



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

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**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

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**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 21<sup>st</sup> day of July, 2011.

Attest:

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Richard W. O'Brien, Mayor

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Gregg Mandsager, City Clerk

## **GATE EASEMENT AGREEMENT NUMBER 3508001**

Date: July 15, 20 11

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,

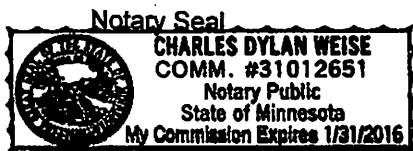
13.0 This indenture shall inure to the benefit of and be binding upon the successors and assigns of the Grantor and the Grantee.

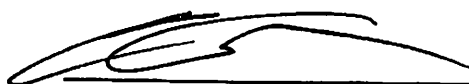
**DAKOTA, MINNESOTA AND EASTERN RAILROAD CORPORATION**, a Delaware Corporation,

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

STATE OF MINNESOTA )  
                                  ) ss:  
COUNTY OF HENNEPIN )

The foregoing easement was acknowledged before me this 15<sup>th</sup> 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 Public



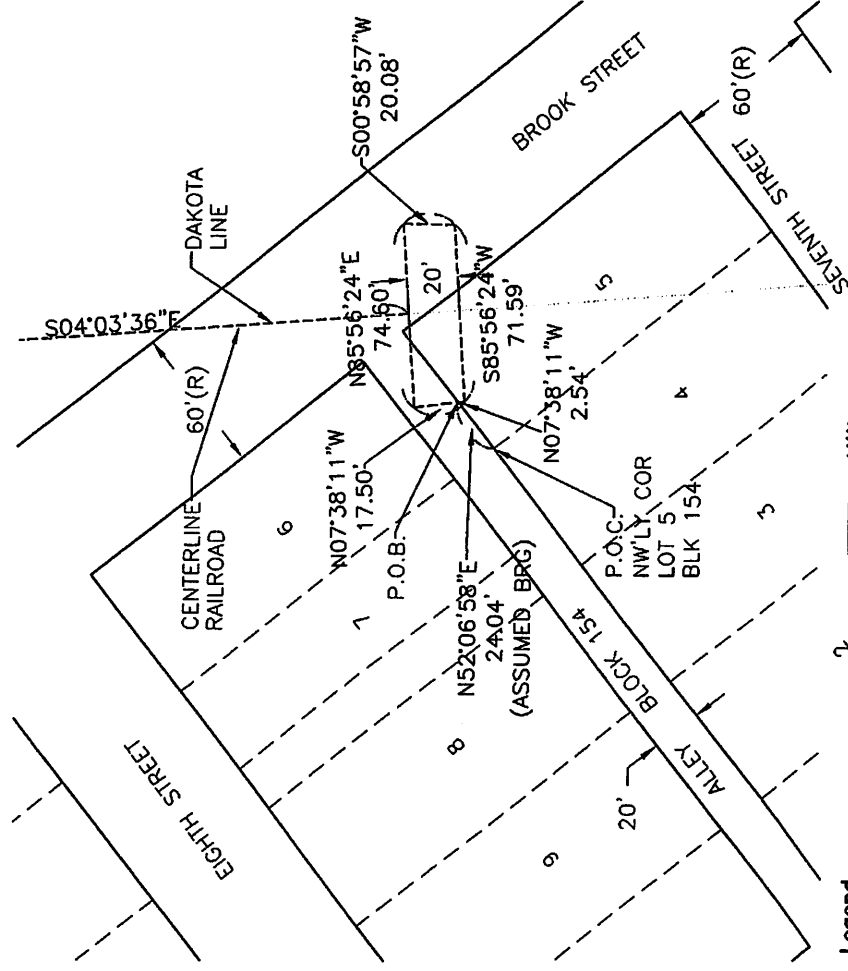
# PERMANENT EASEMENT FOR RAILROAD CLOSURE

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

## Legal Description

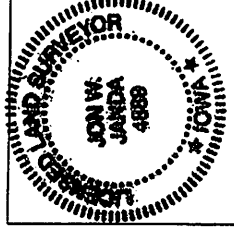
A PERMANENT EASEMENT FOR RAILROAD CLOSURE OVER PART OF LOT 5 AND THE VACATED ALLEY IN BLOCK 154 VACATED BROOK STREET ADJACENT TO SAID LOT 5, ORIGINAL PLAT, CITY OF MUSCATINE, IOWA, FURTHER DESCRIBED AS FOLLOWS:  
COMMENCING AT THE NORTHWESTERLY CORNER OF LOT 5 SAID BLOCK 154; THENCE N57°06'58"E, 24.04 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; 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.

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



## Legend

Boundary Line ———  
Adjoining Lot Line - - -  
Section Line - - -  
Building Setback Line . . . .  
Found 1/2" Iron Rod •  
Set 1/4" 30" Rebar ○  
w/Yellow Cap #4689  
Found Section/Quarter Corner Δ  
Found Section/Quarter Corner ▲  
Measured (M)  
Recorded (R)



I, JON W. JANDA, a duly Licensed Professional Engineer and Surveyor, do hereby certify that this plat and accompanying documents were prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer and Surveyor in the State of Iowa.

DATE: 10-7-10  
Signature: Jon W. Janda

BY LICENSE EXPIRATION DATE IS OCTOBER 31, 2010

PLAT OR SHEET COVERED BY THIS SEAL

1 OF 1



TRACT #83 PE

EASEMENT PLATS

Project Number: 207142

Drawn By: MJS  
Date: 8/10/10  
Scale: 1"=60'

Client: CITY OF MUSCATINE  
215 SYCAMORE STREET  
MUSCATINE, IA 52761  
PHONE: (563)-282-4141

ANDERSON-BOGERT  
Engineers & Surveyors, Inc.  
4001 River Ridge Drive N.E. Cedar Rapids, Iowa 52402  
Phone: (319) 377-4639

Sheet No.  
1 OF 1

## LEVEE EASEMENT AGREEMENT NUMBER 3510201

Date: July 15, 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 EASTERLY LINE OF SAID LOT 6 TO THE POINT OF BEGINNING;  
THENCE CONTINUING S38°11'26"E, 44.44 FEET ALONG THE EASTERLY 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 EASTERLY 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 EASTERLY 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.

hereinafter referred to as the "**Property.**"

- 2.0 The Easement granted herein shall be for the for 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.

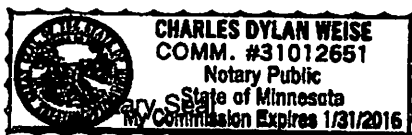
- 11.3 **"Hazardous Substance"** or **"Hazardous Substances"** means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other 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, 2011, 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



0 60

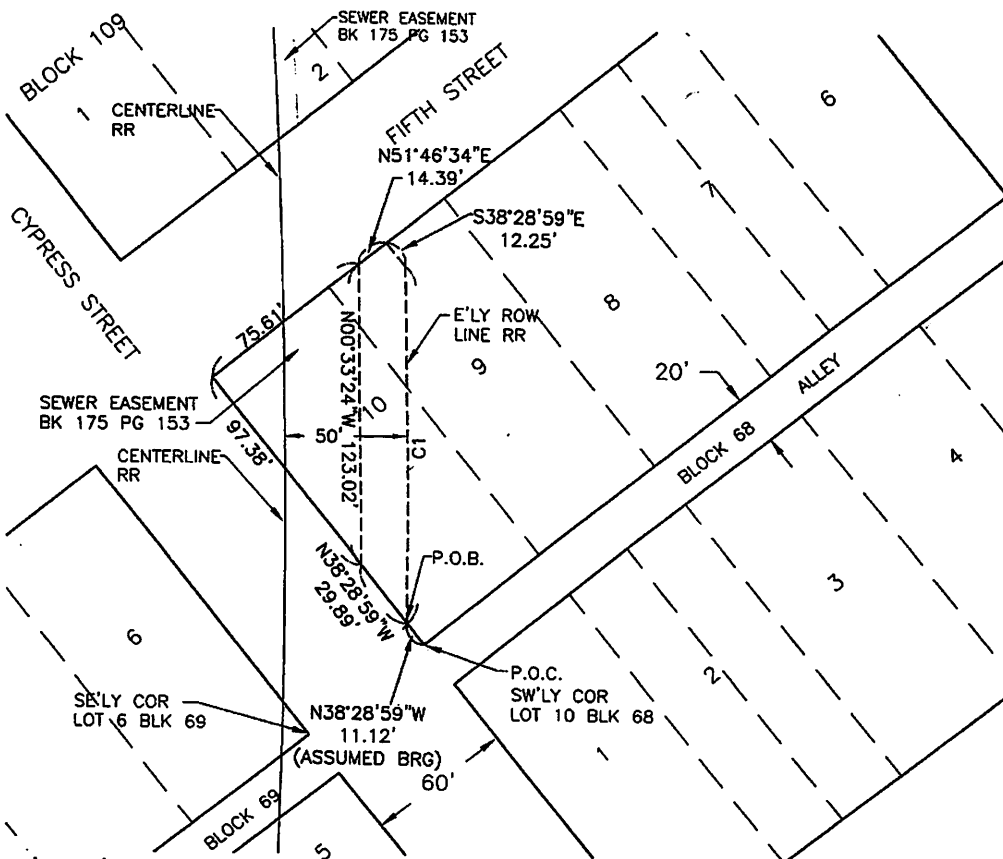
## Legal Description

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

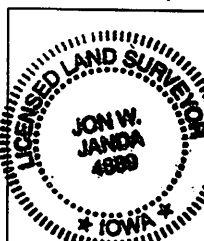
RAILROAD RIGHT-OF-WAY  
MEASUREMENTS SCALED FROM  
A STATION MAP OF THE  
CHICAGO, MILWAUKEE, ST.  
PAUL & PACIFIC RR CO.  
STATION 11100+00 TO  
STATION 11191+71.7  
REVISED OCT. 19, 1982

CURVE TABLE					
CURVE	DELTA	LENGTH	RADIUS	CHORD	CHORD BRG
C1	02°09'28"	145.73	3869.73	145.72	S00°20'30"E - 72.88'



## 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 Δ
- Found Section/Quarter Corner ▲
- Measured (M)
- Recorded (R)



I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A duly LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

*Jon W. Janda* DATE 11-11-10  
Jon W. Janda Iowa Reg. No. 4889

MY LICENSE RENEWAL DATE IS DECEMBER 31, 2010

PAGES OR SHEETS COVERED BY THIS SEAL:

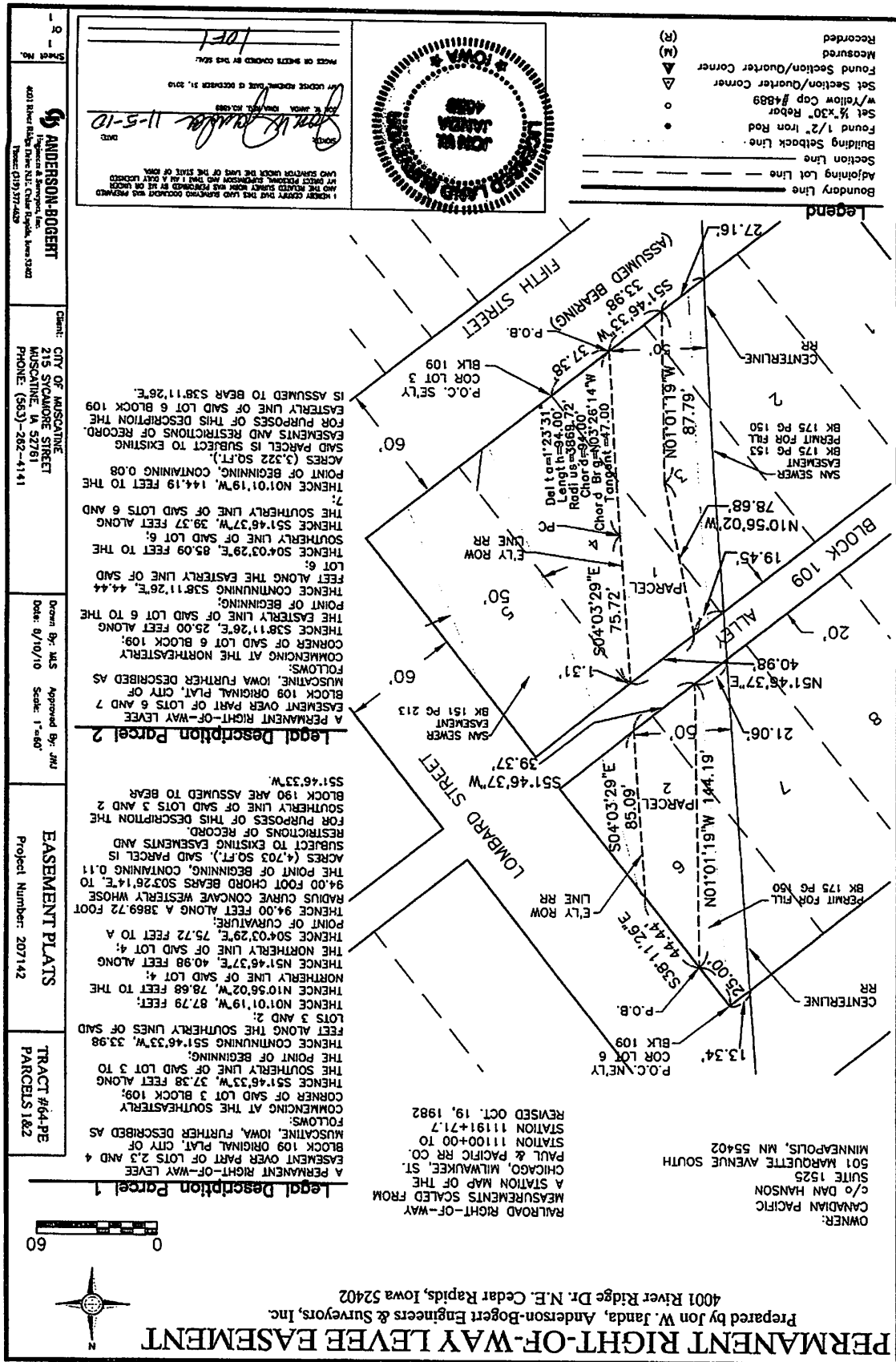
1 OF 1

TRACT #55-PE
EASEMENT PLATS Project Number: 207142
Drawn By: M.S. Delta: 8/10/10 Scale: 1"=60'
Client: CITY OF MUSCATINE 215 SYCAMORE STREET MUSCATINE, IA 52761 PHONE: (563)-282-4141
Anderson-Bogert Engineers & Surveyors, Inc. 4001 River Ridge Drive N.E. Cedar Rapids, Iowa 52402 Phone: (319) 377-4829
Sheet No. 1 OF 1

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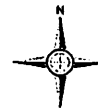
T:\ACAD\207142\dwg\per\_ease.dwg 11-02-10 01:17:32 PM mis287





# 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

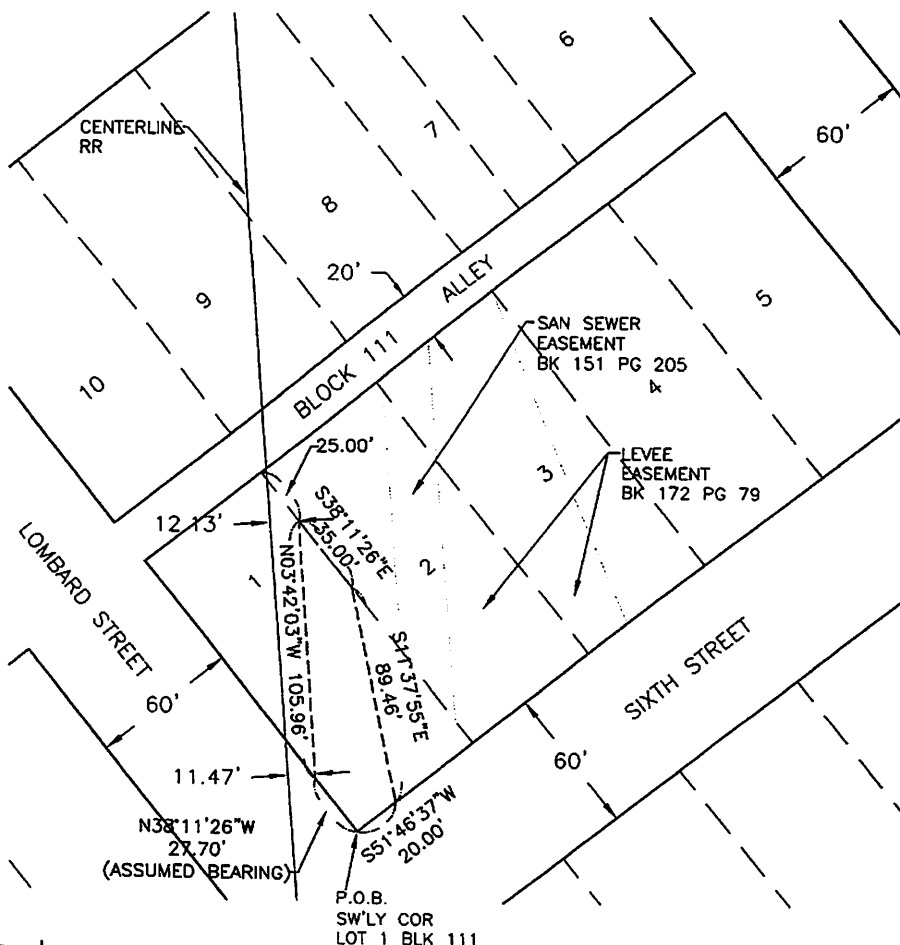


## Legal Description

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 N03°42'03"W, 105.96 FEET TO THE EASTERLY 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.

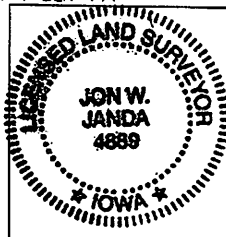
OWNER:  
CANADIAN PACIFIC  
c/o DAN HANSON  
SUITE 1525  
501 MARQUETTE AVENUE SOUTH  
MINNEAPOLIS, MN 55402

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



## 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)



I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

SIGNED: *Jon W. Janda* DATE: 10-7-10  
Jon W. Janda, IOWA REG. NO. 4889

MY LICENSE RENEWS DATE 12 DECEMBER 31, 2010

PAGES OR SHEETS COVERED BY THIS SEAL:

1 of 1

TRACT #72-PE

EASEMENT PLATS  
Project Number: 207142

Drawn By: JWS  
Date: 8/10/10  
Approved By: JWS  
Scale: 1"=60'

CITY OF MUSCATINE  
215 STANFORD STREET  
MUSCATINE, IA 52761  
PHONE: (563)-262-4141

ANDERSON-BOGERT  
Engineers & Surveyors, Inc.  
4001 River Ridge Drive N.E. Cedar Rapids, Iowa 52402  
Phone: (319) 377-4829

Sheet No.  
1  
of  
1

**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.

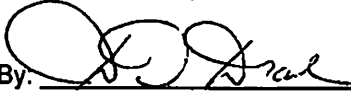
hereinafter referred to as the **"Temporary Easement Property"** or simply as the **"Property."**

- 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

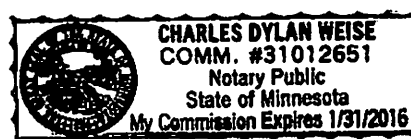
Its: Director Real Estate U.S.

STATE OF MINNESOTA )  
 ) ss:  
COUNTY OF HENNEPIN )

The foregoing easement was acknowledged before me this 15<sup>th</sup> 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

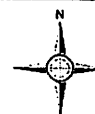
  
\_\_\_\_\_  
Notary Public



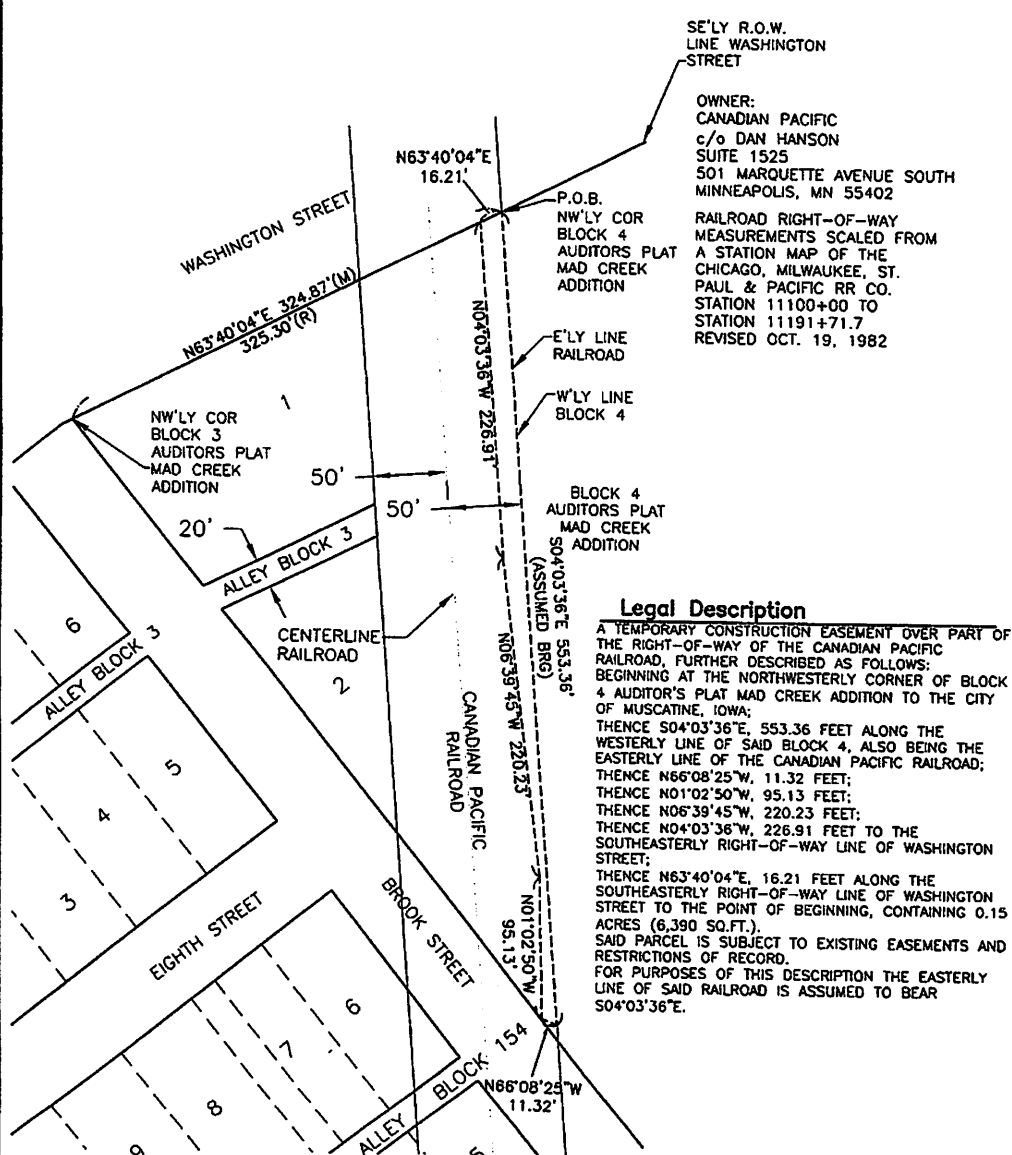
91  
79

# TEMPORARY CONSTRUCTION EASEMENT PLAT

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

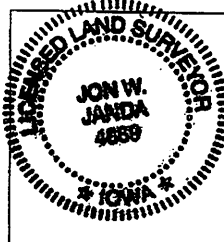


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## Legend

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



I HEREBY CERTIFY THAT THIS LAND SURVEYING DOCUMENT WAS PREPARED  
AND THE RELATED SURVEY WORK WAS PERFORMED BY ME OR UNDER  
MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED  
LAND SURVEYOR UNDER THE LAWS OF THE STATE OF IOWA.

DATE: 10-7-10  
Jon W. Janda  
Jon W. Janda Iowa Reg. No. 4889

MY LICENSE RENEWAL DATE IS DECEMBER 31, 2010

PAGES OR SHEETS COVERED BY THIS SEAL:

1 of 1

TRACT #917E

EASEMENT PLATS  
Project Number: 207142

Drawn By: MJS  
Approved By: JJJ  
Date: 8/10/10  
Scale: 1"=60'

Client:  
CITY OF MUSCATINE  
215 STAMORE STREET  
MUSCATINE, IA 52781  
PHONE: (563)-262-4141

Anderson-Bogert  
Engineers & Surveyors, Inc.  
4001 River Ridge Drive N.E. Cedar Rapids, Iowa 52402  
Phone: (319) 377-4829

Sheet No.  
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Of  
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