CITY COUNCIL AGENDA REPORT
DATE: September 15, 2014
DEPARTMENT: Engineering
ADMINISTRATOR: SPK

10-A

AGENDA ITEM: Easements to Union Pacific for Roadway & Track Encroachments

ACTION TO BE CONSIDERED:

Pass a Motion to have the Mayor and City Clerk sign the attached Roadway and Railroad Tracks Easements on behalf of the City in favor of the Union Pacific Railroad Company.

OVERVIEW:
The City of South St. Paul (SSP) and the Union Pacific Railroad (UP) have had extensive discussion associated with planned improvements by the UP to its facilities in SSP. One of the outcomes of that conversation was the development of a Memorandum of Understanding (MOU) that outlined how the two parties would resolve and/or coordinate respective interests during and following the planned improvement project. One of the topics addressed in the MOU was property ownership rights and interests. It was recognized that both entities need accommodation from the other with regard to existing and planned incursions on each other's property.

The UP has historically maintained rail roadway on property that by record is owned by SSP. The MOU recognized that these encroachments should be formally acknowledged and permitted through execution of Easements by the City. One of the encroachments is for rail roadway maintenance and is on the Kaposia Landing property. In addition, a small portion of the existing UP trackage also encroaches on the Kaposia Landing property. Both of these encroachments are adjacent to the UP yard and are at a significantly lower elevation than the rest of the lands within Kaposia Landing. The two locations do not appear to be of any use to the City or for other development.

The MOU discussion also revealed that the City will need utility, trail way, and roadway accesses through UP property for a Regional Trail extension, the development of Kaposia Landing and the Ultimate transportation plan for the Kaposia Landing area. In the spirit of the MOU, it has been considered that these conveyances between SSP and the UP could be accomplished without exchange of monetary compensation. If the City Council desires more certainty on this point, it could approve execution of the easements and also direct Staff to hold them for release until written confirmation is received from the UP as to the accommodation of an agreed utilities route and presence through UP property to Kaposia Landing.

SOURCE OF FUNDS:

N/A

ROAD EASEMENT

THIS ROAD EASEMENT ("Easement") is made this ___ day of _____, 2014 between the City of South St. Paul (the "City"), a Minnesota municipal corporation, as grantor, and the Union Pacific Railroad Company (the "Railroad"), a Delaware corporation, as grantee.

SECTION ONE
Easement Grant

Upon the terms and subject to the conditions contained in this Easement, and in consideration of the sum of One dollar ($1.00) or other good and valuable consideration, to it in hand paid by the Railroad, the receipt of which is hereby acknowledged, the City does hereby grant and convey to the Railroad a nonexclusive easement for access road purposes for vehicle and pedestrian use by its employees, contractors, agents and invitees, (the "Access Road") over and across the real property in Dakota County, Minnesota, legally described in Exhibit A, attached to this Easement ("Easement Area") and as depicted in the Exhibit Map on Exhibit B, attached to this Easement, both of which are made a part hereof.

SECTION TWO
Repair and Maintenance

Railroad accepts the Easement Area in its present "as-is" condition without any obligation on the part of the City to make improvements or repairs to it.

The easement rights herein granted to the Railroad include the rights of the Railroad, its contractors, agents, and servants to enter upon the Easement Area at all reasonable times to construct, reconstruct, repair and maintain the Access Road. The Railroad shall, at its cost, make all repairs and improvements to the Access Road and shall maintain it in a good condition.

In addition, this Easement grants the non-exclusive right for ingress, egress and utilities, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, over, under, or along a right-of-way extending from the nearest public right-of-way, to the Easement Area for access.

SECTION THREE
Indemnity

Railroad agrees to indemnify and hold harmless the City, its elected officials, officers and employees from all claims, actions, suits, costs, judgments, damages, or expenses, including attorneys fees or other legal costs, for any personal injury, death or property damage arising out of or resulting from the Railroad's exercise of its rights and performance of its obligations under this Easement, including those based upon a release or threatened release of any hazardous substances, pollutants, or contaminants by the Railroad only, except such as are based on the willful act or omission of the City, its elected officials, officers, or employees.

SECTION FOUR
Insurance

(1) Railroad shall at its cost keep in force during the term of this Easement the following types and minimum amounts of insurance on, an occurrence basis, subject to adjustment as provided in paragraph (2):

A. Commercial General Liability policy covering bodily injury, including death, property damage and personal injury, on a comprehensive form, including contractual liability, broad form property damage, with limits not less than $1,000,000.00 per person and $2,000,000.00 combined single limit each occurrence.

B. Business Automobile coverage for bodily injury, death, and property damage, including any and all motor vehicles, owned, leased and non-owned with limits not less than $2,000,000.00 combined single limit.

(2) If the government liability amounts established by Minnesota Statutes, Chapter 466, as amended from time to time, or a successor statute, exceed the preceding amounts of insurance, the limits of coverage of the insurance shall be correspondingly increased.

(3) Railroad shall furnish the City with certificates of insurance listing the City as a certificate holder prior to exercising any rights under this Easement and evidencing the insurance required by this Section Four.

(4) Any policy obtained and maintained under this section shall provide that it shall not be cancelled, materially changed, or not renewed without 30 days prior written notice to the City.

(5) The provision of insurance as required by this section shall not be deemed to release or reduce the liability of Railroad, including, without limitation, liability under the indemnity provision of this Easement, nor shall damages recoverable by the City be limited by the amount of the insurance coverage.

(6) Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Railroad, its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided in Minnesota Statute, Chapter 466.

(7) (6) Notwithstanding any provision herein to the contrary, the Railroad is allowed to retain (self-insure) in whole or in part any insurance obligation under this Agreement. Any retention shall be for the account of the Railroad. If the Railroad elects to retain (self-insure) any insurance required by this Agreement, the Railroad agrees it shall provide the City with the same coverage that would have been provided to it by the required commercial insurance forms had the Railroad obtained commercial insurance. For all coverage not retained (self-insured), the Railroad shall furnish the City with a certificate(s) of insurance, executed by a duly-authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement. For all coverage retained (self-insured), the Railroad shall provide a letter stating that, through its risk management programs, it retains the balance of its insurance obligation under this Agreement and that this letter is provided in lieu of a certificate of insurance.

SECTION FIVE
Labor and Material Claims

Railroad shall not permit any mechanic's or materialman's lien of any kind or nature to be enforced against the Easement area for any work done or materials furnished thereon at the request or on behalf of the Railroad. The Railroad shall indemnify and hold harmless the City against and from any and all liens, claims, demands, costs and expenses construed in any way with or growing out of labor performed or materials furnished.

SECTION SIX
Termination

The City may, at its option, terminate this Easement by written notice to Railroad by personal service or mailed to its last known address if Railroad (a) does not use the rights granted by this Easement for one year, or (b) continues in default in the performance of any obligation under this Easement for more than thirty (30) days after notice from the City, unless such default is curable but is not capable of being cured through the Railroad's diligent and continuous effort within the thirty (30) day period, and the Railroad thereafter applies its diligent and continuous best efforts to cure such default, and does complete its performance to cure the default within ninety (90) days of the City's initial notice.

SECTION SEVEN
Survival of Provisions

The provisions of Sections Three and Five of this Easement shall survive its termination. Rights, obligations or liabilities that accrued prior to the termination of this Easement shall survive its termination.

IN WITNESS WHEREOF, the City has caused this Easement to be executed in its corporate name by its Mayor and City Clerk and its seal to be affixed.

City of South St. Paul

By: _____
Name: Beth A. Baumann
Its: Mayor

By: _____
Name: Christy M. Wilcox
Its: City Clerk

STATE OF MINNESOTA)
)s.s.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ___ day of _____ 2014 by Beth A. Baumann, Mayor, and Christy M. Wilcox, City Clerk, of the City of South St. Paul, a Minnesota municipal corporation, on behalf of the corporation.

_____
Notary Public

This instrument was drafted by:
Ann E. Kennedy
Nilsson Brandt, P.A. .
900 Flour Exchange Building
310 Fourth Avenue SouthMinneapolis, MN 55415
612.843.4470

EXHIBIT A
Easement Area

An easement 30.00 feet in width over and across the following described parcels A, B, C, D, and E:

PARCEL A
That part of Government Lots 2, 3, 4, 5 and 6, Section 16, Township 28 North, Range 22 West; Lots 6, 11 and 20, Auditor's Subdivision No. 17, South St. Paul, Minnesota; the Southwest Quarter of Section 15, Township 28 North, Range 22 West; Lot C, Kochendorfer's Addition to South St. Paul, Minnesota; Lots 1 through 11, Long Island Park Addition to South St. Paul, Dakota County, Minnesota; and Lots 6 and 7, Block 27, South Park Division No. 10, Dakota County, Minnesota, according to the plats thereof (where applicable) on file in the office of the County Recorder, Dakota County, Minnesota, described as follows:

Beginning at the Northwest corner of the Lot 12, said Auditor's Subdivision No. 17, South St. Paul, Minnesota; thence South 0°00'52" West (assumed bearing) along the West lines of Lots 12, 14 and 19 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, a distance of 1,100.00 feet, more or less, to the Southwest corner of said Lot 19; thence South 89°59'08" East, along the South lines of Lots 19, 18 and 17 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, and said South lines produced East, a distance of 1,108.28 feet; thence South 21°30'08" East 399.46 feet; thence South 19°50'07" East 321.67 feet; thence South 25°12'56" East 586.39 feet; thence South 29°05'33" East 232.42 feet; thence South 35°52'20" East 318.65 feet; thence South 22°29'18" East 381.56 feet; thence South 13°14'46" East 493.91 feet; thence South 8°48' 21" East 111.00 feet; thence South 16°16'56" East 156.05 feet; thence South 7°20'59" East 84.22 feet; thence North 52°08'15" West 64.40 feet; thence North 30°11'31" West 129.21 feet; thence North 28°27'34" West 446.50 feet; thence North 81°34'09" West 30.79 feet; thence South 18°30'17" West 105.09 feet; thence South 28°06'52" East 409.61 feet; thence South 41°55'57" East 181.40 feet; thence North 64°00' East 40.00 feet; thence South 26°41'51" East 223.54 feet; thence South 16°50'58" East 245.51 feet; thence South 27°19'11" East 126.59 feet; thence South 17°17'25" East 5.17 feet, more or less, to the South line of Lot 6, Block 27, South Park Division No. 10, Dakota County, Minnesota; thence South 66° 50' 08" West along the South line of said Lot 6, a distance of 129.76 feet; thence North 36°24'36" West 140.89 feet; thence along a tangential curve, concave to the Northeast, radius 3,380.95 feet, central angle 6°34'00" a distance of 387.49 feet; thence North 29°50'36" West 123.43 feet; thence along a tangential curve, concave to the Southwest, radius 2,943.93 feet, central angle 6°27'50" a distance of 332.12 feet; thence North 36°18'26" West 1,653.86 feet; thence South 89°59'08" East 31.03 feet; thence North 36°18'26" West 1841.64 feet to a point on a non-tangential curve, radius 1,120.55 feet, the center of circle of said curve bears North 77°54'39" East from said point; thence Northeasterly along said curve, central angle 62°55'27" a distance of 1,230.62 feet; thence

North 50°50'06" East 261.37 feet; thence South 27°13'41" East 315.44 feet; thence South 30°17'11" East 60.31 feet, more or less, to the North line of Lot 12 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota; thence to the point of beginning,

Except that part thereof described as follows:

Commencing at the Northwest corner of Lot 12, Auditor's Subdivision No. 17, South St. Paul, Minnesota, Dakota County, Minnesota; thence South 0°00'52" West (assumed bearing) along the West lines of Lots 12, 14 and 19 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, a distance of 1,100.00 feet, more or less, to the Southwest corner of said Lot 19; thence South 89° 59' 08" East, along the South lines of Lots 19, 18 and 17 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, and said South lines produced East, a distance of 1,108.28 feet; thence South 21°30'08" East, 399.46 feet; thence South 19° 50' 07" East, 321.67 feet; thence South 25°12'56" East, 586.39 feet; thence South 29° 05'33" East, 232.42 feet; thence South 35°52'20" East, 318.65 feet; thence South 22°29'18" East, 381.56 feet; thence South 13°14'46" East, 57.76 feet to the point of beginning of the property to be described; thence South 13°14'46" East, 436.15 feet; thence South 8°48'21" East, 111.00 feet; thence South 16°16'56" East, 156.05 feet; thence South 7°20'59" East, 84.22 feet; thence North 52°08'15" West, 64.40 feet; thence North 30°11'31" West, 129.21 feet; thence North 28°27'34" West, 446.50 feet; thence North 81°34'09" West, 30.79 feet; thence South 18°30'17" West, 105.09 feet; thence South 28°06'52" East 409.61 feet; thence South 41°55'57" East 181.40 feet; thence North 64°00' East, 40.00 feet; thence South 26°41'51" East, 223.54 feet; thence South 16°50'58" East, 245.51 feet; thence South 27°19'11" East, 126.59 feet; thence South 17°17'25" East, 5.17 feet, more or less, to the South line of Lot 6, Block 27, South Park Division No. 10, Dakota County, Minnesota; thence South 66°50'08" West, along the South line of said Lot 6, a distance of 129.76 feet; thence North 36°24'36" West, 140.89 feet; thence along a tangential curve, concave to the Northeast, radius 3380.95 feet, central angle 6°34'00" a distance of 387.49 feet; thence North 29°50'36" West, 123.43 feet; thence along a tangential curve, concave to the Southwest, radius 2,943.93 feet, central angle 6°27'50" a distance of 332.12 feet; thence North 36°18'26" West, 290.00 feet; thence North 53°41'34" East, 581.22 feet to the point of beginning.

Also except those parts of Government Lots 4, 5 and 6 of Section 16, Township 28 North, Range 22 West, Dakota County, Minnesota, described as follows.

Commencing at the southwest corner of said Section 15; thence South 89°57'13" East, bearing assumed, along the south line of the Southwest Quarter of said Section 15, a distance of 125.51 feet; thence North 8°27'10" West a distance of 124.69 feet; thence North 31°36'06" West a distance of 624.33 feet; thence North 17°11'55" West a distance of 235.80 feet; thence North 35°50'02" West a distance of 53.54 feet to the point of beginning of the parcel to be described;

thence North 35°50'02" West a distance of 538.19 feet; thence North 41°01'13" West a distance of 176.58 feet; thence North 32° 04'50" West a distance of 217.23 feet; thence North 53°32'36" West a distance of 82.27 feet; thence South 89°51'33" West a distance of 57.52 feet; thence North 39°22'54" West a distance of 236.68 feet; thence North 34°52'40" West a distance of 467.01 feet; thence North 37°25'29" West a distance of 161.00 feet; thence North 42°11'50" West a distance of 425.35 feet to the Northeasterly right of way line of the Chicago Northwesterly Transportation Company Railroad; thence North 36°21'13" West, along said Northeasterly right of way line, a distance of 470.06 feet; thence North 53°29'14" East a distance of 65.00 feet; thence South 71°50'16" East a distance of 171.59 feet; thence South 19°25'19" East a distance of 389.81 feet; thence South 42°11'50" East a distance of 379.90 feet; thence South 37°25'29" East a distance of 163.97 feet; thence South 34°52'40" East a distance of 466.22 feet; thence South 39°22'54" East a distance of 192.78 feet; thence North 89°51'33" East a distance of 42.62 feet; thence South 53°32'36" East a distance of 121.53 feet; thence South 32°04'50" East a distance of 245.76 feet; thence South 41°01'13" East a distance of 162.38 feet; thence South 35°50'02" East a distance of 539.67 feet to its intersection with a line bearing North 53°38'53" East from the point of beginning; thence South 53°38'53" West a distance of 40.50 feet to the point of beginning.

The Southerly and Northerly lines of the aforedescribed parcel are to be prolonged or shortened so as to terminate at the shoreline of the Mississippi River. The Northeasterly boundary of said parcel is at all times the shoreline of the Mississippi River.

PARCEL B

Those parts of Government Lots 4, 5 and 6 of Section 16, Township 28 N., Range 22 W., Dakota County, Minnesota, described as follows:

Commencing at the southwest corner of said Section 15, Township 28 N., Range 22 W., Dakota County, Minnesota; thence S89°57'13"E, bearing assumed, along the south line of the Southwest Quarter of said Section 15, a distance of 125.51 feet; thence N8°27'10"W a distance of 124.69 feet; thence N31°36'06"W a distance of 624.33 feet; thence N17°11'55"W a distance of 235.80 feet; thence N35°50'02"W a distance of 53.54 feet to the point of beginning of the parcel to be described; thence N35°50'02"W a distance of 538.19 feet; thence N41°01'13"W a distance of 176.58 feet; thence N32°04'50"W a distance of 217.23 feet; thence N53°32'36"W a distance of 82.27 feet; thence S89°51'33"W a distance of 57.52 feet; thence N39°22'54"W a distance of 236.68 feet; thence N34°52'40"W a distance of 467.01 feet; thence N37°25'29"W a distance of 161.00 feet; thence N42°11'50"W a distance of 425.35 feet to the northeasterly right of way line of the Chicago Northwesterly Transportation Company Railroad; thence N36°21'13"W, along said northeasterly right of way line, a distance of 470.06 feet; thence N53°29'14"E a distance of 65.00 feet; thence S71°50'16"E a distance of 171.59 feet; thence S19°25'19"E a distance of 389.81 feet; thence S42°11'50"E a distance of 379.90 feet; thence S37°25'29"E a distance of 163.97 feet; thence S34°52'40"E a distance of 466.22 feet; thence S39°22'54"E a distance of 192.78 feet; thence

N89°51'33"E a distance of 42.62 feet; thence S53°32'36"E a distance of 121.53 feet; thence S32°04'50"E a distance of 245.76 feet; thence S41°01'13"E a distance of 162.38 feet; thence S35°50'02"E a distance of 539.67 feet to its intersection with a line bearing N53°38'53"E from the point of beginning; thence S53°38'53"W a distance of 40.50 feet to the point of beginning.

PARCEL C

That part of Government Lots 2 and 6, Section 16, Township 28 North, Range 22 West; the Southwest Quarter of Section 15 and Government Lot 5, Section 15, Township 28 North, Range 22 West; Lot C, Kochendorfer's Addition to South St. Paul, Minnesota; Lots 8 through 11, Long Island Park Addition to South St. Paul, Dakota County, Minnesota; and Lots 6 and 7, Block 27, South Park Division No. 10, Dakota County, Minnesota, according to the plats thereof (where applicable) on file in the office of the County Recorder, Dakota County, Minnesota, described as follows:

> Commencing at the Northwest corner of Lot 12, Auditor's Subdivision No. 17, South St. Paul, Minnesota, Dakota County, Minnesota; thence South 0°00'52" West (assumed bearing) along the West lines of Lot 12, 14 and 19 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, a distance of 1100.00 feet, more or less, to the Southwest corner of said Lot 19; thence South 89°59'08" East, along the South lines of Lots 19, 18 and 17 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, and said South lines produced East, a distance of 1108.28 feet; thence South 21°30'08" East, 399.46 feet; thence South 19°50'07" East, 321.67 feet; thence South 25°12'56" East, 586.39 feet; thence South 29°05'33" East, 232.42 feet; thence South 35°52'20" East, 318.65 feet; thence South 22°29'18" East, 381.56 feet; thence South 13°14'46"East, 57.76 feet to the point of beginning of the property to be described; thence South 13°14'46" East 436.15 feet; thence South 8°48'21"East, 111.00 feet; thence South 16°16'56" East, 156.05 feet; thence South 7°20'59" East, 84.22 feet; thence North 52°08'15" West, 64.40 feet; thence North 30°11'31" West, 129.21 feet; thence North 28°27'34" West, 446.50 feet; thence North 81°34'09" West, 30.79 feet; thence South 18°30'17" West, 105.09 feet; thence South 28°06'52" East 409.61 feet; thence South 41°55'57" East 181.40 feet; thence North 64°00' East, 40.00 feet; thence South 26°41'51" East, 223.54 feet; thence South 16°50'58" East, 245.51 feet; thence South 27°19'11" East, 126.59 feet; thence South 17°17'25" East, 5.17 feet, more or less, to the South line of Lot 6, Block 27, South Park Division No. 10, Dakota County, Minnesota; thence South 66°50'08" West, along the South line of said Lot 6, a distance of 129.76 feet; thence North 36°24'36" West, 140.89 feet; thence along a tangential curve, concave to the Northeast, radius 3380.95 feet, central angle 6°34'00" a distance of 387.49 feet; thence North 29°50'36" West, 123.43 feet; thence along a tangential curve, concave to the Southwest, radius 2943.93 feet; central angle 6°27'50" a distance of 332.12 feet; thence North 36°18'26" West, 290.00 feet; thence North 53°41'34" East, 581.22 feet to the point of beginning.

Which lies Westerly and Southwesterly of a line described as follows:

> Beginning at the southwest corner of said Section 15; thence S89°57'13"E, bearing assumed, along the south line said Section 15, a distance of 125.51 feet; thence N8°27'10"W a distance of 124.69 feet; thence N31°36'06"W a distance of 624.33 feet; thence N17°11'55"W a distance of 235.80 feet; thence N35°50'02"W a distance of 53.54 feet to the Northwesterly line of the previously described parcel and there terminating.

Note: The basis of bearings in the two parts of the herein described Parcel C are intentionally different.

PARCEL D

That part of Government Lot 5 of Section 15, Township 28 N., Range 22 W., Dakota County, Minnesota, and that part of Government Lot 6 of Section 16, Township 28 N., Range 22 W., Dakota County, Minnesota, described as follows:

Commencing at the southwest corner of said Section 15; thence S89°57'13"E, bearing assumed, along the south line of the Southwest Quarter of said Section 15, a distance of 125.51 feet to the point of beginning of the parcel to be described; thence N8°27'10"W a distance of 124.69 feet; thence N31°36'06"W a distance of 624.33 feet; thence N17°11'55"W a distance of 235.80 feet; thence N35°50'02"W a distance of 53.54 feet; thence N53°38'53"E a distance of 40.50 feet; thence S35°50'02"E a distance of 19.82 feet; thence S71°32'30"E to the westerly shore of the Mississippi river inlet lying in said Government Lot 6 of Section 16 and Government Lot 5 of Section 15; thence southeasterly, along said westerly shore of the Mississippi River inlet and along the westerly shore of the Mississippi River, along said south line of said Southwest Quarter of said section 15; thence North 89°57'13"W, along said south line, to the point of beginning.

PARCEL E

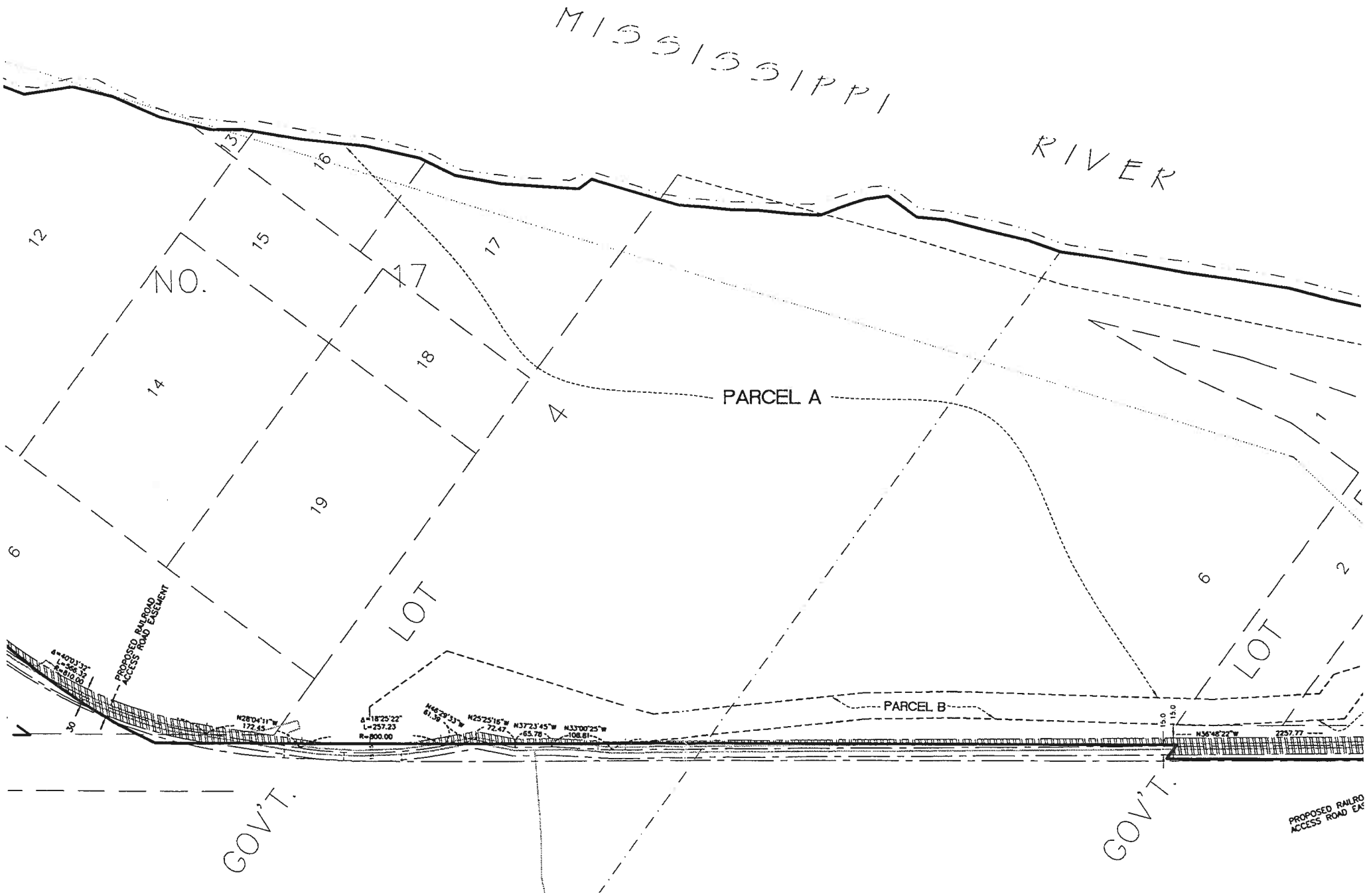
That part of Government Lot 8 of Section 22, Township 28 N., Range 22 W., Dakota County, Minnesota, described as follows:

Commencing at the northwest corner of said Section 22; thence S89°57'13"E, bearing assumed, along the north line of the Northwest Quarter of said Section 22, a distance of 125.51 feet to the point of beginning of the parcel to be described; thence southeasterly, along a nontangential curve, concave to the northeast, having a radius of 3380.95 feet, a central angle of 2°04'09", a chord bearing of S35°25'18"E, a distance of 122.10 feet; thence S36°27'23"E a distance of 140.89 feet; thence N66°47'21"E to the westerly shore of the Mississippi River; thence northwesterly, along said westerly shore of the Mississippi River, to its intersection with the north line of said Northwest Quarter of Section 22; thence N89°57'13"W, along said north line, to the point of beginning.

The centerline of said 30.00 foot wide easement for roadway purposes is described as commencing at the northwest corner of said Section 22, Township 28, Range 22, Dakota

County, Minnesota; thence South 00 degrees 43 minutes 00 seconds West, bearing assumed, along the west line of the Northwest Quarter of said Section 22, a distance of 967.40 feet; thence South 89 degrees 17 minutes 00 seconds East a distance of 802.40 feet; thence North 54 degrees 15 minutes 00 seconds East 37.98 feet; thence northwesterly 423.23 feet along a nontangential curve concave to the northeast having a radius of 4605.00, a central angle of 5 degrees 15 minutes 57 seconds and a chord which bears North 39 degrees 05 minutes 27 seconds West; thence North 36 degrees 27 minutes 29 seconds West, tangent to said curve a distance of 651.40 feet; thence North 37 degrees 46 minutes 51 seconds West a distance of 41.67 feet to the point of beginning of the centerline to be described; thence northerly 53.71 feet along a nontangential curve concave to the west having a radius of 65.00 feet, a central angle of 47 degrees 20 minutes 28 seconds, and a chord which bears North 08 degrees 31 minutes 49 seconds West; thence North 32 degrees 12 minutes 03 seconds West, tangent to said curve, a distance of 302.13 feet; thence northwesterly 140.00 feet along a tangential curve concave to the northeast having a radius of 5,000.00 feet and a central angle of 01 degrees 36 minutes 24 seconds; thence North 30 degrees 35 minutes 40 seconds West, tangent to said curve, a distance of 424.62 feet; thence northwesterly 271.03 feet along a tangential curve concave to the southwest having a radius of 2,500.00 feet and a central angle of 06 degrees 12 minutes 42 seconds; thence North 36 degrees 48 minutes 22 seconds West, tangent to said curve, a distance of 2,257.77 feet; thence North 33 degrees 00 minutes 25 seconds West 108.81 feet; thence North 37 degrees 23 minutes 45 seconds West 65.78 feet; thence North 25 degrees 25 minutes 16 seconds 72.47 feet; thence North 46 degrees 29 minutes 33 seconds West 61.39 feet; thence northwesterly 257.23 feet along a tangential curve concave to the northeast having a radius of 800.00 feet and a central angle of 18 degrees 25 minutes 22 seconds; thence North 28 degrees 04 minutes 11 seconds West, tangent to said curve, a distance of 172.45 feet; thence northerly 566.32 feet along a tangential curve concave to the east having a radius of 810.00 feet and a central angle of 40 degrees 03 minutes 32 seconds; thence North 11 degrees 59 minutes 22 seconds East, tangent to said curve, a distance of 83.22 feet; thence northeasterly 328.67 feet along a tangential curve concave to the southeast having a radius of 675.00 feet and a central angle of 27 degrees 53 minutes 53 seconds; thence North 39 degrees 53 minutes 14 seconds East, tangent to said curve, a distance of 303.70 feet; thence North 48 degrees 09 minutes 52 seconds East 238.13 feet and said centerline there terminating.

SEE THE FULL SIZED VERSIONS FOR MORE COMPLETE AND DETAILED INFORMATION.



THIS EXHIBIT MAP IS A SIMPLIFIED VERSION OF THE FULL-SIZED COPIES THEREOF.
SEE THE FULL SIZED VERSIONS FOR MORE COMPLETE AND DETAILED INFORMATION.

NORTH

0 100 200 300

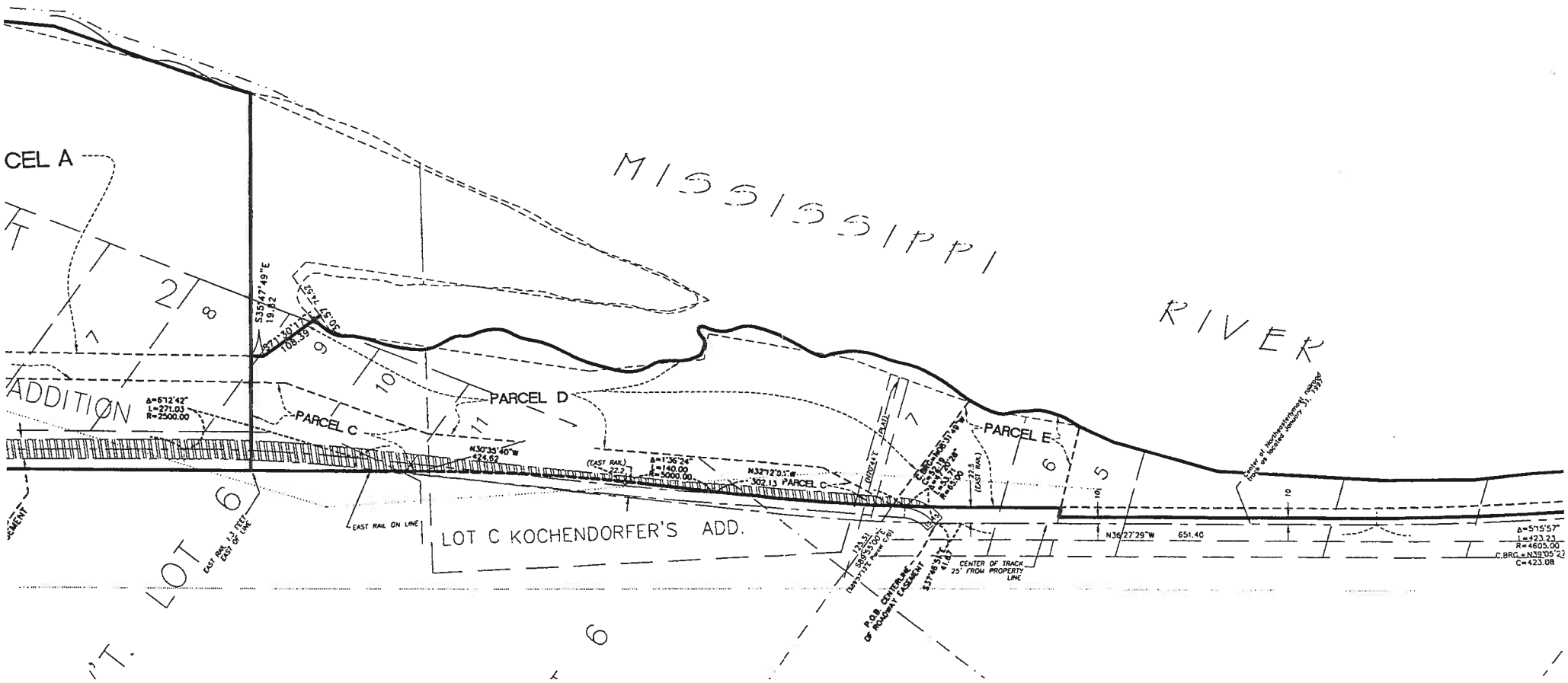
SCALE IN FEET

DOCUMENT SOURCES

PARCEL NUMBER	ORIGINAL DOCUMENT	DOCUMENT NUMBER
A	Wheeling Contract for Deed - Parcel 1	Unknown - Provided by City
B	Condemnation - Parcel 17	Unknown - Provided by City
C	Parcel 1 from Commonwealth Title Commitment 39973C lying Southwesterly of Condemned Parcel 16	Unknown - from Title Commitment
D	Condemnation - Parcel 16	Unknown - Provided by City
E	Condemnation - Parcel 15A	Unknown - Provided by City

PROPOSED EASEMENT AREAS

PROPOSED RAILROAD ACCESS ROAD EASEMENT	86,177 SQ. FT.
OVERLAP WITH RAILROAD TRACK EASEMENTS	1,297 SQ. FT.



RAILROAD TRACKS EASEMENT

THIS RAILROAD TRACKS EASEMENT ("Easement") is made this ___ day of _____, 2014 between the City of South St. Paul (the "City"), a Minnesota municipal corporation, as grantor, and the Union Pacific Railroad Company (the "Railroad"), a Delaware corporation, as grantee.

SECTION ONE
Easement Grant

Upon the terms and subject to the conditions contained in this Easement, and in consideration of the sum of One Dollar ($1.00), or other good and valuable consideration, to it in hand paid by the Railroad, the receipt of which is hereby acknowledged, the City does hereby grant and convey to the Railroad a perpetual, exclusive easement for the construction, use, operation, maintenance, repair, reconstruction and replacement of railroad tracks and appurtenances thereto, drainage facilities, utilities and communication facilities, and for any other railroad purposes ("Tracks") over and across the real property in Dakota County, Minnesota, legally described in Exhibit A, attached to this Easement ("Easement Area") and as depicted in the Exhibit Map on Exhibit B, attached to this Easement, both of which are made a part hereof.

SECTION TWO
Repair and Maintenance

Railroad accepts the Easement Area in its present "as-is" condition, without any obligation on the part of the City to make improvements or repairs to it.

The easement rights herein granted to the Railroad include the rights of the Railroad, its contractors, agents, and servants to enter upon the Easement Area at all reasonable times to construct, reconstruct, repair and maintain the Tracks. The Railroad shall, at its cost, make all repairs and improvements to the Tracks and shall maintain it in a good condition.

In addition, this Easement grants the non-exclusive right for ingress, egress and utilities, seven (7) days a week, twenty-four (24) hours a day, on foot or motor vehicle, including trucks, over, under, or along a right-of-way extending from the nearest public right-of-way, to the Easement Area for access.

SECTION THREE
Indemnity

Railroad agrees to indemnify and hold harmless the City, its elected officials, officers and employees from all claims, actions, suits, costs, judgments, damages, or expenses, including attorneys fees or other legal costs, for any personal injury, death or property damage arising out of or resulting from the Railroad's exercise of its rights and performance of its obligations under this Easement, including those based upon a release or threatened release of any hazardous substances, pollutants, or contaminants by the Railroad only, except such as are based on the willful act or omission of the City, its elected officials, officers, or employees.

SECTION FOUR
Insurance

(1) Railroad shall at its cost keep in force during the term of this Easement the following types and minimum amounts of insurance, on an occurrence basis, subject to adjustment as provided in paragraph (2):

A. Commercial General Liability policy covering bodily injury, including death, property damage, and personal injury on a comprehensive form, including contractual liability, broad form property damage, with limits not less than $1,000,000.00 per person and $2,000,000.00 combined single limit each occurrence.

B. Business Automobile coverage for bodily injury, death and property damage, including any and all motor vehicles, owned, leased and non-owned with limits not less than $2,000,000.00 combined single limit.

(2) If the government liability amounts established by Minnesota Statutes, Chapter 466, as amended from time to time, or a successor statute, exceed the preceding amounts of insurance, the limits of coverage of the insurance shall be correspondingly increased.

(3) Railroad shall furnish the City with certificates of insurance listing the City as a certificate holder prior to exercising any rights under this Easement and evidencing the insurance required by this Section Four during the term of this Easement.

(4) Any policy obtained and maintained under this section shall provide that it shall not be cancelled, materially changed, or not renewed without 30 days prior written notice to the City.

(5) The provision of insurance as required by this section shall not be deemed to release or reduce the liability of Railroad, including, without limitation, liability under the indemnity provision of this Easement, nor shall damages recoverable by the City be limited by the amount of the insurance coverage.

(6) Nothing contained herein shall be deemed a waiver by the City of any governmental immunity defenses, statutory or otherwise. Further, any and all claims brought by Railroad, its successors or assigns, shall be subject to any governmental immunity defenses of the City and the maximum liability limits provided in Minnesota Statute, Chapter 466.

(7) Notwithstanding any provision herein to the contrary, the Railroad is allowed to retain (self-insure) in whole or in part any insurance obligation under this Agreement. Any retention shall be for the account of the Railroad. If the Railroad elects to retain (self-insure) any insurance required by this Agreement, the Railroad agrees it shall provide the City with the same coverage that would have been provided to it by the required commercial insurance forms had the Railroad obtained commercial insurance. For all coverage not retained (self-insured), the Railroad shall furnish the City with a certificate(s) of insurance, executed by a duly-authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement. For all coverage retained (self-insured), the Railroad shall provide a letter stating that, through its risk management programs, it retains the balance of its insurance obligation under this Agreement and that this letter is provided in lieu of a certificate of insurance.

SECTION FIVE
Labor and Material Claims

Railroad shall not permit any mechanic's or materialman's lien of any kind or nature to be enforced against the Easement area for any work done or materials furnished thereon at the request or on behalf of the Railroad. The Railroad shall indemnify and hold harmless the City against and from any and all liens, claims, demands, costs and expenses construed in any way with or growing out of labor performed or materials furnished.

SECTION SIX
Termination

The City may, at its option, terminate this Easement by written notice to Railroad by personal service or mailed to its last known address if Railroad (a) does not use the rights granted by this Easement for one year, or (b) continues in default in the performance of any obligation under this Easement for more than thirty (30) days after notice from the City, unless such default is curable but is not capable of being cured through the Railroad's diligent and continuous effort within the thirty (30) day period, and the Railroad thereafter applies its diligent and continuous best efforts to cure such default, and does complete its performance to cure the default within ninety (90) days of the City's initial notice of default.

SECTION SEVEN
Survival of Provisions

The provisions of Sections Three and Five of this Easement shall survive its termination. Rights, obligations or liabilities that accrued prior to the termination of this Easement shall survive its termination.

IN WITNESS WHEREOF, the City has caused this Easement to be executed in its corporate name by its Mayor and City Clerk and its seal to be affixed.

City of South St. Paul

By: _____
Name: Beth A. Baumann
Its: Mayor

By: _____
Name: Christy M. Wilcox
Its: City Clerk

STATE OF MINNESOTA)
)s.s.
COUNTY OF DAKOTA)

The foregoing instrument was acknowledged before me this ___ day of _____ 2014 by Beth A. Baumann, Mayor, and Christy M. Wilcox, City Clerk, of the City of South St. Paul, a Minnesota municipal corporation, on behalf of the corporation.

_____
Notary Public

This instrument was drafted by:
Ann E. Kennedy
Nilsson Brandt, P.A. .
900 Flour Exchange Building
310 Fourth Avenue South
Minneapolis, Minnesota 55415
612.843.44701

EXHIBIT A
Easement Area

An easement 19.00 feet in width over and across the following described parcels A and C:

PARCEL A:
That part of Government Lots 2, 3, 4, 5 and 6, Section 16, Township 28 North, Range 22 West; Lots 6, 11 and 20, Auditor's Subdivision No. 17, South St. Paul, Minnesota; the Southwest Quarter of Section 15, Township 28 North, Range 22 West; Lot C, Kochendorfer's Addition to South St. Paul, Minnesota; Lots 1 through 11, Long Island Park Addition to South St. Paul, Dakota County, Minnesota; and Lots 6 and 7, Block 27, South Park Division No. 10, Dakota County, Minnesota, according to the plats thereof (where applicable) on file in the office of the County Recorder, Dakota County, Minnesota, described as follows:

Beginning at the Northwest corner of the Lot 12, said Auditor's Subdivision No. 17, South St. Paul, Minnesota; thence South 0°00'52" West (assumed bearing) along the West lines of Lots 12, 14 and 19 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, a distance of 1,100.00 feet, more or less, to the Southwest corner of said Lot 19; thence South 89°59'08" East, along the South lines of Lots 19, 18 and 17 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, and said South lines produced East, a distance of 1,108.28 feet; thence South 21°30'08" East 399.46 feet; thence South 19°50'07" East 321.67 feet; thence South 25°12'56" East 586.39 feet; thence South 29°05'33" East 232.42 feet; thence South 35°52'20" East 318.65 feet; thence South 22°29'18" East 381.56 feet; thence South 13°14'46" East 493.91 feet; thence South 8°48' 21" East 111.00 feet; thence South 16°16'56" East 156.05 feet; thence South 7°20'59" East 84.22 feet; thence North 52°08'15" West 64.40 feet; thence North 30°11'31" West 129.21 feet; thence North 28°27'34" West 446.50 feet; thence North 81°34'09" West 30.79 feet; thence South 18°30'17" West 105.09 feet; thence South 28°06'52" East 409.61 feet; thence South 41°55'57" East 181.40 feet; thence North 64°00' East 40.00 feet; thence South 26°41'51" East 223.54 feet; thence South 16°50'58" East 245.51 feet; thence South 27°19'11" East 126.59 feet; thence South 17°17'25" East 5.17 feet, more or less, to the South line of Lot 6, Block 27, South Park Division No. 10, Dakota County, Minnesota; thence South 66° 50' 08" West along the South line of said Lot 6, a distance of 129.76 feet; thence North 36°24'36" West 140.89 feet; thence along a tangential curve, concave to the Northeast, radius 3,380.95 feet, central angle 6°34'00" a distance of 387.49 feet; thence North 29°50'36" West 123.43 feet; thence along a tangential curve, concave to the Southwest, radius 2,943.93 feet, central angle 6°27'50" a distance of 332.12 feet; thence North 36°18'26" West 1,653.86 feet; thence South 89°59'08" East 31.03 feet; thence North 36°18'26" West 1841.64 feet to a point on a non-tangential curve, radius 1,120.55 feet, the center of circle of said curve bears North 77°54'39" East from said point; thence Northeasterly along said curve, central angle 62°55'27" a distance of 1,230.62 feet; thence North 50°50'06" East 261.37 feet; thence South 27°13'41" East 315.44 feet;

thence South 30°17'11" East 60.31 feet, more or less, to the North line of Lot 12 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota; thence to the point of beginning,

Except that part thereof described as follows:

Commencing at the Northwest corner of Lot 12, Auditor's Subdivision No. 17, South St. Paul, Minnesota, Dakota County, Minnesota; thence South 0°00'52" West (assumed bearing) along the West lines of Lots 12, 14 and 19 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, a distance of 1,100.00 feet, more or less, to the Southwest corner of said Lot 19; thence South 89° 59' 08" East, along the South lines of Lots 19, 18 and 17 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, and said South lines produced East, a distance of 1,108.28 feet; thence South 21°30'08" East, 399.46 feet; thence South 19° 50' 07" East, 321.67 feet; thence South 25°12'56" East, 586.39 feet; thence South 29° 05'33" East, 232.42 feet; thence South 35°52'20" East, 318.65 feet; thence South 22°29'18" East, 381.56 feet; thence South 13°14'46" East, 57.76 feet to the point of beginning of the property to be described; thence South 13°14'46" East, 436.15 feet; thence South 8°48'21" East, 111.00 feet; thence South 16°16'56" East, 156.05 feet; thence South 7°20'59" East, 84.22 feet; thence North 52°08'15" West, 64.40 feet; thence North 30°11'31" West, 129.21 feet; thence North 28°27'34" West, 446.50 feet; thence North 81°34'09" West, 30.79 feet; thence South 18°30'17" West, 105.09 feet; thence South 28°06'52" East 409.61 feet; thence South 41°55'57" East 181.40 feet; thence North 64°00' East, 40.00 feet; thence South 26°41'51" East, 223.54 feet; thence South 16°50'58" East, 245.51 feet; thence South 27°19'11" East, 126.59 feet; thence South 17°17'25" East, 5.17 feet, more or less, to the South line of Lot 6, Block 27, South Park Division No. 10, Dakota County, Minnesota; thence South 66°50'08" West, along the South line of said Lot 6, a distance of 129.76 feet; thence North 36°24'36" West, 140.89 feet; thence along a tangential curve, concave to the Northeast, radius 3380.95 feet, central angle 6°34'00" a distance of 387.49 feet; thence North 29°50'36" West, 123.43 feet; thence along a tangential curve, concave to the Southwest, radius 2,943.93 feet, central angle 6°27'50" a distance of 332.12 feet; thence North 36°18'26" West, 290.00 feet; thence North 53°41'34" East, 581.22 feet to the point of beginning.

Also except those parts of Government Lots 4, 5 and 6 of Section 16, Township 28 North, Range 22 West, Dakota County, Minnesota, described as follows.

Commencing at the southwest corner of said Section 15; thence South 89°57'13" East, bearing assumed, along the south line of the Southwest Quarter of said Section 15, a distance of 125.51 feet; thence North 8°27'10" West a distance of 124.69 feet; thence North 31°36'06" West a distance of 624.33 feet; thence North 17°11'55" West a distance of 235.80 feet; thence North 35°50'02" West a distance of 53.54 feet to the point of beginning of the parcel to be described; thence North 35°50'02" West a distance of 538.19 feet; thence North 41°01'13"

West a distance of 176.58 feet; thence North 32° 04'50" West a distance of 217.23 feet; thence North 53°32'36" West a distance of 82.27 feet; thence South 89°51'33" West a distance of 57.52 feet; thence North 39°22'54" West a distance of 236.68 feet; thence North 34°52'40" West a distance of 467.01 feet; thence North 37°25'29" West a distance of 161.00 feet; thence North 42°11'50" West a distance of 425.35 feet to the Northeasterly right of way line of the Chicago Northwesterly Transportation Company Railroad; thence North 36°21'13" West, along said Northeasterly right of way line, a distance of 470.06 feet; thence North 53°29'14" East a distance of 65.00 feet; thence South 71°50'16" East a distance of 171.59 feet; thence South 19°25'19" East a distance of 389.81 feet; thence South 42°11'50" East a distance of 379.90 feet; thence South 37°25'29" East a distance of 163.97 feet; thence South 34°52'40" East a distance of 466.22 feet; thence South 39°22'54" East a distance of 192.78 feet; thence North 89°51'33" East a distance of 42.62 feet; thence South 53°32'36" East a distance of 121.53 feet; thence South 32°04'50" East a distance of 245.76 feet; thence South 41°01'13" East a distance of 162.38 feet; thence South 35°50'02" East a distance of 539.67 feet to its intersection with a line bearing North 53°38'53" East from the point of beginning; thence South 53°38'53" West a distance of 40.50 feet to the point of beginning.

The Southerly and Northerly lines of the aforedescribed parcel are to be prolonged or shortened so as to terminate at the shoreline of the Mississippi River. The Northeasterly boundary of said parcel is at all times the shoreline of the Mississippi River.

PARCEL C

That part of Government Lots 2 and 6, Section 16, Township 28 North, Range 22 West; the Southwest Quarter of Section 15 and Government Lot 5, Section 15, Township 28 North, Range 22 West; Lot C, Kochendorfer's Addition to South St. Paul, Minnesota; Lots 8 through 11, Long Island Park Addition to South St. Paul, Dakota County, Minnesota; and Lots 6 and 7, Block 27, South Park Division No. 10, Dakota County, Minnesota, according to the plats thereof (where applicable) on file in the office of the County Recorder, Dakota County, Minnesota, described as follows:

Commencing at the Northwest corner of Lot 12, Auditor's Subdivision No. 17, South St. Paul, Minnesota, Dakota County, Minnesota; thence South 0°00'52" West (assumed bearing) along the West lines of Lot 12, 14 and 19 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, a distance of 1100.00 feet, more or less, to the Southwest corner of said Lot 19; thence South 89°59'08" East, along the South lines of Lots 19, 18 and 17 of said Auditor's Subdivision No. 17, South St. Paul, Minnesota, and said South lines produced East, a distance of 1108.28 feet; thence South 21°30'08" East, 399.46 feet; thence South 19°50'07" East, 321.67 feet; thence South 25°12'56" East, 586.39 feet; thence South 29°05'33" East, 232.42 feet; thence South 35°52'20" East, 318.65 feet; thence South 22°29'18" East, 381.56 feet; thence South 13°14'46"East, 57.76 feet to the point of beginning of the property to be described; thence South 13°14'46"

East 436.15 feet; thence South 8°48'21"East, 111.00 feet; thence South 16°16'56" East, 156.05 feet; thence South 7°20'59" East, 84.22 feet; thence North 52°08'15" West, 64.40 feet; thence North 30°11'31" West, 129.21 feet; thence North 28°27'34" West, 446.50 feet; thence North 81°34'09" West, 30.79 feet; thence South 18°30'17" West, 105.09 feet; thence South 28°06'52" East 409.61 feet; thence South 41°55'57" East 181.40 feet; thence North 64°00' East, 40.00 feet; thence South 26°41'51" East, 223.54 feet; thence South 16°50'58" East, 245.51 feet; thence South 27°19'11" East, 126.59 feet; thence South 17°17'25" East, 5.17 feet, more or less, to the South line of Lot 6, Block 27, South Park Division No. 10, Dakota County, Minnesota; thence South 66°50'08" West, along the South line of said Lot 6, a distance of 129.76 feet; thence North 36°24'36" West, 140.89 feet; thence along a tangential curve, concave to the Northeast, radius 3380.95 feet, central angle 6°34'00" a distance of 387.49 feet; thence North 29°50'36" West, 123.43 feet; thence along a tangential curve, concave to the Southwest, radius 2943.93 feet; central angle 6°27'50" a distance of 332.12 feet; thence North 36°18'26" West, 290.00 feet; thence North 53°41'34" East, 581.22 feet to the point of beginning.

Which lies Westerly and Southwesterly of a line described as follows:

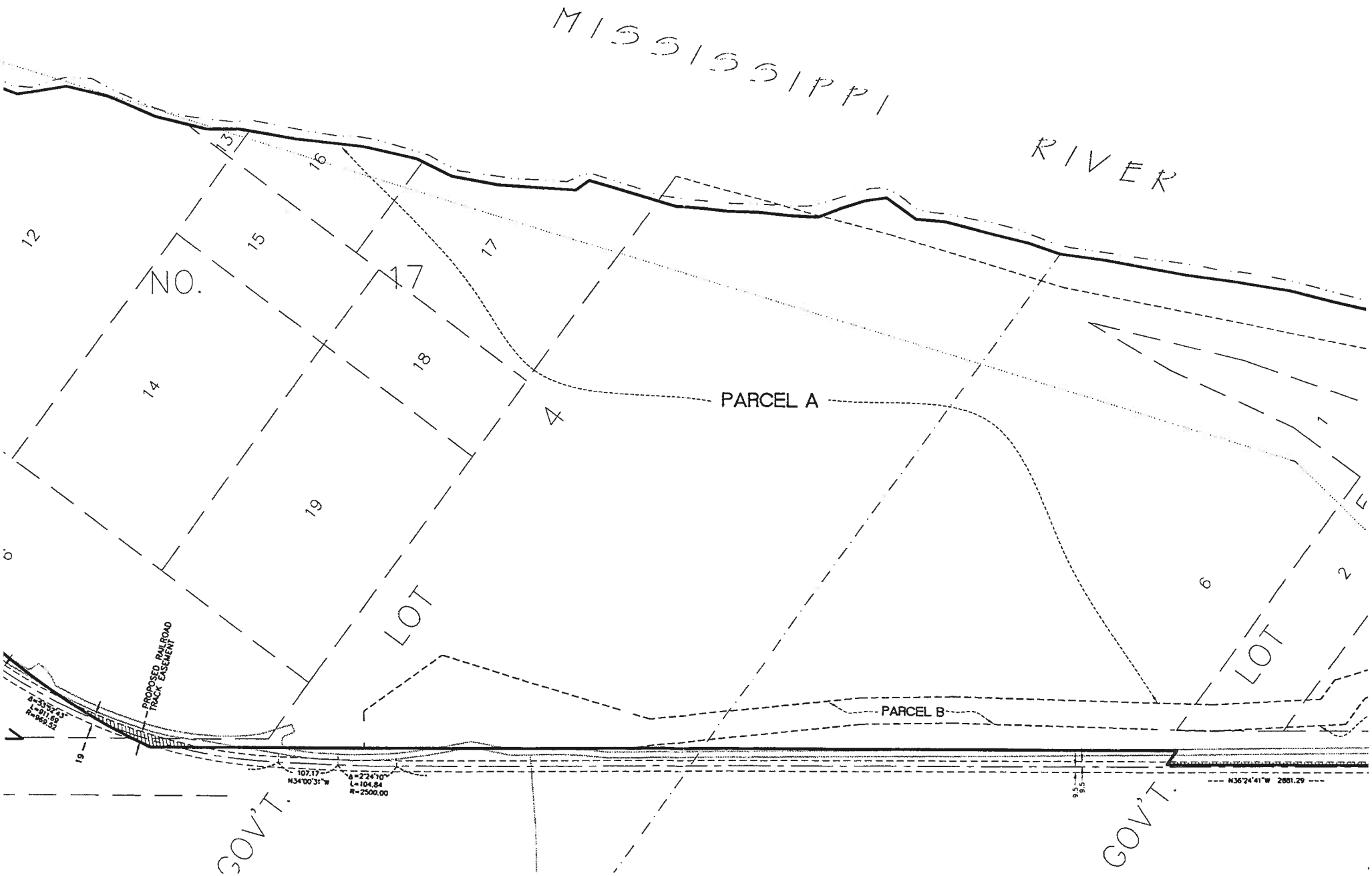
Beginning at the southwest corner of said Section 15; thence S89°57'13"E, bearing assumed, along the south line said Section 15, a distance of 125.51 feet; thence N8°27'10"W a distance of 124.69 feet; thence N31°36'06"W a distance of 624.33 feet; thence N17°11'55"W a distance of 235.80 feet; thence N35°50'02"W a distance of 53.54 feet to the Northwesterly line of the previously described parcel and there terminating.

Note: The basis of bearings in the two parts of the herein described Parcel C are intentionally different.

The centerline of said 19.00 foot wide easement for railroad purposes is described as commencing at the northwest corner of said Section 22, Township 28, Range 22, Dakota County, Minnesota; thence South 00 degrees 43 minutes 00 seconds West, bearing assumed, along the west line of the Northwest Quarter of said Section 22, a distance of 967.40 feet; thence South 89 degrees 17 minutes 00 seconds East a distance of 802.40 feet; thence North 54 degrees 15 minutes 00 seconds East 37.98 feet to the point of beginning of the centerline to be described; thence northwesterly 423.23 feet along a nontangential curve concave to the northeast having a radius of 4605.00, a central angle of 5 degrees 15 minutes 57 seconds and a chord which bears North 39 degrees 05 minutes 27 seconds West; thence North 36 degrees 27 minutes 29 seconds West, tangent to said curve, a distance of 651.40 feet; thence northwesterly 317.45 feet along a tangential curve concave to the northeast having a radius of 2,903.00 feet and a central angle of 06 degrees 15 minutes 55 seconds; thence North 30 degrees 11 minutes 33 seconds West, tangent to said curve, a distance of 477.64 feet; thence northwesterly 186.68 feet along a tangential curve concave to the southwest having a radius of 1,720.00 feet and a central angle of 06 degrees 13 minutes 07 seconds; thence North 36 degrees 24 minutes 41 seconds West, tangent to said curve,

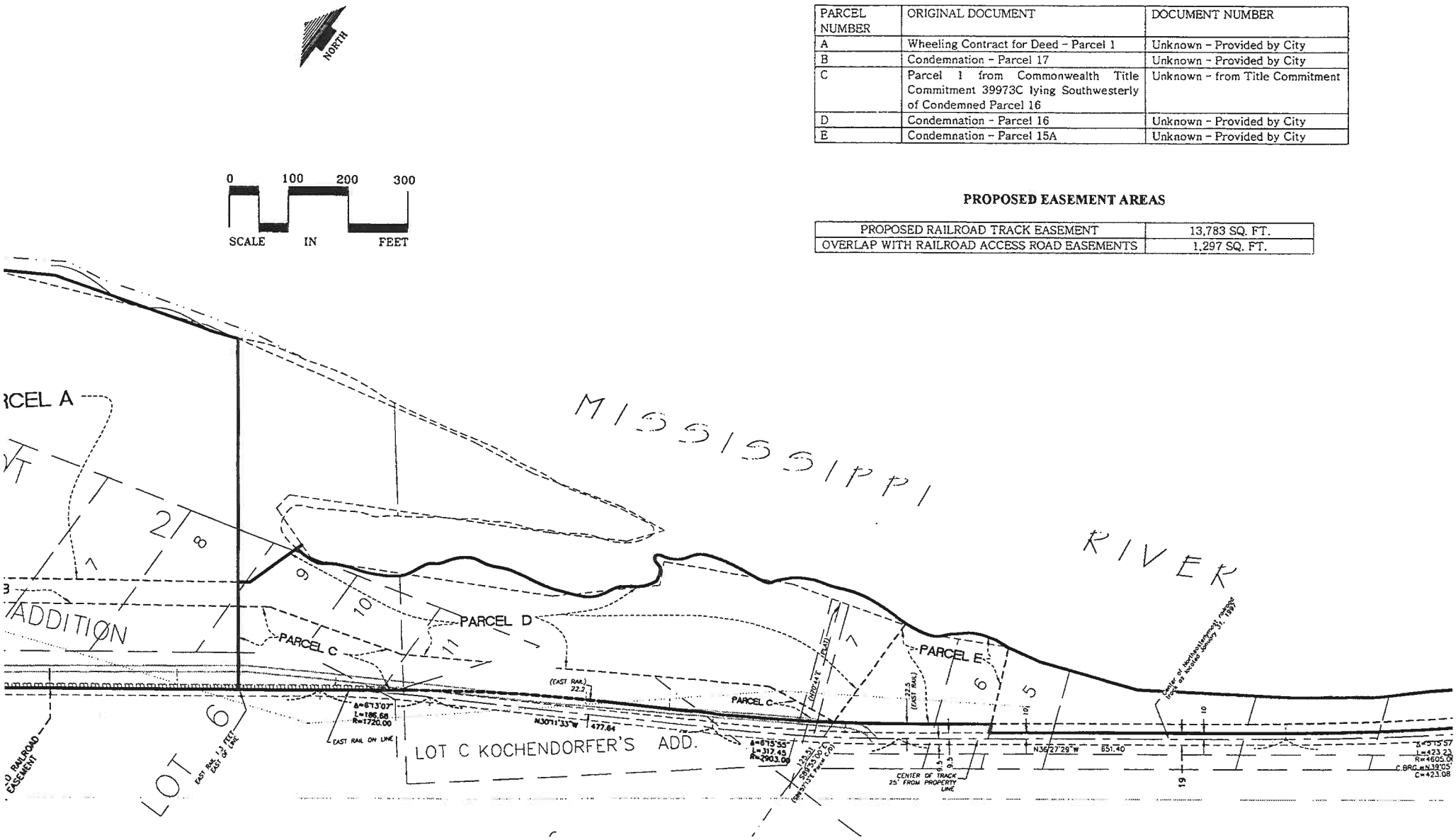
a distance of 2,881.29 feet; thence northwesterly 104.84 feet along a tangential curve concave to the northeast having a radius of 2,500.00 feet and a central angle of 02 degrees 24 minutes 10 seconds; thence North 34 degrees 00 minutes 31 seconds West, tangent to said curve, a distance of 107.17 feet; thence northerly 911.69 feet along a tangential curve concave to the east having a radius of 969.52 feet and a central angle of 53 degrees 52 minutes 43 seconds; thence northeasterly 592.78 feet along a non-tangential curve concave to the southeast having a radius of 1,170.55 feet a central angle of 29 degrees 00 minutes 55 seconds and a chord which bears North 36 degrees 19 minutes 38 seconds East; thence North 50 degrees 50 minutes 06 seconds East, tangent to said curve, a distance of 265.36 feet and said centerline there terminating.

SEE THE FULL SIZED VERSIONS FOR MORE COMPLETE AND DETAILED INFORMATION.



DOCUMENT SOURCES

PARCEL NUMBER	ORIGINAL DOCUMENT	DOCUMENT NUMBER
A	Wheeling Contract for Deed – Parcel 1	Unknown – Provided by City
B	Condemnation – Parcel 17	Unknown – Provided by City
C	Parcel 1 from Commonwealth Title Commitment 39973C lying Southwesterly of Condemned Parcel 16	Unknown – from Title Commitment
D	Condemnation – Parcel 16	Unknown – Provided by City
E	Condemnation – Parcel 15A	Unknown – Provided by City

PROPOSED EASEMENT AREAS

PROPOSED RAILROAD TRACK EASEMENT	13,783 SQ. FT.
OVERLAP WITH RAILROAD ACCESS ROAD EASEMENTS	1,297 SQ. FT.