

## COST SHARE AGREEMENT

**THIS COST SHARE AGREEMENT** (the "Agreement") is entered into on this \_\_\_ day of \_\_\_\_\_, 2016 by and between the Dakota, Minnesota & Eastern Railroad Company doing business as Canadian Pacific (hereinafter "CP"), its successors and assigns, and the City of Muscatine, Iowa (hereinafter the "City").

**WHEREAS**, CP owns and operates railroad tracks along the Mississippi Drive corridor within the City shown on Exhibit A attached ("Mississippi Drive Corridor Tracks"); and

**WHEREAS**, in response to flooding in 2014, CP raised the elevation of the Mississippi Drive Corridor Tracks; and

**WHEREAS**, the City experienced an interruption and displacement of traffic patterns and an interruption in Americans with Disabilities Act as amended ("ADA") access to its riverfront due to the elevation of the Mississippi Drive Corridor Tracks; and

**WHEREAS**, the City is planning a comprehensive project for reconstruction of Mississippi Drive, including but not limited to bringing railroad crossings in the area of Mississippi Drive and entrances into the riverfront area into compliance with the ADA ("City's Project"); and

**WHEREAS**, the City and CP entered into a Memorandum of Understanding ("MOU"), dated April 8, 2015 attached as Exhibit B, as a result of the disruption in access and in order to develop a more definitive contract for coordinating both the City's Project and further increases to the elevation of the Mississippi Drive Corridor Tracks by CP; and

**WHEREAS**, as a result of CP raising the elevation of the Mississippi Drive Corridor Tracks in response to the flooding in 2014, the City will incur expenses for ADA compliance in connection with the City's Project that it would otherwise not incur; and

**WHEREAS**, CP does not at this time plan further increases to the elevation of the Mississippi Drive Corridor Tracks, except work associated with raising the level of the track at the Iowa Avenue crossing by 0.22 feet ("Planned Additional Track Raise"); and

**WHEREAS**, the parties desire to enter into this Agreement to provide for a financial contribution by CP to the City's Project and to address the other matters set forth herein.

**NOW, THEREFORE**, the City and CP agree as follows:

1. **Purpose.** This purpose of this Agreement is to set forth CP's agreement to make a financial contribution to the costs of the City's Project that are necessitated by CP's raising the height of the Mississippi Drive Corridor Tracks.
2. **City's Project.** The portion of the City's Project that is the subject of this Agreement is shown on the attached Exhibit C. For purposes of this Agreement, this area shall be known as the "Area of Impact."
3. **Project Adjustments.** as a result of CP's track raise, it becomes necessary for the City to make certain adjustments to the City's Project design within the Area of Impact, including, *but not limited to*: (i) raising the height of Mississippi Drive; (ii) restoring existing railroad crossings and entrances to the riverfront area so that they comply with all applicable Iowa Department of Transportation requirements and

meet all of the accessibility and design requirements imposed by federal law including, but not limited to, the ADA; and (iii) acquiring property for right-of-way purposes (the "Project Adjustments."). The Project Adjustments are preliminarily illustrated on the attached Exhibit D and itemized on the attached Exhibit E. The City shall complete the City's Project at its sole cost and expense with the exception of the financial contribution by CP pursuant to the terms of this Agreement.

4. Financial Responsibilities. The total cost of the City's Project is currently estimated at \$18,000,000.00. Of the total project costs, the parties estimate that approximately \$4,000,000.00 of the cost is due to the CP track raise. CP agrees to pay the City \$4,000,000.00 as CP's financial contribution to the costs of the City's Project.

A. *Payments*. CP shall make its \$4,000,000.00 contribution to the City's Project in three payments as follows:

- (i) the first payment in the amount of \$2,000,000.00 shall be delivered to the City on or before April 1, 2017;
- (ii) the second payment in the amount of \$1,000,000.00 shall be delivered to the City on or before April 1, 2018; and
- (iii) the third payment in the amount of \$1,000,000 shall be delivered to the City following 85 % completion of the City's Project related to the Mississippi Drive roadway and CP crossing work within the Area of Impact, but not earlier than April 1, 2018.

Upon the making of these three payments totaling \$4,000,000.00, CP's obligation to make a financial contribution to the City's Project shall be fulfilled irrespective of errors in the preliminary illustrations and estimates contained in Exhibits D and E, the actual costs of the City's Project, the actual costs of Project Adjustments, or other actual costs paid by the City due to the CP track raise.

B. *Deposited Funds*. CP agrees that all funds delivered to the City pursuant to this Agreement may be commingled with other similar monies deposited from other sources funding the City's Project.

5. City's Project Letting and Award of Contracts. The City shall be solely responsible for bid letting of the City's Project, including Project Adjustments, which includes advertising for bids and awarding the construction contracts for the City's Project. The City will solicit bids for the public improvement in accordance with the plans developed by the City. The plans may from time to time be modified in order to carry out the work as contemplated. The City reserves the right to reject any and all bids at the City's sole discretion. If, for any reason, the City does not substantially complete the City's Project related to the Mississippi Drive roadway and CP crossing work within the Area of Impact by December 31, 2019, the City shall return to CP any portion of CP's financial contribution paid by CP to the City pursuant to this Agreement and not actually used by the City for Project Adjustments.

6. City's Project Management. Subject to the provisions of this Agreement, The City shall have exclusive control of the City's Project.

7. Ownership and Modification. Regardless of which party procured payment for any portion of the City's Project, the City shall maintain ownership of all portions of such public improvements. By contributing to the cost of the City's Project, CP gains no interest in the roadway or improvements



Muscatine, Iowa 52761  
(563) 264-1550

If to CP: Canadian Pacific  
c/o Jim Krieger – Manager Public Works  
CP Plaza – 120 South 6<sup>th</sup> Street  
Minneapolis, MN 55402  
(612) 330-4553

14. Miscellaneous. The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute the Agreement. All section headings contained in this Agreement are for the convenience of reference only and are not intended to define or limit the scope of any provision of the Agreement. This Agreement represents the entire understanding between the parties regarding the subject and supersedes all prior written or oral communications between the parties regarding this subject. There are no third party beneficiaries of this Agreement. In the event any clause or provision of this Agreement is held illegal, invalid, or unenforceable under present or future laws, then that provision shall be modified or deleted as so ordered and the remainder of this Agreement shall not be affected thereby.

15. Termination of MOU. The MOU is hereby terminated and replaced by this Agreement and neither party shall be deemed to have any obligations under the MOU.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date first written above.

**DAKOTA, MINNESOTA & EASTERN RAILROAD COMPANY d/b/a  
CANADIAN PACIFIC**

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

**CITY OF MUSCATINE, IOWA**

By: \_\_\_\_\_  
**Gregg Mandsager**  
**City Administrator, City of Muscatine**

EXHIBIT A

[Mississippi Drive Corridor Tracks]

EXHIBIT B

[Executed Memorandum of Understanding]

EXHIBIT C  
[Area of Impact]

EXHIBIT D

[Area of Impact Plans]

EXHIBIT E  
[Project Adjustments]

EXHIBIT F

[Performance Milestones for Payment]