

201655

LAW OFFICES

REA, CROSS & AUCHINCLOSS

SUITE 570

1707 L STREET, N.W.

WASHINGTON, D. C. 20036

(202) 785-3700

FACSIMILE: (202) 659-4934

DONALD E. CROSS (1923-1986)

THOMAS M. AUCHINCLOSS, JR.

LEO C. FRANEY

JOHN D. HEFFNER

KEITH G. O'BRIEN

BRYCE REA, JR.

BRIAN L. TROIANO

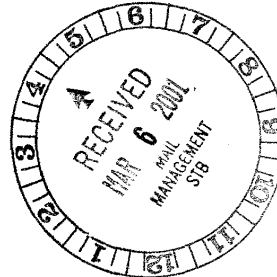
ENTERED
Office of the Secretary

March 6, 2001

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Part of
Public Record

Office of the Secretary
Case Control Unit
STB Finance Docket No. 33407
Surface Transportation Board
1925 K Street NW
Washington, D.C. 20423-0001
Attention: Victoria Rutson
Environmental Project Director
Environmental Filing



RE: STB Docket No. FD 33407, Dakota, Minnesota &
Eastern Railroad Corporation Construction
into the Powder River Basin

Comments on the Draft Environmental Impact Statement

Dear Ms. Rutson:

1. Introduction. The City of Owatonna, MN ("Owatonna" or "the City") files these comments in response to the Draft Environmental Impact Statement ("DEIS") prepared by the Board's Section of Environmental Assessment ("SEA") in the above-captioned railroad construction proceeding.

Owatonna is a city with a population of 21,000 people located in southern Minnesota about 70 miles south of the Twin Cities and about 120 miles west of the Mississippi River. Owatonna is located at the junction of three rail lines including that operated by the Applicant herein Dakota, Minnesota & Eastern Railroad Corporation ("DM&E") as well as lines operated by I&M Rail Line, Ltd. ("IMRL") and the Union Pacific Railroad Company ("UP"). Owatonna is uniquely prominent in DM&E's rail construction proposal insofar as it would be the location of a short but highly significant connecting track to be built linking DM&E and IMRL. Owatonna is one of only a handful of sites of the proposed new rail construction, one that would directly connect the DM&E to the IMRL.

2. DM&E Agreement. Owatonna's participation in this proceeding began with the filing of its Bypass Proposal on June 10, 1999. Subsequently, on March 7, 2000, the City approved a Community Partnership Agreement ("Agreement") with the DM&E

Ms. Victoria Rutson
March 6, 2001
Page Two

Railroad. A duplicate of the Agreement is attached as Exhibit A. That Agreement¹ was the culmination of eighteen months of fact finding, meetings, and negotiations between the City and the railroad for the purpose of designing an appropriate level of mitigation for train whistle noise, safety, and operational issues. The Agreement provides a number of benefits to the City, particularly four quadrant gate crossings that meet the Federal Railroad Administration's proposed rules for "whistle free" operations. Under the terms of the Agreement, City will receive up to six whistle free crossings at start up of operations: four at the intersection of the DM&E and Rice Lake Street, Rose Street, Pine Street, and Elm Street and two more at School Street and Havana Road if DM&E is allowed to link to the IMRL at the existing in-town "diamond" crossing, identified as alternative 0-5.

In exchange for the railroad's promise to make specific improvements, the City agreed to rescind its Bypass Proposal and support DM&E's application to the Board. The City has not taken a position in opposition to the DM&E's expansion project. However, in response to the Board's invitation, the City testified about the impacts of the DM&E construction project at the on-line hearing held by the SEA in Mankato, MN, on November 15, 2000. The City now submits this letter in response to the STB's request for comments on the DEIS.

3. Clarification. Before addressing the DEIS, Owatonna desires, as a preliminary matter, to correct the STB's apparent misunderstanding of the Agreement. The DEIS contains a statement

¹ Under the Community Partnership Agreement, the City and the DM&E reached agreement on a number of issues, including: (a) track crossing surfaces; (b) adjustment of street grades; (c) upgrading of underpass bridges; (d) crossing gates on sidewalks; (e) signal connection to law enforcement agencies; (f) improvement of sight distances and right-of-way clean-up; (g) new flashing lights; (h) whistle free zones; (i) installation of chain link fencing subject to input from owners; (k) sharing of construction of an overpass at 39th Street. Unresolved issues addressed herein include (a) noise mitigation; (b) northbound traffic; (c) traffic delays relative to the operations on the IMRL; and (d) value impacts on adjacent properties.

Ms. Victoria Rutson
March 6, 2001
Page Three

(at page ES-73) indicating that should affected communities reach mutually acceptable agreements with the DM&E addressing potential environmental impacts, the Board would impose these agreements as conditions to its approval of the DM&E construction in lieu of any regulatory conditions it might otherwise impose. The DEIS characterizes these negotiated agreements as "superseding" any environmental conditions that "the Board would otherwise impose."

The Board misunderstands the terms of the Agreement in two significant respects. First, the City may, at its option, choose certain conditions as may be proposed by the STB in lieu of those provided by the Agreement, but this election could be a renunciation of the [A]greement. However, the DM&E is bound by "any mandatory condition ordered by the STB, notwithstanding anything in the [A]greement to the contrary." P.A., p. 2. Sec. 3.² [emphasis supplied].

Thus, if the STB imposes a mandatory condition, the STB's rule trumps the Agreement without forfeiture of the benefits under the Agreement. Section 15 of the Agreement likewise provides:

This Agreement does not supersede conditions of regulatory approval as may be imposed by the STB for any area not covered by this Agreement. For any general area covered by this Agreement, City shall have the option to elect the provisions of this Agreement or the STB conditions as a complete substitute to this Agreement. The DM&E shall abide by any mandatory condition and/or regulation as may be imposed by the STB notwithstanding anything in this Agreement to the Contrary.
[emphasis supplied].

P.A., p. 7, Sec. 15.

This aspect of the Agreement provides the City with a baseline of benefits without depriving the City of those benefits that might be ordered by the STB as conditions of regulatory approval. Thus, in the case of Owatonna, the SEA is in error to suggest that conditions reached by voluntary agreement supersede

² Reference to Partnership Agreements are P.A., p. _____, Sec. _____ herein.

Ms. Victoria Rutson
March 6, 2001
Page Four

any mandatory conditions as may be imposed by the Board. This is as it should be in connection with any agreement within a regulated industry when oversight is imposed, in the public interest, by a federal agency.

4. The DEIS. The City's review of the DEIS leaves the City with two primary areas of concern:

- * Connection with and operation of the DM&E with the IMRL.
- * Mitigation of non-whistle train noise on the DM&E and IMRL.

The City strongly believes that the SEA should give further analysis to (1) traffic on the IMRL and (2) non-whistle (wayside) noise. The former issue is not treated in the Agreement other than as to the connection. The issue of non-whistle train noise could not be fully addressed until now because, at the time of the Agreement, the SEA had not completed its noise measurements and the parties lacked sufficient information at the time to assess the noise analysis. See P.A., p. 3, Sec. 7(a). The DM&E did agree to "comply with the regulatory requirements imposed relative to the [non-whistle noise] issue." Sec. 7(a). The problem is that the City, as an affected party, does not know from the DEIS what the required mitigation will be, other than in general terms. See, Vol. VII, App. F, pp. F-18 through F-21.

5. IMRL connection. Both the City and the DM&E firmly agree that the connection with the IMRL should be made at the location of the present in-town "diamond" crossing identified as Alternative 0-5, which in its present configuration provides for southbound traffic only. The DM&E agreed to use its "best efforts" to obtain the right to construct a connection with the IMRL at or near the "diamond crossing" through negotiations with the UP, regulatory relief at the STB or other legal means. P.A., p. 10, Sec. 24(a). Only if the DM&E cannot through "any means" obtain that connection, can other alternatives be addressed. P.A., p. 11, Sec. 24(b). This connection presents the fewest adverse environmental and community impacts. Unfortunately, the segment of DM&E trackage which crosses IMRL's line is owned by UP, (successor to the former Chicago & North Western Transportation Co.), and DM&E's trackage rights agreement with UP prohibits the DM&E from building this in-town connection.

Ms. Victoria Rutson
March 6, 2001
Page Five

(a) Inner Loop (Alternative O-4).

The draft EIS is in error where it states Alternative O-4 (the so-called "inner loop") would not impact residential land. Vol. II, Ch. 3, p.3.4-6. Alternative O-4 would adversely impact residential land for the following reasons:

- (a) New trackage would be built adjacent to a residential subdivision in the City. Valuation of current homes is approximately \$6.2 million.
- (b) Additional 40 lots in this subdivision are readily available for development. This City is currently extending water and sewer to service these lots at a cost of \$200,000.
- (c) The potential for trains to block access to homes in this area is high, given the limited road access into the area. This creates high concern from a public safety standpoint.

Accordingly, the City opposes Alternative O-4. The SEA should recognize the paramount public interest in preferring the in-town "diamond" crossing, (Alternative O-5), over the "inner loop" which would adversely affect existing and future residential development and roads.

6. IMRL operations. The DM&E has identified Owatonna as a critical gateway for its interchange of coal traffic with the IMRL. The DEIS is deficient in that it does not address the impacts of rail traffic north and south on the IMRL line as it does the impacts along the DM&E. The problem lies with the IMRL trackage in Owatonna which currently does not allow train speeds greater than 10-15 miles an hour. The Agreement provides if the diamond crossing site can be obtained the necessary infrastructure will be provided so that a train can move from the DM&E to the IMRL at 40 miles an hour. P.A., p. 11, Sec. 24(d). This interconnection creates the potential for interchanging trains to be either accelerating or decelerating through town to accommodate IMRL's slower track speeds. These slower speeds through town increase the "Pass-by-Seconds" as defined in Appendix thereby increasing the notice impact and further exacerbating the overall environmental impact concerns along both lines through the City. The City is particularly concerned that the interchange of traffic could block street crossings as, for example, at the intersection of the IMRL at School Street and

Ms. Victoria Rutson
March 6, 2001
Page Six

Havana Road, thereby impeding local traffic including emergency vehicles.

With regard to the interchange of coal traffic between DM&E and IMRL at Owatonna, neither the Agreement nor the DEIS addresses various operational issues which present severe adverse community impacts. Under NEPA, the SEA would be remiss in its role to consider thoroughly all environmental consequences of the proposed construction if it does not raise and consider these and other issues. For example, what plans or arrangements have DM&E and IMRL made concerning the connection between the two railroads including construction of new yard or interchange facilities, sidings, and installation of signalling and grade crossing protection devices? How will the two railroads coordinate their operations to ensure that grade crossings will not be blocked? How many loaded coal trains does DM&E expect to operate during a given week through Owatonna to be interchanged with IMRL, how will these frequencies be divided between north and southbound moves, and whether trains will stop at Owatonna or elsewhere to interchange crews and/or locomotives? This list is merely illustrative of various issues for the SEA to explore.

Owatonna is generally opposed to traffic going north out of Owatonna on the IMRL. See P.A., App. 4, p. 1, para. 1. DM&E has indicated that the interchange of the majority of northbound traffic will be accomplished at Mankato. Owatonna wants assurances that this will be the case.

The SEA should also analyze the effects of DM&E traffic going north on the IMRL through the City currently not possible under Alternative O-5. The analysis should be done with a "macro-view" of the existing regional rail service and the efficiencies of routing northbound traffic from the DM&E at Mankato on the UP to the Twin Cities.

The SEA should undertake an environmental study of the operations on the IMRL resulting from the operations of the DM&E. The fact that the SEA has decided to study the potential impacts of the DM&E/CP Rail interchange in Winona, MN on southbound traffic provides ample precedent for studying the impacts of this connection. In the case of the Winona interchange, the SEA recognized the movement of trains along the CP line created the concerns relative to noise, air quality, transportation, and safety as it did on the DM&E. Thus, the SEA should undertake to similarly conduct a full analysis of the impacts along the IMRL through Owatonna. See Volume II, Chapter 3: Minnesota, page 3.2-32, footnote 6.

Ms. Victoria Rutson
March 6, 2001
Page Seven

The basis for this request is that operations on the IMRL are not covered in the Agreement nor analyzed by the SEA. See P.A., p. 7, Sec. 15.

7. Non-Whistle Noise. With respect to non-whistle noise impacts, the Agreement with the DM&E provides that it will "at a minimum comply with the regulatory requirements imposed relative to this issue, if there are any. Further, it shall work in good faith with the City to explore any reasonable and cost-effective means of improving upon the effectiveness of such mandatory mitigation measures, if any are found to be required as part of the regulatory conditions." P.A., p. 3, Sec. 7(a).

The DEIS does not set forth what mitigation of non-whistle noise it will require as a condition of approval. While the Agreement provides that DM&E will abide by regulatory conditions as to wayside noise, it does not satisfy the concerns of affected local governments nor property owners as to what will be done for homes along the routes.

The DEIS identifies the number of noise sensitive receptors (homes) at the 65DB-70DB range at 37 trains per day and provided the following count: County - 1243/675; City - 1210/653. Vol. II, p. 3.4-20. The DEIS summarizes the environmental impacts on a 1.5 mile stretch of residential land, including the long-term increase in noise and vehicle delays. (Vol. IV, Table 5.1-9 "Summary of Environmental Impacts: Owatonna Alternatives"). If the IMRL connection is allowed, an equivalent impact analysis must also be separately conducted on noise sensitive receptors along the IMRL trackage. A more severe noise impact along the IMRL connection must also pre-empt any other noise impact analysis on the DM&E connecting trackage.

The DEIS addresses the "environmental justice" issue. Environmental justice is defined to mean "federal action developed to insure that low-income and minority populations are not disproportionately or adversely affected by developments that would negatively impact the environment." The DEIS recognizes that two census block groups would experience disproportionate impacts due to increased noise. (Vol. II, Paragraph 3.4.14, pp. 3.4-34, 3.4-35).

The mitigation the DEIS suggests needs clarification. Mitigation is addressed in Vol. VI, Chapter 7. While the DEIS requires that a community liaison officer be established (Section 7.8.3) and states that the community liaison should "work with

Ms. Victoria Rutson
March 6, 2001
Page Eight

affected land owners to appropriately redress any damage to the landowner's property caused by Applicant's project related construction or re-construction activities" (Vol. IV, Sec. 7.8.3.2 at pp. 7-18), the DEIS does not adequately address damages during maintenance and ongoing operation of the railroad. By contrast, the DEIS requires that public utilities be projected, not only during construction and re-construction, but as well as during the subsequent maintenance and operation of the rail line. That same protection should be extended to property owners. Id. at Sec. 7.8.3.6 at pp. 7-20.

Various mitigation strategies and means are identified in the DEIS, along with an analysis of the advantages and disadvantages of each. (Vol. VII A, Appendix F, Table F-7, pp. F-20, F-21).

The DEIS list of mitigation options include "land use provisions" as one option. It states that this mitigation option "can prevent future impacts and reduce severe impact." Id. at F-21. It notes, however, that it is "potentially expensive to acquire affected properties." Because the DM&E has agreed to abide by the regulatory requirements imposed by the STB with regard to wayside noise and because acquisition of properties is among the noise mitigation options recognized by the SEA, it is important that property owners and political subdivisions be assured that just compensation is paid where properties are wholly or partially taken or diminished in value.

The SEA should study, determine, and recommend mitigation measures in wayside noise to address the diminution in value of real estate and promulgate conditions to redress the damage to homeowners and governments so that the Railroad and not the homeowners pay the full costs of rail operations and mitigation.³

³ Such conditions should include the following:

1. The DM&E should be required to purchase, at fair market value, all damaged and reduced in value properties adjacent to the proposed rail corridor and/or properties that are damaged or reduced in value due to the construction of the mitigation measures. Fair market value should be established by independent appraisals. The DM&E should also be responsible for any required relocation costs as required by law. The determination of "damaged" or "reduced" in value should be based on the following:

Ms. Victoria Rutson
March 6, 2001
Page Nine

The SEA needs to provide that redress of damages includes payment of compensation for reduction in the value of property.⁴ There could well be homes for which no amount of mitigation will serve to make the home suitable for habitation.

-
- a. Damaging effects of noise and vibration.
 - b. Partial or total acquisition for rail or mitigation improvements.
 - c. Degraded by the construction or improvement of the rail corridor.
 - d. Degraded by the construction of mitigative measures.
 - e. Degraded by the construction of transportation improvements, including, but not limited to, grade separations, street rerouting, street closure, access modifications, and access closure.
 - f. Other negative impacts as determined by the City of Owatonna and/or the STB, or as may become apparent during the construction or design of the project and mitigation measures.
2. DM&E should be responsible for retrofitting homes and businesses that are exposed to unacceptable noise and/or vibration levels.
 3. DM&E should be responsible for installing vibration breaks and other vibration attenuation devices in order to reduce the level of vibration to acceptable levels.
 4. DM&E should construct and properly maintain tracks and rail beds to reduce noise and vibration.
 5. DM&E should properly maintain locomotives and train cars to reduce levels of noise and vibration.

⁴ In FD No. 33388, CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company -- Control And Operating Lease/Agreement -- Conrail, Inc., and Consolidated Rail Corporation. (Decision 89 Served July 23, 1998) the Board required applicants, with the concurrence of responsible local governments, to mitigate train wayside noise at noise sensitive receptor locations. That requirement led the parties to negotiate voluntary agreements with affected communities which in some cases involved the payment of money to mitigate alleged harms.

Ms. Victoria Rutson
March 6, 2001
Page Ten

8. Summary. Owatonna has emphasized that it needs the government's help, guidance, and money in connection with the DM&E construction project. The proposed construction imposes significant expenses and burdens on the City without significant corresponding benefits to our community. The final EIS must address these costs and the railroad's responsibility for these costs.

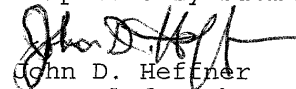
The City respectfully requests that the SEA: (1) analyze operations with the IMRL; and (2) establish specific wayside noise mitigation.

During the past two and one half years, Owatonna has approached the project with a fairly basic philosophy: that DM&E's trains should be able to move through the community safely, quietly, and quickly. That has been the goal of the City's negotiations with DM&E and its submissions to the Board. Owatonna has not tried to stop the project through delay tactics or unreasonable mitigation measures.

Owatonna respectfully expects the STB to utilize a similar philosophy in determining the appropriate course of action protecting national and individual community interests.

Thank you for your consideration of these issues.

Respectfully submitted,



John D. Heffner
Counsel for the
City of Owatonna, MN

cc: Hon. Peter Connor
Mark M. Walbran, Esq.
Mr. Gregory Sparks
City Council Members



DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION

Mark's. com /

3-6-00

337 TWENTY-SECOND AVENUE SOUTH
POST OFFICE BOX 178
BROOKINGS, SOUTH DAKOTA 57006
(605) 697-2400
FAX: (605) 697-2499

KEVIN V. SCHIEFFER • President & CEO

March 3, 2000

Mr. Mark Walbran
Walbran, Furness & Leuning
140 East Main Street
PO Box 273
Owatonna MN 55060

RE: Owatonna Community Agreement

Dear Mark:

Enclosed are two execution copies for the Owatonna Community Plan and Partnership Agreement. If the Agreement as drafted meets the council's approval, please execute both copies at the places indicated and return both in the enclosed self-addressed envelope. I will send one of the original executed copies back to you for your file.

Thanks again for your efforts on this Agreement. Feel free to call if you have any questions.

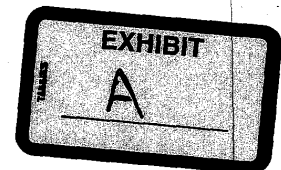
Sincerely,

DICTATED by MR. SCHIEFFER
but sent without signature to avoid delay

Kevin V. Schieffer
President and Chief Executive Officer

KVS:jeh(kvs\wp51\city\Owatonna.118)

Enclosures - Two execution copies for the Owatonna Community Plan and Partnership Agreement
- Proposed STB letter from the City of Owatonna
- Return envelope



_____, 2000

The Honorable Linda Morgan
Chairman
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

RE: DM&E Railroad Project; Finance Docket #33407

Dear Chairman Morgan:

This is to advise you that the city of Owatonna hereby withdraws its proposal to further the study of a by-pass around Owatonna, MN. We have signed a Community Partnership Agreement with the Dakota, Minnesota and Eastern Railroad (DM&E) that addresses the issues to our satisfaction. Throughout this process, DM&E has been a proactive railroad sensitive to community issues. We urge you to study their community outreach process carefully and encourage other railroads to follow this example. We have had experience in our past with many railroads, and none have been as open, accessible, and flexible as DM&E. We urge your prompt approval of this project.

While we have reached a mutually satisfactory agreement, there are issues where we expect to make continued progress as additional information develops, more project and market certainty is established, and as our solid relationship with the DM&E goes forward. In particular, we would like to emphasize our strong desire for the O4 Alternative (as defined in DM&E's June 9, 1999 letter to STB-SEA chief Elaine Kaiser -- relevant paragraph attached) for the I&MRL connection. This is far preferable to building a new loop connection, and it simply makes more common sense to use this existing connection.

Concerns remain, but we are confident that DM&E's approach to this issue has resulted in a significantly better plan for the citizens of Owatonna than could be achieved through any reasonable expectation of the regulatory process. We responded to the opportunity to submit a bypass in part so that we had further opportunity to hear the advice of other industry and legal experts, and study the facts of this case and DM&E's proposal. We are convinced that this is a significantly superior alternative for the city of Owatonna than any other course.

Accordingly, please discontinue any further analysis relative to the Owatonna by-pass proposal submitted to you by the city on June 10, 1999. Thank you for the opportunity to develop this issue, and for your consideration.

Sincerely,

Enclosure

Ms. Elaine Kaiser, Page 23
June 9, 1999

other from either an engineering or operations standpoint. It would be difficult to argue at this point that the designated "preferred" route indicated in the original application is superior to the existing corridor through Mankato, as now designed.

OWATONNA ALTERNATIVES

A procedural alternative to the proposed construction of the I&M Connection at Owatonna has been identified following an inquiry from the city of Owatonna. This would involve eliminating the rail "diamond" and replacing it with a "Y" connection, in a manner that would eliminate any material construction outside the existing rail right of way while still effectively accomplishing the purpose and needs of the project. This additional Owatonna alternative which may warrant consideration by the STB involves the utilization of the existing connection with the I&M at Owatonna, which we would suggest adding as Alternative O4. This alternative raises legal and procedural issues in that the line which intersects with the I&MRL is owned by the UP (although the UP does not and cannot operate on that segment). This unusual arrangement stems from the original acquisition of the DM&E from the C&NW in 1986. I&M was then part of the Soo line, and the C&NW retained ownership of this 3 mile "island" so as to prevent interchange with the Soo line. UP inherited that agreement as a result of its acquisition of the DM&E. This is a legal issue rather than an engineering concern. From DM&E's point of view, building the small connection proposed in the application or some variation thereof is sufficient. But we have agreed to work with the city in an attempt to reach a reasonable arrangement with UP or cooperate in a procedural effort to obviate the need for additional construction that is not necessary from an engineering standpoint. It clearly is reasonable from an engineering and operating standpoint, and we believe would be less objectionable to the City than either O2 or O3. Accordingly, we would suggest the addition of this "procedural alternative" for consideration as Alternative O4 in Owatonna.

We understand that the City of Owatonna also will submit a by-pass proposal, which we will address separately in our comment on that issue (due July 10, 1999).

CONCLUSION

A comprehensive analysis of existing transportation corridors (including most of the D series alternatives) was conducted long before it was required as part of the EIS process. It was the applicant's initial expectation and ongoing desire to develop the existing DM&E line south and east of Rapid City. That is not feasible, despite our repeated efforts to develop something that worked. The northern approach to the mines (Alternative D7) is not feasible independent of the track profile problems on the existing DM&E south of Rapid City. Serious examination of any of the D series alternate routes demonstrates they are patently unreasonable to achieve the purpose and needs of the project.

COMMUNITY PARTNERSHIP AGREEMENT

CITY of OWATONNA, MN RAILROAD IMPROVEMENT, MITIGATION and PARTNERSHIP

This Agreement is entered into by and between the City of Owatonna, MN (hereinafter "City") and the Dakota, Minnesota and Eastern Railroad (hereinafter "DM&E").

RECITALS

Among the purposes of this Agreement are to (1) improve existing transportation and environmental conditions in the City to the maximum extent practicable, (2) minimize or mitigate any negative environmental and transportation impacts to the City which may result from DM&E's proposed construction and rebuilding project, (3) maximize the positive economic and other impacts to the City, (4) provide more effective, efficient rail service throughout the DM&E service territory, (5) foster the timely approval and development of the DM&E railroad's New Construction and Rebuild initiatives, as those terms are described in STB Finance Docket No. 33407 (hereinafter "Project"), and (6) foster a partnership approach to working through issues of mutual interest and concern on an ongoing basis -- not only with respect to the Project development and construction, but also in the years and decades beyond.

This Agreement is based on and consistent with the development philosophy set forth in Appendix 1 of DM&E's Application before the federal Surface Transportation Board (herein "STB") seeking regulatory approval to construct and operate an extension of its existing rail system, and the rebuilding of its existing trackage in South Dakota and Minnesota.

In exchange for DM&E's agreement to seek authority to construct an interchange with I&M in downtown Owatonna in the vicinity of the existing crossing "diamond" at or near Front Street in an effort to avoid the I&M connection via the "inner loop" and "outer loop", the City agrees to withdraw its 'bypass' request and to support DM&E's application.

NOW, THEREFORE, contingent upon the occurrence of (a) final regulatory approval of DM&E's application in STB Finance Docket No. 33407 and any other regulatory approval necessary to construct and operate the Project, and (b) an affirmative vote of DM&E's Board of Directors to proceed with construction of the Project following such final regulatory approval -- and as a condition of construction of the Project -- DM&E and the City agree as follows:

1. City Option; DM&E Obligation. The City may terminate this agreement at any time, with or without cause. DM&E does not have that option. Nothing in this Agreement shall prevent the City from changing its position relative to the Project at any time during the STB's consideration of DM&E's Application or its subsequent construction, or from ceasing efforts to advance the Project as described below, provided that in the event the City so chooses it shall relieve both parties of any and all obligations pursuant to this Agreement and shall terminate the

same, which termination shall be effective upon written notice of either party to the other. DM&E, however, shall be bound by this Agreement immediately upon its execution, which binding effect cannot be modified except by the action or the inaction of the City (as provided for in this Agreement), in which event DM&E shall provide written notice to the City specifying a reasonable means to cure said action or inaction, if any such cure is reasonably effective and available (in which case the City will be permitted at least 7 days from the date of notice to cure its action or inaction, or to protest such notice pursuant to the remedies provisions herein provided).

2. Valuable Consideration. It is the parties' intention that -- because of (1) the efficiencies of mutual cooperation, (2) the inherent benefits of negotiated agreements, (3) the long range advantages of a partner relationship, (4) the regulatory and political advantages of negotiated mitigation and enhancements, (5) the time value associated with the support provided hereby, and (6) various additional reasons -- the entirety of the conditions set forth in this Agreement are intended to and should exceed those established by STB caselaw precedent and reasonably expected to be imposed by the STB as a condition of regulatory approval absent this Agreement. The parties hereto specifically acknowledge that the conditions agreed to herein do not purport to reflect mandatory conditions reasonably expected to be unilaterally imposed by the STB absent the mutuality of benefits and valuable consideration received by both parties to a negotiated agreement. Accordingly the parties hereto emphasize that no part of this Agreement is intended to be used by either party or any third party to seek or avoid conditions through the regulatory process. Both parties to this Agreement specifically request that this Agreement NOT be considered by any regulatory agency as a guide for unilateral conditions to be imposed on the Project. Unlike unilateral regulatory conditions, there exists in this Agreement mutual beneficial consideration negotiated by the parties hereto.

3. Option for Regulatory Conditions. Instead of accepting the conditions of this Agreement, the City may elect to adopt conditions proposed by the STB. However, such an election would constitute a renunciation of this Agreement on the City's part. The DM&E will abide by any mandatory condition ordered by the STB, notwithstanding anything in this Agreement to the contrary. If the City elects to accept STB conditions in substitution of this Agreement, it shall have the unilateral right to do so for a period of 30 days following final STB approval by providing written notice to the DM&E.

4. Continuing Negotiations. The parties recognize that this Agreement does not purport to resolve every community issue that may arise in connection with the Project. The parties shall continue to negotiate and work together to maximize benefits and minimize concerns on any issue that may arise in the future relative to the Project, based on the partnership principles set forth herein. DM&E and the City shall take all reasonable efforts to address and resolve issues as they arise, and shall continue negotiations on such issues which may from time to time result in additional amendments to this Agreement.

5. Safety. DM&E is in the process of developing a system-wide Safety Implementation Plan ("Safety Plan"). Said Safety Plan shall address physical improvements, technological

improvements, training, public education and awareness, etc. DM&E shall make a draft of the Safety Plan available to the City for comment and input prior to its completion. It is DM&E's intention and expectation that the Project and its Safety Implementation Plan will result in an overall safer rail system than exists today. In that regard, the Rebuild portion of the existing rail infrastructure through the City shall be replaced with high quality heavy gauge steel rails, new rail ties for a majority of existing rail ties, and significantly improved rail-bed, including substantial additional ballast. DM&E shall develop new rail traffic control and communications systems. DM&E shall fund a significant upgrade to its grade crossing system, including those City-specific improvements identified in Appendix 1 of this Agreement. DM&E shall continue to work with appropriate safety agencies and technical experts to verify the effectiveness of or improve its overall Safety Plan, and in the event additional system-wide improvements are adopted such improvements will be applied to the City regardless of whether or not they are specified in this Agreement.

6. Traffic. DM&E shall undertake reasonable efforts to improve or mitigate traffic impacts relative to the Project. DM&E shall continue to work with the City in an effort to improve traffic flows through operational planning, track design, and/or use of reasonably available technology or other means available to the parties.

7. Noise. It is recognized that the single biggest noise impact issue is the train whistle. DM&E acknowledges the City's requirement that it minimize whistle noise. The parties agree to cooperate with each other and appropriate regulatory agencies to provide an environment conducive to safe, whistle free operations, consistent with the policies and conditions set forth herein, with the goal of achieving whistle free status within some or all of the City limits.

(a). With respect to non-whistle noise impacts, it is the parties understanding that the federal EIS process will employ proven scientific means of measuring and/or estimating noise impact issues, applying standards consistent with past caselaw and STB policy. It is understood that this scientific analysis is expected to identify certain impacted receptacles within a defined noise contour line, and may or may not require certain remedial measures with respect to such receptacles depending on the scientific analysis. The parties do not have sufficient information at this time to assess the likely outcome of that analysis. DM&E shall at a minimum comply with the regulatory requirements imposed relative to this issue, if there are any. Further, it shall work in good faith with the City to explore any reasonable and cost effective means of improving upon the effectiveness of such mandatory mitigation measures if any are found to be required as part of the regulatory conditions. That issue will be negotiated further if requested by the City following development of such specific information.

8. Grade Crossings. The City grade crossings within the City limits are as listed and at the locations specified in the map at Appendix 1 to this Agreement. DM&E shall at a minimum install crossing protection or traffic control devices at levels specified in Appendix 1. Said levels are tied to average daily train traffic levels. DM&E shall provide to City on or before March 31 of each full calendar year following completion of Project construction and operational commissioning (which construction and commissioning shall be deemed completed

no later than the earlier of either (a) four (4) months following the movement through the City of the first DM&E-originated unit train of coal mined in Wyoming, or (b) the movement through the City of more than 7.5 million net tons of coal originated by DM&E and mined in Wyoming) (hereinafter defined as "Start-up") a verified count of average daily DM&E coal unit train traffic levels in the City for the previous year (for both loaded and empty trains), which shall be added to a base traffic level of three trains per day (1.5 loaded and 1.5 empty). Those updated train traffic levels shall be used in conjunction with motor vehicle average daily traffic counts as of the date of this Agreement (and/or per Appendix 1) to determine the grade crossing control level to be funded by DM&E pursuant to Appendix 1. Grade crossing devices required pursuant to Appendix 1 shall be installed as soon as practicable following submission of the verified count. It is understood and agreed to by the parties that grade crossing devices are provided for the purposes of safety, traffic control, and/or noise reduction. Any modifications made for traffic control, noise reduction or other purposes are deemed reasonable and safe by the parties hereto.

(a). Designation as "whistle free" crossings means the installation of either (a) sufficient gates (four quadrant) or median dividers (curbs, posts, barriers, etc.) or other devices which are reasonably expected to qualify for "whistle free" status at each crossing pursuant to forthcoming federal regulations (which regulations are not finalized but are expected to provide for the establishment of whistle free crossings in the event additional protection such as that outlined above is installed) if such devices are installed prior to adoption of the regulations, or (b) devices that do in fact qualify for some level of whistle free status if installed following adoption of the federal regulations. Such designation also means that, in the event the City requests whistle free technology and takes other action reasonably required to provide a safe whistle free environment, DM&E shall undertake good faith efforts with the City and appropriate regulatory authorities to implement safe whistle free operations.

(b). As a condition of DM&E funding installation and ongoing maintenance of whistle free status, both parties must have an ongoing commitment to maximize safety. The parties understand that the effective implementation of whistle free status will require an ongoing cooperative relationship between the City and DM&E as envisioned in the partnership concept described herein. The parties recognize that grade crossing safety cannot be maximized without coordinated efforts between the parties directly, and their best efforts to involve other responsible parties such as parents, the media, the motoring public, pedestrians, and others. The parties agree to cooperate in good faith to develop a reasonable and safe environment for whistle free development and maintenance. Examples include but are not limited to (a) an effective local law enforcement program for vehicular and pedestrian safety violations, (b) development of local regulations and/or railroad rules designed to provide a safer transportation environment, (3) coordinated joint public education programs, etc. Both the City and DM&E reserve the right to require that a whistle be blown at any crossing, regardless of its designation as whistle free, in the event either or both parties make a good faith determination the whistle is necessary based on safety needs, provided, however, that in the event such determination is made by DM&E contrary to the City's preference, then DM&E shall remain obligated to pay for the whistle free upgrade so as to avoid any financial conflict of interest in making such determination.

(c.) DM&E shall undertake all other grade crossing work as may be specified in Appendix 1 hereto.

(d.) Nothing in this Agreement is intended to limit or in any way preclude either party's existing or future obligations relative to grade crossing protection. The parties shall continue to make good faith efforts to encourage and secure funding for ongoing grade crossing protection safety programs which may be funded in large part by long established government programs. In the event any crossing covered by this Agreement could or does become eligible for normal government grade crossing protection funding prior to construction of the Project, the parties shall cooperate to fully utilize those programs in advance of such construction, provided, however, that DM&E shall reimburse City for City's share of such funding at the time of Project construction. In no event shall either party forgo opportunities for immediate grade crossing enhancements in reliance on future funding via this Agreement, and each will act aggressively to foster such grade crossing safety improvements prior to Project construction.

9. Other Commitments. DM&E shall ensure that all other improvements specified in Appendix 1 are timely completed as specified therein.

10. Right-of-Way Clean-up. DM&E shall clear its City right-of-way of debris at the conclusion of construction of the Project, and maintain it in a reasonable and tidy manner thereafter. Specifically, DM&E shall exercise reasonable care to control noxious weeds. In the event DM&E fails to exercise reasonable care to control noxious weeds or reasonably maintain its right of way, City may after 30 days following written notice to DM&E (which notice must contain photographic evidence of the problem to be addressed) undertake reasonable means to control the same; and DM&E must pay for the reasonable cost thereof if it fails to take reasonable steps to address the problem within 30 days of receipt of such notice.

11. Utility Crossings. DM&E shall bear the reasonable and necessary costs of protecting from Project construction and operation impacts the existing City utility crossings of the DM&E right of way that are identified by the City in the map located at Appendix 2 to this Agreement, and as may be specified therein. Additionally, DM&E shall install casings and/or make other identified provisions for potential future utility crossings as identified and specified in said Appendix 2.

12. Drainage. DM&E shall ensure reasonable and adequate drainage of its rail bed, and shall correct any identified deficiencies in such drainage that may currently exist. City may identify such drainage issues at any time following execution of this Agreement but prior to construction Start-up by providing written notice to DM&E at the address provided for in the notice section of this Agreement.

13. Partnership Community. It is the parties' intention that the cooperative relationship represented by this Agreement shall continue beyond the conclusion of Project construction. It is the parties' intention that they shall maintain and foster effective communication and an ongoing relationship to effectively address the inevitable issues that arise with railroads. Both

parties shall endeavor to foster such a relationship on a going forward basis. City is hereby recognized as a DM&E Partnership Community for its efforts and assistance in developing the Project, and shall maintain such status unless City acts to terminate this Agreement prior to the conclusion of Project construction. DM&E shall establish a Community Liaison for each of the three states affected by its construction Project who shall serve as a point of contact for local communities (cities, counties and states). DM&E shall provide by written notice to the City the name and contact information of such Liaison officer in the relevant state prior to commencement of Project construction. Such Liaison officers shall be supplied with a list of Partnership Communities and shall be directed to place a priority emphasis on (a) maximizing for such communities the economic and other benefits resulting from ongoing operations and (b) resolving any issues of concern associated with Partnership Communities. Said Liaison will serve as an advocate for Partnership Communities in maximizing benefits, and as a resource to said communities in providing answers and assistance and resolving issues of concern. At a minimum of once every year, if a major issue is not otherwise resolved to the City's satisfaction, and at the City's request therefor, DM&E shall make available for a personal meeting in the City a DM&E officer with sufficient authority to resolve the issue.

(a). Targeted Benefits. DM&E shall in its project development efforts work with Partnership Communities to maximize, where it is efficient and reasonably practicable to do so, the positive economic and other opportunities associated with the project. Examples of these efforts may include but are not limited to locating certain facilities in Partnership Communities, provision of local tourism passenger service, maximizing local economic impact through the construction and operation of the Project, utilizing local merchants, contractors and other community resources identified in Appendix 3(a) to this Agreement. To the extent reasonably practicable, DM&E will endeavor to recognize the City's role in advancing the Project to completion, commensurate to the City's advocacy efforts. To facilitate in this effort, City is requested to complete and return the information form in Appendix 3(b) to this Agreement, which Appendix may be amended by the City from time to time. Such Appendix 3(b) is intended to provide a structured approach to identifying and utilizing vendors and supplies from Partnership Communities for such resources as area contractors, lodging and eating facilities, aggregate material resources or suppliers, tool and other hardware suppliers, recreational needs, and any other persons or businesses who might reasonably supply goods or services for the construction and operation of the Project. Partnership Communities are encouraged to offer additional suggestions as to how the Project may be developed in a manner that could efficiently maximize benefits to Partnership Communities.

(b). Good Faith Efforts. The parties understand and agree that nothing in this Agreement is intended in any way to commit either party to utilize the goods or services of any one supplier or group of suppliers, nor is it intended as any level of commitment as to the location of any facilities or similar activities. This section 12 is intended to be a policy statement rather than a legal commitment. While it is expected that any objective measure at the end of Project construction and at any time during future ongoing operations will demonstrate that active Partnership Communities were and will continue to be afforded particular beneficial attention commensurate with their individual involvement in the Project development

process, it is not a legal guarantee that such will be the case. The parties understand that other factors, including but not limited to price, location, and qualifications may control such decisions. Parties further understand that there are numerous Partnership Communities, and that no promises with respect to facilities, activities or preferences to any specific Partnership Community are made hereby. This is a statement of principle whereby, all things being equal and where an interest has been clearly and timely expressed by the Partnership Communities to DM&E, every reasonable consideration should be given to those partners who have helped develop the Project in a timely, responsible manner.

(c). Internal Directives. DM&E shall distribute its list of Partnership Communities to Community Liaisons, appropriate DM&E personnel, suppliers, general contractors, engineers, consultants, planners and others, with instructions to follow the partnership principles as set forth in this Agreement. As part of their Partnership Community advocacy responsibilities, Liaisons will be charged with the specific responsibility of maximizing and documenting benefits for Partnership Communities throughout Project development, and shall be required to provide an ongoing report of the same to the President. Additionally, DM&E shall from time to time issue public statements as to its efforts and the effectiveness of its efforts to target benefits toward Partnership Communities.

14. Ongoing Dialogue. Appendix 4 to this Agreement contains a list of those issues that remain unresolved between the parties, either because they require analysis or negotiation, or because they appear unresolvable. Such list shall be modified from time to time to include any issue either party requests to be placed on the list. The list shall include a reasonable representation of the parties' position as to the status of the issue. Appendix 4 includes both parties' explanation of the objectives sought to be achieved with respect to that issue, and DM&E's technical, budgetary or other explanation of why it is unable to achieve a resolution of that issue. The primary purpose of such explanation is to provide sufficient information to afford others an opportunity to help develop alternative solutions to the issue. For any issues listed in Appendix 4 of this Agreement, the parties shall continue to negotiate in good faith in an effort to resolve them to the extent that there exists a reasonable opportunity to do so. In the event City feels that DM&E is not negotiating in good faith, it may unilaterally cancel this Agreement and take any action it desires before the STB or any other forum to delay or defeat the Project, pursuant to the cancellation provisions of this Agreement.

15. STB Conditions. This Agreement does not supersede conditions of regulatory approval as may be imposed by the STB for any area not covered by this Agreement. For any general area covered by this Agreement, City shall have the option to elect the provisions of this Agreement or the STB conditions as a complete substitute to this Agreement. The DM&E shall abide by any mandatory condition and/or regulation as may be imposed by the STB notwithstanding anything in this Agreement to the contrary.

16. City Support. The City recognizes the overall public interest served by maintaining a strong railroad infrastructure, particularly to the agriculture industry and economic development. The City recognizes that funding for the improvements contemplated by this

Agreement is expected to be made possible in part by timely Project advancement through the regulatory and construction process, and by avoiding the frequent delays brought about by an adversarial process. The additional accommodations recognized in this Agreement are provided to develop and maintain and convey to appropriate parties public consensus achieved through a negotiated partnership approach to Project development. Accordingly, the City agrees to cooperate in good faith to advance the Project in an effort to achieve regulatory approval, construction Start-up, and general Project development as soon as practicable, and shall take reasonable efforts to help effectuate those results following the execution of this Agreement through operational Start-up following completion of construction. The City may at any time change its position relative to the Project, or undertake other actions which could reasonably be expected to delay or otherwise complicate timely regulatory approval (from the STB or other state or federal authorities), Project construction, other Project development and/or operations; provided, however, that any such position change or action will relieve both parties of all obligations pursuant hereto, and result in the termination of this Agreement and any amendments hereto, upon written notice thereof, which notification shall comply with section 1 of this Agreement.

17. Amendments. It is anticipated by the parties that not every issue to arise out of this Project is covered in this initial Agreement. As new issues arise or identified issues need further development, the parties shall continue to negotiate in good faith in an effort to resolve them to mutual satisfaction. By mutual written agreement signed by duly authorized representatives of the parties (in the case of DM&E its President and Chief Executive Officer), this Agreement may be amended, which amendment(s) shall be sequentially numbered and shall specifically refer to this Agreement. Any such agreements shall be enforceable as though part of this Agreement, whether or not they are filed with the STB or any other agency.

18. Engineering & Design Modifications. It is understood and agreed by the parties that this Agreement (in particular the Appendix 1 design) is based on preliminary design and engineering analysis. As the design, engineering, operating plan and similar work product is further refined, such design features of this Agreement are subject to reasonable changes resulting therefrom (e.g., placement of certain facilities, buildings, sidings, etc.), and subject further to City's rights under section 1 of this Agreement. In the event the design changes, DM&E shall provide reasonable notice thereof to the City and coordinate any changes to Appendix 1 as it is refined.

19. EXCLUSIVITY. THE PARTIES TO THIS AGREEMENT SPECIFICALLY OBJECT TO THE USE OF THIS AGREEMENT BY ANY PERSON OR ENTITY NOT A PARTY HERETO IN ANY MATTER RELATED TO STB FINANCE DOCKET NO. 33407, OR ANY OTHER ASPECT OF THE DM&E RAIL CONSTRUCTION AND REBUILDING PROJECT. BOTH PARTIES TO THIS AGREEMENT HAVE NEGOTIATED IN GOOD FAITH, AND HAVE MADE CONCESSIONS IN THE SPIRIT OF A NEGOTIATED COMPROMISE. BOTH PARTIES HAVE GAINED BARGAINED FOR CONSIDERATION AS A RESULT OF THIS AGREEMENT. NO ONE PROVISION OF THIS AGREEMENT STANDS BY ITSELF. EACH IS INTERRELATED TO THE OTHER, AND ALL RELY

HEAVILY ON AN OVERRIDING PARTNERSHIP RELATION. CITY HAS HELPED PAY FOR THE ENHANCED IMPROVEMENTS BY ITS ONGOING AND EARLY COOPERATIVE PARTNERSHIP EFFORTS, ITS TIMELY SUPPORT, ITS CONSTRUCTIVE EFFORTS TO PROVIDE INFORMATION AND ADVICE IN FOSTERING PROJECT DEVELOPMENT AND PARTICIPATING IN COOPERATIVE RAILROAD DESIGN EFFORTS THAT HAVE RESULTED IN SIGNIFICANT SAVINGS IN TERMS OF COSTS, FUTURE PLANNING AND DEVELOPMENT EFFORTS, CONSTRUCTION PROCESS IMPLEMENTATION, AND MANY OTHER ISSUES. DM&E HAS CONSCIOUSLY AGREED TO MITIGATION CONDITIONS FAR IN EXCESS OF THOSE SUPPORTED BY PAST PRECEDENT BECAUSE OF SIGNIFICANT VALUE PROVIDED BY CITY NOT ONLY WITH RESPECT TO THE DEVELOPMENT OF THE IMMEDIATE PROJECT, BUT ALSO FOR OTHER REASONS INCLUDING BUT NOT LIMITED TO PARTNERSHIP SUPPORT IN PROJECT CONSTRUCTION AND FUTURE OPERATIONS, AND OTHER SUPPORT TO BE ACHIEVED THROUGH THE PARTNERSHIP PROCESS. AGREEMENTS AND CONCESSIONS PROVIDED HEREIN ARE BASED ON VALUE RECEIVED AND CONTRIBUTIONS MADE BY THE PARTIES HERETO. FOR THESE AND OTHER REASONS, THE PARTIES HERETO REQUEST THAT THIS AGREEMENT NOT BE CONSIDERED BY THE STB OR ANY OTHER PUBLIC BODY AS A BASIS FOR APPLYING THE CONDITIONS SET FORTH HEREIN OR ANY OTHER ASPECT OF THIS AGREEMENT TO THIRD PARTIES NOT A SIGNATORY TO THIS AGREEMENT, OR FOR ANY OTHER REASON WHATSOEVER UNLESS BY THE MUTUAL SPECIFIC WRITTEN CONSENT OF ALL SIGNATORIES HERETO.

20. Legally Binding, Successors in Interest. This Agreement shall be legally binding upon and shall inure to the benefits of the parties hereto, their licensees, successors and assigns.

21. Notice. Any written notice given under this Agreement shall be effective if delivered in person, sent by same day or overnight courier, or sent by mail on the date placed in the United States mail with proper postage and addressed as follows:

If to DM&E:

President & Chief Executive Officer
Dakota, Minnesota & Eastern Railroad Corporation
337 22nd Avenue South
P.O. Box 178
Brookings, South Dakota 57006

With copies to DM&E's Community Liaison, as identified in Section 13 of this Agreement.

If to City:

Mayor
City of Owatonna
421 NE 13th Street
Owatonna, MN 55060

22. Regulation. In the event that any portion of this Agreement is deemed to be inconsistent with or contrary to any controlling statute, regulation, regulatory condition, or similar legal authority, such provision shall be null and void; but the remainder of the Agreement shall remain in effect. In the event that any such inconsistent provision is deemed significant and material, the parties (or arbitration panel) shall replace it with a similar provision modified to comply with said controlling legal authority and to comply as closely as possible with the spirit and intent of this Agreement.

23. Arbitration. In the event City and DM&E cannot mutually agree on the meaning, application, interpretation, objectives or compliance with respect to any of the terms, provisions or conditions of this Agreement, the parties may arbitrate the matter as follows. Each party shall each designate an arbitrator and the two arbitrators shall seek to reach an agreement regarding the issue in question. In the event the two arbitrators cannot agree, they shall mutually designate a third independent professional arbitrator and the issue shall be determined by a majority vote of the three member arbitration panel. The arbitration panel shall have the right to fashion a remedy consistent with the objectives, rights and obligations of this Agreement. Notwithstanding the above, the moving party will also retain the right to litigate any issue arising under this Agreement before the STB or the Federal District Court for the District of Minnesota whenever that body or Court would otherwise have competent jurisdiction to resolve the matter, provided, however, that if a party seeks remedy through such non-arbitration process, said party shall be precluded from bringing before arbitration any part of the issue or matter so litigated -- either in whole or in part, or directly or indirectly.

24. I&M Connection. DM&E has proposed a connection with the I&M. In its original application, the DM&E proposed a link known as the "outer loop". Subsequently it proposed the "inner loop". There is an existing in-town link with the I&M known as the "diamond" crossing located in the vicinity of Front Street. The parties now agree as follows:

(a). In exchange for the City's agreement to withdraw its bypass proposal, DM&E will use its best efforts to obtain the right to construct a connection with the I&M at or near the diamond crossing through negotiations with the Union Pacific Railroad, regulatory relief at the STB, or other legal means.

(b). The City reserves the right to present any reasonable alternative for any I&M connection in the event that the STB does not authorize the in-city "diamond" crossing connection as mutually agreed by the parties. So long as the alternative is reasonable and cost neutral (as "reasonable" and "cost neutral" are either agreed to by the parties or determined through arbitration) to a connection identified by DM&E, DM&E shall join the City in

presenting the additional alternative to the STB without relieving either party of its obligations under this Agreement. If DM&E cannot obtain an I&M connection at or near the diamond crossing through any means, and if a reasonable and cost neutral alternative cannot be agreed upon, then the City reserves the right to terminate this Agreement and pursue any other alternative.

(c). If the DM&E does acquire the right to connect with I&M at the in-town diamond crossing, at the intersections of the I&M and School Street and Havana Road, it will fund installation of whistle-free level protection at Start-up of operations and will work in good faith with I&M to achieve that result. If for any reason that result cannot be achieved, DM&E shall pay as damages to the City the amount of capital spending necessary to achieve whistle-free protection at those two crossings.

(d). DM&E agrees not to transfer loaded unit coal trains from the DM&E mainline onto the I&M mainline until such time as qualified railroad engineers certify that the lines and switches necessary for such transfer from DM&E to I&M can accommodate the transfer at 40 miles per hour as the train transitions from the DM&E to the I&M. This provision is intended to ensure that the infrastructure can safely accommodate the train transition from DM&E to I&M at 40 mph. It does not purport to establish speed limits or other operating constraints which may be required by law or reasonable safety and operating prudence.

25. Not "Partnership". Nothing in this Agreement creates a legal partnership. The terms "partner" and "partnership" as used herein are intended merely to convey a spirit of cooperation between the parties.

26. Insurance. DM&E shall maintain public liability insurance, including but not limited to third-party personal injury, death and property damage (including contractual liability insurance), in an amount of not less than \$10 million per occurrence, which coverage may include deductibles reasonable in the commercial market.

27. Governing Law. It is mutually understood and agreed that this contract shall be governed by the laws of the State of Minnesota, both as to interpretation and performance.

Agreed to this _____ day of _____, 2000.

DAKOTA, MINNESOTA & EASTERN
RAILROAD CORPORATION

CITY OF OWATONNA

by _____
its PRESIDENT & CEO

by _____
its MAYOR

(kvs\wp51\city\owatonna.agr)

TABLE OF APPENDICES
COMMUNITY PARTNERSHIP AGREEMENTS

Appendix 1	City-specific Improvements (with map)
Appendix 2	Utility Crossings (with map)
Appendix 3(a)	Community Opportunities
Appendix 3(b)	Community Resource Information Form
Appendix 4	Unresolved Community Issues

APPENDIX 1 TO DM&E COMMUNITY PARTNERSHIP AGREEMENT
WITH THE CITY OF OWATONNA

This Appendix 1 with its accompanying notated Community Plan map presentation (hereinafter "Community Plan") is incorporated into the Community Partnership Agreement (hereinafter "Partnership Agreement") between DM&E and the City of Owatonna, MN (hereinafter "City"). This Appendix 1 provides crossing-specific and other details of DM&E's funding commitment for improvements identified in the Community Plan. Page references herein refer to pages in the Community Plan. This Appendix 1 provides additional detailed descriptions. In the event of an inconsistency between this detailed text and the brief text reference notes in the Community Plan presentation, this Appendix 1 text shall control.

1. Whistle Free Threshold. Certain crossings are designated as whistle free at Start-up and others at the achievement of 25 net million tons of coal annually (NMT). As an alternative to 25 million tons of coal annually triggering the whistle free protection, at the City's option the whistle free protection described herein shall be installed upon the achievement of annual traffic levels averaging 13 or more trains per day (inclusive of both loaded and empty unit trains and manifest trains and any other trains in excess of 50 cars in length). For purposes of counting average trains per day, way freights, passenger trains or maintenance trains shall not be counted. This alternative triggering mechanism shall be available to the City for any crossing identified herein as whistle free upon the achievement of 25 million net tons of coal. All improvements described in this Agreement and this Appendix 1 must be made on or before "Start-up". With respect to the unit train count option in lieu of the NMT method, it will be the City's responsibility and burden of proof to count and verify trains, identifying the date and train counted for audit purposes. City may count the number of trains from any location in the City it deems reasonable and necessary to a proper audit, provided that the relief sought shall be limited to the relevant location and street crossings included in the count and related evidence.

2. The crossing immediately to the south of Partridge Avenue is shown on DM&E records as a private crossing. It appears to provide access to only one private home, and as such appears to be a functional private crossing as well. City records indicate that it may be considered by the City as a public street crossing, although there is no record of that found at DM&E. This is an issue that needs to be researched further as public crossing would require whistle protection, and this site clearly would not provide reasonable justification for flashing lights or gates. DM&E shall either leave it as a private crossing with warning and/or stop signs (which likely could eliminate the need for a whistle) (page 5), or close it by providing a driveway access to the existing private crossing approximately 250 feet to the east. (page 6)

3. The vertical and horizontal clearance of the Main Street East underpass will be reviewed in final design in an effort to improve either or both clearances. Preliminary design work indicates that significant clearance improvements may be difficult to achieve, but a good faith effort will be made to coordinate with the City through the final engineering design to

achieve that result. (page 7) Neither the horizontal nor vertical clearance shall be reduced as a result of the project.

4. The Rice Lake Street crossing and the Vine Street crossing are addressed together. DM&E shall install whistle free level protection at Rice Lake Street at Start-up of operations (as per the procedure set forth in the Partnership Agreement), contingent upon closing the Vine Street rail crossing. This level of protection shall not be contingent upon the achievement of any traffic level, but rather shall be installed prior to the operation of unit coal trains over that crossing. (page 8)

5. The Chestnut Avenue NE crossing and the Rose Street crossing and the Pine Avenue crossing are addressed together. DM&E shall install whistle free level protection at Rose Street and Pine Avenue at Start-up of operations, contingent upon closing the Chestnut Avenue NE rail crossing. This level of protection shall not be contingent upon the achievement of any traffic level, but rather shall be installed prior to the operation of unit coal trains over that crossing. (page 9)

6. The vertical and horizontal clearance of the Mineral Springs Road underpass will be reviewed in final design in an effort to improve either or both clearances. Preliminary design work indicates that significant clearance improvements may be difficult to achieve, but a good faith effort will be made to coordinate with the City through the final engineering design to achieve that result. (page 10) Neither the horizontal nor vertical clearance shall be reduced as a result of the project.

7. The North Elm Avenue crossing will be upgraded to include whistle-free level protection at Start-up of Project operations (as per the procedure set forth in the Partnership Agreement). (page 11)

8. The North Cedar Avenue crossing will be upgraded to include gates and flashing lights at Start-up of Project operations. Additionally, DM&E will design the site for whistle free status and pre-wire the site for any necessary whistle free technology (full gates and lights), and install any necessary foundations for the gate pedestals sufficient for whistle free standards. At the achievement of 25 million net tons of coal traffic (as per the procedure set forth in the Partnership Agreement), DM&E shall fund the addition of gates or other requirements for whistle free status (as per the procedure set forth in the Partnership Agreement). (page 11)

9. The vertical and horizontal clearance of the Riverside Avenue/North Oak Avenue underpass will be reviewed in final design in an effort to improve either or both clearances. Preliminary design work indicates that significant clearance improvements may be difficult to achieve, but a good faith effort will be made to coordinate with the City through the final engineering design to achieve that result. (page 12) Neither the horizontal nor vertical clearance shall be reduced as a result of the project.

10. The State Avenue crossing will be protected with gates and flashing lights at Start-up of Project operations. Additionally, DM&E will design the site for whistle free status and pre-wire the site for any necessary whistle free technology (full gates and lights), and install any necessary foundations for the gate pedestals sufficient for whistle free standards. At the achievement of 25 million net tons of coal traffic (as per the procedure set forth in the Partnership Agreement), DM&E shall fund the addition of gates or other requirements for whistle free status (as per the procedure set forth in the Partnership Agreement). (page 13)

11. The Park Drive NW crossing will be upgraded to include gates and flashing lights at Start-up of Project operations. Additionally, DM&E will design the site for whistle free status and pre-wire the site for any necessary whistle free technology (full gates and lights), and install any necessary foundations for the gate pedestals sufficient for whistle free standards. At the achievement of 25 million net tons of coal traffic (as per the procedure set forth in the Partnership Agreement), DM&E shall fund the addition of gates or other requirements for whistle free status (as per the procedure set forth in the Partnership Agreement). (page 14)

12. The 24th Avenue crossing is in the process of being upgraded to include gates and flashing lights. At Start-up of Project operations, DM&E shall reimburse City for its share of the local match for that crossing upgrade. At the achievement of 25 million net tons of coal traffic (as per the procedure set forth in the Partnership Agreement), DM&E shall fund the addition of gates or other requirements for whistle free status (as per the procedure set forth in the Partnership Agreement). (page 15)

13. The 32nd Avenue crossing will be upgraded to include gates and flashing lights at Start-up of Project operations. At the achievement of 25 million net tons of coal traffic (as per the procedure set forth in the Partnership Agreement), DM&E shall fund the addition of gates or other requirements for whistle free status (as per the procedure set forth in the Partnership Agreement). (page 16)

If DM&E acquires the right to connect with the I&M on the existing diamond exchange, DM&E shall be relieved of any obligation to fund or install whistle free technology at the Park Drive, 24th Avenue, and 32nd Avenue crossings, and whistle free will be installed at Start-up on School Street and Havana Road consistent with paragraph 24(c), page 10, of this Agreement.

14. Crossing Surfaces. DM&E shall ensure that all crossing surfaces within the City shall have high quality state of the art surfaces prior to the movement of unit coal trains through Owatonna. These crossings shall all have profiles within state specifications and shall be surfaced with concrete panels or similar state of the art surfacing. In no event shall crossing profiles exceed the greater of 1% or their existing profile as of the date of this Agreement.

15. Unused Trackage Disposal. Unused track at Elm Street and any other unnecessary or unused track shall be removed.

16. Fencing. DM&E will install chain link fencing from approximately Main Street to Pine Avenue on the north side of the track.

17. Signal Interface. DM&E shall undertake good faith efforts to provide an interface with the Steele/Rice Law Enforcement Center so that emergency responses can be diverted away from controlled crossings. As the technical requirements for this interface become known, this Appendix 1 shall be updated to provide the type of signal interface or similar system to coordinate with local law enforcement.

18. Additional Whistle Free. In addition to the above referenced crossing control devices, DM&E shall at the City's option:

- (a) Redesignate any of the crossings designated for immediate whistle free technology at Start-up so that such immediate whistle free technology shall be employed at any other crossing meeting the level E protection criteria in lieu of the initially designated crossing. The net result of this paragraph is that the City may redesignate the crossings in the City limits which are to achieve "whistle free" immediately upon Start-up; and
- (b) Reimburse the City for reasonable and necessary whistle free technology installed prior to the achievement of 25 million net tons of coal traffic, which reimbursement shall become due and payable once such traffic levels are achieved. Reasonable and necessary technology will be mutually agreed between the parties, consistent with DM&E system-wide whistle free technology, and agreement thereto shall not be unreasonably withheld.

19. Whistle Free and Parallel Crossings of DM&E and I&M. Wherever whistle-free technology is called for in this Agreement and where the DM&E tracks lie roughly parallel or contiguous to the tracks of the I&M, DM&E will undertake best efforts to coordinate with I&M so that the whistle-free technology will be installed so as to create a whistle free zone protecting traffic from trains on all tracks of both railroads. This paragraph specifically applies to the intersection of the railroads and Rice Lake Street, Rose Street, Pine Avenue, and Elm Avenue.

20. 39th Street Overpass. In the event the City builds a new road in the vicinity of what would be 39th Street, following the year 2010 or later, DM&E will fund 50% of the amount reasonably necessary to pay for a bridge structure for such future road that will span the railroad, provided that such bridge structure is situated at right angles to the railroad single track mainline on level grade. This funding commitment does not include right of way acquisition or the cost of the approaches on either side. It is limited to the bridge structure itself, which shall not exceed a single structure with a maximum of four lanes.

This Appendix 1 to the Partnership Agreement is verified by the parties on this ____ day
of _____, 2000.

For DM&E

For City

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