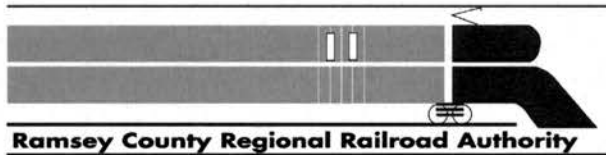




Ramsey County Regional Railroad Authority.
Records.

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Union Depot, Suite 200
214 4th Street East
St. Paul, Minnesota 55101
(651) 266-2760

REGIONAL RAILROAD AUTHORITY

April 2, 2013

Immediately following the County Board Meeting
Council Chambers – Third Floor Court House

.....
ROLL CALL and Call to Order

AGENDA of the April 2, 2013 Regional Railroad Authority Meeting is presented for approval.

MINUTES of the March 12, 2013 Regional Railroad Authority Meeting is presented for approval.

ADMINISTRATIVE AGENDA

1. Purchase Agreement with the City of Maplewood for the former BNSF right-of-way between Beam Avenue and I-694

Board Action Requested:

- 1) Accept and approve a Purchase Agreement with the City of Maplewood for the former BNSF right-of-way between Beam Avenue and a location just North of I-694 in the amount of \$400,000.
- 2) Authorize the Chair to execute the Purchase Agreement.

2. Release of Request for Proposals for Corridors of Opportunity Gateway Corridor - Fostering an East Side Transit Conversation

Board Action Requested:

Authorize the issuance of a Request for Proposals for Corridors of Opportunity Gateway Corridor Project in accordance with County policies and procedures on Request for Proposals, with direction to staff to return to the Ramsey County Regional Railroad Authority with a recommendation for selection of a vendor.

3. Construction Agreement with BNSF Railway

Board Action Requested:

- 1) Approve a Construction Agreement with BNSF Railway for the completion of track and signal installation for the replacement of the Southwest Wye Switch, replacement of the Gillette Spur Switch with an electric lock switch, upgrading of circuitry for the signalization of the North Wye Switch, signalization of the Division Street Wye and Saint Paul Union Depot Track including the West Leg, South Leg, East Terminal Lead, and Saint Paul Union Depot Track (CP 1/ Saint Paul Union Depot Crossover to BNSF St. Paul Subdivision) in an amount not to exceed \$2,320,000.
- 2) Authorize the Chair to execute the Construction Agreement with BNSF Railway on behalf of the Ramsey County Regional Railroad Authority.

(Continued)

4. Contract with Ralph Gilbert to design, fabricate and install public art at Union Depot

Board Action Requested:

- 1) Approve a contract with Ray Ralph Gilbert, 1935 McLendon Ave., Atlanta, GA 30307, for commission of public art at the Union Depot for the period of 4/2/2013 through 6/30/2014, in the amount of \$150,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

CORRIDOR UPDATES

ADJOURNMENT

RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

March 12, 2013

The Ramsey County Regional Railroad Authority met with the following members present: Carter, Huffman, McGuire, Ortega, Reinhardt, Rettman, McDonough – 7. Absent: 0. Also present were Julie Kleinschmidt, Ramsey County Manager and Paul Zisla, Assistant County Attorney, Ramsey County Attorney's Office.

Chair McDonough called the meeting to order at 10:35 A.M.

AGENDA

Commissioner Cater moved approval of the Agenda of the March 12, 2013 Regional Railroad Authority Meeting, seconded by Commissioner Huffman. Roll Call: Ayes – Ortega, Reinhardt, Rettman, Carter, Huffman, McGuire, McDonough – 7. Nays – 0.

MINUTES

Commissioner Ortega moved approval of the Minutes of the February 26, 2013 Regional Railroad Authority Meeting, seconded by Commissioner Huffman. Roll Call: Ayes – Ortega, Reinhardt, Rettman, Carter, Huffman, McGuire, McDonough – 7. Nays – 0.

1. Resolution supporting the nomination of Commissioner James D. Healy, DuPage County, Illinois, to the National Freight Advisory Committee

Commissioner Ortega moved approval of the following resolution, seconded by Commissioner Reinhardt. Roll Call: Ayes – Ortega, Reinhardt, Rettman, Carter, Huffman, McGuire, McDonough – 7. Nays – 0.
R13-09

WHEREAS, The U.S. Department of Transportation is establishing a National Freight Advisory Committee (NFAC) and soliciting nominations for membership; and

WHEREAS, The NFAC will provide advice and recommendations to the Secretary of Transportation on matters related to freight transportation in the United States, including: (1) Implementation of the freight transportation requirements of MAP 21; (2) Establishment of the National Freight Network; (3) Development of a National Freight Strategic Plan; (4) Development of strategies to help states implement State Freight Advisor Committee and State Freight Plans; and (5) Development of measures of conditions and performance in freight transportation; (6) Development of freight transportation investment, data, and planning tools; and (7) Legislative recommendations; and

WHEREAS, the Secretary of Transportation has requested nominations for members of the Committee to ensure a wide range of members and a balanced Committee; and

WHEREAS, the Secretary of Transportation will appoint committee members with a view toward achieving varied perspectives on freight transportation, including from government bodies, and seeking to balance the interests of many groups including those of local elected officials; and

WHEREAS, Counties play an integral role in the movement of freight in America owning and operating 44 percent of all public roads and highways; 2288,026 bridges of all kinds; 27 percent of public transit systems; and 30 percent of public airports; and

WHEREAS, Elected county officials play a key role in economic development efforts in their regions and development of new regional transportation infrastructure, serving on, or being actively involved in, all of the nation's Port Authorities, Metropolitan Planning Organizations and Development Organizations; and

WHEREAS, the Honorable James D. Healy, County Commissioner for DuPage County, Illinois, serves as Transportation Chairman for the National Association of Counties (NACo), having also served NACo as Chairman of the Highway, Airport and Transit Authorization Sub-Committees, and serves as a member of the Board of Directors for the National Association of Regional Councils

(NARC), and served as the Chairman and Vice-Chairman of the Transportation of Public Works Committees in his home county, as well as a past member of his local regional planning organization, NIPC (now CMAP);

WHEREAS, the Honorable James D. Healy has been a vocal proponent of local governments working together in cooperation with the freight, shipping and railroad industries, hosting the first freight/railroad summit last year bringing together 250 local elected officials and representatives of the freight, shipping and railroad industry, and is singularly responsible for the positive dialogue now occurring between local government officials and the railroad industry; Now, Therefore, Be it

RESOLVED, The Ramsey County Regional Railroad Authority, do hereby request the Secretary of Transportation to appoint the Honorable James D. Healy, County Commissioner for DuPage County, Illinois, as a member of the NFAC Committee, to represent the views and interests of Counties in America.

2. Amendment to the Agreement with Civic Source, Inc. for Jobs Central Project

Commissioner Carter moved approval of the following resolution, seconded by Commissioner Ortega. Roll Call: Ayes – Ortega, Reinhardt, Rettman, Carter, Huffman, McGuire, McDonough – 7. Nays – 0. R13-10

WHEREAS, In 2011, the Ramsey County Regional Railroad Authority ("RCRRA") was awarded \$247,000 in federal Housing and Urban Development ("HUD") Sustainable Communities Initiative funds to manage the three-year *Jobs Central Project* ("Project"); and

WHEREAS, in 2012, the RCRRA received \$90,000 in grants from the McKnight Foundation and the Saint Paul Foundation to hire a consultant to provide professional and administrative assistance to the Project Manager; and

WHEREAS, the Civic Source, Inc. was competitively selected as the consultant according to Administrative Code, and an Agreement signed by the County Manager under current authority; and

WHEREAS, the RCRRA would like to engage Civic Source, Inc. to assume additional activities in the Project's Work Plan, for which qualified expenditures will be reimbursed by the HUD grant; and

WHEREAS, in order to do this, the Agreement must be amended to add to the scope, extend the duration, and to increase to payment to the Contractor by \$16,500; Now, Therefore, Be It

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to amend the Agreement with Civic Source to increase the scope of services for the period of February 1, 2012 to January 31, 2014 and to increase the total payment up to the amount of \$106,500; And, Further, Be It

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the County Manager to make all necessary budget adjustments, including estimated revenues and appropriations.

3. Subrecipient Grant Agreement with the Metropolitan Council for the HUD Sustainable Regional Planning Grant Program-Energy and Resource Efficiency Demonstration Project-Central Corridor

Commissioner Reinhardt moved approval of the following resolution, seconded by Commissioner Ortega.

Commissioner Rettman asked if updates on certain details of the project would come back to the board. She thinks it is important because there are details that are related to the Central Corridor, as well as other networks. She also asked who will be monitoring the grants.

Chair McDonough said they would have a future update on the project.

Julie Kleinschmidt, Ramsey County Manager, said Janet Guthrie, Senior Policy Analyst, Ramsey County Manager's Office, and her team will be monitoring the grants.

Roll Call: Ayes – Ortega, Reinhardt, Rettman, Carter, Huffman, McGuire, McDonough – 7. Nays – 0.
R13-11

WHEREAS, The Corridors of Opportunity Program ("CoO") is a regional initiative funded by grants from the Sustainable Communities program of the U.S. Department of Housing and Urban Development ("HUD") and the Living Cities Integration Initiative; and

WHEREAS, CoO uses the HUD grant funds to provide support for individual projects along transit ways in the Twin Cities area and the Metropolitan Council is the fiscal agent for the grant; and

WHEREAS, The Ramsey County Regional Railroad Authority ("RCRRA") currently has grant subrecipient agreements for two projects: Jobs Central\Corridors 2 Careers and Gateway; and

WHEREAS, On September 19, 2012, the CoO Policy Board approved another project ("Attachment 1") where the RCRRA would be the lead agency, the Energy Resource Efficiency Demonstration Project-- Central Corridors ("Project"); and

WHEREAS, The Project is aimed at improving energy and resource efficiency for small restaurant and food related business on the Central Corridor; restaurants are heavy energy and resources users; and the costs are significant and hard to manage without good information and advice; and

WHEREAS, The Project combines technical expertise from the energy services providers and business professionals with information from business and property owners in an approach that is expected to result in better strategies for energy and resource efficiency outreach, training and implementation; and

WHEREAS, Previous attempts to improve energy and resource efficiency have had limited impact; however, through their experiences the entities involved (business owners, energy and resource professionals, business advisors and property owners) have each acquired relevant information and observations on the use of energy and resources; and the Project will bring these different entities together to integrate their separate experiences, information and observations to develop better strategies; and

WHEREAS, The Project is coming forward at this time because it became apparent in 2012 that a resource and energy related project planned for the Saint Paul area would not proceed and CoO, Saint Paul and Ramsey County representatives agreed that the HUD funds being reallocated should continue to be used to address energy and resource issues on Central Corridor in Saint Paul provided projects could be identified that are consistent with CoO goals and priorities and the grant timelines; and

WHEREAS, Energy and resource program experts from Saint Paul and Ramsey County identified the need to improve energy and resource use awareness and practices among culturally diverse small businesses especially ethnic and immigrant owned restaurants and food related businesses along the Central Corridor as a priority concern consistent with CoO goals and priorities; and

WHEREAS, The Neighborhood Development Center ("NDC") was identified as the lead partner for implementation in the Project proposal approved by the CoO Policy Board; the NDC has extensive, successful experience in providing outreach, training and technical support to diverse small businesses and has the capacity to complete this Project; NDC is located on the Central Corridor and has been very active with local business during light-rail construction; the RCRRA will contract with the NDC in an amount not to exceed \$137,700 for the required services; and needed to implement the grant related activities; and the services must be completed by December 31, 2013.

WHEREAS, To proceed with the Project, a subrecipient grant agreement between the RCRRA and the Metropolitan Council is required; Now, Therefore, Be It

RESOLVED, The Ramsey County Regional Railroad Authority authorizes acceptance of a grant from the Metropolitan Council for the HUD Sustainable Communities Planning Grant Energy Demonstration Project - Central Corridor for the period of October 10, 2012 through January 31, 2014, in the amount of \$137,700, and Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to execute the subrecipient grant agreement, and Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the County Manager to approve and execute any agreements, amendments, and change orders, related to the expenditure of these grant funds in accordance with County competitive solicitation policies and procedures in a form approved by the County Attorney's Office and within the limits of the grant funding. , and Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

Commissioner McGuire noted that the approved minutes from February 26, 2013 listed Commissioners Carter and Huffman as absent, yet it listed them as voting "ayes" during roll-call for approval of the agenda and the minutes from that meeting.

Chair McDonough asked for a motion to reconsider the approval of the minutes from February 26, 2013.

Commissioner Rettman moved approval, seconded by Commissioner Ortega.

Chair McDonough asked for a motion to amend the minutes of February 26, 2013 to remove Commissioners Carter and Huffman from attending the meeting and change the approvals to five Ayes and zero Nays.

Commissioner McGuire moved approval, seconded by Commissioner Rettman.

Roll Call: Ayes – Ortega, Reinhardt, Rettman, Carter, Huffman, McGuire, McDonough – 7. Nays – 0.

CORRIDOR UPDATES

- High Speed Rail

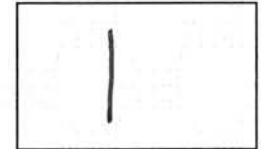
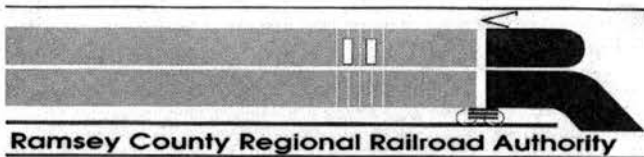
Commissioner Rettman reported that the High Speed Rail Commission met on March 7, 2013. Ken Buckeye from the Minnesota Department of Transportation, discussed the Governor's Transportation Finance Advisory Committee which provided a number of recommendations on how to fund transit and transportation in Minnesota. Although no votes took place in regard to the Plan, Commissioner Rettman said she suggested the report add the same language in regard to funding for High Speed Rail .

- Rush Line

Commissioner Reinhardt reported that she met with Metro Transit and Chairwoman Susan Haigh, Metropolitan Council, on Route 285's continued service to Forest Lake and Columbus. The route has seen increased ridership, which has lowered the subsidy per rider over the past couple of months. Due to continued ridership growth and reduced subsidy requirements, Metro Transit has determined that that it will continue running Route 285 up to Columbus and Forest Lake. This was good news for the riders; she thanked the RCRRA, Metropolitan Council, Metro Transit and the RCRRA staff for helping to make this happen.

ADJOURNMENT

There being no further business, Chair McDonough declared the meeting adjourned at 10:50 A.M.



REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 04/02/2013

Regional Railroad Authority Meeting Date: _____

SUBJECT: Purchase Agreement with the City of Maplewood for the former BNSF right-of-way between Beam Avenue and a location just North of I-694

EXECUTIVE SUMMARY:

The Board of the Ramsey County Regional Railroad Authority (RCRRA) previously determined that it desired to purchase the segment of the former Burlington Northern Santa Fe (BNSF) right of way between Beam Avenue and a location just North of I-694 in Maplewood (ROW) (see attached depiction). In 2012, the RCRRA authorized and directed staff to negotiate a purchase agreement with the City of Maplewood, consistent with the Board's direction.

RCRRA staff negotiated a purchase agreement with the City of Maplewood for the ROW with a purchase price of \$400,000.

ACTION REQUESTED:

1. Accept and approve a Purchase Agreement with the City of Maplewood for the former BNSF right-of-way between Beam Avenue and a location just North of I-694 in the amount of \$400,000.
2. Authorize the Chair to execute the Purchase Agreement.

SUBJECT: Purchase Agreement with the City of Maplewood for the former BNSF right-of-way between Beam Avenue and a location just North of I-694

ATTACHMENTS:

1. Purchase Agreement
2. MNDOT/City of Maplewood Cooperative Construction Agreement
3. Purchase Area Depiction

PREVIOUS ACTION:

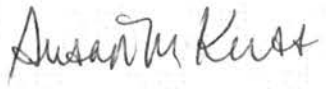
R10-25, March 16, 2010, established the Ramsey County Regional Railroad Board's desire to acquire the BNSF right-of-way segment and authorized staff to negotiate equitable terms.

COUNTY MANAGER'S COMMENTS:

Acquiring the former BNSF right-of-way between Beam Avenue and a location just North of I-694 is essential to closing a land ownership gap between existing Ramsey County Regional Railroad Authority owned properties in the Northeast/Rush Line Corridor right of way.

SUBJECT: Purchase Agreement with the City of Maplewood for the former BNSF right-of-way between Beam Avenue and I-694

Regional Railroad Authority – Authorized Signature	Date
	3/20/13

Finance – Authorized Signature	Date
	3/25/13

County Attorney – Authorized Signature	Date
	3/26/13

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

Subject: Purchase Agreement with the City of Maplewood for the former BNSF right-of-way between Beam Avenue and a location just North of I-694

Draft Resolution

1 WHEREAS, The Ramsey County Regional Railroad Authority desires to purchase the
2 former BNSF right-of-way between Beam Avenue and a location just North I-694 in Maplewood
3 from the City of Maplewood; and
4

5 WHEREAS, Ramsey County Regional Railroad Authority staff negotiated a Purchase
6 Agreement with the City of Maplewood; Now, Therefore, Be It
7

8 RESOLVED, The Ramsey County Regional Railroad Authority accepts and approves a
9 Purchase Agreement with the City of Maplewood for the former BNSF right-of-way between Beam
10 Avenue and a location just North I-694 in the amount of \$400,000; And be it further
11

12 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to
13 execute the Purchase Agreement.

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") is made this _____ day of _____, 2013, by the City of Maplewood, a municipal corporation and political subdivision of the State of Minnesota ("Seller" or "City"), and the Ramsey County Regional Railroad Authority, a political subdivision of the State of Minnesota ("Buyer").

WITNESSETH:

WHEREAS, Buyer desires to purchase and Seller desires to sell certain real property located in Ramsey County, Minnesota, as described below.

NOW, THEREFORE, in consideration of the premises, the mutual promises of the parties hereto and the mutual benefits to be gained by the performance hereof, the parties hereto agree as follows:

1) Sale and Purchase. Subject to the terms and conditions herein set forth, Seller hereby agrees to sell to Buyer and Buyer hereby agrees to purchase the following described property:

(a) Seller's interest (if any) in the real property located in Ramsey County, Minnesota, as more particularly described in Exhibit A attached hereto (the "Premises"). Seller shall convey the Premises to Buyer by quit claim deed (the "Deed").

On the Date of Closing all of the Premises shall be conveyed to Buyer subject to all Permitted Encumbrances. "Permitted Encumbrances" as used herein shall mean all Title Exceptions set forth in the Title Commitment and/or revealed by the Survey, except for any such Title Exceptions to which Buyer has made an Objection (as defined below) and that are not cured by Seller before Closing (as defined below) or approved or deemed approved by Buyer under Paragraph 5) below. Permitted Encumbrances include but are not limited to:

- (i) Local, state and federal building and zoning laws and ordinances;
- (ii) The lien of any real estate taxes and special assessments; and
- (iii) Reservation of any minerals or mineral rights to the State of Minnesota.

2) Purchase Price. Subject to the performance by Seller of all of its obligations hereunder and satisfaction or waiver by Buyer or Seller, as the case may be, of all conditions precedent set forth in Paragraph 8 hereof, Buyer shall pay Seller the sum of Four Hundred Thousand and no/100th Dollars (\$400,000.00) as and for the Purchase Price for the Premises, to be paid at Closing (as defined below).

3) Closing Date. The closing (the "Closing") of this purchase and sale shall take place at a location mutually acceptable to Buyer and Seller on or before May 8, 2013 or such other date to which the parties agree. Said date, as the same may be changed from time to time

pursuant to this Agreement, is referred to herein as the "Date of Closing". Possession of the Premises shall be delivered to Buyer on the Date of Closing.

4) Documents to be Delivered at Closing.

(a) If Buyer shall have performed all of its obligations hereunder as of the Date of Closing, Seller shall, on the Date of Closing, execute where necessary, and shall deliver to Buyer the following (the "Seller Closing Documents"):

(i) A quit claim deed from Seller conveying all of the Premises to Buyer subject to the Permitted Encumbrances, and such other exceptions as otherwise provided in this Agreement.

(ii) An affidavit indicating that to Seller's actual knowledge, on the Date of Closing there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving the Seller and that there has been no skill, labor or material furnished to the Premises at the request of Seller for which payment has not been made except as previously agreed to by Buyer.

(iii) The original, signed copies, or photocopies if Seller does not have an original, signed copy, of all leases, all service, maintenance, management and other contracts in the possession of Seller, all licenses, franchises and permits affecting the Premises in the possession of Seller, and all amendments and modifications to any of the foregoing in the possession of Seller, together with a quitclaim assignment thereof to Buyer and the assumption thereof by Buyer of such items as are expressly accepted by Buyer.

(iv) A certificate stating that Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the United States Internal Revenue Code and Income Tax Regulations promulgated thereunder), as required by such code and regulations. Seller represents to Buyer that it has all requisite power and authority to execute this Agreement and the Deed; that its governing body has reviewed this Agreement and has authorized City officials to execute this Agreement and the Deed on behalf of the City, and that the officials who will execute the Agreement and the Deed have the power and authority to execute the same and thereby bind the Seller. Seller shall provide such other documentation as may reasonably be required by Buyer evidencing the right and authority of Seller to sell the Premises and of the parties executing documents on behalf of Seller to bind Seller.

(v) The Seller's Certification as defined in Paragraph 8) below.

(vi) Without limiting the provisions of Paragraph 8) below, complete copies of any unrecorded easements, licenses, permits, or other documents in possession of Seller which reflect an interest in the Premises by any third party,

each of which shall have been disclosed to Buyer no later than ten (10) days after the Effective Date of this Agreement (as defined in Paragraph 11) (p) below).

(vii) A fully executed, binding agreement from Seller ("Reimbursement Agreement"), binding on Seller for a term of fifty (50) years from the Date of Closing, obligating Seller to reimburse Buyer for actual construction costs incurred by Buyer in connection with or related to the obligations of the Premises owner to BP Products North America, Inc., (BP), its successors or assigns, pursuant to that certain easement granted by Seller to BP on the 24th day of October, 2007, and filed and recorded with the Ramsey County Recorder as document number 4065647 on November 13, 2007 (the "BP Easement").

(viii) Seller's agreement that with respect to the existing right of way for Old County Road D (and in (v) below for new County Road D), as follows (the "County D Agreement"): (1) Seller shall retain ownership of and responsibility for the remaining improvements of the bridge located in the right of way; (2) Seller may remove the bridge improvements at Seller's election, but only in such manner as approved by Buyer, which approval shall not be unreasonably withheld, conditioned or delayed, and which shall be subject to Buyer's reasonable determination that the removal in the manner intended by Seller does not impair the integrity of the Premises for use for transportation purposes and to the extent that any such project by Seller requires any easement or grant of rights or other approval from Buyer to be able to proceed, Buyer's grant of such easement or right shall not be unreasonably withheld, conditioned or delayed; (3) if Buyer elects to improve the Premises for transportation purposes, Buyer will remove the bridge and related improvements at Buyer's expense; (4) Seller shall not alter the improvements and related land (including in connection with removal of any of the bridge and related improvements) in such manner as may compromise the use of the Premises for transportation purposes as determined by Buyer, and (5) agreement and acknowledgement that Buyer may elect to develop the Premises for transportation purposes and that such use is consistent with and is not in conflict with the rights of Seller, if any, with respect to any right of way easement with respect to Old County Road D and with respect to new County Road D. The parties intend that the County D Agreement as stated herein, shall survive delivery of the Deed, including as may be memorialized in the Deed, or in a separate agreement delivered at Closing.

(ix) An assignment of a fully executed maintenance agreement by and between BNSF, MnDOT and Seller with respect to the railroad bridge that crosses I-694 and is located over and across the Premises ("694 Bridge") substantially in the form of agreement and assignment attached to this Agreement as Exhibit B (the "Assignment").

(b) If Seller shall have performed all of its obligations hereunder to the Date of Closing, Buyer shall, on the Date of Closing, execute, where necessary, and deliver to Seller the following:

- (i) The Purchase Price.
- (ii) Such other documentation as may be reasonably required by Seller evidencing the right and authority of Buyer to purchase the Premises and of the parties executing documents on behalf of Buyer to bind Buyer.
- (iii) All other documents to be executed by Buyer affecting title to and/or possession of the Premises and necessary or convenient to transfer the same to Buyer under Minnesota law or practice.
- (iv) The Reimbursement Agreement and if an agreement separate from the Deed, the County D Agreement.

Buyer and Seller shall evenly split any closing costs. Buyer shall pay any taxes or fees in connection with the recording the Deed.

5) Title and Survey. Within not more than twenty (20) days after the Effective Date of this Agreement Seller shall at its sole cost and expense deliver to Buyer an current ALTA survey of the Premises (the "Survey") and within twenty (20) days after the Effective Date of this Agreement Seller shall at its sole cost and expense, shall obtain and deliver to Buyer a commitment (the "Commitment") for the issuance of an ALTA owner's policy of title insurance, with extended coverage (Form B revised 2006 issued by a title company approved by Buyer ("Title Company") in the amount of the Purchase Price, committing to insure that Buyer will have good and marketable title to the Premises on the Date of Closing, free and clear of any liens and encumbrances and exceptions to title except the Permitted Encumbrances and without any exceptions for survey matters, liens for labor and materials, rights of parties in possession, easements or claims of easements not shown by public records, and taxes and special assessments which are not shown as existing liens by public records.

Title to the Premises shall be subject to Buyer's approval and all objections to the status of title or any matter shown on the Survey ("Objections") shall be delivered to Seller in writing within twenty (20) days after receipt of both the Commitment and the Survey, together with copies of all documents referenced therein, it being understood and agreed that any Objections not made within said twenty (20) days shall be deemed waived by Buyer. Upon receipt of Buyer's Objections, Seller may, at its sole option, and by written notice to Buyer given within ten (10) days after receipt of Buyer's Objections, elect to (a) cure such defects as identified by Buyer; or (b), terminate this Agreement. Provided, however, that if Seller elects not to cure such defects, Buyer may, at its sole option, and in writing to Seller, agree to waive any Objection(s) Seller refuses to cure, and proceed to Closing.

6) Taxes. Real estate taxes levied against the Premises, but not including unpaid installments of special assessments payable therewith, due and payable in the year of Closing shall be apportioned between Buyer and Seller as of the Date of Closing. Seller shall pay in full all real estate taxes due and payable in 2012 and years prior thereto and all deferred real estate taxes now or hereafter due by virtue of the sale of the Premises including, but not limited to any

amount due under "Green Acres" or similar laws. All unpaid special assessments (including the amount payable with 2013, taxes and any unpaid deferred assessments and similar governmental charges for the installation of roads, utilities and other public improvements) against the Premises for all public improvements which have been levied or are pending as of the Date of Closing will be paid by Seller on the Date of Closing.

If the amount of any such assessment is unknown on the Date of Closing, Seller shall place in escrow, with an Escrow Agent mutually acceptable to Seller and Buyer, an amount equal to one and one-half (1-1/2) times the estimated amount of such assessment. The funds shall be placed in an interest bearing account which will be used to pay in full such assessment and any interest thereon when the amount of the assessment is known, and any excess funds including interest earned on the escrowed funds, shall be paid to the Seller. If such amount held in escrow is insufficient to pay such special assessment when the amount thereof is known, Seller shall promptly pay such deficiency.

7) Damage, Destruction and Eminent Domain. If, prior to Closing, the Premises or any part thereof shall be taken by eminent domain, this Agreement shall become null and void, at the option of either party, which option shall be exercised by written notice given by the party wishing to exercise such option to the other party within ten (10) days after the date of the casualty or the taking by eminent domain. Upon receipt by either party of written notice of an election by the other party to treat this Agreement as null and void, all Earnest Money shall be returned to Buyer. If notice of exercise of the option to terminate has not been received by Buyer or Seller, as the case may be, within the ten (10) day period, or if the parties elect to proceed and to consummate the purchase despite such condemnation, this Agreement shall continue of full force and effect, there shall be no abatement of the Purchase Price, and Seller shall assign to Buyer the right, title and interest of Seller in and to all condemnation awards resulting from such condemnation.

8) Due Diligence/Conditions Precedent. Without limiting any other condition to Buyer's obligation to perform at Closing as provided in any other provision of this Agreement, Buyer's obligations at Closing are expressly contingent upon the following:

(a) Commencing on the date hereof and ending on the thirtieth day thereafter (the "Due Diligence Period"), Buyer shall have the right to come onto the Premises and conduct such investigation of the Premises as it may deem appropriate, including, but not limited to an environmental investigation.

(b) During the Due Diligence Period Buyer shall have the authority to commence, on Seller's behalf, the process of obtaining regulatory approval of the conveyance to Buyer of any right Seller may currently have to establish, or re-establish rail service on the Premises or to complete full abandonment of rail service, all on such terms and conditions as determined by Buyer ("Regulatory Approval"). An express condition precedent of the obligation of Buyer to perform at Closing is Buyer's determination in its sole discretion that it is reasonably satisfied that the Regulatory Approval will or may be obtained to Buyer's satisfaction.

(c) Attached to this Agreement as Schedule 1 is a list of all of the material documents in Seller's possession and control with respect to the BP Easement referred to in Paragraph 4)(a)(vii) above, including correspondence, engineering studies and drawings and other documents reasonably related to establishing the location, depth and attributes of the pipeline installed pursuant to the BP Easement, in Seller's possession and control, which have been delivered to Buyer to enable Buyer to conduct its evaluation of the attributes of the pipeline as Buyer has determined relevant to its consideration of the potential use of the Premises for transportation purposes ("BP Documents"). Attached to this Agreement as Schedule 2 is a list of all the material documents in Seller's possession and control with respect to Old County D as related to the easement and bridge improvements over and across the Premises, which Seller has delivered to Buyer to enable Buyer to conduct its evaluation of facts and circumstances relating to the easement and bridge improvements ("Old County D Documents"). Attached to this Agreement as Schedule 3 is a list of all of the material documents in Seller's possession and control with respect to the to the railroad bridge that crosses I-694 and is located over and across the Premises, which Seller has delivered to Buyer to enable Buyer to conduct its evaluation of facts and circumstances relating to the ownership and maintenance of the bridge ("694 Bridge Documents"). Collectively, the BP Documents, Old County D Documents and 694 Documents are referred to in this Agreement as the Seller's Documents.

As a condition of Buyer's obligation to perform at Closing, Seller shall deliver to Buyer at Closing a certification by an authorized representative of Seller that the documents identified herein as the Seller's Documents are all the documents in Seller's possession and control relating to the matters referred to in 8) (c) above. If there are additional documents relating to such matters, Seller shall deliver the documents to Buyer and Closing shall be delayed to enable Buyer to review and approve the additional documents ("Additional Documents"). If (i) Buyer does not approve of the Additional Documents, (ii) Buyer does not approve of the condition of the Premises as a result of its inspection, or (iii) Buyer does not determine that the Regulatory Approval condition in Paragraph 8)(b) is satisfied during the Due Diligence Period, subject to the limitations on the right to terminate set forth in this Paragraph 8), Buyer shall have the right to terminate this Agreement by written notice given to Seller pursuant to Paragraph 11)(a) hereof, which notice must be received by Seller not later than 5:00 p.m., Central Daylight Time on the last day of the Due Diligence Period, this Agreement shall be deemed void and of no further force or effect and the parties shall have no further obligations to each other except pursuant to Paragraphs 11)(h) and 11)(m). Unless such notice is received as specified in the immediately preceding sentence, Buyer shall be deemed to have waived any objections it may have to the condition of the Premises and the parties shall proceed to close in accordance with this Agreement.

9) Termination. If either party shall fail to perform its obligations hereunder or shall otherwise breach this Agreement, the other party, as its sole remedy, shall have the right to terminate this Agreement by written notice to the other party.

10) "As Is" Condition. By its execution and delivery of this Agreement, Buyer acknowledges and agrees that, except for its agreement to deliver the Seller Closing Documents

at Closing pursuant to Paragraph 4)(a) hereof and any of the other documents to be delivered by Seller at Closing, Seller has not made, does not make and specifically disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to:

- (a) the nature, quality or condition of the Premises, including, without limitation, the water, soil and geology;
- (b) the suitability of the Premises for any and all activities and uses which Buyer or any other party may conduct thereon;
- (c) the compliance of or by Seller, the Premises or the operation of the Premises with any laws, rules, ordinances or regulations of any applicable governmental authority or body;
- (d) the habitability, merchantability or fitness for a particular purpose of the Premises;
- (e) the manner, construction, condition or state of repair or lack of repair of any improvements located on the Premises;
- (f) the nature of Seller's interest in the Premises or the quality of its title thereto; or
- (g) any other matter with respect to the Premises.

Buyer further acknowledges and agrees that the transfer of the Premises as provided for in this Agreement is and will be made on an "AS IS, WHERE IS" condition and basis (including environmental matters and compliance with the Americans with Disabilities Act), with all faults. Buyer further agrees that all decisions concerning the Premises and the condition thereof shall be based upon its inspection as provided herein and not upon any representation of Seller. The foregoing disclaimers shall be included in the Deed delivered at Closing.

11) Miscellaneous.

(a) Notices. Any notice required herein shall be in writing and shall be deemed effective and received (a) upon personal delivery; (b) five (5) days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; or (c) one (1) business day after deposit with a national overnight air courier, fees prepaid, to Seller or Buyer at the following addresses:

If to Seller:

City of Maplewood
1830 County Road B East
Maplewood, MN 55109
Attn: City Engineer

If to Buyer:

Ramsey County Regional Railroad Authority
Union Depot, Suite 200
214 4th Street East
Saint Paul, Minnesota 55101
Attn: Director

Either party may designate an additional or another address upon giving notice to the other party pursuant to this paragraph. For the purposes of this Paragraph, "business day" shall mean a day which is not a Saturday, a Sunday or a legal holiday of the State of Minnesota;

(b) Interpretation. This Agreement constitutes the entire understanding between the parties. It may be amended or modified only in a writing signed by Seller and Buyer. The paragraph headings are for convenience only and shall not enter into the interpretation hereof;

(c) Waivers. Neither the extension of time or payment of any sum of money to be paid hereunder nor any waiver by Seller or Buyer of its right to declare this Agreement forfeited by reasons of any breach hereof, shall in any manner affect the right of Seller to terminate this Agreement because of a subsequent default;

(d) Additional Documents. After the Closing, each of the parties, without further consideration, agrees to execute such additional documents as may reasonably be necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective parties hereunder;

(e) Commissions. Seller hereby warrants to Buyer and Buyer hereby warrants to Seller that no broker, agent or finder has been retained by either party, and that, except as set forth herein, no broker's commissions, finder's fees or like charges have been incurred in connection with this transaction;

(f) Parties. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

(g) Survival. The warranties, representations, covenants, indemnities and guarantees contained herein shall survive Closing of this transaction.

(h) Confidentiality. Buyer agrees that it will keep all aspects of the transaction contemplated by this Agreement confidential and shall not disseminate or discuss the contents of this Agreement to or with any party (except as may be required for the decisions of Buyer required herein) and shall cause any of its agents and/or employees and/or contractors to whom this transaction is disclosed also to maintain said confidentiality;

(i) Assignment. This Agreement may not be assigned or transferred by Buyer to any person or entity without Seller's prior written consent. In the event of a transfer made without Seller's prior written consent, this Agreement shall be null and void, at Seller's option, and Seller shall have no obligation to deal with any such transferee or assignee. Such transfer shall constitute a breach of Buyer's obligations hereunder and shall entitle Seller to exercise all rights and remedies available to it under this Agreement, at law or in equity;

(j) Time. Time shall be of the essence hereof;

(k) Construction. The parties agree that counsel for both parties have reviewed this Agreement. Accordingly, neither party shall be deemed to have drafted this Agreement and, by reason of the drafting hereof, shall not be construed against either party in the event of a dispute. This Agreement shall be governed in accordance with the laws of the State of Minnesota;

(l) Survival. The parties agree that only the adjustment provisions of Paragraphs 60 and 11)(g) shall survive the delivery of the Deed described in Paragraph 4)(a) hereof. All other agreements, if any, contained in this Agreement shall terminate upon delivery to Buyer of the Deed, except that the parties intend that the Reimbursement Agreement, County D Agreement and the Assignment shall survive delivery of the Deed.

(m) Use of Premises. From and after the date hereof, Buyer, and its agents, employees, contractors and invitees, may enter upon the Premises in order to:

(i) perform surveying, soils, hazardous substances, and engineering testing thereon; and

(ii) show the Premises to prospective contractors.

Buyer hereby agrees to defend and hereby indemnifies and holds Seller harmless from and against any and all losses, claims, causes of action, liabilities and costs of defense incurred by Seller arising out of the actions of Buyer, its agents, employees, contractors or invitees, unless due to the negligence or willful misconduct of Seller or its agents, employees or contractors. Buyer shall pay all costs of removing and replacing any improvements on the Premises which must be removed in order to conduct such tests. Seller shall give Buyer and its counsel and representatives full access, at all reasonable times, prior to and after Closing, to all existing data and records in the possession or control of Seller with respect to the ownership of the Premises and the right to examine and copy the same, and shall furnish Buyer with all such information concerning the same as Buyer may reasonably request. Any such examination or copying shall be at Buyer's sole cost and expense;

(n) Public Announcement. Seller and Buyer agree that they will make a joint public announcement of the transaction contemplated hereby at such time and in such manner as they may mutually agree upon;

(o) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument; and

(p) Effective Date. This Agreement shall not be binding upon the parties hereto until it is fully executed by each of the parties. The date it is fully executed by both parties is the "Effective Date of this Agreement".

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SELLER:

CITY OF MAPLEWOOD

By _____
Its _____

BUYER:

**RAMSEY COUNTY
REGIONAL RAILROAD AUTHORITY**

By _____
Jim McDonough, Chair

By _____
Timothy A. Mayasich, Director

Approved as to form:

Paul B. Juler
Assistant County Attorney

EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

[TO BE FURNISHED]

EXHIBIT B

FORM OF ASSIGNMENT (With 694 Bridge Maintenance Agreement attached)

ASSIGNMENT OF BRIDGE AGREEMENT

THIS ASSIGNMENT OF BRIDGE AGREEMENT ("Assignment Agreement") is made as of the _____ day of May, 2013, and is by and between the City of Maplewood, a Minnesota municipal corporation ("Assignor"), and the Ramsey County Regional Railroad Authority, a political subdivision of the State of Minnesota ("Assignee").

RECITALS:

1. Assignor is the owner of certain real property that is the segment of former BNSF Railroad Right of Way in the City of Maplewood that extends from Beam Avenue north to a point north of right of way of T.H. 694 (I-694) (the "Property").
2. Assignor is selling the Property to Assignee.
3. There is an existing bridge over I-694 (the "Bridge"). The Bridge is situated within the area of the Property and was constructed by Mn/DOT to elevate rail traffic to accommodate I-694 traffic.
4. Assignor and the State of Minnesota through its Commissioner of Transportation (the "State") entered into a Cooperative Construction Agreement, Mn/DOT Contract No. 02472, dated _____, 2013, regarding the ownership and maintenance of the Bridge (the "Bridge Agreement").
5. Section 4.1 of the Bridge Agreement provides that Assignor may assign its rights and obligations under the Bridge Agreement to Assignee.
6. Assignor and Assignee desire and intend that contemporaneous with Assignor's conveyance to Assignee of ownership of fee title to the Property, Assignor shall assign to Assignee, and Assignee accept and assume, the rights and obligations of Assignor under the Bridge Agreement and that the Assignment be effective as of the date of said conveyance.

NOW, THEREFORE, in consideration of the mutual covenants between the parties and the consideration for the purchase and sale between Assignor and Assignee as set forth in the Recitals above, Assignor and Assignee agree as follows:

1. The Recitals set forth above are hereby incorporated herein.
2. Assignor hereby assigns, grants, transfers and conveys to Assignee, all of the right, title and interest of Assignor in and to the Bridge Agreement and the rights and obligations of Assignor under the Bridge Agreement (the "Assignment").
3. Assignee hereby accepts said Assignment and assumes the rights and obligations of Assignor under the Bridge Agreement from and after the Assignment.

4. Assignor hereby indemnifies and holds Assignee harmless from all obligations of Assignor which accrued pursuant to the Bridge Agreement prior to the Assignment. Assignee hereby indemnifies and holds Assignor harmless from all obligations of Assignee under the Bridge Agreement which accrue from and after the Assignment.

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement to be effective as of the date first written above.

ASSIGNOR: City of Maplewood

ASSIGNEE: Ramsey County Regional Railroad Authority

By _____
Jim McDonough, Chair

Approved as to form:

Assistant County Attorney

SCHEDULE 1

BP DOCUMENTS

[LIST TO BE FURNISHED]

SCHEDULE 2

OLD COUNTY D DOCUMENTS

[LIST TO BE FURNISHED]

SCHEDULE 3

694 BRIDGE DOCUMENTS

[LIST TO BE FURNISHED]

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION
And
CITY OF MAPLEWOOD
COOPERATIVE CONSTRUCTION
AGREEMENT**

State Control Section: 6286
Trunk Highway Number (T.H.): 694
Bridge Number: 62822

This Agreement is between the State of Minnesota, acting through its Commissioner of Transportation ("State") and City of Maplewood acting through its City Council ("City").

Recitals

1. There is an existing bridge over T.H. 694, Bridge No. 62822 ("Bridge"); and
2. The State and BNSF Railway Company ("BNSF") (formerly known as Northern Pacific Railway Company) have an agreement (Agreement No. 54881 and amendment 1 to that agreement and letters regarding placement of sign structures on the Bridge) which dedicates an easement for highway purposes, for the construction of T.H. 694 and the construction, maintenance and repair of the Bridge (the "Bridge Agreements"); and
3. The State and BNSF have a letter of request for the placement of highway signs on the Bridge; and
4. The City in September 2005 purchased certain property from BNSF and Minnesota Commercial Railway Company, including the right, title and interest of BNSF with respect to the property of BNSF that is crossed by T.H. 694 and with respect to the Bridge; and
5. The City, BNSF, Minnesota Commercial Railway, and the State intend to execute, contemporaneous with this Agreement, an Agreement of Assignment, Assumption, and Consent, which will confirm the transfer to the City of all of BNSF's and Minnesota Commercial's rights, title, interests, obligations and liabilities under the Bridge Agreements including with respect to maintenance and repair of the Bridge; and
6. The State and City desire and intend to enter into a new agreement that would modify the Bridge Agreements by replacing those portions of the Bridge Agreements that relate to maintenance and repair of the Bridge; and
7. The City has granted an easement to Ramsey County for the construction and operation of a bicycle/pedestrian trail (the "Bruce Vento Trail" or "Trail") and a portion of the Bruce Vento Trail is located on the Bridge and uses the Bridge to cross T.H. 694; and
8. Minnesota Statutes § 161.20, subdivision 2, authorizes the Commissioner of Transportation to make arrangements with and cooperate with any governmental authority for the purposes of constructing, maintaining and improving the trunk highway system.

Agreement

1. Term of Agreement; Survival of Terms; Plans; Incorporation of Exhibits

- 1.1. **Effective date.** This Agreement will be effective on the date the State obtains all signatures required by Minnesota Statutes § 16C.05, subdivision 2.
- 1.2. **Expiration date.** This Agreement will expire as provided in Section 2.3 of this Agreement..
- 1.3. **Survival of terms.** All clauses which impose obligations continuing in their nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement,

including, without limitation, the following clauses: 2. ; 5. Liability; Worker Compensation Claims; Insurance; 7. State Audits; 8. Government Data Practices; 9. Governing Law; Jurisdiction; Venue; and 11. Force Majeure.

- 1.4. **Exhibits.** The Agreement of Assignment, Assumption, and Consent entered into by BNSF, Minnesota Commercial Railway, the City and the State on [DATE], 2013, is attached hereto as Exhibit 1.

2. Maintenance by the Parties

The State and the City agree to terminate all provisions relating to maintenance and repair of the Bridge contained in the Bridge Agreements and to share in the maintenance and repair of the Bridge, as it exists today, as follows:

- 2.1. **Maintenance by the City.** The City, at its expense, shall provide for the maintenance and repair the upper portion of the Bridge above the bridge deck, including railings, fence, and as between the State and the City, the City shall maintain and repair the Trail and subsurface needed for the Trail. The City shall provide for any trash pick-up and removal, plowing and removal of snow, graffiti removal, signage pertaining to usage of the Trail, painting on the Trail side of the Bridge, and similar maintenance associated with the Trail. Any maintenance activities shall be performed in a manner such that no debris, snow or other matter is deposited on the highway or right of way below. The City shall also maintain the approaches to the Bridge outside the highway right-of-way.

The City shall not place or display any non-trail signs, flags, or other objects on the bridge.

The parties intend that this Agreement does not establish a permanent park, recreation area or wildlife or waterfowl refuge facility that would become a Section 4(f) property subject to 23 U.S.C. §138 or 49 U.S.C. §303. If a determination is made that the trail is subject to Section 4(f), the City shall have full responsibility to obtain and implement any Section 4(f) approvals and compliance requirements.

- 2.2. **Maintenance by the State.** The State, at its expense, shall maintain and repair the Bridge, starting with the bridge deck and including the abutments, beams, the highway right-of-way including backslopes and masonry slope protection, drainage facilities within the highway right-of-way and painting of the Bridge from the ground up through the bridge deck. The State has no responsibilities for maintenance of the Bridge above the bridge deck. The State may in its discretion attach to the Bridge signage relating to usage of the highway.

- 2.3. **Future replacement of the Bridge.** At such time as either party determines that the Bridge should be replaced or requires that a change be made that materially modifies the structure of the Bridge, whether caused by highway work or use of the Bridge for Trail or other purposes, this Agreement will terminate and the parties shall negotiate a new maintenance agreement. The agreement of the parties to negotiate and enter into a new maintenance agreement shall not be construed to mean that the parties have agreed in this Agreement that the new maintenance agreement shall alter their respective rights with respect to the existence of the highway, the crossing of the highway by a bridge at the current location of the Bridge, as may exist or be established by the Bridge Agreements or other agreements by and between the parties or their predecessors.

3. Authorized Representatives

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required or permitted by this Agreement.

- 3.1. The State's Authorized Representative will be:

Name/Title: Maryanne Kelly-Sonnek, Municipal Agreements Engineer (or successor)
Address: 395 John Ireland Blvd, MS682, St. Paul, MN 55155
Telephone: 651.366.4634
Fax: 651.366.4769

E-Mail: maryanne.kellysonnek@state.mn.us

3.2. The City's Authorized Representative will be:

Name/Title: Chuck Ahl, P.E., Assistant City Manager/Public Works Director (or successor)
Address: City of Maplewood, 1830 County Road B East, Maplewood, MN 55109
Telephone: 651.249.2056

4. Assignment; Amendments; Waiver; Contract Complete

- 4.1. Assignment.** The City may assign its rights and obligations under this Agreement to the Ramsey County Regional Rail Authority upon written notice of such assignment to the State. Otherwise, neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the Parties.
- 4.2. Amendments.** Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.
- 4.3. Waiver.** If a party fails to enforce any provision of this Agreement, that failure does not waive the provision or the party's right to subsequently enforce it.
- 4.4. Contract Complete.** This Agreement contains all prior negotiations and agreements between the State and the City regarding the maintenance of the Bridge. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

5. Liability; Worker Compensation Claims; Insurance

- 5.1.** Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of others and the results thereof. Minnesota Statutes § 3.736 and other applicable law govern liability of the State. Minnesota Statutes Chapter 466 and other applicable law govern liability of the City.
- 5.2.** Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

6. Nondiscrimination

Provisions of Minnesota Statutes § 181.59 and of any applicable law relating to civil rights and discrimination are considered part of this Agreement.

7. State Audits

Under Minnesota Statutes § 16C.05, subdivision 5, the City's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

8. Government Data Practices

The City and State must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this Agreement. The civil remedies of Minnesota Statutes § 13.08 apply to the release of the data referred to in this clause by either the City or the State.

9. Governing Law; Jurisdiction; Venue

Minnesota law governs the validity, interpretation and enforcement of this Agreement. Venue for all legal proceedings arising out of this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

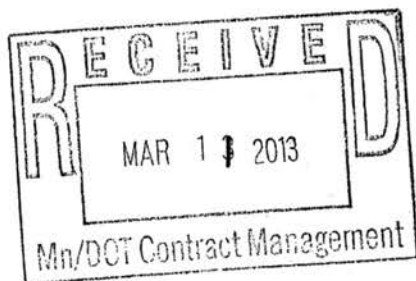
10. Termination

This Agreement may be terminated by mutual agreement of the parties.

11. Force Majeure

Neither party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, other acts of God, labor disputes, acts of war or terrorism, or public health emergencies.

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CITY OF MAPLEWOOD

The undersigned certify that they have lawfully executed this contract on behalf of the Governmental Unit as required by applicable charter provisions, resolutions or ordinances.

By: [Signature]Title: 2/28/2013Date: MAYORBy: [Signature]Title: Asst City ManagerDate: 2/28/13**DEPARTMENT OF TRANSPORTATION**Approved: [Signature]By: [Signature] (State)Date: 3/7/2013**COMMISSIONER OF ADMINISTRATION**By: [Signature]

(With delegated authority)

Date: March 18, 2013

INCLUDE COPY OF RESOLUTION APPROVING THE AGREEMENT AND AUTHORIZING ITS EXECUTION.

AGREEMENT OF ASSIGNMENT, ASSUMPTION, AND CONSENT

This is an Agreement of Assignment, Assumption, and Consent (this "Assignment") by and among **City of Maplewood** (the "City"), a Minnesota municipal corporation, **BNSF Railway Company** ("BNSF"), a Delaware corporation, **Minnesota Commercial Railway Company** ("Minnesota Commercial"), a Minnesota corporation, and the **State of Minnesota through its Commissioner of Transportation** (the "State"). The premises of this Agreement are as follow:

- A. Pursuant to that certain Real Estate Purchase and Sale Agreement dated effective September 26, 2005, by and among the City, BNSF, and Minnesota Commercial (the "Sale Agreement"), City purchased certain property (the "Property") from BNSF.
- B. Minnesota Commercial was made a party to the Sale Agreement because it was providing freight rail service on the Property under a lease with BNSF.
- C. The transaction contemplated by the Sale Agreement was consummated on September 30, 2005 (the "Closing").
- D. The Property acquired by the City pursuant to the Sale Agreement included a railroad bridge (the "Bridge") that crosses over Interstate Highway 694.
- E. It has come to the attention of the parties that there are certain agreements between Northern Pacific Railway Company ("NP") (BNSF's predecessor by merger) and the State that pertain to the construction, maintenance, and use of the Bridge (collectively, the "Bridge Agreements"), to wit: (1) Agreement dated November 16, 1965, a true copy of which is attached hereto as Attachment 1 (which Agreement is variously identified as State Agreement No. 54881 and BNSF agreement number NP17937); (2) Supplemental Agreement No. 1 dated February 21, 1966, a true copy of

which is attached hereto as Attachment 2; and (3) letter agreement regarding a directional highway sign on the Bridge, as set forth in letter dated July 29, 1969 from the State to NP and letter dated October 30, 1969 from NP to the State, true copies of which are attached hereto as Attachment 3.

F. It was the intent of the City, BNSF, and Minnesota Commercial that the Bridge Agreements be included as part of the City's purchase of the Property. In the event there is any doubt concerning such intent, the City, BNSF, and Minnesota Commercial desire to clarify such intent through this Assignment.

G. Consequently, BNSF and Minnesota Commercial desire to assign and transfer to the City, retroactive to the Closing, all of BNSF's and Minnesota Commercial's rights, interests, obligations, and liabilities under the Bridge Agreements, all in accordance with the terms and conditions set forth in this Assignment.

H. The City is willing to accept such assignment and transfer, all in accordance with the terms and conditions set forth in this Assignment.

I. The State is willing to consent to such assignment and transfer, all in accordance with the terms and conditions set forth in this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the parties agree as follows:

1. BNSF and Minnesota Commercial hereby assign and transfer to the City all of BNSF's and Minnesota Commercial's rights, interests, obligations, and liabilities under the Bridge Agreements, effective retroactive to the Closing.

2. The City hereby accepts such assignment and transfer and assumes all of BNSF's and Minnesota Commercial's obligations and liabilities under the Bridge Agreements, effective retroactive to the Closing.

3. The State hereby consents to the foregoing assignment and transfer and hereby releases BNSF and Minnesota Commercial from any obligations and liabilities arising under the Bridge Agreements from and after the Closing.

[balance of page intentionally left blank; signature pages follow]

[signature page for Agreement of Assignment, Assumption, and Consent]

City of Maplewood

By: [Signature]
Print Name: Will Rossbach
Title: MAYOR
Date: 2/7/12

and

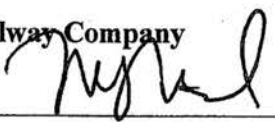
By: [Signature]
Print Name: James W. Atkinson
Title: CITY MANAGER
Date: 2-7-12

Approved as to form:

By: [Signature]
Print Name: H. ALAN KANKRUP
Title: CITY ATTORNEY
Date: 27 JAN 12

[signature page for Agreement of Assignment, Assumption, and Consent]

BNSF Railway Company

By: 

Print Name: Mark D. Ude

Title: AVP - Corporate Real Estate Development

Date: 10-24-12

[signature page for Agreement of Assignment, Assumption, and Consent]

Minnesota Commercial Railway Company

By: Wayne Hall
Print Name: Wayne Hall
Title: Director of operations
Date: 12-12-2011

[signature page for Agreement of Assignment, Assumption, and Consent]

STATE OF MINNESOTA:

Recommended for Approval:

By: [Signature]
Manager, Railroad Administration Section

Date: 1/30/13

COMMISSIONER OF TRANSPORTATION

By: [Signature]
Director, Freight, Railroads and
Waterways

Date: 1/30/13

STATE ENCUMBRANCE VERIFICATION

Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05

Signed: NA Date: _____ MAPS: _____

APPROVED:

DEPARTMENT OF ADMINISTRATION

By: [Signature]
Authorized Signature

Date: 1-30-2013

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Attachment 1

[Attach copy of Agreement dated November 16, 1965 and Exhibits A, B, C, D, and E thereto]

Agreement No. 54981

S.P. 6286-03 (T.H. 69h-393)
Minn. Proj. I-IG-69h-5(39)235
Underpass Bridge No. 62822
0.9 Mi. W. of Jct. (In White Bear Lake)
of White Bear Ave. and T.H. 69h
South of White Bear Lake, Minnesota
NORTHERN PACIFIC RAILWAY COMPANY

THIS AGREEMENT, made this 16th day of November, 1965,
by and between the NORTHERN PACIFIC RAILWAY COMPANY, hereinafter called the
"Company," and the STATE OF MINNESOTA, acting by and through its Commissioner of
Highways, hereinafter called the "State," WITNESSETH:

WHEREAS, plans and specifications have been prepared by the State for the
construction of an underpass bridge, (numbered in the records of the State as
Underpass Bridge No. 62822) for the purpose of causing separation of grades at
the intersection of Trunk Highway No. 69h, as duly established, and the railroad
track of the Company south of White Bear Lake, Ramsey County, Minnesota, at the
location shown on the map attached hereto, marked Exhibit "B," dated August 19,
1965, and made a part hereof and incorporated herein by reference; and

WHEREAS, said plans and specifications have been approved by the Chief
Engineer of the Company; and

WHEREAS, said plans are on file in the Office of the Department of Highways,
St. Paul, Minnesota, being identified as "Trunk Highway No. 69h, State of
Minnesota, Department of Highways, Bridge No. 62822, located South of White Bear
Lake, Ramsey County, Minnesota"; and

WHEREAS, said specifications are on file in the Office of the Department of
Highways, St. Paul, Minnesota, being identified as "Special Provisions for
S.P. 6286-03 (T.H. 69h-393), Minnesota Project I-IG-69h-5(39)235, Bridge No.
62822, located on Trunk Highway No. 69h under the Northern Pacific Railway
Company's track south of White Bear Lake, Ramsey County, Minnesota," which together
with the "Minnesota Department of Highways, St. Paul, Standard Specifications
for Highway Construction, dated January 1, 1964," on file in the Office of the
Commissioner of Highways, will constitute the specifications for said improvement;
and

WHEREAS, the Commissioner of Public Roads, acting through appropriate agencies and departments, has approved the construction of said underpass bridge as a Federal Aid Project, designated in the records of the Bureau of Public Roads as Minnesota Project I-10-694-5(39)235; and

WHEREAS, pursuant to "Policy and Procedure Memorandum No. 21-10, dated October 3, 1958," duly issued by the Commissioner of Public Roads, it has been determined by the Commissioner of Public Roads that the aforesaid railway-highway project shall be classified under said Memorandum as "Existing Railroad Crossed by New Highway," and that under said Federal law, rules and regulations there are no ascertainable benefits to the Company as determined in said Memorandum; and

WHEREAS, condemnation proceedings entitled "State of Minnesota vs. Fern G. Peterson et al" have been instituted in District Court, Ramsey County, to acquire that portion of the Company's right of way colored green on said Exhibit "B" which is required for the construction and maintenance of said Underpass Bridge No. 62822, and which is described in said proceedings as Parcel 7 A- S.P. 6286 (694-393)901; and

WHEREAS, the State desires that the Company grants permission for the construction and maintenance of said Trunk Highway No. 694 upon and across the right of way of the Company at this location and further desires that the Company joins it in the construction of an underpass bridge; to-wit: said Underpass Bridge No. 62822, at the location shown on said Exhibit "3", and the Company is willing to do so upon the terms and conditions hereinafter stated,

NOW, THEN, IT IS AGREED:

1. The State of Minnesota, Department of Highways, "Standard Clauses for Grade Separation Agreements," dated November 15, 1963, is attached hereto as Exhibit "A" and hereinafter referred to as "Standard Clauses." All of the terms and conditions set forth in the "Standard Clauses" are hereby incorporated by reference and made a part of this agreement with the same force and effect as though fully set forth herein.

2. That said plans and specifications for the construction of said bridge, numbered Underrass Bridge No. 62822, referred to and identified in the foregoing recitals, be and are hereby incorporated by reference and made a part of this agreement with the same force and effect as though fully set forth herein.

3. The State agrees to acquire and furnish the right of way necessary for the construction of the one-track shoofly made necessary by reason of the construction of said Underrass Bridge No. 62822. The land to be furnished by the State hereunder for said shoofly is shown in yellow on Exhibit "B" attached hereto.

4. It is contemplated that the construction of said Underrass Bridge No. 62822 and the project of which it is a part is, under the laws of the United States and the rules and regulations from time to time issued thereunder, eligible to be classified as "Existing Railroad Crossed by New Highway" and that as such, under said laws of the United States and said rules and regulations, it may be financed in whole with available Federal Aid without any contribution by the Company.

It is contemplated that the United States is to pay by way of Federal Aid the entire cost of the work to be performed under the contract to be let by the State but, in the event that the United States shall fail to pay any part of the cost of the said work, the State agrees to pay what the United States does not pay; provided, however, that nothing herein contained shall prevent the State from pursuing and enforcing any of its common law and statutory rights which it may have against any tortfeasor, including any contractor and the Company.

The State agrees to supervise and have charge of the work to be performed under the contract to be let by it. It is contemplated that the cost of such supervision shall be reimbursed by the United States. If any part thereof shall not be reimbursed by the United States, the State agrees to assume and pay such costs.

5. The Company, for and in consideration of the sum of Twenty-Five Dollars

(\$25.00) to be paid upon full execution of this agreement, so far as it has the power to do so, and expressly conditioned upon the performance by the State of all the covenants and agreements herein set forth to be by it kept and performed, hereby consents to the continuous use by the State for a public highway and for no other purpose, the strip of land across the right of way and property of the Company, shown colored in red upon said Exhibit "B" attached hereto and made a part hereof, and hereby dedicates said strip of land to the public use forever for highway purposes, said strip of land being more specifically described as follows:

All that part of the following described tract:

That part of the Northern Pacific Railway Company's right of way in the southeast quarter of the southwest quarter (SE $\frac{1}{4}$ SW $\frac{1}{4}$) of section 34, township 30, north, range 22 west, lying within a distance of 25 feet on each side of said railway company's main track center line;

which lies northerly of a line run parallel with and distant 184 feet southerly of Line 1 described below and southerly of Line 2 described below:

- Line 1. Beginning at a point on the east line of said section 34, distant 556.14 feet north of the southeast corner thereof; thence run westerly at an angle of 88°45' with said east section line (measured from south to west) for 103.86 feet; thence deflect to the right at an angle of 2°50'30" for 3000 feet and there terminating;
- Line 2. Beginning at the point of intersection of the northwesterly right of way line of said railway company with a line run parallel with and distant 100 feet northerly of Line 1 described above; thence run northeasterly to the point of intersection of the southeasterly right of way line of said railway company with a line run parallel with and distant 190 feet northerly of said Line 1 and there terminating;

containing 0.38 acre, more or less.

Reserving, however, unto the Company, its successors and assigns, the right and privilege to use said land for any and all purposes (including maintenance and operation of railroad tracks and facilities), not inconsistent with the use thereof for highway purposes, and further reserving unto the Company the right to prevent the placement or maintenance of any utility facility upon said land in a manner which would unreasonably interfere with

the maintenance and safe and continuous operation of said railroad tracks and facilities. The aforesaid reservation shall not be construed to permit the Company to deny to any utility any right to place their facilities upon said land, nor to subject said utilities to any fee or charge whatsoever. The State shall furnish copies to the company of any application, including all plans and specifications attached thereto, for the construction or maintenance of a utility to be placed or maintained upon said land.

6. The company hereby grants to the State the right to enter upon and perform construction operations necessary to construct Underpass Bridge No. 62822 on the Company's right of way in the areas shown green on Exhibit "B", said areas being more particularly described as Parcel 7A-J.P. 6286(694-393) 901 in the aforementioned condemnation proceeding.

7. At the request of the State, subsequent to the execution of this agreement and approval of the project by the Bureau of Public Roads, the Company shall install and remove the shoe-fly track, remove and reinstall its track on the bridge, and make all changes in its facilities required by reason of the construction of said Underpass Bridge No. 62822 in substantial accordance with the layout and detailed estimate, which are attached hereto and made a part hereof and marked Exhibits "C" and "D".

If the Company enters into a contract or agreement with a contractor to perform the aforementioned installation and removal of the shoe-fly track, the removal and reinstallation of its track on the bridge and changes in its facilities required by reason of the construction of said Underpass Bridge No. 62822, the Company, for itself, its assigns and successors in interest, agrees that it will not discriminate in its choice of contractors and will include all the nondiscrimination provisions set forth in Exhibit "E", attached hereto and made a part hereof, in any such contract or agreement.

8. The actual costs of the work performed by the Company in accordance with the foregoing paragraph, shall be ascertained in the manner hereinafter set forth and shall be paid to the Company by the State,

provided, however, the amount to be paid by the State for such work shall not exceed the amount on which the Federal Government bases its reimbursement for such work. Such reimbursable costs shall be ascertained in accordance with the provisions of this agreement and the provisions contained in Policy and Procedure Memorandum No. 30-3 of the Bureau of Public Roads, effective August 15, 1955, and of any other Federal rule or regulations applicable thereto. It is understood that the following estimate of work to be performed by the Company is for informational purpose only. The estimate of cost of the various items of work to be done by the Company hereunder with its own equipment and regularly employed forces and in accordance with the Company's agreements with such regularly employed forces is as follows, and in further accordance with detailed estimate attached hereto and marked Exhibit "D":

Field Engineering and Inspection	\$6,500
Extend Culvert and Remove Timber Grill	590
Construct Shoofly	28,275
Adjust Bridge No. 7	2,000
Remove Track at New Underpass	619
Temporary and Permanent Communications Work	4,827
Temporary and Permanent Signal Work	3,255
Restore Main Track	2,911
Install Inner Guardrail	1,466
Remove Shoofly	4,422
Salvage	12,068 Credit
TOTAL ESTIMATED COST	\$42,800

9. In the event it is determined that a change from the foregoing statement of work to be performed by the Company is required, it shall be authorized only by a written change or extra work order issued by the State and approved by the Division Engineer of the Bureau of Public Roads prior to performance of the work involved in the change. Where an emergency requires, the advance approval of the Division Engineer of the Bureau of Public Roads

may be obtained by telegraph.

10. Upon completion of said bridge, the Company will maintain the entire bridge structure, except the State may maintain all or any part of the structure which may be seen from the highway. The word "maintain" as used herein shall be construed as being synonymous with the word "repair" and shall include restoration to a sound or good state after decay, injury, dilapidation, or partial destruction. The expense incurred with its own equipment and regularly employed forces for maintaining all portions of said structure, except the rails, ties, ballast and inner guard rails thereon shall be ascertained and paid to the Company by the State in the manner and to the extent set forth in Standard Clause 15.

The Company will maintain, at its expense, the railway approaches to the bridge and its right of way outside of the highway right of way. The Company will control all drainage on its right of way.

11. The State will maintain its entire roadway up to and including its backslopes and masonry slope protection within its right of way and across the right of way of the Company. The State will maintain all drainage facilities within its right of way, so as not to cause damage to the bridge or its approaches.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be
duly executed as of the day and year first above written.

In Presence of:

R. G. Carlson
V. A. Newman

NORTHERN PACIFIC RAILWAY COMPANY

By: J. H. Attenbryght
VICE PRESIDENT
Attest: Richard R. Bencke
Assistant Secretary

Recommended for Approval:

B. E. Duggan
Engineer of Railway Negotiations

Recommended for Approval:

C. W. LaBonte
Bridge Engineer

In Presence of:

Shirley J. Miller
James E. Saxon

STATE OF MINNESOTA

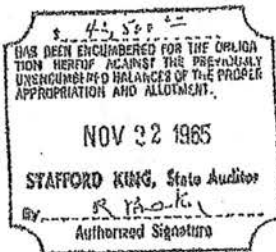
By: Edward J. Hennigan
Commissioner of Highways
Dated: 11-16, 1965

Approved as to Form and Execution:

[Signature]
Special Assistant Attorney General

Approved: DEPARTMENT OF ADMINISTRATION

By: R. E. Duncan
Authorized Signature



STATE OF MINNESOTA }
COUNTY OF RAMSEY } SS

On this 12th day of November, 1965, before
me, a Notary Public within and for said County, personally appeared
E. L. STEINBRIGHT and Richard A. Boulke
to me personally known, who, being each duly sworn, did say that they
are respectively the VICE PRESIDENT and
Assistant Secretary, of the corporation named in
the foregoing instrument, and that the seal affixed to said instrument
is the corporate seal of said corporation, and that said instrument was
signed and sealed in behalf of said corporation, and
E. L. STEINBRIGHT and Richard A. Boulke
acknowledged said instrument to be the free act and deed of said
corporation.

(SEAL)

Richard A. Boulke
Notary Public, Ramsey County, Minnesota
My Commission Expires January 30, 1970

H.P.

45

STATE OF MINNESOTA
DEPARTMENT OF HIGHWAYS

"STANDARD CLAUSES"

FOR

GRADE SEPARATION AGREEMENTS

NOVEMBER 15, 1963

1. The State agrees to submit the plans and specifications for the construction of the grade separation structure to the Railroad and Warehouse Commission for its approval and the approval of the separation of grades of the tracks of the Company and of the trunk highway as shown in the plans and specifications referred to in the grade separation agreement.

2. The State agrees to let a contract pursuant to law for the construction of the grade separation structure in accordance with said plans and specifications.

3. The State agrees that all work provided to be done by the State on the right of way of the Company shall be performed and completed in accordance with said plans and specifications in a manner satisfactory to the Chief Engineer of the Company or his authorized representative. The State agrees that any contract let by it for the performance of any construction work contemplated by this agreement will require the contractor to comply with all of the provisions relating to work on railroad right of way contained in specifications for highway construction issued by the State, dated January 1, 1961, and to carry railway insurance in accordance with "Bureau of Public Roads Policy and Procedure Memorandum No. 20-12, dated March 5, 1959." providing protection to the railway company.

4. The State reserves the right to make such changes in the plans or character of the work as the work under the contract progresses as shall in the Commissioner of Highways' judgment be reasonably necessary to cause the agreed grade separation structure to be in all things constructed and completed in a satisfactory manner and, to that end and as supplemental to any contract let for the construction of said project, to enter into any supplemental agreement with the contractor for the performance of any extra work or work occasioned by any necessary advantages or desirable change in plan. Any such changes in plans or the character of work involving the said structure or the company's facilities will be subject to the approval of the Company.

5. The State agrees that it will from time to time as the work progresses and at the completion thereof take such steps and perform such acts as may be necessary or required under any law of the United States or of any rule or regulation issued by

11/15/67

proper Federal authority in order to obtain and receive any Federal Aid made available for the construction of said project.

6. The work to be performed by the Company in connection with the construction of the grade separation structure is to be considered a part of the cost of said grade separation insofar as such items of work and expense are eligible for reimbursement under Federal laws, and the rules, regulations and memoranda of the Bureau of Public Roads of the Department of Commerce, and it is contemplated that the Company will be reimbursed with Federal Funds made available therefor.

7. The Company shall keep account of its work in such a way that said accounts may be readily audited.

8. The State will reimburse the Company with Federal Funds for actual expense it will incur rearranging its facilities upon receipt of partial or final bills, marked "Progressive Bill No. 1, No. 2, etc." or "First, Second, etc., and 'Final'" and signed by an officer of the Company, rendered in sextuplet on which the State will pay 90%. Final payment will be made after audit of a final detailed bill, rendered in sextuplet, in accordance with Bureau of Public Roads Policy and Procedure Memorandum No. 30-3. Partial bills do not need to be in detail.

9. Said final bill shall be a complete, detailed and itemized statement of all items of work and so arranged and divided as to conform to each of the items of work performed by the Company as shown in the appropriate exhibit or exhibits attached to the grade separation agreement.

10. Upon request of the State's Engineer during prosecution of the work, the Company's representative in charge thereof shall furnish full detailed information as to progress of work and amount of labor and material used to date.

11. The Company agrees that its representative in charge of the work shall furnish the State's Engineer "Monthly Report of Employment, Form 2233," signed in duplicate, showing the number of names on payroll, classification, total hours and total wages paid for each month not later than the week following the month in which the work was performed.

12. The Company agrees that in addition to the foregoing records and acts it will from time to time make such other reports, keep such other records and perform such other work in such manner and time as may be necessary to enable the State to collect and obtain available Federal Aid.

13. The Company agrees that it will notify the State's Engineer in charge of the project as to starting, stopping, resumption and completion dates.

11/15/63

14. In the event that the State does not enter into a contract for construction of the project contemplated by this agreement on or before a day twelve (12) months after the date this agreement is fully executed, then either party may, at any time thereafter, serve notice of cancellation upon the other party by registered mail, and this agreement shall immediately be cancelled and terminated; provided, however, that the Railway Company shall be reimbursed in full by the State for all engineering costs incurred after this agreement is fully executed and prior to said cancellation.

15. The reimbursable maintenance costs shall not extend to the repair of any damage to the bridge structure resulting from the operations of the Company for which the Company has any common law or statutory liability. The reimbursable maintenance costs shall be limited to the actual cost of labor and materials used and to the reasonable rental value of equipment used. Except as hereinafter provided in the case of emergency repairs, reimbursement shall be made only if the Company has submitted its proposed repairs to the State, including an estimate of cost of such repairs, and approval has been received from the State in writing in advance of starting work by the Company. If the Company is unable to obtain the State's approval of such repairs, it may request and require the State to let a contract for the necessary work. Should an emergency exist requiring immediate repairs to said bridge structure in order to maintain railroad traffic, in such event the Company shall be only required to notify the State as soon as reasonably possible that the emergency has arisen and that the Company is proceeding with the work. The Company hereby acknowledges that it may be necessary to file a legislative claim for reimbursement of any costs incurred before State funds are encumbered in an amount sufficient to cover the costs of the work. In all events, reimbursable maintenance costs shall be limited to necessary repairs and the parties hereto agree to submit any dispute as to the necessity of any repairs to the Minnesota Railroad & Warehouse Commission.

16. It is further agreed by and between the parties hereto, anything to the contrary herein notwithstanding, that the Commissioner of Highways of the State of Minnesota is acting in his official capacity only and that he shall not be personally responsible or liable to the Company or to any person or persons whomsoever for any claims, damages, actions or causes of action of any kind or character arising out of or by reason of the execution of this agreement or the performance or completion of the project provided for herein.

17. Before the grade separation agreement shall become binding and effective, it shall have received the approval of such State officers as the law may provide in addition to the Commissioner of Highways.

18. The laws of the State of Minnesota shall govern all questions as to the execution, nature, obligation, construction, validity and performance of the grade separation agreement.

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NO. 67-289-20
JAN 11 1968

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CLARENCE LEBATHE
PT 24 552
PT 24 552

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 10-16-88 BY SP-27-22

EXHIBIT "B"
August 19, 1964
Secret - 100

Stras Man. in
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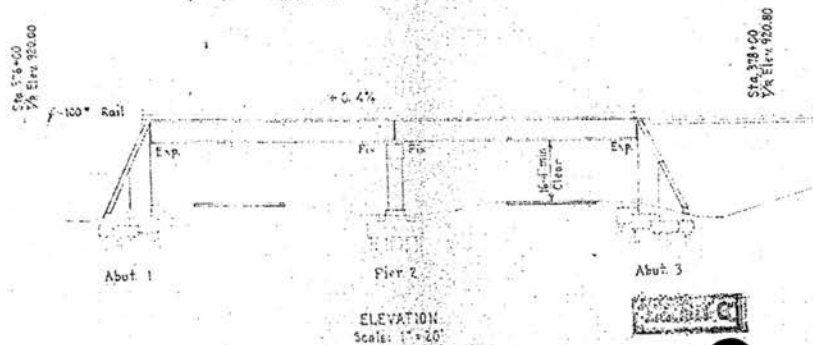
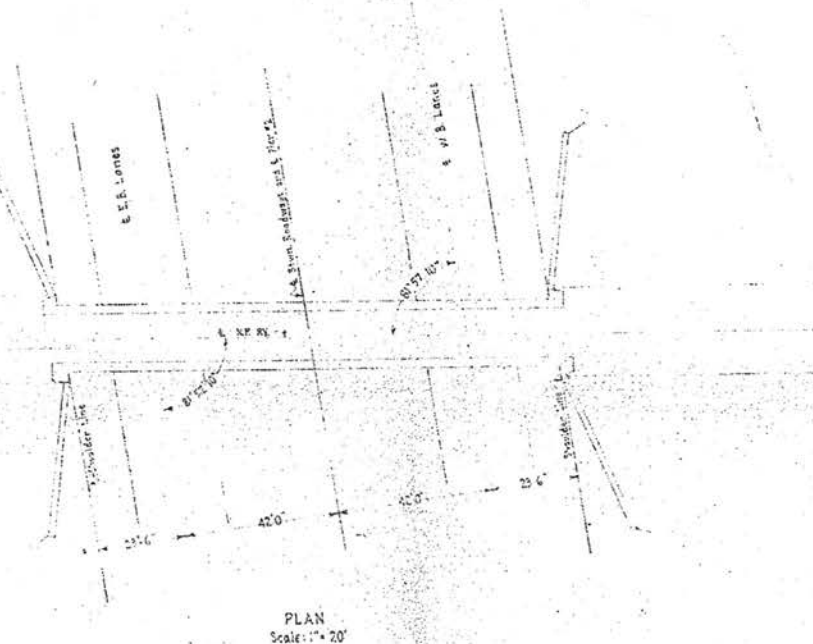
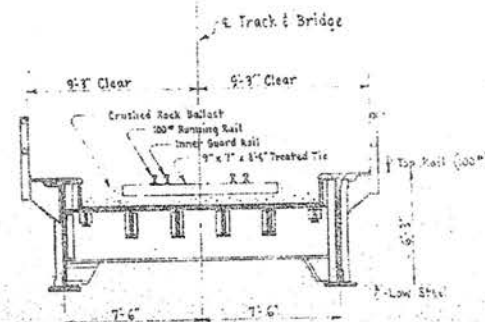
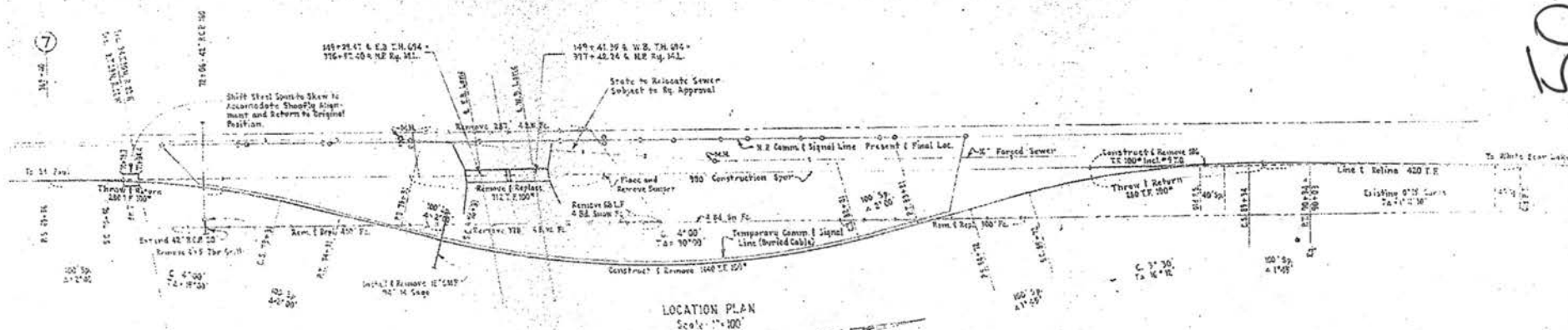


EXHIBIT "C"

N.P. RY.

St Paul Division White Bear Line
Highway Underpass Bridge M.P. 7+740
N.P. Bridge No 71- State Bridge No 62822
NEAR GLOSTER, MINN.
Scale: as shown
Office of Chief Engr: St. Paul, Minn. Aug. 18, 1963

New Work	shown	_____
Relocations	"	_____
Removals	"	_____
Work by Others	"	_____

Yal Sec. Minn.5

NORTHERN PACIFIC RAILWAY COMPANY

St. Paul Division

White Bear Lake Line

Gloster (near)

Estimated cost of work to be done by Railway Company forces in connection with construction by the State of Minnesota of its Highway 4694 Underpass, Bridge No. 62822, South of White Bear Lake, N.P. Ry. Co. Mile Post 7+740.

I - Engineering, Inspection, etc.

Field Engineering and Inspection
Check Bridge Steel Shop Plans
Prepare estimate and bills

5,000
1,000
500
6,500

II - Extend Culvert and Remove Timber Grill

Permanent Work

Material

Reinforced Concrete Pipe - 42" - 20 L.F.
Store and purchase expense

260
10

Labor

Install RCP Culvert
Excavation
Remove 4' x 5' timber grill
Payroll additives

140
100
25
75
590

III - Construct Temporary Shoofly and Construction Turnout

Material:

Cross ties, treated
Switch ties, treated
Rail, SH, 100#, 3186 L.F.
Anglebars, SH, 100#
Bolts and Nutlox
Track Spikes
Tie plates, SH
Rail anchors
Split switch, 100# - 16.5' - Ins.
S.R. Frog, 100# - 16.5' - #9
Guard rails, 100# Mang.
Switch stand
Lamp and lock
Ballast, crushed rock
Signs and timber bumper
Handle materials
Freight

883 Ea.
2956 F.B.M.
47.41 G.T.
84 Pr.
336 Sets
16 Kegs
1779 Pc.
1160 Pc.
1
1
1 Set
1
1
970 C.X.

4,874
420
5,575
384
102
419
1,281
568
524
504
238
102
24
2,153
35
757
1,258

<u>Labor, etc.</u>	5,548
Construct 1626 ft. of temporary track, complete, including one turnout and bumper.	560
Throw 560 Ft. of track at ends of shoofly.	303
Line 420 Ft. of track north of shoofly.	71
Remove 710 Ft. of right of way fence.	1,847
Payroll additives	648
Use of equipment	<u>\$28,275</u>

IV - Bridge No. 7

Throw steel span on to skew to accommodate shoofly alignment and return to existing position after shoofly is removed.	\$2,000
--	---------

V - Remove Track, etc. at New Underpass

Remove 312 Ft. of track and store materials.	390
Remove 665 Ft. of right of way fence, and 68 Ft. of snow fence.	57
Payroll additives	127
Use of equipment	<u>45</u>
	<u>\$619</u>

VI - Work on Communications Line

Temporary Work

Material:

2 Guys with anchors	21
2000 Ft. of 28 Cond. Cable	880
Trunking	360
4 Impedance Matching Transformer Sets	126
2 Grounds	7
Contingencies	139
Store and Purchasing Expense	77
Freight	<u>77</u>
	<u>\$1,687</u>

Labor:

Set 2 anchors and guys	33
Attach 4 upright braces	8
Trenching 415 Ft.	323
Construct 1225 Ft. of trunking	122
Lay-out and pick up 2,000 Ft. of temporary cable.	200
Remove 3.19 miles of line wire	96
Remove 18 X-arms	19
Pull 3 poles and salvage	24
Cut down 6 poles	6
Remove and store 117 Insulators	12
Remove 1225 Ft. trunking	123
Remove 4 transformers	20
Remove 2 grounds	4
Contingencies	297
Payroll additives	360
Subsistence of men	360
Use of truck	<u>162</u>
	<u>2,169</u>

Permanent Work

Material

4 poles, W.C. Class 4, 40 Ft. B.T.	133
2 poles, W.C. Class 4, 35 Ft. B.T.	51
2 poles, W.C. Class 4, 25 Ft. B.T.	23
6 Guys with anchors, etc.	74
4 H-Fixture Braces	11
10 Cross-arms with bolts, etc.	28
52 Dead-end shackles with ins.	67
180 Lb. Copper weld Line Wire, #8	104
515 Lb. Copper weld Line Wire, #9	241
6 Lb. Copper Tie Wire	3
78 Sleeves	11
12 Crossarms, 10-Ft., with pins, etc.	36
Contingencies	78
Store and Purchase Expense	43
Freight	43
	<u>946</u>

Labor:

Distribute, dig holes and set 10 poles	170
Set 6 anchors and attach guys	100
Attach 14 single crossarms	27
Attach 4 double crossarms	18
Attach 4 H-Fixture braces	8
Attach insulators and pins	15
Attach 52 D.E. Shackles	52
String 3.19 miles line wire	128
Make up 52 Dead ends	39
Contingencies	167
Payroll additives	203
Subsistence of men	200
Use of truck	90
	<u>1,217</u>

Salvage Credit:

75 Ft. of guy strand with clamps, etc.	9
2000 Ft. of 28-condr. cable	792
Copper wire, scrap 664 Lb.	214
Poles not reused	57
Impedance Matching Transformers 4	114
Grounds	6
	<u>(1,192)</u>

Net Total for Communications Work

4,827

VII - Work on Signal System

Temporary Work

Material:

2000 Ft. 5 Condr. cable	832
2000 Ft. 3 Condr. cable	590
1800 Ft. Trunking and Capping	540
2 Guys complete	12
Bonds	50
12 Dead ends, complete	20

1 Switch box and circuit controller	125
5 Insulated joints, 100'	163
Misc. material	233
Additives	564
	<u>3,129</u>

<u>Labor:</u>	
10 Days for 3 men	640
Engineering	64
Payroll additives	194
	<u>898</u>

Permanent Work

<u>Material:</u>	
4000 Ft. #8 AWG Line Wire	156
8000 Ft. #10 AWG Line Wire	176
15 Crossarms complete with pins insulators and ties	98
Bonds	20
Misc. material	45
Additives	109
	<u>604</u>

<u>Labor:</u>	
9 Days for 3 men	575
Engr.	58
Payroll additives	174
	<u>807</u>

Salvage Credit

2000 Ft. 5 Condr. Cable	749
2000 Ft. 3 Condr. Cable	531
Trunking and Capping	405
Deadeads	18
Switch box and circuit controller	113
Insulated joints	147
Misc. Material	210
Scrap material	10
	<u>(2,183)</u>

Net Total Signal Work . 3,255

VIII - Restore Main Track

<u>Material:</u>	
Rock ballast 160 Cu. Yd.	355
Service Life Loss on 231 cross ties - 15%	193
Loss on track spikes - 25%	26
Handle material	11
Freight	168

Labor:
 Replace ballast and 112 Ft. of track.
 Payroll additives
 Use of equipment

1,560
 445
 156
\$2,911

IX - Install Inner Steel Guardrail
 770 Lin. Ft. 100# rail 11.46 G.T.
 Joints, bolts, nutlox and spikes
 Handle material
 Freight
 Labor installing guardrail
 Payroll additives
 Use of equipment

385
 229
 31
 20
 578
 165
 58
\$1,466

X - Remove Shoofly and Turnout
 Remove 1626 Ft. of track including
 one turnout.
 Replace switch ties with cross ties
 at temporary turnout.
 Throw 560 Ft. of track at ends
 Line 505 Ft. of track
 Replace 710 Ft. of right of way fence
 Payroll additives
 Use of equipment

2,133
 90
 560
 303
 107
 910
 319
\$4,422

XI - Salvage Credit for Shoofly, etc.
 Ties 75%
 Rail 94%
 Track Spikes 75%
 Other track fastenings and
 turnout material. 94%
 Freight to stores
 Handle at stores

(3,971)
 (5,241)
 (314)
 (3,579)
 202
 755
(\$12,068)

Net Credit

Attachment 2

[attach copy of Supplemental Agreement No. 1 dated February 21, 1966 and Exhibit C thereto]

SUPPLEMENTAL AGREEMENT NO. 1 TO MINNESOTA DEPARTMENT OF HIGHWAYS
AGREEMENT NO. 54881 WITH THE NORTHERN PACIFIC RAILWAY COMPANY

S.P. 6286-03 (T.H. 694=393)
Minn. Proj. I-10-694-5(39)235
Underpass Bridge No. 62822
0.9 Mi. W. of Jct. (IN WHITE BEAR LAKE)
of White Bear Ave. and T.H. 694
South of White Bear Lake, Minnesota.
NORTHERN PACIFIC RAILWAY COMPANY

WHEREAS, under date of November 16, 1965, the NORTHERN PACIFIC RAILWAY COMPANY, hereinafter called the "Company", and the STATE OF MINNESOTA, hereinafter called the "State", entered into Agreement No. 54881, covering the construction and maintenance of Underpass Bridge No. 62822; and

WHEREAS, the State has acquired the necessary right of way from the Company for the construction of Bridge No. 62822; and

WHEREAS, the State has prepared plans and specifications for the construction of Bridge No. 62822 and said plans and specifications have been approved by the Chief Engineer of the Company; and

WHEREAS, Exhibit "C", dated August 18, 1965, attached to and made a part of Agreement No. 54881, did not show the placing by the State's Contractor of a twenty-four (24) inch diameter reinforced concrete culvert one hundred ten (110) feet long at Company Station 376 + 16 or the placing by the State's Contractor of a twenty-four (24) inch diameter reinforced concrete culvert one hundred twelve (112) feet long at Company Station 377 + 84 to carry highway drainage within highway right of way and under the Company's track and railroad grade; and

WHEREAS, Item 11, Page 7, of Agreement No. 54881 does not specifically mention the maintenance of the aforementioned culverts and the Company desires that said maintenance obligation be specifically set forth; and

WHEREAS, the State recognizes its obligation to maintain said culverts under Agreement No. 54881 but is willing to further set forth such obligation; and

WHEREAS, in compliance with Standard Clause No. 1 of Agreement No. 54881, said plans and specifications were submitted to the Minnesota Railroad & Warehouse Commission for its approval; and

WHEREAS, under date of October 26, 1965, the Minnesota Railroad & Warehouse Commission approved said plans and specifications conditioned upon compliance with the

requirement that suitable ramps from the end of footwalks to ballast section shall be installed at each end of the bridge to provide continuous unobstructed walkway for trainmen at this location; and

WHEREAS, Exhibit "C", dated Revised, January 28, 1966, attached hereto and made a part hereof, shows the location of said ramps which will be constructed at State expense by the State's contractor as a part of the construction of Bridge No. 62822; and

WHEREAS, said ramps are a part of the railway approaches to Bridge No. 62822 and the Company recognizes its obligation to maintain said approaches but is willing to further set forth such obligation.

NOW THEN, IT IS AGREED:

1. Item 11, Page 7, of Agreement No. 54881 is amended as follows: The State will maintain its entire roadway up to and including its backslopes and masonry slope protection and any pipe under the railway fill in line with the State's side ditches within the highway right of way and across the right of way of the Company. The State will maintain all the drainage facilities within its right of way, so as not to cause damage to the bridge or its approaches.

2. Exhibit "C", dated August 18, 1965, of Agreement No. 54881 is amended by the attachment of Exhibit "C", dated Revised, January 28, 1966, to this agreement and making it a part hereof.

3. The Company will maintain, at its expense, the railway approaches to the bridges, including the ramps as shown in Exhibit "C".

4. Items 1, 2 and 3 above shall become effective when this supplemental agreement has been countersigned by the State Auditor.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed this 21st day of February, 1966,

In Presence of:

R. G. Carlson

Beatrice E. Nachtrieb

Recommended for Approval:

B. B. Ziegler
Engineer of Railway Negotiations

Recommended for Approval:

W. C. Matarney
Bridge Engineer

In Presence of:

Paula E. Miller

James E. Sisco

Approved as to Form and Execution:

[Signature]
Special Assistant Attorney General

NORTHERN PACIFIC RAILWAY COMPANY

By: J. L. Stembright
VICE PRESIDENT

Attest: Richard A. Reulke
Assistant Secretary

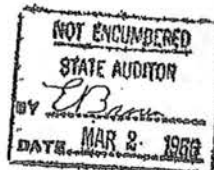
STATE OF MINNESOTA

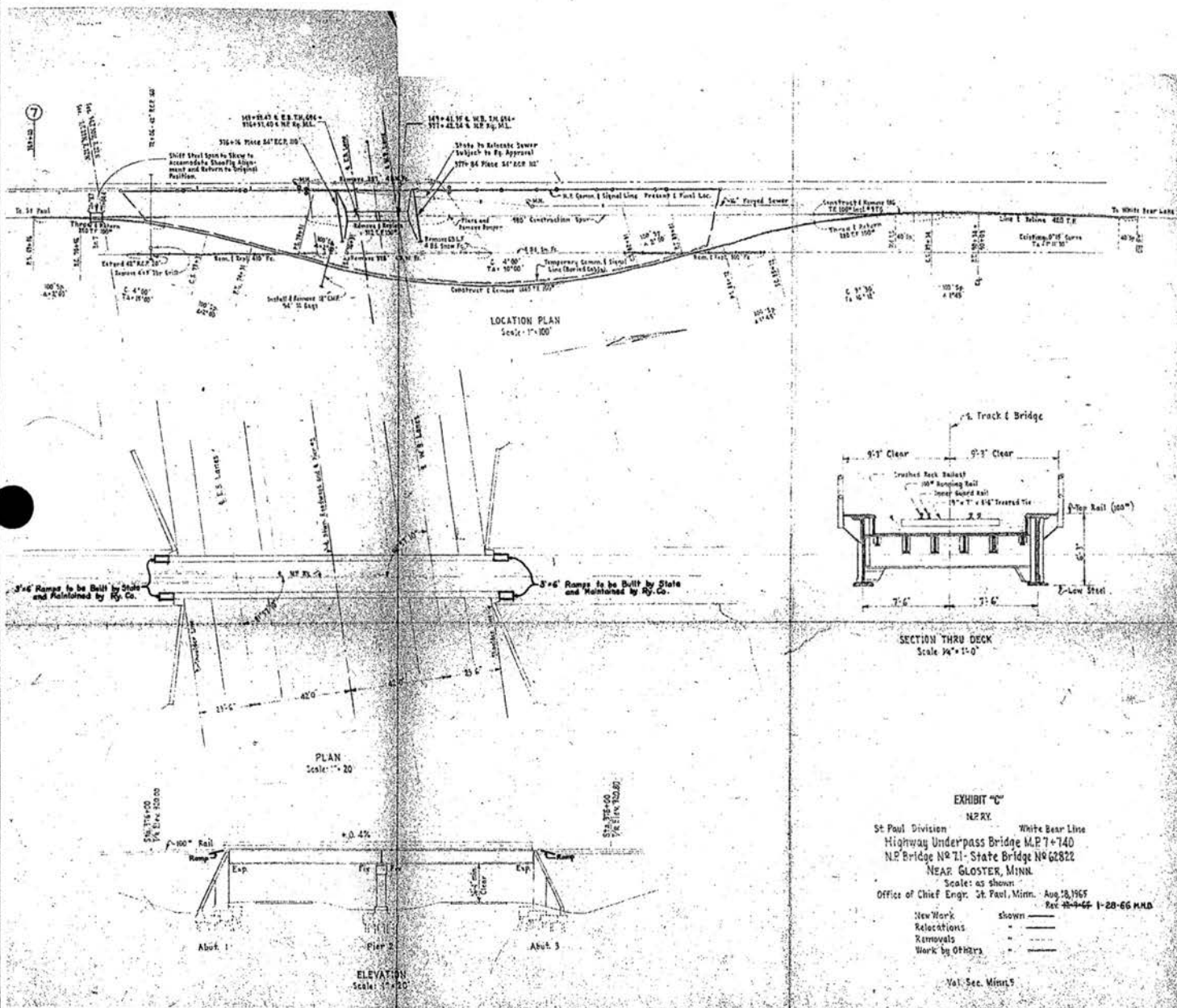
By: [Signature]
Deputy Commissioner of Highways

Dated 2-21, 1966

Approved: _____
Department of Administration

By: A. F. Duncan
Authorized Signature





Attachment 3

[attach clean copy of letter dated July 29, 1969 from the State to NP and letter dated
October 30, 1969 from NP to the State]

July 29, 1969

Mr. D. H. Shoemaker, Chief Engineer
Northern Pacific Railway Company
St. Paul, Minnesota 55101

In reply refer to: 360
S.P. 6286-04 (T.H. 694-393)
Sign --- U.P. Bridge 62822
0.9 Mi. W. (White Bear Avenue)
South of White Bear Lake, Minn.
N.P. File: 5307

Dear Mr. Shoemaker:

Please be referred to our Letters of April 28 and July 14, 1969,
about a directional sign on Bridge No. 62822 South of White Bear
Lake.

We are enclosing one set of prints and their transparencies for
Sheets Nos. 1, 58, 59, 64, 65 and 69, showing the general layout
and details of mounting the sign on Underpass Bridge No. 62822.

The State's contractor will install the sign and assembly and will
be required to furnish a railroad protective liability insurance
policy and a surety bond guaranteeing payment to your company for
flagmen services necessary because of his operations.

Please complete and return one of the attached forms relative to
flagmen services.

The State will accept the responsibility for maintaining the sign
and assembly.

Mr. R. E. Nichols of your office has advised verbally that the plans
sent with our previous letters were agreeable to your company. If
you concur, please so advise in writing in order to complete our
file.

This project has been rescheduled for letting on January 23, 1970.

Sincerely,

J. W. Bolstad
Engineer of Railway Negotiations

Enclosures:

Prints & Transparency (1 set)
Flagging Service Forms (2)

cc:

V. L. Pederson - Room 820
JWB:MCL (J.W.Bolstad)

62

NORTHERN PACIFIC RAILWAY COMPANY

NORTHERN PACIFIC BUILDING, ST. PAUL, MINN. 55101

D. H. SHOEMAKER
Chief Engineer

October 30, 1969

BE 1831

Mr. J. W. Bolstad
Engineer of Railway Negotiations
Minnesota Department of Highways
St. Paul, Minnesota 55101

Dear Mr. Bolstad:

Reference is made to your letter of July 29, 1969, your file 360, S.P. 6286-04(T.H. 694=393), sign -- U.P. Bridge 62822, 0.9 miles west (White Bear Avenue) south of White Bear Lake, Minnesota, regarding proposed installation of highway directional sign on the referenced highway underpass bridge.

This underpass bridge, which carries our St. Paul to Duluth line track over Interstate Highway 694 at Railway MP 7+740 near Glóster, Minnesota, is covered by State-Railway agreement dated November 16, 1965, which has been given State No. 54881 and Railway Docket No. 25318.

This will advise that we have no objections to the installation and maintenance of the proposed sign on the basis set forth in your above letter.

For record purposes, we are filing your above letter with the plans attached thereto and a duplicate copy of this reply with the referenced agreement.

Very truly yours,

REN:sm

D. H. Shoemaker
Chief Engineer

cc 11-6-69

V. L. Pederson - 820

63

CITY OF MAPLEWOOD

RESOLUTION

IT IS RESOLVED that the City of Maplewood enter into Mn/DOT Agreement No. 02472 with the State of Minnesota, Department of Transportation for the following purposes:

To clarify the maintenance responsibilities of the former BNSF Railroad Bridge number 62822 over T.H. 694 between White Bear Ave. and T.H. 61 between the State of Minnesota, Department of Transportation and the City.

IT IS FURTHER RESOLVED that the Mayor and the ^{Assistant}City Manager _(Title) are authorized to execute the Agreement and any amendments to the Agreement.

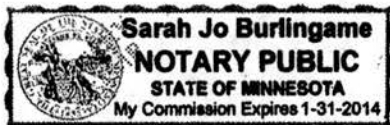
CERTIFICATION

I certify that the above Resolution is an accurate copy of the Resolution adopted by the Council of the City of Maplewood at an authorized meeting held on the 11th day of February, 2013, as shown by the minutes of the meeting in my possession.

Subscribed and sworn to before me this
27 day of February, 2013

Notary Public

My Commission Expires 1-31-2014



Karen E. Guilfoile
(Signature)

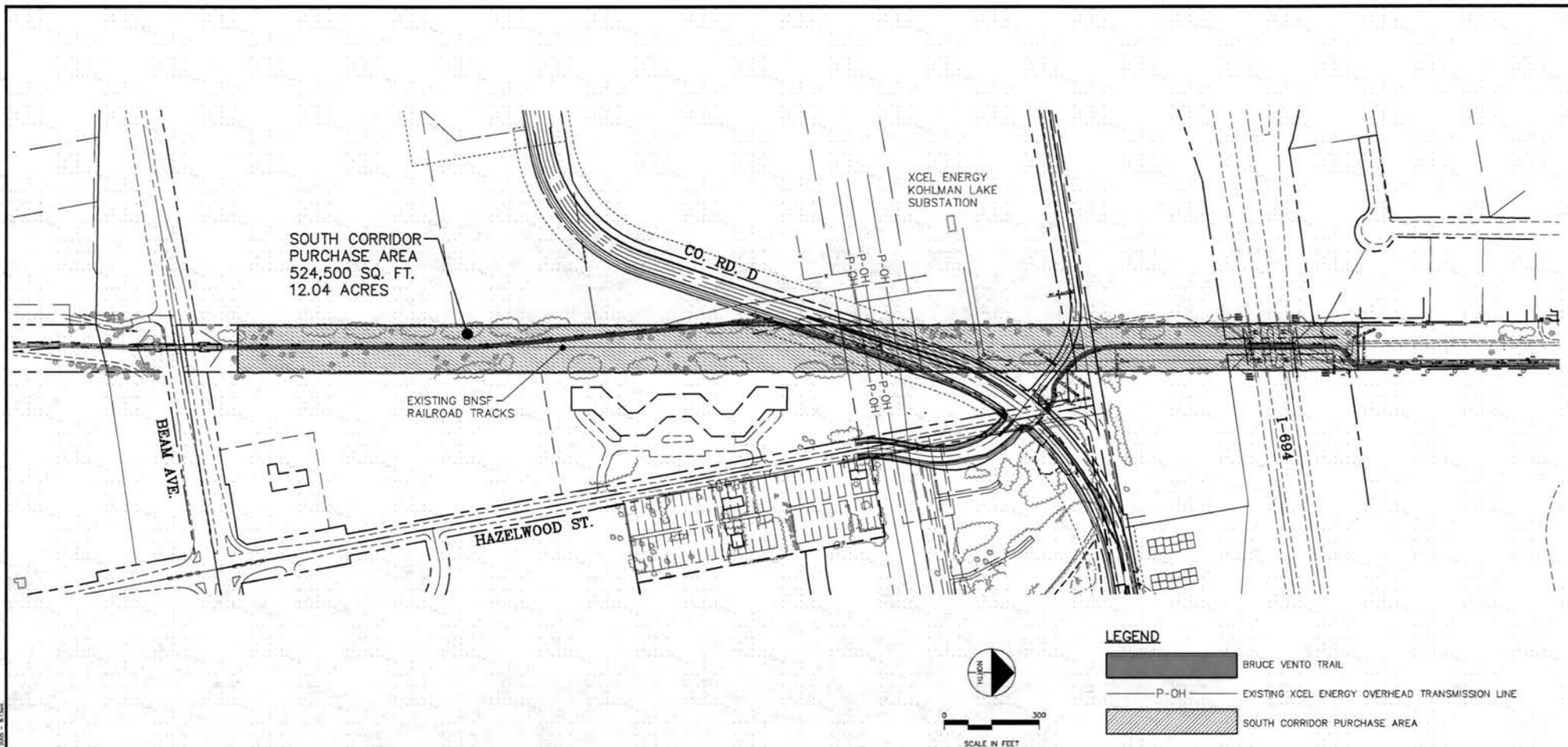
KAREN E. GUILFOILE
(Type or Print Name)

City Clerk
(Title)

65

RECEIVED
JAN 10 1965
U.S. DEPARTMENT OF STATE
WASHINGTON, D.C. 20520

Attachment # 3



LEGEND

-  BRUCE VENTO TRAIL
-  EXISTING XCEL ENERGY OVERHEAD TRANSMISSION LINE
-  SOUTH CORRIDOR PURCHASE AREA


 City of Maplewood, Minnesota
 Department of Public Works
 Engineering Division

 Kimley-Horn
 and Associates, Inc.

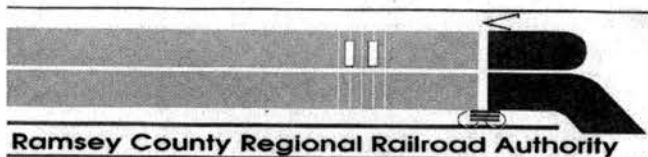
2550 UNIVERSITY AVE. WEST, SUITE 240N
 ST. PAUL, MINNESOTA 55114

TEL. NO. (612) 645-4197
 FAX. NO. (612) 645-0118

RCRA SOUTH CORRIDOR PURCHASE AREA

DECEMBER 2005

66



2

REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: **04/02/2013**

Regional Railroad Authority Meeting Date:

SUBJECT: Release of Request for Proposals for Corridors of Opportunity Gateway Corridor - Fostering an East Side Transit Conversation

EXECUTIVE SUMMARY

Corridors of Opportunity offers the opportunity to think beyond transit as a network of connections, destinations and transit modes focuses on the access to opportunities a well-planned system can provide — opportunities to live, work, play, go to school, invest and build prosperity.

Corridors of Opportunity is focused on seven transitway corridors that are planned, under construction or operating in the region. These corridors connect valued local places, institutions and commercial districts to each other and to the entire region. The Gateway Corridor is identified as one of seven transitway corridors highlighted in the Corridors of Opportunity initiative. Of the \$5 million regional planning grant, \$150,000 has been allocated to work within the Gateway Corridor.

The Gateway Corridor is currently wrapping up an Alternatives Analysis (AA) and will soon continue in the next step of the project development process.

Through the AA process, it became apparent that constituents on the east side of Saint Paul desired a holistic conversation of transit needs and future opportunities. This project sets out to foster a conversation of transit on the east side. It also sets out to narrow the discussion and clear the clutter of multiple transit planning studies. Currently the east side is at the epicenter of transit efforts, i.e. Gateway Corridor, Rush Line Corridor, Metro Transit's Rapid Bus plans, Saint Paul's Citywide Streetcar feasibility study and ongoing improvements to the underlying bus system. A desired outcome of this work is to build the capacity of east side residents and businesses to chart their role in these transit efforts.

ACTION REQUESTED

Authorize the issuance of a Request for Proposals for Corridors of Opportunity Gateway Corridor Project in accordance with County policies and procedures on Request for Proposals, with direction to staff to return to the Ramsey County Regional Railroad Authority with a recommendation for selection of a vendor.

1

SUBJECT: Release of Request for Proposals for Corridors of Opportunity Gateway Corridor - Fostering an East Side Transit Conversation

ATTACHMENTS:

Request For Proposals

PREVIOUS ACTION:

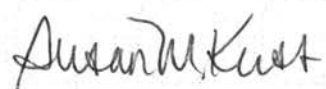
On June 7, 2011, in Resolution R11-19, the Ramsey County Regional Railroad Authority approved and executed Subrecipient Agreement SG011-031 with the Metropolitan Council for the Corridors of Opportunity Gateway Corridor Project, effective upon signature by parties through January 31, 2014, in the amount of \$150,000 in federal funds.

COUNTY MANAGER'S COMMENTS:

Issuance of a Request for Proposals requires Ramsey County Regional Railroad Authority Board approval and is consistent with the Ramsey County Regional Railroad Authority Board's direction for an open, fair and competitive solicitation process.

SUBJECT: Release of Request for Proposals for Corridors of Opportunity Gateway Corridor - Fostering an East Side Transit Conversation

Regional Railroad Authority – Authorized Signature	Date
	3/20/13

Finance – Authorized Signature	Date
	3/25/13

County Attorney – Authorized Signature	Date
	3/26/13

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

SUBJECT: Release of Request for Proposals for Corridors of Opportunity Gateway Corridor - Fostering an East Side Transit Conversation

Draft Resolution

1 WHEREAS, The Corridors of Opportunity Program is a regional initiative funded by grants
2 from the Sustainable Communities program of the U.S. Department of Housing and Urban
3 Development and the Living Cities Integration Initiative; and
4

5 WHEREAS, Corridors of Opportunity uses the Housing and Urban Development grant funds
6 to provide support for individual projects along transit ways in the Twin Cities area and the
7 Metropolitan Council is the fiscal agent for the grant; and
8

9 WHEREAS, The Ramsey County Regional Railroad Authority is currently identified as the
10 lead agency for three Corridors of Opportunity projects: Jobs Central\Corridors 2 Careers, Energy
11 Demonstration Project - Central Corridor, and Gateway Corridor Project; and
12

13 WHEREAS, On June 7, 2011, the Ramsey County Regional Railroad Authority approved
14 and executed Subrecipient Agreement SG011-031 with the Metropolitan Council for the Corridors
15 of Opportunity Gateway Corridor Project, effective upon signature by parties through January 31,
16 2014, in the amount of \$150,000 in federal funds; and
17

18 WHEREAS, Several future transit investments are being studied, including the Gateway
19 Corridor managed by Washington County Regional Railroad Authority, traverse and impact the
20 East Side of Saint Paul in different ways; and
21

22 WHEREAS, The numerous studies/efforts have caused confusion as to the improvements
23 that benefit the East Side constituents; and
24

25 WHEREAS, It was revealed through these studies that east side residents sought a more
26 holistic conversation of transit needs and future opportunities; and
27

28 WHEREAS, The Gateway Corridor Project is aimed at fostering a community conversation
29 around the topic of transit in the East Side of Saint Paul; and
30

31 WHEREAS, The Gateway Corridor Project's desired outcome is a more informed
32 constituency around the topic of current transit challenges and opportunities, as well as an
33 increased capacity by east side residents, business and decision makers to advocate for the transit
34 improvements that most effectively benefits the East Side; Now, Therefore, Be it
35

36 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the issuance of a
37 Request for Proposals for Corridors of Opportunity-Gateway Corridor Project in accordance with
38 County policies and procedures on Request for Proposals, with direction to staff to return to the
39 Ramsey County Regional Railroad Authority with a recommendation for selection of a vendor.
40

Attachment

REQUEST FOR PROPOSALS

FOSTERING AN EAST SIDE TRANSIT CONVERSATION

Issue Date: April 2, 2013
Proposals Due: May 1, 2013

Issued by Ramsey County Regional Railroad Authority with HUD Sustainable
Communities Grant Funding

I. PROJECT INFORMATION

a. Project Overview/Purpose

Ramsey County Regional Railroad Authority ("RCRRA"), assisted by its transit partners at the City of Saint Paul, Metro Transit, and the Metropolitan Council, seek qualified consultants to assist RCRRA and other partners in engaging Saint Paul's East Side citizens and businesses in providing a foundation for more informed transit decision making in the future.

Local and regional plans have identified several potential future transit investments in the greater east metro. The East Side of Saint Paul is positioned to be served by one or more of these transit investments. Several studies have or are currently examining transit investments through East Side neighborhoods, including the Gateway Corridor Alternatives Analysis, Rush Line Alternatives Analysis, Metro Transit Arterial Transit Corridor planning, and Saint Paul's citywide streetcar study. All of these investments have the potential to serve and impact East Side neighborhoods differently.

Uncertain transit funding and the complex nature of these projects make it important that various community voices are heard in the early stages of project development. It is imperative that East Side residents and businesses be ready to make their transit needs known in a connected, strategic and holistic way.

The goals of this project are to foster better working relationships with government partners and East Side constituents in transit decision making; develop a deeper understanding by East Side constituents and decision makers of transit patterns and customer needs and the challenges and opportunities for expanded transit service on the East Side; cultivate a more informed constituency that can more effectively influence transit decision making.

An amount not to exceed \$150,000 has been budgeted for this work and all work shall be completed by December 31st, 2013.

b. Project Limits

For purposes of this study, the East Side of Saint Paul is defined as the northeast portion of the City of Saint Paul. The general geographic limits are: I-35E on the west, Interstate 94 on the south, McKnight Ave on the East, and Larpenteur Ave on the north.

c. Background

The East Side of Saint Paul has been at the confluence of several major transit enhancement efforts. In addition to service changes to Metro Transit's service to and within the East Side, several transit investment efforts.

In 2001, Metro Transit undertook a significant effort to restructure bus routes. This resulted in a simplification of routes and a cost-effective approach to serving the Metro Area including the East Side. Metro Transit has strived to maintain and instances increase service frequency and coverage within the East Side through significant budget fluctuations. Metro Transit endeavors consistently for ways to improve transit service on the East Side. Metro Transit is currently completing an existing conditions report of East Side bus routes including some historical context, ridership performance.

Over the past decade, RCRRRA and its other partners have undertaken or currently undertaking several studies to examine the effectiveness of major transit investments serving the East Side. These include the Rush Line Alternatives Analysis (2008), and Gateway Corridor (Ongoing). At the same time, other transit partners have or are examining other alternatives. Metro Transit has identified East 7th Street as a promising corridor to implement bus rapid transit plans. The City of Saint Paul is currently conducting a citywide Streetcar Study and has preliminarily identified East 7th Street as a potential streetcar corridor worthy of further analysis.

Cost

An amount not to exceed \$150,000 has been budgeted for this work and all work shall be completed by December 31st, 2013. This study is funded through the HUD Sustainable Communities Grant. RCRRRA is a partner to the Corridors of Opportunity. For more information, please visit <http://www.corridorsofopportunity.org>

RCRRRA is identified as the sub-recipient of this grant and will serve as primary project contact.

Timeline

RCRRRA and its partners have a preferred six month project. This is constrained timeframe is dictated by the HUD grant. All funds must be expended by December 31, 2013.

d. Project Information Contact

RCRRRA personnel and elected officials are not authorized to discuss this Project or Request for Proposals with interested proposers. All questions related to the Project requirements and requests for clarification must be submitted in writing to the following person by 4:00 p.m. on Monday, April 15, 2013:

Lisa Bartels
Division of Contract and Analysis Services
280 City Hall/Court House Bldg.
15 West Kellogg Blvd.
St. Paul, MN 55102

Questions may be faxed to (651) 266-8919 or e-mailed to (insert)

- e. Proposers must comply with the provisions of the RCRRRA's *Evaluation of Proposals: Rules and Guidelines*, attached hereto and made a part of this RFP as **Appendix A**.

II. SCOPE OF SERVICES

a. General

A consequence of all the work around transit is confusion as to what is best for the East Side and whether voices of the East Side are being heard. This effort sets out to examine the current challenges and desires for transit on the East Side, and build an informed constituency that will lead for greater community participation and dialogue on transit decisions affecting the East Side.

The CONSULTANT must be prepared to begin immediately upon receipt of a Notice to Proceed and possess the ability to complete required tasks before the end of 2013.

New, creative, transformative and meaningful ways to engage with the public in the discussion of transit improvements are expected for this project.

b. Project Services

The selected consultant is tasked with developing and delivering a community engagement effort around the topic of transit on the East Side of Saint Paul. The community engagement effort will consist of a two part concurrent exercise that revolves around **Learning** about the travel behaviors of transit and non-transit users within the study area of the East Side and **Educating** East Side residents, employees and businesses about current travel options available and the transit planning process as future options are explored.

It is imperative that CONSULTANT has the ability to move quickly in the completion of the effort. CONSULTANT IS expected to deploy traditional and non-traditional engagement tools and techniques in order to reach hard-to-reach populations on the East Side.

Examples of possible engagement tools and strategies include:

- On-board transit or person-to-person surveys
- Public input via websites (electronic means) or phone messages
- Small group discussions
- Interviews
- Community Forums

Task A: Learning

GOAL: Engaging with current transit customers and non-transit users, transit decision makers and east side residents and business hope to better understand the travel behaviors, as well as challenges and opportunities of current and future transit.

In consultation with RCRRA and transit partners, CONSULTANT will develop a methodology for collecting data on transit and non-transit constituents under-represented in traditional public process whereby constituents describe their travel patterns and experiences and identify their challenges and opportunities to improving and expanding transit usage in the East Side. It is the intent of RCRRA and its partners to utilize this data in decision making; therefore it is important that the data be collected using commonly used methods resulting in reliable data. A deliberate focus on connecting with hard-to-reach communities must be included. The CONSULTANT will review travel pattern information including East Side existing conditions report (currently under completion), 2010 Travel Behavior Inventory transit on-board survey and household interview study, as well as customer data from Metro Transit's bi-annual rider survey.

CONSULTANT is encouraged to team with individuals in neighborhoods, business organizations, community groups, district councils, public service agencies, university researchers, etc. in the formulation and execution of the data gathering.

CONSULTANT is also encouraged to obtain both quantitative and qualitative data and deploy innovative methods in the gathering of data. An examples of innovative and/or non-traditional method could include partnering with a public artist.

Task B: Educating

Cultivate a more informed constituency that is active and can more effectively influence transit decision making.

In consultation with RCRR and transit partners, CONSULTANT will develop and disseminate a public outreach campaign focused on educating East Side residents, employees and businesses about current travel options available and the transit planning process as future options are explored; the impacts of future transit investments; and how East Side communities can work with entities charged with implementing transit investments to ensure involvement in transit decision making is successful and meaningful.

Deliverables:

1. A memorandum detailing results of "Learning" task including existing travel patterns, current challenges to using transit, potential opportunities and other relevant learnings from the process based on responses from current and possible future transit customers.
2. A memorandum detailing outreach efforts used, populations targeted, number of engagement sessions, participants at meetings, key outcomes from each of these interactions.
3. A documented toolkit of successful engagement techniques used during this period of fostering conversation with the East Side of St. Paul.
4. A recommendation for best practices that might be used by any transit planning agency interested in learning about a community served by transit (focus on learning from community members under-represented in the traditional planning process).
5. A recommendation for additional educational resources that might be developed to educate communities regarding the transit planning process in the future.
6. A recommendation of key considerations for future transit planning in the East Side of St. Paul.
7. Meetings- including the consultant providing all of the materials used in the meetings

III. REQUEST FOR PROPOSALS TIMETABLE

Request for Proposals Issued		April 2, 2013
Deadline for Written Questions	4:00 p.m.	Monday, April 15, 2013
Written Responses Sent	4:00 p.m.	Friday, April 26, 2013
Proposals Due	2:00 p.m.	Wednesday, May 1st, 2013

IV. PROPOSAL SUBMISSION

A. Proposal Submission Process

i. Notice to Proposers

1. RCRRA is not responsible for costs incurred by anyone responding to this Request for Proposals.
2. Upon submission, all proposals become the property of the RCRRA, which retains the right to use any concept or idea presented in any proposal submitted, whether or not that proposal is accepted.
3. RCRRA expressly reserves the right to amend or withdraw this Request for Proposals at any time and to reject any or all proposals.
4. RCRRA is not bound to accept the lowest cost proposal.
5. Proposers are held legally responsible for their proposals and proposal budgets. Proposers are not to collude with other proposers and competitors or take any other action which will restrict competition. Evidence of such activity will result in rejection of the proposal.
6. RCRRA reserves the right to negotiate contract terms contemporaneously and /or subsequently with any number of proposers as the RCRRA deems to be in its best interests.
7. RCRRA reserves the right to request any additional information at any stage of the Request for Proposals process. Compliance shall be at the proposer's expense.

ii. Questions

Proposers are to submit written questions related to the specific project requirements, the RFP process, and contents of proposals by 4:00 p.m. on *Monday, April 15, 2013* to:

Lisa Bartels

Division of Contract and Analysis Services
280 City Hall/Court House Bldg.
15 West Kellogg Blvd.
St. Paul, MN 55102

Questions may be faxed to (651) 266-8919 or emailed to:
Lisa.Bartels@ci.stpaul.mn.us

Written responses to all questions received on time will be available on Onvia Demandstar by 4:00 p.m. on *Friday, April 26, 2013, 2013*, in the form of addenda. Oral questions will not be accepted. **Proposers shall rely only on the provisions of this Request for Proposals and written addenda in preparing their proposals.**

iii. Proposers must comply with the provisions of **Appendix A.**

b. Valid Proposal

- i. In order to be considered valid, the proposal shall be in writing, submitted on time and in accordance with the sealed solicitation process of the Division of Contract and Analysis Services, and be signed by an officer of the proposer who can be accountable for all representations.
- ii. The proposal must contain the following information, presented in the order shown:

1. Vision for fostering an East Side Conversation, which describes the Submitter's approach to providing the desired services, including but not limited to the following:
 - a. Vision Statement - Understanding of the project and how proposer would approach this effort, and an ability to execute the required tasks within the defined timeline and budget
 - b. Identification of partners you may coordinate with in the execution of this project.
 - c. A proposed breakdown of project services by tasks
For each task listed, identify:
 - i. Key Project staff to be involved, and their roles and responsibilities
 - ii. Timeline
 - iii. Deliverables
 - iv. RCRRRA or other transit partners responsibilities, if different from the description contained in RFP
 - d. Project Budget framework
2. Profile of Proposer, including a description of the respondent's organization and/or its project team organization and composition, including
 - a. Description of each individual/firm involved in the project, and their intended roles in providing the desired services
 - b. Description of the respondent's proposed management structure for the project, including identification of a primary point of contact
 - c. Resumes for all principal staff involved in the project
 - d. Identification of any lawsuits brought against the proposer related to community engagement and transit in the past five years.
3. Relevant Project Experience, including descriptions of comparable projects developed or managed, including
 - a. Names and addresses of contact persons
 - b. Description of proposer's role in these similar projects

c. **Submission**

- i. Proposals are due by 2:00 p.m. on **Wednesday, May 1st, 2013**. Submit to:
Division of Contract and Analysis Services
280 City Hall/Court House Bldg.
15 West Kellogg Blvd.
St. Paul, MN 55102
Faxed or e-mailed proposals will not be accepted.
- ii. The response must include an original and six copies of the proposal. The first page of the original must have the original signature of the officer who will be accountable for all representations. Unsigned proposals will be considered invalid.
- iii. To facilitate proposal opening, the original only must be sealed in a separate envelope or box. The name, address, and RFP number must be

clearly marked on the outside. The remaining copies may be wrapped or boxed together with similar identification information.

- iv. A proposal may be withdrawn on written request of the proposer prior to the proposal due date. Negligence of the proposer in preparing its proposal confers no right to withdraw the proposal after the proposal due date. Prior to the due date deadline, changes may be made, provided the change is initialed by the proposer or the proposer's agent. If the intent of the proposer is not clearly identifiable, the interpretation most advantageous to the RCRRA will prevail. Once submitted, a proposal becomes public property and will not be returned.
- v. Failure to submit a proposal on time may constitute grounds for the rejection of the proposal.
- vi. All information included in the submitted proposal will be classified in accordance with Section 13.591 of Minnesota statutes governing data practices.

V. Evaluation and Contract Award

a. Evaluation

- i. RCRRA reserves the right to waive any minor irregularities in the proposal request process.
- ii. RCRRA reserves the right to interview any or all proposers at its discretion. The RCRRA is not responsible for any costs incurred by the proposer in preparing for or participating in an interview.
- iii. Proposals will be evaluated by an Evaluation Team in accordance with the provisions of Appendix A.
- iv. The Evaluation Team will be made up as follows:
 - Ramsey County Regional Railroad Authority
 - Ramsey County Manager's Office
 - City of Saint Paul
 - Metro Transit
 - Metropolitan Council
 - Representatives from the Corridors of Opportunity

RCRRA reserves the right to include additional representatives on the Evaluation Team.

- v. RCRRA will review and evaluate proposals based on the following criteria:
 - 1. Displayed understanding of the project (i.e. learning from and educating East Side residents regarding transit)
 - 2. Previous experience and demonstrated competence with basic understanding of transit, planning and engineering projects
 - 3. Previous experience and demonstrated competence with community engagement that includes hard to reach communities and the use of non-traditional approaches.
 - 4. The experience, resources, and qualifications of the firm and individuals to be assigned to the Project as key personnel
 - 5. Ability to meet Project requirements
 - 6. Ability to meet Project requirements within the timeline
 - 7. Cost

- 6. The Ramsey County Regional Railroad Authority Board will make the final decision, after considering recommendations by the Evaluation Team.

b. **Contract**

- i. The agreement to be executed between the successful proposer and Ramsey County Railroad Authority will include the scope provisions of this RFP; the provisions of the *General Terms and Conditions*, attached hereto and made a part of this RFP as **Appendix B**; the Federal provisions, attached hereto and made a part of this RFP as **Appendix C**, and provisions of the successful proposer's proposal not inconsistent with the provisions of the RFP, unless otherwise agreed to by the RCRRA.
- ii. The agreement will include the following payment provisions:

"Services will be compensated on a time and materials basis up to a maximum not-to-exceed cost, inclusive of fees and reimbursable expenses. Payments will be made upon achievement of agreed-upon project milestones.

Payment of interest on late payments and disputes regarding payments shall be governed by the provisions of Minn. Stat. Section 471.425.

Reimbursement of expenses, if included, will be made consistent with RCRRA policies. The RCRRA will reimburse only the actual cost of out of pocket expenses. If reimbursement for travel is permitted, all airfare will first be authorized by the RCRRA and will be reimbursed at the lowest cost fare available. Lodging, meals, ground transportation and incidentals necessitated by this Agreement will be reimbursed according to the Internal Revenue Service ("IRS") Regular Per Diem Rate Method or actual cost, whichever is less. Mileage will be reimbursed at the IRS rate in effect at the time of travel."

- iii. Prior to execution of a contract by the RCRRA, the successful proposer shall provide a certificate of insurance acceptable to the County Attorney's Office evidencing, at a minimum, the coverage required by the provisions of **Appendix B**.

EVALUATION OF PROPOSALS
GENERAL RULES APPLICABLE TO THE SELECTION PROCESS

1. Each proposer will be treated equally and fairly, with decisions being made on announced criteria using only information received through the selection process.
2. Each potential vendor and selection panel member shall receive a copy of this Evaluation of Proposals rules and guidelines as part of the RFP solicitation.
3. All contact following issuance of the RFP until submission of proposals is through the Division of Contract and Analysis Services. **Except as provided in these rules, attempts to contact RCRRA staff, elected officials, or evaluation team members directly during that time will result in rejection of a proposal.**
4. If a vendor contacts RCRRA staff, elected officials, or evaluation team members directly for technical assistance relating to the submission, the staff, official or member shall refer the vendor to the Division of Contract and Analysis Services without further discussion and without disqualifying the vendor from consideration pursuant to Rule 3 above. If a request for technical assistance regarding the submittal is made to the Division of Contract and Analysis Services by a vendor, RCRRA staff, elected officials, or evaluation team members may meet jointly with staff from the Division of Contract and Analysis Services and the vendor, solely for the purpose of providing such technical assistance. Technical assistance means clarification or explanation of the RCRRA's procurement practices and policies and of the proposal process, including the steps necessary to be completed in order to submit a valid proposal.
5. The RFP shall describe the evaluation and selection process, including criteria, and may include weighting, whether oral interviews will be given, and identification of the selection team.

GUIDELINES FOR THE SELECTION PROCESS

It is the purpose of these guidelines to ensure that the selection process be conducted in such a manner as to treat each proposer in a fair and equal manner. (The outlined process reflects the practices typically followed in the RCRRA's current selection process.)

1. After the proposal submission date, the Division of Contract and Analysis Services provides members of the selection team with a copy of each proposal and with the appropriate number of evaluation forms, as developed by staff from the initiating department, by the selection team, or jointly.
2. Members independently evaluate each written proposal, using the evaluation criteria set out in the RFP, and complete an evaluation form for each proposal.
3. The selection team meets to exchange and tabulate the evaluations of the written proposals.
4. If oral interviews are part of the selection process:
 - a. The team can request a technical review of the proposals by staff before deciding how many proposers to interview.
 - b. Each proposer should be given the same amount of time, be asked the same core questions, and be interviewed by the same people.

- c. If standard written questions are to be used, the team can submit questions to proposers ahead of time or when the proposer arrives for the interview. Questions can be developed by the team, by the staff of the initiating department, or jointly.
 - d. Team members should not discuss the interviews until all interviews have been held and evaluation forms have been completed.
 - e. Each team member completes an evaluation form based on the oral interview, using the criteria set out in the RFP and the evaluation form developed either by the selection team or by staff from the initiating department.
 - f. The team meets to exchange and tabulate the evaluations based on the oral interviews and to tabulate a composite rating for each proposal based on both the written proposal and the oral interview, giving weight to each component as described in the RFP.
- 5. Reference checks are conducted for the selected number of top-ranking proposers.
 - 6. Selection team meets to receive information from reference checks and to make final selection, unless the team as a whole determines that additional information is required.
 - 7. The Division of Contract and Analysis Services contacts proposers for additional information requested by the team (if required).
 - 8. After consideration of all information, and selection of a proposer, the team prepares a written recommendation for submission to the RCRRRA Board. The written recommendation shall clearly describe the selected proposer's qualifications using the established criteria and shall contain a summary of the proposals submitted by the top three or more proposers.
 - 9. The issuing department will coordinate preparation of the summaries and documentation for RCRRRA Board approval.

Adopted Board of Ramsey County Commissioners November 28, 1995 Resolution 95-538

GENERAL TERMS AND CONDITIONS

1. Independent Contractor

It is agreed that nothing contained in this Agreement is intended or should be construed as creating the relationship of agents, partners, joint venturers, or associates between the parties hereto or as constituting the Contractor as the employee of the County for any purpose or in any manner whatsoever. The Contractor is an independent contractor and neither it, its employees, agents, nor representatives are employees of the County. From any amounts due the Contractor, there will be no deductions for federal income tax or FICA payments, nor for any state income tax, nor for any other purposes which are associated with an employer-employee relationship unless required by law. Payment of federal income tax, FICA payments, and state income tax are the responsibility of the Contractor.

2. Indemnification

The Contractor shall indemnify, hold harmless and defend the County, its officials, agents, and employees against any and all liability, losses, costs, damages, expenses, claims or actions, including attorney's fees, which the County, its officials, agents, or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the Contractor, its officials, agents or employees, in the execution, performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement.

3. Insurance**Professional and Personal Services Over \$10,000/Non-Construction Labor**

1. The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims which may arise out of, or result from, the Contractor's operations under this Agreement, whether such operations are by the Contractor or by any subcontractor, or by anyone directly employed by them, or by anyone for whose acts or omissions anyone of them may be liable.
2. The Contractor shall secure the following coverages and comply with all provisions noted. Certificates of Insurance shall be issued evidencing such coverage to the County throughout the term of this Agreement.
 - 2.1 Commercial General Liability Insurance
 - 2.1.1 \$ 1,500,000 per occurrence
\$ 2,000,000 general aggregate
\$ 2,000,000 products/completed operations total limit
\$ 1,500,000 personal injury and advertising liability
 - 2.1.2 All policies shall be written on an occurrence basis using ISO form CG 00 01 or its equivalent.
 - 2.1.3 Ramsey County, its officials, employees, and agents, shall be added to the policy as additional insured on a primary basis with respect to the operations of the Contractor, using ISO endorsement form CG 20 26 or the equivalent.
 - 2.2 Automobile Insurance

Note: Required only if the Contractor is driving on behalf of the County as part of the Contractor's services under this Agreement.

 - 2.2.1 Coverage shall be provided for hired, non-owned and owned auto.

- 2.2.2 Minimum limits: \$1,000,000 combined single limit.
- 2.3 Workers' Compensation and Employer's Liability
- 2.3.1 Workers' Compensation as required by Minnesota Statutes
- 2.3.2 Employer's Liability limits:
\$500,000/\$500,000/\$500,000
- 2.4 Professional Liability/Errors and Omissions Coverage (if applicable)
- 2.4.1 Per Claim \$ 500,000
Per Occurrence Limit: \$1,500,000
Aggregate Limit: \$2,000,000
- 2.4.2 All policies shall be written as acceptable to the County.
- 2.4.3 Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. If coverage is carried on a claims-made basis, then: 1) the retroactive date shall be noted on the Certificate and shall be prior to or the day of the inception of this Agreement; and 2) evidence of coverage shall be provided for three years beyond expiration of this Agreement.
- Note: Use 2.4.4 only where the Contractor is providing services to clients, customers, patients, and inmates and NOT directly to the County.*
- 2.4.4 Ramsey County, its officials, employees, and agents, shall be added to the policy as additional insured; a separation of insureds endorsement shall be provided to the benefit of the County.
3. Crime and Fidelity Bond (Applicable if the Contractor is handling money for the County or has fiduciary responsibilities): \$_____
4. All Certificates of Insurance shall provide that the insurance company gives the County thirty (30) days prior written notice of cancellation, non-renewal and/or any material change in policy.
5. The above sub-paragraphs establish minimum insurance requirements, and it is the sole responsibility of the Contractor to purchase and maintain additional insurance that may be necessary in connection with this Agreement.
6. Certificate of Insurance must indicate if the policy is issued pursuant to these requirements. The Contractor shall not commence work until the Contractor has obtained the required insurance and filed an acceptable Certificate of Insurance with the County. Copies of insurance policies shall be submitted to the County upon request.
7. Nothing in this Agreement shall constitute a waiver by the County of any statutory or common law immunities, limits, or exceptions on liability.
8. Certificates shall specifically indicate if the policy is written with an admitted or non-admitted carrier. Best's Rating for the insurer shall be noted on the Certificate, and shall not be less than an A.

4. **Non-Assignability**

The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same, whether by subcontract, assignment or novation, without the prior written consent of the County.

5. **Unavailability of Funding**

The purchase of goods or services from the Contractor under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds from the Board of County Commissioners. The County may immediately terminate this Agreement if the funding for the contracted goods and services is no longer available or is not appropriated by the Board of County Commissioners. Upon receipt of the County's notice of termination of the Agreement the Contractor shall take all actions necessary to discontinue further commitments of funds to the Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the County.

6. **Non-Conforming Services**

The acceptance by the County of any non-conforming services under the terms of this Agreement or the foregoing by the County of any of the rights or remedies arising under the terms of this agreement shall not constitute a waiver of the County's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the County provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

7. **Equal Employment Opportunity**

The Contractor agrees to comply with all federal, state and local laws, resolutions, ordinances, rules, regulations and executive orders pertaining to unlawful discrimination on account of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, sexual orientation, disability, or age. When required by law or requested by the County, the Contractor shall furnish a written affirmative action plan.

8. **Workforce Diversity**

The Contractor shall make good faith efforts throughout the term of this Agreement, and any extensions thereof, to employ persons of color for all classifications of work under this Agreement, and shall, when requested by the County, submit a written report to the County regarding the efforts and results of such efforts, including employment by job classification.

9. **Prevailing Wage**

The Contractor and all subcontractors shall conform to the labor laws of the State of Minnesota, and all other laws, ordinances, and legal requirements affecting the work in Ramsey County and Minnesota. The minimum wage rate per hour to be paid for each classification of work shall be the union wage rate in the locality of the project for those classifications over which the unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which the unions do not have jurisdiction.

For purposes of this agreement, the terms "prevailing wage", "minimum wage rate per hour", and "prevailing rate" shall mean "prevailing wage rate" as defined in Minnesota Statutes §177.42.

Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Rules 5200.1000 to 5200.1120, all construction contracts funded in whole or in part by state funds are subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and

mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

10. Respectful Workplace and Violence Prevention

The Contractor shall make all reasonable efforts to ensure that the Contractor's employees, officials and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined in the Ramsey County Respectful Workplace and Violence Prevention Policy, means words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority where the impact is to cause pain, fear or injury.

11. Subcontractor Payment

The Contractor shall pay any subcontractor within ten days of the Contractor's receipt of payment from the County for undisputed services provided by the subcontractor. The Contractor shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

12. Setoff

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of this Agreement by the Contractor. The County may withhold any payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the County from the Contractor is determined.

13. Data Practices

All data collected, created, received, maintained or disseminated for any purpose in the course of the Contractor's performance of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, or any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

Note: If your contract is for a project involving access to electronic County data where services are not being provided to clients, add the following language:

The Contractor shall take all reasonable measures to secure the computers or any other storage devices in which County data is contained or which are used to access County data for the Project. Additionally, access to County data shall be limited to those persons with a need to know for the provision of services by the Contractor. These measures include, but are not limited to, authenticated access to network data storage, use of up-to-date anti-virus software, controlled access to the physical location of the hardware, and the encryption of computers and storage devices. At the conclusion of the Project, all County data will be purged from the Contractor's computers and storage devices used for the Project and the Contractor shall give the County written verification that the data has been purged.

14. Compliance With Applicable Law

The Contractor agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the

Contractor's performance of the provisions of this Agreement. It shall be the obligation of the Contractor to apply for, pay for and obtain all permits and/or licenses required by any governmental agency for the provision of those services contemplated herein.

15. Audit

Until the expiration of six (6) years after the furnishing of services pursuant to this Agreement, the Contractor, upon written request, shall make available to the County, the State Auditor or the County's ultimate funding sources, a copy of this Agreement and the books, documents, records and accounting procedures and practices of the Contractor relating to this Agreement.

16. Termination

a. With Cause

The County reserves the right to suspend or terminate this Agreement if the Contractor violates any of the terms or conditions of this Agreement or does not fulfill in a timely and proper manner its obligations under this Agreement as determined by the County. In the event that the County exercises its right of suspension or termination under this Paragraph, it shall submit written notice to the Contractor, specifying the extent of such suspension or termination under this Paragraph, the reasons therefore, and the date upon which such suspension or termination becomes effective. Upon receipt of such notice, the Contractor shall take all actions necessary to discontinue further commitments of funds to the extent that they relate to the suspended or terminated portions of this Agreement.

b. Without Cause

The County may terminate this Agreement without cause and for any reason whatsoever upon giving at least thirty (30) days written notice thereof to the Contractor. In such event, the Contractor shall be entitled to receive compensation for the services provided in a satisfactory manner up to and including the effective date of termination.

17. Conflict of Interest

The Contractor affirms that, to the best of the Contractor's knowledge, the Contractor's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. The Contractor agrees that, should any conflict or potential conflict of interest become known to the Contractor, the Contractor will immediately notify the County of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise the County whether the Contractor will or will not resign from the other engagement or representation.

18. Waste Reduction

The Contractor shall participate in a recycling program for at least four broad types of recyclable materials and shall favor the purchase of recycled products in its procurement processes. All reports, publications and documents produced as a result of this contract shall be printed on both sides of the paper, where commonly accepted publishing practices allow, on recycled and recyclable paper using soy-based inks, and shall be bound in a manner that does not use glue.

19. Alteration

Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only after it has been reduced to writing and duly signed by both parties.

20. HIPAA Compliance

The Contractor agrees to implement and comply with applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Public Law 104-191), as it may be amended from time to time.

21. Interpretation of Agreement; Venue

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate state or federal district court in Ramsey County, Minnesota.

22. Prompt Payment

Payment of interest on late payments and disputes regarding payments shall be governed by the provisions of Minn. Stat. Section 471.425.

23. Reimbursable Expenses (If applicable)

Reimbursement of expenses, if included, will be made consistent with County policies. The County will reimburse only the actual cost of out of pocket expenses. If reimbursement for travel is permitted, all airfare will first be authorized by the County and will be reimbursed at the lowest cost fare available. Lodging, meals, ground transportation and incidentals necessitated by this Agreement will be reimbursed according to the Internal Revenue Service ("IRS") Regular Per Diem Rate Method or actual cost, whichever is less. Mileage will be reimbursed at the IRS rate in effect at the time of travel.

24. Contractor Certification Regarding Debarment, Suspension, and Responsibility (If applicable)

Federal Regulation 45 CFR 92.35 prohibits the County from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government.

By signing this Agreement, the Contractor certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and
2. Have not within a three-year period preceding this Agreement:
 - a. been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract;
 - b. violated any federal or state antitrust statutes; or
 - c. committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
3. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for:
 - a. commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction;
 - b. violating any federal or state antitrust statutes; or
 - c. committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and

4. Have not had one or more public transactions terminated with in the preceding three years for cause or default; and
5. Shall not knowingly enter into any transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and that they will require any subcontractor that receives more than \$100,000 to make a similar certification as set forth herein; and
6. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Agreement are in violation of any of the certifications set forth above; and
7. Shall immediately give written notice to the County should Contractor come under investigation for allegations of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

25. Lobbying

For all contracts involving over \$100,000 in federal funds, the Contractor must sign the Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements, attached hereto and made a part of this Agreement as **Attachment 1**.

26. Entire Agreement

This Agreement shall constitute the entire agreement between the parties and shall supersede all prior oral or written negotiations.

FEDERAL CLAUSES

Appendix C

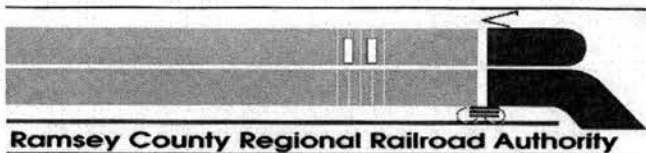
Contractor Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his/her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor Name	Program		
Signature of Certifying Official	Print Name	Title	Date



3

REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 04/02/2013

Regional Railroad Authority Meeting Date: _____

SUBJECT: Construction Agreement with BNSF Railway

EXECUTIVE SUMMARY

The Ramsey County Regional Railroad Authority (RCRRA) has committed to renovating the Union Depot in downtown St. Paul into a multi-modal transit and transportation hub. The renovation includes the construction of rail and platforms for the introduction of passenger rail service. Initially the passenger rail service will consist of Amtrak's Empire Builder, which serves the Twin Cities as it travels between Seattle/Portland and Chicago.

Prior to the Empire Builder serving the Union Depot, track improvements must be made to the existing freight rail network to allow the train to access the station and to mitigate impacts caused by the new station stop. Staff has been working with Mortenson Construction, Burlington Northern Santa Fe Railway (BNSF), Canadian Pacific Railway (CP), Union Pacific Railroad (UP), Amtrak, the Federal Railroad Administration (FRA), and the Minnesota Department of Transportation (Mn/DOT) to identify the improvements necessary and to develop preliminary track plans for approval by BNSF, CP, UP, FRA, Mn/DOT, and Amtrak.

(The Executive Summary is continued on the following page)

ACTION REQUESTED

1. Approve a Construction Agreement with BNSF Railway for the completion of track and signal installation for the replacement of the Southwest Wye Switch, replacement of the Gillette Spur Switch with an electric lock switch, upgrading of circuitry for the signalization of the North Wye Switch, signalization of the Division Street Wye and Saint Paul Union Depot Track including the West Leg, South Leg, East Terminal Lead, and Saint Paul Union Depot Track (CP 1/ Saint Paul Union Depot Crossover to BNSF St. Paul Subdivision) in an amount not to exceed \$2,320,000
2. Authorize the Chair to execute the Construction Agreement with BNSF Railway on behalf of the Ramsey County Regional Railroad Authority.

1

SUBJECT: Construction Agreement with BNSF Railway

(Executive Summary continued)

As identified in the Union Depot Renovation Project Term Sheets (Term Sheets), and the Engineering/Public Project Reimbursement Agreements, a Construction Agreement is needed between the RCRRA and each freight railroad prior to ordering and installing materials for both the track and signal systems.

The Construction Agreements are binding documents that commit the RCRRA to reimburse the freight railroads for their costs in constructing the track and signal improvements identified in the Term Sheets and designed as part of the Engineering/Public Project Reimbursement Agreements. The Canadian Pacific construction agreement is detailed below:

BNSF

The Construction Agreement with BNSF Railway commits BNSF to complete the following:

- Replacement of the Southeast Wye Switch
- Replacement of the Gillette Spur Switch with an electric lock switch
- Upgrading of circuitry for the signalization of the North Wye Switch
- Signalization of the Division Street Wye and Saint Paul Union Depot (SPUD) Track including:
 - West Leg
 - South Leg
 - East Terminal Lead
 - SPUD Track (CP 1/SPUD Crossover to BNSF St. Paul Subdivision)
 - Union Depot Terminal Tracks 1, 2, and 3
 - Union Depot Tail Track

These improvements will have a not to exceed cost of \$2,320,000.

Funding for the \$2,320,000 in costs will come from the Union Depot Project Budget. All costs are within the budget amount.

SUBJECT: Construction Agreement with BNSF Railway

ATTACHMENTS:

Construction Agreement between the RCRRA and BNSF Railway

PREVIOUS ACTION:

December 18, 2012, RCRRA Resolution R12-47, approved amendment #1 to the Engineering Agreement with BNSF Railway.

December 18, 2012, RCRRA Resolution R12-46, approved the Revised and Restated Term Sheet with BNSF Railway.

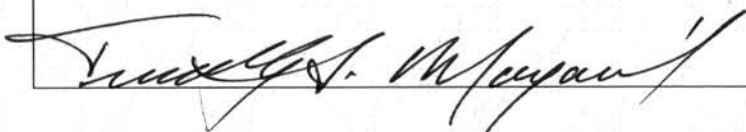
April 10, 2012, RCRRA Resolution R12-22, approved the Term Sheet with BNSF Railway.

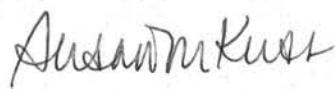
April 10, 2012, RCRRA Resolution R12-23, approved the Engineering Agreement with BNSF Railway.

COUNTY MANAGER'S COMMENTS:

Approval of the construction agreements with the freight railroads will ensure the final track and signal improvements are constructed allowing Amtrak Empire Builder trains to serve the Union Depot.

SUBJECT: Construction Agreement with BNSF Railway

Regional Railroad Authority – Authorized Signature	Date
	3/20/13

Finance – Authorized Signature	Date
	3/25/13

County Attorney – Authorized Signature	Date
	3/26/13

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

SUBJECT: Construction Agreement with BNSF Railway

Draft Resolution

1 WHEREAS, The Ramsey County Regional Railroad Authority has identified the completion
2 of The Union Depot Multi-Modal Transportation and Transit Hub ("Union Depot") as a high priority
3 and has expressed an interest in maximizing its development and economic output potential; and
4

5 WHEREAS, In order to accomplish this interest, the Ramsey County Regional Railroad
6 Authority has identified the need to accommodate Amtrak's Empire Builder passenger rail service;
7 and
8

9 WHEREAS, The Empire Builder will utilize BNSF Railway, Canadian Pacific Railway, and
10 Union Pacific Railroad track to access the Depot; and
11

12 WHEREAS, Accessing the BNSF Railway, Canadian Pacific Railway, and Union Pacific
13 Railroad track will require capacity improvements so that the Empire Builder can maintain on-time
14 performance without negatively impact existing freight operations; and
15

16 WHEREAS, The Ramsey County Regional Railroad Authority has worked with BNSF
17 Railway, Canadian Pacific Railway, and Union Pacific Railroad to develop and execute a Union
18 Depot Renovation Project Term Sheet (Term Sheet) with each railroad that identifies the capacity
19 improvements necessary to maintain on-time performance and mitigate the impact to freight rail
20 operations; and

22 WHEREAS, The Ramsey County Regional Railroad Authority has worked with BNSF
23 Railway, Canadian Pacific Railway, and Union Pacific Railroad to develop and execute a
24 Engineering/Public Project Reimbursement Agreement with each railroad that allows for final track
25 and signal design to be completed; and
26

27 WHEREAS, The BNSF Railway, Canadian Pacific Railway, and Union Pacific Railroad each
28 require the execution of a third agreement for construction of track and signal improvements; and
29

30 WHEREAS, The Ramsey County Regional Railroad Authority will provide funds to each
31 freight railroad for the work necessary to construct track and signal improvements; Now, Therefore,
32 Be It
33

34 RESOLVED, The Ramsey County Regional Railroad Authority approves a Construction
35 Agreement with BNSF Railway for replacement of the Southwest Wye Switch, replacement of the
36 Gillette Spur Switch with an electric lock switch, upgrading of circuitry for the signalization of the
37 North Wye Switch, signalization of the Division Street Wye and Saint Paul Union Depot Track
38 including the West Leg, South Leg, East Terminal Lead, and Saint Paul Union Depot Track (CP 1/
39 Saint Paul Union Depot Crossover to BNSF St. Paul Subdivision) in an amount not to exceed
40 \$2,320,000, And Be It Further
41

42 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to
43 execute the Construction Agreement with BNSF Railway on behalf of the Ramsey County
44 Regional Railroad Authority.

5

Attachment

**Ramsey County Regional Railroad Authority, Minnesota Department of
Transportation and BNSF PROJECT AND CONSTRUCTION**

AGREEMENT

Union Depot and Empire Builder Service, St. Paul, MN

INTRODUCTION AND RECITALS

THIS AGREEMENT ("**Agreement**") is entered into as of the Effective Date (defined below) between the Ramsey County Regional Railroad Authority ("**RCRRA**"), Minnesota Department of Transportation ("**MnDOT**") and the BNSF Railway Company ("**BNSF**") (collectively the "**Parties**") and expresses the mutual agreement of the Parties regarding the terms which will allow BNSF to construct the Project (defined below) on the St. Paul Subdivision of BNSF's rail network in St. Paul, Minnesota. The funding for the construction of the Project will be provided by the Federal Highway Administration ("**FHWA**"), an operating administration of the U.S Department of Transportation through an Addendum to the Transportation Investment Generating Economic Recovery Grant Agreement between MnDOT and FHWA (the "**TIGER Addendum**"), attached hereto as Exhibit E subject to the satisfactory completion of environmental reviews and satisfaction of the program requirements and other relevant Federal statutes and regulations; and,

WHEREAS, BNSF is a Delaware corporation with its principal office at 2650 Lou Menk Drive, Fort Worth, Texas and owns a rail line in St. Paul, Minnesota over which intercity passenger trains currently operate pursuant to separate agreements; and,

WHEREAS, BNSF (as successor to Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company) is party to an agreement with Amtrak dated September 1, 1996 which, including any amendments or successors thereto, is herein after referred to as the "**Amtrak/BNSF Service Agreement**" which among other things allocates liability as contemplated in 49 U.S.C. § 28103; and

WHEREAS, National Passenger Railroad Corporation ("**Amtrak**") operates intercity passenger rail service which runs from Chicago, Illinois to Seattle, Washington and Portland Oregon.

WHEREAS, RCRRA and MnDOT represent they are in compliance with 49 U.S.C. § 28103; and

WHEREAS RCRRA, MnDOT and BNSF agree and acknowledge that in connection with the redevelopment of Union Depot as a multimodal hub for transportation use, among other purposes, including interim rail passenger service and relocation of Amtrak Empire Builder Service to the Depot, RCRRA has obtained Federal Railroad Administration ("**FRA**") funding under the HSIPR Program ("**HSPIR Funds**") that will be provided to the Minnesota Department of Transportation (the "**Recipient**"); and

WHEREAS, all grantees accepting funding under the HSIPR Program must reach agreement with one or more infrastructure owners in order to implement and operate their proposed projects (Stakeholder Agreement), and Congress and FRA have articulated certain minimum requirements for such agreements which include compliance with applicable Federal laws, and that these requirements are intended to ensure that proposed projects are implemented as planned

(i.e., the projects are on schedule, on budget, and as designed), and that the improvements from the projects funded with Federal financial assistance are realized and maintained over the life of the agreement; and,

WHEREAS, RCRRA and BNSF have signed a Revised and Restated Term Sheet dated December 11, 2012 concerning the additions and improvements necessary for RCRRA's establishment of passenger service through the Depot (the "**Project**") and an Engineering Design Agreement dated December 18, 2012 concerning engineering design services to be performed by BNSF (the "**Final Plans**"); and

WHEREAS, BNSF and Amtrak have signed an Agreement covering the long-term maintenance of the proposed improvement (Exhibit F).

NOW THEREFORE, RCRRA and BNSF agree that:

A. This Agreement is entered into effective as of the date of the last signature of this Agreement (the "**Effective Date**") by and between RCRRA and BNSF.

B. In consideration of the mutual covenants and agreements hereinafter contained, RCRRA and BNSF agree as follows:

ARTICLE I - DESCRIPTION OF THE PROJECT

1.1 The Project consists of the installation of power switches at the North and Southeast legs of the Division Street Wye, an electric lock switch at the Gillette Spur, and signalization of these switches, the SPUD Track, and Union Depot Terminal Tracks by BNSF. These items are generally depicted in Exhibit A and as more particularly described in Exhibit B, which will be constructed by BNSF on BNSF's rail network and funded under this Agreement by RCRRA with funds it receives pursuant to the TIGER Addendum as well as its own funds. BNSF is solely responsible for all amounts it may incur in order to complete the Project in excess of the (\$2,320,000) total project cost subject only to the terms of section 9.1. In no event shall RCRRA be responsible for reimbursing BNSF for any amounts in excess of the total project cost of (\$2,320,000).

1.2 BNSF agrees to complete the construction of the Project described in Exhibit B and to provide continued maintenance, repair and/or capital replacement of the Project as outlined in Exhibit F (the Long-Term Maintenance Agreement with Amtrak).

1.3 The following exhibits are incorporated into this Agreement by reference.

1. Exhibit A: Map of Project
2. Exhibit B: Description of Project
3. Exhibit C: Union Depot Railroad Approval Layout Set
4. Exhibit D: TIGER Addendum
5. Exhibit E: BNSF Additives Effective 1/1/2010
6. Exhibit F: BNSF-Amtrak Long-Term Maintenance Agreement

7. Exhibit G: Union Depot, St. Paul, Minnesota Renovation Project Revised and Restated Term Sheet
8. Exhibit I: Certification Regarding Debarment, Workplace and Lobbying Requirements
9. Exhibit J: Agreement Provisions Applicable to BNSF

ARTICLE II - FUNDING, CONSTRUCTION, AND MAINTENANCE OF PROJECT

2.1.1 RCRRA has requested and FRA has selected for an award of HSIPR Program funds for the Project to make capital improvements to BNSF's rail network for the public purpose of benefiting intercity passenger rail service on the BNSF's St. Paul Subdivision at Milepost 429.75B as further described in Exhibit B.

2.1.2 HSIPR Funding granted by FRA for the Project is being administered by FHWA, pursuant to the terms and conditions set forth in Exhibit D, the TIGER Addendum.

2.2 BNSF and RCRRA shall work together in good faith in order to complete the Project as contemplated in this Agreement, and to assist in identifying and obtaining the permits and approvals as contemplated herein in an expeditious manner. Permits and approvals are defined as all approvals legally required by any public agency that has jurisdictional authority or responsibility over regulating or permitting Project work. BNSF and RCRRA shall establish a joint working group for obtaining permits and approvals and coordinating issues related to the design and construction of the Project. Each Party shall designate a representative (or representatives) for such joint working group and the representatives shall establish a schedule for joint meetings and bring such other individuals to such meetings as they deem appropriate to expedite the resolution of any issues that may arise. The joint working group, among other things, shall coordinate timelines and milestones for obtaining permits and approvals, coordinate respective responsibilities and obligations, and coordinate timelines for responding to requests from permitting agencies, all in accordance with the then current Project schedules.

2.3 BNSF and Amtrak have entered into an Agreement (Exhibit F) to address Long-Term Maintenance, repair and/or capital replacement responsibilities for at least 20 years, as set forth in the Agreement.

2.4.1 RCRRA shall have the right to review and comment upon final engineering performed by BNSF upon reasonable request.

2.4.2 BNSF shall be responsible for developing essential information to obtain all necessary environmental permits and approvals required for environmental compliance on the Project and shall obtain all such necessary environmental permits and approvals and provide copies to RCRRA.

2.4.3 All costs associated with developing, implementing, and maintaining any mitigation required to achieve environmental compliance, including, without limitation, wetland mitigation and any environmental remediation or other work required to achieve environmental compliance shall be reimbursed to BNSF as a Project cost, provided they constitute "allowable costs" that are reimbursable under sections 5.1, 5.1(a) and 5.1(b) of this Agreement and do not exceed the previously stated project cost.

2.4.4 Nothing in this Agreement is intended to interfere with BNSF's environmental activities or compliance obligations which do not concern this Project.

2.4.5 Each Party shall provide the other with copies of final environmental documentation either received from or filed with any regulatory body or agency unless the information is considered privileged.

2.5 BNSF may, at any time at its sole discretion and expense, make any changes, additions or dispositions to its tracks, facilities or properties that may be necessary or desirable in connection with its freight service, including raising or lowering the grade; changing the alignment of its tracks; or laying additional tracks; provided, however, that such additional tracks or facilities shall not impair passenger train operations over said route in such a way that would violate BNSF's obligations under its current Amtrak Operating Service Agreement.

2.6 RCRRA shall designate a project manager to monitor the Project and inspect the work performed by BNSF under this Agreement. BNSF shall also designate one or more project managers to coordinate BNSF's activities under this Agreement. Each Party shall notify the other in writing of their designated project manager(s) or of any change in their respective designated project manager(s). While occupying BNSF property, RCRRA's project manager shall be accompanied by a BNSF representative and observe all applicable BNSF safety rules, regulations, and standards, including those requiring use of protective eyewear and clothing. BNSF shall provide a copy of the applicable safety rules to RCRRA's project manager. Prior to entering BNSF property RCRRA's Project Manager and all RCRRA and MnDOT employees entering BNSF property shall annually complete the "BNSF Contractor Safety Orientation" online training, located at www.contractororientation.com and eRAILSAFE, and comply with all of BNSF's applicable safety and security rules and regulations.

2.7 It is the intent of the Parties that both RCRRA and BNSF shall remain independent contractors.

2.8 BNSF agrees that with respect to any of the work of the Project to be completed by BNSF and paid for by the RCRRA using HSIPR Funds, the terms and conditions set forth in subsections 3 a), b), c), and e) on the attached Exhibit D shall apply and are hereby incorporated in this Agreement. The term "**Subrecipient**" as used therein shall mean RCRRA. All improvements will be maintained at the level to which they were implemented for a term of twenty years from the date they were put into service (the "**HSIPR Term**"). The level of maintenance includes applicable FRA track safety standards. BNSF agrees that it will not downgrade the improvements of the Project (or redevelopment of the Depot) in such a manner that reduces the utility of the Project or the Depot for intercity passenger rail operation during the HSIPR Term without MnDOT's and RCRRA's prior written approval.

2.9 All improvements will be maintained at the level to which they are implemented for a term of twenty years from the date they were put into service. BNSF agrees that it shall not downgrade the improvements in any way that reduces the utility of the improvements for the intercity passenger rail operations without prior written approval from the MnDOT. If service is discontinued, improvements must be maintained for a period of one year allowing for Amtrak's resumption of service at same level of operations as in the calendar year immediately preceding

the discontinuance of Amtrak service. At RCRRA's discretion, improvements may be maintained at RCRRA's cost on the items identified in section 3.3 beyond one year to allow for resumption of Amtrak or its successor service. At MnDOT's discretion, improvements may be maintained at MnDOT's cost on the items identified in section 3.3 beyond one year to allow for resumption of Amtrak or its successor service.

2.10 In the event that Amtrak discontinues Empire Builder service, RCRRA and/or MnDOT, at their option, may pursue provision of intercity passenger train service, with access to the Terminal Tracks, on a service frequency comparable to the existing Empire Builder by another operator, pursuant to an agreement negotiated in good faith between BNSF and the new or successor operator.

2.11 BNSF's construction schedule for work in Exhibit B shall be subject to availability of materials, workers and equipment based on BNSF's usual practices and applicable labor agreements for the allocation of such resources. The parties acknowledge that RCRRA desires construction to be completed as soon as possible. The parties also acknowledge that BNSF's construction work cannot be completed during winter months (i.e. from ballast freeze to thaw, typically December to March) and will be scheduled at BNSF's sole discretion taking into consideration weather and ground conditions, its railway operations, train schedules, maintenance blocks, and the need for efficient operations on its railway line. The tentative Construction Schedule attached hereto as Exhibit B is subject to revision accordingly.

ARTICLE III – PERIOD OF PERFORMANCE

This Agreement shall be effective on the Effective Date and shall terminate on the date of completion of the Project and final payment by RCRRA for compensation agreed to under this Agreement; provided, however, that termination shall not release any Party from specific continuing obligations incurred hereunder prior to termination, including but not limited to, the obligations set forth in the Long-term Maintenance Agreement (Exhibit F). This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

ARTICLE IV – NO RIGHT TO GOODS OR SERVICES

The Project will consist of improvements to BNSF's rail network that will become a permanent part of BNSF's working capital. RCRRA is not to receive and will not be entitled to any specific goods or services from BNSF or its affiliates in return for any payments by RCRRA to BNSF in connection with this Agreement.

ARTICLE V – COSTS AND PAYMENT PROVISIONS

5.1 Payment to BNSF under this Agreement shall be made on a reimbursable basis only. RCRRA agrees to reimburse BNSF for all "**Allowable Costs**" (as defined in section 5.1(a)) incurred by BNSF to complete the Project that is the subject of this Agreement, up to (\$2,320,000).

Only Allowable Costs shall be reimbursed to BNSF under this Agreement. In no event will RCRRA be responsible to reimburse BNSF for any costs incurred by BNSF to complete the Project that are not Allowable Costs. In no event will RCRRA be responsible to reimburse

BNSF for any costs incurred by BNSF to complete the Project that are subsequently disallowed under section 5.1(b). BNSF is solely responsible for any costs it incurs to complete the Project, that are not Allowable Costs under section 5.1(a) or are subsequently disallowed under section 5.1(b).

Except as may be provide in section 9.2, In no event will RCRRA be responsible for reimbursing BNSF for any costs incurred by BNSF in excess of (\$2,320,000). Any costs incurred in excess of (\$2,320,000) shall be the sole responsibility of BNSF.

Costs for the Project will include applicable sales and use taxes and additives including, for example, the cost of vehicles, machinery, tools, supervision, clerical, union agreement lodging and rents and applicable payroll related associated costs, as will be applied by the use of the then current FHWA approved additives for BNSF and provided such costs constitute Allowable Costs as defined in sections 5.1(a) and 5.1(b) immediately below. The most current FHWA approved additives as of the date of this Agreement are shown in Exhibit E: BNSF Additives Effective 1/1/2010.

5.1(a) Allowable Costs are costs incurred by BNSF that satisfy all of the following requirements:

1. Conform to the Project description set forth in Exhibits A and B, attached), the Statement of Work and the Approved Project Budget;
2. Are related to the Project and necessary in order to accomplish the Project;
3. Are reasonable for the goods or services purchased;
4. Are actual net costs to BNSF (i.e., the price paid minus any refunds, rebates, or other items of value received by BNSF that have the effect of reducing the costs actually incurred);
5. Are incurred (and be for work performed) after the Effective Date of this Agreement, unless specific authorization from RCRRA to the contrary is received in writing;
6. Conform with the standards set forth in 48 C.F.R. 31 and OMB Circular A-87, to the extent applicable to BNSF.
7. Are satisfactorily documented; and
8. Are treated uniformly and consistently under accounting principles and procedures approved and prescribed by FHWA for RCRRA, and those approved or prescribed by RCRRA for BNSF. The accounting principles and procedures approved and prescribed by the FHWA for RCRRA are those set forth in 49 CFR Part 18 and OMB Circular A-87. The accounting principles and procedures approved and prescribed by MnDOT for BNSF are set forth in 48 CFR Part 31 and OMB Circular A-87, as applicable to BNSF.

5.1(b) In the event the FHWA determines, through audit or review, that it believes any portion of funds awarded to the RCRRA under the TIGER Addendum (Exhibit D) and reimbursed to BNSF by RCRRA on this Project are not Allowable Costs or are disallowed and should be returned, RCRRA will notify BNSF of such determination. Unless BNSF disputes such disallowance, BNSF shall remit such disallowed amounts to the RCRRA within 45 days. If

BNSF does dispute such disallowance then such dispute will be resolved pursuant to the dispute resolution procedures set forth below under Article XV.

5.2 BNSF shall submit to RCRRA, monthly in arrears, an invoice that has been signed by BNSF's Project Manager, for actual funds expended for Allowable Costs incurred under authorized Task Orders. RCRRA shall remit payment of invoices to BNSF within forty-five (45) days of receipt, minus credit received for salvage. Any invoice amounts remaining unpaid after forty-five (45) days shall have become overdue unless RCRRA reasonably determines that all or portions of such invoice amounts are not Allowable Costs in which case the Parties will promptly meet to resolve such matter. In the event such matter cannot be resolved by the Parties it shall then be resolved pursuant to the dispute resolution procedures set forth below under Article XV. BNSF shall submit a detailed invoice to the RCRRA for unpaid amounts. Interest accrual and disputes regarding payment shall be governed by the provisions of Minnesota Statutes § 471.425.

5.3 It is expected that BNSF has, in cooperation with RCRRA, performed or will perform the appropriate risk management analysis and included appropriate contingencies in estimates of Project costs. If the cost of the Project exceeds the authorized maximum reimbursement amount set forth above (\$2,320,000), BNSF shall be responsible to complete the Project and pay any costs incurred in excess of that amount. BNSF further agrees to complete the Project regardless of whether the costs it has incurred qualify as Allowable Costs under section 5.1(a) or are subsequently disallowed under section 5.1(b).

5.4 Following completion of the Project, BNSF shall determine the actual final Allowable Costs of the Project and provide a final billing to RCRRA for the Project. BNSF shall be responsible for preparing a final Project expenditure report and submitting it to RCRRA within one hundred eighty (180) days of completing the Project. The report shall identify the itemized costs incurred for the Project. The final allowable cost of the Project shall be calculated in accordance with 48 CFR Part 31 and OMB Circular A-87, to the extent applicable to BNSF, except as otherwise provided herein.

5.5 Subject to the terms of sections 5.1, 5.1(a) and 5.1(b) above, BNSF may do any of the following: BNSF may, at its sole discretion, select material and vendors following established policy of the BNSF relative to bidding and procurement for non-Agreement reimbursed Project work, if any. Reimbursable costs for material (excluding appropriate overhead additives) will be valued as follows: New stock material will be valued at BNSF inventory price; second hand material will be valued at fifty (50) percent of new BNSF Inventory Price; shop manufactured material will be valued at BNSF Inventory Price; and non-stock material will be valued at invoice price. Working stock (including, but not limited to non-stock field material) not properly identifiable in one of the above categories will be valued at fair market value as determined by BNSF. Material will be included on invoice when received or otherwise assigned to a Project. In each case, "**Inventory Price**" above, shall mean that price carried on BNSF's books for all material of that character used for work on a Project and all other work of a similar nature performed by BNSF in that region.

5.6 The Parties acknowledge and agree that RCRRA's costs associated with administering this Agreement including TIGER Addendum requirements are not included in any Project cost estimates and budgets.

5.7 BNSF recognizes that the FHWA and FRA shall not be subject to any obligations or liabilities to BNSF, third party, or third party subcontractors, or any other person not a party to this Agreement in connection with development and construction of the Project.

ARTICLE VI –INSURANCE

6.1 The Parties intend that personal injury and property damage risks arising from the performance of the work under this Agreement will be covered by insurance to be purchased by BNSF or BNSF's contractors or consultants, as the case may be, as set forth below. RCRRA agrees to reimburse the BNSF or BNSF's contractors or consultants for the cost of such insurance as an Allowable Cost, subject to the terms of sections 5.1, 5.1(a) and 5.1(b) above.

6.2 Insurance to be maintained by BNSF:

Commercial General Liability insurance in an amount of at least \$25,000,000 per occurrence. Such insurance shall include coverage for:

1. Injury to or death of persons whomsoever;
2. Personal Injury, Federal Employers Liability Act, and property damage liability including but not limited to, damage or destruction of any and all property including public liability, bill of lading and foreign line rolling stock;
3. Seepage and pollution coverage as a result of derailments; and
4. Contractual liability for the liability assumed in this Agreement.

Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to, the following:

1. Bodily injury and property damage; and
2. Any and all vehicles owned, used or hired.

All Risk Builder's Risk insurance to cover buildings and structures during construction or remodeling with limits equal to the projected value of the completed structure. Coverage shall include the following:

1. Issued on a replacement cost basis;
2. Include a standard loss payable endorsement naming RCRRA as the loss payee as its interests may appear; and
3. Include a waiver of subrogation in favor of RCRRA.

Pollution legal liability insurance in an amount of at least \$25,000,000 per occurrence and in the aggregate, including but not limited to coverage for the following:

1. First party cleanup;
2. Third Party Liability; and
3. Defense costs.

6.3 BNSF's contractors or consultants shall carry the following minimum insurance coverage:

Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$ 2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 (except for work involving a bridge or overpass, which shall require limits be increased to \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000). Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:

1. Bodily Injury and Property Damage;
2. Personal Injury and Advertising Injury;
3. Fire legal liability; and
4. Products and completed operations.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

1. It is agreed that any workers' compensation exclusion does not apply to BNSF payments related to the Federal Employers Liability Act or a BNSF Wage Continuation Program or similar programs and any payments made are deemed not to be either payments made or obligations assumed under any Workers Compensation, disability benefits, or unemployment compensation law or similar law;
2. The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of BNSF property; and
3. Any exclusion related to the explosion, collapse and underground hazards shall be removed.

Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

1. Bodily injury and property damage; and
2. Any and all vehicles owned, used or hired.

Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

1. Contractor's statutory liability under the worker's compensation laws of the State of Minnesota; and
2. Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee

Railroad Protective Liability insurance naming only the BNSF as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate (except for work involving a bridge or overpass, which shall require limits be increased to \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000). The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

1. Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93);
2. Endorsed to include the Limited Seepage and Pollution Endorsement;

3. Endorsed to remove any exclusion for punitive damages; and
4. No other endorsements restricting coverage may be added.

The original policy must be provided to the BNSF prior to performing any work or services under this Agreement. As respects Consultants, Railroad Protective Liability Insurance will only be required when the Consultant is engaged in work on BNSF property.

In addition to the coverage required above, Architect and Engineering Consultant shall carry Professional Liability Insurance as follows:

Professional Liability Insurance. Professional Liability Insurance covering the Architect or Engineering Consultant from damage resulting from negligent error, omission or acts of the Architect or Engineering Consultant, its agents, officers and employees in the performance of the professional services rendered under this Agreement and for which he is legally liable. Such policy of insurance shall be in an amount not less than \$2,000,000 per claim and \$2,000,000 in the aggregate. If the aggregate is eroded by reserve or claim payments of more than one-half the aggregate, the policy limit will be reinstated by Consultant.

6.4 Whenever BNSF directly procures such insurance, the premium costs shall be included as Allowable Costs subject to the terms of sections 5.1, 5.1(a) and 5.1(b) above. If BNSF's contractor or consultant procures such insurance, the premium costs shall be included within the contract price for such contractor or consultant.

With the exception of Pollution Legal Liability and Professional Liability insurance all insurance policies set forth herein shall be written on occurrence forms. BNSF shall ensure that RCRRRA is named as an additional insured on insurance policies acquired under this provision and that RCRRRA promptly receives current certificates of such insurance showing that RCRRRA has been named an additional insured. The Parties agree that the coverage afforded to RCRRRA as an additional insured shall be applied on a pro rata basis, based on the respective shares of liability of the insured, up to the required limits of liability. The deductible or self-insured retention with respect to each insurance policy purchased under this provision shall not exceed \$50,000 unless otherwise agreed by the Parties.

ARTICLE VII – RECORD RETENTION/AUDIT/REPORTING

7.1 BNSF, its subcontractors, and RCRRRA shall maintain all checks, payrolls, invoices, contracts, vouchers, orders, books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement for a period of six (6) years after completion of the work on the Project. All parties shall make such materials available at their respective offices at all reasonable times during the term of this Agreement and for six (6) years from the date of final payment on the Project. BNSF agrees to submit to and cooperate with any audit requested by the State of Minnesota or the Federal Government within such six years relating to the construction of the Project that is the subject of this Agreement. RCRRRA or any duly authorized

representative of RCRRRA or the Federal Government shall have access to any checks, payrolls, invoices, contracts, vouchers, orders, books, records, and documents of BNSF that are directly pertinent to the Project for the purpose of making audits, examinations, excerpts, and transactions; and copies thereof shall be furnished if requested.

7.2 BNSF agrees to allow RCRRRA, the Secretary of Transportation, the Comptroller General of the United States, or their authorized representatives to inspect all Project work at reasonable times and in a manner that will not unduly delay any work on the Project; provided such individuals comply with BNSF's standard safety requirements for entry onto its right of way.

7.3 BNSF agrees to cooperate with RCRRRA and, when requested, to provide information reasonably needed by the RCRRRA to satisfy RCRRRA's reporting requirements to FHWA as described in the TIGER Addendum in connection with this Project, including, but not limited to, the following information:

1. The status of completion of items in the Project Description (Exhibits A and B attached);
2. An account of significant progress made during the identified reporting period;
3. The amount of costs for which BNSF is seeking reimbursement during the identified reporting period, but only if such amount has not already been identified in the invoices BNSF has submitted to RCRRRA for the work performed;
4. A description of any technical and/or cost problems encountered or anticipated that will affect completion within time and/or budget constraints and any recommended solutions or corrective action plans;
5. A description of work and activities planned for the upcoming identified reporting period;
6. The number of jobs directly created or sustained by the project;
7. If possible, the number of indirect jobs created or sustained in the associated supplying industries;
8. The number of jobs retained by the project after completion of construction of the Project; and
9. Information relating to any subcontracts awarded by BNSF on this Project.

ARTICLE VIII – TITLE

8.1 Title to material purchased by BNSF for installation or use in connection with the Project and paid for by RCRRRA shall be vested in RCRRRA until said material is installed or used. Title to all improvements made under this Project, including materials after installation, shall be vested in BNSF, subject to the credit conditions described in Article VIII.

8.2 BNSF shall contract for the disposal of all materials removed in the course of the work. Within three (3) months of removal, the Project shall receive credit for the net salvage value (all applicable credits less any cost incurred for removal and/or disposal of materials) for all removed materials. In addition to the application of subcontractor requirements in Exhibit J, BNSF shall require the subcontractor responsible for disposing of material to provide the following information which shall be retained by BNSF in accordance with the record retention

requirements of this Agreement: a) a list of the items and quantities being disposed including the approximate mile post location where the materials were removed, b) the identification of any value associated with each item and the basis for determining such value, c) a specification of any costs associated with removal of each item, and d) a specification of any costs for the disposal of each item. The information listed above must accompany any subcontractor request for payment to BNSF for disposed material. The information listed above shall be part of the subcontractor's Accounting Records and must be retained by the subcontractor in compliance with the Record Retention requirements in Exhibit J. There will be no credit for salvaged signal materials.

ARTICLE IX – CHANGE IN TERMS

9.1 No change in or modification of this Agreement shall be effective unless made in writing, dated, and executed by duly authorized representatives of the Parties hereto.

9.2 The failure of BNSF to perform, in whole or in part, any of the obligations of BNSF under this Agreement, by reason of the occurrence of fire, flood, explosion, disaster, strike, materials unavailability, delays in obtaining permits and approvals, unforeseeable tasks including mitigation that may be required by administrative or judicial decision, previously unidentified impacted soils or other environmental conditions that are encountered during construction, the need to secure unforeseen permits and approvals due to any public agency claiming jurisdictional authority or responsibility over regulating or permitting Project work and asserts a need to issue one or more unanticipated permits, judicial or administrative injunctions, unexpected physical conditions or any other cause beyond the reasonable control of BNSF (hereinafter referred to as “**Force Majeure Occurrence**”) shall be excused for all purposes, including time performance; provided, that BNSF shall promptly begin work and a revised schedule for Project completion when the Force Majeure Occurrence abates and complete the work.

Unforeseen underground conditions shall be defined as sub-surface conditions within Project limits that are newly discovered despite BNSF's due diligence investigation of geotechnical conditions and that vary from actual field conditions discovered and predicted during pre-construction. BNSF's failure to exercise accepted geotechnical investigation methods in developing the Project shall not be a valid cause to exercise BNSF's termination provisions under this paragraph.

In the event of a claimed Force Majeure Occurrence, BNSF shall promptly notify and consult with RCRRA as to how to proceed pursuant to the provisions of this Agreement under the circumstances presented by the Force Majeure Occurrence. In the event the Force Majeure Occurrence has delayed work or increased costs so that the Project cannot be completed for the cost or in the time specified in this Agreement, BNSF need not proceed with completion of the work until the Parties have amended this Agreement in ways necessary to enable the Project to be completed in the revised manner, for the revised amount and/or in compliance with the revised schedule. If, after six (6) months from BNSF first providing RCRRA written notice of a Force Majeure Occurrence, the Parties have not amended this Agreement in ways necessary to

complete the Project, then either Party may terminate this Agreement by written notice to the other Party.

ARTICLE X - RESERVED

ARTICLE XI – SUBCONTRACTING CLAUSE

BNSF will use the attachment at Exhibit J for all subcontractors for the Project and will require that all subcontractors it hires in connection with this Project comply with all terms and provisions set forth in that Exhibit.

ARTICLE XII – TERMINATION

12.1 RCRRA may terminate this Agreement upon a finding that BNSF is not in compliance with the terms of this Agreement if BNSF does not correct such default as set forth below. Termination shall be by written notice specifying the reason for termination and giving BNSF thirty (30) days to correct the default or if such default cannot reasonably be corrected within such 30 days such reasonable period of time necessary to correct such default provided BNSF has commenced to cure such default within the 30 day period but in no event shall the period of time to cure be more than ninety (90) days.

12.1(a) RCRRA may terminate this Agreement if it receives written notice from the FHWA that all or part of the FHWA's financial assistance provided to RCRRA through the TIGER Program for this Project has been suspended or terminated for any reason or that the FRA is de-obligating unspent FHWA funds awarded to RCRRA in the TIGER Program for this Project. In that event, RCRRA will provide written notice of termination under this section to BNSF and BNSF shall take all reasonable steps to cancel any obligations it has incurred before the date of the termination notice. BNSF will be reimbursed for obligations incurred by BNSF before the date of the termination, subject to the terms of sections 5.1, 5.1(a) and 5.1(b), above.

12.2 RCRRA must pay invoices in accordance with Article V. BNSF may commence the process for suspension of work upon RCRRA's non-payment of any undisputed BNSF invoices after one hundred twenty (120) days. Suspension shall be by written notice specifying the reason for suspension and giving RCRRA thirty (30) days to make payment. Should RCRRA not make payment on or before thirty (30) days of BNSF's written notification of suspension, then and in that event all Project work shall be suspended. If RCRRA does not pay all invoices and applicable interest within another one hundred and twenty (120) days after the suspension, all Project work shall be terminated.

12.3 In the event this Agreement is terminated as provided for under this Agreement, RCRRA shall reimburse BNSF for work completed up to the point of termination, including the cost to dispose of material on hand, less any applicable credits; and any cost incurred to restore the site to a reasonably safe and usable condition all subject to the terms of sections 5.1, 5.1(a) and 5.1(b) above. RCRRA shall also pay BNSF all properly invoiced allowable costs associated with services provided by contractors to BNSF for Project work that was either completed or

obligated and not capable of being halted when the Project work was terminated subject to the terms of sections 5.1, 5.1(a) and 5.1(b), above.

ARTICLE XIII – INDEMNITY

BNSF agrees to defend, indemnify and hold harmless RCRRA from any claim, action or liability for personal injury or death and for damage or destruction of real or personal property arising during construction of the Project. This agreement to defend, indemnify and hold harmless applies to all aspects of RCRRA's involvement in this Project, including any design plan reviews, construction reviews and any funding participation.

ARTICLE XIV – RESERVED

ARTICLE XV – ARBITRATION

15.1 A. Except as provided to the contrary below, any controversy that arises out of, or relating to work done under this Agreement or reimbursement of Project costs under this Agreement, or any written modification or extension thereof, including any claim for damages, shall be resolved by binding arbitration. Such arbitration shall be conducted pursuant to the Construction Industry Arbitration rules in accordance with the American Arbitration Association (“AAA”). The arbitration shall be conducted by a panel of three (3) arbitrators drawn from the list of arbitrators on the Large, Complex Case Program and Panel (construction and/or commercial) maintained in the San Francisco Office of the AAA. It is the express desire of the Parties that the arbitration be administered and that the hearings occur as expeditiously as possible. In furthering this objective, it is agreed that the following goals shall be followed by AAA and the panel of arbitrators in administering and hearing the claims:

- i. The panel shall be agreed to by the Parties or administratively appointed within sixty (60) days after the initial demand for arbitration is lodged with the AAA; and
- ii. The hearing will be completed, the matter fully briefed, and the award issued within one hundred eighty (180) days after the initial demand for arbitration has been lodged with the AAA.

B. The Parties may stipulate, in writing, to extend said time periods. The arbitration panel shall require a complete exchange of relevant documents and coordinate a schedule for the identification of fact witnesses, expert witnesses, summary statements of witness testimony, marking and exchanging of documentary evidence, and briefing. Subject to the terms of section 15.3 below, the decision of the majority of the arbitrators shall be binding upon all Parties, and the Parties hereby consent to the arbitration award and the entry of a judgment upon any confirmed award rendered by the arbitration panel.

15.2 In all arbitrated matters, the arbitration panel's award shall contain a written explanation of the basis for the award, shall include written findings of fact and conclusions of law, and shall be supported by substantial documentation. Further, such award shall determine

the prevailing party such award may be appealed by either party to a court of competent jurisdiction only on the following limited basis: the issues for review in the event of such appeal shall be limited to: (i) whether the arbitration panel exceeded its jurisdiction or was without jurisdiction as provided in this Agreement, or any written modification or extension thereof; (ii) whether the arbitration proceeding constituted a fair hearing; and (iii) whether there was any prejudicial abuse of discretion. An abuse of discretion shall be established if the appellant demonstrates that: (x) the arbitration panel did not proceed in the manner required by this Agreement, or any written modification or extension thereof, and by applicable laws and regulations; (y) the arbitration panel's award is not supported by the required findings or the arbitration panel's conclusions of law are contrary to applicable law and regulations; or (z) the arbitration panel's findings of fact are not supported by substantial evidence. The requirement to arbitrate disputes under this Article shall not apply to any non-monetary claims (such as injunctive relief or declaratory relief) unless the claimant shall seek to have such claims so arbitrated.

15.3 Arbitration decisions relating to or addressing the issue of reimbursement of Project costs under Article V are subject to review and final approval by the FHWA. Such decisions shall not be binding upon all the Parties and shall not constitute a judgment unless approved by the FHWA, in writing.

The arbitration panel shall convene in St. Paul, Minnesota and judgment may be entered upon an arbitration award in District Court in the State of Minnesota.

RCRRA reserves the right to assert all claims, defenses, immunities and protections available to it under state or federal law in any arbitration proceeding or court proceeding relating to this Agreement. Nothing contained in this Agreement shall constitute a waiver of such rights.

ARTICLE XVI – NATIONAL LABOR RELATIONS BOARD CERTIFICATION

BNSF hereby states, under penalty of perjury, that no more than one final unappealable finding of contempt of court by a Federal court has been issued against BNSF within the immediately preceding two (2) year period because of BNSF's failure to comply with an order of a Federal court that orders BNSF to comply with an order of the National Labor Relations Board. Work performed by BNSF's scheduled (unionized) workforce to construct the Project as contemplated in this Agreement will be performed under the terms of the relevant collective bargaining agreements and collective bargaining agreements covering that workforce will be in effect during the entire term of this Agreement.

ARTICLE XVII - CHOICE OF LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

ARTICLE XVIII – NOTICES

Any notice required by this Agreement shall be in writing and directed to the representatives of the Parties identified herein by personal delivery or deposit with the United States Postal Service, first class postage prepaid:

BNSF:

BNSF Railway Company
2600 Lou Menk Drive
Fort Worth, Texas 76131
Attn: Asst. Vice President – Engineering Services

With a copy to:

BNSF Railway Company
2500 Lou Menk Drive
Fort Worth, Texas 76131
Attn: Vice President & General Counsel - Regulatory

MnDOT:

Minnesota Department of Transportation
Passenger Rail Office
Mail Stop 480
395 John Ireland Boulevard
St. Paul, MN 55155
Attn: Director

RCRRA:

Ramsey County Regional Rail Authority
Union Depot, Suite 200
214 4th Street East
St. Paul, MN 55101
Attn: Director

ARTICLE XIX – AGREEMENT EXECUTION

This Agreement shall be executed in six (6) counterparts and shall be valid when each of the Parties has executed copies of the signature page and a copy of the entire Agreement incorporating original signature pages signed by the Parties has been distributed to each Party.

ARTICLE XX – SEVERABILITY

If any provision of this Agreement is held invalid, all remaining provisions of this Agreement shall continue in full force and effect to the extent not inconsistent with such holding.

ARTICLE XXI – GENERAL

21.1 Data Practices Information. Except as required by law, RCRRRA shall not release to third parties any books, manuals, drawings, computer software, other documentation and know-how ("Contract Information") provided or made available to RCRRRA or its representatives by BNSF, pursuant to this Agreement, make any alterations in any Contract Information, or use or permit others to use Contract Information for any purpose other than for the performance of this Agreement without the prior written consent of BNSF. Notwithstanding the foregoing, all data and Contract Information provided to RCRRRA by BNSF, or by RCRRRA or BNSF to MnDOT, as the case may be, as a result of entering into this Agreement and performing any obligation hereunder will be "government data" as defined by Minn. Stat. §13.02, subd. 7. RCRRRA and MnDOT will treat all government data in accordance with the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. If BNSF or RCRRRA believes that any data qualifies as "Trade Secret Data" or "Security Information" pursuant to Minn. Stat. §13.37, or otherwise qualifies as "non-public data", then the party providing the data must clearly label such data with the qualifying classification. If RCRRRA or MnDOT receives a request to release such data, RCRRRA or MnDOT will use its best efforts to notify the party providing the data of such request prior to any release of the data. This Agreement is "public data" and RCRRRA or MnDOT will release this Agreement upon proper request without regard to any "confidential" or similar legend placed on this Agreement by any party.

21.2 Conflict of Interest. Each party affirms that, to the best of that party's knowledge, its involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. Each party agrees that, should any conflict or potential conflict of interest become known to it, it will immediately notify the other party of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise the other party whether it will or will not resign from the other engagement or representation.

21.3 Certification regarding debarment, workplace and lobbying requirements. BNSF certifies compliance with, and agrees to obtain certifications from its third party contractors on the Project with respect to the certifications set forth in Exhibit I entitled "Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying".

21.4 Compliance with Applicable Law. Notwithstanding any other provision of this Agreement, BNSF shall comply with all applicable federal state, and local laws, rules, and regulations with regard to the Project and its obligations under this Agreement, except to the extent preempted by federal law. Applicable Federal laws, rules and regulations under this Section 21.5 shall include without limitation applicable laws with which the TIGER Addendum requires compliance; provided that notwithstanding anything herein or in the TIGER Addendum, the inclusion or listing in the TIGER Addendum of any laws, rules, and/or regulations that would not otherwise apply to the Project or BNSF in the absence of such inclusion or listing shall not make any such laws, rules, and/or regulations applicable to the Project or BNSF. Except as set forth in this Agreement, BNSF is not agreeing by contract in this Agreement to comply with any provisions of the TIGER Addendum or with any laws, rules, and/or regulations that would not otherwise apply.

(Intentionally blank. Signature page follows.)

In witness whereof, the Parties hereto have caused this Agreement to be executed by their duly authorized officers.

BNSF RAILWAY COMPANY

By: _____
Richard E. Weicher Date
Vice President and General Counsel-Regulatory

RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

Attest:

By: _____
Name:

Title:

Attest:

By: _____
Name:

Title:

Approved as to form:

Assistant County Attorney

MINNESOTA DEPARTMENT OF TRANSPORTATION

Attest:

By: _____
Name:

Title:

Attest:

By: _____

Name:

Title:

Approved as to form:

Attorney

Exhibit A

Map of Project

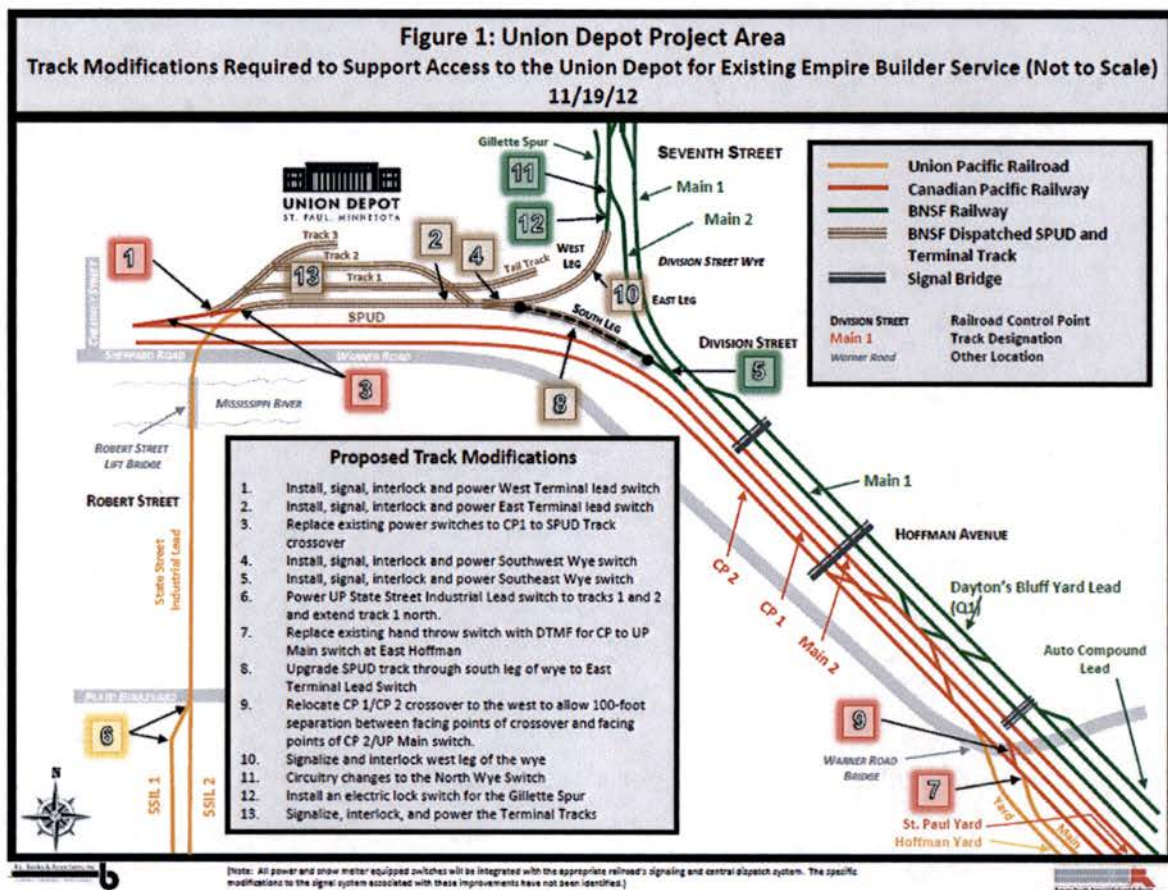


Exhibit B

Description of Project, Estimated Costs, and Project Schedule

1. Replacement of the Southeast Wye Switch (Exhibit A, Item #5)
2. Replacement of the Gillette Spur Switch with an electric lock switch (Exhibit A, Item #12)
3. Upgrading of circuitry for the signalization of the North Wye Switch (Exhibit A, Item #11)
4. Signalization of the Division Street Wye and SPUD Track (Exhibit 1, Items #2, #4, #10, and #13)
 - a. West Leg
 - b. South Leg
 - c. East Terminal Lead
 - d. SPUD Track (CP 1/SPUD Crossover to BNSF St. Paul Sub)

Estimated Project Cost - \$2,320,000

Project Schedule:

Union Depot, St. Paul MN Tentative Construction Schedule June 2013

Work Element	Tentative Completion Date
Final Design - Track	Q1 2013
Final Design - Signals	Q1 2013

Work Element	Tentative Completion Date
*Procurement - Track	Q1 2013
*Procurement - Signals	Q1 2013
*Construction	Q3 2013

*Schedules to be updated following the completion of Final Design Track and Final Design Signals.

Exhibit C

Union Depot Railroad Approval Layout Set
(design sheet attached)

Exhibit D

TO THE GRANT AGREEMENT UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 TRANSPORTATION INVESTMENTS GENERATING ECONOMIC RECOVERY (TIGER) DISCRETIONARY GRANT PROGRAM

Ramsey County Regional Railroad Authority

Union Depot

FHWA TIGER Grant No. 19

SECTION 1. PURPOSE OF ADDENDUM No. 2

- a) This addendum, Addendum No. 2 ("Addendum"), to FHWA TIGER Grant No. 19 ("Grant Agreement") is to revise the Project budget and to recognize and accept the addition of FY 2010 Federal Railroad Administration ("FRA") High-Speed Intercity Passenger Rail ("HSIPR") Program funding ("HSIPR funds"), made available under the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 {Div. A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009)}, to the Project. This addition of HSIPR funds to the Project is subject to the terms and conditions of the Grant Agreement which was executed by the U. S. Department of Transportation, the Federal Highway Administration (the "Government" or "FHWA"), the Ramsey County Regional Railroad Authority and the Minnesota Department of Transportation) (collectively the "Parties"), with an effective date of November 15, 2010.
- b) The Parties to this Addendum additionally recognize that the purpose of the HSIPR funds is to first ensure that intercity passenger rail can enter, exit, and access the St. Paul Union Depot (the "Depot") in a safe and efficient manner and, secondly, to contribute towards the rehabilitation of the Depot and its return to service as a multimodal hub. Further, by executing this Addendum the Parties recognize and accept the use of the HSIPR funds on the Project. With respect to the application and use of the HSIPR funds on the Project, the Parties also recognize and accept that they must comply with the applicable requirements of the HSIPR Program, as described in this Addendum, in addition to the terms and conditions of the TIGER program, as described in the Grant Agreement. This Addendum and its sections are to be made part of Section 7 - Special Grant Requirements - of the Grant Agreement.
- c) FRA and FHWA have executed an Inter-Agency Agreement which is fully incorporated herein by reference.

SECTION 2. HSIPR FUNDS

- a) FRA announced an award of \$40.0 million dollars (\$40,000,000) under the HSIPR Program to the Minnesota Department of Transportation on October 28, 2010 for construction to rehabilitate the Depot as a multimodal hub for intercity rail, future high-speed rail, local rail and bus transit, and pedestrian, bicycle, taxi, and other local modes of access allowing relocation of the Amtrak's Empire Builder service to the Depot upon completion of the Project. The Parties agree that this HSIPR award is consistent with the purpose of the TIGER Grant award, as it is fully described in the Grant Agreement.

- b) The Parties acknowledge that the FRA will transfer the administration of the subject HSIPR funds, up to the total amount of \$40.0 million (\$40,000,000), to the FHWA for the purpose of completing the Project as it is described in section 4(c)(1) and Attachment A of the Grant Agreement, subject to the conditions described in this Addendum.
- c) The Parties, by signing and executing this Addendum, further acknowledge that the \$40.0 million (\$40,000,000) of HSIPR funds may only be used to pay costs associated with the renovation of the Depot buildings and the track and signal work necessary for intercity passenger rail service to access the Depot, subject to the conditions described in this Addendum.
- d) The Parties additionally recognize that the recipient of the HSIPR funds for the Depot was the State of Minnesota Department of Transportation ("Recipient") and the subrecipient was the Ramsey County Regional Railroad Authority ("Subrecipient"). The Recipient and Subrecipient agree to use the HSIPR funds to assist in the final design and construction of the Project in accordance with the terms and conditions of the Grant Agreement and this Addendum.
- e) The Parties further recognize and understand that upon signing and execution of this Addendum \$20.0 million dollars (\$20,000,000) of the HSIPR funds will be made immediately available to the Recipient ("Initial Funds").

The Recipient and Subrecipient may request additional sums of the remaining HSIPR funds ("Remaining Funds") upon written request to the FHWA Minnesota Division Administrator (MN Administrator). The MN Administrator will then consult with designated representatives of the FRA on the request and only after agreement with FRA will any of the Remaining Funds be released. The request must demonstrate that Preliminary Engineering, as set forth in Section 3(h) of this Addendum, is complete, and that the Government determines that sufficient progress is being made on track and signal system design and Project construction. It is understood by the Parties that the release of any of the Remaining Funds shall be at the sole discretion of the Government.

SECTION 3. HSIPR FUNDS ADDITIONAL GRANT CONDITIONS

The following terms and conditions apply to use of the HSIPR funds on the Project, in addition to the terms and conditions set forth in the Grant Agreement:

a) Buy America. With respect to the use of all HSIPR funds made available under this Addendum, the Recipient and Subrecipient shall comply with the Buy America provisions set forth in 49 U.S.C. 24405(a) for the Project requiring the use of steel, iron, and manufactured goods produced in the United States, in accordance with the conditions therein set forth.

b) Labor Provisions. 49 U.S.C. 24405(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with HSIPR funds made available under this Addendum shall be considered a "rail carrier," as defined by 49 U.S.C. 10102(S), for the purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). The Recipient and Subrecipient shall reflect these provisions in their agreements with the entities operating rail services over such rail infrastructure to the extent required by 44 U.S.C. 24405(6) and other laws referenced above.

c) Labor Protective Arrangements. For a project that uses rights-of-way owned by a railroad, the Recipient and Subrecipient shall comply with the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836, with respect to employees affected by actions taken in connection with the Project financed in whole or in part with HSIPR funds made available under this Addendum (See 49 U.S.C. 24405(c)). The Recipient and Subrecipient agree to include the applicable protective arrangements established by the Department of Labor under 45 U.S.C. 836 in their agreements with entities operating rail services over rail infrastructure constructed as part of the Project. The following definitions apply for purposes of applying those protective arrangements: (1) 'Protected employee' means an employee of a railroad who had an employment relationship with such railroad on the date on which the Recipient first applied for financial assistance applicable to the Project involved and who is affected by actions taken pursuant to this Grant Agreement; provided, however, that an employee who was benefitted solely as a result of the Project shall not be a protected employee under these provisions. (2) 'Railroad' means a rail carrier or a common carrier by railroad or express as defined in 49 U.S.C. 10102, and includes the National Railroad Passenger Corporation and the Alaska Railroad as well as a person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made pursuant to this Addendum.

d) Project Use for Intercity Passenger Rail Service and Refunds. The Recipient and Subrecipient acknowledge that part of the overall purpose of the Project is to benefit intercity passenger rail service. In the event that all intercity passenger rail service making use of the Project improvements is discontinued (for any reason) at any time during a period of twenty (20) years from the date such Project improvements were placed in service ("Service Period"), as set forth above, and if such intercity passenger rail service is not reintroduced during a one (1) year period following the date of such discontinuance, the Subrecipient shall keep the improvements of the Project available for intercity passenger rail service for the remainder of the Service Period, taking such action as is reasonably necessary to keep the improvements available for such use for the remainder of the Service Period, and in such event that the improvements are not kept available for intercity passenger rail service as provided in this Section 3.d} then the Recipient and Subrecipient shall, at FHWA's request, refund to FHWA, no later than eighteen (18) months following the date of such discontinuance, a pro-rata share of the Federal contribution made available under this Addendum, based upon the percentage of the twenty (20) year period remaining at the time of such discontinuance.

e) Davis-Bacon Act Provisions. For Project components funded using the HSIPR funds, the Recipient and Subrecipient shall comply with 49 U.S.C. 24405(c)(2), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. This section does not abrogate the Recipient's and Subrecipient's responsibilities on the remainder of the Project to comply with the Davis Bacon Act provisions as are set out in the terms and conditions of the Grant Agreement.

f) Replacement of Existing Intercity Passenger Rail Service. 49 U.S.C. 24405(d) requires any entity providing intercity passenger railroad transportation on a project funded by this Addendum to comply with certain requirements with respect to its employees and the employees of preexisting intercity rail passenger services. The Recipient and Subrecipient shall comply with the applicable provisions of 49 U.S.C. 24405(d) to the extent they are or

become a provider of intercity passenger railroad transportation. If they are not the operator or provider of the intercity passenger rail services benefitting from the Project funded under this Addendum, then they shall notify the selected operator of the requirements imposed by section 24405(d).

g) Additional HSIPR Guidance. The Recipient and Subrecipient shall comply with additional HSIPR guidance found in the HSIPR Program Interim Guidance/Notice of Funding Availability through which this Project was selected for funding (see <http://www.fra.dot.gov/downloads/PubAffairs/2010-15993.pdf>). The Recipient and Subrecipient should refer to this Guidance as necessary when carrying out the activities associated with implementing the Project.

h) Preliminary Engineering: The Subrecipient shall complete PE (30% design) for the track and signal system improvements. The Subrecipient shall obtain approval of the PE plans from Amtrak, Union Pacific Railroad Company ("UP"), BNSF Railway Company ("BNSF"), Canadian Pacific ("CP"), the Minnesota Department of Transportation, and FRA (FRA approval shall occur last, after all other necessary approvals are issued). The costs associated with performing such PE may not be reimbursed with HSIPR funds under this Addendum and may not be credited towards Recipient or Subrecipient's non-federal match of such HSIPR funds.

- i) Construction Agreements: Prior to conducting any final design work activities under Section 3(j), the Recipient and Subrecipient shall submit to MN Administrator the following: (i) a Construction Agreement between CP and Recipient and Subrecipient regarding the construction of any and all track and signal system improvements to occur on CP owned and/or controlled infrastructure relating to the Project; (ii) a Construction Agreement between BNSF and Recipient and Subrecipient regarding the construction for any and all track and signal system improvements to occur on BNSF owned and/or controlled infrastructure relating to the Project; and (iii) a Construction Agreement between UP and Recipient and Subrecipient regarding the construction of any and all track and signal system improvements to occur on UP owned and/or controlled infrastructure relating to the Project. The Recipient and Subrecipient must receive approval from the Government on the Construction Agreements required by this paragraph. The costs associated with performing the tasks required by this paragraph may not be reimbursed with HSIPR funds under this Addendum and may not be credited towards Recipient and Subrecipient non-federal match of such HSIPR funds. The Recipient and Subrecipient shall include in each Construction Agreement the following provisions: 1) The infrastructure capacity will be adequate to accommodate both the existing freight and intercity passenger rail operations and the future freight and intercity passenger rail operations that will result from this Project. For clarity, no additional passenger train frequencies will result from the Project;
- 2) Recipient and Subrecipient represent that they are in compliance with liability requirements consistent with section 28103 of Title 49 of the United States Code;
 - 3) The railroad agrees that collective bargaining agreements with the railroad's employees, including terms regulating the contracting of work, will remain in full force and effect according to their terms for work performed by the railroad on the Project;

- 4) Recipient and Subrecipient (including successors and assigns) shall have the right to use the Project property for the purpose of providing intercity passenger rail service for twenty (20) years beginning from completion of the Project (the "HSIPR Term");
- 5) The railroad shall ensure the maintenance of the Project property to the level of utility (including applicable FRA track safety standards) which exists when the Project improvements are placed in service for the HSIPR Term; and
- 6) The railroad shall not downgrade the Project in any way that reduces the utility of the Project for the intercity passenger rail operations during the HSIPR Term, without Recipient's prior written approval.

j) Final Design. Upon Recipient and Subrecipient's compliance with paragraphs (h) and (i) of this section, Grantee shall perform the final design (100% design) of all track and signal systems required to achieve fill, operational access to the Depot, in accordance with the approved PE (30% design). Recipient and Subrecipient shall provide copies of final design materials to the MN Administrator.

SECTION 4. PROJECT BUDGET
EXECUTION BY THE GOVERNMENT
Executed this day of 2012.

Signature of Government's Authorized Representative

Print Name

Title

EXECUTION BY THE RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

Executed this day of , 2012.

Signature of Project Sponsor's Authorized Representative

Print Name

Title

EXECUTION BY THE MINNESOTA DEPARTMENT OF TRANSPORTATION

Executed this

day of , 2012.

Signature of State Department of Transportation Designated Official Representative

Title

Exhibit E
BNSF Additives

BNSF Railway Company
Schedule of Additive Rates
Cost Year Ended December 31, 2010
Effective January 1, 2012

Engineering

<u>Description</u>	<u>Rate</u>
Time paid not worked	15.03%
Payroll taxes	22.82%
Health and welfare	28.12%
Force account insurance	16.79%
Engineering project costs	99.66%
Equipment - vehicles, roadway machines and work equipment	54.31%
Equipment - vehicles	27.97%

Transportation

<u>Description</u>	<u>Rate</u>
Time paid not worked	56.22%
Payroll taxes	26.20%
Health and welfare	32.28%
Force account insurance	16.79%
Transportation project costs	88.74%
Equipment - vehicles	1.20%

General and Administrative

<u>Description</u>	<u>Rate</u>
General and administrative	17.85%

Exhibit F

BNSF-Amtrak Long-Term Maintenance Agreement
(to be executed and attached)

Exhibit G
December 11, 2012

***Union Depot, St. Paul, Minnesota
Renovation Project***

Revised and Restated Term Sheet

BNSF Railway Company – Ramsey County Regional Rail Authority

This Revised and Restated Term Sheet dated as of December 11, 2012 summarizes key provisions to be included in a future agreement between BNSF Railway Company (“BNSF”) and Ramsey County Regional Rail Authority (“RCRRA”) regarding the establishment of Amtrak Empire Builder service through the Union Depot (“The Depot”) in Saint Paul, Minnesota. RCRRA intends to enter into similar agreements with all Class I railroads involved in station access or Amtrak operations, including Union Pacific Railroad (“UP”), Canadian Pacific Railroad (“CP”), and BNSF (collectively “The Railroads”).

The current route of the Amtrak Empire Builder, trains #7 and #8, bypasses The Depot. RCRRA, through a contract with Mortenson Construction (“Mortenson Team”), intends to complete the Union Depot Project (“The Project”) as defined subsequently in the Definition of Terms. The Project will involve renovations to existing buildings, construction of railroad track including connections to Class 1 tracks operated by The Railroads, platforms for passenger trains and associated features designed to facilitate the boarding and discharging of passengers from passenger trains.

The Railroads and RCRRA recognize that in order to route Empire Builder trains through the proposed Station Area, modifications will also be required to the track, signal and communications systems of The Railroads in the surrounding area. It is understood that the Minnesota Department of Transportation (“MNDOT”) expects these modifications as well.

The purpose of this document is to identify the required improvements to be made and outline proposed operating parameters and terms under consideration by the parties for proposed access to The Depot Terminal Area only by Amtrak trains #7 and #8, in its current and projected configurations, or their successors, and not by additional passenger trains. Should additional passenger trains be entertained by RCRRA, Amtrak, and The Railroads, for access to The Depot, additional analysis would be necessary to identify the required improvements to allow for their access to The Depot.

In the event that Amtrak discontinues Empire Builder service, the parties contemplate RCRRA may, subject to mutual written agreement of the parties, pursue the provision of intercity passenger train service to The Depot on a service frequency comparable to the existing Empire Builder by another qualified operator, that has an agreement with the applicable railroad to use that railroads facilities.

The Union Depot Railroad Approval Layout Set (Figure 4) represents preliminary engineering of the track improvements identified in Figures 1, 2 and 3 of this Term Sheet.

Notwithstanding any other provision of this Term Sheet, none of the Parties shall have any binding, legal obligations hereunder. The parties contemplate possible execution of definitive agreements identified in Section H which may incorporate terms and concepts outlined in this Term Sheet. Should the Parties fail for any reason or no reason whatsoever to agree and sign such definitive agreements, the Parties shall have no further obligation whatsoever to one another with respect to the subject matter of this Term Sheet.

Definition of Terms

Union Depot ("The Depot") – The Union Depot is the entire 33-acre complex of buildings, track, platforms, roadways, parking lots and other facilities that are or are proposed to be on property owned by the Ramsey County Regional Rail Authority (RCRRA) and used to support the operation of an intercity passenger rail station. (See Figure 1).

Terminal Buildings – The Terminal Buildings are that part of the Union Depot that includes the Head House and the Concourse.

Head House – The Head House is the building located on the block bounded by 4th Street East, 5th Street East, Sibley Street North and Wacouta Street North.

Concourse – The Concourse is the building located south of the Head House, a portion of which is elevated over the area to be used for tracks, platforms and passenger pick-up and drop-off, and includes the elevated connection between the Head House and the Concourse that crosses Kellogg Boulevard.

Terminal Area – The Terminal Area is that part of the Union Depot that includes the Terminal Tracks, platforms and other facilities that are or will be constructed on RCRRA property between Kellogg Boulevard and tracks owned by The Railroads, subject to each Railroad's agreement, but not including the Station Buildings.

Union Depot Project ("The Project") – The Union Depot Project refers to those activities being undertaken by RCRRA that involve the renovation of the Terminal Buildings; the construction of tracks, platforms and other facilities within the Terminal Area and the construction/renovation of other facilities, structures and systems necessary for the operation of an intercity passenger station within the property owned or proposed to be owned by the RCRRA, including those track and signal modifications associated with Class I Tracks and described herein.

Terminal Tracks – The Terminal Tracks are all the railroad tracks that are proposed to be located on RCRRA property in the Terminal Area. These tracks are identified as 'Track 1', 'Track 2', and 'Track 3' and the 'Tail Track' on Figure 1 and Figure 3.

The Railroads – For the purposes of this document, reference to The Railroads will specifically include the BNSF Railway (BNSF), the Canadian Pacific Railway (CP) and the Union Pacific Railroad (UP).

Class I Tracks – The term Class I Tracks will refer to all of the tracks on property owned or operated by The Railroads. Tracks owned by a specific railroad will be referred to using the name of the railroad (i.e. CP Tracks, UP Tracks or BNSF Tracks.)

SPUD Track – The track known as the SPUD Track or St. Paul Union Depot Track is the Class I track closest to RCRRA property (see Figure 1). It is owned jointly by all three Class I railroads (UP, CP and BNSF) and is operated and maintained by the Union Pacific Railroad. Subject to mutual written agreement on terms of an amendment to the January 1, 1984 Joint Operating Agreement (“**SPUD Joint Operating Agreement**”) between The Railroads, The Railroads will transfer dispatching responsibility and assign signal construction, maintenance, repair and renewal responsibility for the SPUD Track from UP to BNSF.

DTMF – Dual Tone Multi Frequency

Division Street Wye– The triangle (wye) of track and switches to the east of Union Depot as shown in Figure 3. Impacts to the Division Street Wye include the following:

BNSF Main Track 2 - As shown in Figure 1 through 3.

SPUD Track – As defined above and shown in Figure 1 and Figure 3.

Southwest Division Street Wye Switch (Item #4, Figures 1 and 3) – As described in section A.3 as the “Southwest Wye Switch”.

Southeast Division Street Wye Switch (Item#5, Figures 1 and 3) – As described in section A.3 as the “Southeast Wye Switch”.

North Division Street Wye Switch (Item #11, Figures 1 and 3) – As described in section A.3 as the “North Wye Switch”.

Gillette Spur Switch (Item #12, Figures 1 and 3)– Switch connecting the BNSF Gillette Spur track to the west leg of the Division Street Wye south of the North Wye Switch.

Union Depot Railroad Layout Approval Set – Refers to Railroad Layout Approval Set for state projects nos. 091-595-023, 091-595-24, and 091-525-025 dated December 11, 2012 and is attached hereto as Figure 4.

Amtrak - shall mean the National Passenger Railroad Corporation and its permitted successors and assigns.

Attachments

The following list of attachments are incorporated by reference:

- Figure 1: Union Depot Project Area, Track Modifications Required to Support Access to the Union Depot for Existing Empire Builder Service.
- Figure 2: Hoffman Interlocking and East, Track Modifications Required to Support Access to the Union Depot for Existing Empire Builder Service.
- Figure 3: Division Street Wye, Track Modifications Required to Support Access to the Union Depot for Existing Empire Builder Service.
- Figure 4: Union Depot Railroad Approval Layout Set.

The key issues are organized into the following categories merely to facilitate reference:

- A. Switch and Track Modifications
- B. Signal and Communications Modifications
- C. Design and Construction
- D. Dispatching
- E. Operations and Maintenance
- F. Design and Construction Funding
- G. Access
- H. Additional Agreements and/or Amendments to Existing Agreements Prior to Startup
- I. Construction Schedule

A. Switch and Track Modifications

1. Terminal Track and Connections

West Terminal Lead – A power switch (a switch controlled by a central dispatch center) is proposed to be installed on the west end of the Terminal Area that would connect the West Terminal Lead to the CP 1/SPUD Crossover just west of the point where the existing SPUD Track turns south to cross the Robert Street Lift Bridge. The installation of this switch would facilitate more efficient access to the Terminal Area by Amtrak trains. (Figure 1; Item 1).

West Terminal Lead Derail – A power derail will be installed by CP along the West Terminal Lead to protect against rolling equipment entering onto the CP 1 Track.

East Terminal Lead – A power switch is proposed to be installed on the east end of the Terminal Area that would connect the East Terminal Lead to the SPUD Track. The installation of this switch would improve access to the Terminal Area by Amtrak trains.

(Figure 1; Item 2 and Figure 3; Item 2).

Terminal Track – Two new terminal tracks are proposed to be constructed of sufficient length for the Amtrak Trains #7 & #8 to discharge and load passengers without fouling the SPUD Track, CP 1 Track or access of passenger trains to planned future tracks.

A portion of a third terminal track is proposed to be constructed on the west end of the Terminal Area for approximately 500 feet eastward and stub-ended at this time. Plans for this third terminal track and any subsequent track changes or additions would be subject to prior written approval of BNSF, CP, UP and Amtrak.

Tail Track -A Tail Track is proposed to be constructed on the East end of the Terminal Area that connects to Terminal Track 1 and Terminal Track 2 at the location of the East Terminal Track 1/Terminal Track 2 Switch. This switch, which would be a double slip switch, would allow the movement of trains between:

- 1) Terminal Track 1 and the Tail Track
- 2) Terminal Track 1 and the East Terminal Lead
- 3) Terminal Track 2 and the Tail Track
- 4) Terminal Track 2 and the East Terminal Lead

The Tail Track would be 1,042 feet long and extend from the Terminal Track 1/Terminal Track 2 Switch to the east and northeast in a curving manner that keeps it parallel to the west leg of the wye. The northeast end of the Tail Track would not be connected to the west leg of the wye, or any other track, and would dead end. The purpose of the proposed Tail Track would be to allow switching between Terminal Track 1 and Terminal Track 2 without requiring the use of the adjacent SPUD Track.

A private at-grade crossing across the Tail Track is proposed to be provided east of the East Terminal Lead/SPUD Switch that would allow railroad motor vehicles to cross both the SPUD Track and the Tail Track, providing Railroad operating and maintenance personnel access to the SPUD, UP, CP and BNSF Tracks in the vicinity.

A private access point will be provided to the west of the Terminal Area that allows railroad motor vehicles providing Railroad operating and maintenance personnel access to SPUD,

BNSF, CP and UP Tracks in the vicinity.

Crossing warning signage will be installed on the private access road.

At the east end of the Terminal Tracks, the double slip switch connecting Terminal Tracks 1 and 2, the Tail Track, and the East Terminal Lead will serve as the derail to protect against rolling equipment entering onto the SPUD Track.

A power or hand throw derail will be installed along the Tail Track to protect against rolling equipment striking equipment stored on the Tail Track.

2. CP 1/SPUD Crossover

CP1/SPUD Crossover – To connect the West Terminal Lead to the CP 1/SPUD Crossover, the existing #10 switches on either end of the existing CP 1/SPUD crossover will be replaced with #11 switches at their current locations.

This crossover replacement would be necessary to maintain existing freight routing options. Powering of the switches is not only necessary for the efficient movement of passenger trains, but would improve freight operations in the vicinity of the Terminal Area, reducing potential freight-passenger conflicts in the area.

(Figure 1; Item 3).

3. Modifications to Existing Switches

Southwest Wye Switch – The switch between the south leg of the wye and the SPUD Track is proposed to be reconstructed or replaced at its current location and powered. The reconstruction or replacement and powering of this switch would be necessary to avoid passenger trains having to stop while an employee detrains and manually operates the switch. The power switch would facilitate a more efficient movement of both passenger and freight trains through the wye and would reduce potential freight-passenger conflicts in the area.

(Figure 1; Item 4 and Figure 3; Item 4).

Southeast Wye Switch – The switch between the south leg of the wye and the BNSF Main Track 2, which leads to CP Main Track 2 to the east, is proposed to be reconstructed or replaced and powered. The reconstruction or replacement and powering of this switch would facilitate freight and passenger movements as described above.

(Figure 1; Item 5 and Figure 3; Item 5).

North Wye Switch – The switch on the north end of the Division Street Wye, where the east and west legs of the wye are joined, will require circuitry changes for its integrated with the Gillette Spur Switch and BNSF dispatch system. (Figure 1; Item 11 and Figure 3; Item 11)

State Street Industrial Lead (SSIL) – The switch on the UP State Street Industrial Lead that connects the single track north of Plato Blvd. to a double track section south of Plato Blvd. will be reconstructed or replaced and designated as a manual interlocker controlled by a dispatcher. The reconstruction or replacement and powering of this switch would expedite UP freight movements in the vicinity of the Terminal Area thereby reducing the potential of freight-passenger conflicts. The SSIL double track shall be extended north toward Plato Blvd. (Figure 1; Item 6)

UP Main Track Connection to CP Main – The switch between the CP 2 Track and the UP Main underneath the Warner Road viaduct is proposed to be replaced and DTMF controlled. The replacement and powering of this switch would enable UP crews to move freight trains between the UP Hoffman Yard and the CP 2 track without stopping to manually operate the switch. The expedited movement of these trains would reduce potential freight-passenger train conflicts in the vicinity of the Terminal Area.

Plans for these tracks and any subsequent track changes or additions would be subject to prior BNSF, CP and UP approval pursuant to the Hoffman Avenue Interlocking Agreement. (Figure 1; Item 7 and Figure 2; Item 7)

CP 1 to CP2 Right-hand Manual Crossover – The CP 1 to CP 2 manual crossover located west of the existing CP 2 to UP Main Switch is proposed to be relocated 100 feet to the west to satisfy current standards for the separating of switches. The crossover would continue to be manually operated (Figure 1; Item 9 and Figure 2; Item 9).

4. Track Reconstruction

South Leg of Wye – The south leg of the wye is proposed to be reconstructed to standards consistent with passenger train service. (Figure 1; Item 8 and Figure 3; Item 8).

SPUD Track – A short segment of the SPUD Track between the Southwest Wye Switch and the East Terminal Lead Switch is

proposed to be reconstructed as a consequence of installing the East Terminal Lead Switch and reconstructing the Southwest Wye Switch. This would necessary to sustain efficient passenger train operation.

(Figure 1; Items 2 & 4 and Figure 3; Items 2 & 4).

5. Switches

Except as noted above (*CP 1 to CP 2 Right-hand Manual Crossover and Gillette Spur*) All switches installed or reconstructed related to this Project are proposed to be power or DTMF switches and equipped with snow melting devices.

6. Derails

All derails installed for The Project on properties owned or controlled by The Railroads will be powered and connected to a dispatch center.

All derails installed for The Project on properties owned or controlled by RCRRA will be powered or hand throw. If a derail is powered, it will be connected to a dispatch center.

B. Signal and Communications Modifications

1. CP-operated track

All of the switches on CP-operated track that are proposed to be constructed as part of The Project would be connected to the CP dispatch center and integrated into the CP Centralized Traffic Control (CTC) signal system. These would include the:

- West Terminal Lead Switch (Figure 1; Item 1).
- Crossover switches and signals attached to the CP 1/ SPUD Crossover

The connection and/or integration of these switches would facilitate efficient passenger train movements to and from the Terminal Area.

The switch between the CP 2 Track and the UP Main underneath the Warner Road viaduct will be DTMF and use of this switch will be authorized by the CP St. Paul Yardmaster, not by the CP dispatch center (Figure 1; Item 7 and Figure 2; Item 7).

2. UP-operated track

The following switch, which is currently operated by hand throw, would be configured as a manual interlocker with a power switch connected to the UP dispatch center and integrated into the UP Centralized Traffic Control (CTC) signal system.

- State Street Industrial Lead (SSIL) –The switch that connects the two SSIL tracks to the single track north of Plato Blvd. (Figure 1; Item 6).

The connection and/or integration of these switches would facilitate efficient passenger train movements to and from the Terminal Area.

3. BNSF-operated and/or dispatched track

The following switches are currently operated by hand throw and are proposed to be modified to power and connected to the BNSF dispatch center and integrated into the BNSF Centralized Traffic Control (CTC) signal system.

- Southeast Wye Switch (Figure 1; Item 5 and Figure 3; Item 5)– The connection between the south leg of the wye and BNSF/CP Main Track 2.
- The Southwest Wye switch (Figure 1; Item 4 and Figure 3; Item 4) - The connection between the south leg of the wye and the SPUD Track.

The Gillette Spur Switch currently operates as a hand throw and will be replaced with an electric lock switch. (Figure 1; Item 12 and Figure 3; Item 12)

The following new switch on the east end of the Terminal Area will be connected to the BNSF dispatch center and integrated into the signal system:

- East Terminal Lead (Figure 1; Item 2 and Figure 3; Item 2).

The west leg of the Division Street Wye will be integrated into the BNSF dispatch system.

The connection and/or integration of these switches will facilitate efficient passenger train movements to and from the Terminal Area.

4. Terminal Track

Switches governing train movements between Terminal Track 1, 2, 3, and the Tail Track will be controlled by BNSF. This will include the power derail which is part of the double slip switch connecting Terminal Tracks 1 and 2 to the Tail Track.

5. Signal Interface

BNSF, CP, and UP will work to ensure the interface of their signal/dispatching systems for the CP Merriam Park Subdivision, BNSF St. Paul Subdivision, the UP State Street

Industrial Lead, the SPUD Track, and the Terminal Track

6. Positive Train Control

The Parties recognize the need to incorporate current Positive Train Control ("PTC") guidelines into The Project as applicable and in the event PTC is required to be installed and implemented, RCRRA shall install and implement PTC or cause PTC to be installed and implemented interoperable among all carriers as part of The Project and such costs shall be funded by RCRRA as outlined in Section F. 1. of this term sheet.

C. Design and Construction

1. Mortenson Team

If the Project proceeds, RCRRA intends that the Mortenson Team, under RCRRA's direction, will be responsible for engineering and final design of the Terminal Buildings and the Terminal Area, excluding those systems related to Class I Railroad signals and communication.

The Mortenson Team would also be responsible to consult with the Railroads on how designs are to be created, particularly for track. The Terminal Area specifications would need to be compatible with the Railroads' specifications on all components of the Union Depot Project that may affect Class I Railroad operation or the design and installation of signals.

Amtrak, UP, CP and BNSF, MNDOT and USDOT would need to review, inspect and approve any engineering as well as final design and construction managed by the Mortenson Team. It is expected that all engineering design plans will be presented to Amtrak, The Railroads, RCRRA, and MNDOT for signature if accepted. USDOT would be expected to review and accept or reject the final design, but not sign the final design plans.

The Mortenson Team would require a right of entry permit from the controlling Railroad for any work on Railroad property.

2. The Railroads General

The parties intend that if the Project proceeds, the engineering/design agreements would confirm which party will own, design, construct, operate and maintain the improvements outlined in this Term Sheet. This would include connectivity for dispatching operations.

If definitive agreements are executed, the Railroads would propose to coordinate with the parties on the engineering/design and construction of the improvements identified in Figures 1, 2, 3

and 4. Subject to agreement of The Railroads, it is proposed that CP would be the lead railroad in ensuring that this coordination occurs on those improvements that impact multiple railroads.

3. Union Pacific Railroad

Subject to the agreement of UP, it is proposed that UP would be responsible for engineering and final design of any signal and communications work on UP owned, dispatched, or controlled property, except for the East Terminal Lead and the Southwest Wye Switch, and other pieces of the SPUD Track. UP has agreed that BNSF will dispatch these two switches and the SPUD Track under terms of a revised Joint SPUD Operating Agreement, to be negotiated.

UP is proposed to be responsible for the installation of the East Terminal Lead switch and the Southwest Wye switch, and any necessary realignment of the SPUD Track.

UP is proposed to be responsible for the removal of the East #10 switch on the CP 1/SPUD Crossover and its replacement with a #11 switch. CP is proposed to be responsible for the removal of the West #10 switch on the CP 1/SPUD Crossover and its replacement with a #11 switch. CP is proposed to be responsible for the integration of the CP 1/SPUD Crossover into the CP signaling and dispatch system.

UP will work with BNSF on the interface of the UP and BNSF dispatching systems to ensure their cohesion at the CP 1/SPUD Crossover where the two systems connect.
(Figure 1; Item 3)

UP will work with CP on the interface of the UP and CP dispatching systems to ensure their cohesion at the CP1/SPUD Crossover where the two systems connect.
(Figure 1; Item 3)

UP is proposed to be responsible for design and construction of all improvements to the north end of the State Street Industrial Lead including the installation of the State Street Industrial Lead Switch south of Plato Blvd and its integration with the UP communications system. UP is proposed to be responsible for extending the double track north toward Plato Boulevard.

4. Canadian Pacific

Subject to agreement of CP, CP is proposed to be responsible for engineering and final design of any signal and communications work on CP property.

CP is proposed to be responsible for engineering and final design of any track work on CP owned, dispatched, or controlled property

CP is proposed to be responsible for the installation of the West Terminal Lead switch and derail, and would work with UP to complete removal of the existing CP 1/SPUD Crossover and installation of the new CP 1/SPUD Crossover and its integration into the CP signaling and dispatch system.

UP is proposed to be responsible for the removal of the East #10 switch on the CP 1/SPUD Crossover and its replacement with a #11 switch. CP is proposed to be responsible for the removal of the West #10 switch on the CP 1/SPUD Crossover and its replacement with a #11 switch. CP is proposed to be responsible for the integration of the CP 1/SPUD Crossover into the CP signaling and dispatch system.

CP will work with BNSF on the interface of the CP and BNSF dispatching systems to ensure cohesion at the CP 1/SPUD Crossover and the Terminal Tracks where the two systems connect. (Figure 1; Items 1 and 3)

CP will work with UP on the interface of the CP and UP dispatching systems to ensure their cohesion at the CP 1/SPUD Crossover where the two systems connect. (Figure 1; Item 3)

CP is proposed to be responsible for the installation of the CP 2 to UP Main DTMF Switch. (Figure 1; Item 7 and Figure 2; Item 7).

CP is proposed to be responsible for the relocation of the CP1 to CP 2 Right-hand Manual Crossover that is currently located just west of the CP 2 Track to UP Main Switch (Figure 1; Item 9 and Figure 2; Item 9). Crossover will remain hand throw and will not be incorporated into the dispatch system.

5. BNSF Railway

BNSF is proposed to be responsible for engineering and final design of any signal and communications work on BNSF owned, dispatched, or controlled property including the Terminal Tracks.

BNSF is proposed to be responsible for engineering and final design of any track work on BNSF owned, dispatched, or controlled property except for the SPUD Track, which will be UP's responsibility as set forth above.

BNSF is proposed to be responsible for replacement of the Southeast Wye Switch. BNSF's continued use of the Southeast Wye Switch for its freight operations shall not be diminished or impaired in any way as a result of this Project. (Figure 1; Item 5 and Figure 3; Item 5)

BNSF is proposed to be responsible for the integration of the East Terminal Lead Switch and the Southwest Wye Switch into the BNSF signaling and dispatch system.

BNSF will work with CP on the interface of the BNSF and CP dispatching systems to ensure cohesion at the CP 1/SPUD Crossover and the Terminal Tracks where the two systems connect. (Figure 1; Items 1 and 3)

BNSF will work with UP on the interface of the BNSF and UP dispatching systems to ensure their cohesion at the CP 1/SPUD crossover where the two systems connect. (Figure 1; Item 3)

BNSF will be responsible for upgrading circuitry for the North Wye Switch. (Figure 1; Item 11 and Figure 3; Item 11)

BNSF will be responsible for replacing the Gillette Spur Switch and any necessary reconstruction of the west Leg of the Division Street Wye except for the SPUD Track which will be UP's responsibility as set forth above. (Figure 1; Item 12 and Figure 3; Item 12)

6. Construction Staging

Construction and implementation of track, signal and communications equipment is proposed to be coordinated between Mortenson and The Railroads for the Terminal Area so as to minimize impact to Amtrak and freight operations.

D. Dispatching

- | | |
|------------------------------|--|
| 1. West end of Terminal Area | CP will dispatch and control all switches installed on CP track. This will include the West Terminal Lead Switch (Figure 1; Item 1) and the CP 1 to SPUD Track Crossover (Figure 1; Item 3). |
| 2. East end of Terminal Area | BNSF will dispatch the East Terminal Lead Switch, SPUD Track (up to but not including the CP 1/SPUD Crossover |

(Figure 1; Item 3)), the North Wye Switch and the Southwest Wye Switch.

3. Southeast Wye Switch
BNSF would dispatch the Southeast Wye Switch that connects to the south leg of the wye and the BNSF Main 2 tracks.
4. CP 2 to UP Main Switch
The CP St. Paul Yardmaster will continue to authorize the use of the DTMF switch that connects CP 2 to the UP Main. (Figure 1; Item 7 and Figure 2; Item 7)
5. Terminal Tracks
Terminal Tracks between the East and West Terminal Lead Switches will be controlled by BNSF. BNSF will determine the Terminal Track to be used by all inbound trains from either direction.
7. State Street Industrial Lead
UP will dispatch the new power switch at the north end of the State Street Industrial Lead.
8. Amtrak Operations
BNSF will work with Amtrak on dispatching need for Amtrak Trains 7 and 8 as they relate to Union Depot.

E. Operations and Maintenance

1. Clearance of mainline
The Terminal Track is proposed to be designed such that the Empire Builder under its current and projected configurations would clear the Railroads' mainline at both ends of the Terminal Area during loading and unloading of passengers at The Depot.
2. Switching Responsibilities
Amtrak and/or RCRRA are proposed to be responsible for switching in the Terminal Area either by performing these functions directly or arranging for these services to be provided in consultation and agreement with The Railroads.
3. Switching Procedures
Switching that occurs in the Terminal Area would not utilize or foul the adjacent Class I mainline tracks, including the SPUD Track, and would not block access for arriving and departing trains. The clear track length between the East and West Terminal Lead Switches would be a minimum of 2,690 feet and the ability to switch existing and future Empire Builder trains has been documented to the satisfaction of RCRRA.

4. Road Access

The design of modifications to track, signals and communication systems are proposed to be developed to preserve existing road access to the main lines for maintenance and train crews.

5. Maintenance

RCRRA would be responsible for maintenance of The Depot to be performed in a good and workmanlike manner.

RCRRA would be responsible, at no expense to BNSF, for maintenance of track, signal and communications systems (including PTC systems) and utilities within the Terminal Area either by performing these functions directly or arranging for these services to be provided by a qualified contractor, all in consultation with The Railroads.

BNSF is proposed to be responsible for maintenance of track, signal and communications systems located on BNSF property.

All improvements are proposed to be maintained at the same level to which they were implemented for a term of 20 years from the date they were put into service. If service is discontinued, improvements would need to be maintained for a period of one year allowing for resumption of service at same level of operations as Amtrak.

F. Design and Construction Funding

1. Funding

RCRRA proposes to be responsible for all costs associated with the design and construction of the track, signal and communications modifications (including PTC installation, as needed) outlined in this document.

All Railroad expenses for participation in engineering and final design and other project planning are proposed to be a reimbursable expense paid for by RCRRA. This expense would be further defined as part of additional agreements between the RCRRA and UP, the RCRRA and CP, and the RCRRA and BNSF.

2. RCRRA Right to Review

RCRRA, MNDOT and USDOT would review and approve designs prepared and force account costs advanced by BNSF.

G. Access

1. Amtrak operations into

The improvements identified herein are intended to be sufficient

The Depot

to support access to The Depot by Amtrak trains #7 and #8 or their successor and subject to mutual written concurrence, The Railroads agree to amend the SPUD Joint Operating Agreement to permit access to The Depot by Amtrak trains #7 and #8. RCRRRA anticipates access for Amtrak, or a successor passenger rail traffic service, being provided for a period of not less than 20 years from the date The Project is placed in service.

It is proposed that passenger rail traffic would receive priority on the Terminal Tracks.

Note: The longest Empire Builder trains projected by Amtrak (1,740 feet) could be accommodated on either Terminal Track 1 or Terminal Track 2, but not without blocking access by other trains to Terminal Tracks 1 or 2.

H. Additional Agreements and/or Amendments to Existing Agreements Prior to Startup

The following implementing agreements involving BNSF are proposed:

1. Engineering Agreement An engineering agreement before initiating any work (including signal design) related to the Project.
2. Construction and Maintenance Agreement An agreement or agreements to cover BNSF construction and subsequent maintenance of the planned improvements on BNSF property.
3. Amtrak/BNSF Operating Agreement An operating agreement or an amendment to an existing operating agreement between Amtrak and BNSF would be required prior to startup of Amtrak service at the Terminal Area.
4. BNSF/CP Paired Main Agreement Amtrak will continue to operate the Empire Builder on the BNSF/CP Paired Main as CP's admittee. In order to route the Empire Builder through the Terminal Area, Amtrak will use a portion of the Paired Main between Hoffman Avenue and Division Street and use the Southeast Wye Switch. This operational change does not require amendment of the Paired Main Agreement.
5. Hoffman Avenue Interlocking Agreement A letter of consent may need to be executed among BNSF, UP and CP if any changes contemplated to the Hoffman Avenue Interlocker result as part of The Project.

6. Dispatch Protocol Agreement

An agreement or agreements between Amtrak, UP, CP, and BNSF to cover the dispatching of passenger trains into and out of the Terminal Area.

7. SPUD Agreement

An amendment to the SPUD Joint Operating Agreement among The Railroads to codify the new and/or changed infrastructure and track alignments; the agreed upon future use of the facilities among The Railroads and Amtrak; admit Amtrak as CP's admittee; transfer of dispatching functions/authority from UP to BNSF and assignment of signal construction, maintenance, repair and renewal responsibility from UP to BNSF.

I. Construction Schedule

1. Final Designs Complete

Final Terminal Track design plans are proposed to be prepared by the Mortenson team under the direction of RCRRA and approved by USDOT. These final design plans would be expected to be available by December 14, 2012.

Final track design and signal/communications plans for track owned, dispatched, or controlled by BNSF will be prepared by BNSF.

Final track design and signal/communications plans for track owned, dispatched, or controlled by CP will be prepared by CP.

Final track design and signal/communications plans for track owned, dispatched, or controlled by UP will be prepared by UP.

2. Design, Construction & Maintenance Agreements Executed

These agreements would be proposed to address the requirements in 49 U.S.C. § 24405 (c), design, construction, on-going maintenance, operational issues and reimbursement to the Railroads by RCRRA.

3. Signal and Communications Design

Subject to final agreement to proceed and implementation of necessary agreements, BNSF will complete the signal and communications design.

The foregoing is a nonbinding outline of the parties' intent as understood by the parties as of the date executed:

Exhibit C

Union Depot Railroad Approval Layout Set
(design sheet attached)

Exhibit D

TO THE GRANT AGREEMENT UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 TRANSPORTATION INVESTMENTS GENERATING ECONOMIC RECOVERY (TIGER) DISCRETIONARY GRANT PROGRAM

Ramsey County Regional Railroad Authority

Union Depot

FHWA TIGER Grant No. 19

SECTION 1. PURPOSE OF ADDENDUM No. 2

- a) This addendum, Addendum No. 2 ("Addendum"), to FHWA TIGER Grant No. 19 ("Grant Agreement") is to revise the Project budget and to recognize and accept the addition of FY 2010 Federal Railroad Administration ("FRA") High-Speed Intercity Passenger Rail ("HSIPR") Program funding ("HSIPR funds"), made available under the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 {Div. A of the Consolidated Appropriations Act, 2010 (Pub. L. 111-117, Dec. 16, 2009)}, to the Project. This addition of HSIPR funds to the Project is subject to the terms and conditions of the Grant Agreement which was executed by the U. S. Department of Transportation, the Federal Highway Administration (the "Government" or "FHWA"), the Ramsey County Regional Railroad Authority and the Minnesota Department of Transportation) (collectively the "Parties"), with an effective date of November 15, 2010.
- b) The Parties to this Addendum additionally recognize that the purpose of the HSIPR funds is to first ensure that intercity passenger rail can enter, exit, and access the St. Paul Union Depot (the "Depot") in a safe and efficient manner and, secondly, to contribute towards the rehabilitation of the Depot and its return to service as a multimodal hub. Further, by executing this Addendum the Parties recognize and accept the use of the HSIPR funds on the Project. With respect to the application and use of the HSIPR funds on the Project, the Parties also recognize and accept that they must comply with the applicable requirements of the HSIPR Program, as described in this Addendum, in addition to the terms and conditions of the TIGER program, as described in the Grant Agreement. This Addendum and its sections are to be made part of Section 7 - Special Grant Requirements - of the Grant Agreement.
- c) FRA and FHWA have executed an Inter-Agency Agreement which is fully incorporated herein by reference.

SECTION 2. HSIPR FUNDS

- a) FRA announced an award of \$40.0 million dollars (\$40,000,000) under the HSIPR Program to the Minnesota Department of Transportation on October 28, 2010 for construction to rehabilitate the Depot as a multimodal hub for intercity rail, future high-speed rail, local rail and bus transit, and pedestrian, bicycle, taxi, and other local modes of access allowing relocation of the Amtrak's Empire Builder service to the Depot upon completion of the Project. The Parties agree that this HSIPR award is consistent with the purpose of the TIGER Grant award, as it is fully described in the Grant Agreement.

- b) The Parties acknowledge that the FRA will transfer the administration of the subject HSIPR funds, up to the total amount of \$40.0 million (\$40,000,000), to the FHWA for the purpose of completing the Project as it is described in section 4(c)(1) and Attachment A of the Grant Agreement, subject to the conditions described in this Addendum.
- c) The Parties, by signing and executing this Addendum, further acknowledge that the \$40.0 million (\$40,000,000) of HSIPR funds may only be used to pay costs associated with the renovation of the Depot buildings and the track and signal work necessary for intercity passenger rail service to access the Depot, subject to the conditions described in this Addendum.
- d) The Parties additionally recognize that the recipient of the HSIPR funds for the Depot was the State of Minnesota Department of Transportation ("Recipient") and the subrecipient was the Ramsey County Regional Railroad Authority ("Subrecipient"). The Recipient and Subrecipient agree to use the HSIPR funds to assist in the final design and construction of the Project in accordance with the terms and conditions of the Grant Agreement and this Addendum.
- e) The Parties further recognize and understand that upon signing and execution of this Addendum \$20.0 million dollars (\$20,000,000) of the HSIPR funds will be made immediately available to the Recipient ("Initial Funds").

The Recipient and Subrecipient may request additional sums of the remaining HSIPR funds ("Remaining Funds") upon written request to the FHWA Minnesota Division Administrator (MN Administrator). The MN Administrator will then consult with designated representatives of the FRA on the request and only after agreement with FRA will any of the Remaining Funds be released. The request must demonstrate that Preliminary Engineering, as set forth in Section 3(h) of this Addendum, is complete, and that the Government determines that sufficient progress is being made on track and signal system design and Project construction. It is understood by the Parties that the release of any of the Remaining Funds shall be at the sole discretion of the Government.

SECTION 3. HSIPR FUNDS ADDITIONAL GRANT CONDITIONS

The following terms and conditions apply to use of the HSIPR funds on the Project, in addition to the terms and conditions set forth in the Grant Agreement:

a) Buy America. With respect to the use of all HSIPR funds made available under this Addendum, the Recipient and Subrecipient shall comply with the Buy America provisions set forth in 49 U.S.C. 24405(a) for the Project requiring the use of steel, iron, and manufactured goods produced in the United States, in accordance with the conditions therein set forth.

b) Labor Provisions. 49 U.S.C. 24405(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with HSIPR funds made available under this Addendum shall be considered a "rail carrier," as defined by 49 U.S.C. 10102(S), for the purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.), the Railway Labor Act (45 U.S.C. 151 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). The Recipient and Subrecipient shall reflect these provisions in their agreements with the entities operating rail services over such rail infrastructure to the extent required by 44 U.S.C. 24405(6) and other laws referenced above.

c) Labor Protective Arrangements. For a project that uses rights-of-way owned by a railroad, the Recipient and Subrecipient shall comply with the protective arrangements established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836, with respect to employees affected by actions taken in connection with the Project financed in whole or in part with HSIPR funds made available under this Addendum (See 49 U.S.C. 24405(c)). The Recipient and Subrecipient agree to include the applicable protective arrangements established by the Department of Labor under 45 U.S.C. 836 in their agreements with entities operating rail services over rail infrastructure constructed as part of the Project. The following definitions apply for purposes of applying those protective arrangements: (1) 'Protected employee' means an employee of a railroad who had an employment relationship with such railroad on the date on which the Recipient first applied for financial assistance applicable to the Project involved and who is affected by actions taken pursuant to this Grant Agreement; provided, however, that an employee who was benefitted solely as a result of the Project shall not be a protected employee under these provisions. (2) 'Railroad' means a rail carrier or a common carrier by railroad or express as defined in 49 U.S.C. 10102, and includes the National Railroad Passenger Corporation and the Alaska Railroad as well as a person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made pursuant to this Addendum.

d) Project Use for Intercity Passenger Rail Service and Refunds. The Recipient and Subrecipient acknowledge that part of the overall purpose of the Project is to benefit intercity passenger rail service. In the event that all intercity passenger rail service making use of the Project improvements is discontinued (for any reason) at any time during a period of twenty (20) years from the date such Project improvements were placed in service ("Service Period"), as set forth above, and if such intercity passenger rail service is not reintroduced during a one (1) year period following the date of such discontinuance, the Subrecipient shall keep the improvements of the Project available for intercity passenger rail service for the remainder of the Service Period, taking such action as is reasonably necessary to keep the improvements available for such use for the remainder of the Service Period, and in such event that the improvements are not kept available for intercity passenger rail service as provided in this Section 3.d} then the Recipient and Subrecipient shall, at FHWA's request, refund to FHWA, no later than eighteen (18) months following the date of such discontinuance, a pro-rata share of the Federal contribution made available under this Addendum, based upon the percentage of the twenty (20) year period remaining at the time of such discontinuance.

e) Davis-Bacon Act Provisions. For Project components funded using the HSIPR funds, the Recipient and Subrecipient shall comply with 49 U.S.C. 24405(c)(2), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. This section does not abrogate the Recipient's and Subrecipient's responsibilities on the remainder of the Project to comply with the Davis Bacon Act provisions as are set out in the terms and conditions of the Grant Agreement.

f) Replacement of Existing Intercity Passenger Rail Service. 49 U.S.C. 24405(d) requires any entity providing intercity passenger railroad transportation on a project funded by this Addendum to comply with certain requirements with respect to its employees and the employees of preexisting intercity rail passenger services. The Recipient and Subrecipient shall comply with the applicable provisions of 49 U.S.C. 24405(d) to the extent they are or

become a provider of intercity passenger railroad transportation. If they are not the operator or provider of the intercity passenger rail services benefitting from the Project funded under this Addendum, then they shall notify the selected operator of the requirements imposed by section 24405(d).

g) Additional HSIPR Guidance. The Recipient and Subrecipient shall comply with additional HSIPR guidance found in the HSIPR Program Interim Guidance/Notice of Funding Availability through which this Project was selected for funding (see <http://www.fra.dot.gov/downloads/PubAffairs/2010-15993.pdf>). The Recipient and Subrecipient should refer to this Guidance as necessary when carrying out the activities associated with implementing the Project.

h) Preliminary Engineering: The Subrecipient shall complete PE (30% design) for the track and signal system improvements. The Subrecipient shall obtain approval of the PE plans from Amtrak, Union Pacific Railroad Company ("UP"), BNSF Railway Company ("BNSF"), Canadian Pacific ("CP"), the Minnesota Department of Transportation, and FRA (FRA approval shall occur last, after all other necessary approvals are issued). The costs associated with performing such PE may not be reimbursed with HSIPR funds under this Addendum and may not be credited towards Recipient or Subrecipient's non-federal match of such HSIPR funds.

- i) Construction Agreements: Prior to conducting any final design work activities under Section 3(j), the Recipient and Subrecipient shall submit to MN Administrator the following: (i) a Construction Agreement between CP and Recipient and Subrecipient regarding the construction of any and all track and signal system improvements to occur on CP owned and/or controlled infrastructure relating to the Project; (ii) a Construction Agreement between BNSF and Recipient and Subrecipient regarding the construction for any and all track and signal system improvements to occur on BNSF owned and/or controlled infrastructure relating to the Project; and (iii) a Construction Agreement between UP and Recipient and Subrecipient regarding the construction of any and all track and signal system improvements to occur on UP owned and/or controlled infrastructure relating to the Project. The Recipient and Subrecipient must receive approval from the Government on the Construction Agreements required by this paragraph. The costs associated with performing the tasks required by this paragraph may not be reimbursed with HSIPR funds under this Addendum and may not be credited towards Recipient and Subrecipient non-federal match of such HSIPR funds. The Recipient and Subrecipient shall include in each Construction Agreement the following provisions: 1) The infrastructure capacity will be adequate to accommodate both the existing freight and intercity passenger rail operations and the future freight and intercity passenger rail operations that will result from this Project. For clarity, no additional passenger train frequencies will result from the Project;
- 2) Recipient and Subrecipient represent that they are in compliance with liability requirements consistent with section 28103 of Title 49 of the United States Code;
 - 3) The railroad agrees that collective bargaining agreements with the railroad's employees, including terms regulating the contracting of work, will remain in full force and effect according to their terms for work performed by the railroad on the Project;

- 4) Recipient and Subrecipient (including successors and assigns) shall have the right to use the Project property for the purpose of providing intercity passenger rail service for twenty (20) years beginning from completion of the Project (the "HSIPR Term");
- 5) The railroad shall ensure the maintenance of the Project property to the level of utility (including applicable FRA track safety standards) which exists when the Project improvements are placed in service for the HSIPR Term; and
- 6) The railroad shall not downgrade the Project in any way that reduces the utility of the Project for the intercity passenger rail operations during the HSIPR Term, without Recipient's prior written approval.

j) Final Design. Upon Recipient and Subrecipient's compliance with paragraphs (h) and (i) of this section, Grantee shall perform the final design (100% design) of all track and signal systems required to achieve fill, operational access to the Depot, in accordance with the approved PE (30% design). Recipient and Subrecipient shall provide copies of final design materials to the MN Administrator.

SECTION 4. PROJECT BUDGET
EXECUTION BY THE GOVERNMENT
Executed this day of 2012.

Signature of Government's Authorized Representative

Print Name

Title

EXECUTION BY THE RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

Executed this day of , 2012.

Signature of Project Sponsor's Authorized Representative

Print Name

Title

EXECUTION BY THE MINNESOTA DEPARTMENT OF TRANSPORTATION

Executed this

day of , 2012.

Signature of State Department of Transportation Designated Official Representative

Title

Exhibit E
BNSF Additives

BNSF Railway Company
Schedule of Additive Rates
Cost Year Ended December 31, 2010
Effective January 1, 2012

Engineering

<u>Description</u>	<u>Rate</u>
Time paid not worked	15.03%
Payroll taxes	22.82%
Health and welfare	28.12%
Force account insurance	16.79%
Engineering project costs	99.66%
Equipment - vehicles, roadway machines and work equipment	54.31%
Equipment - vehicles	27.97%

Transportation

<u>Description</u>	<u>Rate</u>
Time paid not worked	56.22%
Payroll taxes	26.20%
Health and welfare	32.28%
Force account insurance	16.79%
Transportation project costs	88.74%
Equipment - vehicles	1.20%

General and Administrative

<u>Description</u>	<u>Rate</u>
General and administrative	17.85%

Exhibit F

BNSF-Amtrak Long-Term Maintenance Agreement
(to be executed and attached)

Exhibit G
December 11, 2012

***Union Depot, St. Paul, Minnesota
Renovation Project***

Revised and Restated Term Sheet

BNSF Railway Company – Ramsey County Regional Rail Authority

This Revised and Restated Term Sheet dated as of December 11, 2012 summarizes key provisions to be included in a future agreement between BNSF Railway Company (“BNSF”) and Ramsey County Regional Rail Authority (“RCRRA”) regarding the establishment of Amtrak Empire Builder service through the Union Depot (“The Depot”) in Saint Paul, Minnesota. RCRRA intends to enter into similar agreements with all Class I railroads involved in station access or Amtrak operations, including Union Pacific Railroad (“UP”), Canadian Pacific Railroad (“CP”), and BNSF (collectively “The Railroads”).

The current route of the Amtrak Empire Builder, trains #7 and #8, bypasses The Depot. RCRRA, through a contract with Mortenson Construction (“Mortenson Team”), intends to complete the Union Depot Project (“The Project”) as defined subsequently in the Definition of Terms. The Project will involve renovations to existing buildings, construction of railroad track including connections to Class 1 tracks operated by The Railroads, platforms for passenger trains and associated features designed to facilitate the boarding and discharging of passengers from passenger trains.

The Railroads and RCRRA recognize that in order to route Empire Builder trains through the proposed Station Area, modifications will also be required to the track, signal and communications systems of The Railroads in the surrounding area. It is understood that the Minnesota Department of Transportation (“MNDOT”) expects these modifications as well.

The purpose of this document is to identify the required improvements to be made and outline proposed operating parameters and terms under consideration by the parties for proposed access to The Depot Terminal Area only by Amtrak trains #7 and #8, in its current and projected configurations, or their successors, and not by additional passenger trains. Should additional passenger trains be entertained by RCRRA, Amtrak, and The Railroads, for access to The Depot, additional analysis would be necessary to identify the required improvements to allow for their access to The Depot.

In the event that Amtrak discontinues Empire Builder service, the parties contemplate RCRRA may, subject to mutual written agreement of the parties, pursue the provision of intercity passenger train service to The Depot on a service frequency comparable to the existing Empire Builder by another qualified operator, that has an agreement with the applicable railroad to use that railroads facilities.

The Union Depot Railroad Approval Layout Set (Figure 4) represents preliminary engineering of the track improvements identified in Figures 1, 2 and 3 of this Term Sheet.

Notwithstanding any other provision of this Term Sheet, none of the Parties shall have any binding, legal obligations hereunder. The parties contemplate possible execution of definitive agreements identified in Section H which may incorporate terms and concepts outlined in this Term Sheet. Should the Parties fail for any reason or no reason whatsoever to agree and sign such definitive agreements, the Parties shall have no further obligation whatsoever to one another with respect to the subject matter of this Term Sheet.

Definition of Terms

Union Depot ("The Depot") – The Union Depot is the entire 33-acre complex of buildings, track, platforms, roadways, parking lots and other facilities that are or are proposed to be on property owned by the Ramsey County Regional Rail Authority (RCRRA) and used to support the operation of an intercity passenger rail station. (See Figure 1).

Terminal Buildings – The Terminal Buildings are that part of the Union Depot that includes the Head House and the Concourse.

Head House – The Head House is the building located on the block bounded by 4th Street East, 5th Street East, Sibley Street North and Wacouta Street North.

Concourse – The Concourse is the building located south of the Head House, a portion of which is elevated over the area to be used for tracks, platforms and passenger pick-up and drop-off, and includes the elevated connection between the Head House and the Concourse that crosses Kellogg Boulevard.

Terminal Area – The Terminal Area is that part of the Union Depot that includes the Terminal Tracks, platforms and other facilities that are or will be constructed on RCRRA property between Kellogg Boulevard and tracks owned by The Railroads, subject to each Railroad's agreement, but not including the Station Buildings.

Union Depot Project ("The Project") – The Union Depot Project refers to those activities being undertaken by RCRRA that involve the renovation of the Terminal Buildings; the construction of tracks, platforms and other facilities within the Terminal Area and the construction/renovation of other facilities, structures and systems necessary for the operation of an intercity passenger station within the property owned or proposed to be owned by the RCRRA, including those track and signal modifications associated with Class I Tracks and described herein.

Terminal Tracks – The Terminal Tracks are all the railroad tracks that are proposed to be located on RCRRA property in the Terminal Area. These tracks are identified as 'Track 1', 'Track 2', and 'Track 3' and the 'Tail Track' on Figure 1 and Figure 3.

The Railroads – For the purposes of this document, reference to The Railroads will specifically include the BNSF Railway (BNSF), the Canadian Pacific Railway (CP) and the Union Pacific Railroad (UP).

Class I Tracks – The term Class I Tracks will refer to all of the tracks on property owned or operated by The Railroads. Tracks owned by a specific railroad will be referred to using the name of the railroad (i.e. CP Tracks, UP Tracks or BNSF Tracks.)

SPUD Track – The track known as the SPUD Track or St. Paul Union Depot Track is the Class I track closest to RCRRA property (see Figure 1). It is owned jointly by all three Class I railroads (UP, CP and BNSF) and is operated and maintained by the Union Pacific Railroad. Subject to mutual written agreement on terms of an amendment to the January 1, 1984 Joint Operating Agreement (“**SPUD Joint Operating Agreement**”) between The Railroads, The Railroads will transfer dispatching responsibility and assign signal construction, maintenance, repair and renewal responsibility for the SPUD Track from UP to BNSF.

DTMF – Dual Tone Multi Frequency

Division Street Wye– The triangle (wye) of track and switches to the east of Union Depot as shown in Figure 3. Impacts to the Division Street Wye include the following:

BNSF Main Track 2 - As shown in Figure 1 through 3.

SPUD Track – As defined above and shown in Figure 1 and Figure 3.

Southwest Division Street Wye Switch (Item #4, Figures 1 and 3) – As described in section A.3 as the “Southwest Wye Switch”.

Southeast Division Street Wye Switch (Item#5, Figures 1 and 3) – As described in section A.3 as the “Southeast Wye Switch”.

North Division Street Wye Switch (Item #11, Figures 1 and 3) – As described in section A.3 as the “North Wye Switch”.

Gillette Spur Switch (Item #12, Figures 1 and 3)– Switch connecting the BNSF Gillette Spur track to the west leg of the Division Street Wye south of the North Wye Switch.

Union Depot Railroad Layout Approval Set – Refers to Railroad Layout Approval Set for state projects nos. 091-595-023, 091-595-24, and 091-525-025 dated December 11, 2012 and is attached hereto as Figure 4.

Amtrak - shall mean the National Passenger Railroad Corporation and its permitted successors and assigns.

Attachments

The following list of attachments are incorporated by reference:

- Figure 1: Union Depot Project Area, Track Modifications Required to Support Access to the Union Depot for Existing Empire Builder Service.
- Figure 2: Hoffman Interlocking and East, Track Modifications Required to Support Access to the Union Depot for Existing Empire Builder Service.
- Figure 3: Division Street Wye, Track Modifications Required to Support Access to the Union Depot for Existing Empire Builder Service.
- Figure 4: Union Depot Railroad Approval Layout Set.

The key issues are organized into the following categories merely to facilitate reference:

- A. Switch and Track Modifications
- B. Signal and Communications Modifications
- C. Design and Construction
- D. Dispatching
- E. Operations and Maintenance
- F. Design and Construction Funding
- G. Access
- H. Additional Agreements and/or Amendments to Existing Agreements Prior to Startup
- I. Construction Schedule

A. Switch and Track Modifications

1. Terminal Track and Connections

West Terminal Lead – A power switch (a switch controlled by a central dispatch center) is proposed to be installed on the west end of the Terminal Area that would connect the West Terminal Lead to the CP 1/SPUD Crossover just west of the point where the existing SPUD Track turns south to cross the Robert Street Lift Bridge. The installation of this switch would facilitate more efficient access to the Terminal Area by Amtrak trains. (Figure 1; Item 1).

West Terminal Lead Derail – A power derail will be installed by CP along the West Terminal Lead to protect against rolling equipment entering onto the CP 1 Track.

East Terminal Lead – A power switch is proposed to be installed on the east end of the Terminal Area that would connect the East Terminal Lead to the SPUD Track. The installation of this switch would improve access to the Terminal Area by Amtrak trains.

(Figure 1; Item 2 and Figure 3; Item 2).

Terminal Track – Two new terminal tracks are proposed to be constructed of sufficient length for the Amtrak Trains #7 & #8 to discharge and load passengers without fouling the SPUD Track, CP 1 Track or access of passenger trains to planned future tracks.

A portion of a third terminal track is proposed to be constructed on the west end of the Terminal Area for approximately 500 feet eastward and stub-ended at this time. Plans for this third terminal track and any subsequent track changes or additions would be subject to prior written approval of BNSF, CP, UP and Amtrak.

Tail Track -A Tail Track is proposed to be constructed on the East end of the Terminal Area that connects to Terminal Track 1 and Terminal Track 2 at the location of the East Terminal Track 1/Terminal Track 2 Switch. This switch, which would be a double slip switch, would allow the movement of trains between:

- 1) Terminal Track 1 and the Tail Track
- 2) Terminal Track 1 and the East Terminal Lead
- 3) Terminal Track 2 and the Tail Track
- 4) Terminal Track 2 and the East Terminal Lead

The Tail Track would be 1,042 feet long and extend from the Terminal Track 1/Terminal Track 2 Switch to the east and northeast in a curving manner that keeps it parallel to the west leg of the wye. The northeast end of the Tail Track would not be connected to the west leg of the wye, or any other track, and would dead end. The purpose of the proposed Tail Track would be to allow switching between Terminal Track 1 and Terminal Track 2 without requiring the use of the adjacent SPUD Track.

A private at-grade crossing across the Tail Track is proposed to be provided east of the East Terminal Lead/SPUD Switch that would allow railroad motor vehicles to cross both the SPUD Track and the Tail Track, providing Railroad operating and maintenance personnel access to the SPUD, UP, CP and BNSF Tracks in the vicinity.

A private access point will be provided to the west of the Terminal Area that allows railroad motor vehicles providing Railroad operating and maintenance personnel access to SPUD,

BNSF, CP and UP Tracks in the vicinity.

Crossing warning signage will be installed on the private access road.

At the east end of the Terminal Tracks, the double slip switch connecting Terminal Tracks 1 and 2, the Tail Track, and the East Terminal Lead will serve as the derail to protect against rolling equipment entering onto the SPUD Track.

A power or hand throw derail will be installed along the Tail Track to protect against rolling equipment striking equipment stored on the Tail Track.

2. CP 1/SPUD Crossover

CP1/SPUD Crossover – To connect the West Terminal Lead to the CP 1/SPUD Crossover, the existing #10 switches on either end of the existing CP 1/SPUD crossover will be replaced with #11 switches at their current locations.

This crossover replacement would be necessary to maintain existing freight routing options. Powering of the switches is not only necessary for the efficient movement of passenger trains, but would improve freight operations in the vicinity of the Terminal Area, reducing potential freight-passenger conflicts in the area.

(Figure 1; Item 3).

3. Modifications to Existing Switches

Southwest Wye Switch – The switch between the south leg of the wye and the SPUD Track is proposed to be reconstructed or replaced at its current location and powered. The reconstruction or replacement and powering of this switch would be necessary to avoid passenger trains having to stop while an employee detrains and manually operates the switch. The power switch would facilitate a more efficient movement of both passenger and freight trains through the wye and would reduce potential freight-passenger conflicts in the area.

(Figure 1; Item 4 and Figure 3; Item 4).

Southeast Wye Switch – The switch between the south leg of the wye and the BNSF Main Track 2, which leads to CP Main Track 2 to the east, is proposed to be reconstructed or replaced and powered. The reconstruction or replacement and powering of this switch would facilitate freight and passenger movements as described above.

(Figure 1; Item 5 and Figure 3; Item 5).

North Wye Switch – The switch on the north end of the Division Street Wye, where the east and west legs of the wye are joined, will require circuitry changes for its integrated with the Gillette Spur Switch and BNSF dispatch system. (Figure 1; Item 11 and Figure 3; Item 11)

State Street Industrial Lead (SSIL) – The switch on the UP State Street Industrial Lead that connects the single track north of Plato Blvd. to a double track section south of Plato Blvd. will be reconstructed or replaced and designated as a manual interlocker controlled by a dispatcher. The reconstruction or replacement and powering of this switch would expedite UP freight movements in the vicinity of the Terminal Area thereby reducing the potential of freight-passenger conflicts. The SSIL double track shall be extended north toward Plato Blvd. (Figure 1; Item 6)

UP Main Track Connection to CP Main – The switch between the CP 2 Track and the UP Main underneath the Warner Road viaduct is proposed to be replaced and DTMF controlled. The replacement and powering of this switch would enable UP crews to move freight trains between the UP Hoffman Yard and the CP 2 track without stopping to manually operate the switch. The expedited movement of these trains would reduce potential freight-passenger train conflicts in the vicinity of the Terminal Area.

Plans for these tracks and any subsequent track changes or additions would be subject to prior BNSF, CP and UP approval pursuant to the Hoffman Avenue Interlocking Agreement. (Figure 1; Item 7 and Figure 2; Item 7)

CP 1 to CP2 Right-hand Manual Crossover – The CP 1 to CP 2 manual crossover located west of the existing CP 2 to UP Main Switch is proposed to be relocated 100 feet to the west to satisfy current standards for the separating of switches. The crossover would continue to be manually operated (Figure 1; Item 9 and Figure 2; Item 9).

4. Track Reconstruction

South Leg of Wye – The south leg of the wye is proposed to be reconstructed to standards consistent with passenger train service. (Figure 1; Item 8 and Figure 3; Item 8).

SPUD Track – A short segment of the SPUD Track between the Southwest Wye Switch and the East Terminal Lead Switch is

proposed to be reconstructed as a consequence of installing the East Terminal Lead Switch and reconstructing the Southwest Wye Switch. This would necessary to sustain efficient passenger train operation.

(Figure 1; Items 2 & 4 and Figure 3; Items 2 & 4).

5. Switches

Except as noted above (*CP 1 to CP 2 Right-hand Manual Crossover and Gillette Spur*) All switches installed or reconstructed related to this Project are proposed to be power or DTMF switches and equipped with snow melting devices.

6. Derails

All derails installed for The Project on properties owned or controlled by The Railroads will be powered and connected to a dispatch center.

All derails installed for The Project on properties owned or controlled by RCRRA will be powered or hand throw. If a derail is powered, it will be connected to a dispatch center.

B. Signal and Communications Modifications

1. CP-operated track

All of the switches on CP-operated track that are proposed to be constructed as part of The Project would be connected to the CP dispatch center and integrated into the CP Centralized Traffic Control (CTC) signal system. These would include the:

- West Terminal Lead Switch (Figure 1; Item 1).
- Crossover switches and signals attached to the CP 1/ SPUD Crossover

The connection and/or integration of these switches would facilitate efficient passenger train movements to and from the Terminal Area.

The switch between the CP 2 Track and the UP Main underneath the Warner Road viaduct will be DTMF and use of this switch will be authorized by the CP St. Paul Yardmaster, not by the CP dispatch center (Figure 1; Item 7 and Figure 2; Item 7).

2. UP-operated track

The following switch, which is currently operated by hand throw, would be configured as a manual interlocker with a power switch connected to the UP dispatch center and integrated into the UP Centralized Traffic Control (CTC) signal system.

- State Street Industrial Lead (SSIL) –The switch that connects the two SSIL tracks to the single track north of Plato Blvd. (Figure 1; Item 6).

The connection and/or integration of these switches would facilitate efficient passenger train movements to and from the Terminal Area.

3. BNSF-operated and/or dispatched track

The following switches are currently operated by hand throw and are proposed to be modified to power and connected to the BNSF dispatch center and integrated into the BNSF Centralized Traffic Control (CTC) signal system.

- Southeast Wye Switch (Figure 1; Item 5 and Figure 3; Item 5)– The connection between the south leg of the wye and BNSF/CP Main Track 2.
- The Southwest Wye switch (Figure 1; Item 4 and Figure 3; Item 4) - The connection between the south leg of the wye and the SPUD Track.

The Gillette Spur Switch currently operates as a hand throw and will be replaced with an electric lock switch. (Figure 1; Item 12 and Figure 3; Item 12)

The following new switch on the east end of the Terminal Area will be connected to the BNSF dispatch center and integrated into the signal system:

- East Terminal Lead (Figure 1; Item 2 and Figure 3; Item 2).

The west leg of the Division Street Wye will be integrated into the BNSF dispatch system.

The connection and/or integration of these switches will facilitate efficient passenger train movements to and from the Terminal Area.

4. Terminal Track

Switches governing train movements between Terminal Track 1, 2, 3, and the Tail Track will be controlled by BNSF. This will include the power derail with is part of the double slip switch connecting Terminal Tracks 1 and 2 to the Tail Track.

5. Signal Interface

BNSF, CP, and UP will work to ensure the interface of their signal/dispatching systems for the CP Merriam Park Subdivision, BNSF St. Paul Subdivision, the UP State Street

Industrial Lead, the SPUD Track, and the Terminal Track

6. Positive Train Control

The Parties recognize the need to incorporate current Positive Train Control ("PTC") guidelines into The Project as applicable and in the event PTC is required to be installed and implemented, RCRRA shall install and implement PTC or cause PTC to be installed and implemented interoperable among all carriers as part of The Project and such costs shall be funded by RCRRA as outlined in Section F. 1. of this term sheet.

C. Design and Construction

1. Mortenson Team

If the Project proceeds, RCRRA intends that the Mortenson Team, under RCRRA's direction, will be responsible for engineering and final design of the Terminal Buildings and the Terminal Area, excluding those systems related to Class I Railroad signals and communication.

The Mortenson Team would also be responsible to consult with the Railroads on how designs are to be created, particularly for track. The Terminal Area specifications would need to be compatible with the Railroads' specifications on all components of the Union Depot Project that may affect Class I Railroad operation or the design and installation of signals.

Amtrak, UP, CP and BNSF, MNDOT and USDOT would need to review, inspect and approve any engineering as well as final design and construction managed by the Mortenson Team. It is expected that all engineering design plans will be presented to Amtrak, The Railroads, RCRRA, and MNDOT for signature if accepted. USDOT would be expected to review and accept or reject the final design, but not sign the final design plans.

The Mortenson Team would require a right of entry permit from the controlling Railroad for any work on Railroad property.

2. The Railroads General

The parties intend that if the Project proceeds, the engineering/design agreements would confirm which party will own, design, construct, operate and maintain the improvements outlined in this Term Sheet. This would include connectivity for dispatching operations.

If definitive agreements are executed, the Railroads would propose to coordinate with the parties on the engineering/design and construction of the improvements identified in Figures 1, 2, 3

and 4. Subject to agreement of The Railroads, it is proposed that CP would be the lead railroad in ensuring that this coordination occurs on those improvements that impact multiple railroads.

3. Union Pacific Railroad

Subject to the agreement of UP, it is proposed that UP would be responsible for engineering and final design of any signal and communications work on UP owned, dispatched, or controlled property, except for the East Terminal Lead and the Southwest Wye Switch, and other pieces of the SPUD Track. UP has agreed that BNSF will dispatch these two switches and the SPUD Track under terms of a revised Joint SPUD Operating Agreement, to be negotiated.

UP is proposed to be responsible for the installation of the East Terminal Lead switch and the Southwest Wye switch, and any necessary realignment of the SPUD Track.

UP is proposed to be responsible for the removal of the East #10 switch on the CP 1/SPUD Crossover and its replacement with a #11 switch. CP is proposed to be responsible for the removal of the West #10 switch on the CP 1/SPUD Crossover and its replacement with a #11 switch. CP is proposed to be responsible for the integration of the CP 1/SPUD Crossover into the CP signaling and dispatch system.

UP will work with BNSF on the interface of the UP and BNSF dispatching systems to ensure their cohesion at the CP 1/SPUD Crossover where the two systems connect.
(Figure 1; Item 3)

UP will work with CP on the interface of the UP and CP dispatching systems to ensure their cohesion at the CP1/SPUD Crossover where the two systems connect.
(Figure 1; Item 3)

UP is proposed to be responsible for design and construction of all improvements to the north end of the State Street Industrial Lead including the installation of the State Street Industrial Lead Switch south of Plato Blvd and its integration with the UP communications system. UP is proposed to be responsible for extending the double track north toward Plato Boulevard.

4. Canadian Pacific

Subject to agreement of CP, CP is proposed to be responsible for engineering and final design of any signal and communications work on CP property.

CP is proposed to be responsible for engineering and final design of any track work on CP owned, dispatched, or controlled property

CP is proposed to be responsible for the installation of the West Terminal Lead switch and derail, and would work with UP to complete removal of the existing CP 1/SPUD Crossover and installation of the new CP 1/SPUD Crossover and its integration into the CP signaling and dispatch system.

UP is proposed to be responsible for the removal of the East #10 switch on the CP 1/SPUD Crossover and its replacement with a #11 switch. CP is proposed to be responsible for the removal of the West #10 switch on the CP 1/SPUD Crossover and its replacement with a #11 switch. CP is proposed to be responsible for the integration of the CP 1/SPUD Crossover into the CP signaling and dispatch system.

CP will work with BNSF on the interface of the CP and BNSF dispatching systems to ensure cohesion at the CP 1/SPUD Crossover and the Terminal Tracks where the two systems connect. (Figure 1; Items 1 and 3)

CP will work with UP on the interface of the CP and UP dispatching systems to ensure their cohesion at the CP 1/SPUD Crossover where the two systems connect. (Figure 1; Item 3)

CP is proposed to be responsible for the installation of the CP 2 to UP Main DTMF Switch. (Figure 1; Item 7 and Figure 2; Item 7).

CP is proposed to be responsible for the relocation of the CP1 to CP 2 Right-hand Manual Crossover that is currently located just west of the CP 2 Track to UP Main Switch (Figure 1; Item 9 and Figure 2; Item 9). Crossover will remain hand throw and will not be incorporated into the dispatch system.

5. BNSF Railway

BNSF is proposed to be responsible for engineering and final design of any signal and communications work on BNSF owned, dispatched, or controlled property including the Terminal Tracks.

BNSF is proposed to be responsible for engineering and final design of any track work on BNSF owned, dispatched, or controlled property except for the SPUD Track, which will be UP's responsibility as set forth above.

BNSF is proposed to be responsible for replacement of the Southeast Wye Switch. BNSF's continued use of the Southeast Wye Switch for its freight operations shall not be diminished or impaired in any way as a result of this Project. (Figure 1; Item 5 and Figure 3; Item 5)

BNSF is proposed to be responsible for the integration of the East Terminal Lead Switch and the Southwest Wye Switch into the BNSF signaling and dispatch system.

BNSF will work with CP on the interface of the BNSF and CP dispatching systems to ensure cohesion at the CP 1/SPUD Crossover and the Terminal Tracks where the two systems connect. (Figure 1; Items 1 and 3)

BNSF will work with UP on the interface of the BNSF and UP dispatching systems to ensure their cohesion at the CP 1/SPUD crossover where the two systems connect. (Figure 1; Item 3)

BNSF will be responsible for upgrading circuitry for the North Wye Switch. (Figure 1; Item 11 and Figure 3; Item 11)

BNSF will be responsible for replacing the Gillette Spur Switch and any necessary reconstruction of the west Leg of the Division Street Wye except for the SPUD Track which will be UP's responsibility as set forth above. (Figure 1; Item 12 and Figure 3; Item 12)

6. Construction Staging

Construction and implementation of track, signal and communications equipment is proposed to be coordinated between Mortenson and The Railroads for the Terminal Area so as to minimize impact to Amtrak and freight operations.

D. Dispatching

- | | |
|------------------------------|--|
| 1. West end of Terminal Area | CP will dispatch and control all switches installed on CP track. This will include the West Terminal Lead Switch (Figure 1; Item 1) and the CP 1 to SPUD Track Crossover (Figure 1; Item 3). |
| 2. East end of Terminal Area | BNSF will dispatch the East Terminal Lead Switch, SPUD Track (up to but not including the CP 1/SPUD Crossover |

(Figure 1; Item 3)), the North Wye Switch and the Southwest Wye Switch.

3. Southeast Wye Switch
BNSF would dispatch the Southeast Wye Switch that connects to the south leg of the wye and the BNSF Main 2 tracks.
4. CP 2 to UP Main Switch
The CP St. Paul Yardmaster will continue to authorize the use of the DTMF switch that connects CP 2 to the UP Main. (Figure 1; Item 7 and Figure 2; Item 7)
5. Terminal Tracks
Terminal Tracks between the East and West Terminal Lead Switches will be controlled by BNSF. BNSF will determine the Terminal Track to be used by all inbound trains from either direction.
7. State Street Industrial Lead
UP will dispatch the new power switch at the north end of the State Street Industrial Lead.
8. Amtrak Operations
BNSF will work with Amtrak on dispatching need for Amtrak Trains 7 and 8 as they relate to Union Depot.

E. Operations and Maintenance

1. Clearance of mainline
The Terminal Track is proposed to be designed such that the Empire Builder under its current and projected configurations would clear the Railroads' mainline at both ends of the Terminal Area during loading and unloading of passengers at The Depot.
2. Switching Responsibilities
Amtrak and/or RCRRA are proposed to be responsible for switching in the Terminal Area either by performing these functions directly or arranging for these services to be provided in consultation and agreement with The Railroads.
3. Switching Procedures
Switching that occurs in the Terminal Area would not utilize or foul the adjacent Class I mainline tracks, including the SPUD Track, and would not block access for arriving and departing trains. The clear track length between the East and West Terminal Lead Switches would be a minimum of 2,690 feet and the ability to switch existing and future Empire Builder trains has been documented to the satisfaction of RCRRA.

4. Road Access

The design of modifications to track, signals and communication systems are proposed to be developed to preserve existing road access to the main lines for maintenance and train crews.

5. Maintenance

RCRRA would be responsible for maintenance of The Depot to be performed in a good and workmanlike manner.

RCRRA would be responsible, at no expense to BNSF, for maintenance of track, signal and communications systems (including PTC systems) and utilities within the Terminal Area either by performing these functions directly or arranging for these services to be provided by a qualified contractor, all in consultation with The Railroads.

BNSF is proposed to be responsible for maintenance of track, signal and communications systems located on BNSF property.

All improvements are proposed to be maintained at the same level to which they were implemented for a term of 20 years from the date they were put into service. If service is discontinued, improvements would need to be maintained for a period of one year allowing for resumption of service at same level of operations as Amtrak.

F. Design and Construction Funding

1. Funding

RCRRA proposes to be responsible for all costs associated with the design and construction of the track, signal and communications modifications (including PTC installation, as needed) outlined in this document.

All Railroad expenses for participation in engineering and final design and other project planning are proposed to be a reimbursable expense paid for by RCRRA. This expense would be further defined as part of additional agreements between the RCRRA and UP, the RCRRA and CP, and the RCRRA and BNSF.

2. RCRRA Right to Review

RCRRA, MNDOT and USDOT would review and approve designs prepared and force account costs advanced by BNSF.

G. Access

1. Amtrak operations into

The improvements identified herein are intended to be sufficient

The Depot

to support access to The Depot by Amtrak trains #7 and #8 or their successor and subject to mutual written concurrence, The Railroads agree to amend the SPUD Joint Operating Agreement to permit access to The Depot by Amtrak trains #7 and #8. RCRRRA anticipates access for Amtrak, or a successor passenger rail traffic service, being provided for a period of not less than 20 years from the date The Project is placed in service.

It is proposed that passenger rail traffic would receive priority on the Terminal Tracks.

Note: The longest Empire Builder trains projected by Amtrak (1,740 feet) could be accommodated on either Terminal Track 1 or Terminal Track 2, but not without blocking access by other trains to Terminal Tracks 1 or 2.

H. Additional Agreements and/or Amendments to Existing Agreements Prior to Startup

The following implementing agreements involving BNSF are proposed:

1. Engineering Agreement An engineering agreement before initiating any work (including signal design) related to the Project.
2. Construction and Maintenance Agreement An agreement or agreements to cover BNSF construction and subsequent maintenance of the planned improvements on BNSF property.
3. Amtrak/BNSF Operating Agreement An operating agreement or an amendment to an existing operating agreement between Amtrak and BNSF would be required prior to startup of Amtrak service at the Terminal Area.
4. BNSF/CP Paired Main Agreement Amtrak will continue to operate the Empire Builder on the BNSF/CP Paired Main as CP's admittee. In order to route the Empire Builder through the Terminal Area, Amtrak will use a portion of the Paired Main between Hoffman Avenue and Division Street and use the Southeast Wye Switch. This operational change does not require amendment of the Paired Main Agreement.
5. Hoffman Avenue Interlocking Agreement A letter of consent may need to be executed among BNSF, UP and CP if any changes contemplated to the Hoffman Avenue Interlocker result as part of The Project.

- | | |
|--------------------------------|---|
| 6. Dispatch Protocol Agreement | An agreement or agreements between Amtrak, UP, CP, and BNSF to cover the dispatching of passenger trains into and out of the Terminal Area. |
| 7. SPUD Agreement | An amendment to the SPUD Joint Operating Agreement among The Railroads to codify the new and/or changed infrastructure and track alignments; the agreed upon future use of the facilities among The Railroads and Amtrak; admit Amtrak as CP's admittee; transfer of dispatching functions/authority from UP to BNSF and assignment of signal construction, maintenance, repair and renewal responsibility from UP to BNSF. |

I. Construction Schedule

- | | |
|---|---|
| 1. Final Designs Complete | Final Terminal Track design plans are proposed to be prepared by the Mortenson team under the direction of RCRRA and approved by USDOT. These final design plans would be expected to be available by December 14, 2012.

Final track design and signal/communications plans for track owned, dispatched, or controlled by BNSF will be prepared by BNSF.

Final track design and signal/communications plans for track owned, dispatched, or controlled by CP will be prepared by CP.

Final track design and signal/communications plans for track owned, dispatched, or controlled by UP will be prepared by UP. |
| 2. Design, Construction & Maintenance Agreements Executed | These agreements would be proposed to address the requirements in 49 U.S.C. § 24405 (c), design, construction, on-going maintenance, operational issues and reimbursement to the Railroads by RCRRA. |
| 3. Signal and Communications Design | Subject to final agreement to proceed and implementation of necessary agreements, BNSF will complete the signal and communications design. |

The foregoing is a nonbinding outline of the parties' intent as understood by the parties as of the date executed:

BNSF Railway Company

**Ramsey County Regional Railroad
Authority**

By: _____

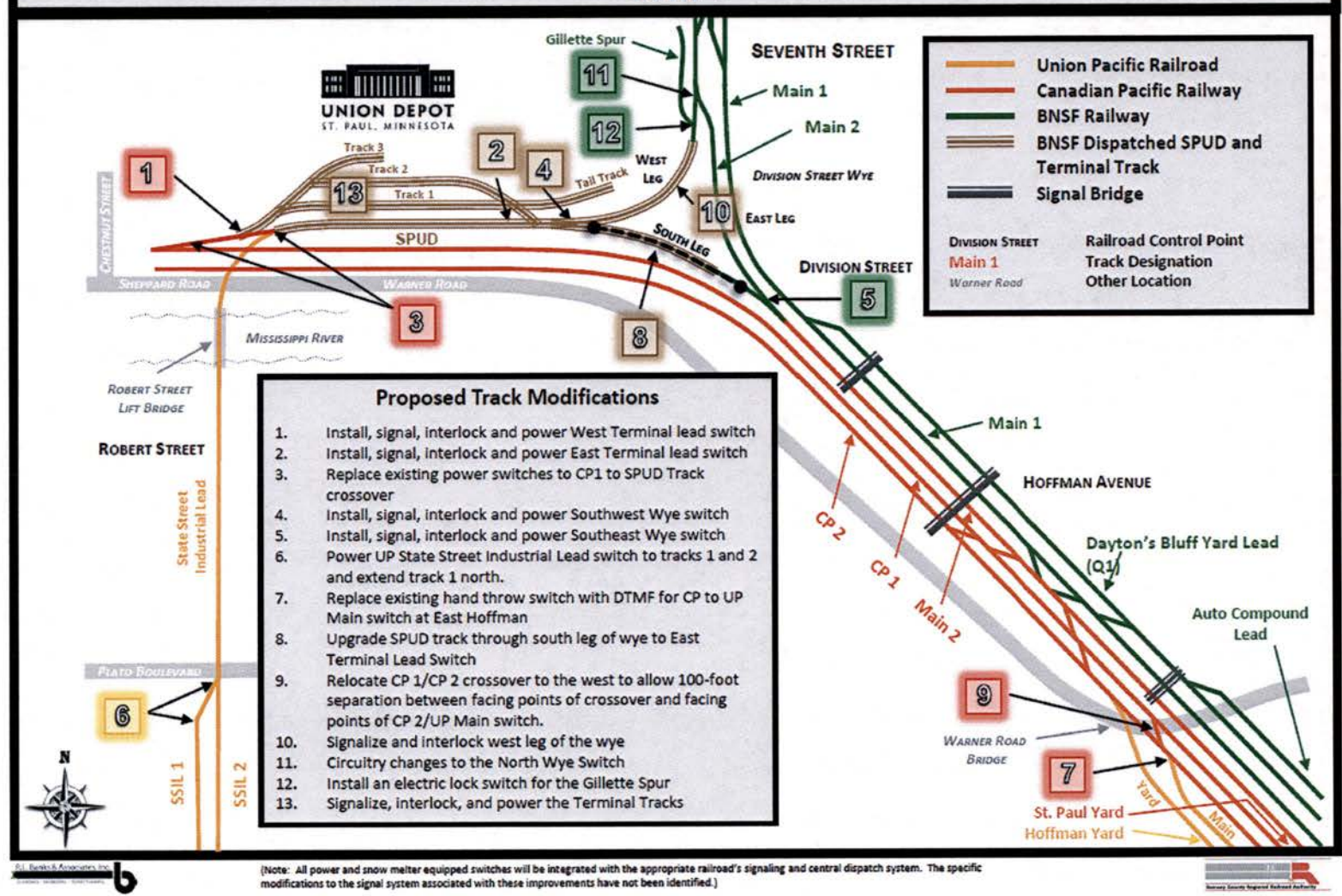
By: _____

Title: _____

Title: _____

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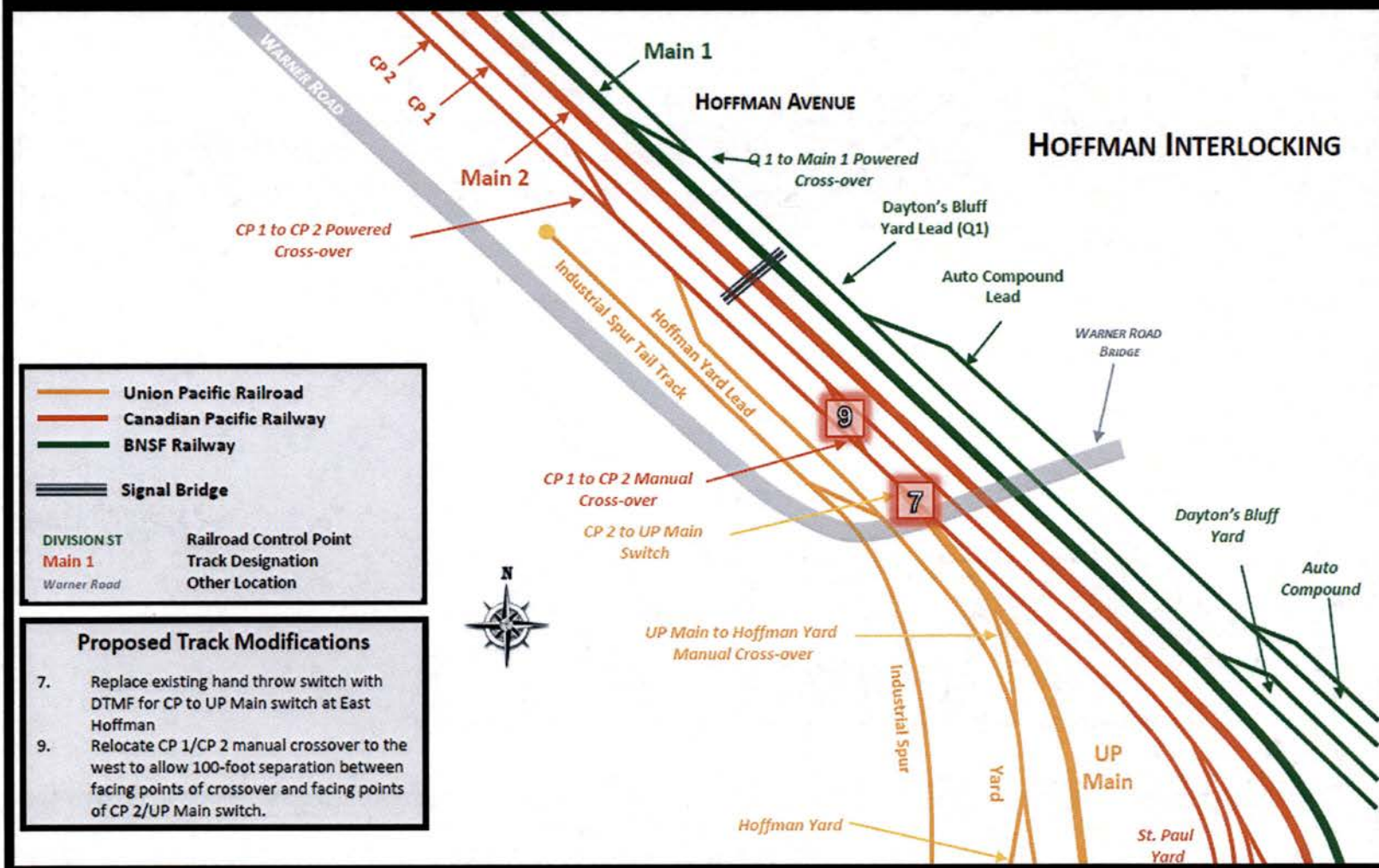
Figure 1: Union Depot Project Area
Track Modifications Required to Support Access to the Union Depot for Existing Empire Builder Service (Not to Scale)
11/19/12



(Note: All power and snow melter equipped switches will be integrated with the appropriate railroad's signaling and central dispatch system. The specific modifications to the signal system associated with these improvements have not been identified.)

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Figure 2: Hoffman Interlocking and East
Track Modifications Required to Support Access to the Union Depot for Existing Empire Builder Service (Not to Scale)
11/19/12



(Note: All power and snow melter equipped switches will be integrated with the appropriate railroad's signaling and central dispatch system. The specific modifications to the signal system associated with these improvements have not been identified.)

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Figure 3: Division Street Wye
Track Modifications Required to Support Access to the Union Depot for Existing Empire Builder Service (Not to Scale)
11/19/12

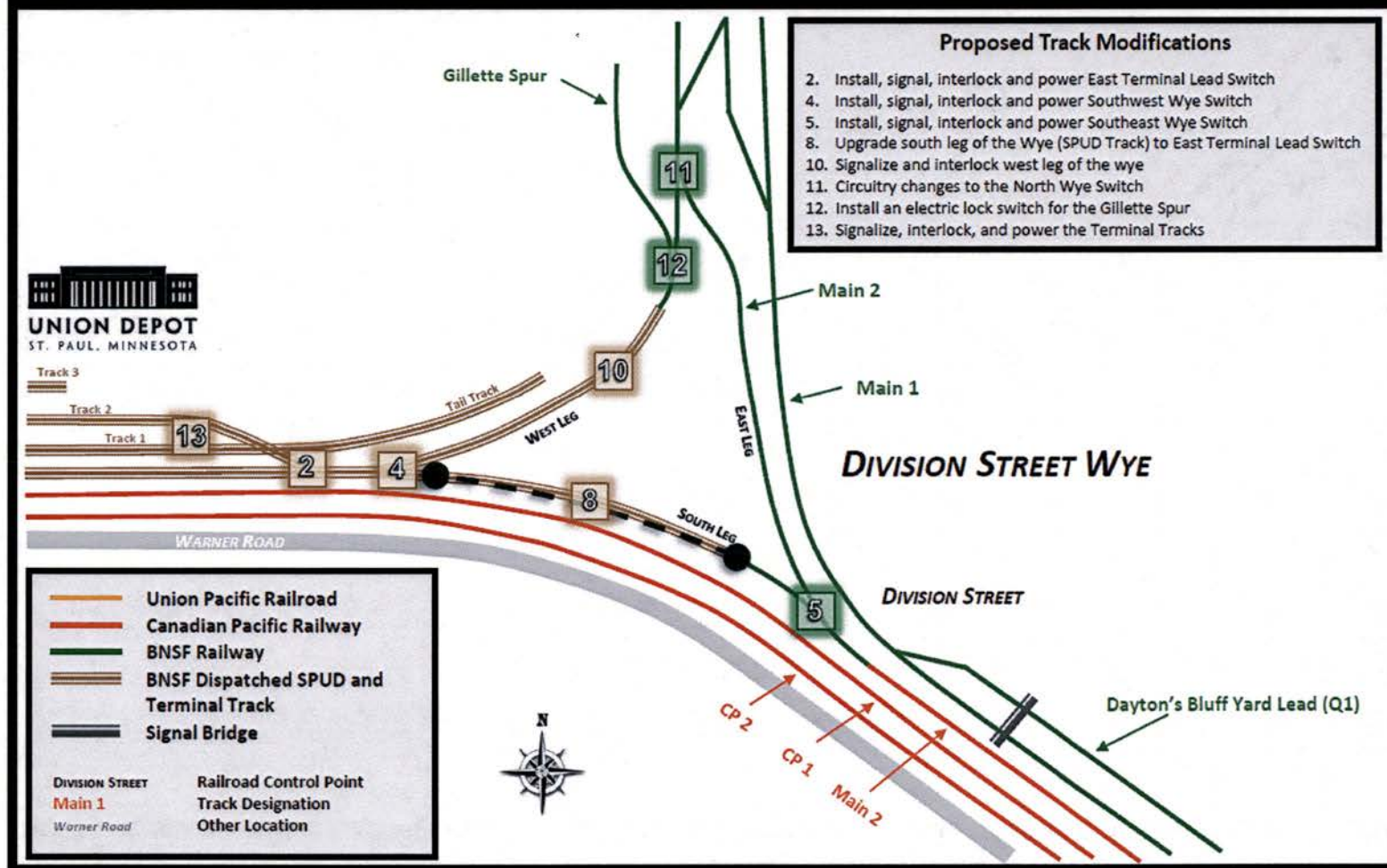


Figure 4
Union Depot Railroad Approval Layout Set

MINNESOTA DEPARTMENT OF TRANSPORTATION
RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

RAILROAD LAYOUT APPROVAL SET
PRELIMINARY FEB. 7, 2012 - SUBJECT TO FINAL DESIGN
REVISIONS DEC 11, 2012



THE UNION DEPOT
ST. PAUL, MINNESOTA



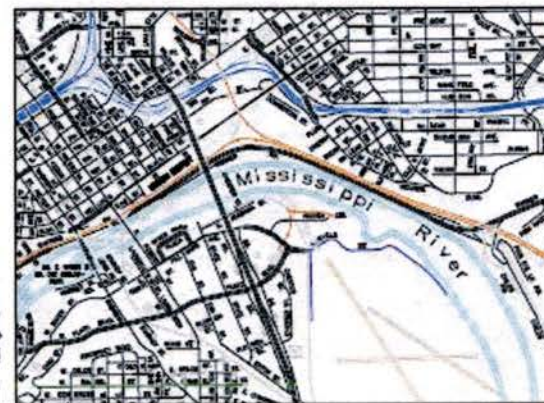
CONSTRUCTION PLAN FOR UNION DEPOT PASSENGER RAIL SERVICE TRACK IMPROVEMENTS TO ACCOMMODATE AMTRAK TRAINS 7 AND 8

STATE PROJ. NO.S 091-595-023, 091-595-24 & 091-595-025

RAILROAD LAYOUT APPROVAL SET

- 1 COVER SHEET
- 2 KEY PLAN
- 3-6, 9A-10 PROPOSED TRACK PLANS
- 19-20 RAILROAD ACCESS PLANS

PROJECT LOCATION
STATE: MINNESOTA
COUNTY: RAMSEY



SCALE IN FEET
LOCATION MAP 0 1000 2000
PLAN SHEET SCALES ARE BASED ON 30"x42" SHEET SIZE

MINN. PROJECT NO. 091-595-023
SHEET 001 OF 023
CONVENTION SPECIFICATIONS
THESE SPECIFICATIONS FOR CONSTRUCTION OF RAILROADS ARE BASED ON THE STANDARD SPECIFICATIONS FOR CONSTRUCTION AND ARCHITECTURAL DRAWINGS FOR RAILROADS, AS PREPARED BY THE MINNESOTA DEPARTMENT OF TRANSPORTATION, AND ARE SUBJECT TO THE REVISIONS THEREOF. THE USER OF THESE SPECIFICATIONS SHALL BE RESPONSIBLE FOR OBTAINING THE LATEST EDITION OF THESE SPECIFICATIONS.

Mortenson
construction

URS

I HEREBY CERTIFY THAT THE PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A FULLY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.
DATE: 02/07/12 BY: [Signature] P.E. NO. 00000000

TKDA

I HEREBY CERTIFY THAT THE PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A FULLY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.
DATE: 02/07/12 BY: [Signature] P.E. NO. 00000000

INVOLVED RAIL CARRIERS

NAME: _____ TITLE: _____

SIGNATURE: _____ REPRESENTING UNION PACIFIC CORPORATION

NAME: _____ TITLE: _____

SIGNATURE: _____ REPRESENTING BNSF RAILWAY CO.

NAME: _____ TITLE: _____

SIGNATURE: _____ REPRESENTING CANADIAN PACIFIC RAILWAY CO.

NAME: _____ TITLE: _____

SIGNATURE: _____ REPRESENTING AMTRAK NATIONAL RAILROAD PASSENGER CORPORATION

NAME: _____ TITLE: _____

SIGNATURE: _____ REPRESENTING FEDERAL RAILROAD ADMINISTRATION

NAME: _____ TITLE: _____

SIGNATURE: _____ REPRESENTING STATE OF MINNESOTA

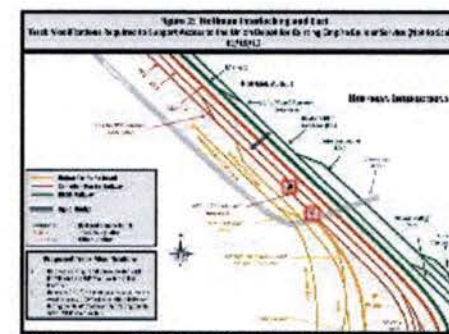
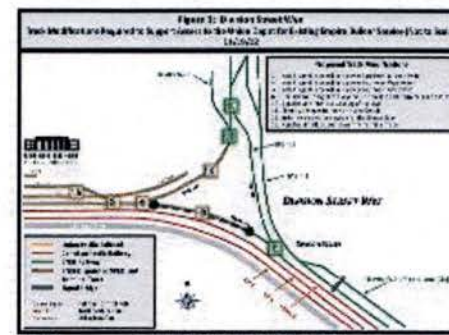
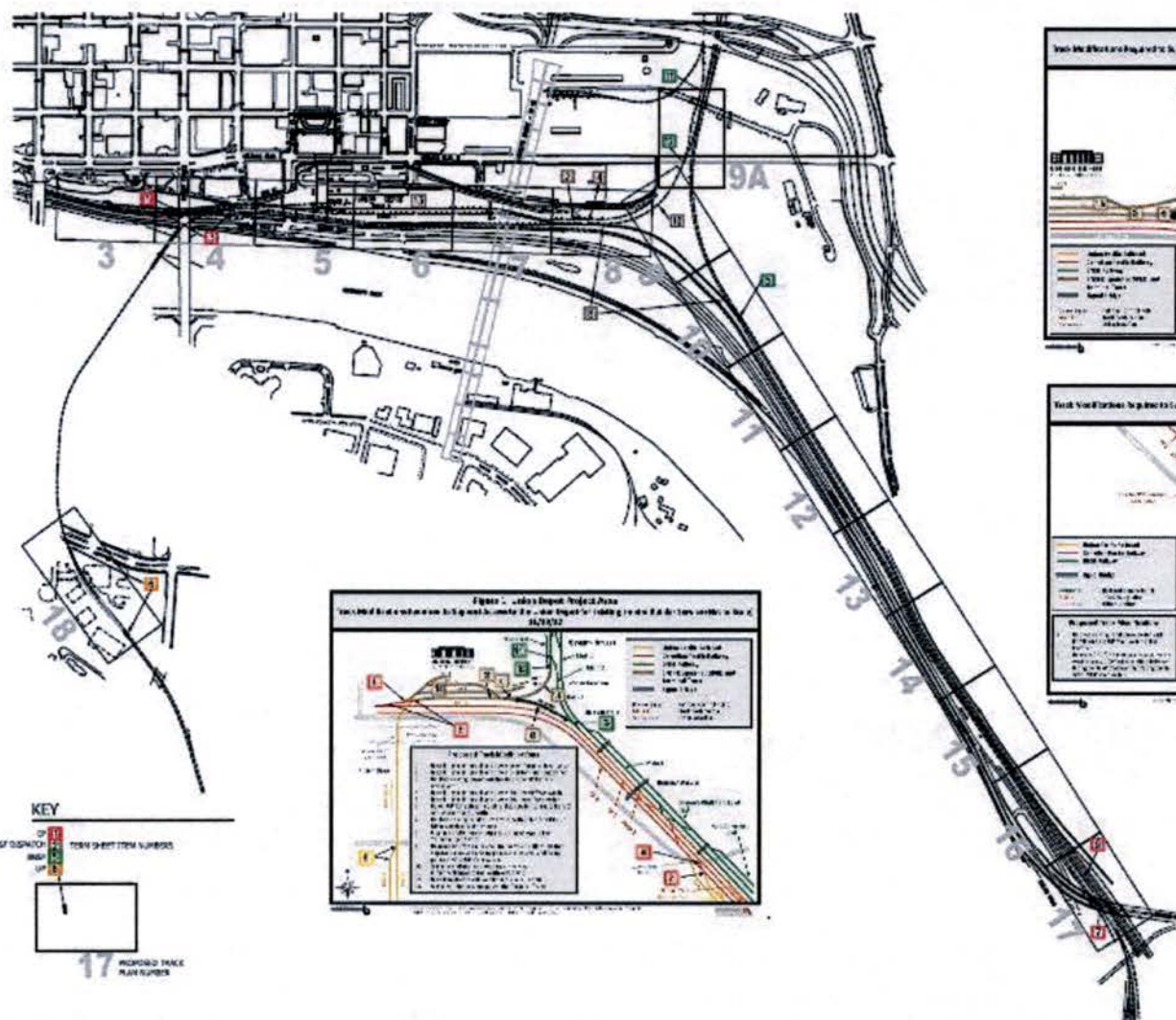
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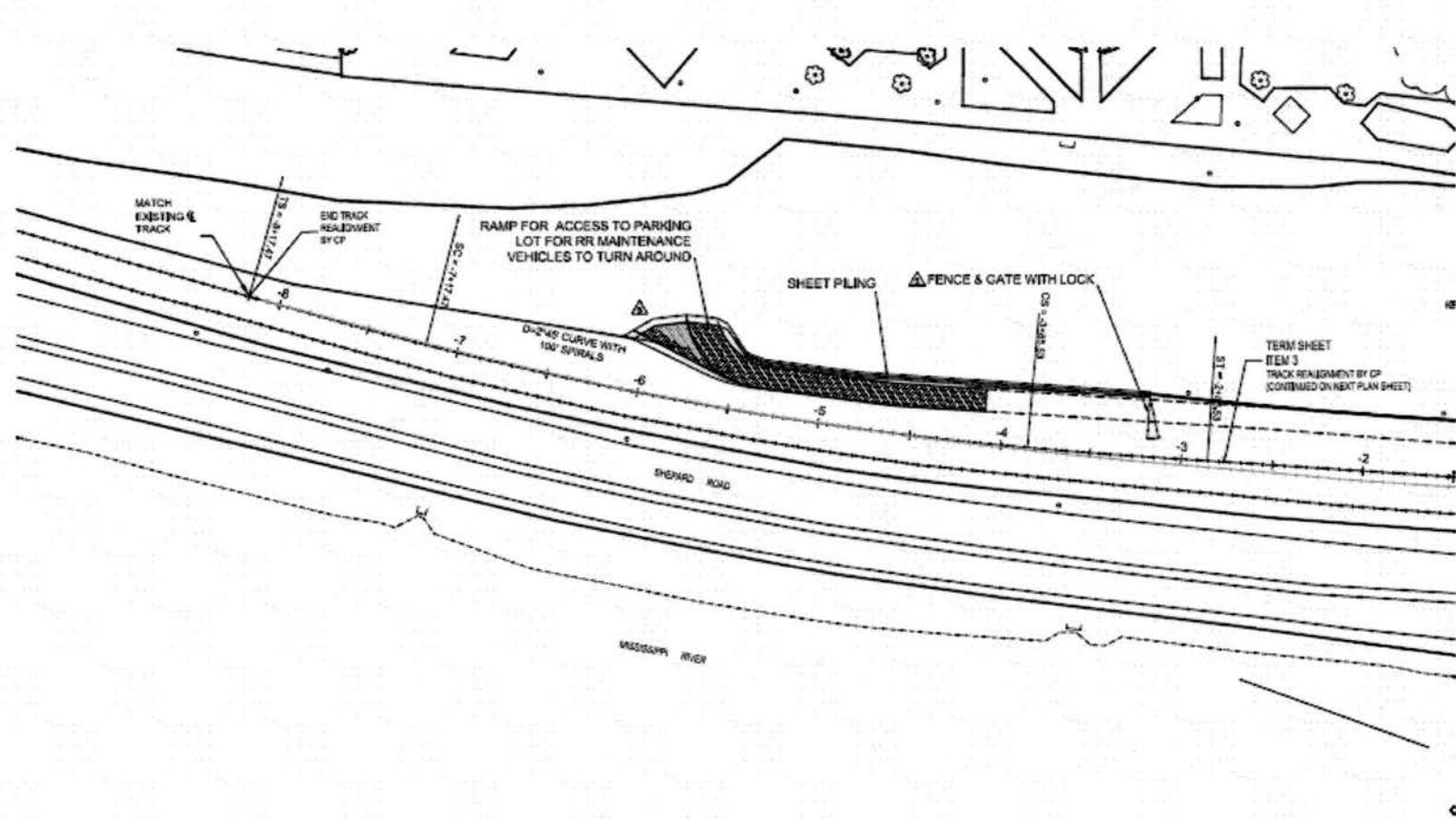
SIGNATURE: _____ REPRESENTING RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

SHEET NO. 1
091-595-023 RAILROAD LAYOUT APPROVAL SET
091-595-024 COVER SHEET
091-595-025



NOTES

2. ALL POWER SWITCHES INSTALLED, RECONSTRUCTED OR RELATED TO THIS PROJECT SHALL BE EQUIPPED WITH SWITCH-INTERLOCK.

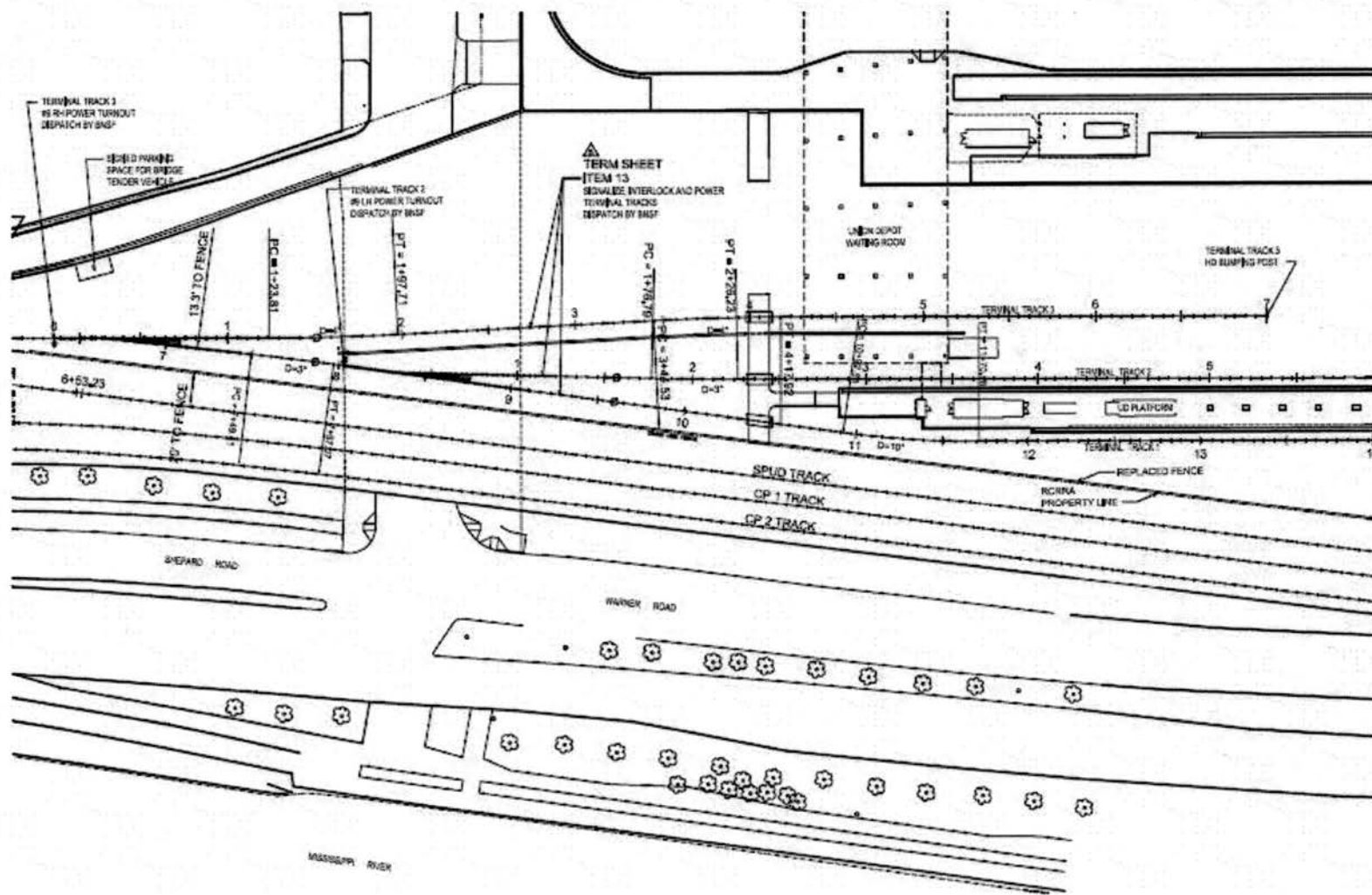


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UNION DEPOT ST. PAUL, MINNESOTA	Mortenson URS TKDA	1. PROJECT: ST. PAUL UNION DEPOT 2. TRACKS: 1-10 3. TRACKS: 1-10 4. TRACKS: 1-10 5. TRACKS: 1-10 6. TRACKS: 1-10 7. TRACKS: 1-10 8. TRACKS: 1-10 9. TRACKS: 1-10 10. TRACKS: 1-10 11. TRACKS: 1-10 12. TRACKS: 1-10 13. TRACKS: 1-10 14. TRACKS: 1-10 15. TRACKS: 1-10 16. TRACKS: 1-10 17. TRACKS: 1-10 18. TRACKS: 1-10 19. TRACKS: 1-10 20. TRACKS: 1-10 21. TRACKS: 1-10 22. TRACKS: 1-10 23. TRACKS: 1-10 24. TRACKS: 1-10 25. TRACKS: 1-10 26. TRACKS: 1-10 27. TRACKS: 1-10 28. TRACKS: 1-10 29. TRACKS: 1-10 30. TRACKS: 1-10 31. TRACKS: 1-10 32. TRACKS: 1-10 33. TRACKS: 1-10 34. TRACKS: 1-10 35. TRACKS: 1-10 36. TRACKS: 1-10 37. TRACKS: 1-10 38. TRACKS: 1-10 39. TRACKS: 1-10 40. TRACKS: 1-10 41. TRACKS: 1-10 42. TRACKS: 1-10 43. TRACKS: 1-10 44. TRACKS: 1-10 45. TRACKS: 1-10 46. TRACKS: 1-10 47. TRACKS: 1-10 48. TRACKS: 1-10 49. TRACKS: 1-10 50. TRACKS: 1-10 51. TRACKS: 1-10 52. TRACKS: 1-10 53. TRACKS: 1-10 54. TRACKS: 1-10 55. TRACKS: 1-10 56. 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79	NO. 80	NO. 79	NO. 80	NO. 81	NO. 82	NO. 81	NO. 82	NO. 83	NO. 84	NO. 83	NO. 84	NO. 85	NO. 86	NO. 85	NO. 86	NO. 87	NO. 88	NO. 87	NO. 88	NO. 89	NO. 90	NO. 89	NO. 90	NO. 91	NO. 92	NO. 91	NO. 92	NO. 93	NO. 94	NO. 93	NO. 94	NO. 95	NO. 96	NO. 95	NO. 96	NO. 97	NO. 98	NO. 97	NO. 98	NO. 99	NO. 100	NO. 99	NO. 100
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UNION DEPOT
ST. PAUL, MINNESOTA



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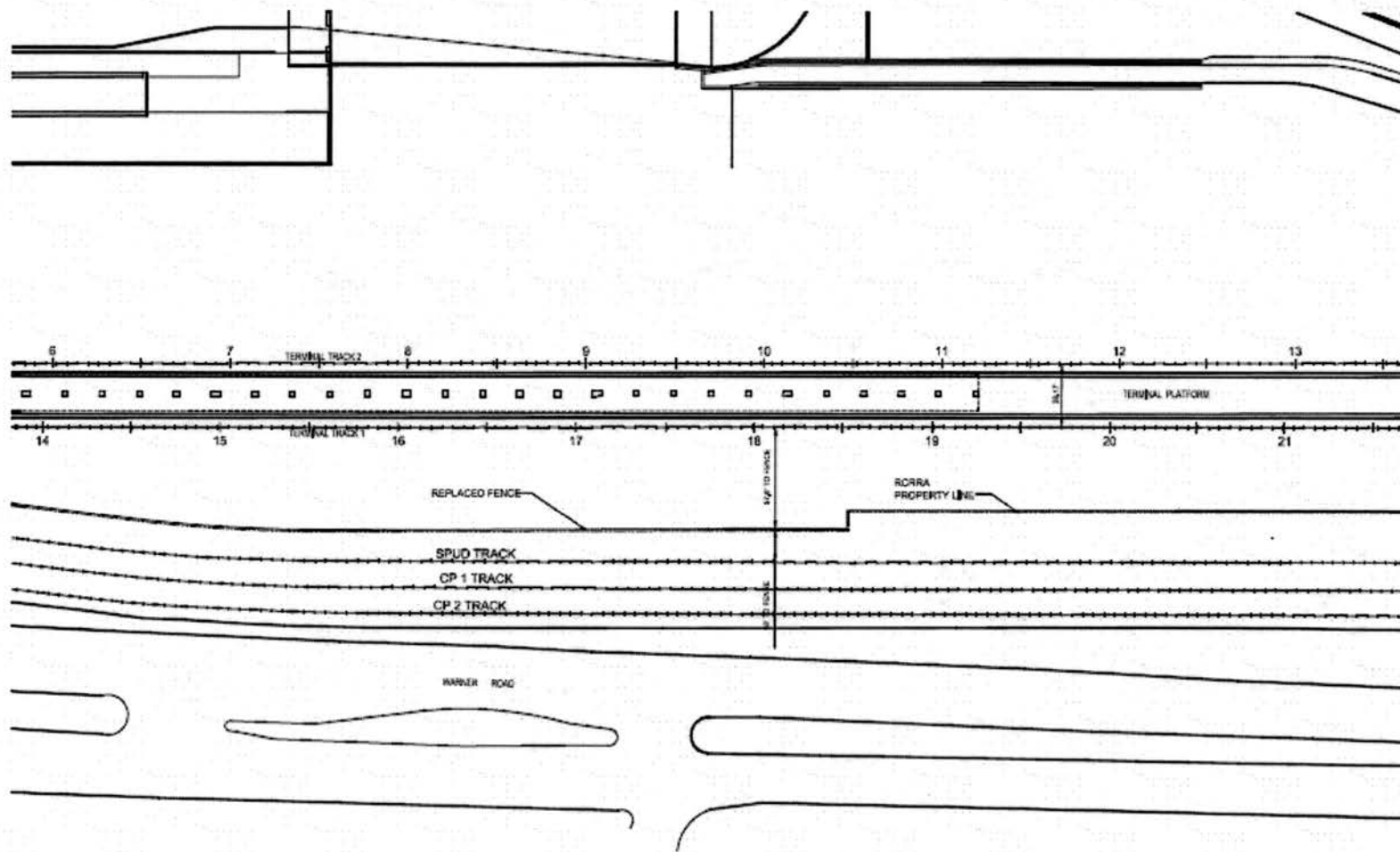
TKDA

1. THIS PLAN WAS PREPARED BY THE ENGINEER FOR THE PURPOSE OF OBTAINING PERMITS AND FOR CONSTRUCTION. IT IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER.

DATE: 10/10/00
BY: [Signature]
CHECKED: [Signature]
APPROVED: [Signature]

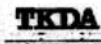
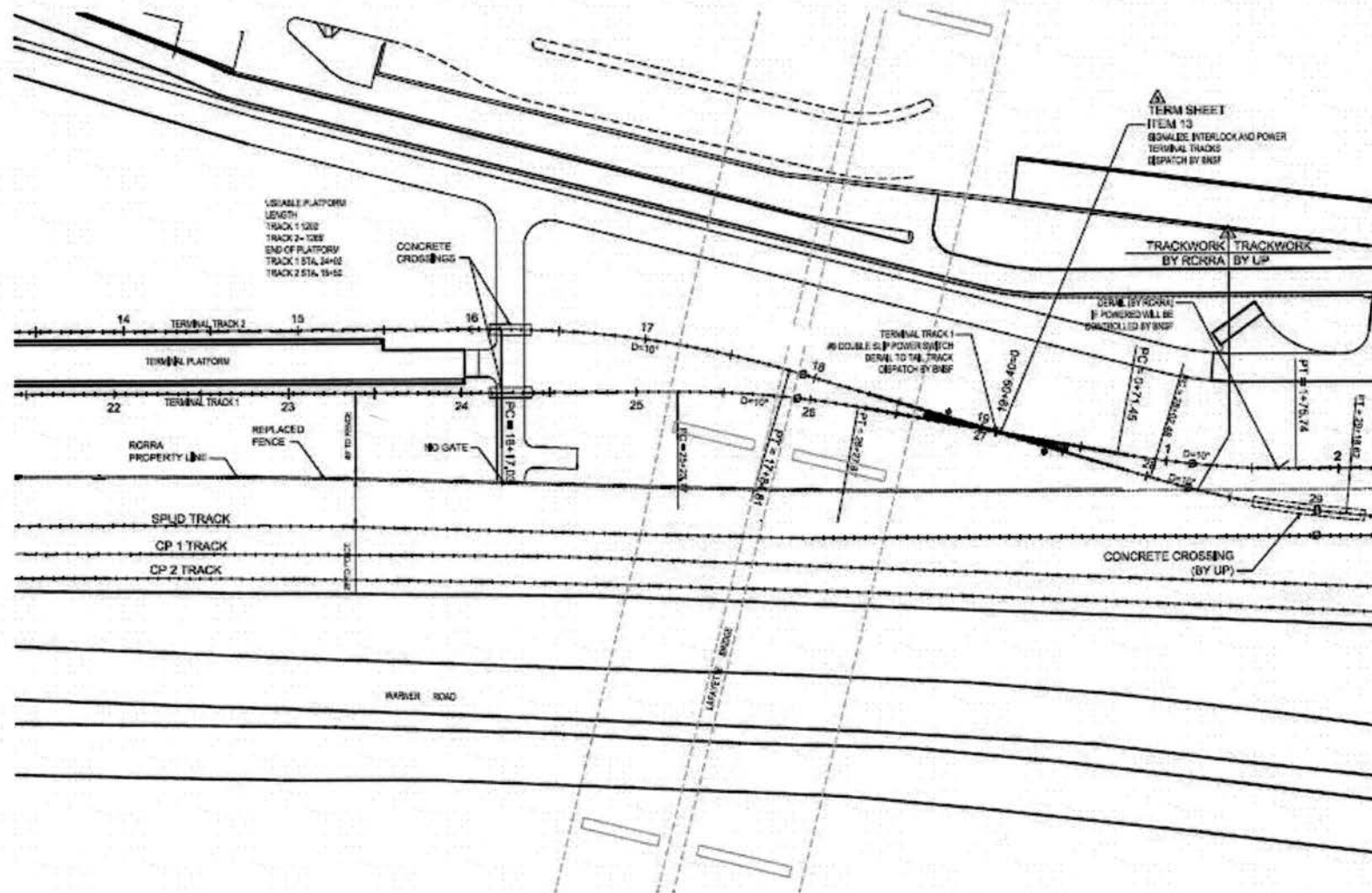
TRACK MODIFICATIONS
1" = 100'-0"

PROPOSED TRACK PLAN
5



64

UNION DEPOT ST. PAUL, MINNESOTA	Mortenson URS TKDA	I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. DATE: 08/18/2011 BY: [Signature] PROJECT: ST. PAUL UNION DEPOT REVISION: 001	TRACK MODIFICATIONS PROPOSED TRACK PLAN DATE: 08/18/2011 BY: [Signature] PROJECT: ST. PAUL UNION DEPOT REVISION: 001 6
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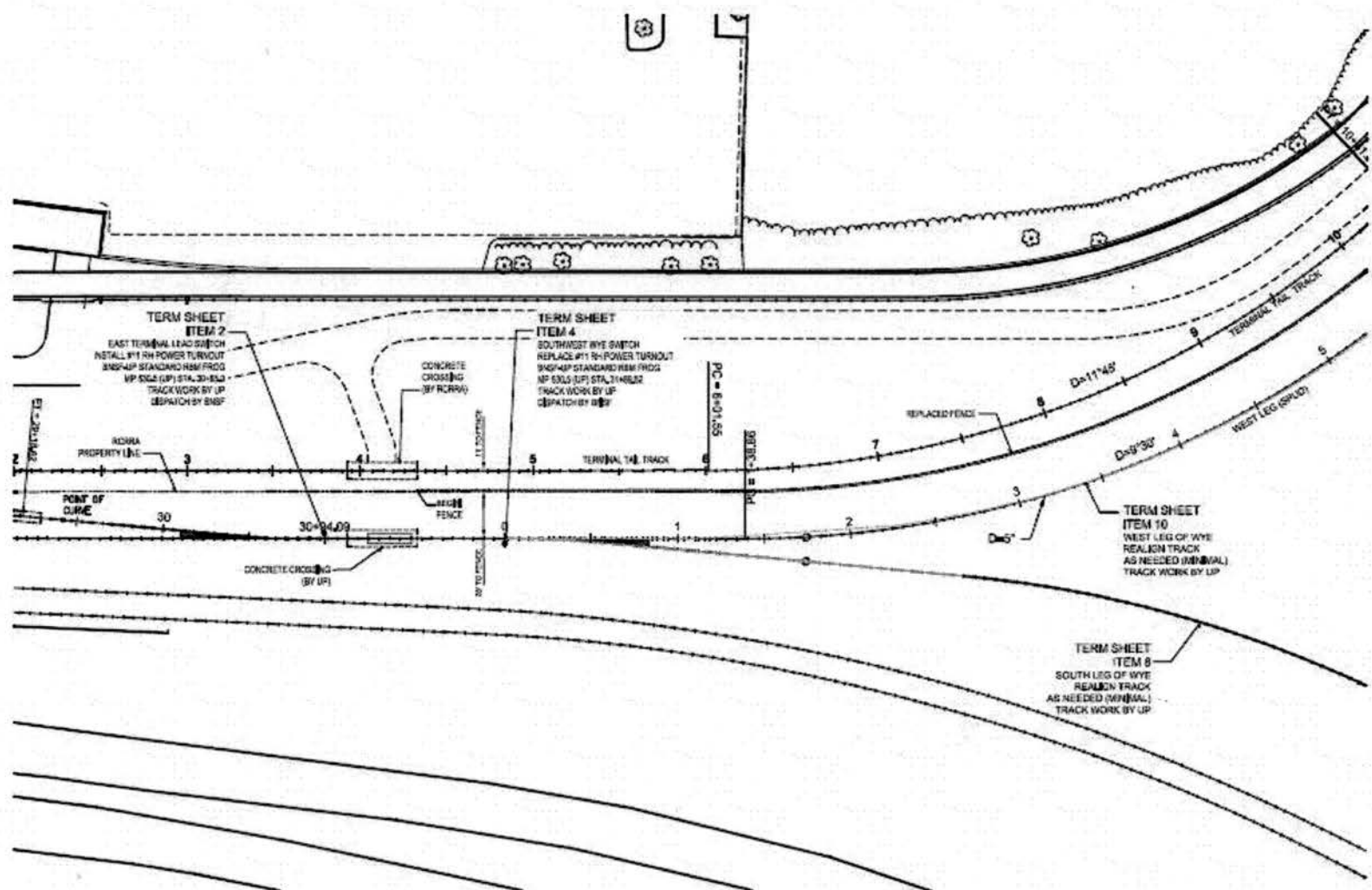


1. THIS PLAN IS A PROPOSED TRACK PLAN FOR THE UNION DEPOT ST. PAUL, MINNESOTA. IT IS NOT A FINAL TRACK PLAN AND IT IS NOT A TRACK PLAN FOR THE UNION DEPOT ST. PAUL, MINNESOTA. IT IS A PROPOSED TRACK PLAN FOR THE UNION DEPOT ST. PAUL, MINNESOTA.

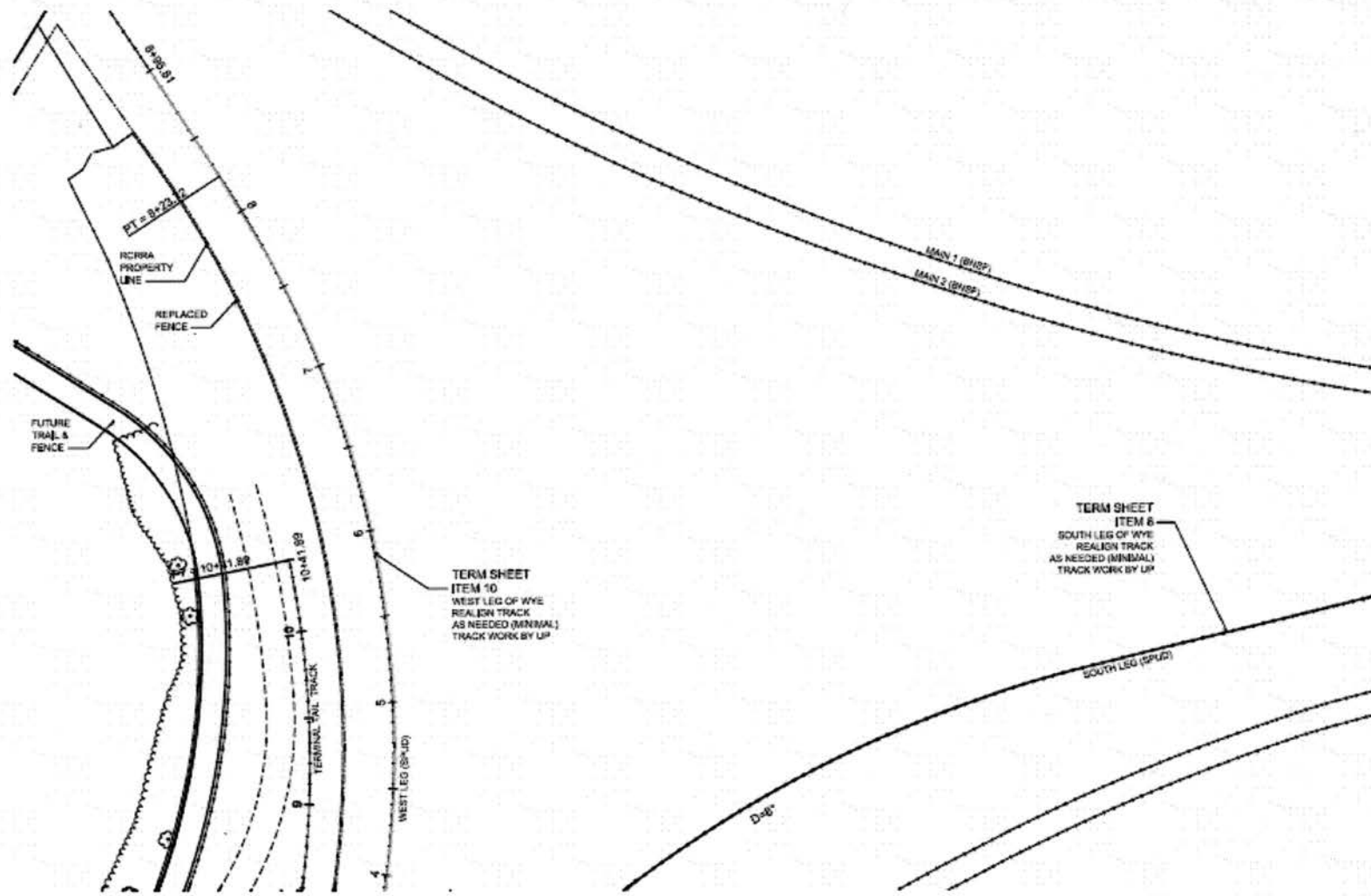
2. THE TRACK PLAN IS A PROPOSED TRACK PLAN FOR THE UNION DEPOT ST. PAUL, MINNESOTA. IT IS NOT A FINAL TRACK PLAN AND IT IS NOT A TRACK PLAN FOR THE UNION DEPOT ST. PAUL, MINNESOTA. IT IS A PROPOSED TRACK PLAN FOR THE UNION DEPOT ST. PAUL, MINNESOTA.

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4. THE TRACK PLAN IS A PROPOSED TRACK PLAN FOR THE UNION DEPOT ST. PAUL, MINNESOTA. IT IS NOT A FINAL TRACK PLAN AND IT IS NOT A TRACK PLAN FOR THE UNION DEPOT ST. PAUL, MINNESOTA. IT IS A PROPOSED TRACK PLAN FOR THE UNION DEPOT ST. PAUL, MINNESOTA.



66



1. THIS PLAN WAS PREPARED BY THE ENGINEER FOR THE PROJECT DESCRIBED HEREIN AND IS NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF THE ENGINEER.

2. THE ENGINEER HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROJECT SITE SINCE THE DATE OF THE LAST REVISION.

3. THE ENGINEER HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROJECT SITE SINCE THE DATE OF THE LAST REVISION.

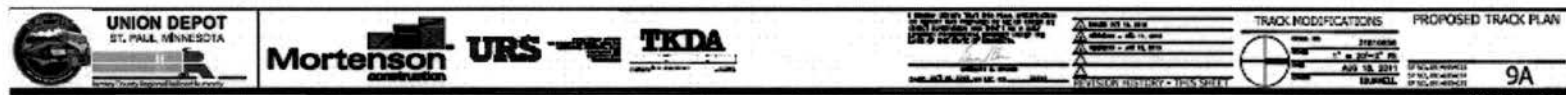
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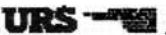
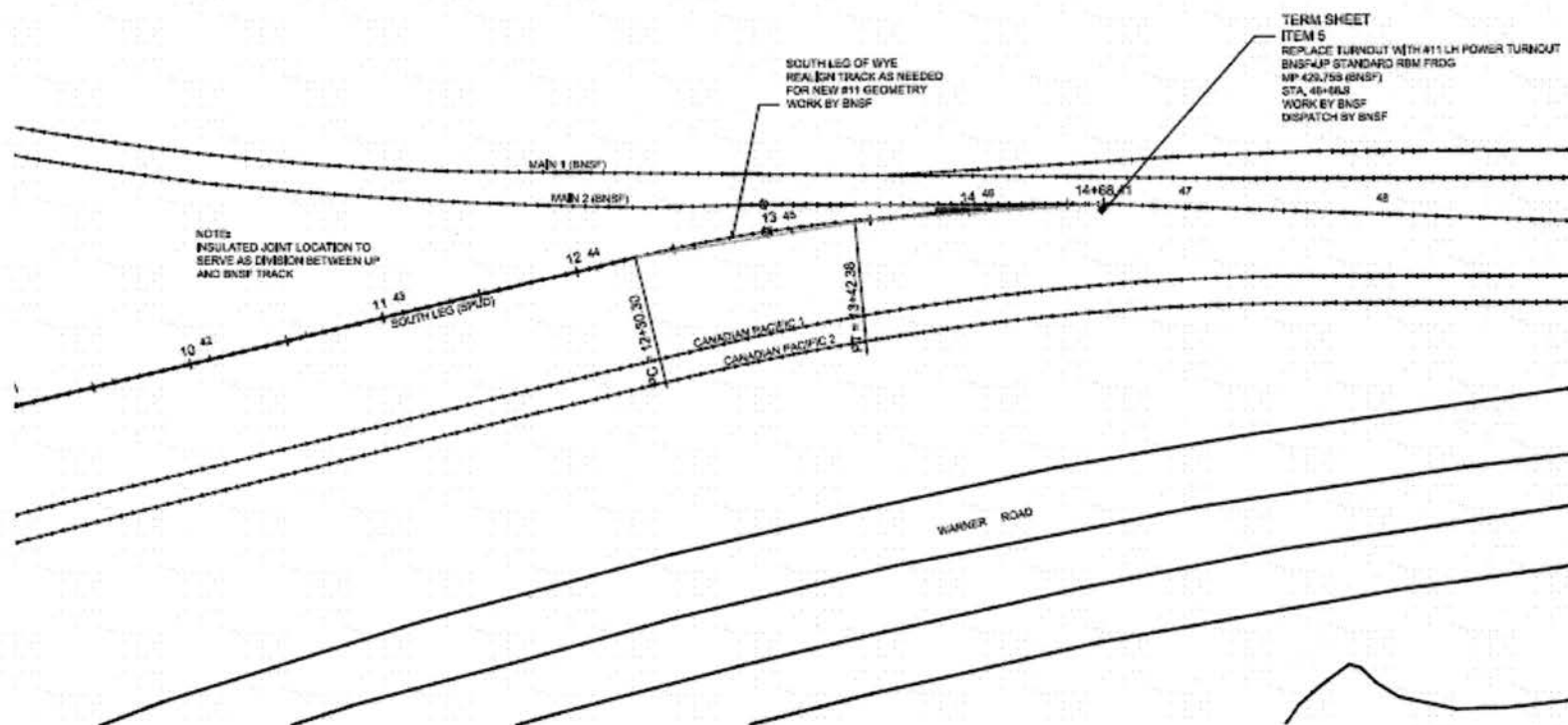
5. THE ENGINEER HAS NOT CONDUCTED A VISUAL INSPECTION OF THE PROJECT SITE SINCE THE DATE OF THE LAST REVISION.

REVISION	DATE	DESCRIPTION
1	08/18/2011	ISSUED FOR PERMIT
2	08/18/2011	ISSUED FOR PERMIT
3	08/18/2011	ISSUED FOR PERMIT
4	08/18/2011	ISSUED FOR PERMIT
5	08/18/2011	ISSUED FOR PERMIT

TRACK MODIFICATIONS
1. 1" = 20'-0" H.S.
2. 1" = 20'-0" H.S.
3. 1" = 20'-0" H.S.
4. 1" = 20'-0" H.S.
5. 1" = 20'-0" H.S.

PROPOSED TRACK PLAN
1. 1" = 20'-0" H.S.
2. 1" = 20'-0" H.S.
3. 1" = 20'-0" H.S.
4. 1" = 20'-0" H.S.
5. 1" = 20'-0" H.S.





1. THIS PLAN WAS PREPARED BY THE ENGINEER FOR THE USE OF THE BUREAU OF RAILROADS AND IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT THE WRITTEN CONSENT OF THE ENGINEER.

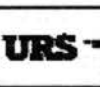
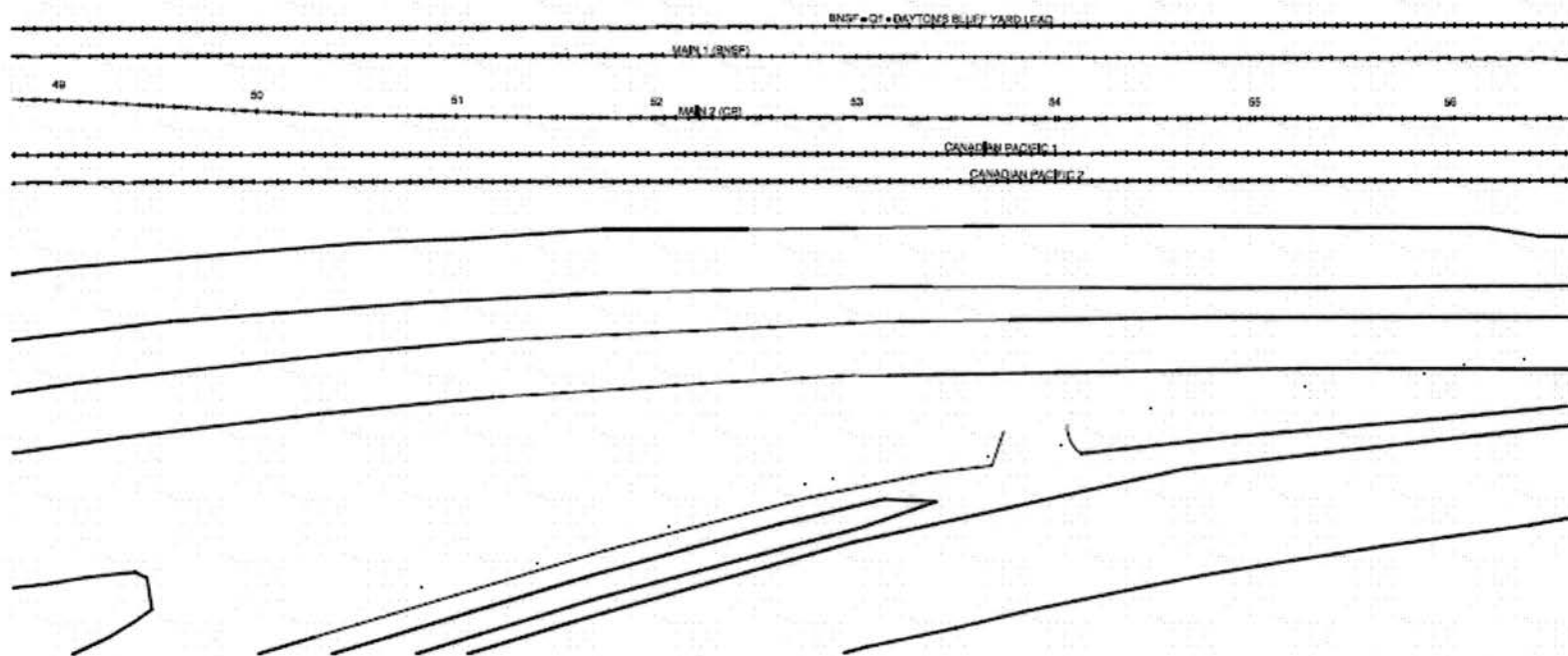
DATE: 10/10/11
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 APPROVED BY: [Signature]

TRACK MODIFICATIONS		PROPOSED TRACK PLAN	
NO. 1	200-0000	NO. 1	200-0000
NO. 2	200-0000	NO. 2	200-0000
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NO. 6	200-0000	NO. 6	200-0000
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ROUT

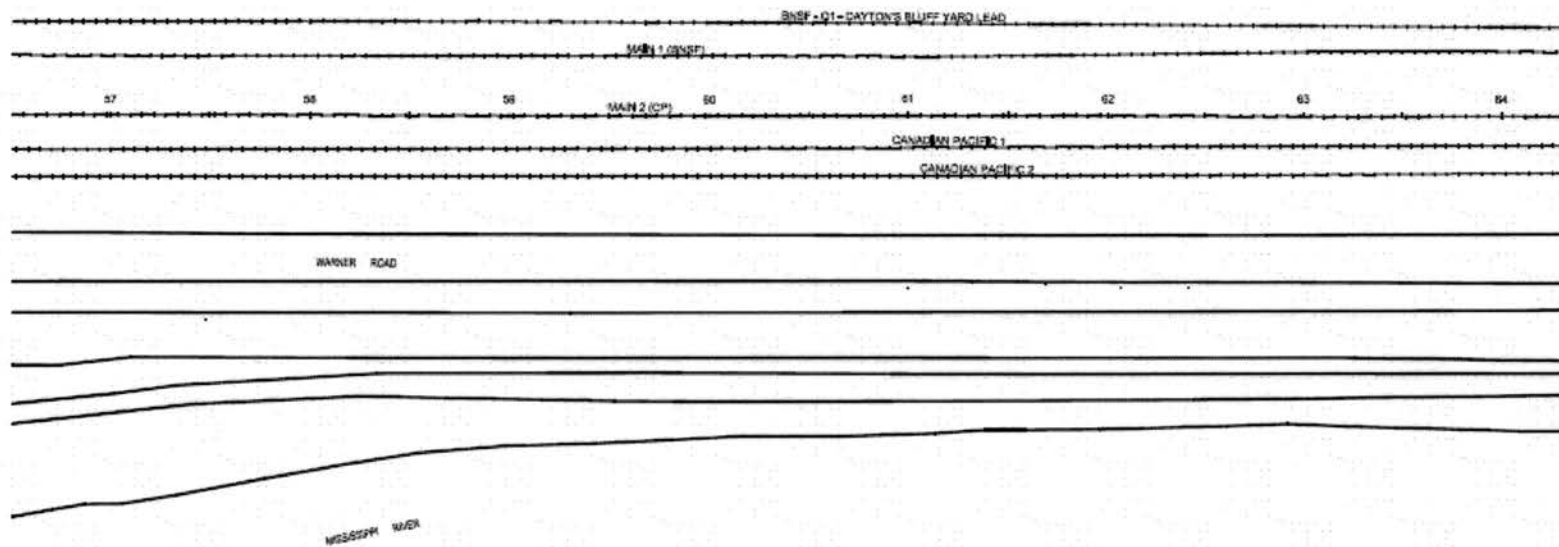


1. THIS PLAN SHOWS THE PROPOSED TRACK MODIFICATIONS TO THE EXISTING TRACK PLAN FOR THE ST. PATRICKS BLUFF YARD LEAD. THE EXISTING TRACK PLAN IS SHOWN IN DASHED LINES. THE PROPOSED TRACK MODIFICATIONS ARE SHOWN IN SOLID LINES. THE TRACK MODIFICATIONS ARE BASED ON THE TRACK PLAN FOR THE ST. PATRICKS BLUFF YARD LEAD, DATED AUGUST 18, 2011.

NO.	DESCRIPTION	DATE
1	ADDED TRACK MODIFICATIONS TO THE EXISTING TRACK PLAN FOR THE ST. PATRICKS BLUFF YARD LEAD.	2011/08/18
2	ADDED TRACK MODIFICATIONS TO THE EXISTING TRACK PLAN FOR THE ST. PATRICKS BLUFF YARD LEAD.	2011/08/18
3	ADDED TRACK MODIFICATIONS TO THE EXISTING TRACK PLAN FOR THE ST. PATRICKS BLUFF YARD LEAD.	2011/08/18
4	ADDED TRACK MODIFICATIONS TO THE EXISTING TRACK PLAN FOR THE ST. PATRICKS BLUFF YARD LEAD.	2011/08/18

TRACK MODIFICATIONS
 1" = 30'-0" PL.
 AUG 18, 2011
 11/11/11

PROPOSED TRACK PLAN
 11

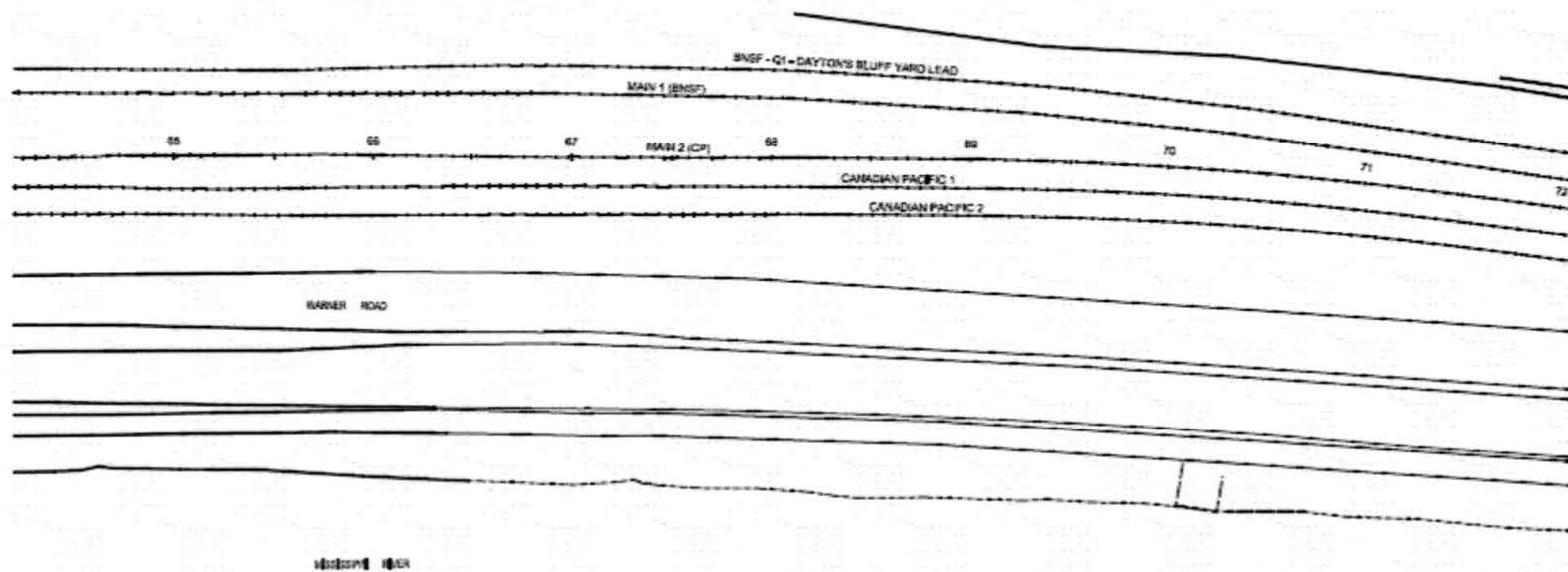


1. THIS PLAN IS FOR THE PROPOSED
TRACK MODIFICATIONS AND IS NOT
TO BE USED FOR ANY OTHER PURPOSE.
2. THE TRACK MODIFICATIONS ARE
BASED ON THE 2001 TRACK PLAN.
3. THE TRACK MODIFICATIONS ARE
BASED ON THE 2001 TRACK PLAN.
4. THE TRACK MODIFICATIONS ARE
BASED ON THE 2001 TRACK PLAN.

DATE: 08/18/2011
BY: [Signature]
CHECKED: [Signature]
APPROVED: [Signature]

TRACK MODIFICATIONS
1. 1" = 100' HORIZONTAL
2. 1" = 10' VERTICAL
3. 1" = 10' HORIZONTAL
4. 1" = 10' VERTICAL

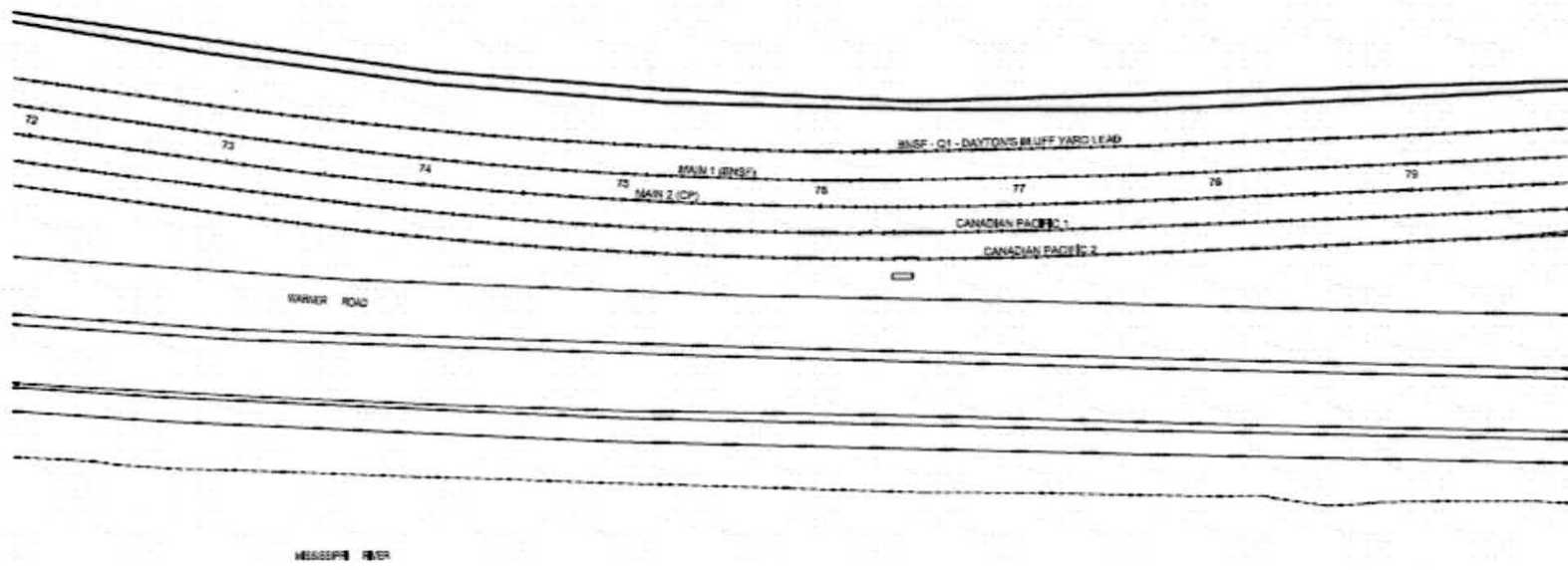
PROPOSED TRACK PLAN
12



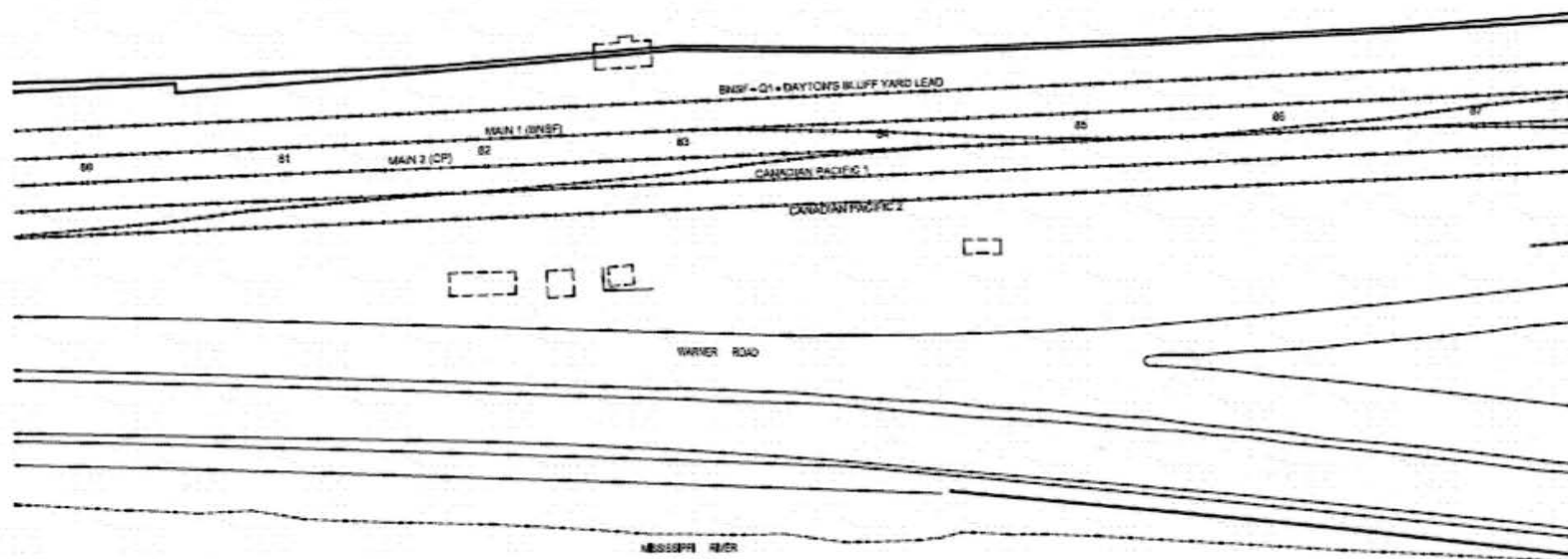
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UNION DEPOT ST. PAUL, MINNESOTA	Mortenson CONSTRUCTION	URS	TKDA CONSULTANTS	TRACK MODIFICATIONS		PROPOSED TRACK PLAN
				1. 10' WIDENING OF TRACK 1 2. 10' WIDENING OF TRACK 2 3. 10' WIDENING OF TRACK 3 4. 10' WIDENING OF TRACK 4 5. 10' WIDENING OF TRACK 5 6. 10' WIDENING OF TRACK 6 7. 10' WIDENING OF TRACK 7 8. 10' WIDENING OF TRACK 8 9. 10' WIDENING OF TRACK 9 10. 10' WIDENING OF TRACK 10	11' x 22'-0" R/L AUG 18, 2011 EAPWELL	14



Mortenson
construction

URS

TKDA

[illegible]

WILLIAM E. SMITH
1945-1946, 1947-1948, 1949-1950, 1951-1952, 1953-1954, 1955-1956, 1957-1958, 1959-1960, 1961-1962, 1963-1964, 1965-1966, 1967-1968, 1969-1970, 1971-1972, 1973-1974, 1975-1976, 1977-1978, 1979-1980, 1981-1982, 1983-1984, 1985-1986, 1987-1988, 1989-1990, 1991-1992, 1993-1994, 1995-1996, 1997-1998, 1999-2000, 2001-2002, 2003-2004, 2005-2006, 2007-2008, 2009-2010, 2011-2012, 2013-2014, 2015-2016, 2017-2018, 2019-2020, 2021-2022, 2023-2024, 2025-2026, 2027-2028, 2029-2030, 2031-2032, 2033-2034, 2035-2036, 2037-2038, 2039-2040, 2041-2042, 2043-2044, 2045-2046, 2047-2048, 2049-2050, 2051-2052, 2053-2054, 2055-2056, 2057-2058, 2059-2060, 2061-2062, 2063-2064, 2065-2066, 2067-2068, 2069-2070, 2071-2072, 2073-2074, 2075-2076, 2077-2078, 2079-2080, 2081-2082, 2083-2084, 2085-2086, 2087-2088, 2089-2090, 2091-2092, 2093-2094, 2095-2096, 2097-2098, 2099-2100, 2101-2102, 2103-2104, 2105-2106, 2107-2108, 2109-2110, 2111-2112, 2113-2114, 2115-2116, 2117-2118, 2119-2120, 2121-2122, 2123-2124, 2125-2126, 2127-2128, 2129-2130, 2131-2132, 2133-2134, 2135-2136, 2137-2138, 2139-2140, 2141-2142, 2143-2144, 2145-2146, 2147-2148, 2149-2150, 2151-2152, 2153-2154, 2155-2156, 2157-2158, 2159-2160, 2161-2162, 2163-2164, 2165-2166, 2167-2168, 2169-2170, 2171-2172, 2173-2174, 2175-2176, 2177-2178, 2179-2180, 2181-2182, 2183-2184, 2185-2186, 2187-2188, 2189-2190, 2191-2192, 2193-2194, 2195-2196, 2197-2198, 2199-2200, 2201-2202, 2203-2204, 2205-2206, 2207-2208, 2209-2210, 2211-2212, 2213-2214, 2215-2216, 2217-2218, 2219-2220, 2221-2222, 2223-2224, 2225-2226, 2227-2228, 2229-2230, 2231-2232, 2233-2234, 2235-2236, 2237-2238, 2239-2240, 2241-2242, 2243-2244, 2245-2246, 2247-2248, 2249-2250, 2251-2252, 2253-2254, 2255-2256, 2257-2258, 2259-2260, 2261-2262, 2263-2264, 2265-2266, 2267-2268, 2269-2270, 2271-2272, 2273-2274, 2275-2276, 2277-2278, 2279-2280, 2281-2282, 2283-2284, 2285-2286, 2287-2288, 2289-2290, 2291-2292, 2293-2294, 2295-2296, 2297-2298, 2299-2300, 2301-2302, 2303-2304, 2305-2306, 2307-2308, 2309-2310, 2311-2312, 2313-2314, 2315-2316, 2317-2318, 2319-2320, 2321-2322, 2323-2324, 2325-2326, 2327-2328, 2329-2330, 2331-2332, 2333-2334, 2335-2336, 2337-2338, 2339-2340, 2341-2342, 2343-2344, 2345-2346, 2347-2348, 2349-2350, 2351-2352, 2353-2354, 2355-2356, 2357-2358, 2359-2360, 2361-2362, 2363-2364, 2365-2366, 2367-2368, 2369-2370, 2371-2372, 2373-2374, 2375-2376, 2377-2378, 2379-2380, 2381-2382, 2383-2384, 2385-2386, 2387-2388, 2389-2390, 2391-2392, 2393-2394, 2395-2396, 2397-2398, 2399-2400, 2401-2402, 2403-2404, 2405-2406, 2407-2408, 2409-2410, 2411-2412, 2413-2414, 2415-2416, 2417-2418, 2419-2420, 2421-2422, 2423-2424, 2425-2426, 2427-2428, 2429-2430, 2431-2432, 2433-2434, 2435-2436, 2437-2438, 2439-2440, 2441-2442, 2443-2444, 2445-2446, 2447-2448, 2449-2450, 2451-2452, 2453-2454, 2455-2456, 2457-2458, 2459-2460, 2461-2462, 2463-2464, 2465-2466, 2467-2468, 2469-2470, 2471-2472, 2473-2474, 2475-2476, 2477-2478, 2479-2480, 2481-2482, 2483-2484, 2485-2486, 2487-2488, 2489-2490, 2491-2492, 2493-2494, 2495-2496, 2497-2498, 2499-2500, 2501-2502, 2503-2504, 2505-2506, 2507-2508, 2509-2510, 2511-2512, 2513-2514, 2515-2516, 2517-2518, 2519-2520, 2521-2522, 2523-2524, 2525-2526, 2527-2528, 2529-2530, 2531-2532, 2533-2534, 2535-2536, 2537-2538, 2539-2540, 2541-2542, 2543-2544, 2545-2546, 2547-2548, 2549-2550, 2551-2552, 2553-2554, 2555-2556, 2557-2558, 2559-2560, 2561-2562, 2563-2564, 2565-2566, 2567-2568, 2569-2570, 2571-2572, 2573-2574, 2575-2576, 2577-2578, 2579-2580, 2581-2582, 2583-2584, 2585-2586, 2587-2588, 2589-2590, 2591-2592, 2593-2594, 2595-2596, 2597-2598, 2599-2600, 2601-2602, 2603-2604, 2605-2606, 2607-2608, 2609-2610, 2611-2612, 2613-2614, 2615-2616, 2617-2618, 2619-2620, 2621-2622, 2623-2624, 2625-2626, 2627-2628, 2629-2630, 2631-2632, 2633-2634, 2635-2636, 2637-2638, 2639-2640, 2641-2642, 2643-2644, 2645-2646, 2647-2648, 2649-2650, 2651-2652, 2653-2654, 2655-2656, 2657-2658, 2659-2660, 2661-2662, 2663-2664, 2665-2666, 2667-2668, 2669-2670, 2671-2672, 2673-2674, 2675-2676, 2677-2678, 2679-2680, 2681-2682, 2683-2684, 2685-2686, 2687

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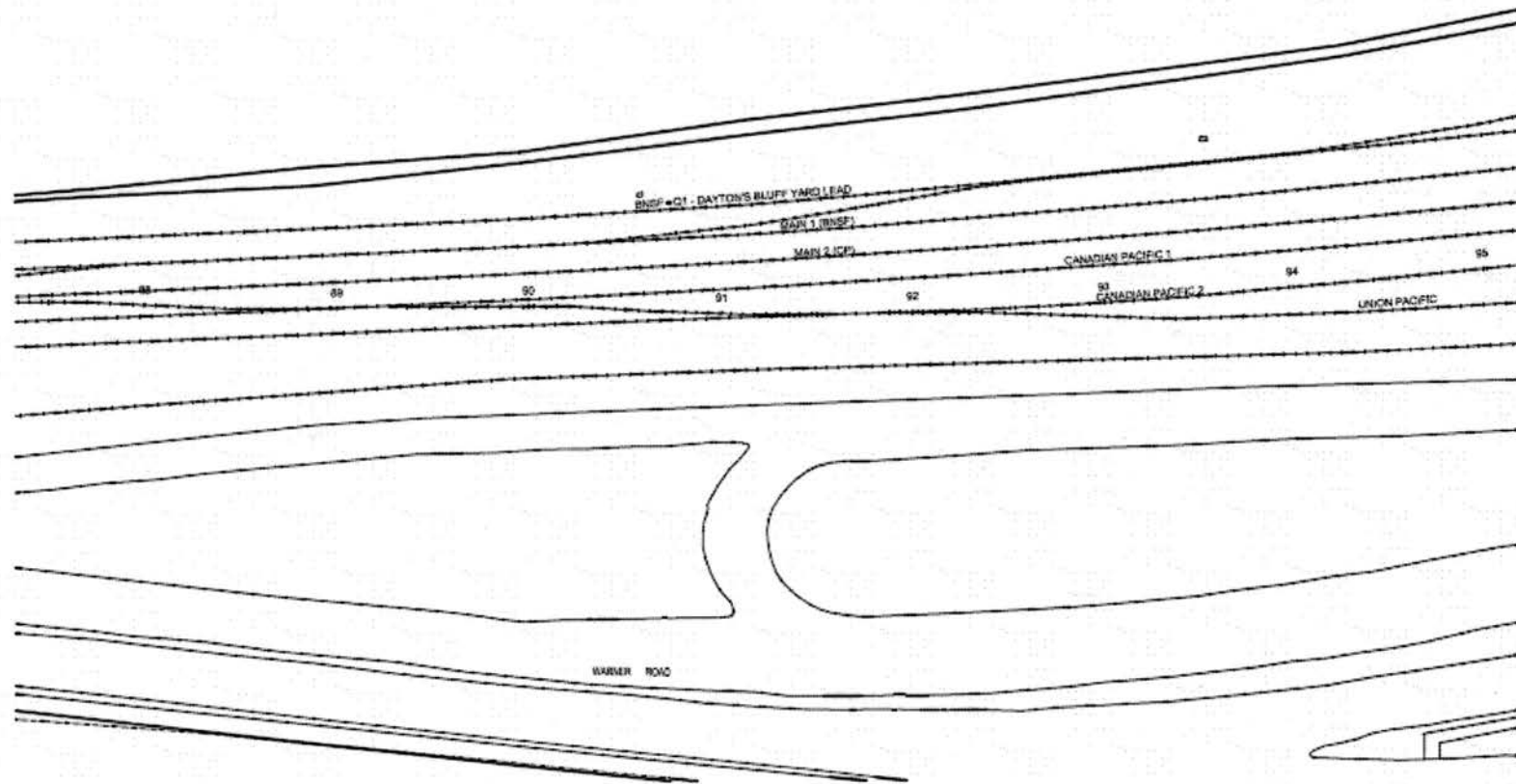
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WHEEL IN	210-00
WHEEL	1" x 22-5"
SIZE	400 18. 31
TRAIL	18.000

PROPOSED TRACK PLAN

SP SOLAR-HIGHWAY SP SOLAR-WESTWAY SP SOLAR-EASTWAY	15
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15



UNION DEPOT
ST. PAUL, MINNESOTA



URS

TKDA

1. This plan shows the proposed track layout for the Union Depot project. It is intended to be used in conjunction with the other plans in this set. The plan is not to be used for construction without the approval of the design engineer.

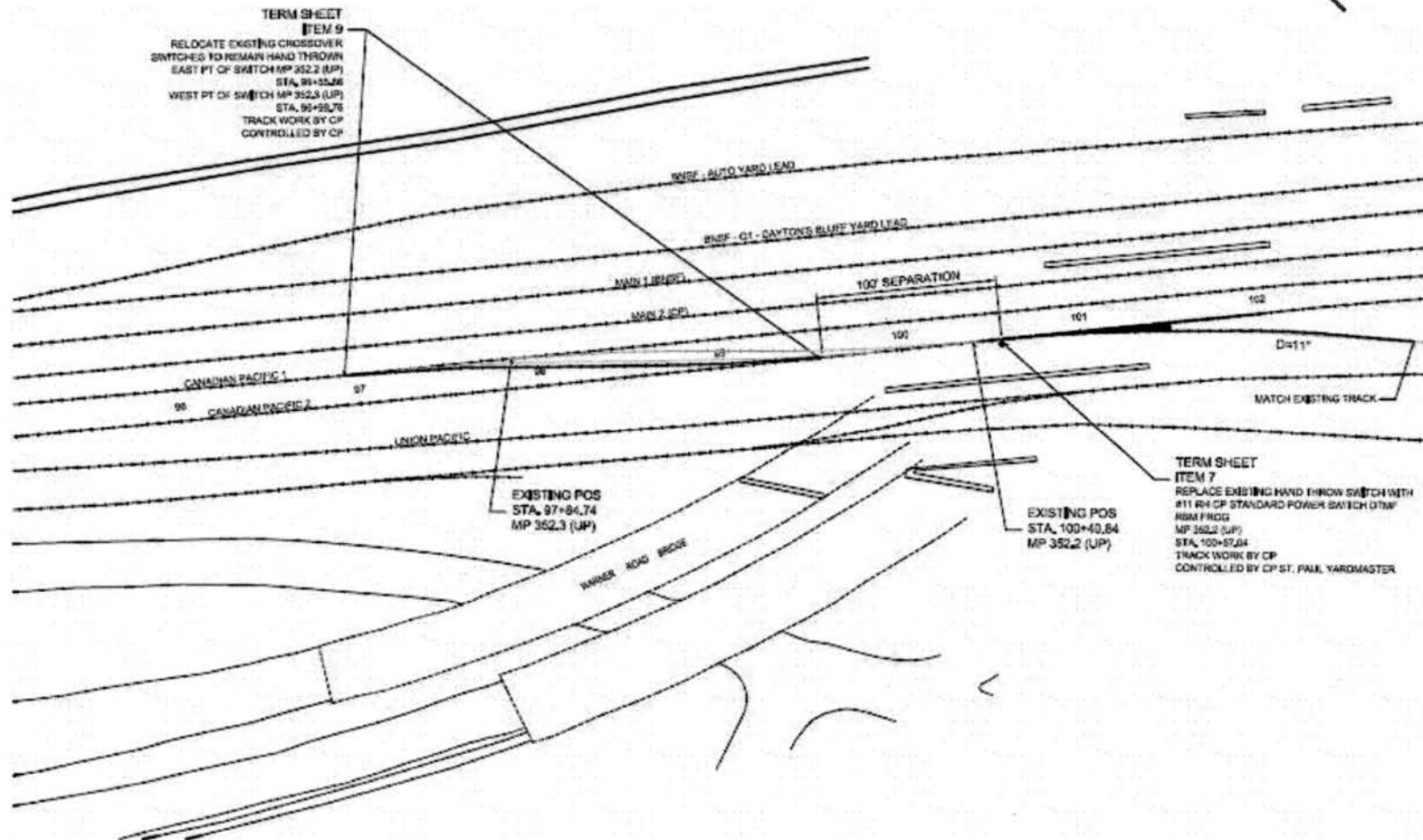
2. The plan shows the proposed track layout for the Union Depot project. It is intended to be used in conjunction with the other plans in this set. The plan is not to be used for construction without the approval of the design engineer.

3. The plan shows the proposed track layout for the Union Depot project. It is intended to be used in conjunction with the other plans in this set. The plan is not to be used for construction without the approval of the design engineer.

4. The plan shows the proposed track layout for the Union Depot project. It is intended to be used in conjunction with the other plans in this set. The plan is not to be used for construction without the approval of the design engineer.

16

75



UNION DEPOT
ST. PAUL, MINNESOTA



URS

TKDA

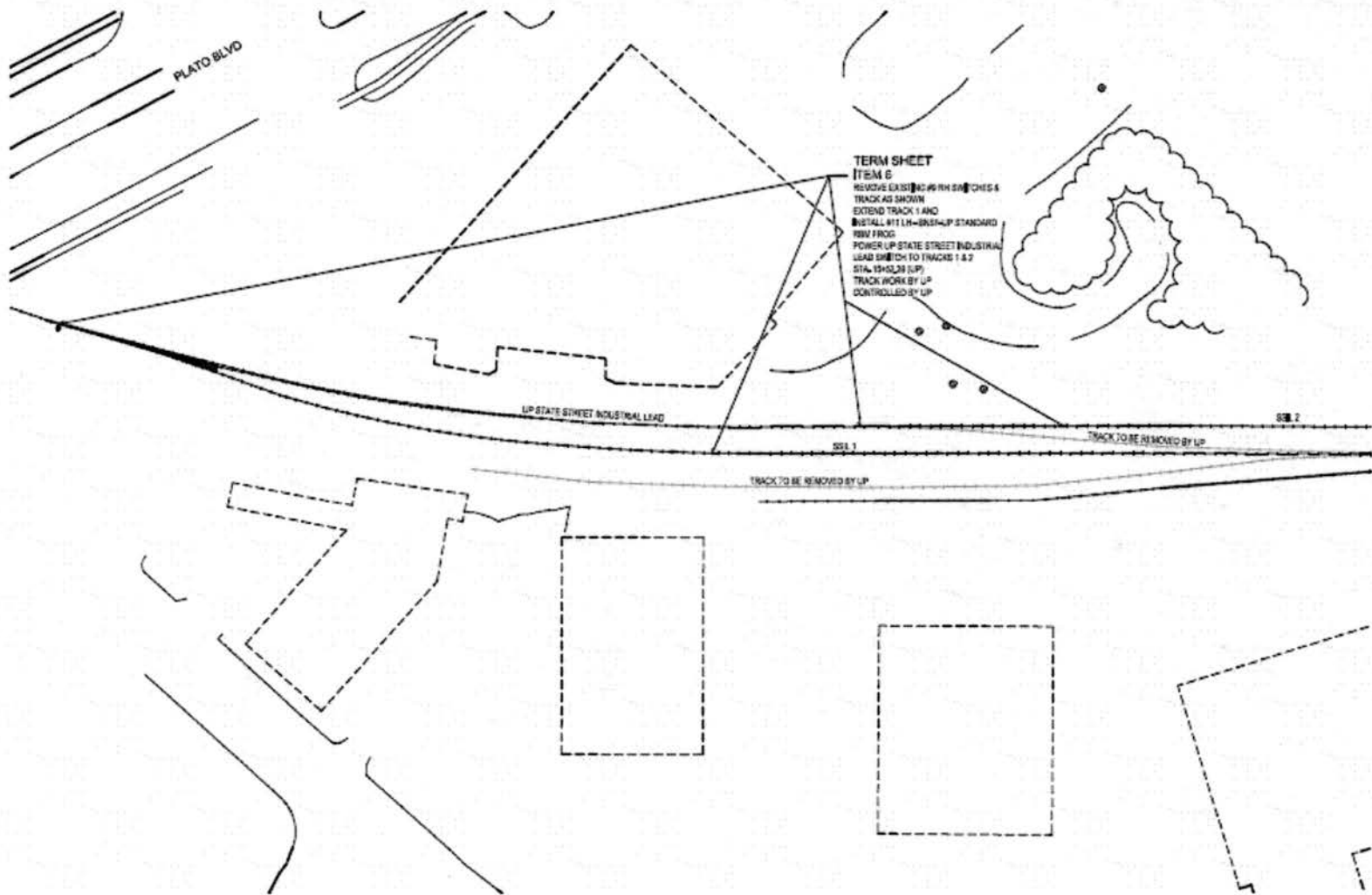
DESIGNED BY: [Signature]
CHECKED BY: [Signature]
DATE: 10/10/10

DESIGNED BY: [Signature]
CHECKED BY: [Signature]
DATE: 10/10/10

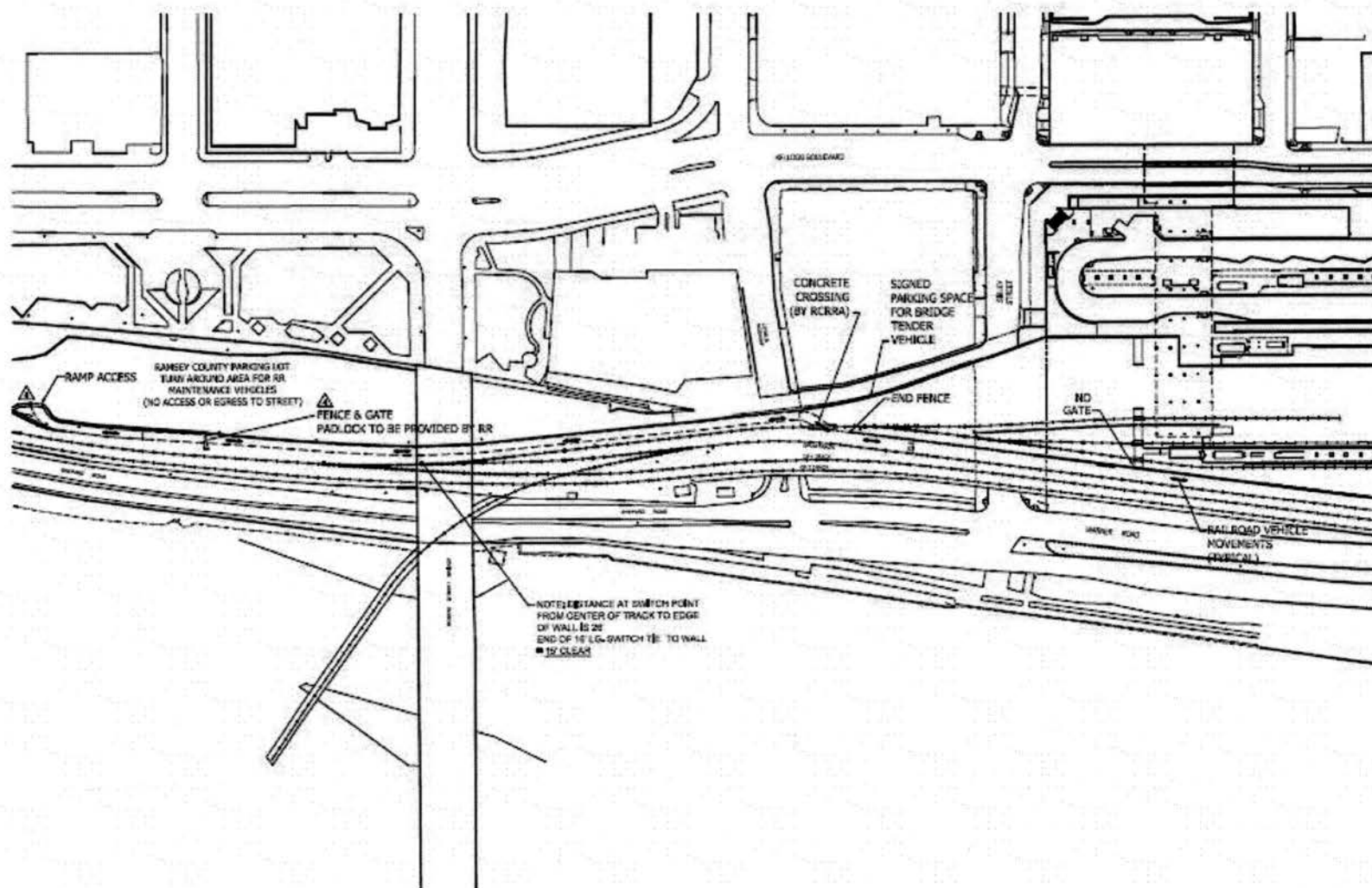
TRACK MODIFICATIONS
1" = 100'
1" = 100'

PROPOSED TRACK PLAN
17

76

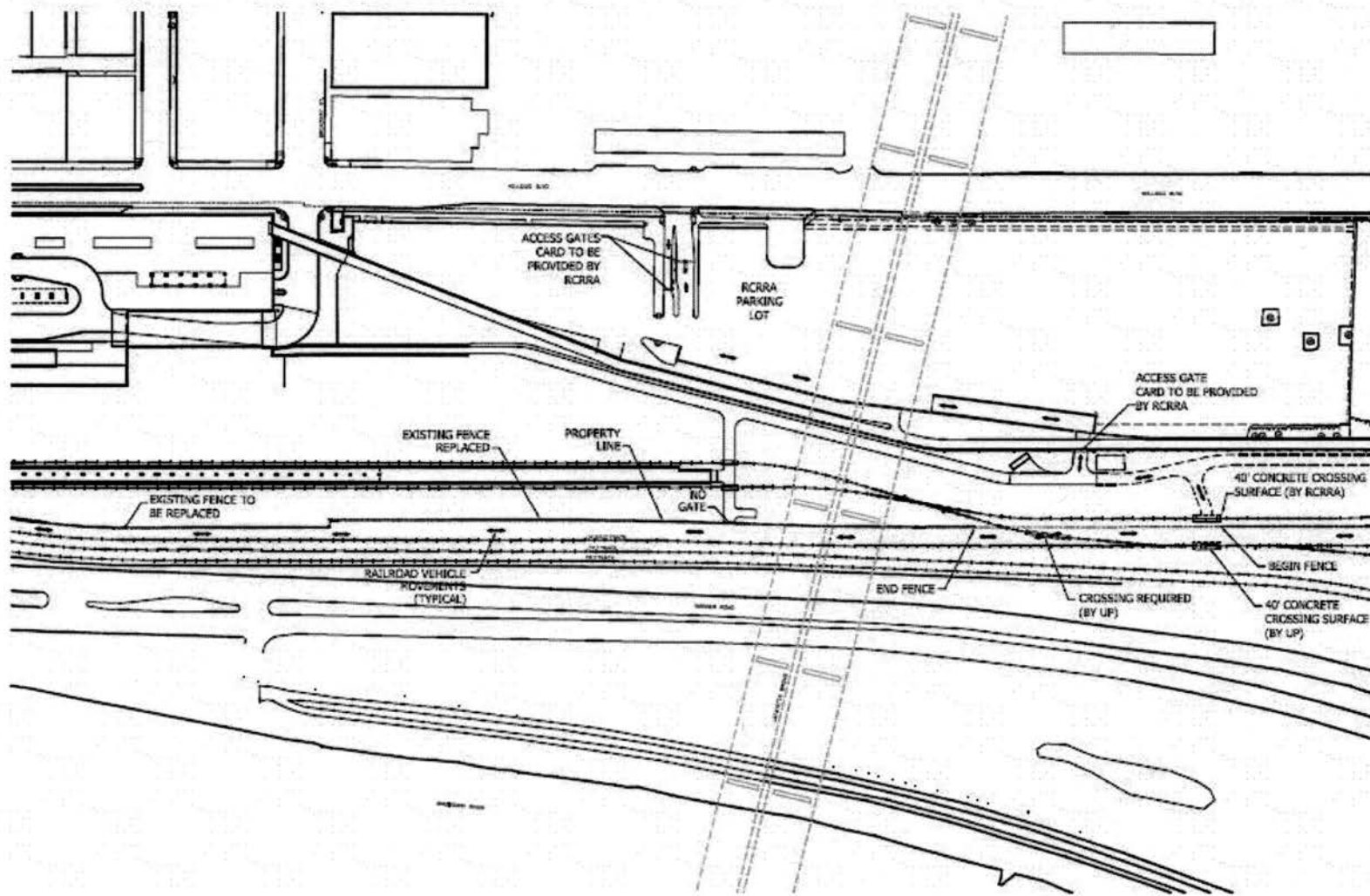


77



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Page 73



1. THIS PLAN IS A PART OF THE PROJECT AND IS NOT TO BE USED FOR ANY OTHER PURPOSE. 2. THE PROJECT IS THE PROPERTY OF THE CITY OF ST. PAUL, MINNESOTA. 3. THE CITY OF ST. PAUL, MINNESOTA, IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED HEREON.

DATE	DESCRIPTION
10/10/00	ISSUED FOR PERMIT
10/10/00	ISSUED FOR PERMIT
10/10/00	ISSUED FOR PERMIT
10/10/00	ISSUED FOR PERMIT

RAILROAD LAYOUT	
UP	DOWN
1" = 200'-0"	1" = 200'-0"
AGE 10, 2011	DATE
10/10/00	DATE

RAILROAD ACCESS PLAN	
1" = 200'-0"	1" = 200'-0"
AGE 10, 2011	DATE
10/10/00	DATE

20

Exhibit I

**U.S. Department of Transportation Federal Railroad Administration Certifications
Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free
Workplace Requirements and Lobbying**

**PART A: Certification Regarding Debarment, Suspension and Other Responsibility
Matters – Primary Covered Transactions (Pursuant to 2 CFR Part 180)**

- (1) The grantee certifies to the best of its knowledge and belief, that it and its principles:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal of State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the grantee is unable to certify to any of the statements of this certification, he or she shall attach an explanation to this application.

**PART B: Certification Regarding Drug-Free Workplace Requirements (Pursuant to 49
CFR
Part 32)**

- A. The grantee certifies that it will or continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee is so convicted—

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (e) and (f).

B. The grantee may insert in the space below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____ Check _____ if there are workplaces on file that are not identified here.

PART C: Certification Regarding Lobbying (Pursuant to 49 CFR Part 20)

CHECK _____ IF APPLICABLE
CERTIFICATION IS FOR THE AWARD OF A GRANT OR COOPERATIVE AGREEMENT
EXCEEDING \$100,000
OR A FEDERAL LOAN EXCEEDING \$150,000

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the authorized certifying official, I hereby certify that the certifications in Parts A, B, and C (if C is applicable) are true.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

TYPED NAME AND TITLE

DATE

Exhibit J

Agreement Provisions Applicable to BNSF and its Contractors

BNSF will comply with the following provisions of the Agreement and will incorporate these provisions into any contract it enters into including consultant contracts, and subcontracts at any tier relating to the Project identified in the Agreement.

1. Documentation Standards.

When submitting documents to RCRRA, BNSF will ensure such documents are of professional quality and suitable for their intended purpose.

2. Record Retention/Audit/Reporting

- a. All parties shall maintain all checks, payrolls, invoices, contracts, vouchers, orders, books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement for a period of six (6) years after completion of the work on the Project. All parties shall make such materials available at their respective offices at all reasonable times during the term of this Agreement and for six (6) years from the date of final payment on the Project. All parties agree to submit to and cooperate with any audit requested by the State of Minnesota or the Federal Government within such six years relating to the construction of the Project that is the subject of this Agreement. RCRRA or any duly authorized representative of RCRRA or the Federal Government shall have access to any checks, payrolls, invoices, contracts, vouchers, orders, books, records, and documents of all parties that are directly pertinent to the Project for the purpose of making audits, examinations, excerpts, and transactions; and copies thereof shall be furnished if requested.
- b. All parties agree to allow RCRRA, the Secretary of Transportation, the Comptroller General of the United States, or their authorized representatives to inspect all Project work at reasonable times and in a manner that will not unduly delay any work on the Project; provided such individuals comply with BNSF's standard safety requirements for entry onto its right of way.
- c. All parties agree to cooperate with RCRRA and, when requested, to provide information reasonably needed by the RCRRA to satisfy RCRRA's reporting requirements to FHWA as described in the TIGER Addendum in connection with this Project, including, but not limited to, the following information:
 1. The status of completion of items in the Project Description;
 2. An account of significant progress made during the identified reporting period;
 3. The amount of costs for which BNSF is seeking reimbursement during the identified reporting period, but only if such amount has not already been identified in the invoices BNSF has submitted to RCRRA for the work performed;

4. A description of any technical and/or cost problems encountered or anticipated that will affect completion within time and/or budget constraints and any recommended solutions or corrective action plans;
5. A description of work and activities planned for the upcoming identified reporting period;
6. The number of jobs directly created or sustained by the project;
7. If possible, the number of indirect jobs created or sustained in the associated supplying industries;
8. The number of jobs retained by the project after completion of construction of the Project; and
9. Information relating to any subcontracts awarded by BNSF on this Project.

3. Contract Awards

The parties intend that to the extent feasible, when awarding contracts to its contractors, BNSF shall use not to exceed priced and competitively bid contracts.

4. Accounting Records.

The Parties acknowledge that under the terms of the TIGER Addendum, RCRRA must keep a separate set of account or accounts consistent with 49 C.F.R. 18.20 and that all costs charged to the Project including any approved services contributed by the RCRRA or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. To the extent possible, BNSF shall ensure that all invoices are appropriately detailed to support RCRRA's obligations under the TIGER Addendum and shall keep such documents, including all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents, readily available, clearly identified, and to the extent feasible, kept separate from documents not pertaining to projects not covered under this agreement.

5. Buy America

All Parties shall comply with the Buy America provisions set forth in 49 U.S.C. 24405(a), with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions therein set forth. Upon request, all parties shall provide material's certifications with each invoice for which payment is requested that affirms said materials comply with 49 U.S.C. 24405(a).

6. Davis-Bacon Act Provisions

For Project components funded using the HSIPR funds, BNSF shall comply with 49 U.S.C. 24405(c)(2), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. If BNSF chooses to use contractors and sub-contractors consistent with the terms of the Agreement, BNSF shall ensure all such contractors and sub-contractors comply with the requirements of the Davis-Bacon Act and all related acts and regulations.

7. False Claims Act

All Parties shall promptly refer to the U.S. Department of Transportation Inspector General any credible evidence that a principal, employee, agency, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

8. Reserved

9. Application of Federal, State, and Local Laws and Regulations

All Parties understand that Federal laws, regulations, policies, and related administrative practices to this Agreement on the date the Agreement was executed may be modified from time to time. All Parties agree that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in this Agreement of a contrary intent. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. All Parties are hereby provided specific notice that Federal requirements may change and all Parties agree that any such changed requirements will apply to the Project as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.

10. Changed Conditions of Performance (Including Litigation)

All Parties agree to notify RCRRA immediately of any change in law, conditions, or any other event that may affect their ability to perform the Project in accordance with the terms of this Agreement. In addition, BNSF agrees to notify RCRRA immediately of any decision pertaining to the BNSF's conduct of litigation that may affect RCRRA's interests in the Project or RCRRA's administration or enforcement of applicable laws or regulations.

11. No FHWA Obligations to Third Parties

FHWA's involvement, approval or concurrence in any decision relating to this project shall not subject FHWA to any obligations or liabilities to BNSF, any third party contractors or third party subcontractors, or any other person not a party to this Agreement in connection with development, construction or performance of the Project.

12. Relocation and Land Acquisition

If any real property is acquired in connection with this Project such acquisition will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq.; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24.

13. Cargo Preference

As required by 46 C.F.R. Part 381, BNSF agrees-

- a. To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or

commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

- b. To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, D.C. 20590, marked with appropriate identification of the Project.
- c. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

14. Debarment and Suspension; and Drug-Free Work Place

Certification regarding debarment, workplace and lobbying requirements. BNSF certifies compliance with, and agrees to obtain certifications from its third party contractors on the Project with respect to the certifications set forth in Exhibit I entitled "Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying".

15. Notification of Third Party Contract Disputes or Breaches

BNSF agrees to notify RCRRA of any current or prospective major dispute, breach, or litigation pertaining to any third party contract. If BNSF seeks to name RCRRA or FHWA as a party to litigation for any reason, BNSF agrees first to inform RCRRA before doing so. This proviso applies to any type of litigation whatsoever, in any forum.

16. Patent Rights

a. If any invention, improvement, or discovery of BNSF or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, BNSF agrees to notify FHWA immediately and provide a detailed report. The rights and responsibilities of BNSF, third party contractors and FHWA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

b. If BNSF secures a patent with respect to any invention, improvement, or discovery of BNSF or any of its third party contractors conceived or first actually reduced to practice in the course of or under this Project, BNSF agrees to grant to FHWA a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

c. BNSF agrees to include the requirements of the "Patent Rights" section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.

17. Rights in Data and Copyrights

a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.

b. The following restrictions apply to all subject data first produced in the performance of this Agreement:

1) Except for its own internal use, BNSF may not publish or reproduce such data in whole or in part, or in any manner or form, nor may BNSF authorize others to do so, without the written consent of FHWA, until such time as FHWA may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to grant agreements with academic institutions.

2) As authorized by 49 C.F.R. § 18.34, or 49 C.F.R. § 19.36, as applicable, FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

a) Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and

b) Any rights of copyright to which BNSF or a third party contractor purchases ownership with Federal assistance.

c. When FHWA provides assistance for a Project involving planning, research, or development, it is generally FHWA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FHWA determines otherwise, BNSF understands and agrees that, in addition to the rights set forth in preceding portions of this section of this Agreement, FHWA may make available to any FHWA Grantee or any third party contractor, or third party subcontractor, either FHWA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement. In the event that such a Project which is the subject of this Agreement is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined herein and shall be delivered as FHWA may direct.

d. Unless prohibited by State law, BNSF agrees to indemnify, save and hold harmless FHWA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by BNSF of proprietary rights, copyrights, or right of privacy, arising out of the publication,

translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. BNSF shall not be required to indemnify FHWA for any such liability arising out of the wrongful acts of employees or agents of FHWA.

e. Nothing contained in this section on rights in data, shall imply a license to FHWA under any patent or be construed as affecting the scope of any license or other right otherwise granted to FHWA under any patent.

f. The requirements of this section of this Agreement do not apply to material furnished to BNSF by FHWA and incorporated in the work carried out under this Agreement, provided that such incorporated material is identified by BNSF at the time of delivery of such work.

g. Unless FHWA determines otherwise, BNSF agrees to include the requirements of this section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.

18. Acknowledgement of Support

BNSF agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to FHWA identifying the Project and indicating that FHWA is participating in the development of the Project. RCRA will prepare and provide such signs to BNSF.

19. Site Visits

FHWA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by FHWA on BNSF property, FHWA shall comply with requirements under Section 7.2 of the Stakeholder Agreement. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by BNSF.

20. Safety Oversight

To the extent applicable, BNSF agrees to comply with any federal regulations, laws, or policy and other guidance that FHWA or U.S. DOT may issue pertaining to safety oversight in general, and in the performance of this Agreement, in particular.

21. Civil Rights

BNSF agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the FHWA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 C.F.R. Part 21), which prohibits the discrimination on the basis of race, color, or national origin; (b) Title IX of the Educational Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to

nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to BNSF.

22. Americans with Disabilities Act

The Parties shall comply with the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.) and all applicable regulations for the PNWRC Program elements funded under this Agreement and constructed by BNSF. This Agreement does not constitute any obligation by BNSF to execute Task Orders for construction of any improvements the design of which due to requirements of the ADA would impair BNSF's operations. BNSF shall have no obligation to subsequently modify such improvements as a result of this Agreement.

23. Environmental Protection

a. All facilities that will be used to perform work under this Agreement shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, state and Federal standards.

b. BNSF will conduct work under this Agreement, and will require that work that is conducted as a result of this Agreement be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued thereunder. BNSF certifies that no facilities that will be used to perform work under this Agreement are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). BNSF will notify the Administrator as soon as it or any contractor or subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that BNSF's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. BNSF will include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to this Agreement, the criteria and requirements of this section and an affirmative covenant requiring such contractor or subcontractor to immediately inform BNSF upon the receipt of a communication from the EPA concerning the matters set forth herein.

c. BNSF may not expend any of the funds provided in this agreement on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332)(NEPA), the National Historic Preservation Act (16 U.S.C. 470(f))(NHPA), and related laws and regulations have been completed and the FHWA has provided BNSF with a written notice authorizing BNSF to proceed.

d. BNSF shall assist RCRRA and FHWA in compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. Part 1500 et seq.), FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this agreement, BNSF may be required to conduct certain environmental analyses and to prepare and submit to the FHWA draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).

e. No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials shall be used by BNSF without the prior written concurrence of FHWA. BNSF shall assist the RCRRA and FHWA in complying with the requirements of 49 U.S.C. §303(c).

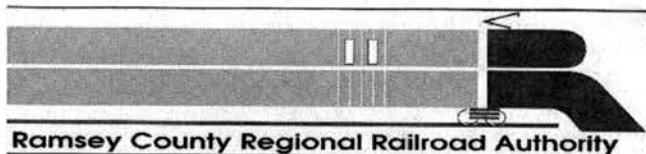
f. BNSF agrees to facilitate compliance with the policies of Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. '4321 note, except to the extent that the FRA determines otherwise in writing.

24. Project Completion, Audit, Settlement, and Closeout

Upon request, BNSF shall obtain and provide RCRRA with the information in its possession and control necessary to meet the requirements set forth in section 22 of the Cooperative Agreement relating to project completion, audit, settlement and closeout.

25. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.

BNSF agrees to: (a) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and (b) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement.



4

REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 04/02/2013

Regional Railroad Authority Meeting Date: _____

SUBJECT: Contract with Ralph Gilbert to design, fabricate and install public art at Union Depot

EXECUTIVE SUMMARY

The Federal Transit Administration (FTA) strongly encourages its funded major construction projects to include a public art program within the project capital costs. FTA's reasoning for this investment is stated in Circular C9400.1A-Federal Transit Administration Design and Art in Transit Projects:

"The visual quality of the nation's transportation systems has a profound impact on transit patrons and the community at large. Mass transit systems should be positive symbols in the community, attracting local riders, tourists and the attention of decision makers for local, regional, national and international events. Good design and art can improve the appearance and safety of a facility, give vibrancy to its public spaces and make patrons feel welcome. Good design and art will also contribute to the goal that transit facilities help to create livable communities."

FTA guidelines state that the public art budget should at a minimum be one half of one percent of construction costs, but should not exceed five percent of construction costs. "One percent for art" is a common practice for governmental organizations. The proposed budget for public art at the Union Depot remains at \$1.25 million, which represents slightly less than one percent of construction costs (0.84 percent).

(The Executive Summary is continued on the following page)

ACTION REQUESTED

- 1) Approve a contract with Ray Ralph Gilbert, 1935 McLendon Ave., Atlanta, GA 30307, for commission of public art at the Union Depot for the period of 4/2/2013 through 6/30/2014, in the amount of \$150,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

SUBJECT: Contract with Ralph Gilbert to design, fabricate and install public art at Union Depot

(Executive Summary continued from previous page)

Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, approved by the RCRRA in December 2011, provides \$1 million towards public art at Union Depot. Ramsey County Regional Railroad Authority ("RCRRA") funds in the amount of \$250,000 will provide the balance. In August 2012, the RCRRA approved contracts with four artists which accounted for \$1.05 million of the \$1.25 million budget. In September 2012, the RCRRA approved the release of two RFPs, including the Supplemental Call to Artists for a Historical and Multicultural Public Art Commission at Union Depot.

The purpose of this Supplemental Call to Artists was to invite artists to submit applications for consideration for a multicultural and historic public art commission in the waiting room of Union Depot. FTA provides guidelines on the process by which artists should be selected, and that process was followed, including utilizing the Union Depot Art Selection and Design Review Panel, composed of artists, arts professionals, historic preservationists, project partners and community representatives. The panel, following a fair and deliberative process, enthusiastically recommends the selection of Ralph Gilbert to create a series of six historical and multicultural murals for the grand waiting room of Union Depot. The total budget for the commission will not exceed \$150,000. Once under contract, the same panel will review and approve subsequent design proposals.

Ralph Gilbert is a figurative painter and muralist who has completed large public projects, including the Piedmont Park Conservancy in Atlanta, and the Helene S. Mills Senior Center of Fulton. Gilbert studied at the Chouinard Art Institute (now the California Institute of the Arts) in Los Angeles and received the Master of Fine Arts degree from the University of California at Santa Barbara. In 2005 he was awarded an Edwin Austin Abbey Memorial Fund Fellowship in mural painting at the National Academy of Design in New York.

Gilbert's experience as a narrative painter dealing with diverse cultures, history and connection to communities is deep. The Piedmont Park Conservancy mural, a barrel-vaulted ceiling in a turn-of-the-century beaux-arts building, was a depiction of Atlanta's version of New York's Central Park, both having been designed by the legendary Frederick Law Olmstead. The Mills Senior Center mural is in the historic Martin Luther King, Jr. district, and features members of a proud, diverse and active community of seniors.

Samples of Gilbert's previous work are included by attachment. Additionally, the review panel wanted to share a few brief notes from Gilbert's interview:

- Gilbert's research would involve meeting with community members, historians, and intensive research of historical archives. Gilbert's research partner and spouse, Dr. Mary Odem, is a professor of American History at Emory University.
- Movement is an important part of Gilbert's work. It is "where figures gain their power." The subjects of his murals are characters created through research, using photos as reference.
- When talking about representing cultural communities, Gilbert spoke of the importance of the work as "dignified," that "people feel represented" when they experience the murals. He noted that this was particularly critical as some of the communities, such as the African American porters/redcaps, worked in service to others. Gilbert said the work will honor the history and strength of the people.
- Gilbert felt it was important to show women in a role that goes beyond being in support of men.
- Gilbert indicated that this is one of the most important mural projects to come on the national public art scene in some time, and that he viewed this project as the pinnacle of his career. He described this as a career defining project, and he would not rest until it was his finest work.

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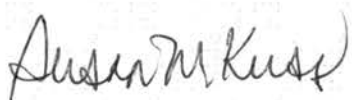
On September 25, 2012, Resolution R12-38 authorized the issuance of a Supplemental Call to Artists (Request for Proposals) for a Historical and Multicultural Public Art Commission at Union Depot in accordance with Ramsey County policies and procedures on Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad Authority with the selection of an artist for contracting authorization.

COUNTY MANAGER'S COMMENTS:

The process followed by RCRRA staff, involving the formation of the Union Depot Art Selection and Design Review Panel, was recommended by FTA under best practices for commissioning public art. The process was consistent with the County's commitment to an open, fair and competitive solicitation process and included input from project stakeholders and the community.

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Regional Railroad Authority – Authorized Signature	Date
	3/20/13

Finance – Authorized Signature	Date
	3/25/13

County Attorney – Authorized Signature	Date
	3/26/13

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

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Draft Resolution

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3 of the The Union Depot Multi-Modal Transportation and Transit Hub ("Depot"); and
4

5 WHEREAS, The Federal Transit Administration's recognition of importance is coupled with
6 a commitment of \$1 million in funding towards the public art program; and
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8 WHEREAS, Public art provides a unique opportunity to recognize and celebrate the rich
9 multicultural histories of Union Depot, the Lowertown neighborhood, St. Paul and the State of
10 Minnesota; and
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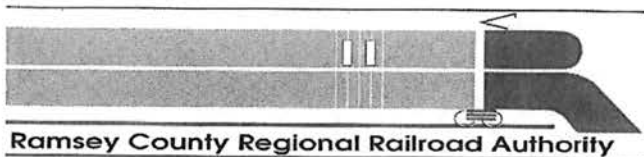
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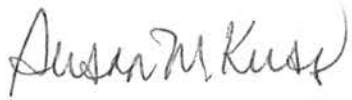
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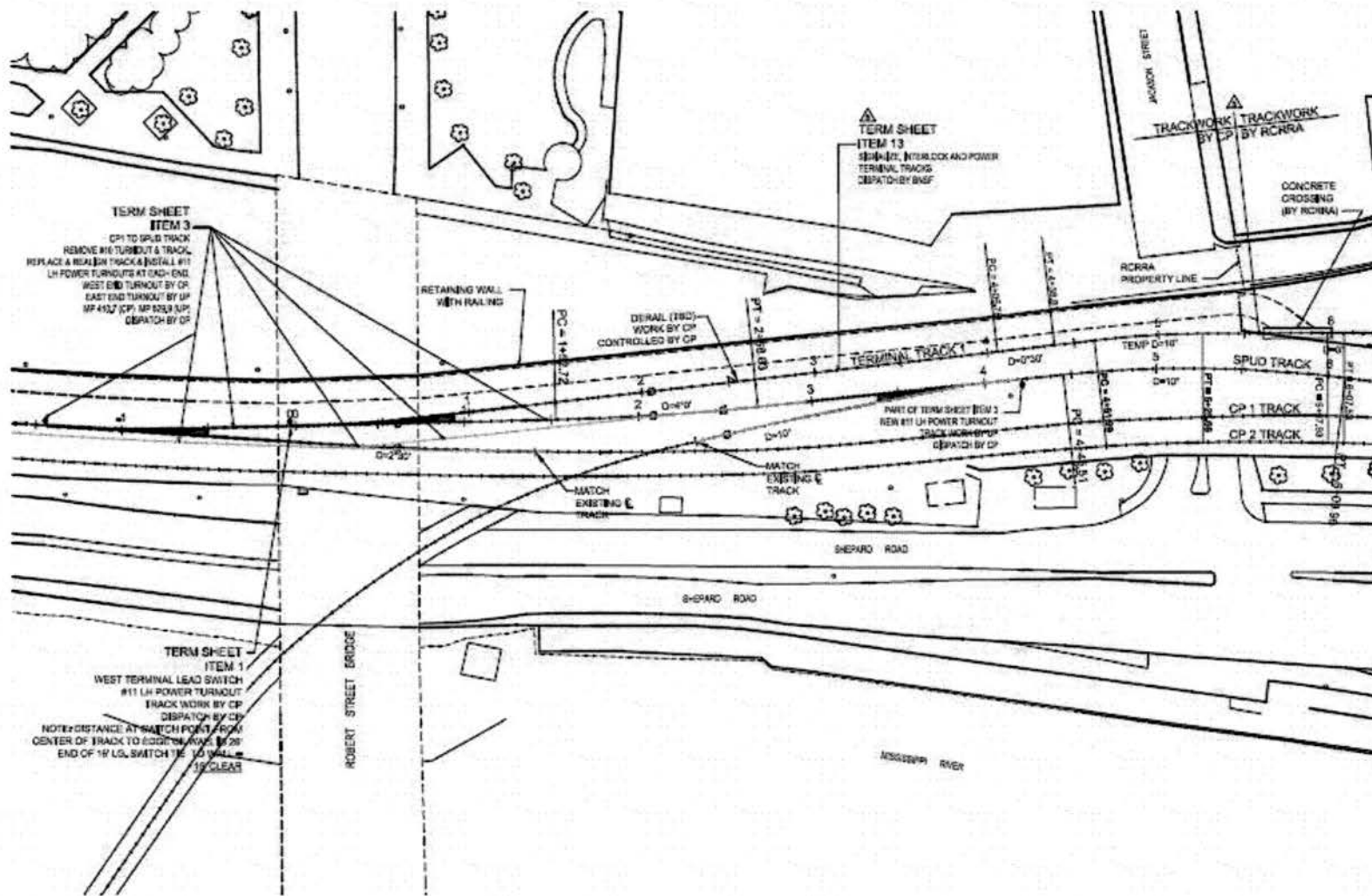
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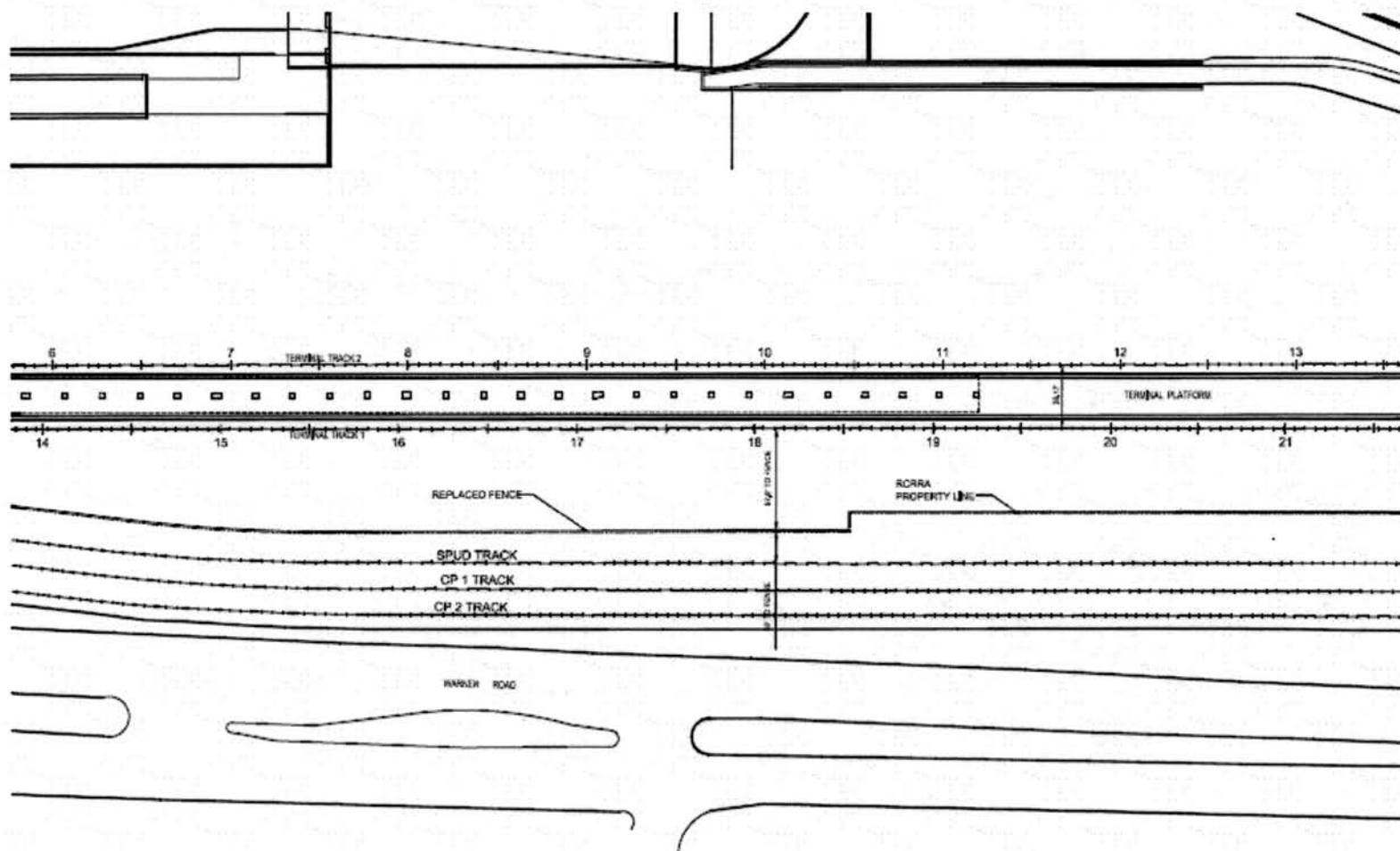
COMPETITIVE SOLICITATION SUMMARY

TITLE Supplemental Call to Artists for a Historical and Multicultural Public Art Commission at Union Depot (RFP)	Programs: Union Depot Multimodal Transportation Hub Goal: Engage a talented public artist to create a work of art for Union Depot that will educate the public about the important history and cultures of the people who were part of Union Depot over the span of its existence.
DATE SENT	October 4, 2012
DATE DUE	November 13, 2012
NUMBER SENT	69
RESPONSES Star (*) those Agencies invited for interviews	1. ALEX COLE JR. 2. ANDREW REID SHED 3. AUGUSTINA DROZE 4. BILL HUEG 5. BRIAN STEWART 6. BRUCE HOWDLE 7. CAITLIN KAROLCZAK 8. CHRIS LAPORTE 9. CONVERSATION STARTS 10. CRAIG DAVID 11. DANIEL GALVEZ 12. DAVE BLODGETT 13. DAVID GORDON 14. DAVID MESSIER 15. DAVID WITT 16. ERIK PEARSON 17. FRANK BROWN 18. GARIN BAKER 19. GARY KORLIN 20. GIESLA HOESLSCHER 21. GLENN TERRY 22. GREG PRESLICKA DBA THE BIG PICTURE 23. HECTOR DUARTE 24. JARED BADER 25. JEFF ZIMMERMAN 26. JOE HEFFRON 27. JOHANNA POETHIG 28. JOHN LEWIS 29. JOHN PITMAN WEBER-NINA SMOOT CAIN 30. JUDITH TAYLOR 31. KATHLEEN FARRELL 32. KEN BERNSTEIN ART STUDIO, INC 33. LILIANA PAYNE 34. LORI GREENE-JOSHUA SARANTITIS 35. LYNDIA PETERSON 36. MARCUS AKINLANA 37. MARGARET MONAHAN 38. MARCIA MCEACHRON-KORINEK-WALSH 39. MARLA MULLANEY 40. MELISSA GOHMAN 41. MELODEE STRONG 42. MICHAEL KIRBY DBA MURALS OF BALTIMORE, LLC 43. MICHAEL WEBB 44. MICHAELA MAHADY

	45. MIKE VYE 46. MJ HEUBACH FINE ART AND DESIGN 47. NANCY B BENNETT 48. PACIFIC STUDIO 49. * RALPH GILBERT * 50. RDG DAHLQUIST ART STUDIO 51. RICHARD BARLOW 52. RICHARD HAAS 53. * ROBERT BARNUM * 54. ROBERT EVANS 55. ROBERTO DELGADO 56. SCOTT GUNVALDSON 57. SCOTT MURPHY 58. SEITU KEN JONES 59. STEPHEN FARLEY 60. STEPHEN T. JOHNSON 61. STUART MORSE 62. TOM BOLLINGER 63. * TOM STANCLIFFE * 64. TOM TORLVEMKE 65. TOMS ROYAL 66. TONY STAFKI 67. VIGEE BLUE 68. WAYNE HEALY/EAST LOST STREETSCAPERS 69. YETTI FRENKEL
REVIEW COMMITTEE Include title and agencies	Rich Laffin, chair, Saint Paul Heritage Preservation Commission; architect with offices in Lowertown Armando Gutierrez G., painter, muralist, performer and musician; founder and former executive director of CreArte Chicano Latino Arts Center and Museum. Roberta Avidor, artist and resident of Union Depot Lofts. Lisa Tabor, executive director of Culture Brokers, secretary for the Saint Paul NAACP and member of the African American Leadership Forum and the American Indian Science & Engineering Society.
VENDORS RECOMMENDED	Ralph Gilbert, Atlanta, GA
OTHER INFORMATION	Review Committee Rating from Criteria in RFP - The Union Depot Art Selection and Design Review Panel reviewed and evaluated applications based on the following criteria: - Aesthetic quality of previously completed art projects and commissions. - Demonstrated experience in developing artworks that educate the public about history and culture, and demonstrated knowledge of the ethnic and cultural communities and histories that are significant to Lowertown and Union Depot. - Applicability and suitability of past work to specific Union Depot commission opportunities, including work that was installed in buildings within a historic site or district. - Appropriateness of previously completed artworks to their sites, including safety and scale; durability and suitability of materials used related to resistance to vandalism and minimization of maintenance requirements. - Experience working with the public and neighborhood communities.







UNION DEPOT
ST. PAUL, MINNESOTA

Mortenson

URS

TKDA

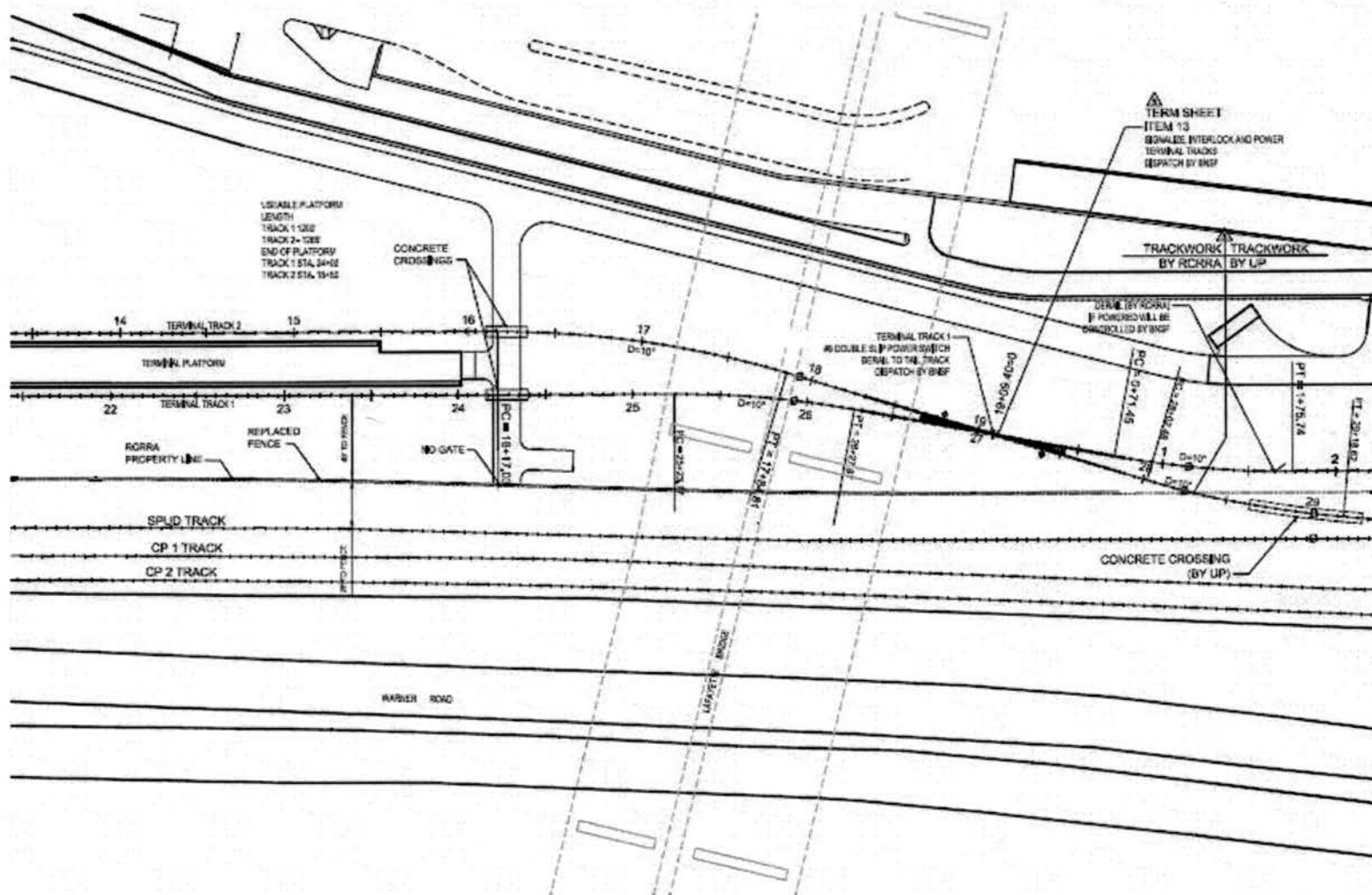
1. THIS PLAN SHALL BE THE PROPERTY OF THE U.S. DEPARTMENT OF TRANSPORTATION AND SHALL BE USED ONLY FOR THE PROJECT AND LOCATION SPECIFICALLY IDENTIFIED HEREON.

DATE: 08/18/2011
BY: [Signature]
CHECKED BY: [Signature]
APPROVED BY: [Signature]

TRACK MODIFICATIONS
NO. 1
NO. 2
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Mortenson
CONSTRUCTION

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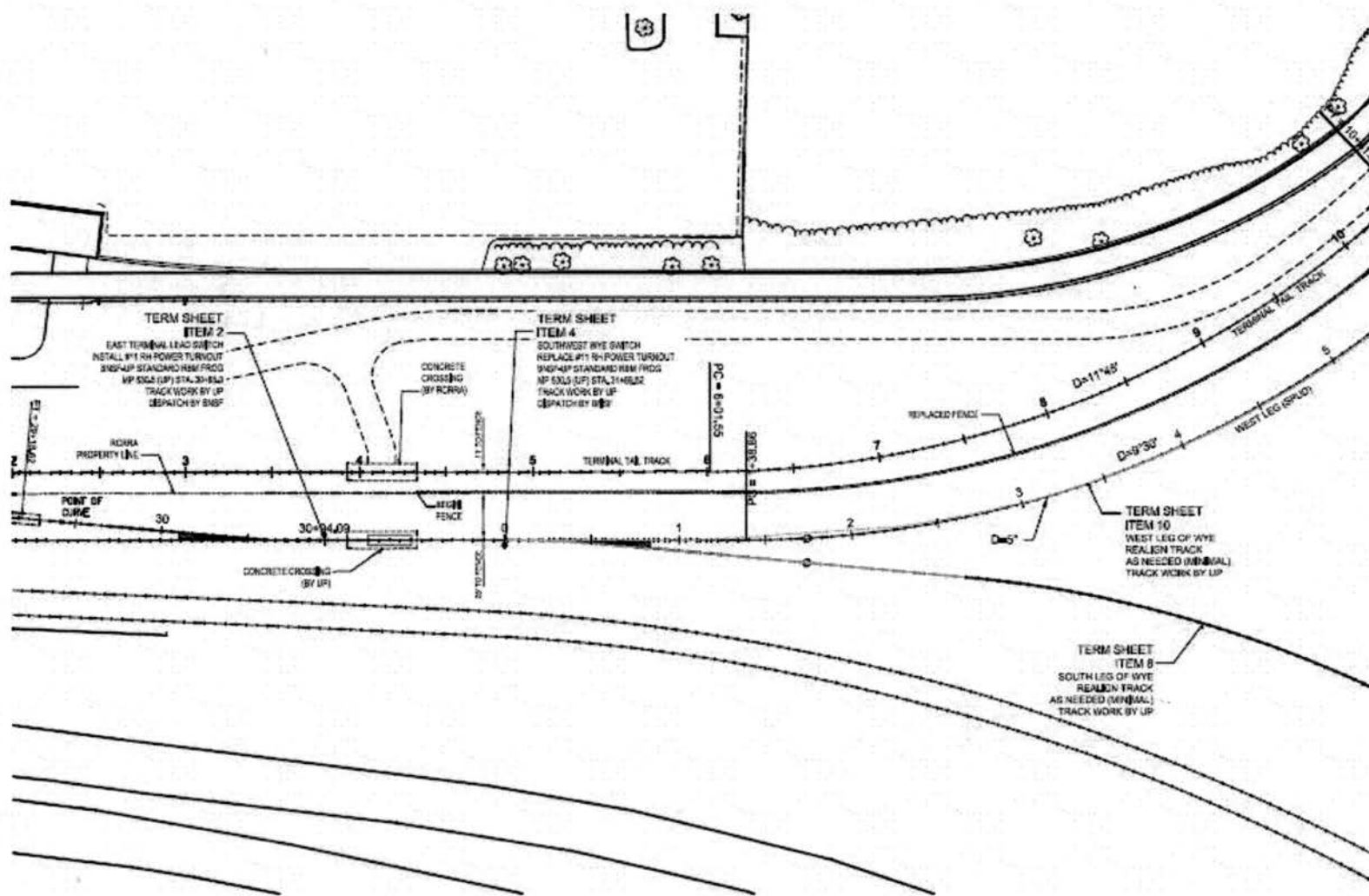
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DESIGNED BY: [Signature]
CHECKED BY: [Signature]
DATE: 10/10/00

REVISION HISTORY
1. 10/10/00 - 10/10/00

TRACK MODIFICATIONS
1. 10/10/00 - 10/10/00

PROPOSED TRACK PLAN
7



UNION DEPOT
ST. PAUL, MINNESOTA

Mortenson

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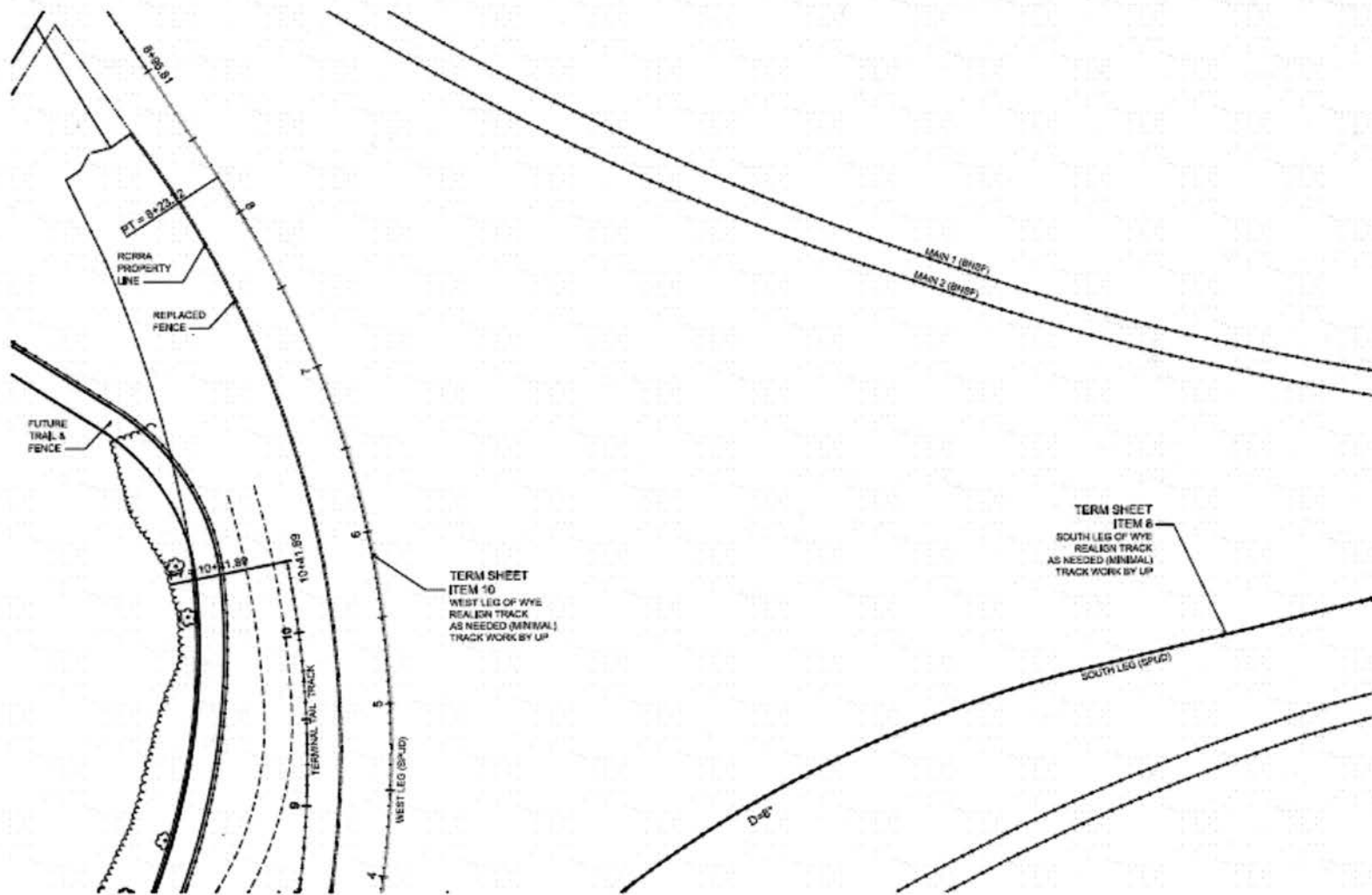
1. THESE PLANS, SPECIFICATIONS, AND CONDITIONS SHALL BE READ AND UNDERSTOOD IN CONNECTION WITH THE BNSF RAILROAD COMPANY'S STANDARD TRACK PLAN, 10-10-10, AND THE BNSF RAILROAD COMPANY'S STANDARD TRACK PLAN, 10-10-10, AND THE BNSF RAILROAD COMPANY'S STANDARD TRACK PLAN, 10-10-10.

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UNION DEPOT
ST. PAUL, MINNESOTA



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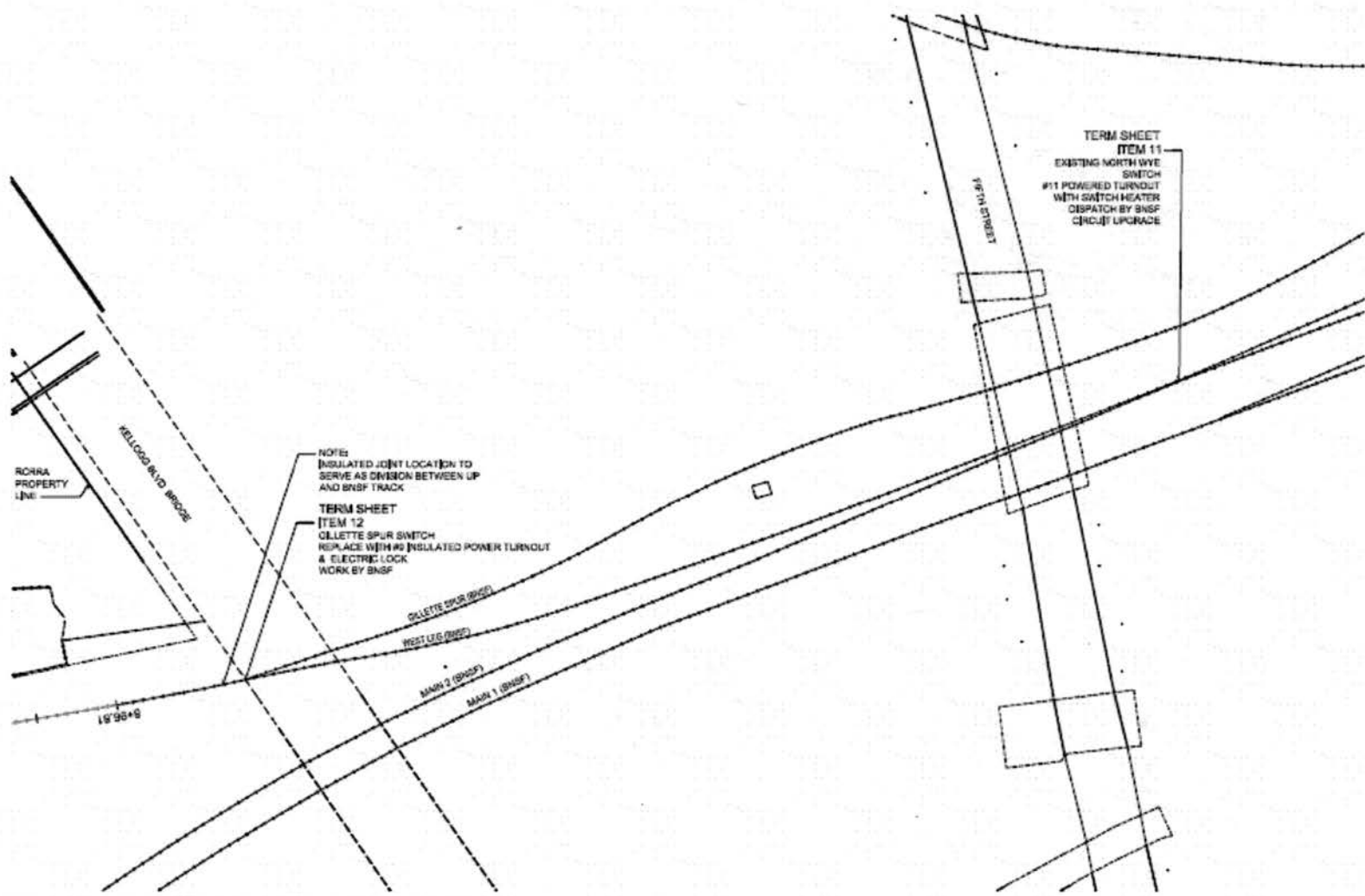
TKDA

DESIGNED BY: [Signature]
CHECKED BY: [Signature]
DATE: 10/10/11

REVISION HISTORY - THIS SHEET

TRACK MODIFICATIONS

PROPOSED TRACK PLAN
9



UNION DEPOT
ST. PAUL, MINNESOTA

Mortenson

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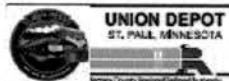
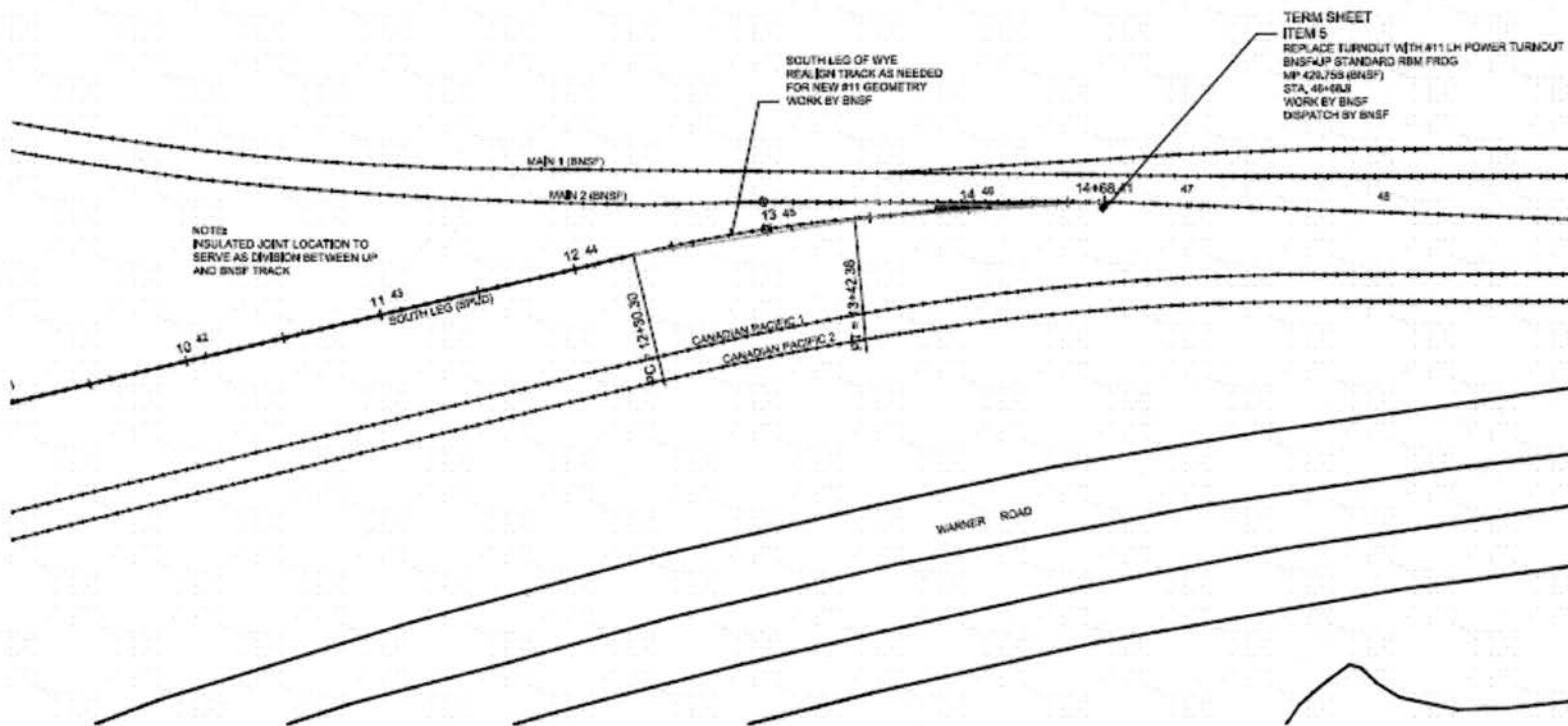
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DATE: 08/18/2011

TRACK MODIFICATIONS
DATE: 08/18/2011
BY: [Signature]

PROPOSED TRACK PLAN
DATE: 08/18/2011
BY: [Signature]

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URS

TKDA

1. THIS PLAN IS THE PROPERTY OF THE URS CORPORATION AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE URS CORPORATION.

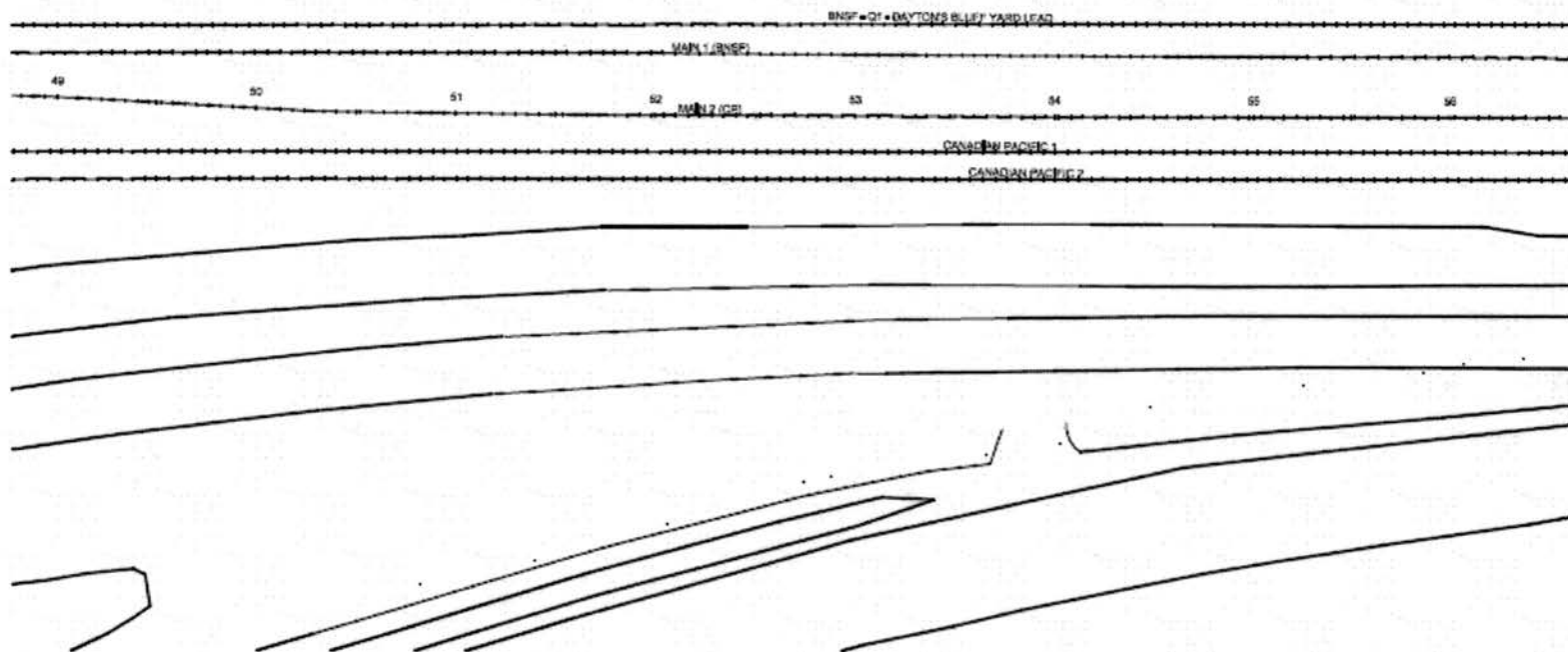
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APPROVED: [Signature]

TRACK MODIFICATIONS
1" = 100'-0"

PROPOSED TRACK PLAN
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(OUT)



UNION DEPOT
ST. PAUL, MINNESOTA



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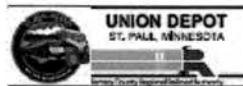
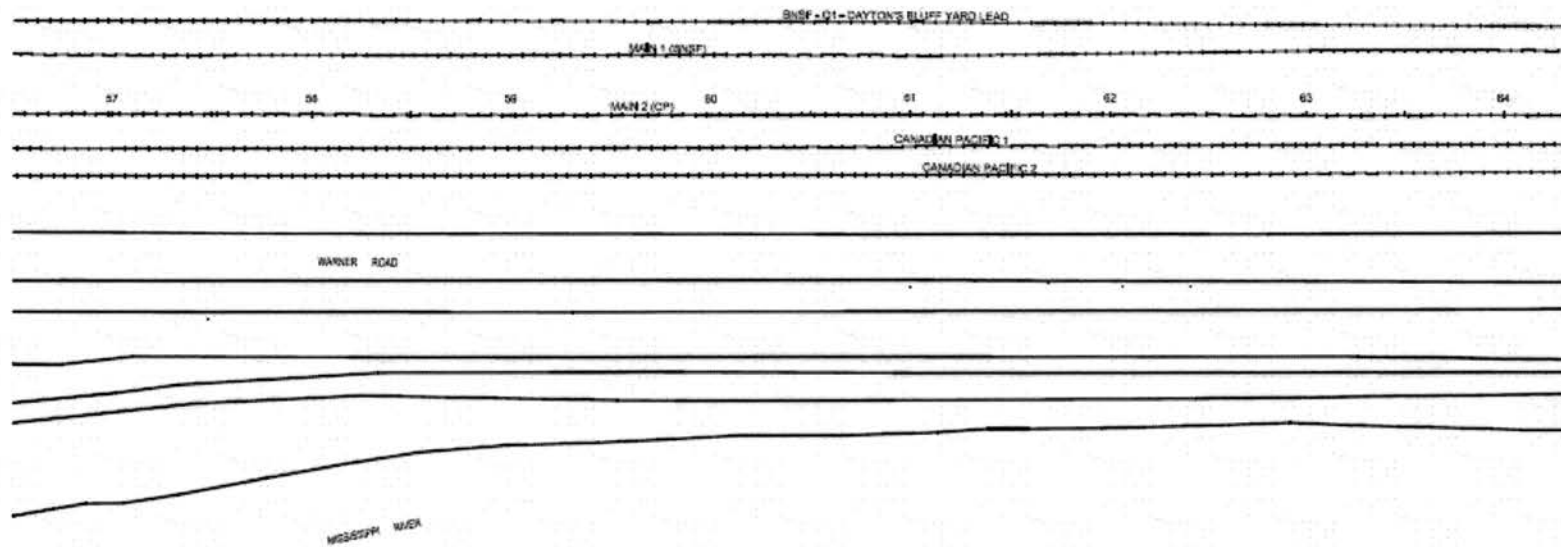
DESIGNED BY: [Signature]
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DATE: 10/18/2011

REVISION HISTORY - THIS SHEET

TRACK MODIFICATIONS

PROPOSED TRACK PLAN

11



1. THIS PLAN IS FOR THE PROPOSED
ST. PAUL UNION DEPOT TRACKS
AND IS NOT TO BE USED FOR ANY
OTHER PURPOSES WITHOUT THE
WRITTEN CONSENT OF THE
DESIGNER.

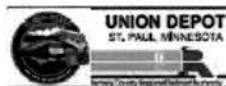
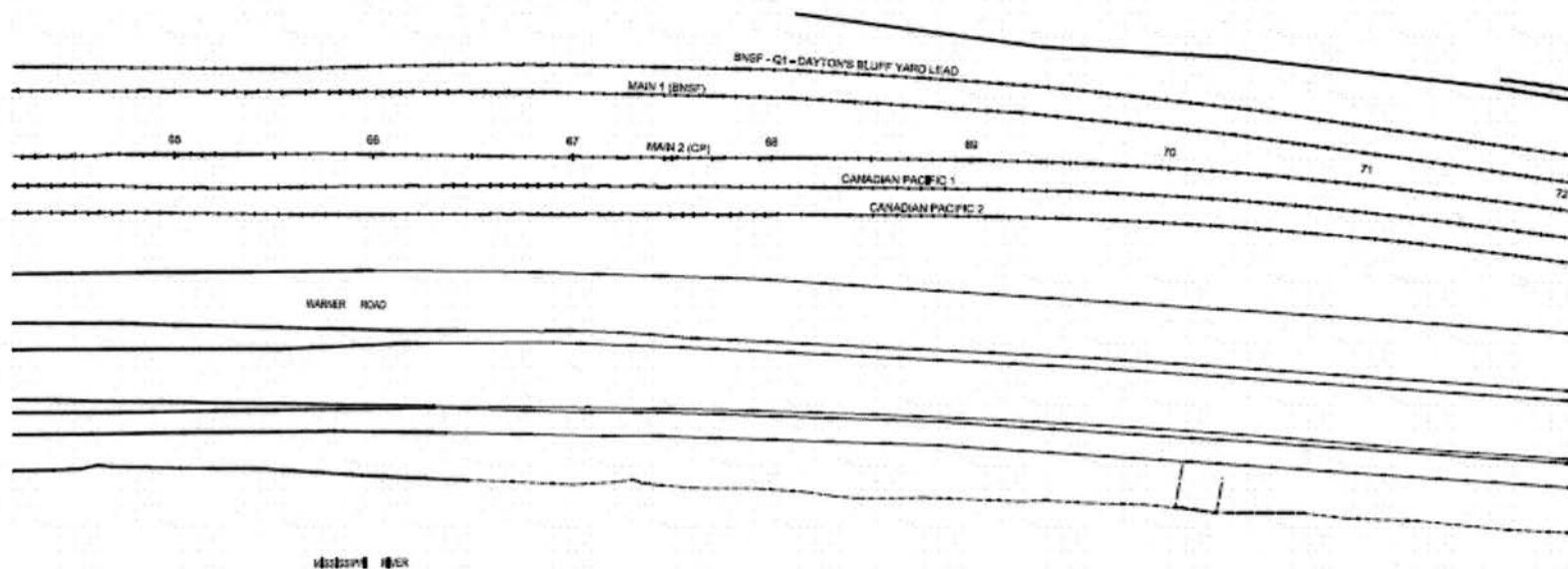
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TRACK MODIFICATIONS
DATE: 08/18/2011
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PROPOSED TRACK PLAN
DATE: 08/18/2011
BY: [Signature]

71



1. THIS PLAN IS FOR THE PROPOSED
2. TRACKS AND YARD LEADS ONLY.
3. IT DOES NOT SHOW EXISTING
4. TRACKS OR YARD LEADS.
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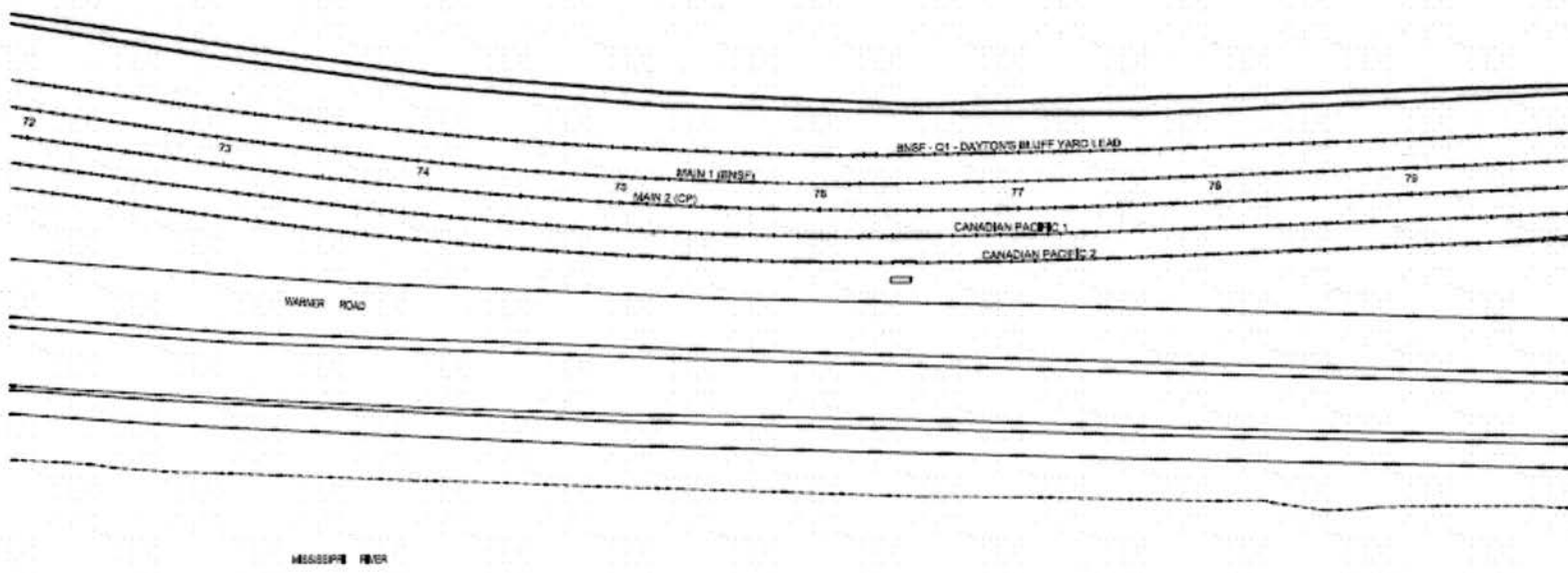
1. TRACKS AND YARD LEADS
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UNION DEPOT ST. PAUL, MINNESOTA	Mortenson construction	URS	TKDA	1. THESE PLANS HAVE BEEN PREPARED BY THE ENGINEER AND THE DESIGNER HAS ACCEPTED THE RESPONSIBILITY FOR THE DESIGN AND CONSTRUCTION OF THE PROJECT. THE ENGINEER HAS NOT BEEN ADVISED OF ANY CHANGES TO THE PROJECT SINCE THE PLANS WERE PREPARED. 2. THE ENGINEER HAS NOT BEEN ADVISED OF ANY CHANGES TO THE PROJECT SINCE THE PLANS WERE PREPARED. 3. THE ENGINEER HAS NOT BEEN ADVISED OF ANY CHANGES TO THE PROJECT SINCE THE PLANS WERE PREPARED.	TRACK MODIFICATIONS <table border="1"> <tr> <th>NO.</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>ADD 10' TO 10'</td> </tr> <tr> <td>2</td> <td>ADD 10' TO 10'</td> </tr> <tr> <td>3</td> <td>ADD 10' TO 10'</td> </tr> <tr> <td>4</td> <td>ADD 10' TO 10'</td> </tr> <tr> <td>5</td> <td>ADD 10' TO 10'</td> </tr> <tr> <td>6</td> <td>ADD 10' TO 10'</td> </tr> <tr> <td>7</td> <td>ADD 10' TO 10'</td> </tr> <tr> <td>8</td> <td>ADD 10' TO 10'</td> </tr> <tr> <td>9</td> <td>ADD 10' TO 10'</td> </tr> <tr> <td>10</td> <td>ADD 10' TO 10'</td> </tr> </table> PROPOSED TRACK PLAN 14	NO.	DESCRIPTION	1	ADD 10' TO 10'	2	ADD 10' TO 10'	3	ADD 10' TO 10'	4	ADD 10' TO 10'	5	ADD 10' TO 10'	6	ADD 10' TO 10'	7	ADD 10' TO 10'	8	ADD 10' TO 10'	9	ADD 10' TO 10'	10	ADD 10' TO 10'
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UNION DEPOT
 ST. PAUL, MINNESOTA



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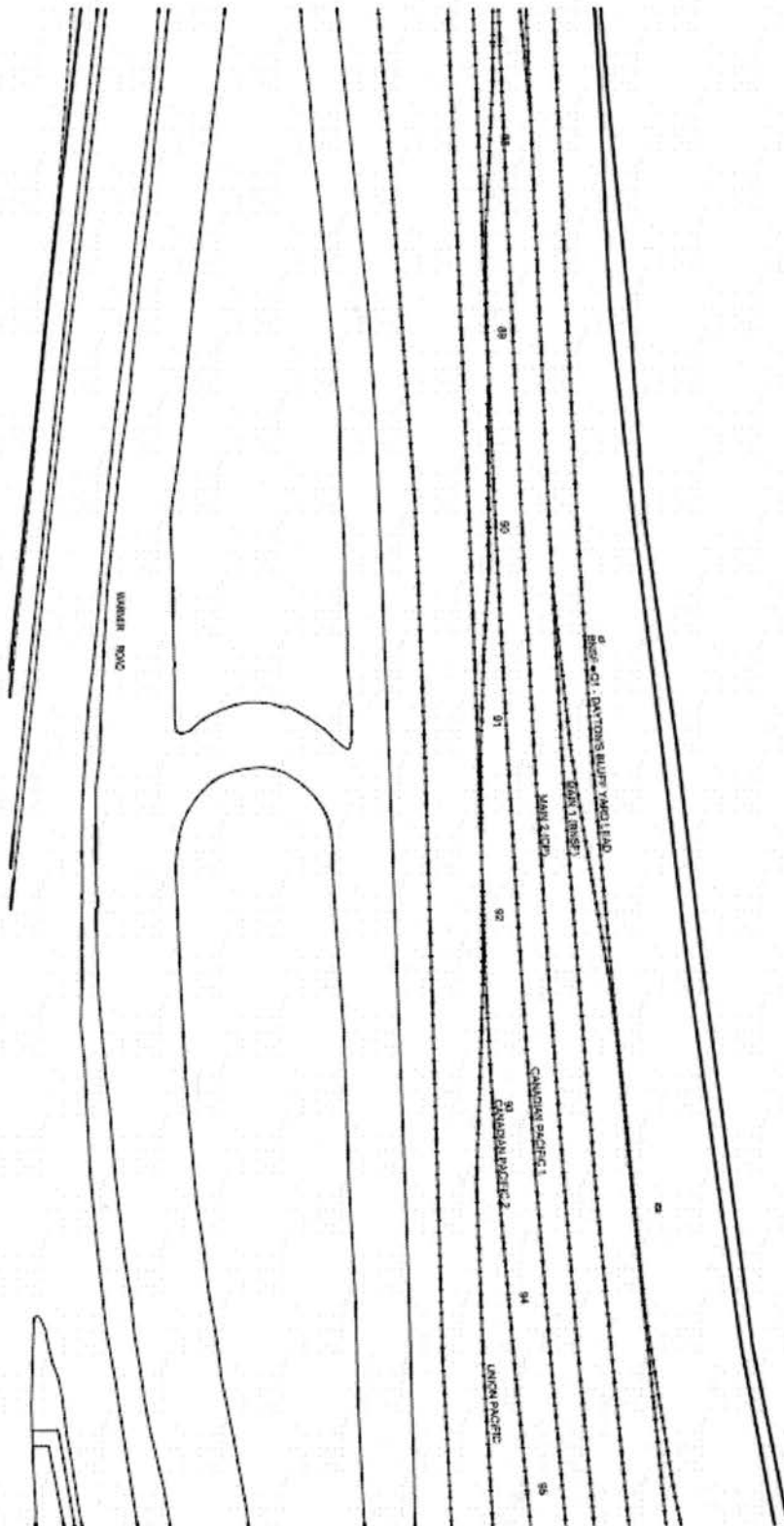
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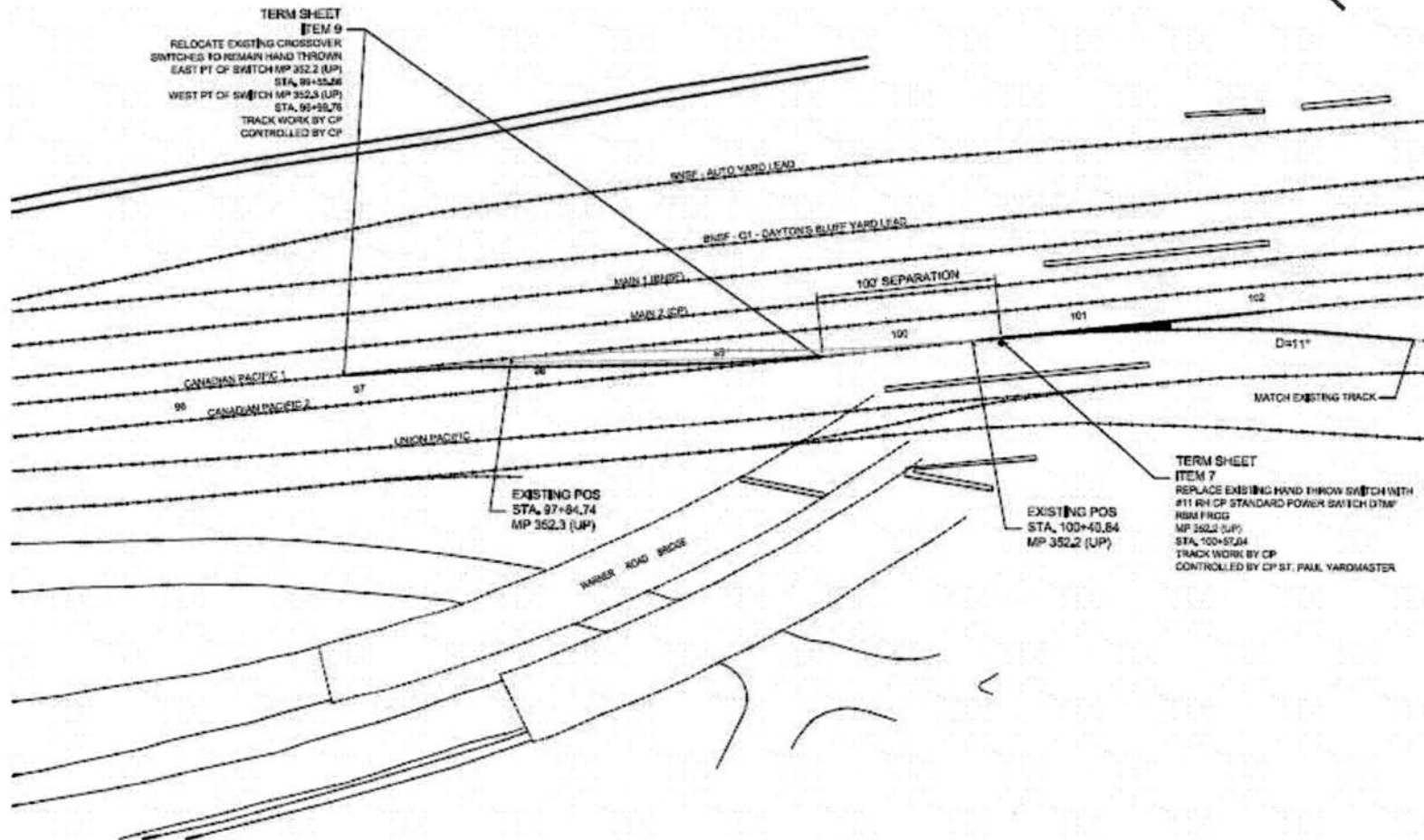


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PROPOSED TRACK PLAN
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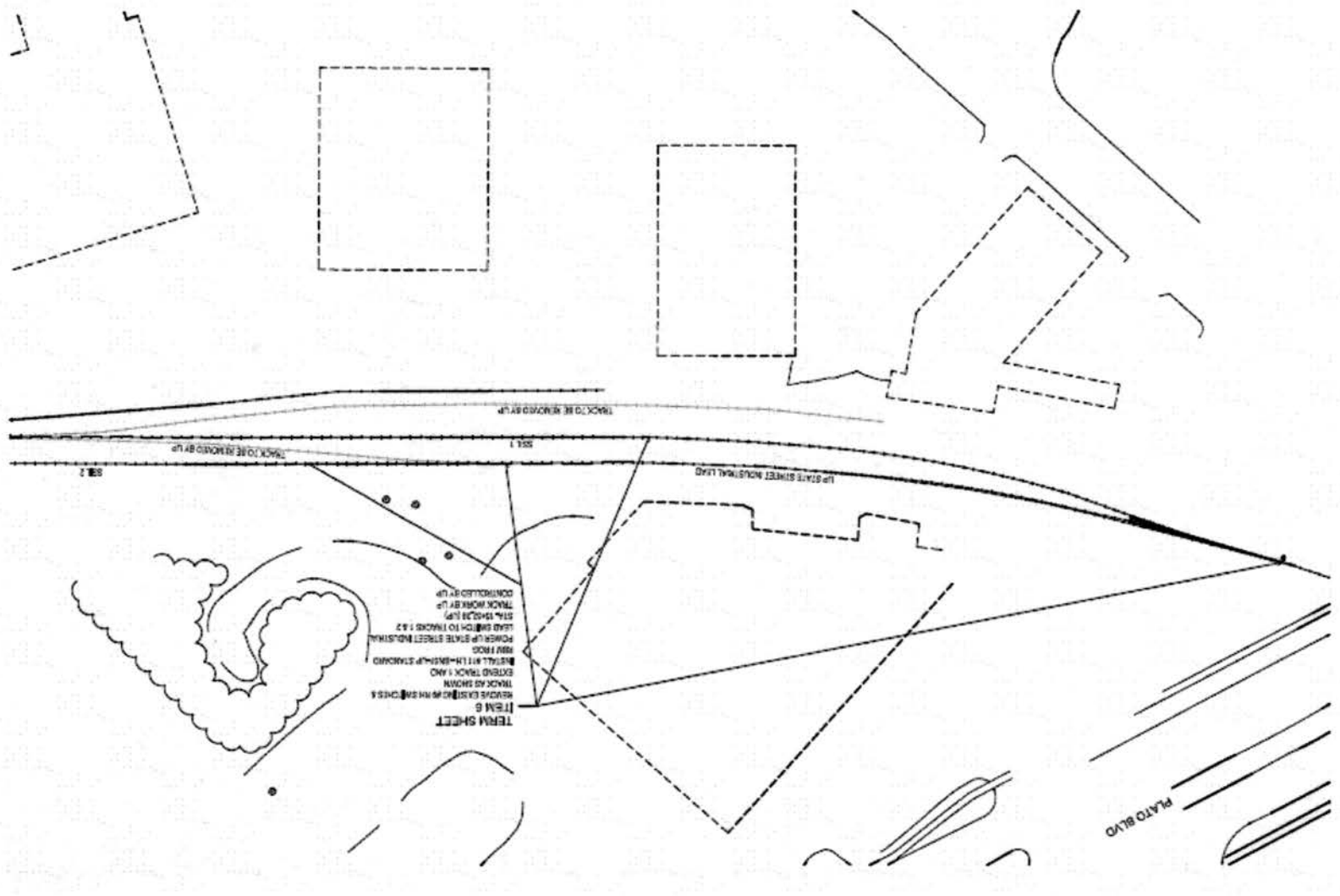
1. THIS PLAN IS TO BE USED FOR THE PROPOSED TRACK MODIFICATIONS TO THE ST. PAUL YARDMASTER TRACKS. IT IS THE RESPONSIBILITY OF THE USER TO VERIFY THE ACCURACY OF THE DATA AND THE RESULTS OF THE TRACK MODIFICATIONS.

2. THE TRACK MODIFICATIONS SHOWN ON THIS PLAN ARE BASED ON THE DATA PROVIDED BY THE USER. THE USER IS RESPONSIBLE FOR THE ACCURACY OF THE DATA AND THE RESULTS OF THE TRACK MODIFICATIONS.

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4. THE TRACK MODIFICATIONS SHOWN ON THIS PLAN ARE BASED ON THE DATA PROVIDED BY THE USER. THE USER IS RESPONSIBLE FOR THE ACCURACY OF THE DATA AND THE RESULTS OF THE TRACK MODIFICATIONS.

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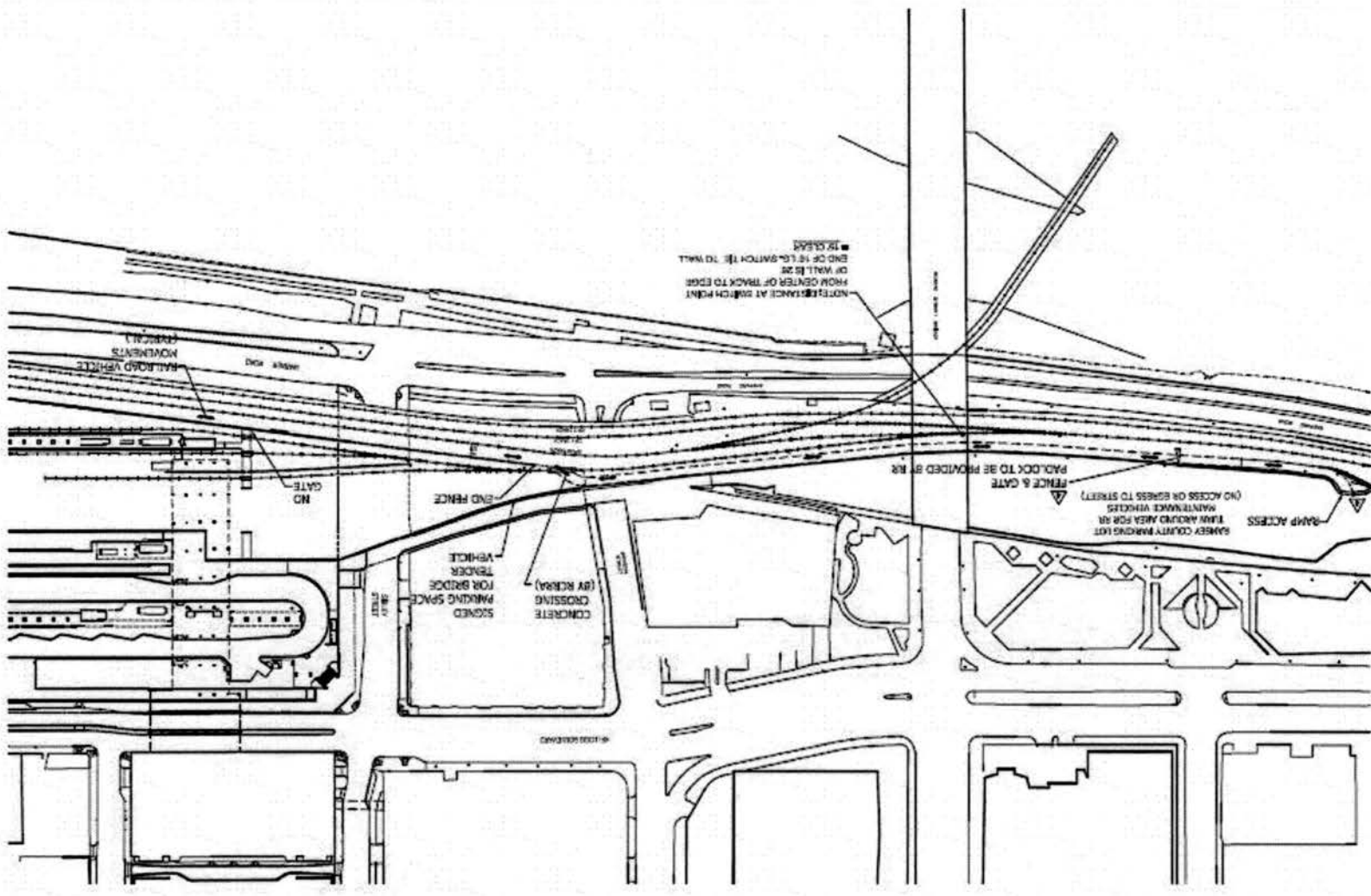




Exhibit I

**U.S. Department of Transportation Federal Railroad Administration Certifications
Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free
Workplace Requirements and Lobbying**

**PART A: Certification Regarding Debarment, Suspension and Other Responsibility
Matters – Primary Covered Transactions (Pursuant to 2 CFR Part 180)**

- (1) The grantee certifies to the best of its knowledge and belief, that it and its principles:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the grantee is unable to certify to any of the statements of this certification, he or she shall attach an explanation to this application.

**PART B: Certification Regarding Drug-Free Workplace Requirements (Pursuant to 49
CFR
Part 32)**

- A. The grantee certifies that it will or continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee is so convicted—

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (e) and (f).

B. The grantee may insert in the space below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____ Check _____ if there are workplaces on file that are not identified here.

PART C: Certification Regarding Lobbying (Pursuant to 49 CFR Part 20)

CHECK _____ IF APPLICABLE
CERTIFICATION IS FOR THE AWARD OF A GRANT OR COOPERATIVE AGREEMENT
EXCEEDING \$100,000
OR A FEDERAL LOAN EXCEEDING \$150,000

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the authorized certifying official, I hereby certify that the certifications in Parts A, B, and C (if C is applicable) are true.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

TYPED NAME AND TITLE

DATE

Exhibit J

Agreement Provisions Applicable to BNSF and its Contractors

BNSF will comply with the following provisions of the Agreement and will incorporate these provisions into any contract it enters into including consultant contracts, and subcontracts at any tier relating to the Project identified in the Agreement.

1. Documentation Standards.

When submitting documents to RCRRA, BNSF will ensure such documents are of professional quality and suitable for their intended purpose.

2. Record Retention/Audit/Reporting

- a. All parties shall maintain all checks, payrolls, invoices, contracts, vouchers, orders, books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering this Agreement for a period of six (6) years after completion of the work on the Project. All parties shall make such materials available at their respective offices at all reasonable times during the term of this Agreement and for six (6) years from the date of final payment on the Project. All parties agree to submit to and cooperate with any audit requested by the State of Minnesota or the Federal Government within such six years relating to the construction of the Project that is the subject of this Agreement. RCRRA or any duly authorized representative of RCRRA or the Federal Government shall have access to any checks, payrolls, invoices, contracts, vouchers, orders, books, records, and documents of all parties that are directly pertinent to the Project for the purpose of making audits, examinations, excerpts, and transactions; and copies thereof shall be furnished if requested.
- b. All parties agree to allow RCRRA, the Secretary of Transportation, the Comptroller General of the United States, or their authorized representatives to inspect all Project work at reasonable times and in a manner that will not unduly delay any work on the Project; provided such individuals comply with BNSF's standard safety requirements for entry onto its right of way.
- c. All parties agree to cooperate with RCRRA and, when requested, to provide information reasonably needed by the RCRRA to satisfy RCRRA's reporting requirements to FHWA as described in the TIGER Addendum in connection with this Project, including, but not limited to, the following information:
 1. The status of completion of items in the Project Description;
 2. An account of significant progress made during the identified reporting period;
 3. The amount of costs for which BNSF is seeking reimbursement during the identified reporting period, but only if such amount has not already been identified in the invoices BNSF has submitted to RCRRA for the work performed;

4. A description of any technical and/or cost problems encountered or anticipated that will affect completion within time and/or budget constraints and any recommended solutions or corrective action plans;
5. A description of work and activities planned for the upcoming identified reporting period;
6. The number of jobs directly created or sustained by the project;
7. If possible, the number of indirect jobs created or sustained in the associated supplying industries;
8. The number of jobs retained by the project after completion of construction of the Project; and
9. Information relating to any subcontracts awarded by BNSF on this Project.

3. Contract Awards

The parties intend that to the extent feasible, when awarding contracts to its contractors, BNSF shall use not to exceed priced and competitively bid contracts.

4. Accounting Records.

The Parties acknowledge that under the terms of the TIGER Addendum, RCRRA must keep a separate set of account or accounts consistent with 49 C.F.R. 18.20 and that all costs charged to the Project including any approved services contributed by the RCRRA or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. To the extent possible, BNSF shall ensure that all invoices are appropriately detailed to support RCRRA's obligations under the TIGER Addendum and shall keep such documents, including all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents, readily available, clearly identified, and to the extent feasible, kept separate from documents not pertaining to projects not covered under this agreement.

5. Buy America

All Parties shall comply with the Buy America provisions set forth in 49 U.S.C. 24405(a), with respect to the use of steel, iron, and manufactured goods produced in the United States, subject to the conditions therein set forth. Upon request, all parties shall provide material's certifications with each invoice for which payment is requested that affirms said materials comply with 49 U.S.C. 24405(a).

6. Davis-Bacon Act Provisions

For Project components funded using the HSIPR funds, BNSF shall comply with 49 U.S.C. 24405(c)(2), with respect to the payment of prevailing wages consistent with the provisions of 49 U.S.C. 24312. For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements. If BNSF chooses to use contractors and sub-contractors consistent with the terms of the Agreement, BNSF shall ensure all such contractors and sub-contractors comply with the requirements of the Davis-Bacon Act and all related acts and regulations.

7. False Claims Act

All Parties shall promptly refer to the U.S. Department of Transportation Inspector General any credible evidence that a principal, employee, agency, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Recovery Act funds.

8. Reserved

9. Application of Federal, State, and Local Laws and Regulations

All Parties understand that Federal laws, regulations, policies, and related administrative practices to this Agreement on the date the Agreement was executed may be modified from time to time. All Parties agree that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in this Agreement of a contrary intent. Likewise, new Federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. All Parties are hereby provided specific notice that Federal requirements may change and all Parties agree that any such changed requirements will apply to the Project as required. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements.

10. Changed Conditions of Performance (Including Litigation)

All Parties agree to notify RCRRA immediately of any change in law, conditions, or any other event that may affect their ability to perform the Project in accordance with the terms of this Agreement. In addition, BNSF agrees to notify RCRRA immediately of any decision pertaining to the BNSF's conduct of litigation that may affect RCRRA's interests in the Project or RCRRA's administration or enforcement of applicable laws or regulations.

11. No FHWA Obligations to Third Parties

FHWA's involvement, approval or concurrence in any decision relating to this project shall not subject FHWA to any obligations or liabilities to BNSF, any third party contractors or third party subcontractors, or any other person not a party to this Agreement in connection with development, construction or performance of the Project.

12. Relocation and Land Acquisition

If any real property is acquired in connection with this Project such acquisition will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq.; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24.

13. Cargo Preference

As required by 46 C.F.R. Part 381, BNSF agrees-

- a. To utilize privately owned United States-flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or

commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

- b. To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, D.C. 20590, marked with appropriate identification of the Project.
- c. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

14. Debarment and Suspension; and Drug-Free Work Place

Certification regarding debarment, workplace and lobbying requirements. BNSF certifies compliance with, and agrees to obtain certifications from its third party contractors on the Project with respect to the certifications set forth in Exhibit I entitled "Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying".

15. Notification of Third Party Contract Disputes or Breaches

BNSF agrees to notify RCRRA of any current or prospective major dispute, breach, or litigation pertaining to any third party contract. If BNSF seeks to name RCRRA or FHWA as a party to litigation for any reason, BNSF agrees first to inform RCRRA before doing so. This proviso applies to any type of litigation whatsoever, in any forum.

16. Patent Rights

a. If any invention, improvement, or discovery of BNSF or any of its third party contractors is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, BNSF agrees to notify FHWA immediately and provide a detailed report. The rights and responsibilities of BNSF, third party contractors and FHWA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

b. If BNSF secures a patent with respect to any invention, improvement, or discovery of BNSF or any of its third party contractors conceived or first actually reduced to practice in the course of or under this Project, BNSF agrees to grant to FHWA a royalty-free, nonexclusive, and irrevocable license to use and to authorize others to use the patented device or process for Federal Government purposes.

c. BNSF agrees to include the requirements of the "Patent Rights" section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.

17. Rights in Data and Copyrights

a. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is developed, delivered, or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.

b. The following restrictions apply to all subject data first produced in the performance of this Agreement:

1) Except for its own internal use, BNSF may not publish or reproduce such data in whole or in part, or in any manner or form, nor may BNSF authorize others to do so, without the written consent of FHWA, until such time as FHWA may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to grant agreements with academic institutions.

2) As authorized by 49 C.F.R. § 18.34, or 49 C.F.R. § 19.36, as applicable, FHWA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

a) Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and

b) Any rights of copyright to which BNSF or a third party contractor purchases ownership with Federal assistance.

c. When FHWA provides assistance for a Project involving planning, research, or development, it is generally FHWA's intent to increase the body of knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FHWA determines otherwise, BNSF understands and agrees that, in addition to the rights set forth in preceding portions of this section of this Agreement, FHWA may make available to any FHWA Grantee or any third party contractor, or third party subcontractor, either FHWA's license in the copyright to the "subject data" derived under this Agreement or a copy of the "subject data" first produced under this Agreement. In the event that such a Project which is the subject of this Agreement is not completed, for any reason whatsoever, all data developed under that Project shall become subject data as defined herein and shall be delivered as FHWA may direct.

d. Unless prohibited by State law, BNSF agrees to indemnify, save and hold harmless FHWA, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by BNSF of proprietary rights, copyrights, or right of privacy, arising out of the publication,

translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. BNSF shall not be required to indemnify FHWA for any such liability arising out of the wrongful acts of employees or agents of FHWA.

e. Nothing contained in this section on rights in data, shall imply a license to FHWA under any patent or be construed as affecting the scope of any license or other right otherwise granted to FHWA under any patent.

f. The requirements of this section of this Agreement do not apply to material furnished to BNSF by FHWA and incorporated in the work carried out under this Agreement, provided that such incorporated material is identified by BNSF at the time of delivery of such work.

g. Unless FHWA determines otherwise, BNSF agrees to include the requirements of this section of this Agreement in its third party contracts for planning, research, development, or demonstration under the Project.

18. Acknowledgement of Support

BNSF agrees to cause to be erected at the site of any construction, and maintain during construction, signs satisfactory to FHWA identifying the Project and indicating that FHWA is participating in the development of the Project. RCRA will prepare and provide such signs to BNSF.

19. Site Visits

FHWA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and management control systems and to provide such technical assistance as may be required. If any site visit is made by FHWA on BNSF property, FHWA shall comply with requirements under Section 7.2 of the Stakeholder Agreement. All site visits and evaluations shall be performed in such a manner as will not unduly delay work being conducted by BNSF.

20. Safety Oversight

To the extent applicable, BNSF agrees to comply with any federal regulations, laws, or policy and other guidance that FHWA or U.S. DOT may issue pertaining to safety oversight in general, and in the performance of this Agreement, in particular.

21. Civil Rights

BNSF agrees to comply with all civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the FHWA determines otherwise in writing. These include, but are not limited to, the following: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) (as implemented by 49 C.F.R. Part 21), which prohibits the discrimination on the basis of race, color, or national origin; (b) Title IX of the Educational Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 1601-1607), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to

nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to the nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) 49 U.S.C. § 306, which prohibits discrimination on the basis of race, color, national origin, or sex in railroad financial assistance programs; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance was made; and (k) the requirements of any other nondiscrimination statute(s) which may apply to BNSF.

22. Americans with Disabilities Act

The Parties shall comply with the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.) and all applicable regulations for the PNWRC Program elements funded under this Agreement and constructed by BNSF. This Agreement does not constitute any obligation by BNSF to execute Task Orders for construction of any improvements the design of which due to requirements of the ADA would impair BNSF's operations. BNSF shall have no obligation to subsequently modify such improvements as a result of this Agreement.

23. Environmental Protection

a. All facilities that will be used to perform work under this Agreement shall not be so used unless the facilities are designed and equipped to limit water and air pollution in accordance with all applicable local, state and Federal standards.

b. BNSF will conduct work under this Agreement, and will require that work that is conducted as a result of this Agreement be in compliance with the following provisions, as modified from time to time, all of which are incorporated herein by reference: section 114 of the Clean Air Act, 42 U.S.C. 7414, and section 308 of the Federal Water Pollution Control Act, 33 U.S.C. 1318, and all regulations issued thereunder. BNSF certifies that no facilities that will be used to perform work under this Agreement are listed on the List of Violating Facilities maintained by the Environmental Protection Agency ("EPA"). BNSF will notify the Administrator as soon as it or any contractor or subcontractor receives any communication from the EPA indicating that any facility which will be used to perform work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that BNSF's duty of notification hereunder shall extend only to those communications of which it is aware, or should reasonably have been aware. BNSF will include or cause to be included in each contract or subcontract entered into, which contract or subcontract exceeds Fifty Thousand Dollars (\$50,000.00) in connection with work performed pursuant to this Agreement, the criteria and requirements of this section and an affirmative covenant requiring such contractor or subcontractor to immediately inform BNSF upon the receipt of a communication from the EPA concerning the matters set forth herein.

c. BNSF may not expend any of the funds provided in this agreement on construction or other activities that represent an irretrievable commitment of resources to a particular course of action affecting the environment until after all environmental and historic preservation analyses required by the National Environmental Policy Act (42 U.S.C. 4332)(NEPA), the National Historic Preservation Act (16 U.S.C. 470(f))(NHPA), and related laws and regulations have been completed and the FHWA has provided BNSF with a written notice authorizing BNSF to proceed.

d. BNSF shall assist RCRRA and FHWA in compliance with the provisions of NEPA, the Council on Environmental Quality's regulations implementing NEPA (40 C.F.R. Part 1500 et seq.), FRA's "Procedures for Considering Environmental Impacts" (45 Fed. Reg. 40854, June 16, 1980), as revised May 26, 1999, 64 Fed. Reg. 28545), Section 106 of the NHPA, and related environmental and historic preservation statutes and regulations. As a condition of receiving financial assistance under this agreement, BNSF may be required to conduct certain environmental analyses and to prepare and submit to the FHWA draft documents required under NEPA, NHPA, and related statutes and regulations (including draft environmental assessments and proposed draft and final environmental impact statements).

e. No publicly-owned land from a park, recreational area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, state or local significance as so determined by such officials shall be used by BNSF without the prior written concurrence of FHWA. BNSF shall assist the RCRRA and FHWA in complying with the requirements of 49 U.S.C. §303(c).

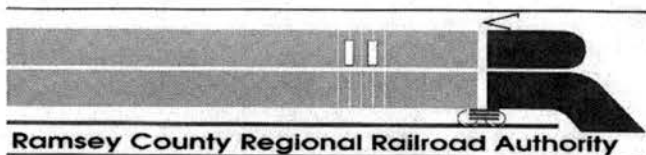
f. BNSF agrees to facilitate compliance with the policies of Executive Order No. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. '4321 note, except to the extent that the FRA determines otherwise in writing.

24. Project Completion, Audit, Settlement, and Closeout

Upon request, BNSF shall obtain and provide RCRRA with the information in its possession and control necessary to meet the requirements set forth in section 22 of the Cooperative Agreement relating to project completion, audit, settlement and closeout.

25. Participation by Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals.

BNSF agrees to: (a) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and (b) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement.



4

REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 04/02/2013

Regional Railroad Authority Meeting Date: _____

SUBJECT: Contract with Ralph Gilbert to design, fabricate and install public art at Union Depot

EXECUTIVE SUMMARY

The Federal Transit Administration (FTA) strongly encourages its funded major construction projects to include a public art program within the project capital costs. FTA's reasoning for this investment is stated in Circular C9400.1A-Federal Transit Administration Design and Art in Transit Projects:

"The visual quality of the nation's transportation systems has a profound impact on transit patrons and the community at large. Mass transit systems should be positive symbols in the community, attracting local riders, tourists and the attention of decision makers for local, regional, national and international events. Good design and art can improve the appearance and safety of a facility, give vibrancy to its public spaces and make patrons feel welcome. Good design and art will also contribute to the goal that transit facilities help to create livable communities."

FTA guidelines state that the public art budget should at a minimum be one half of one percent of construction costs, but should not exceed five percent of construction costs. "One percent for art" is a common practice for governmental organizations. The proposed budget for public art at the Union Depot remains at \$1.25 million, which represents slightly less than one percent of construction costs (0.84 percent).

(The Executive Summary is continued on the following page)

ACTION REQUESTED

- 1) Approve a contract with Ray Ralph Gilbert, 1935 McLendon Ave., Atlanta, GA 30307, for commission of public art at the Union Depot for the period of 4/2/2013 through 6/30/2014, in the amount of \$150,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

SUBJECT: Contract with Ralph Gilbert to design, fabricate and install public art at Union Depot

(Executive Summary continued from previous page)

Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, approved by the RCRRA in December 2011, provides \$1 million towards public art at Union Depot. Ramsey County Regional Railroad Authority ("RCRRA") funds in the amount of \$250,000 will provide the balance. In August 2012, the RCRRA approved contracts with four artists which accounted for \$1.05 million of the \$1.25 million budget. In September 2012, the RCRRA approved the release of two RFPs, including the Supplemental Call to Artists for a Historical and Multicultural Public Art Commission at Union Depot.

The purpose of this Supplemental Call to Artists was to invite artists to submit applications for consideration for a multicultural and historic public art commission in the waiting room of Union Depot. FTA provides guidelines on the process by which artists should be selected, and that process was followed, including utilizing the Union Depot Art Selection and Design Review Panel, composed of artists, arts professionals, historic preservationists, project partners and community representatives. The panel, following a fair and deliberative process, enthusiastically recommends the selection of Ralph Gilbert to create a series of six historical and multicultural murals for the grand waiting room of Union Depot. The total budget for the commission will not exceed \$150,000. Once under contract, the same panel will review and approve subsequent design proposals.

Ralph Gilbert is a figurative painter and muralist who has completed large public projects, including the Piedmont Park Conservancy in Atlanta, and the Helene S. Mills Senior Center of Fulton. Gilbert studied at the Chouinard Art Institute (now the California Institute of the Arts) in Los Angeles and received the Master of Fine Arts degree from the University of California at Santa Barbara. In 2005 he was awarded an Edwin Austin Abbey Memorial Fund Fellowship in mural painting at the National Academy of Design in New York.

Gilbert's experience as a narrative painter dealing with diverse cultures, history and connection to communities is deep. The Piedmont Park Conservancy mural, a barrel-vaulted ceiling in a turn-of-the-century beaux-arts building, was a depiction of Atlanta's version of New York's Central Park, both having been designed by the legendary Frederick Law Olmstead. The Mills Senior Center mural is in the historic Martin Luther King, Jr. district, and features members of a proud, diverse and active community of seniors.

Samples of Gilbert's previous work are included by attachment. Additionally, the review panel wanted to share a few brief notes from Gilbert's interview:

- Gilbert's research would involve meeting with community members, historians, and intensive research of historical archives. Gilbert's research partner and spouse, Dr. Mary Odem, is a professor of American History at Emory University.
- Movement is an important part of Gilbert's work. It is "where figures gain their power." The subjects of his murals are characters created through research, using photos as reference.
- When talking about representing cultural communities, Gilbert spoke of the importance of the work as "dignified," that "people feel represented" when they experience the murals. He noted that this was particularly critical as some of the communities, such as the African American porters/redcaps, worked in service to others. Gilbert said the work will honor the history and strength of the people.
- Gilbert felt it was important to show women in a role that goes beyond being in support of men.
- Gilbert indicated that this is one of the most important mural projects to come on the national public art scene in some time, and that he viewed this project as the pinnacle of his career. He described this as a career defining project, and he would not rest until it was his finest work.

SUBJECT: Contract with Ralph Gilbert to design, fabricate and install public art at Union Depot

ATTACHMENTS:

1. Competitive Solicitation Summary
2. Samples of previous work
3. Draft contract with Ralph Gilbert

PREVIOUS ACTION:

RCRRA previously approved Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, which will provide 80 percent of the funding towards public art at the Union Depot.

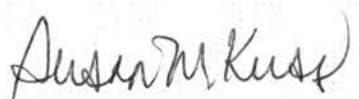
On September 25, 2012, Resolution R12-38 authorized the issuance of a Supplemental Call to Artists (Request for Proposals) for a Historical and Multicultural Public Art Commission at Union Depot in accordance with Ramsey County policies and procedures on Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad Authority with the selection of an artist for contracting authorization.

COUNTY MANAGER'S COMMENTS:

The process followed by RCRRA staff, involving the formation of the Union Depot Art Selection and Design Review Panel, was recommended by FTA under best practices for commissioning public art. The process was consistent with the County's commitment to an open, fair and competitive solicitation process and included input from project stakeholders and the community.

SUBJECT: Contract with Ralph Gilbert to design, fabricate and install public art at Union Depot

Regional Railroad Authority – Authorized Signature	Date
	3/20/13

Finance – Authorized Signature	Date
	3/25/13

County Attorney – Authorized Signature	Date
	3/26/13

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

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Draft Resolution

1 WHEREAS, The Ramsey County Regional Railroad Authority, along with the Federal
2 Transit Administration, recognizes the importance of public art to the overall success and viability
3 of the The Union Depot Multi-Modal Transportation and Transit Hub ("Depot"); and
4

5 WHEREAS, The Federal Transit Administration's recognition of importance is coupled with
6 a commitment of \$1 million in funding towards the public art program; and
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8 WHEREAS, Public art provides a unique opportunity to recognize and celebrate the rich
9 multicultural histories of Union Depot, the Lowertown neighborhood, St. Paul and the State of
10 Minnesota; and
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12 WHEREAS, Public art at Union Depot will: complement the power of the existing
13 architectural elements, support Union Depot as a destination community space, educate the public
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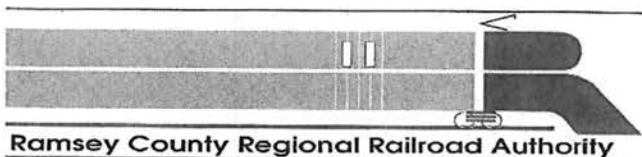
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28

29 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to
30 execute the contract; And Be It Further
31

32 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Ramsey
33 County Manager to make all necessary budget adjustments including increasing estimated
34 revenues and appropriations.

5

COMPETITIVE SOLICITATION SUMMARY

TITLE Supplemental Call to Artists for a Historical and Multicultural Public Art Commission at Union Depot (RFP)	Programs: Union Depot Multimodal Transportation Hub Goal: Engage a talented public artist to create a work of art for Union Depot that will educate the public about the important history and cultures of the people who were part of Union Depot over the span of its existence.
DATE SENT	October 4, 2012
DATE DUE	November 13, 2012
NUMBER SENT	69
RESPONSES Star (*) those Agencies invited for interviews	1. ALEX COLE JR. 2. ANDREW REID SHED 3. AUGUSTINA DROZE 4. BILL HUEG 5. BRIAN STEWART 6. BRUCE HOWDLE 7. CAITLIN KAROLCZAK 8. CHRIS LAPORTE 9. CONVERSATION STARTS 10. CRAIG DAVID 11. DANIEL GALVEZ 12. DAVE BLODGETT 13. DAVID GORDON 14. DAVID MESSIER 15. DAVID WITT 16. ERIK PEARSON 17. FRANK BROWN 18. GARIN BAKER 19. GARY KORLIN 20. GIESLA HOESLSCHER 21. GLENN TERRY 22. GREG PRESICKA DBA THE BIG PICTURE 23. HECTOR DUARTE 24. JARED BADER 25. JEFF ZIMMERMAN 26. JOE HEFFRON 27. JOHANNA POETHIG 28. JOHN LEWIS 29. JOHN PITMAN WEBER-NINA SMOOT CAIN 30. JUDITH TAYLOR 31. KATHLEEN FARRELL 32. KEN BERNSTEIN ART STUDIO, INC 33. LILIANA PAYNE 34. LORI GREENE-JOSHUA SARANTITIS 35. LYNDIA PETERSON 36. MARCUS AKINLANA 37. MARGARET MONAHAN 38. MARCIA MCEACHRON-KORINEK-WALSH 39. MARLA MULLANEY 40. MELISSA GOHMAN 41. MELODEE STRONG 42. MICHAEL KIRBY DBA MURALS OF BALTIMORE, LLC 43. MICHAEL WEBB 44. MICHAELA MAHADY

	45. MIKE VYE 46. MJ HEUBACH FINE ART AND DESIGN 47. NANCY B BENNETT 48. PACIFIC STUDIO 49. * RALPH GILBERT * 50. RDG DAHLQUIST ART STUDIO 51. RICHARD BARLOW 52. RICHARD HAAS 53. * ROBERT BARNUM * 54. ROBERT EVANS 55. ROBERTO DELGADO 56. SCOTT GUNVALDSON 57. SCOTT MURPHY 58. SEITU KEN JONES 59. STEPHEN FARLEY 60. STEPHEN T. JOHNSON 61. STUART MORSE 62. TOM BOLLINGER 63. * TOM STANCLIFFE * 64. TOM TORLVEMKE 65. TOMS ROYAL 66. TONY STAFKI 67. VIGEE BLUE 68. WAYNE HEALY/EAST LOST STREETSCAPERS 69. YETTI FRENKEL
REVIEW COMMITTEE Include title and agencies	Rich Laffin, chair, Saint Paul Heritage Preservation Commission; architect with offices in Lowertown Armando Gutierrez G., painter, muralist, performer and musician; founder and former executive director of CreArte Chicano Latino Arts Center and Museum. Roberta Avidor, artist and resident of Union Depot Lofts. Lisa Tabor, executive director of Culture Brokers, secretary for the Saint Paul NAACP and member of the African American Leadership Forum and the American Indian Science & Engineering Society.
VENDORS RECOMMENDED	Ralph Gilbert, Atlanta, GA
OTHER INFORMATION	Review Committee Rating from Criteria in RFP - The Union Depot Art Selection and Design Review Panel reviewed and evaluated applications based on the following criteria: - Aesthetic quality of previously completed art projects and commissions. - Demonstrated experience in developing artworks that educate the public about history and culture, and demonstrated knowledge of the ethnic and cultural communities and histories that are significant to Lowertown and Union Depot. - Applicability and suitability of past work to specific Union Depot commission opportunities, including work that was installed in buildings within a historic site or district. - Appropriateness of previously completed artworks to their sites, including safety and scale; durability and suitability of materials used related to resistance to vandalism and minimization of maintenance requirements. - Experience working with the public and neighborhood communities.

Attachment #2

SAMPLE IMAGES OF RALPH GILBERT'S WORK



Piedmont Park Conservancy mural, 20'x40' barrel vault, Atlanta.



Detail: Piedmont Park Conservancy Mural



Detail: Piedmont Park Conservancy Mural



Detail: Piedmont Park Conservancy Mural



Detail: Fulton County Senior Center Mural, 3'x60', Atlanta.



Selection of paintings for Milken Foundation Archive of Jewish Music, Los Angeles.

Attachment # 3

AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK

THIS AGREEMENT is entered into between the Ramsey County Regional Railroad Authority ("RCRRA"), a political subdivision of the State of Minnesota, with offices at Union Depot, 214 4th Street East, Suite 200, St. Paul, MN 55101 and Ralph Gilbert Studio, LLC, a Georgia limited liability company, with offices at 1935 McLendon Ave. NE, Atlanta, GA 30307 ("Artist").

WHEREAS, the RCRRA has included Artwork Funding for the establishment and display of Artwork as part of the renovation and restoration of Union Depot ("Project"); and

WHEREAS, the RCRRA issued a Call to Artists for applications to design, execute, fabricate and/or install a series of historical and multicultural murals ("Artwork") in the waiting room area of Union Depot; and

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create Artwork as part of the Project; and

WHEREAS, the Artist and the RCRRA wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

Article 1 Scope of Services

1.1 Artist's Obligations

- 1.1.1 The Artist shall perform all services and furnish all supplies, material and/or equipment as necessary for the design, fabrication, and installation of the Artwork described in **Exhibit 1**, attached to and made a part of this Agreement, at the location described in **Exhibit 1** ("Site"). Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- 1.1.2 The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the RCRRA as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist's proposal shall be reviewed by the RCRRA and its Consultants, as necessary, for approval by the RCRRA to ensure compliance with these objectives.
- 1.1.3 The Artist shall prepare the Artwork design and corresponding budget as provided in Section 1.3 of this Agreement for the approved proposal.
- 1.1.4 Prior to submitting a Schematic Design, the Artist shall travel to the Site to gain an understanding of the Site's unique characteristics and to coordinate with RCRRA staff, as appropriate, to communicate about the Artwork and to ensure appropriate integration and/or installation of the Artwork.

- 1.1.5 Throughout the Project, the Artist shall provide RCRRA staff sufficient detail to permit the RCRRA to determine compliance with applicable local, state or federal laws, ordinances and/or regulations, and to obtain any necessary approvals with the State Historic Preservation Office ("SHPO"), and the City of Saint Paul's Heritage Preservation Commission ("HPC").
- 1.1.6 The Artist shall complete the fabrication of the Artwork by the scheduled installation start date as provided in Section 1.4.2 of this Agreement.
- 1.1.7 The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.
- 1.1.8 The Artist shall arrange the transportation and installation of the Artwork in consultation with RCRRA staff. If the Artist does not personally install the Artwork, the Artist shall supervise and approve the installation.
- 1.1.9 The Artist shall provide required insurance as specified in Article 6 and **Exhibit 2**, attached hereto and made a part of this Agreement.
- 1.1.10 The Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- 1.1.11 The Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
- 1.1.12 The Artist shall provide photographic documentation of the Artwork.
- 1.1.13 The Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

1.2 RCRRA's Obligations

- 1.2.1 The RCRRA shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- 1.2.2 The RCRRA shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, and reports; a list of required permits, licenses, and other authorizations; and other existing relevant data, if any, which is needed by the Artist in order to perform.
- 1.2.3 The RCRRA shall be responsible for compliance with applicable laws and regulations with the exception of required licenses, permits and similar authorizations required to be secured by the Artist under Section 1.1.6, and shall explain any limitations imposed by such laws and/or regulations to the Artist.

- 1.2.4 The RCRRA shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The Artist and RCRRA staff will cooperate to determine reasonable costs for those items that the RCRRA will be responsible for in order to prepare the Site for the timely transportation and installation of the Artwork. The RCRRA shall complete the Site preparations by the scheduled installation start date as provided in Section 1.4.2 of this Agreement or shall notify the Artist in writing of any delays.
- 1.2.5 The RCRRA shall provide and install a plaque on or near the Artwork containing a credit to the Artist substantially in the following form: [Artist's name, Artwork title, date of publication].
- 1.2.6 The RCRRA shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the RCRRA's control.
- 1.2.7 RCRRA staff shall be responsible for leading the Artist through the required review process. RCRRA staff shall be responsible for organizing and scheduling meetings with review entities such as the Union Depot Art Selection and Design Review Panel, the State Historic Preservation Office (SHPO) and the City of Saint Paul's Heritage Preservation Commission (HPC) and for providing the Artist written instructions for the materials required at such meetings should they be necessary.

1.3 Design

1.3.1. Concept/Schematic

- a. Within 180 days of the execution of this Agreement, the Artist shall submit to RCRRA staff the design concept (the "Schematic Design") in the form of detailed color drawings, models, and/or other documents as are required to present a meaningful representation of the Artwork. The Schematic Design will include: a description of the method by which the Artwork is to be fabricated and installed; a description of any operational, maintenance and conservation requirements for the Artwork; a description of the placement of the Artwork at the Site and any site preparations that may be required by the RCRRA including, but not limited to, any changes or modifications to any utility system or structure of the Site as necessary within a reasonable cost and as required by the RCRRA. The design concept shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved. The Schematic Design of the Artwork shall be incorporated into and made a part of this Agreement by reference as **Exhibit 1**.
- b. The proposed Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and

equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense.

- c. Prior to submitting the Schematic Design, the Artist shall visit, examine, research and consider the Site and surrounding area. The Artist shall also discuss with RCRRA staff the most appropriate method to inform the content of the Schematic Design. If applicable, the Artist shall consult with representatives of the community and consider their input and concerns.
- d. The Schematic Design must include sufficient detail to permit the RCRRA, SHPO, and HPC to determine compliance with applicable local, state or federal laws, ordinances and/or regulations.
- e. When the Artist submits the Schematic Design to RCRRA staff for approval, the Artist shall also submit a detailed budget for approval for the design, fabrication and installation of the Artwork, including costs for Site preparation, as described in Section 1.4.1 of this Agreement.

1.3.2 Approval

- a. Within 15 days after the Artist submits the Schematic Design, the Union Depot Art Selection and Design Review Panel will convene and review the submitted Schematic Design. RCRRA staff shall notify the Artist whether it approves or disapproves of the Schematic Design. The RCRRA shall have discretion to approve outright, approve with conditions, or disapprove the Schematic Design.
- b. RCRRA staff shall notify the Artist of any revisions to the Schematic Design determined by the RCRRA to be necessary for the Artwork to comply with applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the accepted Schematic Design.

1.3.3 Redesign

- a. If the Union Depot Art Selection and Design Review Panel disapproves of the Schematic Design, RCRRA staff will notify the Artist in writing of the reasons for such disapproval. In such event, the Artist will submit a Revised Design within 20 days after RCRRA staff has notified the Artist of its disapproval, addressing the identified reasons. This process shall continue until the Union Depot Art Selection and Design Review Panel approves the Revised Design. The Artist will not be paid additional fees for the Revised Design(s).
- b. The Revised Design will reflect changes made to address the stated reasons for disapproval, as well as any adjustments in the budget or

schedule that may be necessary. RCRRA staff shall notify the Artist in writing whether the Union Depot Art Selection and Design Review Panel approves or disapproves of the Revised Design within 30 days after the Artist submits the Revised Design.

- c. If the Artist refuses to revise the Schematic Design pursuant to Section 1.3.3. a., or if the Artist fails to adequately revise the Schematic Design in the judgment of the Union Depot Art Selection and Design Review Panel and RCRRA staff, this Agreement shall terminate and the parties shall be under no further obligation to each other as of the date of such termination. The effective date of termination shall be the date the RCRRA submits its written disapproval of the Revised Design to the Artist. The RCRRA shall submit to the Artist a written termination notice with the disapproval. The termination notice shall advise the Artist that this Agreement has been terminated pursuant to this Article. The termination notice shall notify the Artist that the Artist is entitled to retain the compensation paid prior to the termination date, and that the Parties are under no further obligation to each other. The termination notice shall confirm that the Artist shall retain ownership of all Schematic Designs, Revised Designs and renderings thereof submitted hereunder.

1.3.4 Final Design/Construction Documents

- a. The Artist shall prepare structural drawings for the approved design ("Final Design") detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings and supplementary documents shall indicate any issues involved in the construction, integration and maintenance of the Artwork, and shall identify any subcontractors needed to work on the project including the work to be performed by the subcontractors.
- b. Where appropriate, the Artist shall present such drawings to a qualified engineer, licensed by the State of Minnesota and paid by the Artist, for certification that the Artwork will be of adequate structural integrity, and the Artist shall provide the RCRRA with such certification, signed and stamped by the licensed engineer. The Artist shall present the Final Design to a qualified conservator, designated by RCRRA staff at no cost to the Artist, who will make recommendations on the maintenance of the Artwork. The Artist shall provide a written copy of the conservator's recommendations to RCRRA staff.
- c. The Artist shall provide a detailed narrative Description of the Artwork with explicit detail regarding the overall form or design, scale, dimensions, color, and surface treatment of the Artwork. The Description of the Artwork shall be incorporated into and made a part of this Agreement by reference as **Exhibit 3**.

1.4 Budget/Payment Schedule

1.4.1 Budget

- a. The budget to be prepared by the Artist pursuant to the provisions of this Section shall include all goods, services and materials, with such costs itemized. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date. The Artist shall include a contingency amount between 5% and 10% to be used towards unforeseen costs directly related to the fabrication and/or installation of the project.
- b. Upon approval by the RCRRA staff, the Budget shall be incorporated into and made a part of this Agreement by reference as **Exhibit 4**.
- c. The Artist shall keep a log of the Artist's Project hours as well as the hours of work performed by subcontractors, and shall retain all original receipts pertaining directly to the Project.
- d. The Artist shall notify the RCRRA, in writing, prior to the use of any contingency funds for any purpose.
- e. Upon completion of the Project, and prior to Transfer of Title of the Artwork from the Artist to the RCRRA, the Artist shall provide written notice of any unspent funds from the contingency funds. These unspent funds shall be retained by the Artist.
- f. If the Artist incurs costs in excess of the approved budget, the Artist shall pay such excess from the Artist's own funds unless the Artist had previously obtained written approval for a modified budget incorporating such costs from the RCRRA.

1.4.2 Payment Schedule

- a. A schedule for payment to the Artist is included in **Exhibit 4**.

1.5 Project Construction Schedule and Progress Reports

- 1.5.1 The Artist shall submit a proposed schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any, to the RCRRA for approval. Upon approval, the schedule shall be incorporated into and made a part of this Agreement by reference as **Exhibit 5**.
- 1.5.2 The Schedule may be amended only by written agreement of the parties. Any approved revised schedule shall replace and supersede the original schedule as **Exhibit 5**.

1.6 Fabrication Stage

- 1.6.1 The Artist shall fabricate and install the Artwork in substantial conformity with the Final Design. The Artist may not deviate from the approved Final Design without written approval of RCRRA staff.

- 1.6.2 The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings, if applicable, unless the RCRRRA disapproves. If the Artwork is being constructed on-site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the RCRRRA with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All subcontractors must provide proof of insurance as described in **Exhibit 2** prior to entering the Site.
- 1.6.3 The Artist will inform RCRRRA of the intent to enter into subcontracts for any part of the fabrication of the Artwork. Subcontracted work will be assigned a Disadvantaged Business Enterprise (DBE) goal that will be based on the proposed scope of the subcontracted work for the project. Applicable DBE policies and procedures are attached hereto and made a part of this Agreement as **Exhibit 7**.
- 1.6.4 RCRRRA staff shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. At the RCRRRA's request, the Artist shall provide clear photographic documentation of the progress of fabrication of the Artwork.
- 1.6.5 If RCRRRA staff, upon review of the Artwork, determines that the Artwork does not conform to the Final Design, the RCRRRA reserves the right to notify the Artist in writing of the deviations and that the RCRRRA intends to withhold the next payment.
- 1.6.6 The Artist will inform the RCRRRA of the planned method for achieving conformance to the Final Design, will promptly cure the deviations and will notify the RCRRRA in writing of completion of the cure. RCRRRA staff or the RCRRRA's Consultants, as necessary, shall promptly review the Artwork, and upon approval shall release the next payment. If the Artist disputes the RCRRRA's determination of deviation, the Artist shall promptly submit reasons in writing to the RCRRRA within 10 days of the RCRRRA's notification. The RCRRRA shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the RCRRRA.
- 1.6.7 The Artist shall notify the RCRRRA in writing when fabrication of the Artwork has been completed, and when the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site. Artist shall also provide RCRRRA staff with clear photographic documentation of the completed Artwork.
- 1.6.8 At the RCRRRA's option, RCRRRA staff or the RCRRRA's Consultants, as necessary, shall inspect the Artwork within 10 days after receiving notification pursuant to paragraph 1.6.6, prior to installation, to determine that the Artwork conforms to the Final Design and to give final approval of the Artwork. The

RCRRA shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the RCRRA does withhold final approval, the RCRRA shall submit the reasons for such disapproval in writing within 10 days of examining the fabricated Artwork. The Artist shall then have 30 days from the date of the RCRRA's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Final Design without the prior approval of the RCRRA. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.

1.6.9 RCRRA staff shall promptly notify the Artist of any delays, if such delays are caused by the RCRRA, impacting installation of the Artwork. Any additional storage fees incurred as a result of such delays are the responsibility of the RCRRA.

1.6.10 The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the RCRRA of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

1.7 Changes to Design

1.7.1 Changes to the approved design may not be executed prior to submission of the proposed changes in writing to the RCRRA for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design.

1.7.2 If RCRRA staff approves the changes, the RCRRA shall promptly notify the Artist in writing. RCRRA staff will also make the required presentations to the approval bodies.

1.7.3 If RCRRA staff disapproves of the changes, the RCRRA shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design.

1.7.4 The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the Design under Section 1.7.1. Any claim of the Artist for adjustment under this paragraph must be asserted in writing within 20 days after the date of the approval of the revision by the RCRRA.

1.8 Installation

- 1.8.1 Upon the RCRRA's final approval of the fabricated Artwork as being in conformity with the Final Design, the Artist shall deliver and install the completed Artwork to the Site in accordance with the agreed-upon schedule.
- 1.8.2 The Artist will coordinate closely with RCRRA staff to ascertain that the Site is prepared to receive the Artwork. The Artist must notify the RCRRA of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- 1.8.3 The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with RCRRA staff to ensure timely coordination with the RCRRA's Project construction team. Site access procedures will be identified in coordination with the development of the Artwork design and installation schedule. The Artist may not install the Artwork until authorized to do so by RCRRA staff.
- 1.8.4 The Artist will inform RCRRA of the intent to enter into subcontracts for any part of the installation of the Artwork. Subcontracted work will be assigned a Disadvantaged Business Enterprise (DBE) goal that will be based on the proposed scope of the subcontracted work for the project. Applicable DBE policies and procedures are set forth in **Exhibit 7**.
- 1.8.5 The Artist and any assistants or installation subcontractors shall, at the discretion of the RCRRA, participate in safety training classes for the purpose of accessing construction zones or RCRRA rail rights-of-way.
- 1.8.6 The Artist shall supervise the installation of the Artwork.
- 1.8.7 Upon installation of the Artwork, the Artist shall provide the RCRRA with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used.
- 1.8.8 Upon written acceptance of the installation by the RCRRA in accordance with the provisions of Section 1.9 herein, the Artwork shall be deemed to be in the custody of the RCRRA for purposes of Article 4 and Article 6 of this Agreement.
- 1.8.9 The RCRRA is responsible for the proper care and maintenance of the Artwork after written acceptance of the installation

1.9 Approval and Acceptance

- 1.9.1 The Artist shall notify the RCRRA in writing when all services have been completed in substantial conformity with the requirements of this Agreement and that the Artwork is ready for approval and acceptance.

- 1.9.2 RCRRA staff shall promptly notify the Artist of its final acceptance of the Artwork within 10 days after the Artist submitted written notice pursuant to Section 1.9.1 above. The effective date of final acceptance shall be the date the RCRRA submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the RCRRA acknowledges completion of the Artwork in substantial conformity with the Final Design, and that the RCRRA confirms that all services as required of the Artist have been completed.
- 1.9.3 If the RCRRA disputes that all the services have been performed, the RCRRA shall notify the Artist in writing of those services the Artist has failed to perform within 10 days after the Artist submitted written notice pursuant to Section 1.9.1 above. The Artist shall promptly perform those services indicated by the RCRRA.
- 1.9.4 If the Artist disputes the RCRRA's determination that not all services have been performed, the Artist shall submit reasons in writing to the RCRRA within 30 days of the RCRRA's notification. The RCRRA shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the RCRRA.
- 1.9.5 Upon the resolution of any disputes that arise under this Section 1.9, RCRRA staff shall notify the Artist of its final acceptance of the Artwork.
- 1.9.6 After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by RCRRA staff and the Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork. The RCRRA shall be solely responsible for coordinating public information materials and activities related to public presentations.

Article 2 Taxes

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion and in accordance with all legal requirements. The RCRRA shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

Article 3 Term of Agreement

3.1 Duration

This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to the provisions of this Agreement, shall extend until the completion of obligations by both parties. Provisions of this Agreement that by their nature extend beyond the term of the Agreement shall survive the termination of this Agreement. Extension of time for performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and shall replace the prior Project Schedule as describe in Section 1.5.2.

3.2 Force Majeure

The RCRRA shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Article 4 Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the RCRRA's final acceptance of the Artwork under Section 1.9. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The RCRRA shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork, by written agreement of the RCRRA, is in the custody, control or supervision of the RCRRA or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Article 5 Artist's Representations and Warranties

5.1 Warranties of Title

5.1.1 The Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic effort of the Artist.
- b. Except as otherwise disclosed in writing to the RCRRA, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person.
- c. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere.
- d. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement.
- e. The Artwork is free and clear of any liens from any source whatsoever.
- f. All Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
- g. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.

- h. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.

5.1.2 These representations and warranties shall survive the termination or expiration of this Agreement.

5.2 Warranties of Quality and Condition

The Artist represents and warrants that:

- 5.2.1 All work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two years after the date of final acceptance by the RCRRA under Section 1.9.
- 5.2.2 The Artwork and the materials used are not currently known to be harmful to public health and safety.
- 5.2.3 Reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.8.7.
- 5.2.4 If within two years after Final Acceptance the RCRRA observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the Artist shall, at the request of the RCRRA, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the RCRRA. The RCRRA shall give notice to the Artist of such breach with reasonable promptness.
- 5.2.5 If within two years after Final Acceptance the RCRRA observes a breach of warranty described in this Section 5.2 that is not curable by the Artist, the Artist is responsible for reimbursing the RCRRA for damages, expenses and loss incurred by the RCRRA as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the RCRRA accepted that it may occur, it shall not be deemed a breach for purposes of this Section 5.2 of this Agreement.
- 5.2.6 If after two years after Final Acceptance the RCRRA observes any breach of warranty described in this Section 5.2 that may be curable by the Artist, the RCRRA, at its discretion, has the option to either:
 - a. Contact the Artist to make or supervise repairs or restorations at a reasonable fee; or
 - b. Seek the services of a qualified restorative conservator and maintenance expert.

5.3 Acceptable Standard of Display

5.3.1 The Artist represents and warrants that:

- a. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
 - b. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
 - c. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
 - d. To the extent the Artwork incorporates products covered by a manufacturer's warranty, the Artist shall provide copies of such warranties to the RCRRA.
- 5.3.2 The foregoing warranties are conditional, and shall be voided by the failure of the RCRRA to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the RCRRA fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

Article 6 Liability/Insurance

6.1 General

6.1.1 The Artist acknowledges that, except as otherwise provided herein, until final acceptance of the Artwork by the RCRRA under Section 1.9, any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.

6.1.2 Insurance requirements are set forth in **Exhibit 2**.

6.2 Indemnity

6.2.1 The Artist shall indemnify, defend and hold harmless the RCRRA and officials, employees and agents (each a "Covered Person") from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Losses") arising from, in connection with or caused by:

- a. Any personal injury or property damage caused, directly or indirectly, by any act or omission of the Artist; or

- b. Any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by the Artist.
- 6.2.2 Notwithstanding the foregoing, Artist shall have no obligation under this Section with respect to any Losses that are caused solely by the active negligence or willful misconduct of the Covered Party and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by the Artist.
- 6.2.3 The Artist acknowledges and agrees that its obligation to defend in this Section:
 - a. Is an immediate obligation, independent of its other obligations hereunder;
 - b. Applies to any Losses which actually or potentially fall within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and
 - c. Arises at and continues after the time the Losses are tendered to the Artist.

Article 7 Ownership and Intellectual Property Rights

7.1 Title

Title to the Artwork shall transfer to the RCRRA upon the RCRRA's written final acceptance and payment for the Artwork pursuant to Article 1 and **Exhibit 4**. The Artist shall provide the RCRRA with a Transfer of Title in substantially the form attached hereto and made a part of this Agreement as **Exhibit 6**.

7.2 Ownership of Documents

One set of presentation materials prepared and submitted under this Agreement shall be retained by the RCRRA for possible exhibition and to hold for permanent safekeeping.

7.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

7.4 Reproduction Rights

7.4.1 In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate two or three-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the RCRRA. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.

7.4.2 The Artist grants to the RCRRA and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.

- 7.4.3 All reproductions by the RCRRA shall contain a credit to the Artist in substantially the following form: [Artist's name, Artwork title, date of publication].
- 7.4.4 The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to the RCRRA in substantially the following form: "Artwork commissioned by the Ramsey County Regional Railroad Authority, St. Paul, MN."
- 7.4.5 The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- 7.4.6 If the RCRRA wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- 7.4.7 Third Party Infringement. The RCRRA is not responsible for any third party infringement of the Artist's copyright and not responsible for protecting the intellectual property rights of the Artist.

Article 8 Artist's Rights

8.1 General

- 8.1.1 The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- 8.1.2 The RCRRA agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first consulting with the Artist.
- 8.1.3 If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this contract. Upon written request, the RCRRA shall remove the identification plaque and all attributive references to the Artist at its own expense within 30 days of receipt of the written request. No provision of this Agreement shall obligate the RCRRA to alter or remove any such attributive reference printed or published prior to the RCRRA's receipt of such written request. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

8.2 Alterations of Site or Removal of Artwork

- 8.2.1 The RCRRA shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. The RCRRA shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The RCRRA shall make a reasonable effort to maintain the integrity of the Artwork.

8.2.2 The RCRRA agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact the Artist. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation, the Artist shall provide the RCRRA with written handling instructions. In the event that the Artist is deceased or unable to otherwise give the Artist's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

8.2.3 This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

Article 9 Permanent Record

The RCRRA shall maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

Article 10 Artist as an Independent Contractor

The Artist agrees to perform all Artwork under this Agreement as an independent contractor and not as an agent or employee of the RCRRA. The Artist acknowledges and agrees that the Artist shall not hold himself or herself out as an authorized agent of the RCRRA with the power to bind in any manner. The Artist shall provide the RCRRA with the Artist's Tax Identification Number and any proof of such number as requested by the RCRRA.

Article 11 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

Article 12 Assignment of Artwork

The Artwork and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the RCRRA. The RCRRA shall have the right to assign or transfer any and all of the RCRRA's rights and obligations under this Agreement if ownership of the Site is transferred.

Article 13 Suspension/Termination

13.1 Either Party may suspend this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; superior governmental regulation or control, public emergency or strike or other labor disturbance. Notice of suspension of this Agreement shall be given to the other Party in writing not less than 15 days prior to the effective date of the suspension. If the suspension continues for more than 90 days, either party may terminate this Agreement

without cause. If this Agreement is terminated, the RCRRA shall pay the Artist for services performed and costs incurred that cannot be eliminated prior to the date of termination, consistent with the schedule of payments set forth in **Exhibit 4** of this Agreement.

- 13.2 The RCRRA may terminate this Agreement without cause upon 15 days written notice to the Artist. The RCRRA shall pay the Artist for services performed and costs incurred that cannot be eliminated prior to the date of termination, consistent with the schedule of payments set forth in **Exhibit 4** of this Agreement.
- 13.3 If the Artist willfully or negligently fails to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the RCRRA shall thereupon have the right to terminate this Agreement by giving written notice to the Artist of its intent to terminate, specifying the grounds for termination. The Artist shall have 30 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate and the Artist shall return to the RCRRA all payments received from the RCRRA in excess of expenses already incurred. The Artist shall provide an accounting of such expenses along with the reimbursement payment. All finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. The RCRRA shall retain the right to have the Artwork completed, fabricated, executed, delivered and installed. However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- 13.4 Upon notice of termination, the Artist and his or her subcontractors shall cease all activities under this Agreement.

Article 14 Death or Incapacity

If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for the purpose of Article 13. However, nothing in this Article shall obligate the RCRRA to accept the Artwork. In the event of death of the Artist, this Agreement shall terminate as of the date of death; in the event of incapacity, the Agreement shall terminate upon expiration of 90 days of incapacity. The RCRRA shall pay the Artist, the Artist's heirs, or the Artist's estate, as appropriate, for all services and work delivered in a satisfactory manner and in accordance with the provisions of this Agreement prior to the Artist's death or first day of incapacity.

Article 15 Compliance with Applicable Law

The Artist agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Artist's performance of the provisions of this Agreement, including the provisions of the specific **Federal Requirements**, attached hereto and made a part of this Agreement as **Exhibit 8**. It shall be the obligation of the Artist to apply for, pay for and obtain all permits and/or licenses required by any governmental agency for the provision of those services contemplated herein.

Article 16 Notices and Documents

Notices required under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party pursuant to the provisions of this Article:

For the RCRRA: Josh Collins or successor
Ramsey County Regional Railroad Authority
Suite 6560 RCGC-West
50 W. Kellogg Blvd
St. Paul, MN 55102

For the Artist: Ralph Gilbert
1935 McLendon Ave. NE
Atlanta, GA 30307

Notice shall be deemed effective on the date personally delivered or, if mailed, on the date the return receipt is signed.

Article 17 Waiver

The Parties agree that a waiver of any breach of violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition.

Article 18 Audit

18.1 Until the expiration of six (6) years after the furnishing of services pursuant to this Agreement, the Artist, upon written request, shall make available to the RCRRA, the State Auditor or the RCRRA's ultimate funding sources, a copy of this Agreement and the books, documents, records and accounting procedures and practices of the Artist relating to this Agreement.

18.2 The Artist shall maintain all books, documents, records and accounting procedures and practices of the Artist relating to this Agreement for a period of six years from the date of transfer of title following acceptance and final payment is made. Those records subject to an audit shall be maintained until the audit is resolved, even if this period extends beyond the six years stated. All records shall be made available for inspection or audit, at any time during regular business hours, upon written request by the RCRRA's General Counsel or designated representative, the State Auditor or the County's ultimate funding sources.

Article 19 Data Practices

All data collected, created, received, maintained or disseminated for any purpose in the course of the Artist's performance of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, or any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

Article 20 Conflict of Interest

The Artist and the RCRRA shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 21 Arbitration

- 21.1 If, during the creation of the Artwork, its installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other, provided that the breach is not cured within a reasonable time under Section 13.3 of this Agreement.
- 21.2 If an ambiguity arises regarding this Agreement upon which the parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit the matter to arbitration.
- 21.3 Each Party agrees to be responsible for its own attorney's fees and costs.

Article 22 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto in the form of an amendment to this Agreement.

Article 23 Conflicts of Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel or mediation procedure to be in conflict with the laws, rules, and/or regulations of the United States or the State of Minnesota, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 24 Interpretation of Agreement; Venue

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate state or federal district court in Ramsey County, Minnesota.

Article 25 Prompt Payment

Payment of interest on late payments and disputes regarding payments shall be governed by the provisions of Minn. Stat. Section 471.425.

Article 26 Contractor Certification Regarding Debarment, Suspension, and Responsibility (If applicable)

Federal Regulation 45 CFR 92.35 prohibits the RCRRA from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government.

By signing this Agreement, the Artist certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and
2. Have not within a three-year period preceding this Agreement:

- a. been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract;
 - b. violated any federal or state antitrust statutes; or
 - c. committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
3. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for:
 - a. commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction;
 - b. violating any federal or state antitrust statutes; or
 - c. committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
4. Have not had one or more public transactions terminated with in the preceding three years for cause or default; and
5. Shall not knowingly enter into any transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and that they will require any subcontractor that receives more than \$100,000 to make a similar certification as set forth herein; and
6. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Agreement are in violation of any of the certifications set forth above; and
7. Shall immediately give written notice to the RCRRA should the Artist come under investigation for allegations of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

Article 27 Non-Conforming Services

The acceptance by the RCRRA of any non-conforming services under the terms of this Agreement or the foregoing by the RCRRA of any of the rights or remedies arising under the terms of this agreement shall not constitute a waiver of the RCRRA's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the RCRRA provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

Article 28 Unavailability of Funding

The purchase of goods or services from the Artist under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds from the RCRRA Board. The RCRRA may immediately terminate this Agreement if the funding for the Artwork is no longer available or is not appropriated by the RCRRA Board. Upon receipt of the RCRRA's notice of termination of the Agreement the Artist shall take all actions necessary to discontinue further commitments of funds to the Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the RCRRA.

Article 29 Prevailing Wage

The Artist and all subcontractors shall conform to the labor laws of the State of Minnesota, and all other laws, ordinances, and legal requirements affecting the work in Ramsey County and Minnesota. The minimum wage rate per hour to be paid for each classification of work shall be the union wage rate in the locality of the project for those classifications over which the unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which the unions do not have jurisdiction.

Article 30 Respectful Workplace and Violence Prevention

The Artist shall make all reasonable efforts to ensure that the Artist's employees, officials and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined in the Ramsey County Respectful Workplace and Violence Prevention Policy, means words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority where the impact is to cause pain, fear or injury.

Article 31 Subcontractor Payment

The Artist shall pay any subcontractor within ten days of the Artist's receipt of payment from the RCRRA for undisputed services provided by the subcontractor. The Artist shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Artist shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Artist must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

Article 32 Lobbying

For all contracts involving over \$100,000 in federal funds, the Artist must sign the Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements, attached hereto and made a part of this Agreement as **Exhibit 8**.

Article 33 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements, and conditions between the parties. No verbal agreements or conversations between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligations.

WHEREFORE, this Agreement is duly executed on the last date written below.

**RAMSEY COUNTY REGIONAL
RAILROAD AUTHORITY**

RALPH GILBERT STUDIO, LLC

Jim McDonough, Chair
Ramsey County Regional Railroad Authority

By: _____
Print Name: Ralph Gilbert _____
Its (title): _____
Date: _____

Approval recommended:

Timothy A. Mayasich, Director
Ramsey County Regional Railroad Authority

Approved as to form and insurance:

Assistant County Attorney

Exhibit 1
Concept/Schematic Design

(To be developed and incorporated into the contract as provided in Section 1.3.1 of the forgoing contract to which this exhibit is attached.)

Exhibit 2
Insurance Requirements

The Artist shall obtain and maintain for the duration of the contract, an insurance policy or policies for the protection of both the **Artist** and the **RCRRA**. The **RCRRA** requires certification of insurance coverage from all Artists/subArtists, Sub-contractors and suppliers before commencing work. All subcontractors used for the installation shall provide certificates of insurance evidencing General Liability, Workers Compensation, and automobile coverage prior to installation with the RCRRA and Ramsey County as property manager added as an additional insured with respect to installation of the artwork.

Please carefully review the requirements outlined.

IT IS HIGHLY RECOMMENDED THAT YOU CONFER WITH YOUR INSURANCE BROKER/AGENT OR OTHER INSURANCE COMPANY REPRESENTATIVE, BEFORE SUBMITTING YOUR BID, TO DETERMINE THE AVAILABILITY AND APPLICABLE COST, IF ANY, OF CERTIFICATES, ENDORSEMENTS, COVERAGES, AND LIMITS REQUIRED.

1. MINIMUM SCOPE AND EXTENT OF COVERAGE

A. GENERAL LIABILITY

Commercial General Liability, ISO coverage form number **CG 00 01** ("occurrence" basis).

\$ 1,000,000 limit per occurrence for bodily injury, personal injury, and property damage; **\$1,000,000** annual aggregate

The Ramsey County Regional Railroad Authority, its commissioners, officers, officials, agents, and employees, shall be endorsed as **additional insureds** by ISO Form **CG 20 26 -- ADDITIONAL INSURED -- DESIGNATED PERSON OR ORGANIZATION** or equivalent. As additional insureds, they shall be covered as to work performed by or on behalf of the **Artist** or as to liability which arises out of **Artist's** activities or resulting from the performance of services or the delivery of goods called for by the **Contract**.

B. AUTOMOBILE LIABILITY (IF APPLICABLE)

Business Auto or Personal Automobile Liability insurance
\$1,000,000 limit per occurrence covering bodily injury and property damage.

C. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY (IF APPLICABLE)

Statutory Workers' Compensation insurance for all states where Proposer has work

locations and standard Employer's Liability insurance, *if required by state law*.

D. PROFESSIONAL LIABILITY – REGISTERED STRUCTURAL ENGINEER
(IF APPLICABLE)

D.1 Per Claim \$1,000,000
Aggregate Limit: \$2,000,000

D.2 Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. If coverage is carried on a claims-made basis, then: 1) the retroactive date shall be noted on the Certificate and shall be prior to or the day of the inception of this Agreement; and 2) evidence of coverage shall be provided for three years beyond expiration of this Agreement.

E. PROPERTY

The Artist shall maintain property coverage on an all-risk basis and shall add the RCRRA as a loss payee as the RCRRA's interest in the Artwork may appear. This interest shall be based on the payments made according to **Exhibit 4** for the commissioned Artwork as defined in the contract between the Artist and the RCRRA. The Artist shall keep this policy in effect until the RCRRA's final acceptance of the Artwork under Article 4 Risk of Loss.

2. INSURER QUALIFICATIONS/ACCEPTABILITY

The insurance required hereunder shall be issued by an **A.M. Best "A-" rated, Class VI** insurance company licensed to conduct insurance business in the state of Minnesota.

3. VERIFICATION OF INSURANCE COVERAGE

Prior to commencing work, the **Artist** shall furnish the **RCRRA** with CERTIFICATE(S) OF INSURANCE (including a Professional Liability insurance certificate from Registered Structural Engineer) and with any applicable original endorsements evidencing the required insurance coverage. A person authorized by that insurer to bind coverage on its behalf must sign the insurance certificates and endorsements. All certificates and endorsements received by the **RCRRA** are subject to review and approval by the Ramsey County Attorney's Office. The **RCRRA** reserves the rights to require complete, certified copies of all required policies at any time. If the scope of this contract will exceed one (1) year—or, if any of **Artist's** applicable insurance coverage expire prior to completion of the work or services required under this contract—the **Artist** will provide a renewal or replacement certificate before continuing work or services hereunder.

4. NON-WAIVER

Nothing in this Agreement shall constitute a waiver by the **RCRRA** of any statutory or common law immunities, limits, or exceptions on liability.

Exhibit 3
Final Design

(To be developed and incorporated into the contract as provided in Section 1.3.4 of the forgoing contract to which this exhibit is attached)

[This exhibit will identify the location of the Artwork and will provide a detailed narrative describing the proposed artwork with explicit detail regarding the overall form or design, scale, dimensions, color and surface treatment of the Artwork.]

Exhibit 4
Artwork Budget

(To be developed and incorporated into the contract as provided in Section 1.4.1 of the forgoing contract to which this exhibit is attached.)

Fee and Payment Schedule

The RCRRA shall pay the Artist a fixed fee of one hundred and fifty thousand dollars (\$150,000), which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- a. \$22,500 upon the execution of this Agreement, recognizing that the Artist will invest time and expense in preparing the Design as set forth in Section 1.3 of the Agreement;
- b. \$37,500 upon the RCRRA's notification to the Artist of its approval of the Final Design as set forth under Section 1.3 and issuance of a Notice to Proceed with Fabrication and Installation;
- c. \$37,500 within 30 days after the Artist notifies the RCRRA that the Artwork fabrication is 50% complete and provides photographic or other reasonable documentation as requested by the RCRRA;
- d. \$37,500 within 30 days after the Artist notifies the RCRRA that the Artwork is fabricated and ready for delivery and installation at the Site as set forth under Section 1.5(f);
- e. \$15,000 within 30 days after final acceptance of the Artwork by the RCRRA as set forth under Section 1.8(e).

Exhibit 5
Project Schedule

(To be developed and incorporated into the contract as provided in Section 1.5.1 of the forgoing contract to which this exhibit is attached.)

Exhibit 6
Transfer of Title

STATE OF MINNESOTA
COUNTY OF RAMSEY

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the RCRRA, located in St. Paul, Minn., its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by the Ramsey County Regional Railroad Authority and as described in the agreement between the parties.

Title: _____
Location: _____

IN WITNESS WHEREOF, the Artist has executed this written transfer of title on this _____ day of _____, 20____.

ARTIST

ADDRESS

WITNESS

Sworn to and subscribed
before me this _____ day
of _____, 20____.

NOTARY PUBLIC

My Commission Expires:
(NOTARY SEAL)

Exhibit 7
Federal DBE Requirements

1. **Artwork Disadvantaged Business Enterprise Requirements** (FTA Funding with DBE Goal – APPLICABLE TO SUBCONTRACTED WORK ONLY)

- A. General Requirement.** This contract is funded in part with a grant from the Federal Transit Administration (FTA), whose funds are administered locally by the Metropolitan Council ("Council"), and provided to the RCRRA through a sub-recipient grant agreement. For this project, the Disadvantaged Business Enterprise (DBE) requirements of the Transportation Equity Act for the 21st Century (TEA-21) and 49 CFR part 26 will apply only to subcontracted portions of the Artwork project. Under 49 CFR section 26.51, the Council will establish a goal for DBE participation for work that will be subcontracted by the Artist. The DBE goal will be based on the proposed scope of subcontracted work for the Artwork.

Selected artists who subcontract work will be required to make good faith efforts to meet the established DBE goal. Good faith efforts may be demonstrated by either:

- 1) documenting the participation of specific DBEs to meet the goal; or
- 2) documenting adequate good faith efforts to meet the goal, even if the efforts were not successful in obtaining sufficient DBE participation to meet the goal.

B. Documenting Good Faith Efforts

Participation of DBE. If the Artist will be using a DBE the Artist must list all firms, if any, whose participation is committed to be credited toward meeting the DBE goal. All DBE firms which are listed must, as of the date the information is provided by the Artist to the RCRRA, be:

- 1) certified by the Minnesota Unified Certification Program (MnUCP) as a DBE; or
- 2) certified by any other United States Department of Transportation (USDOT) recipient and then certified by the MnUCP; or
- 3) included on the MnUCP **Disadvantaged Business Enterprise (DBE) Directory**.

All of the firms on this listing shall be considered "currently certified" for the purposes of proposal submittal. This listing is available from the Council and can also be found at the following website:

<http://www.dot.state.mn.us/civilrights/ucpdirectory.html>

Adequate Good Faith Efforts. If the Artist will not be using a DBE, the Artist must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if it was not fully successful.

The Council's DBE Liaison Officer will determine whether the Artist made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 CFR section 26.53, and Appendix A thereto.

Compliance will be determined based on a review of documentation of the following types of activities:

- 1) Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the subcontracted work related to the Artwork. The Artist must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Artist must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- 2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Artist might otherwise prefer to perform these work items with its own forces. The Artist is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- 3) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation of DBEs.

Exhibit 8
Specific Federal Requirements

(continued on following eight pages)

SPECIFIC FEDERAL REQUIREMENTS

FTA-1 Fly America Requirements. The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

FTA-2 Energy Conservation. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.

FTA-3 Access to Records and Reports. The Contractor agrees to provide the Council, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor also agrees, pursuant to 49 C.F.R. § 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight (PMO) contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309, or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce such documents by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. In addition to any other requirements for maintenance of project records and documents in this contract, the Contractor agrees to maintain such records and documents until the Council, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all litigation, appeals, claims or exceptions arising from the performance of this contract.

FTA-4 Federal Changes. The Contractor shall at all times comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the Master Agreement between the Council and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

FTA-5 Recovered Materials. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 C.F.R. part 247.

FTA-6 No Obligation by the Federal Government. The Council and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of this contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Council, the Contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from this contract. The Contractor agrees to include the preceding clause in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-7 Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this contract. Upon execution of this contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001, 49 U.S.C. § 5307(k)(1), 49 U.S.C. § 5323(l) or other applicable federal law on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above language in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-8 Civil Rights. The following requirements apply to this contract:

- 1. Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d *et seq.* and USDOT regulations "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of

Title VI of the Civil Rights Act," 49 C.F.R. part 21, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity. The following equal employment opportunity requirements apply to this contract:

a. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this contract. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

b. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

c. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630, pertaining to

employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Inclusion in Subcontracts. The Contractor agrees to include the requirements of this Section FTA-8 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

FTA-9 Disadvantaged Business Enterprise ("DBE")

1. Nondiscrimination. Pursuant to 49 C.F.R. § 26.13, the Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Council deems appropriate. The Contractor shall include this requirement in all subcontracts pursuant to this contract.

2. Prompt Payment. The Contractor agrees to pay subcontractors within 10 calendar days of the Contractor's receipt of payment from the Council for undisputed services provided by the subcontractor. The Contractor agrees to pay subcontractors all undisputed retainage payments within 10 calendar days of the Contractor's receipt of payment of retainage from the Council. The Contractor shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the Council. The Contractor agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The Contractor will not be reimbursed for work performed by subcontractors unless and until the Contractor ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section may result in the Council finding the Contractor in noncompliance with the DBE provisions of this contract.

FTA-10 Incorporation of FTA Terms. Specific provisions in this contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in 49 C.F.R. § 18.36 and FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Council requests which would cause the Council to be in violation of the FTA terms and conditions.

FTA-10a National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit

Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

FTA-11 Clean Water. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.* The Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-12 Certification of Restrictions on Lobbying; Disclosure. The Contractor certifies that no federal appropriated funds have been paid or will be paid by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The certification of this compliance ("Lobbying Restriction Certification") submitted by the Contractor in connection with this project is incorporated into, and made a part of, this agreement.

The Contractor further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit to the Council, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor certifies that it will require the language of this certification be included in the award documents for any subcontracts equal to or in excess of \$100,000.00 under this agreement, and that all subcontractors shall certify and disclose accordingly to the Contractor.

The certifications referred to in this section (including the "Lobbying Restriction Certification" submitted by the Contractor in connection with this project and incorporated in, and made a part of, this agreement) are material representations of fact upon which the Council relies when this contract is made.

FTA-13 Clean Air. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* The Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-14 Suspension and Debarment. This contract is a covered transaction for the purposes of 2 C.F.R. part 1200. By executing this contract, the Contractor certifies that none of the Contractor, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are disqualified or excluded as defined at 2 C.F.R. §§ 180.935 and 180.940. The certification in this clause is a material representation of fact relied upon by the Council. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to Council, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. part 180, subpart C throughout the term of this contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

FTA-15 [Reserved].

FTA-16 [Reserved].

FTA-17 Buy America. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

FTA-18 Cargo Preference. The Contractor agrees: (a) to use privately-owned United States-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph (a) to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Council (through the Contractor in the case of a lower-tier participating subcontractors bill of lading); and (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

FTA-19 [Reserved].

FTA-20 Contract Work Hours and Safety Standards Act.

(1) **Overtime Requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible for a violation shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for Unpaid Wages and Liquidated Damages.** The Council shall, upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) **Safety Standards.**

(i) **General Requirement.** The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3704, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 C.F.R. part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts.** The Contractor also agrees to include the requirements of this paragraph (5) in each subcontract. The term "subcontract" under this paragraph (5) is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this paragraph (5) if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this paragraph (5) do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

FTA-21 [Reserved]

FTA-22 Pre-Award and Post Delivery Audit Requirements. The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663 and to submit the following certifications:

- 1. Buy America Requirements.** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- 2. Solicitation Specification Requirements.** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.