IOWA DOT
SMARTER | SIMPLER | CUSTOMER DRIVEN

# Railroad Revolving Loan and Grant Program Agreement

**Project Number: RRLG-ST15(03)--9T-77**

**Award Date: October 14, 2014**

**Loan Amount: $1,700,000**

Business Address: Des Moines Area Metropolitan Planning Organization
420 Watson Powell Jr. Parkway
Suite 200
Des Moines, Iowa, 50309

Department Address: Office of Rail Transportation
Planning, Programming and Modal Division
800 Lincoln Way
Ames, Iowa 50010


ARTICLE I. DEFINITIONS
ARTICLE II. FUNDING
ARTICLE III. TERMS OF LOAN
ARTICLE IV. CONDITIONS OF DISBURSEMENT OF FUNDS
ARTICLE V. DISBURSEMENT PROCEDURES
ARTICLE VI. REPRESENTATIONS AND WARRANTIES OF BUSINESS
ARTICLE VII. COVENANTS OF BUSINESS
ARTICLE VIII. DEFAULTS AND REMEDIES
ARTICLE IX. GENERAL TERMS AND CONDITIONS

THIS AGREEMENT is made between IOWA DEPARTMENT OF TRANSPORTATION, Planning, Programming and Modal Division, 800 Lincoln Way, Ames, Iowa 50010 ("Department" or "DOT") and The Des Moines Metropolitan Planning Organization, 420 Watson Powell Jr. Parkway, Suite 200, Des Moines, Iowa 50309 (referred to as "Business").

The Department desires to make a Loan to the Business and the Business desires to accept this Loan, all upon the terms and conditions set forth in this Agreement. The Railroad Revolving Loan and Grant Program (RRLG) funding is to be provided pursuant to Iowa Code Chapter 327H.20A and 761 Iowa Administrative Rules chapter 822.

THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, it is agreed as follows:

## ARTICLE I
## DEFINITIONS

As used in this Agreement, the following terms shall apply:

1.1 **AGREEMENT EXPIRATION DATE.** "Agreement Expiration Date" means the date all obligations of the Agreement have been satisfied.

1.2 **AWARD DATE.** "Award Date" means the date on which the Iowa Transportation Commission approved the DOT participation, which was October 14, 2014.

1.3 **AGREEMENT DATE.** "Agreement Date" means the date that this Agreement is fully executed, including Exhibits E and F hereto.

1.4 **LOAN.** "Loan" means a conventional loan through the Railroad Revolving Loan and Grant Funds, the terms of which are set forth in this Agreement. The loan amount is matched with 20% provided by the recipient and 80% of the covered rail project costs provided by the RRLG fund.

1.5 **AGREEMENT.** "Agreement" means this Agreement, the Project budget and all the notes, leases, assignments, mortgages, and similar documents referred to in the Agreement and all other instruments or documents executed by the Business or otherwise required in connection with the Agreement, including but not limited to the following:

a. Exhibit A, Location and Site Map

b. Exhibit B, Description of work with sketch plan

c. Exhibit C, Itemized Cost Estimate

d. Exhibit D, Required Bidding Procedures

e. Exhibit E, Promissory Note of the Business

f. Exhibit F, Security Agreement and Financing Statement

g. Exhibit G Amortization Schedule

1.6 **PROJECT.** "Project" includes development of a transload facility to improve the overall freight capacity and options in the Des Moines metropolitan area. As proposed, the site will receive direct service by NS and BNSF and will be able to access the IAIS and the UP via a reciprocal switch with the construction of a connection to the IAIS. The "Project" also includes other obligations to be performed or accomplished by the Business as described in this Agreement and the application approved by the Department.

1.7 **CONSTRUCTION COMPLETION DATE.** "Construction Completion Date" means thirty-six months after the Agreement Date, and is the date by which the Project shall have been fully accomplished. The Construction Completion Date may be extended by the Department if the Business requests an extension in writing.

## ARTICLE II
## FUNDING

2.1 **FUNDING SOURCE.** The source of funding for the Loan is the Railroad Revolving Loan and Grant Program.

2.2 **RECEIPT OF FUNDS.** All payments owed by the Department to the Business under this Agreement are subject to receipt by the Department of sufficient State funds for the RRLG program. Any termination, reduction or delay of funding to the RRLG fund to the Department shall, at the option of the Department, result in the termination, reduction or delay of RRLG funds to the Business.

2.3 **PRIOR COSTS.** No expenditures made prior to the Award Date may be included as Project costs for the purposes of this Agreement. Expenditures made prior to the Agreement Date, but after the Award Date may not be included as Project costs for the purposes of this Agreement unless approved in writing by the Department of Transportation prior to the start of Project work.

2.4 **FINAL DISBURSEMENT.** The final billing shall be submitted for reimbursement within six months following the Construction Completion Date, or the Department shall be under no obligation for further disbursement.

## ARTICLE III
## TERMS OF LOAN

3.1 **LOAN.** The Department agrees to make a Loan to the Business in the maximum amount of $1,700,000 of the total project cost. Interest at zero percent (0%) per year for ten (10) years shall begin accruing effective January 1, 2021.

a. PROMISSORY NOTE. The obligation to repay the Loan shall be evidenced by a Promissory Note executed by the Business, which is attached as Exhibit E.

b. SECURITY AGREEMENT AND FINANCING STATEMENT. To secure repayment Business shall execute a Security Agreement covering the following property including all rail, ties and related track related material used in the rehabilitation as collateral for the loan, which is attached as Exhibit F.

c. PREPAYMENT. The outstanding principal and accrued interest of this Loan may be prepaid in part or in full at any time without penalty.

d. ACCELERATION UPON DEFAULT. If there is a failure to pay any installment of principal when due, or only a portion is paid, or in the event of any other default under this Agreement, the Department may declare the entire unpaid principal of the Loan and all accrued interest immediately due and payable.

## ARTICLE IV
## CONDITIONS TO DISBURSEMENT OF FUNDS

Unless and until the following CONDITIONS have been satisfied, the Department shall be under no obligation to disburse to the Business any amounts under the Agreement:

4.1 **PROJECT SCHEDULE.** The Business shall have submitted a Project schedule and have received the Department's approval of the Project schedule.

4.2 **COMPETITIVE BIDDING REQUIREMENTS.** All Project work shall be accomplished pursuant to the procedures shown in Exhibit D, attached hereto and made a part of this Agreement. Any exceptions shall be approved by the Department.

4.3 **RECORDING.** The Business shall have properly recorded in the appropriate office of the County Recorder and/or filed with the Secretary of State and in all such other places as may be required by law in order to fully reserve and protect the Department, any security agreement, financing statement or similar document required by the Department under Paragraph 3.1 of this the Agreement. All recording charges shall be paid by the Business as a Business expense. Business shall, prior to any reimbursement, furnish to the Department an opinion of counsel stating that the financing documents have been properly recorded or filed of record, and that it is a lien on the property described in the document, and furnish to the Department a UCC lien search stating that the financing statement has been properly recorded or filed of record and that it is a lien on the property described in the security agreement. The security agreement, financing statement or similar document required by the Department under Paragraph 3.1 of this the Agreement shall remain in effect for the duration of the loan. Upon payment in full of all amounts owed under the terms of the loan, the Department shall file an appropriate release of lien or termination agreement with the appropriate office of the County Recorder and/or Secretary of State."

## ARTICLE V
## DISBURSEMENT PROCEDURES

5.1 **UTILIZATION OF FUNDS.** The Business shall utilize RRLG for financing the Project described in the work description shown as Exhibit B. All labor performed and material used on the Project shall conform to Exhibit C. The Business agrees that the quantity of items shown in Exhibit C shall be the minimum incorporated into the Project. Any proposed changes in quality or quantity of materials or work performed shall be approved in advance in writing by DOT.

5.2 **DISBURSMENT OF FUNDS.** No disbursement of funds shall be made for work that does not conform to Exhibit B and Exhibit C except for work changes approved in advance in writing by DOT. Disbursements may be made for conforming work done after the date of this Agreement, provided the Business

provides adequate documentation to DOT of the work performed, the costs incurred, and actual payment of the cost by the Business. No disbursement of funds shall be made for work that is done after the Construction Completion Date.

5.3 **REQUESTS FOR REIMBURSEMENT.** All disbursements of proceeds shall be subject to the receipt by the Department of Requests for Reimbursement submitted by the Business. Requests for Reimbursement shall be in form and content acceptable to the Department.

5.4 **PROCEDURE FOR REQUESTS OF REIMBURSEMENT.**
RRLG funds shall be disbursed in the following manner:

b. No more than monthly, the Business may send a Request for Reimbursement to the DOT for work performed which has not previously been submitted to the DOT.

c. The Business shall make no Request for Reimbursement of less than fifty thousand dollars ($50,000), with the exception of the final Request for Reimbursement.

d. DOT shall make reimbursements only for that work performed which conforms to Exhibit B and Exhibit C or with work changes to Exhibit B or Exhibit C approved in advance by DOT.

e. DOT shall reimburse the Business only for authorized work, and for which proper documentation of receipts, quantities, and proof of payment has been provided.

f. Loan reimbursement costs of all Authorized Work documented in each Request for Reimbursement will be made only for Project costs up to the maximum amount stated in Paragraph 3.1 of the Agreement.

g. Ten percent (10%) shall be retained from each reimbursement payment made by DOT until the Project has been accepted as complete by the DOT, the Business has signed the Certificate of Completion and Final Acceptance as described in 5.5. of this Agreement, and a letter of acceptance for service has been provided by the serving railroad.

5.5 **COMPLETION OF PROJECT AND FINAL ACCEPTANCE**. Upon completion of the Project work, the Business shall certify that the Project work has been completed in accordance with the Agreement by signing the Certificate of Completion. Railroad acceptance of the Project, if required, shall also be provided in writing. DOT shall determine whether to accept the Project as complete and shall promptly notify the Business in writing of any items of work

not approved, pursuant to Exhibit B and Exhibit C and any work changes to Exhibit B or Exhibit C authorized in advance by DOT.

5.6 **FINAL PAYMENT**. After Business certification that Project is complete Business shall submit a final bill within six months of Project completion. The DOT shall have no responsibility to make the final payment without receiving the final bill.

## ARTICLE VI
## REPRESENTATIONS AND WARRANTIES OF BUSINESS

To induce the Department to make the Loan referred to in this Agreement, the Business represents, covenants and warrants that:

6.1 **AUTHORITY.** The Business is a corporation duly organized and validly existing under the laws of the state of incorporation and is in good standing, and has complied with all applicable laws of the State of Iowa. The Business is duly authorized and empowered to execute and deliver the Agreement. All action on the Business's part, such as appropriate resolution of its Board of Directors for the execution and delivery of the Agreement, has been effectively taken.

6.2 **FINANCIAL INFORMATION.** All financial statements and related materials concerning the Business and the Project provided to the Department are true and correct in all material respects and completely and accurately represent the subject matter thereof as of the effective date of the statements and related materials, and no material adverse change has occurred since that date.

6.3 **APPLICATION.** The contents of the application the Business submitted to the Department for DOT funding is a complete and accurate representation of the Business and the Project as of the date of submission and there has been no material adverse change in the organization, operation, business prospects, fixed properties or key personnel of the Business since the date the Business submitted its DOT application to the Department.

6.4 **CLAIMS AND PROCEEDINGS.** There are no actions, lawsuits or proceedings pending or, to the knowledge of the Business, threatened against the Business affecting in any manner whatsoever their rights to execute the Agreement or the ability of the Business to make the payments required under the Loan, or to otherwise comply with the obligations of the Business contained under the Agreement. There are no actions, lawsuits or proceedings at law or in equity, or before any governmental or administrative authority pending or, to the knowledge of the Business, threatened against or affecting the Business or any property or collateral pledged as security for the Loan.

6.5 **PRIOR AGREEMENTS.** The Business has not entered into any verbal or written contracts, agreements or arrangements of any kind that are inconsistent with this Agreement.

6.6 **MAINTENANCE.** After the work has been completed and Project has been constructed pursuant to this Agreement, Business agrees to assume all responsibility for future maintenance of the Project.

## ARTICLE VII
## COVENANTS OF BUSINESS

7.1 **AFFIRMATIVE COVENANTS.** The Business covenants with the DOT that:

a. PROJECT WORK AND SERVICES. The Business shall complete the work and services detailed in Exhibit B and Exhibit C of this Agreement by the Construction Completion Date.

b. ACCESS TO RECORDS/INSPECTIONS. The Business shall, upon reasonable notice and at any time (during normal business hours), permit the Department, its representatives or the State Auditor to examine, audit and/or copy (i) any plans and work details pertaining to the Project, (ii) all the Business' books, records and accounts relating to the Project, and (iii) all other documentation or materials related to this Loan; the Business shall provide proper facilities for making such examination and/or inspection.

c. USE OF PROGRAM FUNDS. The Business shall expend funds received under the Agreement only for the purposes and activities described in its DOT Application and approved by the Department.

d. DOCUMENTATION. The Business shall deliver to the DOT, upon request, (i) copies of all contracts or agreements relating to the Project, (ii) invoices, receipts, statements or vouchers relating to the Project.

e. NOTICE OF PROCEEDINGS. The Business shall promptly notify the DOT of the initiation of any claims, lawsuits, bankruptcy proceedings or other proceedings brought against the Business which would adversely impact the Project, including, but not limited to, any proceedings to assert or enforce liens against collateral securing the Loan.

f. NOTICE OF BUSINESS CHANGES. The Business shall provide prompt notice to the Department of any proposed change in the Business ownership, structure or control, which would materially affect the Project.

g. MAINTENANCE OF PROJECT PROPERTY. The Business shall maintain the Project property for a minimum of ten years in good repair and condition, ordinary wear and tear excepted, and shall not suffer or commit waste or damage upon the Project property.

h. INDEMNIFICATION. The Business shall indemnify and hold harmless the Department, its officers and employees, from and against any and all losses, except those losses incurred by the Department resulting from willful misconduct or negligence on its or their part.

7.2 **NEGATIVE COVENANTS.** So long as the Business is indebted to the DOT, the Business shall not, without prior written disclosure to the DOT and prior written consent of DOT (unless DOT prior approval is expressly waived below), directly or indirectly:

a. BUSINESS' INTEREST. Assign, waive or transfer any of Business' rights, powers, duties or obligations under this Agreement.

b. PROPERTY/COLLATERAL. Sell, transfer, convey, assign, encumber or otherwise dispose of any of the collateral securing the Loan as described in Exhibit F.

c. RESTRICTIONS. Place or permit any restrictions, covenants or any similar limitations on the collateral securing the Loan as described in Exhibit F.

d. REMOVAL OF COLLATERAL. Remove from the Project site all or any part of the collateral securing the Loan as described in Exhibit F.

e. RELOCATION OR ABANDONMENT. Relocate its operations or remove rail infrastructure funded through this Agreement from the location described in the application or abandon its operations or facilities or a substantial portion thereof for a period of five (5) years following the Construction Completion Date or any time during the Loan term, whichever is greater.

## ARTICLE VIII
## DEFAULT AND REMEDIES

8.1 **EVENTS OF DEFAULT.** The following shall constitute Events of Default under this Agreement:

a. MATERIAL MISREPRESENTATION. If any representation, warranty or statement made or furnished to the Department by, or on behalf of, the Business in connection with this Agreement or application for this loan, is determined by the Department to be incorrect, false, misleading or erroneous in any material respect when made or furnished, it shall constitute an event of default. The Business shall have 30 days to remedy such default to the Department's satisfaction after written notice by the Department is given to the Business.

b. NON-PAYMENT. If the Business fails to make a payment within 30 days of date due under the terms of this Agreement.

c. NONCOMPLIANCE. If there is a failure by the Business to comply with any of the covenants, terms or conditions contained in this Agreement or Security Instruments executed pursuant to this Agreement.

d. CONSTRUCTION COMPLETION DATE. If the Project, in the sole judgment of the Department, is not completed on or before the Construction Completion Date.

e. RELOCATION OR ABANDONMENT. If there is a relocation or abandonment by the Business as described in 7.2 (e).

f. INSOLVENCY OR BANKRUPTCY. If the Business becomes insolvent or bankrupt, or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or the Business applies for or consents to the appointment of a trustee or receiver for the Business or for the major part of its property; or if a trustee or receiver is appointed for the Business or for all or a substantial part of the assets of the Business and the order of such appointment is not discharged, vacated or stayed within sixty (60) days after such appointment; or if bankruptcy, reorganization, arrangement, insolvency, or liquidation proceedings or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against the Business and, if instituted against the Business, is consented to, or, if contested by the Business is not dismissed by the adverse parties or by an order, decree or judgment within sixty (60) days after such institution.

g. INSECURITY. The Department shall deem itself insecure if, in good faith and after consideration of all the facts and circumstances then existing, it reasonably believes that the prospect of payment and satisfaction of the obligations it is owed under this Agreement, or the performance of or observance of the covenants it is owed in this Agreement, or the value of its collateral referenced in 3.1 (b) and Exhibit F, is or will be materially impaired.

8.2 **NOTICE OF DEFAULT.** The Department shall issue a written notice of default providing therein a thirty (30) day period in which the Business shall have an opportunity to cure, provided that cure is feasible.

8.3 **REMEDIES UPON DEFAULT.** If the default remains unremedied, DOT shall have the right, in addition to any rights and remedies available to it under any of the Security Instruments, to do one or more of the following:

a. exercise any remedy provided by law;

b. declare the unpaid principal on the Note due and payable immediately without presentment, demand, protest, notice of protest, notice of intention to accelerate or other notice of any kind, all of which are expressly waived by the Business.

c. require all Grant funds disbursed to the Business to be immediately repaid to the Department

## ARTICLE IX
## GENERAL TERMS AND PROVISIONS

9.1 **BINDING EFFECT.** This Agreement shall be binding upon and shall inure to the benefit of the Department and Business and their respective heirs, successors, legal representatives and assignees. The obligations, covenants, warranties, acknowledgments, waivers, agreements, terms, provisions and conditions of this Agreement shall be jointly and severally enforceable against the parties to this Agreement.

9.2 **COMPLIANCE WITH LAWS AND REGULATIONS.** The Business shall comply with all applicable State and Federal laws, rules (including the Administrative rules adopted by the Department for the RRLG Program - 761Iowa Administrative Rules chapter 822.

9.3 **COMPLIANCE WITH EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**. The Business shall comply with all provisions of the equal employment opportunity requirements prohibiting discrimination and requiring

affirmative action to assure equal employment opportunity as required by the Iowa Code Chapter 216. The Business and its contractors will use their best efforts to solicit bids from and to utilize minority group contractors and subcontractors, or contractors and subcontractors with meaningful minority group and female representation among their employees. The Business will use its best efforts to ensure contractor and subcontractor compliance with Iowa state equal employment opportunity obligations. No person shall, on the grounds of age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Business receives state funds from the DOT. The Business shall comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4, and all requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation.

9.4 **TERMINATION FOR CONVENIENCE.** In addition to termination due to an Event of Default or non-appropriation of DOT funds, this Agreement may be terminated in whole, or in part, when the Department and the Business agree that the continuation of the Project would not produce beneficial results commensurate with the future disbursement of funds. The Department and Business shall agree upon the termination conditions. The Business shall not incur new obligations after the effective date of the termination and shall cancel as many outstanding obligations as is reasonably possible. The Department will allow full credit to the Business for the Department share of the non-cancellable obligations allowable under the Agreement and properly incurred by the Business prior to termination.

9.5 **PROCEDURE UPON TERMINATION.** If the Agreement is terminated for convenience, an Event of Default or non-appropriation of DOT funds, disbursements shall be allowed for costs up to the date of termination determined by the Department to be in compliance with this Agreement. The Business shall return to the Department all unencumbered Loan proceeds within one (1) week of receipt of Notice of Termination. Any costs previously paid by the Department which are subsequently determined to be unallowable through audit, monitoring or closeout procedures shall be returned to the Department within thirty (30) days of the disallowance.

9.6 **SURVIVAL OF AGREEMENT.** If any portion of this Agreement is held to be invalid or unenforceable, the remainder shall be valid and enforceable. The provisions of this Agreement shall survive the execution of all instruments herein mentioned and shall continue in full force until the Loan is paid in full.

9.7 **GOVERNING LAW.** This Agreement and all Security Instruments shall be interpreted in accordance with the law of the State of Iowa, and any action

relating to the Agreement shall only be commenced in the Iowa District Court for Story County or the United States District Court for the Northern District of Iowa.

9.8 **MODIFICATION.** Neither this Agreement nor any provision of the Security Instruments executed in connection with this Agreement may be changed, waived, discharged or terminated orally, but only by a written document signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

9.9 **NOTICES.** Whenever this Agreement requires or permits any notice or written request by one party to another, it shall be in writing, enclosed in an envelope, addressed to the party to be notified at the address heretofore stated (or at such other address as may have been designated by written notice), properly stamped, sealed and deposited in the United States Mail. Any such notice given hereunder shall be deemed delivered upon the earlier of actual receipt or two (2) business days after posting. The Department may rely on the addresses of the Business set forth heretofore, as modified from time to time, as being the addresses of the Business.

9.10 **WAIVERS.** No waiver by the Department of any default hereunder shall operate as a waiver of any other default or of the same default on any future occasion. No delay on the part of the Department in exercising any right or remedy hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy by the Department shall preclude future exercise thereof or the exercise of any other right or remedy.

9.11 **LIMITATION.** It is agreed that the Department shall not, under any circumstances, be obligated financially under this Agreement except to disburse funds according to the terms of the Agreement.

9.12 **ENFORCEMENT EXPENSES.** The Business shall pay upon demand any and all reasonable fees and expenses of the Department, including the fees and expenses of their attorneys, experts and agents, in connection with the exercise or enforcement of any of the rights of the Department under the Agreement.

9.13 **FINAL AUTHORITY.** The Department shall have the final authority to assess whether the Business has complied with the terms of this Agreement.

9.14 **INTEGRATION.** This Agreement contains the entire understanding between the Business and the Department and any representations that may have been made before or after the signing of this Agreement, which are not contained herein, are nonbinding, void and of no effect. None of the parties have relied on any such prior representation in entering into this Agreement.

9.15 **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of who shall be deemed an original, but all of which together

shall constitute but one and the same instrument.

9.16 **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date last signed below.

**IOWA DEPARTMENT OF TRANSPORTATION:**

BY: _____ Date: _____

Stuart Anderson, Division Director
Planning Programming and Modal Division

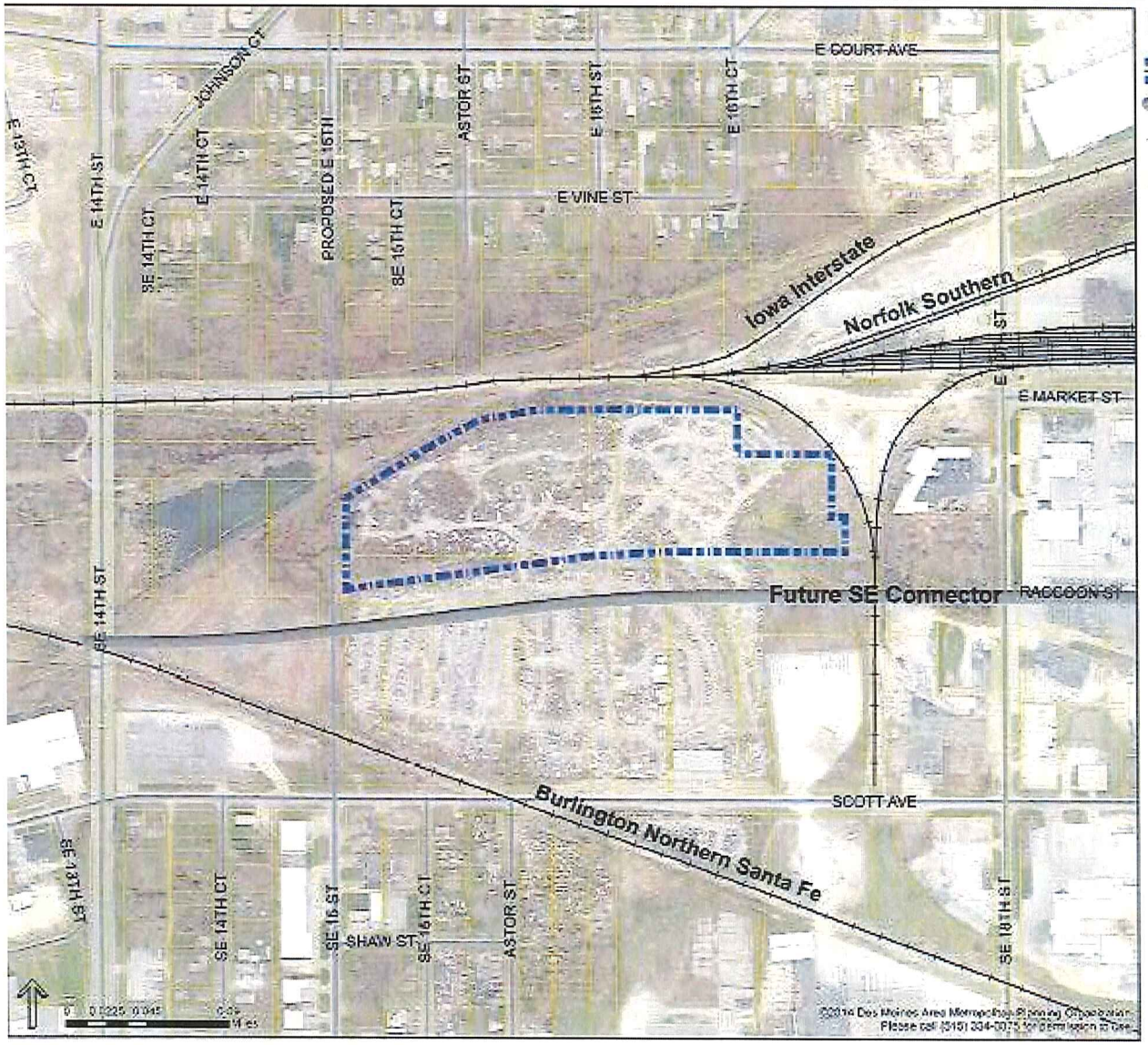
**BUSINESS:**
**Des Moines Area Metropolitan Planning Organization**

BY: _____ Date: _____

Title: _____

DES MOINES AREA MPO

# Proposed Transload Site




## Legend

- Proposed Transload Site
- Future SE Connector
- Railroad
- Parcel

MPO Planning Area

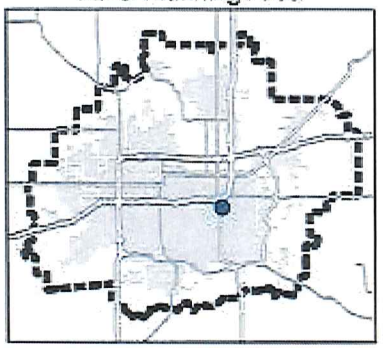


EXHIBIT A

EXHIBIT B

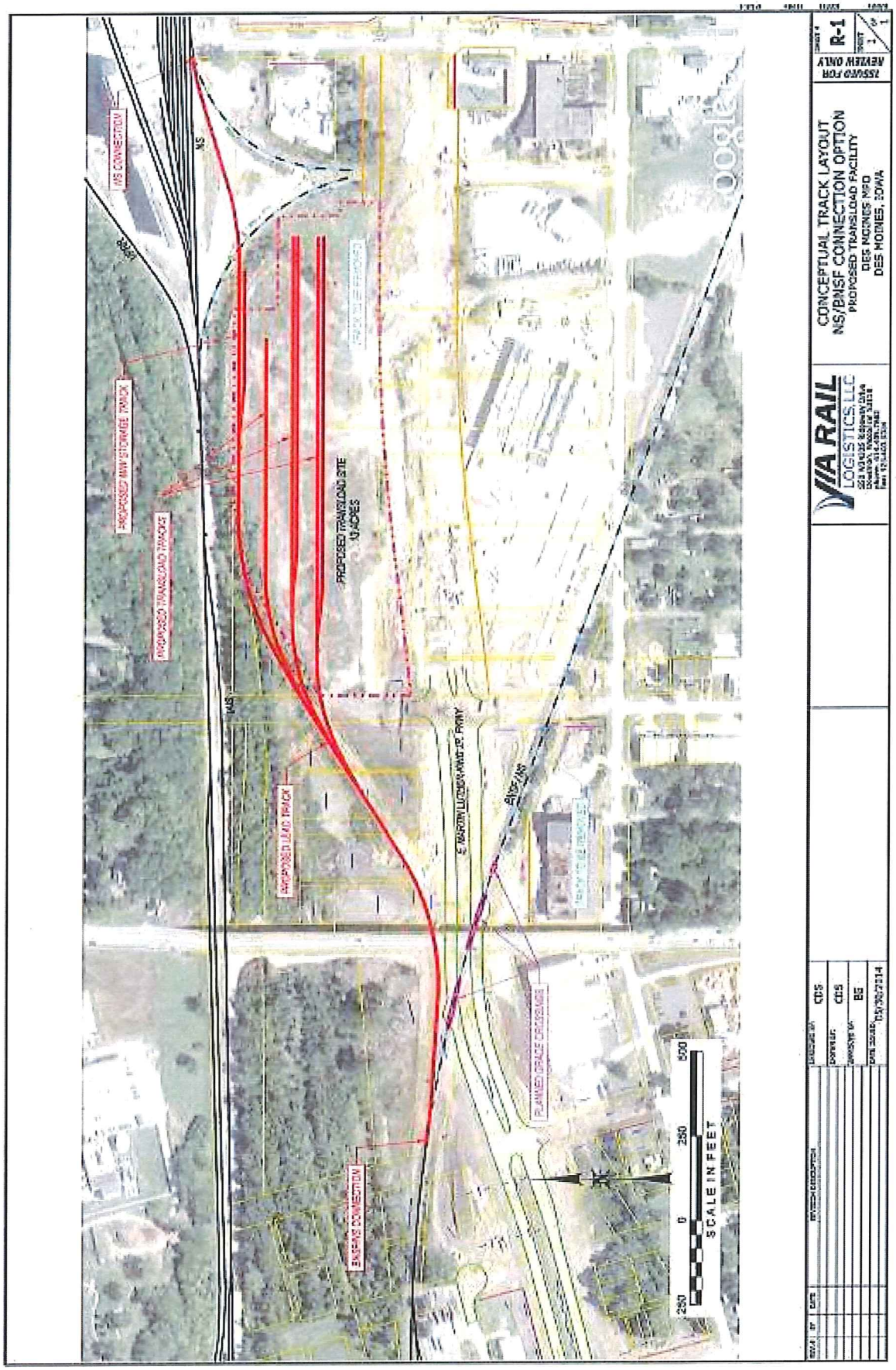

CONCEPTUAL TRACK LAYOUT
NS/BNSF CONNECTION OPTION
PROPOSED TRANSLOAD FACILITY
DES MOINES MPO
DES MOINES, IOWA
VIA RAIL
LOGISTICS, LLC
ISSUED FOR REVIEW ONLY
R-1
NS CONNECTION
PROPOSED MW STORAGE TRACK
PROPOSED TRANSLOAD TRACKS
PROPOSED TRANSLOAD SITE
PROPOSED LEAD TRACK
PLANNED GRADE CROSSINGS
BNSF/NS CONNECTION
SCALE IN FEET
250
0
250
500

EXHIBIT C

See Next Page(s)

Form 260012wd
07-06

# Iowa Department of Transportation

## RAILROAD PROJECT PRELIMINARY COST ESTIMATE

**Project Description** *(Please enclose location and site map of area)*

Location: County Polk Town Des Moines

Address E. Martin Luther King Jr. Parkway & S.E. 15th Street

Spur Length: 6700 Ft. Connecting RR NS/BNSF/UP/Iowa Intestate Milepost 338

Purpose: (Industry Served) Transload Facility - Site Tracks Date Estimate Prepared 11/09/2017

Products Shipped: TBD

**Total Project Cost $** 2,123,275.00

### A. SITE GRADING ITEMS

| ITEM DESCRIPTION | QUANTITY | UNITS | UNIT PRICE | TOTAL AMOUNT |
|---|---|---|---|---|
| (1) CLEARING AND GRUBBING<br>Site shall be cleared and grubbed prior to grading work. | 1 | Acre | $ 2200.00 | $ 2200.00 |
| (2) TOPSOIL, STRIP, SALVAGE, & RESPREAD<br>Topsoil shall be stripped, salvaged, and replaced on all Slopes and disturbed areas. | 1000 | C.Y. | $ 7.00 | $ 7000.00 |
| (3) EXCAVATION, Class 10 roadway & borrow<br>Roadbed shall have minimum 24' top with 2:1 side slopes and ditches at least 2' wide by 1' deep | 15000 | C.Y. | $ 7.00 | $ 105000.00 |
| (4) EMBANKMENT, with moisture & density control<br>Roadbed shall have minimum 24' top with 2:1 side slopes and ditches at least 2' wide by 1' deep. | 5000 | C.Y. | $ 41.00 | $ 205000.00 |
| (5) SUBBALLAST, Compacted in place<br>Class A crushed stone shall be placed 22' wide and a Minimum 8" deep. | 4020 | C.Y. | $ 40.00 | $ 160800.00 |
| (6) SEEDING AND FERTILIZING<br>All disturbed areas shall be seeded and fertilized to meet DOT rural standards. | 1 | Acre | $ 1500.00 | $ 1500.00 |
| (7) CULVERTS, UNCLASSIFIED<br>Diameter_____ Type _____<br>Culvert shall meet DOT specifications for type. | 100 | L.F. | $ 350.00 | $ 35000.00 |
| *(8)* OTHER *(Specify)*_____<br>Demolition, Removals, etc. | | | $ | $ 0.00 |
| (9) OTHER *(Specify)* Railcar Dock<br>Utility Relocation, Fencing, etc. | 230 | LF | $ 225.00 | $ 51750.00 |

**RAILROAD ECONOMIC DEVELOPMENT PROJECT**
**PRELIMINARY COST ESTIMATE**

**B. TRACK CONSTRUCTION ITEMS**

| | ITEM DESCRIPTION | QUANTITY | UNITS | UNIT PRICE | TOTAL AMOUNT |
|---|---|---|---|---|---|
| MATERIAL ITEMS | (1) RAIL *(Includes OTM)* SIZE: 115 # Minimum 90# Industrial or heavier. Minimum rail length shall be 25 feet. | 6700 - | T.F. | $ 37.50 | $ 251250.00 |
| | (2) TURNOUT, INSTALLED *(Other than Mainline)* Turnout No. 11 Rail Size: 115 New or rebuilt components shall be used. | 5 - | Each | $ 70000.00 | $ 350000.00 |
| | (3) TIES *(Specify)*, New _____ or Used 7x9x8.5 Mainline relay or new industrial grade shall be used. Maximum 22" center to center spacing. | 4125 - | Each | $ 57.00 | $ 235125.00 |
| | (4) BALLAST PURCHASE TYPE Class 2 Ballast shall be 1 ½" to 2" clean rock placed to a minimum Depth of 6" below tie bottom. | 6280 - | Tons | $ 20.00 | $ 125600.00 |
| LABOR AND EQUIPMENT ITEMS | (5) TRACK CONSTRUCTION *(excluding turnout)* Includes installation of Rail, OTM, Ties, & Tie Plates in Accordance with AREMA Specifications. | 6700 - | T.F. | $ 25.00 | $ 167500.00 |
| | (6) SURFACING AND LINING Track shall be surfaced, lined, and broomed. | 6700 - | T.F. | $ 6.50 | $ 43550.00 |
| RELATED ITEMS | (7) ROADWAY CROSSING Type Surface Timber Include crossing protection. Type Private Crossing Crossing surface & protection shall be appropriate for roadway. | 128 - | T.F. | $ 350.00 | $ 44800.00 |
| | *(8)* OTHER *(Specify)* _____ Bumping Posts, Derails, etc. | _____ - | _____ - | $ _____ | $ 0.00 |
| | **A. and B. Subtotal** | **CONSTRUCTION COST** | | | $ 1786075.00 |
| | Construction Cost Contingency -- (up to 10 percent) | | | | $ 165000.00 |
| | **C. Railroad Installed Turnout** Specify Installing RR: _____ Turnout Number: _____ Rail Size: _____ | | | | $ _____ |
| | **D. Engineering Costs – Track Construction Only** Specify Engineering Firm TBD Limited to 10 percent of Parts A and B construction costs. | | | | $ 172200.00 |
| | **E. Acquisition Costs** Buyer _____ Seller _____ | _____ | Acre | $ _____ | $ 0.00 |
| | Name of Estimator Steve Braithwaite - Des Moines Transload Services, LLC. | TOTAL PROJECT COST | | | $ 2,123,275.00 |

EXHIBIT D

# REQUIRED Procedures for Contracting Work

The business shall do the following in sequence:

A. If applicable, develop plans and specifications covering the work, conforming to the *Manual for Railway Engineering*, published by the American Railway Engineering and Maintenance-of Way Association (AREMA), the connecting railroad minimum requirements, and the State of Iowa guidelines and standards agreeable to both the connecting railroad and the Iowa Department of Transportation (DOT).

B. If applicable, submit plans and specifications along with bid documents to DOT for review and approval.

C. Solicit bids for specified work from three or more Track work contractors.

D. Send the results of the letting including all letters of solicitation, bids received, the low bidder or contractor of choice, and the total fixed contract cost or the fixed unit prices to the DOT for review and concurrence to award contract.

E. Award contract to selected contractor and supervise contract to completion.

F. Notify the DOT prior to start of work to enable monitoring and inspection of the project during construction.

G. Any extra work needed to complete the project shall be approved by all parties to the agreement prior to commencing extra work. Extra work orders will show agreed to cost and the cost will be eligible for reimbursement with prior approval.

H. Secure written approval for train operations from operating railroad, send copy to DOT.

I. Notify the DOT of project completion and schedule final inspection.

J. Submit an original bill and proof of payment for approved costs along with a cover letter requesting payment and summarizing project costs to enable audit and justify payment.

EXHIBIT E

IOWA DEPARTMENT OF TRANSPORTATION

Railroad Revolving Loan and Grant Program

**PROMISSORY NOTE**

Loan Number: RRLG-ST15(03)-9T-77

Ames, Iowa
(City and State)

$1,700,000 _____ (Date)

FOR VALUE RECEIVED, the undersigned (hereafter called the "Maker") promises to pay to the order of Department of Transportation (hereafter called the "Payee"), at its office at 800 Lincoln Way, Ames, Iowa 50010, or upon notice to the Maker, at such other place as may be designated from time to time by the holder, the principal sum of $1,700,000, together with interest at zero percent (0%) on the unpaid balance beginning January 1, 2018 to be paid as follows:

A **$1,700,000 loan at 0% interest to be paid as follows:**
Ten (10) equal annual payments of $170,000 beginning on January 1, 2021.

**1. Payments.** All payments under the Note shall be applied to principal.

**2. Agreement; Acceleration upon Default.** This Note is issued by Maker to evidence an obligation to repay a loan according to the terms of Agreement RRLG-ST15(03)--9T-77 between the Payee and Maker and, at the election of the holder without notice to the Maker, shall become immediately due and payable in the event any payment is not made when due or upon the occurrence of any event of default under the terms of the Agreement.

**3. Reduced Amount.** In the event the Maker fails to requisition and spend the full-face amount of the Note as set out above, then the amount of each installment payment shall be reduced accordingly in equal amounts.

**4. Security.** Payment of this Note is secured by collateral described in Exhibit F of the Agreement, and the holder is entitled to the benefits of the security therein described.

**5. Waiver.** No delay or omission on the part of the holder in exercising any right under this Note shall operate as a waiver of that right or of any other right under this Note. A waiver on any one occasion shall not be construed as a bar to or waiver of any right and/or remedy on any future occasion.

**6. Waiver of Protest.** Each maker, surety, endorser and guarantor of this Note, expressly waives presentment, protest, demand, notice of dishonor or default, and notice of any kind with respect to this Note.

**7. Costs of Collection.** The Maker will pay on demand all costs of collection, maintenance of collateral, legal expenses, and attorneys' fees incurred or paid by the holder in collecting and/or enforcing this Note on default.

**8. Meaning of Terms.** As used in this Note, "holder" shall mean the Payee or other endorsee of this Note, who is in possession of it, or the bearer hereof, if this Note is at the time payable to the bearer. The word "Maker" shall mean each of the undersigned. If this Note is signed by more than one person, it shall be the joint and several liabilities of such persons.

**9. Miscellaneous.** The captions of paragraphs in this Promissory Note are for the convenience of reference only, shall not define or limit the provisions hereof and shall not have any legal or other significance whatsoever.

ADDRESS:
Des Moines Area Metropolitan Planning Organization
420 Watson Powell Jr. Pkwy
Suite 200
Des Moines, Iowa 50309

Des Moines Area Metropolitan Planning Organization

BY: _____

ATTEST: _____

EXHIBIT F

**SECURITY AGREEMENT**
**AND FINANCING STATEMENT**

THIS SECURITY AGREEMENT AND FINANCING STATEMENT (herein called this Security Agreement) is entered into as of the _____by and between the Des Moines Area Metropolitan Planning Organization (herein called the "Business") and the PLANNING, PROGRAMMING AND MODAL DIVISION OF THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF IOWA, 800 Lincoln Way, Ames, Iowa 50010 (herein called the "Department").

R E C I T A L S

A. The Business and the Department have entered into a contract (herein called the "Agreement") pursuant to which the Business will borrow from the Department from time to time amounts not to exceed in the aggregate $1,700,000 (herein called the "Secured Amount ").

B. The funds borrowed by the Business from and by the Department are to be used for the construction of the development of a rail connection of the development of a transload facility to improve the overall freight capacity and options in the Des Moines metropolitan area. Description as follows:

C. A PORTION OF LOT 1, OFFICIAL PLAT OF BLOCK 33 OF BROOKS & COS ADDITION, AN OFFICIAL PLAT; AND A PORTION OF BLOCK 33, BROOKS & COS ADDITION, AN OFFICIAL PLAT, AND A PORTION OF LOTS 8 THRU 19, COTTAGE ADDITION, AN OFFICIAL PLAT; AND LOTS 11 THRU 27 AND A PORTION OF LOTS 28 THRU 31, A PORTION OF VACATED ELM STREET ADJOINING LOTS 6 THRU 19, CAPITAL ADDITION, AN OFFICIAL PLAT; AND A PORTION OF PART OF BLOCK 34, BROOKS & COS ADDITION TO CITY OF DES MOINES, AN OFFICIAL PLAT; AND ALL OF LOTS 4 AND 5 AND A PORTION OF LOTS 3 AND 6, AND A PORTION OF THE VACATED ALLEY ADJOINING LOTS 3 AND 4, CHOICE ADDITION TO DES MOINES IOWA, AN OFFICIAL PLAT; AND A PORTION OF VACATED SOUTHEAST 16TH STREET, AND A PORTION OF THE VACATED RIGHT OF WAY OF THE FORMER CHICAGO, ROCK ISLAND, AND PACIFIC RAILROAD (C.R.I.& P. RAILROAD), AND A PORTION OF A VACATED RAILROAD, ALL

NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 33; THENCE SOUTH 89°(DEGREES) 54'(MINUTES) 41"(SECONDS) EAST, 1142.21 FEET ON THE SOUTHERLY RIGHT OF WAY LINE OF EAST MARKET STREET TO THE NORTHEAST CORNER OF SAID LOT 11, CAPITAL ADDITION; THENCE SOUTH 00°17'46" EAST, 132.00 FEET ON THE EAST LINE OF SAID LOT 11, CAPITAL ADDITION, TO THE SOUTHEAST CORNER OF SAID LOT 11, CAPITAL ADDITION; THENCE SOUTH 89°54'56" EAST, 182.88 FEET ON THE NORTH RIGHT OF WAY LINE OF VACATED ELM STREET; THENCE SOUTH 45°26'58" WEST, 419.76 FEET; THENCE SOUTH 78°45'06" WEST, 41.58 FEET; THENCE 483.09 FEET ON A 5115.00 FOOT RADIUS CURVE TO THE LEFT WITH A CHORD LENGTH OF 482.91 FEET AND BEARS SOUTH 85°49'38" WEST; THENCE SOUTH 83°07'17" WEST, 125.73 FEET; THENCE NORTH 16°26'52" WEST, 99.67 FEET; THENCE NORTH 88°58'52" WEST, 351.66 FEET TO THE EAST RIGHT OF WAY LINE OF SOUTHEAST 15TH STREET; THENCE NORTH 00°03'46" EAST, 384.98 FEET ON SAID EAST RIGHT OF WAY LINE TO THE POINT OF BEGINNING, CONTAINING 11.52 ACRES MORE (501,749 SQUARE FEET) OR LESS; SUBJECT TO A RAILROAD EASEMENT.

D. As used herein the term "Liabilities" means and includes all of the following: all indebtedness of any kind arising under, and all amounts of any kind which at any time become due or owing to the Department under or with respect to the Agreement; all of the covenants, obligations and agreements of the Business pursuant to the Agreement; any and all advances, costs or expenses paid or incurred by the Department to protect the Collateral (defined hereinafter) and interest on all of the foregoing as set forth in the Agreement. The maximum amount included within the liabilities on account of principal shall not exceed an amount equal, to the Secured Amount.

E. For the purposes hereof, the term "Collateral" means and includes all rail, ties and other track related materials and other property constructed or installed to construct the rail that serves the Central Iowa Transload Facility in Des Moines, Iowa, at the real estate described in paragraph C above.

NOW THEREFORE, for and in consideration of the Department executing and delivering the Agreement, and of the Department's making any loan, advance or other financial accommodation to or for the benefit of the Business and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Business, THE BUSINESS HEREBY ASSIGNS THE COLLATERAL TO THE DEPARTMENT AND GRANTS TO THE DEPARTMENT AND ITS SUCCESSORS AND ASSIGNS A CONTINUING SECURITY INTEREST IN AND TO, ALL OF THE COLLATERAL FOR THE PURPOSE OF SECURING THE PAYMENT AND PERFORMANCE OF THE LIABILITIES, TO HAVE AND TO HOLD THE COLLATERAL UNTO THE BUSINESS AND ITS SUCCESSORS.

## CONVENANTS AND AGREEMENTS OF BUSINESS

Further to secure the payment and performance of the Liabilities, the Business hereby covenants and agrees as follows:

1. Any failure of the Business or action by Business which constitutes a default as described in Article VII paragraph 1 of the Agreement, will constitute a Default hereunder. Upon the occurrence of such a Default, but following any notice or cure period provided by the Agreement, the Department will have the right to foreclose this loan agreement and related collateral.

2. This conveyance shall be effective on the same date as the Agreement and shall continue in effect until all loan repayments due to the Department by the Business under the Agreement have been paid. Thereafter this conveyance shall be null and void and Department shall promptly release to Business the interests conveyed hereby.

WITNESS the hands of the Business and the Department as of the date first above written.

Des Moines Metropolitan Planning Organization

By: _____

Name: _____

Title: _____

Date: _____

Iowa Department of Transportation
Planning, Programming and Modal Division

By: _____

Name: Stu Anderson

Title: Division Director, Planning Programming and Modal Division

Date: _____

STATE OF IOWA )
) SS
COUNTY OF )

I _____, a Notary Public in and for said State and County, do hereby certify that _____ personally known to me to be the _____ of the Des Moines Area Metropolitan Planning Organization and personally known to me to be the same person whose name are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they signed and delivered said instrument on such officers as their voluntary act and as the voluntary act of said corporation.

Given under my hand and notarial seal this _____ day of _____, 2017.

_____
Notary Public

_____
My Commission Expires

STATE OF IOWA )
) SS
COUNTY OF STORY )

I, _____, a Notary Public in and for the State and County, do hereby certify that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument on behalf of the IOWA DEPARTMENT OF TRANSPORTATION, Modal Division as her voluntary act.

Given under my hand and notarial seal this _____ day of _____, 2017.

_____
Notary Public

_____
My Commission Expires

EXHIBIT G

## Des Moines Transload Facility

RRLG-ST15(03)--9T-77

Loan Amount: $1,700,000

Annual Interest Rate: 0%

Loan period in years:10

Number of payments per year: 1

| PAYMENT DATE | PMT NO. | BEGINNING BALANCE | INTEREST | PRINCIPAL | ENDING BALANCE |
|---|---|---|---|---|---|
| 1/1/2021 | 1 | $1,700,000 | $0.00 | $170,000 | $1,530,000 |
| 1/1/2022 | 2 | $1,530,000 | $0.00 | $170,000 | $1,360,000 |
| 1/1/2023 | 3 | $1,360,000 | $0.00 | $170,000 | $1,190,000 |
| 1/1/2024 | 4 | $1,190,000 | $0.00 | $170,000 | $1,020,000 |
| 1/1/2025 | 5 | $1,020,000 | $0.00 | $170,000 | $850,000 |
| 1/1/2026 | 6 | $850,000 | $0.00 | $170,000 | $680,000 |
| 1/1/2027 | 7 | $680,000 | $0.00 | $170,000 | $510,000 |
| 1/1/2028 | 8 | $510,000 | $0.00 | $170,000 | $340,000 |
| 1/1/2029 | 9 | $340,000 | $0.00 | $170,000 | $170,000 |
| 1/1/2030 | 10 | $170,000 | $0.00 | $170,000 | $0.00 |