. The City shall own the track between the letters B-C and between the letters E1-E as shown on Exhibit A. The Railroad Company hereby leases to the City that portion of its land lying within nine and one-half (9.5) feet of the centerline of the City Spur that lies on Railroad Company property for the construction, maintenance and operation of said City Spur (the "Leased Premises"), subject to the following terms and conditions:

B. The City shall pay a one time lease rent payment of \$1 for the term of this Agreement.

C. The City, in addition to the Base Rent, shall pay all taxes, assessments, license fees or other charges (except assessments or taxes for permanent improvements, other than those resulting from or necessitated by, City's use of the land) which, during the term of this Agreement, shall be levied or assessed by, or become payable to any state, municipal, county or federal authority for or against the whole or any part of the Leased Premises, including all improvements located thereon, or against the business conducted upon the premises for that portion of the track on Railroad Company property beyond Point B.

D. The City shall, during the term of this Agreement, fully protect the Leased Premises from all mechanics' and materialmen's liens accruing by reason of the construction, maintenance, repair, replacement or renewal of any building or improvements of the Industry located upon the Leased Premises, or the use or occupancy thereof by the Industry.

E. The City shall not permit any advertisements or signs upon the Leased Premises other than advertisements or signs relating strictly to the business that is being conducted thereon.

F. The City shall not permit the existence of any nuisance upon the Leased Premises.

G. The City shall not cause or allow the Leased Premises to be used for any purposes other than as herein authorized, or in any manner cause or allow the Leased Premises or any of the City's adjacent property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or to otherwise bring any such property within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. ' 9601 et seq. or any similar state statute or local ordinance.

H. The City shall be familiar with the requirements of, comply with, and secure at the City's own expense, any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws and the orders of any duly constituted public authority now or hereafter in effect which in any way govern or regulate the Lessee's occupancy or use of the Leased Premises, and shall at the City's sole expense, make all improvements alterations, repairs or additions, and install all appliances required by any such laws, regulations, ordinances or standards.

I. The City shall, upon written request by the Railroad Company, provide the Railroad Company with copies of transportation and disposal contracts and manifests for Hazardous Waste, any permits issued under any Environmental Laws, and any other documents demonstrating that the City has complied with all Environmental Laws relating to the Leased Premises. Upon reasonable notice to the City, the Railroad Company and the Railroad Company's beneficiaries, agents and employees shall have the right to enter the Leased Premises at any time and to conduct any inspections and tests deemed advisable by the Railroad Company in order to determine City's compliance with Environmental Laws.

J. The City shall not, without prior written disclosure to and approval by the Lessor, Use or authorize the Use of any Hazardous Substance on the Leased Premises, including installation of any above or underground storage tanks; subject thereto, the City shall arrange at its own cost for the lawful transportation and off-site disposal of any and all Hazardous Substances that it shall Use or generate.

K. The City shall not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Leased Premises.

L. The City shall promptly notify the Railroad Company of any actual or suspected Release of any Hazardous Substance on, to, or from the Leased Premises, regardless of the cause of the Release.

M. The City shall promptly provide the Railroad Company 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, concerning (i) any Release of a Hazardous Substance on, to or from the Leased premises, (ii) the imposition of any lien on the Leased Premises, or (iii) any alleged violation of or responsibility under any Environmental Law relating to the Leased Premises.

N. The City shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Leased Premises caused by, or attributable to, any act or omission of the City (or the City's employees, agents, representatives or invitees) that (i) gives rise to any Claim under any Environmental Law, (ii) causes a significant public health or workplace effect, or (iii) creates a nuisance.

O. Following receipt of any notice, order, claim, investigation, information request, letter, summons, citation, or directive pursuant to subparagraph K of this Section 11 or in connection with any action taken pursuant to subparagraph L of this Section 11, the City shall notify the Railroad Company of and permit the Railroad Company to participate in any and all investigations, telephone conferences, settlement discussions, remediation plans and all other interactions, direct or indirect, with

governmental or regulatory officials, and the City shall take all action necessary to ensure that any indemnification, release, or hold harmless agreement benefiting the Industry and arising out of such activities, whether from a governmental or regulatory entity or from a private entity, also-benefits the Railroad Company to at least the same extent as the City. The City acknowledges and agrees that a Release of any Hazardous Substance may impair the value of the Leased Premises and restrict future use of the Leased Premises notwithstanding the completion of any cleanup or remediation to the satisfaction of governmental or regulatory officials. The City agrees to compensate the Railroad Company fully for any such diminution in value or restriction in use of the Leased Premises regardless of whether a cleanup or remediation action was performed to the satisfaction of governmental or regulatory officials. No provision of this subparagraph N shall be construed to limit or impair the indemnification provisions of Section 18 below.

13. Clearance

A. The City or Industry shall not place, or permit to be placed, or to remain, any material, structure, pole or other obstruction within eight and one-half (8.5) feet on straight track or ten and one-half (10.5) feet on curve track laterally of the centerline, or within twenty-three (23) feet vertically from the top of rail of the track, without the written consent of the Railroad Company. The support arm for a crossbuck will provide eighteen (18) feet of vertical clearance over the City Spur just west of the turnout at point C. The City will temporarily remove this support arm if the Railroad Company's operation over the City Spur requires between eighteen (18) feet and twenty-three (23) feet of vertical clearance. The City is responsible for obtaining required state approval of the reduced vertical clearance.

B. The Railroad Company's operation over the City Spur with knowledge of any unauthorized reduced clearance shall not be, or deemed to be, a waiver of the foregoing covenants contained in this Section or of the Railroad Company's right to recover for such damages to property or injury to or death of persons that may result from any unauthorized reduced clearance.

14. Under-Track Pit

There will be no under-track pit.

15. Overhead Loading Facilities There will be no overhead loading facilities.

16. Restricted Area

The City shall not allow employees or equipment to operate within twelve (12) feet from the centerline of the most northerly track in Muskego Yard.

17. Crossing Protective Device Maintenance.

A. There are no crossing signals.

B. St. Marys will maintain the protective devices for the Canal Street at-grade crossing of the St. Marys Spur.

18. Indemnity

A. Railroad Company is defined as the following corporations and their officers, directors, employees, and agents; Soo Line Railroad Company, Soo Line Corporation, Canadian Pacific Railway, Canadian Pacific Limited, and their respective parent companies, subsidiaries, and affiliated companies.

B. The City and St. Marys acknowledge and agree that the movement of railroad locomotives, trains or cars and the work incident to the maintenance of the right-of-way and track in close proximity to the Leased Premises involves some risk of injury to persons and damage to structures and property thereon by fire, vibration or smoke. As one of the material considerations of this Agreement, without which it would not be granted, the City, to the extent permitted by applicable law, and St. Marys expressly assumes said risk and hereby releases and agrees to indemnify, hold harmless and defend the Railroad Company and its directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, or anyone acting on its behalf or their behalf, from and against any and all Claims of every kind, past, present and future, existing and contingent, known and unknown, arising from any injury to persons, firms or corporations whomsoever (including

the parties hereto and their employees, agents and invitees), including injuries resulting in death, and damage to property whatsoever (including property of the parties hereto), including structures and their appurtenances, equipment and appliances, except Claims arising under Environmental Laws, while such persons or property are on, about, or in the vicinity of the Leased Premises, and when such injury or damage has been caused by or is attributable to, in whole or in part, fire, vibration or smoke in connection with the Railroad Company's operation of locomotives, trains or cars, the Railroad Company's performance of railroad maintenance in the vicinity of the Leased Premises, or any other activity of the City and St Marys or the Railroad Company, except that the City and St. Marys' assumption of liability and its obligations hereunder shall not extend to damages to the premises of the Railroad Company, to rolling stock belonging to the Railroad Company or to others, or to shipments in course of transportation. The City and St. Marys' obligations hereunder shall survive the termination or expiration of this Agreement.

C. The City, to the extent permitted by applicable law, and St. Marys shall indemnify and hold harmless the Railroad Company and its agents for any and all liability, claims, suits and judgments, costs and expense, including attorney's fees, for loss, damage, injury or death to the person or property of the parties and their employees, and to the person or property of any other person or corporation, arising out of or connected with any act or omission, negligent or otherwise, of the City, and St. Marys or their employees or agents connected with this Track Agreement or the City and St. Marys presence or its performance of any activity in connection with the operation or use of the City Spur or St. Marys Spur. If the liability, claim, suit, judgment, cost or expense, other than that assumed by the City and St. Marys under the above Sections arises from the joint or concurring negligence of any of the parties, contributions by the parties shall be based on comparative fault or comparative negligence.

D. As one of the material considerations of this Agreement, without which it would not be granted, the City, to the extent permitted by applicable law, St. Marys hereby release and agree to indemnify, hold harmless and defend the Railroad Company and its directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, or anyone acting on its behalf or their behalf, from and against any and all Claims arising under any Environmental Law, of every kind, past, present and future, existing and contingent, known and unknown, arising from any injury to persons, firms or corporations whomsoever (including the parties hereto and their employees, agents and invitees), including injuries resulting in death, and damage to property whatsoever (including property of the parties hereto), wherever such persons or property are located, caused by or attributable to, in whole or in part, any act or omission of the City and St. Marys (or the City and St. Marys' employees, agents, contractors, representatives, or invitees), including without limitation the Use or Release of Hazardous Substances by the City and St. Marys and the breach by the City and St. Marys of any of its warranties, representations or covenants. The City and St. Marys obligations hereunder shall survive the termination or expiration of this Agreement.

19. Railroad Use

A. The Railroad Company shall have the right to use the whole or any part of the subject trackage for its own use or other customers of the Railroad Company to the extent such use does not unreasonably interfere with the use of the subject trackage by the City and St. Marys. The City and St. Marys shall not permit or authorize the use of the subject trackage by, or for the benefit of, any other person, firm or corporation without the written consent of the Railroad Company.

B. The Railroad Company shall have the right to extend and/or connect other track to the subject trackage for the purpose of reaching and serving other industries, if authorized in writing by the City which authorization shall not be unreasonably withheld.

20. Termination

A. This Track Agreement shall be subject to termination by the Railroad Company upon thirty (30) days written notice to the City and St. Marys (i) if St. Marys discontinues the use of the subject trackage for a period of twelve (12) consecutive months, (ii) if the City or St. Marys fails to perform or comply with any of the provisions of this Agreement and such default constitutes a material breach which continues for a period of thirty (30) days after written notice of default by the Railroad Company,

or (iii) if compliance with the requirements of any law, ordinance or order of any competent public authority or other changed conditions not within the control of the parties makes continued use of the subject trackage impracticable. However, the Railroad Company may not terminate this Agreement if the City or St. Marys receiving the notice has cured or begun and is continuing diligent efforts to cure within a reasonable time the default set forth in the notice within the thirty (30) day time period. The termination of this Agreement shall not in any way limit the rights or obligations of the parties accruing before the termination.

B. The City or St. Marys, upon written consent of the other parties, may terminate this Track Agreement at any time with thirty (30) days written notice to the Railroad Company.

C. The City shall, within three hundred sixty-five (365) days of the termination of this Track Agreement for any reason, remove any of its tracks from the Railroad Company property, fill all pits, remove all foundations and restore said property to a state of usefulness for general purposes. The City shall not be responsible for removing track from A-B owned by the Railroad Company. Any City-owned track material remaining on Railroad Company property after three hundred sixty-five (365) days shall be considered the property of the Railroad Company. The City shall reimburse the Railroad Company for all costs incurred by it in restoring the property within thirty (30) days after billing.

21. Waiver

The waiver by any party of a breach by the other of any provision of this Track Agreement shall be limited to the act or omission constituting such breach and shall not be construed as a continuing or permanent waiver.

22. Assignment

The City or St. Marys shall not assign this Track Agreement, in whole or in part, without the written consent of the Railroad Company. Subject to such condition, this Agreement shall inure to the benefit of, and be binding upon, the parties, their legal representatives, successors and assigns. Assignment in contravention of this provision shall be void and unenforceable.

23. Severability

If any provision of this Track Agreement is judicially determined to be invalid or unenforceable, such provision shall be considered to be eliminated from this Agreement and this Agreement shall continue in full force and effect in all respects as though such invalid or unenforceable provision had never been included.

24. Additions

The City or St. Marys may make track additions at future dates at its own construction and maintenance expense as long as it receives approval from the Railroad Company for these additions, which approval shall not be unreasonably withheld.

25. Force Majeure

The Railroad Company shall not be obligated to operate the subject trackage if it is prevented or hindered from doing so by acts of God, public authority, strikes, riots, labor disputes, or by any cause beyond its control.

26. Amendment

This Agreement completely outlines all of the rights, responsibilities, and obligations of the parties hereto and said Track Agreement 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.

27. Notice

All correspondence and notices to be given by the Industry to the Railroad Company shall be given by letter, deposited with the United States Postal Service, postage prepaid, addressed to:

Canadian Pacific Railway
501 Marquette Avenue South
Minneapolis, MN 55402
Attn: Area Manager, Business Development

City of Milwaukee
841 North Broadway
Milwaukee, WI 53202
Attn: City Engineer

St. Marys Cement
712 West Canal Street
Milwaukee, WI 53223
Attn: Plant Manager

All correspondence and notices to be given by the Railroad Company to the City and St. Marys shall be similarly given, addressed to the City and St. Marys at the last known address of the City and St. Marys. It is the City and St. Marys' duty to notify the Railroad Company promptly in writing of any change of address. If the City or St. Marys fails to do so, any notice from the Railroad Company sent to the City or St. Marys' last known address shall be effective, whether or not received.

28. Cancellation of Prior Agreement

This Track Agreement shall supersede and cancel that certain agreement between the Railroad Company and Universal Atlas Cement, Division of United States Steel Corporation, dated October 16, 1967 Railroad Company's file S-7604.

[The remainder of this page 9 is intentionally blank. The following page, page 10, contains the signatures of the parties to this agreement.]

IN WITNESS WHEREOF, the parties hereto have caused this Track Agreement to be duly executed as of the day and year first above written.

**SOO LINE RAILROAD COMPANY,
d/b/a Canadian Pacific Railway**

By: [Signature]
Chief Engineer

By: [Signature]
Director Real Estate Marketing-US

**In the presence of as to
Railroad Company:**

[Signature]

CITY OF MILWAUKEE

By: [Signature]

In the presence of as to City:

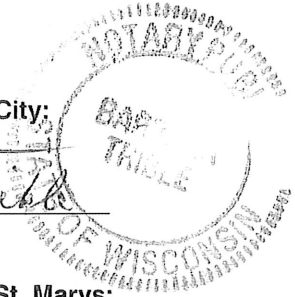
[Signature]

ST. MARYS CEMENT

By: [Signature]

In the presence of as to St. Marys:

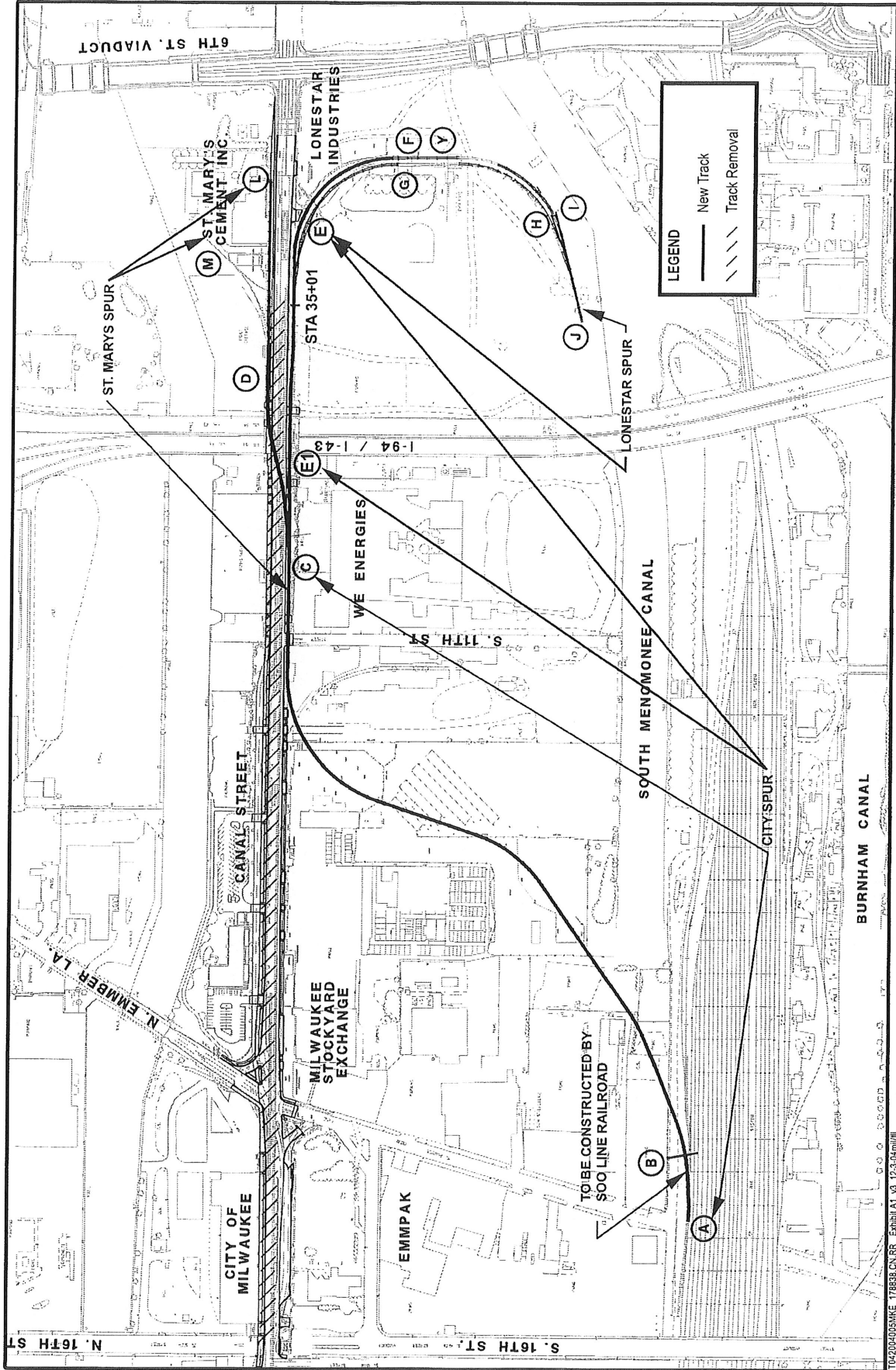
[Signature]



PATRICK J. GALLAGHER, ATTORNEY AT LAW
NOTARY PUBLIC-State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.

NOT ASSIGNABLE WITHOUT CONSENT
NOT TO BE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS

Rev 12/99



- A = STA 0+0
- B = 3+65.30
- C = 28+33.88 (Point of switch)
- D = 704+90.00
- E1 = 29+34.88
- E = 202+51.69 & 37+30.22
- F = 41+46.00
- G = 205+94.00
- H = 211+98.88
- I = 47+73.71
- J = 50+09.38