

**CONSTRUCTION AGREEMENT BETWEEN THE CITY OF DUBUQUE, IOWA**  
**AND**  
**DAKOTA, MINNESOTA, & EASTERN RAILROAD CORPORATION d/b/a**  
**CANADIAN PACIFIC**

THIS CONSTRUCTION AGREEMENT ("Agreement"), made and entered into by and between the CITY OF DUBUQUE, IOWA, hereinafter referred to as the "CITY" and DAKOTA, MINNESOTA, & EASTERN RAILROAD CORPORATION d/b/a Canadian Pacific, hereinafter referred to as the "COMPANY."

**WITNESSETH**

WHEREAS, the Bee Branch Creek storm sewer is owned and operated by the City; and

WHEREAS, the restoration and realignment of the Bee Branch Creek storm sewer will require crossing the COMPANY's property (the "Project"); and

WHEREAS, the Bee Branch Watershed has experienced flooding impacting properties and businesses; and

WHEREAS, the City Council has adopted a drainage basin master plan authored by HDR Engineering that outlines improvements to mitigate flooding, collectively referred to as the Bee Branch Watershed Flood Mitigation Project; and

WHEREAS, the Upper Bee Branch Creek Restoration Project is Phase 7 of the 12-phase Bee Branch Watershed Flood Mitigation Project; and

WHEREAS, the proposed improvements ("Proposed Improvements"), portions of which will be constructed within the boundaries of the COMPANY's property near CPR Station 44+21.54, include:

a) the construction of six (6) eight (8)-foot diameter steel culverts with inlet and outlet headwalls (the "Steel Culverts") next to the COMPANY's existing dual box culverts (defined herein as the "Existing Culverts") to provide for the free flow of storm water through the COMPANY's right-of-way; and

b) the construction of four (4) twelve (12)-foot by ten (10)-foot reinforced concrete box culverts (the "Box Culverts") to provide for the free flow of water from the Upper Bee Branch Creek north of Garfield Avenue onto the COMPANY's property at 506 Garfield Avenue to a proposed reinforced concrete transition structure (the "Transition Structure") that will allow for the flow to "transition" from the Box Culverts to the Steel Culverts and the Existing Culverts; and

c) the construction of a headwall structure at the downstream end of the Steel Culverts and the Existing Culverts where the water will flow into the Lower Bee Branch creek; and

d) the conversion of the Existing Culverts for utilization for grade-separated pedestrian and non-motorized cycle traffic and trail purposes and as residual stormwater / flood mitigation structures.

WHEREAS, the parties desire the construction of the Steel Culverts, the Transition Structure, the Box Culverts, and the conversion of the Existing Culverts (defined herein as the "Culvert System") to be performed in accordance with plans, specifications and special provisions prepared by the CITY, and approved by the COMPANY; and

WHEREAS, the CITY has retained Strand Associates, Inc. (with IIW, P.C.) to prepare detailed plans, specifications, special provisions, bid documents, and cost estimates for the Culvert System; and

WHEREAS, the COMPANY does not object to CITY's construction of the Culvert System, subject to the terms of this Agreement; and

WHEREAS, the CITY agrees to pay the cost for the construction of the Culvert System without cost or assessment to the COMPANY and to be solely responsible for the ongoing maintenance and functioning of the Culvert System; and

WHEREAS, the City reserves the right to retain independent contractors, approved by COMPANY, to perform maintenance on the Culvert System, subject to the terms and conditions of this Agreement and the Easement Agreements; and

NOW THEREFORE, in consideration of the promises and the mutually dependent covenants and agreement hereinafter contained, the parties hereto agree as follows:

## **I. INTRODUCTION**

The CITY has prepared, approved and submitted for COMPANY review and approval plans, specifications, and special provisions covering bidding documents for construction of the Culvert System, temporary works, and work incidental thereto, which are listed on Exhibit 1, attached hereto and made a part hereof ("Plans and Specifications"); and the CITY shall construct the Culvert System in accordance therewith and shall supervise and furnish engineering and inspection for all work performed thereunder.

The CITY shall give the COMPANY written notice of the commencement of construction on COMPANY property at least sixty (60) days before the commencement date. After giving notice, the CITY shall proceed expeditiously to complete construction of the Culvert System within thirty (30) months after the commencement date or such longer period as may be reasonable under the circumstances due to unforeseen delays.

Unless earlier terminated due to default by the CITY, this Agreement shall terminate upon the delivery by the CITY to the COMPANY of a certificate signed by a professional engineer that the construction of the Culvert System has been substantially completed in accordance with the approved Plans and Specifications; provided, however, that notwithstanding anything in this Agreement to the contrary, the obligations of the City pursuant to Sections III.A, IV, V, VI, VII, IX, X, XI, XIII, and XV of this Agreement and the rights and obligations of the COMPANY pursuant to Sections III.B, VI, VII, and X of this Agreement shall survive the termination of this Agreement, whether such termination shall occur prior to or after the final completion of the Culvert System.

## **II. COOPERATION**

The COMPANY will reasonably cooperate with the CITY so that all work may be conducted in an efficient manner, and will reasonably cooperate with the CITY's contractor or contractors in enabling the use of those portions of the COMPANY's property to which easements are being granted to the CITY pursuant to this Agreement, in accordance with and subject to the terms of such easements and this Agreement.

No significant change shall be made to those portions of the Plans and Specifications related to the Culvert System (Exhibit 1) without prior written consent of the COMPANY. Said consent shall not be unreasonably withheld or conditioned, and shall be granted or denied with explanation within four (4) weeks of COMPANY's receipt of a proposed change order. For purposes of this Agreement, changes to any design elements that would impact the structural integrity or functionality of the Steel Culverts, Transition Structure, Box Culverts or converted Existing Culverts shall constitute significant changes requiring the Company's prior written consent as provided herein.

## **III. WORK RESPONSIBILITIES**

The parties hereto shall perform or cause to be performed, in accordance with the approved Plans and Specifications, the following items of work:

**A. Work by the City.**

The CITY or its contractor or contractors shall furnish or cause to be furnished without cost or assessment to the Company all engineering, labor, material, work equipment and tools and shall perform all work necessary to construct and complete the Culvert System, substantially in accordance with the approved Plans and Specifications and in compliance with all applicable federal, state, and local laws, regulations, and permit requirements.

The CITY shall furnish or cause to be furnished at the expense of the CITY, the following items of work:

1. Solicit construction bids, award the construction of the Culvert System to the lowest responsive, responsible bidder, and enter into a contract for construction of the Culvert System.

2. Perform all inspection, testing, measuring of pay quantities, creating pay estimates, general Culvert System administration, construction record drawings, and all else necessary to assure that construction of the Culvert System is in substantial compliance with all Culvert System plans, specifications, and special provisions.
4. Provide all grading, drainage, paving, surfacing, traffic controls, and all other work and incidental construction required to perform and complete the improvement of the Culvert System in its entirety.
5. Pay or reimburse the COMPANY for all costs associated with the COMPANY's temporary and permanent track work in the Culvert System area to return track to its preconstruction position in the event of ground movements affecting track position during construction and after the completion of construction of the Culvert System. Track work includes ballast, ties and incidentals. Notwithstanding anything in this Agreement to the contrary, such temporary or permanent track work shall be performed by the COMPANY or the contractor(s) selected by the COMPANY and paid or reimbursed by the CITY within thirty (30) days after receipt of an invoice from the COMPANY, except that the COMPANY may, in its sole discretion, allow the CITY to perform such temporary or permanent track work using the CITY's contractor(s), subject to the COMPANY's advance written approval of such contractor(s) and the COMPANY's proposed plans and construction schedule, in which case the CITY shall cause such work to be completed expeditiously and in accordance with such approved plans and schedule. The CITY'S obligation to pay or reimburse for, or perform, track work as provided in this paragraph shall not be in limitation of any other remedy provided under this Agreement or available to the COMPANY under law for ground movements affecting track position or other damage to the track.
6. Complete the work shown on Exhibit 1 for construction of the Culvert System. The CITY shall cause its contractor to have (i) a tamper machine on-site and an operator on-call at all times during pipe boring, and (ii) both a tamper machine and operator on-call at all times during construction of the elements that support vertical and lateral loading of the Culvert System in COMPANY'S right-of-way. The CITY shall provide daily surveys of monitoring and of control points during construction on COMPANY right-of-way and for 30 days after completion of all trenchless construction by obtaining elevations of each point once per day under loaded conditions. If each of the elevations remain within 1/4-inch during 30 consecutive days of monitoring following the end of all trenchless construction, the monitoring interval may be adjusted to once per week after 1 month, and to once per /month after 3 months until 12 months have passed since trenchless construction completion.

7. Install appropriate roadway signage and roadway barricades in conjunction with the Culvert System.
8. Complete grading of slopes, placement of topsoil, and turf reestablishment behind abutments and wing walls to reestablish preexisting conditions during final phase of construction.
9. Furnish the COMPANY a set of reproduction drawings of the final approved Culvert System Plans and Specifications.
10. Pay or reimburse the COMPANY for all costs associated with COMPANY safety, flagging, watchman protection, inspections, and other work, personnel and material costs incidental to the Culvert System to protect railroad traffic and operations according to the Company's Exhibit 2 attached hereto and made a part hereof. The costs specified in Exhibit 2 are subject to change without notice to the CITY and the COMPANY shall be reimbursed based upon its costs actually in effect as of the date of such service.
11. Pay or reimburse the COMPANY for all costs associated with scheduling and lost profits associated with track down times caused by the construction of the Culvert System.
12. Assume ownership and maintenance of storm sewer and trail construction and maintenance easement pursuant to the Easement Agreement attached hereto as Exhibit A. Assume ownership of and all maintenance and other responsibility for the two Existing Culverts and the concrete floors and wing walls located at the inlets of the Existing Culverts.
13. Assume ownership and maintenance of a storm sewer and trail construction and maintenance easement pursuant to the Easement Agreement attached hereto as Exhibit B.
14. Assume access and maintenance of a temporary easement for the installation and construction of storm sewer and hike / bike trail pursuant to the Temporary Easement Agreement attached hereto as Exhibit C.
15. Assume access and maintenance of a temporary construction access easement pursuant to the Temporary Easement Agreement attached hereto as Exhibit D.
16. Assume access and maintenance of a temporary construction access easement pursuant to the Temporary Easement Agreement attached hereto as Exhibit E.
17. Assume access and maintenance of a temporary construction access easement pursuant to the Temporary Easement Agreement attached hereto as Exhibit F (the Easement Agreements attached hereto as Exhibits A, B, C, D, E and F, collectively, the "**Easement Agreements**").

18. Pay to the COMPANY as consideration for the COMPANY entering into this Agreement, including compensation for the easements to be granted hereunder, a total of \$131,000.00 ("Transaction Payment"). Such payment shall be made by wire transfer within five (5) business days after execution of this Agreement by the parties hereto, in accordance with wiring instructions to be provided by the COMPANY. All other costs and expenses for which the CITY is obligated to make payment or reimburse the COMPANY pursuant to this Agreement and/or any other agreement between the CITY and the COMPANY, including without limitation the Easement Agreements (excluding any compensation for the easements to be granted hereunder that is included in the Transaction Payment) and the Amended and Substituted Service Agreement between the CITY and the COMPANY, effective July 28, 2017, shall be in addition to the payment required in this Section III.A.18.
19. Incidental work necessary to complete the items herein above specified.

B. Work by the COMPANY.  
The COMPANY shall furnish or cause to be furnished, the following items of work, with the cost of all such work to be paid or reimbursed by the CITY:

1. Review and approve plans, specifications, special provisions, and significant change orders affecting the construction of the Culvert System, said approval shall not be unreasonably withheld or conditioned, and shall be granted or denied with explanation within four (4) weeks of COMPANY's receipt thereof.
2. Provide construction coordination and reasonable cooperation with the CITY and its contractors to minimize disruption to the operation of the railroad and to secure safe and timely construction of the Culvert System.
3. Design and construction of temporary and permanent alterations or relocations of communication and signal lines, signals and appurtenances, as necessitated by the CITY's Culvert System, with the cost of all such work to be paid or reimbursed by the CITY; provided that the COMPANY may, in its sole discretion, permit the CITY to perform such temporary or permanent alterations or relocations using the CITY's contractor(s), subject to the COMPANY's advance written approval of such contractor(s) and the COMPANY's proposed plans and construction schedule, in which case the CITY shall cause such work to be completed expeditiously and in accordance with such approved plans and schedule.
4. Incidental work necessary to complete the items hereinabove specified and to complete and restore the COMPANY's facilities and property affected by the construction, ownership and maintenance of the Culvert System, with the reasonable cost of all such work to be paid or reimbursed by the CITY.

5. All safety, flagging, watchman protection, inspections, and other work, personnel and material costs incidental to the Culvert System to protect railroad traffic and operations.
6. Incidental work necessary to complete the items herein above specified.

The COMPANY shall furnish flagging and watchman protection at the expense of the CITY, as provided in Section IV hereof, to protect railroad traffic and operations.

#### **IV. WORK IN COMPANY RIGHT-OF-WAY**

All work herein provided to be done by the CITY or its contractor or contractors on the right-of-way or upon, over, under, and across the railroad tracks of the COMPANY shall be done in a manner satisfactory to the COMPANY and shall be performed at such time and in such manner as not to interfere unnecessarily with the movement of trains or traffic upon the tracks of the COMPANY. The CITY shall require its contractor or contractors to use all care and precaution necessary to avoid accident, damage or interference to the COMPANY's tracks or to the trains or traffic using its tracks, and to notify the COMPANY a sufficient time in advance, not less than sixty (60) days, whenever the contractor is about to perform work adjacent to the tracks to enable the COMPANY to arrange for or furnish flagging and such other protective service as might be necessary to insure safety of railroad operations, and the COMPANY shall have the right to furnish all such flagging or protective service as in its judgment is necessary. The fact that the COMPANY provides such service shall not relieve the CITY from any liability under this Agreement. Wherever safeguarding of trains or traffic of the COMPANY is mentioned in this Agreement, it is intended to cover all users of the COMPANY's track having permission for such use.

The CITY shall require its contractor or contractors, upon completion of the work, to remove all machinery, equipment, temporary buildings, false work, debris, and rubbish from the COMPANY's right-of-way, to provide proper drainage away from the COMPANY's tracks, and to leave the COMPANY's tracks and right-of-way in a neat condition, satisfactory to the COMPANY's authorized representative.

#### **V. INSURANCE REQUIREMENTS**

The CITY shall procure and maintain in effect (or shall cause its contractor to procure and maintain in effect), at any time when the Culvert System work is being performed, the following insurance:

A. Comprehensive General Liability Insurance.

Comprehensive general liability insurance with a policy limit of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, death, and damage to or destruction of property (including the loss of use thereof).

The policy will include those policy extensions commonly referred to as broad form completed operations, contractor's protective, collapse, and underground damage.

The policy shall by its wording or by endorsement insure those liabilities and obligations which this Agreement contemplates will be assumed by the CITY, including liabilities and obligations to indemnify the Indemnified Parties (as defined below).

The policy shall be endorsed to require that the COMPANY be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage.

The policy shall be endorsed with a cross liability (severability of interest) endorsement in substantially the following form: "This policy shall insure each person, firm, or corporation hereunder in the same manner and to the same extent as if a separate policy had been issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurance company's liabilities."

The policy shall be endorsed to add the following as additional insureds: Dakota, Minnesota & Eastern Railroad Corporation, Soo Line Holding Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway or Canadian Pacific, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to COMPANY property located within the easements granted by the Easement Agreements, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing (collectively, the Protected Parties). The policy shall also be endorsed to waive subrogation rights against the Protected Parties.

B. Automobile Liability and Property Damage Insurance.

Automobile liability and property damage insurance in an amount not less than \$2,000,000, personal injury and property damage combined, covering the ownership, use, and operation of any motor vehicles and trailers licensed for use on public highways which are owned, leased, non-owned or controlled by the CITY or its contractor and used in connection with the work. The policy shall be endorsed to require that the COMPANY be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage.

C. Workers Compensation Insurance.

Workers compensation insurance that meets the requirements of applicable state law.

D. Railroad Protective Liability Insurance.

Railroad protective liability insurance (occurrence form), in the name of Dakota, Minnesota & Eastern Railroad Corporation and Canadian Pacific Railway Company, with limits of no less than \$5,000,000 per occurrence and \$10,000,000 aggregate for personal injury and property damage.

E. Environmental Pollution Impairment Liability Insurance.

Environmental pollution impairment liability insurance with a policy limit of not less than \$5,000,000 per occurrence.

The policy shall be endorsed to require that the COMPANY be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage.

The policy shall be endorsed with a cross liability (severability of interest) endorsement in substantially the following form: "This policy shall insure each person, firm, or corporation hereunder in the same manner and to the same extent as if a separate policy had been issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurance company's liabilities."

The policy shall be endorsed to add the Protected Parties as additional insureds and to waive subrogation rights against the Protected Parties.

If the policy is to be procured and maintained by the City's contractor, coverage shall include, but not be limited to, claims for bodily injury, death, damage to property including the loss of use thereof, clean-up costs and associated legal defense expenses arising from pollution conditions caused by, and/or exacerbated by, services performed by the contractor. The policy shall be endorsed to contain a blanket contractual liability endorsement. If this policy is written on a "claims-made" basis it shall remain in effect for no less than twenty-four (24) months after the expiry or termination of this Agreement.

F. Umbrella/Excess Liability. Umbrella/excess liability insurance, follow-form of the underlying policies, with a policy limit of not less than \$10,000,000.

G. Other Policies of Insurance.

Such other insurance as may be necessary to protect the Protected Parties against certain other claims arising out of the work, to wit:

1. claims under any workers' compensation law,
2. claims under the Federal Employer's Liability Act, and
3. any other claims for damages for personal injury or death.

H. Contractual Endorsement.

The Comprehensive General Liability Insurance policy shall include the following endorsement upon the certificate, or within the binder, policy or other contractual evidence signed by the insurer and in form acceptable to the COMPANY:

**“It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work pursuant to the Agreement dated \_\_\_\_\_, 2018 by and between the City of Dubuque, Iowa and Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific, including work upon railroad property, within railroad right of way and in close proximity to operating railroad tracks.”**

Before the CITY or its contractor enter COMPANY property, the COMPANY must receive and approve certificates of insurance evidencing the coverages required by Sections V.A, V.B, V.C, V.E and V.F, and endorsements V.H and the COMPANY must also receive and approve either the policy required by subparagraph V.D or a binder evidencing that that policy is in effect.

The COMPANY reserves the right to demand a certified copy of any required policy, and the CITY or its contractor shall provide such copy within 10 working days after the COMPANY shall give written notice to the CITY demanding such copy. All of the required policies shall be issued by insurers acceptable to the COMPANY and shall be acceptable to the COMPANY in both form and substance.

The CITY or its contractor shall not enter COMPANY property until all of the required policies have been approved in writing by the COMPANY. The COMPANY shall not unreasonably withhold said approval.

If the comprehensive general liability and automobile policies are procured by the CITY’s contractor, the CITY shall be added as an additional insured party under such policies. If the contractor uses a subcontractor, the contractor shall provide the required policies and shall, in addition, either require the subcontractor to provide insurance equivalent to that described herein (except that only one policy required by subparagraph V.D need be provided for the work) or obtain endorsements to the contractor’s policies naming the subcontractor as an additional insured party. If a subcontractor uses a sub-subcontractor, the sub-subcontractor shall either provide insurance equivalent to that required of the subcontractor or shall be named as an additional insured party on the contractor’s or subcontractor’s policies. In the event any required policy lapses, the COMPANY shall have the option of immediately suspending all work by the CITY and its contractors and subcontractors, with written notice to the CITY; such suspension shall

be without prejudice to the COMPANY's rights and privileges under this Agreement. The insurance coverage obtained pursuant to Section V and its sub-sections shall in no manner restrict or limit the liabilities assumed by the CITY under this Agreement.

The CITY or its contractor or contractors must at all times when on railroad property use personal protective equipment as follows: hard hats, orange reflectorized safety vests, safety glasses, and safety boots.

## VI. LIABILITY AND INDEMNITY

A. Damage to Tracks, Facilities, and Equipment.

Except to the extent arising from the gross negligence or willful misconduct of the COMPANY or its employees, agents, or invitees, if any tracks, facilities, or equipment owned, used, or maintained by the COMPANY are damaged in connection with the work, the COMPANY shall repair (or arrange for the repair of) such damage and the CITY shall pay the full cost of such repair within 30 days after the COMPANY shall tender a bill for the costs of repair.

B. Assumption of Risk.

The CITY acknowledges that it is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on or about COMPANY property. Without in any way limiting the scope of the preceding sentence, the CITY assumes the risk that the Culvert System and any monitoring wells, elevation bench marks, reference points, and other installations or property of the CITY located on, under, above or in the vicinity of COMPANY property may be disturbed, damaged, or destroyed as a result of railroad operations or mishaps or by third persons. As an inducement to the COMPANY to enter into this Agreement and as part consideration therefor, the CITY agrees that it shall not make any claim against and shall hold harmless the COMPANY, its officers, agents and employees on account of same, even if such disturbance, damage, or destruction arises from the negligence of the COMPANY or its employees, agents, or invitees, but excluding damage or destruction that is attributable to the COMPANY's gross negligence or willful misconduct. The CITY assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on COMPANY property. For purposes of this Agreement, the Parties agree that "gross negligence or willful misconduct" shall be defined as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness, including all of the following elements: (1) knowledge of the peril to be apprehended; (2) knowledge that injury, damage or loss is a probable, as opposed to a possible, result of the danger; and (3) a conscious failure to avoid the peril.

C. Indemnity.

To the fullest extent permitted by law the CITY shall defend, indemnify, and hold harmless the Company Indemnified Parties (as defined below) from and against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines, sanctions, court costs, litigation costs, and attorneys' fees arising out of or relating to any breach of this Agreement, any destruction of (or damage to) any property or natural resource, any upstream or downstream flooding caused in whole or in part by the Culvert System, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the work, any action or omission of the CITY, its employees, agents, contractors and subcontractors, while on or about COMPANY property pursuant to this Agreement, or the exercise by the CITY of the rights granted by this Agreement or the Easement Agreements, including but not limited to damage to COMPANY's railroad tracks caused by or associated in any way with the Culvert System, except to the extent caused by the gross negligence or willful misconduct of Company Indemnified Parties. As used in this Agreement, "Company Indemnified Parties" means the following businesses and their officers, directors, employees, successors, assigns and agents: Dakota, Minnesota & Eastern Railroad Corporation, Soo Line Holding Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway or Canadian Pacific, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to COMPANY property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

## **VII. WORKER'S COMPENSATION**

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

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

## **VIII. PRE-CONSTRUCTION CONFERENCE**

Before any work is started on this Culvert System, a conference shall be held between the representatives of the CITY, the COMPANY, and the CITY's contractor at a time and place designated by the CITY, for the purpose of coordinating the work to be performed by the various parties, and at such time a schedule of operations shall be adopted.

## **IX. MAINTENANCE**

Upon completion of the Culvert System, the CITY, at its expense, shall thereafter furnish or cause to be furnished all the labor, materials and work equipment necessary for use in performing the proper maintenance of the Culvert System.

## **X. RESERVATION OF RIGHTS**

This Agreement is subject to the superior title of the COMPANY to its property and to all other outstanding and superior rights, if any; and except as provided in Section III.A.12 of this Agreement with respect to the CITY's assumption of ownership of the Existing Culverts and the concrete floors and wing walls located at the inlets of the Existing Culverts, the CITY shall not, by reason of rights hereby granted, acquire or assert title to any COMPANY property adverse to the title of the COMPANY. The COMPANY shall have the continuing and compatible right to operate, maintain, and repair its facilities within the limits of said Culvert System and to construct such other facilities as from time to time it may choose at COMPANY's sole cost and expense, provided however, that the usefulness and the purpose of said Culvert System shall not be impaired. The COMPANY'S railroad operations, tracks and facilities shall be deemed superior to the rights granted to the CITY under this Agreement and the Easement Agreements.

## **XI. CONTROLLING LAW**

This Agreement shall be governed by and construed according to the laws of the state of Iowa.

## **XII. SUCCESSORS AND ASSIGNS**

The grants, covenants and stipulations hereof shall extend to and be binding upon the respective successors and assigns of the parties hereto, but the CITY shall not assign any of its rights hereunder without the approval of the COMPANY and without first furnishing written notice to the COMPANY and an acceptance by the assignees of the terms hereof.

## **XIII. COVENANTS, CONDUCT AND RESPONSIBILITIES**

### **A. Definitions:**

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);

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, 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, ordinance, order or decree dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted;
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;
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;
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;
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.

B. Investigation; Compliance with Laws; Safety Requirements.

1. Tenants and Licensees in Possession of Property.

Before entering COMPANY property, the CITY shall secure the consent of all persons or entities who are using or occupying any portion of COMPANY property located in the easement areas. The COMPANY will cooperate with the CITY to obtain consent from any such person or entity who unreasonably withholds consent.

2. Underground Utilities and Structures.

- a. The CITY shall be responsible for determining the location of all underground utilities (electric lines, telephone lines, gas lines, steam lines, sewer lines, water lines, fiber optic cables, pipes, wires, and the like) and underground structures. The CITY may enter the COMPANY property for such purpose after this Agreement has been fully executed and upon at least 48 hours advance written notice to the COMPANY.
- b. The CITY shall call the **CP ONE CALL at 1-888-625-8702** a minimum of 5 business days prior to commencing any excavation or boring on COMPANY property.
- c. The COMPANY will cooperate with the CITY to identify the location of underground utilities and structures known to the COMPANY, but such cooperation shall not relieve the CITY from its primary responsibility to determine the locations of such utilities and structures.

3. Permits and Licenses; Compliance with Laws.

The CITY shall secure, at no expense to the COMPANY, any permits or licenses required in connection with the work and shall comply with all laws applicable to the work and COMPANY property, including (but not limited to) any laws, standards, regulations, and permit requirements relating to environmental pollution or contamination or to occupational health and safety. The CITY shall indemnify and defend the COMPANY against any and all Claims arising out of or connected with the violation of any law by the CITY while on or about COMPANY property.

4. Compliance with COMPANY Safety Requirements; Identification.

- a. While on COMPANY property, the CITY shall comply with the safety requirements of the COMPANY, as such requirements may be amended from time to time during the duration of the work, all at no expense to the COMPANY. The COMPANY's safety requirements are set forth in Exhibit 3 and in the COMPANY's current safety handbook. One free copy of the current safety handbook will be provided to the CITY by the COMPANY contact person. Additional copies will be provided at the CITY's expense. The COMPANY shall notify the CITY in writing if such safety requirements are amended during the duration of the work. The CITY shall be responsible for ensuring that any person performing any of the work for or on behalf of the CITY shall comply with the COMPANY safety requirements that would apply to a COMPANY employee performing similar work.
- b. Prior to any entry onto COMPANY property, the CITY and every employee, agent or subcontractor who carries out any part of the work on

COMPANY property shall successfully complete the safety training available through the e-railsafe program at [www.e-railsafe.com](http://www.e-railsafe.com) in respect to requirements for Canadian Pacific operations.

- c. The CITY and every employee, agent or subcontractor who carries out any part of the work on COMPANY property shall at all times wear and visibly display the identification badge issued to them following successful completion of the e-railsafe safety training together with whatever additional identification materials that the COMPANY may reasonably require.

C. Work in Close Proximity to Railroad Operations; Drainage.

1. Non-Interference with Railroad Operations.

The CITY shall keep the COMPANY fully apprised of its proposed activities on COMPANY property so as to prevent any interference with the operations of the COMPANY's trains or equipment (or trains or equipment of others) operating on or near COMPANY property.

2. Clearance.

No work shall be done or any equipment or other obstruction placed over or within 25 feet laterally of the centerline of any track without advance notification to the COMPANY prior to performing such work or placing such equipment or obstruction.

3. Certain Work Close to Track Not Permitted; Lateral Support.

a. Unless otherwise agreed to in writing by the COMPANY or approved pursuant to the plans and specifications in Exhibit 1, excavations, borings, wells, pits, test holes, probe sites, and the like shall not be located closer than 25 feet from the centerline of the nearest railroad track on or adjacent to COMPANY property nor shall it take or allow any action upon COMPANY property that would materially impair the lateral or subadjacent support of adjacent lands or railroad tracks;

b. Unless otherwise agreed to in writing by the COMPANY or approved pursuant to the plans and specifications in Exhibit 1, drilling and excavating equipment and related equipment shall not be located closer than 25 feet from the nearest rail of any such track;

c. In the event that the COMPANY permits excavations, borings, wells, pits, test holes, probe sites, or the like in close proximity to tracks, embankments or other features providing lateral or subadjacent support to land or tracks, then notwithstanding anything to the contrary in this Agreement, the CITY shall be responsible for designing and constructing at no cost to the COMPANY any measure that is required to prevent the collapse, erosion or impairment to said land or tracks.

4. Fencing.

The CITY shall, at no cost to the COMPANY, construct and maintain during the term hereof a fence to restrict access to the construction area acceptable to the COMPANY. Following completion of the work, the CITY shall remove the fencing, remove any post footings or concrete, and fill and tamp any post holes with clean fill material.

D. Conduct.

1. Property Clean, Safe and Free From Nuisances.

The CITY shall not permit the existence of any nuisance upon COMPANY property and shall at all times keep COMPANY property in a proper, clean, safe and sanitary condition, and free from accumulations of waste materials, debris or refuse.

2. Release of Hazardous Substances.

The CITY shall not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from COMPANY property.

3. Response Actions.

The CITY shall promptly take all action required by the state or federal government or any agency thereof pursuant to any Environmental Law and as necessary for continued use of the COMPANY property for railroad purposes, in Response to any Release or Use of a Hazardous Substance at COMPANY property caused by, or attributable to, any act or omission of the CITY (or the CITY's employees, agents, representatives or invitees) that could:

- a. give rise to any Claim under any Environmental Law,
- b. cause a public health or workplace hazard, or
- c. create a nuisance.

E. Required Notices/Disclosures.

1. Transportation and Disposal Contracts.

The CITY shall, upon written request by the COMPANY, provide the COMPANY with copies of transportation and disposal contracts and manifests for Hazardous Waste, any permits issued under any Environmental Laws, and any other documents demonstrating that the CITY has complied with all Environmental Laws relating to COMPANY property

2. Releases or Suspected Releases.

The CITY shall promptly notify the COMPANY of any actual or suspected Release of any Hazardous Substance on, to, or from COMPANY property, regardless of the cause of the Release.

3. Notices, Summons Citations, etc.

The CITY shall promptly provide the COMPANY 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:

- a. any Release of a Hazardous Substance on, to or from COMPANY property,
- b. the imposition of any lien on COMPANY property, or
- c. any alleged violation of or responsibility under any Environmental Law relating to COMPANY property.

4. Other Reports.

The CITY shall, at the COMPANY's option, provide the COMPANY, at no cost to the COMPANY, a copy of any other report, summary or written test results, collectively "**Report**," pertaining to the work. If any such Report is to be filed or made available to any governmental agency acting in a regulatory capacity, then the CITY shall also give the COMPANY a reasonable time (not less than 5 working days) to review and comment on a draft of such Report and when preparing any such final Report pertaining to the work, the CITY or its contractor shall give due consideration to the COMPANY's comments with respect to the draft of that Report. The CITY will promptly provide the COMPANY with a copy of any final Report.

F. The COMPANY's Right to Participate in Response Actions.

Following receipt of any notice, order, claim, investigation, information request, letter, summons, citation, directive, or other communication identified in Section XV.E.3 hereof, the CITY shall notify the COMPANY of and permit the COMPANY to participate in any and all investigations, telephone conferences, settlement discussions, remediation plans and all other interactions, direct or indirect, with governmental or regulatory officials, and the CITY shall take all action necessary to ensure that any indemnification, release, waiver, covenant not to sue, or hold harmless agreement benefiting the CITY and arising out of such activities, whether from a governmental or regulatory entity or from a private entity, also benefits the COMPANY to at least the same extent as the CITY.

G. Restoration of Property.

Upon completion of the work or earlier termination of this Agreement, the CITY shall remove any debris resulting therefrom and shall restore the COMPANY property to the condition it was in prior to the commencement of the work (or such other condition as is satisfactory to the COMPANY). All excavations are to be backfilled and tamped. All borings shall be backfilled with grout. Drill cuttings shall not be used as backfill. The CITY shall dispose of all drill cuttings, soil and sediment samples, purge water, dewatering effluent, and water samples and all excess excavation material in a manner acceptable to the COMPANY and in accordance with all applicable laws, all at no expense to the COMPANY.

H. Existing Conditions.

The COMPANY makes no warranty or representation regarding existing surface or subsurface conditions on the COMPANY'S property, including but not limited to any warranty or representation regarding the presence or absence of prior Releases. The CITY relies solely upon its own investigation of existing conditions and prior Releases. Upon Execution of this Agreement and a separate right-of-entry agreement granting access to the CITY for such purpose, and upon giving advance written notice to the COMPANY in accordance with such right-of-entry agreement, the CITY and its consultants, agents, and employees may enter the COMPANY's property to conduct environmental sampling at the CITY's sole cost and expense. At the request of the COMPANY, the CITY will share the results of all sampling with COMPANY. Notwithstanding anything in this Agreement to the contrary, the CITY shall be responsible, at its sole cost and expense without reimbursement by the COMPANY, for properly managing in a manner acceptable to the COMPANY and in accordance with all applicable laws, all Releases, Hazardous Substances, wastes, and obstructions of any kind that are encountered, disrupted, or affected by the CITY'S work on the Culvert System, including but not limited to Releases, Hazardous Substances, wastes, and obstructions that were not caused or placed on or under the property by the CITY, to the extent required for construction of the Culvert System. Such management by the CITY shall include but not be limited to Response actions and the proper disposal of Hazardous Substances and wastes as required by law.

I. Mechanics' and Materialmen's Liens.

If any mechanics' or materialmen's lien, or similar lien, is asserted against COMPANY property as a consequence of the work, the CITY shall immediately satisfy, defend, or obtain the release of such lien, all at the CITY's expense, and the CITY shall indemnify and defend the COMPANY against any Claims arising out of or connected with such lien.

## XIV. MISCELLANEOUS

1. City/Company.

As used in this Agreement, the terms "**CITY**" and "**COMPANY**" shall include the parties first named above and their respective successors or assigns.

2. Headings.

The paragraph 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 paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.

3. Severability of Terms.

Each provision, paragraph, 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, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.

4. No Waiver.

Any act or omission constituting a breach of this Agreement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof.

5. Notices.

Any notice given by a party required by this Agreement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address, or if e-mailed to the authorized representatives identified by each party herein with deposit the same day in the United States post office as provided herein.

6. Merger.

This Agreement completely outlines all of the rights, responsibilities, and obligations of the parties hereto and said indenture may not be amended or altered except by an instrument in writing signed by both parties. Furthermore, this Agreement merges all prior oral representations and negotiations of the parties hereto.

7. Default and Remedies.

In the event of any violation by CITY or COMPANY of any of the provisions of this Agreement, in addition to the right to collect damages and/or receive specific performance, the CITY or COMPANY will have the right to seek an injunction of such violation from a court of competent jurisdiction. The prevailing party in any such action shall be entitled to an award of its reasonable attorney's fees incurred in enforcing this Agreement. In addition, in the event the CITY fails to perform any of the provisions of this Agreement or violates any of the provisions hereof, the COMPANY may cure such default; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the CITY not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment

of the COMPANY, such default is emergency in nature. In the event the COMPANY fails to perform any of the provisions of this Agreement or violates any provisions hereof, the CITY may cure such default at the CITY's sole cost and expense; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the COMPANY not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the CITY, such default is emergency in nature, and only if the COMPANY approves and authorizes the CITY's proposed cure in writing. If the COMPANY elects to perform the action to have been performed by the CITY, on completion of such action, an itemized statement of the costs thereof will be submitted to the CITY, and the amount thereof will be immediately due and payable by the CITY to the COMPANY. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

8. No Partnership, Joint Venture, or Shared Enterprise.

The CITY'S construction and operation of the Culvert System in accordance with this Agreement and the Easement Agreements shall not create a partnership, joint venture, or shared enterprise of any kind between the CITY and the COMPANY.

IN WITNESS WHEREOF, the parties have caused these presents to be executed in counterparts, each of which shall be considered as an original, by their proper officers thereunto duly authorized as of the dates below indicated.

[Remainder of page intentionally left blank; signature pages follows]

City's Signature Page to Construction Agreement

Executed by the CITY this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF DUBUQUE, IOWA

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

\_\_\_\_\_  
Mayor

Attest:

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

\_\_\_\_\_  
Clerk

For purposes of notices under Section XIV.5 of the foregoing Agreement, the City's address and authorized representative are as follows:

Mike Van Milligen  
City Manager  
City of Dubuque  
50 W. 13th Street  
Dubuque, IA 52001  
ctymgr@cityofdubuque.org

Company's Signature Page to Construction Agreement

Executed by the COMPANY this 10 day of December, 2018.

DAKOTA, MINNESOTA, & EASTERN RAILROAD CORPORATION  
*Doing business as Canadian Pacific*

By: 

Its VP Engineering

For purposes of notices under Section XIV.5 of the foregoing Agreement, the Company's address and authorized representative are as follows:

Curt Whelan  
Director – Projects & Public Works US  
120 South Sixth Street, Suite 700  
Minneapolis, MN 55402  
612-904-5904  
Curt\_Whelan@cpr.ca

# Exhibit 1

## Culvert System Plans and Specifications

[See attached – Only select pages are included for the limited purpose of identifying the relevant plans and specifications]

**From:** Vieth, Eric <Eric.Vieth@strand.com>  
**Sent:** Tuesday, October 30, 2018 5:26 PM  
**To:** Curt Whelan <Curt\_Whelan@cpr.ca>  
**Cc:** Devolve, Robert <robert.devolve@stinson.com>; James Wainwright <JWAINWRI@ahlerslaw.com>; BARRY LINDAHL <balesq@cityofdubuque.org>; Deron Muehring <dmuehrin@cityofdubuque.org>; 'Steve Brown' <Sbrown@cityofdubuque.org>; Mike Jansen <m.jansen@iwengr.com>; Jeff K Johnson <Jeff.K.Johnson@hdrinc.com>  
**Subject:** RE: CP/Dubuque

Hi Curt -

A message was relayed that we should place a 'FINAL' stamp w/date on the final drawings and specs to be inserted as 'Exhibit 1' to the construction agreement. This has been done and the revised file links are located below. Please let us know if you need anything else.

**1. Dubuque 1-2018 Vol 1 of 2 Review 101518.pdf** (12 MB) -

<https://strand.filetransfers.net/downloadPublic/hsbirs06k3gos8v>

**2. Dubuque 1-2018 Vol 2 of 2 Review 101518.pdf** (9.92 MB) -

<https://strand.filetransfers.net/downloadPublic/pgpqsjcrhhlw256>

**3. Railroad Culvert Crossing Full Size Set 10.15.18.pdf** (315.17 MB) -

<https://strand.filetransfers.net/downloadPublic/giyyderu2snon47>

These links will expire on **11/14/18 at 03:35 pm CST**

Thanks  
Eric



**Eric Vieth, P.E.**

Strand Associates, Inc.®  
608.251.2129 ext.1130  
[eric.vieth@strand.com](mailto:eric.vieth@strand.com) | [www.strand.com](http://www.strand.com)

*Excellence in Engineering Since 1946.*

Professional  
Engineering  
Services

Upper Bee  
Branch Creek  
Restoration  
Railroad Culvert  
Crossing Project  
Contract 1-2018  
CIP #2642769  
CIP #7202769  
CIP #3402769

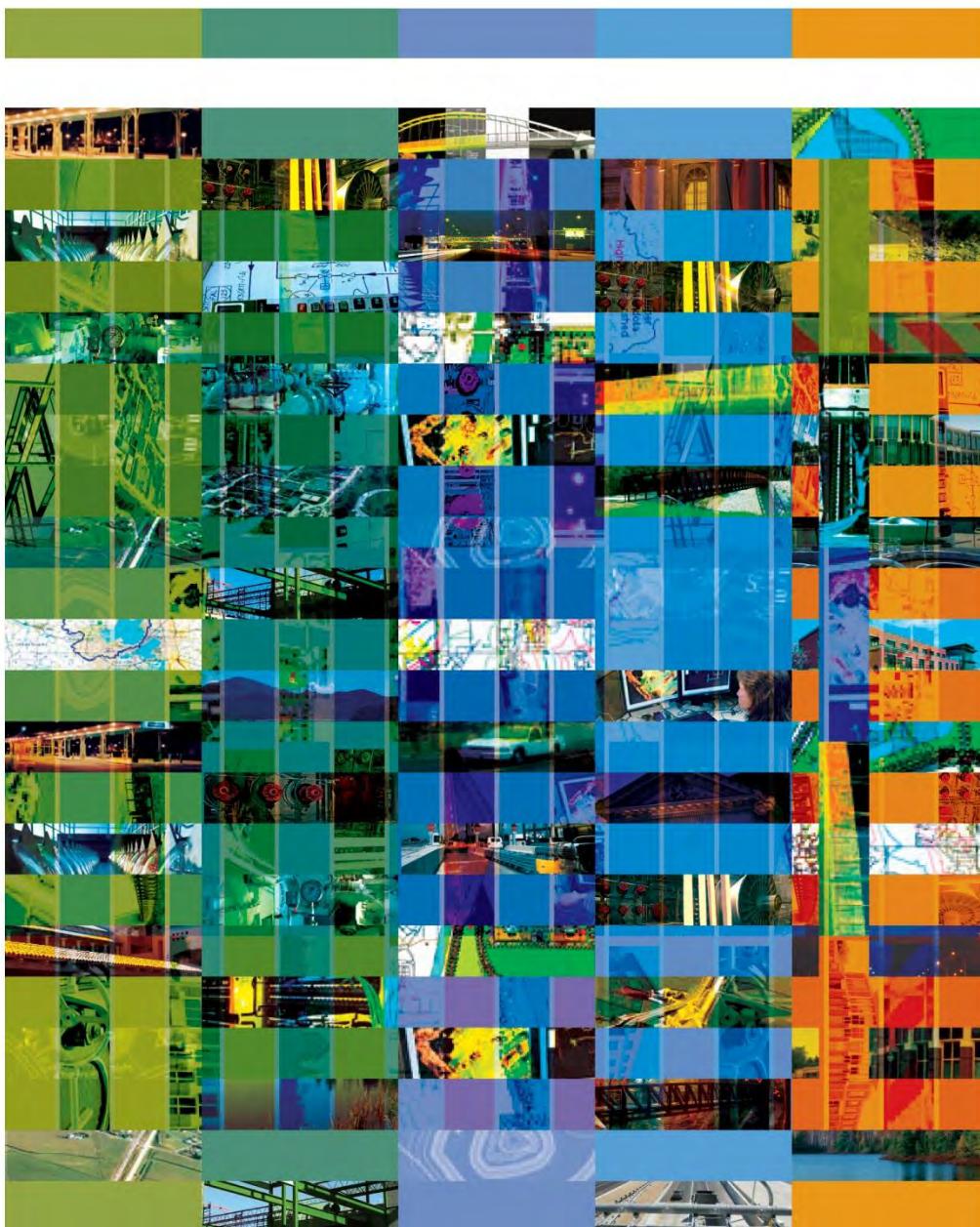


EXHIBIT 1 (Page 2 of 4)

## Project Manual

City of Dubuque, IA

Issued for Bid

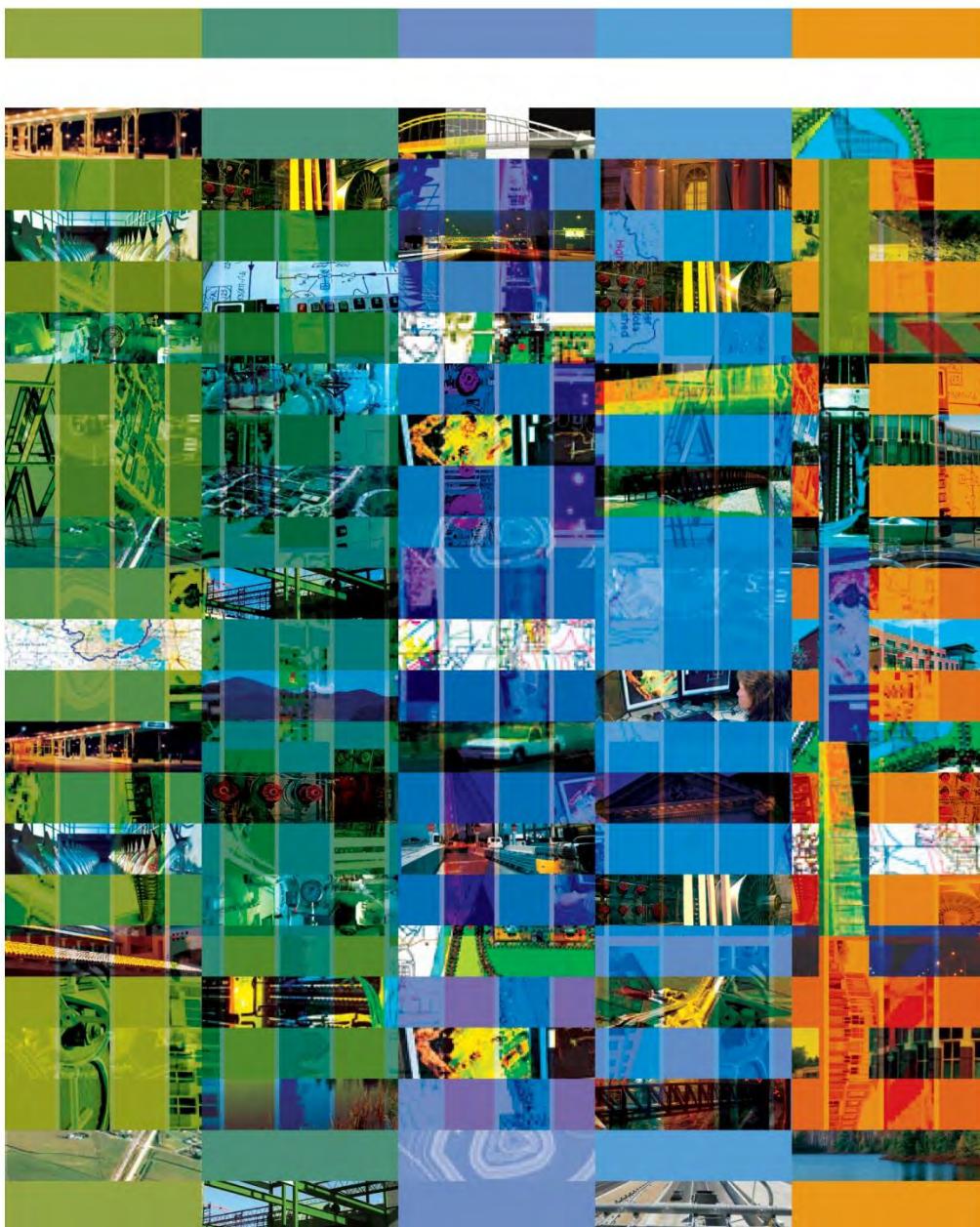
October 16, 2018

Volume 1 of 2



Professional  
Engineering  
Services

Upper Bee  
Branch Creek  
Restoration  
Railroad Culvert  
Crossing Project  
Contract 1-2018  
CIP #2642769  
CIP #7202769  
CIP #3402769



## Project Manual

City of Dubuque, IA

Issued for Bid

October 16, 2018

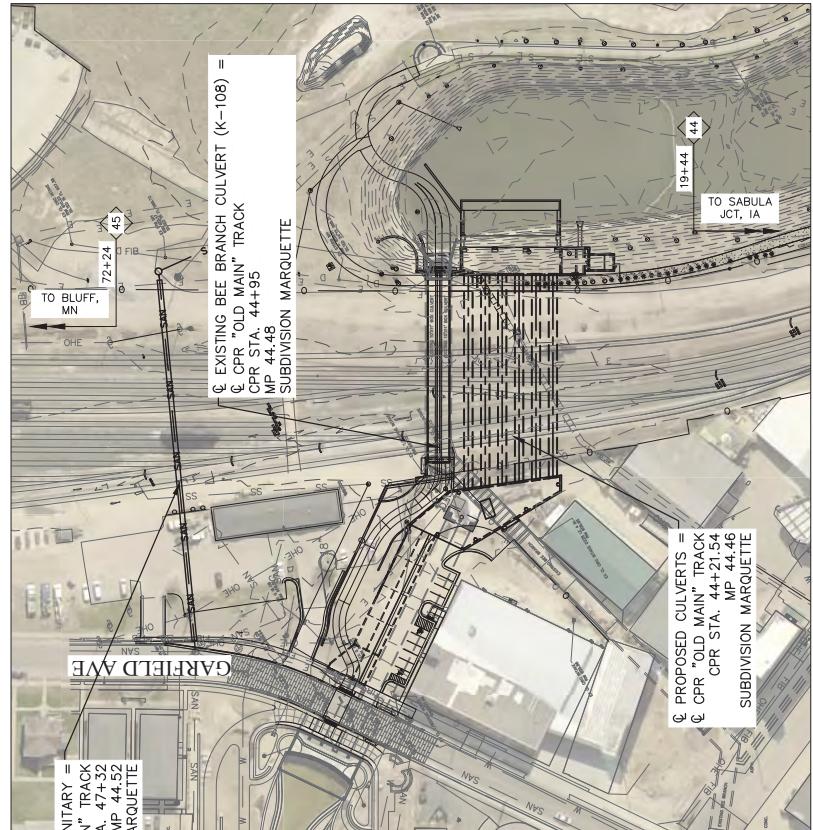
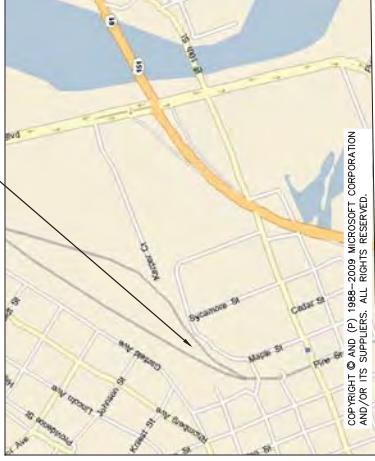
Volume 2 of 2



FINAL 10/15/18

953-558-2644 • 800-556-4911  
iW, P.C. • www.iwangr.comUPPER BEE BRANCH CREEK RESTORATION RAILROAD  
CULVERT CROSSING PROJECTIOWA  
ONE CALL  
1-800-292-9989  
www.iowonecall.comCP CALL BEFORE  
YOU DIG  
#1-866-291-0741IN THE EVENT OF AN EMERGENCY, RAILWAY CROSSING INCIDENT OR A CRIMINAL INCIDENT  
ANYWHERE ON THE CP RAIL NETWORK OR INVOLVING A CP TRAIN OR CP PROPERTY, CONTACT:  
CP POLICE CONTROL CENTRE  
EMERGENCY NUMBER  
1-800-716-9132

PROJECT LOCATION

CIP# 2642769  
CIP# 7202769  
CIP# 3402769

PROJECT LOCATION

CITY OF DUBUQUE  
DUBUQUE COUNTY

## COVER SHEET

UPPER BEE BRANCH CREEK RESTORATION RAILROAD  
CULVERT CROSSING PROJECT

NO

REVISIONS

DATE

## UTILITY AND RAILROAD CONTACTS

BLACK HILLS ENERGY  
NICK PAYBLI  
PHONE: 563-585-4035  
EMAIL: nick.paybl@blackhillscorp.com

CENTURY LINK  
BRENT GIESE  
PHONE: 563-650-0147  
EMAIL: brent.giese@centurylink.com

ALLIANT ENERGY  
TERRY DEMPWOLF  
PHONE: 563-543-5885  
EMAIL: Terry.Dempwolf@AlliantEnergy.com

MEDACOM  
TIM ORCUTT  
PHONE: 515-249-9848  
EMAIL: torm@medacomcc.com

CANADIAN PACIFIC RAILROAD  
JEFF CHALCH  
PHONE: 612-773-2057  
EMAIL: jef-chalch@cpr.ca

NO

REVISIONS

DATE

I HEREBY CERTIFY THAT THE PORTION OF THIS TECHNICAL SUBMISSION  
HEREBELLOW WAS PREPARED BY ME OR UNDER MY DIRECT  
SUPERVISION AND CONTROL BY A PROFESSIONAL ENGINEER,  
PROFESSIONAL LANDSCAPE ARCHITECT, UNDER THE LAWS OF THE STATE  
OF IOWA FOR SNA DESIGN, INC.

ABBE MOLLEN  
00897  
DATE 06-10-2020  
LICENSE # C720-2725  
PAGES OR SHEETS COVERED BY THIS CERTIFICATION:

I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED  
BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND  
THAT I AM A ONLY LICENSED PROFESSIONAL ENGINEER UNDER THE  
LAWS OF THE STATE OF IOWA  
FOR STRAND ASSOCIATES, INC.

ERIC D. VIETH  
22000  
LICENSING # PE-22000  
DATE 12/31/2019  
PAGES OR SHEETS COVERED BY THIS CERTIFICATION:  
C100-CR-02, C10-C54, C822-C822-2, M601-02, C822-C899  
JOB NO. 1154-059  
PROJECT MGR. MAJ

I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED  
BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND  
THAT I AM A ONLY LICENSED PROFESSIONAL ENGINEER UNDER THE  
LAWS OF THE STATE OF IOWA  
FOR iW, P.C.

MICHAEL A. JANSEN  
12418  
LICENSING # PE-12418  
DATE 12/31/2019  
PAGES OR SHEETS COVERED BY THIS CERTIFICATION:  
C100-CR-02, C10-C54, C822-C822-2, M601-02, C822-C899  
JOB NO. 1154-059  
PROJECT MGR. MAJ

I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED  
BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND  
THAT I AM A ONLY LICENSED PROFESSIONAL ENGINEER UNDER THE  
LAWS OF THE STATE OF IOWA  
FOR iW, P.C.

ABBE MOLLEN  
00897  
DATE 06-10-2020  
LICENSE # C720-2725  
PAGES OR SHEETS COVERED BY THIS CERTIFICATION:

PROJECT SHEET C000

# Exhibit 2

CP schedule of costs for flagging, inspections, etc.

CP's actual expenses for external costs and CP's then-current rates for CP personnel plus applicable overheads.

Current flagging rates are as follows:

Flagman/EIC Regular Hours – \$ 950.00 /day

Flagman/EIC Overtime - 3<sup>rd</sup> Party Work \$ 125.00 /hour

Flagman/EIC Weekend/Holiday - 3<sup>rd</sup> Party Work \$ 1,200.00 /day

Mileage rate (\*) \$ 0.545 /mile

# Exhibit 3

Contractor – CP Railroad Flagging Agreement

Minimum Safety Requirements for Contractors

CP Safety Briefing Cards

[See attached]



Engineering - Southern Region  
Canadian Pacific Plaza  
120 South 6<sup>th</sup> Street, Suite 900  
Minneapolis, MN 55402

## CONTRACTOR-RAILROAD AGREEMENT

This Agreement is between \_\_\_\_\_ ("Contractor") and the Dakota, Minnesota & Eastern Railroad Company d/b/a Canadian Pacific with its principal place of business at Canadian Pacific Plaza, 120 South 6<sup>th</sup> Street, Suite 900, Minneapolis, MN 55402 including its subsidiaries or parent corporations ("Railroad")

Contractor agrees that they shall provide the Railroad with proof of insurance as set forth below, prior to commencement of the, being anything done on, over or under the railroad right of way, hereinafter referred to as ("Work"). **Contractor requires a flagman at (.....), (..... Subdivision), (..... Division), ..(City..., ..State) for the (Project Description).**

**Contractor agrees to pay for flagging for the Work as follows:**

---

### **1. For Railroad Flagman Service**

---

#### Railroad Flagman Service Rates:

- a. Estimated rates for the Railroad Flagman Service are currently \$950 for an eight (8) hour day.
- b. Currently no overtime is approved for the Railroad Flagman Service.
- c. Plus equipment & expenses (meals, mileage, etc.).

## INDEMNIFICATION AND INSURANCE REQUIREMENTS

### **INDEMNIFICATION CLAUSE**

Contractor agrees to defend, save harmless and indemnify the Railroad, its officers, directors, shareholders, agents, employees, successors and assigns from any loss, cost or damage by reason of Personal Injury or property damage of whatsoever nature or kind arising out of, or as a result of, the performance of the Work by the Contractor, its employees, agents or subcontractors.

### **INSURANCE**

Contractor shall procure and maintain in effect at any time when any portion of the Work is being performed, the following insurance:

#### **1. Comprehensive General Liability Insurance:**

Comprehensive general liability insurance with a policy limit of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, death, and damage to or destruction of property (including the loss of use thereof).

The policy will include those policy extensions commonly referred to as broad form completed operations, contractor's protective, collapse, and underground damage.

The policy shall by its wording or by endorsement insure those liabilities and obligations which this Agreement contemplates will be assumed by the Contractor, including liabilities and obligations to indemnify the Indemnified Parties (as defined below).

The policy shall be endorsed to require that the Railroad be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage.

The policy shall be endorsed with a cross liability (severability of interest) endorsement in substantially the following form: "This policy shall insure each person, firm, or corporation hereunder in the same manner and to the same extent as if a separate policy had been issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurance company's liabilities."

The policy shall be endorsed to add the following as additional insureds: Dakota, Minnesota & Eastern Railroad Corporation, Soo Line Holding Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway or Canadian Pacific, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to Railroad property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing (collectively, the Protected Parties). The policy shall also be endorsed to waive subrogation rights against the Protected Parties.

## **2. Automobile Liability and Property Damage Insurance:**

Automobile liability and property damage insurance in an amount not less than \$2,000,000, personal injury and property damage combined, covering the ownership, use, and operation of any motor vehicles and trailers licensed for use on public highways which are owned, leased, non-owned or controlled by Contractor and used in connection with the Work. The policy shall be endorsed to require that CP be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage.

## **3. Workers Compensation Insurance:**

Workers compensation insurance that meets the requirements of applicable state law.

**4. Railroad Protective Liability Insurance:**

Railroad protective liability insurance (occurrence form), in the name of the Dakota, Minnesota & Eastern Railroad Company d/b/a Canadian Pacific, with limits of no less than \$5,000,000 per occurrence and \$10,000,000 aggregate for personal injury and property damage.

**5. Environmental Pollution Impairment Liability Insurance:**

Contractor's environmental Pollution Impairment liability insurance with a policy limit of not less than \$5,000,000 per occurrence. The policy shall be endorsed to require that CP be given not less than 30 days written notice in advance of cancellation or termination of the policy or of any change or amendment to the policy that restricts or reduces coverage. The policy shall be endorsed with a cross liability (severability of interest) endorsement in substantially the following form: "This policy shall insure each person, firm, or corporation hereunder in the same manner and to the same extent as if a separate policy had been issued to each, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurance company's liabilities." The policy shall be endorsed to add the Protected Parties as additional insureds and to waive subrogation rights against the Protected Parties. Coverage shall include, but not be limited to, claims for bodily injury, death, damage to property including the loss of use thereof, clean-up costs and associated legal defense expenses arising from pollution conditions caused by, and/or exacerbated by, services performed by the contractor. The policy shall be endorsed to contain a blanket contractual liability endorsement. If this policy is written on a "claims-made" basis it shall remain in effect for no less than twenty-four (24) months after the expiry or termination of this Agreement.

**6. Umbrella/Excess Liability.**

Umbrella/excess liability insurance, follow-form of the underlying policies, with a policy limit of not less than \$10,000,000.

**7. Other Policies of Insurance: <if applicable>**

Such other insurance as may be necessary to protect the Protected Parties against certain other claims arising out of the Work, to wit:

- a. claims under any workers' compensation law,
- b. claims under the Federal Employer's Liability Act, and
- c. any other claims for damages for personal injury or death.

**8. Contractual Endorsement**

Each policy of insurance shall include the following endorsement upon the certificate, or within the binder, policy or other contractual evidence signed by the insurer and in form acceptable to the Dakota, Minnesota & Eastern Railroad Company d/b/a CP:

**"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with**

**work pursuant to the Agreement dated \_\_\_\_\_, 2018 by and between [Contractor] and Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific, including work upon railroad property, within railroad right of way and in close proximity to operating railroad tracks.”**

Before Contractor enters the Property, CP must receive and approve certificates of insurance evidencing the coverage's required by sections 1, 2, 3, 5, 6 and 7, and endorsements 8 and CP must also receive and approve either the policy required by subparagraph 4 or a binder evidencing that that policy is in effect. CP reserves the right to demand a certified copy of any required policy, and Contractor shall provide such copy within 10 working days after CP shall give notice to demanding such copy. All of the required policies shall be issued by insurers acceptable to CP and shall be acceptable to CP in both form and substance. Contractor shall not enter the Property until all of the required policies have been approved in writing by CP if the contractor uses a subcontractor, the Contractor shall provide the required policies and shall, in addition, either require the subcontractor to provide insurance equivalent to that described herein (except that only one policy required by subparagraph 4 need be provided for the Work) or obtain endorsements to the contractor's policies naming the subcontractor as an additional insured party. If a subcontractor uses a sub-subcontractor, the sub-subcontractor shall either provide insurance equivalent to that required of the subcontractor or shall be named as an additional insured party on the contractor's or subcontractor's policies. In the event any required policy lapses, CP shall have the option of immediately terminating the work on premises, with or without notice to Contractor; such termination shall be without prejudice to CP's rights and privileges under this Agreement. The insurance coverage obtained pursuant to section “Insurance” and its sub-sections shall in no manner restrict or limit the liabilities assumed by Contractor under this Agreement.

#### **Governing Law**

This Agreement shall be construed and interpreted in accordance with the laws of the state in which the Property is located, without reference to the choice of law rules of that state.

THE PARTIES HEREBY AGREE AND ACCEPT THESE TERMS

**NAME OF CONTRACTOR:** \_\_\_\_\_

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

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

Date: \_\_\_\_\_

Address: \_\_\_\_\_

---

Phone: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

*Railroad internal use only*

**Certificate of Insurance:**

Named additional Insured Approved: _____	Limits approved: _____
Cancellation provision approved: _____	Work Authorized: _____ [initials]



## **Minimum Safety Requirements for Contractors Working on CP Property in the United States**



<b>Approval Authority:</b>	Corporate Risk	<b>Effective Date:</b>	September 1, 2018
<b>Version:</b>	3.0	<b>Revision Date:</b>	September 1, 2021

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# Introduction

At Canadian Pacific (CP), safety is an integral part of the way we do business. We expect everyone working on Canadian Pacific's property to be unconditionally committed to safety. Safety must be given top priority and will take precedence over deadlines, production schedules, and all other considerations.

## 1 Application

### 1.1 Application

- 1.1.1 These Minimum Safety Requirements are applicable to all who work on CP property (except as noted in 1.13 and 1.14 below) including Contractors and other persons performing Work or otherwise providing services to Canadian Pacific on CP Property in the United States.
- 1.1.2 These Minimum Safety Requirements cannot be waived or altered, in whole or in part, without a prior Risk Assessment specific to the Work being conducted, and written consent has been provided by Manager-in-Charge.
- 1.1.3 Notwithstanding the foregoing, these Minimum Safety Requirements do not apply to other railroad companies who only operate trains on CP Property under various trackage or interchange agreements.
- 1.1.4 Further notwithstanding the foregoing, these Minimum Safety Requirements may not apply to Work or services provided in CP office premises, in which case, CP's Minimum Safety Requirements for Contractors Working in CP Offices may apply.

## 2 Definitions and Interpretation

### 2.1 Definitions

- 2.1.1 In these Minimum Safety Requirements, the following capitalized terms shall have the ascribed meaning below:
  - (a) **“Applicable Legislation”** means all applicable legislation, regulations, by-laws, codes, rules, standards, policies, procedures, promulgated by any federal, state, and municipal governmental body, including those of its agencies, having authority over CP and, or a Contractor in relation to the Work in the matter of health and safety of the person, property and, or the environment;
  - (b) **“Canadian Pacific”** or **“CP”** means Canadian Pacific Railway Company Ltd., and its subsidiaries and affiliates, and includes each of their respective directors, officers, employees, agent, and representatives;
  - (c) **“CP Personnel”** means CP's employees, agents, and representatives;
  - (d) **“CP Property”** means any building, facility, yard, track, right of way or other property owned or controlled by CP;
  - (e) **“Contractor”** means the company or person, and their respective employees and authorized agents, representative and subcontractors who are providing goods or services to CP; or on behalf of a third party working on CP property.
  - (f) **“Contractor Personnel”** means the Contractor's employees, and authorized agents, representative and subcontractors;
  - (g) **“Co-mingled Work”** means Work where Contractor Personnel works directly with or, in close proximity (time or space) to CP Personnel;

- (h) “**eTest**” an efficiency test. It is a planned procedure to evaluate compliance with rules, instructions and procedures, with or without the employee's knowledge.
- (i) “**Foul of Track**” means the placement of an individual or equipment within 4' feet of the outside rail of a railway track that could be struck by a moving train or on- track work equipment (e.g. Hi-rail equipment).
- (j) “**Hazardous Materials**” means any substance, which is hazardous to persons or property and includes, without limiting the generality of the foregoing:
  - (i) radioactive, explosive, poisonous, or toxic substances;
  - (ii) any substance that if added to any water, would degrade or alter the quality of the water to the extent that it is detrimental to its use by man or by any animal, or plant;
  - (iii) any solid, liquid, gas or odor or combination of any of them that, if emitted into the air, would create or contribute to the creation of a condition of the air that endangers the health, safety, or welfare of persons, or the health of animal life, or causes damage to plant life or to property; and
  - (iv) substances declared to be hazardous, toxic or dangerous under any law or regulation now or hereafter enacted by any governmental authority having jurisdiction.
- (k) “**Manager-in-Charge**” means a CP manager as designated or otherwise identified by CP as being responsible for overseeing the Work to be performed, such Manager-in-Charge may include, but is not limited to Local CP Management, Superintendents, Chief Engineers, and Project Managers.
- (l) “**Mobile Equipment**” means any motorized and self-propelled equipment, excluding railroad equipment and highway vehicles, but including, for example, forklifts, tractors, cranes, ATVs, mules, motorized scissor lifts, telescopic boom lifts, and similar equipment that are not designed to operate or move on railroad tracks;
- (m) “**Office Premises**” means any building, facility, or portion thereof, or other premises, whether owned or controlled by CP, which is used solely for clerical or administrative purposes and which does not contain heavy equipment or machinery, as designated by CP from time to time;
- (n) “**Qualified and Authorized**” means a status attained by a person who has successfully completed any required training and demonstrated proficiency in the duties of a particular position or function and who has been given the right to act.
- (o) “**Railroad Equipment**” means trains, locomotives, railcars, on track equipment (track units), hi-rail vehicles and any other equipment designed to operate or move on railroad tracks;
- (p) “**Site Safety Plan**” means a documented plan which set out how Work is to be conducted in a safe manner, as required by Applicable Legislation, see 3.15 c);
- (q) “**Third Party Project**” means any work being performed on CP property that CP is not managing (i.e, road authority, utility company, commuter agency, or other similar entity, are on CP property for their own purposes, and not a project sponsored or managed by CP.
- (r) “**Work**” means the provision of products and services and related activities;
- (s) “**Work Site**” means any CP Property where CP Personnel or Contractor Personnel are present, or permitted to be present, while engaged in any Work, including any railroad equipment, mobile equipment and highway vehicles operated by or used to convey a person engaged in such Work. This applies also to work immediately adjacent to CP property which can pose a risk to safe railway operations (i.e., blasting, excavation next to ROW, etc).

## **2.2 Interpretation & Application**

- 2.2.1 Where legislation is referred to in these Minimum Safety Requirements, it shall include all amendments and replacements thereto as promulgated from time to time.
- 2.2.2 Where standards, such as those of the American National Standards Institute (ANSI), are referred to in these Minimum Safety Requirements, they shall include all amendments and replacements thereof from time to time.
- 2.2.3 Where there is any ambiguity, inconsistencies, or omissions between or among any agreements with CP, expressed or implied; any Applicable Legislations; any applicable CP policies and practices; and any applicable industrial standards and practices, Contractor and Contractor Personnel shall adhere to that which is most stringent and current.

## **3 Contractor Compliance & Responsibilities**

### **3.1 General Compliance**

- 3.1.1 Contractor shall be fully and solely responsible for ensuring the health and safety of Contractor Personnel and for ensuring that its Work and other activities do not compromise the health and safety of CP Personnel or any other party, the protection of the environment, the protection of CP's property and those of any other party, and do not interfere with the safety of CP's railroad operations.
- 3.1.2 Contractor shall comply with and shall ensure all of Contractor Personnel are trained and qualified to safely perform the Work and that they comply with all Applicable Legislation pertaining to the protection against fire, safety, health, and environmental hazards, and with any license, permits, authorizations issued by the respective authority. Contractor shall provide CP with written certification that Contractor's safety program required by 49 CFR Part 243 has been approved by the Federal Railroad Administration (FRA) where applicable.
- 3.1.3 Contractor shall comply with and shall ensure all of Contractor Personnel comply with all terms and conditions of all agreements, expressed or implied, between Contractor and CP, and all applicable CP policies and practices.
- 3.1.4 Subject to the requirements of CP's Access Control Procedures, the contractor shall provide CP eRailsafe training for each employee engaged in work on CP property. Where there is no agreement between CP and the Contractor, the Contractor is responsible for meeting the additional requirements outlined within CP's Access Control Procedures.
- 3.1.5 Contractor shall provide Contractor Personnel, at its own expense, any and all safety equipment required to protect against injuries during the performance of the Work and shall ensure that Contractor Personnel are knowledgeable of and utilize safe practices in performing the Work.
- 3.1.6 The Contractor shall have a copy of the following documents at the Work Site at all times, and shall produce them as and when requested by CP:
  - (a) These Minimum Safety Requirements for Contractors Working on CP Property;
  - (b) Licenses, certifications, permits, training records or other documents required by Applicable Legislation or these Minimum Safety Requirements;
  - (c) Site Safety Plan to include Emergency Response Plan Procedures, see 7.1.1.c, 16.1.1, 16.4.3;
  - (d) Contractor's Emergency Information Sheet (see Attachment A); and
  - (e) Any additional documents required by Contract or by agreement with Manager-in-Charge.
  - (f) Employee identification (eRailsafe badge – see 9.1.1).

### **3.2 Compliance Assurance**

- 3.2.1 CP reserves the right to observe, inspect, test and audit Contractor and Contractor Personnel for compliance with all requirements herein, and to demand and receive all relevant records, documentation, and materials evidencing compliance, at any time, and from time to time.
- 3.2.2 Failure of the Contractor or Contractor Personnel to comply with any applicable provisions herein may be considered a material breach, and in addition to all other remedies available, CP may without prejudice:
  - (a) take over control of that Work or activity;
  - (b) order the Work to stop; and/or
  - (c) order Contractor Personnel to leave CP Property.
- 3.2.3 Upon the earlier of the completion of the Work, the expiration of the applicable agreement, or the request of a Manager-in-Charge, Contractor and Contractor Personnel shall return all identification, badges, access cards, and decals, issued or provided by CP to the Manager-in-Charge.

## **4 Site Safety Plans**

### **4.1 General Requirements**

- 4.1.1 Prior to starting any Work on CP Property, the Contractor must have a written Site Safety Plan that identifies:
  - (a) All applicable legislation, rules, policies and work practices in relation to the work being performed;
  - (b) Specific hazards that are associated with the Work being performed on CP property for CP, and Work being performed not for CP:
    - for example:
      - (i) Construction, maintenance or inspections of buildings;
      - (ii) Working on or adjacent to railroad tracks;
      - (iii) Maintenance or inspection or railroad tracks, crossings or signal systems;
      - (iv) Operating Railroad Equipment on CP tracks; or
      - (v) When/where Contractor Personnel work directly with or in proximity (time or space) to CP Personnel; and
    - (c) Methods of verifying compliance.
- 4.1.2 The Contractor will provide Manager-In-Charge with a copy of this Site Safety Plan on reasonable request.
- 4.1.3 The Contractor must be able to demonstrate an awareness of applicable legislation, rules, policies and work practices in relation to the work being performed.

## 5 Safety Training

### 5.1 Minimum Training & Qualifications

- 5.1.1 At its sole cost and expense, Contractor shall ensure that all Contractor Personnel be fully trained and qualified for the Work they will be performing. Contractors and Contractor Personnel shall meet, or exceed, all Applicable Legislation requirements relating to training and qualification, including but not limited to the requirements of 49 CFR Part 243.
- 5.1.2 Additionally, Contractor Personnel training and qualification shall meet or exceed all applicable industry standards.

### 5.2 Proof of Training & Qualification

- 5.2.1 Contractor Personnel shall at all times have proof of such training and qualifications and shall produce them as and when requested by the Manager-in-Charge.
- 5.2.2 CP reserves the right to inspect qualification certificates, licenses, training records and/or Work-history records for any Contractor Personnel, and, or to be provided with copies thereof, on reasonable request. In addition, CP reserves the right to perform eTests on contractor employees, and request discipline for non-conformance.
- 5.2.3

## 6 Safety Orientation

### 6.1 General Requirements

- 6.1.1 Prior to beginning Work, all Contractor Personnel shall participate in a CP authorized safety orientation, including on-site orientation presented by the Manager-in-Charge or designate.
- 6.1.2 Any time the scope of Work, location, condition or supervision changes, Contractor Personnel may be required to attend additional safety orientation sessions.
- 6.1.3 After successful completion of such safety orientation, Contractors must be able to produce company identification or an eRailsafe photo identification badge authorizing access to CP property unescorted for the purposes of conducting work. Managers have the ability to enter the tracking code into CM (Compliance management). Third parties who hire subcontractors must ensure required compliance while on CP property. The eRailsafe identification card shall be worn or be made visible at all times, or produced upon request and cannot be transferred under any circumstances.

## 7 Job Safety Briefing

- 7.1.1 Contractor Personnel shall attend all Job Safety Briefings as and when conducted. Contractor Personnel shall be solely and fully responsible for understanding the content of the Job Safety Briefing, and at a minimum shall:
  - (a) have an understanding of the scope of Work to be performed and an appreciation of the nature of the location, environment, and conditions where such Work is to be performed;
  - (b) be aware of specific or unusual hazardous condition, existing or potential and the control measures required to protect against, control, mitigate, or where possible, avoid said hazard; and
  - (c) have an emergency response plan/evacuation procedures.

7.1.2 Where Contractor Personnel are working directly with or in proximity (time or space) to CP Personnel, job safety briefings must include both CP Personnel and Contractor Personnel, and any other affected third parties. The job safety briefing shall identify nature and extent of the interaction between the Work being performed by Contractor Personnel, and those performed by CP Personnel or other third parties. Contractor Personnel shall inform CP Personnel, and any other third parties of known or potential unsafe conditions and hazards that may be created by, resulting from, or inherent in their Work and the corresponding preventative, mitigation, and/or control measures at all job briefings prior to commencing Work, or as soon as Contractor Personnel becomes aware of such conditions.

7.1.3 In all situations, all Contractor Personnel are expected to:

- (a) continually identify hazards and assess risk of hazards and to continually and clearly communicate all hazards to the Manager-in-Charge and to all other parties that may be affected at job safety briefings, and at any other time as and when appropriate or necessary;
- (b) take actions that are within their assigned responsibility to eliminate or control hazards and risks; and
- (c) immediately notify their supervisor or the Manager-in-Charge of hazards that pose unacceptable risk that they are unable to eliminate or control.

7.1.4 Where Contractor Personnel are unable to eliminate or control a hazard, Contractor Personnel shall take interim measures to protect people, property, equipment and the environment until the hazard can be properly assessed and appropriate corrective actions taken.

## **8 Applicable Legislation**

### **8.1 General Requirements**

8.1.1 Contractor and Contractor Personnel shall be solely responsible for identifying and complying with all Applicable Legislation. At a minimum, Contractor and Contractor Personnel shall comply with the federal legislations set out below which list is intended solely for general guidance, and not as a comprehensive list of all Applicable Legislation.

8.1.2 Additionally, the Association of American Railroads (AAR) is an industry association which can provide support and guidance on matters related to railroad safety and the transportation of hazardous materials.

### **8.2 Transportation of Hazardous Materials**

8.2.1 When Work involves the handling or transportation of hazardous materials (hazmat), that Work must comply with Hazardous Materials Transportation Act and regulations administered by the Pipeline and Hazardous Materials Safety Administration (PHMSA).

8.2.2 Contractors shall be solely responsible for ensuring that all Contractor Personnel who handles, offers for transport and/or transports hazmat by any transportation mode are trained and hold a valid training certificate or is working under the direct supervision of someone who is trained and holds a valid training certificate. That training must be based on the Work that the person is expected to perform and the hazmat that the person is expected to handle, offer for transport or transport.

8.2.3 All U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (PHMSA) regulations are published in Chapter I of title 49 of the Code of Federal Regulations (49 CFR).

### **8.3 Railroad Work**

- 8.3.1 When Work involves the construction, alteration, operation, inspection and maintenance of any part of the general railroad system of transportation, that Work must comply with the Federal Railroad Safety Act and regulations administered by the Federal Railroad Administration (FRA).
- 8.3.2 Contractors shall be solely responsible for ensuring that all Contractor Personnel who perform railroad Work are trained and qualified in accordance with those regulations and hold valid certificates when required.
- 8.3.3 All FRA regulations are published in Chapter II of title 49 of the Code of Federal Regulations (49 CFR).

### **8.4 Occupational Safety & Health**

- 8.4.1 Any Work being performed that may create a risk to the health and safety of any person, including CP Personnel and Contractor Personnel, when not covered by FRA regulations shall be governed by U.S. Department of Labor regulations administered by Occupational Safety and Health Administration (OSHA).
- 8.4.2 All OSHA regulations are published in Chapter XVII of title 29 of the Code of Federal Regulations (29 CFR).

### **8.5 Environmental Protection**

- 8.5.1 Where Work is being performed that may impact the environment, that Work must comply with all applicable federal, state, and local government legislation, regulations and standards.
- 8.5.2 Federal legislation is generally administered by the Environmental Protection Agency. A compilation of those laws and regulations can be accessed at <http://www.epa.gov/lawsregs/>

## **9 Security Access to CP Property**

- 9.1.1 All Contractor Personnel must have personal identification and/or eRailsafe credentials authorizing access and in their possession at all times while on CP Property, and present them for review to any Manager-in-Charge, other CP managers and employees, Police Officer, security guard, or regulatory officer upon request:
  - (a) photo identification (e.g. driver's license); and
  - (b) proof of employment, document or card; and
  - (c) CP safety orientation certificate; or
  - (d) building access pass issued by CP or third party having control over CP premises; or
  - (e) CP security photo ID card or badge; or
  - (f) other proof of safety orientation and access authorization issued by CP.
  - (g) Valid eRailsafe card
- 9.1.2 Where any Work requires Contractor Personnel to ride in locomotive or other non-passenger railroad equipment, the Contractor must also possess a CP ACCESS PASS for riding non-passenger railroad equipment, signed by the responsible operating manager. Such a signed pass must be presented to the train crew or operator when boarding the equipment. Failure to possess such a pass will result in the equipment not moving, removal from the equipment, and/or the filing of trespasser charges.

## **9.2 Security Awareness**

- 9.2.1 Contractor shall conduct employee background checks as is necessary to ensure that Contractor Personnel do not pose a security risk to CP, such security risk includes the risk of the commission of terrorist activities, sabotage, vandalism, theft, and violence. CP reserves the right, at all times, to require that Contractors undertake certain security training and/or performs background checks on Contractor Personnel, prior to allowing such Contractor Personnel to enter onto CP Property.
- 9.2.2 On request CP can make available a copy of CP's Railway Security Awareness Program for use by Contractor Personnel.

## **9.3 Firearms & Explosives**

- 9.3.1 Firearms (loaded or empty) are not permitted on CP Property, except for Police officers and other designated government officials when authorized to do so.
- 9.3.2 No explosives will be permitted on CP Property without written approval by the Manager-in-Charge.

## **9.4 Reporting**

Contractor Personnel must report any security concern, security incident, criminal activity (known or suspected), suspicious happenings and/or suspicious persons on CP Property to the Manager-in-Charge or to CP Police Services in accordance with Section 18.

# **10 Personal Conduct**

## **10.1 Drug and Alcohol Prohibition**

CP recognizes the problem of alcohol and substance abuse in today's society. This problem poses particular concerns to an employer who is subject to governmental regulations and seeks to promote the safety of the general public. CP has a concern for the safety, health and well-being of its employees as well as an obligation to comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations. CP will comply with all statutes and regulations administered by the FRA in implementing the required 49 CFR §219 Drug and Alcohol Program. CP also expects employees of other railroads, visitors or contractors to comply with this regulation while on CP property, consistent with federal regulations. If subject to this regulation, Contractor shall be solely responsible for compliance with the 49 CFR Part 219. Contractor shall provide CP with proof of its compliance prior to performing services for CP and continued proof of compliance must be provided to CP immediately upon request. This proof of compliance will include, but will not be limited to, a copy of the 49 CFR §219 Drug and Alcohol Program Plan and FRA Approval Letter and Continued Certification of Compliance and Statistical Reporting. Periodic audits to ensure compliance with these regulations may be performed and cooperation and compliance is expected upon request.

If subject to other DOT modalities and regulations, such as the Federal Motor Carriers Safety Administration (FMCSA), compliance of that modality's drug and alcohol program guidelines will be required and periodic audits to ensure compliance with these regulations may be performed and cooperation and compliance is expected upon request.

- 10.1.1 Entry onto CP Property when in possession of, or under the influence of alcohol, intoxicants, narcotics, or controlled substances is strictly prohibited. Controlled substances include all Schedule 1 drugs (such as marijuana and "medical marijuana") and synthetic/designer drugs and/or any intoxicants or products labeled "not intended for human consumption".
- 10.1.2 The sale, trade, and/or offer for sale alcohol or controlled substances are prohibited.

- 10.1.3 Additionally, Contractor Personnel shall be free of any condition which may in any way adversely affect alertness, concentration, responsiveness, or the ability react calmly and responsibly to safety hazards.
- 10.1.4 CP reserves the right to request drug and/or alcohol tests for Contractor Personnel as and where required or permitted by law.

## **10.2 Inappropriate Behavior**

- 10.2.1 CP is committed to maintaining a work environment that supports the dignity of all individuals. No person working at CP may be subjected to any form of discrimination or harassment, including sexual harassment.
- 10.2.2 Acts or threats of violence are unacceptable at all times on CP Property. Uttering of threats or committing acts of violence will result in the removal of the responsible Contractor Personnel from CP Property, termination of the Contract, and/or criminal charges.
- 10.2.3 Horseplay, practical jokes, fighting or any other activity that may create a safety hazard is not permitted.

## **10.3 Electronic Entertainment and Communication Devices**

- 10.3.1 The use of personal entertainment devices, including portable audio and video devices such as compact DVD, CD, video game players, tablets and MP3 players, is prohibited:
  - (a) while Working on CP Property;
  - (b) while transporting CP Personnel, whether on and off CP Property; and
  - (c) while operating any CP highway vehicle, railroad equipment or mobile equipment, whether on and off CP Property.
- 10.3.2 The use of electronic communication devices, including cell phones, Smart Phones, Blackberries, walkie-talkies, PDAs, iPads, Tablets, GPS navigation units, portable computers, and similar devices, is prohibited:
  - (a) while operating any highway vehicle, unless it is stopped and parked in a safe location;
  - (b) while transporting CP Personnel, whether on and off CP Property;
  - (c) while operating or assisting in the operation of any railroad equipment or mobile equipment;
  - (d) while operating power tools, equipment or machinery;
  - (e) when Foul of Track for any reason;
  - (f) wherever use is prohibited by signage or by a CP manager; or
  - (g) whenever use of such a device creates an unsafe condition.
- 10.3.3 Notwithstanding the foregoing, company cell phones, radios, walkie-talkies, GPS units, iPads, tablets and other communication devices may be used solely for the conduct of business when authorized by the CP Manager-in-Charge and where not prohibited by state or municipal legislation. Any electronic communication device may be used when it is necessary to communicate an emergency condition.

## **10.4 Smoking**

- 10.4.1 Smoking, including the use of e-cigarettes is prohibited on all CP Property, and in or on all highway vehicles, Railroad Equipment, and Mobile Equipment, except for CP designated outdoor smoking areas.

# 11 Personal Protection

## 11.1 Work Clothing

11.1.1 The Contractor must ensure that Contractor Personnel wear clothing that meets applicable legislation and is suitable to perform the work safely. This includes at minimum ankle length pants and waist length shirts with a minimum quarter-length sleeves at all times. Clothing must not interfere with vision, hearing or use of hands and feet.

## 11.2 Personal Protective Equipment (PPE)

11.2.1 The Contractor shall ensure that Contractor Personnel wear personal protective equipment required by applicable legislation, regulations, codes and industry standards as necessary to protect against personal injuries while on railroad property. All personal protective equipment shall meet applicable legislation and American National Standards Institute (ANSI) standards and shall be in good condition and be properly fitted.

11.2.2 The following mandatory personal protective equipment ("PPE") shall be supplied by the Contractor at its own expense, and shall be worn at all times by Contractor Personnel while on CP Property:

- (a) safety hard hat, meeting ANSI 89.1 standards, except in office buildings or in enclosed vehicles or equipment;
- (b) safety footwear with protective toe caps and puncture resistant soles, meeting ASTM F2413 standards.
- (c) safety glasses with permanently attached side shields meeting ANSI Z87.1 standards in office buildings or enclosed highway vehicles. Note- transition lenses are not permitted;
- (d) high visibility fluorescent outerwear with retro reflective striping meeting ANSI 107 Class 2 standards not covered by other clothing or equipment, except where necessary for safety reasons such as where fall protection or pole climbing equipment is being used; and
- (e) any other PPE as required by applicable legislation or referenced standard, or as otherwise required to protect Contractor Personnel from injuries.

Type of Protection	Additional Recommendations
Hard Hats	Have hi-visibility characteristics which are not obscured by markings or decals
Safety Eyewear	Tinted safety eyewear must meet military standards for red signal recognition if operating railroad equipment (safety eyewear meeting this requirement is available from ORR Safety; ask for CP approved tinted safety eyewear)  Transition lenses are discouraged and should be worn with caution when working in changing light conditions  Personal sunglasses are discouraged and must not be worn when operating Railway Equipment  Wear mesh face shields over top safety glasses when using any striking tool while performing on track maintenance work (e.g. spiking, snapping on/off anchors, etc.). If working alongside CP employees you will be required to comply with this practice.
Safety Footwear	Have defined heels  Be laced and tied securely for ankle support  When snow and ice conditions are present wear anti-slip winter footwear
High-Visibility Apparel	Lime-green is recommended when working on, or near tracks, or when performing Co-mingled Work

11.2.3 Contractor and Contractor Personnel shall be solely and fully responsible for assessing the risks related to the work and determining whether additional PPE may be required such as:

- (a) Nomex or Proban fire-retardant protective gear when performing certain Transportation of Dangerous Goods (TDG) work and/or handling certain Hazardous Materials, or performing specialized work.
- (b) hearing protection when working in any area where noise exposure levels:
  - (i) are consistently equal to or greater 85 dBA;
  - (ii) exceed 115 dBA at any time; and
  - (iii) any other work areas where posted, or so notified by CP management.
- (c) respiratory protection where Contractor Personnel may be exposed to occupational dusts/particulates, fumes, mists, gases and vapors, in which case, in which case Contractors must have a written Respiratory Protection Program that meets or exceeds applicable legislation;
- (d) additional eye and face protection meeting ANSI standard Z87.1 (i.e. face shields, impact/splash goggles, welding/cutting goggles and welding helmets); and
- (e) fall protection systems and equipment meeting appropriate ANSI Z359 standards as required by applicable legislation and as appropriate for the related fall hazards.
- (f) fall protection when working on an unguarded surface over water, where the water is deeper than 4 feet, or where there is a hazard of drowning due to terrain, winter conditions, water velocity or current; contractors must use a fall protection system or a personal floatation device (PFD) meeting approved standards.

## 12 Railroad Track Protection

### 12.1 Contractor's Responsibilities for the Protection of Railroad Traffic and Property

- 12.1.1 Where the Work Site is in close proximity to, or is located on, above, or below railroad tracks, special attention, care and precautions shall be taken to ensure the safety of all Contractor Personnel, CP Personnel, all other third parties and to protect CP's property and railroad operations.
- 12.1.2 Contractor shall ensure that Contractor Personnel is made aware of all unique and inherent hazards in working near, on, above or below railroad tracks and shall ensure that all Contractor Personnel are fully trained and equipped to work safely.
- 12.1.3 Contractors who perform inspection, maintenance or repair to railroad tracks or track structures must be trained in accordance with FRA On Track Safety Rules (FRA 49 CFR Part 214, Subpart C - Roadway Worker Protection Regulations).
- 12.1.4 Contractors will not be allowed to foul a track unless:
  - (a) They have been properly advised of the On Track Safety awareness procedures;
  - (b) A railroad employee who is qualified to provide protection is present at the work site, or.
  - (c) The Contractor has personnel present who are specifically trained, qualified and authorized to provide that protection.
- 12.1.5 All work shall be organized or executed in such a manner as to ensure no interference with the regularity and safety of railroad operations. No step or sequence of any Work that might directly or indirectly affect the safe movement of railroad traffic shall be started without the approval of the Manager-in-Charge.

12.1.6 No temporary structure, materials, or equipment shall be permitted closer than 12 feet to the nearest rail of any track without prior approval in writing of the Manager-in-Charge.

Contractor Personnel shall at all times remain alert to the movement of trains, rolling stock and other railroad equipment.

12.1.7 Contractor Personnel shall be especially alert in yards and terminal areas as

- (a) Railroad equipment that appears to be stationary may be moving;
- (b) the rate of movement of railroad equipment may be faster than it appears;
- (c) Railroad equipment change tracks often; and movements may be occurring simultaneously on adjacent tracks.

12.1.8 The Contractor shall, at all times, conduct its operations in a wholly responsible manner to avoid damage to the CP's tracks or property.

## **12.2 50 feet Clearance Requirement**

12.2.1 All work shall be performed as far away from railroad tracks as possible.

12.2.2 Unless authorized by CP, Contractor Personnel, equipment, and vehicles are not permitted to be within 50 feet of the closest track centerline.

12.2.3 In the event work must be carried out within 50 feet of the closest track written authorization must be obtained from the Manager-in-Charge, and Contractor Personnel must still remain at the maximum practicable distance from all railroad tracks at all times.

12.2.4 When crossing tracks, Contractor Personnel shall ensure a minimum of 50 feet separation between standing railroad equipment, stay at least 15 feet away from the end of the nearest equipment, and look both ways before crossing tracks, and if clear, walk at a right angle to the tracks.

12.2.5 No work activities or processes are allowed within 50 feet of the track while trains are passing through the work site unless specifically authorized.

## **12.3 Flagging Protection**

12.3.1 When the Work requires Contractor Personnel to be within 50 feet of any railroad tracks, Contractor or Contractor Personnel shall notify and obtain the written approval of the Manager-in-Charge in advance of the intended start date, and when approved, shall only perform Work strictly in accordance with all terms and conditions of that approval.

12.3.2 Unless otherwise indicated by the Manager-in-Charge, proper protection against the movement of trains, rolling stock and other railroad equipment shall be deemed required at all times whenever Work or Contractor Personnel must be within 50 feet of the closest track. Protection may be provided only by a qualified CP employee through use of a flag person.

12.3.3 Where CP determines that flagging is required, then Work must be strictly conducted under the direction of a CP flag person or such other person designated by the Manager-in-Charge.

12.3.4 Contractor Personnel shall ensure that there is clear communication at all times between Contractor Personnel and any CP flag person. Contractor Personnel shall ensure that they are aware of:

- (a) flagging distance limits;
- (b) time limits; and
- (c) any adjacent tracks where movement of railroad equipment may still occur.

- 12.3.5 Contractor Personnel shall not assume that a train movement is being stopped or cleared unless clear communication is received directly from the CP flag person.
- 12.3.6 A job briefing between the CP flag person and all Contractor Personnel must occur before beginning any Work on or Foul of Track.
- 12.3.7 Blue signal protection is used to indicate that CP or Contractor Personnel are working on, under or between railroad equipment and movement of trains or other railroad equipment is prohibited. Blue signals must not be tampered with or obstructed. Blue signals can only be removed by the person or group of persons who originally applied it. Application, use, and removal of blue signals, when appropriate, may only be done under the authorization and guidance of the Manager-in-Charge.
- 12.3.8 Red flag protection is used to indicate that CP or Contractor Personnel are working on or foul of track, or the track is out of service and movement of trains or other railroad equipment is prohibited. Red flags must not be tampered with or obstructed. Application, use, and removal of red flags, when appropriate, may only be done under the authorization and guidance of the Manager-in-Charge.

#### **12.4 Working on or near Tracks**

- 12.4.1 When authorized to perform Work foul of track or otherwise be near railroad tracks, Contractor Personnel shall ensure all Contractor Personnel, equipment, and vehicles are kept as far away from railroad tracks as practicable, and shall at all times:
  - (a) be alert to train movements and shall expect the movement of trains, engines, cars, or other mobile railroad equipment at any time, on any track, and in any direction, even if they appear to be stationary or in storage;
  - (b) not rely on others to protect them from train movement;
  - (c) stay at least 15 feet away from the ends of railroad equipment when crossing the track;
  - (d) ensure a minimum of 50 feet separation prior to crossing between Railroad Equipment;
  - (e) look both ways before crossing tracks, and if clear, walk at a right angle to them.
  - (f) never climb on, under or between railroad equipment;
  - (g) be aware of the location of structures or obstructions where track clearances are close;
  - (h) not stand on the track in front of an approaching engine, car or other equipment;
  - (i) stand at least 20 feet from the track(s) when there is a passing movement of trains, engines, cars, or other mobile railroad equipment, to prevent injury from flying debris or loose rigging and shall observe the train as it passes and be prepared to take evasive action in the event of an emergency;
  - (j) not stand on or between adjacent tracks in multiple track territory when a train is passing;
  - (k) not walk, stand or sit on the rails, between rails or on the end of ties, unless absolutely necessary. As the rail surface can be extremely slippery, personnel must step over the rails when crossing tracks. Personnel shall also be aware railroad ties can also be slippery and that railroad ballast can shift while walking on top of it. Situational awareness and use of proper footwear is important;
  - (l) not remain in a vehicle that is within 50 feet of a passing train unless specifically authorized, or where this is not possible.
  - (m) keep away from track switches as remotely operated switch points can move unexpectedly with enough force to crush ballast rock. Personnel shall stay away from any other railroad devices they are unsure of. Personnel shall not disturb or foul the ballast at any time.

- (n) Third party work that has a potential to impact rail traffic must take into account machine swing radius, vertical grade differences, overhead work, etc to ensure it will not impact a passing train; work and equipment must maintain a distance of 50 feet of a passing train.
- (o) When exiting on track machinery as trains are passing; exit on the opposite side.
  - (a) use 3-point contact when getting on/off any vehicle, equipment or track unit;
  - (b) face the vehicle or equipment/track unit when getting on/off
  - (c) place handheld items onto equipment/track unit or seek help prior to getting on/off
  - (d) get on/off on the operators side when possible

## **12.5 Equipment on or near tracks**

- 12.5.1 Contractor Personnel shall not be Foul of Track with any piece of equipment without a CP flag person or other authorized track protection;
- 12.5.2 Contractor Personnel shall not move equipment across the tracks except at established road crossings, or unless under the protection and authorization of a CP flag person and only if the Work Site has been properly prepared for such a move. Tracked equipment will require a CP flag person any time railroad tracks are crossed.
- 12.5.3 Contractor Personnel shall not move equipment across railroad bridges or through tunnels, except as expressly authorized and only under such conditions as stipulated by the Manager-in-Charge.
- 12.5.4 When there is passing rail traffic, Contractor Personnel shall move equipment away from the tracks at least 50 feet, or where not possible, park the equipment as far away from the tracks as possible, exit to the side away from the track where the movement is taking place, and walk to a safe a distance.
- 12.5.5 When there is passing rail traffic, buckets, shovels, and loads on cranes must be lowered to the ground to rest, and cranes without a load must have their load line tightened or retracted to prevent movement.

## **12.6 Railroad Signs, Signals, Flags and other Communication Infrastructure**

- 12.6.1 Signs, signals and flags shall not be obstructed, removed, relocated, disabled or altered in any way without proper authorization and qualification.
- 12.6.2 Only qualified Contractor Personnel who are authorized by CP are permitted to operate switches, derails, electric track mechanisms, signal and communication systems or other track control appliances.
- 12.6.3 Railroad pole lines carry electric power and should be treated as any other power lines.
- 12.6.4 The Contractor shall keep all Contractor Personnel informed of current weather conditions. Personnel shall stay alert for possible high water conditions, or flash floods. During severe weather conditions:
  - a) Personnel shall be prepared to take cover in the event of a tornado
  - b) Personnel shall not work while lightning is occurring
  - c) If storm conditions arise unexpectedly, Contractor Personnel shall ensure that equipment is in the clear of the tracks and secured before seeking cover. Contractor Personnel shall stay away from railroad tracks when visibility is poor, such as during fog or blizzard conditions.

**Any Contractor personnel discovering a hazardous or potentially unsafe condition, which may affect the safe passage of railroad traffic, must advise CP Police immediately by calling the CP Police Communications Centre – 1-800-716-9132**

## **12.7 Excavation**

- 12.7.1 Before starting excavation operations, the Contractor shall ascertain that there are no underground wires, fiber optic cables, pipelines or other utilities which could be damaged or, if present, that such installations are properly protected. Fiber optic cables are present on most segments of the right-of-way. Prior to commencing any excavation, the Contractor shall contact the proper authority CP and/or public utility to obtain the necessary permit and to locate and protect such cables or other underground utilities.
- 12.7.2 Excavations shall not be left unattended unless they are properly protected; and the Manager-in-Charge shall be notified.
- 12.7.3 Contractors MUST obtain and maintain utility locates in accordance with applicable law.

# **13 HAZCOM**

## **13.1 General Requirements**

- 13.1.1 If at any time Contractor's Work involves the use, handling, storage, or disposal of Hazardous Materials ("Handling of Hazardous Materials"), Contractor Personnel must inform the Manager-in-Charge.
- 13.1.2 Contractors shall ensure that all Contractor Personnel are fully trained in the Handling of Hazardous Materials and that Contractor and Contractor Personnel are in full compliance with all Applicable Legislation, and as directed by the Manager-in-Charge.
- 13.1.3 Contractor Personnel shall have appropriate processes, systems and controls in place to prevent or otherwise mitigate potential environmental, health and safety risks associated with the Handling of Hazardous Materials.

## **13.2 Access to Safety Data Sheets (SDS)**

- 13.2.1 Prior to beginning any Work that may expose CP Personnel to Hazardous Materials, Contractor or Contractor Personnel shall:
  - (a) provide a copy of the respective SDS to the Manager-in-Charge; and
  - (b) keep a copy of the SDS at the work site and ensure that it is readily available at all times.

## **13.3 Hazardous Material Incident or Spill**

- 13.3.1 In the event of a hazardous material incident or spill, the Contractor must:
  - (a) ensure that no Contractor or CP Personnel have or will be exposed;
  - (b) take all reasonable actions to contain the spill;
  - (c) respond in accordance with its emergency response plan; and
  - (d) notify CP immediately in accordance with Section 18 below.

## **14 Operation of Highway Vehicles**

### **14.1 Highway Vehicles**

14.1.1 The following requirements apply to all highway vehicles, when operated on CP Property; or used to transport CP Personnel.

### **14.2 Regulations and Inspection**

14.2.1 Before using a highway vehicle, Contractor Personnel shall:

- (a) complete a pre-trip inspection;
- (b) maintain an inspection log;
- (c) ensure periodic inspections are completed at official testing locations as required;
- (d) ensure the vehicle is maintained and in safe operating conditions at all times; and
- (e) ensure the vehicle is in compliance with applicable motor vehicle regulations and license requirements.

14.2.2 Vehicle maintenance, inspection records and logs must be made available to the Manager-in-Charge on request.

### **14.3 Vehicle Operator Requirements**

14.3.1 Operation of highway vehicles is restricted to those Contractor Personnel who are licensed, qualified and authorized to do so. Such Contractor Personnel shall be responsible for the safety of all passengers at all times. For greater certainty, such Contractor Personnel shall:

- (a) hold a valid license for the class of vehicle being operated, in accordance with applicable local, state and federal requirements, and
- (b) strictly comply with all posted traffic signs, signals, and all shall obey all applicable legislation; and
- (c) maintain the required driver log, and make the log available to the Manager-in-Charge on request, and
- (d) comply with the requirements on the use of electronic devices as set out in Section 10 above.

### **14.4 Driving on CP Property**

14.4.1 In addition to the requirements set out above, while on CP Property, Contractor Personnel shall:

- (a) travel only on designated roadways unless otherwise instructed;
- (b) keep daytime running lights on (if so equipped);
- (c) not exceed 15 mph unless otherwise posted;
- (d) come to a full stop at all blind corners, rail and roadway crossings;
- (e) yield the right of way to all Mobile Equipment and other non-highway equipment or service vehicles;
- (f) not operate vehicles (or any internal combustion equipment) inside buildings or enclosed structures unless adequate ventilation is provided;
- (g) not park Foul of Track unless on-track protection is provided;
- (h) not leave vehicles running unnecessarily;

- (i) park only in pre-determined or designated areas;
- (j) always use the parking brake (or wheel chocks) when leaving an unoccupied vehicle running; and
- (k) prior to operation of a vehicle the driver must conduct a walk around of the vehicle to identify any obstacles, clearance restrictions, or adjacent vehicles that may interfere with executing a safe movement.
- (l) where safe and practicable, pull vehicles through or back into marked parking spaces to avoid reverse collisions when exiting.
- (m) If a passenger is present, he exit the vehicle prior to a reverse movement to provide guidance and direction to the driver during the reverse movement and applies to commercial vehicles and vehicles with restricted rear views

14.4.2 All Contractor Personnel who will be operating a highway vehicle or Mobile Equipment in any CP intermodal facilities must complete a Driver Safety Orientation program prior to first entry, and from time to time thereafter as directed by the Manager-in-Charge.

#### **14.5    Seat Belts**

14.5.1 Seat belts must always be worn while operating or riding in any equipped vehicle unless Contractor personnel is actively engaged in inspections requiring said Contractor Personnel to be free of such restraint, and then only when the vehicle is operating at less than 15 mph.

#### **14.6    Loads**

14.6.1 Contractor Personnel shall ensure vehicles are loaded according to weight and dimensional requirements as authorized by state regulations and permits, and properly load and secure tools, material, equipment and freight to avoid shifting, falling, leaking or otherwise escaping from vehicles during operation.

#### **14.7    Riding in CP Vehicles**

14.7.1 Contractor Personnel are prohibited from operating or riding in any CP vehicles unless authorized to do so, or in case of emergency.

### **15 Tools, Equipment and Machinery**

#### **15.1    General Safety Requirements Respecting All Tools, Equipment and Machinery**

15.1.1 Contractor Personnel shall ensure that all tools, equipment, and machinery used be:

- (a) in compliance with all Applicable Legislation;
- (b) in good working order, properly serviced and maintained;
- (c) safe for their proposed use and used only for purposes specified by the manufacturer;
- (d) operated and maintained only by persons properly trained and qualified for that duty;
- (e) seat belts (if present on equipment) must be worn while operating or riding any such equipped mobile equipment;
- (f) if mobile, equipped with appropriate safety devices (e.g. lights, horns, back-up alarms, safety beacons); and prevented from moving, through use of the hand brake, wheel blocking, wheel chocking and/or a derail, where applicable.

15.1.2 The Contractor shall provide adequate lighting when performing work between sunset and sunrise.

15.1.3 Use of CP tools, equipment and machinery by Contractor Personnel is prohibited unless specifically authorized by local CP management.

## **15.2 Hazardous Energy Control- Lockout**

15.2.1 Contractor Personnel shall employ lockout/tagout procedures as required to eliminate the accidental or unexpected start-up, energizing, or release of stored (residual) energy during maintenance, repair and/or servicing activities.

15.2.2 All tools, equipment and machinery must be made safe and isolated from all energy sources rendering the machine, equipment, or process inoperative prior to performing maintenance, repair or servicing related tasks.

15.2.3 No Contractor Personnel can remove any CP applied lock or tag, including bad-order tag.

15.2.4 Notwithstanding the foregoing, if Contractor's Work may create an energy hazard to any CP Personnel, then all affected parties must follow the requirements set forth in CP's Lockout – Hazardous Energy Control Policy and Code of Practice.

15.2.5 If CP Personnel and Contractors are jointly performing maintenance, repair or servicing activities on the same machine, equipment or using the same energy source, then a multi-lock hasp must be applied with individual locks and tags affixed (as per CP's Lockout – Hazardous Energy Control Policy and Code of Practice).

## **15.3 Electrical Safety Requirements**

15.3.1 In addition to the hazardous energy control lockout requirements above, all electrical Work must comply with Applicable Legislation, National Electrical Code (NEC), and National Fire Protection Association (NFPA) requirements.

15.3.2 Contractor Personnel Working on electrical systems must:

- (a) if in proximity to CP Personnel, inform them of:
  - (i) existing or potential electrical hazards;
  - (ii) any specific additional personal protective equipment that may be required;
  - (iii) applicable safe work practices;
  - (iv) applicable emergency and evacuation procedures; and
  - (v) apply lock out procedures as per section above on Hazardous Energy Control-Lockout
- (b) have practices, procedures and training that comply with:
  - (i) Applicable sections of the NEC and NFPA electrical safety standards;
  - (ii) Any other Applicable Legislation; and
- (c) not operate or allow cranes or other mobile equipment to approach closer to any live electrical power line than is permitted by OSHA regulations (29 CFR 1910.333).

## **15.4 Lifting Devices**

15.4.1 All lifting devices, including but not limited to jacks, cranes, cables, slings, chains and hooks shall:

- (a) meet Applicable Legislation governing design, inspection, maintenance and operation;
- (b) be safety certified and labeled or tagged with load capacity limits where required;

- (c) have sufficient capacity for the planned lift;
- (d) have sufficient footing or support area to properly distribute the load during a lift.

## **15.5 Welding and Torch Cutting**

### **15.5.1 When welding or torch cutting, Contractor Personnel shall:**

- (a) be properly trained and qualified;
- (b) ensure that all closed containers have been properly purged;
- (c) direct flame or sparks away from other Workers, equipment and flammable material;
- (d) have a fire extinguisher readily available;
- (e) keep compressed gas and oxygen cylinders stored in a secure, vertical position, with regulators removed and caps applied, labeled properly and located in vented cabinets or other designated locations.

## **15.6 Explosive Actuated Tools**

### **15.6.1 Only Contractor Personnel who are qualified and licensed in accordance with Applicable Legislation, and authorized by CP, may use explosives or explosive actuated tools.**

## **15.7 Unattended Equipment or Machinery**

### **15.7.1 Tools, Equipment and Machinery shall not be left unattended at any time and shall not be stored on CP Property, unless expressly permitted pursuant to a written agreement with CP or by the Manager-in-Charge in writing, and where so permitted, Contractor shall ensure that:**

- (a) storage shall be restricted to the designated area, or as otherwise specified by CP.
- (b) all such tools, equipment and machinery shall be secured in a safe position well clear of all tracks to prevent accidental contact with trains and moving equipment and to not restrict train crew sightlines;
- (c) as much as possible, tools, equipment and machinery shall be stored in locations out of public view.
- (d) Machines must be secured in accordance with on-track machinery rules.

# **16 Emergency Response**

## **16.1 Emergency Response Plan**

### **16.1.1 The Contractor must maintain a current emergency response plan and make it available to CP on request. Emergency response plans must include at a minimum:**

- (a) contractor reporting procedures in the event of an incident or spill;
- (b) emergency response contacts and phone numbers, including phone numbers for CP incident reporting and local CP managers (See Attachment A); and
- (c) containment measures to be taken in the event of an incident or spill.

## **16.2 Initial Response**

16.2.1 Initial response to any emergency condition must follow the following sequence:

- (a) Protect the safety and security of all individuals and communities
- (b) Provide environmental protection and mitigation
- (c) Conduct incident investigation and evidence preservation
- (d) Restore railroad operations

## **16.3 First Aid**

16.3.1 Contractor Personnel must have sufficient First Aid qualified personnel and the required First Aid kit and any other required First Aid equipment at the Work Site, suitable for the crew size, nature of Work being performed and location, all of which shall, at a minimum, comply with OSHA regulations (29 CFR 1910.266).

## **16.4 Fire Protection**

16.4.1 The Contractor must have appropriate fire extinguishers suitable (i.e., type, size and quantity) for nature of the work being done, in compliance with applicable legislation, and be readily available at all times on:

- (a) the work site; and
- (b) all Contractor equipment, machinery and highway vehicles.

16.4.2 Contractor Personnel shall ensure that all necessary precautions are taken to prevent fires, including the following:

- (a) storing flammable material (e.g., paper, rubbish, sawdust, oily or greasy rags, etc.) in proper containers;
- (b) storing and transporting fuel, gasoline or other flammable liquids in approved containers. Use of unapproved containers is prohibited;
- (c) proper disposal of flammable material daily;
- (d) preventing static electricity when dispensing or transferring flammable liquids by using proper grounding and bonding techniques;
- (e) avoid using cutting or welding torches during the last one-half hour of shifts, if possible;
- (f) taking special precautions with fusees, including:
  - (i) store and transport in approved containers;
  - (ii) do not allow fusees to come in contact with any combustible material, including railroad ties or wooden timbers; and
  - (iii) fully extinguish fusees before leaving the location where used;
- (g) promptly advise CP management of any fire on CP Property; and
- (h) fully extinguish or provide protection for any fire prior to leaving the Work Site.

16.4.3 Contractors Working on the CP right-of-way where a high risk of fire exists (e.g., during rail grinding, rail welding) must have:

- (a) appropriate fire prevention and suppression plans (including emergency numbers for CP, local firefighters and fire control districts); and
- (b) additional firefighting equipment and trained Contractor Personnel on site, as required by Applicable Legislation or the Manage In Charge.

## **17 Confined Space**

### **17.1 Confined Space**

- 17.1.1 Qualified and authorized Contractor Personnel must follow all required confined space entry procedures in accordance with applicable legislation and standards prior to entering into a confined space.
- 17.1.2 Rescue procedures and equipment must readily available when required to enter a confined space.

## **18 Reportable Accidents, Incidents and Injuries**

### **18.1 Reportable Injuries**

- 18.1.1 Reportable injuries include any personal injury to:
  - (a) Contractor Personnel;
  - (b) any CP Personnel; or
  - (c) to any third party on CP Property.

### **18.2 Reportable Accidents**

- 18.2.1 Reportable accidents include any occurrence that results in:
  - (a) damage to railroad tracks, right of way, buildings or other CP Property;
  - (b) damage to railroad equipment;
  - (c) damage to CP highway vehicles;
  - (d) release of hazardous material;
  - (e) spill or loss of transported commodities; and
  - (f) any threat to the environment.

### **18.3 Reportable Incidents**

- 18.3.1 Reportable incidents include:
  - (a) unintended movement of railroad equipment;
  - (b) failure to provide track protection for Workers when required;
  - (c) movement of railroad equipment beyond authorized limits;
  - (d) operation of railroad equipment by an unqualified person;
  - (e) unauthorized handling of a track switch;
  - (f) damage, vandalism or tampering with any railroad signals, structures or railroad safety device;

- (g) seepage, leakage, spills of, or other contamination from, Hazardous Materials;
- (h) actual, threaten or suspected security related incidents;
- (i) slides, washouts or other on-track obstructions; or
- (j) any occurrence that may disrupt the movement of trains or affect safe rail operations.

## 19 Reporting

### 19.1 Emergency Reporting

19.1.1 In the case of an emergency, Contractor Personnel must call:

- (a) 911, where this emergency response system exists, or
- (b) the local police, fire or emergency department in all cases; and
- (c) CP Police Services Communication Center- 1-800-716-9132.

### 19.2 Accident, Incident, Injury Reporting

19.2.1 When an accident, incident or injury occurs on CP Property, the Contractor must:

- (a) immediately report it to the
  - (i) CP Police Services Communication Center 1-800-716-9132; and
  - (ii) CP Manager-in-Charge
- (b) follow all instructions given to protect the scene.

19.2.2 CP is obligated to report Contractor Personnel injuries occurring on CP property to the Federal Railroad Administration (FRA). Any state or required regulatory reporting remains the Contractor's responsibility.

### 19.3 Information to Report

19.3.1 Information required with the initial report includes:

- (a) type of incident;
- (b) date and time of occurrence;
- (c) location (mileage, subdivision, building, yard or other physical description);
- (d) identity of person(s) involved or injured (company & name);
- (e) description of any hazardous materials involved;
- (f) type & unit number of any railroad equipment or vehicle involved;
- (g) description of occurrence, damage and/or injury, and cause if known;
- (h) description of any emergency response;
- (i) name and contact information of person making the report; and
- (j) any such other information that CP may require.

### 19.4 Environmental Incidents and Spills

19.4.1 In the event of an environmental incident or spill that could have a negative impact on the environment, the Contractor must immediately:

- (a) report the incident to the Operations Center, the Manager-in-Charge, and the designated CP Contact as per the governing agreement relating to the Work;
- (b) take all reasonable actions to contain the spill;
- (c) respond in accordance with its emergency response plan; and

- (d) provide CP with the following information:
  - (i) description of location and surrounding area, including any sensitive environmental areas nearby (e.g., rivers, parks, sewers);
  - (ii) type and quantity of substance released;
  - (iii) cause of spill or deposit, if known; and
  - (iv) details of any immediate action taken or action proposed to be taken to contain spill and recover substance.

## **19.5 Additional Contractor Requirements**

19.5.1 Contractor and Contractor Personnel must:

- (a) ensure an appropriate emergency response is initiated;
- (b) protect any evidence until released by the CP Manager-in-Charge;
- (c) cooperate fully with any CP investigation;
- (d) cooperate fully with any investigating government agency; and
- (e) notify CP if information is requested by any investigating government agency.

## **20 Contractor & Contractor Personnel Acknowledgement**

### **Acknowledgement**

- 20.1.1 Contractor and Contractor Personnel who Work on CP Property shall be deemed to have read and understood the content of these Minimum Safety Requirements for Contractors While Working on CP Property in the United States, as amended from time to time, and to agree to be bound by them.
- 20.1.2 These Minimum Safety Requirements for Contractors While Working on CP Property in the United States are subject to change without prior notice. The most current version of these Minimum Safety Requirements can be viewed at [www.cpr.ca](http://www.cpr.ca) or by contacting the Manager-in-Charge.



***Home Safe™ is a commitment to be vigilant about personal safety  
and the safety of co-workers.***

## NOTES:

## 21 Attachment A – Emergency Information Sheet

<b>EMERGENCY CONTACT INFORMATION</b>		
<b>EMERGENCY CONTACTS</b>	<b>PHONE</b>	<b>LOCATION</b>
CP Minneapolis Operations Center	1-800-766-4357	.
CP Police Services	1-800-716-9132	
CP Railroad Traffic Controller Radio Channel		
Manager-in-Charge		
Local Police Services		
Local Fire Services:		
Local EMS		
Hospital		
Physician		
Aircraft Service, (if applicable):		
Watercraft Service, (if applicable):		
Other Emergency Services		
<b>Emergency Evacuation Route</b> (Describe nearest evacuation assembly location OR Provide sketch on back)		

## WORK SITE INFORMATION

	PHONE	LOCATION
Work Site Location Name		
Railroad Subdivision & Mileage		
Address, Number and Street		
Nearest Town		
CP Manager-in-Charge		
Emergency Site Access Route (Describe route from nearest emergency services location in detail including access roads & physical landmarks OR provide sketch on back.)		
Contractor Supervisor		
Site Telephone		
Certified First Aid Attendant		
Location of First Aid Supplies at Site		
Location of Fire Extinguishing Equipment:		
Location of WHIMS data sheets		

## UTILITY INFORMATION

UTILITIES CONTACT	PHONE	LOCATION
Natural Gas:	( )	
Electrical:	( )	
Fiber Optic Line:	( )	
Water & Sewer:	( )	
Telephone:	( )	
Cable System:	( )	
Qualified employee(s) in:	( )	
Confined Space Entry, (if applicable):	( )	
Equipment requirements for Confined Space Entry, (if applicable):	( )	
Other:		



## Contractor Safety Briefing Card \_U.S.

Complying with CP's Minimum Safety Requirements for Contractors Working on CP Property in the U.S is required at times

### Safety Briefings

- Identify Local On-Site Supervisor and CP Manager-in-Charge
- Review Site Safety Plan
- Ensure all employees know the scope & limits of the work being performed
- Identify and communicate any restricted or high hazard areas that must be avoided, including underground services and overhead power lines
- Identify and discuss with all employees any safety hazards in the immediate work place and the measures used to protect against them
- Always hold daily safety briefings or whenever the scope, location or hazards of the work change
- Always include any affected CP employees in Safety Briefings

### Identification & Qualifications

- Ensure all contractor employees have proper identification while on CP property
- Confirm all contractor employees are qualified & trained for the work to be undertaken and have required certifications/documentation as required
- Transportation of dangerous goods always requires certification, placards & regulatory documents
- Federal regulations govern inspection and maintenance of track, crossings, signal systems, & rolling stock

### Personal Protection

- Hard hats, high visibility apparel, safety glasses & safety boots are required
- Additional PPE (i.e. fall protection, etc.) must be used dependent on work type and regulations/standards governing it
- Chemicals or controlled products being used must have proper documentation and Safety Data Sheets (SDSs) documents on site and disclosed to CP
- Excavations must not be left unattended unless properly protected & CP Manager in Charge notified

### Personal Conduct

- Use and possession of any drugs or alcoholic beverages is prohibited on CP property
- Any act or threat of violence or harassment is prohibited
- Smoking is prohibited in CP buildings, vehicles, equipment, where posted, or a risk of fire or explosion exists
- Use of cell phones & entertainment devices is prohibited unless permitted by CP policy/local CP manager

### On or About Tracks/Track Protection

- Expect the movement of trains or on-track work equipment at any time and in any direction
- Leave at least 15 feet of room if walking around or in front of stationary railroad equipment. If required to walk between stationary railroad equipment left standing on the same track ensure at least 50 feet separation by the equipment
- If required to cross a railroad track, approach it 90 degrees to the rail, look both ways to ensure no moving railroad equipment and cross it without stepping on the rail.



## Contractor Safety Briefing Card \_U.S.

### On or About Tracks/Track Protection Cont.

- Contact CP in advance for appropriate track protection if working closer than 25 feet to any railroad tracks
- Roadway workers required to work foul of any track must have On Track Safety rules training that complies with current FRA regulations
- Know the type of track protection provided and comply with those limits & instructions at all times
- Exit on-track work equipment and stand at least 20 feet back from track when trains are passing
- In multi-track territory always exit to the non-live side and never stand on or between adjacent tracks
- Temporary structures, material or equipment may not be placed or stored closer than 12 ft. to the nearest rail
- Contractor's equipment shall not be operated within 50 feet of the track unless specifically authorized during passage of trains or track units
- Handling of track switches and derails is prohibited unless specifically authorized and qualified
- Altering, obstructing or operating any track, tools, bridge or signal components is prohibited unless authorized

### Vehicles

- All vehicle and equipment operators must comply with all traffic signage and posted speed limits at all times
- Seat belts must be worn at all times unless engaged in inspections on CP property and travelling less than 15 mph
- All mobile equipment must be operated with functioning lights, horns, beacons & backup alarms
- Unless authorized, Contractors are not permitted to operate or ride on any CP rolling stock
- Unless authorized in writing, operating CP vehicles is prohibited

### Emergency Conditions

- Identify local emergency evacuation plans & assembly locations
- Identify emergency first aid providers and the location of first aid and fire suppression equipment
- Ensure an Emergency Information Sheet with contact numbers (See Appendix A of Minimum Safety Requirements document for an example) is available & accessible
- Ensure emergency communication devices are available at work location
- Immediately advise CP of any accidents, injuries, spills, near miss incidents and hazards or any emergency or hazardous condition including those that may affect the safe passage of trains to the CP Police Communication Center-  
**1-800-716-9132**
- Initial response to any emergency situation must follow the following sequence:
  - Protect the safety & security of all individuals and communities
  - Provide environmental protection & mitigation
  - Conduct incident investigation & evidence preservation
  - Restore railway operations & resume work

**Canadian Pacific (CP)** is committed to provide a safe and healthy working environment for all railroad and contractor employees and welcomes you to its property. This document provides a general orientation/briefing outline and basic safety requirements all must comply with when working on CP property.

Full requirements are contained in the Minimum Safety Requirements for Contractors Working on CP Property in the US\_ September 1, 2018

# Exhibit A

[See attached]

**EASEMENT AGREEMENT NUMBER** \_\_\_\_\_

**(Construction and Maintenance of Culvert System and Hike/Bike Trail – Subsurface Only)**

Date: \_\_\_\_\_, 2018

For good and valuable consideration 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 700 Canadian Pacific Plaza, 120 S. Sixth Street, Minneapolis, Minnesota 55402 ("Grantor")

hereby grants unto

**THE CITY OF DUBUQUE, IOWA**, a government agency ("Grantee"),

an easement ("Easement") described and conditioned as follows:

1.0 **DESCRIPTION OF PROPERTY:** The Easement is granted under a strip of land located in Dubuque, Dubuque County, Iowa, more fully described as:

**PART OF LOT 1-1 OF MINERAL LOT 106, PART OF LOT 50 OF MINERAL LOT 107, PART OF LOTS 1 THRU 4 AND LOT 5 OF BLOCK 1, PART OF LOTS 1 & 2 OF BLOCK 2, PART OF VACATED ALLEY IN BLOCK 1, AND PART OF VACATED 19TH STREET ALL IN RAILROAD ADDITION, IN THE CITY OF DUBUQUE, IOWA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING AT THE NORTHEAST CORNER OF LOT 2 OF BEE BRANCH SUBDIVISION NO. 11;**

**THENCE SOUTH 34 DEGREES 08 MINUTES 12 SECONDS EAST, 209.66 FEET ALONG THE EAST LINE OF SAID LOT 2 TO THE SOUTHEAST CORNER OF SAID LOT 2 AND THE POINT OF BEGINNING;**

**THENCE NORTH 22 DEGREES 11 MINUTES 29 SECONDS EAST, 36.60 FEET;**

**THENCE SOUTH 59 DEGREES 49 MINUTES 23 SECONDS EAST, 182.11 FEET TO THE EAST RIGHT OF WAY LINE OF DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION;**

**THENCE SOUTH 30 DEGREES 30 MINUTES 25 SECONDS WEST, 110.74 FEET ALONG SAID EAST RIGHT OF WAY LINE;**

EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 1 of 12

DM & E, Grantor  
City of Dubuque, Grantee

THENCE CONTINUING SOUTHWESTERLY ALONG SAID EAST RIGHT OF WAY LINE A DISTANCE OF 51.59 FEET ALONG THE ARC OF A CIRCULAR CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 877.30 FEET, A CENTRAL ANGLE OF 3 DEGREES 22 MINUTES 10 SECONDS, AND WHOSE CORD BEARS SOUTH 28 DEGREES 49 MINUTES 20 SECONDS WEST, 51.59 FEET;

THENCE NORTH 59 DEGREES 49 MINUTES 16 SECONDS WEST, 159.93 FEET TO THE WEST RIGHT OF WAY LINE OF THE DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION;

THENCE NORTH 22 DEGREES 11 MINUTES 29 SECONDS EAST, 127.30 FEET ALONG SAID WEST RIGHT OF WAY LINE TO THE POINT OF BEGINNING.

CONTAINING 27,662 FEET, MORE OR LESS, AND SUBJECT TO EASEMENTS, RESERVATIONS, RESTRICTIONS, AND RIGHT-OF-WAY RECORD AND NOT OF RECORD.

and hereinafter referred to as the "**Easement Area**." The Easement Area is shown in the drawing attached hereto as **Exhibit A** and made a part hereof.

This grant of the Easement includes the transfer by Grantor to Grantee of ownership of and responsibility for the two existing 10 foot by 11 foot box culverts within and extending beyond the Easement Area ("Existing Culverts") and the concrete floors and wing walls located at the inlets of the Existing Culverts.

The Easement Area is underground only and does not include the surface of the land overlying the Easement Area.

2.0 **PURPOSE:** The Easement shall be limited to the installation, construction, maintenance, repair, replacement, and use of an underground channelization of Bee Branch Creek under Grantor's railroad right-of-way and tracks through six (6) eight (8)-foot diameter steel culverts with inlet and outlet headwalls (the "**Steel Culverts**"), the Existing Culverts, four (4) twelve (12)-foot by ten (10)-foot reinforced concrete box culverts (the "**Box Culverts**") to provide for the free flow of water from the Upper Bee Branch Creek north of Garfield Avenue through the Grantor's property at 506 Garfield Avenue to a proposed reinforced concrete transition structure (the "**Transition Structure**") that will allow for the flow to transition from the Box Culverts to the Steel Culverts and the Existing Culverts; and a headwall structure at the downstream end of the Steel Culverts and the Existing Culverts where the water will flow into the Lower Bee Branch creek; and the modification of the Existing Culverts for utilization for grade-separated pedestrian and non-motorized cycle traffic and trail purposes and as residual stormwater / flood mitigation structures ("**Trail Purposes**") (together hereinafter referred to as the "**Culvert System**"). The Grantee shall be solely responsible for the functioning of the Culvert System and shall maintain an adequate outlet for water conveyed by the Culvert System over and across property not owned by Grantor.

3.0 **RESERVATIONS:** Grantor reserves unto itself, and its successors and assigns:

- 3.1 fee title to the Easement Area; Grantee's maintenance and use of the Easement Area, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Agreement;
- 3.2 the exclusive right and privilege to use the Easement Area for the maintenance, construction, and operation of railroad tracks and facilities and other purposes in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area pursuant to this Agreement; and

- 3.3 the right to permit other parties to use the Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area pursuant to this Agreement;
- 3.4 the right of incidental use of the Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area pursuant to this Agreement; and
- 3.5 the right and privilege to use the Easement Area for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this Agreement or which unreasonably interferes with or restricts the rights granted to Grantee.
- 3.6 Notwithstanding anything to the contrary contained herein, Grantor's railroad operations, tracks and facilities shall be deemed superior to the rights granted to the Grantee under this Agreement.

#### **4.0 TERM, TERMINATION AND EXPIRATION:**

- 4.1 This Easement shall remain in effect so long as required by Grantee for the functioning of the Culvert System. Additionally, the Easement shall be subject to termination or expiration as follows:
  - 4.1.1 **Abandonment:** In the event Grantee fails to use or occupy any part of the Easement Area for a period of twelve (12) consecutive months and Grantor serves upon Grantee a written notice alleging such failure and abandonment of the Easement. If Grantee does not refute said allegation or make use of the Culvert System within 30 days following receipt of said written notice, then Grantee shall be deemed to have agreed with Grantor's allegations and the Easement shall therewith be extinguished.
  - 4.1.2 **Removal:** In the event Grantee substantially removes the Culvert System with the written consent of Grantor and with the intent of not replacing it, then the Easement shall therewith be extinguished.
  - 4.1.3 **Breach:** If Grantee is unable or unwilling to cure a breach of any of the provisions of this Agreement within thirty (30) days (or such longer period as may be reasonably required if Grantee promptly initiates the cure and diligently prosecutes the cure to completion) following receipt of a written notice from Grantor detailing such breach, then at Grantor's sole option this Easement may therewith be extinguished. The foregoing shall be subject, however, to reasonable seasonal accommodations for any physical work to the Culvert System required to cure a breach.

This Section 4.1 shall not be deemed to limit Grantor's ability to enforce the obligations of Grantee to maintain the Culvert System pursuant to the terms of this Agreement.

#### **5.0 CULVERT CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:**

- 5.1 The initial construction of the Culvert System will be pursuant to the separate construction agreement (the "**Construction Agreement**") between the parties, dated \_\_\_\_\_, 2018. The Grantee shall retain ownership of the Culvert System after construction.

5.2 If, in the unlikely event it becomes necessary, Grantee, at Grantee's sole expense, shall promptly make such repairs to or changes in the Culvert System, including reasonable changes in location, as Grantor may require to accommodate changes in railroad operations, construction of railroad facilities or the safety of persons, railroad operations or the environment, Grantor covenants that it shall not unreasonably act upon its rights contained in this section 5.2.

5.3 Grantee shall at all times during the term of this Agreement, at Grantee's sole cost and expense, keep and maintain the Culvert System in a structurally safe and sound condition, in good repair, clear of obstructions, and in compliance with the plans and specifications therefor and this Agreement. Without limiting the generality of the foregoing, it is expressly acknowledged that Grantee's maintenance obligations shall apply to the Steel Culverts, the two Existing Culverts, the concrete floors and wing walls located at the inlets of the Existing Culverts, the Box Culverts, and the Transition Structure. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain the Culvert System.

5.4 Any repair, reconstruction, removal or other changes or modifications to the Culvert System, except those made on an emergency basis, made after completion of the Culvert's initial construction, shall be subject to a separate construction agreement between the parties that will include the provisions set forth in Exhibit B, or such other provisions that at the time are necessary for the safety of persons, community, railroad operations and the environment.

5.5 Except as may be expressly provided in any separate construction or maintenance agreement, Grantee shall have no right to enter or make any use of the surface of the land overlying the Easement Area for construction, maintenance, reconstruction, removal, changes, or modifications of or to the Culvert System. Upon written request by Grantee, Grantor shall reasonably grant access to the two Existing Culverts for purposes of maintenance of the two Existing Culverts.

6.0 **TAXES AND ASSESSMENTS:** Grantee shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the existence or use of said land for the Culvert System.

7.0 **LIABILITY AND HOLD HARMLESS; INDEMNITY:**

7.1 Damage to Railroad facilities. If any railroad tracks, facilities, or equipment owned, used, or maintained by the Grantor are damaged by Grantee or the Culvert System, the Grantor shall repair (or arrange for the repair of) such damage and the Grantee shall pay the full cost of such repair within 30 days after the Grantor shall tender a bill therefor.

7.2 Assumption of risks. Grantee acknowledges that it is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about Grantor's property. Without in any way limiting the scope of the preceding sentence, Grantee assumes the risk that the Culvert System and any monitoring wells, elevations bench marks, reference points, and other installations or property of Grantee located within, under, above, or in the vicinity of the Easement Area may be disturbed, damaged, or destroyed as the result of railroad operations or mishaps by third persons. As an inducement to Grantor to grant the rights herein and as part consideration therefor, Grantee agrees that it shall not make any claim against and shall hold harmless Grantor, its officers, agents, and employees on account of the same, even if such disturbance, damage, or destruction arises from the negligence of the Grantor or its employees, agents, or invitees, but excluding damage or destruction

that is attributable to Grantor's gross negligence or willful misconduct. Grantee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on Grantor's property. For purposes of this Agreement, the Parties agree that "gross negligence or willful misconduct" shall be defined as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness, including all of the following elements: (1) knowledge of the peril to be apprehended; (2) knowledge that injury, damage or loss is a probable, as opposed to a possible, result of the danger; and (3) a conscious failure to avoid the peril.

7.3 **Indemnification Provisions.** To the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Grantor Indemnified Parties (as defined below) from and against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines, sanctions, court costs, litigation costs, and attorneys' fees arising out of or relating to any breach of this Agreement, any destruction of (or damage to) any property or natural resource, any upstream or downstream flooding caused in whole or in part by the Culvert System, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the work, any action or omission of the Grantee, its employees, agents, contractors and subcontractors, while on or about the Grantor's property pursuant to this Agreement, or the exercise by the Grantee of the rights granted by this Agreement, including but not limited to damage to Grantor's railroad tracks caused by or associated in any way with the Culvert System, except to the extent caused by the gross negligence or willful misconduct of Grantor Indemnified Parties. As used in this Agreement, "**Grantor Indemnified Parties**" means the following businesses and their officers, directors, employees, successors, assigns and agents: Dakota, Minnesota & Eastern Railroad Corporation, Soo Line Holding Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway or Canadian Pacific, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to Grantor property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

7.4 **Insurance Provisions.** Grantee is a member of and has an Agreement with the Iowa Communities Assurance Pool (ICAP), a local government risk pool authorized by Iowa Code Sec. 670.7. Grantee shall maintain in full force and effect its membership in ICAP (and, during construction of the Culvert System, cause its contractor to procure and maintain in effect the insurance policies required under the Construction Agreement) at all times during the term of this Easement, with initial limits of coverage shown in brackets "[ ]" as follows:

7.4.1. Commercial General Liability coverage with a combined single limit of \$[5,000,000].

7.4.2 The above ICAP agreement shall further be subject to the following:

a. The coverage limits of the ICAP agreement shall be initially as shown in brackets, but such amounts shall after one year from the date hereof be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.

b. The ICAP agreement shall name the Grantor as an additional party. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate of coverage for the ICAP agreement stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate of coverage shall include the following endorsement:

"It is agreed that the coverage evidenced by this certificate covers the liability assumed by the insured in connection with the use as set forth in the easement grant dated \_\_\_\_\_, 2018 by Dakota, Minnesota & Eastern Railroad Corporation to the City of Dubuque."

## 8.0 **MISCELLANEOUS:**

- 8.1 **Grantee/Grantor:** As used in this Agreement, the terms "**Grantee**" and "**Grantor**" shall include the parties first named above and their respective successors or assigns.
- 8.2 **Headings:** The paragraph 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 paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.
- 8.3 **Severability of Terms:** Each provision, paragraph, 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, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.
- 8.4 **No Waiver:** Any act or omission constituting a breach of this Agreement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof.
- 8.5 **Notices:** Any notice given by a party pursuant to this Agreement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.
- 8.6 **Merger:** The Construction Agreement and this Agreement completely outline all of the rights, responsibilities, and obligations of the parties hereto and may not be amended or altered except by an instrument in writing signed by both parties. Furthermore, the Construction Agreement and this Agreement merge all prior oral representations and negotiations of the parties hereto.
- 8.7 **No Warranty:** Grantor does not warrant title to the Easement Area, and makes no representations or warranties, express or implied, as to the habitability of the Easement Area or the fitness of the Easement Area for Grantee's purpose or any other particular purpose.
- 8.8 **Default and Remedies:** In the event of any violation by Grantor or Grantee of any of the provisions of this Agreement, in addition to the right to collect damages and/or receive specific performance, the Grantor or Grantee will have the right to seek an injunction of such violation from a court of competent jurisdiction. The prevailing party in any such action shall be entitled to an award of its reasonable attorney's fees incurred in enforcing this Agreement. In addition, in the event the Grantee fails to perform any of the provisions of this Agreement or violates any of the provisions hereof, the Grantor may cure such default;

provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantee not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantor, such default is emergency in nature. In the event the Grantor fails to perform any of the provisions of this Agreement or violates any provisions hereof, the Grantee may cure such default at the Grantee's sole cost and expense; provided however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantor not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantee, such default is emergency in nature, and only if the Grantor approves and authorizes the Grantee's proposed cure in writing. If the Grantor elects to perform the action to have been performed by the Grantee, on completion of such action, an itemized statement of the costs thereof will be submitted to the Grantee, and the amount thereof will be immediately due and payable by the Grantee to the Grantor. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity. Notwithstanding anything in the foregoing that might be construed to the contrary, Grantor shall not be required to give notice to Grantee prior to repairing or arranging for the repair of tracks, facilities, or equipment damaged by Grantee or the Culvert System.

8.9 No Partnership, Joint Venture, or Shared Enterprise. The Grantee's construction and operation of the Culvert System in accordance with this Agreement shall not be deemed to create a partnership, joint venture, or shared enterprise of any kind with the Grantor.

This Agreement 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**  
doing business as Canadian Pacific

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

Name: \_\_\_\_\_

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

STATE OF MINNESOTA      )  
                                  ) ss:  
COUNTY OF HENNEPIN      )

The foregoing easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by\_\_\_\_\_, the \_\_\_\_\_ of Dakota, Minnesota and Eastern Railroad Corporation, a Delaware corporation, on behalf of the corporation.

Notary Seal

Notary Public

This instrument was drafted by:  
Real Estate Department  
700 Canadian Pacific Plaza  
120 South Sixth Street  
Minneapolis MN 55402

EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

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DM & E, Grantor  
City of Dubuque, Grantee

EXHIBIT A  
(Drawing of Easement Area)

[See following page]

EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

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DM & E, Grantor  
City of Dubuque, Grantee

CORE/2061322.0024/138216959.7

**PERMANENT EASEMENT EXHIBIT A**

PERMANENT EASEMENT UNDER AND THROUGH PART OF LOT 1-1 OF  
MINERAL LOT 106, PART OF LOT 50 OF MINERAL LOT 107, PART OF LOTS 1  
THRU 4 AND LOT 5 OF BLOCK 1, PART OF LOTS 1 & 2 OF BLOCK 2,  
PART OF VACATED ALLEY IN BLOCK 1, AND PART OF VACATED 19TH  
STREET ALL IN RAILROAD ADDITION, IN THE CITY OF DUBUQUE, IOWA

### GRAPHIC SCALE

$$1'' = 40'$$

0 40 80  
1" = 40'

DRAWING MAY HAVE BEEN REDUCED

SUBSURFACE EASEMENT TO BE GRANTED TO THE CITY OF DUBUQUE WITH TRANSFER OF TWIN BOX OWNERSHIP (TYP)

EXISTING TWIN BOX CULVERT

PERMANENT EASEMENT  
27,662 SQ. FT. +/-

VACATED ROW 8,069 SQ. FT. +/-

NEW EASEMENT 14,460 SQ. FT. +/-

NOTE

SUBSURFACE EASEMENT TO BE GRANTED  
WITH TRANSFER OF TWIN BOX OWNERSHIP  
NOT IN VACATED ROW'S 5,133 SQ. FT. +/-

TOTAL EASEMENT 27,662 SQ. FT. +/-  
VACATED ROW 8,069 SQ. FT. +/-  
NEW EASEMENT 14,460 SQ. FT. +/-

## LEGEND

**EASEMENT EXCEPTION AREAS AS RETAINED  
BY CITY PER DOC. # 4035-85**

— — — — — LOT LINE

— • — PROPOSED EASEMENT LINE

P.O.B. POINT OF BEGINNING

R.O.W. RIGHT OF WAY

## THE UNIVERSITY LOGO

PROPRIETOR: IOWA, CHICAGO & EAST

CORP. (DBA CP RAILWAY)

PREPARED FOR: CITY OF

DATE PREPARED: JAN. 24, 2018, REV. MAY 30, 2018

Digitized by srujanika@gmail.com

**NOTE**  
THIS SURVEY IS SUBJECT TO  
EASEMENTS, RESERVATIONS,  
RESTRICTIONS AND  
RIGHTS-OF-WAY OF RECORD  
AND NOT OF RECORD



www.livengr.com - 800.356.4491		TRANSPORTATION ENGINEERING
DRAWN	JJB	PLAT NO. 1-IA-18
CHECKED	SAF	PROJ. NO. 06169-02
DATE	5-30-18	SHEET 1 of 2
P:\\06169\\169-02\\DRAWINGS\\SUR\\06169.CB-BR		

EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

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DM & E, Grantor  
City of Dubuque, Grantee

## PERMANENT EASEMENT EXHIBIT A

PERMANENT EASEMENT UNDER AND THROUGH PART OF LOT 1-1 OF MINERAL LOT 106, PART OF LOT 50 OF MINERAL LOT 107, PART OF LOTS 1 THRU 4 AND LOT 5 OF BLOCK 1, PART OF LOTS 1 & 2 OF BLOCK 2, PART OF VACATED ALLEY IN BLOCK 1, AND PART OF VACATED 19TH STREET ALL IN RAILROAD ADDITION, IN THE CITY OF DUBUQUE, IOWA

### LEGAL DESCRIPTION

A permanent easement located under and through part of Lot 1-1 of Mineral Lot 106, part of Lot 50 of Mineral Lot 107, part of Lots 1, 2, 3, 4, and 5 of Block 1, part of Lots 1 and 2 of Block 2, part of Vacated Alley in Block 1, and part of Vacated 19th Street all in Railroad Addition, in the City of Dubuque, Iowa, more particularly described as follows;

Commencing at the Northeast Corner of Lot 2 of Bee Branch Subdivision No. 11;

Thence South 34 degrees 08 minutes 12 seconds East, 209.66 feet along the east line of said Lot 2 to the Southeast Corner of said Lot 2 and the Point of Beginning;

Thence North 22 degrees 11 minutes 29 seconds East, 36.60 feet;

Thence South 59 degrees 49 minutes 23 seconds East, 182.11 feet to the East Right of Way line of the Canadian Pacific Railway;

Thence South 30 degrees 30 minutes 25 seconds West, 110.74 feet along said East Right of Way line;

Thence continuing Southwesterly along said East Right of Way Line a distance of 51.59 feet along the arc of a circular curve concave to the Southeast, having a radius of 877.30 feet, a central angle of 3 degrees 22 minutes 10 seconds, and whose cord bears South 28 degrees 49 minutes 20 seconds West, 51.59 feet;

Thence North 59 degrees 49 minutes 16 seconds West, 159.93 feet to the West Right of Way line of the Canadian Pacific Railway;

Thence North 22 degrees 11 minutes 29 seconds East, 127.30 feet along said West Right of Way line to the Point of Beginning.

Containing 27,662 feet, more or less, and subject to easements, reservations, restrictions, and right-of-way record and not of record.

PROPRIETOR: IOWA, CHICAGO & EASTERN RAILROAD CORP. (DBA CP RAILWAY)  
PREPARED FOR: CITY OF DUBUQUE  
DATE PREPARED: JAN. 24, 2018, REV. 5-30-18



**EXHIBIT B**  
Requirements for Entry unto railroad property for  
Maintenance or repair of Culvert System.

- 1 As used herein, the term "**Culvert Work**" shall mean the installation, maintenance, repair, changing or renewal of the Culvert System the requires the grading, excavation or disturbance of soil adjacent or above the Culvert System, or such activities that could result in impacts to the adjacent railroad operations including, but not limited to, as vibration, noise, smoke and fumes. Work does not include the use or maintenance activities such as cleaning, painting, or electrical work where the foregoing impacts to soil or railroad operations are not present.
2. Grantee, shall secure all necessary public approvals and permits for any Culvert Work in the Easement Area.
- 3 Prior to any Culvert Work, Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to Grantee's Culvert Work. Grantee expressly assumes the risk of damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, and agrees to pay any claims arising from damage thereto in connection with its Culvert Work. Grantor makes no representation by the granting of this indenture that the Easement Area is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.
- .4 Grantee shall not carry on any Culvert Work until:
  - A. it shall have given Grantor at least five (5) days' written notice, and
  - B. an authorized representative of Grantor shall, at Grantor's election, be present to supervise same. Upon bills being rendered for the authorized representative's supervision, Grantee shall promptly reimburse Grantor for all reasonable expenses incurred by it in connection with such supervision, including all labor costs for flagmen supplied by Grantor to protect railroad operations, and for the entire cost of the furnishing, installation and later removal of any temporary supports for said tracks, if any.
5. Prior to the commencement of Culvert Work, the Grantee shall require any third party contractor acting on behalf of the Grantee pursuant to this Easement to:
  - A. to the extent permitted by law, execute and deliver to the Grantor a release of liability that shall provide that the contractor 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 any negligence or willful misconduct of the Contractor (or its employees, agents, or contractors) while on the Easement Area pursuant to this Easement. Indemnitees means Grantor, its subsidiaries, affiliated companies and parent companies, and their directors, officers, employees and agents, including without limitation, Soo Line Railroad Company, Delaware and Hudson Railroad Corporation, Dakota, Minnesota and Eastern Railroad Corporation, Soo Line Corporation, Wyoming, Dakota Railroad Properties, Inc., The Milwaukee Motor Transportation Company, Hiawatha Transfer Company, and Canadian and Pacific Railway Company.
  - B. to maintain during any period of time that any of its employees or agents or equipment are upon the Property, policies of insurance conforming to the insurance requirements set forth in the Construction Agreement.

C. The above polices of insurance shall further be subject to the following:

- i. The coverage limits of the foregoing policies shall be initially as set forth in the Construction Agreement, but such amounts shall after one year from the date of this Easement Agreement be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.
- ii. Each such insurance policy shall name the Grantor as an additional Insured. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate or certificates of insurance for each such insurance policy stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate for the Commercial General Liability Policy of insurance shall include the following endorsement:

"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work to be performed in connection with the Roadway as set forth in the easement grant dated \_\_\_\_\_, 20\_\_ by Dakota, Minnesota & Eastern Railroad Corporation to the City of Dubuque including work upon railroad property, within railroad right of way and in close proximity of operating railroad tracks."

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EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

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DM & E, Grantor  
City of Dubuque, Grantee

CORE/2061322.0024/138216959.7

# Exhibit B

[See attached]

**EASEMENT AGREEMENT NUMBER** \_\_\_\_\_  
**(Construction and Maintenance of Culvert System and Hike/Bike Trail)**

Date: \_\_\_\_\_, 2018

For good and valuable consideration 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 700 Canadian Pacific Plaza, 120 S. Sixth Street, Minneapolis, Minnesota 55402 ("Grantor")

hereby grants unto

**THE CITY OF DUBUQUE, IOWA**, a government agency ("Grantee"),

an easement ("Easement") described and conditioned as follows:

1.0 **DESCRIPTION OF PROPERTY:** The Easement is granted across a strip of land located in Dubuque, Dubuque County, Iowa, more fully described as:

**Parts of Lots 44 thru 50 in Mineral Lot 107, in the City of Dubuque, Iowa, more particularly described as follows:**

**Beginning at the Southeast Corner of Lot 2 of Bee Branch Subdivision No. 11;**

**Thence North 34 degrees 08 minutes 12 seconds West, 209.66 feet along the east line of said Lot 2 to the south Right of Way line of Garfield Avenue and the Northeast Corner of said Lot 2;**

**Thence North 55 degrees 47 minutes 48 seconds East, 33.23 feet along said Right of Way line;**

**Thence South 51 degrees 59 minutes 38 seconds East, 59.96 feet;**

**Thence South 34 degrees 23 minutes 47 seconds East, 117.89 feet;**

**Thence South 22 degrees 11 minutes 29 seconds West, 62.66 feet to the Point of Beginning.**

**Containing 9,442 feet, more or less, and subject to easements, reservations, restrictions, and right-of-way record and not of record.**

EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 1 of 12

DM & E, Grantor  
City of Dubuque, Grantee

and hereinafter referred to as the "**Easement Area**." The Easement Area is shown in the drawing attached hereto as **Exhibit A** and made a part hereof.

2.0 **PURPOSE:** The Easement shall be limited to the installation, construction, maintenance, repair, replacement, and use of an underground channelization of Bee Branch Creek under Grantor's railroad right-of-way and tracks through six (6) eight (8)-foot diameter steel culverts with inlet and outlet headwalls (the "**Steel Culverts**"), the Existing Culverts, four (4) twelve (12)-foot by ten (10)-foot reinforced concrete box culverts (the "**Box Culverts**") to provide for the free flow of water from the Upper Bee Branch Creek north of Garfield Avenue through the Grantor's property at 506 Garfield Avenue to a proposed reinforced concrete transition structure (the "**Transition Structure**") that will allow for the flow to transition from the Box Culverts to the Steel Culverts and the Existing Culverts; and a headwall structure at the downstream end of the Steel Culverts and the Existing Culverts where the water will flow into the Lower Bee Branch creek; and the modification of the Existing Culverts for utilization for grade-separated pedestrian and non-motorized cycle traffic and trail purposes and as residual stormwater / flood mitigation structures ("**Trail Purposes**") (together hereinafter referred to as the "**Culvert System**"). The Grantee shall be solely responsible for the functioning of the Culvert System and shall maintain an adequate outlet for water conveyed by the Culvert System over and across property not owned by Grantor.

3.0 **RESERVATIONS:** Grantor reserves unto itself, and its successors and assigns:

- 3.1 fee title to the Easement Area; Grantee's maintenance and use of the Easement Area, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Agreement;
- 3.2 the exclusive right and privilege to use the Easement Area for the maintenance, construction, and operation of railroad tracks and facilities and other purposes in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area pursuant to this Agreement; and
- 3.3 the right to permit other parties to use the Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area pursuant to this Agreement;
- 3.4 the right of incidental use of the Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area pursuant to this Agreement; and
- 3.5 the right and privilege to use the Easement Area for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this Agreement or which unreasonably interferes with or restricts the rights granted to Grantee.
- 3.6 Notwithstanding anything to the contrary contained herein, Grantor's railroad operations, tracks and facilities shall be deemed superior to the rights granted to the Grantee under this Agreement.

4.0 **TERM, TERMINATION AND EXPIRATION:**

4.1 This Easement shall remain in effect so long as required by Grantee for the functioning of the Culvert System. Additionally, the Easement shall be subject to termination or expiration as follows:

4.1.1 **Abandonment:** In the event Grantee fails to use or occupy any part of the Easement Area for a period of twelve (12) consecutive months and Grantor serves upon Grantee a written notice alleging such failure and abandonment of the Easement. If Grantee does not refute said allegation or make use of the

Culvert System within 30 days following receipt of said written notice, then Grantee shall be deemed to have agreed with Grantor's allegations and the Easement shall therewith be extinguished.

- 4.1.2 **Removal:** In the event Grantee substantially removes, or abandons and fills, the Culvert System with the written consent of Grantor and with the intent of not replacing it, then the Easement shall therewith be extinguished.
- 4.1.3 **Breach:** If Grantee is unable or unwilling to cure a breach of any of the provisions of this Agreement within thirty (30) days (or such longer period as may be reasonably required if Grantee promptly initiates the cure and diligently prosecutes the cure to completion) following receipt of a written notice from Grantor detailing such breach, then at Grantor's sole option this Easement may therewith be extinguished. The foregoing shall be subject, however, to reasonable seasonal accommodations for any physical work to the Culvert System required to cure a breach.

This Section 4.1 shall not be deemed to limit Grantor's ability to enforce the obligations of Grantee to maintain the Culvert System pursuant to the terms of this Agreement.

## 5.0 **CULVERT CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:**

- 5.1 The initial construction of the Culvert System will be pursuant to the separate construction agreement (the "**Construction Agreement**") between the parties, dated \_\_\_\_\_, 2018. The Grantee shall retain ownership of the Culvert System after construction.
- 5.2 If, in the unlikely event it becomes necessary, Grantee, at Grantee's sole expense, shall promptly make such repairs to or changes in the Culvert System, including reasonable changes in location, as Grantor may require to accommodate changes in railroad operations, construction of railroad facilities or the safety of persons, railroad operations or the environment, Grantor covenants that it shall not unreasonably act upon its rights contained in this section 5.2.
- 5.3 Grantee shall at all times during the term of this Agreement, at Grantee's sole cost and expense, keep and maintain the Culvert System in a structurally safe and sound condition, in good repair, clear of obstructions, and in compliance with the plans and specifications therefor and this Agreement. Without limiting the generality of the foregoing, it is expressly acknowledged that Grantee's maintenance obligations shall apply to the Steel Culverts, the two Existing Culverts, the concrete floors and wing walls located at the inlets of the Existing Culverts, the Box Culverts, and the Transition Structure. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain the Culvert System.
- 5.4 Any repair, reconstruction, removal or other changes or modifications to the Culvert System, except those made on an emergency basis, made after completion of the Culvert's initial construction, shall be subject to a separate construction agreement between the parties that will include the provisions set forth in Exhibit B, or such other provisions that at the time are necessary for the safety of persons, community, railroad operations and the environment.
- 5.5 Except as may be expressly provided in any separate construction or maintenance agreement, Grantee shall have no right to enter or make any use of the surface of the land overlying the Easement Area for construction, maintenance, reconstruction, removal, changes, or modifications of or to the Culvert System. Upon written request by Grantee, Grantor shall reasonably grant access to the Surface Inlet Area for purposes of maintenance of the two Existing Culverts and the concrete floors and wing walls located at the inlets of the Existing Culverts.

6.0 **TAXES AND ASSESSMENTS:** Grantee shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the existence or use of said land for the Culvert System.

7.0 **LIABILITY AND HOLD HARMLESS; INDEMNITY:**

7.1 **Damage to Railroad facilities.** If any railroad tracks, facilities, or equipment owned, used, or maintained by the Grantor are damaged by Grantee or the Culvert System, the Grantor shall repair (or arrange for the repair of) such damage and the Grantee shall pay the full cost of such repair within 30 days after the Grantor shall tender a bill therefor.

7.2 **Assumption of risks.** Grantee acknowledges that it is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about Grantor's property. Without in any way limiting the scope of the preceding sentence, Grantee assumes the risk that the Culvert System and any monitoring wells, elevations bench marks, reference points, and other installations or property of Grantee located within, under, above, or in the vicinity of the Easement Area may be disturbed, damaged, or destroyed as the result of railroad operations or mishaps by third persons. As an inducement to Grantor to grant the rights herein and as part consideration therefor, Grantee agrees that it shall not make any claim against and shall hold harmless Grantor, its officers, agents, and employees on account of the same, even if such disturbance, damage, or destruction arises from the negligence of the Grantor or its employees, agents, or invitees, but excluding damage or destruction that is attributable to Grantor's gross negligence or willful misconduct. Grantee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on Grantor's property. For purposes of this Agreement, the Parties agree that "gross negligence or willful misconduct" shall be defined as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness, including all of the following elements: (1) knowledge of the peril to be apprehended; (2) knowledge that injury, damage or loss is a probable, as opposed to a possible, result of the danger; and (3) a conscious failure to avoid the peril.

7.3 **Indemnification Provisions.** To the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Grantor Indemnified Parties (as defined below) from and against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines, sanctions, court costs, litigation costs, and attorneys' fees arising out of or relating to any breach of this Agreement, any destruction of (or damage to) any property or natural resource, any upstream or downstream flooding caused in whole or in part by the Culvert System, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the work, any action or omission of the Grantee, its employees, agents, contractors and subcontractors, while on or about the Grantor's property pursuant to this Agreement, or the exercise by the Grantee of the rights granted by this Agreement, including but not limited to damage to Grantor's railroad tracks caused by or associated in any way with the Culvert System, except to the extent caused by the gross negligence or willful misconduct of Grantor Indemnified Parties. As used in this Agreement, "**Grantor Indemnified Parties**" means the following businesses and their officers, directors, employees, successors, assigns and agents: Dakota, Minnesota & Eastern Railroad Corporation, Soo Line Holding Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway or Canadian Pacific, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to Grantor

property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

7.4 Insurance Provisions. Grantee is a member of and has an Agreement with the Iowa Communities Assurance Pool (ICAP), a local government risk pool authorized by Iowa Code Sec. 670.7. Grantee shall maintain in full force and effect its membership in ICAP (and, during construction of the Culvert System, cause its contractor to procure and maintain in effect the insurance policies required under the Construction Agreement) at all times during the term of this Easement, with initial limits of coverage shown in brackets "[ ]" as follows:

7.4.1. Commercial General Liability coverage with a combined single limit of \$[5,000,000].

7.4.2 The above ICAP agreement shall further be subject to the following:

- a. The coverage limits of the ICAP agreement shall be initially as shown in brackets, but such amounts shall after one year from the date hereof be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.
- b. The ICAP agreement shall name the Grantor as an additional party. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate of coverage for the ICAP agreement stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate of coverage shall include the following endorsement:

"It is agreed that the coverage evidenced by this certificate covers the liability assumed by the insured in connection with the use as set forth in the easement grant dated \_\_\_\_\_, 2018 by Dakota, Minnesota & Eastern Railroad Corporation to the City of Dubuque."

## 8.0 **MISCELLANEOUS:**

- 8.1 Grantee/Grantor: As used in this Agreement, the terms "**Grantee**" and "**Grantor**" shall include the parties first named above and their respective successors or assigns.
- 8.2 Headings: The paragraph 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 paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.
- 8.3 Severability of Terms: Each provision, paragraph, 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, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.
- 8.4 No Waiver: Any act or omission constituting a breach of this Agreement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof.
- 8.5 Notices: Any notice given by a party pursuant to this Agreement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.

8.6 **Merger:** The Construction Agreement and this Agreement completely outline all of the rights, responsibilities, and obligations of the parties hereto and may not be amended or altered except by an instrument in writing signed by both parties. Furthermore, the Construction Agreement and this Agreement merge all prior oral representations and negotiations of the parties hereto.

8.7 **No Warranty:** Grantor does not warrant title to the Easement Area, and makes no representations or warranties, express or implied, as to the habitability of the Easement Area or the fitness of the Easement Area for Grantee's purpose or any other particular purpose.

8.8 **Default and Remedies:** In the event of any violation by Grantor or Grantee of any of the provisions of this Agreement, in addition to the right to collect damages and/or receive specific performance, the Grantor or Grantee will have the right to seek an injunction of such violation from a court of competent jurisdiction. The prevailing party in any such action shall be entitled to an award of its reasonable attorney's fees incurred in enforcing this Agreement. In addition, in the event the Grantee fails to perform any of the provisions of this Agreement or violates any of the provisions hereof, the Grantor may cure such default; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantee not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantor, such default is emergency in nature. In the event the Grantor fails to perform any of the provisions of this Agreement or violates any provisions hereof, the Grantee may cure such default at the Grantee's sole cost and expense; provided however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantor not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantee, such default is emergency in nature, and only if the Grantor approves and authorizes the Grantee's proposed cure in writing. If the Grantor elects to perform the action to have been performed by the Grantee, on completion of such action, an itemized statement of the costs thereof will be submitted to the Grantee, and the amount thereof will be immediately due and payable by the Grantee to the Grantor. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity. Notwithstanding anything in the foregoing that might be construed to the contrary, Grantor shall not be required to give notice to Grantee prior to repairing or arranging for the repair of tracks, facilities, or equipment damaged by Grantee or the Culvert System.

8.9 **No Partnership, Joint Venture, or Shared Enterprise.** The Grantee's construction and operation of the Culvert System in accordance with this Agreement shall not be deemed to create a partnership, joint venture, or shared enterprise of any kind with the Grantor.

This Agreement 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**  
doing business as Canadian Pacific

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

STATE OF MINNESOTA      )  
                                  ) ss:  
COUNTY OF HENNEPIN      )

EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 6 of 12

DM & E, Grantor  
City of Dubuque, Grantee

The foregoing easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of Dakota, Minnesota and Eastern Railroad Corporation, a Delaware corporation, on behalf of the corporation.

Notary Seal

Notary Public

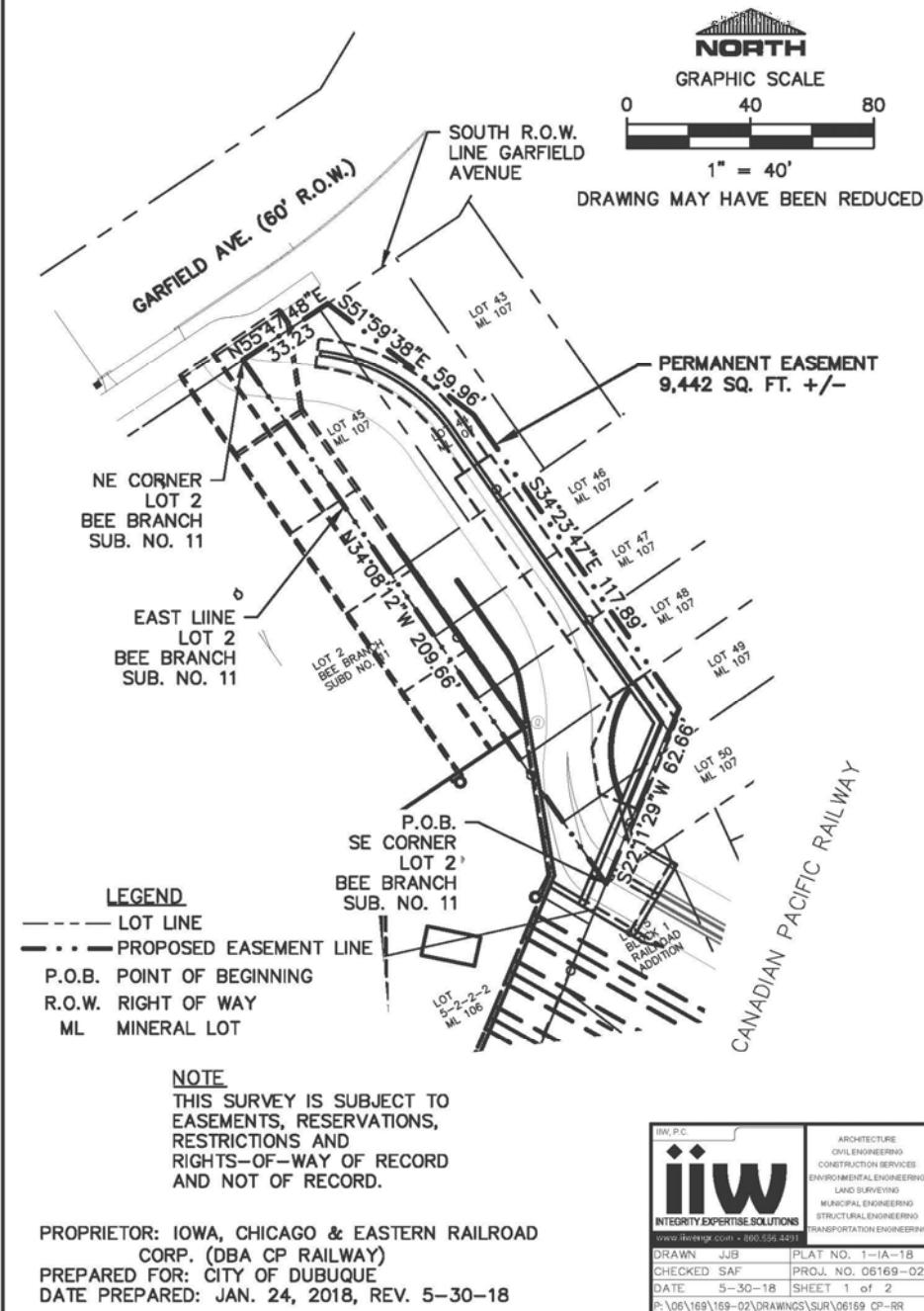
This instrument was drafted by:  
Real Estate Department  
700 Canadian Pacific Plaza  
120 South Sixth Street  
Minneapolis MN 55402

EXHIBIT A

(Drawing of Easement Area)

[See following page]

**PERMANENT EASEMENT EXHIBIT B**  
**PERMANENT EASEMENT ACROSS PARTS OF LOTS 44**  
**THRU 50 IN MINERAL LOT 107, IN THE CITY OF**  
**DUBUQUE, IOWA**



EASEMENT: Dubuque, Iowa  
AGR No.\_\_\_\_\_

Page 9 of 12

DM & E, Grantor  
City of Dubuque, Grantee

**PERMANENT EASEMENT EXHIBIT B**  
**PERMANENT EASEMENT ACROSS PARTS OF LOTS 44**  
**THRU 50 IN MINERAL LOT 107, IN THE CITY OF**  
**DUBUQUE, IOWA**

LEGAL DESCRIPTION

A permanent easement located across parts of Lots 44 thru 50 in Mineral Lot 107, in the City of Dubuque, Iowa, more particularly described as follows;

Beginning at the Southeast Corner of Lot 2 of Bee Branch Subdivision No. 11;

Thence North 34 degrees 08 minutes 12 seconds West, 209.66 feet along the east line of said Lot 2 to the south Right of Way line of Garfield Avenue and the Northeast Corner of said Lot 2;

Thence North 55 degrees 47 minutes 48 seconds East, 33.23 feet along said Right of Way line;

Thence South 51 degrees 59 minutes 38 seconds East, 59.96 feet;

Thence South 34 degrees 23 minutes 47 seconds East, 117.89 feet;

Thence South 22 degrees 11 minutes 29 seconds West, 62.66 feet to the Point of Beginning.

Containing 9,442 feet, more or less, and subject to easements, reservations, restrictions, and right-of-way record and not of record.

PROPRIETOR: IOWA, CHICAGO & EASTERN RAILROAD  
CORP. (DBA CP RAILWAY)  
PREPARED FOR: CITY OF DUBUQUE  
DATE PREPARED: JAN. 24, 2018, REV. 5-30-18



EASEMENT: Dubuque, Iowa  
AGR No.\_\_\_\_\_

Page 10 of 12

DM & E, Grantor  
City of Dubuque, Grantee

**EXHIBIT B**  
Requirements for Entry unto railroad property for  
Maintenance or repair of Culvert System.

- 1 As used herein, the term "**Culvert Work**" shall mean the installation, maintenance, repair, changing or renewal of the Culvert System the requires the grading, excavation or disturbance of soil adjacent or above the Culvert System, or such activities that could result in impacts to the adjacent railroad operations including, but not limited to, as vibration, noise, smoke and fumes. Work does not include the use or maintenance activities such as cleaning, painting, or electrical work where the foregoing impacts to soil or railroad operations are not present.
2. Grantee, shall secure all necessary public approvals and permits for any Culvert Work in the Easement Area.
- 3 Prior to any Culvert Work, Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to Grantee's Culvert Work. Grantee expressly assumes the risk of damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, and agrees to pay any claims arising from damage thereto in connection with its Culvert Work. Grantor makes no representation by the granting of this indenture that the Easement Area is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.
- .4 Grantee shall not carry on any Culvert Work until:
  - A. it shall have given Grantor at least five (5) days' written notice, and
  - B. an authorized representative of Grantor shall, at Grantor's election, be present to supervise same. Upon bills being rendered for the authorized representative's supervision, Grantee shall promptly reimburse Grantor for all reasonable expenses incurred by it in connection with such supervision, including all labor costs for flagmen supplied by Grantor to protect railroad operations, and for the entire cost of the furnishing, installation and later removal of any temporary supports for said tracks, if any.
5. Prior to the commencement of Culvert Work, the Grantee shall require any third party contractor acting on behalf of the Grantee pursuant to this Easement to:
  - A. to the extent permitted by law, execute and deliver to the Grantor a release of liability that shall provide that the contractor 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 any negligence or willful misconduct of the Contractor (or its employees, agents, or contractors) while on the Easement Area pursuant to this Easement. Indemnitees means Grantor, its subsidiaries, affiliated companies and parent companies, and their directors, officers, employees and agents, including without limitation, Soo Line Railroad Company, Delaware and Hudson Railroad Corporation, Dakota, Minnesota and Eastern Railroad Corporation, Soo Line Corporation, Wyoming, Dakota Railroad Properties, Inc., The Milwaukee Motor Transportation Company, Hiawatha Transfer Company, and Canadian and Pacific Railway Company.
  - B. to maintain during any period of time that any of its employees or agents or equipment are upon the Property, policies of insurance conforming to the insurance requirements set forth in the Construction Agreement
  - C. The above policies of insurance shall further be subject to the following:
    - i. The coverage limits of the foregoing policies shall be initially as set forth in the Construction Agreement, but such amounts shall after one year from the date of this

Easement Agreement be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.

- ii. Each such insurance policy shall name the Grantor as an additional Insured. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate or certificates of insurance for each such insurance policy stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate for the Commercial General Liability Policy of insurance shall include the following endorsement:

"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work to be performed in connection with the Roadway as set forth in the easement grant dated \_\_\_\_\_, 20\_\_\_\_ by Dakota, Minnesota & Eastern Railroad Corporation to the City of Dubuque including work upon railroad property, within railroad right of way and in close proximity of operating railroad tracks."

01536555-1\10422-183

# Exhibit C

[See attached]

**TEMPORARY EASEMENT AGREEMENT NUMBER XXXXX**  
**(Temporary Construction of Culvert System and Hike/Bike Trail)**

Date: \_\_\_\_\_, 2018

For good and valuable consideration 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 700 Canadian Pacific Plaza, 120 S. Sixth Street, Minneapolis, Minnesota 55402, ("Grantor")

hereby grants unto

**THE CITY OF DUBUQUE, IOWA**, a government agency, ("Grantee"),

a temporary easement ("Temporary Easement") described and conditioned as follows:

**1.0 DESCRIPTION OF PROPERTY:** The Temporary Easement is granted over, across, and through a strip of land located in Dubuque, Dubuque County, Iowa, more fully described and depicted on the drawing attached hereto as **Exhibit A** and made a part hereof, and hereinafter referred to as the "Temporary Easement Area."

**2.0 PURPOSE:** The Temporary Easement shall be limited to construction activities associated with the installation and construction of storm sewer and hike / bike trail improvements adjacent to the Temporary Easement Area ("City Improvements") in accordance with the Construction Agreement as defined in Section 5.1 below (said installation and construction, hereinafter, the "Construction Project").

**3.0 RESERVATIONS:** Grantor reserves unto itself, and its successors and assigns:

3.1 fee title to the Temporary Easement Area; Grantee's maintenance and use of the Temporary Easement Area, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Agreement;

3.2 the exclusive right and privilege to use the Temporary Easement Area for the maintenance, construction, and operation of railroad tracks and facilities and other purposes in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement;

- 3.3 the right to permit other parties to use the Temporary Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement;
- 3.4 the right of incidental use of the Temporary Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement; and
- 3.5 the right and privilege to use the Temporary Easement Area for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this Agreement or which unreasonably interferes with or restricts the rights granted to Grantee.
- 3.6 Notwithstanding anything to the contrary contained herein, Grantor's railroad operations, tracks and facilities shall be deemed superior to the rights granted to the Grantee under this Agreement.

**4.0 TERM, TERMINATION AND EXPIRATION:**

- 4.1 This Temporary Easement shall remain in effect until the earlier of: a) so long as required by Grantee during the Construction Project, or b) the two year anniversary of the date of execution of this Temporary Easement ("Expiration Date"), after which this Temporary Easement shall terminate without further action by either Party; provided that if Grantee's Construction Project has not been completed by the Expiration Date, Grantee may request an extension in writing, which extension shall not be unreasonably withheld by Grantor but may, in Grantor's sole discretion, be subject to a reasonable fee to be paid by Grantee prior to commencement of such extension. Additionally, the Temporary Easement shall be subject to termination or expiration as follows:
  - 4.1.1 **Breach:** If Grantee is unable or unwilling to cure a breach of any of the provisions of this Agreement within thirty (30) days (or such longer period as may be reasonably required if Grantee promptly initiates the cure and diligently prosecutes the cure to completion) following receipt of a written notice from Grantor detailing such breach, then this Temporary Easement shall therewith be terminated. The foregoing shall be subject, however, to reasonable seasonal accommodations for any physical work required to cure a breach.

**5.0 CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:**

- 5.1 The use of the Temporary Easement Area for the Construction Project will be pursuant to the separate construction agreement between the parties, dated \_\_\_\_\_, 2018 (the "Construction Agreement").
- 5.2 Grantee shall at all times during the term of this Temporary Easement Agreement, at Grantee's sole cost and expense, keep and maintain any improvements located upon the Temporary Easement Area in a structurally safe and sound condition, in good repair and in compliance with the plans and specifications therefor and this Temporary Easement Agreement. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Temporary Easement Area and shall keep the Temporary Easement Area in a clean and safe condition. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain any improvements in the Temporary Easement Area.

6.0 **TAXES AND ASSESSMENTS:** Grantee shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the existence or use of said land for the Construction Project.

7.0 **LIABILITY AND HOLD HARMLESS; INDEMNITY:**

7.1 Damage to Railroad facilities. If any railroad tracks, facilities, or equipment owned, used, or maintained by the Grantor are damaged by Grantee or the City Improvements, the Grantor shall repair (or arrange for the repair of) such damage and the Grantee shall pay the full cost of such repair within 30 days after the Grantor shall tender a bill therefor.

7.2 Assumption of risks. Grantee acknowledges that it is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about Grantor's property. Without in any way limiting the scope of the preceding sentence, Grantee assumes the risk that the City Improvements and any monitoring wells, elevations bench marks, reference points, and other installations or property of Grantee located within, under, above, or in the vicinity of the Easement Area may be disturbed, damaged, or destroyed as the result of railroad operations or mishaps by third persons. As an inducement to Grantor to grant the rights herein and as part consideration therefor, Grantee agrees that it shall not make any claim against and shall hold harmless Grantor, its officers, agents, and employees on account of the same, even if such disturbance, damage, or destruction arises from the negligence of the Grantor or its employees, agents, or invitees, but excluding damage or destruction that is attributable to Grantor's gross negligence or willful misconduct. Grantee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on Grantor's property. For purposes of this Agreement, the Parties agree that "gross negligence or willful misconduct" shall be defined as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness, including all of the following elements: (1) knowledge of the peril to be apprehended; (2) knowledge that injury, damage or loss is a probable, as opposed to a possible, result of the danger; and (3) a conscious failure to avoid the peril.

7.3 Indemnification Provisions. To the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Grantor Indemnified Parties (as defined below) from and against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines, sanctions, court costs, litigation costs, and attorneys' fees arising out of or relating to any breach of this Agreement, any destruction of (or damage to) any property or natural resource, any upstream or downstream flooding caused in whole or in part by the City Improvements, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the work, any action or omission of the Grantee, its employees, agents, contractors and subcontractors, while on or about the Grantor's property pursuant to this Agreement, or the exercise by the Grantee of the rights granted by this Agreement, including but not limited to damage to Grantor's railroad tracks caused by or associated in any way with the City Improvements, except to the extent caused by the gross negligence or willful misconduct of Grantor Indemnified Parties. As used in this Agreement, "Grantor Indemnified Parties" means the following businesses and their officers, directors, employees, successors, assigns and agents: Dakota, Minnesota & Eastern Railroad Corporation, Soo Line Holding Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway or Canadian Pacific, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to Grantor property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

7.4 Insurance Provisions. Grantee is a member of and has an Agreement with the Iowa Communities Assurance Pool (ICAP), a local government risk pool authorized by Iowa Code Sec. 670.7. Grantee shall maintain in full force and effect its membership in ICAP (and, during construction of the Culvert System, cause its contractor to procure and maintain in effect the insurance policies required under the Construction Agreement) at all times during the term of this Easement, with initial limits of coverage shown in brackets "[ ]" as follows:

7.4.1. Commercial General Liability coverage with a combined single limit of \$[5,000,000].

7.4.2 The above ICAP agreement shall further be subject to the following:

- a. The coverage limits of the ICAP agreement shall be initially as shown in brackets, but such amounts shall after one year from the date hereof be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.
- b. The ICAP agreement shall name the Grantor as an additional party. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate of coverage for the ICAP agreement stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate of coverage shall include the following endorsement:

"It is agreed that the coverage evidenced by this certificate covers the liability assumed by the insured in connection with the use as set forth in the easement grant dated \_\_\_\_\_, 2018 by Dakota, Minnesota & Eastern Railroad Corporation to the City of Dubuque."

## 8.0 **MISCELLANEOUS:**

- 8.1 **Grantee/Grantor:** As used in this Agreement, the terms “**Grantee**” and “**Grantor**” shall include the parties first named above and their respective successors or assigns.
- 8.2 **Headings:** The paragraph 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 paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.
- 8.3 **Severability of Terms:** Each provision, paragraph, 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, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.
- 8.4 **No Waiver:** Any act or omission constituting a breach of this Agreement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof.
- 8.5 **Notices:** Any notice given by a party pursuant to this Agreement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.
- 8.6 **Merger:** The Construction Agreement and this Agreement completely outline all of the rights, responsibilities, and obligations of the parties hereto and may not be amended or altered except by an instrument in writing signed by both parties. Furthermore, the Construction Agreement and this Agreement merge all prior oral representations and negotiations of the parties hereto.
- 8.7 **No Warranty:** Grantor does not warrant title to the Temporary Easement Area, and makes no representations or warranties, express or implied, as to the habitability of the Temporary Easement Area or the fitness of the Temporary Easement Area for Grantee's purpose or any other particular purpose.
- 8.8 **Default and Remedies:** In the event of any violation by Grantor or Grantee of any of the provisions of this Agreement, in addition to the right to collect damages and/or receive specific performance, the Grantor or Grantee will have the right to seek an injunction of such violation from a court of competent jurisdiction. The prevailing party in any such action shall be entitled to an award of its reasonable attorney's fees incurred in enforcing this Agreement. In addition, in the event the Grantee fails to perform any of the provisions of this Agreement or violates any of the provisions hereof, the Grantor may cure such default; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantee not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantor, such default is emergency in nature. In the event the Grantor fails to perform any of the provisions of this Agreement or violates any provisions hereof, the Grantee may cure such default at the Grantee's sole cost and expense; provided however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantor not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantee, such default is emergency in nature, and only if the Grantor approves and authorizes the Grantee's proposed cure in writing. If the Grantor elects to perform the action to have been performed by the Grantee, on completion of such action, an itemized statement of the costs thereof will be submitted to the Grantee, and the amount thereof will be immediately due and payable by the Grantee to the Grantor. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity. Notwithstanding anything in the foregoing that might be construed to the contrary, Grantor shall not be required to give notice to Grantee prior

to repairing or arranging for the repair of tracks, facilities, or equipment damaged by Grantee or the City Improvements.

8.9 **No Partnership, Joint Venture, or Shared Enterprise.** The Grantee's construction activities in accordance with this Agreement shall not be deemed to create a partnership, joint venture, or shared enterprise of any kind with the Grantor.

This Agreement 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**  
doing business as Canadian Pacific

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

STATE OF MINNESOTA      )  
                                    ) ss:  
COUNTY OF HENNEPIN      )

The foregoing easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of Dakota, Minnesota and Eastern Railroad Corporation, a Delaware corporation, on behalf of the corporation.

Notary Seal

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

This instrument was drafted by:  
Real Estate Department  
700 Canadian Pacific Plaza  
120 South Sixth Street  
Minneapolis, MN 55402

EXHIBIT A

(Drawing of Easement Area)

[See following page]

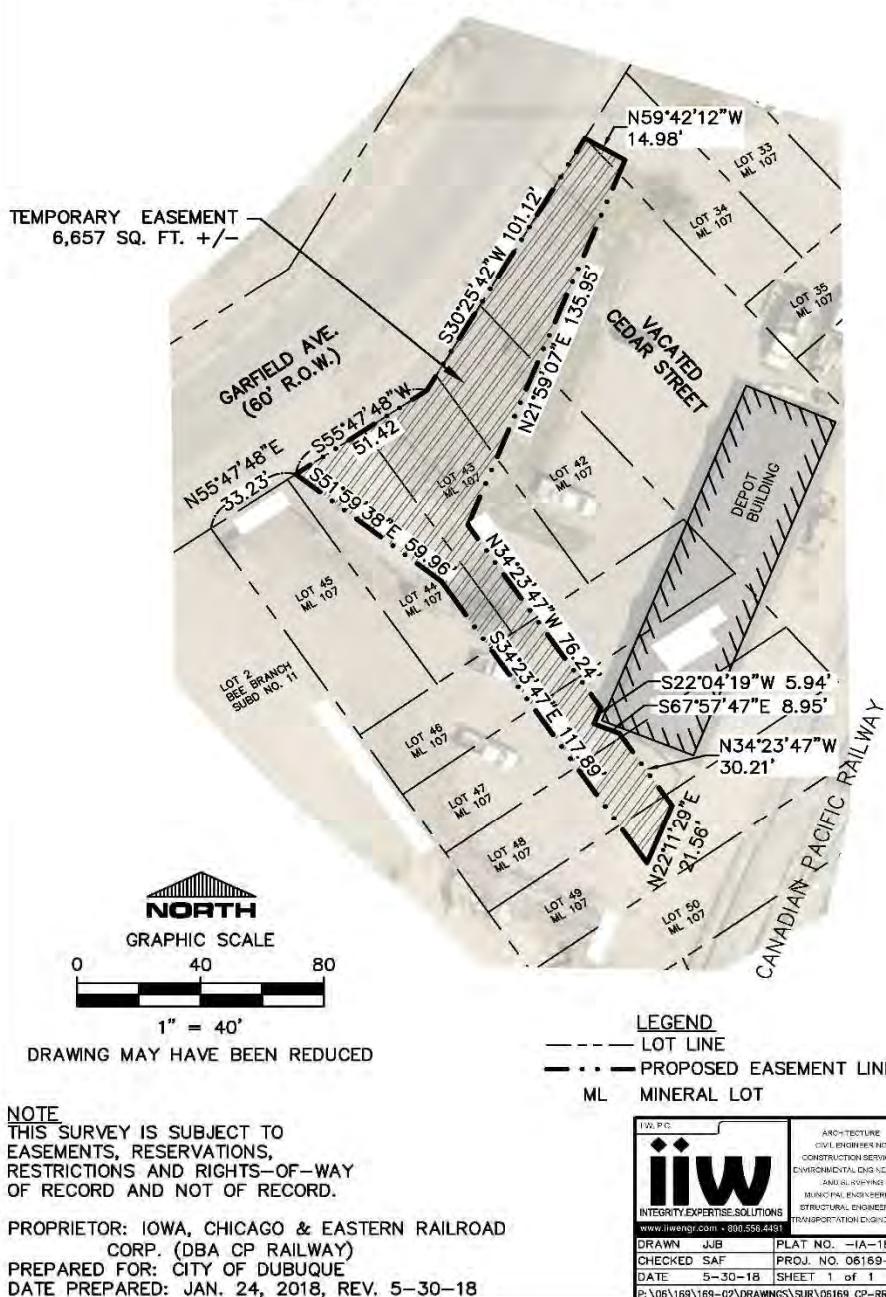
TEMP EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 7 of 8

DM & E, Grantor  
City of Dubuque, Grantee

## TEMPORARY EASEMENT EXHIBIT C

TEMPORARY EASEMENT ACROSS PART OF VACATED  
CEDAR STREET, PARTS OF LOTS 34, 42, 43, 44, 46,  
47, 48, AND 49 IN MINERAL LOT 107, ALL IN THE  
CITY OF DUBUQUE, IOWA



01536562-1\10422-183

TEMP EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 8 of 8

DM & E, Grantor  
City of Dubuque, Grantee

# Exhibit D

[See attached]

**TEMPORARY EASEMENT AGREEMENT NUMBER XXXXX**  
**(Temporary Construction of Culvert System and Hike/Bike Trail)**

Date: \_\_\_\_\_, 2018

For good and valuable consideration 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 700 Canadian Pacific Plaza, 120 S. Sixth Street, Minneapolis, Minnesota 55402, ("Grantor")

hereby grants unto

**THE CITY OF DUBUQUE, IOWA**, a government agency, ("Grantee"),

a temporary easement ("Temporary Easement") described and conditioned as follows:

**1.0 DESCRIPTION OF PROPERTY:** The Temporary Easement is granted over, across, and through two strips of land located in Dubuque, Dubuque County, Iowa, more fully described and depicted on the drawing attached hereto as **Exhibit A** and made a part hereof, and hereinafter referred to as the "Temporary Easement Area."

**2.0 PURPOSE:** The Temporary Easement shall be limited to construction activities associated with the installation and construction of storm sewer and hike / bike trail improvements adjacent to the Temporary Easement Area ("City Improvements") in accordance with the Construction Agreement as defined in Section 5.1 below (said installation and construction, hereinafter, the "Construction Project").

**3.0 RESERVATIONS:** Grantor reserves unto itself, and its successors and assigns:

- 3.1 fee title to the Temporary Easement Area; Grantee's maintenance and use of the Temporary Easement Area, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Agreement;
- 3.2 the exclusive right and privilege to use the Temporary Easement Area for the maintenance, construction, and operation of railroad tracks and facilities and other purposes in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement;

- 3.3 the right to permit other parties to use the Temporary Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement;
- 3.4 the right of incidental use of the Temporary Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement; and
- 3.5 the right and privilege to use the Temporary Easement Area for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this Agreement or which unreasonably interferes with or restricts the rights granted to Grantee.
- 3.6 Notwithstanding anything to the contrary contained herein, Grantor's railroad operations, tracks and facilities shall be deemed superior to the rights granted to the Grantee under this Agreement.

#### 4.0 **TERM, TERMINATION AND EXPIRATION:**

- 4.1 This Temporary Easement shall remain in effect until the earlier of: a) so long as required by Grantee during the Construction Project, or b) the two year anniversary of the date of execution of this Temporary Easement ("Expiration Date"), after which this Temporary Easement shall terminate without further action by either Party; provided that if Grantee's Construction Project has not been completed by the Expiration Date, Grantee may request an extension in writing, which extension shall not be unreasonably withheld by Grantor but may, in Grantor's sole discretion, be subject to a reasonable fee to be paid by Grantee prior to commencement of such extension. Additionally, the Temporary Easement shall be subject to termination or expiration as follows:
  - 4.1.1 **Breach:** If Grantee is unable or unwilling to cure a breach of any of the provisions of this Agreement within thirty (30) days (or such longer period as may be reasonably required if Grantee promptly initiates the cure and diligently prosecutes the cure to completion) following receipt of a written notice from Grantor detailing such breach, then this Temporary Easement shall therewith be terminated. The foregoing shall be subject, however, to reasonable seasonal accommodations for any physical work required to cure a breach.

#### 5.0 **CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:**

- 5.1 The use of the Temporary Easement Area for the Construction Project will be pursuant to the separate construction agreement between the parties, dated \_\_\_\_\_, 2018 (the "Construction Agreement").
- 5.2 Grantee shall at all times during the term of this Temporary Easement Agreement, at Grantee's sole cost and expense, keep and maintain any improvements located upon the Temporary Easement Area in a structurally safe and sound condition, in good repair and in compliance with the plans and specifications therefor and this Temporary Easement Agreement. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Temporary Easement Area and shall keep the Temporary Easement Area in a clean and safe condition. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain any improvements in the Temporary Easement Area.

#### 6.0 **TAXES AND ASSESSMENTS:** Grantee shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the existence or use of said land for the Construction Project.

## 7.0 **LIABILITY AND HOLD HARMLESS; INDEMNITY:**

7.1 **Damage to Railroad facilities.** If any railroad tracks, facilities, or equipment owned, used, or maintained by the Grantor are damaged by Grantee or the City Improvements, the Grantor shall repair (or arrange for the repair of) such damage and the Grantee shall pay the full cost of such repair within 30 days after the Grantor shall tender a bill therefor.

7.2 **Assumption of risks.** Grantee acknowledges that it is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about Grantor's property. Without in any way limiting the scope of the preceding sentence, Grantee assumes the risk that the City Improvements and any monitoring wells, elevations bench marks, reference points, and other installations or property of Grantee located within, under, above, or in the vicinity of the Easement Area may be disturbed, damaged, or destroyed as the result of railroad operations or mishaps by third persons. As an inducement to Grantor to grant the rights herein and as part consideration therefor, Grantee agrees that it shall not make any claim against and shall hold harmless Grantor, its officers, agents, and employees on account of the same, even if such disturbance, damage, or destruction arises from the negligence of the Grantor or its employees, agents, or invitees, but excluding damage or destruction that is attributable to Grantor's gross negligence or willful misconduct. Grantee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on Grantor's property. For purposes of this Agreement, the Parties agree that "gross negligence or willful misconduct" shall be defined as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness, including all of the following elements: (1) knowledge of the peril to be apprehended; (2) knowledge that injury, damage or loss is a probable, as opposed to a possible, result of the danger; and (3) a conscious failure to avoid the peril.

7.3 **Indemnification Provisions.** To the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Grantor Indemnified Parties (as defined below) from and against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines, sanctions, court costs, litigation costs, and attorneys' fees arising out of or relating to any breach of this Agreement, any destruction of (or damage to) any property or natural resource, any upstream or downstream flooding caused in whole or in part by the City Improvements, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the work, any action or omission of the Grantee, its employees, agents, contractors and subcontractors, while on or about the Grantor's property pursuant to this Agreement, or the exercise by the Grantee of the rights granted by this Agreement, including but not limited to damage to Grantor's railroad tracks caused by or associated in any way with the City Improvements, except to the extent caused by the gross negligence or willful misconduct of Grantor Indemnified Parties. As used in this Agreement, "Grantor Indemnified Parties" means the following businesses and their officers, directors, employees, successors, assigns and agents: Dakota, Minnesota & Eastern Railroad Corporation, Soo Line Holding Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway or Canadian Pacific, and any railway company or contractor operating trains or rail equipment upon railway tracks in close proximity to Grantor property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

7.4 Insurance Provisions. Grantee is a member of and has an Agreement with the Iowa Communities Assurance Pool (ICAP), a local government risk pool authorized by Iowa Code Sec. 670.7. Grantee shall maintain in full force and effect its membership in ICAP (and, during construction of the Culvert System, cause its contractor to procure and maintain in effect the insurance policies required under the Construction Agreement) at all times during the term of this Easement, with initial limits of coverage shown in brackets "[ ]" as follows:

7.4.1. Commercial General Liability coverage with a combined single limit of \$[5,000,000].

7.4.2 The above ICAP agreement shall further be subject to the following:

- a. The coverage limits of the ICAP agreement shall be initially as shown in brackets, but such amounts shall after one year from the date hereof be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.
- b. The ICAP agreement shall name the Grantor as an additional party. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate of coverage for the ICAP agreement stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate of coverage shall include the following endorsement:

"It is agreed that the coverage evidenced by this certificate covers the liability assumed by the insured in connection with the use as set forth in the easement grant dated \_\_\_\_\_, 2018 by Dakota, Minnesota & Eastern Railroad Corporation to the City of Dubuque."

## 8.0 MISCELLANEOUS:

- 8.1 Grantee/Grantor: As used in this Agreement, the terms "Grantee" and "Grantor" shall include the parties first named above and their respective successors or assigns.
- 8.2 Headings: The paragraph 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 paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.
- 8.3 Severability of Terms: Each provision, paragraph, 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, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.
- 8.4 No Waiver: Any act or omission constituting a breach of this Agreement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof.
- 8.5 Notices: Any notice given by a party pursuant to this Agreement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.
- 8.6 Merger: The Construction Agreement and this Agreement completely outline all of the rights, responsibilities, and obligations of the parties hereto and may not be amended or altered except by an instrument in writing signed by both parties. Furthermore, the Construction Agreement and this Agreement merge all prior oral representations and negotiations of the parties hereto.

8.7 **No Warranty:** Grantor does not warrant title to the Temporary Easement Area, and makes no representations or warranties, express or implied, as to the habitability of the Temporary Easement Area or the fitness of the Temporary Easement Area for Grantee's purpose or any other particular purpose.

8.8 **Default and Remedies:** In the event of any violation by Grantor or Grantee of any of the provisions of this Agreement, in addition to the right to collect damages and/or receive specific performance, the Grantor or Grantee will have the right to seek an injunction of such violation from a court of competent jurisdiction. The prevailing party in any such action shall be entitled to an award of its reasonable attorney's fees incurred in enforcing this Agreement. In addition, in the event the Grantee fails to perform any of the provisions of this Agreement or violates any of the provisions hereof, the Grantor may cure such default; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantee not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantor, such default is emergency in nature. In the event the Grantor fails to perform any of the provisions of this Agreement or violates any provisions hereof, the Grantee may cure such default at the Grantee's sole cost and expense; provided however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantor not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantee, such default is emergency in nature, and only if the Grantor approves and authorizes the Grantee's proposed cure in writing. If the Grantor elects to perform the action to have been performed by the Grantee, on completion of such action, an itemized statement of the costs thereof will be submitted to the Grantee, and the amount thereof will be immediately due and payable by the Grantee to the Grantor. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity. Notwithstanding anything in the foregoing that might be construed to the contrary, Grantor shall not be required to give notice to Grantee prior to repairing or arranging for the repair of tracks, facilities, or equipment damaged by Grantee or the City Improvements.

8.9 **No Partnership, Joint Venture, or Shared Enterprise.** The Grantee's construction activities in accordance with this Agreement shall not be deemed to create a partnership, joint venture, or shared enterprise of any kind with the Grantor.

This Agreement 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**  
doing business as Canadian Pacific

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

STATE OF MINNESOTA      )  
                                 ) ss:  
COUNTY OF HENNEPIN      )

TEMP EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 5 of 8

DM & E, Grantor  
City of Dubuque, Grantee

The foregoing easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_, of Dakota, Minnesota and Eastern Railroad Corporation, a Delaware corporation, on behalf of the corporation.

Notary Seal

Notary Public

This instrument was drafted by:  
Real Estate Department  
700 Canadian Pacific Plaza  
120 South Sixth Street  
Minneapolis, MN 55402

TEMP EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 6 of 8

DM & E, Grantor  
City of Dubuque, Grantee

EXHIBIT A  
(Drawing of Easement Area)

[See following page]

## TEMPORARY EASEMENT EXHIBIT D

TEMPORARY EASEMENTS ACROSS PART OF LOTS 49 AND 50 OF MINERAL  
LOT 107, PART OF VACATED 19TH AND CEDAR STREETS, PART OF LOT 5  
AND PART OF VACATED ALLEY EAST OF LOT 5 IN BLOCK 1 RAILROAD  
ADDITION, PART OF LOTS 1 AND 2 IN BLOCK 2 RAILROAD ADDITION, PART  
OF LOTS 1 THRU 5, 10 & 11, AND PART OF VACATED ALLEY ALL IN BLOCK  
4 RAILROAD ADDITION, AND PART OF LOT 1-1-1 IN MINERAL LOT 106,  
ALL IN THE CITY OF DUBUQUE, IOWA

GRAPHIC SCALE

GRAPHIC SCALE

DRAWING MAY HAVE  
BEEN REDUCED

TEMPORARY  
EASEMENT  
3,745 SQ. FT. +

**DEPOT BUILDING**

**CANADIAN PACIFIC RAILWAY**

**TEMPORARY EASEMENT**  
16,824 SQ. FT. +/-

**KERPER INDUSTRIAL PARK**

**LEGEND**

LOT LINE  
PROPOSED EASEMENT LINE  
MINERAL LOT

**NOTE**

THIS SURVEY IS SUBJECT TO  
EASEMENTS, RESERVATIONS,  
RESTRICTIONS AND RIGHTS-OF-WAY  
OF RECORD AND NOT OF RECORD.

**TOTAL TEMPORARY  
EASEMENT AREA  
PER THIS EXHIBIT**  
20,569 SQ. FT.

**DEPOT BUILDING**

**CANADIAN PACIFIC RAILWAY**

**TEMPORARY EASEMENT**  
16,824 SQ. FT. +/-

**KERPER INDUSTRIAL PARK**

**LEGEND**

LOT LINE  
PROPOSED EASEMENT LINE  
MINERAL LOT

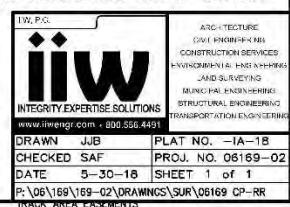
**NOTE**

THIS SURVEY IS SUBJECT TO  
EASEMENTS, RESERVATIONS,  
RESTRICTIONS AND RIGHTS-OF-WAY  
OF RECORD AND NOT OF RECORD.

**TOTAL TEMPORARY  
EASEMENT AREA  
PER THIS EXHIBIT**  
20,569 SQ. FT.

PROPRIETOR: IOWA, CHICAGO & EASTERN  
RAILROAD CORP. (DBA CP RAILWAY) 30.00  
PREPARED FOR: CITY OF DUBUQUE  
DATE PREPARED: JAN. 24, 2018, REV. 5-30-18

NOTE  
THIS SURVEY IS SUBJECT TO  
EASEMENTS, RESERVATIONS,  
RESTRICTIONS AND RIGHTS-OF-WAY  
OF RECORD AND NOT OF RECORD.



01538419-1\10422-183

TEMP EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 8 of 8

DM & E, Grantor  
City of Dubuque, Grantee

# Exhibit E

[See attached]

**TEMPORARY EASEMENT AGREEMENT NUMBER XXXXX**  
**(Temporary Construction of Culvert System and Hike/Bike Trail)**

Date: \_\_\_\_\_, 2018

For good and valuable consideration 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 700 Canadian Pacific Plaza, 120 S. Sixth Street, Minneapolis, Minnesota 55402, ("Grantor")

hereby grants unto

**THE CITY OF DUBUQUE, IOWA**, a government agency, ("Grantee"),

a temporary easement ("Temporary Easement") described and conditioned as follows:

**1.0 DESCRIPTION OF PROPERTY:** The Temporary Easement is granted over, across, and through two strips of land located in Dubuque, Dubuque County, Iowa, more fully described and depicted on the drawing attached hereto as **Exhibit A** and made a part hereof, and hereinafter referred to as the "Temporary Easement Area."

**2.0 PURPOSE:** The Temporary Easement shall be limited to construction activities associated with the installation and construction of storm sewer and hike / bike trail improvements adjacent to the Temporary Easement Area ("City Improvements") in accordance with the Construction Agreement as defined in Section 5.1 below (said installation and construction, hereinafter, the "Construction Project").

**3.0 RESERVATIONS:** Grantor reserves unto itself, and its successors and assigns:

- 3.1 fee title to the Temporary Easement Area; Grantee's maintenance and use of the Temporary Easement Area, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Agreement;
- 3.2 the exclusive right and privilege to use the Temporary Easement Area for the maintenance, construction, and operation of railroad tracks and facilities and other purposes in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement;

- 3.3 the right to permit other parties to use the Temporary Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement;
- 3.4 the right of incidental use of the Temporary Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement; and
- 3.5 the right and privilege to use the Temporary Easement Area for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this Agreement or which unreasonably interferes with or restricts the rights granted to Grantee.
- 3.6 Notwithstanding anything to the contrary contained herein, Grantor's railroad operations, tracks and facilities shall be deemed superior to the rights granted to the Grantee under this Agreement.

#### **4.0 TERM, TERMINATION AND EXPIRATION:**

- 4.1 This Temporary Easement shall remain in effect until the earlier of: a) so long as required by Grantee during the Construction Project, or b) the two year anniversary of the date of execution of this Temporary Easement ("Expiration Date"), after which this Temporary Easement shall terminate without further action by either Party; provided that if Grantee's Construction Project has not been completed by the Expiration Date, Grantee may request an extension in writing, which extension shall not be unreasonably withheld by Grantor but may, in Grantor's sole discretion, be subject to a reasonable fee to be paid by Grantee prior to commencement of such extension. Additionally, the Temporary Easement shall be subject to termination or expiration as follows:
  - 4.1.1 **Breach:** If Grantee is unable or unwilling to cure a breach of any of the provisions of this Agreement within thirty (30) days (or such longer period as may be reasonably required if Grantee promptly initiates the cure and diligently prosecutes the cure to completion) following receipt of a written notice from Grantor detailing such breach, then this Temporary Easement shall therewith be terminated. The foregoing shall be subject, however, to reasonable seasonal accommodations for any physical work required to cure a breach.

#### **5.0 CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:**

- 5.1 The use of the Temporary Easement Area for the Construction Project will be pursuant to the separate construction agreement between the parties, dated \_\_\_\_\_, 2018 (the "Construction Agreement").
- 5.2 Grantee shall at all times during the term of this Temporary Easement Agreement, at Grantee's sole cost and expense, keep and maintain any improvements located upon the Temporary Easement Area in a structurally safe and sound condition, in good repair and in compliance with the plans and specifications therefor and this Temporary Easement Agreement. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Temporary Easement Area and shall keep the Temporary Easement Area in a clean and safe condition. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain any improvements in the Temporary Easement Area.

6.0 **TAXES AND ASSESSMENTS:** Grantee shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the existence or use of said land for the Construction Project.

7.0 **LIABILITY AND HOLD HARMLESS; INDEMNITY:**

7.1 **Damage to Railroad facilities.** If any railroad tracks, facilities, or equipment owned, used, or maintained by the Grantor are damaged by Grantee or the City Improvements, the Grantor shall repair (or arrange for the repair of) such damage and the Grantee shall pay the full cost of such repair within 30 days after the Grantor shall tender a bill therefor.

7.2 **Assumption of risks.** Grantee acknowledges that it is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about Grantor's property. Without in any way limiting the scope of the preceding sentence, Grantee assumes the risk that the City Improvements and any monitoring wells, elevations bench marks, reference points, and other installations or property of Grantee located within, under, above, or in the vicinity of the Easement Area may be disturbed, damaged, or destroyed as the result of railroad operations or mishaps by third persons. As an inducement to Grantor to grant the rights herein and as part consideration therefor, Grantee agrees that it shall not make any claim against and shall hold harmless Grantor, its officers, agents, and employees on account of the same, even if such disturbance, damage, or destruction arises from the negligence of the Grantor or its employees, agents, or invitees, but excluding damage or destruction that is attributable to Grantor's gross negligence or willful misconduct. Grantee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on Grantor's property. For purposes of this Agreement, the Parties agree that "gross negligence or willful misconduct" shall be defined as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness, including all of the following elements: (1) knowledge of the peril to be apprehended; (2) knowledge that injury, damage or loss is a probable, as opposed to a possible, result of the danger; and (3) a conscious failure to avoid the peril.

7.3 **Indemnification Provisions.** To the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Grantor Indemnified Parties (as defined below) from and against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines, sanctions, court costs, litigation costs, and attorneys' fees arising out of or relating to any breach of this Agreement, any destruction of (or damage to) any property or natural resource, any upstream or downstream flooding caused in whole or in part by the City Improvements, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the work, any action or omission of the Grantee, its employees, agents, contractors and subcontractors, while on or about the Grantor's property pursuant to this Agreement, or the exercise by the Grantee of the rights granted by this Agreement, including but not limited to damage to Grantor's railroad tracks caused by or associated in any way with the City Improvements, except to the extent caused by the gross negligence or willful misconduct of Grantor Indemnified Parties. As used in this Agreement, "Grantor Indemnified Parties" means the following businesses and their officers, directors, employees, successors, assigns and agents: Dakota, Minnesota & Eastern Railroad Corporation, Soo Line Holding Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway or Canadian Pacific, and any railway company or

contractor operating trains or rail equipment upon railway tracks in close proximity to Grantor property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

7.4 Insurance Provisions. Grantee is a member of and has an Agreement with the Iowa Communities Assurance Pool (ICAP), a local government risk pool authorized by Iowa Code Sec. 670.7. Grantee shall maintain in full force and effect its membership in ICAP (and, during construction of the Culvert System, cause its contractor to procure and maintain in effect the insurance policies required under the Construction Agreement) at all times during the term of this Easement, with initial limits of coverage shown in brackets "[ ]" as follows:

7.4.1. Commercial General Liability coverage with a combined single limit of \$[5,000,000].

7.4.2 The above ICAP agreement shall further be subject to the following:

- a. The coverage limits of the ICAP agreement shall be initially as shown in brackets, but such amounts shall after one year from the date hereof be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.
- b. The ICAP agreement shall name the Grantor as an additional party. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate of coverage for the ICAP agreement stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate of coverage shall include the following endorsement:

"It is agreed that the coverage evidenced by this certificate covers the liability assumed by the insured in connection with the use as set forth in the easement grant dated \_\_\_\_\_, 2018 by Dakota, Minnesota & Eastern Railroad Corporation to the City of Dubuque."

## 8.0 MISCELLANEOUS:

- 8.1 Grantee/Grantor: As used in this Agreement, the terms "**Grantee**" and "**Grantor**" shall include the parties first named above and their respective successors or assigns.
- 8.2 Headings: The paragraph 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 paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.
- 8.3 Severability of Terms: Each provision, paragraph, 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, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.
- 8.4 No Waiver: Any act or omission constituting a breach of this Agreement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof.
- 8.5 Notices: Any notice given by a party pursuant to this Agreement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.

- 8.6 **Merger:** The Construction Agreement and this Agreement completely outline all of the rights, responsibilities, and obligations of the parties hereto and may not be amended or altered except by an instrument in writing signed by both parties. Furthermore, the Construction Agreement and this Agreement merge all prior oral representations and negotiations of the parties hereto.
- 8.7 **No Warranty:** Grantor does not warrant title to the Temporary Easement Area, and makes no representations or warranties, express or implied, as to the habitability of the Temporary Easement Area or the fitness of the Temporary Easement Area for Grantee's purpose or any other particular purpose.
- 8.8 **Default and Remedies:** In the event of any violation by Grantor or Grantee of any of the provisions of this Agreement, in addition to the right to collect damages and/or receive specific performance, the Grantor or Grantee will have the right to seek an injunction of such violation from a court of competent jurisdiction. The prevailing party in any such action shall be entitled to an award of its reasonable attorney's fees incurred in enforcing this Agreement. In addition, in the event the Grantee fails to perform any of the provisions of this Agreement or violates any of the provisions hereof, the Grantor may cure such default; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantee not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantor, such default is emergency in nature. In the event the Grantor fails to perform any of the provisions of this Agreement or violates any provisions hereof, the Grantee may cure such default at the Grantee's sole cost and expense; provided however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantor not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantee, such default is emergency in nature, and only if the Grantor approves and authorizes the Grantee's proposed cure in writing. If the Grantor elects to perform the action to have been performed by the Grantee, on completion of such action, an itemized statement of the costs thereof will be submitted to the Grantee, and the amount thereof will be immediately due and payable by the Grantee to the Grantor. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity. Notwithstanding anything in the foregoing that might be construed to the contrary, Grantor shall not be required to give notice to Grantee prior to repairing or arranging for the repair of tracks, facilities, or equipment damaged by Grantee or the City Improvements.
- 8.9 **No Partnership, Joint Venture, or Shared Enterprise.** The Grantee's construction activities in accordance with this Agreement shall not be deemed to create a partnership, joint venture, or shared enterprise of any kind with the Grantor.

This Agreement 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**  
doing business as Canadian Pacific

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

TEMP EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 5 of 8

DM & E, Grantor  
City of Dubuque, Grantee

STATE OF MINNESOTA      )  
                            ) ss:  
COUNTY OF HENNEPIN    )

The foregoing easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by  
\_\_\_\_\_, the \_\_\_\_\_ of Dakota, Minnesota and Eastern  
Railroad Corporation, a Delaware corporation, on behalf of the corporation.

Notary Seal

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

This instrument was drafted by:  
Real Estate Department  
700 Canadian Pacific Plaza  
120 South Sixth Street  
Minneapolis, MN 55402

EXHIBIT A  
(Drawing of Easement Area)

[See following page]

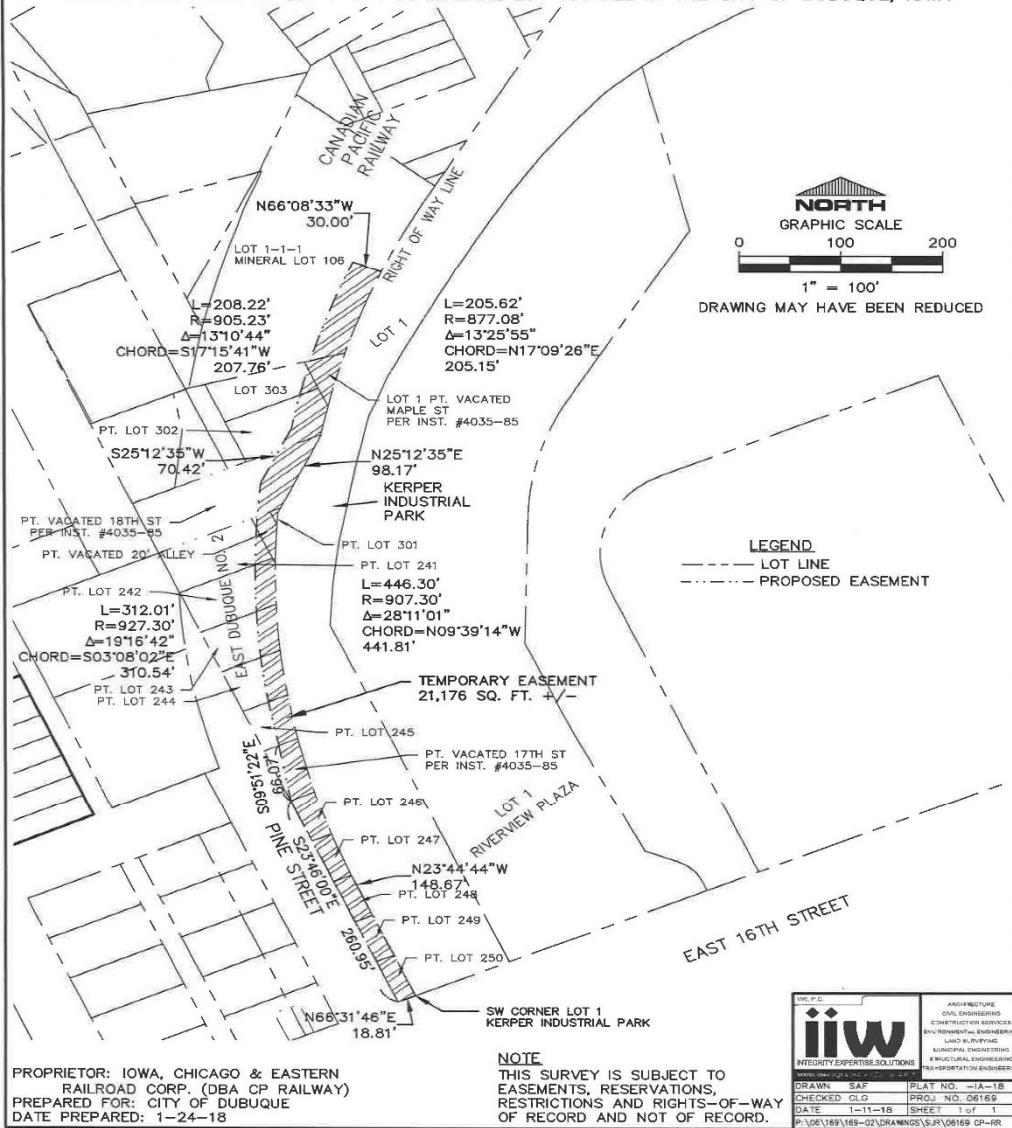
TEMP EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 7 of 8

DM & E, Grantor  
City of Dubuque, Grantee

**TEMPORARY EASEMENT EXHIBIT E**

TEMPORARY EASEMENT ACROSS PARTS OF LOTS 241-250 AND LOTS 301-303 AND PT OF VACATED ALLEY BETWEEN LOT 242 AND LOT 301 ALL IN EAST DUBUQUE NO. 2 ALSO PARTS OF VACATED 17TH AND 18TH STREETS EAST OF PINE STREET AND PART OF LOT 1 A VACATED PORTION OF MAPLE STREET AND PART OF LOT 1-1-1 IN MINERAL LOT 106 ALL IN THE CITY OF DUBUQUE, IOWA



01538431-1\10422-183

TEMP EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 8 of 8

DM & E, Grantor  
City of Dubuque, Grantee

# Exhibit F

[See attached]

01523143-1\10422-183

## **TEMPORARY EASEMENT AGREEMENT NUMBER XXXXX**

**(Temporary Construction of Culvert System and Hike/Bike Trail – Subsurface Only)**

Date: \_\_\_\_\_, 2018

For good and valuable consideration 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 700 Canadian Pacific Plaza, 120 S. Sixth Street, Minneapolis, Minnesota 55402, ("Grantor")

hereby grants unto

**THE CITY OF DUBUQUE, IOWA**, a government agency, ("Grantee"),

a temporary easement ("Temporary Easement") described and conditioned as follows:

**1.0 DESCRIPTION OF PROPERTY:** The Temporary Easement is granted under a strip of land located in Dubuque, Dubuque County, Iowa, more fully described and depicted on the drawing attached hereto as **Exhibit A** and made a part hereof, and hereinafter referred to as the "Temporary Easement Area."

**2.0 PURPOSE:** The Temporary Easement shall be limited to installation of temporary underground tie-backs associated with installation and construction of storm sewer and hike / bike trail improvements adjacent to the Temporary Easement Area ("City Improvements") in accordance with the Construction Agreement as defined in Section 5.1 below (said installation and construction, hereinafter, the "Construction Project").

The Temporary Easement Area is underground only and does not include the surface of the land overlying the Easement Area.

**3.0 RESERVATIONS:** Grantor reserves unto itself, and its successors and assigns:

- 3.1 fee title to the Temporary Easement Area; Grantee's maintenance and use of the Temporary Easement Area, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Agreement;
- 3.2 the exclusive right and privilege to use the Temporary Easement Area for the maintenance, construction, and operation of railroad tracks and facilities and other purposes in a manner that

does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement;

- 3.3 the right to permit other parties to use the Temporary Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement;
- 3.4 the right of incidental use of the Temporary Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Temporary Easement Area pursuant to this Agreement; and
- 3.5 the right and privilege to use the Temporary Easement Area for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this Agreement or which unreasonably interferes with or restricts the rights granted to Grantee.
- 3.6 Notwithstanding anything to the contrary contained herein, Grantor's railroad operations, tracks and facilities shall be deemed superior to the rights granted to the Grantee under this Agreement.

#### **4.0 TERM, TERMINATION AND EXPIRATION:**

- 4.1 This Temporary Easement shall remain in effect until the earlier of: a) so long as required by Grantee during the Construction Project, or b) the two year anniversary of the date of execution of this Temporary Easement ("Expiration Date"), after which this Temporary Easement shall terminate without further action by either Party; provided that if Grantee's Construction Project has not been completed by the Expiration Date, Grantee may request an extension in writing, which extension shall not be unreasonably withheld by Grantor but may, in Grantor's sole discretion, be subject to a reasonable fee to be paid by Grantee prior to commencement of such extension. Additionally, the Temporary Easement shall be subject to termination or expiration as follows:
  - 4.1.1 **Breach:** If Grantee is unable or unwilling to cure a breach of any of the provisions of this Agreement within thirty (30) days (or such longer period as may be reasonably required if Grantee promptly initiates the cure and diligently prosecutes the cure to completion) following receipt of a written notice from Grantor detailing such breach, then this Temporary Easement shall therewith be terminated. The foregoing shall be subject, however, to reasonable seasonal accommodations for any physical work required to cure a breach.

#### **5.0 CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:**

- 5.1 The use of the Temporary Easement Area for the Construction Project will be pursuant to the separate construction agreement between the parties, dated \_\_\_\_\_, 2018 (the "Construction Agreement").
- 5.2 Grantee shall at all times during the term of this Temporary Easement Agreement, at Grantee's sole cost and expense, keep and maintain any improvements located upon the Temporary Easement Area in a structurally safe and sound condition, in good repair and in compliance with the plans and specifications therefor and this Temporary Easement Agreement. Grantee shall not permit the existence of any nuisance or the accumulation of junk, debris or other unsightly materials on the Temporary Easement Area and shall keep the Temporary Easement Area in a clean and safe condition. Grantor shall have no obligation whatsoever, monetary or non-monetary, to maintain any improvements in the Temporary Easement Area.

6.0 **TAXES AND ASSESSMENTS:** Grantee shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the existence or use of said land for the Construction Project.

7.0 **LIABILITY AND HOLD HARMLESS; INDEMNITY:**

7.1 **Damage to Railroad facilities.** If any railroad tracks, facilities, or equipment owned, used, or maintained by the Grantor are damaged by Grantee or the City Improvements, the Grantor shall repair (or arrange for the repair of) such damage and the Grantee shall pay the full cost of such repair within 30 days after the Grantor shall tender a bill therefor.

7.2 **Assumption of risks.** Grantee acknowledges that it is fully aware of the dangers of working on and about railroad property and railroad operations and knowingly and willingly assumes the risk of harm (e.g., injury to or death of persons and damage to or destruction of property) that may occur while on and about Grantor's property. Without in any way limiting the scope of the preceding sentence, Grantee assumes the risk that the City Improvements and any monitoring wells, elevations bench marks, reference points, and other installations or property of Grantee located within, under, above, or in the vicinity of the Easement Area may be disturbed, damaged, or destroyed as the result of railroad operations or mishaps by third persons. As an inducement to Grantor to grant the rights herein and as part consideration therefor, Grantee agrees that it shall not make any claim against and shall hold harmless Grantor, its officers, agents, and employees on account of the same, even if such disturbance, damage, or destruction arises from the negligence of the Grantor or its employees, agents, or invitees, but excluding damage or destruction that is attributable to Grantor's gross negligence or willful misconduct. Grantee assumes full responsibility for protecting its installations and personal property from theft and vandalism while such installations and personal property are on Grantor's property. For purposes of this Agreement, the Parties agree that "gross negligence or willful misconduct" shall be defined as the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness, including all of the following elements: (1) knowledge of the peril to be apprehended; (2) knowledge that injury, damage or loss is a probable, as opposed to a possible, result of the danger; and (3) a conscious failure to avoid the peril.

7.3 **Indemnification Provisions.** To the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Grantor Indemnified Parties (as defined below) from and against all claims, demands, actions, suits, judgments, losses, damages (including, but not limited to, lost profits and other actual, compensatory, direct, consequential, punitive, and exemplary damages), expenses, penalties, fines, sanctions, court costs, litigation costs, and attorneys' fees arising out of or relating to any breach of this Agreement, any destruction of (or damage to) any property or natural resource, any upstream or downstream flooding caused in whole or in part by the City Improvements, any injury to (or death of) any person, or any environmental pollution or contamination whatsoever, where such destruction, damage, injury, death, pollution, or contamination actually or allegedly arises in whole or in part from the work, any action or omission of the Grantee, its employees, agents, contractors and subcontractors, while on or about the Grantor's property pursuant to this Agreement, or the exercise by the Grantee of the rights granted by this Agreement, including but not limited to damage to Grantor's railroad tracks caused by or associated in any way with the City Improvements, except to the extent caused by the gross negligence or willful misconduct of Grantor Indemnified Parties. As used in this Agreement, "Grantor Indemnified Parties" means the following businesses and their officers, directors, employees, successors, assigns and agents: Dakota, Minnesota & Eastern Railroad Corporation, Soo Line Holding Company, Soo Line Corporation, Canadian Pacific Railway Company, any company doing business as Canadian Pacific Railway or Canadian Pacific, and any railway company or

contractor operating trains or rail equipment upon railway tracks in close proximity to Grantor property, together with the parent companies, subsidiaries, and affiliated companies of all of the foregoing.

7.4 Insurance Provisions. Grantee is a member of and has an Agreement with the Iowa Communities Assurance Pool (ICAP), a local government risk pool authorized by Iowa Code Sec. 670.7. Grantee shall maintain in full force and effect its membership in ICAP (and, during construction of the Culvert System, cause its contractor to procure and maintain in effect the insurance policies required under the Construction Agreement) at all times during the term of this Easement, with initial limits of coverage shown in brackets "[ ]" as follows:

7.4.1. Commercial General Liability coverage with a combined single limit of \$[5,000,000].

7.4.2 The above ICAP agreement shall further be subject to the following:

- a. The coverage limits of the ICAP agreement shall be initially as shown in brackets, but such amounts shall after one year from the date hereof be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.
- b. The ICAP agreement shall name the Grantor as an additional party. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate of coverage for the ICAP agreement stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate of coverage shall include the following endorsement:

"It is agreed that the coverage evidenced by this certificate covers the liability assumed by the insured in connection with the use as set forth in the easement grant dated \_\_\_\_\_, 2018 by Dakota, Minnesota & Eastern Railroad Corporation to the City of Dubuque."

## 8.0 MISCELLANEOUS:

- 8.1 Grantee/Grantor: As used in this Agreement, the terms "**Grantee**" and "**Grantor**" shall include the parties first named above and their respective successors or assigns.
- 8.2 Headings: The paragraph 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 paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.
- 8.3 Severability of Terms: Each provision, paragraph, 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, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Agreement.
- 8.4 No Waiver: Any act or omission constituting a breach of this Agreement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof.
- 8.5 Notices: Any notice given by a party pursuant to this Agreement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.

8.6 **Merger:** The Construction Agreement and this Agreement completely outline all of the rights, responsibilities, and obligations of the parties hereto and may not be amended or altered except by an instrument in writing signed by both parties. Furthermore, the Construction Agreement and this Agreement merge all prior oral representations and negotiations of the parties hereto.

8.7 **No Warranty:** Grantor does not warrant title to the Temporary Easement Area, and makes no representations or warranties, express or implied, as to the habitability of the Temporary Easement Area or the fitness of the Temporary Easement Area for Grantee's purpose or any other particular purpose.

8.8 **Default and Remedies:** In the event of any violation by Grantor or Grantee of any of the provisions of this Agreement, in addition to the right to collect damages and/or receive specific performance, the Grantor or Grantee will have the right to seek an injunction of such violation from a court of competent jurisdiction. The prevailing party in any such action shall be entitled to an award of its reasonable attorney's fees incurred in enforcing this Agreement. In addition, in the event the Grantee fails to perform any of the provisions of this Agreement or violates any of the provisions hereof, the Grantor may cure such default; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantee not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantor, such default is emergency in nature. In the event the Grantor fails to perform any of the provisions of this Agreement or violates any provisions hereof, the Grantee may cure such default at the Grantee's sole cost and expense; provided however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the Grantor not less than thirty (30) days prior to the commencement of such action or such lesser time if, in the reasonable judgment of the Grantee, such default is emergency in nature, and only if the Grantor approves and authorizes the Grantee's proposed cure in writing. If the Grantor elects to perform the action to have been performed by the Grantee, on completion of such action, an itemized statement of the costs thereof will be submitted to the Grantee, and the amount thereof will be immediately due and payable by the Grantee to the Grantor. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity. Notwithstanding anything in the foregoing that might be construed to the contrary, Grantor shall not be required to give notice to Grantee prior to repairing or arranging for the repair of tracks, facilities, or equipment damaged by Grantee or the City Improvements.

8.9 **No Partnership, Joint Venture, or Shared Enterprise.** The Grantee's construction activities in accordance with this Agreement shall not be deemed to create a partnership, joint venture, or shared enterprise of any kind with the Grantor.

This Agreement 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**  
doing business as Canadian Pacific

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

STATE OF MINNESOTA )  
                          )  
                          ) ss:

TEMP EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

Page 5 of 8

DM & E, Grantor  
City of Dubuque, Grantee

COUNTY OF HENNEPIN )

The foregoing easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of Dakota, Minnesota and Eastern Railroad Corporation, a Delaware corporation, on behalf of the corporation.

Notary Seal

Notary Public

This instrument was drafted by:  
Real Estate Department  
700 Canadian Pacific Plaza  
120 South Sixth Street  
Minneapolis, MN 55402

TEMP EASEMENT: Dubuque, Iowa  
AGR No. \_\_\_\_\_

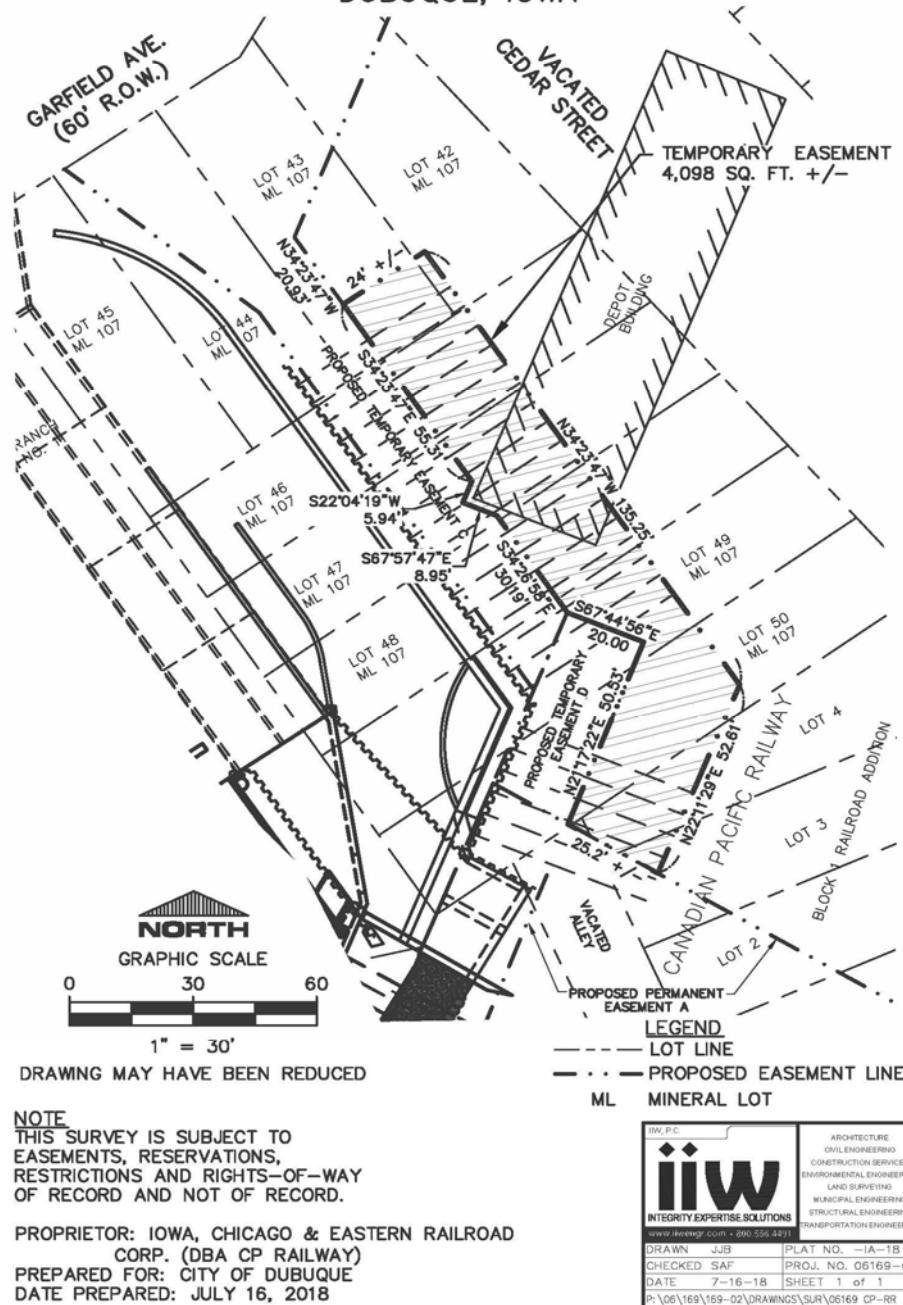
Page 6 of 8

DM & E, Grantor  
City of Dubuque, Grantee

EXHIBIT A  
(Drawing of Easement Area)

[See following page]

**TEMPORARY EASEMENT EXHIBIT F**  
 TEMPORARY EASEMENT UNDER PARTS OF LOTS 42, 43,  
 46, 47, 48, 49, AND 50 IN MINERAL LOT 107, AND  
 LOTS 3 AND 4 IN BLOCK 1 OF RAILROAD ADDITION AND  
 PART OF VACATED ALLEY ALL IN THE CITY OF  
 DUBUQUE, IOWA



01538439-1\10422-183

TEMP EASEMENT: Dubuque, Iowa  
 AGR No. \_\_\_\_\_

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DM & E, Grantor  
 City of Dubuque, Grantee