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**MEMORANDUM**

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TO: RANDY HILL, PUBLIC WORKS DIRECTOR

FROM: JON LUTZ, CITY ENGINEER

SUBJECT: MUSSER PARK TO WIGGENS ROAD TRAIL  
REQUEST LEASE AGREEMENT APPROVAL WITH CPR

DATE: OCTOBER 15, 2014

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**INTRODUCTION:**

The City of Muscatine has planned for a 9.45 trail beginning from Houser Street at Kent Stein Park to the Louisa County Line near Wiggins Road. See attached location map showing the proposed trail route. New trail will be constructed on 5.18 miles while the remaining length "share the road" will be on low volume hard surfaced roads and trails.

**BACKGROUND:**

Land acquisition for the trail is currently ongoing. The Canadian Pacific Railway (CPR) has agreed to lease a parcel of abandoned rail spur west of Houser Street near the entrance to Kent Stein Park. This lease area allows access across the Muscatine Slough using an abandoned railroad bridge to the northeast corner of the Transfer Station property. The trail alignment would then loop around the Transfer station, approximately 1 mile. Terms of the lease are 10 year for \$2000.00 total renewable for 10 year periods thereafter. Cost to purchase this property would be significantly greater.

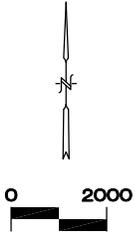
The CPR has coordinated well with Muscatine to allow this scenic and practical opportunity. CPR has recently formed renewed relationships with Muscatine for mutually beneficial infrastructure improvements.

**RECOMMENDATION/RATIONALE:**

The City Engineer recommends approving the lease agreement.

**BACKUP INFORMATION:**

1. Trail location map.
2. Lease agreement.
3. Trail Plan.



# CITY OF MUSCATINE

## TRAIL LENGTH SUMMARY

SOUTH SEGMENT	= 0.22 MI
MIDDLE SEGMENT	= 0.46 MI
NORTH SEGMENT	= 4.45 MI
NEW TRAIL LENGTH	= 5.13 MI
FRUITLAND TRAIL	= 0.28 MI
SHARE THE ROAD	= 4.06 MI
TOTAL TRAIL ROUTE	= 9.47 MI

END TRAIL CONSTRUCTION NORTH SEGMENT  
4.45 MI

BEGIN TRAIL CONSTRUCTION NORTH SEGMENT

END 0.46 MI

BEGIN TRAIL CONSTRUCTION MIDDLE SEGMENT

END 0.22 MI

BEGIN TRAIL CONSTRUCTION SOUTH SEGMENT

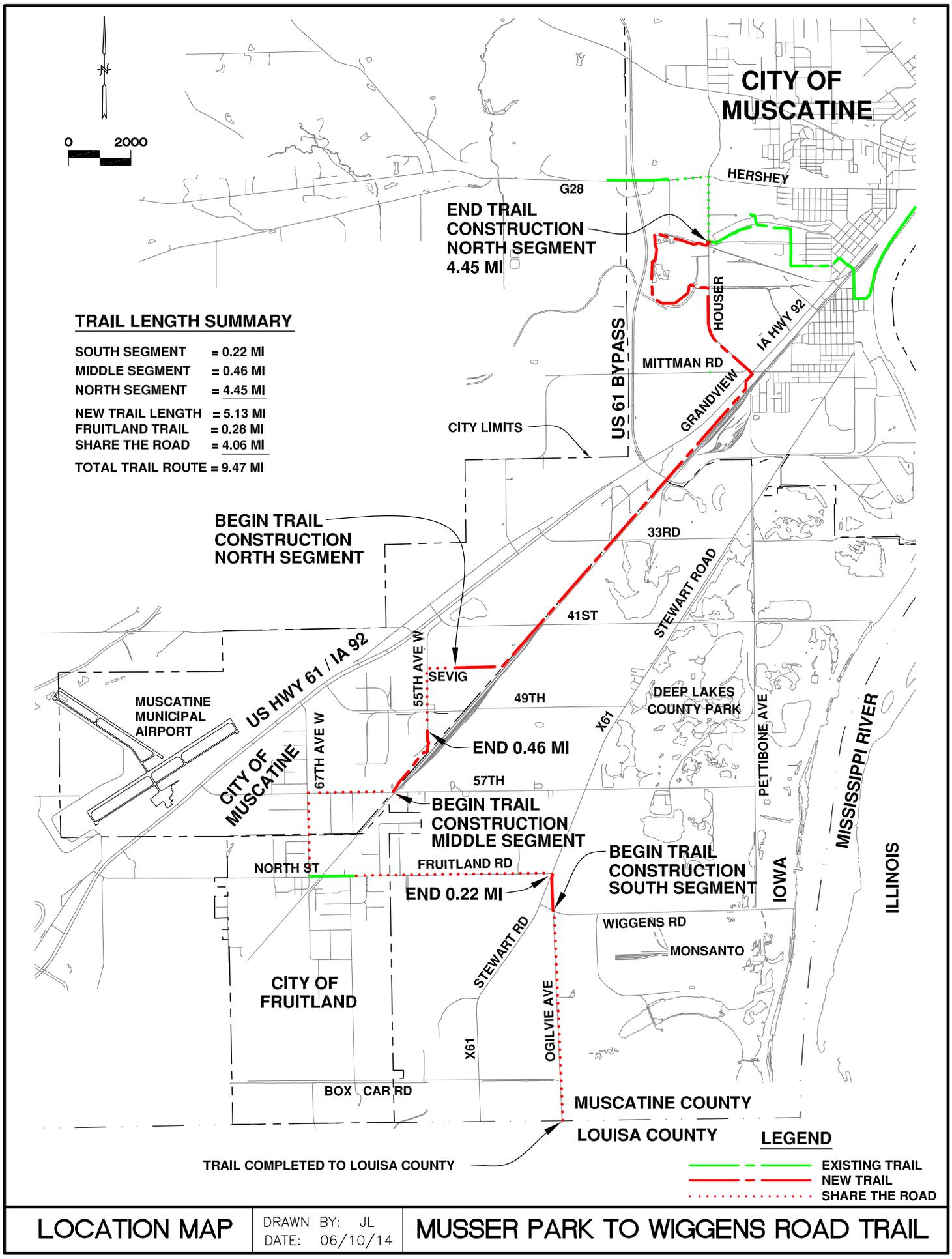
TRAIL COMPLETED TO LOUISA COUNTY

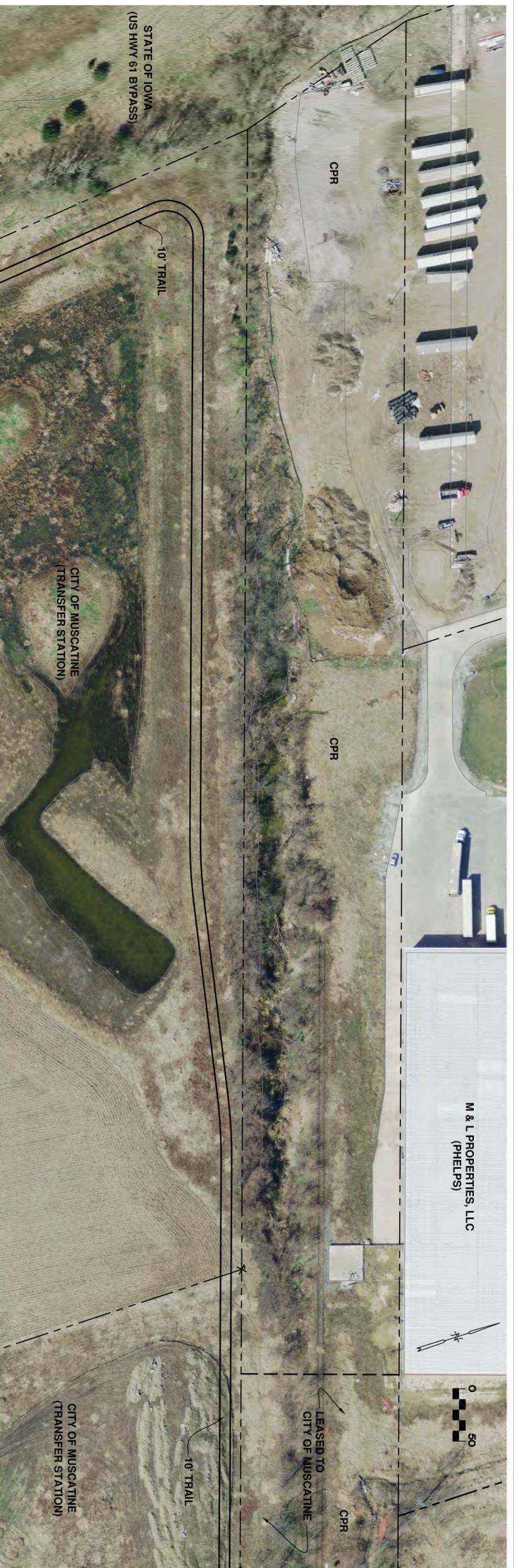
- LEGEND**
- EXISTING TRAIL
  - NEW TRAIL
  - SHARE THE ROAD

LOCATION MAP

DRAWN BY: JL  
DATE: 06/10/14

MUSSER PARK TO WIGGENS ROAD TRAIL





**MUSSER TO WIGGENS TRAIL**

DRAWN BY: JL  
DATE: 05/23/14

CITY OF MUSCATINE

STATE OF IOWA

FED. ROAD DIST. NO. 5

FISCAL YEAR 2015

FED. PROJ. NO. EDP-5330(622)--7Y-70

CITY PROJ. NO. 700-12-A

SHEET **A08**

License No. **XXXXX**

**THIS LICENSE** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between

**SOO LINE RAILROAD COMPANY**, a Minnesota corporation doing business as Canadian Pacific Railway,

with offices at 120 S. Sixth St., Suite 900  
Minneapolis, Minnesota 55402  
Attn: Real Estate Department  
(612) 904-6143  
(612) 904-6147 (fax)

hereinafter called the "**Railroad**,"  
and

**City of Muscatine, an Iowa** municipal corporation,

with offices at 215 Sycamore Street  
Muscatine, IA, 52761  
Attn: City Engineer  
563-506-4274

hereinafter called "**Licensee**,"

**WITNESSETH:**

1. The Railroad, in consideration of the payments, covenants and conditions hereinafter set forth to be made, performed and complied with by the Licensee, hereby grants unto the Licensee the right and license to use those certain portions of the Railroad's property located in **Muscatine, Muscatine County, State of Iowa** (the "**Property**"), for the sole purpose of placement of an

**at-grade pedestrian trail and crossing**

located in

That part of the Canadian Pacific Railroad which lies within the Southeast Quarter of Section 4, Township 76 North, Range 2 West of the 5<sup>th</sup> P.M , Muscatine County, Iowa, further described as follows:

Commencing at the Northeast corner of the Southeast Quarter of Section 4, Township 76 North, Range 2 West of the 5<sup>th</sup> PM, Muscatine County, Iowa; thence South 00 degrees 14 minutes 25 seconds East, assumed bearing along the East line of said Southeast Quarter, a distance of 1159.95 feet; thence South 89 degrees 45 minutes 35 seconds West, 40.00 feet to a point on the Westerly right of way line of the Houser Street and the Northerly right of way line of Canadian Pacific Railroad and the point of beginning; thence South 00 degrees 14 minutes 25 seconds East, 158.21 feet to a point on the Southerly right of way line of said Railroad and the Westerly right of way line of Houser Street; thence North 71 degrees 42 minutes 00 seconds West, along said Southerly right of way line, 788.72 feet; thence North 18 degrees 18 minutes 0 seconds East, 150.00 feet to a point on said Northerly right of way line; thence south 71 degrees 42 minutes 00 seconds East, along said Northerly right of way line, 738.42 feet to the point of beginning containing 2.629 acres more or less.

Said Property is shown upon the plan sheet D19 labeled Exhibit A that is attached hereto and is made a part hereof.

The right and license herein granted is subject to the rights granted in all other licenses, permits and easements for tracks, roads, walkways, poles, wires, pipelines, sewers, billboards and other improvements that exist or may be placed upon, across, above or underneath the Property by the Railroad, or its employees, agents, licensees, grantees, representatives or invitees. Further, the Railroad

reserves unto itself the right to place (or to give others the right to place) additional tracks, roads, walkways, poles, wires, pipelines, sewers and billboards upon, across, above or underneath the Property.

2. This License shall initially be for the term of **Ten (10) years with 10 year renewal options** and shall remain in effect thereafter until terminated by either party upon thirty (30) days' advance written notice to the other party.

3. In consideration for this License, the Licensee shall pay to the Railroad a sum **TWO THOUSAND DOLLARS AND NO CENTS (\$2000)** as rental for the 10 year term hereof, which shall not be refunded in the event this License is terminated by either party.

4. The Licensee:

(A) Shall keep the Property in a neat and orderly condition;

(B) Shall provide adequate drainage of and from the Property and Railroad's adjoining right of way; and wherever any improvements by Licensee may obstruct the natural pre-existing drainage from the Property and Railroad's adjoining right of way, Licensee shall construct and maintain culverts or drains within the Property as may be requisite to preserve such natural and pre-existing drainage.

(C) Shall not cause or allow the Property or any of the Railroad's adjacent property to be used for the disposal of any items or materials, including fill dirt, or in any manner cause or allow any such 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. § 6901 et seq. or any similar state statute or local ordinance;

(D) Shall be familiar with the requirements of, comply with, and secure at the Licensee's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws;

(E) Shall not, without prior written disclosure to and approval by the Railroad, Use or authorize the Use of any Hazardous Substance on the Property;

(F) Shall not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property;

(G) Shall promptly notify the Railroad of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release;

(H) Shall promptly provide the Railroad 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 Property, or (ii) any alleged violation of or responsibility under any Environmental Law relating to the Property;

(I) Shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property caused by, or attributable to, any act or omission of the Licensee (or the Licensee'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;

(J) Following receipt of any notice, order, claim, investigation, information request, letter, summons, citation, or directive pursuant to subparagraph G of this paragraph 4 or in connection with any action taken pursuant to subparagraph H of this paragraph 4, Licensee shall notify the Railroad of and permit the Railroad 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 Licensee shall take all action necessary to ensure that any indemnification, release, or hold harmless agreement benefiting Licensee and arising out of such activities, whether from a governmental or regulatory entity or from a private party, also benefits the Railroad to at least the same extent as Licensee. Licensee acknowledges and agrees that a Release of any Hazardous Substance may impair the value of the Property and restrict future use of the Property, notwithstanding the completion of any cleanup or remediation to the satisfaction of governmental or regulatory officials. Licensee agrees to compensate the Railroad fully for any such diminution in value or restriction in use of the Property, regardless of whether a cleanup or remediation action was performed to the satisfaction of governmental or regulatory officials. No provision of this subparagraph I shall be construed to limit or impair the indemnification provisions of paragraphs 5(A) and (B), below;

(K) Shall not construct or place any improvement or property upon the Property or allow the Property to be used for the storage of any materials excepting the bike and pedestrian path constructed in accordance with [the Musser Park to Wiggins Road Trail plan sheet D19 dated August 14, 2014.](#);

(L) Shall, prior to termination of this License, remove all of its property from the Property, clear away and properly dispose of all accumulations of waste material, and restore the Property to its original state. Failure of the Licensee to do so by the effective date of termination shall constitute an abandonment by the Licensee of all property of the Licensee then on the Property, and shall give the Railroad the right to dispose of such property in any way it may desire, to clear the Property of waste material, and to restore the Property to its original state. If the Railroad shall exercise such right, the Licensee, upon a bill being rendered therefor, shall within 10 days reimburse the Railroad for all costs and expenses in connection therewith, plus fifteen percent (15%);

(M) Shall not place or permit any material, structure, equipment, pole, beam, cable, wire or other obstruction nearer than eight (8) feet six (6) inches horizontally (measured at right angles) from the center line of any railway track now or hereafter located upon or adjacent to the Property, or nearer than twenty-seven (27) feet vertically measured from the top of the rail; nor permit any excavation to be made or remain nearer than eight (8) feet six (6) inches horizontally from the center line of any such track.

5. (A) Licensee acknowledges and agrees 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 Property 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 License, without which it would not be granted, Licensee expressly assumes said risk and, to the maximum extent permitted by law, hereby releases and agrees to indemnify, hold harmless and defend the Railroad 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, except Claims arising under Environmental Laws, past, present and future, existing and contingent, known and unknown, arising from any injury, including injuries resulting in death, to persons (the Licensee, its employees, agents and invitees) and damage to property whatsoever (including property of the parties hereto), including structures and their appurtenances, equipment and appliances, while such persons or property are on, about, or in the vicinity of the Property with the express or implied consent of Licensee, 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's operation of locomotives, trains or cars, the Railroad's performance of railroad maintenance in the vicinity of the Property, or any other activity of Licensee or the Railroad, except that Lessee's assumption of liability and its obligations hereunder shall not extend to damages to the premises of the Railroad, to rolling stock belonging to the Railroad or to others, or to shipments in course of transportation. Licensee's obligations hereunder shall survive the termination or expiration of this License.

6. (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 attorney's 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. § 6901 et seq., the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. § 1251 et seq. the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other 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.

7. (A) The Licensee shall not in any manner assign or transfer its rights under this License, voluntarily or involuntarily, by operation of law or otherwise. Any attempted or purported assignment or transfer by the Licensee shall be void, and in such event this License shall be automatically revoked without further action by either party;

(B) The use and occupancy of the Property by the Licensee, howsoever long continued, shall not vest in the Licensee any right, title or interest in the Property adverse to that of the Railroad;

(A) Any act or omission constituting a breach of this License shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof;

(D) The Railroad does not warrant title to the Property;

(E) The right and license granted herein is a mere license to use the Property for the purpose or purposes specified in this License. The right and license granted herein is not a lease or an easement. This License does not grant or convey to the Licensee any estate, title or ownership interest in or to the Property;

(F) The Licensee acknowledges the Railroad's title to and ownership of the Property.

8. Each provision, paragraph, sentence, clause, phrase, and word of this License shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, sentence, clause, phrase or word of this License is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this License.

**THE PARTIES HERETO** have caused this License to be duly executed as of the date first above written.

**SOO LINE RAILROAD COMPANY**

By \_\_\_\_\_  
Manager, Real Estate - U.S.

**CITY OF MUSCATINE**

By \_\_\_\_\_  
Its \_\_\_\_\_

Not Assignable  
**NOT TO BE RECORDED IN PUBLIC RECORDS**