



1459 Washington St.
Muscatine, IA 52761-5040
(563) 263-8933
Fax (563) 263-2127

Public Works

City Transit

263-8152

MEMORANDUM

Equipment Maintenance

Roadway Maintenance

Collection & Drainage

Building & Grounds

Engineering

To: Brian Stineman Public Works Director
FROM: Jim Edgmond, City Engineer
CC:
DATE: December 22, 2016
RE: Approval of Agreement with CP Railroad for Trail Crossing at Dick Drake Way

INTRODUCTION:

The design of the Musser to Wiggins Road Trail has a crossing of the CPR tracks at and parallel to Dick Drake Way. Due to the funding of this project the Iowa DOT requires an additional agreement between the CPRR and the City for this crossing prior to letting the project for construction.

BACKGROUND:

The IowaDOT approved the form of this agreement on Dec. 21, 2016. The CPR has indicated to me over the phone that they will sign and send back to me prior to Jan. 4, 2016 the agreement with their authorized signature on it. To keep the Trail Project on its current letting schedule the City of Muscatine must sign and send to the Iowa DOT the fully signed agreement by Jan. 6, 2016. This new agreement does not commit the city to anything more than what was committed to in the agreement for the Dick Drake Way Street Crossing. The City is still responsible for all maintenance and replacement cost for this crossing. Nothing changes with this new agreement for the trail except for some federally required material source documentation that meets the requirements of the Buy American Act.

The cost of the trail portion of the railroad crossing is estimated at \$37,000. This amount, however, will be included in the full \$140,000 of railroad crossing improvements to be budgeted in 2017/2018 with funding from Road Use Taxes.

RECOMMENDATION/RATIONALE:

Recommend City Council approves and accepts this trail crossing agreement so the Trail Project can stay on the current letting schedule. It is also staff's request that the Mayor sign the agreement as quickly as possible to expedite the delivery of the agreement to the IowaDOT.

ATTACHMENTS:

- Agreement as signed by the CPR.

**"I remember Muscatine for its sunsets. I have never seen any
on either side of the ocean that equaled them" — Mark Twain**

COOPERATIVE AGREEMENT

This "Agreement" dated as of this day of December ___, 2016, between the DAKOTA, MINNESOTA & EASTERN RAILROAD COMPANY d/b/a CANADIAN PACIFIC (The "COMPANY") and the CITY OF MUSCATINE, IOWA (The "CITY")

WITNESSETH:

WHEREAS, the COMPANY is the owner of property with an at-grade road crossing across Dick Drake Way with DOT # 393258B and being part of the Ottumwa Subdivision at milepost 222.32 in the City of Muscatine, Muscatine County, State of Iowa, and

WHEREAS, the CITY proposes installation of the City Trail (a multi-purpose pathway) at-grade crossing located adjacent to the existing Dick Drake Way crossing carrying trail traffic over the COMPANY's right-of-way, which work will be identified herein as the Project; and

WHEREAS, the proposed installation of the trail and crossing will remain adjacent to and part of one crossing surface to carry the roadway and trail over the COMPANY's railroad track substantially as shown on the plan attached hereto and marked Exhibit "A;" and

WHEREAS, the parties desire the Project be performed in accordance with plans, specifications and special provisions to be prepared by the CITY, and approved by the COMPANY (the Project Plans); and

WHEREAS, as part of the Project, it will be necessary for the COMPANY to perform certain work on its facilities, and the COMPANY is agreeable to performing said work as hereinafter provided; and

WHEREAS, all work performed by the CITY as part of the Project shall be in accordance with the Project Plans; and

WHEREAS, this Agreement does not provide for the right to enter COMPANY property nor does it include any land property transfer.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. For federal funds used for the Project, the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23, CFR 646, Subparts A and B are incorporated into this Agreement by reference.

Exhibit C containing Appendix A and E of Title VI Assurances is incorporated by reference.

All portions of the project performed by the COMPANY shall be in compliance with the Buy America Requirements, as set forth in 23 CFR 635.410 and 23 USC 313, as amended by Section 1518 of P.L. 112-141. Before incorporating any iron or steel products into the work, the COMPANY shall provide the CITY with manufacturer's certifications indicating that all manufacturing processes for iron and steel, including the application of coatings, have occurred in the United States, unless granted a waiver pursuant to 23 CFR 635.410. This agreement requires the railroad to use a step-certification process, whereby each corporate entity involved in the manufacturing process (from melting to fabrication) on transfer of the intermediate product, certify that its product complies with Buy America. This process produces a "chain of custody" documentation trail that can be used to verify compliance.

SECTION 2. The CITY shall secure, or cause to be secured, all rights-of-way or easements required for the Project and shall construct and complete the Project all without cost or assessment to the COMPANY, as provided in this Agreement.

SECTION 3. The CITY shall permit and the COMPANY shall have the right to inspect and approve the work performed by the CITY which is directly related to the railroad track under this Agreement at any time without prior notice. The COMPANY may refuse to approve any and all work performed (including, but not limited to temporary shoring and grading) under this Agreement for failure to comply with applicable standards for the work of the type in accordance with the Project Plans. All work on the trail structures will be done using applicable specifications and recommendations of the Iowa Department of Transportation, the Federal Highway Administration, the American Association of State Highway and Transportation Officials (AASHTO), the American Railway Engineering and Maintenance of Way Association (AREMA) and the COMPANY.

A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided to the Engineer for submittal to CP for review and approval prior to commencement of work. This schedule shall also include the anticipated dates when the below listed events will occur. This schedule shall be updated for the below listed events as necessary, but at least monthly so that site visits may be scheduled.

- Preconstruction meetings
- Pile driving, drilling of caissons or drilled shafts
- Reinforcement & concrete placement for railroad bridge substructure or superstructure
- Erection of precast concrete or steel bridge superstructure
- Placement of waterproofing (prior to placing ballast on bridge deck)
- Completion of the bridge structure

SECTION 4. The parties hereto shall perform, or cause to be performed, the following items of work:

CP representatives will be provided at the expense of the Contracting Authority to protect CP facilities, property, and movements of its trains or engines. CP may, at the contractor's sole cost, risk and expense, furnish whatever protective services it considers necessary, including, but not limited to, flagger(s), inspector(s), and stand-by personnel.

In general, CP will furnish such personnel or other protective services as follows:

- Flagging protection will be required during any operation involving direct and potential interference with CP's tracks or traffic. This may include but is not limited to fouling of railroad operating clearances, reasonable proximity of accidental hazard to railroad traffic, work within 25 feet horizontally of the nearest centerline, any work over any railroad track, or in any other condition that CP deems protective services necessary, which may include work on or off CP's property more than 25 feet from the nearest centerline of a railroad track, such as any equipment extension (including but not limited to a crane boom) that will reach or has the potential to reach within 25 feet of any track.

- For any excavation below elevation of track subgrade if, in the opinion of CP, track or other CP facilities may be subject to settlement or movement.
- During any clearing, grubbing, excavation, or grading, or other construction activity in proximity to CP facilities, which, in the opinion of CP, may endanger CP facilities or operations.
- During the Contractor's operations when, in the opinion of CP, CP facilities, including, but not limited to, tracks, buildings, signals, wire lines, or pipe lines, may be endangered.
- Contractor shall arrange with CP to provide the adequate number of flag persons to accomplish the work.

Contractor shall be required to pay CP in advance for the cost of personnel or other protective services. Prepayment will be based on the Contractor's estimated time for needing protective services, and if that prepayment will be exhausted prior to the expiration of the contractor's need for protective services, additional prepayment funds will be needed to cover the new projected completion of the project.

In the event CP is unable to furnish flagging protection, inspection services, or standby personnel at the desired time or on the desired date(s), Contractor shall not perform the said operation or work until such time and date(s) that appropriate CP services can be made available. CP shall not be liable for any delay or increased costs incurred by Contractor owing to CP's inability or failure to have appropriate CP services available at the time or on the date requested.

A. Notification.

Contractor shall notify CP and Engineer at least 15 working days in advance of commencement of any work on CP property and at least 10 working days in advance of proposed performance of any work by the Contractor in which any person or equipment will be within 50 feet of any track, or near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 50 feet of any track. Notice shall be made using CP's "Request for Flagging Services" form attached as DS-15047, Attachment B.

The services of a flagman will be required during any operation involving direct interference with CP's tracks or traffic, fouling of railroad operating clearances, or reasonable proximity of accidental hazard to railroad traffic, when work takes place within 50 feet horizontally of the nearest centerline, any work over any railroad track, or in any other condition that CP deems the services of a flagman necessary, which may include work on or near CP's property more than 50 feet from the nearest centerline of a railroad track. Additional flagmen will also be furnished whenever in the opinion of CP such protection is needed.

Upon receipt of 10 working days notice, CP will determine and inform Contractor whether a railroad flagger need be present and whether the Contractor need implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by CP, such services will be provided at Contractor's expense with the understanding that if CP provides any flagging or other services, the Contractor shall not be relieved of any of its responsibilities or liabilities set forth herein. Contractor shall be required to pay CP in advance for the cost of personnel or other protective services. CP shall not be liable for any increased costs incurred by the Contractor or Contracting Authority owing to CP's inability or failure to have appropriate CP personnel available at the time or on the date requested.

To enable orderly flagger reassignment to other projects the Contractor shall notify CP 5 working days prior to the termination of flagging need or 5 working days prior to completion of the Contractor's work, whichever is sooner. Contractor shall inform CP when work requiring flaggers is complete.

CP will notify the Engineer and Contractor when non-compliance is reported by CP train crews or other CP employees. Contractor work performed without proper flagging services, when such flagging is required, will be subject to a \$5,000.00 per day price adjustment to Contractor, and may result in the removal of Contractor by CP or Engineer from the project.

B. Flagger Hours and Rate of Pay.

The rate of pay for each flagger will be at the base rate of \$1,300.00 per weekday (1-10 hour continuous period). Weekend flagman protection will be at the rate of \$150.00 per hour, with a 10 hour minimum of \$1,500.00. Hours in excess of 10 continuous hours per flagman on either weekday or weekend days will be billed at the rate of \$150.00 per hour. Rates are subject to change, at any time, by law or by agreement between CP, its employees or contractors, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor shall pay on the basis of the new rates and charges.

A flagman has to perform many functions in conjunction with a flagging project. The hours start once the flagman reaches the local yard. Any needed safety materials must be collected and other railroad employees that may come into the area must be well informed of the project that will be taking place. The commute time from the local yard to the actual project is included in an invoice. Once on site the individual must set up warning devices several miles away from the site (in both directions) in order to assure locomotive engineers are properly warned of additional safety precautions necessary. Once the day is over, the flagman must collect these warning devices and return them to the local yard. In CP terminal areas, this employee is compensated for a full eight hour day regardless if the employee was physically flagging at the location or not, therefore, the full day is charged back to the contractor. If CP must pay the employee for hours in excess of their daily scheduled time or on a holiday in order to accomplish the flagging project, those costs are passed onto the contractor as well.

Occasionally it is necessary for the flagman to leave the project for various reasons. Some of these are to throw a manual switch in order to divert an oncoming train, or to meet a train that is approaching.

C. Reimbursement to CP.

Contractor shall reimburse the CP for railroad flagger services provided within 15 days of billing from the CP. In the event the Contractor fails to reimburse or pay CP for hours of flagman protection provided, the Contracting Authority will reimburse CP within 30 calendar days of the Contractor defaulting on the payment (default is defined as non-payment within 30 calendar days of billing by CP to the Contractor). Failure of the Contractor to reimburse CP may result in a reduction or suspension of the Contractors bidding qualifications according to Article 1102.03 of the Standard Specifications.

D. Documentation and Reimbursement to the Contractor.

Contractor shall initially pay CP for all flagging costs in conjunction with railroad flaggers when any of the conditions identified in Article DS-15047.05, warrant a flagger. The Contracting Authority will reimburse the Contractor for any daily cost that exceeds \$1,000.00 per day for the cost of flagger services provided by CP. The Contracting Authority will reimburse the Contractor 100% of the total cost of flagger services, as deemed necessary by CP, that does not meet any of the conditions identified in Article DS-15047.05, unless the flagger's presence on the project was a result of the Contractor's communication, or lack of communication, with CP. The Contracting Authority will reimburse the Contractor following completion of all work

necessitating flagging operations by CP and receipt of documentation verifying CP invoices have been paid.

For each day that railroad flaggers have been provided, the Contractor shall document daily the conditions on the project site that warrant the flagger. The Contractor shall submit the daily records to the Engineer each week. The Engineer will review the daily logs and promptly notify the Contractor if any information in the daily log is believed to be incorrect.

Contractor shall forward copies of the invoices received from CP for flaggers and a summary of the flagging costs incurred that exceed the Contractors' requirements described in Article DS-15047.05, to the Engineer with a request for payment for the additional railroad flagger costs. The Engineer will review the Contractor's daily logs against CP's invoice and make payment for the eligible costs in accordance with Article 1109.03, of the Standard Specifications.

Contractor shall be responsible to CP for all flagging costs. Flagging costs for subcontracted work shall be the responsibility of the Contractor. Reimbursement from subcontractors to the Contractor shall be the sole responsibility of the Contractor.

Contractor shall forward, to the Engineer, copies of payments made to CP for flagging costs.

The Contracting Authority may award multiple contracts for work in the same general area. Contractor shall try to stage work to minimize the need for railroad flaggers. In the event of multiple projects in a particular location, the Contractor initially requiring flagging on a daily basis shall be responsible for all flagging costs for that day.

SECTION 5. All work herein provided to be done by the CITY or its contractor or contractors on the right-of-way or upon, under, and across the railroad tracks of the COMPANY shall be done in accordance with the Project Plans and shall be performed at such time and matter as not to interfere unnecessarily with the movement of trains or traffic upon the tracks of the COMPANY. The CITY shall require its contractor or contractors to use all care and precaution necessary to avoid accident, damage or interference to the COMPANY's tracks or to the train or traffic using its track, and to notify the COMPANY a sufficient time in advance whenever the contractor is about to perform work adjacent to the tracks to enable the COMPANY to arrange for or furnish flagging services and such other protective service as might be necessary to insure safety of railroad operations. The COMPANY shall have the right to furnish all such flagging services or protective service as in its judgment is necessary, and the CITY or its contractor or contractors shall reimburse the COMPANY for the cost thereof. Where ever safeguarding of trains or traffic of the COMPANY is mentioned in this Agreement, it is intended to cover all users of the COMPANY's tracks having permission for such use. The CITY shall require its contractor or contractors, upon completion of the Project, to remove all machinery, equipment, temporary buildings, false-work, debris, and rubbish from the COMPANY's right-of-way, to provide proper drainage away from the COMPANY's tracks in the area immediately adjacent to the trail, and to leave the COMPANY's tracks and right-of-way in a neat condition, satisfactory to the COMPANY's authorized representative. Nothing in this Section 5 shall make CITY responsible for repairing existing deficiencies with regard to drainage within the COMPANY's right-of-way except as necessitated by the Project.

SECTION 6. Before entering the COMPANY's property and during the entire time CITY's employees, agents or contractors are on the COMPANY's property, CITY or its contractor, as the case may be, shall maintain the following insurance:

Before the contract is awarded, Contractor shall submit to the Department a certificate of insurance evidencing the coverage. The certificate shall identify the insurance company firm name and address, Contractor firm name, policy period, type of policy, limits of coverage, and scope of work covered (including project number). Policies shall provide no less than 30 calendar days prior written notice to Contracting Authority and Railroad of cancellation or material change in policies. Following award of the Contract, Contractor shall submit a certificate of insurance evidencing the foregoing coverage to the Railroad and Contracting Authority (if other than the Department), and a certified, true, and complete copy of policy or policies to the Contracting Authority and Railroad. Upon request from either the Contracting Authority or Railroad, a certified duplicate original of any required certificate or policy shall be furnished at no cost to the Contracting Authority or Railroad.

Insurance shall be kept in full force and effect during the performance of work and thereafter until the Contractor removes all tools, equipment, and material from CP's property and cleans the premises in a manner reasonably satisfactory to CP.

If the Contractor uses a subcontractor(s), the Contractor shall provide the required insurances and shall provide either: equivalent to that described herein or (ii) obtain endorsements to the required policies naming the subcontractor(s) as additional insured parties.

A. Commercial General Liability Insurance.

Commercial general liability (CGL) (occurrence based) with a combined single limit of not less than \$1,000,000.00 each occurrence. CGL insurance shall be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy shall also contain the following endorsement, which shall be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Dakota, Minnesota & Eastern Railroad Corporation Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

B. Business Automobile Coverage Insurance.

Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$1,000,000.00 for each accident; covering owned, non-owned, and hired vehicles engaged in or about the work.

The policy shall contain the following endorsements, which shall be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Dakota, Minnesota & Eastern Railroad Corporation" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90), if required by law.

C. Railroad Protective Liability Insurance.

Railroad protective liability insurance (occurrence form), in the name of the Dakota, Minnesota,

& Eastern Railroad Company d/b/a Canadian Pacific, with limits of \$5,000,000.00 per occurrence and \$10,000,000.00 aggregate for bodily injury (including death) and property damage.

Contractor shall use the website listed below to acquire Railroad train movement information for the purpose of obtaining Railroad Protective Liability Insurance:

<http://safetydata.fra.dot.gov/OfficeofSafety/PublicSite/Crossing/Crossing.aspx>

The US DOT Crossing Inventory Number will be located in the project plans. Zero trains per day will be displayed on the crossing inventory report for locations with grade separated crossings or at-grade crossings when there is less than one train per day. In these situations generating a map to find alternative crossing locations may be used to provide the number of trains per day and speed nearest the project location.

D. Workers Compensation and Employers Liability Insurance.

Coverage shall include, but not limited to: Contractor's statutory liability under the workers' compensation laws of the State of Iowa including requirements of any occupational disease law.

If Contractor is self-insured, evidence of the State of Iowa's approval and excess workers compensation coverage shall be provided. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall contain the following endorsement, which shall be stated on the certificate of insurance:

Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing CP in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

E. Umbrella Insurance.

If Contractor utilizes umbrella policies, these policies shall "follow form" and afford no less coverage than the primary policy. Excess coverage is not allowed.

F. Pollution Liability Insurance.

Pollution liability coverage shall be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$1,000,000.00 per occurrence and an aggregate limit of \$2,000,000.00.

If the scope of work as defined in this contract includes disposal of hazardous or non-hazardous materials from the job site, Contractor shall furnish to CP evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000.00 per loss, and an annual aggregate of \$2,000,000.00.

G. Policy(ies) required above (except worker's compensation and employers liability) shall include CP and its Parents as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to CP and its Parents as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for CP's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions contained in the specifications.

- H. Punitive damages exclusion, if any, shall be deleted (and the deletion indicated on the certificate of insurance), unless the law governing prohibits all punitive damages that might arise in connection with this contract.
- I. Contractor waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors, and employees. This waiver shall be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this contract.
- K. Insurance policies shall be written by a reputable insurance company acceptable to CP or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the State of Iowa.
- L. The fact that insurance is obtained by the Contractor or by CP on behalf of the Contractor shall not be deemed to release or diminish the liability of the Contractor, including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by CP from the Contractor or any third party shall not be limited by the amount of the required insurance coverage.

ASSIGNMENT, SUBCONTRACTING, AND INSURANCE ENDORSEMENTS.

Contractor shall not assign or subcontract the provisions of this specification, or any interest therein, without the written consent of the Engineer. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, they shall, except to the extent prohibited by law; (1) require each subcontractor to include the Contractor and CP as "Additional Insureds" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage; (2) require each subcontractor to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each subcontractor to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

ADDITIONAL SAFETY REQUIREMENTS.

Personnel employed by the Contractor or subcontractors shall complete the course "CP Contractor Security/Safety Course", and be registered prior to working on CP property, except that such personnel are not required to execute the Right of Entry form for contractors, it being understood that all contractors or subcontractors shall instead execute the Right of Entry Agreement attached to this specification. The CP orientation course is available at: www.contractororientation.com. This course shall be completed annually.

CP has exempted from this requirement those it classifies as "Delivery Persons" from this training, such as UPS, FedEx, trucking companies, etc. who merely access the property to supply materials or equipment.

Contractor shall require its employees to be suitably dressed to perform their duties safely. Contractor

shall require workers to wear personal protective equipment as specified by CP rules and regulations. All personal protective equipment will be of safe design and construction for the work to be performed and shall be maintained in a sanitary and reliable condition. Protective equipment shall include, but not be limited to the following PPE listed below that meet the U.S. ANSI standards (American National Standards Institute):

- Eye and face protection ANSI Z 87.1
- Head protection ANSI Z 89.1
- Foot protection ANSI Z 41.1
- High Visibility apparel ANSI / ISEA Z 107

Additional eye protection shall be provided to meet specific job situations such as welding, grinding, burning, etc.; and hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Only waist length shirts with sleeves and trousers covering the entire leg shall be worn. Flare-legged trouser bottoms shall be tied to prevent catching.

CP requires that the Contractor provide their personnel with the proper training, and that the Contractor's personnel are provided with 1) a sticker to be affixed visibly on their hard hat and 2) a qualification card so that CP employees know that the Contractor's personnel are familiar with CP safety practices and proof of having successfully completed the "CP Contractor Security/Safety Course" course. If a Contractor's employee does not have the sticker and qualification card, that Contractor employee will not be allowed on CP property.

Heavy equipment operating within CP ROW shall be equipped with audible back-up warning devices. If in the opinion of CP the Contractor's equipment is unsafe for use on CP's ROW, the Contractor shall remove such equipment from the CP ROW.

Contractor shall promptly notify CP of any U.S. OSHA reportable injuries occurring to any employee that arises during the work performed on the work site within CP ROW.

If at any time the Engineer or CP is of the opinion that any work of the Contractor is being or is about to be done or prosecuted without due regard and precaution for safety and security, or in violation of any applicable safety rule, the Engineer may suspend the work until proper protective measures are adopted and provided. In addition, if CP has a reasonable, good faith belief that the Contractor is engaging, or is about to engage, in any activity that poses a substantial risk of causing great bodily injury or death to any person, or significant property damage, CP may suspend the work of the Contractor and shall as soon as possible thereafter contact the Engineer to review the circumstances of the work stoppage. CP shall thereafter abide by the decision of the Engineer as to the necessity of the work stoppage.

SECTION 7. It is agreed that each party to this Agreement shall not be responsible or liable to the other party or to any other person or persons whomsoever for any claims, damage, action, or cause of action of any kind or character arising out of or by reason of the performance of any work or part hereof by the other party as provided for herein, except when due to the other party's negligence; and that each party further agrees to defend at its sole cost and expense any action or proceeding commenced for the purpose of asserting any claims of whatsoever character arising in connection with or by virtue of each party's performance hereunder, except when due to the other party's negligence.

SECTION 8. It is further agreed that any and all employees of the COMPANY and all other persons engaged by the COMPANY in the performance of any work or services required or provided herein to be performed by the COMPANY shall not be considered employees of the CITY, and that any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensation Act of the State of

Iowa on behalf of said employees while so engaged and any and all claims made by any third parties as consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein shall in no way be the obligation or responsibility of the CITY. Also, any and all employees of the CITY and all other persons engaged by the CITY in the performance of any work or services required or provided for herein to be performed by the CITY shall not be considered employees of the COMPANY, and that any and all claims that may or might arise under the Worker's Compensation Act or the Unemployment Compensation Act of the State of Iowa or Federal Railroad

Unemployment Insurance Act on behalf of said employees while so engaged and any and all claims made by any third parties as consequence of any act or omission on the part of said employees while so engaged on any of the work or services provided to be rendered herein shall in no way be the obligation or responsibility of the COMPANY.

SECTION 9. The COMPANY, upon the completion of its work, shall render to the CITY a detailed statement of the actual cost and expense as incurred by it or for its account. After the CITY representatives have checked the progressive invoices and the final statement, and they have agreed with the COMPANY's representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the CITY shall promptly reimburse the COMPANY for 100% of the amount agreed upon.

SECTION 10. The CITY agrees that upon receipt of written notice from COMPANY of the existence of any flooding or other conditions on the COMPANY's right-of-way that are detrimental to COMPANY's use of its tracks and that are directly caused by the Project or subsequent existence or use of the trail, CITY will promptly remedy or eliminate such detrimental condition, and that upon failure to do so within a reasonable time of such notice, or such other timeframe that the parties mutually agree upon, the COMPANY may perform the necessary work at the expense of the CITY and the CITY agrees that it will promptly, upon receipt of a bill or bills therefore, reimburse the COMPANY for the expense incurred by the COMPANY in remedying or eliminating the flooding or other detrimental conditions.

SECTION 11. This Agreement is subject to the superior title of the COMPANY to its property and to all other outstanding and superior rights, if any; and the CITY shall not, by reason of the rights hereby granted, acquire or assert title to any of said property adverse to the title of the COMPANY. The COMPANY shall have the continuing and compatible right to operate, maintain, and repair its facilities within the limits of said public right-of-way and to construct such other facilities as from time to time it may choose, provided however, that such facilities do not unreasonably interfere with the existence and use of the trail. In the event that the construction of facilities by the COMPANY requires modifications to be made to the CITY's public right-of way or the trail, the cost of such modifications shall be paid by the COMPANY. Likewise, in the event that the construction of facilities by the CITY requires modifications to be made to the COMPANY's right-of way or the tracks/crossing/signals/power service/etc., the cost of such modifications shall be paid by the CITY.

SECTION 12. The grants, covenants and stipulations hereof shall extend to and be binding upon the respective successors of the parties hereto, but the CITY shall not assign any of its rights hereunder without the approval of the COMPANY and without first furnishing written notice to the COMPANY and an acceptance by the assignees of the terms hereof. The grants, covenants and stipulations hereof shall extend to and be binding upon the respective successors of the parties hereto, but neither party shall assign any of its rights hereunder without first furnishing written notice to the other party and a signed acceptance by the assignee's) of the terms of this Agreement.

CANADIAN PACIFIC

Engineering Works – US East

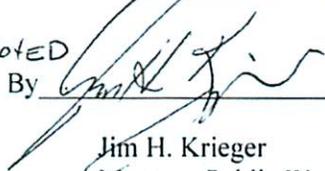
120 South Sixth Street
Minneapolis, MN 55402
Fax : 612-904-5917

SECTION 13. Subject to the provisions in Section 13 hereof, this Agreement shall be binding upon and inure to the benefits of the successors or assigns of the respective parties hereto.

IN WITNESS WHEREOF, the Railroad has signed and sealed this Agreement in the City of Muscatine, Iowa, as of the day and year first above written.

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

APPROVED
By



12/22/16
Jim H. Krieger
Manager Public Works

By: 

CURT WHELAN
DIRECTOR PROJECTS & PUBLIC WORKS

CITY OF MUSCATINE, IOWA

By _____

Name
Title

By _____

Name
Title

By _____

Name
Title

EXHIBITS

- A. Diagram / Plans for Trail
- B. Flagging Requirements
- C. Title VI Assurances Appendix A and E