

Agreement No. 73-53003

File No. 73-53003

PERMIT AGREEMENT
29th St. Greenway – Phase III Trail

This agreement (“Permit Agreement”), entered into by and between the Hennepin County Regional Railroad Authority, (hereinafter referred to as the “HCRRA”), a Minnesota political subdivision, and the City of Minneapolis, a Minnesota political subdivision (hereinafter referred to as the “City”).

WHEREAS, HCRRA has invested in a transportation corridor paralleling Lake Street and lying between France Avenue and the west bank of the Mississippi River, in the City of Minneapolis known as the 29th Street Rail Corridor (“Corridor”) for the purpose of implementing Light Rail Transit (“LRT”) and other permitted future transportation uses; and

WHEREAS, Hennepin County has identified this transportation corridor and its proposed transportation improvements as an integral part of a vision for long-range property value enhancements and business developments known as Hennepin Community Works; and

WHEREAS, the Minneapolis neighborhoods adjoining this corridor, together with the City of Minneapolis, Hennepin County and HCRRA have named this Community Works project, the “Midtown Greenway”, and

WHEREAS, the City of Minneapolis desires to implement temporary trail use on that portion of the Corridor lying between Minnehaha Avenue and the west bank of the Mississippi River (“Trail”); and

WHEREAS, HCRRA has acquired this portion of the Corridor from the Soo Line Railroad Company (“Soo”) pursuant to that certain Purchase and Sale Agreement dated December 2, 2004, between HCRRA and Soo (“Soo Agreement”); and

WHEREAS, Soo has retained the rail line that runs parallel to and is immediately adjacent to the Premises (“Soo’s Rail Line”). Freight rail operations will continue on Soo’s Rail Line during the period in which City will construct and operate the Trail.

Pursuant to the Soo Agreement, certain covenants and obligations run with the land. City is willing to assume said obligations and abide by the covenants.

In consideration of the covenants by and between the parties contained in this Permit Agreement, it is hereby agreed:

1. Premises

HCRRA hereby agrees to grant certain rights and benefits to the City hereinafter described with regard to that certain real property described as follows:

That part of HCRRA's right of way, located in the City of Minneapolis, between Minnehaha Ave. and the west bank of the Mississippi River, the northerly limits being a line parallel with and twenty feet southerly of the existing Soo Line Railroad Company railroad tracks. The southerly limits being the southerly construction limits shown on the construction plans for the 29th St. Midtown Greenway – Phase III, attached hereto as, Exhibit "A".

The said real estate shall be hereinafter described as the "Premises."

2. Uses

The Premises shall be for the temporary use of the City, its agents, officers, employees, sub-permittees and invitees for trail purposes, including but not limited to pedestrian use, in-line skating, bicycles and other non motorized uses, and all requirements necessary to the enjoyment of the Premises for said uses. The City shall be granted temporary use of adjacent lands controlled by HCRRA as reasonably required for maintenance of the Premises.

3. Term

The term of this Permit shall be for an indefinite period, commencing on execution of this Permit Agreement by the Chair of HCRRA until termination in accordance with Paragraph 4.

4. Termination

Either party may, at any time and for any reason, terminate this Permit by giving one hundred eighty (180) days' written notice to the other of its intention to do so in accordance with provisions of Paragraph 26. Except as provided herein and in Paragraph 17, this Permit Agreement may not be terminated or revoked by either party.

5. Temporary Nature of Use

The City acknowledges that the Premises was acquired by HCRRA specifically and solely for the purpose of constructing a light rail transit system or other permitted transportation uses and its associated facilities and that it is HCRRA's intention to allow the City to use the Premises only until it is needed for that purpose. Nothing in this Permit shall be deemed to evidence any change by HCRRA of its intended use of the Premises for light rail transit purposes or other permitted transportation uses. Rather, HCRRA has agreed to the terms of this Permit to provide a temporary use for the Premises during the time required for further planning and development of the light rail transit system or other permitted transportation uses.

6. Rights Upon Termination

On the expiration of one-hundred eighty (180) days after service of notice of termination, this Permit, and all rights hereunder, shall terminate and be at an end, saving and excepting such rights as may have accrued to either party prior to termination. The City

shall, without further notice or demand, deliver possession of the Premises to HCRRA at the expiration of said one-hundred eighty (180) days and shall, before the expiration of said one-hundred eighty (180) days, remove all buildings and property placed upon the Premises which it has the right to remove. If it shall fail to remove the buildings and property, its right to remove them, at the option of HCRRA, shall cease and the City's interest to the buildings and property shall be forfeited and the same shall belong to HCRRA. If HCRRA elects, it may, at any time after the expiration of said period of one-hundred eighty (180) days, tear down and/or remove any or all such buildings and property without any liability for damages in any respect whatsoever at the expense of the City. The City shall thereupon promptly reimburse HCRRA for all expenses incurred by it in doing so.

7. Rent

Upon any termination of this Permit, rent shall be paid by the City to the date of termination at the rate of \$1.00 per year.

8. Sub-Permits

The City may grant permits to sub-permittees upon written approval by HCRRA. The City shall submit a copy of the permit to HCRRA for approval. Any sub-permit shall be on the same terms and conditions and limited to the same uses as are contained in this Permit.

HCRRA consents to, and the City will grant to the County of Hennepin and other third parties a temporary construction and access easement for purpose of constructing improvements necessary for the City's use of the Premises and for construction related environmental clean up in a form substantially as contained in Exhibit "B" hereto. HCRRA's consent does not relieve the City of any of the obligations it has undertaken pursuant to this Permit Agreement, including, but not limited to, the City's obligation to defend, indemnify and hold HCRRA harmless contained in Paragraph 12. Upon the City granting such easement, the County of Hennepin and the other third parties shall be considered the City's sub-permittees for purposes of Paragraph 12.

9. Signage

The City shall provide, install and maintain signage, including kiosks, on the Premises identifying the Premises as a temporary trail corridor of the City, by permission of the owner, HCRRA, until the Premises are used for light rail transit or other transportation uses. Any such signage shall also identify the improvement as part of Hennepin Community Works.

10. Nuisance, Waste

The City shall not permit the existence of any nuisance on the Premises. The City, at all times, shall keep the Premises clean and shall comply with all laws, ordinances and regulations respecting the City's business and use and occupation of the Premises. The City, at its sole cost, shall make any and all improvements, alterations, repairs and additions, and install all appliances required on the Premises by or under any such regulations, ordinances

or laws. No bills, posters or advertising matter of any kind shall be posted on the Premises; provided, however, that the City may post on appropriate structures, informational materials relating to the permitted uses. The City shall use all reasonable precautions to prevent any waste, injury, death or property damage and shall modify, repair or replace any railings, fencing, pathways or other improvements on the Premises when necessary.

11. Utilities, Title, Rights of Others

The City accepts the Premises subject to the rights of any person, firm or corporation, including HCRRA and Soo in and to any existing telephone, telegraph and/or other wires, poles and facilities, above and underground, of any kind whatsoever, whether or not of record, and should it, at any time, become necessary because of the City's use of the Premises to relocate any of said poles, wires or facilities by reason of this Permit, the City shall bear and pay the cost of so doing.

The City also accepts the Premises subject to any want or failure at any time of HCRRA's title to the Premises or any part thereof and the City shall assume any damages sustained by the City in connection therewith. The City also accepts such Premises subject to rights of any party, including HCRRA and Soo, in and to any roadways, easements, leases and permits, whether granted, at HCRRA's sole discretion, either prior to or after the date of this Permit Agreement. The City agrees to provide to HCRRA or other tenants of HCRRA access over and through the Premises on these roadways and easements should such access be deemed necessary by HCRRA. The City accepts said Premises subject to the right of HCRRA, its employees, agents, lessees, and contractors when reasonably necessary to walk upon said Premises to repair adjacent property and the right of HCRRA, its employees, agents, lessees, and contractors to temporarily place equipment upon the Premises when reasonably necessary for the purpose of maintaining, repairing, inspecting or constructing upon HCRRA's other property.

12. Indemnification

The City shall defend, indemnify and hold harmless HCRRA, its Commissioners, officers, agents, and employees from any liability, claims, causes of action, judgments, damages, losses, costs or expenses, including reasonable attorney's fees, resulting directly or indirectly from an act or omission of the City, its contractors, subcontractors, officers, agents, employees, customers, invitees, sub-permittees, permittees, lessees or other occupiers of the Premises.

Notwithstanding the foregoing, the City is not responsible to defend, indemnify and hold HCRRA harmless for the acts or omission of "other occupiers" who are present on the Premises pursuant to an easement, lease or permit granted to them by HCRRA.

HCRRA shall not be liable to the City or those claiming by, through, or under the City for any injury, death or property damage occurring in, on or about the Premises based upon the design, construction, operation or maintenance of the Premises by the City or any other entity or resulting from the presence of freight rail operations adjacent to the Premises, nor for the loss or damage by reason of the present or future condition of repair of the Premises,

or for the loss or damage arising from the acts or omissions of the City, its contractors, subcontractors, officers, agents, employees, customers, invitees, sub-permittees, permittees, lessees, or other occupiers of the Premises, including those “other occupiers” present on the Premises pursuant to an easement, lease or other permit granted to them by HCRRA.

13. Insurance

The City further agrees that if in any case the release and indemnity provided in this paragraph shall not be valid, HCRRA shall have the full benefit of any insurance effected by the City upon the property injured, destroyed or damaged and/or against the hazard involved; and the City agrees that any and all such insurance shall be so written that the insurer shall have no claim or recourse of any kind whatsoever against HCRRA in connection therewith.

13.1 Trail Operations, Insurance and Self-Insurance: During such time as Trail operations or construction activities related to Trail operations are conducted on the Premises, City shall, at its entire cost and expense, maintain, and require any contractor or agent acting on its behalf to maintain, until written notice from HCRRA to City of Abandonment of all common carrier railroad activity on Soo’s Rail Line, the following insurance:

13.1.1 Commercial General Liability: City shall maintain comprehensive general liability insurance (or be fully self-insured for the same) which shall insure City against loss, with limits of liability of not less than \$5,000,000 during the periods of any construction on the Premises and \$2,000,000 at all other times, combined single limits with respect to injuries to or death of one or more persons and damage to property in any one occurrence (or such other lesser amounts within the limits provided for by Minn. Stat. Sec. 466.04, as it may from time to time be amended).

13.1.2 Railroad Protective Liability Coverage: During any periods of construction on the Premises, City shall maintain at its sole expense, in effect a railroad protective liability policy of insurance insuring HCRRA and Soo with limits of liability of not less than \$5,000,000 and \$2,000,000 at all other times, with respect to combined single limits with respect to injuries to or death of one or more persons and damage to property in any one occurrence.

13.1.3 Workers’ Compensation Insurance: At all times City shall maintain workers’ compensation insurance (or be fully self-insured for the same) in a manner that fully meets the requirements of the laws of the State of Minnesota, including the requirements of an occupational disease law.

13.1.4 General Provisions: All insurance coverage amounts in this Paragraph 13 shall be adjusted every five years in proportion to the change in the Consumer Price Index, All Items, All Urban

Consumers, U.S. City Average, 1982-84=100, during the preceding five year period. City shall require the companies insuring City to waive all rights of subrogation against HCRRA and Soo (or any other railway company) which the insurer may have as a result of any loss. City shall require the company issuing comprehensive general liability coverage to provide coverage for the risks covered by the indemnity provisions herein for the benefit of HCRRA. City shall also name HCRRA and Soo as an additional insured and provide a certificate of insurance to HCRRA and Soo evidencing the coverages required above and further providing that such insurance shall not be canceled by the insured or the insurer on less than thirty days' advance written notice to HCRRA and Soo. Notwithstanding the foregoing, City or any successor or assign that is a public agency will be permitted to self-insure the risks covered by insurance required under this Paragraph 13. The above provisions shall not act as, and it is not City's or HCRRA's intent that the foregoing provisions shall act as, a waiver of any of City's or HCRRA's defenses, immunities or other limitations on liability granted by statute or common law.

14. Covenants

The City, in consideration of the rights granted herein, covenants and agrees to pay the rent promptly, and to fully abide by and perform all and singular the conditions, covenants and agreements to be observed and performed by the City and to yield up the Premises unto HCRRA at the expiration or termination of the Permit Agreement in as good condition as when entered upon.

14.1 Trail Operations Fence Covenant. City hereby covenants to construct, maintain, repair and replace at its sole cost and expense, a fence reasonably acceptable to HCRRA and Soo and complying with all applicable laws and regulations (including, but not limited to, laws and regulations governing the fencing of railroad property) so long as Trail operations are conducted on the Premises. The fence shall run along the track side boundary line of the Premises. The fence shall be constructed by the earlier of: (i) the date of completion of any Trail construction activity on the Premises by City, or (ii) within sixty (60) days following written notice from HCRRA or Soo, based upon planned commencement of Trail operations. This covenant will automatically terminate on the date of Abandonment of Soo's Rail Line, as defined by this Permit Agreement. If it is necessary for City to have access to Soo's Rail Line in order to install the fencing required in this paragraph, City shall obtain permission from Soo for right of entry at that time.

14.2 Environmental Covenant - Covenant Not to Sue. By entering into this Permit Agreement, City acknowledges that it is accepting the Premises in an "AS IS" condition and covenants and agrees not to sue HCRRA and Soo and their

respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, successors, lessees and assigns, or anyone acting on its behalf or their behalf with respect to any Claims (including without limitation all Claims arising under any Environmental Law), existing and contingent, known and unknown, that City had, has or may have, whether arising at common law, in equity, or under a federal, state or local statute, rule or regulation, arising out of, resulting from, or relating to the condition of the Premises in existence prior to the effective date of this Permit Agreement. The foregoing shall apply to any condition of the Premises, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Premises, whether such Hazardous Substance is located on or under the Premises, or has migrated from or to the Premises, regardless of whether the foregoing condition of the Premises was caused in whole or in part by HCRRA's or Soo's actions or inactions.

14.3 General Release and Covenant Not to Sue. City acknowledges and agrees that the movement of Soo's locomotives, trains or cars and the work incidental to the maintenance of the right of way and tracks near the Premises involves some risk of injury to people and damage to structures and property. As one of the material considerations of this Permit Agreement (without which it would not be executed by HCRRA) City expressly assumes said risk and hereby releases and covenants not to sue HCRRA or Soo with regard to any and all claims related to any Trail operations conducted on the Premises, of every kind, past, present or future, existing or contingent, known or unknown, arising from any injury or death of individuals, injury to any corporation or other entity and damage to real or personal property (including property of the parties and Soo hereto), including structures and their appurtenances, equipment and appliances, while such persons or property are in or on the Premises or on or near Soo's Rail Line, including, but not limited to, when such injury or damage has been caused by or is attributable to, in whole or in part, by Soo's operation of locomotives, trains or cars, the performance of maintenance in the vicinity of the Premises, or any other act or omission of Soo except to the extent caused by Soo's intentional malicious acts. The foregoing release and covenant not to sue shall benefit Soo, Soo's lessees as of the date HCRRA accepted transfer of title to the Premises from Soo and their directors, officers, employees, stockholders, divisions, agents, affiliates, subsidiaries or anyone acting on their behalf and HCRRA (the "Released Parties") and to the successors and assigns of the Released Parties, to the extent that such successor or assign acquires all, or a controlling interest in a Released Party, and is (i) a Class I railroad, as defined by the Surface Transportation Board, or (ii) a governmentally-owned or controlled rail operator.

15. Quiet Enjoyment

HCRRA has the right and authority to enter into this Permit Agreement and if the City pays the rent required hereby and otherwise performs the terms hereof to be performed by the City, the City shall, during the term hereof, be entitled to quiet enjoyment and possession of the Premises subject to the termination provisions hereof. Notwithstanding the foregoing,

City acknowledges that the rights provided to it by virtue of the Permit are subject to the provisions of Paragraphs 11 and 20, and as otherwise provided by this Permit Agreement.

16. Waiver

No receipt of money by HCRRA from the City after any default by the City or after the expiration of this Permit or after the service of any notice or after the commencement of any suit or after final judgment for possession of said Premises, shall waive such default or reinstate, continue or extend the term of this Permit or affect any such notice or suit, as the case may be. No waiver of any default of the City shall be implied from omission by HCRRA to take any action on account of such default, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated.

17. Breach

It is further agreed between the parties hereto, that if the City shall breach or make default in any of the conditions, covenants or agreements of this Permit, which breach or default shall continue for fifteen (15) days after the City's receipt of written notice thereof from HCRRA, then it shall be lawful for HCRRA, then or at any time thereafter, to declare this Permit ended, and to re-enter the Premises and take possession thereof, with or without process of law, and to use any reasonable or necessary lawful force for regaining possession; whereupon the rights and obligations of the parties shall be the same as above specified in the case of termination pursuant to Paragraph 6; and it is hereby further agreed and provided that any waiver at any time of a breach of any condition, covenant or agreement of this Permit shall extend only to the particular breach so waived and shall, in no manner, impair or affect the existence of such condition, covenant or agreements, or the right of HCRRA thereafter to avail itself of same and any subsequent breach thereof. In the event HCRRA has to take action for repossession of the Premises, the City, its assigns or heirs shall be liable for reasonable attorney's fees incurred by HCRRA.

18. Assignment

The benefits and obligations of this Permit shall extend to and shall bind the heirs, administrators, executors, lessees, successors or assigns of the parties hereto, but no interest in this Permit shall be assigned, nor said Premises or any part thereof shall be sub-permitted, used or occupied by any party other than the City unless specifically stated herein. HCRRA reserves the right to review and revise the rental rate applicable to this Permit upon any change in the status of the Permit, the City or person occupying the Premises during the term of this Permit or any renewal thereof.

19. Improvements, Maintenance

The City shall be responsible for the construction of all improvements necessary to its use of the Premises whether constructed by itself or others, and shall be responsible for the construction of all bridges and crossings including, without limitation, under or over passes, required pursuant to Paragraph 24 deemed necessary for the City to provide

trails on the Premises or to otherwise use the Premises. Further, City shall be responsible for all requirements as to fencing pursuant to Paragraph 14. Plans, if any, shall be submitted to HCRRA for prior review and comment. HCRRA reserves the right to reject any plans for construction proposed by the City on the grounds, in HCRRA's sole discretion, that said plans are inappropriate or incompatible with its future use of the Premises or that Soo has determined that the plans for fencing are unacceptable pursuant to Paragraph 14. The City shall be responsible for maintenance of the Premises at its own expense. Maintenance includes, but is not limited to, maintaining the Trail during the winter months, including snow and ice removal, mowing vegetation in areas abutting trails, fences and retaining walls and maintaining vegetation at 6 inches or less, except for those areas identified by HCRRA, from time to time in writing, as Midtown Greenway Landscaping and Planting Sites which shall be maintained in a manner consistent with the character of the landscaping and plantings.

The City recognizes that in accordance with HCRRA's authorizing statutes, HCRRA is not assuming, nor does it agree to undertake, liability or risk from the construction, operation, or maintenance of the Trail. City has entered into a Memorandum of Understanding (MOU) with Hennepin County setting forth responsibilities for construction, operation and maintenance of the Trail for Phase 2 and Phase 3 of the Midtown Greenway, which is attached hereto as Exhibit "C" and is hereby incorporated into this Permit Agreement by reference. The foregoing incorporation does not limit or change the City's obligations and responsibilities to HCRRA under this Permit Agreement. Nor does it in anyway preclude HCRRA from obtaining relief against City, whether at law or equity, for the breach of any of those obligations or responsibilities.

20. Environmental Concerns

The City shall not create or permit any condition of the Premises that could present a threat to human health or to the environment. The City shall bear the expense of all practices or work, preventative, investigative or remedial, which may be required because of any conditions of the Premises introduced by the City, sub-permittees or invitees during the City's period of use, including conditions introduced by the City, sub-permittees, or invitees which affect other lands. The City expressly agrees that the obligations it hereby assumes shall survive cancellation of this Permit. The City agrees that statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until HCRRA discovers any such health or environmental impairment, and a remedial action plan necessary for development of the Premises to its highest and best use has been identified and approved by the appropriate local, state and federal regulatory agencies. The City hereby knowingly and voluntarily waives the benefits of any shorter limitation period.

HCRRA shall have the right, but not the duty, to enter upon the Premises from time to time as set forth below to inspect the Premises for environmental contamination and in the course thereof to conduct soil and groundwater testing and to perform environmental investigation, remediation or mitigation. HCRRA may enter the Premises during regular business hours of the City without prior notice, and may enter the Premises during periods other than regular business hours either with prior written consent of the City or without if

HCRRA reasonably believes that an emergency exists on the Premises. HCRRA shall conduct any such inspections or testing so as to minimize interference with the City's operations. HCRRA's entry on to the Premises pursuant to this paragraph shall not relieve the City's obligation to pay rent under this Permit.

The City may make any inspections, tests, audits or reviews of the physical condition of the Premises, all at the City's sole cost and expense. Such inspections and tests may include, without limitation, soil tests, soil borings, surveys, environmental audits, and other tests of the Premises ("Environmental Inspection"). If the City elects to abandon its Trail project and terminate this agreement due to its Environmental Inspection, the City shall restore the property to its prior condition, and provide HCRRA with copies of all reports and test result. The City agrees to indemnify, defend, and hold HCRRA harmless from any and all actual out-of-pocket expenses incurred by HCRRA related to containing or disposing of any contaminated materials released by such inspections.

In addition to the foregoing provisions of this Paragraph 20, and in exchange for the rights and privileges granted in this Permit Agreement the City hereby agrees to bear the expense of all practices or work, preventative, investigative or remedial necessary to comply with all Environmental Laws necessary for the City's use of the Premises for Trail purposes regardless of whether or not the Hazardous Substances to which the Environmental Laws apply were present on the Premises before or after the commencement of this Permit Agreement. However, should the City elect in its sole discretion to abandon its Trail project and terminate this agreement, due to its Environmental Inspection, the City shall not be obliged to bear expenses enumerated in this sentence. Further, the City agrees to defend, indemnify and hold harmless HCRRA, its Commissioners, officers, agents and employees from any liability, claims, causes of action, judgements, damages, losses, costs or expenses, including reasonable attorney's fees arising from exercise of the rights granted by this Permit Agreement and resulting from the presence of any Hazardous Substances on the Premises regardless of whether or not the same was present on the Premises before or after the commencement of this Permit Agreement. The City expressly agrees that the obligations it hereby assumes related to construction and operation of the Trail, shall survive the cancellation of this Permit.

21. Compliance with Laws, Ordinances and Rule

The City agrees to comply with all laws, ordinances and regulations of federal, state, municipal and local government agencies as they apply to use of the Premises. The City agrees to comply with rules as may be promulgated from time to time by HCRRA. The City may enforce its ordinances on the Premises, as it applies to third parties.

22. Condition of Premises Inspection

The City accepts the Premises in an "AS IS" condition with no express or implied representations or warranties by HCRRA as to the physical condition or fitness or suitability for any particular purpose, express or implied. The City is responsible for and has had ample opportunity to inspect the Premises, is familiar with the same, and has determined to its satisfaction the fitness of the Premises for its intended use.

23. Liens and Encumbrances

The City shall not permit any liens or encumbrances to be established or remain against the Premises, including but not limited to, encumbrances with respect to work performed or equipment or materials furnished in connection with use of the Premises by the City, its agents, employees, customers, invitees, sub-permittees, or other occupiers of the Premises pursuant to this Permit.

24. Relocation

In the event HCRRA determines, at its sole discretion, that relocation of the City's Trail and any Trail related facilities including, but not limited to, bridges and crossings added by the City or added on behalf of the City for Trail purposes, is required to accommodate HCRRA's use of the Corridor for transportation purposes, the City shall be required at its expense, and at no cost to HCRRA to relocate, remove or alter all or any part of the City's Trail improvements necessary to accommodate such use.

25. Assignment and Assumption of Obligations – Soo Agreement; Consent of Soo Required

In consideration for the rights granted to City by this Permit Agreement to construct and operate the Trail on the Premises, HCRRA hereby assigns and City hereby assumes all trail related obligations contained in the Soo Agreement, including without limitation the Trail Operations Fence Covenant contained in Paragraph 5 and the Insurance obligations contained in Paragraph 24 of the Soo Agreement ("Trail Obligations"). City understands and acknowledges that City may not exercise the rights granted by this Permit Agreement until this assignment and assumption of the Trail Obligations by City has been consented to in writing by Soo.

26. Notice

Notices permitted or required by this Permit Agreement must be in writing and shall be delivered in legible form to the business address of the party to whom addressed. The business addresses of the parties are as follows:

To HCRRA: Hennepin County Regional Railroad Authority
417 North Fifth Street, Suite 320
Minneapolis, MN 55401
Attn: Manager of Leasing and Land Management

To City: City of Minneapolis Department of Public Works
Attn: Director of Public Works
City Hall, Room 203
305 South 5th Street
Minneapolis, MN 55415-1315

To Soo: Canadian Pacific Railway
501 Marquette Avenue, Suite 804
Minneapolis, MN 55402
Attn: Directory, Real Estate Marketing, US

27. Definitions

“Abandonment” shall mean the date that is twelve (12) months after Soo, or its successor or assign, discontinues rail operations upon Soo’s Rail Line with the intention of not resuming rail operations and following the exercise by Soo of authority granted by the Surface Transportation Board (STB) or other applicable authorization, to abandon its common carrier railroad operations upon Soo’s Rail Line, or such other earlier date following abandonment authorization that Soo may stipulate.

“Claims” shall mean any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorneys’ fees, consultants’ fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims).

“Environmental Law” shall mean the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) 42 U.S.C. § 9601 et seq. the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted.

“Hazardous Substance” or “Hazardous Substances” shall mean any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

IN WITNESS WHEREOF, the parties hereto have signed this Permit Agreement as of _____, 2005.

**HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY**

Reviewed by County Attorney's Office:

Date: _____

Approved as to form and execution:

Attorney for City of Minneapolis

Date: _____

By: _____
Chair of Its Board
Date: _____

And: _____
Deputy/Executive Director
Date: _____

Attest: _____
Deputy/Clerk of Authority Board
Date: _____

CITY OF MINNEAPOLIS

By: _____
Mayor
Date: _____

Attest: _____
City Clerk
Date: _____

And: _____
Director of Public Works
Date: _____

And: _____
Assistant/City Finance Officer
Date: _____

Exhibits

Exhibit A-Construction Plans for the 29th Street Midtown Greenway-Phase III

Exhibit B-Temporary Construction and Access Easement

Exhibit C-Memorandum of Understanding between City and Hennepin County