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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 Purchase Property – Mad Creek Levee Project – Phase II

INTRODUCTION: The City is completing the process of acquiring property necessary for Phase II of the Mad Creek Levee Improvement Project. To move into the contract for Phase II, it is necessary to for all property to be acquired and ready for construction.

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 cost associated with this effort is credited to the City's obligation toward the Project.

RECOMMENDATION/RATIONALE: The attached Purchase and Sale Agreement with the Dakota, Minnesota & Eastern Railroad Corporation Offer and Easement Plat has been prepared for City Council consideration. It is recommended that the City Council approve the attached resolution approving the Purchase and Sale Agreement with the D, M & E Railroad for Phase II of the Mad Creek Levee Improvement Project.

BACKUP INFORMATION:

1. Resolution
2. Purchase and Sale Agreement

RESOLUTION NO. _____

**A RESOLUTION APPROVING THE PURCHASE AND SALE AGREEMENT
WITH THE DAKOTA, MINNESOTA & EASTERN RAILROAD
CORPORATION FOR PROPERTY RELATED TO PHASE II OF 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 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 acquisition of said property 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 approves the attached Purchase and Sale Agreement with the Dakota, Minnesota & Eastern Railroad Corporation and the real estate identified as shown on Exhibit A hereto attached and by this reference made a part hereof for the construction and maintenance of improvements related to the Mad Creek Levee and Floodwall in the City of Muscatine, Muscatine County, Iowa.
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. The Mayor is authorized and directed to sign the Purchase and Sale Agreement on behalf of the City of Muscatine and this Council.
4. 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

PURCHASE AND SALE AGREEMENT

Canadian Pacific
501 Marquette Avenue
Suite 1525
Minneapolis, Minnesota 55402

Attn: Director Real Estate U.S.

1. **BUYER AND SELLER:** The undersigned (Buyer) offers to purchase certain Property (as defined in Section 3) from Dakota Minnesota, & Eastern Railroad Corporation, a Delaware Corporation, doing business as Canadian Pacific (Seller).

2. **ACCEPTANCE:** This offer shall be void if not accepted by Seller within ninety (90) days of its date. The accepted offer is sometimes referred to as "this Agreement."

3. **PROPERTY:** The Property consists of the land in Muscatine, Muscatine County, Iowa shown in approximation on the map labeled Exhibit A that is attached hereto and made a part hereof (the Land) and the improvements thereon (the Improvements) (collectively, the "Property"); provided, however, that the Improvements do not include those improvements which are excluded from the purchase by other provisions of this offer. The legal description of the Land will be obtained from the survey described in paragraph 15.

4. **DEED: RESERVATIONS AND COVENANTS; BILL OF SALE:** The Property will be conveyed at the closing by quit claim deed. Upon written notice from Buyer requesting same, given at least ten (10) days in advance of the closing, Seller will deliver at the closing a quit claim bill of sale for any personal property included in the purchase. The following reservations and covenants will be included in the deed.

In these reservations and covenants, Seller is referred to as Grantor, Buyer is referred to as Grantee, and the Property is referred to as the real property.

Grantor reserves unto itself, and its successors and assigns, all minerals on or under the surface of the real property (or otherwise accessible from the real property), together with the full right, through its servants, employees, agents, licensees, and appointees, to enter and utilize the real property for the purpose of exploring for, mining, and removing said minerals. Grantor shall at all times exercise these rights in such a manner as not to cause unnecessary damage to the surface of the real property. If said mineral exploration, mining, or removal causes damage at the surface of the real property or presents a reasonable risk of causing future surface damage, the grantor or its successors and assigns shall either restore the surface to the condition it was prior to the exploration, mining, or mineral removal, or the grantor shall compensate the grantee or its successors and assigns for the required restoration. As used herein, "minerals" is used in its broadest sense and means any naturally occurring substance, of any nature whatsoever, whether organic or inorganic, metalliferous or nonmetalliferous, on or under the surface of the real property (or otherwise accessible from the real property), and it specifically includes, but is not limited to, water, oil, gas, petroleum, coal, peat, sand, gravel, clay, scoria, stone, gemstones, and chemical substances. Notwithstanding the foregoing, Grantor's reservation of minerals shall not be construed as an assumption of liability as a result of, arising from, or relating to the presence on the property of hazardous substances. As used herein, "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 other chemical, substance or material listed or regulated by any 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.

All utilities and related facilities whether above, below or upon the surface of real property, including, but not limited to electrical transmission and distribution lines, telephone lines, fiber optic or coaxial cables, pipelines, sewers, and transmission towers (such as for cellular telephone service, and any improvement appurtenant there to, such as, but not limited to, poles, guy wires, anchors, footings, foundations, transformers, junction or service boxes, or repeater or signal stations, collectively the "Utilities," and all agreements relating to such Utilities, are excepted from the purchase, and Grantor reserves to itself, and its successors and assigns a permanent easement, or easements, as the case may be, (Utility Easement(s)) over the portions of the real property located within ten (10) feet of each such Utility, for the operation, maintenance, repair, alteration, renewal, replacement, and removal of such Utility, together with a permanent easement of sufficient width for pedestrian and vehicular access (an Access Easement) to and from each such Utility and the right to trim vegetation that may be deemed by the operator of any such Utility to interfere with such Utility.

As used in this paragraph, "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, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims); "Environmental Law" 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, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., 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 and hereafter enacted; and "Hazardous Substance" 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. By accepting delivery of this Quit Claim Deed, Grantee, for itself, its directors, officers, agents, affiliates, predecessors, successors and assigns, and anyone acting on its behalf or their behalf covenants and agrees not to sue Grantor or its respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, grantors or anyone acting on its behalf or their behalf with respect to any Claims (including without limitation all Claims arising under any Environmental Law), existing and contingent, known and unknown, that Grantee had, has or may have, whether arising at common law, in equity, or under a federal, state or local statute, rule or regulation, arising out of, resulting from, or relating to the condition of the Property. The foregoing shall apply to any condition of the Property, known or unknown, contemplated or unanticipated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property, regardless of whether the foregoing condition of the Property was caused in whole or in part by the Grantor's actions or inactions.

5. [not applicable]
6. [not applicable]

7. **PURCHASE PRICE:** The purchase price of the Property is \$25,860.00 net to the Seller. The square footage shall be certified in the survey described in Section 15.

8. **CLOSING:** Except as otherwise provided in Section 9, this transaction shall close at a mutually agreeable time and place no later than thirty (30) days after Seller's acceptance of this offer.

9. **GOVERNMENTAL APPROVAL:** If Seller is required to obtain governmental approval or exemption in lieu thereof (collectively, Authorization) in order to consummate this transaction, this Agreement shall be contingent upon the granting of Authorization, and Buyer will cooperate with Seller to obtain Authorization. If Authorization is not obtained within one hundred eighty (180) days after Seller's acceptance of this offer (the Contingency Period), this Agreement shall automatically terminate at the end of the Contingency Period. If Authorization is not obtained prior to the expiration of the time period specified in Section 8, the date for closing shall be delayed to a date no later than 15 days after Authorization is obtained; however, under no circumstances shall the closing be delayed to a date later than one hundred eighty (180) days after Seller's acceptance of this offer.

10. **ESCROW:** Should the parties agree to close in escrow, Buyer will pay all fees and charges in connection with the escrow.

11. [not applicable]

12. **ENCUMBRANCES:** The Property will be conveyed subject to facts which would be disclosed by a comprehensive survey, rights and claims of parties in possession, rights of the public, and easements, leases, licenses, and permits. Buyer may object to the marketability of Seller's title on the basis of such matters.

13. **JUDGMENT LIENS:** Any judgment against Seller which may appear of record as a lien against the Property shall be settled and satisfied by Seller within thirty (30) days after it becomes final and unappealable, and Seller shall indemnify Buyer, and Buyer's title insurer, for any loss sustained by either of them as a result of Seller's failure to have any such judgment lien so settled and satisfied. Buyer may object to the marketability of Seller's title on the basis of such matters.

14. [not applicable]

15. **SURVEY:** The Parties agrees to accept the Plats of Survey prepared, signed, and sealed by Jon W. Janda, PLS, Iowa registration number 4889, dated 10-7-10 (Parcel #37) and 6-3-11 (Parcels #39, #59, and #69) as accurately depicting and describing the Property.

16. **SUBDIVISION PLATS:** Buyer will be responsible for preparing, at its expense, any survey or plat required by any governmental authority (including any survey or plat of Seller's property contiguous to the Land, where such survey or plat is required in connection with or as a consequence of, Buyer's purchase of the Land). The survey or plat shall not be filed or recorded until Seller has approved it.

17. **RIGHT OF ENTRY:** During the first 45 days after Seller's acceptance of this offer, Buyer (and its employees, agents, and contractors) may enter the Property and, to the extent necessary to effectuate the purposes of this Section, Seller's land in the vicinity of the Property (such land and the Property being referred to, collectively, as the Site), for the purpose of conducting soil tests, environmental tests, and a survey, subject to the following conditions:

- (a) Buyer shall give Seller reasonable advance notice of the date and time of each entry and the nature of the activities to be conducted on the Site at each such date and time.
- (b) Seller may elect to be present during the conduct of such activities and to monitor same. Such monitoring shall not relieve Buyer of any liability under this Section 17.

- (c) Prior to entering the Site, Buyer shall secure the permission of any tenant then in possession of same.
- (d) Upon the completion of its activities on the Site, Buyer shall remove any debris resulting from such activities and shall restore the Site to the condition it was in prior to the commencement of such activities.
- (e) Buyer shall indemnify, hold harmless and defend the Indemnitees (as defined below) from and against all Claims arising out of, resulting from or relating to any loss of (or damage to) any property or business or any injury to (or death of) any person, where such loss, damage, injury, or death actually or allegedly arises (whether directly or indirectly, wholly or in part) from: (a) any action or omission of Buyer (or its employees, agents, or contractors) while on the Site pursuant to this Section 17; or (b) the exercise by Buyer (or its employees, agents, or contractors) of the permission granted by this Section 17; or (c) the release of any Hazardous Substance (as defined in Section 30) resulting (directly or indirectly, wholly or in part) from any action or omission of Buyer (or its employees, agents, or contractors) while on the Site pursuant to this Section 17. Indemnitees means Seller, its subsidiaries, affiliated companies and parent companies, and their directors, officers, employees and agents, including without limitation Dakota, Minnesota, & Eastern Railroad Corporation, Soo Line Corporation, The Milwaukee Motor Transportation Company, Hiawatha Transfer Company, and Canadian Pacific Railway Company.
- (f) Buyer (and its employees, agents, and contractors) shall comply with all applicable laws while on the Site.
- (g) Buyer will not commence any environmental testing until its work plan for such testing has been approved in writing by Seller, which approval shall not be unreasonably withheld, conditioned or delayed. Buyer will provide Seller with complete copies of the test data and test reports as soon as they are available to Buyer.
- (h) The cost of any test or survey will be borne solely by Buyer.
- (i) Test holes shall be located no closer than 10 feet from the nearest rail of any railroad track located on or adjacent to the Site. Drilling equipment and related equipment shall not be placed closer than 10 feet from the nearest rail of any such track.
- (j) While on the Site, Buyer (and its employees, agents, and contractors) shall comply with Seller's safety rules, including any requirement regarding the use of flagmen. All costs associated with compliance with such rules shall be borne by Buyer. If Seller shall incur any costs in connection therewith, Buyer shall reimburse Seller within 30 days after receipt of Seller's invoice.
- (k) Unless disclosure is required by court order or applicable law, Buyer shall maintain, and shall cause its employees, agents, and contractors to maintain, the confidentiality of all information pertaining to any environmental test performed on the Site.
- (l) If any mechanic's or materialmen's lien, or similar lien, is asserted against the Site, the Property, or any other property of Seller or the Indemnitees as a result of the exercise of the permission granted in this Section 17, Buyer shall immediately satisfy and/or obtain the release of such lien, all at Buyer's expense, and Buyer shall indemnify, hold harmless and defend the Indemnitees from and against all Claims arising out of or connected with such lien.

18. TITLE MATTERS: Seller makes no warranty or representation with respect to the marketability or quality of its title and is not under any obligation to furnish abstracts of title, title reports, or title

insurance policies in respect of the Property. Buyer shall have 45 days after Seller's acceptance of this offer in which to raise objections to the marketability of Seller's title. If Buyer objects to Seller's title, it must give Seller notice within such 45-day period, specifying the precise nature of the alleged title defects. The notice must be accompanied by evidence of the alleged defects, in the form of a copy of an abstract of title or a title company's title commitment. If Buyer fails to give proper or timely notice, it shall be deemed to have waived its right to object (except that defects which arise subsequent to the 45-day period shall not be deemed waived unless Buyer fails to give Seller notice of same promptly after it learns, or in the exercise of reasonable diligence should have learned, of them); furthermore, even if Buyer gives proper and timely notice, it shall be deemed to have waived its right to object on the basis of then-existing defects not specified in the notice. Seller shall have 45 days or until the closing, whichever is less (the Cure Period), in which it may, if it so chooses, attempt to cure any defect specified in a timely and otherwise proper notice. Seller has no obligation or responsibility whatsoever to cure (or attempt to cure) any title defect. If Seller shall undertake to cure or attempt to cure any title defect, it may withdraw from such undertaking at any time without penalty; such undertaking shall not create, nor shall it under any circumstance be construed to create, any obligation whatsoever on the part of Seller to cure any such defect. If Seller is unable or unwilling to cure any specified defect, Buyer may terminate this Agreement by giving Seller notice of termination at any time prior to the actual delivery and acceptance of the deed, which notice shall state that this Agreement is being terminated by reason of Seller's failure to cure title defects. If Buyer gives proper and timely notice of termination, Seller shall reimburse Buyer for the actual amount paid by Buyer for the abstract of title or title commitment, provided that the abstract or commitment is delivered and assigned to Seller. By accepting delivery of the quit claim deed, Buyer shall be deemed to waive any and all uncured title defects.

19. **REAL ESTATE TAXES:** The total real estate tax bill payable in the year in which the date of closing occurs will be prorated on a per diem basis as of the closing, using the most recent tax bill; such proration shall be final and binding on Seller and Buyer and there shall be no post-closing adjustment. Taxes payable in any year after closing shall be the responsibility of the Buyer even if the taxes are for a prior year. There will be no proration to the extent the payment of such taxes has been assumed by a lessee under a lease that will be assigned to Buyer or merged into the purchase.

20. **TRANSFER TAXES AND FEES:** Buyer will purchase, affix, and cancel any and all documentary stamps in the amount prescribed by statute, and will pay any and all transfer taxes, excise taxes, sales taxes, use taxes, and fees incidental to the transfer of the Property or the recordation or filing of the deed.

21. **SPECIAL ASSESSMENTS:** Buyer will assume responsibility for paying any special assessment (or installment thereof) where the due date for payment is on or after the closing date, irrespective of the date of the improvement.

22. **NOTICES:** Notices permitted or required by this Agreement must be in writing and shall be deemed given when delivered in legible form to the business address of the party to whom addressed. If delivered at the closing, a notice shall be deemed given when hand-delivered to the party's representative at the closing. The business addresses of the parties are as follows:

Seller –	
mail & delivery	
address:	501 Marquette Avenue
	Suite 1525
	Minneapolis, MN55402
	Director Real Estate U.S.
telecopier:	(612) 904-6147
	Director Real Estate U.S.

Buyer -- mail& delivery address:	City of Muscatine
	215 Sycamore Street
	Muscatine, IA 52761
Telecopier	(563) 264-0750
	Attn: GreggMandsager, City Administrator/Clerk

Notices not given in the manner or within the time limits set forth in this Agreement are of no effect and may be disregarded by the party to whom they are directed.

23. REAL ESTATE BROKERS: Seller represents that it has not retained any real estate broker or agent in connection with this transaction. If any real estate broker or agent can establish a valid claim for commission or other compensation in connection with this transaction, such commission or other compensation shall be paid by Buyer.

24. LEASES: Except as may be reserved unto Seller pursuant to Section 4, at and as of the closing, Seller will assign to Buyer Seller's rights, and Buyer will assume Seller's obligations, under any lease which: (a) was granted by Seller (or its predecessors in interest) as lessor, (b) is known to Seller, and (c) includes or burdens any portion of the Property; provided, that if Buyer is the lessee under such a lease, that lease shall merge into the purchase as of the closing. And further provided, that if a lease includes property other than the Property, the assignment and assumption (or merger) shall be limited to the leasehold interest in the Property. The assignment and assumption contemplated by this Section shall be limited to rights and obligations accruing as of and after the closing. Prepaid rentals shall be prorated on a per diem basis at and as of the closing. In the event of a partial assignment or merger, rentals in respect of the period from and after the closing shall be adjusted between Seller and Buyer on the basis of the square footage of the land area of their respective interests in the leased premises; provided, however, that where the rental was established on a basis other than square footage, the adjustment shall be determined using such other basis. Seller will provide a copy of each such lease to Buyer within 30 days after Seller accepts this offer. At the closing, the parties will execute an assignment and assumption agreement incorporating the terms of this Section and identifying such lease or leases.

25. EASEMENTS, LICENSES, AND PERMITS: Except as may be reserved unto Seller pursuant to Section 4, at and as of the closing, Seller will assign to Buyer Seller's rights, and Buyer will assume Seller's obligations, under existing easements, licenses, and permits (collectively, instruments) which: (a) were granted by Seller (or its predecessors in interest), (b) are known to Seller, and (c) include or burden any portion of the Property. There shall be no proration of prepaid rentals, prepaid fees, or other prepaid charges in respect of any such instrument. If such an instrument pertains in part to property other than the Property, the assignment and assumption shall be limited to the interest the instrument creates in the Property. In the event of such partial assignment, the rentals, fees, and other charges which come due after the closing shall be allocated between Seller and Buyer on the basis of the square footage of the land area of their respective interests in the property affected by the instrument; provided, however, that where the rental, fee, or other charge was established on a basis other than square footage, the adjustment shall be determined using such other basis. The assignment and assumption contemplated by this Section shall be limited to rights and obligations accruing as of and after the closing. Seller will provide a copy of each such instrument to Buyer within 30 days after Seller accepts this offer. At the closing, the parties will execute an assignment and assumption agreement incorporating the terms of this Section and identifying such instrument or instruments.

26. AS IS; ALL FAULTS; NO REPRESENTATION BY SELLER: Buyer agrees to accept the condition of the Property, including specifically without limitation, the environmental and geological condition of the Property, in an "AS-IS" and with "ALL FAULTS" condition. Buyer's acceptance of title to the Property shall represent Buyer's acknowledgment and agreement that:

- (i) Seller has not made any written or oral representation or warranty of any kind with respect to the Property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose);
- (ii) Buyer has not relied on any written or oral representation or warranty made by Seller, its agents or employees with respect to the condition or value of the Property;
- (iii) Buyer has had an adequate opportunity to inspect the condition of the Property, including without limitation any environmental testing, and to inspect documents applicable thereto, and Buyer is relying solely on such inspection and testing; and
- (iv) the condition of the Property is fit for Buyer's intended use. Buyer agrees to accept all risk of Claims (including without limitation all Claims under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) whether past, present or future, existing or contingent, known or unknown, arising out of, resulting from or relating to the condition of the Property, known or unknown, contemplated or unanticipated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property.

27. [not applicable]

28. [not applicable]

29. ENVIRONMENTAL: PARTIES' RIGHT TO TERMINATE: Either party may terminate this Agreement at any time prior to the delivery of the deed if it determines, in the exercise of its discretion, that circumstances related to Hazardous Substances render the sale inadvisable. The closing of the sale, if it occurs, is not, and shall not be construed as, an actual or implied representation or warranty by Seller as to the condition of the Property or the absence of Hazardous Substances.

30. DEFINITIONS:

"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, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

"Environmental Law" 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.

"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.

31. LITIGATION EXPENSES: In any action brought in connection with this Agreement, the prevailing party shall be entitled to recover its litigation expenses, including, but not limited to, court costs, disbursements, witness fees, experts' fees, and attorneys' fees.

32. **TIME OF THE ESSENCE:** Time is of the essence of this Agreement.

33. **LIQUIDATED DAMAGES AND SPECIFIC PERFORMANCE:** If Buyer fails to perform any of the terms or conditions of this Agreement within the specified time limits, Seller may, at Seller's option, declare this Agreement terminated or have this Agreement specifically enforced. Likewise, if Seller fails to perform any of the terms or conditions of this Agreement within the specified time limits, Buyer may declare this Agreement terminated or Buyer may have this Agreement specifically enforced. The rights and remedies granted to the parties in this Section are intended to be cumulative to all other rights and remedies available to the parties (whether under this Agreement, at law, in equity or otherwise); accordingly, the exercise by either party of any such right or remedy shall not preclude it from exercising any other such right or remedy.

34. **COMPUTATION OF TIME:** For the purpose of computing the time periods specified in this Agreement, Saturdays, Sundays and legal holidays shall be counted. However, where the last day for performing any act falls on a Saturday, Sunday, or legal holiday, that act may be performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

35. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties with respect to the sale and purchase of the Property. Buyer has not relied on any statements or representations by Seller except as are set forth in this Agreement.

36. **NON-ASSIGNABILITY:** Buyer shall not in any manner assign or transfer its rights under this Agreement, voluntarily or involuntarily, by operation of law or otherwise, without the advance written consent of Seller. Any attempted or purported assignment or transfer by Buyer without such consent shall be void. Subject thereto, this Agreement shall inure to the benefit of, and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties.

37. **SURVIVAL OF TERMS AND CONDITIONS:** The terms and conditions of this Agreement shall survive and be in full force and effect after the delivery of the deed, and shall not be deemed to have merged therein.

38. **SURVIVAL OF INDEMNIFICATION, LITIGATION EXPENSE AND CONFIDENTIALITY PROVISIONS:** The indemnification, litigation expense, and confidentiality provisions of this Agreement shall survive its termination.

39. **APPLICABLE LAW:** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Iowa.

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

41. **RAIL SERVICE; NO OBLIGATION:** Nothing in this Agreement is intended to create, nor shall it be construed to create, any express or implied obligation on the part of Seller to provide (or continue to provide) rail service to Buyer and/or the Property. Nothing in this Agreement is intended to prevent or limit, nor shall it be construed to prevent or limit, the discontinuance, by Seller, of rail service over any railroad line or trackage by which rail service is or may be provided to Buyer and/or the Property.

42. **HEADINGS:** The Section headings used in this Agreement are used solely for the purpose of convenience. They are not intended to, and do not, modify or limit the wording of the Sections to which they are appended, and they shall not be used or construed as guides to the interpretation of said Sections.

43. **OFFER DATE:** This offer is dated _____, 20____.

OFFER:

CITY OF MUSCATINE, IOWA
an Iowa municipal corporation

By _____
Richard O'Brien, Mayor

Date: _____

(City Seal)

ACCEPTANCE:

DAKOTA, MINNESOTA AND EASTERN
RAILROAD CORPORATION

By 
Director Real Estate U.S.

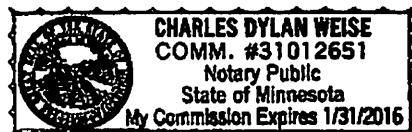
Date: July 15, 2011

STATE OF Minnesota)
COUNTY OF Hennepin)ss:

On this 15th day of July, 2011, before me personally came
David Drach, to me known to be the person described in and who executed the
foregoing instrument, and acknowledged that he/she executed the same.

Notary Public in and for the
State of Minnesota

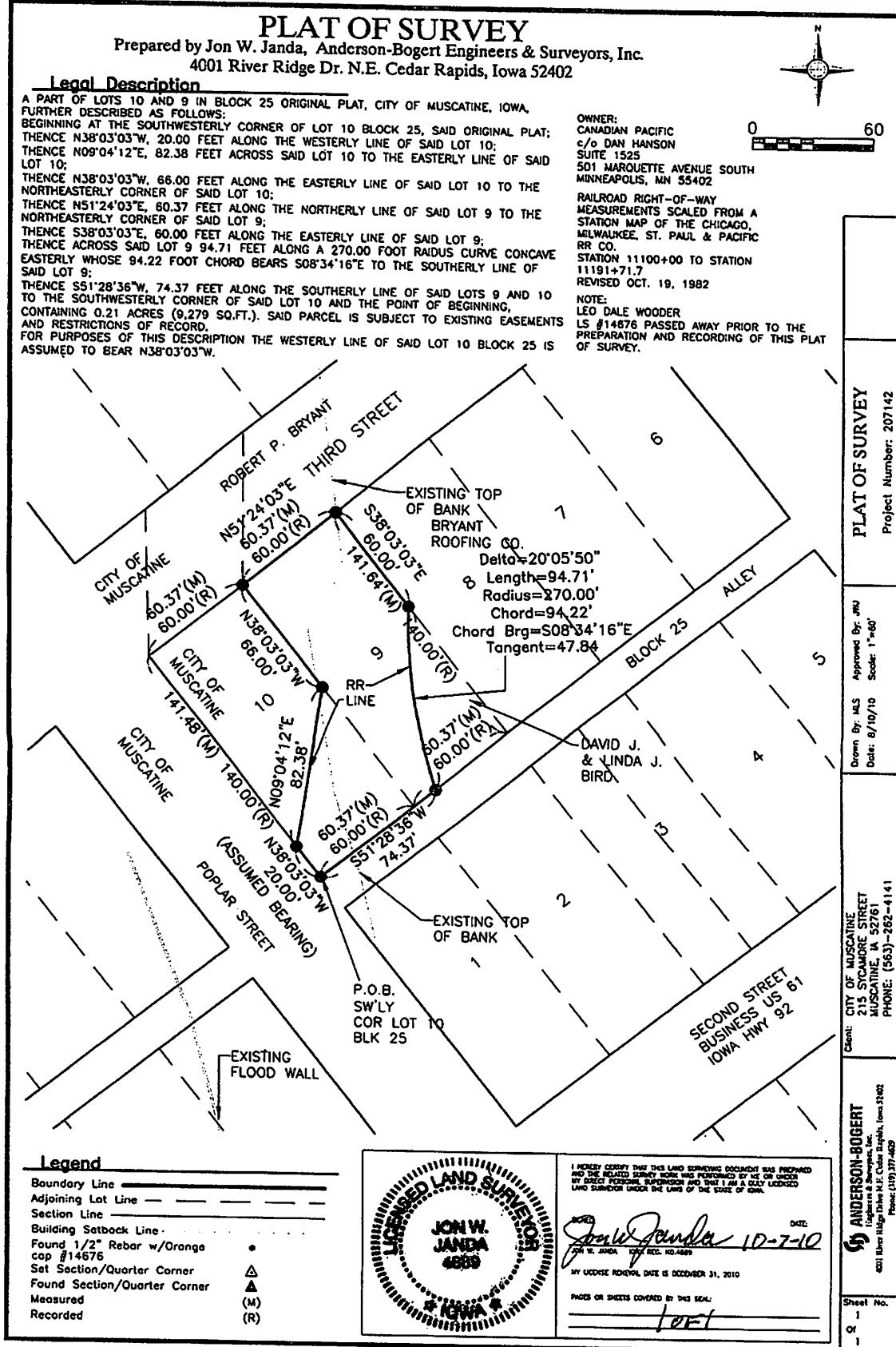
STATE OF IOWA)
)ss:
MUSCATINE COUNTY)



On this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and
for the State of Iowa, personally appeared **Richard W. O'Brien** to me personally known, who, being by
me duly sworn, did say that he is the Mayor, respectfully, of the City of Muscatine, Iowa; that the seal
affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was
signed and sealed on behalf of the corporation by authority of its City Council as contained in Resolution
No. _____ passed by the City Council under Roll Call No. _____ of the City Council on
_____, and that the Mayor, as such Officer, acknowledges the execution of said instrument to be
the voluntary act and deed of the City of Muscatine, by him voluntarily executed.

Notary Public in and for the
State of Iowa

Not Assignable Without Consent



PLAT OF SURVEY

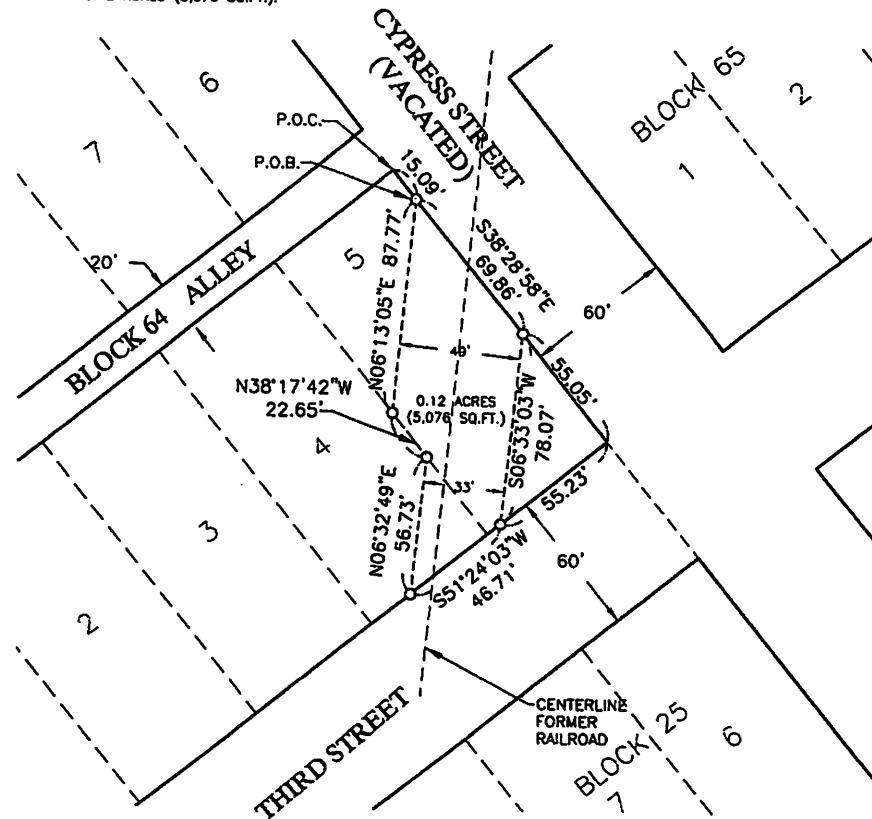
Prepared by Jon W. Janda, Anderson-Bogert Engineers & Surveyors, Inc.
4001 River Ridge Dr. N.E. Cedar Rapids, Iowa 52402



0 60

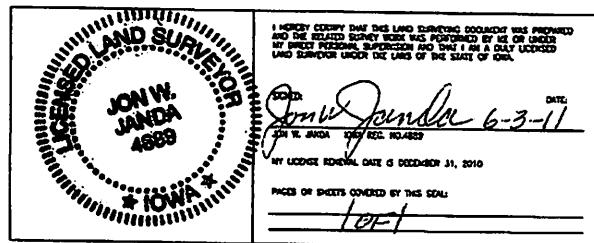
Legal Description

PART OF LOT 4 AND 5 IN BLOCK 64, ORIGINAL PLAT, CITY OF MUSCATINE, IOWA FURTHER DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 5, BLOCK 64, SAID ORIGINAL PLAT; THENCE S38°28'58"E, 15.09 FEET ALONG THE NORTHEASTERLY LINE OF LOT 5 AND THE SOUTHWESTERLY LINE OF VACATED CYPRESS STREET TO THE POINT OF BEGINNING; THENCE CONTINUING S38°28'58"E ALONG SAID LINE, 69.86 FEET; THENCE S06°33'03"W, 78.07 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 5 AND THE NORTHWESTERLY LINE OF SAID 3RD STREET; THENCE S51°24'03"W, 46.71 FEET ALONG THE SOUTHEASTERLY LINE OF LOT 5, AND 4 AND THE NORTHWESTERLY LINE OF SAID 3RD STREET; THENCE N06°32'49"E, 56.73 FEET TO THE NORTHEASTERLY LINE OF LOT 4 AND THE SOUTHWESTERLY LINE OF LOT 5; THENCE N38°17'42"W, 22.65 FEET ALONG SAID LINE; THENCE N06°13'05"E, 87.77 FEET ACROSS LOT 5 TO THE POINT OF BEGINNING. FOR THE PURPOSE OF THIS DESCRIPTION THE NORTHEAST LINE OF LOT 5 IS ASSUMED TO BEAR S38°28'58"E. THIS PARCEL CONTAINS 0.12 ACRES (5,076 SQ.FT.).



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)



PLAT OF SURVEY
Project Number: 207142

Drawn By: J.W. Approved By: J.W.
Date: 8/9/10 Scale: 1"=60'

Client: CITY OF MUSCATINE
215 SYCAMORE STREET
MUSCATINE, IA 52641
PHONE: (563)-262-4141

ANDERSON-BOGERT
Engineers & Surveyors, Inc.
4001 River Ridge Dr., Cedar Rapids, Iowa 52402
Phone: (515) 277-4029

Sheet No. 1 of 1

PLAT OF SURVEY

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



0 100

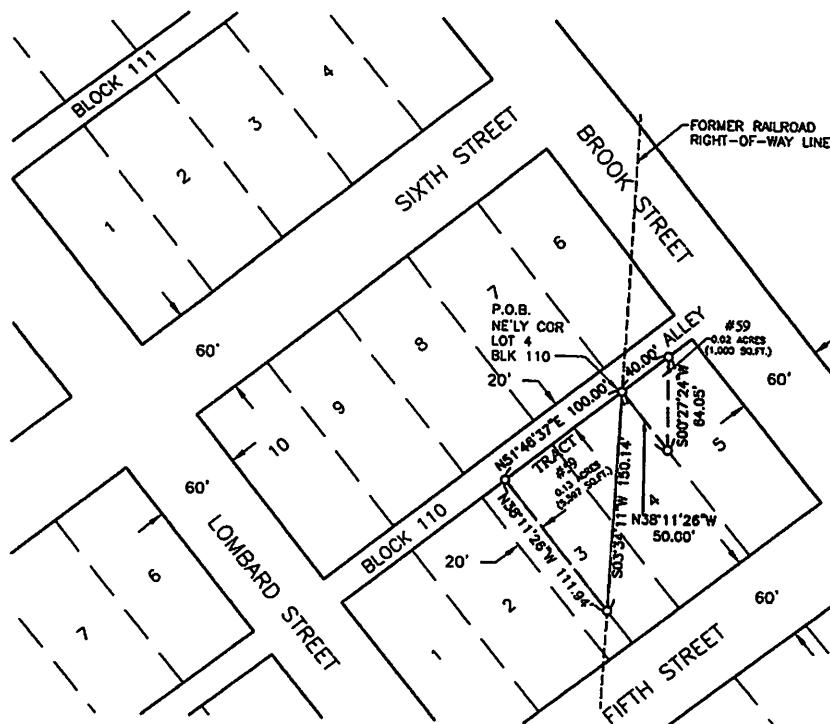
Legal Description

PART OF LOT 3, 4, AND 5 IN BLOCK 110, ORIGINAL PLAT, CITY OF MUSCATINE, IOWA FURTHER DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHEAST CORNER OF LOT 4, BLOCK 110, SAID ORIGINAL PLAT; THENCE S03°34'11"W, 150.14 FEET ACROSS LOTS 4 AND 3 AND ALONG THE WESTERLY LINE OF THE FORMER RAILROAD RIGHT-OF-WAY TO A POINT THAT IS 20.00 FEET NORTHEASTERLY OF THE SOUTHWESTERLY LINE OF SAID LOT 3; THENCE N38°11'26"W, 111.94 FEET ALONG SAID LINE THAT IS PARALLEL TO AND 20.00 FEET NORTHEASTERLY OF SAID SOUTHWESTERLY LINE OF LOT 3 TO THE NORTHWESTERLY LINE OF SAID LOT 3; THENCE N51°46'37"E, 100.00 FEET ALONG THE NORTHWESTERLY LINE OF LOT 3 AND 4, SAID BLOCK 110 TO THE NORTHEAST CORNER OF SAID LOT 4; THENCE CONTINUING N51°46'37"E ALONG THE NORTHWESTERLY LINE OF LOT 5, SAID ORIGINAL PLAT, 40.00 FEET; THENCE S00°27'24"W, 64.05 FEET ALONG THE 5.B.W. RAILROAD LINE TO THE SOUTHWESTERLY LINE OF SAID LOT 5; THENCE N38°11'26"W, 50.00 FEET TO THE NORTHEASTERLY CORNER OF SAID LOT 4 (NW CORNER OF LOT 5) TO THE POINT OF BEGINNING FOR THE PURPOSE OF THIS DESCRIPTION THE NORTHWESTERLY LINE OF LOTS 3, 4, AND 5 IS ASSUMED TO BEAR N51°46'37"E THIS PARCEL CONTAINS 0.15 ACRES (6,597 SQ.FT.).

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

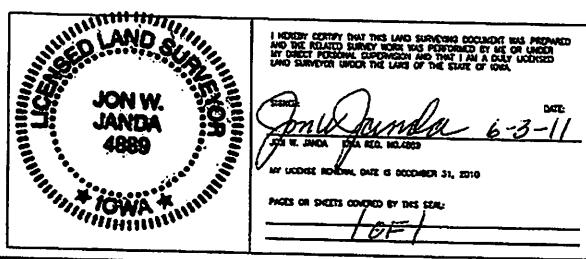
OWNER:
CANADIAN PACIFIC
c/o DAN HANSON
SUITE 1525
501 MARQUETTE AVENUE SOUTH
MINNEAPOLIS, MN 55402

PLAT OF SURVEY	
Project Number: 207142	



Legend

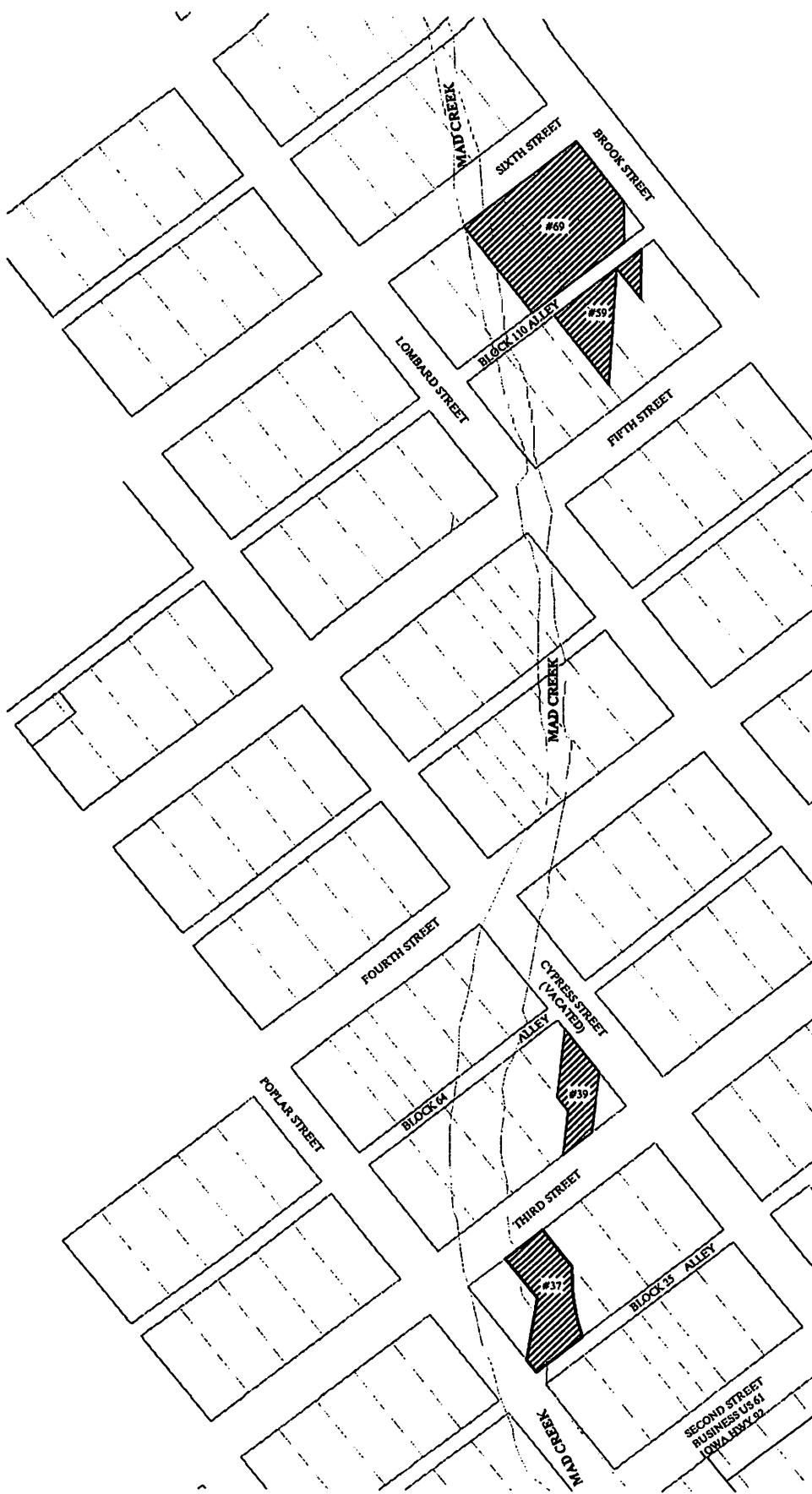
- Boundary Line —
- Adjoining Lot Line - - - - -
- Section Line —
- Building Setback Line
- Found 1/2" Iron Rod •
- Set 1/2" x 30" Rebar o
- Set Yellow Cap #4889 o
- Set Section/Quarter Corner ▲
- Found Section/Quarter Corner ▲ (M)
- Measured (R)



ANDERSON-BOGERT Engineers & Surveyors, Inc. 4001 River Ridge Dr. N.E. Cedar Rapids, Iowa 52402 Phone: (319) 377-4629	Client: CITY OF MUSCATINE 215 SYCAMORE STREET MUSCATINE, IA 52661 Phone: (563) 262-4141	Drawn By: MJS Approved By: MJS Date: 4/28/11 Scale: 1"=100'
	Project Number: 207142	PLAT OF SURVEY

Sheet No. 1 of 1

Exhibit A



Seller:
Canadian Pacific Railway
501 Marquette Avenue
Suite 1525
Minneapolis, Minnesota 55402

Buyer :
City of Muscatine
215 Sycamore
Muscatine, IA 52761

Drawn By: CJP Approved By: JCD
Date: 6/08/11 Scale: 1"=200'

ANDERSON-BOGERT
Engineers & Surveyors, Inc.
4001 River Ridge Drive N.E. Cedar Rapids, Iowa 52402
Phone: (319) 377-4629

Sheet No.
1
Of
1

Exhibit A