



City Hall, 215 Sycamore St.
Muscatine, IA 52761-3840
(563) 262-4141
Fax (563) 262-4142

COMMUNITY DEVELOPMENT

Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement

MEMORANDUM

To: Mayor and City Council Members
Cc: Gregg Mandsager, City Administrator
From: Steven Boka, Director of Community Development
Date: July 18, 2011
Re: Request to Approve & Accept Permanent and Temporary Easements

INTRODUCTION: The City is completing the process of acquiring temporary and permanent easements for Phase II of the Mad Creek Levee Improvement Project,

BACKGROUND: The City has the responsibility for the acquisition of all property needed for the Mad Creek Levee Improvement Project as set out in the Cooperation Agreement with the US Army Corps of Engineers. The City must now accept the costs associated with the Temporary & Permanent Easements related to Phase II of the Project. These costs will be credited to the City's obligation toward the Project.

RECOMMENDATION/RATIONALE: The attached resolution(s) complete the City process of approving and accepting a variety of permanent and temporary easements from the railroad related to the construction of Phase II of the Mad Creek Levee Improvement Project. Once all signatures are affixed to the documents, I will have the originals recorded with the Muscatine County Recorder's Office and all of the property easements for this project will be complete. It is therefore recommended that City Council take action to accept and approve the temporary and permanent easements as attached hereto.

BACKUP INFORMATION:

1. Easements
2. Easement Plats

RESOLUTION NO. _____

**A RESOLUTION ESTABLISHING TEMPORARY AND PERMANENT
EASEMENTS FOR THE MAD CREEK LEVEE AND FLOODWALL
IMPROVEMENT PROJECT**

WHEREAS, the City Council of Muscatine, Iowa, is entering into contracts for the improvement of the Mad Creek Levee and Floodwall in the City of Muscatine, Muscatine County, Iowa; and

WHEREAS, in connection with this project it is necessary to obtain temporary and permanent easements located on real property owned by Dakota, Minnesota, and Eastern Railroad Corporation, doing business as Canadian Pacific, 501 Marquette Avenue, Minneapolis Minnesota, for the construction and maintenance of the improvements of the Mad Creek Levee and Floodwall; and

WHEREAS, the City Council finds that the establishment of such easements will serve the public interest;

It is therefore, **RESOLVED**, by the City Council for the City of Muscatine, Iowa, as follows:

1. The City of Muscatine, Iowa hereby accepts and approves the Temporary and Permanent Easements as shown on Exhibit A hereto attached and by this reference made a part hereof for the construction and maintenance of improvements to the Mad Creek Levee and Floodwall in the City of Muscatine, Muscatine County, Iowa. The Temporary Easements shall continue throughout the construction Project and shall terminate as stated. The Permanent Easements shall continue as set out in the Easement Agreements.
2. The Mayor and City Clerk are hereby authorized and directed to sign this Resolution and thereafter deliver a copy thereof to the Muscatine County Recorder to be recorded in the permanent real estate records of Muscatine County, Iowa

3. Any resolution or part thereof in conflict or inconsistent with this Resolution is hereby repealed.

PASSED, APPROVED, AND ADOPTED by the Muscatine City Council on this, the 21st day of July, 2011.

Richard W. O'Brien, Mayor

Attest:

Gregg Mandsager, City Clerk

GATE EASEMENT AGREEMENT NUMBER 3508001

Date: July 15, 2011

In consideration of the sum of TEN THOUSAND and NO/100 DOLLARS (\$10,000.00) the receipt whereof is hereby acknowledged,

DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION,

a Delaware Corporation doing business as Canadian Pacific, having its principal place of business at 501 Marquette Avenue, Minneapolis, Minnesota 55402, ("Grantor")

hereby grants unto

CITY OF MUSCATINE, an Iowa government agency, ("Grantee"),

a perpetual right and easement in and to Property, hereinafter described, situated in

Muscatine County, Iowa,

("Easement") described and conditioned as follows:

1.0 Property:

TRACT 83 PE

A PERMANENT EASEMENT FOR RAILROAD CLOSURE OVER PART OF LOT 5 AND THE VACATED ALLEY IN BLOCK 154 VACATED BROOK STREET ADJACENT TO SAID LOT 5, ORIGINAL PLAT, CITY OF MUSCATINE, IOWA, FURTHER DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWESTERLY CORNER OF LOT 5 SAID BLOCK 154; THENCE N52°06'58"E, 24.04 FEET ALONG THE NORTHERLY LINE OF SAID LOT 5 TO THE POINT OF BEGINNING; THENCE N07°38'11"W, 17.50 FEET ACROSS SAID VACATED ALLEY; THENCE N85°56'24"E, 74.60 FEET ACROSS SAID VACATED ALLEY. SAID LOT 5 AND SAID VACATED BROOK STREET; THENCE S00°58'57"W, 20.08 FEET ACROSS SAID VACATED BROOK STREET; THENCE S85°56'24"W, 71.59 FEET ACROSS SAID VACATED BROOK STREET AND SAID LOT 5; THENCE N07°38'11"W, 2.54 FEET ACROSS SAID LOT 5 TO THE POINT OF BEGINNING, CONTAINING 0.03 ACRES (1,462 SQ.FT.). SAID PARCEL IS SUBJECT TO EXISTING EASEMENTS AND RESTRICTIONS OF RECORD. FOR THE PURPOSES OF THIS DESCRIPTION THE NORTHERLY LINE OF SAID LOT 5 BLOCK 154 IS ASSUMED TO BEAR N52°06'58"E.

hereinafter referred to as the "Easement Property" or simply as the "Property."

- 2.0 Purpose: Grantee's use of the Easement Property shall be for the sole purpose of construction, operation, and maintenance of closure structure to control Mississippi river water and Mad Creek and its tributaries during critical high water, the "(Flood Gates.)" Both upstream rain events and downstream flooding from the Mississippi River can warrant Flood Gate closure. Procedures for operation and closure of the flood gate, including notification of the Grantor, shall be governed by the City's Flood Control Manual. Grantee shall also have and the right to reasonably clear, cut, fell, remove, and dispose of any and all timber, trees, underbrush and/or other naturally occurring obstructions thereto, and, subject to the consent of the Grantor, which consent shall not be unreasonably withheld, conditioned or delayed, the right to remove any improvements or buildings that may obstruct the Flood Gates.
- 3.0 The easement rights granted herein for Flood Gate purposes upon the Easement Property shall continue only so long as used for Flood Gate purposes.
- 4.0 The Grantor reserves unto itself, and its successors and assigns, the right and privilege to use the Easement Property for the maintenance and operation of railroad tracks and facilities, including the right to permit other parties to use the Easement Property for such maintenance and operation, and further reserving the right and privilege to use the Easement Property for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this indenture, and further reserving the right to prevent the placement or maintenance of Flood Gates upon the Easement Property in a manner which would unreasonably interfere with the maintenance and safe and continuous operation of railroad tracks and facilities. Any uses granted to others by the Grantor at the Property requiring alterations to the land shall be subject to review of the plans by the Grantee and by the Rock Island District Engineer for a period of 45 days to insure the integrity of the Project.
- 5.0 The Grantor reserves the title to the Easement Property to itself, and the Grantee's maintenance and use for the above purposes upon the Easement Property, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this indenture.
- 6.0 The Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to the construction of the Grantee's Flood Gates and shall indemnify, hold harmless and defend the Grantor from and against any and all liability for damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, caused by the construction or maintenance of the Grantee's Flood Gates. The Grantor makes no representation by the granting of this indenture that its property is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.
- 7.0 After initial construction, the Grantee shall not carry on any work in connection with the maintenance, repair, changing or renewal of the Flood Gates or within 25 feet of the center line of any Grantor-owned track at the above-described location until: (i) it shall have given the Grantor at least three (3) days' written notice, and (ii) an authorized representative of the Grantor shall be present to supervise same. Upon bills being rendered therefor, the Grantee shall promptly reimburse the Grantor for all expenses incurred by it in connection with such supervision, including all labor costs for flagmen supplied by the Grantor to protect railroad operations, and for the entire cost of the furnishing, installation and later removal of any temporary supports for said tracks.
- 8.0 The Grantee assumes all risk of damage to or destruction of the Flood Gates through any cause whatsoever while located upon and across the Property, except from Grantor's willful intentional misconduct.
- 9.0 The Grantee shall:

- 9.1 be familiar with the requirements of, comply with, and secure at the Grantee's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws;
- 9.2 upon written request by the Grantor, provide the Grantor with the results of appropriate reports and tests and with any other applicable documents to demonstrate that the Grantee has complied with all Environmental Laws relating to the Property;
- 9.3 not in any manner cause or allow the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the 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;
- 9.4 not, without prior written disclosure to and approval by the Grantor, Use or authorize the Use of any Hazardous Substance on the Property;
- 9.5 not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property;
- 9.6 promptly notify the Grantor of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release;
- 9.7 promptly provide the Grantor 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 any Release of a Hazardous Substance on, to or from the Property, or any alleged violation of or responsibility under any Environmental Law relating to the Property; and
- 9.8 promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property that gives rise to any liability, claim, cause of action, obligation, demand, fine, penalty, loss, judgment or expense under any Environmental Law, or causes a significant public health or workplace effect, or creates a nuisance; and
- 9.9 assume and pay any fee, tax, assessment or other charge or expense levied against the Property or incurred by the Railroad in connection with installation, use or existence of the Flood Gates upon the Property.

- 10.0 To the extent permitted by applicable law, the Grantee hereby releases and agrees to indemnify, hold harmless and defend the Grantor 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 (including without limitation any Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) of every kind, past, present and future, existing and contingent, known and unknown, arising from any injury to persons, firms or corporations whomsoever, including injuries resulting in death, and damage to property whatsoever, wherever such persons or property are located, caused by or attributable to, in whole or in part, any act or omission of the Grantee (or the Grantee's employees, agents, representatives, or invitees) in connection with the exercise of the right and privilege herein granted, including without limitation the Use or Release of Hazardous Substances by the Grantee and the breach by the Grantee of any of its warranties, representations or covenants. The Grantee's obligations hereunder shall survive the termination or expiration of this easement.
- 11.0 As used herein,

- 11.1 **"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);
- 11.2 **"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.
- 11.3 **"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;
- 11.4 **"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;
- 11.5 **"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 of a Hazardous Substance;
- 11.6 **"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.

12.0 The Grantor does not warrant title to the above-described property, and the Grantee shall have no recourse against the Grantor in the event the Grantee shall be required, through the action of any third party, to either remove the Flood Gates from the Grantor's property or to make any payment to avoid such removal.

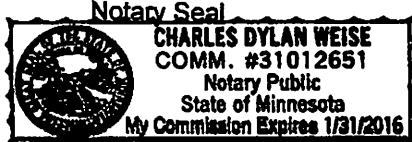
13.0 This indenture shall inure to the benefit of and be binding upon the successors and assigns of the Grantor and the Grantee.

DAKOTA, MINNESOTA AND EASTERN RAILROAD
CORPORATION, a Delaware Corporation,

By: 
David S. Drach
Its: Director Real Estate U.S.

STATE OF MINNESOTA)
)
COUNTY OF HENNEPIN) ss:
)

The foregoing easement was acknowledged before me this 15th day of Jul, 2011, by
David S. Drach, Director Real Estate U.S. for Dakota, Minnesota and Eastern Railroad Corporation, a
corporation under the laws of the State of Delaware, on behalf of the corporation.



Notary Public

PERMANENT EASEMENT FOR RAILROAD CLOSURE

Prepared by: Jon W. Janda, Anderson-Bogert Engineers & Surveyors, Inc.

4001 River Ridge Dr. N.E. Cedar Rapids, Iowa 52402

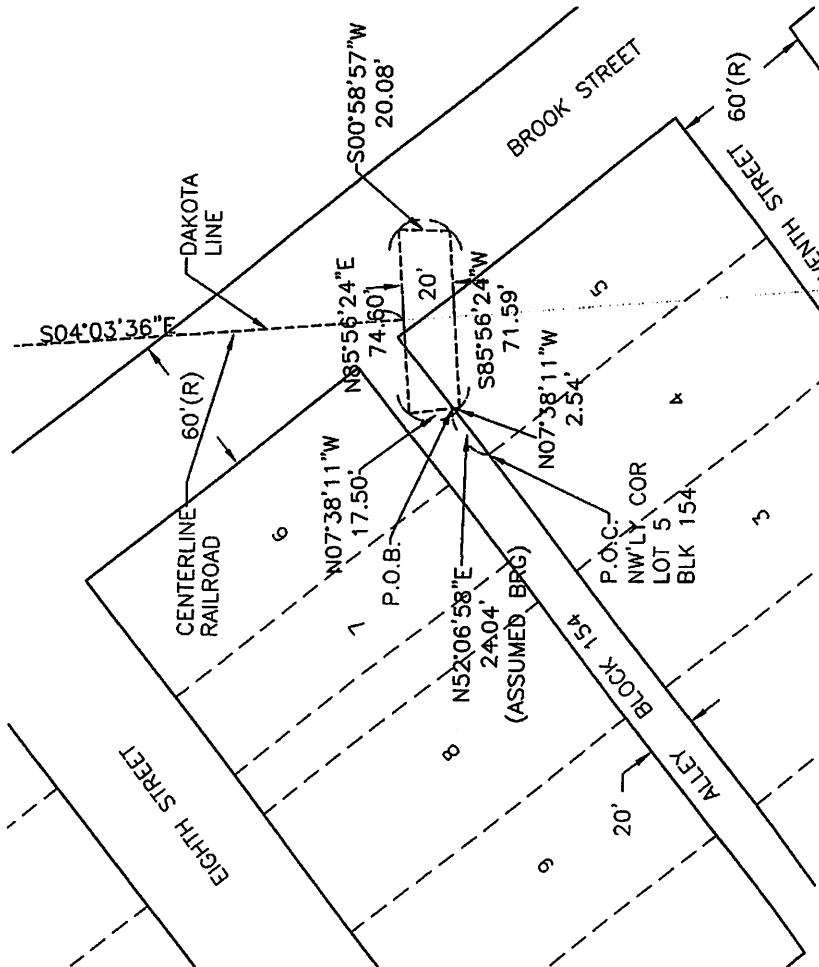
Legal Description

A PERMANENT EASEMENT FOR RAILROAD CLOSURE OVER PART OF LOT 5 AND SAID LOT 5, ORIGINAL PLAT, CITY OF MUSCATINE, IOWA, FURTHER DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWESTERLY CORNER OF LOT 5 SAID BLOCK 154; THENCE NS 2' 06 38"E, 24.04 FEET ALONG THE NORTHERLY LINE OF SAID LOT 5 TO THE POINT OF BEGINNING; THENCE N 07° 38' 11" W, 17.50 FEET ACROSS SAID VACATED ALLEY; THENCE N 85° 56' 24"E, 74.60 FEET ACROSS SAID VACATED ALLEY; SAID LOT 5 AND SAID VACATED BROOK STREET; THENCE S 00° 58' 57" W, 20.08 FEET ACROSS SAID VACATED BROOK STREET; THENCE S 85° 56' 24"E, 71.59 FEET ACROSS SAID VACATED BROOK STREET; AND SAID LOT 5; THENCE N 07° 38' 11" W, 2.54 FEET ACROSS SAID LOT 5 TO THE POINT OF BEGINNING, CONTAINING 0.03 ACRES (1,442 SQ.FT.). SAID PARCEL IS SUBJECT TO EXISTING EASEMENTS AND RESTRICTIONS OF RECORD, FOR THE PURPOSES OF THIS DESCRIPTION THE NORTHERLY LINE OF SAID LOT 5 BLOCK 154 IS ASSUMED TO BEAR N52°06'58"E.

OWNER:
CANADIAN PACIFIC
C/O DAN HANSON
SUITE 1525
501 MARQUETTE AVENUE SOUTH
MINNEAPOLIS, MN 55402

RAILROAD RIGHT-OF-WAY
MEASUREMENTS SCALED FROM
A STATION MAP OF THE
CHICAGO, MILWAUKEE, ST.
PAUL & PACIFIC RR CO.
STATION 11100+00 10
STATION 11191+71.7

REVISED OCT. 19, 1982



Legend
Boundary Line _____
Adjoining Lot Line - - - - -
Section Line _____
Building Setback Line _____
Found Iron Rod •
Sat 1/2" x 30" Rebar o
w/yellow Cap # 8889 ▲
Sat Section/Quarter Corner ▲
Found Section/Quarter Corner ▲
Measured (M)
Recorded (R)

ANDERSON-BOGERT Engineers & Surveyors, Inc. 4001 River Ridge Dr. N.E. Cedar Rapids, Iowa 52402 Phone: (319) 377-4292 Fax: (319) 377-4293 e-mail: anderson-bogert.com		
Chart: CITY OF MUSCATINE MUSCATINE, IA 52761 PHONE: (563) 262-4141 Date: 6/10/10 Approved by: J.W.J. Drawn by: J.W.J. Scale: 1"=60'	Project Number: 207142 TRACT #83 PE	Sheet No. 1
<p>I HEREBY CERTIFY THAT THE WORK SHOWN ON THIS DRAWING WAS PERFORMED BY ME ON BEHALF OF ANDERSON-BOGERT ENGINEERS & SURVEYORS, INC. AND THAT THE DRAWING IS A TRUE AND ACCURATE REPRESENTATION OF THE SURVEY AS FURNISHED ME.</p> <p>JOHN W. JANDA P.E. I.D. #4489 MY LICENSE EXPIRE DATE IS DECEMBER 31, 2010 PLATE OR SHEET NUMBER BY THIS SEAL:</p>		10-7-10 J.W. JANDA P.E. I.D. #4489

LEVEE EASEMENT AGREEMENT NUMBER 3510201

Date: July 5, 2011

In consideration of the sum of TWENTY-FIVE THOUSAND and NO/100 DOLLARS (\$25,000.00) the receipt whereof is hereby acknowledged,

DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION,

a Delaware Corporation, doing business as Canadian Pacific, having its principal place of business at 501 Marquette Avenue, Minneapolis, Minnesota 55402, ("Grantor")

hereby grants unto

CITY OF MUSCATINE, an Iowa government agency, ("Grantee").

A perpetual right and easement in and to Property, hereinafter described, situated in

Muscatine County, Iowa,

("Easement") described and conditioned as follows:

1.0 **Property:**

TRACT 55 PE

A PERMANENT RIGHT-OF-WAY LEVEE EASEMENT OVER PART OF LOTS 10 AND 9 BLOCK 68 ORIGINAL PLAT, CITY OF MUSCATINE, IOWA FURTHER DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWESTERLY CORNER OF SAID LOT 10 BLOCK 68; THENCE N38°28'59"W, 11.12 FEET ALONG THE WESTERLY LINE OF SAID LOT 10 TO THE POINT OF BEGINNING; THENCE CONTINUING N38°28'59"W, 29.89 FEET ALONG THE WESTERLY LINE OF SAID LOT 10; THENCE N00°33'24"W, 123.02 TO THE NORTHERLY LINE OF LOT 9 SAID BLOCK 68; THENCE N51°46'34"E, 14.39 FEET ALONG THE NORTHERLY LINE OF SAID LOT 9; THENCE S38°28'59"E, 12.25 FEET ACROSS SAID LOT 9; THENCE ACROSS SAID LOTS 9 AND 10 145.73 FEET ALONG A 3869.73 FOOT RADIUS CURVE CONCAVE WESTERLY WHOSE 145.72 FOOT CHORD BEARS S00°20'30"E, TO THE POINT OF BEGINNING, CONTAINING 0.06 ACRES (2,663 SQ.FT.). SAID PARCEL IS SUBJECT TO EXISTING EASEMENTS AND RESTRICTIONS OF RECORD. FOR PURPOSES OF THIS DESCRIPTION THE WESTERLY LINE OF SAID LOT 10 BLOCK 68 IS ASSUMED TO BEAR N38°28'59"W.

TRACT 64 PE

PARCEL 1

A PERMANENT RIGHT-OF-WAY LEVEE EASEMENT OVER PART OF LOTS 2,3 AND 4 BLOCK 109 ORIGINAL PLAT, CITY OF MUSCATINE, IOWA, FURTHER DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHEASTERLY CORNER OF SAID LOT 3 BLOCK 109;
THENCE S51°46'33"W, 37.38 FEET ALONG THE SOUTHERLY LINE OF SAID LOT 3 TO THE POINT OF BEGINNING;
THENCE CONTINUING S51°46'33"W, 33.98 FEET ALONG THE SOUTHERLY LINES OF SAID LOTS 3 AND 2;
THENCE N01°01'19"W, 87.79 FEET;
THENCE N10°56'02"W, 78.68 FEET TO THE NORTHERLY LINE OF SAID LOT 4;
THENCE N51°46'37"E, 40.98 FEET ALONG THE NORTHERLY LINE OF SAID LOT 4;
THENCE S04°03'29"E, 75.72 FEET TO A POINT OF CURVATURE;
THENCE 94.00 FEET ALONG A 3869.72 FOOT RADIUS CURVE CONCAVE WESTERLY WHOSE 94.00 FOOT CHORD BEARS S03°26'14"E, TO THE POINT OF BEGINNING, CONTAINING 0.11 ACRES (4,703 SQ.FT.). SAID PARCEL IS SUBJECT TO EXISTING EASEMENTS AND RESTRICTIONS OF RECORD.
FOR PURPOSES OF THIS DESCRIPTION THE SOUTHERLY LINE OF SAID LOTS 3 AND 2 BLOCK 190 ARE ASSUMED TO BEAR S51°46'33"W.

PARCEL 2

A PERMANENT RIGHT-OF-WAY LEVEE EASEMENT OVER PART OF LOTS 6 AND 7 BLOCK 109 ORIGINAL PLAT, CITY OF MUSCATINE, IOWA FURTHER DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEASTERLY CORNER OF SAID LOT 6 BLOCK 109;
THENCE S38°11'26"E, 25.00 FEET ALONG THE EASTERNLY LINE OF SAID LOT 6 TO THE POINT OF BEGINNING;
THENCE CONTINUING S38°11'26"E, 44.44 FEET ALONG THE EASTERNLY LINE OF SAID LOT 6;
THENCE S04°03'29"E, 85.09 FEET TO THE SOUTHERLY LINE OF SAID LOT 6;
THENCE S51°46'37"W, 39.37 FEET ALONG THE SOUTHERLY LINE OF SAID LOTS 6 AND 7;
THENCE N01°01'19"W, 144.19 FEET TO THE POINT OF BEGINNING, CONTAINING 0.08 ACRES (3,322 SQ.FT.).
SAID PARCEL IS SUBJECT TO EXISTING EASEMENTS AND RESTRICTIONS OF RECORD.
FOR PURPOSES OF THIS DESCRIPTION THE EASTERNLY LINE OF SAID LOT 6 BLOCK 109 IS ASSUMED TO BEAR S38°11'26"E.

TRACT 72 PE

A PERMANENT RIGHT-OF-WAY LEVEE EASEMENT OVER PART OF LOT 1 BLOCK 111 ORIGINAL PLAT, CITY OF MUSCATINE, IOWA, FURTHER DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 1 BLOCK 111;
THENCE N38°11'26"W, 27.70 FEET ALONG THE WESTERLY LINE OF SAID LOT 1;
THENCE N03°42'03"W, 105.96 FEET TO THE EASTERNLY LINE OF SAID LOT 1;
THENCE S38°11'26"E, 35.00 FEET ALONG THE EASTERNLY LINE OF SAID LOT 1;
THENCE S11°37'55"E, 89.46 FEET TO THE SOUTHERLY LINE OF SAID LOT 1;
THENCE S51°46'37"W, 20.00 FEET ALONG THE SOUTHERLY LINE OF SAID LOT 1 TO THE POINT OF BEGINNING, CONTAINING 0.06 ACRES (2,681 SQ.FT.). SAID PARCEL IS SUBJECT TO EXISTING EASEMENTS AND RESTRICTIONS OF RECORD.
FOR PURPOSES OF THIS DESCRIPTION THE WESTERLY LINE OF SAID LOT 1 BLOCK 111 IS ASSUMED TO BEAR N38°11'26"W.

hereinafter referred to as the "Property."

2.0 The Easement granted herein shall be for the sole purpose of constructing, maintaining, repairing, operating, patrolling, and replacing a levee or flood wall, including all appurtenances thereto, the "Levee," and further including the right to reasonably clear, cut, fell, remove, and dispose of any and all timber, trees, underbrush and/or other naturally obstructions thereto, and, subject to the consent of the Grantor, which consent shall not be unreasonably withheld,

conditioned or delayed, the right to remove any improvements or buildings that may obstruct the Levee.

- 3.0 The easement rights granted herein shall continue only so long as used for Levee purposes.
- 4.0 The Grantor reserves unto itself, and its successors and assigns, the right and privilege to use said Property for the maintenance and operation of railroad tracks and facilities, including the right to permit other parties to use said Property for such maintenance and operation, and further reserving the right and privilege to use said Property for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this indenture, and further reserving the right to prevent the placement or maintenance of any Land facility upon said Property in a manner which would unreasonably interfere with the maintenance and safe and continuous operation of railroad tracks and facilities. Any uses granted to others by the Grantor of the Property requiring alterations to the land shall be subject to review of the plans by the Grantee and by the Rock Island District Engineer for a period of 45 days to insure the integrity of the Project.
- 5.0 The Grantor reserves the title to said Property to itself, and the Grantee's maintenance and use for the above purposes upon said Property, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this indenture.
- 6.0 The Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to the construction of the Grantee's levee and floodwall and shall indemnify, hold harmless and defend the Grantor from and against any and all liability for damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, caused by the construction or maintenance of the Grantee's levee and floodwall. The Grantor makes no representation by the granting of this indenture that its property is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.
- 7.0 After initial construction, the Grantee shall not carry on any work in connection with the maintenance, repair, changing or renewal of the Land or within 25 feet of the center line of any Grantor-owned track at the above-described location until: (i) it shall have given the Grantor at least three (3) days' written notice, and (ii) an authorized representative of the Grantor shall be present to supervise same. Upon bills being rendered therefor, the Grantee shall promptly reimburse the Grantor for all expenses incurred by it in connection with such supervision, including all labor costs for flagmen supplied by the Grantor to protect railroad operations, and for the entire cost of the furnishing, installation and later removal of any temporary supports for said tracks.
- 8.0 The Grantee assumes all risk of damage to or destruction of the levee and floodwall through any cause whatsoever while located upon and across the Property, except from Grantor's willful intentional misconduct.
- 9.0 The Grantee shall:
 - 9.1 be familiar with the requirements of, comply with, and secure at the Grantee's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws;
 - 9.2 upon written request by the Grantor, provide the Grantor with the results of appropriate reports and tests and with any other applicable documents to demonstrate that the Grantee has complied with all Environmental Laws relating to the Property;
 - 9.3 not in any manner cause or allow the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the 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;

- 9.4 not, without prior written disclosure to and approval by the Grantor, Use or authorize the Use of any Hazardous Substance on the Property;
- 9.5 not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property;
- 9.6 promptly notify the Grantor of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release;
- 9.7 promptly provide the Grantor 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 any Release of a Hazardous Substance on, to or from the Property, or any alleged violation of or responsibility under any Environmental Law relating to the Property; and
- 9.8 promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property that gives rise to any liability, claim, cause of action, obligation, demand, fine, penalty, loss, judgment or expense under any Environmental Law, or causes a significant public health or workplace effect, or creates a nuisance; and
- 9.9 assume and pay any fee, tax, assessment or other charge or expense levied against the Property or incurred by the Railroad in connection with installation, use or existence of the levee and floodwall upon the Property.

10.0 To the extent permitted by applicable law, the Grantee hereby releases and agrees to indemnify, hold harmless and defend the Grantor 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 (including without limitation any Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) of every kind, past, present and future, existing and contingent, known and unknown, arising from any injury to persons, firms or corporations whomsoever, including injuries resulting in death, and damage to property whatsoever, wherever such persons or property are located, caused by or attributable to, in whole or in part, any act or omission of the Grantee (or the Grantee's employees, agents, representatives, or invitees) in connection with the exercise of the right and privilege herein granted, including without limitation the Use or Release of Hazardous Substances by the Grantee and the breach by the Grantee of any of its warranties, representations or covenants. The Grantee's obligations hereunder shall survive the termination or expiration of this easement.

11.0 As used herein,

- 11.1 "**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);
- 11.2 "**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.

11.3 **"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;

11.4 **"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;

11.5 **"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 of a Hazardous Substance;

11.6 **"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.

12.0 The Grantor does not warrant title to the above-described property, and the Grantee shall have no recourse against the Grantor in the event the Grantee shall be required, through the action of any third party, to either remove the levee and floodwall from the Grantor's property or to make any payment to avoid such removal.

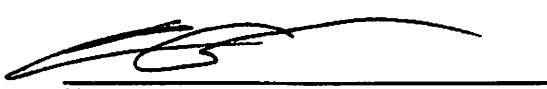
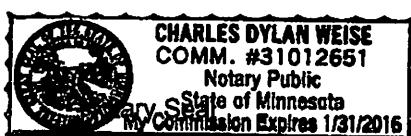
13.0 This indenture shall inure to the benefit of and be binding upon the successors and assigns of the Grantor and the Grantee.

DAKOTA, MINNESOTA AND EASTERN RAILROAD
CORPORATION, a Delaware Corporation,

By: 
David S. Drach
Its: Director Real Estate U.S.

STATE OF MINNESOTA)
) ss:
COUNTY OF HENNEPIN)

The foregoing easement was acknowledged before me this 15th day of July, 2016, by
David S. Drach, Director Real Estate U.S. of, Dakota, Minnesota & Eastern Railroad Corporation, a
corporation under the laws of the State of Delaware, on behalf of the corporation.



Notary Public

PERMANENT RIGHT-OF-WAY LEVEE EASEMENT

Prepared by Jon W. Janda, Anderson-Bogert Engineers & Surveyors, Inc.
4001 River Ridge Dr. N.E. Cedar Rapids, Iowa 52402



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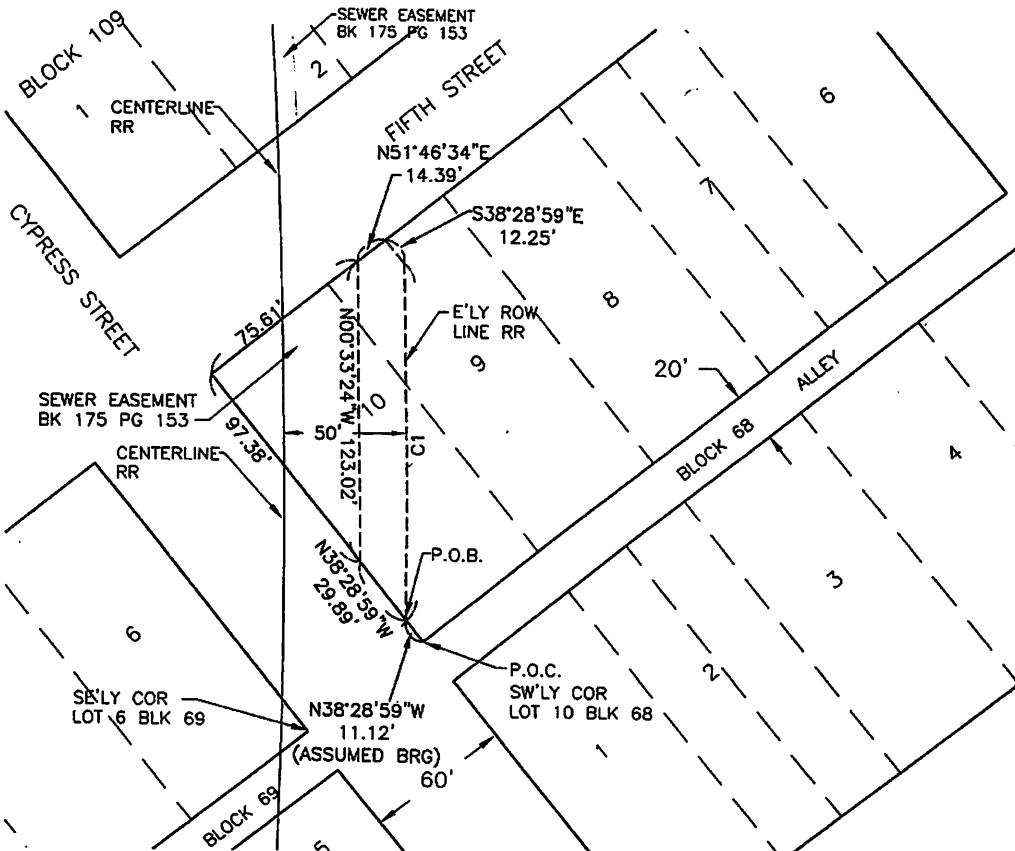
Legal Description

A PERMANENT RIGHT-OF-WAY LEVEE EASEMENT OVER PART OF LOTS 10 AND 9 BLOCK 68
ORIGINAL PLAT, CITY OF MUSCATINE, IOWA FURTHER DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHWESTERLY CORNER OF SAID LOT 10 BLOCK 68;
THENCE N38°28'59"W, 11.12 FEET ALONG THE WESTERLY LINE OF SAID LOT 10 TO THE POINT
OF BEGINNING;
THENCE CONTINUING N38°28'59"W, 29.89 FEET ALONG THE WESTERLY LINE OF SAID LOT 10;
THENCE N00°33'24"W, 123.02 TO THE NORTHERLY LINE OF LOT 9 SAID BLOCK 68;
THENCE N51°46'34"E, 14.39 FEET ALONG THE NORTHERLY LINE OF SAID LOT 9;
THENCE S38°28'59"E, 12.25 FEET ACROSS SAID LOT 9;
THENCE ACROSS SAID LOTS 9 AND 10 145.73 FEET ALONG A 3869.73 FOOT RADIUS CURVE
CONCAVE WESTERLY WHOSE 145.72 FOOT CHORD BEARS S00°20'30"E, TO THE POINT OF
BEGINNING, CONTAINING 0.06 ACRES (2,663 SQ.FT.). SAID PARCEL IS SUBJECT TO EXISTING
EASEMENTS AND RESTRICTIONS OF RECORD.
FOR PURPOSES OF THIS DESCRIPTION THE WESTERLY LINE OF SAID LOT 10 BLOCK 68 IS
ASSUMED TO BEAR N38°28'59"W.

OWNER:
CANADIAN PACIFIC
c/o DAN HANSON
SUITE 1525
501 MARQUETTE AVENUE SOUTH
MINNEAPOLIS, MN 55402

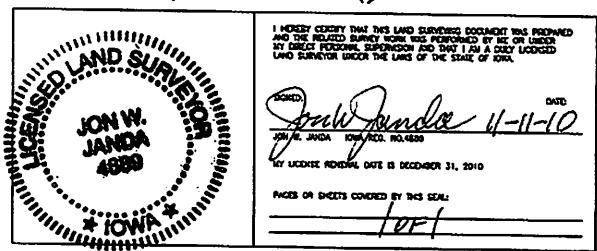
RAILROAD RIGHT-OF-WAY
MEASUREMENTS SCALED FROM
A STATION MAP OF THE
CHICAGO, MILWAUKEE, ST.
PAUL & PACIFIC RR CO.
STATION 11100+00 TO
STATION 11191+71.7
REVISED OCT. 19, 1982

CURVE TABLE					
CURVE	DELTA	LENGTH	RADIUS	CHORD	CHORD BRG
C1	02°09'28"	145.73'	3869.73'	145.72'	S00°20'30"E



Legend

- Boundary Line —
- Adjoining Lot Line - - - -
- Section Line —
- Building Setback Line - - - -
- Found 1/2" Iron Rod
- Set 1/4"x30" Rebar
- w/Yellow Cap #4889
- Set Section/Quarter Corner Δ
- Found Section/Quarter Corner Δ
- Measured (M)
- Recorded (R)



ANDERSON-BOGERT	Drawn By: M.S.	Approved By: M.P.J.	EASEMENT PLATS	TRACT #55-PE
Client: CITY OF MUSCATINE 215 SYCAMORE STREET MUSCATINE, IA 52761 PHONE: (563)-282-4141	Date: 8/10/10	Scale: 1=50'	Project Number: 207142	

PERMANENT RIGHT-OF-WAY LEVEE EASEMENT

Prepared by Jon W. Janda, Anderson-Bogert Engineers & Surveyors, Inc.
4001 River Ridge Dr. N.E. Cedar Rapids, Iowa 52402



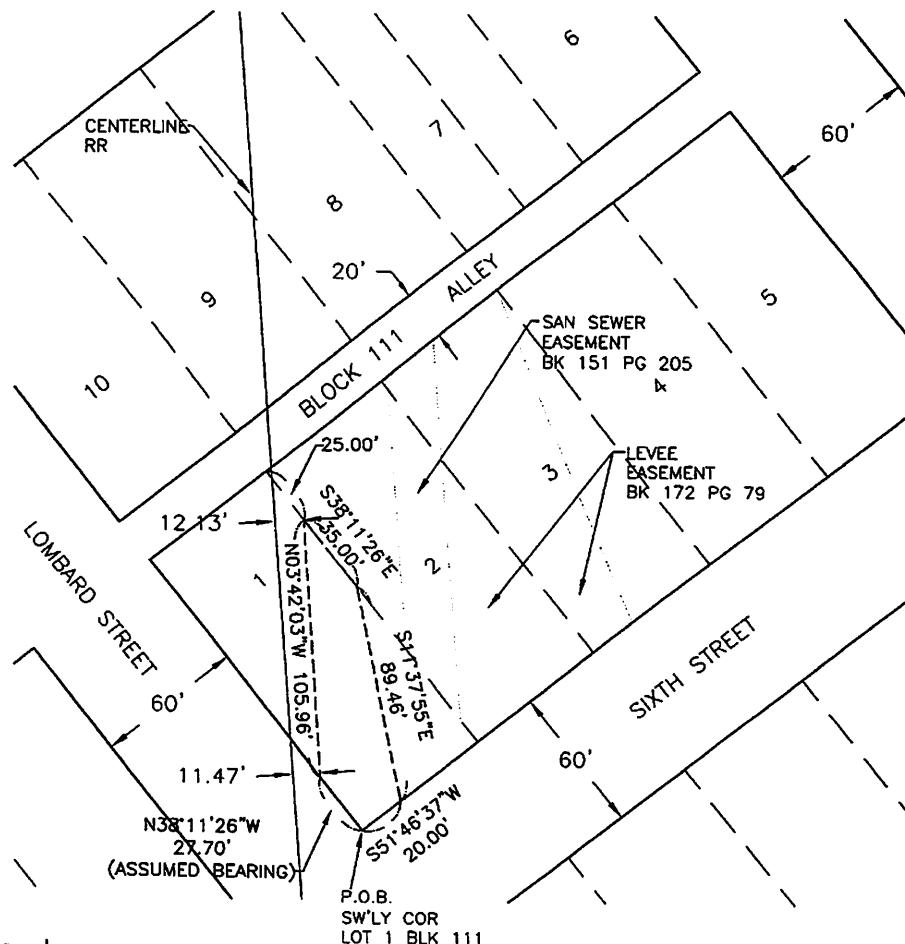
Legal Description

A PERMANENT RIGHT-OF-WAY LEVEE EASEMENT OVER PART OF LOT 1 BLOCK 111 ORIGINAL PLAT, CITY OF MUSCATINE, IOWA, FURTHER DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWESTERLY CORNER OF SAID LOT 1 BLOCK 111; THENCE N38°11'26"W, 27.70 FEET ALONG THE WESTERLY LINE OF SAID LOT 1; THENCE S38°11'26"E, 35.00 FEET ALONG THE EASTERLY LINE OF SAID LOT 1; THENCE S11°37'55"E, 89.46 FEET TO THE SOUTHERLY LINE OF SAID LOT 1; THENCE S51°46'37"W, 20.00 FEET ALONG THE SOUTHERLY LINE OF SAID LOT 1 TO THE POINT OF BEGINNING, CONTAINING 0.06 ACRES (2,681 SQ.FT.). SAID PARCEL IS SUBJECT TO EXISTING EASEMENTS AND RESTRICTIONS OF RECORD. FOR PURPOSES OF THIS DESCRIPTION THE WESTERLY LINE OF SAID LOT 1 BLOCK 111 IS ASSUMED TO BEAR N38°11'26"W.

OWNER:
CANADIAN PACIFIC
c/o DAN HANSON
SUITE 1525
501 MARQUETTE AVENUE SOUTH
MINNEAPOLIS, MN 55402

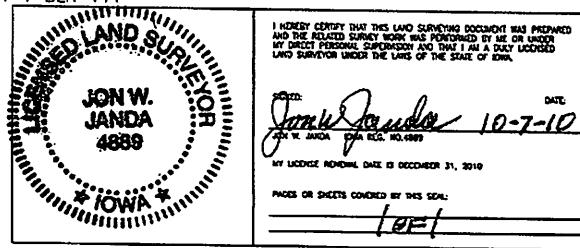
RAILROAD RIGHT-OF-WAY
MEASUREMENTS SCALED FROM
A STATION MAP OF THE
CHICAGO, MILWAUKEE, ST.
PAUL & PACIFIC RR CO.
STATION 11100+00 TO
STATION 11191+71.7
REVISED OCT. 19, 1982

TRACT #72-PE	TRACT #72-142	Project Number: 207142	EASEMENT PLATS
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Legend

- Boundary Line —
- Adjoining Lot Line - - - - -
- Section Line —
- Building Setback Line - - - - -
- Found 1/2" Iron Rod •
- Set 1/2"x30" Rebar w/Yellow Cap #4889 •
- Set Section/Quarter Corner ▲
- Found Section/Quarter Corner ▲
- Measured (M)
- Recorded (R)



ANDERSON-BOGERT Engineers & Surveyors, Inc. 4001 River Ridge Dr. Cedar Rapids, Iowa 52402 Phone: (563) 262-4141	CITY OF MUSCATINE 215 SYCAMORE STREET MUSCATINE, IA 52661 PHONE: (563) 262-4141	Drawn By: J.W. Date: 8/10/10 Scale: 1=60'	Approved By: J.W. Date: 8/10/10
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TEMPORARY CONSTRUCTION EASEMENT AGREEMENT NUMBER 40626

Date: July 15, 2011

In consideration of the sum of TEN and NO/100 DOLLARS (\$10.00) the receipt whereof is hereby acknowledged,

DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION,

a Delaware Corporation doing business as Canadian Pacific, having its principal place of business at 501 Marquette Avenue, Minneapolis, Minnesota 55402, ("Grantor")

hereby grants unto

CITY OF MUSCATINE, an Iowa government agency, ("Grantee"),

a temporary construction easement upon the Property, hereinafter described, situated in

Muscatine County, Iowa,

("Temporary Easement") described and conditioned as follows:

1.0 Property:

TRACT 91 TE

BEGINNING AT THE NORTHWESTERLY CORNER OF BLOCK 4 AUDITOR'S PLAT MAD CREEK ADDITION TO THE CITY OF MUSCATINE, IOWA;
THENCE S04°03'36"E, 553.36 FEET ALONG THE WESTERLY LINE OF SAID BLOCK 4, ALSO BEING THE EASTERLY LINE OF THE DAKOTA, MINNESOTA AND EASTERN RAILROAD;
THENCE N66°08'25"W, 11.32 FEET;
THENCE N01°02'50"W, 95.13 FEET;
THENCE N06°39'45"W, 220.23 FEET;
THENCE N04°03'36"W, 226.91 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF WASHINGTON STREET;
THENCE N63°40'04"E, 16.21 FEET ALONG THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF WASHINGTON STREET TO THE POINT OF BEGINNING, CONTAINING 0.15 ACRES (6,390 SQ.FT.).

SAID PARCEL IS SUBJECT TO EXISTING EASEMENTS AND RESTRICTIONS OF RECORD.
FOR PURPOSES OF THIS DESCRIPTION THE EASTERLY LINE OF SAID RAILROAD IS ASSUMED TO BEAR S04°03'36"E.

hereinafter referred to as the "Temporary Easement Property" or simply as the "Property."

- 2.0 Purpose: Grantee's use of the Temporary Easement Property shall be for the sole purpose of entering thereon to use as a work area, including the right to move, store, and remove equipment and supplies, and erect and remove temporary structures on the land, and to perform other work necessary and incident to the construction of a flood control project. Grantee shall also have and the right to reasonably clear, cut, fell, remove, and dispose of any and all timber, trees, underbrush and/or other naturally occurring obstructions thereto, and, subject to the consent of the Grantor, which consent shall not be unreasonably withheld, conditioned or delayed.
- 3.0 The temporary easement shall terminate when the Grantee determines that it no longer requires the Temporary Easement for purposes permitted herein, or on November 22, 2013, whichever is earlier.
- 4.0 The Grantor reserves unto itself, and its successors and assigns, the right and privilege to use the Temporary Easement Property for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this indenture, and further reserving the right to prevent any use of the Temporary Easement Property by Grantee that would unreasonably interfere with the maintenance and safe and continuous operation of adjacent railroad tracks and facilities.
- 5.0 The Grantor reserves the title to the Temporary Easement Property to itself, and the Grantee's maintenance and use for the above purposes upon the Temporary Easement Property, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this indenture.
- 6.0 The Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to any of its activities on the Temporary Easement Property and shall indemnify, hold harmless and defend the Grantor from and against any and all liability for damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, caused by its activities. The Grantor makes no representation by the granting of this indenture that its property is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.
- 7.0 The Grantee assumes all risk of damage to or destruction of property whatsoever and injury to persons whomsoever while located upon the Property with the express or implied consent of Grantee, except may occur from Grantor's willful intentional misconduct.
- 8.0 The Grantee shall:
 - 8.1 be familiar with the requirements of, comply with, and secure at the Grantee's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws;
 - 8.2 upon written request by the Grantor, provide the Grantor with the results of appropriate reports and tests and with any other applicable documents to demonstrate that the Grantee has complied with all Environmental Laws relating to the Property;
 - 8.3 not in any manner cause or allow the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the 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;
 - 8.4 not, without prior written disclosure to and approval by the Grantor, Use or authorize the Use of any Hazardous Substance on the Property;

- 8.5 not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property;
- 8.6 promptly notify the Grantor of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release;
- 8.7 promptly provide the Grantor 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 any Release of a Hazardous Substance on, to or from the Property, or any alleged violation of or responsibility under any Environmental Law relating to the Property; and
- 8.8 promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property that gives rise to any liability, claim, cause of action, obligation, demand, fine, penalty, loss, judgment or expense under any Environmental Law, or causes a significant public health or workplace effect, or creates a nuisance; and
- 8.9 assume and pay any fee, tax, assessment or other charge or expense levied against the Property or incurred by the Railroad in connection with its use of, and activities upon the Property.

9.0 To the extent permitted by applicable law, the Grantee hereby releases and agrees to indemnify, hold harmless and defend the Grantor 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 (including without limitation any Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) of every kind, past, present and future, existing and contingent, known and unknown, arising from any injury to persons, firms or corporations whomsoever, including injuries resulting in death, and damage to property whatsoever, wherever such persons or property are located, caused by or attributable to, in whole or in part, any act or omission of the Grantee (or the Grantee's employees, agents, representatives, or invitees) in connection with the exercise of the right and privilege herein granted, including without limitation the Use or Release of Hazardous Substances by the Grantee and the breach by the Grantee of any of its warranties, representations or covenants. The Grantee's obligations hereunder shall survive the termination or expiration of this easement.

10.0 As used herein,

- 10.1 "**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);
- 10.2 "**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.

10.3 **"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;

10.4 **"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;

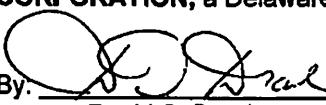
10.5 **"Response"** or **"Respond"** means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;

10.6 **"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.

11.0 The Grantor does not warrant title to the above-described property.

12.0 This indenture shall inure to the benefit of and be binding upon the successors and assigns of the Grantor and the Grantee.

DAKOTA, MINNESOTA AND EASTERN RAILROAD
CORPORATION, a Delaware Corporation,

By: 

David S. Drach

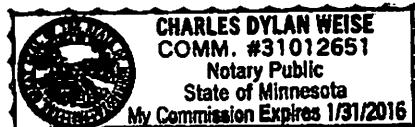
Its: Director Real Estate U.S.

STATE OF MINNESOTA)
)
) ss:
COUNTY OF HENNEPIN)

The foregoing easement was acknowledged before me this 15th day of July, 2011, by David S. Drach, Director Real Estate U.S. for Dakota, Minnesota and Eastern Railroad Corporation, a corporation under the laws of the State of Delaware, on behalf of the corporation.


Notary Seal

Notary Public



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TEMPORARY CONSTRUCTION EASEMENT PLAT

Prepared by Jon W. Janda, Anderson-Bogert Engineers & Surveyors, Inc.
4001 River Ridge Dr. N.E. Cedar Rapids, Iowa 52402



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