

HCRRA Agreement No. A141188

**MEMORANDUM OF UNDERSTANDING
(Southwest LRT Project)**

THIS MEMORANDUM OF UNDERSTANDING (the “MOU”) is made the _____ day of _____ 2014 by and between the HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY, a regional railroad authority organized and existing as a political subdivision and local government unit of the State of Minnesota (“**HCRRA**”); and the CITY OF MINNEAPOLIS, a Minnesota municipal corporation (“**City**”).

RECITALS:

- A. HCRRA is the owner of certain real property in an area commonly known as the Kenilworth Corridor and legally described in the attached Exhibit A (the “**HCRRA Property**”). The parts of the HCRRA Property that are located within the boundaries of the City of Minneapolis are hereinafter referred to as the “**Corridor**.”
- B. A portion of the HCRRA Property consists of a railroad line approximately 2.5 miles in length, extending from a point of connection with trackage at or near milepost 16.2 on attached Exhibit B in the City of St. Louis Park, northeasterly to a point of connection at or near milepost 13.7 on attached Exhibit B in the City of Minneapolis.
- C. Pursuant to that certain Trackage Rights Agreement Between the Soo Line Railroad Company, Twin Cities & Western Railroad Company and Hennepin County Regional Railroad Authority dated August 10, 1998, denominated HCRRA Contract No. A18158 (the “1998 Trackage Rights Agreement”), HCRRA granted a railroad easement to Twin Cities & Western Railroad, a Minnesota corporation (“**TCW**”) and rights to Soo Line Railroad Company, a Minnesota corporation doing business as Canadian Pacific Railway (“**Soo**”) and TCW to conduct railroad operations over the portion of the HCRRA Property depicted on Exhibit B and legally described on Exhibit C (the “**Freight Rail Corridor**”). The portions of the Freight Rail Corridor that are located within the boundaries of the City of Minneapolis are hereinafter referred to as the “**Freight Rail Property**.” The 1998 Trackage Rights Agreement has since been amended by that certain Supplement to Trackage Rights Agreement dated July 30, 2002, among HCRRA, TCW and Soo, denominated A16541 – 1st Supplement (the “**Supplemental Agreement**”) and further legally clarified with respect to certain rights and obligations of HCRRA and TCW in that certain Settlement Agreement dated August 1, 2012, between HCRRA and TCW, denominated Contract A121128 (the “**Settlement Agreement**”).

The 1998 Trackage Rights Agreement as amended by the Supplemental Agreement and as legally clarified by the Settlement Agreement are collectively referred to herein as the “**Trackage Rights Agreement.**”

- D. Pursuant to that certain Permit Agreement (No. 73-31016) effective August 19, 1998, HCRRA granted certain rights and benefits to City to construct and operate a bicycle/pedestrian trail over the portion of the HCRRA Property depicted on Exhibit D (the “**Kenilworth Trail**”).
- E. The Metropolitan Council (the “**Council**”) is a public corporation and political subdivision of the state of Minnesota.
- F. The Council has been designated by the governor of Minnesota as the entity responsible for planning, designing, acquiring, constructing, and equipping the Southwest Light Rail Transit Project (the “**Project**”). The Council is also the entity responsible for operating all light rail transit facilities and services located in the metropolitan area upon completion of construction of the facilities and the commencement of revenue service using the facilities.
- G. The Council has released preliminary design plans for the Project, the route for which includes some or all of the Corridor in the vicinity of the Freight Rail Property and includes co-location of freight rail, light rail and a bicycle/pedestrian trail.
- H. As a result of mediated negotiations between the City and Council, the Council approved, at its July 9, 2014 meeting, a Memorandum of Understanding between the City and Council to address various City concerns related to preserving public ownership and control over any freight rail land in the Corridor and the granting of a permanent easement for a pedestrian and bicycle trail through the Corridor at the completion of the Project.
- I. In Resolution 13-HCRRA-0059, the HCRRA Board passed the following resolution: “BE IT RESOLVED, that HCRRA’s conveyance of property interests for the light rail project must assure that HCRRA is relieved of all obligations, liabilities or risks for freight rail or light rail in the corridor.”
- J. The City wishes to assure, to the extent permitted by law and subject to the provisions of this MOU, that the Freight Rail Property stays in public ownership and that Section 2.3 of the Trackage Rights Agreement is utilized to limit detrimental changes in the frequency or nature of freight service over the Freight Rail Property.
- K. In recognition of the fact that freight rail was intended to be relocated from the Corridor, HCRRA shares the City’s objectives, to the extent lawfully permissible, not in breach of the Trackage Rights Agreement, and as provided herein to preserve public ownership of the Freight Rail Property and to limit detrimental changes in the frequency or nature of freight service over the Freight Rail Property.

NOW, THEREFORE, in consideration of the foregoing, and for other valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, HCRRA and City agree as follows:

1. Use Restrictions. HCRRA will, to the extent lawfully permissible and not in breach of the Trackage Rights Agreement, (i) enforce its rights under Section 2.3 of the Trackage Rights Agreement to prevent Soo and TCW from admitting additional railroads to use of the Freight Rail Property; and (ii) not admit additional railroads to the joint use of the Freight Rail Property; provided, however, that nothing herein shall be construed to prevent the HCRRA Property from being utilized for light rail use for the Project.
2. Trackage Rights Agreement Modifications. To the extent lawfully permissible and not in breach of the Trackage Rights Agreement, HCRRA will not terminate Section 2.3 of the Trackage Rights Agreement or make or allow any modifications, amendments or supplements to the Trackage Rights Agreement that would extend or expand railroad use of the Corridor without prior written consent from City; provided, however, that nothing herein shall be construed to prevent the HCRRA Property from being utilized for light rail use for the Project or to prevent the Project from temporarily or permanently moving some or all of the trackage in order to accommodate the Project and amending the Trackage Rights Agreement accordingly.
3. Public Ownership. HCRRA will not sell or offer the Freight Rail Property for sale in a manner that would create an obligation to offer a right of first refusal under Minnesota Statutes, Section 222.632 (2014), or as that provision may be subsequently recodified or renumbered (“**Section 222.632**”). This restriction is not intended to prevent HCRRA from transferring all or any part of the Freight Rail Property to the State of Minnesota, the Council or other governmental entity through an intergovernmental transfer or in any other transaction that would not create an obligation to offer a right of first refusal under Section 222.632. HCRRA further agrees that any transfer of ownership of the Freight Rail Property shall be to another governmental entity and contingent upon assumption by the governmental entity transferee (i) of the commitments by HCRRA herein with respect to the Freight Rail Property and (ii) of the Trackage Rights Agreement.
4. Bicycle/ Pedestrian Trail. In order to perpetuate and maintain the connection to local and regional trails in the area, HCRRA agrees it will, after completion of necessary environmental review and approvals of the Project and determination of the final Project route, work cooperatively with the City and any future owner of the Corridor to assure continued availability and use of the Kenilworth Trail. The Parties understand and agree that the needs of the Project will likely require the temporary closure of the Kenilworth Trail during construction.
5. MOU to Run with the Land. The Corridor shall be held, transferred and used subject to and together with the covenants and restrictions described in Sections 1-3, subject to Section 7, which shall run with the land, burden those portions of the Corridor to which the covenants and restrictions apply, and be binding on any person or entity who now owns or hereafter acquires any right, title or interest in or to all or any portion of the

Corridor to which the covenants and restrictions apply. The covenants and restrictions described in Sections 1-3, subject to Section 7, inure to the benefit of and may be enforced by City.

6. Term. This MOU is effective as of the date that City grants municipal approval of the Council's preliminary design plans for the Project as provided in Minnesota Statutes, Section 473.3994 and upon execution (the "Effective Date"), and shall continue for so long as Soo, TCW, or any successors or assigns of Soo or TCW use any portion of the Freight Rail Property for freight rail purposes, and in no event less than thirty (30) years after the Effective Date, except to the extent any of the following occurs:
 - a. Freight rail rights in the Corridor no longer exist and the termination of such rights and obligations has been approved or confirmed by the Surface Transportation Board or any successor agency with jurisdiction over the matter, in which case HCRRA may convey the Freight Rail Property to a non-public owner with the express limitation that the property is not to be used for freight rail purposes;
 - b. The Council terminates the Project or it is highly unlikely, based on objective factors, that the Project will be constructed;
 - c. The Project does not co-locate freight rail and light rail in the Corridor or, if the Project is constructed, transit use in the Corridor is subsequently abandoned.

On or after the Effective Date, City may record this MOU or a memorandum of this MOU in the office of the Hennepin County Recorder. Upon the occurrence of any of the above termination events, the parties will cooperate in filing an appropriate instrument to evidence termination of this MOU.

7. Acknowledgments. HCRRA and City acknowledge that their agreements herein shall be implemented and interpreted based on the following:
 - a. The Parties understand and acknowledge that the exact boundaries and dimensions of the Freight Rail Property may change in accordance with the Project, and will work cooperatively to amend Exhibits B and C as appropriate. If HCRRA or a subsequent owner amends the railroad easement area described in the Trackage Rights Agreement to reflect such changes to or relocation of the trackage, HCRRA or the subsequent owner shall prepare a corresponding amendment to this MOU in recordable form. City will execute and deliver the amendment upon receipt of such information as is necessary to determine that the revised legal description and/or depiction of the Freight Rail Property is accurate, complete and consistent with the provisions of this MOU. HCRRA or the subsequent owner shall be responsible for filing or recording the amendment.
 - b. The Parties further understand and acknowledge that the exact location of the Kenilworth Trail may change within the Corridor as a consequence of the Project and that the obligations set out in Paragraph 4 above will apply to the bicycle/ pedestrian trail wherever it may ultimately be located within the Corridor.

- c. The Project may necessitate amending the Trackage Rights Agreement or the taking of other actions not yet known or defined.
 - d. The purpose of this MOU is to limit, to the extent lawfully permissible, detrimental changes in the frequency or nature of freight service over the Freight Rail Property. Nothing in this MOU, however, requires HCRRA to take any action or decline to take any action that would be in breach of the Trackage Rights Agreement or in derogation of any rights of TCW or Soo in the Trackage Rights Agreement.
 - e. The parties acknowledge and agree that contractual relations with railroads, and matters collateral thereto, are governed by various federal and state laws, rules and regulations and decisions of various regulatory bodies, as well as by general law. Nothing in this MOU shall be construed to require HCRRA to take any action or decline to take any action in whole or in part if to do so would be contrary to any applicable federal or state law, rule, or regulation or any applicable decision of any court or any decision or order of any regulatory authority of appropriate jurisdiction.
8. Injunctive Relief; Specific Performance. HCRRA acknowledges and agrees that the rights conveyed by this MOU and the covenants hereunder are of a unique and special nature, and that a breach or violation of this MOU shall result in immediate and irreparable harm. In the event of any such actual or threatened breach or violation of this MOU, the City shall be entitled as a matter of right to seek an injunction or a decree of specific performance from any equity court of competent jurisdiction without the posting of any bond. HCRRA waives the right to assert the defense that a breach of this MOU can be compensated adequately in damages in an action at law.
9. No Waiver. The failure of a party hereunder to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies that the party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.
10. Additional Documents and Approval. The parties, whenever and as often as any shall be reasonably requested to do so, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient and within their lawful obligation in order to carry out the purpose and intent of this MOU. Furthermore, the parties shall take all ministerial actions and proceedings reasonably necessary or appropriate to remedy any apparent invalidity, lack, or defect in authorization, or illegality, or to cure any other defect.
11. Notices. All notices and demands given or required to be given by any party hereto to any other party shall be deemed to have been properly given if and when delivered in person, the next business day if sent by reputable national overnight courier (e.g. UPS or FedEx), or two (2) business days after having been deposited in any U.S. Postal Service and sent by registered or certified mail, postage prepaid, addressed as follows (or sent to

such other address as any party shall specify to the other party pursuant to the provisions of this paragraph):

TO CITY:

City of Minneapolis
Department of Public Works
350 South Fifth Street, Room 203
Minneapolis, MN 55415
Attn: Director of Public Works

TO HCRRA:

HCRRA
Attn: Executive Director
A-2300 Government Center
300 South 6th St.
Minneapolis, MN 55487

With a copy to:
Hennepin County Attorney Office
Attn: County Attorney
A-2000 Government Center
300 South 6th St.
Minneapolis, MN 55487

12. Amendment. This MOU may be amended or modified only by a written instrument executed by the City and HCRRA or its successors in title to all or any part of the Freight Rail Property, each during its period of fee ownership.
13. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of Minnesota.
14. Severability. If any term of this MOU or any application thereof shall be invalid or unenforceable, the remainder of this MOU and any other application of such term shall not be affected thereby.
15. Reformation. If any provision contained in this MOU is or would be deemed invalid under or would otherwise violate applicable law, such provision shall *ipso facto* be automatically reformed sufficient to comply with applicable law and such reformed provision shall be enforceable to the fullest extent permitted by applicable law.
16. Time. Time is of the essence hereof with respect to each of the dates, terms and conditions of this MOU.
17. Incorporation of Recitals. The Recitals set forth above are incorporated into and deemed to be a part of this MOU.
18. No Presumption against Drafter. This MOU has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, this MOU shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this MOU. Further, counsel for the parties found it advantageous and efficient in the course of drafting to exchange drafts and ideas, often without prior consultation with their respective client entities; accordingly, no previous drafts or comments regarding drafts

shall be relevant evidence of the meaning of this MOU, as executed, or the intent of the parties.

19. Incorporation by Reference. All exhibits referenced in this MOU are hereby incorporated into this MOU and are deemed to be an integral part of this MOU.
20. Entire Agreement. This MOU, together with the exhibits attached hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all other prior written and oral agreements, letters of intent, understandings, negotiations and discussions of the parties with respect to such subject matter.
21. Relationship of Parties. It is agreed that nothing contained in this MOU shall be deemed or construed as creating a partnership or joint venture among the Parties.
22. Counterparts. This MOU may be executed in multiple counterparts, all of which shall be originals and all of which together shall constitute one and the same instrument.

*[Remainder of Page Intentionally Left Blank]
Signature pages follow.*

EXHIBIT A

DESCRIPTION OF HCRA PROPERTY

EXHIBIT B

DEPICTION OF FREIGHT RAIL PROPERTY

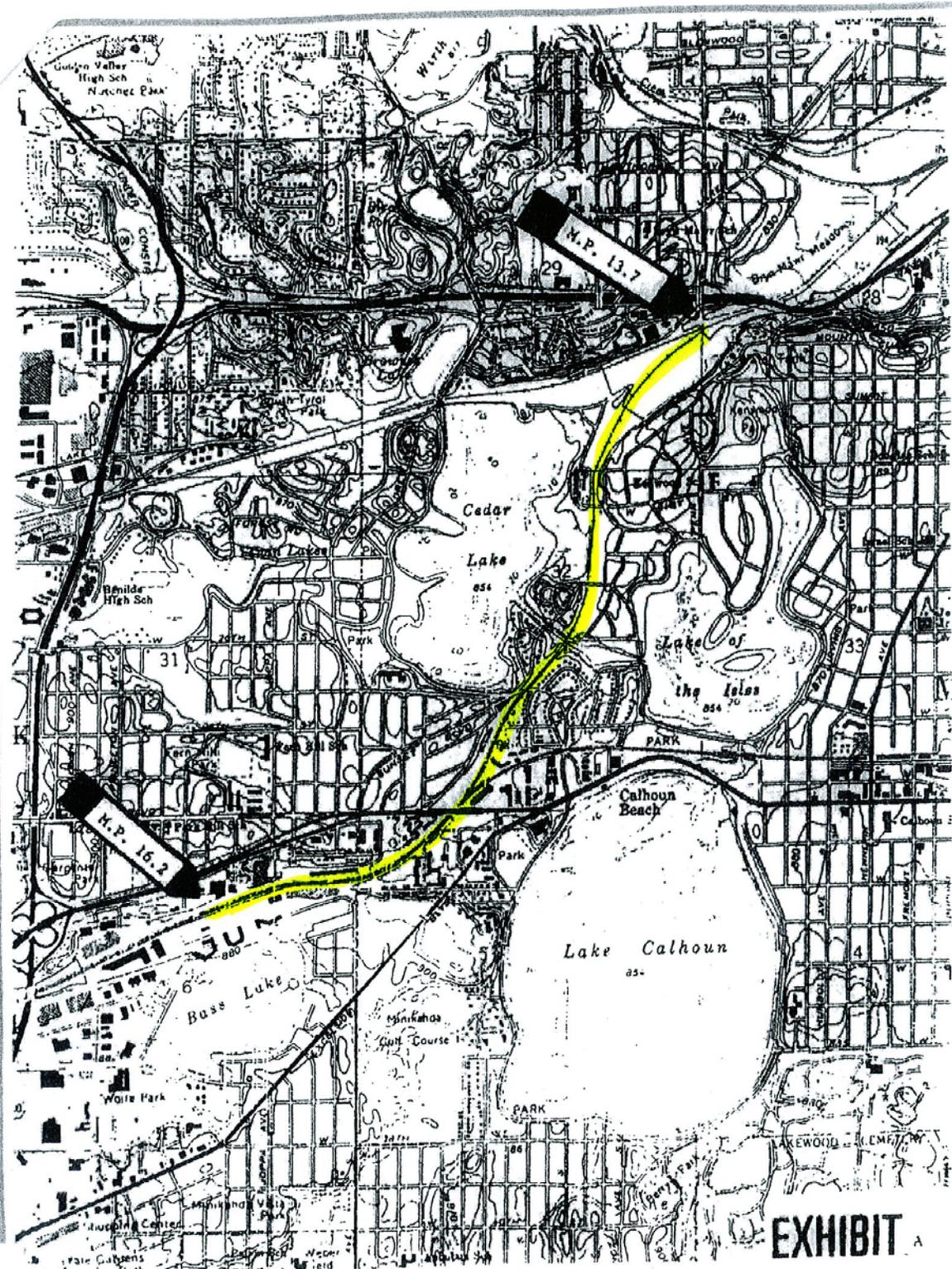


EXHIBIT C

DESCRIPTION OF FREIGHT RAIL PROPERTY

A strip of land fifty feet in width lying 25 feet on either side of the center line of the railroad tracks extending from the point of connection with Soo Line trackage at or near Chicago North Western Railway milepost 16.2 in the City of St. Louis Park, easterly to Chicago North Western Railway milepost 13.7 at a point of connection with Burlington Northern Santa Fe Railway in the City of Minneapolis except as the width is limited by the Trackage Rights Agreement between the Twin Cities and Western Railroad, Soo Property Railroad Company and the Hennepin County Regional Railroad Authority dated August 10, 1998.

EXHIBIT D

DEPICTION OF KENILWORTH TRAIL