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July 20, 2018

VIA E-FILING

Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

**Re: Docket No. FD 36178, Metropolitan Council – Petition for Declaratory Order
Docket No. FD 36177, Hennepin County Regional Railroad Authority –
Acquisition Exemption – In Hennepin County, MN**

Dear Ms. Brown:

Following up on the letter filed in Docket No. 36178 on July 16, 2018 by the Metropolitan Council ("Council"), the Council and Hennepin County Regional Railroad Authority ("HCRRA") hereby submit the following executed agreements that are relevant to the settlement reached by the Council, HCRRA and the Twin Cities & Western Railroad Company ("TCWR"):

1. Settlement Agreement and Release;¹
2. Construction Agreement Between Metropolitan Council and Twin Cities & Western Railroad Company; and
3. Co-Location Agreement Between Metropolitan Council and Twin Cities & Western Railroad Company.

¹ The Soo Line Railroad Company, a Minnesota corporation now doing business as Canadian Pacific, is also a party to the final Settlement Agreement and Release.

Cynthia Brown
July 20, 2018
Page 2

HCRRA, by undersigned counsel, also wishes to inform the Board that, in addition to the terms addressed in the Settlement Agreement, HCRRA has carefully considered the issue raised by TCWR and the shippers related to HCRRA's regulatory status and the impact (if any) of the exemption from 49 U.S.C Subtitle IV that the ICC conferred upon HCRRA in 1995.² As the Council and HCRRA have explained in pleadings filed in this proceeding on June 27, 2018, they do not believe that the exemption from Subtitle IV places any limitation on HCRRA's right and obligations to fulfill the obligations the ICC identified in the 1995 decision. However, to eliminate any future basis for doubt, HCRRA would not oppose the Board, in conjunction with approving the pending filings of HCRRA and the Council, revoking the Subtitle IV exemption as to the Kenilworth Corridor effective as of the date that the Metropolitan Council acquires the property underlying that rail corridor (should the proposed property transfers move forward).³

It is the desire of the Council and HCRRA that the submission of these agreements and this letter, combined with TCWR's formal withdrawal on July 19, 2018 of its opposition to the Council's Petition for Declaratory Order and to HCRRA's Notice of Exemption, will help facilitate an expeditious approval of the requests of the Council and HCRRA in their respective filings.

Please do not hesitate to contact either of the undersigned if you have any questions.

Sincerely,



Edward D. Greenberg
Attorney for Metropolitan Council



Charles A. Spitulnik
Kaplan Kirsch & Rockwell LLP
(202) 955 – 5600
*Attorney for Hennepin County Regional Railroad
Authority*

cc: Parties of Record

² See *Chi. & N.W. Transp. Co. – Abandonment & Discontinuance of Serv. – in Hennepin Cty., Minn.*, AB-1 (Sub-No. 252X) (ICC served Dec. 20, 1995).

³ No such action is required for the transaction involved in Finance Docket No. 36177 because HCRRA did not request any such exemption when it filed its Notice of Exemption in that proceeding.

1

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made this ___ day of July, 2018 by and between the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota ("Council"), Hennepin County, Hennepin County Regional Railroad Authority ("HCRRA"), Soo Line Railroad Company, a Minnesota corporation now doing business as Canadian Pacific ("CP") and Twin Cities & Western Railroad Company, a Minnesota Corporation ("TCWR"), collectively "the Parties."

RECITALS

WHEREAS, the purpose of this Agreement is to completely and finally settle and release all disputes, claims, and concerns between the Parties that have been raised or could have been raised related in any way to the STB Petitions and the Lawsuit as defined herein, the Property Agreements (which are the purchase agreement between the Council and CP for sale of the Bass Lake Spur to the Council, the HCRRA Trackage Rights Agreement defined below, the CP Trackage Rights Agreement defined below, the assignment agreement for the CP Trackage Rights Agreement, the HCRRA-Council Property Transfer Agreement, and all attachments to each) discussed in those proceedings, and the construction and operation of the Southwest Light Rail Transit Project ("SWLRT Project") and to avoid the delay, expense, and uncertainty of litigation;

WHEREAS portions of the SWLRT Project will be in the areas known as the Kenilworth Corridor and Bass Lake Spur;

WHEREAS, TCWR operates freight rail service in the Kenilworth Corridor pursuant to a Trackage Rights Agreement between CP, TCWR and HCRRA and a Railroad Easement, both dated August 10, 1998, and modified by a Supplement and a Railroad Easement dated July 30, 2002, and a Settlement Agreement, denominated A121128, dated on or about August 1, 2012, (collectively, the "HCRRA Trackage Rights Agreement");

WHEREAS, TCWR operates freight rail service in the Bass Lake Spur under a Trackage Rights Agreement between CP and TCWR dated July 26, 1991, as amended by a Relinquishment Agreement dated July 27, 1993, and Supplemental Agreements dated July 27, 1993, and April 30, 1996 (collectively the "CP Trackage Rights Agreement"). As used herein, the "CP Trackage Rights Agreement" means that portion of the CP Trackage Rights Agreement, including any amendments, that has been assigned to HCRRA pursuant to the Partial Assignment Agreement between CP and HCRRA;

WHEREAS, as part of the SWLRT Project and pursuant to proposed agreements currently on file with the STB, and as amended by any subsequent filings or agreements pertaining to this Agreement, the Council will acquire freight rail assets in the Kenilworth Corridor and Bass Lake Spur. The Council's acquisition of the Bass Lake Spur assets are subject to CP's grant to HCRRA of a permanent, exclusive, and irrevocable easement to provide common carrier service over this trackage. HCRRA is retaining the HCRRA Trackage Rights Agreement. CP will assign those

portions of the CP Trackage Rights Agreement that pertain to the Bass Lake Spur trackage to HCRRA;

WHEREAS, CP currently provides and assures, through the 1993 Supplemental Agreement and the 1993 Relinquishment Agreement, the alternate route to the St. Paul Yard;

WHEREAS, CP will retain the obligation to provide a replacement alternate route pursuant to Section 7 of the 1993 Supplemental Agreement but has agreed with the Council and HCRRA that the Council or HCRRA will fulfill that obligation as to the extent that the alternate route becomes unavailable or operations over the alternate route are materially adversely affected either by acts or omissions of the Council and/or HCRRA or due to conditions on the Bass Lake Spur due to acts or omissions on the Bass Lake Spur of persons other than TCW or CP;

WHEREAS, as part of the SWLRT Project, the Council will adjust portions of the freight track subject to the HCRRA Trackage Rights Agreement and the CP Trackage Rights Agreement, and replace or rehabilitate certain freight track in the Bass Lake Spur and/or Kenilworth Corridor. The construction of the SWLRT Project will also remove some of the siding track in the Bass Lake Spur as detailed on Exhibit A to this Agreement ("Subject Sidings");

WHEREAS, TCWR has alleged that the construction and operation of the SWLRT Project will impact (1) its operations and (2) its rights under the CP Trackage Rights Agreement or the HCRRA Trackage Rights Agreement. TCWR has filed opposition papers at the Surface Transportation Board ("STB") in Docket Nos. FD 36178 and FD 36177 related to the Council's acquisition of the freight rail property on the Kenilworth Corridor and the Bass Lake Spur and HCRRA's filings related to common carrier authority on the Bass Lake Spur ("STB Petitions"). TCWR has also filed a Complaint alleging various claims against the Council, HCRRA, and CP, United States District Court for the District of Minnesota, 18-CV-01088 ("Lawsuit"), arising out of the plans for the SWLRT Project;

WHEREAS, the Council, HCRRA, and CP moved to dismiss the Lawsuit;

WHEREAS, as part of this Agreement, TCWR intends to build replacement track capacity to replace siding due to construction of the SWLRT Project; and

WHEREAS, the Parties have resolved all concerns regarding the impact (if any) related in any way to the STB Petitions and the Lawsuit as defined herein, the Property Agreements discussed in those proceedings, and the terms and conditions of the construction and operation of the SWLRT Project on TCWR's (1) operations and (2) ability to operate, and rights under or in any way related to the CP Trackage Rights Agreement or the HCRRA Trackage Rights Agreement (both of which continue as written except as modified by the amendment to the CP Trackage Rights Agreement as assigned to HCRRA (as referenced in the Construction Agreement Sec. 14.20), Construction Agreement and the Co-Location Agreement) and all parties fully support the construction and operation of the SWLRT Project. Collectively, all concerns regarding the impact, if any, on TCWR from the transfer of the Bass Lake Spur from CP to the Council and the transfer of the Kenilworth Corridor from HCRRA to the Council and agreements associated therewith, the assignment of the CP Trackage Rights Agreement, HCRRA's status as common carrier in the Bass

Lake Spur and Kenilworth Corridor, or construction and operation of the SWLRT Project, that are or could have been raised in either the STB, Petitions or the Lawsuit, which are referred to herein as the "Dispute."

NOW, THEREFORE, in consideration of the promises and covenants contained herein, and in the Construction Agreement (attached as Exhibit E) and Co-Location Agreement (attached as Exhibit F), the sufficiency and adequacy of which mutual consideration is hereby acknowledged, the Parties fully and finally resolve the Dispute between them as follows:

1. **Incorporation of Recitals:** The Recitals set forth above, even though provided as background, are incorporated into this Agreement.

2. **Mutual Release of Claims:** TCWR, the Council, Hennepin County, HCRRA, and CP fully and finally release each other and each other's affiliates, parents, subsidiaries, successors, and agents, including any of their members, officers, officials, employees, consultants and attorneys, from any and all claims, charges, demands, rights, damages, costs, losses, suits, actions, liabilities, attorneys' fees and expenses of any kind, whether in law or in equity, known or unknown, asserted or unasserted, suspected or unsuspected arising under any state or federal law, common law, statute, or other regulation of any kind, or arising from any contract or agreement, which the Parties have or have had that relate to this Dispute ("Released Claims"). The Released Claims are to be broadly construed and include all of those related to the Dispute, as defined above, up through the date of this Agreement. For purposes of clarity, this release does not apply to or release any claims or assertions regarding invoices issued or payments due or disputed pursuant to the CP Trackage Rights Agreement or the HCRRA Trackage Rights Agreement. This release does not apply to or release any future claims, including but not limited to any claims arising out of the Construction and Co-Location Agreements or the CP Trackage Rights Agreement or the HCRRA Trackage Rights Agreement.

For purposes of clarity and not limitation, the Released Claims include but are not limited to all claims or assertions that were raised or could have been raised at the STB or in the Lawsuit. The Released Claims also include but are not limited to all claims or assertions related to the Dispute, such as the effects of removal of the sidetracks identified in Paragraph 4 below upon TCWR's freight rail service and operations, including freight forwarding and storage in transit (whether approved or unapproved by any Party or any TRA), adjustment, replacement, or reconstruction of the freight tracks, the alternative route currently provided to TCWR, harm to the Council, HCRRA, CP, and/or Hennepin County caused by TCWR's Lawsuit and/or opposition at the STB, any dispute that the Council or HCRRA's actions is a taking of any TCWR property or other right, and/or any harm to TCWR, including any damages its shippers and customers, or potential shippers and potential customers have claimed or may claim due to the construction or operations of the SWLRT Project but not including Damages as described in the Construction or Co-Location Agreements.

TCWR acknowledges and agrees that TCWR will not encourage or facilitate other persons or parties to take action against the Council, Hennepin County, HCRRA or CP as to the Lawsuit and/or the subjects released herein or before the STB. TCWR agrees to provide reasonable cooperation in the defense of any claim asserted by TCWR shippers against the Council, Hennepin County, or HCRRA. Notwithstanding the foregoing, nothing herein shall release the Parties from their obligations under this Agreement.

Concurrent with this Agreement, TCWR, and the Council are also signing the Construction Agreement, which will govern roles and responsibilities of the parties during construction (if any), and TCWR, HCRRA, and the Council are signing a Co-Location Agreement, which will govern roles and responsibilities if the construction is completed and the SWLRT is operational. On

execution of the Construction Agreement, the Co-Location Agreement, and this Agreement, the Released Claims are fully released, satisfied, discharged and settled. The release contained in this Agreement is a broad, general release and the Parties waive and assume the risk of any claims or damages which exist as of this date but of which the Parties do not know, whether through ignorance, error, oversight, negligence, or otherwise, and which, if known, would materially affect the Parties' decision to enter this release. This release applies whether or not the SWLRT Project is constructed or continuously operated and whether or not the milestones in the Payment to TCWR identified in this Agreement are reached.

3. **Payment to TCWR:** To resolve the Dispute, the Council will make the following payments under this Agreement:

\$18,500,000 to TCWR apportioned and conditioned as follows:

- a. \$500,000 within seven days after TCWR sends the STB and shipper letters attached as Exhibits C and D ;
- b. \$2,000,000 14 days after the later of the effective date of a STB decision on the petition for declaratory order allowing for the SWLRT Project to proceed or the effective date of the notice of exemption allowing HCRRA to acquire CP's common carrier rights on the Bass Lake Spur.
- c. If the Council issues a limited notice to proceed to the civil construction contractor for the SWLRT Project, \$10,000,000 within 14 days after the Council issues the limited notice to proceed;
- d. If the Council issues a Full Notice To Proceed ("FNTP") to the construction contractor, \$4,000,000 within 14 days after the Council issues the FNTP; and
- e. \$2,000,000 within 30 days after revenue operations begin or five years after the FNTP, whichever occurs first.

The Council will provide TCWR a Form 1099 for these payments and deliver these payments to President Twin ~~City~~ & Western Railroad Company, 2925 12th St. East, Glencoe, MN

cities

55336. Except as separately agreed between the Council and CP, each Party is responsible for its own attorney's fees, costs, and disbursements.

4. **Co-Location and Construction Cooperation:** Certain parties have executed and will carry out, as part of the overall settlement between the Parties, the terms of that certain Co-Location Agreement attached as Exhibit F and that certain Construction Agreement attached as Exhibit E. Those agreements are incorporated as though set forth fully herein.

To the extent the Council constructs the freight line rail improvements on the Bass Lake Spur and Kenilworth Corridor identified on the SWLRT Project construction plans, the coordination and cooperation during construction and thereafter are defined in the Construction Agreement and the Co-location Agreement.

TCWR is currently using sidings in the Bass Lake Spur. Upon 60 days notice from the Council, but no sooner than November 1, 2018, TCWR will cease all use of the Subject Sidings marked as A and B1 on Exhibit A (Siding Group I), and vacate and remove all property from the Subject Sidings marked as A and B1 on Exhibit A (Siding Group I), notwithstanding any right TCWR has alleged under any applicable agreement or otherwise to use such tracks.

Upon 60 days notice from the Council, but no sooner than by September 1, 2019, TCWR will cease all activity and vacate and remove all property from the Subject Sidings marked as E and F on Exhibit A (Siding Group II) and a portion of Siding D east of the Skunk Hollow Switching Wye turnout.

Upon 60 days of notice from the Council, but no sooner than, by May 25, 2020, TCWR will cease all activity and vacate and remove all property from the Subject Sidings marked as C and the remainder of D on Exhibit A (Siding Group III), notwithstanding any right TCWR has alleged under any applicable agreement or otherwise to use such tracks..

Upon 60 days of notice from the Council, but no sooner than July 1, 2020, TCWR will cease all storage activity and freight forwarding from the remaining sidings.

5. **Full Accord and Satisfaction:** This Agreement, and the payment of the foregoing consideration to TCWR upon full and final execution hereof and the meeting of the conditions therein, is in full accord, satisfaction, and final compromise and settlement of the Dispute and the Parties known and unknown claims against each other, which relate to the Dispute.

6. **Communication to STB of Cooperation and No Opposition:** Within 24 hours after all Parties execute this Agreement, TCWR will communicate in writing to the STB by sending a letter no longer opposing the SWLRT Project and STB filings and withdrawing its opposition. Additionally, within 24 hours after all Parties execute this Agreement, TCWR will communicate in writing to any shippers, potential shippers, other customers, or potential customers in addition to any other municipality, government official, person or entity (jointly referred to as "shippers, customers, or entities") its withdrawal of its opposition to the Project. The letters will contain the content shown in the attached Exhibits C and D.

TCWR also agrees not to facilitate any challenges or claims in any forum by any shippers, customers, or entities related to or arising out of the construction or operation of the SWLRT Project, including rehabilitation of the Bass Lake Spur West as detailed in Section ____ of this Agreement.

7. **Stipulation of Dismissal with Prejudice:** The Parties shall execute the stipulation for dismissal of the Lawsuit with prejudice that is attached hereto as Exhibit B (the "**Stipulation**"). Upon execution of this Agreement, the Parties' counsel shall notify the Court of the settlement and that the Stipulation will be filed within approximately five (5) days.

8. **Legal Counsel:** The Parties acknowledge they have carefully read this Agreement, consulted with their legal counsel, and voluntarily enter into this Agreement after having been advised by their respective counsel. The Parties acknowledge they have fully negotiated this Agreement and have not relied upon any statements by any other Party, its employees, officials, agents, insurers, or attorneys, in agreeing to this Agreement.

9. **Enforceability and Governing Law:** This Agreement will be construed and interpreted in accordance with the laws of the State of Minnesota. It is the express intent of the Parties that this Agreement be binding and enforceable under the principals of law applicable to contracts and that the Agreement itself may be used as evidence in a subsequent proceeding in which any Party alleges a breach of this Agreement. The state or federal courts in Hennepin County, Minnesota, will be the exclusive forum for litigation regarding the interpretation or enforcement of this Agreement. By agreeing to this settlement, the Parties in no way admit liability of any kind. This Agreement is binding upon and inures to the benefit of the Parties and their successors and assigns. If any Party wishes to assign this Agreement it will provide the other Parties with 48 hour notice of its assignment intent and the other parties' consent to such an assignment will not be unreasonably withheld. The consent and notice obligations do not apply if the assignment occurs by operation of law.

10. **Insurance and Indemnity:** From the date (to be provided upon closing) that the Council closes on the Real Estate Purchase Agreement (Bass Lake Spur) and the HCRRA Property Transfer Agreement (Kenilworth) until the effective date of the Co-Location Agreement, TCWR will comply with Sections 8.2, 9.2, 9.3(a), and 9.3(c) of the Co-Location Agreement.

11. **Bass Lake Spur West Rehabilitation:** The Bass Lake Spur West will be maintained at FRA Class 2 track level pursuant to the CP Trackage Rights Agreement. If the Council closes on

the Real Estate Purchase Agreement (Bass Lake Spur), then the rehabilitation obligations described in this section will apply. If the Council does not close on the Real Estate Purchase Agreement (Bass Lake Spur) then this section does not apply.

Although rehabilitation of the Bass Lake Spur West ("BLS West") is not part of the SWLRT Project, the salvage from the Kenilworth Corridor is intended to be used for the BLS West rehabilitation. To the extent the salvage from the Kenilworth Corridor is not used for such rehabilitation, then such salvage will belong to the Council. In addition, as to rehabilitation of the BLS West, with respect to the proposed freight rail improvements between Tower E-14 and STA 33+00 (west of TH 169) west to Tower E-14, Hennepin County, HCRRA, and the Council agree that, consistent with all applicable laws and rules, the following work is to be performed prior to SWLRT Revenue Service:

- a. Remove approximately 8,355 feet of existing 112RE jointed rail and replace with approximately 8,355 feet of 115RE jointed rail removed from the Kenilworth Corridor (mainline);
- b. Remove and replace 1,600 wood ties, clips, spikes and plates (mainline);
- c. Installation of new #11 turnout west of Dominick Drive (replace existing turnout);
- d. Installation of new #11 crossover west of 11th Avenue (replace existing crossover);
- e. Up to 500 TF ballast undercut and cleaning (mainline);(mainline and siding).
- f. Bridge repairs at Rowland Rd (shore existing 3 exterior beams, remove loose pier concrete, remove interior drains, form and pour new repair concrete on each side of existing pier);
- g. All new turnouts or crossovers will be # 11 complying with BNSF/UP mainline standards;
- h. Install new east facing crossover at location to be specified by TCWR near 11th Avenue; and
- i. Surface and lining of the BLS West mainline and portions of siding in vicinity of replaced turnout and crossover.

12. **Solicitation For 2019 Maintenance Contract For Bass Lake Spur:** A solicitation will be issued for a maintenance service provider to maintain the Bass Lake Spur at the end of CP's maintenance contract on June 30, 2019, consistent with the terms of the Co-location Agreement (even if the Co-location Agreement is not yet effective).

13. **Prior Agreements:** The terms of this Agreement supersede and terminate all prior agreements, representations, and communications between the CP, the Council, Hennepin County, and HCRRA, on the one hand, and TCWR, on the other hand, regarding the Dispute, whether written or oral. For the avoidance of doubt, the Parties do not intend this Agreement, except as otherwise provided in the Construction and Co-Location Agreements, to supersede or terminate the parties' rights under the HCRRA Trackage Rights Agreement or the CP Trackage Rights Agreement. Also for the avoidance of doubt, this paragraph does not alter the Mutual Releases provided herein.

14. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which when executed will be deemed an original and the counterparts will together constitute one Agreement. A copy of this Agreement, including its signature pages, will be binding and deemed an original.

15. **Dismissal of Claims:** This Agreement may be used to secure the dismissal with prejudice of any related lawsuit (including 18-CV-01088 filed in the United States District Court for the District of Minnesota), STB action, or other legal action, including in arbitration, that currently exists and that could exist now or in the future, related to or arising from the Dispute.

16. **Warranty of Legal Capacity:** The individuals signing this Agreement represent and warrant on behalf of each Party that they are duly authorized to execute this Agreement and that this Agreement constitutes the respective Party's valid, binding, and enforceable agreement.

17. **TCWR Responsible for Taxes:** The Payments to TCWR detailed in this Agreement are made without the opinions or advice of the Council, HCRRA, Hennepin County or CP on taxability under the Internal Revenue Code or any local law, state law or federal law. TCWR is fully responsible to any federal, state or local taxing authority for its taxes, including any interest or penalties, which may arise from payment under this Agreement.

18. **Council, Hennepin County, and HCRRA Approval:** The Council, Hennepin County, and HCRRA represent that if approval of their respective governing boards is required, that they obtained any such approval before executing this Agreement.

IN WITNESS WHEREOF, we have executed this agreement on the dates below:

TWIN CITIES & WESTERN RAILROAD
COMPANY

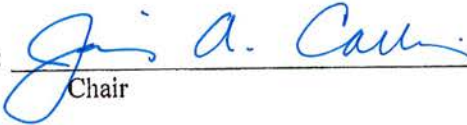
Dated: July 13, 2018 By: Mark Wegner
Its: President & CEO

METROPOLITAN COUNCIL

Dated: 7/18/2018 By: [Signature]
Weston Kooistra
Regional Administrator

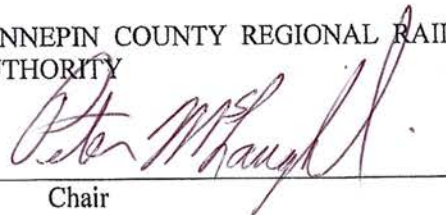
HENNEPIN COUNTY

Dated: 7-19-18

By: 
Chair

HENNEPIN COUNTY REGIONAL RAILROAD
AUTHORITY

Dated: 7/19/18

By: 
Chair

Soo Line Railroad Company

Dated: 7/13/18

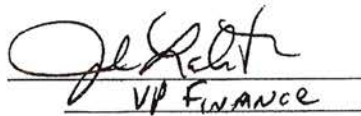
By: 
VP FINANCE

Exhibit A- Subject Siding

Exhibit B - Stipulation of Dismissal with Prejudice

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TWIN CITIES & WESTERN
RAILROAD COMPANY,

Plaintiff

Case No: 0:18-cv-01088-DWF-SER

v.

METROPOLITAN COUNCIL,
HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY AND SOO
LINE RAILROAD COMPANY D/B/A
CANADIAN PACIFIC RAILWAY,

Defendants

JOINT STIPULATION AND NOTICE FOR DISMISSAL WITH PREJUDICE

Plaintiff Twin Cities & Western Railroad Company and Defendants Metropolitan Council, Hennepin County Regional Railroad Authority, and Soo Line Railroad Company d/b/a/ Canadian Pacific (hereinafter collectively the "Parties"), by and through their counsel, file this stipulation and agree as follows:

WHEREAS, Plaintiff served a Complaint in the above-referenced matter ("the Complaint") on Defendants on April 25, 2018 and April 26, 2018;

WHEREAS, the Parties have agreed that this action be dismissed with prejudice;

NOW, THEREFORE, the Parties agree as follows:

1. This stipulation is filed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

2. The Complaint shall be dismissed with prejudice. Each Party is responsible for its own attorney's fees, costs, and disbursements.

Dated: _____, 2018

By: /s/
David R. Marshall (#0184457)
Leah C. Janus (#0337365)
Benjamin R. Tozer (#0393453)

FREDRIKSON & BYRON, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55401-1425
Telephone: 612.492.700

Attorneys for Plaintiff Twin Cities & Western Railroad Company

Dated: _____, 2018

By: /s/
Katie Crosby Lehmann (#257357)
Jan M. Conlin (#192697)
Heather M. McElroy (#34168X)
Kyle W. Wislocky (#393492)

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E-mail: KWW@CiresiConlin.com

Attorneys for Defendants Metropolitan Council and Hennepin County Regional Railroad Authority

Dated: _____, 2018

By: /s/
Andrew W. Davis (#0386634)

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David F. Rifkind (*pro hac vice* motion granted 5/11/18)
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*Attorneys for Defendant Soo Railroad Company
d/b/a Canadian Pacific*

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TWIN CITIES & WESTERN
RAILROAD COMPANY,

Plaintiff,

v.

METROPOLITAN COUNCIL,
HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY AND SOO
LINE RAILROAD COMPANY D/B/A
CANADIAN PACIFIC RAILWAY,

Defendants.

Court File No. 0:18-cv-01088-DFW-SER

**PROPOSED ORDER GRANTING
JOINT STIPULATION FOR
DISMISSAL WITH PREJUDICE**

Plaintiff Twin Cities & Western Railroad Company and Defendants Metropolitan Council, Hennepin County Regional Railroad Authority, and Soo Line Railroad Company d/b/a/ Canadian Pacific (hereinafter collectively the "Parties"), by and through their counsel, have filed a Joint Stipulation for Dismissal with Prejudice. The Parties represent that they have met and conferred regarding the Joint Stipulation and have stipulated pursuant to Local Rule 7.1(a)(2) that the present action may be dismissed with prejudice.

Therefore, the Court APPROVES the Joint Stipulation for Dismissal with Prejudice. It is hereby **ORDERED AND ADJUDGED** that the Complaint is **DISMISSED WITH PREJUDICE** to any further suit being brought against Defendants Metropolitan Council, Hennepin County Regional Railroad Authority, and Soo Line Railroad Company concerning the subject matter of this case.

SO ORDERED this _____ day of _____, 2018.

HONORABLE DONOVAN W. FRANK
UNITED STATES DISTRICT JUDGE

Exhibit C: TCWR Letter to STB

TO: The Surface Transportation Board

FROM: Twin Cities & Western Railroad

RE: Withdrawal of Opposition and Support of Board Approval in Docket Nos. FD 36178 and FD 36177

Twin Cities and Western Railroad ("TCW") files this letter to inform the Board that TCW no longer opposes and hereby withdraws its opposition to Metropolitan Council's request for issuance of a State of Maine declaratory order filed in STB Docket No. 36178 or the notice of exemption filed by Hennepin County Regional Railroad Authority ("HCRRA") in STB Docket No. 36177 (collectively, "the Filings"). TCW is satisfied that as a result of various agreements between the parties, the SWLRT Project will protect its interests and those of its shippers, customers, or entities. TCW also agrees that the current route is sufficient, and no alternative or replacement route to the St. Paul Yard is needed at this time.

TCW, the Council, HCRRA and Soo Line Railroad Company d/b/a Canadian Pacific engaged in Board-sponsored mediation following the Board's suggestion of this path in its May 22, 2018 order in Docket No. FD 36178. As a result of the mediation process, TCW's concerns related to the construction or operation of the SWLRT Project and approval of the Petitions have been mutually and satisfactorily resolved. TCW will communicate the same to its shippers and urge each of its shippers to likewise support approval of the Filings and requested Board action as filed.

TCW has additionally agreed to dismiss its federal district court action filed in the District of Minnesota (18-CV-01088). As a result, the federal district court litigation should not provide any basis to stay or impede the Board from ruling on the Petitions.

TCW appreciates the Board's careful attention to the important issues and willingness to facilitate a full and fair resolution for all.

Sincerely,

Twin Cities & Western Railroad COMPANY

Dated:

By: _____

Its: _____

Exhibit D: TCW Letter to Shippers

TO: [Insert Shipper Names]

FROM: Twin Cities & Western Railroad

RE: Withdrawal of Opposition and Support of Board Approval in Docket Nos. FD 36178 and FD 36177

Twin Cities and Western Railroad ("TCW") writes to inform you that TCW no longer opposes the Southwest Light Rail Transit Project ("SWLRT Project"), and has withdrawn its opposition to approval of the Surface Transportation Board filings by the Metropolitan Council and the Hennepin County Regional Railroad Authority ("HCRRA") in Docket Nos. FD 36178 and FD 36177 ("the Filings"). TCW encourages you to communicate to the Board that you no longer oppose the SWLRT Project as it is currently structured. As you may know, TCW, the Council, HCRRA and Soo Line Railroad Company d/b/a Canadian Pacific engaged in Board-sponsored mediation following the Board's suggestion of this path in its May 22, 2018 order in Docket No. FD 36178.

As a result of the mediation process, the parties have reached a series of agreements that resolve TCW's concerns related to the potential disruptions of its operations during the four year construction period, the shared usage of the corridor in the future, and the potential impacts from the removal of the sidetracks. TCW is confident that as a result of those agreements, it will be able to maintain the level of service to its shippers and customers that it currently does. TCW has additionally agreed to dismiss its federal district court action filed in the District of Minnesota.

TCW greatly appreciates the support the shippers have given it during the proceeding. That support has been critical in helping TCW to resolve your concerns. TCW is happy to discuss the impact of those agreements on your operations and its reasons for no longer opposing the SWLRT Project as currently presented to the Board. TCW is hopeful that you will likewise withdraw any opposition to the Project, and consider informing the STB that your concerns have been resolved as well.

Sincerely,

TWIN CITIES & WESTERN RAILROAD
COMPANY

Dated: _____ By: _____
Its: _____

2

**CONSTRUCTION AGREEMENT
BETWEEN
METROPOLITAN COUNCIL
AND
TWIN CITIES & WESTERN RAILROAD COMPANY**

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement") is entered into between Metropolitan Council, a public corporation and political subdivision of the State of Minnesota ("Council"), and Twin Cities & Western Railroad Company, a Minnesota corporation ("TCWR"). The Council and TCWR are collectively referred to as the "Parties" or individually as a "Party." The terms "Parties" and "Party" mean only the Council and TCWR.

RECITALS

- A. The Council and the Hennepin County Regional Railroad Authority ("HCRRA") filed in STB Docket Nos. FD 36177 and FD 36178, respectively, a Petition for Declaratory Order and Notice of Exemption with the Surface Transportation Board on or about April 4, 2018, to seek any required authorization for, or a determination that no such authorization is required, with respect to: (1) the Council's acquisition of the Kenilworth Corridor and the Bass Lake Spur Corridor; and (2) HCRRA's acquisition from CP of a permanent, irrevocable, exclusive rail freight operating easement over the Bass Lake Spur Corridor; and
- B. The Kenilworth Corridor and Bass Lake Spur Corridor connect at Soo Line Railroad Company d/b/a Canadian Pacific ("CP") milepost 428.38/CNW milepost 16.3 to create an approximately 9.3-mile contiguous corridor (the "Corridor"); and
- C. TCWR operates Freight Rail Service (as defined in Section 1) in the Kenilworth Corridor pursuant to a Trackage Rights Agreement between CP, TCWR and HCRRA and a Railroad Easement, both dated August 10, 1998, and in turn modified by a Supplement and a Railroad Easement dated July 30, 2002 (collectively, the "HCRRA Trackage Rights Agreement"); and
- D. TCWR operates Freight Rail Service on the Bass Lake Spur pursuant to a Trackage Rights Agreement between CP and TCWR dated July 26, 1991, as amended by a Relinquishment Agreement dated July 27, 1993 and Supplemental Agreements dated July 27, 1993, and April 30, 1996 (collectively the "CP Trackage Rights Agreement"); and
- E. In this Agreement, the parties desire to set forth their respective rights and obligations with respect to the design and construction of the Modifications (as defined in Section 1) in the Corridor.

NOW, THEREFORE, in consideration of the recitals and mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS

In addition to other terms defined in other parts of this Agreement, the following capitalized terms shall have the following meanings:

1.1 “Activities” means the activities TCWR will engage in pursuant to this Agreement required for the Council to construct the Project.

1.2 “Agreement” is defined in the preamble.

1.3 “AREMA” means American Railway Engineering and Maintenance-of-Way Association.

1.4 “Automatic Warning Devices” means traffic control devices at railroad-street at-grade crossings and at railroad-pedestrian at-grade crossings, including, without limitation, any combination of flashing light signals, bells, automatic gates, active advance warning devices, highway traffic signals and their associated activation and control devices, control relays and batteries, microprocessor technology, and associated electrical circuitry and supply.

1.5 “Bass Lake Spur” means Bass Lake Spur – East and Bass Lake Spur – West so long as both properties are owned by the Council. If the Council sells any portion of the Bass Lake Spur, then “Bass Lake Spur” shall refer only to the portion still owned by the Council.

1.6 “Bass Lake Spur – East” means the Council-owned portions of the Bass Lake Spur from the point of connection to the Bass Lake Spur – West at CP milepost 432.12 to the point of connection to the Kenilworth Corridor at Cedar Lake Junction (CP milepost 428.38, former CNW milepost 16.3) in the City of St. Louis Park and also includes the connecting track to the “Camden Line,” known locally as the CP MN&S.

1.7 “Bass Lake Spur – West” means the Council-owned portions of the Bass Lake Spur from Tower E-14 at CP milepost 435.06 in the City of Minnetonka to the point of connection to the Bass Lake Spur – East at CP milepost 432.12.

1.8 “BNSF” means BNSF Railway Company.

1.9 “Cessation of Operations Date” means the last date TCWR shall operate on the Freight Rail Facilities specified in a SSWP.

1.10 “CGL” means commercial general liability.

1.11 “Change Order” means a written order issued by the Council to the Council’s Contractor authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents.

1.12 “Construction Commencement Date” means the date the Council notifies TCWR that construction of Modifications to be constructed pursuant to this Agreement will begin and TCWR’s maintenance responsibilities outlined in the HCRRA Trackage Rights Agreement will

temporarily suspend on the Kenilworth Corridor. The Construction Commencement Date is expected to coincide with the Council's issuance of a notice-to-proceed to the Council's Contractor, anticipated in September 2018.

1.13 "Construction Completion Date" means the date that the Council notifies TCWR that all Modifications to be constructed pursuant to this Agreement have been completed and TCWR's maintenance responsibilities outlined in the HCRRA Trackage Rights Agreement will resume on the Kenilworth Corridor. The Construction Completion Date is anticipated in May 2021.

1.14 "Construction Coordination Committee" means the committee established pursuant to Section 3.2 of this Agreement.

1.15 "Contract Documents" means the complete package of agreements between the Council and the Council's Contractor with respect to Southwest LRT Project ("SWLRT"), including the contractor's bid, certificates and representations, performance and payments bonds, general conditions, supplementary conditions, specifications and drawings, SSWPs approved by the Council, Management Plans approved by the Council, and Change Orders approved by the Council.

1.16 "Corridor" means the Council-owned Kenilworth Corridor and the Council-owned Bass Lake Spur-East and additional property adjacent to the Bass Lake Spur - East and the Kenilworth Corridor acquired by Council and required for the shift of the freight rail track to a different alignment (see Exhibit D: Corridor Maps) and other construction work on Freight Rail Facilities as described in section 2.1 c and Exhibit B of this Agreement.

1.17 "Council" is defined in the Preamble.

1.18 "Council's Authorized Representative" or "CAR" means the primary point of contact designated by the Council pursuant to Section 3.2.

1.19 "Council's Contractor" means any contractor or supplier who performs Work or supplies materials for the Modifications, including subcontractors regardless of tier, and other agents of the Council providing services to the Council in connection with the Work.

1.21 "Days" or "days" means calendar days.

1.22 "Execution Date" is defined in the preamble to this Agreement.

1.23 "Force Majeure Event" means any event beyond the reasonable control of the party, which may include, but not be limited to, an order, rule, or regulation of any federal, state, or local government entity, work stoppage or labor dispute resulting in a strike or slowdown, extraordinary unavailability of essential materials, services or products from suppliers, accident, derailment, natural disaster, an act of war or terrorism, or civil disorder.

1.24 "Foul" or "Fouling" means the placement of an individual or an item of equipment or other personal property in such proximity to a track that the individual, equipment or other item

of personal property could be struck by a moving train or on-track equipment, or in any case is within twenty-five feet (25') of the centerline of the closest track, and when cranes or similar equipment positioned beyond twenty-five (25) feet from the closet track centerline could contact the track, a train, or on-track equipment in event of tip over or other catastrophic occurrence.

1.25 RESERVED

1.26 “Freight Rail Facilities” means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (including associated equipment but excluding LRT Facilities), drainage facilities, other track material, Automatic Warning Devices, roadbed, embankments, bridges, trestles, culverts (to the extent the culverts are within or service the Corridor), and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing, to the extent any of the above are necessary or related to the provision of Freight Rail Service.

1.27 “Freight Rail Service” means freight rail service provided by CP or TCWR pursuant to the HCRRA Trackage Rights Agreement and CP Trackage Rights Agreement in the Corridor.

1.28 “Freight Railroad Management Plan (FRMP)” is defined in Section 3.3.

1.29 “Freight Railroad Safety Action Plan (FRASP)” is defined in Section 3.3.

1.30 “FTA” means the Federal Transit Administration.

1.31 “Inspection-Point” means a mandatory verification point to check the quality of the completed Work and beyond which Work cannot proceed without approval by the CAR. Inspection-Points will be identified in the SSWPs.

1.32 “Modifications” means the relocation or other Work on the Project performed between the Construction Commencement Date and Construction Completion Date.

1.33 “Kenilworth Corridor” means the Council-owned property acquired from HCRRA through the HCRRA Property Transfer Agreement from former CNW milepost 16.3 (CP milepost 428.38) in the City of St. Louis Park, easterly to former CNW milepost 13.7 (BNSF milepost 13.0) at a point of connection with BNSF in the City of Minneapolis.

1.34 “LRT” means light rail transit.

1.35 “LRT Facilities” means any light rail transit structures, equipment, or facilities that serve LRT passengers or LRT operations, including, without limitation, all LRT rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), drainage facilities, other track material, Automatic Warning Devices (including the shared freight and LRT crossings at 5th Ave S, Blake

Road, Wooddale Avenue, Beltline Blvd, and West 21st Street), roadbed, embankments, bridges, trestles, culverts, and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes the pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing, LRT stations, platforms, parking lots, LRT signals, traction power substations, overhead catenary systems, and maintenance/repair equipment, all land within the Corridor, to the extent any of the above are necessary or related to the provision of LRT Service.

1.36 “LRT Service” means operation of LRT vehicles or equipment with or without passengers, on the Corridor.

1.37 “Management Plans” means the Freight Railroad Safety Action Plan, Freight Railroad Management Plan, and the Site Specific Work Plans.

1.38 “Monthly Fee” means the payment to be made by the Council to TCWR outlined in Section 7.1.

1.39 “Liquidated Damages” means charges for delays to TCWR Freight Rail Service due to Outages that are not Pre-Planned Outages.

1.40 “Co-Location Agreement” means the Co-Location Agreement between the Council and TCWR.

1.41 “Outages” means interruptions to Freight Rail Service for any reason that are directly attributable to accommodating Work in the Corridor.

1.42 “Pre-Planned Outage” means a temporary Outage of Freight Rail Service within the time frames specified in the Outage Matrix set forth in **Exhibit C**.

1.43 “Project” means the Modifications to be constructed pursuant to the Contract Documents.

1.44 “Return to Service Date” means the date specified in a SSWP from the Council to TCWR, on which the Council shall authorize TCWR to commence use of specific Freight Rail Facilities for the Freight Rail Service.

1.45 “Site Specific Work Plan(s) (SSWP or SSWPs)” is defined in Section 3.3.

1.46 “Substantial Completion” means the point in time when all of the Modifications to be constructed pursuant to this Agreement have progressed to the point where, in the opinion of the Council, it is sufficiently complete, in accordance with the Contract Documents, so that the Modifications can be utilized for their intended purposes.

1.47 “TCWR” is defined in the Preamble.

1.48 “TCWR Modifications Completion Certificate” means the certificate issued by TCWR after inspection that evidences TCWR’s acknowledgement that the relevant Modifications have been completed and are suitable for operation of the Freight Rail Service.

1.56 “Wayzata Subdivision” means the portion of BNSF’s right of way in Minneapolis, MN from MP 11.79 to 12.2 where Council operates LRT on BNSF property and from MP 12.2 to 13.0 (known as the Cedar Lake Junction) where Council operates LRT adjacent to BNSF property.

1.49 “Unsafe Work” means Work that, after inspection, TCWR determines would materially impair the safety or efficient operation of Freight Rail Service.

1.50 “Work” means the entire completed construction of Modifications, to be constructed pursuant to Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, performing or furnishing hoisting, scaffolding, or temporary bracing or shoring, and performing or furnishing services and furnishing documents, as required by the Contract Documents. Work will be divided into separate SSWPs.

SECTION 2. DESIGN

2.1 Design.

- a. The Council shall design all Modifications, including preparation of final plans and specifications as the Council deems necessary and appropriate, at the Council’s sole cost and expense. The Council shall provide a certificate of contractor’s professional liability insurance related to the Project design upon request. The Council shall procure professional liability insurance related to the Project design. Such insurance shall provide coverage for liability arising from professional errors, acts, and omissions, including resulting bodily injury or property damage. The limit of insurance shall not be less than \$50,000,000 each claim and in the annual aggregate.
- b. The Parties acknowledge that the design of the Project requires TCWR to operate Freight Rail Service on a combination of existing and newly constructed Freight Rail Facilities during construction. The schedule for operating on specific Freight Rail Facilities will be identified in the SSWPs. Except for Pre-Planned Outages as defined herein, the Freight Rail Facilities will be designed, constructed and maintained in a condition that permits safe, continuous, and uninterrupted operation of Freight Rail Service on a track structure based on not less than AREMA E80 loading.
- c. Except for Pre-Planned Outages, the design of the Modifications shall provide for TCWR to operate continuous and uninterrupted Freight Rail Service on a single contiguous line on the Corridor and a segment of BNSF Railway Wayzata Subdivision, with the following modifications:

- i. Freight Rail Facilities will be shifted up to thirteen (13) feet south of the existing main line to accommodate Project construction from STA 33+00 to STA 59+25 (west of TH 169 to CSAH 3-Excelsior Boulevard);
 - ii. Freight Rail Facilities will be shifted up to forty-eight (48) feet north of the existing freight track to accommodate Project construction from STA 59+25 to STA 234+00 (CSAH 3-Excelsior Boulevard to east of Beltline Boulevard);
 - iii. Freight Rail Facilities will be shifted up to six (6) feet north from the existing freight track to accommodate Project construction from STA 300+00 to STA 322+00 (CSAH 25-West Lake Street to Cedar Lake Parkway);
 - iv. Freight Rail Facilities will be shifted up to forty (40) feet north of the existing freight track to accommodate Project construction from STA 322+00 to STA 343+42 (Cedar Lake Parkway to Burnham Road); and
 - v. Freight Rail Facilities from STA 234+00 to STA 262+05 (note station equation: STA 300+00 ahead = STA 262+05 back) (east of Beltline Boulevard to CSAH 25-West Lake Street), and from STA 343+42 to STA 393+00 (Burnham Road to Cedar Lake Junction) will be improved but will stay in their existing location with no shifting.
- d. TCWR acknowledges that prior to the Execution Date the Council provided it with an opportunity to review and comment on the Project design summarized in **Exhibit B** (the "Design & Plan Summary"), and that **Exhibit B** is consistent with the general parameters described in Section 2.1(c).

SECTION 3. CONTRACT ADMINISTRATION

3.1 Oversight. Except as otherwise set forth in this Agreement, the Council shall perform, direct, and supervise all construction, contract administration and inspection Council deems required or necessary and appropriate and, where such Work involves Freight Rail Service, Council shall assure that TCWR has as had an opportunity to inspect such Work as outlined in Section 5.1. All Work shall be performed by the Council or the Council's Contractors, as directed by the Council, in accordance with the Contract Documents for the Project. The Contract Documents will be kept on file at the SWLRT Project Office, 6465 Wayzata Boulevard, St. Louis Park, Minnesota during construction and at the Metropolitan Council, 390 Robert Street North, St. Paul, Minnesota, after construction, or at such other location as the Council may advise TCWR from time to time.

3.2 Construction Coordination Committee – Membership and Purpose.

- a. The Council and TCWR shall establish an advisory Construction Coordination Committee consisting of at least two (2) representatives of each Party. The Construction Coordination Committee shall be a forum for the Parties to share information, discuss matters submitted by one Party to the other Party for review

and approval, and to work to resolve any issues between the Parties with respect to this Agreement. The Construction Coordination Committee shall participate in weekly meetings with the Council's Contractor and also as necessary (in person or by telephone) to address issues between the Parties that require prompt resolution. The first meeting of the Construction Coordination Committee shall occur within fourteen (14) days of the Execution Date. The Construction Coordination Committee will terminate on the Construction Completion Date.

- b. The Council and TCWR shall each designate one representative to the Construction Coordination Committee as their authorized primary point of contact with respect to matters concerning Project design and construction during the Term of this Agreement. Each Party shall be entitled to act in reliance upon directions from the other Party's designated primary point of contact in carrying out the Party's obligations pursuant to this Agreement. Except as specifically authorized in this Agreement with respect to emergencies or Work Stoppage by TCWR as outlined in Section 4.3, TCWR shall not have any authority to direct the Council's Contractor(s), and all communications with the Council's Contractor(s) shall be through or authorized by the CAR.

3.3 Management Plans.

- a. The Contract Documents shall require the Council's Contractor to submit the following Management Plans for the Council's approval:
 - i. Freight Railroad Safety Action Plan (FRSAP). The FRSAP shall describe the actions the Council's Contractor shall implement to increase safety for Work occurring adjacent to freight railroads. The FRSAP shall identify areas of concern and plans to address those identified concerns, provide a summary of the employee training program and job safety briefings to be conducted by Council's Contractor, emergency preparedness plans, fire prevention plans, and on-site safety assessments.
 - ii. Freight Railroad Management Plan (FRMP). The FRMP shall provide a detailed accounting of how the Council's Contractor shall manage Work activities occurring adjacent to freight railroads in a safe manner, in accordance with the schedule approved by the Council for each SSWP. The FRMP shall identify an organization and staffing levels for each SSWP, freight railroad interface control, safety and security management, community and public impact, clean up and disposal, environmental impact and emergency response and contact information.
 - iii. Site Specific Work Plans (SSWPs). SSWPs are detailed plans for Work in the Corridor. The type of SSWP required shall depend upon the proximity to Freight Rail Facilities (referred to as "type of adjacency" in the Contract Documents) for which the Work is being performed. The SSWPs shall identify the detailed scope of work, schedule (including Inspection-Points, Return to Service Date, and Cessation of Operations Date), personnel and

equipment requirements, contingency plans, controls, safety, community and public impact, clean up and disposal, emergency response and contact information, and address flagger shortage procedures so that Work can continue in the event TCWR's flaggers are unavailable.

- b. The Council shall submit each Management Plan to TCWR for review and comment prior to the Council approving the same pursuant to the Contract Documents. TCWR shall provide written review comments (if any) to the Council within fourteen (14) days of its receipt of the FRSAP and FRMP, and within seven (7) days of its receipt of each SSWP. The Council shall cause the Council's Contractor to revise the Management Plans to address TCWR's comments as it relates to the safe and efficient operation of Freight Rail Service. If the Council does not accept all of TCWR's comments, then within fourteen (14) days of receipt of such comments the Parties shall meet and confer regarding the unaccepted comments in an effort to resolve the issues posed by such comments. If the parties do not resolve the unaccepted comments, the Council shall not be obligated to incorporate them unless the Council determines failure to do so would materially impair the safety or efficient, continuous and uninterrupted operation of Freight Rail Service or violate any other provision of this Agreement. Upon completion of final plans, the Council shall give a copy of the final Management Plans to TCWR for its records.

SECTION 4. CONSTRUCTION

4.1 Flagging. Council's Contractor will provide flagging necessitated by Work on Freight Rail Facilities in the Corridor pursuant to the Contract Documents from Construction Commencement Date to the Construction Completion Date. TCWR's flagging obligation pursuant to the HCRRA Trackage Rights Agreement will resume on the Construction Completion Date.

(a) Before commencing any flagging activities, flaggers shall complete TCWR On Track Safety (OTS) procedures training. OTS procedures training will be provided by TCWR within 10 days of Council's issuance of limited notice to proceed to the Council's Contractor.

(b) Upon expiration of CP dispatching, Council, on behalf of HCRRA, will commence dispatching on the Bass Lake Spur, including issuance of freight rail timetables pertinent to the Bass Lake Spur. The timetables will preserve TCWR's ability to operate on the Bass Lake Spur at speeds of 25 mph or less, consistent with existing conditions. In carrying out its dispatching functions, Council or its contractor shall not discriminate against TCWR and shall dispatch in a manner consistent with standard industry dispatching protocols.

4.2 Pre-Planned Outages. TCWR shall temporarily suspend Freight Rail Services in accordance with the time frames set forth in the Pre-Planned Service Outage Matrix (the "Outage Matrix", see **Exhibit C-1**). The Construction Coordination Committee shall review the Outage Matrix at each monthly meeting to identify any adjustments necessary to synchronize the Outage Matrix with actual Project construction progress. The Parties may agree upon and make

necessary changes to the Outage Matrix based upon the Construction Coordination Committee's recommendations without amending this Agreement. The changes to the Outage Matrix shall be deemed to be incorporated herein when executed by the primary point of contact for each Party. The Council shall notify TCWR promptly upon the Council's determination that suspension of Freight Rail Service on any portion of the Freight Rail Facilities will not be required at a time specified in the Outage Matrix. The Parties shall meet and confer to address any anticipated delay or acceleration in the Project, and to agree upon any corresponding adjustment to the timeframes set forth in the Outage Matrix that are necessitated by such delay or acceleration. The Parties agree that Pre-Planned Outages are the exception to the obligations related to obligations of "continuous and uninterrupted operation of Freight Rail Service" throughout this Agreement.

4.3 Work Stoppage by TCWR. It is understood and agreed that TCWR shall have the right to request that Council's Contractor cease Work immediately if, in TCWR's sole discretion, any Work poses a threat to the safety of Freight Rail Service, TCWR's employees or contractors, or the general public or creates unsafe working or operating conditions and if Work Stoppage is approved by the Council, and Council shall assure that its Contractor abides by such order. In the event that TCWR requests that Council's Contractor stop Work, TCWR agrees to immediately notify the Council in writing and must include the action which, in the opinion of TCWR must be taken to rectify the situation, and the prescribed time period by which the situation must be rectified without resulting in an Unscheduled Outage. Failure by the Council to rectify the situation by the prescribed time period may result in an Unscheduled Outage at TCWR's reasonable discretion.

4.4 Unscheduled Outages. If the Council's Contractor's activities require an Outage that, (i) at TCWR's sole discretion, materially impacts TCWR's Freight Rail Service (as demonstrated by a daily schedule of planned Freight Rail Service, upon request) which are not Pre-Planned Outages included on **Exhibit C-1**, or (ii) the Contractor overstays a Pre-Planned Outage (collectively an "Unscheduled Outage"), the Council's Contractor will be assessed Liquidated Damages. Liquidated Damages for each incident will be assessed at the rate(s) outlined in **Exhibit C-2**. The Council shall remit to TCWR all Liquidated Damages owed by the Council's Contractor, whether or not collected from the Council's Contractor, pursuant to the Contract Documents. The Council will use commercial best efforts to collect Liquidated Damages from the Council's Contractor. TCWR agrees to accept any Liquidated Damages collected or withheld from the Council's Contractor as its sole remedy for an Unscheduled Outage.

4.5 Utilities. The Council shall be responsible for coordinating the modification and relocation of all existing utilities on the Corridor as required by the Project, and the costs related to the modification and/or relocation of utilities shall not be borne by TCWR.

4.6 Change Orders. The Council shall provide TCWR with an opportunity to review and comment on any proposed Change Order that could impair the safe or efficient, continuous, and uninterrupted operation of Freight Rail Service (exceptions for interruptions are outlined in Section 4.2). The Council shall submit proposed Change Orders including any interim plans and design documents to TCWR for TCWR's review and comment. TCWR shall cooperate with the Council in reviewing and providing written comments on any proposed Change Order submitted by the Council to TCWR for review and comment within fourteen (14) days for a plan set in excess of twenty (20) sheets plus one (1) day for each additional twenty (20) sheets, and

seven (7) working days for plan submittals of nineteen (19) sheets or less. Review time will be based on the number of sheets submitted in a 24-hour period of the Council's submittal of proposed Change Order to TCWR. Upon the Council's request, TCWR shall promptly meet and confer with the Council to address comments raised by TCWR with respect to proposed Change Order. In emergency situations, the Council may begin implementation of a Change Order prior to receipt of comments from TCWR.

4.7 Ownership of Modifications. All Modifications made, changed or relocated by the Council on the Corridor (except for the Hopkins Depot owned by TCWR), including but not limited to the Freight Rail Facilities, will be owned by the Council.

4.8 Salvage. The Council shall retain all materials salvaged from the Work.

4.9 As-Built CAD Drawings. After the Construction Completion Date, the Council shall furnish to TCWR a minimum of one (1) set of as-built plans for the Modifications included in the Project, at no cost to TCWR, prepared in U.S. Customary Units, and a minimum of one (1) set of computer diskettes, containing as-built CAD drawings of the Modifications. The "as-built plans" shall (i) depict all information in Project engineering stationing and mile post pluses, (ii) include plan and profile, structural drawings and specifications, and drainage plans, and (iii) show all Freight Rail Facility Modifications.

4.10 LRT System Testing. The Council shall have the right to conduct testing of the LRT Facilities on the Corridor, including pre-revenue service testing of vehicles and passenger carriage, and to conduct tours and other promotional activities on the Corridor. The Council shall coordinate the testing and promotional activities with TCWR through the Construction Coordination Committee.

4.11 Permits. The Council shall be responsible for obtaining all required environmental and/or planning documents, including any environmental permits, needed for the Project. If the permit process requires that TCWR sign the permit application or request, TCWR shall, after reviewing the application or request and all related documents, respond to any requests to sign a permit application or request within fourteen (14) days of request by the Council, and shall advise the Council in writing of the reasons for any refusal to comply with a request, specifying how the Work that is the subject of the request would materially impair the safety or efficient, continuous, and uninterrupted operation of the Freight Rail Services. In the event of any such refusal, TCWR shall meet and confer with the Council to address the reasons why TCWR believes the Work would materially impair the safety or efficient, continuous, and uninterrupted operation of the Freight Rail Service so as to justify TCWR's refusal to sign a permit application or request. If the Council concurs with TCWR, the Council shall modify its permit application to address the reasons for TCWR's refusal, and resubmit the request to TCWR. If the Parties are unable to reach agreement the matter shall be submitted to dispute resolution in accordance with Section 15.

4.12 Clearing of Wrecks. During the period of construction, TCWR shall, at its sole expense, be responsible for clearing all freight rail derailments and wrecks occurring on the Corridor for which it is liable as provided in the HCRRA Trackage Rights Agreement and CP Trackage

Rights Agreements. Any derailment which is caused, in whole or in part, by Council's Contactors shall be the responsibility of Council and shall be cleared promptly.

4.13 Temporary Crossings and Roadways. The Council shall provide TCWR with an opportunity to review and comment on any proposed temporary at-grade crossings used during construction, whether roadway (including temporary haul roads) or pedestrian, that could Foul the freight rail tracks, in accordance with the process for review and comment on Management Plans set forth in Section 3.3.

SECTION 5. ACCEPTANCE OF WORK

5.1 Inspection.

a. The Council shall be responsible for constructing all Work at the sole cost and expense of the Council, in accordance with the Contract Documents. TCWR shall have the right to review and inspect the as-built condition of all Work on the Freight Rail Facilities for compliance with Contract Documents prior to the Council's acceptance of the Work from the Council's Contractor.

b. Inspection Process:

- i. The Council shall provide TCWR with seven (7) days advance notice of the date on which the Council anticipates reaching an Inspection-Point or Return to Service Date, as identified in a SSWP, of any Work on Freight Rail Facilities.
- ii. The Council shall notify TCWR of the date on which the Inspection-Point or Return to Service Date has been achieved and the Work is available for TCWR's inspection. TCWR shall complete its inspection and provide written notice of any Unsafe Work identified by TCWR in its inspection within seven (7) days from the date of such notice that the Work has reached an Inspection-Point or Return to Service Date.

TCWR's Notice of Unsafe Work must specify the reason(s) the Work is unsafe, and the actions which, in the opinion of TCWR, must be taken to make the Work safe and operational. The Council shall in good faith take reasonable steps to address the Unsafe Work specified in TCWR's notice.

- iii. The Council shall require the Council's Contractor to make corrections of Unsafe Work and notify TCWR when the Work identified by TCWR as Unsafe Work has been corrected, and TCWR shall have up to five (5) days to conduct an inspection of the corrected Work. Upon such further inspection, TCWR shall either provide a further notice of Unsafe Work, or a notice that the Unsafe Work has been corrected. The process shall repeat until the Unsafe Work is in compliance with the Contract Documents. Disagreements between the Council and TCWR with respect

to the existence of Unsafe Work shall be resolved in accordance with the dispute resolution process specified in Section 14.10.

- iv. TCWR's failure to inspect the Work within the time specified in this Section shall be deemed to waive TCWR's right to inspect the Work. TCWR's failure to inspect the Work, or to notify the Council of Unsafe Work within the time specified in this Section shall be deemed a waiver of TCWR's right to request any further changes, except for any changes necessary to correct Unsafe Work that would materially impair the safety or efficient operation of the Freight Rail Services.

5.2 Substantial Completion & Construction Completion Date.

- a. The Council will provide TCWR with written notice of the Construction Completion Date after the Council determines that all of the Modifications to be constructed pursuant to this Agreement have progressed to the point it is sufficiently complete and in accordance with the Contract Documents ("Substantial Completion"). Together, the Parties will inspect the Freight Rail Facilities in the Corridor and the process in accordance with Section 5.1.

SECTION 6. ACCESS RIGHTS TO KENILWORTH CORRIDOR

6.1 Access to Freight Rail Facilities. The Council and Council's Contractor shall have access to the Freight Rail Facilities from the Construction Commencement Date until the Construction Completion Date as outlined in the SSWPs.

6.2 Maintenance of Freight Rail Facilities. TCWR is responsible for inspecting, maintaining, and repairing the Freight Rail Facilities in accordance with the HCRRA Trackage Rights Agreement until the Construction Commencement Date and after the Construction Completion Date. The Council's Contractor shall be responsible for necessary inspection, maintenance, repair and renewal of Freight Rail Facilities on the Kenilworth Corridor and Bass Lake Spur from the Construction Commencement Date until the Construction Completion Date.

6.3 Third Party Providers.

- a. In the event either party utilizes the services of a third party, other than CP, to provide any of its flagging, dispatch, maintenance, repair or replacement obligations hereunder, the party shall assure that such third party provider is qualified to perform such flagging, dispatch, maintenance, repair and replacement obligations on the Freight Rail Facilities, and the shared freight and LRT crossings at 5th Ave S, Blake Road, Wooddale Avenue, Beltline Blvd, and West 21st Street, has all certifications for such work, and is in full compliance with 49 CFR Part 214 relating to third party contractors and industry standards including those of the American Railway Engineering and Maintenance-of-Way Association (AREMA). Any third party provider of maintenance or repair of the Freight Rail Facilities shall, immediately upon selection and thereafter at least sixty (60) days prior to the contract anniversary date, provide an annual maintenance

plan, which shall include procedures to assure timely response to emergency repairs as well as matters subject to Section 3.1(c). The party utilizing the services of a third party provider shall make reasonable, good faith efforts to resolve any concerns of the other party regarding the annual maintenance plan prior to either party exercising the dispute resolution process set forth in Section 11. The use of a third party provider shall in no way diminish the obligations of each party to the other under Section 9 hereof.

b. The Council agrees to consult and confer with TCWR before requesting proposals or bids from third parties.

SECTION 7. CONSTRUCTION MATERIALS TRANSPORTATION. TCWR may utilize the Bass Lake Spur and the Kenilworth Corridor, subject to all of the requirements of the aforementioned trackage rights agreements, to transport and deliver construction materials for light rail use for the Project until Substantial Completion.

SECTION 8. RESERVED

SECTION 9. ADDITIONAL REQUIREMENTS

9.1 Records-Keeping. TCWR shall maintain such books, records, documents and other evidence relevant to activities performed pursuant to this Agreement. These books, records, documents, and data shall be retained for at least six (6) years after the term of the Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case TCWR agrees to maintain them until the Council and any of its duly authorized representatives have disposed of the litigation or claims.

The provisions of this Section 9.1 shall survive termination or cancellation of this Agreement.

SECTION 10. RESERVED

SECTION 11. NON DISCRIMINATION AND AFFIRMATIVE ACTION

In providing the Activities under this Agreement, TCWR agrees as follows:

11.1 Prohibition on Discriminatory Practices. TCWR shall take affirmative action to ensure that applicants are selected, and that employees are treated during employment, without regard to their race, color, creed, religion, national origin, sex, sexual orientation, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability or age.

11.2 Freedom from Sexual Harassment. The Council has a policy that establishes a work environment for Council employees free of sexual harassment of any form, whether mental or physical. TCWR shall require its employees and all other persons performing Activities in association with this Agreement, to conform to this policy as their actions may relate to Council employees.

11.3 Drug Free. TCWR shall not permit the possession or use of intoxicating liquors or illegal drugs by TCWR, or its agents, or employees, or subcontractor upon any Council facility or property.

SECTION 12. INSURANCE, LIABILITY AND INDEMNITY

12.01 Section 12 Definitions. The following definitions apply only to this Section 12.

“Council Party” means any one or more of: (i) the Council and one or more of their officers, directors, employees, agents, licensees, invitees, or contractors, including any Council Contractor; (ii) any person other than a TCWR Party on the shared corridor in connection with council activities.

“Council Activity” means all activities conducted by or for the Council within the Corridor related to the construction, maintenance, operation, repair, and replacement of LRT Facilities or Freight Rail Facilities and the commissioning and testing of the Council’s LRT vehicles or Council LRT Facilities.

“Environmental Law” means any applicable current or future federal, state or local statute, regulation, code, rule, ordinance, permit, license, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life, or the environment including, without limitation, principles of common law and equity, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

“Environmental Loss or Damage” means all investigations, cleanups, removals, remediations, response actions, requirements, or any expense of every character at any location, whether on or off the shared corridor or on public or private property (including, without limitation, amounts paid under any Environmental Law, and including all expenses and attorneys’ fees incurred in the investigation, defense or settlement of any actual or threatened legal proceeding), as well as all fines, penalties, or other obligations arising under any Environmental Law, arising from, resulting from, related to, or incurred in connection with or with respect to Hazardous Materials released on or from an activity conducted on or about the shared corridor and including, without limitation, damages or injuries to public property (real or personal and including, without limitation, natural resources).

“Environmental Tort Liability” means all claims for damages for personal injury or property damage arising from, resulting from, related to or incurred in connection with Hazardous Materials released on or about the shared corridor (including without limitation, punitive damages), claims (formal or informal), actions, judgments, suits, liability, cost, injuries, deaths, losses, fees, charges, or expenses (including, without limitation, amounts paid under any State or Federal workers compensation law, and including all expenses and attorneys’ fees incurred in the investigation, defense or settlement of any actual or threatened legal proceeding).

“Hazardous Materials” means (A) any pollutant, contaminant, hazardous, toxic, radioactive or infectious or other substance, material or waste defined, listed or regulated under

any Environmental Law (B) those substances included within the definition of "hazardous material," "pollutant," "contaminant," "hazardous substance," "pollutants," "waste water," "toxic substance," "hazardous air pollutant," "regulated substance," "insecticide," "fungicide," "rodenticide," or "hazardous waste:" as defined in any Environmental Law; (C) any petroleum product or byproduct or fractions, or asbestos.

"Loss or Damage" or "loss or damage" must arise, in connection with or incidental or related to loss or destruction of or damage to property (including real property and improvements thereon, and personal property, including injury or death to animals, and including property of the parties and of third parties) and injury to and death of persons (including officers, directors, agents, employees, contractors, invitees, licensees, customers, passengers or patrons of TCWR Parties, Council Parties and third parties).

Subject to the limitations above, "Loss or Damage" means all fines, penalties, losses, damages, lost profits of TCWR, Costs incurred by TCWR to reroute trains, claims (formal or informal), actions, suits, demands, costs, liabilities, injuries, charges, cleanups removals or remediations of non-Hazardous Materials, judgments, fines, fees (including, without limitation, reasonable attorneys' fees) and expenses of every character (including, without limitation, amounts paid under any State or Federal workers compensation law, and costs of investigation, defense expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair and replacement expenses) of any nature in each case arising from (i) the rights and obligations under this Construction Agreement, (ii) performance by the Council or Council Parties of any Council Activity, or (iii) the Parties' respective shared use of, or activities on, the Corridor.

"TCWR Party" means any one or more of (i) TCWR and its affiliates and subsidiaries and one or more of their respective officers, directors, employees, agents, or contractors and invitees while using, or on, the shared corridor in connection with performing duties of any kind for TCWR or any of its affiliates or subsidiaries, including, among others, performing duties relating to or arising under this Agreement; TCWR Party does not include any individual that meets the definition of a Council Party.

12.1 Council's Contractor Insurance. Throughout the term of this Agreement Council shall require the Council's Contractor to procure and maintain the following insurance:

a. Commercial General Liability (CGL). The Council's Contractor shall maintain CGL on an occurrence form (ISO CG 00 01 12 04, or its equivalent) and, if necessary, commercial umbrella insurance with a limit of not less than \$100,000,000 each occurrence and in the annual aggregate. The annual aggregate limit shall apply separately to this project. The policy shall provide defense and coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and contractual liability (ISO CG 24 17, or its equivalent).

i. The Council, the Council's Contractor, its officers, agents and employees, and TCWR, shall be included as an additional insured

under the CGL utilizing ISO CG 20 26 07 04 and ISO CG 20 37 07 04, or their equivalent. Such coverage shall be maintained for a minimum period of three years following final acceptance of the Modifications by the Council of the Work related to this Agreement. This insurance shall be primary and non-contributory with respect to any other insurance or self-insurance programs afforded to the Council or TCWR. There shall be: (1) no endorsement or modification of the CGL to make it excess over other available insurance, (2) no exclusions for any contractual liability assumed within fifty (50) feet of a railroad, (3) provisions requiring insurers to waive any subrogation or recovery that may exist against TCWR, its affiliate, subsidiaries, officers, directors, employees or agent or the Council, its members, officers, directors, employees or agents.

b. Automobile and Umbrella Liability Insurance. The Council's Contractor shall maintain business automobile coverage, ISO CA 00 01, 1997 or later edition, and if necessary an Umbrella Liability policy on a following-form basis, for liability arising out of the operation, maintenance or use of any automobile, whether owned, non-owned, rented or leased, with a limit of not less than \$100,000,000 each accident.

i. Pollution liability coverage equivalent to that provided under the ISO pollution liability-broadened coverage for covered autos endorsement (CA 99 48) shall be provided, and the Motor Carrier Act endorsement (MCS 90) shall be attached.

ii. The Council, its officers, agents and employees, and TCWR, shall be included as an additional insured by endorsement, ISO Form CA 20 48 02 99 or equivalent.

c. Contractor Pollution Liability (CPL). The Council's Contractor shall maintain this coverage with limits not less than \$10,000,000 each claim and \$10,000,000 annual aggregate. Coverage shall include bodily injury, property damage, including loss of use of property, clean-up costs, defense (including costs and expenses incurred in the investigation, defense, or settlement of claims), products and/or completed operations, and contractual liability. Coverage shall also be provided for transport of waste and non-owned disposal sites, if the Council's Contractor is disposing of waste.

i. The Council and TCWR shall also be listed as an insured on such policy.

d. Certificates of Insurance evidencing that the above insurance is in place must be provided to TCWR prior to the Construction Commencement Date.

12.2 Council Insurance.

a. Builder's Risk Property Insurance. Council will maintain a Builder's Risk policy for the Project. Policy shall be written on replacement cost basis and shall provide a waiver of subrogation in favor of TCWR.

b. Railroad Protective Liability Insurance. Council will maintain a Railroad Protective Liability Insurance naming TCWR as a named insured having limits of not less than \$100,000,000 each occurrence and in the aggregate. The policy shall be issued using Insurance Services Offices forms CG 00 35 04 13 and CG 28 31 04 13, or their equivalents.

c. Certificates of Insurance evidencing that the above insurances is in place and a copy of the original Railroad Protective Liability policy must be provided to TCWR prior to the Construction Commencement Date.

12.3 RESERVED

12.4 INDEMNITY AND RELEASE

TO THE FULLEST EXTENT PERMITTED BY FEDERAL LAW AND STATE LAW, THE COUNCIL WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS TCWR AND TCWR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "*INDEMNITEES*") FOR, FROM, AND AGAINST ANY AND ALL LOSS OR DAMAGE, AND, ENVIRONMENTAL LOSS OR DAMAGE, AND ENVIRONMENTAL TORT LIABILITY OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART) (COLLECTIVELY, THE "*COVERED LIABILITIES*"):

i. THIS CONSTRUCTION AGREEMENT (INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS);

ii. ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS CONSTRUCTION AGREEMENT;

iii. OCCUPATION AND USE OF THE CORRIDOR IN CONNECTION WITH THE PROJECT BY THE COUNCIL, OR ANY CONTRACTORS, SUBCONTRACTORS, AGENTS, INVITEES, LESSEES, LICENSEES AND PERMITTEES OF THE COUNCIL, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THE COUNCIL, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER (INDIVIDUALLY, A "*COUNCIL AFFILIATED PARTY*", AND COLLECTIVELY "*COUNCIL AFFILIATED PARTIES*");

iv. CONSTRUCTION ACTIVITIES, DEVELOPMENT ACTIVITIES, AND OTHER ACTIVITIES, CONDITIONS, OCCURRENCES OR EVENTS RELATED TO THE PROJECT IN CONNECTION WITH THE PROJECT;

v. THE ENVIRONMENTAL CONDITION AND STATUS OF THE CORRIDOR CAUSED BY OR CONTRIBUTED TO BY THE COUNCIL AND/OR ANY COUNCIL AFFILIATED PARTIES, AND ANY ENVIRONMENTAL LOSS OR DAMAGE OR ENVIRONMENTAL TORT LIABILITY CAUSED BY ANY COUNCIL PARTIES AND/OR COUNCIL AFFILIATED PARTIES THAT WOULD NOT HAVE OCCURRED BUT FOR THE DISTURBANCE OR EXPOSURE OF HAZARDOUS MATERIALS (BUT NOT MERE DISCOVERY OR INVESTIGATION THEREOF) IN CONNECTION WITH THE PROJECT;

vi. ANY ACT OR OMISSION OF THE COUNCIL AND/OR ANY AUTHORITY AFFILIATED PARTIES IN CONNECTION WITH THE PROJECT;

vii. ANY ACT OR OMISSION OF THE COUNCIL AND/OR ANY AUTHORITY AFFILIATED PARTIES IN CONNECTION WITH THE BASS LAKE SPUR REHABILITATION DEFINED IN THE SETTLEMENT AGREEMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT.

THE LIABILITY ASSUMED BY THE COUNCIL WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE LOSS OR DAMAGE WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF TCWR OR ANY OTHER INDEMNITEE, EXCEPT TO THE EXTENT ANY SUCH LOSS OR DAMAGE IS PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR SOLE NEGLIGENCE OF TCWR OR ANY OTHER INDEMNITEE (IN WHICH CASE THE PROVISIONS OF THIS SECTION WILL NOT APPLY).

The Parties expressly intend that the indemnification obligations of the Council under this Section do not constitute, as to third parties, a waiver of or operate to defeat any other immunities, limitations, or defenses imposed by or available under any statute or common law which are applicable to any Party. The indemnification obligations above include, without limitation, any liability, suits, claims, damages, judgments, lawsuits, demands, causes of action, losses, reasonable defense costs, and expenses brought against or incurred by TCWR under the Federal Employer's Liability Act and include claims for strict liability under any applicable state or federal statute, to the extent arising from the matters covered by the above indemnification. The Council hereby waives, to the extent permitted by applicable federal and state law, any immunity against claims for which it has assumed an indemnification obligation hereunder that would otherwise be available.

To the extent permitted by applicable federal and state law, the Council hereby releases and discharges TCWR and the other Indemnitees from all claims that the Council has or may have in the future against TCWR or the other Indemnitees arising out of, resulting from, or related to the use, occupancy, or presence of the Council in, on, or about the Corridor; provided, however that the foregoing release (i) does not release TCWR from its obligations under this Construction Agreement or any other agreement between the Council and TCWR, and (ii) does not apply to any claims to the extent based on the gross negligence, willful misconduct, or sole negligence of TCWR or any other Indemnatee.

Notwithstanding the foregoing, as between TCWR and the Council, TCWR (and if applicable, any other Indemnatee) will continue to be responsible for any actions, costs and liabilities in connection with any governmental investigation or remediation commenced or order issued to TCWR or other Indemnatee by any governmental authority prior to the date of this Construction Agreement with respect to Hazardous Materials on, in or under, or the environmental condition of, any property on or about the Corridor, except to the extent that such Hazardous Materials or condition were exacerbated by the actions of the Council (but the mere discovery or investigation of any such Hazardous Materials or condition will not be deemed to exacerbate the same).

12.4. Indemnities from Council's Contractors to TCWR. Council shall assure that all Agreements between Council and any Contractor performing Work or otherwise providing services under this Agreement shall contain indemnity terms in favor of TCWR, its affiliates, subsidiaries, officers, directors, employees or agents as least as favorable to TCWR as Contractor provides to Council.

SECTION 13. SUSPENSION; TERM; DEFAULT.

13.1 Suspension. The Council may suspend Work at any time by giving thirty (30) days' written notice of suspension to TCWR. The Council will consult with TCWR at the earliest opportunity to discuss issues relating to the status of the Corridor.

(a) Prior to such suspension the Council shall (i) take all actions needed to ensure that worksites are not left in a condition that will hinder or endanger the employees or other representatives of TCWR, or the structures or equipment of TCWR and either (ii) take actions to prevent material impairment of the safety or efficiency of operation of the Freight Rail Service, or restore Freight Rail Service so there are fully functioning Freight Rail Facilities of equivalent functionality and quality to the Freight Rail Facilities prior to the Construction Commencement Date.

(b) If Council fails to take actions in Section 13.1(a), within seven (7) days written notice by TCWR, TCWR may at its election take actions to prevent material impairment of the safety or efficiency of operation of the Freight Rail Service caused or threatened by the condition of the worksite as a result of such suspension by the Council. The Council shall reimburse TCWR for any costs that TCWR incurs to eliminate the impairment or threat of impairment to the safety or efficiency of operation of the Freight Rail Service due to such suspension or such TCWR actions.

(c) The Council may subsequently reinstate Work on the Modifications by giving thirty (30) days' written notice, unless otherwise agreed to by the Parties, of reinstatement to TCWR, provided that TCWR shall have the right to seek reimbursement from the Council for the additional reasonable costs incurred by TCWR directly caused by the suspension, excluding suspension due to a Force Majeure Event. Costs must be accurate, comprehensive, verifiable, and in sufficient detail and must not include profit. The Council and TCWR shall amend the applicable SSWP('s) as necessary to account for the time of suspension.

SECTION 14. MISCELLANEOUS PROVISIONS

14.1 Legal Compliance. The Parties shall comply with all applicable local, state or federal laws or regulations. The Parties shall exert their best efforts to give all notices required by law and to avoid violations of the law in connection with their Activities under this Agreement. The Parties shall monitor their agents and employees for the purposes of ensuring compliance with all applicable laws. The Parties agree that the most recent version of these shall govern at any given time. If any change in circumstances or law will affect either Party's compliance under this Agreement, the Party so affected shall notify the other Party's Project Director of the change in circumstances or law at its earliest opportunity.

14.2 Independent Contractors. The Parties agree that any and all persons employed by or on behalf of a Party to perform any Activities as an agent of a Party under this Agreement shall not be considered employees of the other Party. Any and all claims that may or might arise under the Workers Compensation Act of Minnesota, as applicable, on behalf of said employees or persons while so engaged, and any and all claims made by any third person as a consequence of any act or omission on the part of said employees or persons while so engaged in any Activities contemplated in this Agreement, shall not be the obligation or responsibility of the other Party.

14.3 Agreement Conflicts. In the event of an express conflict between any provisions of this Construction Agreement and the Co-Location Agreement, this Agreement governs from the Construction Commencement Date to the Construction Completion Date and the terms of the Co-Location Agreement control after the Construction Completion Date

14.4 Amendments. The terms of this Agreement may be changed only by mutual agreement of the Parties. Such changes shall be effective only upon the execution of written amendments signed by the Parties' authorized representatives.

14.5 Non-Waiver. The failure of either Party at any time to insist upon the strict performance of any or all of the terms, conditions, and covenants in this Agreement shall not be deemed a waiver by that Party of any subsequent breach or default in the said terms, conditions, or covenants by the other Party.

14.6 Severability. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either Party.

14.7 Assignment Prohibited. Neither Party shall assign their obligations under this Agreement without receiving the express prior written consent of the other Party.

14.8 Time. The Parties agree that all obligations undertaken under this Agreement, will be diligently performed in a manner consistent with the proper exercise of professional care and with due consideration to Project timelines and constraints.

14.9 Notices. Except as otherwise expressly provided in this Agreement, all requests, notices, demands, authorizations, directions, consents, waivers or other communications required or permitted under this Agreement shall be in writing and shall either be:

- a. Delivered in person;
- b. Deposited postage prepaid in the certified mails of the United States, return receipt requested;
- c. Delivered by a nationally recognized overnight or same-day courier service that obtains receipts; or
- d. Delivered via email attachment.

Such communications shall be directed to the individuals specified below or to such other persons and at such other addresses as either Party may at any time or from time to time designate for itself by notice in accordance with this Section. Each such request, notice, demand, authorization, direction, consent, waiver or other document shall be deemed to be delivered to a Party when received at its address set forth or designated as above provided.

For the Council:

Project Director
Southwest LRT Project Office
6465 Wayzata Blvd., Suite 600
St. Louis Park, MN 55416

For the TCWR:

President
Twin Cities & Western Railroad Company
2925 12TH Street East
Glencoe, MN 55336

14.10 Dispute Resolution.

a. **Process.** A dispute resolution process shall be used for any unresolved issue, dispute, or controversy between the Parties before any legal remedies are exercised. The dispute resolution process contains a three-level dispute resolution ladder that escalates a dispute from the project management level through the executive management level. TCWR is represented by the Vice President Operations or designee. The Council is represented from level 1 to 3 in the following order: Southwest LRT Project Director, Council's Metro Transit division's General Manager, and the Council's Regional Administrator. At each level, representatives of the Parties shall meet and continue to explore resolution until either Party determines, in good faith, that effective resolution is not possible at the current level, and notifies the other Party that the process is elevated to the next level. If either or both Parties make such a determination at any point during issue resolution at level 3, then the dispute resolution process has been exhausted.

b. **Pending Resolution.** While the Dispute Resolution process provided for in Section 14.10(a) is underway, the business and the operations to be conducted under this

Agreement, to the extent they are the subject of such controversy, shall continue in the manner and form existing prior to the arising of such dispute.

14.11 Project Directors. The Council's Project Director for purposes of administration of this Agreement is the person whose title is listed in Section 14.9, or such other person designated in writing by the Council's Regional Administrator. However, nothing in this Agreement shall be deemed to authorize the Project Director to execute amendments to this Agreement on behalf of the Council.

TCWR's Project Director for purposes of administration of this Agreement is the person whose title is listed in Section 14.9, or such other person designated in writing by the TCWR. TCWR's Project Director shall:

- a. coordinate the carrying out of TCWR's Activities under this Agreement; and
- b. attend meetings as ability allows called by the Council's Project Director for the Activities provided or performed under this Agreement.

14.12 Applicable Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota or federal law where applicable.

14.13 Effective Date and Termination. This Agreement shall be effective on the Execution Date set forth in the Preamble. This Agreement shall terminate upon the earliest of:

- a. The Construction Completion Date;
- b. A determination by the Council that the Project should not proceed; or
- c. A determination by the Council that sufficient funds do not exist, or are not reasonably projected to exist, in order to complete the Project.

In the event that delays or difficulties arise which in the opinion of the Council render it impractical to proceed with the Project, then at any time the Council may serve formal notice of cancellation upon TCWR in accordance with Section 14.9, and this Agreement shall become null and void, except for those provisions that expressly survive its termination. The Council shall promptly reimburse TCWR for all costs incurred by TCWR prior to notice of cancellation, which are unavoidable by TCWR after notice of cancellation has been received.

14.14 Tax Withholding Representations. In accordance with Minnesota Statutes, section 270C.66, TCWR represents that it is in compliance with any applicable tax withholding on wages requirements of Minnesota Statutes, section 290.92.

14.15 Continuing Obligations. The Parties agree that Project closeout or termination of this Agreement does not invalidate continuing obligations imposed on each by this Agreement or any agreements entered into pursuant to this Agreement.

14.16 Data Practices. TCWR understands and agrees that the Minnesota Government Data Practices Act (the "Act") regulates the collection, creation, storage, maintenance, dissemination and access to government data in government entities. In the event that government data is disseminated to TCWR as a result of this Agreement, and TCWR receives a request to release such government data, TCWR agrees to promptly notify the Council of the request. The Council

shall give TCWR instructions concerning the release of said data to the requesting Party before the data is released; however, TCWR does not waive any right it may have under the Act or under other applicable law to refuse to produce the data or limit its production.

The Council understands and agrees that certain data that TCWR may provide to the Council under this Agreement is information that TCWR considers to be confidential, proprietary, trade secret or security information that should not be made accessible to the public. If the Council receives a request to release any information TCWR has provided the Council or which the Council has otherwise received or created regarding TCWR, its business or its operations, the Council agrees to promptly notify TCWR of the request. TCWR shall give the Council instructions concerning the release of the data to the requesting Party before any such data is released by the Council.

The Council acknowledges and agrees that by entering into this Agreement TCWR is not waiving and will not waive any rights it may have under the Act or under other applicable law to refuse to produce data or to limit its production and the Council will respect TCWR's instructions with respect to any request to release such data, to the extent legally permitted, in order to protect TCWR's trade secret data, security information, and "not public data." Minnesota Statutes Section 13.2, Subdivision 8a defines "not public data" as "any government data classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic."

14.17 Governmental Requirements. The statutes, regulations, standards, policies, orders, procedures, directives, requirements, provisions, terms, and conditions (hereinafter the "Requirements") of the Council and of any other governmental entity which are cited, named, described, or referred to in this Agreement apply, if at all, only to TCWR's performance of the Activities associated with this Agreement.

14.18. Hopkins Depot. Within 60 days after closing on the Bass Lake Spur, the Parties shall enter into an amendment of that certain Agreement identified as Lease No. 31320 between Council (as successor to Soo Line Railroad Company) and TCWR, dated as of November 1, 2004, with respect to TCWR's depot structure at Hopkins, MN, to provide for a revised Basic Term of 25 years with automatic extensions for additional 25 year periods.

14.19. Preparation. The Parties and their legal counsel have cooperated in the drafting of this Agreement. Accordingly, this Agreement shall be deemed the joint work product of the Parties and not be construed against either party by reason of such preparation. Neither Party shall use the drafts of this Agreement against the other to construe the meaning or interpretation of terms or wording deleted from terms during the drafting process.

14.20 Amendment Of CP Trackage Rights Agreements. Within 60 after completion of the new southerly connection, the parties agree amend the CP Trackage Rights Agreement to include a map identifying the new connection.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective on the Construction Commencement Date as defined in Section 1.12, by their duly authorized representatives. Furthermore, this Agreement may be executed in counterparts, each of which

shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**TWIN CITIES & WESTERN
RAILROAD COMPANY**

By: Mark Wegner

Its: President & CEO

Date: July 11, 2018

Hennepin County Regional Railroad Authority ("HCRRRA"), a political subdivision of the State of Minnesota, hereby consents to the relevant parts of this Agreement, including but not limited to Section 7.

METROPOLITAN COUNCIL

By: [Signature]

Its: Regional Administrator

Date: 7/18/2018

**HENNEPIN COUNTY REGIONAL RAILROAD
AUTHORITY**

By: [Signature]
Chair of Its Board

7/19/18

Reviewed by the
County Attorney's Office

[Signature]

Date: July 19, 2018

And M. Rose
Deputy/Clerk of HCRRRA Board

List of Exhibits

Exhibit A	Depiction of Kenilworth Corridor and Bass Lake Spur - East
Exhibit B	Design & Plan Summary
Exhibit C-1	Outage Matrix
Exhibit C-2	Rates for Liquidated Damages
Exhibit D	Corridor Maps

Point E: SWLRT operates on BNSF right-of-way from milepost 12.2 to 11.79

Point D: Cedar Lake Junction/ CNW milepost 13.7/BNSF milepost 13.00
Kenilworth Corridor point of connection to the BNSF-owned Wayzata Subdivision

Point F: BNSF milepost 11.79

Point C: CP milepost 428.38/
Former CNW milepost 16.3
Bass Lake Spur-East point of connection
to the Kenilworth Corridor

Point B: CP milepost 432.12
Bass Lake Spur-West point of connection
to Bass Lake Spur-East

Point A: Tower E-14/CP milepost 435.06
Bass Lake Spur-West point of connection with TCWR
Glencoe Subdivision to the west

SOUTHWEST LRT
LIMITS OF THE CORRIDOR

METROPOLITAN COUNCIL

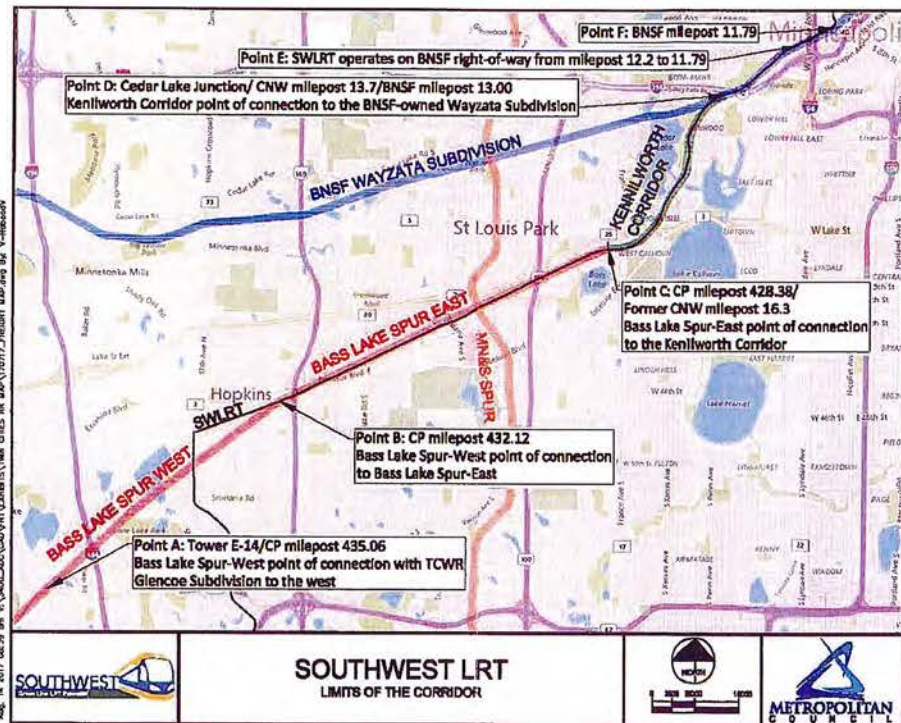


EXHIBIT B: Design & Plan Summary

1. With respect to the general layout of the single track alignment as compared to existing conditions, TCWR would:
 - a. Continue to operate freight service on a single contiguous line on the BLS, KC and a segment of BNSF's Wayzata Subdivision;
 - b. From STA 33+00 to STA 59+25, operate freight service on single contiguous line shifted up to 13 feet south of the existing main line to accommodate the light rail in the BLS;
 - c. From STA 59+25 to STA 234+00, operate freight service on single contiguous line shifted up to 48 feet north of the existing freight track to accommodate the light rail alignment in the BLS;
 - d. From STA 300+00 to STA 322+00, operate freight service on single contiguous line shifted up to 6 feet from the existing freight track to accommodate the light rail alignment in the KC;
 - e. From STA 322+00 to STA 343+42, operate freight service on single contiguous line shifted up to 40 feet north of the existing freight track to accommodate the light rail alignment in the KC; and
 - f. From STA 234+00 to STA 262+05 (note station equation: STA 300+00 ahead = STA 262+05 back), and from STA 343+42 to STA 393+00, operate freight service on single contiguous line in the existing freight track location in the KC.
2. With respect to the general spacing conditions in the proposed condition, the single contiguous line clearances to adjacent features in the shared corridor in the BLS and KC would be:
 - a. A typical spacing of 33 feet with a minimum of 25 feet between the freight track center and the nearest adjacent light rail track center;
 - b. A typical spacing of 25 feet with a minimum of 15 feet between the freight track center to the nearest edge of regional trail located in the KC when light rail is in a tunnel;
 - c. A minimum of 10 feet between the freight track center and the nearest existing or proposed bridge pier or retaining wall. Any permanent track center spacing less than 25 feet includes AREMA crash wall protection for the adjacent pier or retaining wall; and
 - d. All clearances or distances between freight track and adjacent light rail tracks or other corridor features shall be as shown in the 100% design plans reviewed and commented on by TCWR.
3. With respect to the proposed light rail and freight improvements between STA 33+00 and STA 72+00 (west of TH 169 to east of the proposed LRT bridge over CSAH 3-Excelsior Boulevard), where LRT would be located parallel and adjacent to the existing BLS right of way, the proposed project includes construction of:
 - a. Parallel eastbound and westbound light rail tracks;

- b. A corridor protection barrier integrated with retaining wall where light rail is supported on retained fill (STA 45+75 to STA 49+65, and STA 65+90 to STA 71+65);
 - c. Light rail on bridge structure between STA 49+65 and STA 65+90:
 - i. Light rail on bridge structure includes 8 foot high fence when crossing over the BLS (pedestrian traffic on the structure is limited to Metro Transit operations and maintenance staff);
 - d. Light rail systems devices, including the overhead catenary system and traction power substation;
 - e. Intrusion detection between light rail and freight where track separation is less than 50 feet and where light rail is not on retained fill or structure:
 - i. Intrusion detection will be located no closer to the freight railroad than the top of LRT subballast.
 - f. A storm water ditch or drain tile between light rail and freight along the south edge of the light rail alignment;
 - g. New 136RE rail freight rail track;
 - h. A new No. 15 turnout to terminate siding track at STA 36+40;
 - i. A new No. 11 turnout and spur track at STA 41+05;
 - j. Reconstruction of existing at-grade freight rail crossing of CSAH 3 (Excelsior Boulevard) including new rail, ties, drain tile, precast concrete panels and signals;
 - k. A 1 degree, 30 minute reversing curve with a 100' minimum tangent alignment shift located under light rail on bridge structure;
 - l. Removal of approximately 2,661 feet of siding track west of Excelsior Boulevard. SWLRT project construction work will be staged such that removal of the siding track is coordinated with plans to be prepared by TCWR for replacement of the siding track outside the SWLRT project limits;
 - m. Relocation of private utilities and public utilities to accommodate improvements in the corridor; and
 - n. New utility crossings including storm sewer, watermain, sanitary sewer, freight and light rail signal duct and ductbank, and traction power electrical feeds beneath existing or new freight rail tracks installed by jacking or open cut although open cutting will only be used in areas where freight rail will be out of service during a pre-approved out of service period during cutting.
4. With respect to the proposed light rail, regional trail and freight improvements between STA 72+00 and STA 232+00 (east of the LRT bridge over CSAH 3-Excelsior Boulevard to east of Beltline Boulevard), where LRT would be located generally on the existing BLS right of way and freight rail would be shifted north to be located between the regional trail and light rail, the proposed project includes construction of:
- a. Parallel eastbound and westbound light rail tracks;
 - b. Light rail systems devices, including the overhead catenary system, traction power substations, signal bungalows, and crossovers;
 - c. Intrusion detection between light rail and freight where track separation is less than 50 feet and where light rail is not on retained fill or structure:
 - i. Intrusion detection will be located no closer to the freight railroad than the top of LRT subballast.

- d. Reconstruction of the regional trail located no closer than 25 feet from centerline of freight rail to edge of trail with a fence located adjacent to the trail:
 - i. 25 feet represents a minimum dimension.
 - ii. Trail alignments shall be as shown in the 100% design plans to be reviewed and commented on by TCWR.
 - e. Trail underpasses under CSAH 20 (Blake Road) and Wooddale Avenue parallel to the freight rail alignment;
 - f. Trail underpass under the BLS at the Louisiana Station;
 - g. Trail overpass over Beltline Boulevard and light rail and freight rail east of Beltline Boulevard;
 - h. A storm water ditch or drain tile between light rail and freight along the north edge of the light rail alignment and between freight and the regional trail along the north edge of the freight rail alignment;
 - i. New light rail and trail bridges at Minnehaha Creek and Louisiana Avenue;
 - j. New light rail bridge at TH 100;
 - k. New 136RE rail freight rail track located within the corridor;
 - l. A new No. 15 turnout and 136 RE rail "Southerly Connector" spur track to connect to the existing CP MN&S Spur;
 - m. Removal of approximately 13,461 feet of siding track east of Excelsior Boulevard. SWLRT project construction work will be staged such that removal of the siding track is coordinated with plans to be prepared by TCWR for replacement of the siding track outside the SWLRT project limits;
 - n. New freight rail bridges at Minnehaha Creek and Louisiana Avenue on the BLS;
 - o. New freight rail bridges over light rail and Oxford Street on the "Southerly Connector";
 - p. A relocated existing freight rail bridge at TH 100 to match the new freight rail alignment;
 - q. Reconstruction of existing at-grade freight rail crossings at CSAH 20 (Blake Road), Wooddale Avenue and Beltline Boulevard including new precast concrete panels and signals;
 - r. Relocation of private utilities and public utilities to accommodate improvements in the corridor; and
 - s. New utility crossings including storm sewer, watermain, sanitary sewer, freight and light rail signal duct and ductbank, and traction power electrical feeds beneath existing or new freight rail tracks installed by jacking or open cut although open cutting will only be used in areas where freight rail will be out of service during a pre-approved out of service period during cutting.
5. With respect to the proposed light rail, regional trail and freight improvements between STA 273+58 and STA 393+00 (east of Beltline Boulevard to Cedar Lake Junction), where LRT would be located south of the existing KC freight rail alignment, the proposed project includes construction of:
- a. Parallel eastbound and westbound light rail tracks;
 - b. Light rail in a tunnel between STA 302+50 and STA 328+30;
 - c. Light rail systems devices, including the overhead catenary system, traction power substations, signal bungalows, and crossovers;

- d. Intrusion detection between light rail and freight where track separation is less than 50 feet and where light rail is not in a tunnel;
- e. Replace dual guard rail design in the KC with equipment defect detectors for dragging equipment and hot wheel bearings to be located near Cedar Lake Junction and near Dominic Drive;
- f. A corridor protection barrier between light rail and freight rail at each light rail tunnel portal;
- g. Reconstruction of the regional trail located no closer than 15 feet (minimum existing condition) from centerline of freight rail to edge of trail with a fence located adjacent to the trail:
 - i. 15 feet represents a minimum dimension.
 - ii. Trail alignments shall be as shown in the 100% design plans reviewed and commented on by TCWR.
- h. A storm water ditch or drain tile between light rail and freight along the north edge of the light rail alignment or north edge of the trail alignment when light rail is in a tunnel;
- i. New light rail, trail bridge and freight bridge at the Kenilworth Channel;
- j. New 136 RE rail freight rail track from STA 300+00 to STA 343+42 and from STA 355+50 to STA 359+50;
- k. Replace existing 115 RE rail with 136 RE rail from STA 234+00 to 262+05 (note station equation: STA 300+00 ahead = STA 262+05 back), and STA 347+42 to STA 355+50 (note station equation: STA 347+42 ahead = STA 343+42 back);
- l. Improve track structure within limits of Kenilworth Corridor for which trackwork is not currently proposed by performing the following Work:
 - i. Replacing ties to bring tie condition to FRA Class 5 Standards, as inspected and approved by the FRA.
- m. Tie replacement from STA 234+00 to 262+05 (note station equation: STA 300+00 ahead = STA 262+05 back), STA 347+42 to STA 355+50 (note station equation: STA 347+42 ahead = STA 343+42 back), and STA 359+50 to STA 390+50. Reconstruction of existing at-grade freight rail crossing at Cedar Lake Parkway including new precast concrete panels and signals;
- n. Reconstruction of existing at-grade freight rail crossing at West 21st Street including a raised top of rail profile, new storm sewer, new precast concrete panels and signals;
- o. Reconstruction of the at-grade Cedar Lake Trail pedestrian crossing at STA 385+00 near Bryn Mawr Station and Cedar Lake Junction;
- p. Relocation of private utilities and public utilities to accommodate improvements in the corridor; and
- q. New utility crossings including storm sewer, watermain, sanitary sewer, freight and light rail signal duct and ductbank, and traction power electrical feeds beneath existing or new freight rail tracks installed by jacking or open cut although open cutting will only be used in areas where freight rail will be out of service during a pre-approved out of service period during cutting.

6. To address concerns of ensuring safe freight operations during construction of the proposed SWLRT project, the following measures would be implemented and included in construction documents:
 - a. Pre-planned Outages and durations of Outages as indicated on the "Exhibit C – Outage Matrix";
 - b. Project Safety Plan complying with BNSF's "Contractor Responsibilities and Requirements for Working on BNSF Right-of-Way";
 - c. Railroad flagging provided by the Council's Contractor at the expense of the Council;
 - d. Requirements for excavation activities adjacent to active freight railroads in accordance with BNSF "Guidelines for Temporary Shoring" document with the following revisions and clarifications:
 - i. Allow the Contractor to install temporary shoring as follows:
 1. Minimum: 15 feet from centerline of operating track; and
 2. Absolute minimum: 8.5 feet from centerline of operating track.
 - a. Less than 15 feet only used as identified in Management Plans to be prepared by the Council's Contractor, subject to review and comment by TCWR.
 - ii. It is anticipated that it will be necessary to locate temporary shoring between 15 feet and 8.5 feet from centerline of operating track at the following locations:
 1. Adjacent to the LRT Kenilworth tunnel and boat sections;
 2. Adjacent to the LRT Excelsior bridge piers and retaining walls;
 3. On the Skunk Hollow Track where the proposed Southerly Connector Track crosses the existing Skunk Hollow Track; and
 4. At other locations as identified in Management Plans to be prepared by the Council's Contractor, subject to review and comment by TCWR.
 - iii. Where possible, stage excavation activities such that they do not occur adjacent to the operating railroad.
 - e. Requirements for construction personnel to clear up at 10 feet from centerline of track within the Kenilworth Tunnel Construction area, and 25 feet for the remainder of the Project:
 - i. Require the Contractor to create Sight Specific Work Plans (SSWP) to provide a detailed accounting of how the Contractor proposes to accomplish Work in a safe manner, within the proposed Project Schedule and for which maintains railroad operations. Key items in the SSWP include the following:
 1. There are four types of SSWP's based on "Adjacencies":
 - a. Out of Service Adjacency: SSWP requires a continuous suspension of freight railroad operations to facilitate construction activities, including disturbing active freight railroad track;
 - b. Fouling Adjacency: SSWP requires fouling of the freight railroad track to facilitate construction activities. A fouling adjacency is required when any Work is performed within

- 15 feet of an active freight railroad, and when full extension of equipment has potential to foul an active freight railroad;
 - c. Adjacent Adjacency: SSWP requires construction activities and CONTRACTOR personnel to be located between 15 feet and 25 feet of an active freight railroad, and when full extension of equipment does not have potential to foul an active freight railroad; and
 - d. Clear Adjacency: SSWP requires construction activities and CONTRACTOR personnel to be located between 25 feet and 100 feet of an active freight railroad, and when full extension of equipment does not have potential to foul within 25 feet of an active freight railroad.
 - 2. The SSWP's will include detailed scope of Work identifying Work activities, personnel and equipment involved in the Work, personnel and equipment locations during the Work, clearing locations, Work schedule, safety equipment, contingency plans, and other pertinent information as necessary.
- f. Monitoring the railroad and geotechnical conditions adjacent to the Kenilworth LRT tunnel with appropriate instrumentation. Output of the instrumentation will be monitored and reviewed by SPO/Contractor and would be shared with TCWR:
 - i. The Contractor in coordination with the SPO is responsible for monitoring and ensuring the integrity of the railroad and geotechnical conditions and ensuring safe passage of trains at all times during construction; and
 - ii. TCWR would have a qualified employee on site during construction who would have authority to stop construction activities if required.
- g. Provide 8 foot tall temporary chain link construction fencing adjacent to active freight track to provide fall protection for TCWR employees at locations where track is adjacent to excavations including:
 - i. Adjacent to the LRT Kenilworth tunnel and boat sections; and
 - ii. At locations where an excavation is located within 15 feet of centerline of track, and the excavation presents a drop from existing grade that is greater than 2 feet and the resulting side slope is greater than 3 horizontal to 1 vertical.
- h. Provide 4 foot tall temporary orange construction fence adjacent to active freight track to provide a physical separation between Contractor activities and railroad operations. Fence will be placed as follows:
 - i. Desired minimum: 15 feet from centerline of operating track; and
 - ii. Absolute minimum: 8.5 feet from centerline of operating track.
 - 1. Less than 15 feet only used as identified in Management Plans to be prepared by the Council's Contractor, subject to review and comment by TCWR.
- i. Freight rail speed restrictions after track has been disturbed during pre-planned and approved Outages for purposes of normalizing the track structure as follows:
 - i. To accommodate a passing train when the track has not been set to final tolerances, but meets minimum FRA Class 2 standards.

7. With regards to other technical issues discussed, the SPO would:
- a. Provide a copy of all final Contract Documents to TCWR;
 - b. Provide typical track section that meets the CP mainline standard track section;
 - c. Provide 136RE rail (or 115RE rail left in place) on timber ties, with standard AREMA tie plates, cut spikes, and rail anchors:
 - i. Transitioning from 115RE rail to 136RE rail would be facilitated using transition rails; and
 - ii. 115RE Rail removed in the Kenilworth Corridor will be salvaged and become the property of the Council. The SWLRT Contractor will cut the rail into 80 feet long lengths and transport and off-load at the Hopkins depot.
 - iii. In the final condition, existing 115RE rail will be located from the west limit of Cedar Lake Jct Interlocking to the east work limit at W 21st Street. New 136RE will be located from the east work limit at W 21st Street to the west freight railroad work limit at about 575 feet west of the TH 169 overhead bridge.
 - d. Construct ballast and subballast side slopes at 2 horizontal to 1 vertical;
 - e. Construct track on AREMA Grade "7 inch" - 7 inch x 9 inch x 8 feet-6 inch timber ties at 20 inches on center, with 7 inch x 9 inch x 10 feet ties used within limits of at-grade crossings;
 - i. Rail will be placed on standard AREMA double shoulder tie plates with cut spikes and rail anchors.
 - ii. Rail will be box anchored at every other tie except for the following locations:
 1. At at-grade crossings: box anchor every tie through the crossing and to a location 195 feet on either side of the crossing.
 2. At turnouts: box anchor every tie to a location 195 feet on either side of the crossing.
 - f. Construct a typical section with a subballast width of 20 feet as measured at the top of subballast:
 - i. The typical section would include a 6 foot wide flat area in the subballast only centered about the center of tie. This is based on the CP standard typical section.
 - g. Require the Contractor to be responsible for operating a geometry car under loading after final construction of the track, but prior to placing the track in service;
 - i. Geometry car will measure the integrity of the track, final elevation, grade, alignment, and gage. All measurements will be made under simulated railroad loading.
 - h. Surface all new freight rail track approximately one year after final completion of the last segment of the freight rail track constructed by the Project.
 - i. Provide geotechnical improvements and install select granular material below the typical track section including improving existing poor draining soils within construction limits near and beneath West Lake Street;

- j. Subcut and replace existing soil, to a depth between 1.5 feet and 7.5 feet below bottom of proposed subballast (based on geotechnical investigations);
- k. Provide a cellular concrete support slab under the Bass Lake Spur in the vicinity of Louisiana Ave. to mitigate poor soil conditions;
- l. Provide a load transfer platform under the Southerly Connector to mitigate poor soil conditions. The load transfer platform will consist of a concrete slab supported by H piles or equivalent;
- m. Construct drainage facilities that provide positive drainage:
 - i. Construct undergrade drainage pipes utilizing reinforced concrete class V pipe, with individual sections mechanically fastened and sealed watertight;
 - ii. Construct ditches and infiltration basins adjacent to the railroad such that:
 - 1. Infiltration ditches include check dams for purposes of regulating flow;
 - 2. Check dams would be constructed of clay, graded at 3:1;
 - 3. Check dams, and infiltration ditches would be drivable for light maintenance vehicles;
 - 4. Amended soils for infiltration are located at the bottom of adjacent ditches a minimum of 14.2 feet from the track;
 - 5. Infiltration basins shall be designed for a maximum 100 year high water level of 31.5" below top of rail;
 - 6. Infiltration basins shall draw down completely within 48 hours of a 100 year rainfall; and
 - 7. Overland emergency overflow for rainfall events exceeding a 100 year storm shall be provided from all adjacent infiltration basins or drainage ditches.
- n. Construct a freight track alignment that is capable of operating speeds as follows:
 - i. BLS: 25 mph;
 - ii. Southerly Connector: 25 mph; and
 - iii. KC: 25 mph – note that the TCWR plans to operate at 10 mph;
- o. Provide and install turnouts in accordance with AREMA standards for material and geometry
 - i. Adjustable rail braces per AREMA Plan 224; and
 - ii. Switch points and stock rails in accordance with AREMA Plan 5100 (Samson undercut stock rail).
- p. Provide and install hand throw switch machines as follows:
 - i. In compliance with AREMA Standard Plan 251;
 - ii. Configured in accordance with Racor Style 36EH with 45 inch Tri-Handle;
 - iii. Equipped with adjustable mechanism and throw rod;
 - iv. Equipped with green and red targets;
 - v. Equipped for switch locks – TCWR to supply locks; and
 - vi. Located on diverging side of the turnout.
- q. Construct a freight track alignment which provides sufficient vertical and horizontal clearances to adjacent corridor elements for wind turbine components. Clearance calculations to address this are contained in a SPO performed analysis

and summarized in an internal memorandum titled "TC&W - High and Wide Loads" dated November 13, 2014;

- r. Provide minimum vertical clearance of 23 feet at all overhead bridges except for the following:
 - i. Burnham Road overhead bridge clearance of 19 feet-11 inches, which is an existing condition; and
 - ii. West Lake Street overhead bridge clearance of 21 feet-7 inches, which is an existing condition.
- s. Construct at-grade crossings with Mirafi HP570 or equal fabric placed between the subgrade and select granular material;
- t. Relocate the Distant Signal located at Cedar Lake Parkway (by BNSF forces) as follows:
 - i. The DS temporary location during tunnel construction will be positioned on the left for east bound traffic; and
 - ii. The DS final location after tunnel construction is complete and freight track is in its final location will be positioned on the right for east bound traffic.
- u. Provide and install "Whistle", "Milepost", and "Flanger" signs per BNSF Standards.
- v. Provide TCWR with the ability to review Contractor submittals. Metropolitan Council and TCWR intend to agree to a procedure for TCWR to be included in construction communications and for review of submittals prior to construction. Items to consider include the following:
 - i. TCWR would be granted access and review of submittals via e-Builder;
 - ii. TCWR would be granted access to CAR submittal comments;
 - iii. TCWR would participate in construction meetings and on-site activities; and
 - iv. TCWR would be granted access to As-Built drawings and track geometry data.
- w. Include liquidated damages in the Contract which assess charges to the Contractor after actual damages occur for the following:
 - i. Failure to receive approval for any non-pre-scheduled activity which requires an Outage to the freight railroad; and
 - ii. Failure to restore the railroad to operation in accordance with any approved pre-planned Outage schedule.

Exhibit C-1: Outage Matrix

Rev 8

Date: 1/24/2018

Bass Lake Spur and Kenilworth Corridor Phasing Out of Service Matrix.

Outage No.	BASS LAKE SPUR				KENILWORTH CORRIDOR			
	Outage Name	Phase No.	Timing	Duration of Outage	Outage Name	Phase No.	Timing	Duration of Outage
1					Cut and Throw to KW_TMP_A	2	December '18	4 Hour
2	Excelsior I	2	March '19	4 Hour	Track Shift to KW_TMP_B	4	March '19	8 Hour (possible 2x 4 Hour)
3					Cut and Throw KW_TMP_A to Proposed Track	6	July '19	4 Hour
4	TH 100 - HCRRA	5	September '19	4 Hour				
5	Wooddale - TH 100	7	September '19	4 Hour				
6	TH 100 Bridge Move, Temp No. 11 T/O at Wooddale, and Shift at Blake	9	Memorial Day Weekend '20	36 Hour	Reconstruct Track and W 21st St Crossing	7	Memorial Day Weekend '20	36 Hour
7	Southerly Connector	10	December '20	Skunk Hollow OOS 3-6 Weeks				
8	LRT Bridge - Blake	12	April '21	4 Hour				
9	Excelsior II	13	May '21	4 Hour				
10					Cut and Throw From KW_TMP_B to Proposed Track	9	September '21	6 Hour
11					Shift KW_TMP_B to Proposed Track	11	September '21	8 Hour (possible 2x 4 Hour)

Exhibit C-2: Liquidated Damages

Manifest Train:

- Hourly Cost Per Train: \$2,331
- Lump Sum Cost Per Train: \$0

Unit Grain Train:

- Hourly Cost Per Train: \$2,473
- Lump Sum Cost Per Train: \$11,000 per train

Unit Train other than Grain:

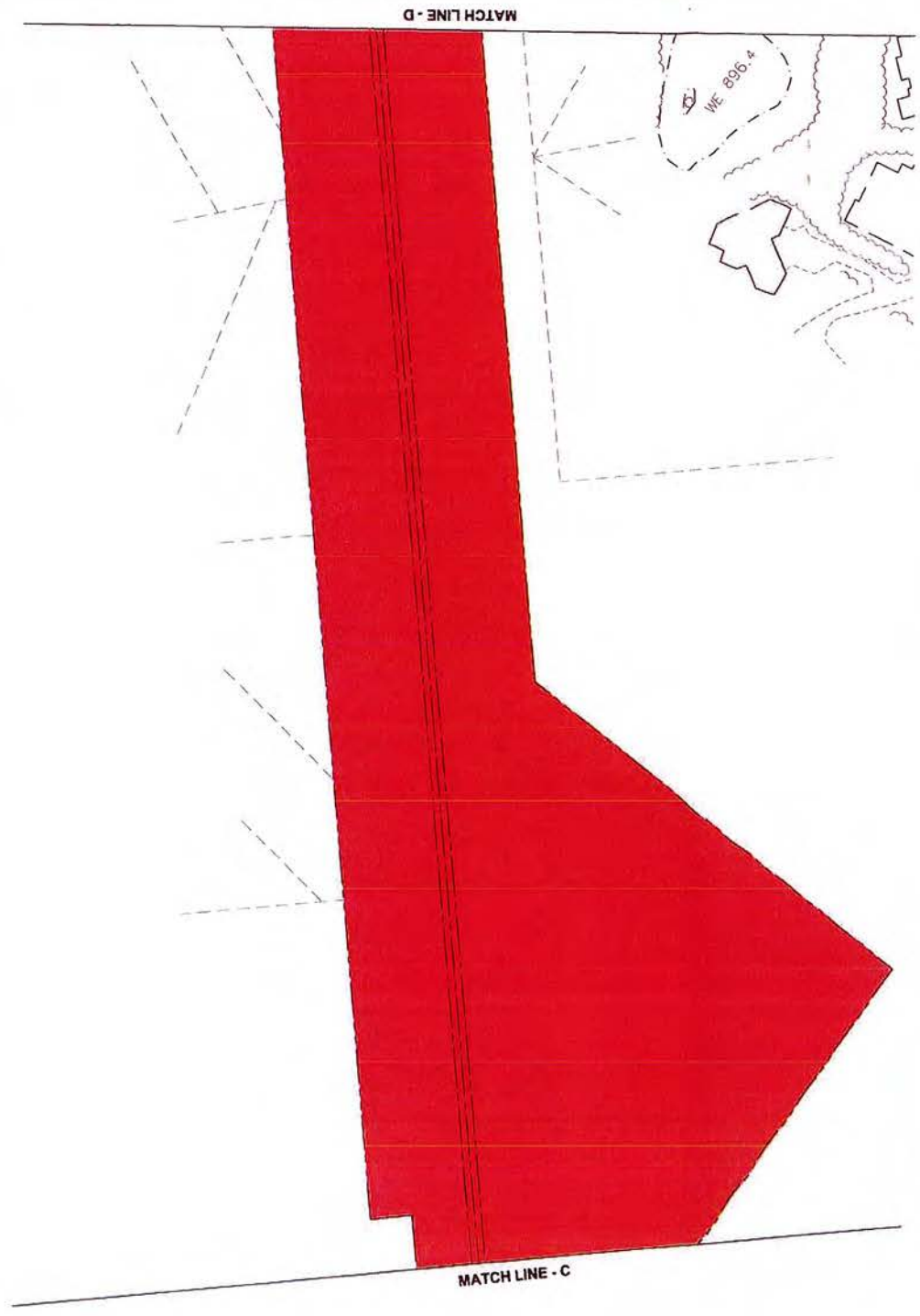
- Hourly Cost Per Train: \$2,473
- Lump Sum Cost Per Train: \$0

Delay of a Hazardous Material Train

- Based on actual fines assessed to TCWR by the FRA for civil penalties incurred for violation of 49 CFR Part 174 due to a train delay, in particular 49 CFR 174.14 and 174.16.b

Exhibit D

Corridor Maps



LEGEND

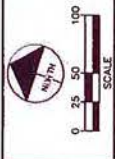
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- ADDITIONAL REAL PROPERTY

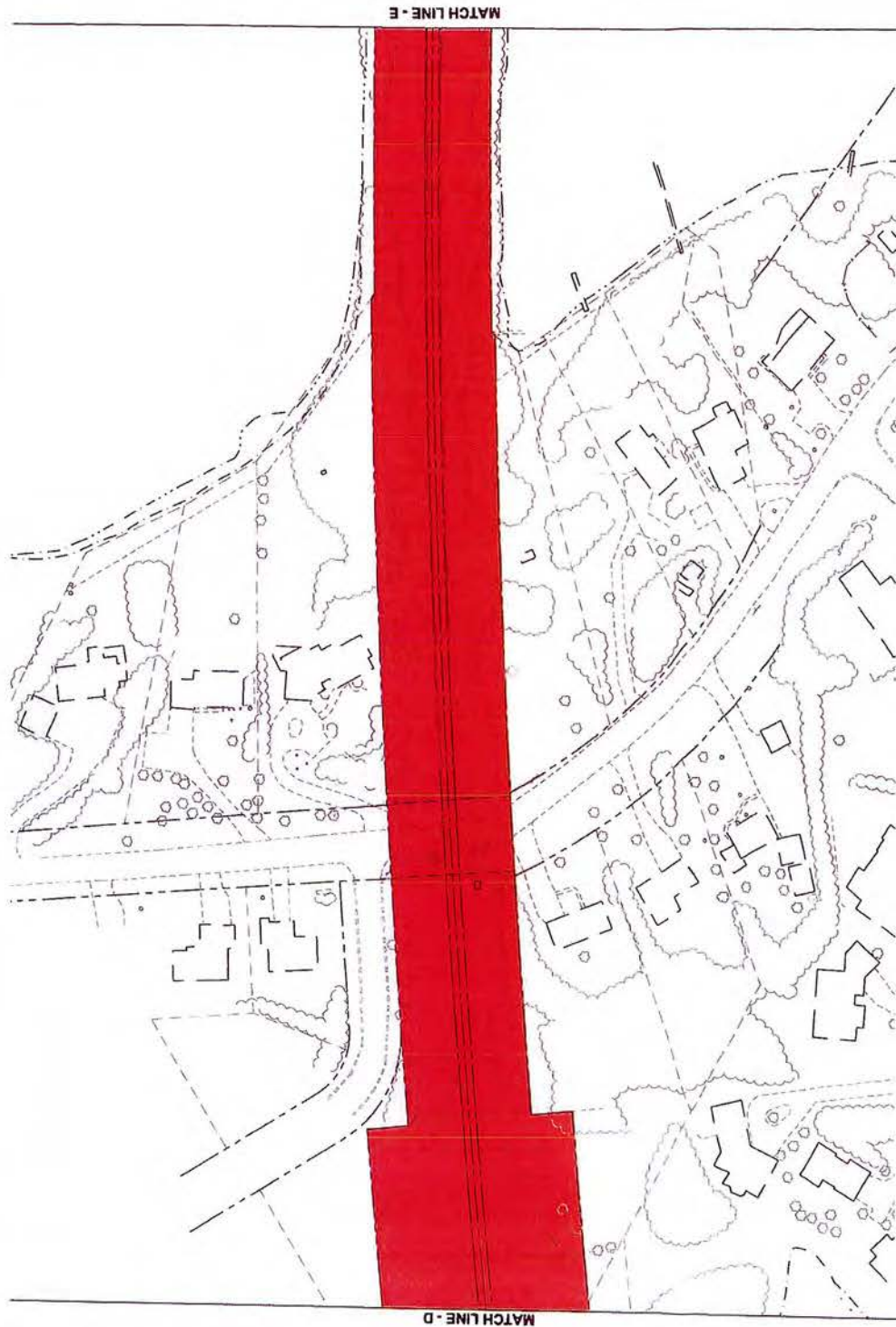
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SOUTHWEST LIGHT RAIL
EXHIBIT D
CORRIDOR MAPS
SHEET 04 OF 29

Rev 0
02/28/2018





LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

MATCH LINE - E

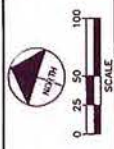
MATCH LINE - D

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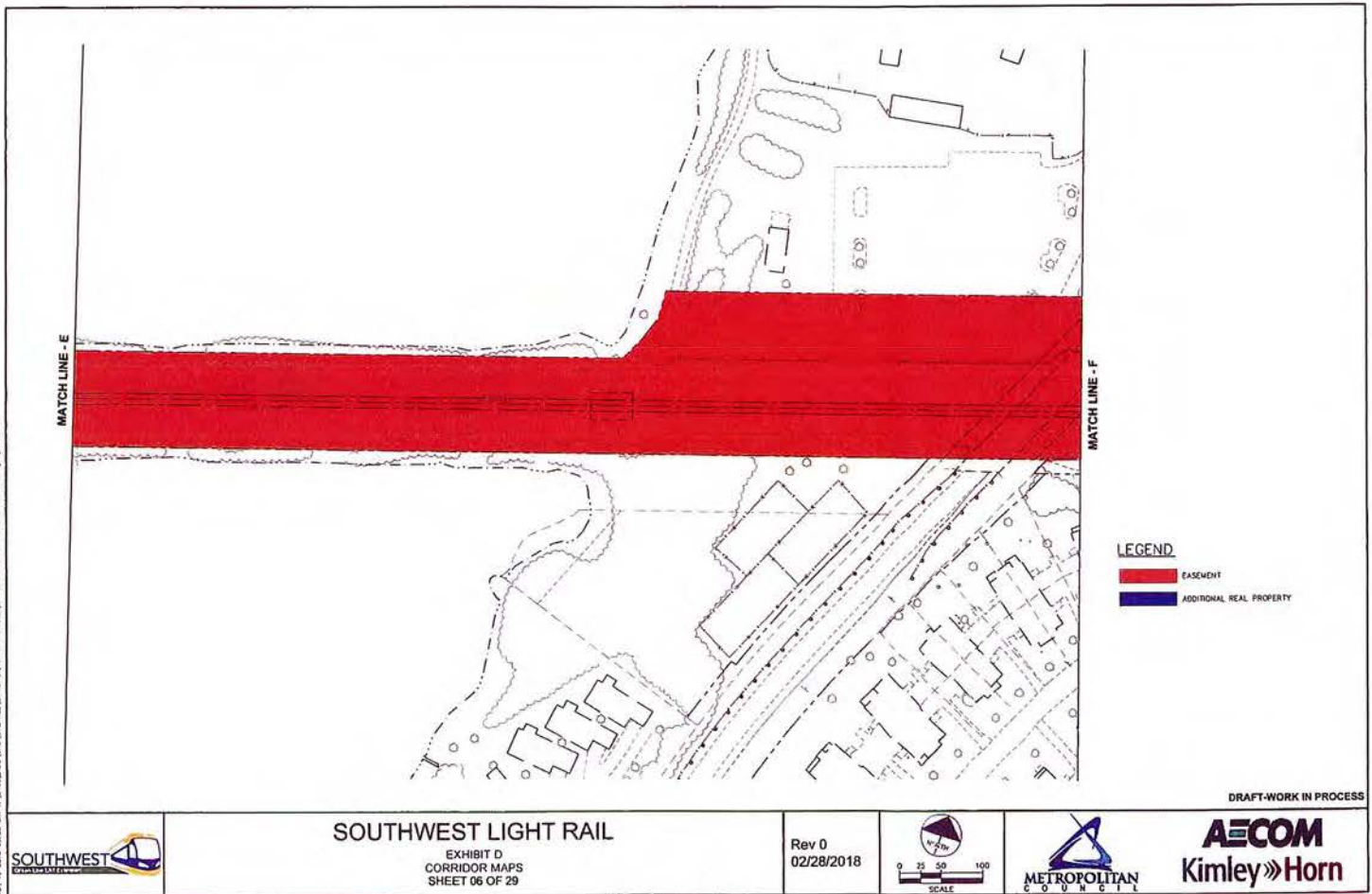


SOUTHWEST LIGHT RAIL
EXHIBIT D
CORRIDOR MAPS
SHEET 05 OF 29

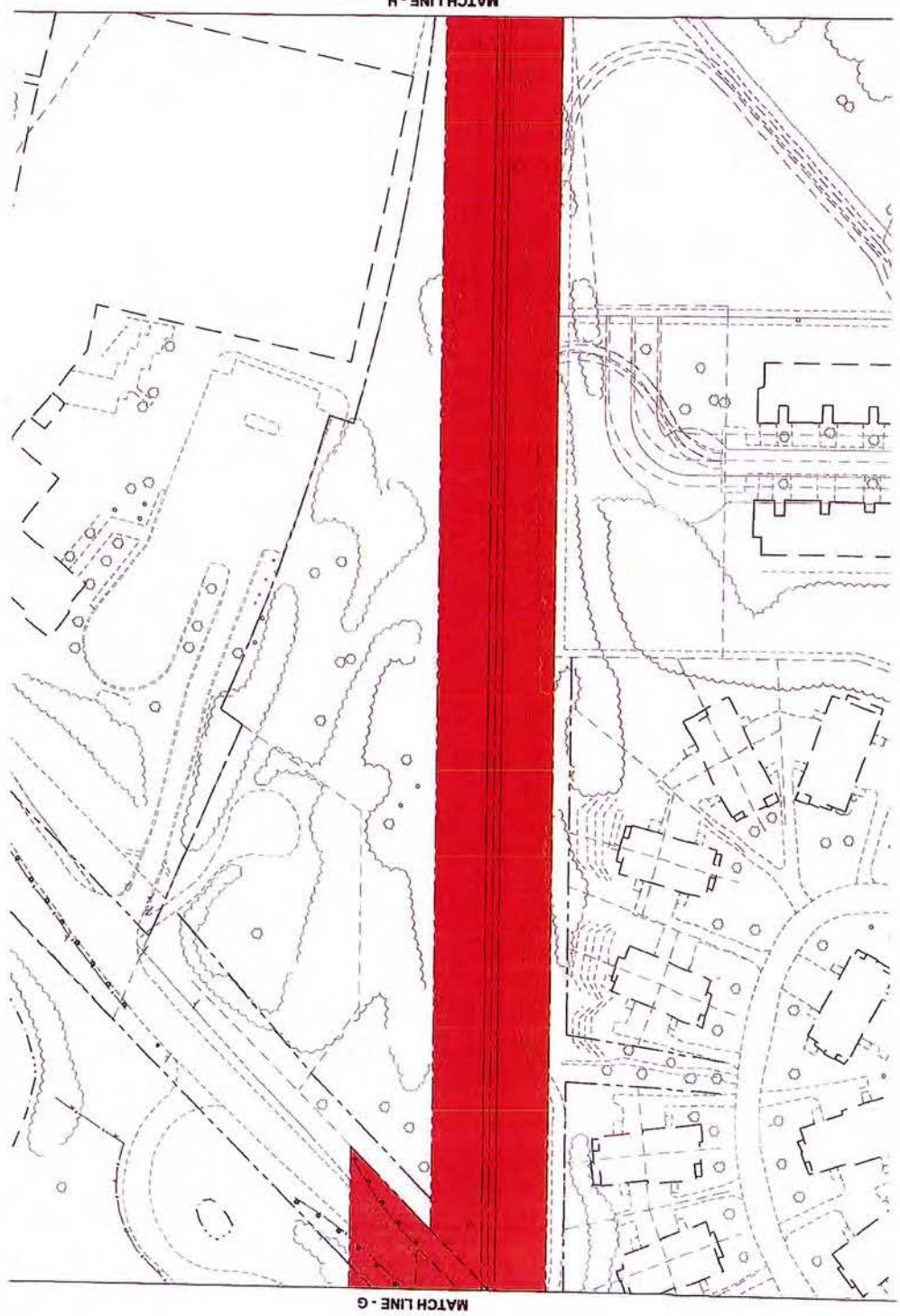
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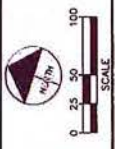
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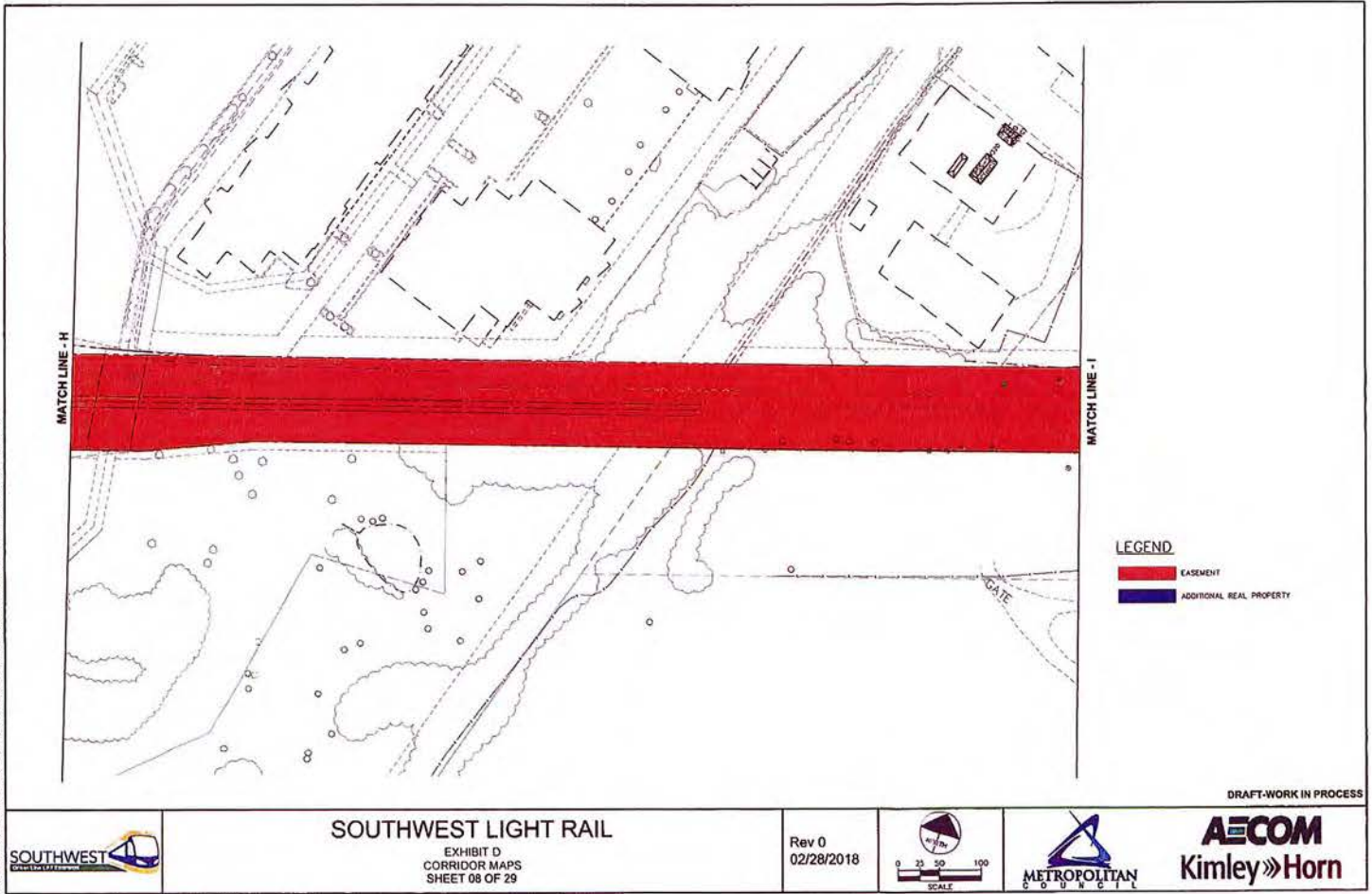


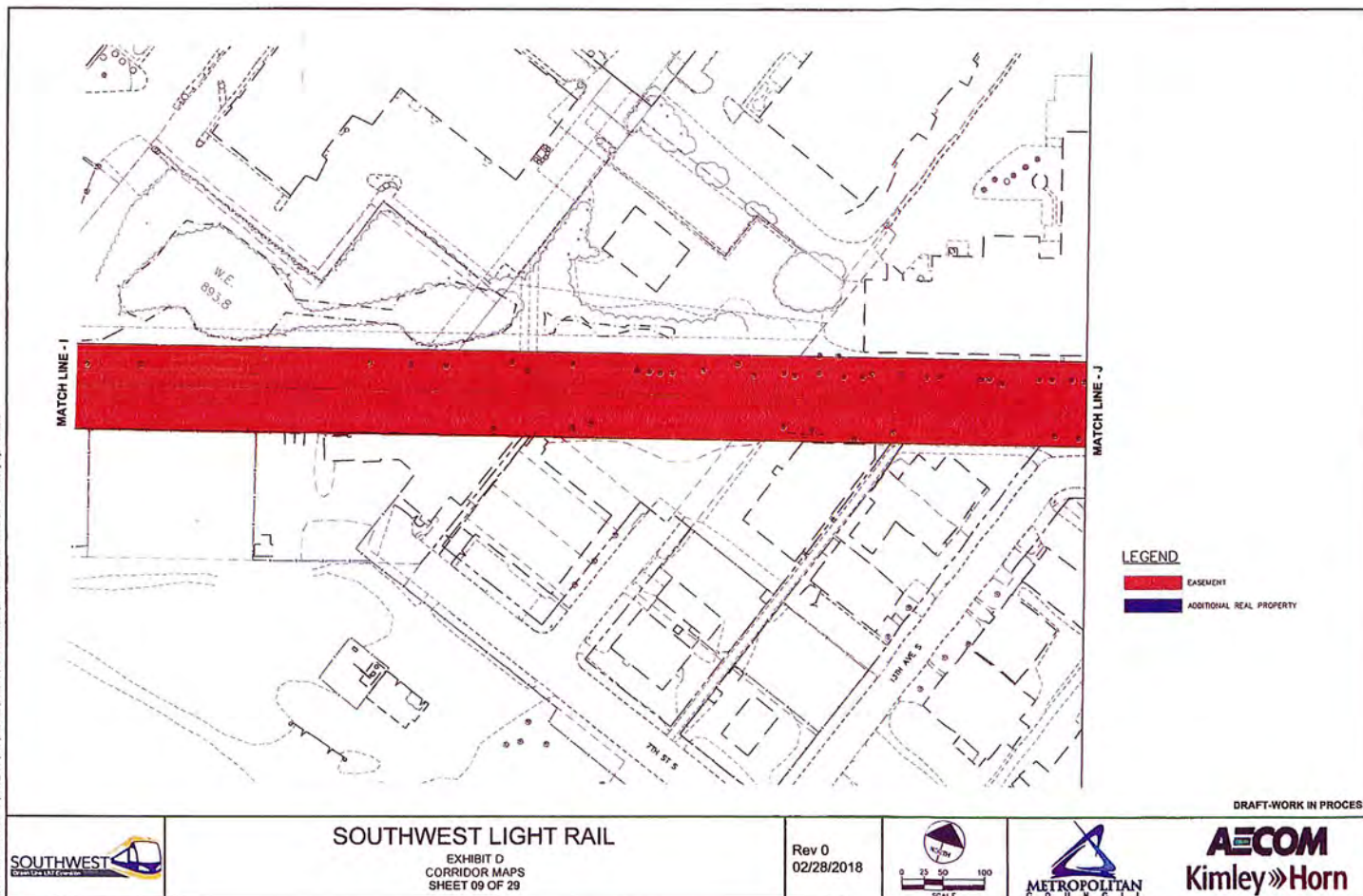
SOUTHWEST LIGHT RAIL
EXHIBIT D
CORRIDOR MAPS
SHEET 07 OF 29

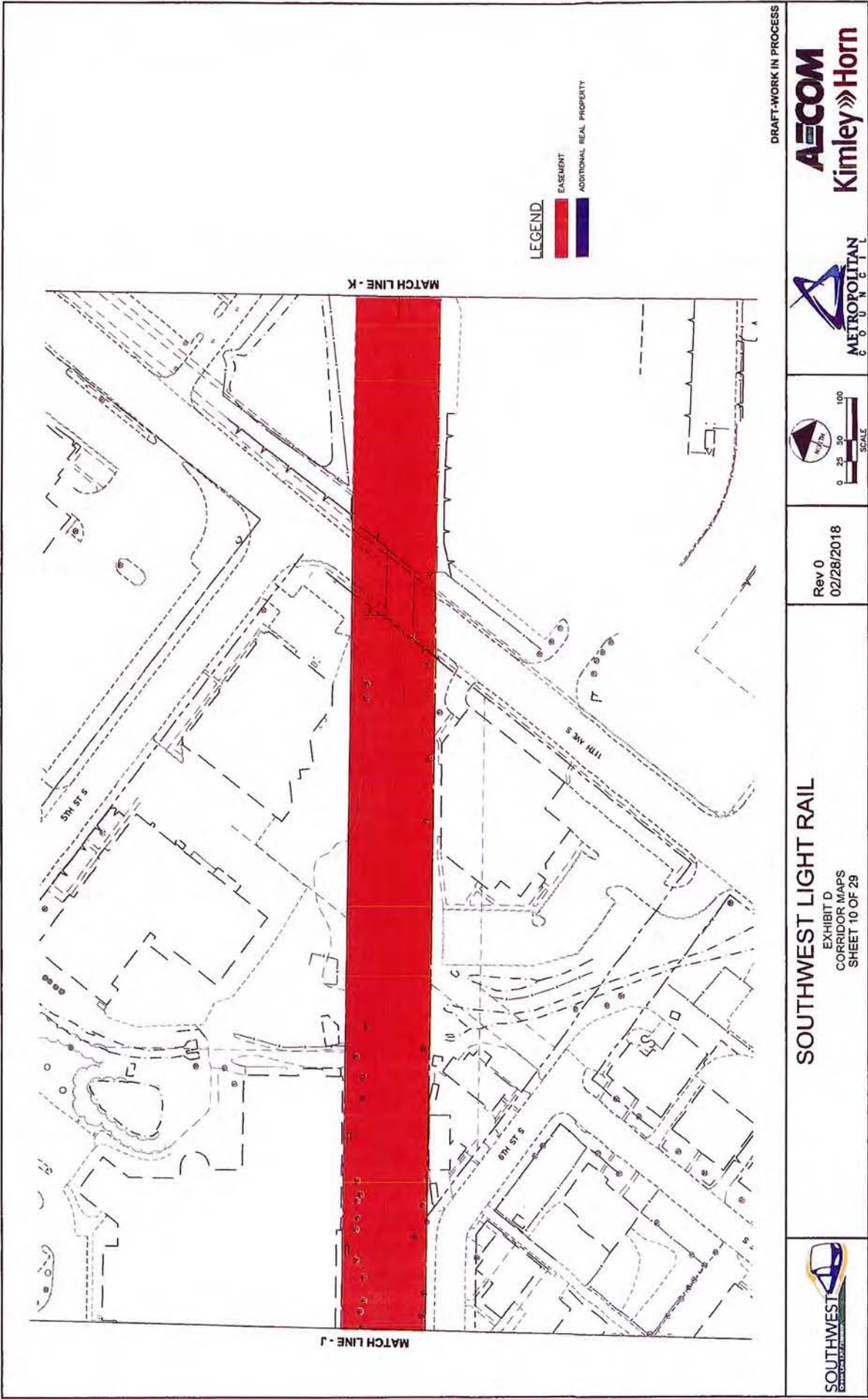
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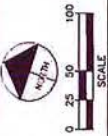
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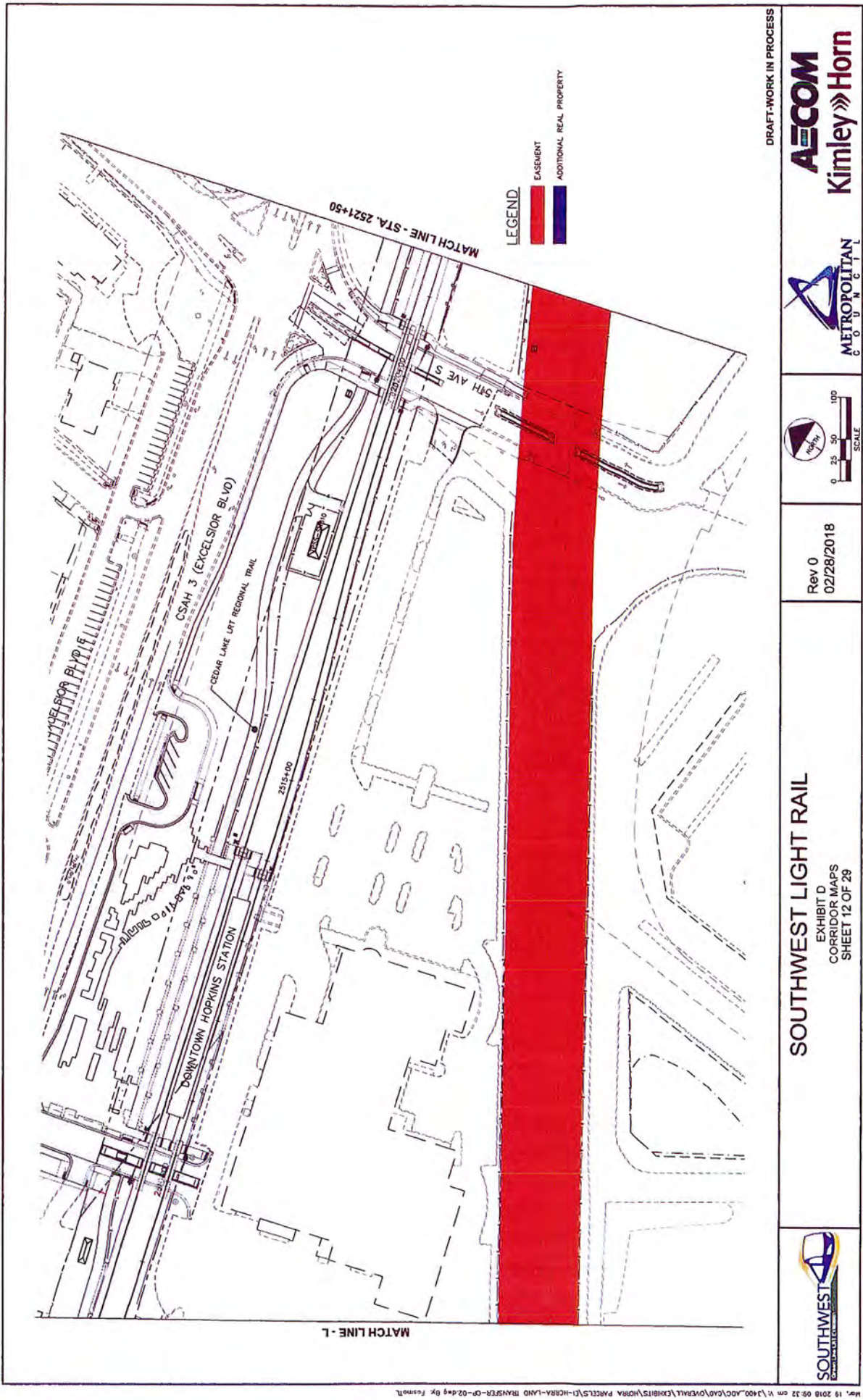


SOUTHWEST LIGHT RAIL

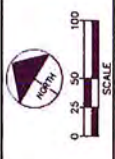
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CORRIDOR MAPS
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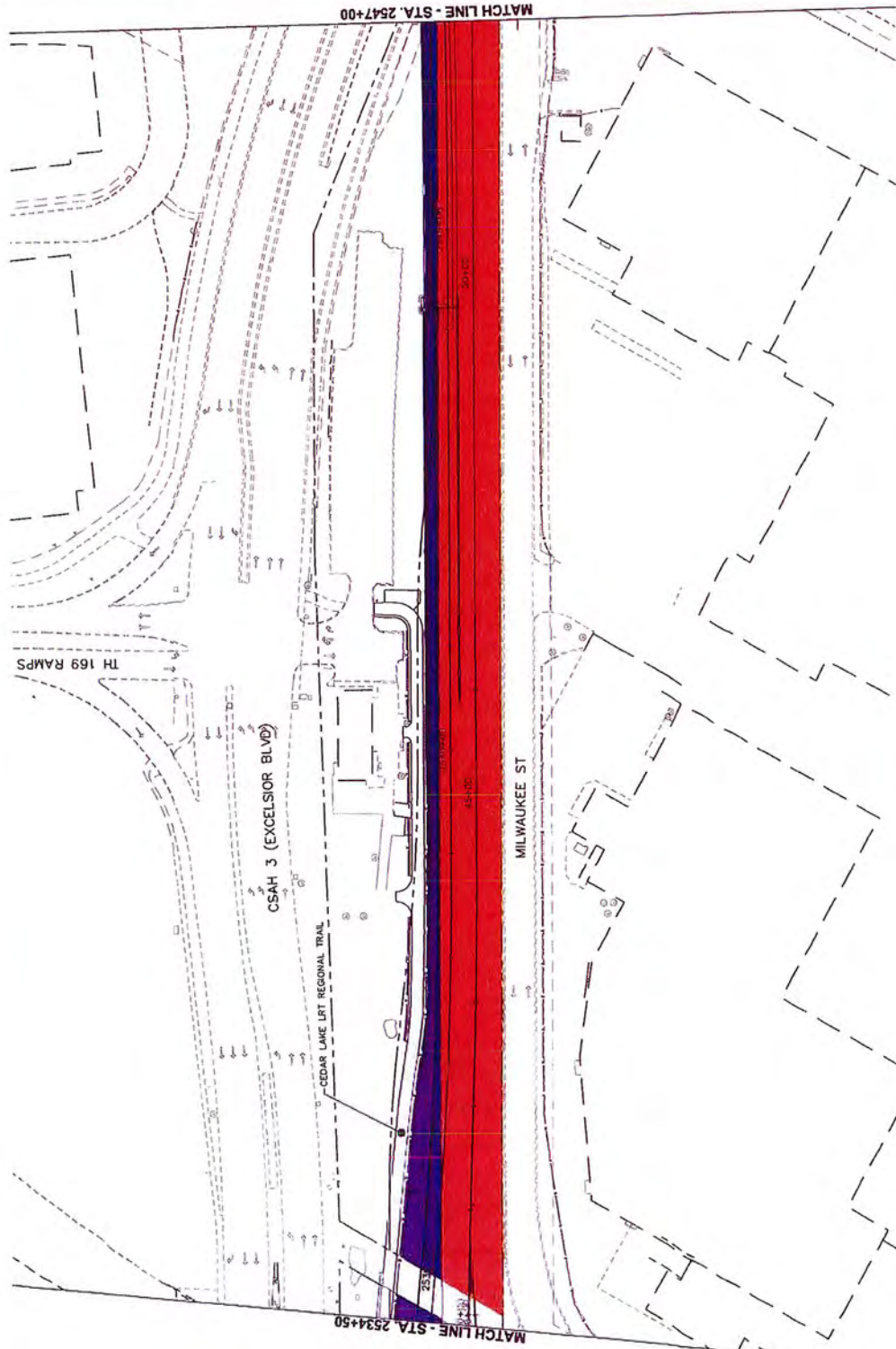
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SOUTHWEST LIGHT RAIL
EXHIBIT D
CORRIDOR MAPS
SHEET 12 OF 28

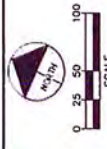


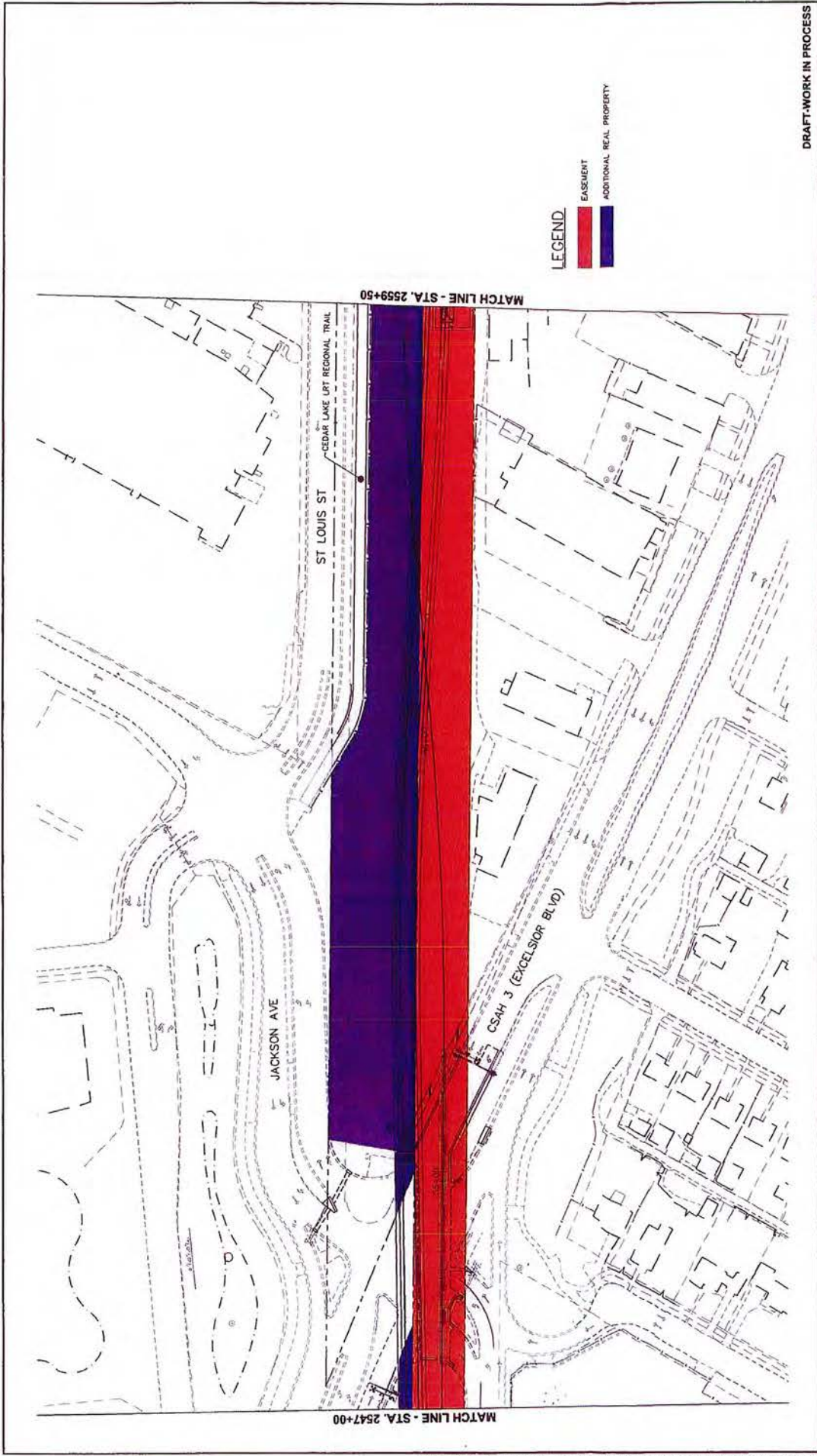


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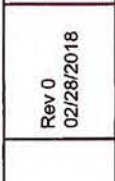
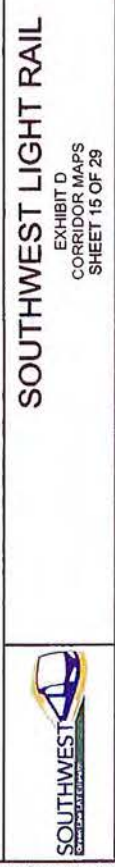
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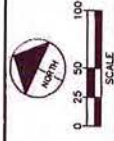
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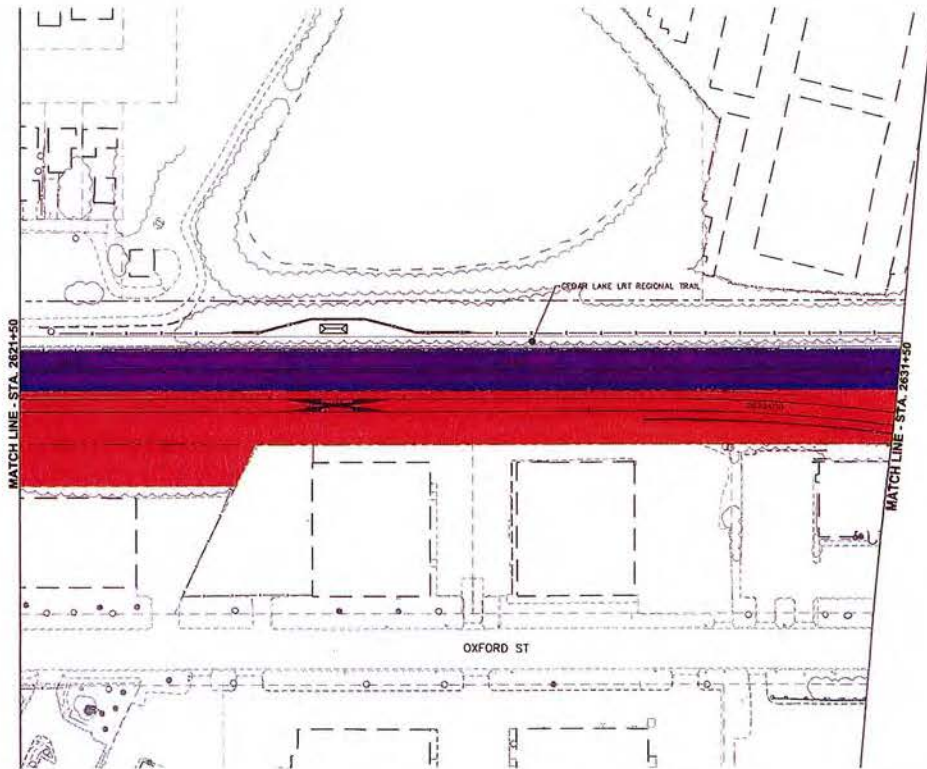
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CORRIDOR MAPS
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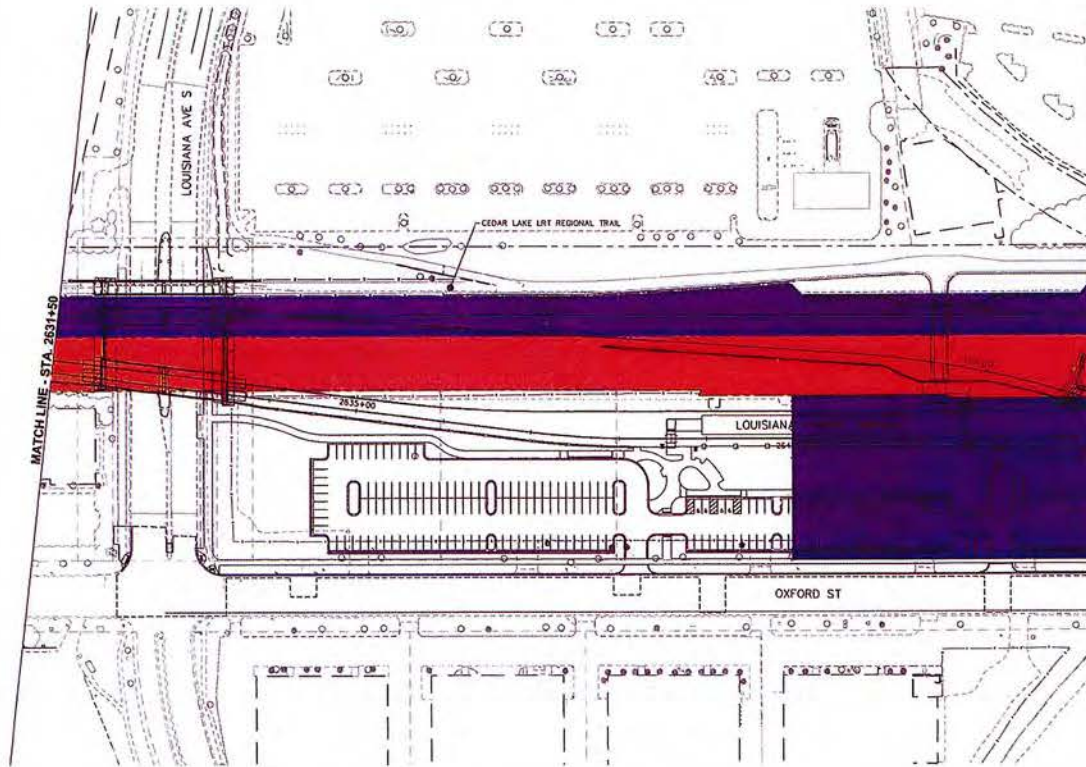
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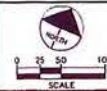
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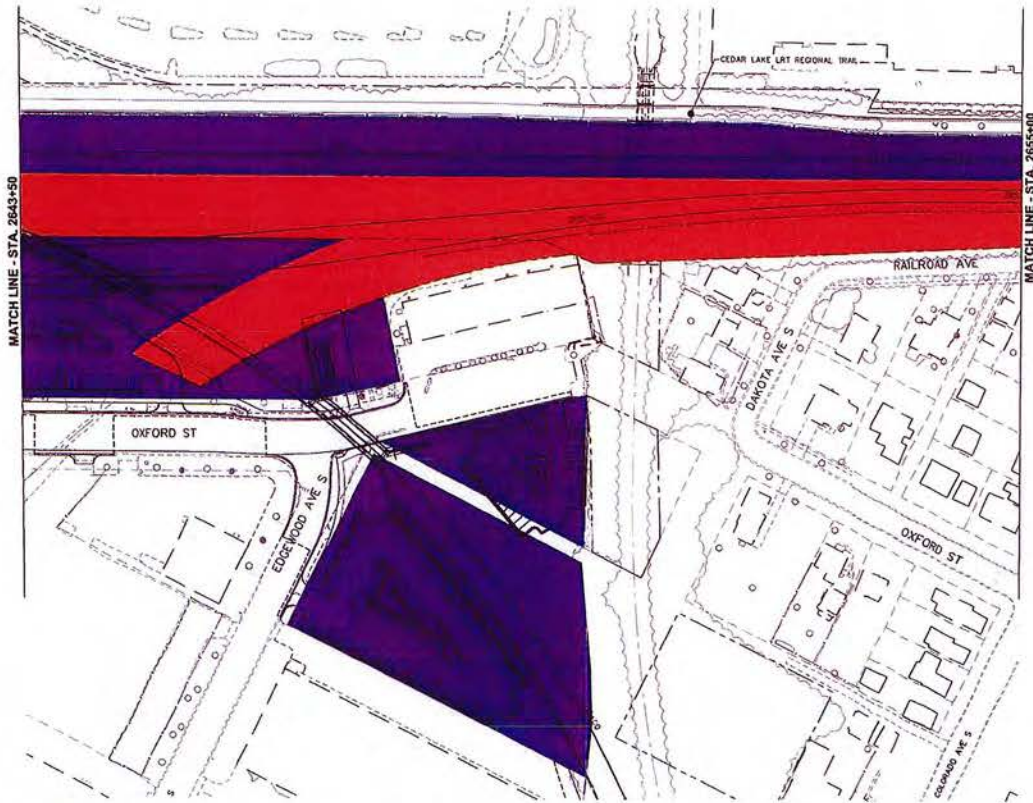
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SHEET 22 OF 29

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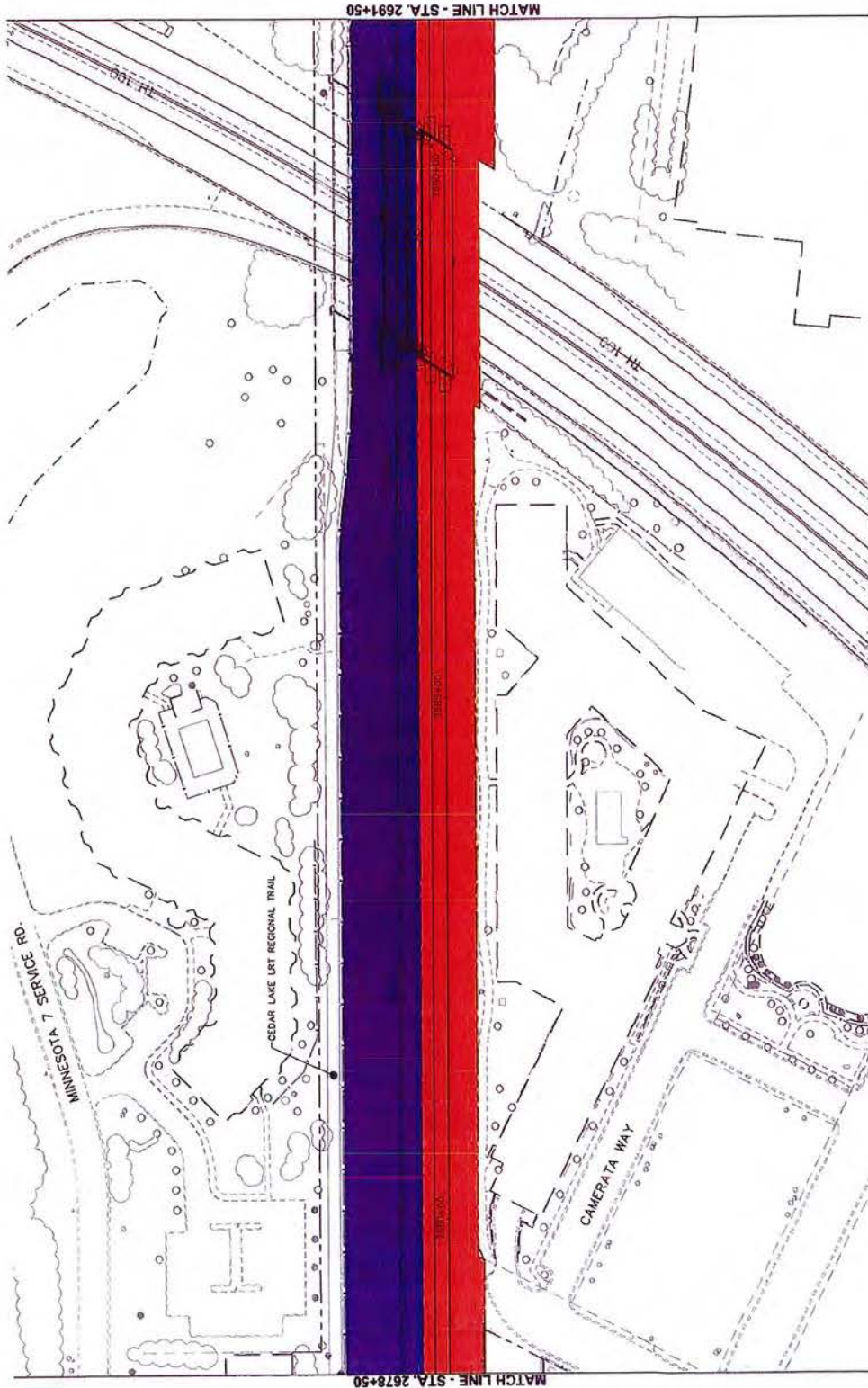
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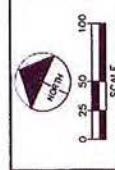


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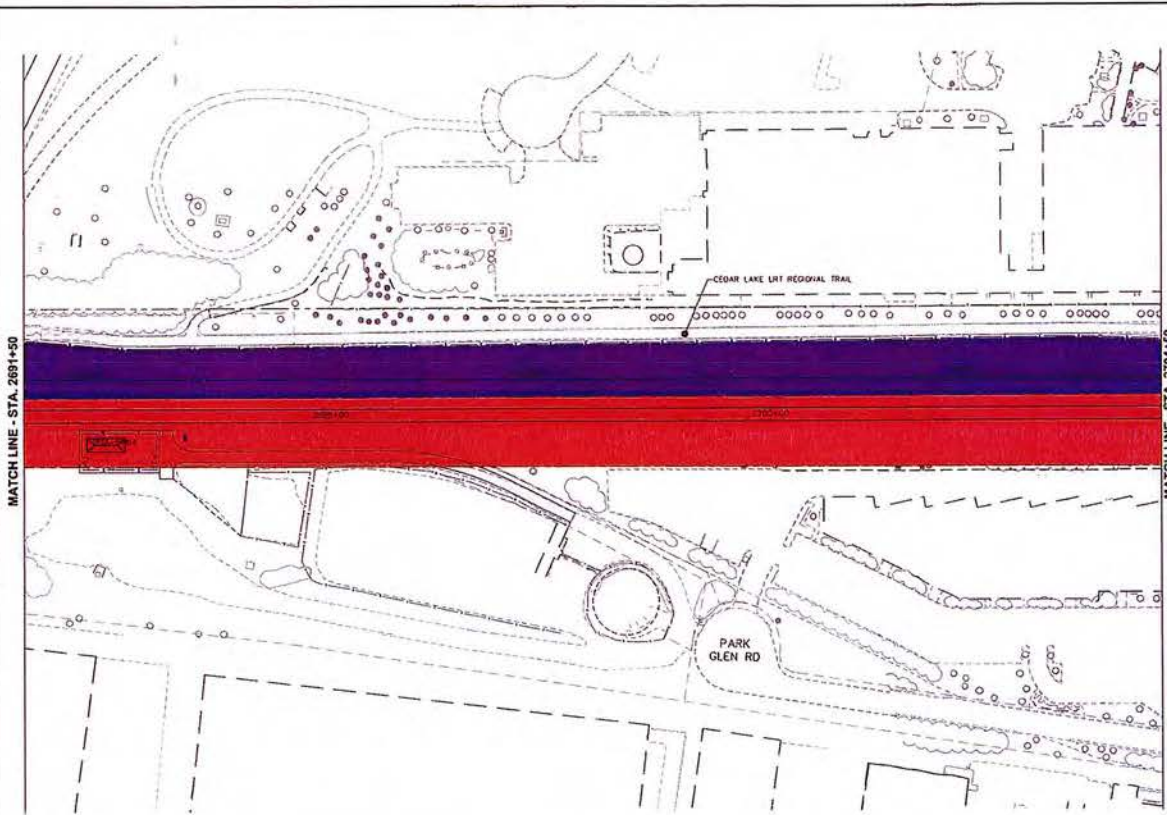


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SOUTHWEST LIGHT RAIL
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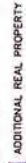
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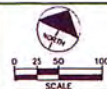
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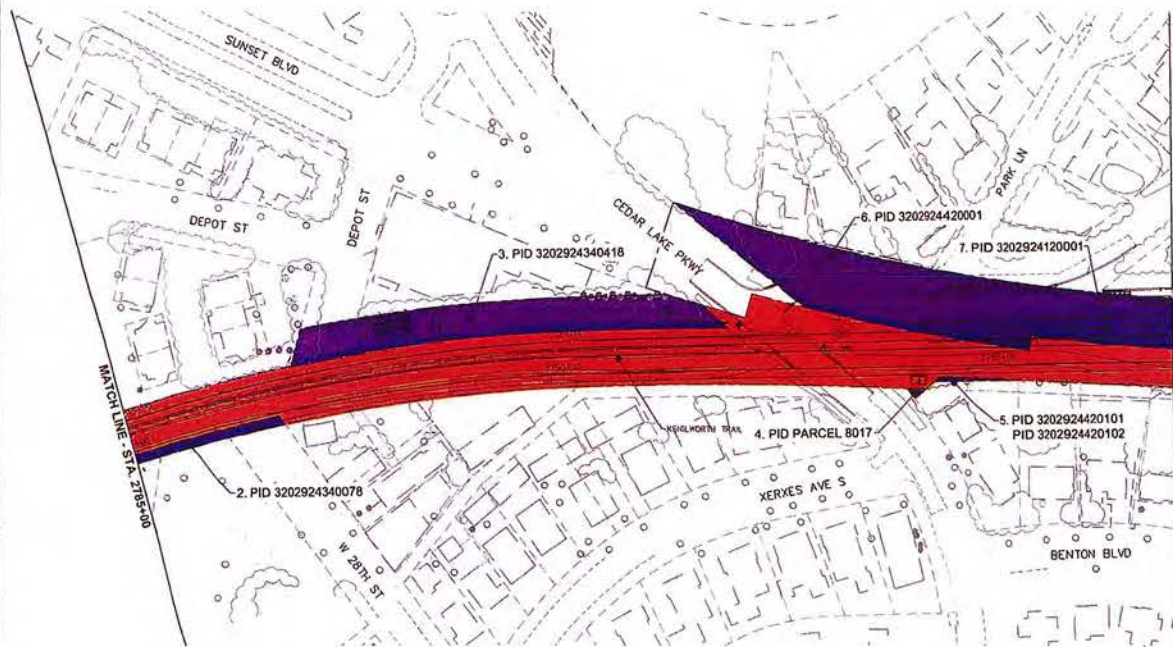
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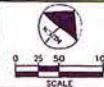
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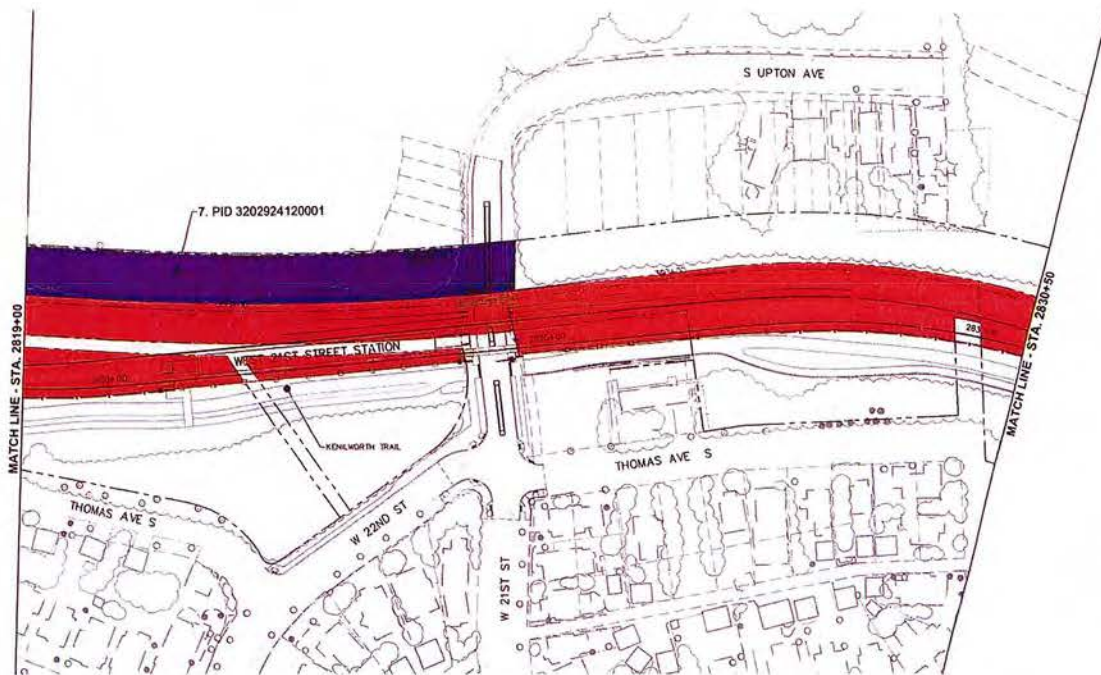
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ADDITIONAL PROPERTY

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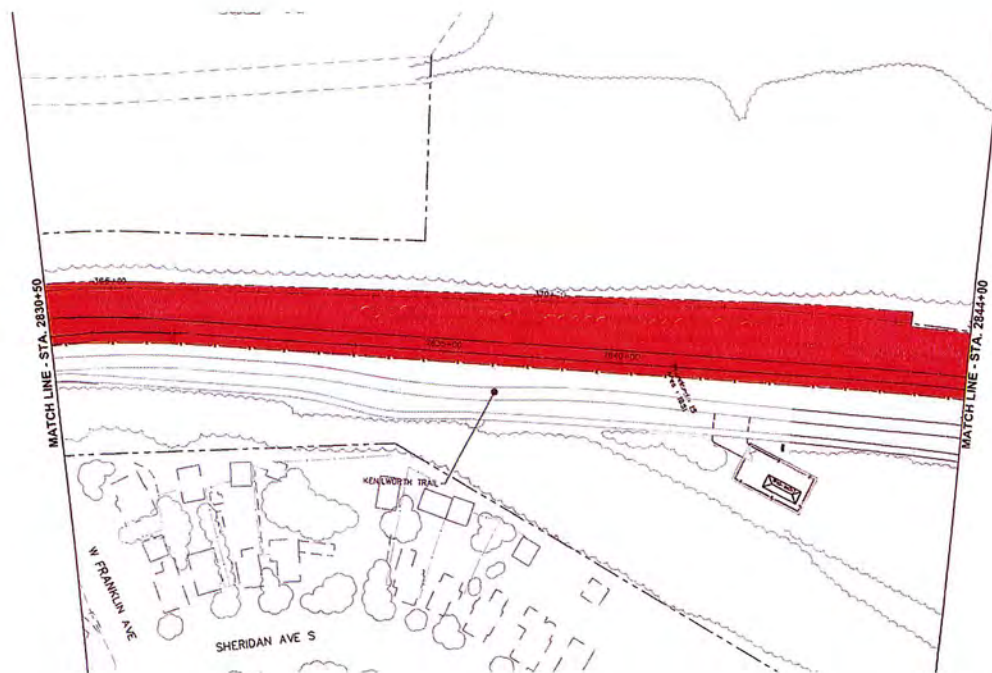


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CORRIDOR MAPS
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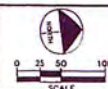
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CORRIDOR MAPS
SHEET 11 OF 12



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3

CO-LOCATION AGREEMENT BETWEEN

**METROPOLITAN COUNCIL AND TWIN CITIES & WESTERN RAILROAD
COMPANY**

Reference Numbers:

SWLRT Project: 61001
Metropolitan Council: 16M012
TCWR: #####

**CO-LOCATION AGREEMENT
BETWEEN
METROPOLITAN COUNCIL
AND TWIN CITIES & WESTERN RAILROAD COMPANY**

This Co-Location Agreement (the “Agreement”) is entered into between the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota (“Council”), and Twin Cities & Western Railroad Company, a Minnesota corporation (“TCWR”), collectively referred to as the “parties” as of the Effective Date (as defined in Section 1 below).

Recitals

- A. The Council and the Hennepin County Regional Railroad Authority (“HCRRA”) filed in STB Docket Nos. FD 36177 and FD 36178, respectively, a Petition for Declaratory Order and Notice of Exemption with the Surface Transportation Board on or about April 4, 2018, to seek any required authorization for, or a determination that no such authorization is required, with respect to: (1) the Council’s acquisition of the Kenilworth Corridor and the Bass Lake Spur Corridor; and (2) HCRRA’s acquisition from CP of a permanent, irrevocable, exclusive rail freight operating easement over the Bass Lake Spur Corridor; and
- B. The STB filing included an Operations and Maintenance Agreement (“HCRRA OMA”) between Metropolitan Council and HCRRA setting forth terms governing coordination between the Council and HCRRA with respect to certain rail operations over and inspection, maintenance, repair, and replacement of the freight rail track in the Corridor, so that the federal obligation to provide local freight rail service and permit the continuance of overhead freight rail service will be fulfilled; and
- C. The Kenilworth Corridor and Bass Lake Spur Corridor connect at Soo Line Railroad Company d/b/a Canadian Pacific (“CP”) milepost 428.38/CNW milepost 16.3 to create an approximately 9.3-mile contiguous corridor (the “Corridor”); and
- D. TCWR operates Freight Rail Service (as defined in Section 1) in the Kenilworth Corridor pursuant to a Trackage Rights Agreement between CP, TCWR and HCRRA and an Easement Agreement, both dated August 10, 1998, and in turn modified by a Supplement and a Railroad Easement dated July 30, 2002, and with reference to that certain

Settlement Agreement, denominated A121128, dated on or about August 1, 2012, (collectively, the "HCRRA Trackage Rights Agreement"); and

- E. TCWR operates Freight Rail Service on the Bass Lake Spur pursuant to a Trackage Rights Agreement between CP and TCWR dated July 26, 1991, as amended by a Relinquishment Agreement dated July 27, 1993, and Supplemental Agreements dated July 27, 1993, and April 30, 1996 (collectively the "CP Trackage Rights Agreement"); and
- F. The parties executed a Construction Agreement ("Construction Agreement") dated _____ setting forth their respective rights and obligations with respect to the design and construction of the Modifications (as defined in Section 1 of the Construction Agreement) in the Corridor.
- G. In order to avoid exposing TCWR to additional liability as a result of the SWLRT Project in the Corridor, the State enacted Minnesota Statutes, Section 473.4052, and the Council is entering into this Agreement, as necessary material consideration and inducement to enter into this Agreement, without which the Council acknowledges TCWR would not be willing to do.
- H. The parties intend that existing law at the time of the signing of this Agreement including Minnesota Statutes, Section 473.4052, as then written—be incorporated into this Agreement, see *In re Individual 35W Bridge Litig.*, 806 N.W.2d 820, 835 (Minn. 2011), and no provision of this Agreement shall express any intent of any party contrary to the incorporation of Section 473.4052.
- I. In this Agreement, the parties desire to set forth their respective rights and obligations with respect to the co-location of LRT Service and Freight Rail Service (as defined in Section 1) in the Corridor.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS

(a) "Additions and Alterations" means any modifications constructed by or on behalf of either party on the Corridor after the Effective Date (excluding modifications constructed pursuant to the Construction Agreement and at-grade rail crossings), including, without limitation, additions, alterations and betterments of any Facilities, and any construction,

reconstruction, modifications and renewals thereof or any reconstruction, modification or renewal of additional Facilities, but excluding maintenance items.

- (b) “Agreement” is defined in the preamble.
- (c) RESERVED
- (d) “Automatic Warning Devices” means traffic control devices at railroad-street at-grade crossings and at railroad-pedestrian at-grade crossings, including, without limitation, any combination of flashing light signals, bells, automatic gates, active advance warning devices, highway traffic signals and their associated activation and control devices, control relays and batteries, microprocessor technology, and associated electrical circuitry and supply.
- (e) “Bass Lake Spur” means Bass Lake Spur – East and Bass Lake Spur – West so long as both properties are owned by the Council. If the Council sells any portion of the Bass Lake Spur, then “Bass Lake Spur” shall refer only to the portion still owned by the Council.
- (f) “Bass Lake Spur – East” means the Council-owned portions of the Bass Lake Spur from the point of connection to the Bass Lake Spur – West at CP milepost 432.12 to the point of connection to the Kenilworth Corridor at Cedar Lake Junction (CP milepost 428.38, former CNW milepost 16.3) in the City of St. Louis Park and also includes the connecting track to the “Camden Line,” known locally as the CP MN&S.
- (g) “Bass Lake Spur – West” means the Council-owned portions of the Bass Lake Spur from Tower E-14 at CP milepost 435.06 in the City of Minnetonka to the point of connection to the Bass Lake Spur – East at CP milepost 432.12.
- (h) “BNSF” means BNSF Railway Company.
- (i) “CGL” means commercial general liability.
- (j) “CNW” means the company defined in Recital D or Chicago & North Western Railway Company, depending on the context.
- (k) “Constructing Party” means the party constructing Additions and Alterations on the Corridor.
- (l) “Construction Agreement” is defined in Recital F.
- (m) “Construction Completion Date” has the meaning provided in the Construction Agreement.
- (n) “Coordination Committee” means the advisory committee of representatives of the Council and TCWR established pursuant to Section 6.

(o) “Corridor” means the Council-owned Kenilworth Corridor and the Council-owned Bass Lake Spur and additional land adjacent to the Bass Lake Spur - East and the Kenilworth Corridor acquired by Council and required for the shift of the freight rail track to a different alignment and other construction work on Freight Rail Facilities as described in section 2.1.C and Exhibit B of the Construction Agreement.

(p) “Covered Taxes” of or with respect to a person means and is limited to ad valorem taxes on real or personal property lawfully imposed under chapters 272 *et seq.* of the Minnesota Statutes, as the same may be modified by sections 270.80 *et seq.* of the Minnesota Statutes applicable to railroad companies, and regardless of whether the same are paid by such person directly to a government agency or indirectly on account of rent or other fees charged by such person’s lessor, licensor, or other contractual counter-party. For avoidance of doubt, “Covered Taxes” shall not include any taxes, assessments, duties, or fees not specifically described in the foregoing sentence and specifically shall not include, by way of illustration and not limitation, income and franchise taxes; sales and use taxes; or business license taxes.

(q) “Council” is defined in the preamble.

(r) “Council Freight Activity” means the Council’s provision of maintenance of Freight Rail Facilities.

(s) “CP” means the company defined in Recital C.

(t) RESERVED

(u) RESERVED

(v) RESERVED

(w) RESERVED

(x) “CP Trackage Rights Agreement” means the agreement defined in Recital E.

(y) “Effective Date” means the Construction Completion Date in the Construction Agreement.

(z) “Environmental Laws” means any applicable federal, state or local statute, regulation, code, rule, ordinance, permit, license, government authorization, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life, or the environment including, without limitation, principles of common law and equity, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

(aa) “Environmental Loss or Damage” means all investigations, cleanups, removals, remediations, response actions, requirements, or any expense of every character at any location, whether on or off the shared corridor or on public or private property (including, without limitation, amounts paid under any Environmental Law, and including all expenses and attorneys’ fees incurred in the investigation, defense or settlement of any actual or threatened legal proceeding), as well as all fines, penalties, or other obligations arising under any Environmental Law, arising from, resulting from, related to, or incurred in connection with or with respect to Hazardous Materials released on or from an activity conducted on or about the Kenilworth Corridor or Bass Lake Spur and including, without limitation, damages or injuries to public property (real or personal and including, without limitation, natural resources).

(bb) “Environmental Tort Liability” means liability of either of the parties arising from, resulting from, related to or incurred in connection with a release of Hazardous Materials, relating to a railroad accident, after the Effective Date.

(cc) “Facilities” means Freight Rail Facilities and LRT Facilities, individually or collectively, as the context requires.

(dd) “Foul” or “Fouling” means the placement of an individual or an item of equipment or other personal property in such proximity to a track that the individual, equipment or other item of personal property could be struck by a moving train or on-track equipment, or in any case, is within twenty-five (25) feet adjacent to, over or under the centerline of the closest track, and when cranes or similar equipment positioned beyond twenty-five (25) feet from the closest track centerline could contact the track, a train or on-track equipment in event of tip over or other catastrophic occurrence.

(ee) “FRA” means the Federal Railroad Administration.

(ff) “Freight Rail Facilities” means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment, including, but not limited to, wayside positive train control equipment as required by a regulatory body with jurisdiction over freight rail), drainage facilities, other track material, Automatic Warning Devices, roadbed, embankments, bridges, trestles, culverts within the Corridor, and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing, to the extent any of the above are necessary or related to the provision of Local Freight Rail Service (as defined in the HCRRA OMA) or Freight Rail Service.

(gg) RESERVED

(hh) RESERVED

(ii) “Freight Rail Service” means freight rail service provided by CP or TCWR pursuant to the HCRRA Trackage Rights Agreement and CP Trackage Rights Agreement in the Corridor.

(jj) “FTA” means the Federal Transit Administration.

(kk) “Hazardous Materials” means any pollutant, contaminant, hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Laws, including without limitation ethanol, propane, chlorine and petroleum oil and any of its fractions deemed to be hazardous.

(ll) “HCRRA” means the entity defined in Recital A.

(mm) RESERVED

(nn) RESERVED

(oo) RESERVED

(pp) RESERVED

(qq) “HCRRA Trackage Rights Agreement” means the agreement defined in Recital D.

(rr) “Kenilworth Corridor” means the Council-owned property from former CNW) at milepost 16.3 (CP milepost 428.38) in the City of St. Louis Park, easterly to former CNW milepost 13.7 (BNSF milepost 13.0) at a point of connection with BNSF in the City of Minneapolis.

(ss) “Loss or Damage” must arise from, in connection with or incidental or related to loss or destruction of or damage to property (including real property and improvements thereon, and personal property, including injury or death to animals, and including property of the Parties and of Third Parties) and injury to and death of persons (including officers, directors, agents, employees, contractors, invitees, licensees, customers, passengers or patrons of TCWR Parties, LRT Parties, and Third Parties).

Subject to the Limitations above, Loss or Damage means all fines, penalties, losses, damages, lost profits, Costs incurred to reroute trains, claims (formal or informal), actions, suits, demands, costs, liabilities, injuries, charges, cleanups removals or remediations of non-Hazardous Materials, judgments, fines, fees (including, without limitation, reasonable attorneys’ fees) and expenses of every character (including, without limitation, Environmental Tort Liability as defined herein, amounts paid under any State or Federal workers compensation law, and costs of investigation, defense expenses at arbitration, trial or appeal and without institution of arbitration or suit, and, with respect to damage or destruction of property, cleanup, repair and replacement expenses) of any nature.

(tt) “LRT” means light rail transit.

(uu) “LRT Facilities” means any light rail transit facilities that serve LRT passengers or LRT operations, including, without limitation, all LRT rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment), drainage facilities, other track material, Automatic Warning Devices including the shared freight and LRT crossings at 5th Ave S, Blake Road, Wooddale Avenue, Beltline Blvd, and West 21st Street, roadbed, embankments, bridges, trestles, culverts, and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes the pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing, LRT stations, platforms, parking lots, LRT signals, traction power substations, overhead catenary systems, and maintenance/repair equipment, all land within the Corridor, to the extent any of the above are necessary or related to the provision of LRT Service.

(vv) “LRT Party” means any one or more of: (i) Council and one or more of its members, employees, agents, permittees, or contractors (other than a TCWR party), while on, adjacent to, or using the Corridor; (ii) any passenger of LRT while the passenger is on a LRT train; (iii) any person (other than a TCWR Party) located in or on an LRT Facility; (iv) Trail-Users; or (v) any other person (other than a TCWR Party) on or about the Corridor (other than the Bass Lake Spur – West) who Council cannot reasonably demonstrate was on or about the Corridor for reasons unrelated to LRT Service, or LRT Facilities.

(ww) “LRT Service” means the operation of LRT vehicles or equipment, with or without passengers, on the Corridor.

(xx) “Metro Transit” means the division of the Council that oversees transit operations.

(yy) RESERVED

(zz) “Releasing Party” means the party defined in Section 5.3(b).

(aaa) RESERVED

(bbb) “TCWR” means the company defined in the Preamble.

(ccc) “TCWR Party” means any one or more of (i) TCWR and its affiliates and subsidiaries and one or more of their officers, directors, employees, agents, or contractors while on, adjacent to, or using the Corridor; (ii) any party receiving freight rail services provided by TCWR in the Corridor or using the Corridor under authority of or by agreement with TCWR (other than Council); or (iii) any other person (other than an LRT Party) on or about the Bass Lake Spur – West who TCWR cannot reasonably demonstrate was on or about the Bass Lake Spur – West for reasons related to LRT Service, LRT Parties or LRT Facilities.

(ddd) “Third Party” means a person or entity that is neither a TCWR Party nor a LRT Party.

(eee) “Trail” means, the land within or adjacent to the Kenilworth Corridor, Bass Lake Spur, or Wayzata Subdivision used for walking, biking, or recreational purposes. Collectively, the Trails are currently known as Cedar Lake LRT Regional Trail abutting the Bass Lake Spur-West, Bass Lake Spur-East and Kenilworth Corridor; the Kenilworth Trail abutting the Kenilworth Corridor; and the Cedar Lake Trail crossing the Kenilworth Corridor at-grade west of the Bryn Mawr LRT Station and abutting the Wayzata Subdivision, which locations are generally depicted on Exhibit D-1, each used for walking, bicycling, or any other public recreational purpose.

(fff) “Trail-Users” means any person whose intended purpose is or was to use the Trail, regardless of whether the Trail is owned by the Council or any other entity.

(fff) “Wayzata Subdivision” means the portion of BNSF’s right of way in Minneapolis, MN from MP 11.79 to 12.2 where Council operates LRT on BNSF property and from MP 12.2 to 13.0 (known as the Cedar Lake Junction) where Council operates LRT adjacent to BNSF property.

SECTION 2. FREIGHT RAIL FACILITIES AND SERVICE

2.1 TCWR’s General Rights and Obligations.

TCWR shall exercise its rights and obligations in this Agreement in such manner as to avoid unreasonable interference with LRT Facilities or LRT Service on the Corridor.

2.2 Council’s General Rights and Obligations.

(a) The Council shall have exclusive authority to manage, direct and control all activities related to LRT Service, including, without limitation, the operations of all LRT vehicles and equipment, and the movement and speed of the same.

(b) The Council shall exercise its rights and obligations in this Agreement in such manner as to avoid unreasonable interference with Freight Rail Facilities or Freight Rail Service on the Corridor.

(c) The Council shall be solely responsible for the provision of security related to LRT Service, LRT Parties, or LRT Facilities. The Council shall install and maintain fencing type included in the Contract Documents, as defined in the Construction Agreement, between the Freight Rail Facilities and any adjacent Trail. The Council shall be solely responsible for all public requests for information, customer relations or complaints of any nature related to LRT Service or use of the Corridor, except for those related solely to the provision of Freight Rail Service.

(d) Council, on behalf of HCRRA, will dispatch the Bass Lake Spur, including issuance of freight rail timetables pertinent to the Bass Lake Spur. The timetables will preserve TCWR's ability to operate on the Bass Lake Spur at speeds of 25 mph or less, consistent with existing conditions. In carrying out its dispatching functions, Council or its contractor shall not discriminate against TCWR and shall dispatch in a manner consistent with standard industry dispatching protocols.

SECTION 3. MAINTENANCE, REPAIR AND REPLACEMENT OBLIGATIONS

3.1 General Inspection, Maintenance, Repair and Replacement Obligations.

(a) The Council is responsible for inspection, maintenance, repair and replacement of LRT Facilities on the Corridor.

(b) The parties respective responsibilities for inspection, maintenance, repair and replacement of Freight Rail Facilities on the Corridor, to the extent such responsibilities exist, are set forth in the Trackage Rights Agreements and the HCRRA OMA.

(c) Each party shall inspect, maintain, repair and replace the Facilities it is responsible for in accordance with all applicable laws, rules and regulations, including, but not limited to, timely compliance with notices, directives, defect repair requirements and other requirements specified by the Federal Railroad Administration. The parties shall immediately notify each other of any known FRA inspection report, violation, notice, order or other direction, requirement, or recommendation.

(d) Except as otherwise stated in the Construction Agreement, any rail or other track material salvaged from repair and replacement of the Freight Rail Facilities shall be the property of the party paying for or otherwise supplying the replacement materials; provided further, that the replacement materials are of equivalent or higher quality and rail weight, and the useful life of any federally procured asset being replaced has been fully depreciated.

If either party fails to meet any of its obligations under this Section, with respect to the Freight Rail Facilities, the other party shall have the right (but not the obligation) to perform such obligations, after giving the non-performing party thirty (30) days' notice of its election to perform, except when a shorter response time is ordered or required by the FRA or other regulatory agency, in which case the time specified will dictate the appropriate notification and response times. The non-performing party shall reimburse the other for the reasonable, documented out-of-pocket costs of performing the non-performing party's obligations.

3.2 Disabled Equipment and Clearing Obstructions.

(a) Each party shall be solely responsible for removing its own disabled equipment (including after derailments or wrecks) and other obstructions involving its equipment

(including lading). If either party fails to meet its obligations under this Section 3.2(a), the other party shall have the right (but not the obligation) to perform such obligations, after giving the non-performing party five (5) days' notice of its election to perform.

(b) If equipment or other obstructions of a party (the "obstructing party") fouls the tracks of the other party (the "obstructed party"), the obstructed party shall have the right (but not the obligation) to clear such obstructions 72 hours after telephone notification to the obstructing party of the obstruction if the obstructing party has not commenced (and is not diligently pursuing) clearance of the obstruction; provided that the obstructing party shall not have the obligation to commence (and diligently pursue) clearance if the obstructing party arrives at the location of the obstruction within 8 hours of telephone notification but reasonably determines that clearing the obstruction could prejudice the investigation of the causes of the obstruction. If the obstructing party arrives at the location of the obstruction within 8 hours of telephone notification but reasonably determines that clearing the obstruction could prejudice the investigation of the causes of the obstruction, the obstructed party shall not have the right to clear such obstructions unless, 36 hours after completing the requisite investigation, the obstructing party has not commenced (and is not diligently pursuing) clearance of the obstruction.

(c) The parties agree, subject to safety requirements to (i) perform any permitted clearance of obstructions in an expeditious manner and (ii) take steps to mitigate further damage to the equipment or other obstructions in the course of such clearance.

(d) For purposes of this section, TCWR will be responsible for cars hauled in its trains in the account of any third party and (as between the parties) for disabled equipment of trains operating under detour agreements.

(e) In all cases where a party exercises a right to clear disabled equipment or other obstructions of the other party, the non-performing party shall reimburse the other for the reasonable, documented out-of-pocket costs of performing the non-performing party's obligations.

3.3 Other Malfunctions.

(a) In the event the Council or TCWR discovers any malfunction of or damage to Freight Rail Facilities or LRT Facilities for which the other is responsible and is not within the scope of Section 3.2 and such malfunction or damage may result in an imminent and substantial danger to human health or safety or property, or interference with Freight Rail Service or LRT Service, it shall promptly notify the other party by telephone. If the notified party fails to rectify such malfunction or damage within 24 hours of such notification, the other party shall have the right (but not the obligation) to perform such obligations and the non-performing party shall reimburse the other for the reasonable, documented out-of-pocket costs of performing the non-performing party's obligations.

(b) With respect to malfunction of or damage to at-grade crossing signals, the Council or TCWR (as set forth in the Trackage Rights Agreements or HCRRA OMA) shall be

responsible for responding to at-grade roadway crossing failures, and reports of malfunctions and damage, including but not limited to, gates down with no train present, gates and lights not operating correctly, broken gates, gate knockdowns, signal light outs, or vandalism, as follows:

- (i) The responding party shall respond within 60 minutes to reported at-grade crossing signal related failures in accordance with the FRA CFR Part 234 Regulations with sufficient resources and at their sole cost without regard for time, day or otherwise, to permit Freight Rail or LRT Service to resume.
- (ii) Within 48 hours after the incident is reported, the responding party shall provide to the other party a written explanation of the repair work anticipated including a schedule for repair or correction of the at-grade crossing signal.
- (iii) For the first 7 days prior to completion of the repair work on the Kenilworth Corridor TCWR shall provide flaggers at the responding parties' expense, in accordance with FRA CFR Part 234 Regulations, to permit Freight Rail or LRT Service to resume. After the 7th day, if the Council is responsible for the at-grade crossing signal, Council shall be responsible for providing flaggers, in accordance with FRA CFR Part 234 Regulations, to permit Freight Rail or LRT Service to resume.
- (iv) If the responsible party fails to respond to at-grade crossing signal failures and incidents and initiate actions to restore service within 60 minutes of initial notification, the remedies of Section 3.3(a) shall apply.

3.4 Emergency Notifications.

Telephone notifications described in this section or elsewhere in this Agreement will be made as follows:

COUNCIL Telephone Contact:

Metro Transit Rail Control Center
Telephone No. (612) 341-5710

TCWR Telephone Contact:

Mark Wegner, TCWR President
Telephone No. (320) 864-7204

3.5 Third Party Providers.

(a) In the event either party utilizes the services of a third party to provide any of its flagging, dispatch, maintenance, repair or replacement obligations hereunder, the party shall assure that such third party provider is qualified to perform such flagging, dispatch, maintenance,

repair and replacement obligations, on the Freight Rail Facilities, and the shared freight and LRT crossings at 5th Ave S, Blake Road, Wooddale Avenue, Beltline Blvd, and West 21st Street, has all certifications for such work, and is in full compliance with all 49 CFR Part 214 relating to third party contractors and industry standards including those of the American Railway Engineering and Maintenance-of-Way Association (AREMA). Any third party provider of maintenance or repair of the Freight Rail Facilities shall, immediately upon selection and thereafter at least sixty (60) days prior to the contract anniversary date, provide an annual maintenance plan, which shall include procedures to assure timely response to emergency repairs as well as matters subject to Section 3.1(c). The party utilizing the services of a third party provider shall make reasonable, good faith efforts to resolve any concerns of the other party regarding the annual maintenance plan prior to either party exercising the dispute resolution process set forth in Section 11. The use of a third party provider shall in no way diminish the obligations of each party to the other under Section 9 hereof.

(b) The Council agrees to consult and confer with TCWR before requesting proposals or bids from third parties.

SECTION 4. CONSTRUCTION OF ADDITIONS AND ALTERATIONS

4.1 Constructing Party Obligations. The party constructing Additions and Alterations (the "Constructing Party") shall use reasonable efforts to perform work on Additions and Alterations at such times and in such manner as not to unreasonably interfere with or delay the other party's service or facilities (i.e., the Freight Rail Service and Freight Rail Facilities or LRT Service and LRT Facilities).

4.2 Design Review.

(a) Subject to the exception in subsection (b) of this Section 4.2, in the course of designing Additions and Alterations, the Constructing Party shall notify the other party and generally describe such Additions and Alterations. If within ten (10) business days of the notification, the other party notifies the Constructing Party that it would like to review the plans for such Additions and Alterations, the Constructing Party shall have ten (10) business days to deliver to them. Within thirty (30) business days after receiving the plans, the other party will provide the Constructing Party with any comments regarding such plans, which shall be in writing. The Constructing Party shall have ten (10) business days to determine whether it will accept all of the other party's comments. If the Constructing Party does not accept all of the other party's comments, it shall notify the other party and, within fifteen (15) business days of such notice, the parties shall meet and confer regarding the unaccepted comments in an effort to resolve the issues posed by such comments. If the parties do not resolve the unaccepted comments, the constructing party shall not be obligated to incorporate them unless failure to do so would violate another provision of this Agreement or federal, state or local laws or regulations. Upon completion of final plans, the constructing party shall give a copy of the final plans to the other.

(b) Subsection (a) of this Section 4.2 shall apply to the design and construction of Additions and Alterations to the LRT Facilities only when the design or construction of such Additions or Alterations would Foul the Freight Rail Facilities.

(c) In no event may any Additions and Alterations performed by a Constructing Party unreasonably interfere with the provision of Freight Rail Service or LRT Service.

4.3 At-grade Rail Crossings. Additions and Alterations shall not include any Freight Rail Facility at-grade crossings of LRT Facilities or vice versa. To the extent a petition for a new crossing is filed with the State of Minnesota by any Third Party, TCWR reserves the option to oppose such crossing.

4.4 RESERVED

4.5 Federal Requirements. The Council used FTA funds to pay for modifications constructed under the Construction Agreement. FTA requires repayment of the undepreciated value of a federally-procured asset disposed of before the end of its useful life. Accordingly, the parties agree that the party responsible for paying for the removal of any such asset before the end of its useful life is responsible for the payment to the FTA for the undepreciated value of the asset. TCWR agrees that if it is responsible for paying the FTA, it will make such payment to the Council to be passed along to the FTA.

4.6 Expenses of Additions and Alterations. Unless otherwise provided in the Trackage Rights Agreements, each party is responsible for the cost and expense of the design and construction of Additions and Alterations it constructs. Any rail or other track material salvaged from Additions and Alterations to the Freight Rail Facilities shall be the property of the party paying for the related Additions and Alterations; provided further, that any replacement materials are of equivalent or higher quality and rail weight, and the useful life of any federally procured asset being replaced has been fully depreciated.

4.7 Insurance and Indemnification. The constructing party shall include the following insurance and indemnification requirements in contracts it procures for the construction of any Additions or Alterations, and shall require that its contractors include such requirements in any subcontracts the contractor lets for work in connection with any such Additions or Alterations:

(a) Unless otherwise agreed to in writing by the Parties, the contractor shall provide and maintain in force during the term of its contract a Commercial General Liability ("CGL") policy on an occurrence form basis occurrence form basis (utilizing ISO CG 00 01, or its equivalent), with limits of insurance no less than \$5,000,000 per claim and \$10,000,000 in the aggregate. The Council and TCWR shall be an additional insured on such policy, on a primary and non-contributory basis, utilizing ISO CG 20 26 07 04 and ISO CG 20 37 07 04, or their equivalent. The CGL policy must also be endorsed to remove any exclusion for any contractual liability assumed within fifty feet (50') of a railroad (ISO CG 24 17, or its equivalent).

(b) The contractor shall indemnify, defend, and hold harmless the Constructing Party, TCWR and its affiliates, subsidiaries, officers, directors, employees and agents, and the Council and its members, officers, directors, employees and agents from and against any Loss or Damage alleged to be related, whether in whole or in part, to the work of the contractor, including acts or omissions of its employees, subcontractors, representatives, agents, or anyone for whom the contractor may be liable.

(c) The contractor shall, and shall require its insurers to, waive any subrogation or recovery that may exist against the Constructing Party, TCWR and its affiliates, subsidiaries, officers, directors, employees and agents, and the Council and its members, officers, directors, employees and agents.

(d) The contractor shall also procure and maintain during the Work, Railroad Protective Liability insurance (ISO form CG 00 35 04 13 or its current equivalent), naming the TCWR and the Council as the only insureds on such policy. Unless otherwise agreed to in writing by the Parties, limits shall be negotiated according to project specifications but in no event shall be less than \$5,000,000 per occurrence and \$10,000,000 in the aggregate and contain the following provisions:

- Policy must define designated employees to include:
 - Any supervisory employee of TCWR and the Council at the job site;
 - Any employee of TCWR and the Council while operating, attached to, or engaged on work trains or other railroad equipment at the job site which are assigned exclusively to the contractor; and
 - Any employee of TCWR and the Council not within (1) or (2) who is specifically loaned or assigned to the work of the contractor for prevention of accidents or protection or property regardless at whose cost those services are provided.
- Policy shall be endorsed to include:
 - Pollution Exclusion Amendment (ISO Form CG 28 31 04 13) or its current equivalent; and
 - Limited Seepage and Pollution Endorsement (including Evacuation Expense Coverage) or its current equivalent.
- Contain no language excluding punitive damages.
- No other endorsements restricting coverage may be added, except as may be reasonably agreed to by TCWR and Council.

(e) The contracting party shall upon request provide the other party with a certificate of insurance evidencing the required insurance coverage.

SECTION 5 ACCESS AND NOTICE RIGHTS.

5.1 Access.

(a) Subject to all applicable rules and regulations of the FRA, the accessing party shall have the right to enter upon the Facilities operated upon by the other after reasonable advance notice to and written or email authorization by the other party that will not be unreasonably withheld. Each party is required to notify the other party as to the time and place anticipated work will take place if the work will, or will have the potential to, Foul the tracks of the other party, except in the event of emergency work undertaken in accordance with Section 5.1(c); and:

(b) In areas having drivable access on only one side of the Corridor, the accessing party may use the drivable access, but may only cross the tracks of the other party on foot.

(c) In the event of an emergency of any kind, the accessing party may enter upon the other party's Facilities to warn the other party's trains or vehicles by any reasonable means, including, without limitation, use of flaggers or placement of torpedoes upon the other party's tracks. The accessing party shall immediately notify the other party of such entry by telephone at the emergency telephone number set forth in Section 3.3.

(d) In the event the Council sells, transfers, leases, or licenses any portion of the Corridor to a third party, the parties will confer on the need for an access easement and appropriate access easement terms related to TCWR's access to the Freight Rail Facilities for maintenance.

(e) In the event the Council sells, transfers, leases, or licenses any portion of the Trail to a third party, the Council shall convey an Access Easement in the form substantially shown on Exhibit G ensuring the right of access by TCWR to the Freight Rail via the Trail. The Council will provide TCWR an opportunity to review and comment on any Trail related operations and maintenance agreement prior to execution.

5.2 Trained Personnel. Entry by an accessing party on the other party's Facilities shall be only by the accessing party's personnel trained in the other party's safety practices. Standard operating procedures for training shall be addressed by the Coordination Committee.

5.3 Hazardous Materials.

(a) Hazardous Materials may be brought onto Facilities used by the other party only to the extent necessary for a party to meet its obligations or exercise any of its rights under this Agreement, and in all events in compliance with all applicable Environmental Laws. For purposes of the prior sentence, necessity is presumed with respect to any Hazardous

Materials moved by TCWR in Freight Rail Service. Council acknowledges it is aware TCWR moves such commodities in Freight Rail Service on the Corridor.

(b) Subject to Sections 8 and 9 of this Agreement, in the event of leakage, spillage, release, discharge or disposal of any Hazardous Materials (including, without limitation, by explosion) by a party (the "Releasing Party") when upon the other party's Facilities on the Corridor as provided in Section 5.1, the Releasing Party shall give the other party immediate notice of such event, and at the Releasing Party's sole cost and expense, clean or remediate the other party's Facilities to the standards required by law or by any governmental agency or public body having jurisdiction in the matter. Should any such leakage, spillage, release, discharge or disposal result in a fine, penalty, cost, or charge, the Releasing Party shall promptly and fully pay such fine, penalty, cost or charge. The Council shall be deemed the Releasing Party, responsible for any such leakage, spillage, release, discharge or disposal, by any third party it admits to the Corridor. TCWR shall be deemed the Releasing Party, responsible for any such leakage, spillage, release, discharge or disposal from rail cars in haulage or by any third party with detour rights on the Corridor.

(c) Subject to Sections 8 and 9 of this Agreement, in the event TCWR is the Releasing Party, the Council shall have the right (but not the obligation) to perform some or all of the releasing party's obligations under Paragraph (b) of Section 5.3 in lieu of TCWR, provided the Council shall notify TCWR of the Council's election to do so as soon as is practicable. In such case, TCWR shall reimburse the Council for the documented out-of-pocket cost thereof incurred by the Council. Prior to exercising its rights under this Section 5.3(c), the Council shall notify TCWR and afford TCWR reasonable opportunity to perform the obligations referenced herein.

5.4 Permission for Entry and Flagging.

(a) The Council will notify TCWR of any third-party work that has the potential to Foul freight rail tracks. Council shall require that Council's contractors desiring to work within Fouling distance of freight tracks follow mutually agreed upon protocols and guidelines developed by the Coordination Committee as outlined in Section 6.2.

(b) TCWR shall require that TCWR's contractors desiring to work within Fouling distance of LRT Facilities to follow mutually agreed upon protocols and guidelines developed by the Coordination Committee as outlined in Section 6.2. TCWR must obtain written permission from the Council prior to TCWR's contractors entering upon the Corridor, except in the event of emergency work under Section 3.2 in which case TCWR shall notify the Council as soon as reasonably practicable.

(c) With respect to the Council's responsibilities outlined in this Agreement, TCWR shall provide for flaggers at Council's expense for freight train traffic control on the Kenilworth Corridor; if flagging is required for LRT traffic control, it shall be provided by the Council at the Council's expense. Payment requirements for flaggers will be outlined in a separate Purchase Order issued as needed.

(d) All flaggers shall be required to attend and complete On Track Safety (OTS) training.. The parties will provide to the other party certification that the flaggers have attended and successfully completed FRA compliant OTS training.

SECTION 6. COORDINATION COMMITTEE

6.1 Representatives and Purpose. The Council, TCWR, and HCRRA shall establish an advisory Coordination Committee consisting of at least two (2) representatives of each entity. The parties' initial representatives are designated in Exhibit H. Each party may at any time designate other representatives for itself by providing notice in accordance with this Agreement. The Coordination Committee shall be a forum for the parties to share information, discuss matters submitted by one party to the other party for review and/or approval, and progress resolution of any issues between the parties with respect to this Agreement. The Coordination Committee shall meet at least annually (in person or by telephone) and also as necessary to address issues between the parties that require prompt resolution, including maintenance, repair, and replacement requests. The first meeting of the Coordination Committee shall occur within sixty (60) days of the Effective Date. The Coordination Committee shall not be a forum for discussions or negotiations involving amendments, supplements, or modifications, breaches or waivers of any terms and conditions of this Agreement or any exhibits thereto, or the Trackage Rights Agreements.

6.2 Protocols and Guidelines. Within sixty (60) days of the Construction Completion Date, the Coordination Committee shall share the protocols and guidelines for the standard operating procedures related to flagging, training and work activities adjacent to freight rail and LRT tracks for the other party's records. The Coordination Committee shall identify safety conflicts in the protocols and guidelines and cooperatively develop standards agreeable to both parties.

SECTION 7. RESERVED

SECTION 8. INSURANCE

8.1 Coverage Required to be Maintained by the Council.

(a) Prior to testing Council's light rail vehicles, Council shall secure and maintain railroad general liability insurance in an amount that is at least the amount required by the Minnesota Statutes, Section 473.4052, related to light rail transit or U.S.C. 49, Section 28103(a)(2), as indexed under Fixing America's Surface Transportation Act, Public Law 114-94, section 11415, whichever is greater, but in no event less than the amount otherwise carried by Council, which insurance shall be accessible to and for the mutual benefit of both TCWR and Council in accordance with this Agreement . In satisfying this obligation, the Council may procure insurance that also provides coverage for other freight railroads operating within the light rail corridor that have entered shared use agreements with the Council. Such insurance shall be effective prior to testing LRT vehicles or equipment and shall cover, consistent with this Agreement, Loss or Damage and Environmental Tort Liability (but need not cover

Environmental Loss or Damage), alleged by any Party to have arisen in whole or in part out of LRT Service, LRT Facilities, or LRT Parties, including, without limitation, negligence (including specifically any action arising pursuant to the Federal Employers' Liability Act), gross negligence, recklessness, and willful and wanton misconduct of TCWR ("**TCWR Covered Liability**"). Loss or Damage not related in any way to LRT Service, LRT Facilities, or LRT Parties shall not be deemed a TCWR Covered Liability (i.e., it need not be covered by insurance under this Agreement). Such insurance may include a reasonable deductible or self-insured retention not to exceed \$10,000,000; provided, that the Council maintains a substantially similar financial condition as of the Effective Date and maintains a funded reserve in the amount of retention, which shall be replenished should any portion of the retention be depleted. Council shall immediately suspend Council LRT Service operations if such reserve account is not fully funded to the amount of the self-insured retention maintained under the insurance policies required by this Agreement and shall not recommence LRT Service operations until said reserve account becomes fully funded; and if Council elects to include any deductible or self-insured retention, Council shall itself directly cover, in lieu of insurance, any and all TCWR Covered Liability that would otherwise be covered in accordance with the provisions of this Agreement by Council insurance if Council elected not to include a deductible or self-insured retention, and such direct coverage by Council shall be in an amount equal to the amount of Council's actual deductible or self-insured retention. In the event that all or any portion of the insurance required by this Agreement is exhausted, Council's insurance policy or policies shall have the ability to provide limits adequate to cover future losses within the same annual policy period. To satisfy this requirement, Council's insurance shall include either a reinstatement option or an annual aggregate of at least twice the required per occurrence limits required herein, provided that either alternative provides coverage per occurrence of no less than the greater of the amount required by the Minnesota Statutes, Section 473.4052, related to light rail or U.S.C. 49, Section 28103(a)(2), as indexed under Fixing America's Surface Transportation Act, Public Law 114-94, section 11415, for each TCWR Covered Liability, but is not required to exceed an aggregate for each policy period of twice the amount of the per occurrence limit.

(b) All-risk property insurance (ISO CP 10 30 special causes of loss form or its equivalent), subject to usual and customary exclusions, with property damage limits equal to the replacement cost of the property and modifications, except for commonly sub-limited perils/coverages such as earthquake, flood, terrorism, and business interruption. With respect to terrorism, the sub-limit shall cover both certified and non-certified terrorism events, subject to commercial availability. This insurance, or self-insurance, shall provide TCWR additional insured status with respect only to business interruption. TCWR will provide necessary financial documents required to obtain or maintain business interruption coverage.

(c) Subject to Section 8.1.C, the railroad general liability insurance required hereunder may be written on an occurrence basis or a claims-made basis, and shall provide coverage for personal injury, bodily injury and death (including coverage under the Federal Employers Liability Act), and property damage (including, but not limited to, property listed on

any bill(s) of lading, and Rolling Stock). Such insurance shall include blanket contractual coverage, including coverage for this Agreement and specific coverage for the indemnity provisions set in Section 9.

(d) In the event Council purchases railroad general liability insurance on a claims-made basis, Council hereby agrees to procure insurance with the ability to trigger extended reporting period(s) of three (3) years (on a cumulative basis) beyond expiration, cancellation or termination of the policy, intended expressly to cover events that may have occurred while the policy was in force. Council shall trigger such extended reporting period(s) for a three (3) year period (on a cumulative basis), in the event of the expiration, cancellation, or termination of any such policy.

(e) Council must provide certificates of insurance from an authorized individual evidencing the required coverage of this Section 8 at least annually and in the event of a renewal or material change in coverage. Within twenty (20) days of issuance of the policies, copies of the policies shall be provided to TCWR by Council. Acceptance of a certificate or copy of a policy that does not comply with this Section 8.1 shall not operate as a waiver of Council's obligations hereunder.

(f) Insurance obtained pursuant to this Section 8.1 shall be primary and non-contributing as respects any level of self-insurance or coverage maintained by TCWR. The certificate(s) of insurance must reflect that the above wording is included in all policies required herein. Any other coverage maintained by TCWR shall be excess of this coverage herein defined as primary and shall not contribute with it. Nothing in this Section 8 shall be interpreted to prevent Council from requiring any non-TCWR contractor to procure primary insurance as a condition of a particular contract, and, in that event, the insurance required by this Section 8 may be excess to such non-TCWR contractor's primary insurance, provided that TCWR will be protected to the same extent as if Council had not secured services from such non-TCWR contractor.

(g) All policies required herein shall include a severability of interest endorsement (or separation of insureds language within the policy), and TCWR shall be named as an additional insured on all required policies. The severability of interest (or separation of insureds) and TCWR's status as an additional insured shall be indicated on all the certificates of insurance. TCWR shall have the right to review all language of the additional insured endorsement(s)

(h) If Council maintains broader coverage and/or higher limits than those stated in this Agreement, TCWR requires and shall be entitled to the broader coverage and/or higher limits. Any available proceeds in excess of the limits specified herein shall be available to TCWR.

(i) Without waiving any statutory liability limits, common law or statutory immunities applicable to third party claims arising from Loss or Damage, these insurance provisions are intended to be a separate and distinct obligation on the part of Council. Therefore, these provisions shall be enforceable and Council shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the services or other work is performed under this Agreement.

8.2 Coverage Required to be Maintained by TCWR

TCWR shall procure, and maintain in effect throughout the term of this Agreement, or longer if required elsewhere in this Agreement, or any extensions thereof, railroad liability insurance providing defense and coverage for Loss or Damage alleged by any person whomsoever to have arisen solely out of Freight Rail Service or Freight Rail Facilities and not related to or involving in any way LRT Service, LRT Parties or LRT Facilities. Such insurance shall have a per occurrence limit of not less than \$10,000,000 (ten million dollars) with a self-insured retention of \$5,000,000; provided, however, that TCWR shall be permitted to increase the amount of the self-insured retention at any time, upon sixty (60) days written notice by TCWR to the Council, if TCWR demonstrates to the Council's reasonable satisfaction that it has established safeguards to ensure that the Council's risk exposure is not greater than it would be with the \$5,000,000 deductible or self-insured retention. Such policy shall name the Council as an additional insured by endorsement on a primary and non-contributory basis, and shall include a waiver of subrogation in favor of the Council.

8.3 Other Requirements.

(a) Prior to closing on the Kenilworth Corridor and Bass Lake Spur, TCWR shall deliver to the Council a certificate of insurance with an additional insured endorsement referencing this Agreement evidencing coverage as required hereunder and annually thereafter prior to the expiration of coverage. Upon request, TCWR will provide copies of the insurance policies to the Council. Acceptance of a certificate or copy of a policy(ies) that does not comply with this Agreement shall not operate as a waiver of TCWR's obligations.

(b) Each policy of insurance required by the parties in this Section shall not be permitted to expire or be canceled or materially changed except after thirty (30) days' prior written notice has been given by each Party to the other, except that each Party shall provide the other at least ten (10) days' notice in the event of cancellation due to non-payment of a premium.

(c) Each policy of insurance required by this Agreement must be written by financially sound insurers who may lawfully do business in the State of Minnesota with a current Best's Guide Rating of A- and Class VII or better, unless otherwise agreed to by the parties.

(d) The parties hereby waive subrogation or other recovery rights against each other, whether pursuant to insurance or as a self-insured, and agree to require their respective insurers to waive subrogation or other recovery rights against the other party and such other party's insurers, to the extent any liability for Loss or Damage for property damage, bodily

injury (including death), or other loss may be covered by the proceeds of insurance. Council further waives its rights of recovery, and its insurers also waive their rights of subrogation, against TCWR Parties, for property damage to LRT Facilities and light rail vehicles related to LRT Service.

(e) No more frequently than every five years from the date LRT revenue service begins, or the latest evaluation, whichever is later, either of the Parties may request a meeting, at which point the Parties shall meet within a reasonable amount of time and confer in good faith to reassess and re-evaluate the exposure of TCWR, and the insurance requirements set out in this Section 8.1 (including, but not limited to, the amount of deductible or self-insurance retention and major changes in the insurance market affecting availability and cost of railroad liability insurance), and to reopen and renegotiate a new level of insurance intended to reflect TCWR's exposure to liability, and to make an increase or reduction, if necessary, to the insurance coverage required by this Section 8.1. If the insurance limits prescribed by Minnesota Statutes, Section 473.4052, related to light rail or U.S.C. 49, Section 28103(a)(2), as indexed under Fixing America's Surface Transportation Act, Public Law 114-94, section 11415 are adjusted upward, the Council will provide limits consistent with the change in insurance limits to reflect the greater of Minnesota Statutes, Section 473.4052, related to light rail or U.S.C. 49, Section 28103(a)(2), as indexed under Fixing America's Surface Transportation Act, Public Law 114-94, section 11415 on the date the statutory prescription of increased statutory limits become effective, regardless of the policy period of the pre-existing insurance.

(f) The fact that insurance (including, without limitation, self-insurance) is obtained by either party shall not be deemed to release or diminish the liability of each to the other, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recovered by either party from the other shall not be limited by the amount of the required insurance coverage. This provision shall in no way be interpreted as waiver of any party's immunity or liability limits to third-parties.

(g) For purposes of this Section and Section 9, references to TCWR shall include its subsidiaries, successors, assigns, and affiliates, and TCWR's officers, directors, employees, shareholders, agents, attorneys, and contractors.

(h) On the date that is five years after the latest of each of the following conditions to be satisfied: (i) TCWR or Council no longer operate trains on or across the Corridor, (ii) TCWR or Council does not maintain any segment of the Corridor on which the service is provided, and (iii) no events giving rise to actual or potential claims for which TCWR or Council would be liable under this Agreement have occurred, the insurance requirements of this Section shall not apply.

(i) In the event that the Council cannot or does not obtain the insurance coverage required under this Section, if such insurance is initially procured but later lapses for any reason or is no longer reasonably commercially available, or if limits are exhausted due to one or more losses, claims, incidents or occurrences such that full per occurrence limits are not

available (subject to the double aggregate requirement in Section 8.1 (a) or if changes to the relevant federal or state law make maintaining such insurance impossible or materially compromises the liability protections provided to TCWR in this Section and Section 9, or the amount of available coverage falls below the limits set forth in Section 8.1(a), Council shall immediately give TCWR actual notice of such lapse or other occurrence. Further, to the extent that TCWR is thereby deprived of the protection it would otherwise have had under this Agreement, the Parties agree to negotiate in good faith to ensure equivalent protection for TCWR, and if agreement is not reached regarding the equivalent protection required, then, upon written demand by TCWR, Council shall suspend Council LRT Service operations until such time as the equivalent protection is obtained. No such agreement shall relieve Council of its obligations under this Agreement, including, but not limited to, those contained in Section 9.

SECTION 9. ALLOCATION OF LIABILITY FOR LOSS OR DAMAGE AND INDEMNITY

9.1 General Intent. In allocating liability for Loss or Damage, the Parties specifically acknowledge and agree that TCWR should bear no risk of liability for Loss or Damage that would not exist but for LRT Service, LRT Parties, or LRT Facilities.

9.2 Loss or Damage Related to LRT or Freight Rail Service. It is the intention of the Parties that the respective insurance procured by the Council and TCWR under Sections 8.1 and 8.2 of this Agreement is intended to cover the Council's and/or TCWR's liability for Loss or Damage and, so long as and to the extent it does, it shall be exhausted prior to allocation of liabilities under Section 9.3 hereof. To the extent it does not for any reason apply or cover the Loss or Damage, then allocation of liabilities shall be as set forth in Section 9.3.

9.3 Allocation of Liability. If the insurance procured pursuant to Sections 8.1 or 8.2 does not cover the Council's and/or TCWR's liability for Loss or Damage, the parties agree, subject to Section 9.3(d), to the following allocation of liability for Loss or Damage based on the general intent expressed in 9.1.

(a) TCWR shall bear, hold harmless, indemnify and defend Council from and against all Loss or Damage to persons whomsoever or property whatsoever where the Loss or Damage is the result of Freight Rail Service or Freight Rail Facilities and does not relate to or in any way involve LRT Service, LRT Parties, or LRT Facilities, or is a breach of its obligations under this Agreement, except that it is understood and agreed that TCWR shall bear no liability for Loss or Damage involving any environmental conditions existing prior to 1998 or not arising from TCWR's presence or operations or the acts or omissions of TCWR contractors or subcontractors.

(b) The Council shall bear, hold harmless, indemnify and defend TCWR from and against all Loss or Damage to persons whomsoever or property whatsoever where the Loss or Damage results in any way from LRT Service, LRT Parties, LRT Facilities, or Council

Freight Activity, is otherwise a Loss or Damage that would not have occurred but for the presence of LRT Service, LRT Parties or LRT Facilities, or is a breach of Council's obligations under this Agreement, whether or not the Loss or Damage arises in contract, warranty, tort, or other legal theory, including, but not limited to, negligent acts or omissions (including, but not limited to, negligent acts or omissions of TCWR whether active or passive and of any degree or type including sole negligence), any action arising pursuant to the Federal Employers' Liability Act, any violation of statute, rule, or regulation, strict liability, absolute liability, or other fault or legal theory. However, the Council's indemnification of TCWR for Council Freight Activity does not extend to Loss or Damage to the extent caused by negligent acts or omissions of TCWR (including, but not limited to, negligent acts or omissions whether active or passive and of any degree or type including sole negligence).

(c) The indemnification obligations hereunder do not constitute a waiver of or operate to defeat any other immunities, limitations, or defenses available under any other statute or common law as to third parties. The Council and TCWR, with respect to each other only, hereby waive any and all immunities or limits to liability under statute or common law with respect to Loss or Damage for which they have assumed an indemnification obligation hereunder.

(d) If any provision of this Agreement purports to indemnify a Party against Loss or Damage and such indemnification would be prohibited by or unenforceable under the binding laws of the State of Minnesota (including a determination that indemnification under the circumstances involved is against public policy of the State of Minnesota), the indemnity provided by such provision shall be deemed to be limited to and operative only to the maximum extent permitted by law. Further, to the extent that TCWR is thereby deprived of the protection it would otherwise have had under this Agreement, the Parties agree to negotiate in good faith to ensure equivalent protection for TCWR, and if agreement is not reached regarding the equivalent protection required, then, upon written demand by TCWR, Council shall suspend Council LRT Service operations until such time as the equivalent protection is obtained.

SECTION 10. CLAIMS

10.1 Claims for which Council is Responsible. The Council shall have the exclusive right to defend, investigate, settle or cause to be settled all claims for Loss or Damage covered by the insurance required in Section 8.1. TCWR agrees to fully cooperate with the Council, including sharing relevant information and providing access to necessary witnesses and other company experts or expertise, without additional cost to the Council. If such claim or lawsuit is made against TCWR, TCWR shall immediately tender such claim or lawsuit to the Council.

10.2 Claims for which TCWR is Responsible. TCWR shall have the exclusive right to defend, investigate, settle or cause to be settled all claims for Loss or Damage for which TCWR is responsible under the terms of this Agreement. The Council agrees to fully cooperate

with TCWR, including sharing relevant information and providing access to necessary witnesses and other agency experts or expertise, without additional cost to TCWR. If such claim or lawsuit is made against Council, Council shall immediately tender such claim or lawsuit to TCWR.

SECTION 11. DISPUTE RESOLUTION

11.1 Process. A dispute resolution process shall be used for any unresolved issue, dispute or controversy between the parties before any legal remedies are exercised. The dispute resolution process contains a three-level dispute resolution ladder that escalates a dispute from the project management level through the executive management level. TCWR is represented by the Vice President Operations or designee. The Council is represented from level 1 to 3 in the following order: Deputy General Manager, General Manager, and Regional Administrator. At each level, representatives of the parties shall meet and continue to explore resolution until either party determines, in good faith, that effective resolution is not possible at the current level, and notifies the other party that the process is elevated to the next level. If either or both parties make such a determination at any point during issue resolution at level 3, then the dispute resolution process has been exhausted.

11.2 Pending Resolution. While the Dispute Resolution process provided for in Section 11.1 is underway, the business and the operations to be conducted under this Agreement, to the extent that they are the subject of such controversy, shall continue in the manner and form existing prior to the arising of such dispute.

SECTION 12. RESERVED

SECTION 13. MISCELLANEOUS PROVISIONS

13.1 Termination or Assignment.

(a) Except as provided in this Section, this Agreement and any rights and obligations created by it may not be assigned in whole or in part by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, this Agreement may be assigned by a Party without the prior written consent of the other Party (i) as a result of a merger or corporate reorganization, consolidation, change of control, or sale of substantially all of its assets; (ii) to an affiliate of the assigning Party, where the term "affiliate" means a corporation, partnership, or other entity controlled, controlling, or under common control with the assigning Party; or (iii) if the transferor is a public entity, the transfer of the responsibilities, duties, authority, rights, and obligations of such public entity to another federal, state or local, joint powers, public entity to which such responsibilities, duties, authority, rights, and obligations have been transferred by operation of law; and (iv) only if such transferee entity is legally able to perform all obligations hereunder; or (v) by operation of law.

(b) Notwithstanding the foregoing restrictions on transfer contained in this Section, all of the grants, covenants, terms, provisions and conditions herein shall bind the Parties hereto and their respective successors and assigns.

13.2 Severability. If any language in this Agreement, or the application thereof to any person or circumstance, is found to be invalid or unenforceable in any respect ("invalid language"), the remainder of this Agreement, and the application of such language to other persons or circumstances nevertheless will be binding with the same effect as if the invalid language were originally deleted. The parties agree to bargain in good faith to reform this Agreement or replace any invalid language with enforceable language that comes as close as possible to the intention of the invalid language.

13.3 Notices. Except as provided in Section 3 or as otherwise expressly provided in this Agreement, all notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the applicable telecopy number listed below and the transmission is confirmed by mail as provided under (b) below which is deposited on the first business day after the transmission, or if made by e-mail to the applicable e-mail address below and the transmission is confirmed telephonically on the same day as transmission, followed by a hard copy provided by mail as provided under (b) below, or (b) at the earlier of actual receipt or the third business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

COUNCIL: METROPOLITAN COUNCIL
390 Robert Street N.
St. Paul, MN 55101
Attn: Deputy Chief of Operations Officer - Rail
Telephone No.: (612) 341-5601

TCWR: TWIN CITIES & WESTERN RAILROAD COMPANY
2925 12th Street East
Glencoe, MN 55336
Attn: Vice President Operations
Telephone No.: (320) 864-7200
Facsimile: (320) 864-7220

With a copy to: Thomas V. Seifert
Seifert Law, PLLC
7300 Hudson Blvd. Suite 109
Oakdale, MN 55128
Telephone No.: (651) 738-1007

13.4 Headings. The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement.

13.5 Integration, Amendment, and Waiver. This Agreement is the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations, and understandings, of the parties concerning the subject matter hereof, provided, however, that the terms of this Agreement, the Construction Agreement, the HCRRA Trackage Rights Agreement, and the CP Trackage Rights Agreement are intended to be complementary and shall be interpreted so as not to conflict with one another.

In the event of any conflict between this Agreement and the HCRRA Trackage Rights Agreement or CP Trackage Rights Agreement, this Agreement shall control.

No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both parties. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13.6 Counterparts. This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

13.7 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Minnesota or federal law where applicable.

13.8 Time of Essence. Time is of the essence to each and every provision in this Agreement that has time constraints set forth therein.

13.9 Not for the Benefit of Others. This Agreement is for the exclusive benefit of the parties and HCRRA and not for the benefit of any other third party. Nothing herein shall be construed to create or increase any right in any third party not listed to recover by way of damages or otherwise against either of the parties hereto.

13.10 Inspection and Audit. To the extent applicable, the Parties incorporate Minnesota Statutes, section 16C.05, subdivision 5. However, by entering into this Agreement, TCWR is not waiving and does not waive its right to refuse to allow or limit the examination of its records, books, documents, and accounting procedures and practices provided by any applicable law, statute, rule or regulation, including, but without limitation, the Minnesota Government Data Practices Act. TCWR shall permit this examination and audit at any time during regular business hours. Audits conducted by the Council under this provision shall be in accordance with generally accepted auditing standards and the Council shall give reasonable advance notice to TCWR. Financial adjustments resulting from any audit by the Council shall be paid in full within thirty (30) days of TCWR's receipt of audit.

13.11 RESERVED

13.12 Force Majeure. The parties will be excused from performance of any obligations under this Agreement where such non-performance is caused by any event beyond the reasonable control of the party, which may include, but not be limited to, an order, rule, or regulation of any federal, state, or local government entity, work stoppage or labor dispute resulting in a strike or slowdown, extraordinary unavailability of essential materials, services or products from suppliers, accident, derailment, natural disaster, an act of war or terrorism, or civil disorder ("Force Majeure Event"); provided that the party excused hereunder shall use all reasonable effort to minimize its non-performance and to remove the Force Majeure Event in the shortest practical time.

13.13 Equitable Remedies Upon Material Breach. If either party is in breach of a material provision of this Agreement, then, in addition to any remedies at law, the other party may seek equitable relief, including, but not limited to, an injunction to suspend the other party's activities (Freight Rail Service or LRT Service, as applicable) for the duration of such breach. This provision is so that (1) TCWR can protect itself (and its customers) from the potential harms to its business associated with the presence of LRT Service and LRT Facilities and (2) the Council can protect itself (and its passengers) from the potential harms to the LRT Service associated with the presence of Freight Rail Service or Freight Rail Facilities. Notwithstanding the foregoing, TCWR customers and Council LRT passengers are not third-party beneficiaries of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective on the Effective Date as defined in Section 1(x), by their duly authorized representatives. Furthermore, this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

TWIN CITIES & WESTERN RAILROAD
COMPANY, a Minnesota corporation

By: Mark Wegner
Name: MARK WEGNER
Title: President & CEO
Date: July 11, 2018

METROPOLITAN COUNCIL, a public
corporation and political subdivision of the
State of Minnesota

By: Weston Kasstra
Name: Weston Kasstra
Title: Regional Administrator
7/13/2018

Hennepin County Regional Railroad Authority ("HCRRA"), a political subdivision of the State of Minnesota, hereby consents to the relevant parts of this Agreement, including but not limited to Sections 2.1, 3.1(b), 6.1, 13.5, and 13.9.

HENNEPIN COUNTY REGIONAL RAILROAD
AUTHORITY

By: _____

Chair of Its Board

Reviewed by the
County Attorney's Office

[Signature]

Date: July 19, 2018

And _____

Deputy/Clerk of HCRRA Board

EXHIBIT LIST	
Exhibit A	RESERVED
Exhibit B	RESERVED
Exhibit C	RESERVED
Exhibit D	Limits of the Corridor
Exhibit D-1	General Location of Trails
Exhibit E	RESERVED
Exhibit F	RESERVED
Exhibit G	Form of Access Easement
Exhibit H	Coordination Committee Designees

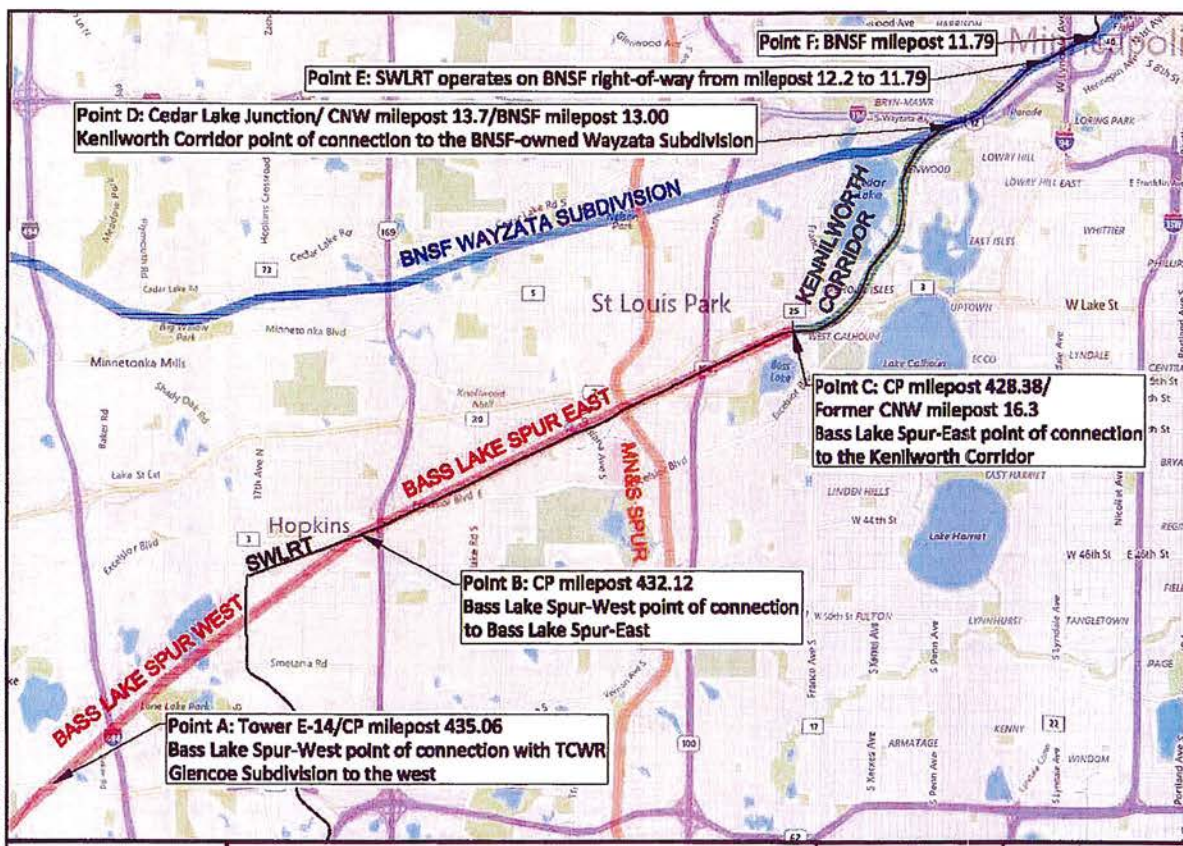
**Exhibit A
RESERVED**

Exhibit B
RESERVED

Exhibit C
RESERVED

Exhibit D
Limits of the Corridor

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SOUTHWEST LRT
LIMITS OF THE CORRIDOR





Exhibit D-1
General Location of Trails

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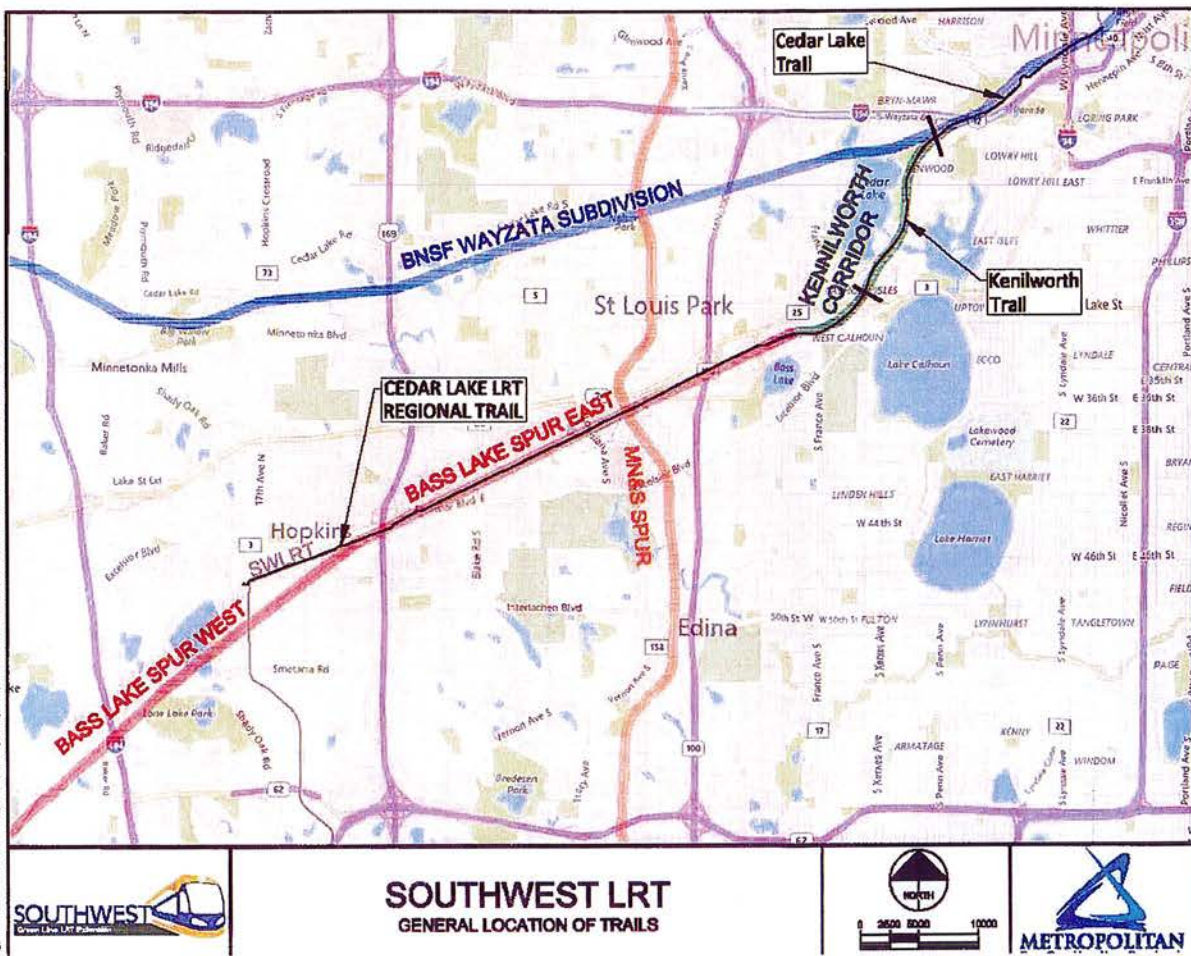


Exhibit F
RESERVED

Exhibit G
Form of Access Easement

(Above space is reserved for Recording Information)

FREIGHT RAIL MAINTENANCE AND ACCESS EASEMENT AGREEMENT

THIS FREIGHT RAIL MAINTENANCE AND ACCESS EASEMENT AGREEMENT (“*EASEMENT*”) is made and entered into this _____ day of _____, 201__, by and between the METROPOLITAN COUNCIL, a public corporation and political subdivision under the laws of the State of Minnesota (“*Grantor*”) and the TWIN CITIES & WESTERN RAILROAD COMPANY a corporation under the laws of the State of Minnesota (“*Grantee*”).

WITNESSETH:

WHEREAS, Grantor owns the Property, or the Corridor as defined in Article 1 (F) below and which is depicted on **Exhibit A** attached hereto and incorporated herein by this reference; and

WHEREAS, a portion of the Property has been established as a public bicycle and pedestrian trail (“*Trail*”) which lies between certain county roads and city streets (“*Public Right of Way*”) and portions of the Freight Rail Facilities; and

WHEREAS, Grantor, as part of its METRO Green Line LRT Project, intends to realign the Trail on the Property and, after construction, intends to convey the Trail and underlying property and easements (“*Trail Parcel*”) to Hennepin County or the Hennepin County Regional Railroad Authority (“*HCRRA*”); and

WHEREAS, prior to the above-referenced conveyance, Grantor desires to grant to Grantee a non-exclusive easement from the Public Right of Way unto, over and across those sections of the Trail Parcel as depicted and described on **Exhibit B** for Grantee to access and service the Freight Rail Facilities consistent with the terms of this Easement, the Co-Location Agreement, the Bass Lake Spur TRA and/or the Kenilworth TRA (as applicable).

NOW THEREFORE, for the sum of One Dollar \$1.00 to be paid by Grantee to Grantor, and in consideration for the mutual promises contained herein, the parties hereto agree as follows:

1. Definitions.

A. “*Bass Lake Spur*” means Bass Lake Spur – East and Bass Lake Spur – West so long as both properties are owned by the Council. If the Council sells any portion of the Bass Lake Spur, then “Bass Lake Spur” shall refer only to the portion still owned by the Council.

B. “*Bass Lake Spur – East*” means the Council-owned portions of the Bass Lake Spur from the point of connection to the Bass Lake Spur – West at CP milepost 432.12 to the point of connection to the Kenilworth Corridor at Cedar Lake Junction (CP milepost 428.38, former CNW milepost 16.3) in the City of St. Louis Park and also includes the connecting track to the “Camden Line,” known locally as the CP MN&S.

C. “*Bass Lake Spur – West*” means the Council-owned portions of the Bass Lake Spur from Tower E-14 at CP milepost 435.06 in the City of Minnetonka to the point of connection to the Bass Lake Spur – East at CP milepost 432.12.

D. “*Bass Lake Spur TRA*” means that certain Trackage Rights Agreement between CP and Grantee dated July 26, 1991, as amended by a Relinquishment Agreement dated July 27, 1993, and Supplemental Agreements dated July 27, 1993, and April 30, 1996 to the extent assigned to HCRRA by the Partial Assignment Agreement between HCRRA and CP.

E. “*Co-Location Agreement*” means that certain agreement entered into by and between Grantor and Grantee related to the co-location of light rail and freight rail in the Corridor.

F. “*Construction Agreement*” means that certain agreement entered into by and between Grantor and Grantee related to the construction of the SWLRT Project.

G. “*Corridor*” or “*Property*” means the Council-owned Kenilworth Corridor and the Council-owned Bass Lake Spur and additional land adjacent to the Bass Lake Spur - East and the Kenilworth Corridor acquired by Council and required for the shift of the freight rail track to a different alignment and other construction work on Freight Rail Facilities as described in the Co-Location Agreement.

H. “*Freight Rail Facilities*” means all rails, fastenings, switches, switch mechanisms and frogs with associated materials, ties, ballast, signals and communications devices (and associated equipment, including, but not limited to, wayside positive train control equipment as required by a regulatory body with jurisdiction over freight rail), drainage facilities, other track material, Automatic Warning Devices, roadbed, embankments, bridges, trestles, culverts within the Corridor, and any other structures or things necessary for the support thereof and, if any portion thereof is located in a thoroughfare, the term includes pavement, crossing planks and other similar materials or facilities used in lieu of pavement or other street surfacing materials at vehicular and pedestrian crossings of tracks, and any and all structures and facilities required by lawful authority in connection with the construction, renewal, maintenance and operation of any of the foregoing, to the extent any of the above are necessary or related to the provision of freight rail service as described in the Co-Location Agreement.

I. “*Kenilworth Corridor*” means the Council-owned property from former CNW milepost 16.3 (CP milepost 428.38) in the City of St. Louis Park, easterly to former CNW milepost 13.7 (BNSF milepost 13.0) at a point of connection with BNSF in the City of Minneapolis.

J. “*Kenilworth TRA*” means that certain Trackage Rights Agreement between CP, Grantee and HCRRA and an Easement Agreement, both dated August 10, 1998, and in turn modified by a Supplement and a Railroad Easement dated July 30, 2002, and with reference to that certain Settlement Agreement, denominated A121128, dated on or about August 1, 2012.

2. Grant of Freight Rail Maintenance and Access Easement. Grantor hereby grants and conveys to Grantee, its agents, permittees, successors and assigns, a permanent, non-exclusive vehicular and pedestrian access easement from the Public Right of Way onto, over and across portions of the Trail Parcel, as depicted on **Exhibit B**, to, without limitation, access the Freight Rail Facilities for the purposes of maintaining, repairing or replacing the Freight Rail Facilities. This Easement is granted subject to all applicable rules and regulations of the Federal Railroad Administration and pursuant to Section 5 of the Co-Location Agreement and is granted subject to the terms and conditions of the Co-Location Agreement, the Bass Lake Spur TRA and/or the Kenilworth TRA (as applicable).

3. Covenant of Ownership. Grantor covenants that it is the lawful owner and is in lawful possession of the Property and has lawful right and authority to convey and grant the Easement described herein. This Easement shall run with the land and apply to all interests now owned or hereafter acquired or conveyed.

4. Termination or Amendment of Easement. This Easement will terminate if Grantee abandons its Freight Rail Facilities or may be terminated or amended by an agreement in writing signed by the parties or their successors and assigns. In the event of any such termination or amendment, the parties agree to execute a recordable document to memorialize of record any such termination or amendment.

5. Repair and Liability. Grantor and Grantee each agree that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof unless otherwise provided for in the Co-Location Agreement, the Bass Lake Spur TRA or the Kenilworth Corridor TRA (as applicable). Grantee agrees to repair at its expense any physical damage done to the Trail or adjacent property while exercising its access rights granted hereunder.

6. Miscellaneous.

a. Further Actions. The parties shall execute and deliver all further documents and take all further actions reasonably necessary to effectuate the purposes of this Easement.

b. Governing Law. This Easement has been made under the laws of the State of Minnesota and such laws shall control its interpretation.

c. No Presumption against Drafter. This Easement has been negotiated at arms' length and between persons sophisticated and knowledgeable in the matters dealt with herein. Accordingly, this Easement shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Easement.

d. Effective Date. This Easement shall be effective on the date it is fully executed by both parties.

e. Running with the Land; Assignment. The terms, covenants and provisions hereof shall inure to the benefit of and be binding upon the legal representatives, successors and assigns of the parties hereto and the covenants, agreements and easements contained herein shall be deemed to run with and burden the property subject to the easement. Grantee shall not assign or otherwise convey any of its rights, titles, or interests under this Easement Agreement without the prior written consent of Grantor.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Easement as of the date first set forth above.

METROPOLITAN COUNCIL,
a public corporation and political subdivision under the
laws of the State of Minnesota,

By: _____
Weston Kooistra

Title: Regional Administrator

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

I, the undersigned, a Notary Public in and for Ramsey County, Minnesota, do hereby certify that Weston Kooistra, the Regional Administrator of the Metropolitan Council, a public body appeared before me this day in person and acknowledged that he signed and delivered said instrument on behalf of said public body.

Given under my hand and official seal this _____ day of _____, 201__.

Notary Public

TWIN CITIES & WESTERN RAILROAD
COMPANY, a corporation under the laws of the
State of Minnesota

By: _____
Title: _____

STATE OF MINNESOTA)
) ss
COUNTY OF HENNIPIN)

I, the undersigned, a Notary Public in and for Hennepin County, Minnesota, do hereby
certify that _____, the _____ of TWIN CITIES AND
WESTERN RAILROAD COMPANY appeared before me this day in person and
acknowledged that he signed and delivered said instrument on behalf of said corporation.

Given under my hand and official seal this _____ day of _____, 201____.

Notary Public

This instrument drafted by:

Office of the General Counsel
Metropolitan Council
390 North Robert Street
Saint Paul, MN 55101

EXHIBIT A

PROPERTY OR CORRIDOR

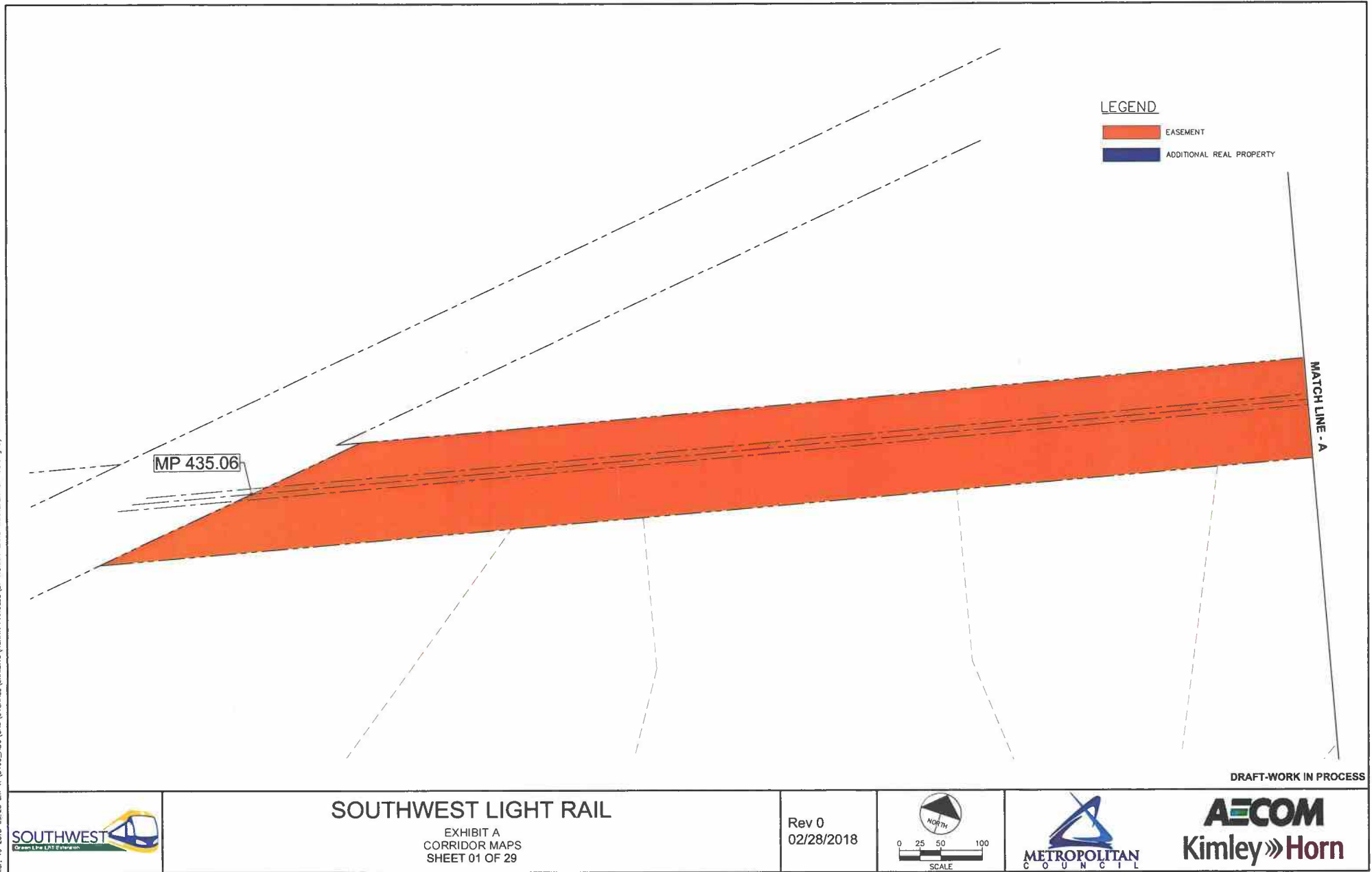
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EXHIBIT B

**TRAIL PARCEL
AND ACCESS AREAS**

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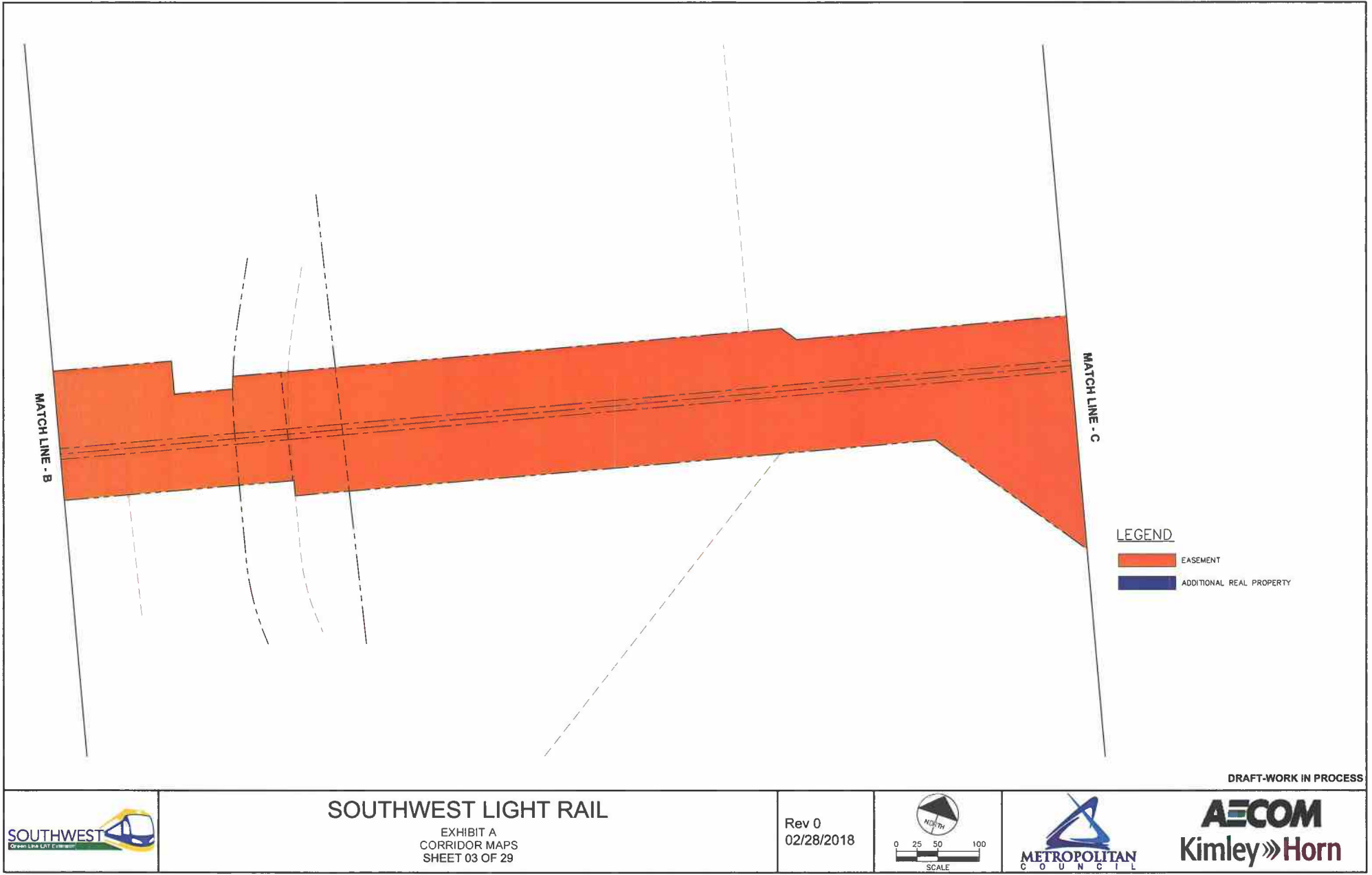
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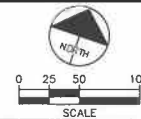
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SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 03 OF 29

Rev 0
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MATCH LINE - D

LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

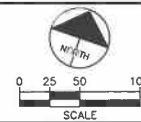
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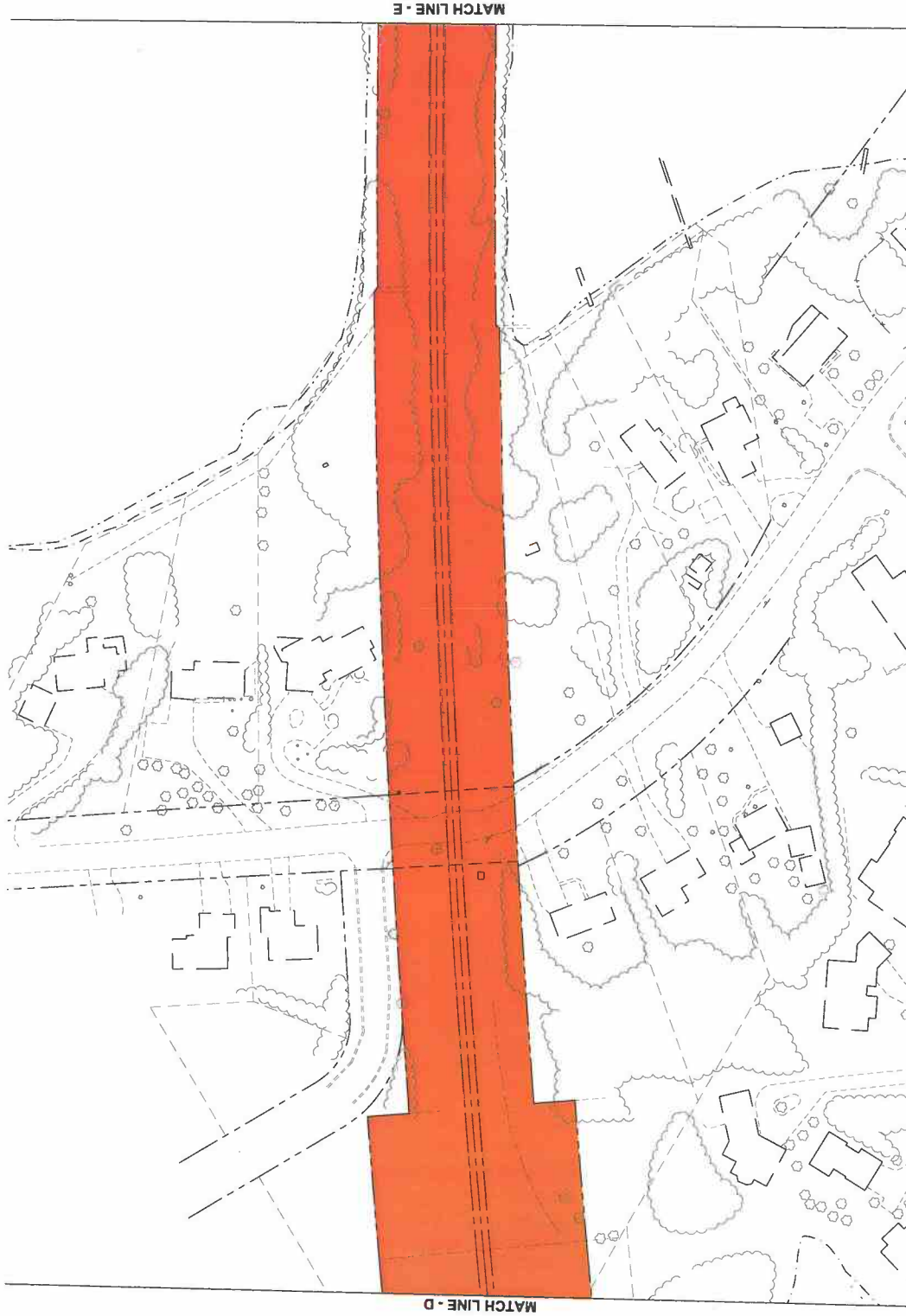
SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 04 OF 29

Rev 0
02/28/2018



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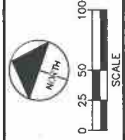
LEGEND

EASEMENT

ADDITIONAL REAL PROPERTY

DRAFT-WORK IN PROCESS

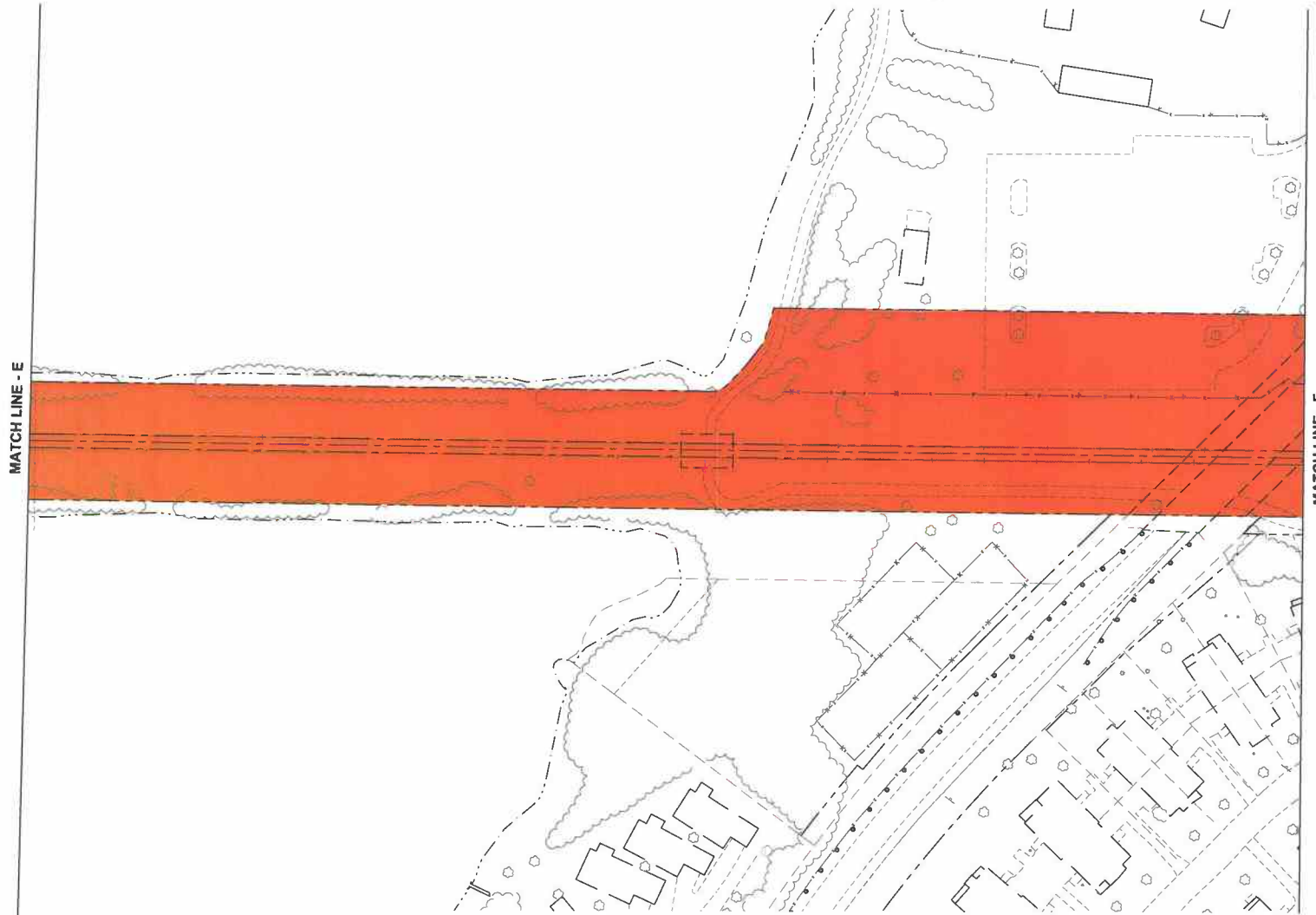
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Rev 0
02/28/2018

SOUTHWEST LIGHT RAIL
EXHIBIT A
CORRIDOR MAPS
SHEET 05 OF 29





LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

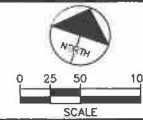
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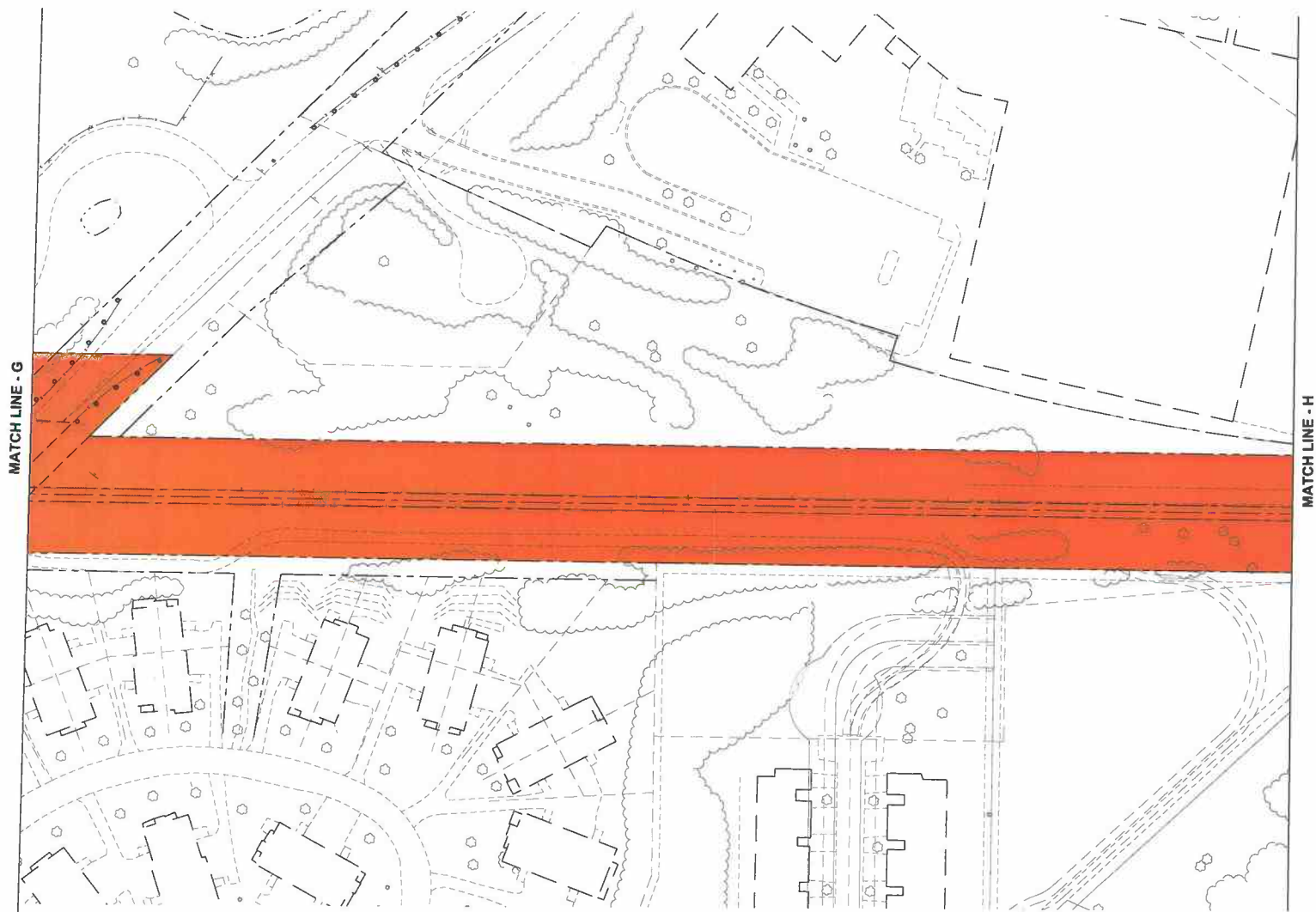
SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 06 OF 29

Rev 0
02/28/2018



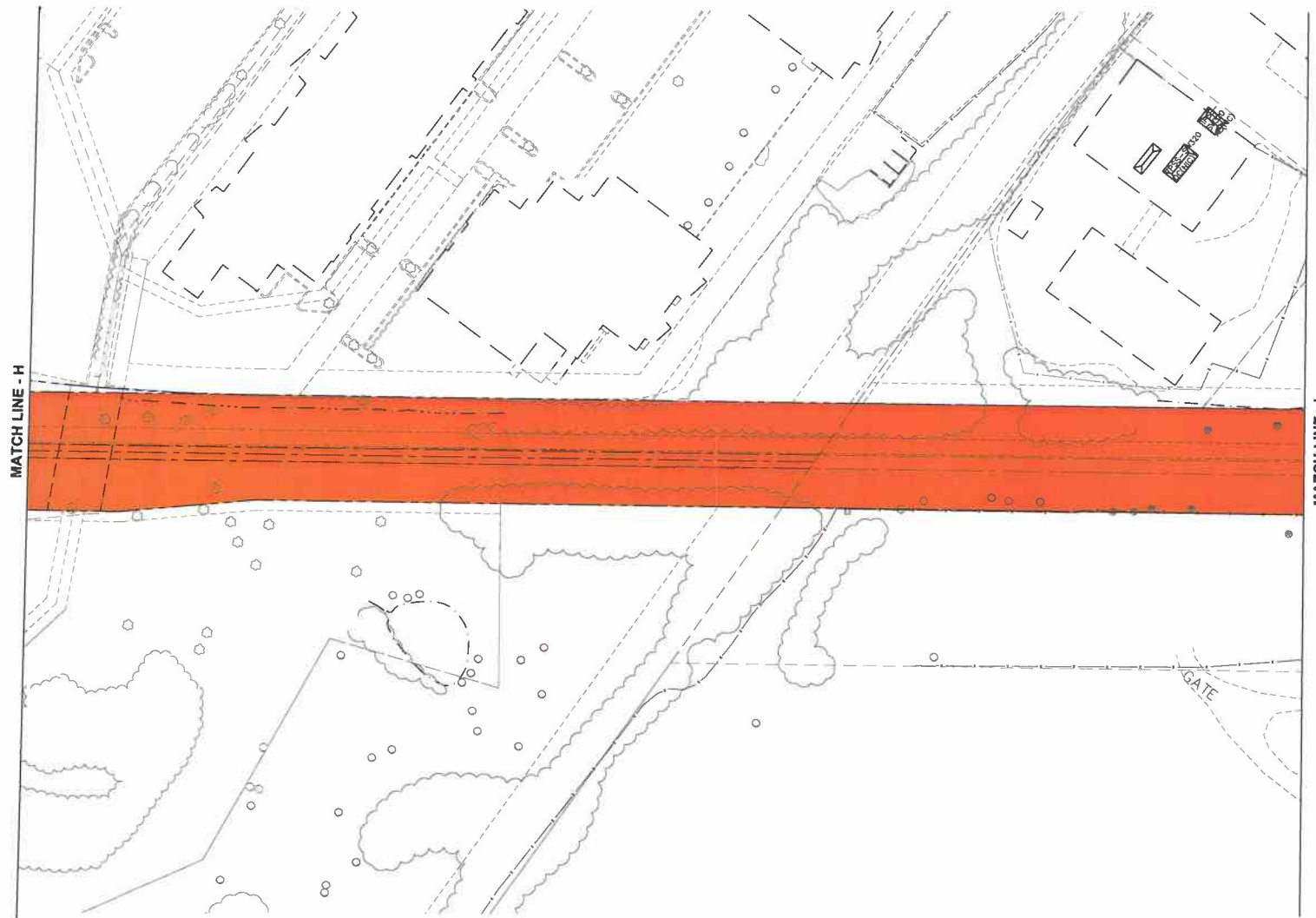
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- LEGEND
- EASEMENT
 - ADDITIONAL REAL PROPERTY

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LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

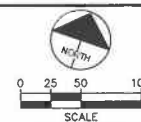
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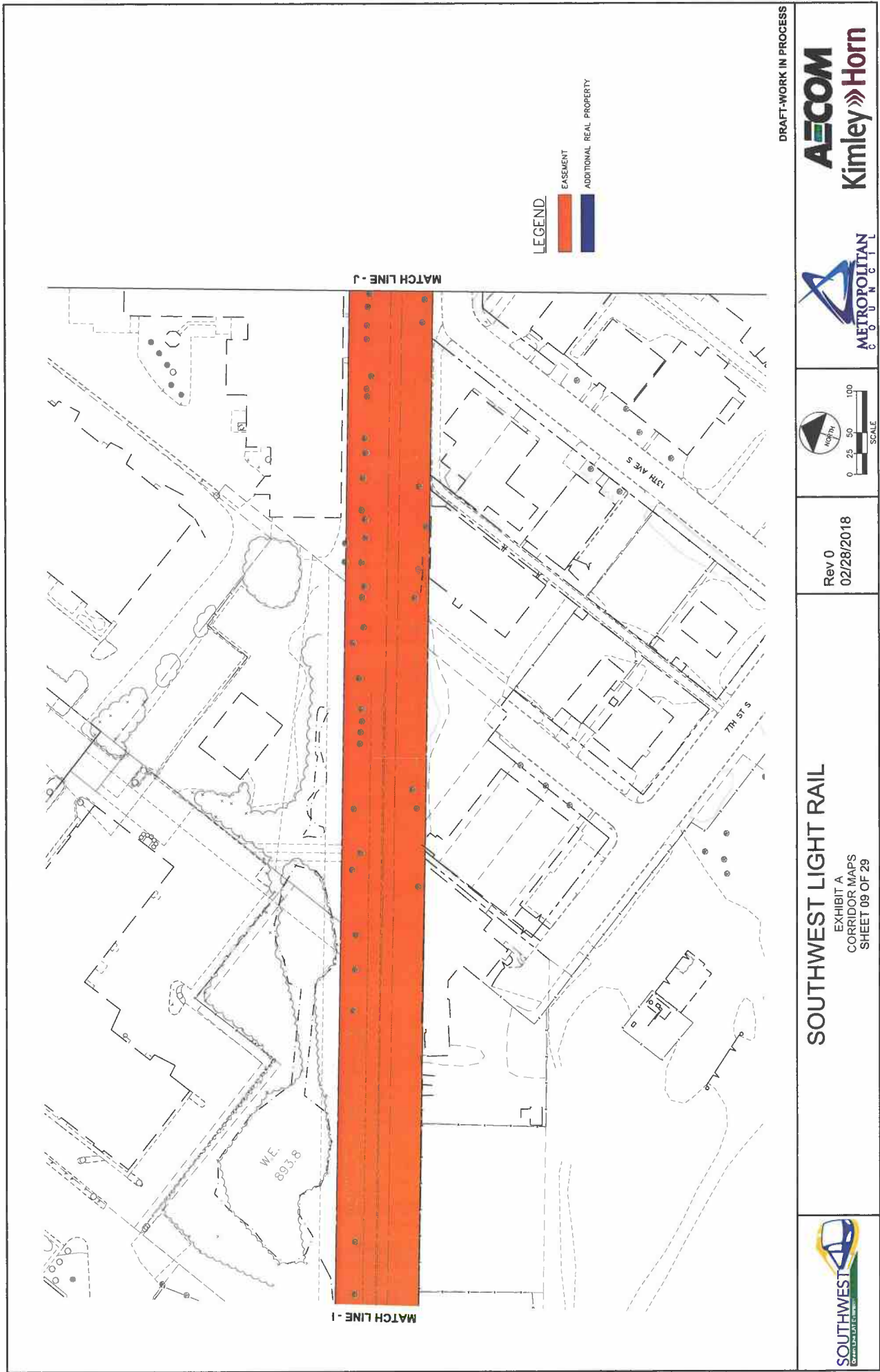
SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 08 OF 29

Rev 0
02/28/2018

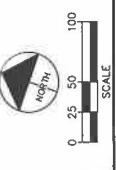


AECOM
Kimley»Horn



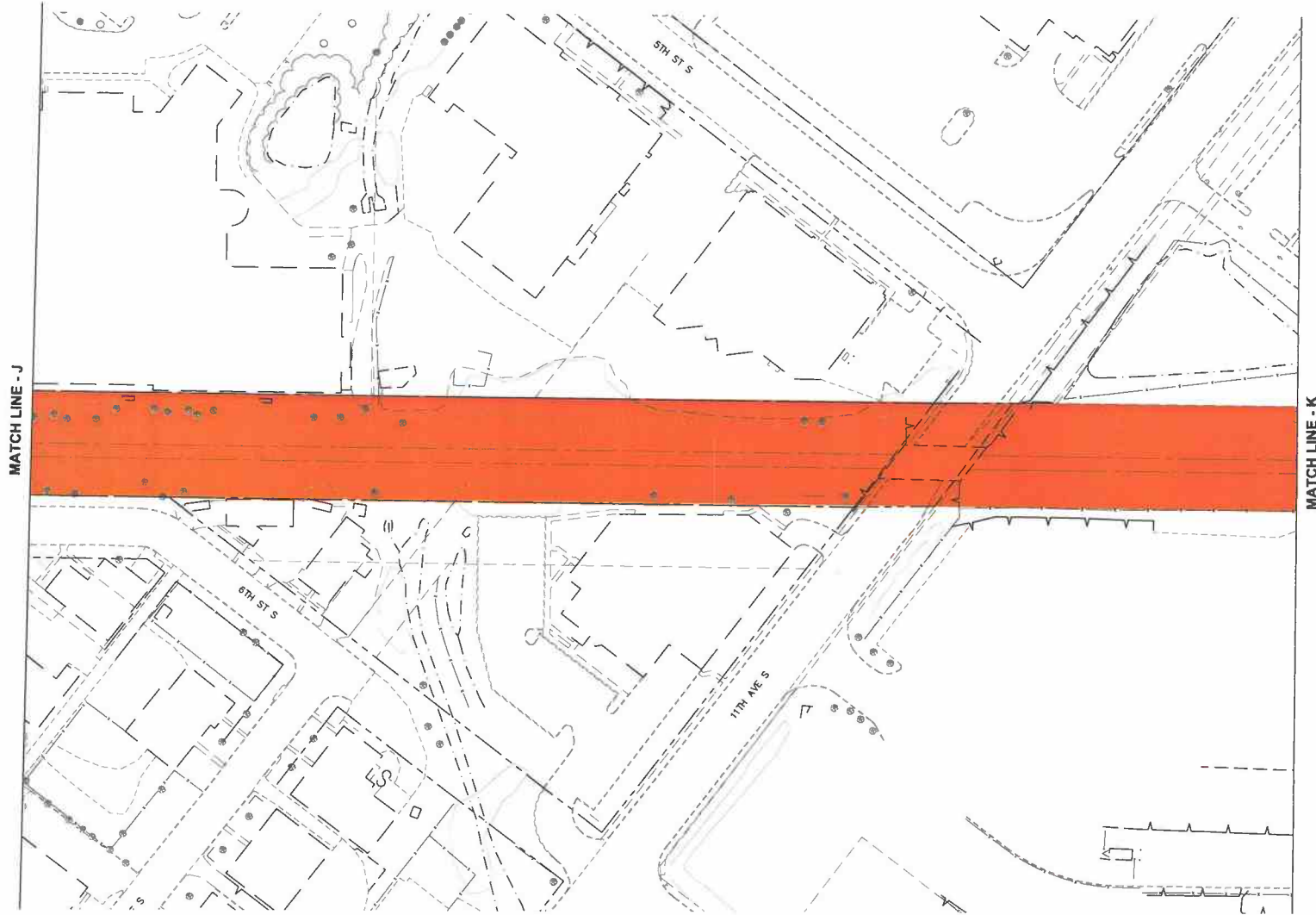
SOUTHWEST LIGHT RAIL
EXHIBIT A
CORRIDOR MAPS
SHEET 09 OF 29

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02/28/2018



DRAFT-WORK IN PROCESS

Mar 19 2016 09:30 am W:\3400_JDC\CAO\OVERALL EXHIBITS\HARRA-PARCELS\E1-HARRA-LAND TRANSFER-CP-02.dwg By: foamc/l



LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

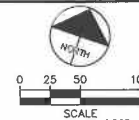
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SOUTHWEST LIGHT RAIL

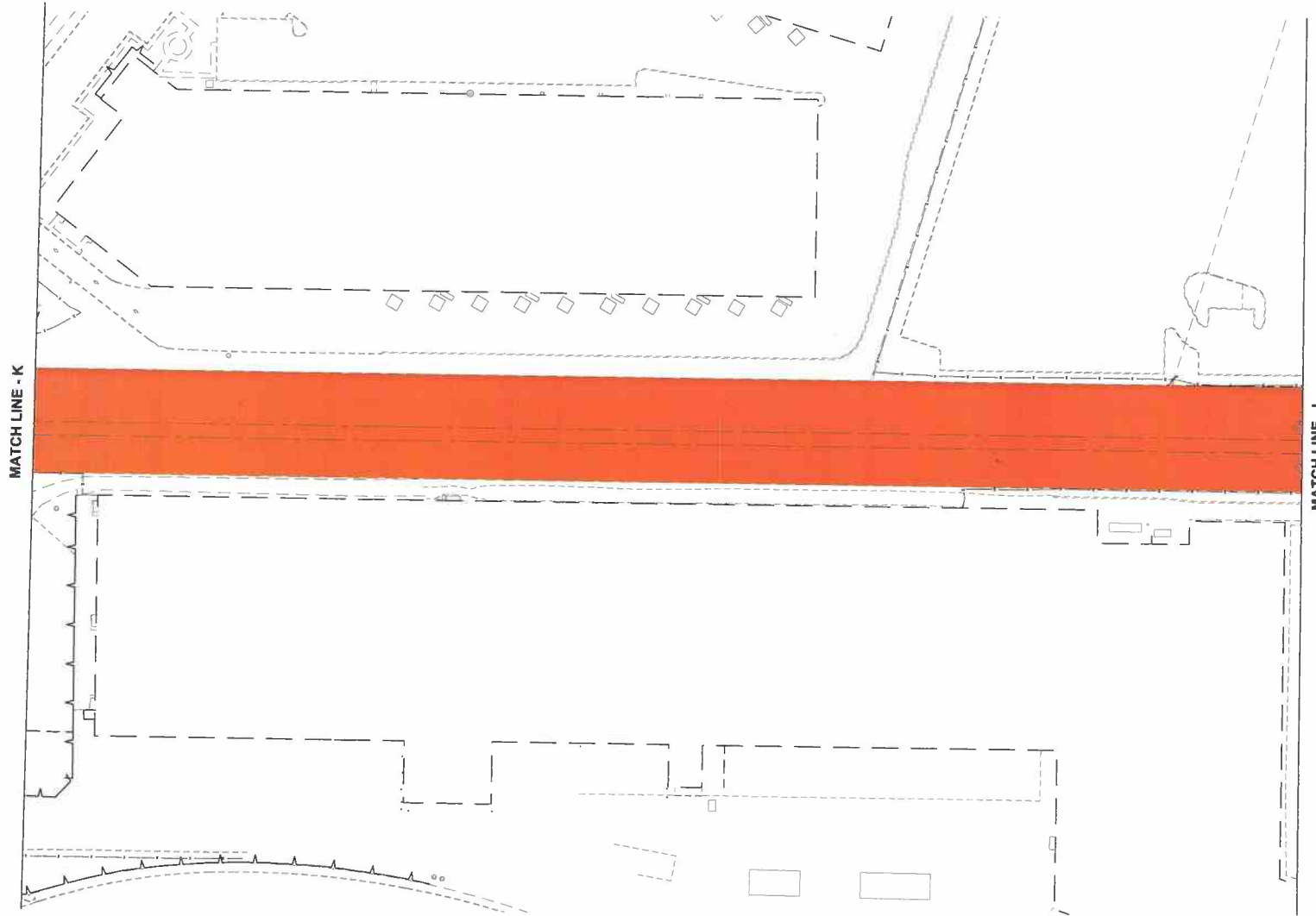
EXHIBIT A
CORRIDOR MAPS
SHEET 10 OF 29

Rev 0
02/28/2018



AECOM
Kimley»Horn

Mar 19 2018 08:31 am K:\3400_LDC\OVERALL EXHIBITS\HCRRA PARCELS\ET-HCRRA-LAND TRANSFER-CP-02.dwg By: FoamITL



LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

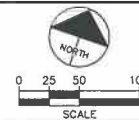
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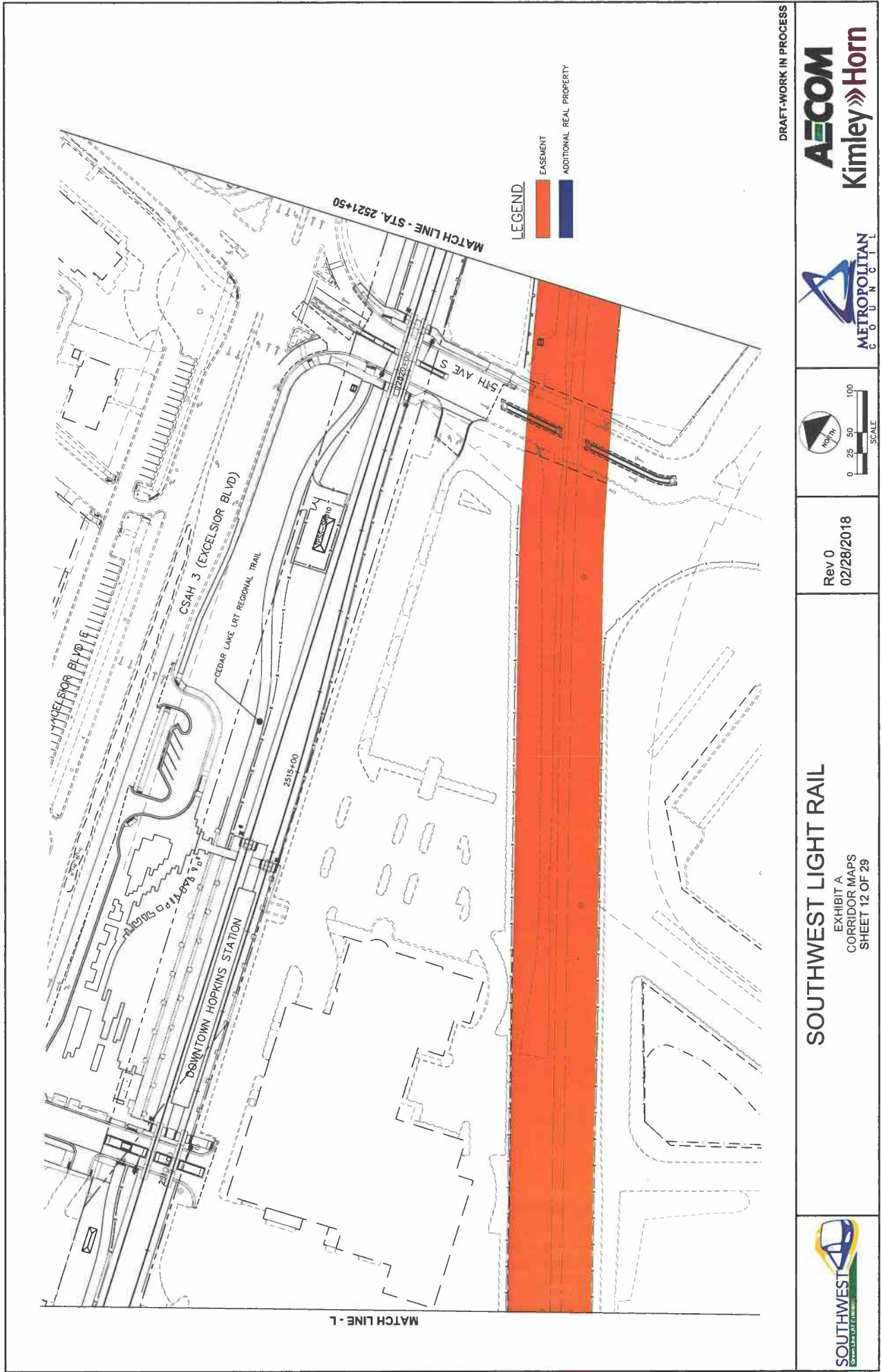


SOUTHWEST LIGHT RAIL

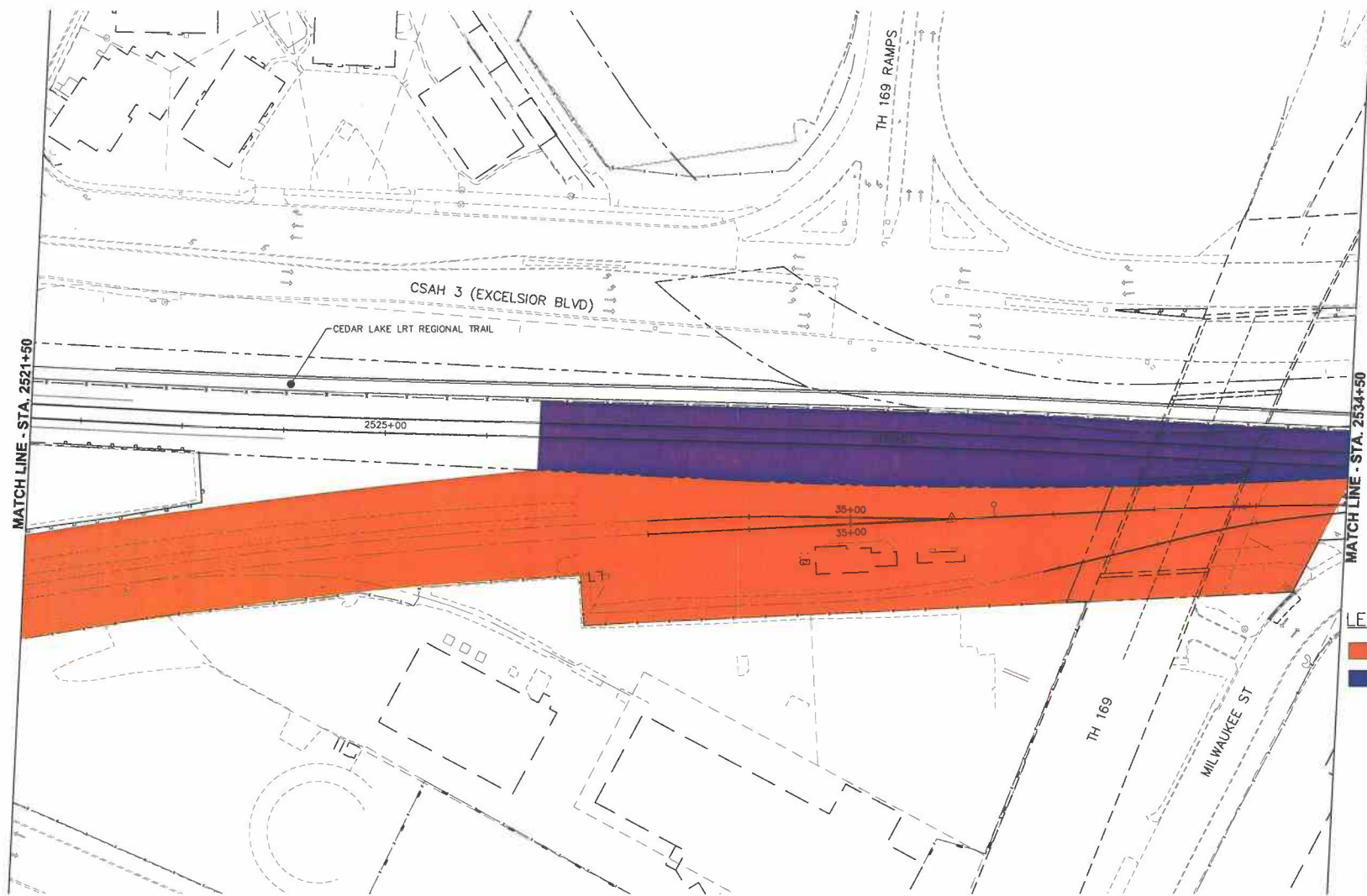
EXHIBIT A
CORRIDOR MAPS
SHEET 11 OF 29

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Mar. 19 2018 09:33 am V:\3400_ADC\AD\CAD\OVERALL EXHIBITS\HCBRA PARCELS\CI-HCBRA-LAND TRANSFER-CP-02.dwg By: Forman.TL



LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

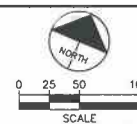
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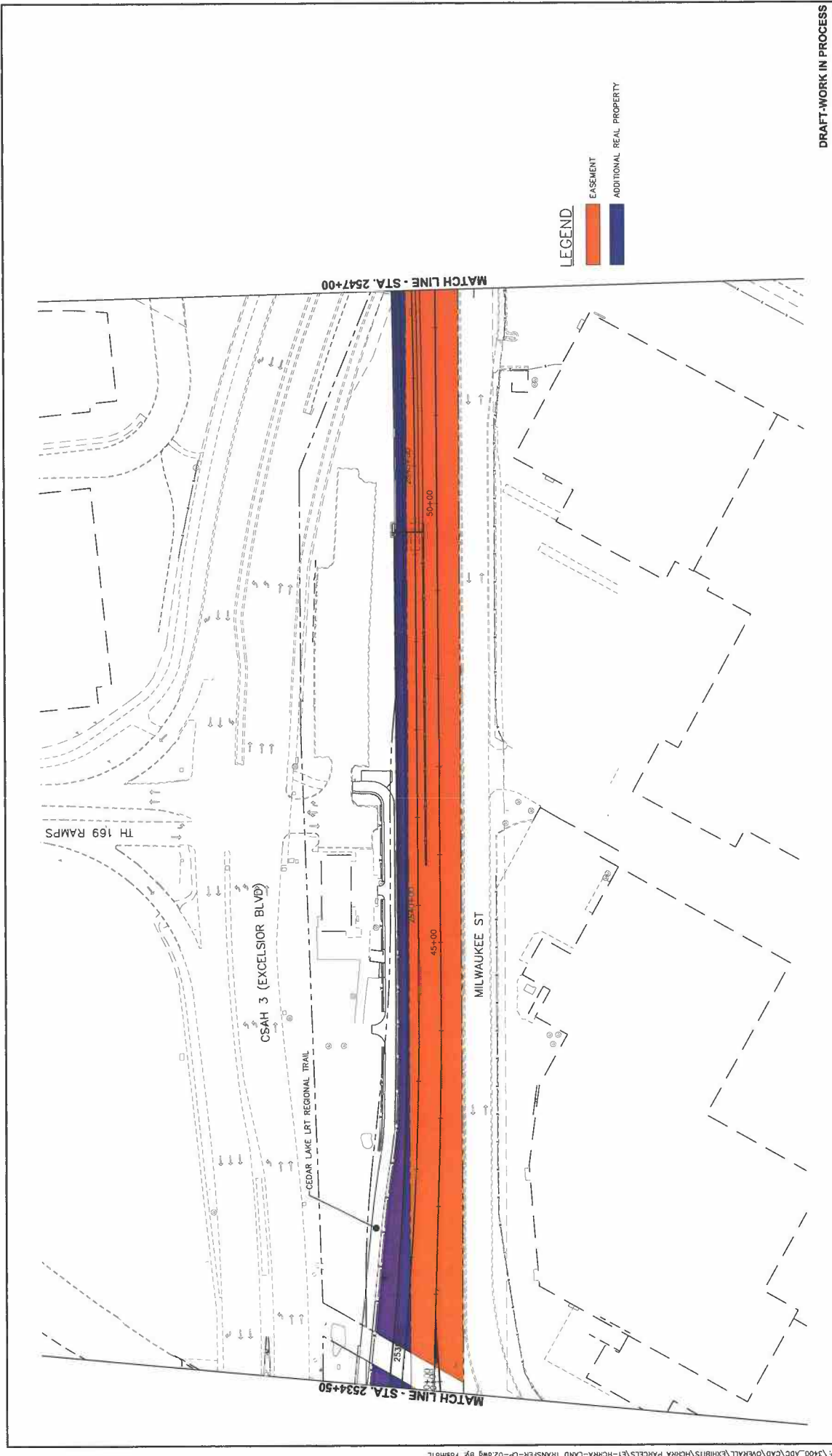


SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 13 OF 29

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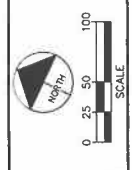




LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

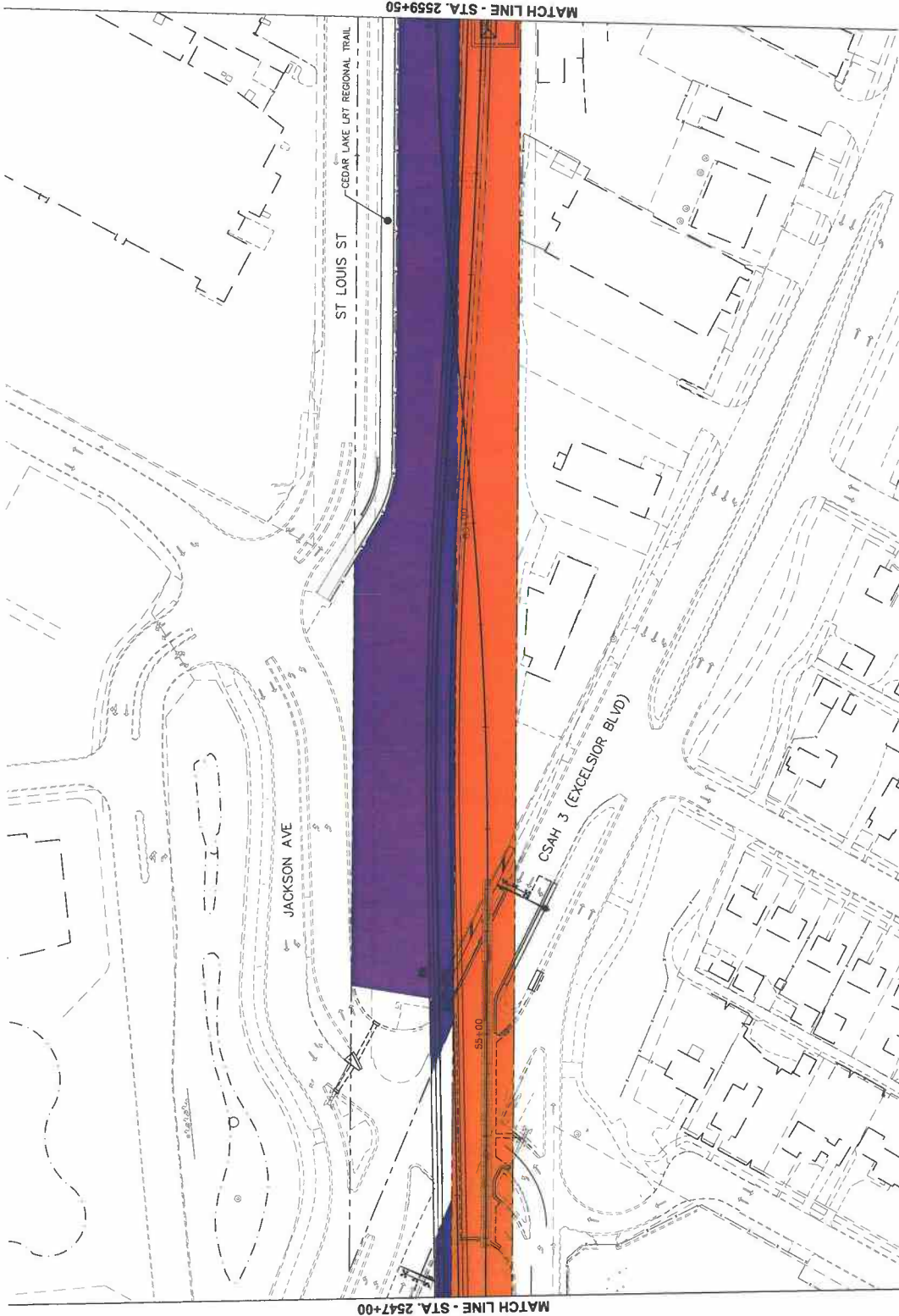
DRAFT - WORK IN PROCESS



Rev 0
02/28/2018

SOUTHWEST LIGHT RAIL
EXHIBIT A
CORRIDOR MAPS
SHEET 14 OF 29

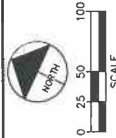




LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

DRAFT WORK IN PROCESS



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02/28/2018

SOUTHWEST LIGHT RAIL
EXHIBIT A
CORRIDOR MAPS
SHEET 15 OF 29



\\400_AOC\A00\Overall\Exhibits\HORA PARCELS\ET-HORA-LAND TRANSFER-02.dwg By: Forman



LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

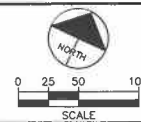
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SOUTHWEST LIGHT RAIL

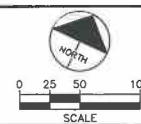
EXHIBIT A
CORRIDOR MAPS
SHEET 16 OF 29

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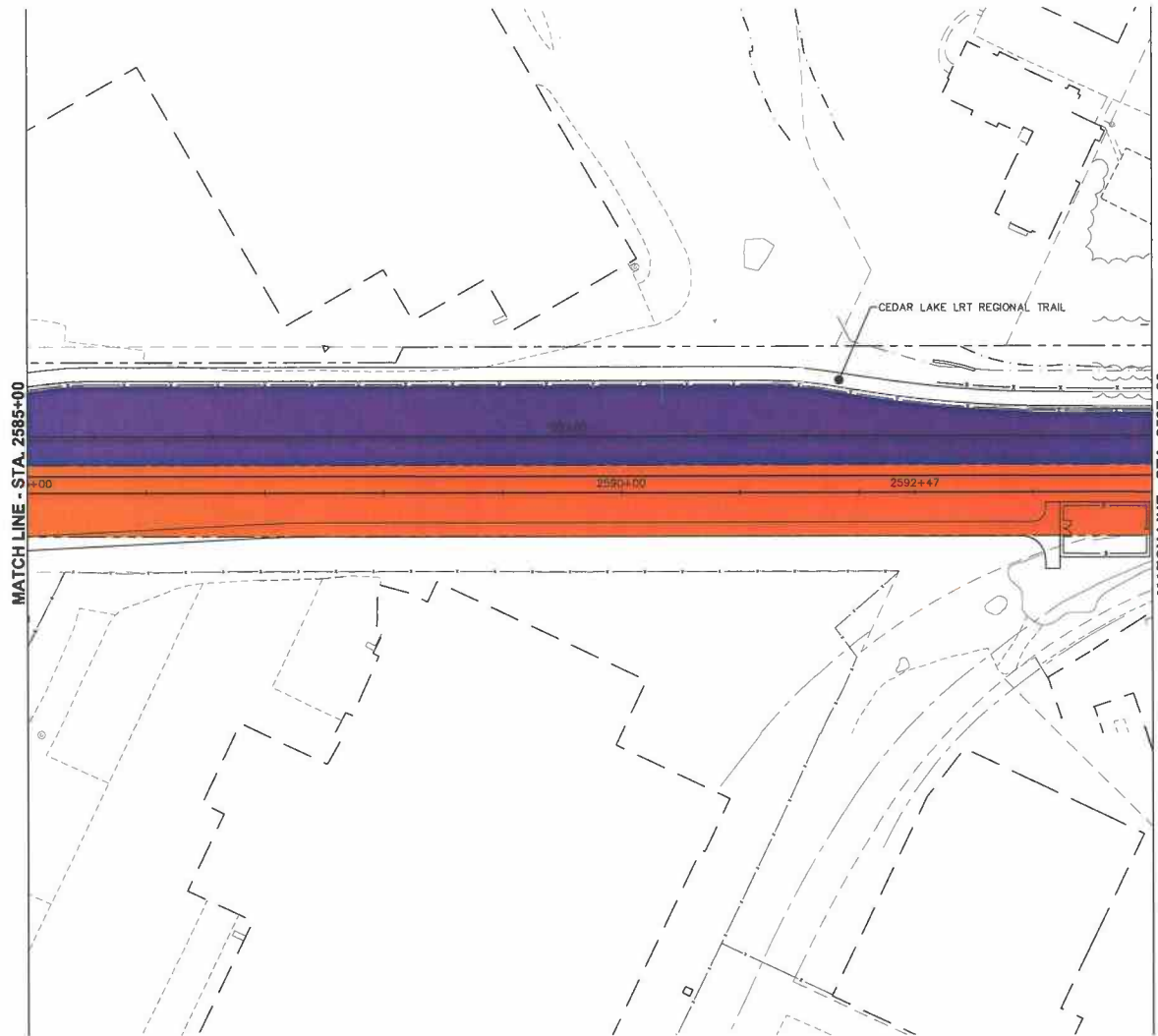


Rev 0
02/28/2018



AECOM
Kimley»Horn

\\s0400_jac\cad\overall\exhibits\hcora\land\transfer-op-02.dwg By: FormoIL
Mon, 19 Feb 2018 09:38 am



LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

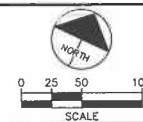
DRAFT-WORK IN PROCESS



SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 18 OF 29

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02/28/2018



AECOM
Kimley»Horn



MATCH LINE - STA. 2609+00

MATCH LINE - STA. 2597+00

LEGEND

EASEMENT

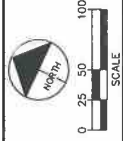
ADDITIONAL REAL PROPERTY

DRAFT-WORK IN PROCESS



SOUTHWEST LIGHT RAIL
EXHIBIT A
CORRIDOR MAPS
SHEET 19 OF 29

Rev 0
02/28/2018



Mar, 19 2018 09:42 am W:\4400_JUC\CAO\OVERALL\EXHIBITS\HORRA PARCELS\E2-HORRA-LAND TRANSFER-CP-02.dwg By: FpasmL



LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

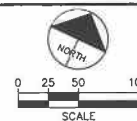
DRAFT-WORK IN PROCESS



SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 20 OF 29

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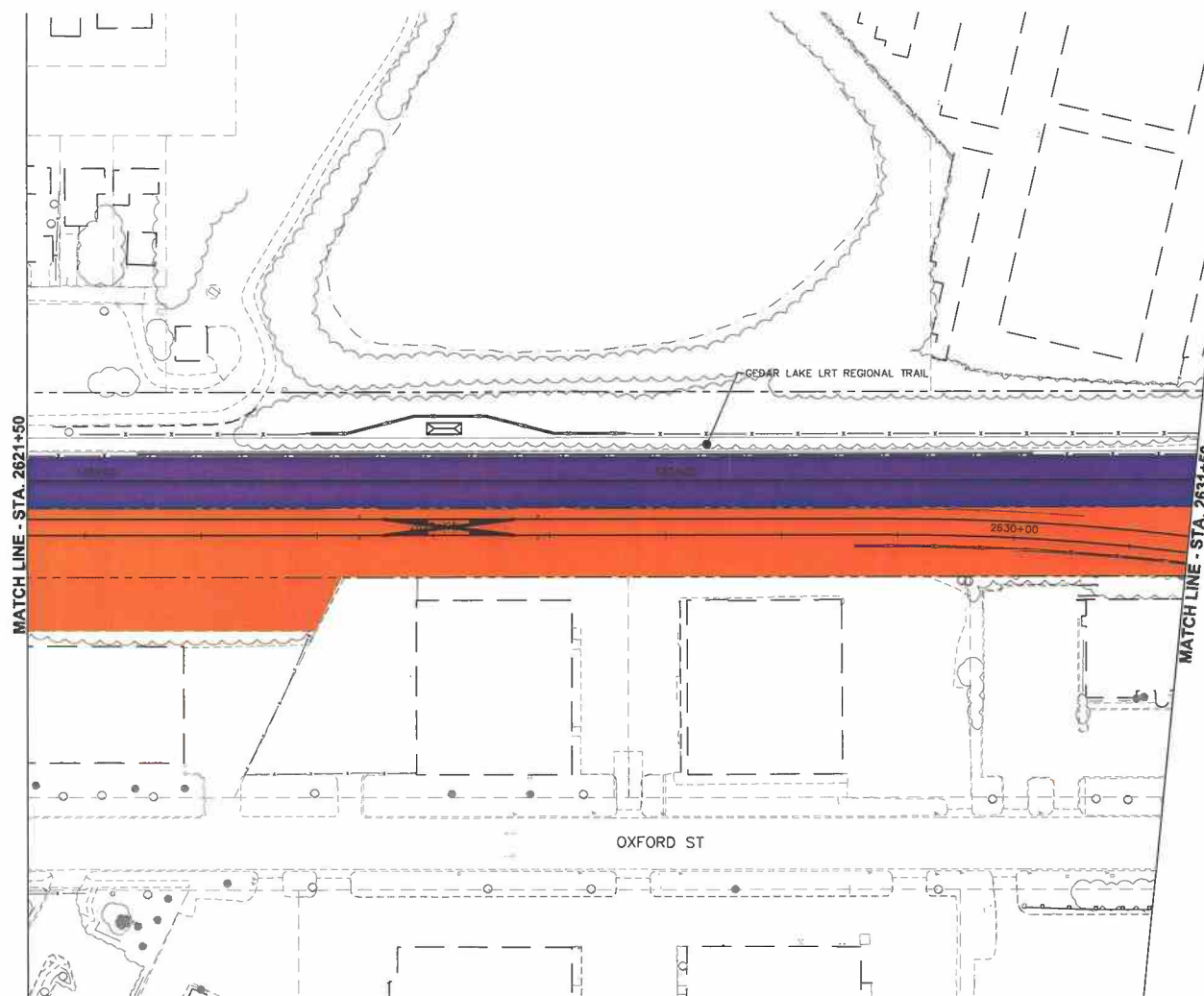
AECOM
Kimley»Horn

EXHIBIT A
CORRIDOR MAPS
SHEET 21 OF 29



AECOM
Kimley»Horn

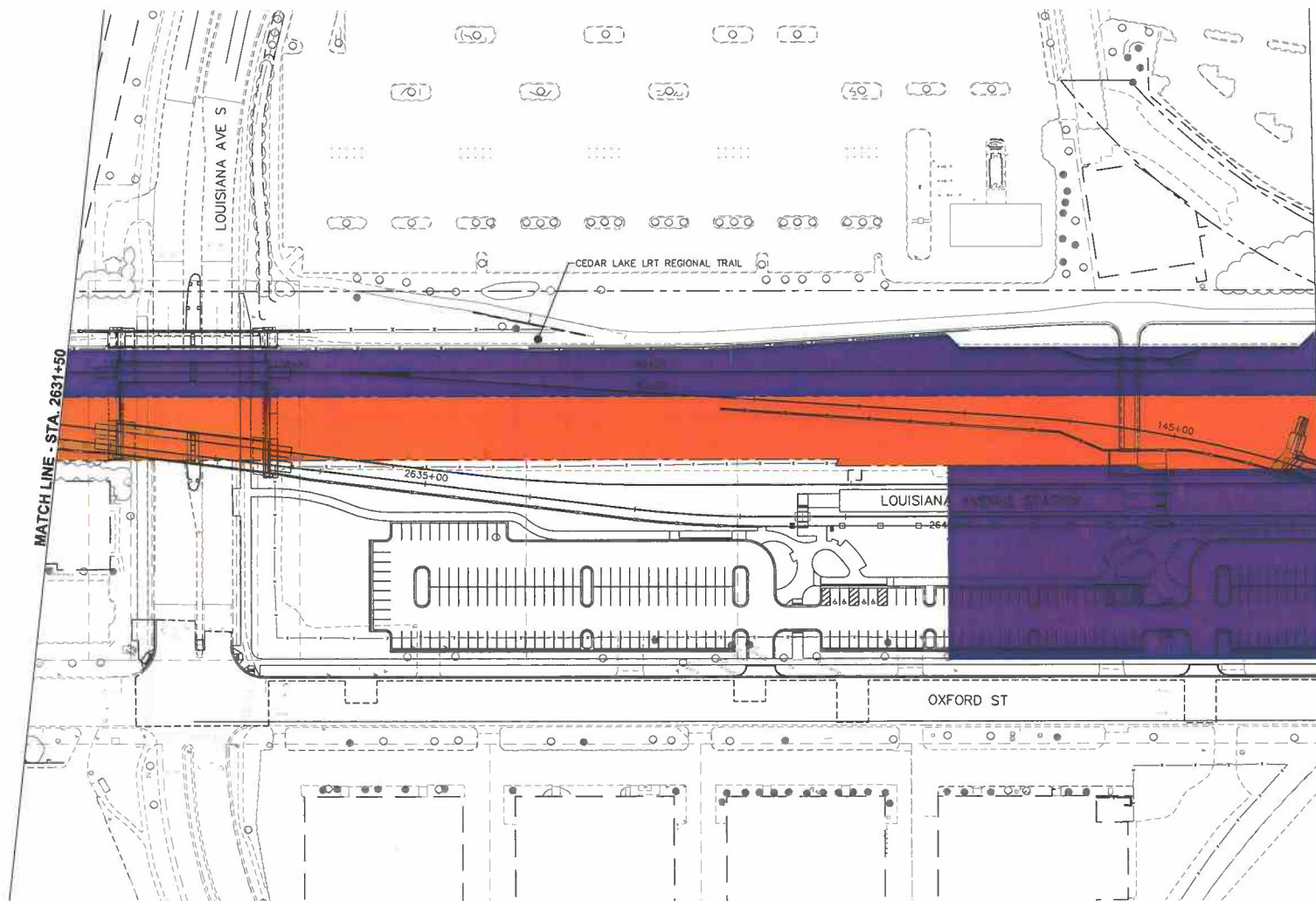
DRAFT-WORK IN PROCESS



LEGEND

-  EASEMENT
-  ADDITIONAL REAL PROPERTY

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MATCH LINE - STA. 2631+50

MATCH LINE - STA. 2643+50

LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

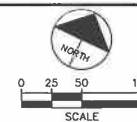
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SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 22 OF 29

Rev 0
02/28/2018



\\s0401_joc\cad\overall\exhibits\HERRA PARCELS\E2-HERRA-LAND TRANSFER-CP-02.dwg By: FoamITL



LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

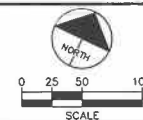
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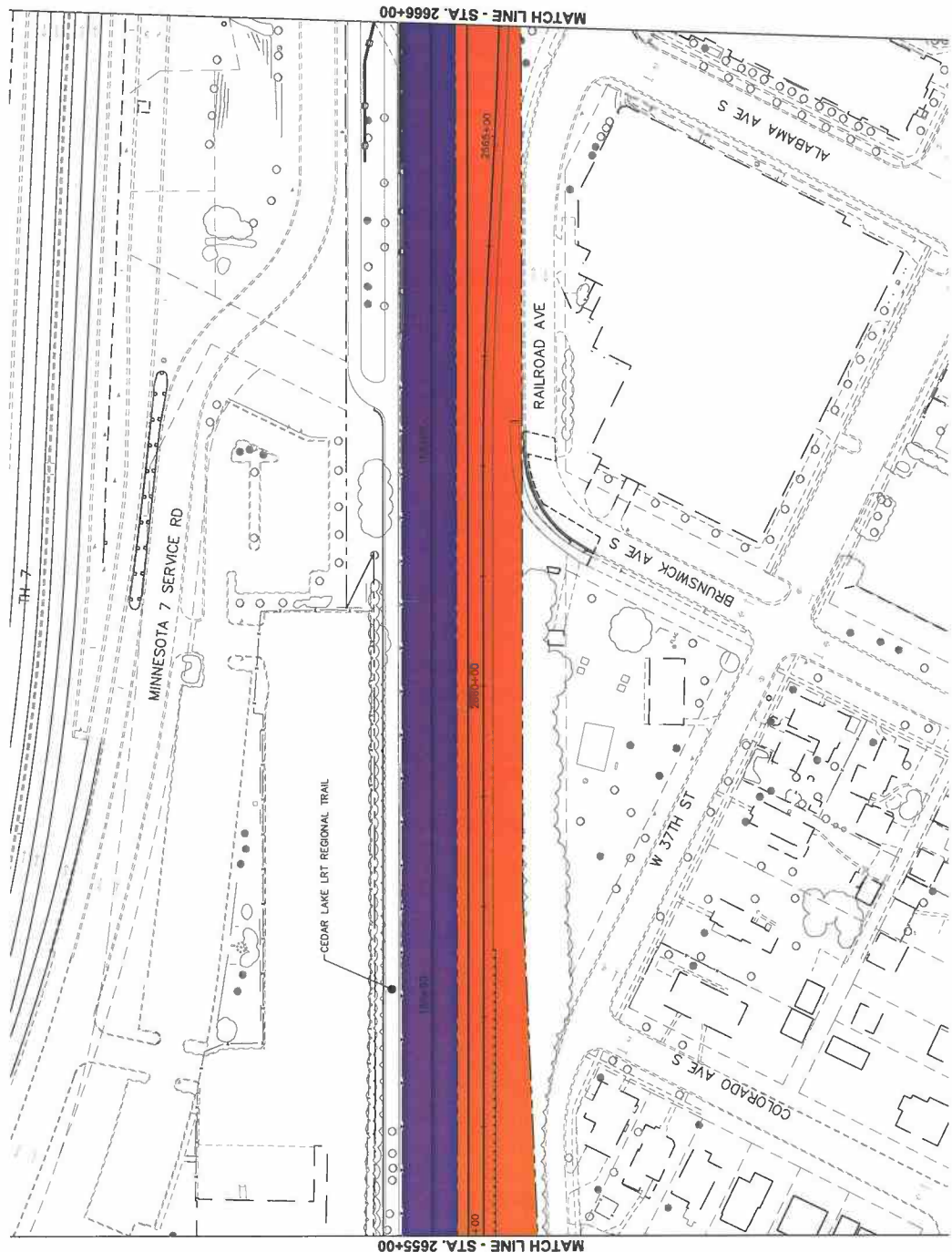
SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 23 OF 29

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AECOM
Kimley»Horn



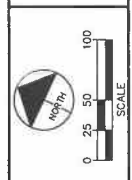
LEGEND

EASEMENT

ADDITIONAL REAL PROPERTY

AECOM
Kimley»Horn

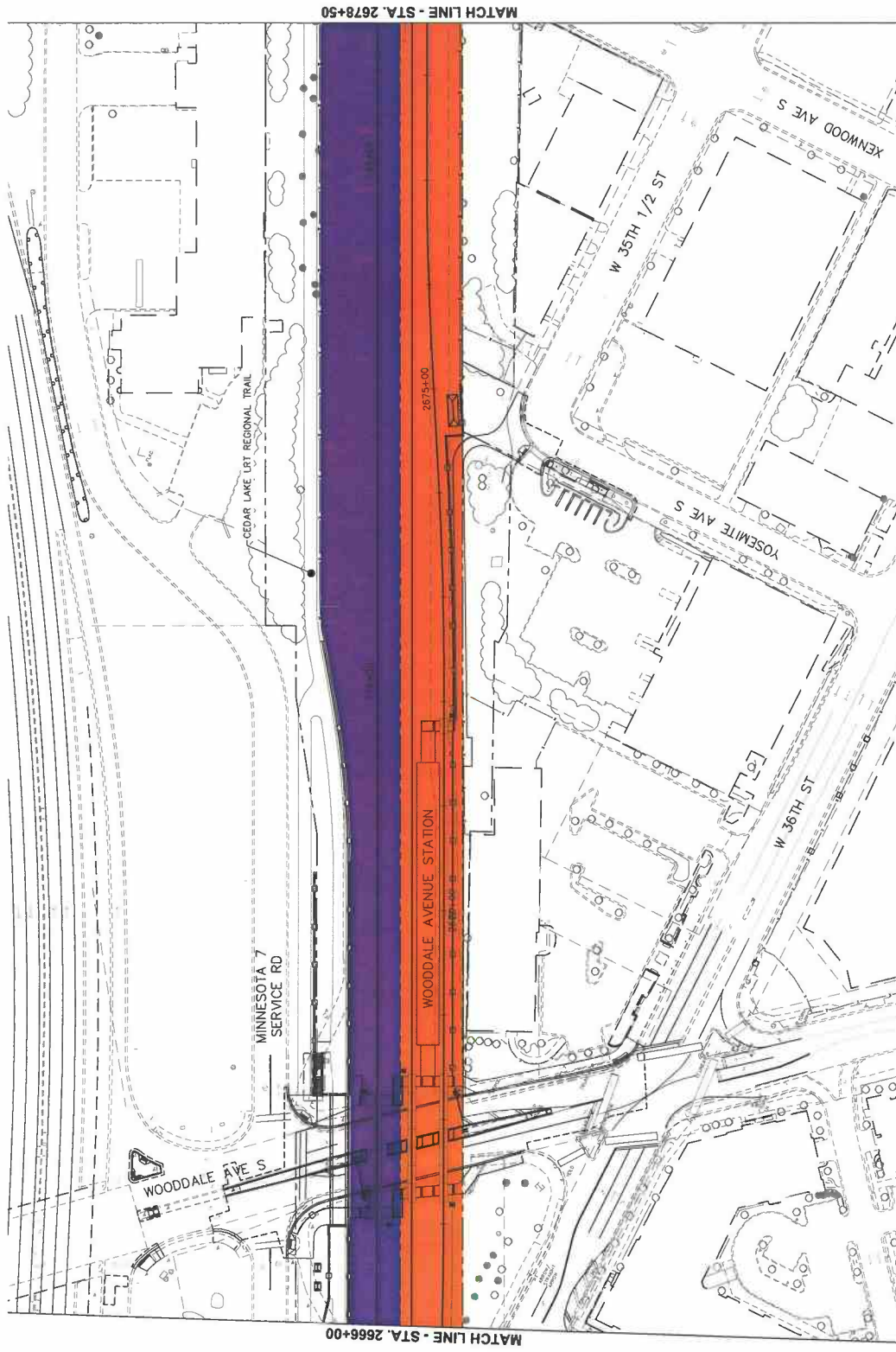
METROPOLITAN
 CONSULTANTS



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 02/28/2018

SOUTHWEST LIGHT RAIL
 EXHIBIT A
 CORRIDOR MAPS
 SHEET 24 OF 29

SOUTHWEST
 LIGHT RAIL



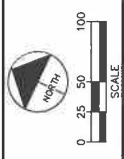
LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

DRAFT-WORK IN PROCESS



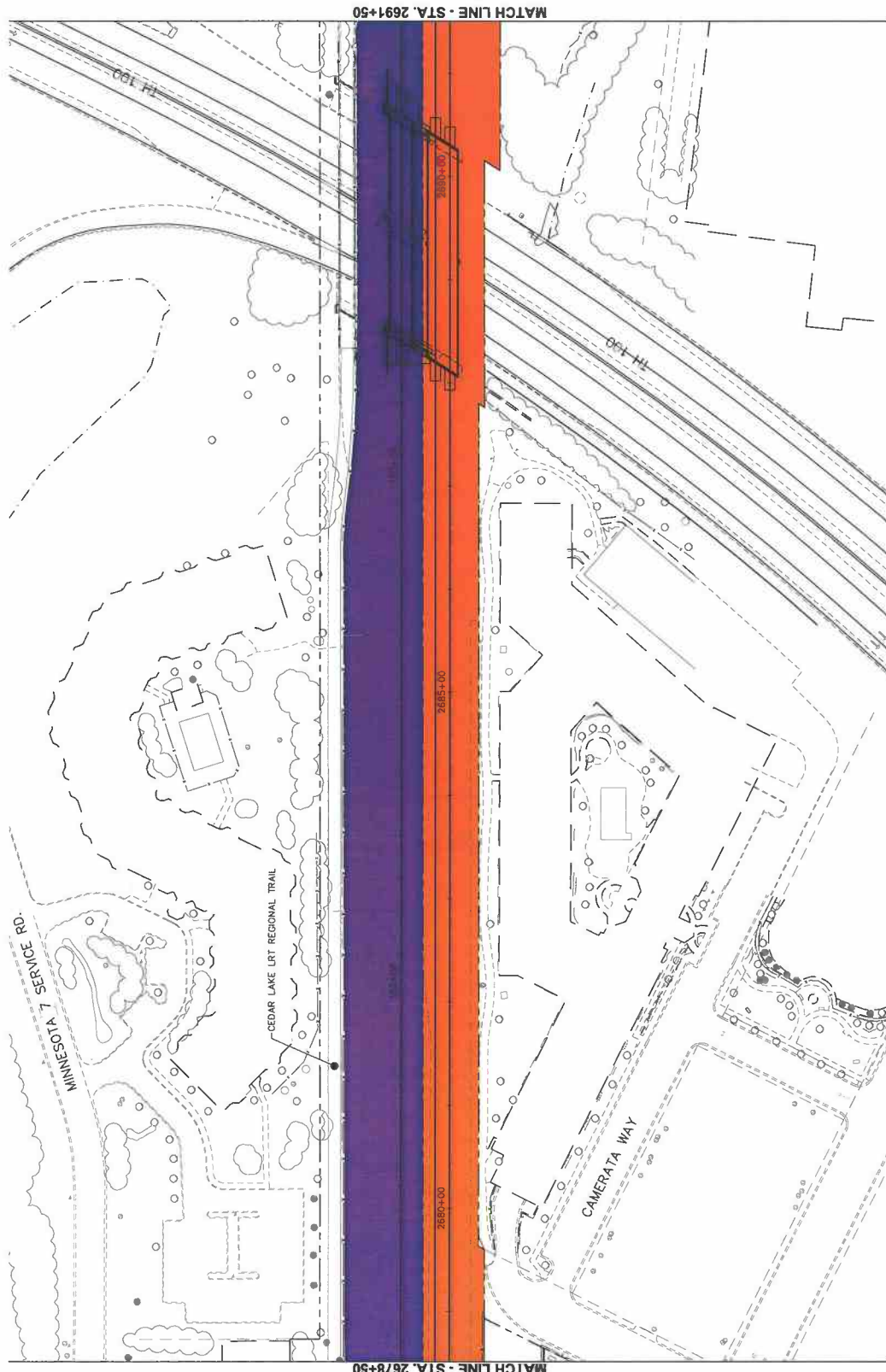




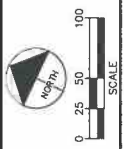
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SOUTHWEST LIGHT RAIL
EXHIBIT A
CORRIDOR MAPS
SHEET 25 OF 29





DRAFT-WORK IN PROCESS



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02/28/2018

SOUTHWEST LIGHT RAIL
EXHIBIT A
CORRIDOR MAPS
SHEET 26 OF 29



Mon, 19 Feb 2018 09:50 am v:\3400\00\CA0 OVERALL EXHIBITS\H00RA-PARCELS\02-H00RA-LAND TRANSFER-02.dwg By: Fomail

MATCH LINE - STA. 2691+50



MATCH LINE - STA. 2704+50

LEGEND

-  EASEMENT
-  ADDITIONAL REAL PROPERTY

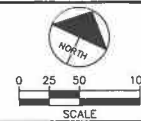
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SOUTHWEST LIGHT RAIL

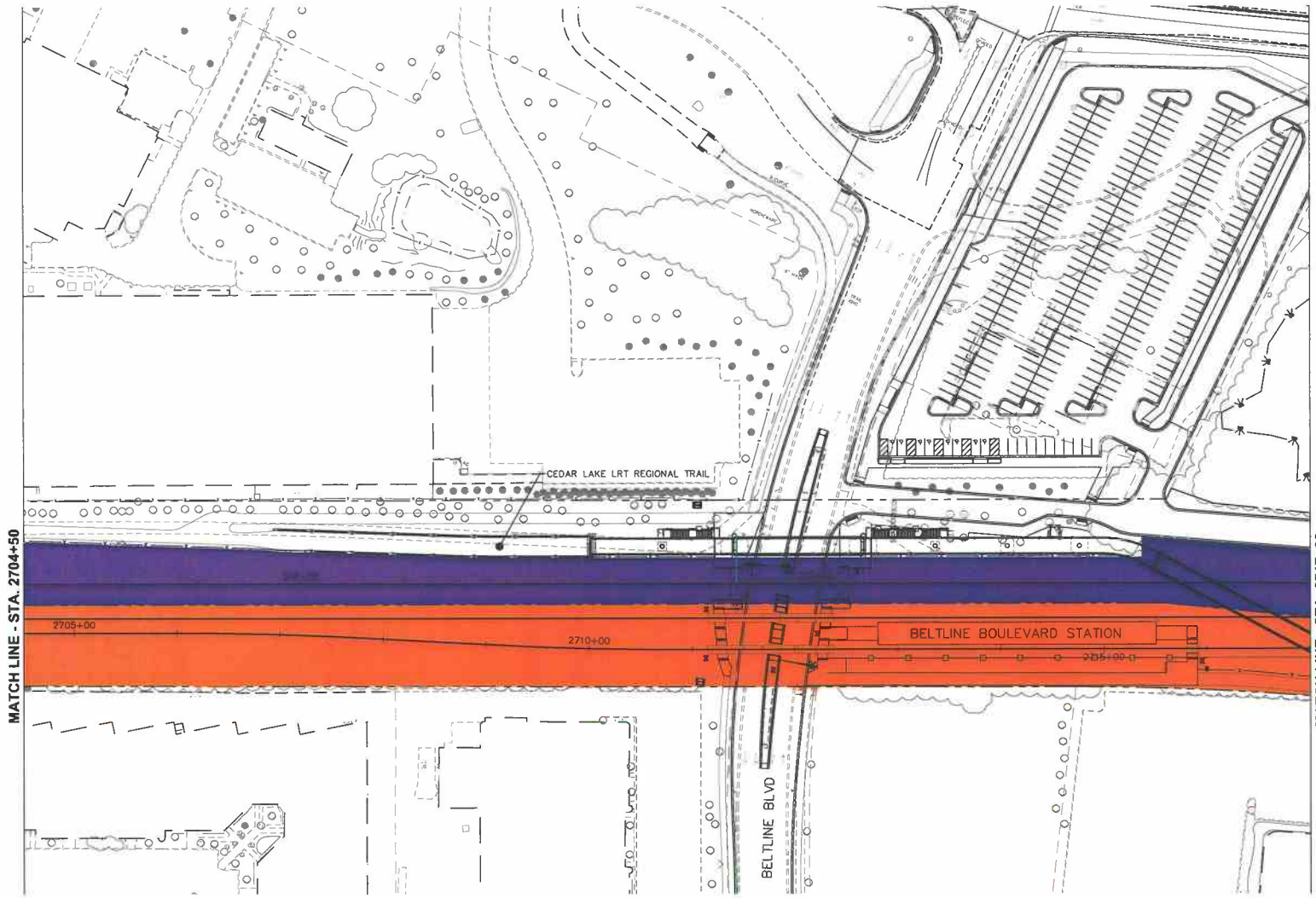
EXHIBIT A
CORRIDOR MAPS
SHEET 27 OF 29

Rev 0
02/28/2018



AECOM
Kimley»Horn

\\Mir_19_2018_06:52 am V:\3400_AUC\CA0\OVERALL EXHIBITS\HARRA PARCELS\2-HARRA-LAND TRANSFER-CP-02.dwg By: Fsemo/L



LEGEND

	EASEMENT
	ADDITIONAL REAL PROPERTY

DRAFT-WORK IN PROCESS

Mar. 19 2018 09:53 am W:\3400_AOC\CAO\OVERALL EXHIBITS\HORRA PARCELS\2-HORRA-LAND TRANSFER-CP-02.dwg By: foamtl



LEGEND

- EASEMENT
- ADDITIONAL REAL PROPERTY

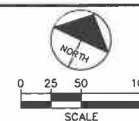
DRAFT-WORK IN PROCESS



SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 29 OF 29

Rev 0
02/28/2018



AECOM
Kimley»Horn

Jul 05 2018 04:53 pm V:\3400_AUC\CAD\OVERALL EXHIBITS\HCRA PARCELS\3-HCRA-LAND TRANSFER-KW-EXHIBIT D.dwg By: erin.mspheisen@son



LEGEND

- EASEMENT AREA
- ADDITIONAL PROPERTY

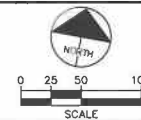
DRAFT-WORK IN PROCESS



SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 01 OF 12

Rev 0
02/28/2018



AECOM
Kimley»Horn

Jul, 05 2018 04:57 pm C:\Users\jenn.mcsheehanderson\appdata\local\temp\AcPublish_28686\3--ICRA--LAND TRANSFER-KW--EXHIBIT D.dwg By: jenn.mcsheehanderson



LEGEND

- EASEMENT AREA
- ADDITIONAL PROPERTY

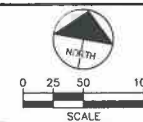
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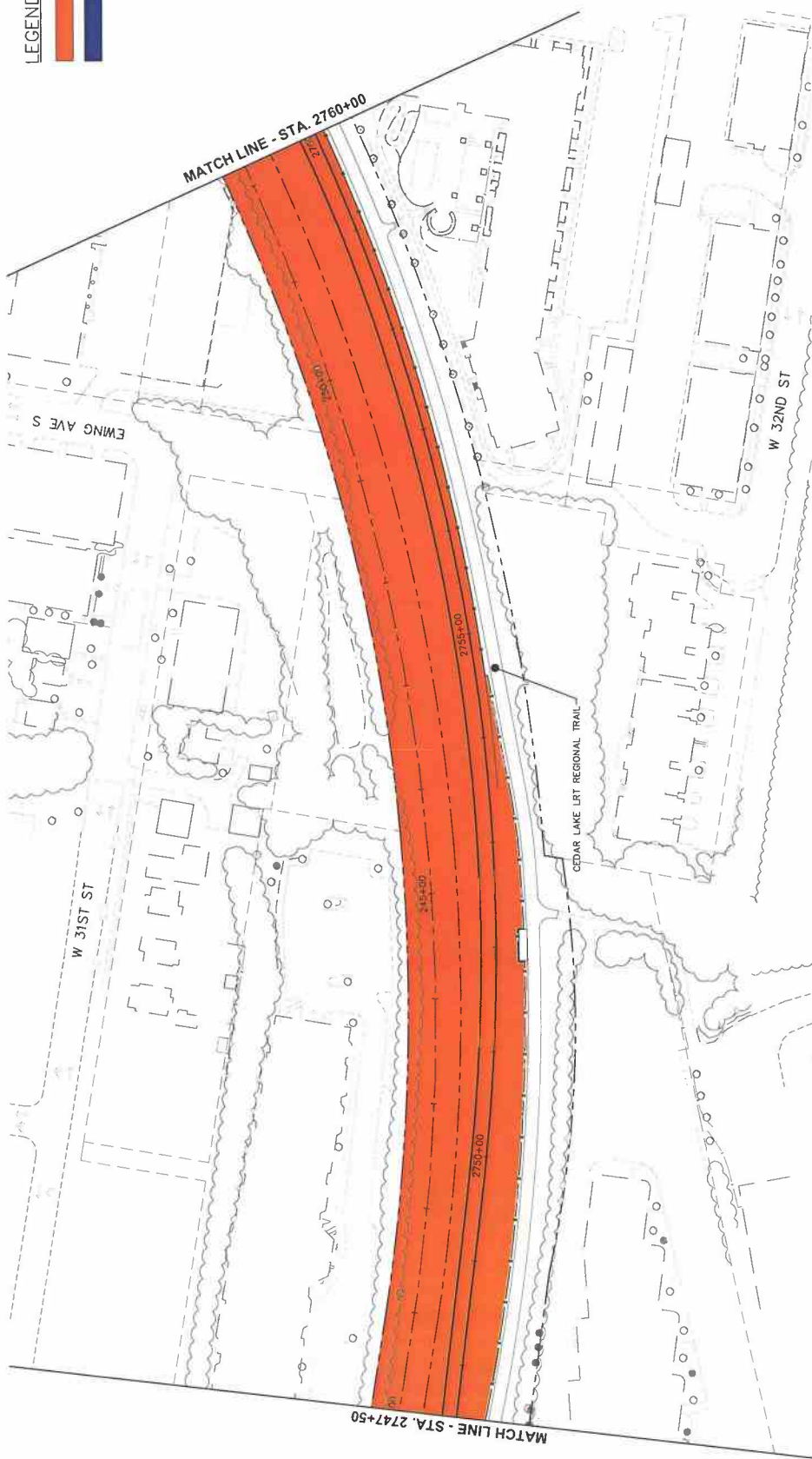


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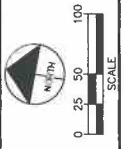
EXHIBIT A
CORRIDOR MAPS
SHEET 02 OF 12

Rev 0
02/28/2018





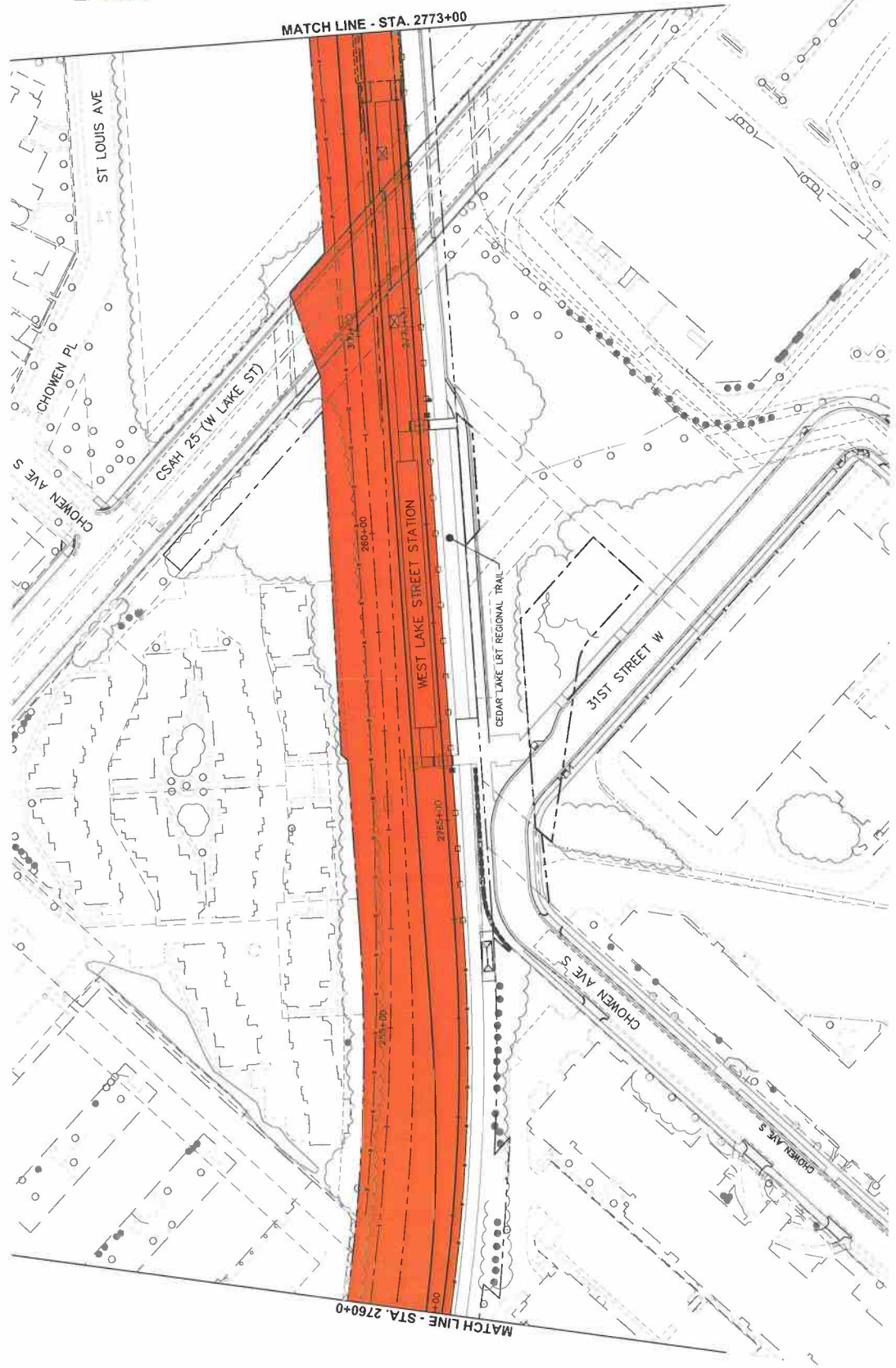
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02/28/2018

SOUTHWEST LIGHT RAIL
EXHIBIT A
CORRIDOR MAPS
SHEET 03 OF 12



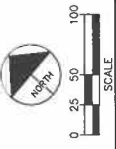


LEGEND

EASEMENT AREA

ADDITIONAL PROPERTY

AECOM
Kimley»Horn

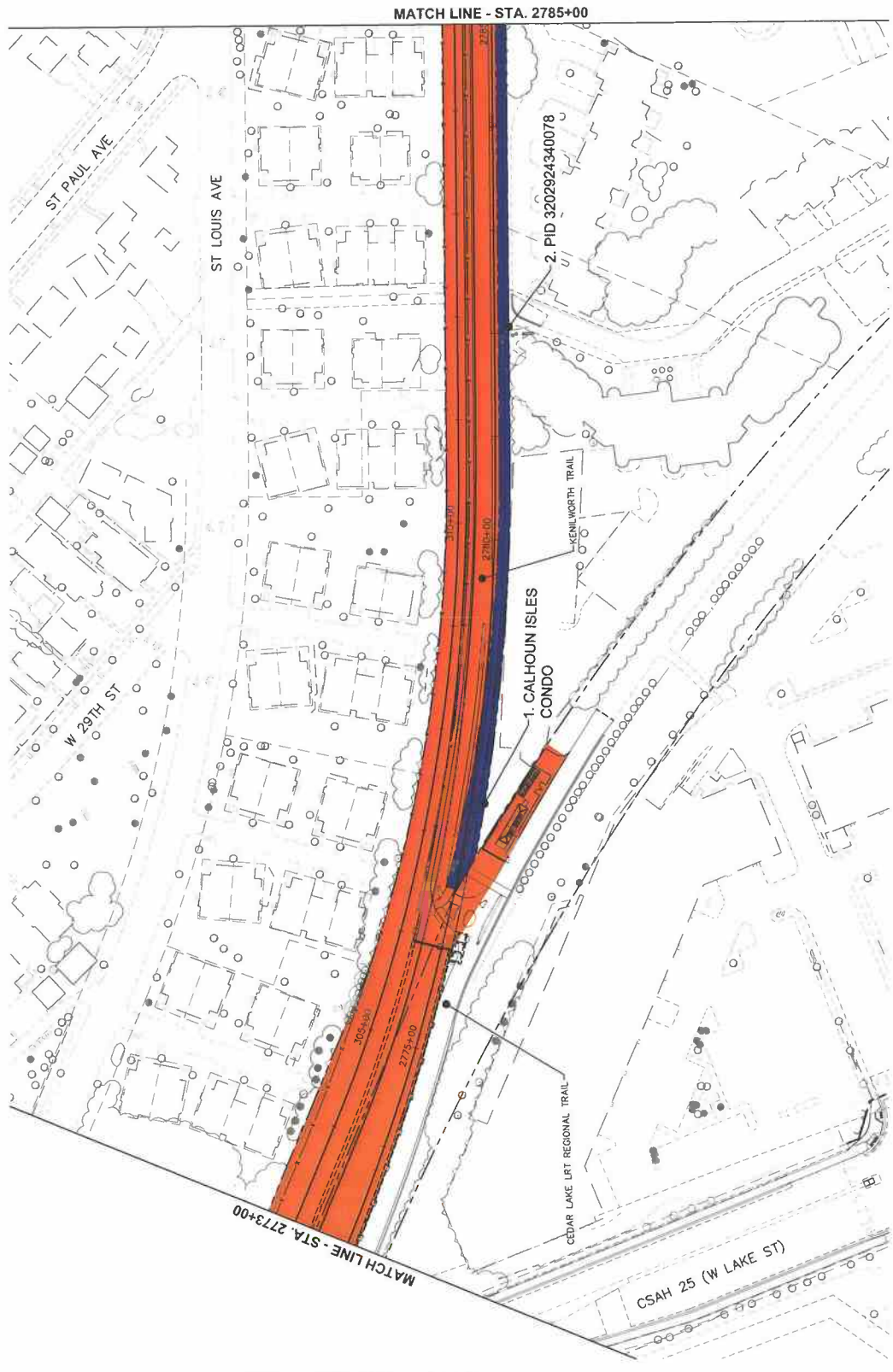


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 02/28/2018

SOUTHWEST LIGHT RAIL
 EXHIBIT A
 CORRIDOR MAPS
 SHEET 04 OF 12



DRAFT-WORK IN PROCESS

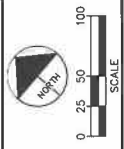


LEGEND

EASEMENT AREA

ADDITIONAL PROPERTY

DRAFT-WORK IN PROCESS



Rev 0
02/28/2018

SOUTHWEST LIGHT RAIL
EXHIBIT A
CORRIDOR MAPS
SHEET 05 OF 12



Jul, 05 2018 05:00 pm C:\Users\jerry.mcpherson\OneDrive\Local\Temp\McPherson_28684\3-HCRA-LAND TRANSFER-KV-EXHIBIT D.dwg Bjr erin.mcpherson



LEGEND

- EASEMENT AREA
- ADDITIONAL PROPERTY

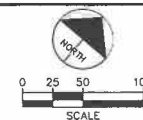
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SOUTHWEST LIGHT RAIL

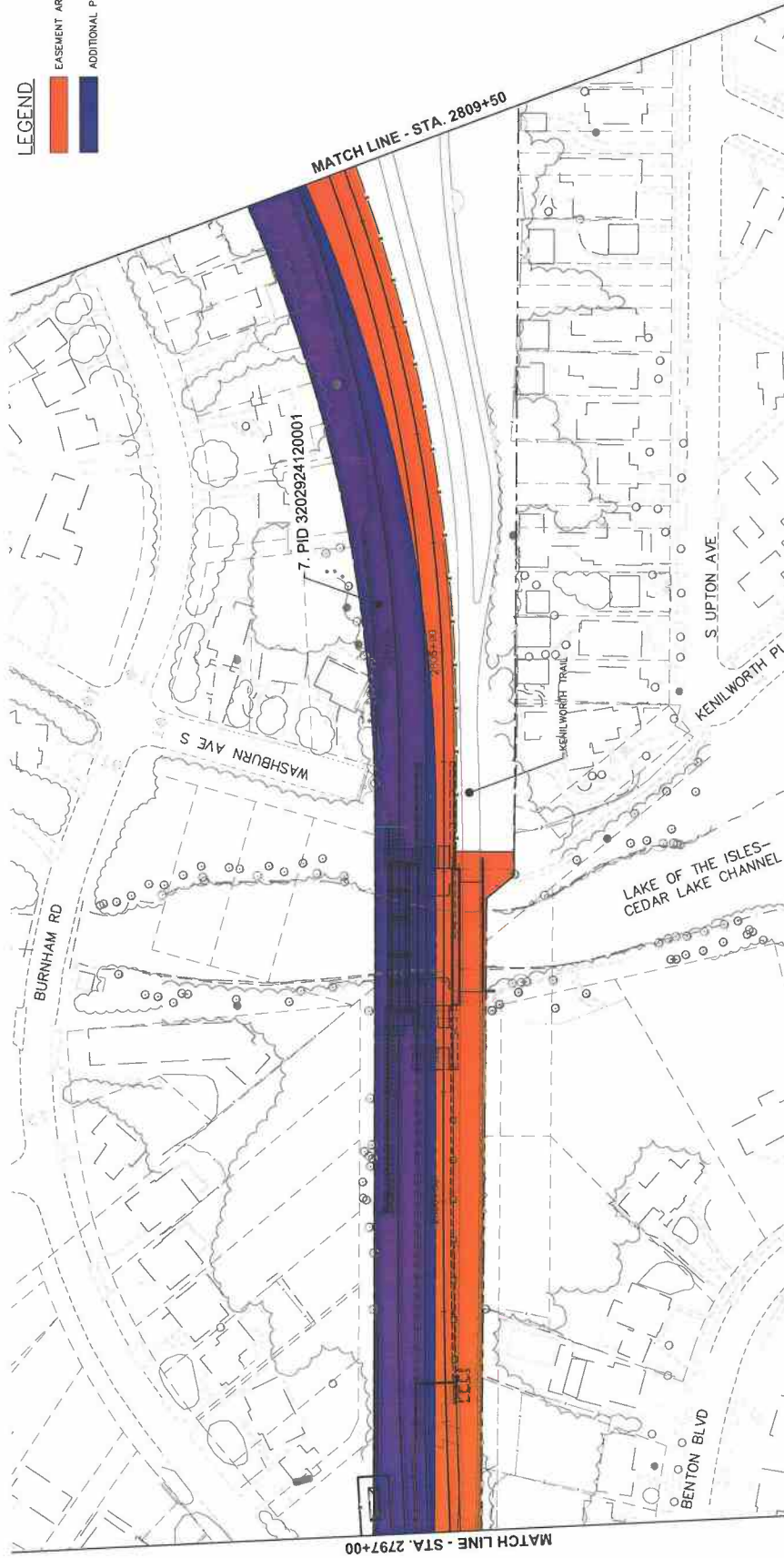
EXHIBIT A
CORRIDOR MAPS
SHEET 06 OF 12

Rev 0
02/28/2018



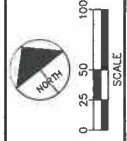
AECOM
Kimley»Horn

LEGEND
EASEMENT AREA
ADDITIONAL PROPERTY



DRAFT-WORK IN PROCESS

AECOM
Kimley»Horn

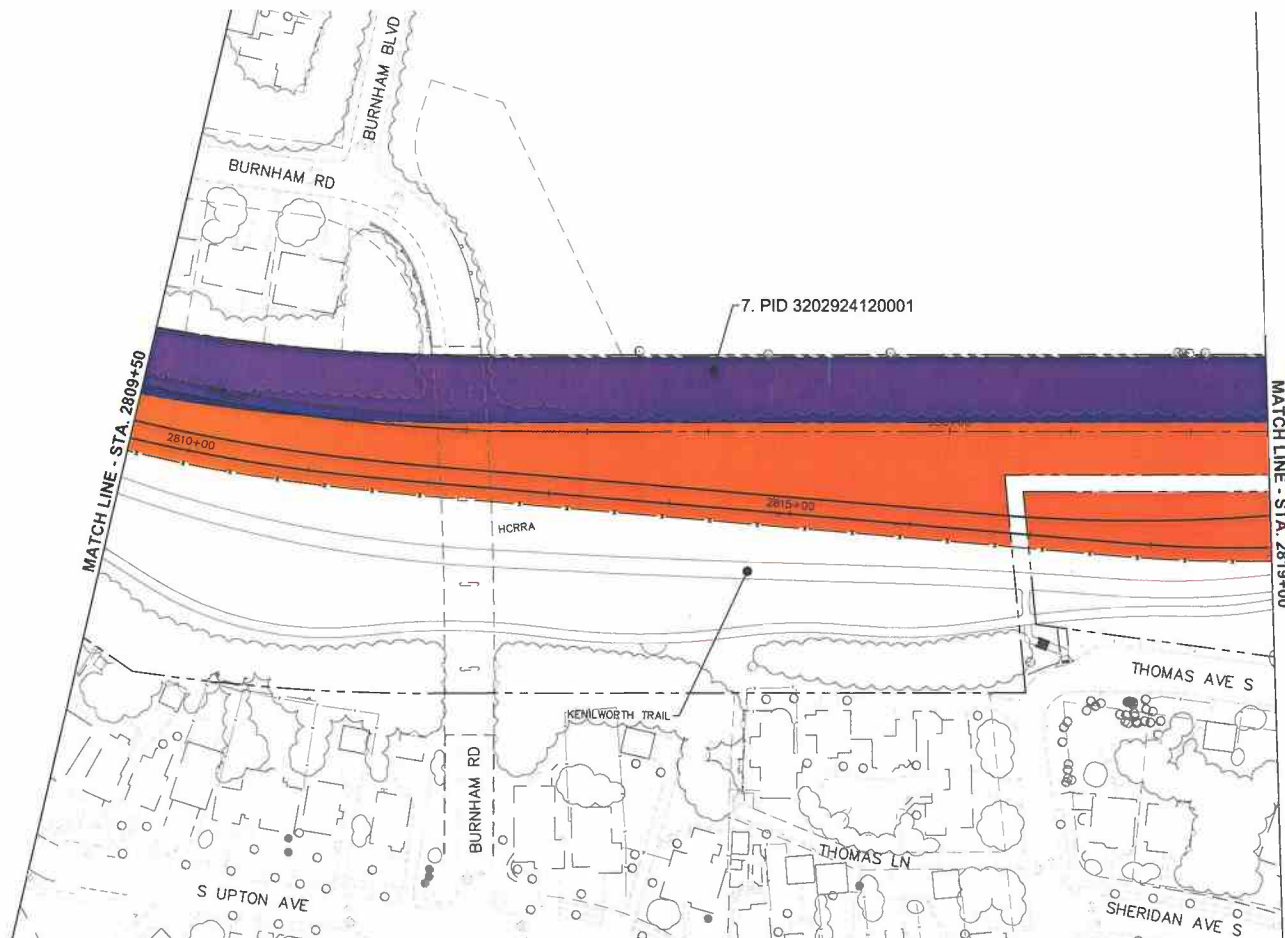


Rev 0
02/28/2018

SOUTHWEST LIGHT RAIL
EXHIBIT A
CORRIDOR MAPS
SHEET 07 OF 12



Jul 05 2018 05:01 pm C:\Users\jerry.mcpherson\OneDrive\Local\temp\Map\Public\266683\13-HCRA-LAND TRANSFER-KW-EXHIBIT D.dwg By: jerry.mcpherson



LEGEND

- EASEMENT AREA
- ADDITIONAL PROPERTY

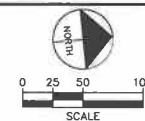
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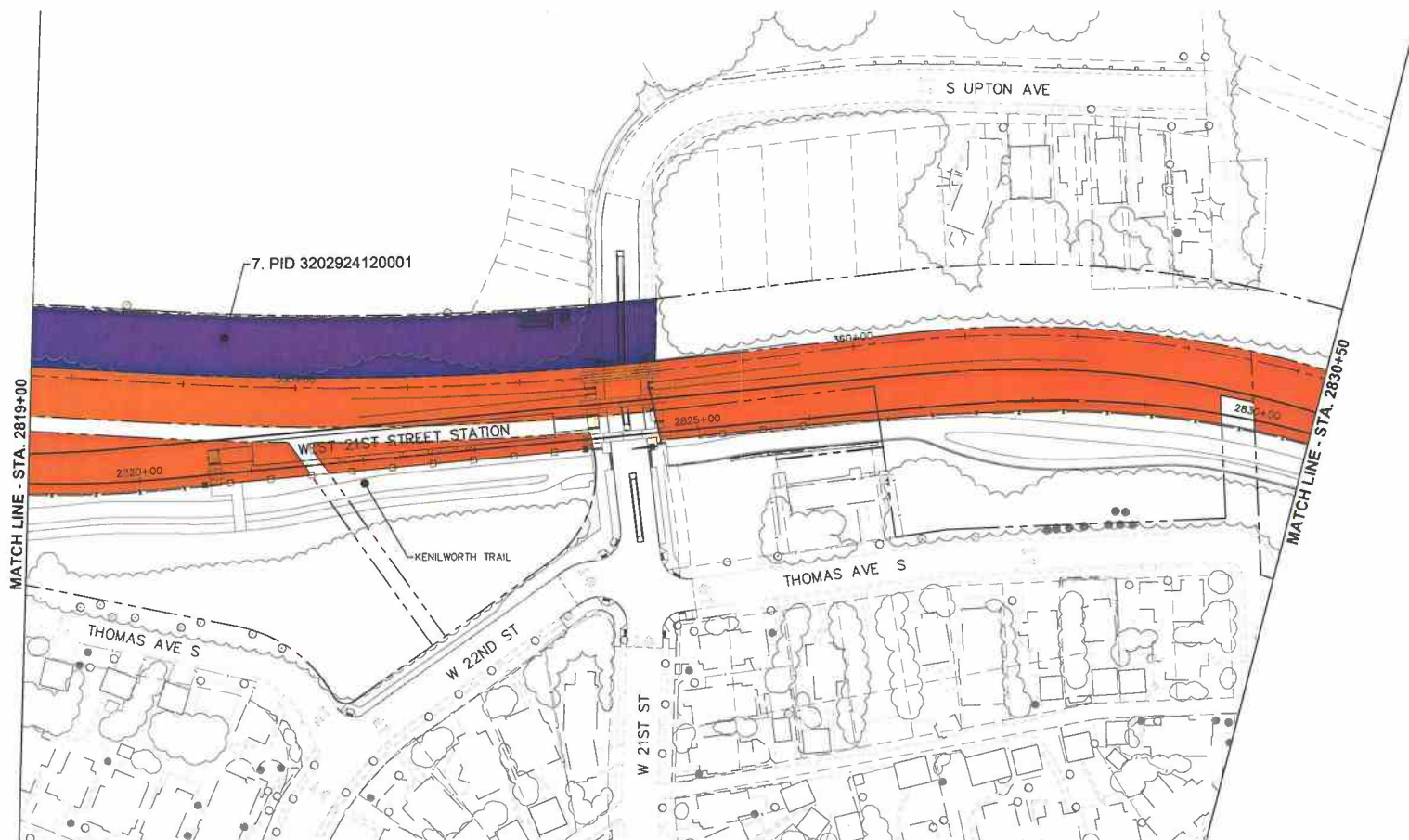


SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 08 OF 12

Rev 0
02/28/2018





LEGEND

 EASEMENT AREA

 ADDITIONAL PROPERTY

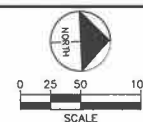
DRAFT-WORK IN PROCESS



SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 09 OF 12

Rev 0
02/28/2018



AECOM
Kimley»Horn

Jul, 05 2018 05:02 pm C:\Users\mcpheersonson\appdata\local\temp\AcDb\plan_28686\CS-HCRA-LAND TRANSFER-KW-EXHIBIT D.dwg By: eric.mcpheersonson



LEGEND

- EASEMENT AREA
- ADDITIONAL PROPERTY

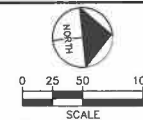
DRAFT-WORK IN PROCESS



SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 10 OF 12

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02/28/2018



Jul, 05 2018 05:10 pm C:\Users\erin.mphaserderson\AppData\Local\Temp\MapPublish_28684\4-1-HCRA-LAND TRANSFER-KW-EXHIBIT D.dwg By: erin.mphaserderson



LEGEND

- EASEMENT AREA
- ADDITIONAL PROPERTY

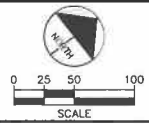
DRAFT-WORK IN PROCESS

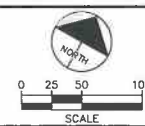
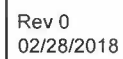


SOUTHWEST LIGHT RAIL

EXHIBIT A
CORRIDOR MAPS
SHEET 11 OF 12

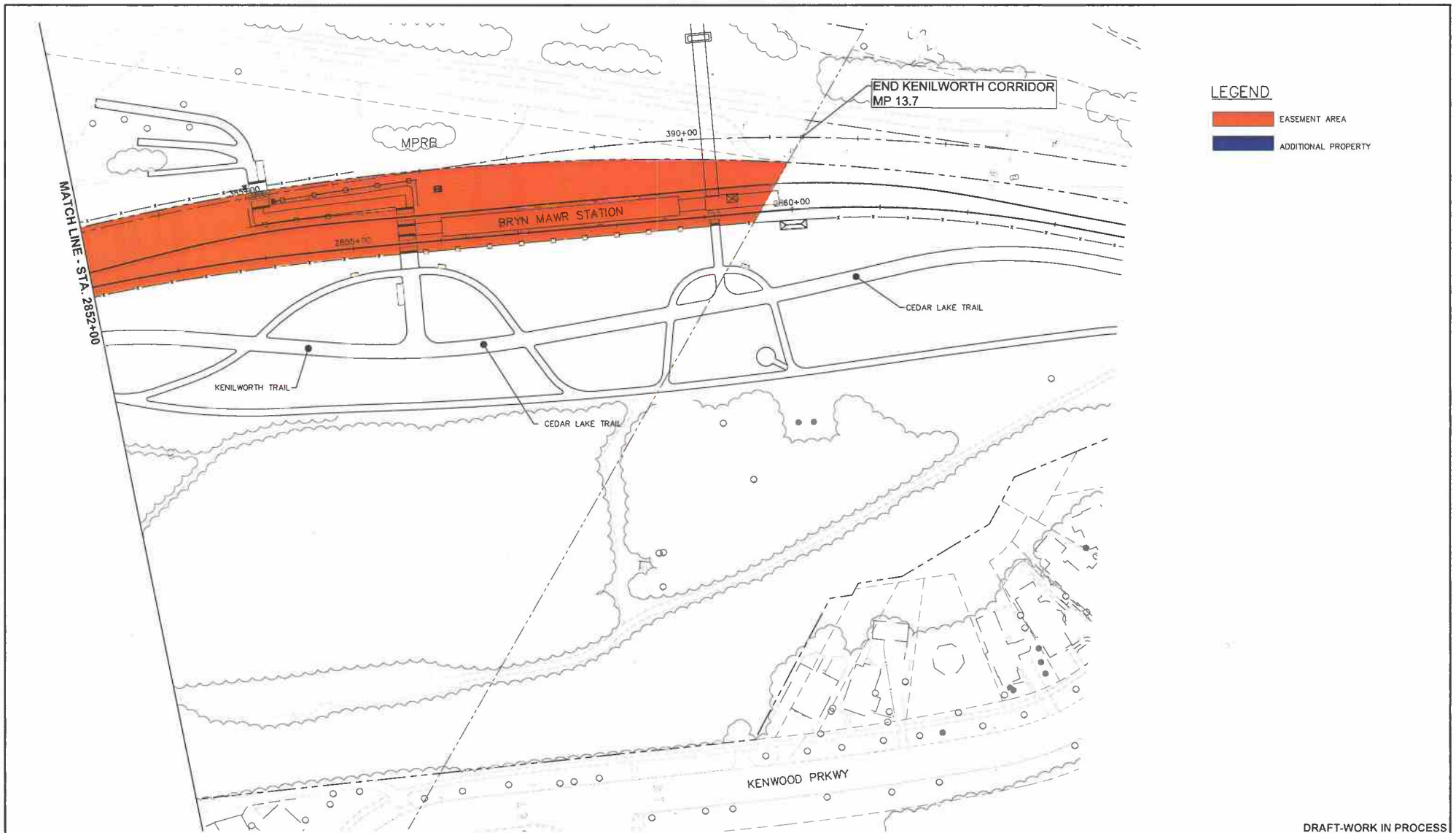
Rev 0
02/28/2018





AECOM
Kimley»Horn

DRAFT-WORK IN PROCESS



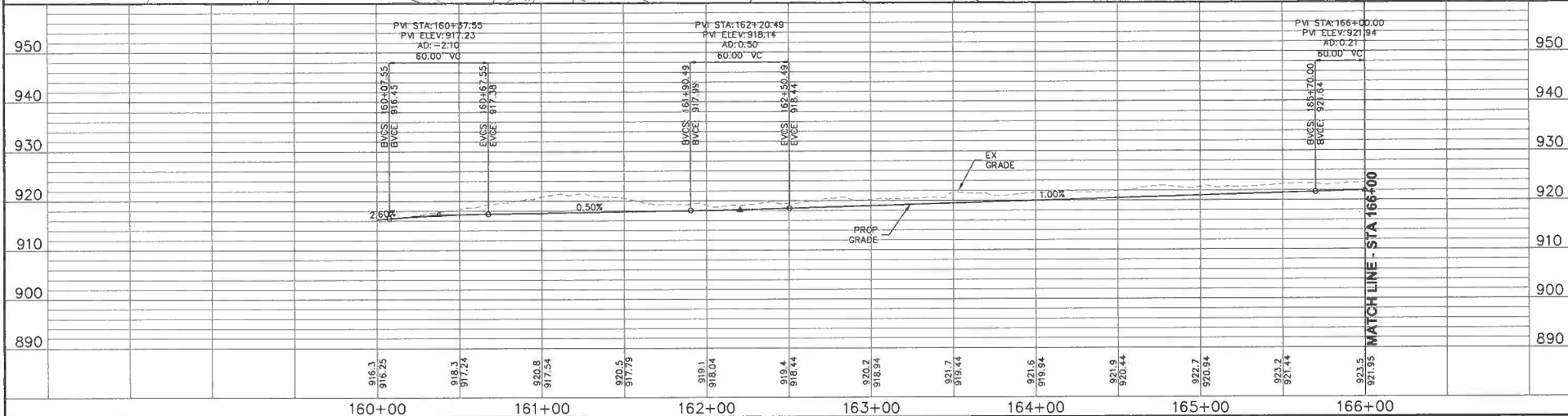
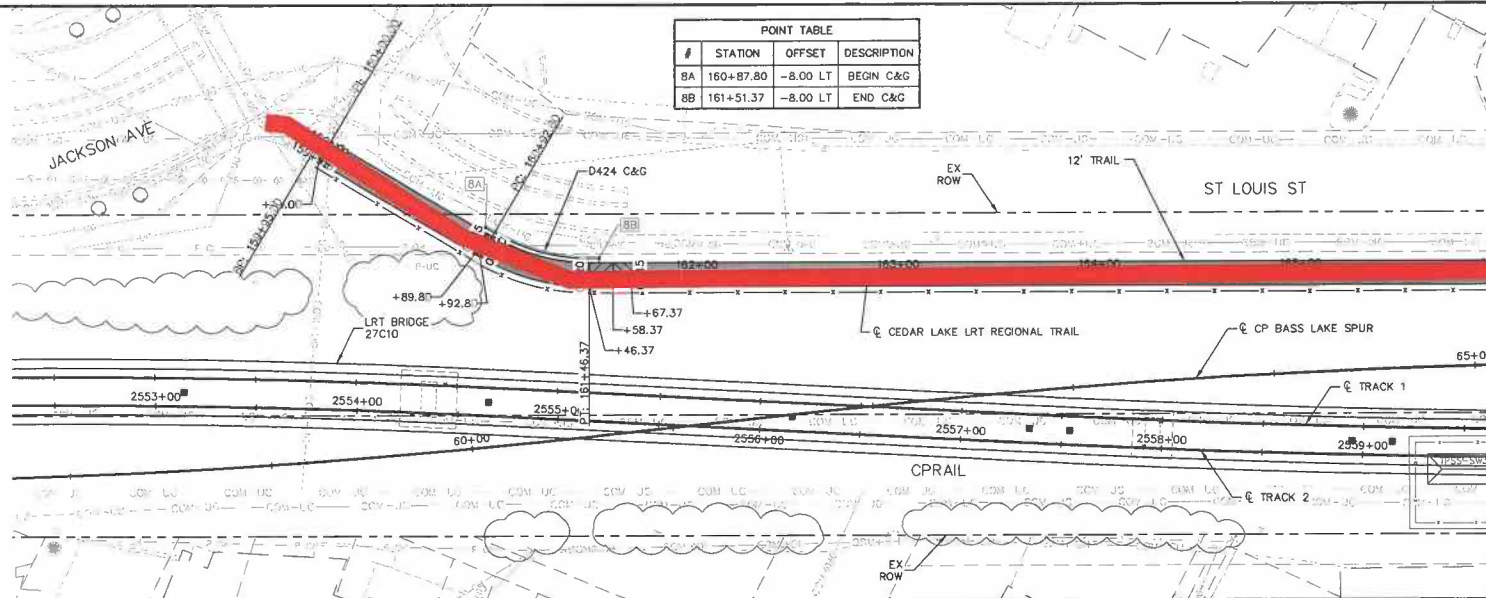
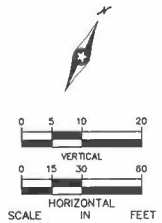
Dec 16 2016 11:29 am V:\3400_AOC\CAO\00_EAST\PLANS\SHEETS\CIVIL\E1-TRL-PRF.dwg By: --corridor

POINT TABLE		
#	STATION	OFFSET
8A	160+87.80	-8.00 LT
8B	161+51.37	-8.00 LT

NOTES

1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
4. SEE CIVIL VOLUME 10B FOR TYPICAL SECTIONS

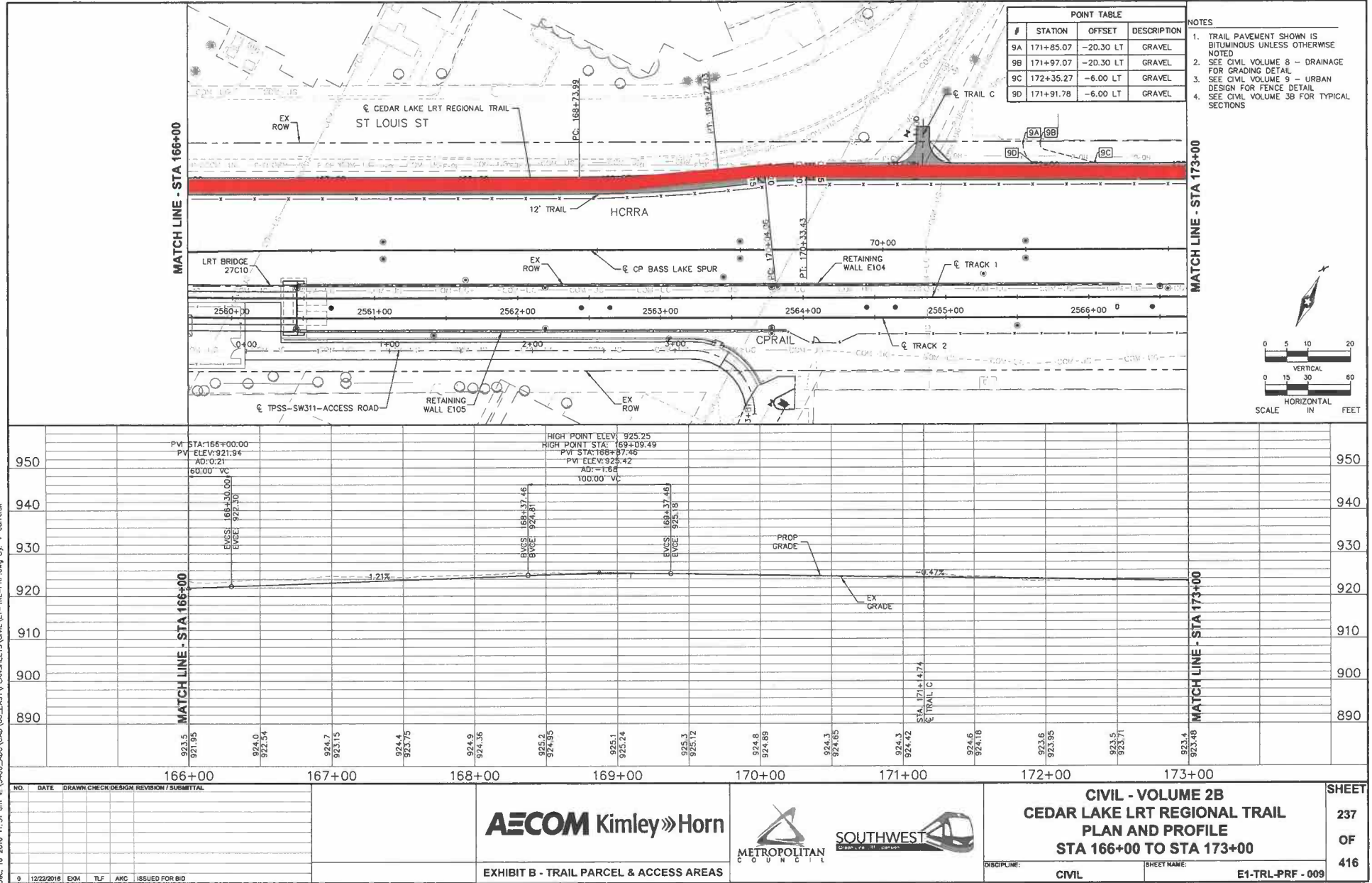
MATCH LINE - STA 166+00



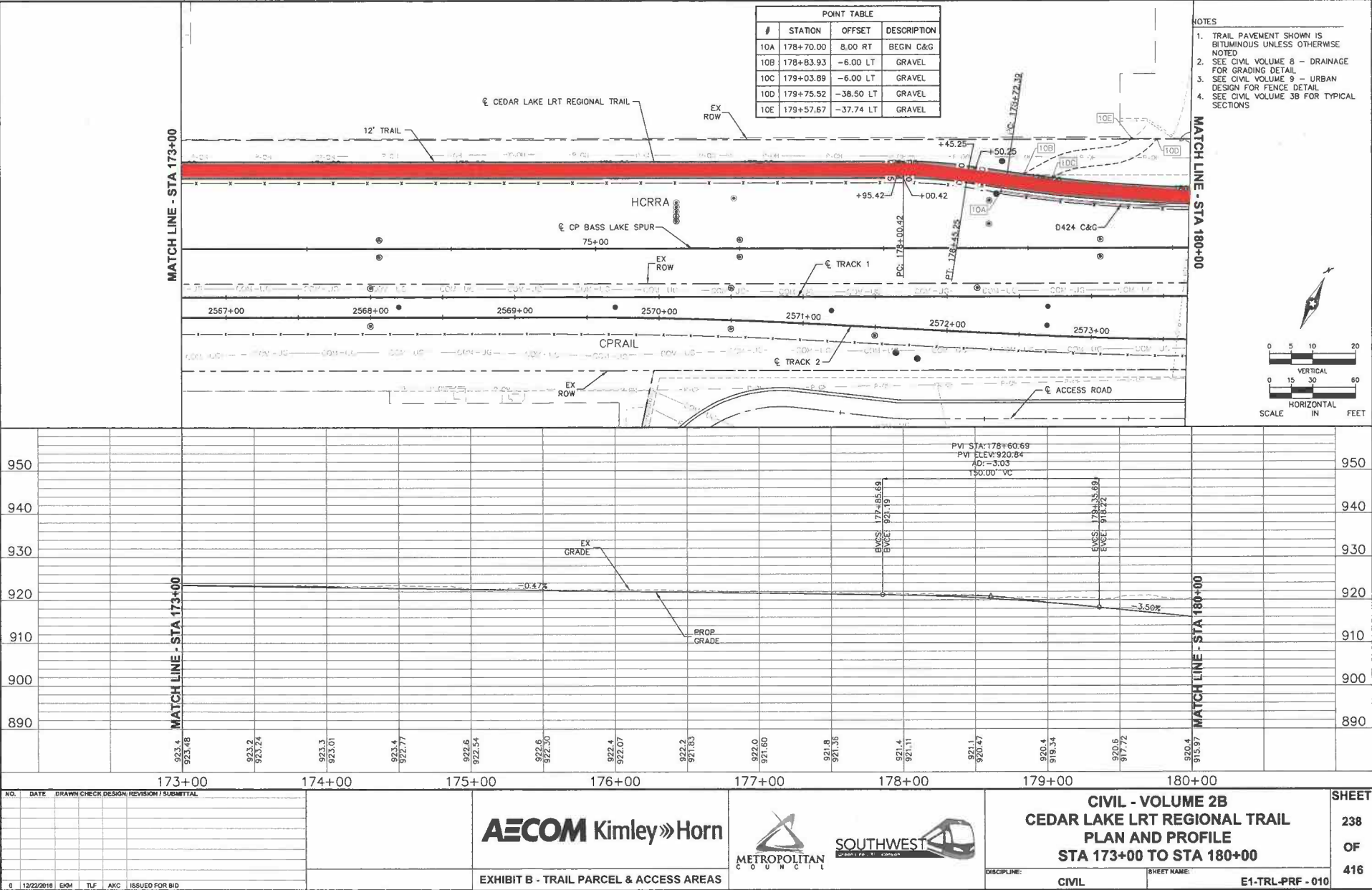
MATCH LINE - STA 166+00

NO. DATE DRAWN CHECK DESIGN REVISION / SUBMITTAL										100100 100100									
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Dec. 16 2016 11:31 am V:\3400_ADC\CAO\00_EAST\PLAN\SS\04\1-TRL-PRF.dwg By: v-corrad



Dec. 16 2016 11:34 am V:\400_400\CAO\00_EAST\PLANS\ETS\QWL\E1-TRL-PRF.dwg By: v-corralda



AECOM Kimley»Horn



**CIVIL - VOLUME 2B
 CEDAR LAKE LRT REGIONAL TRAIL
 PLAN AND PROFILE
 STA 173+00 TO STA 180+00**

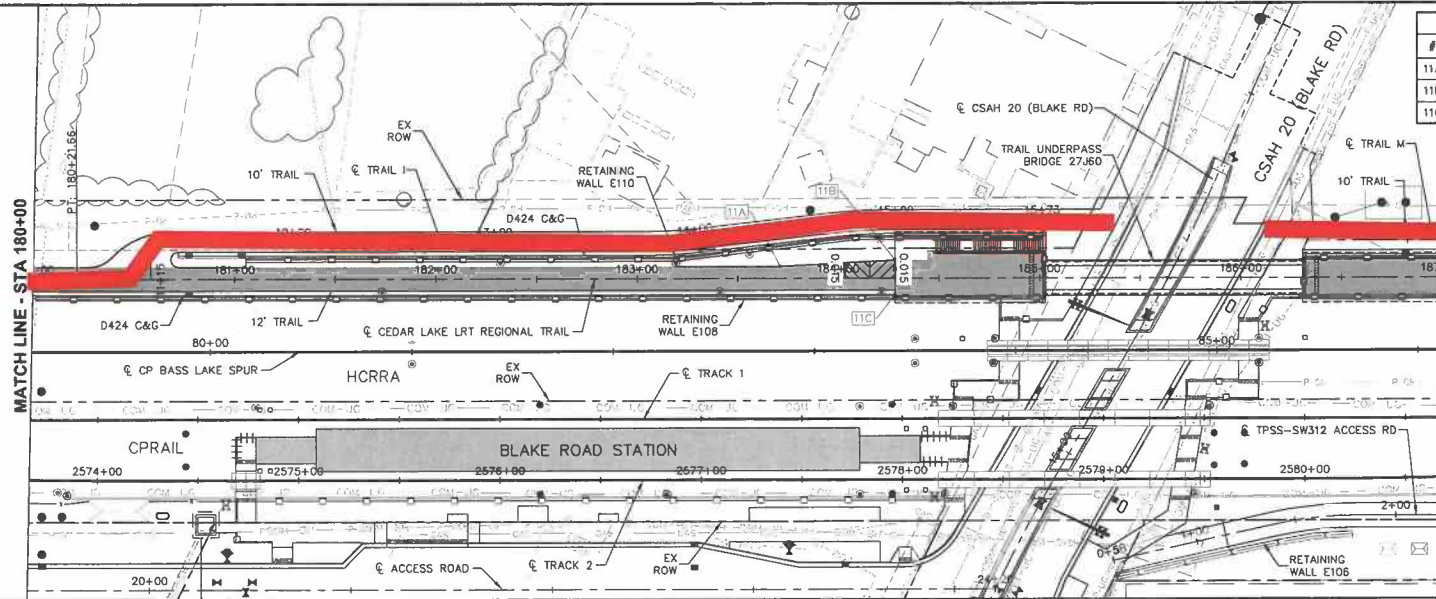
**SHEET
 238
 OF
 416**

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

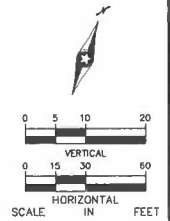
DISCIPLINE: CIVIL SHEET NAME: E1-TRL-PRF - 010

NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2016	EOM	TLF	AKC		ISSUED FOR BID

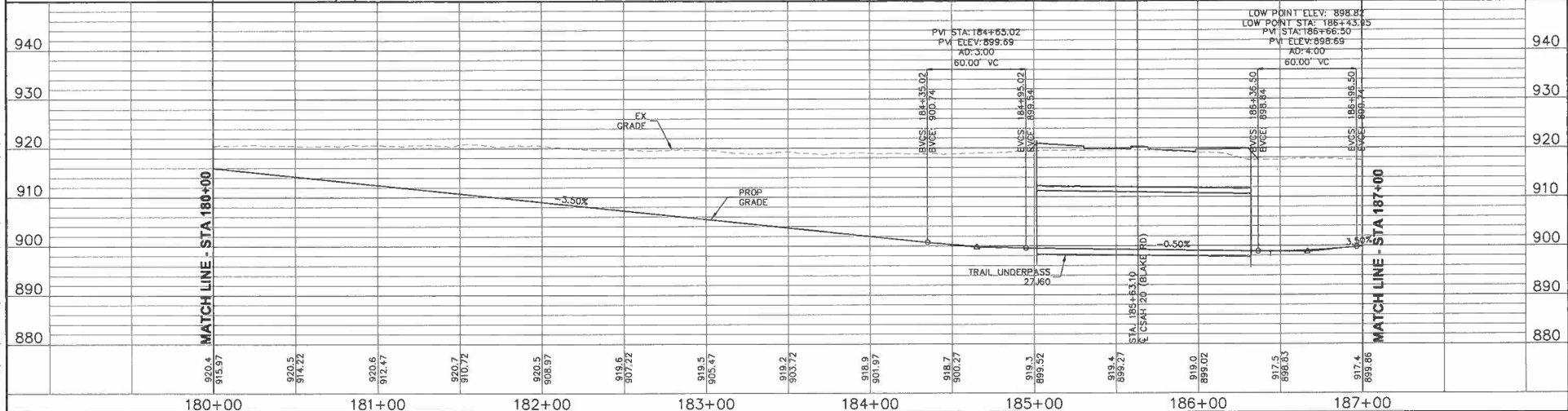
Dec. 18 2016 11:36 am V:\3400_AOC\CAD\00_EAST PLANS\SHEETS\DWG\E1-TRL-PRF.dwg Bjr. v-corrado



POINT TABLE			
#	STATION	OFFSET	DESCRIPTION
11A	183+71.04	-6.00 LT	BEGIN TAPER
11B	184+28.09	-9.17 LT	END TAPER
11C	184+28.09	8.00 RT	END C&G



- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2016	DJM	TJF	ARC		ISSUED FOR BID

AECOM Kimley»Horn

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

METROPOLITAN COUNCIL

SOUTHWEST

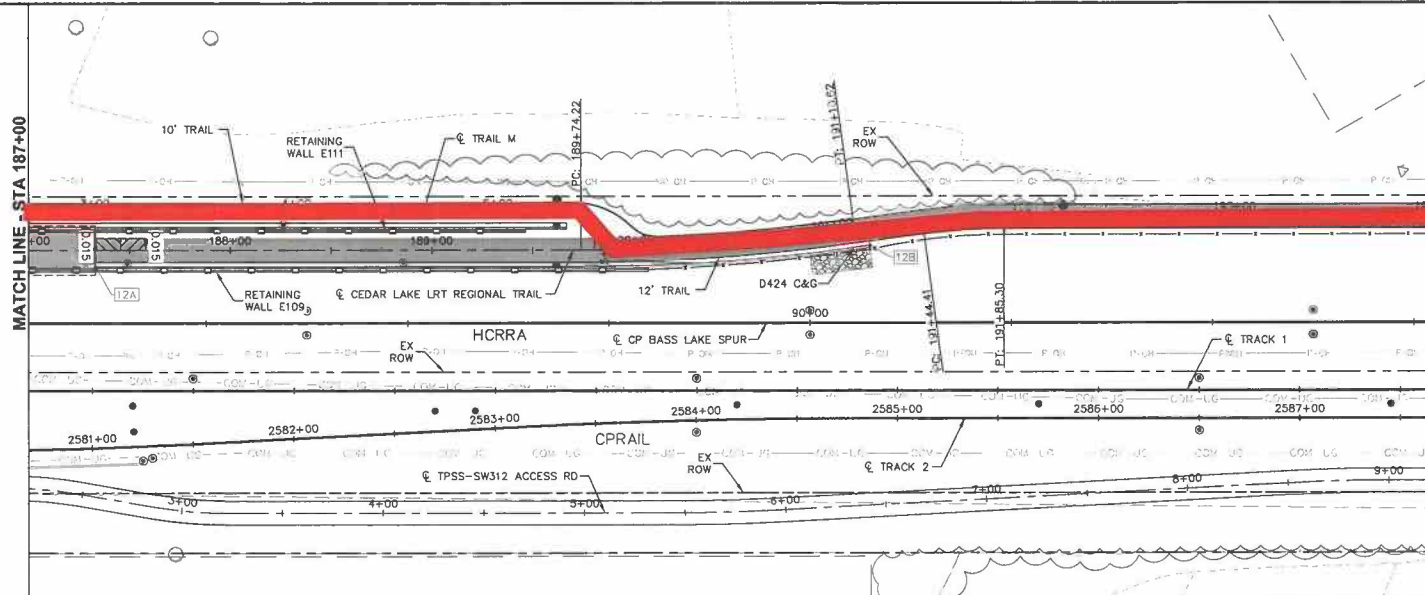
CIVIL - VOLUME 2B
CEDAR LAKE LRT REGIONAL TRAIL
PLAN AND PROFILE
STA 180+00 TO STA 187+00

SHEET
239
OF
416

DISCIPLINE: CIVIL

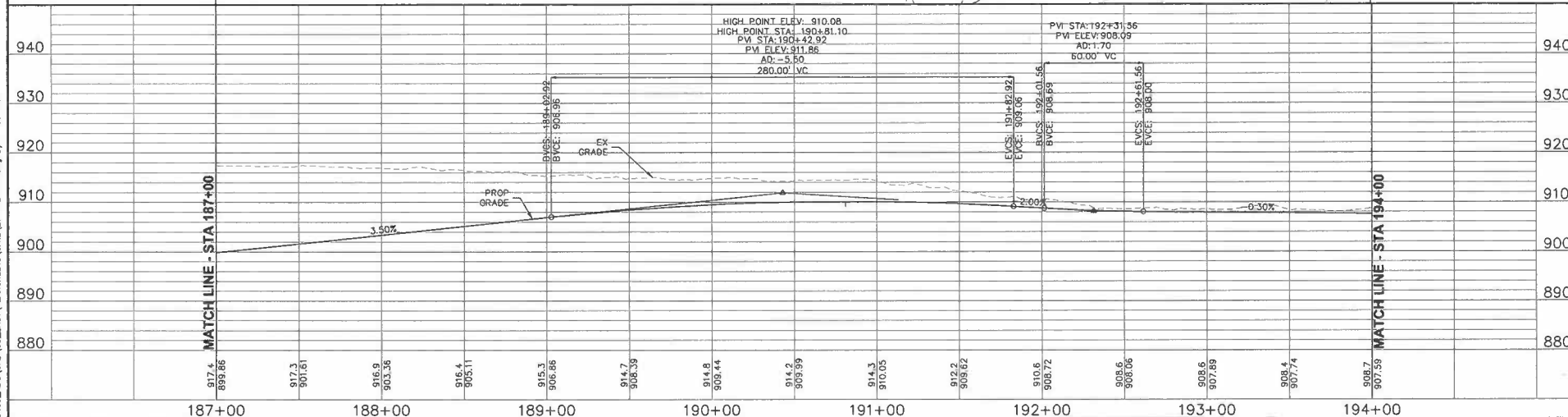
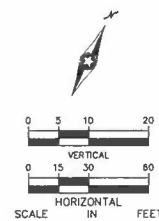
SHEET NAME: E1-TRL-PRF - 011

Dec. 16 2016 11:39 am V:\3400_ADC\CAO\00_EAST\PLANS\ETS\01A\ET1-TRL-PRF.dwg By: --corridor



POINT TABLE			
#	STATION	OFFSET	DESCRIPTION
12A	187+33.09	8.00 RT	BEGIN C&G
12B	191+16.89	8.00 RT	END C&G

- NOTES**
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME B - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 39 FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	1/22/2016	EGM	TLF	AKC	ISSUED FOR BID	

AECOM Kimley»Horn

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

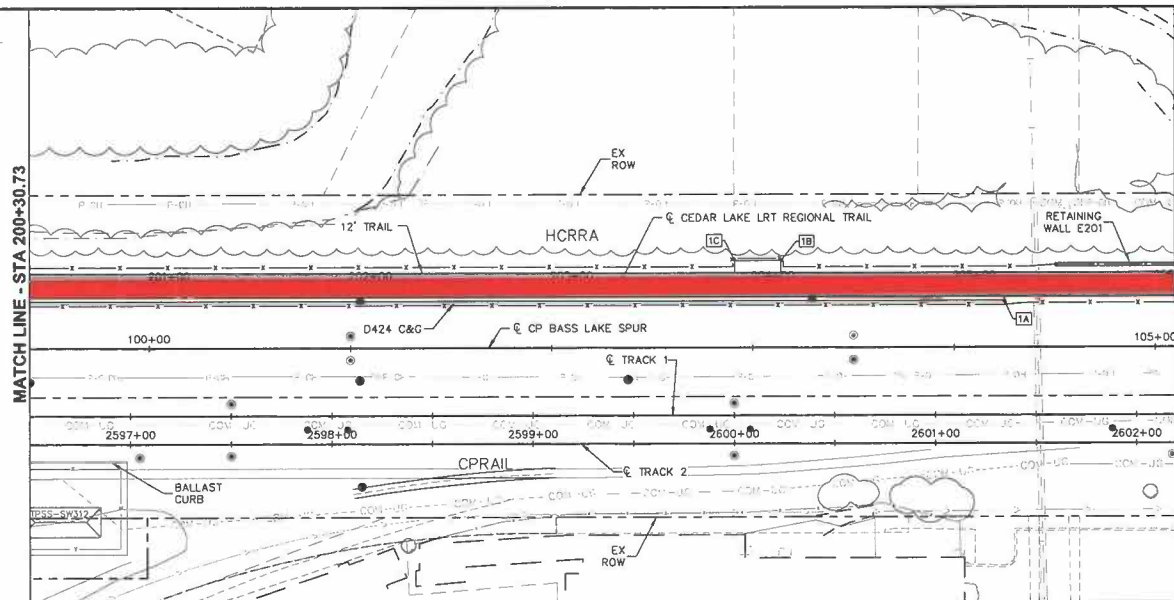
METROPOLITAN COUNCIL
SOUTHWEST

CIVIL - VOLUME 2B
CEDAR LAKE LRT REGIONAL TRAIL
PLAN AND PROFILE
STA 187+00 TO STA 194+00

DISCIPLINE: CIVIL
SHEET NAME: E1-TRL-PRF - 012

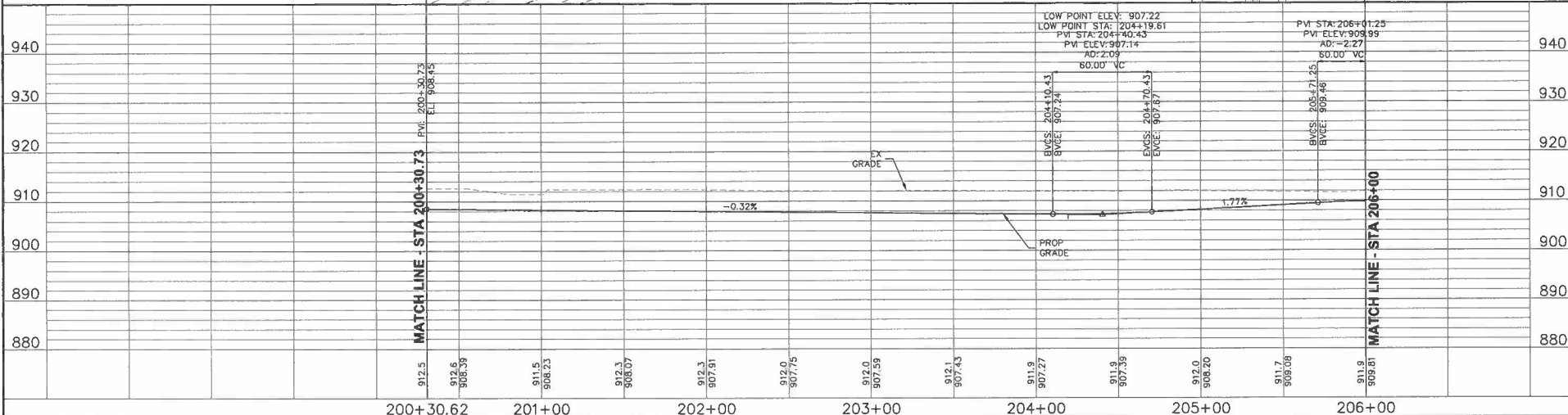
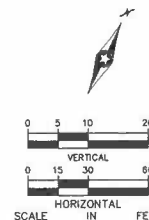
SHEET
240
OF
416

CEDAR LAKE LRT REGIONAL TRAIL			
#	STATION	OFFSET	DESCRIPTION
1A	205+15.00	8.00 RT	END C&G
1B	204+04.10	-12.00 LT	CONC PAD
1C	203+81.10	-12.00 LT	CONC PAD



- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS

MATCH LINE - STA 206+00



NO.	DATE	DRAWN/CHECK	DESIGN/REVISION	SUBMITTAL

AECOM Kimley»Horn



EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

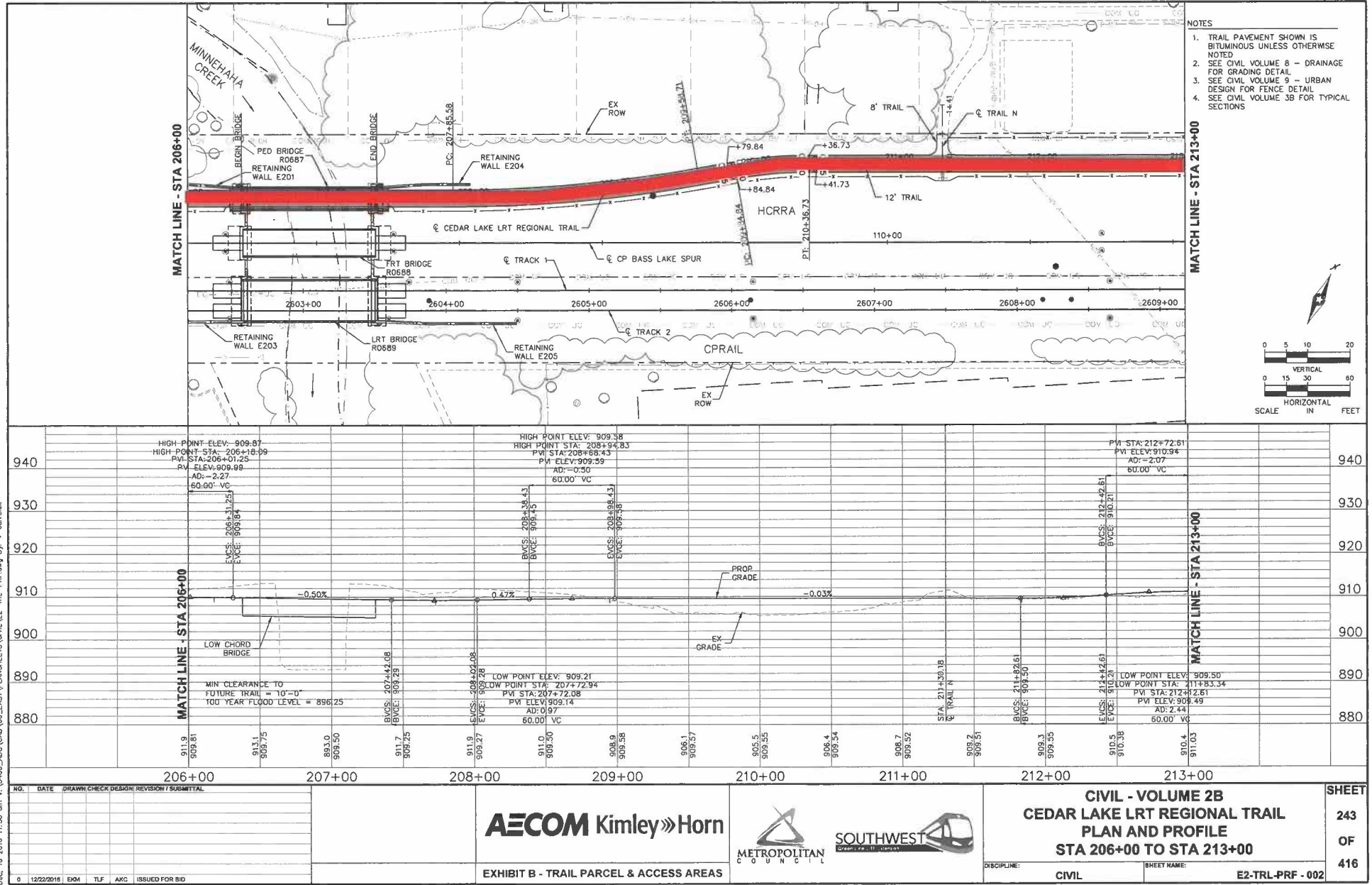
CIVIL - VOLUME 2B
CEDAR LAKE LRT REGIONAL TRAIL
PLAN AND PROFILE
STA 200+30.73 TO STA 206+00

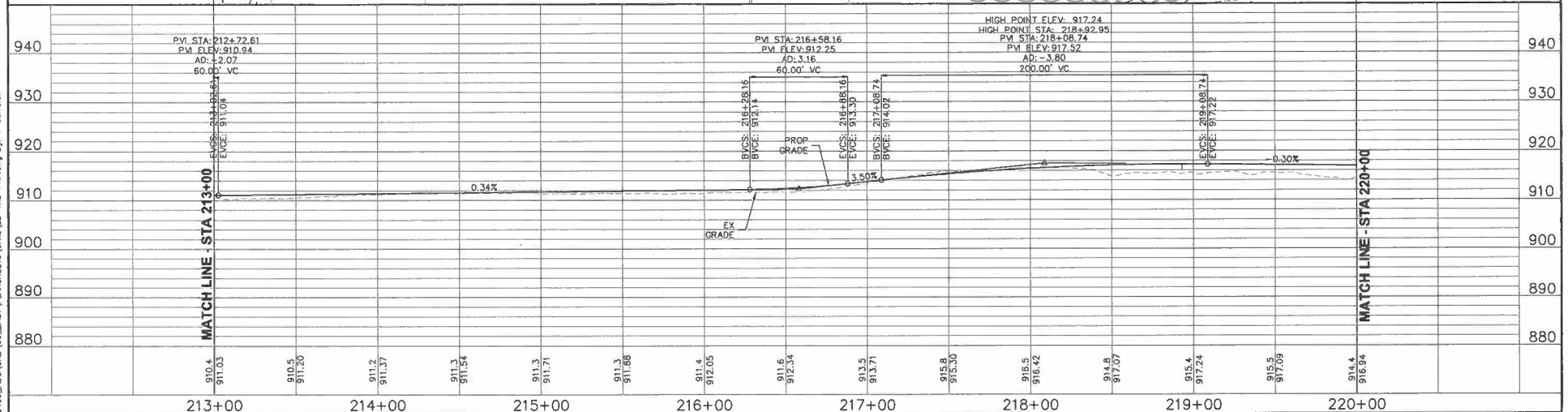
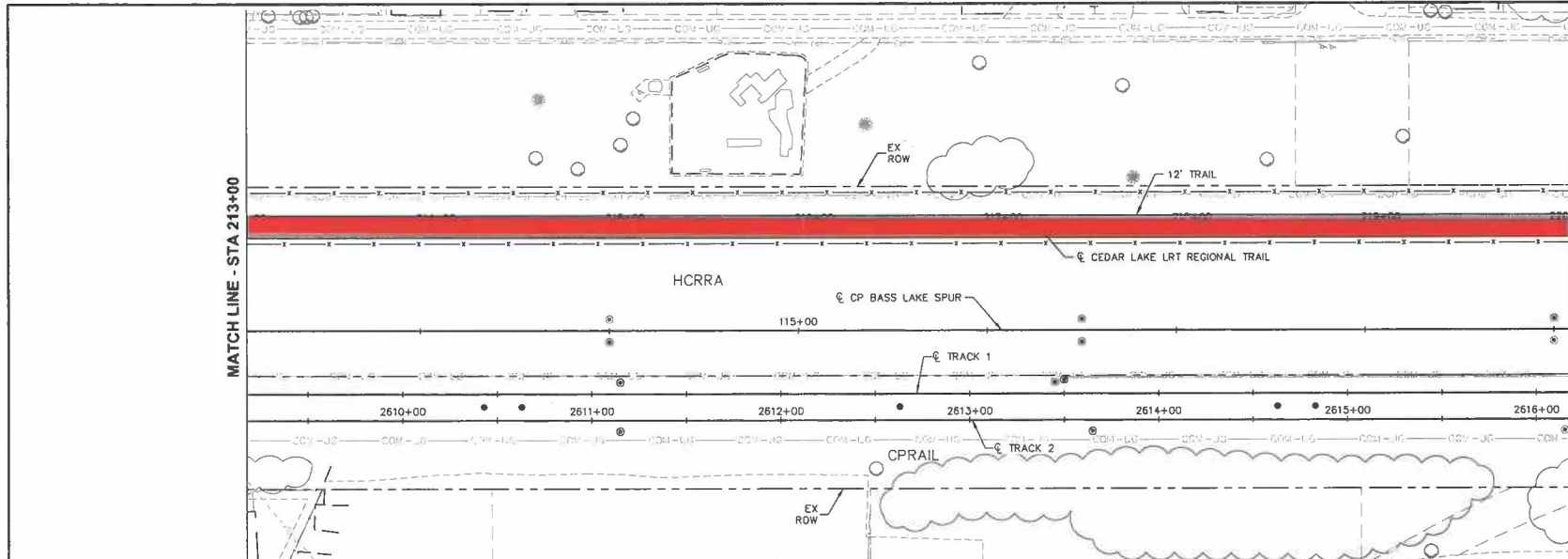
SHEET
242
OF
416

DISCIPLINE: **CIVIL** SHEET NAME: **E2-TRL-PRF - 001**

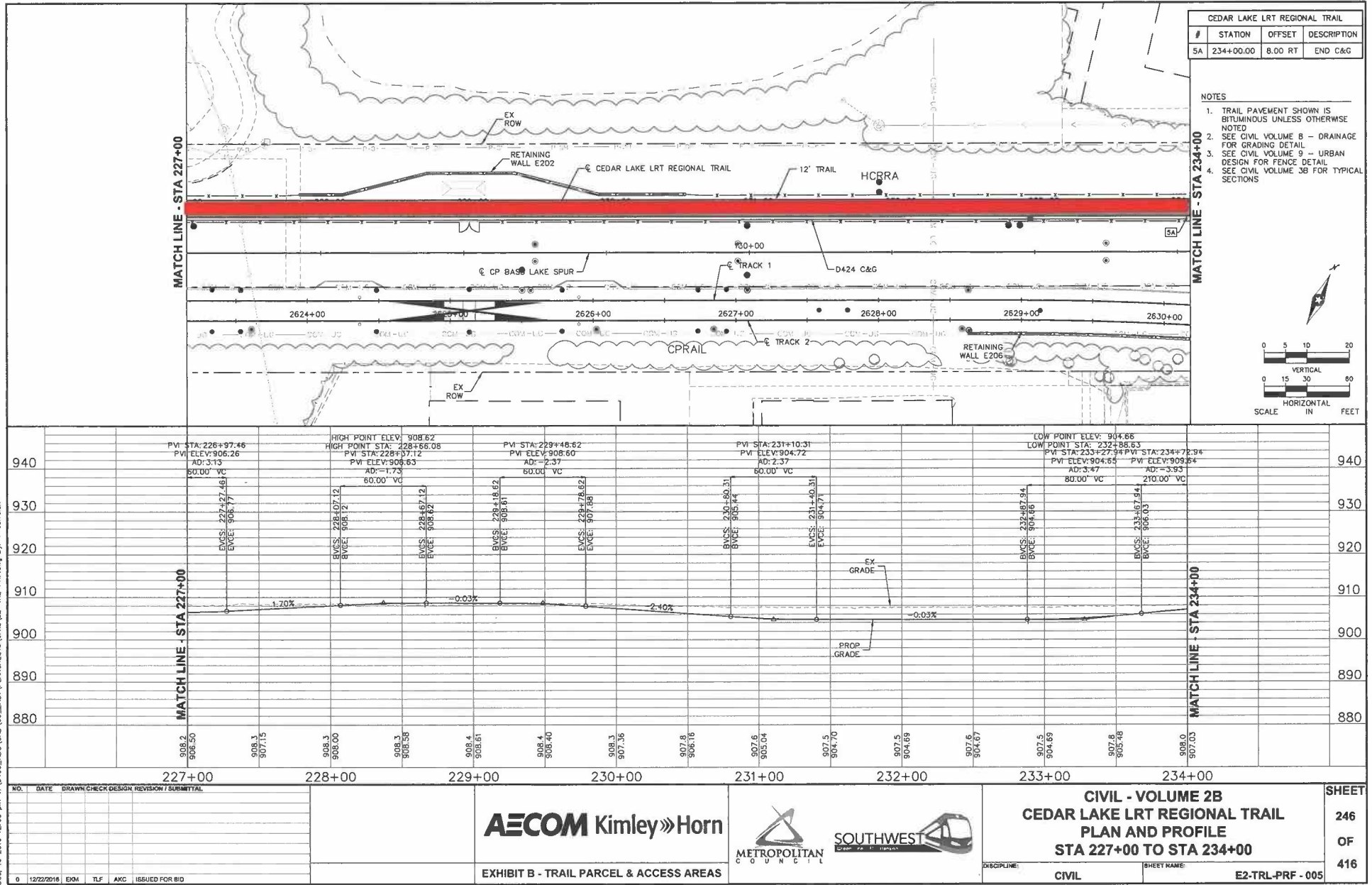
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Dec. 16 2016 11:50 am V:\3400_A00\CA0\00_EAST\PLANS\ETS\GWL\2-TRL-PRF.dwg By: v-corrad

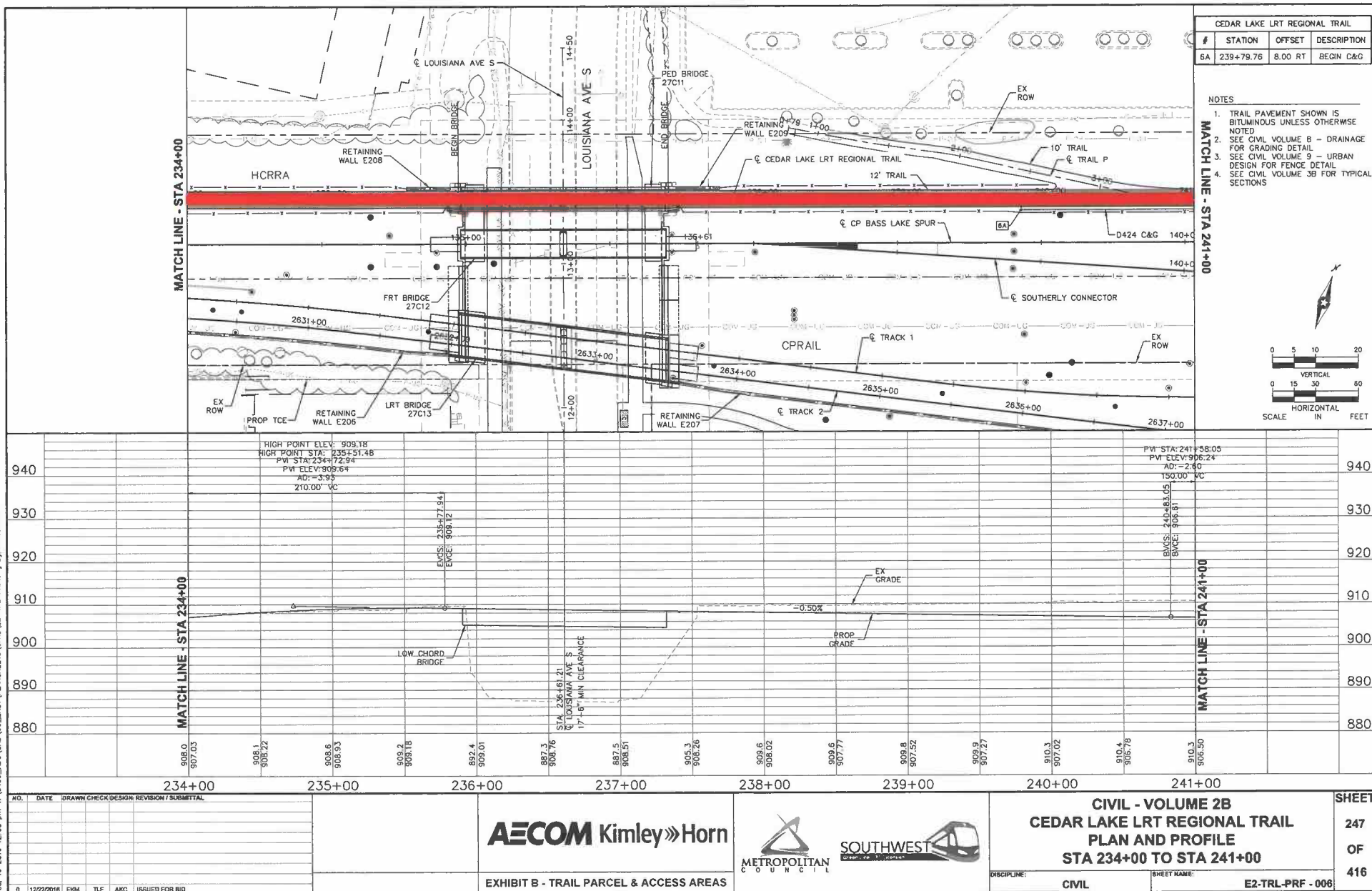




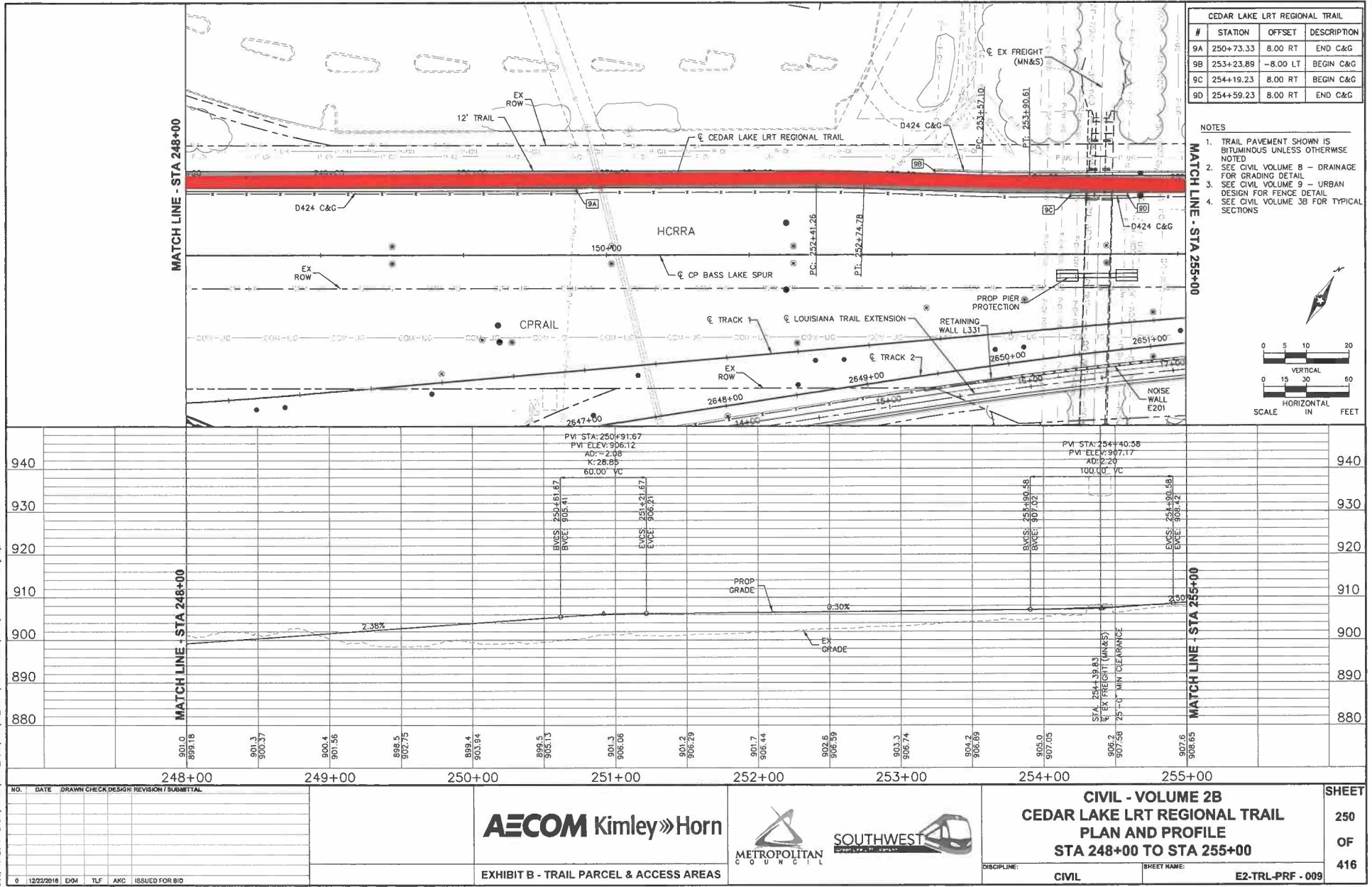
Dec. 16 2016 12:03 pm V:\3460_ADC\CAO\00_EAST\PLANS\SHEETS\QV\E2-TRL-PRF.dwg By: v-corredak



Dec. 16 2016 12:08 pm V:\3400_AOC\AOC\00_EAST\PLANS\SET\01\2-E2-TRL-PRF.dwg By: v-correda

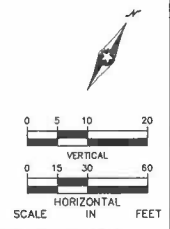


Dec. 18 2016 12:21 pm V:\3400_AOC\CAD\00_EAST\PLANSHEETS\001\02-TRL-PRF.dwg By: rcorleak



CEDAR LAKE LRT REGIONAL TRAIL			
#	STATION	OFFSET	DESCRIPTION
9A	250+73.33	8.00 RT	END C&G
9B	253+23.89	-8.00 LT	BEGIN C&G
9C	254+19.23	8.00 RT	BEGIN C&G
9D	254+59.23	8.00 RT	END C&G

- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL

AECOM Kimley»Horn



CIVIL - VOLUME 2B
CEDAR LAKE LRT REGIONAL TRAIL
PLAN AND PROFILE
STA 248+00 TO STA 255+00

SHEET
250
OF
416

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

DISCIPLINE: **CIVIL** SHEET NAME: **E2-TRL-PRF - 009**

Dec. 16 2016 12:25 pm V:\4400_AOC\CAU\00_EAST_PLANS\ETS\QVL\E2-TRL-PRF.dwg By: v-corredak

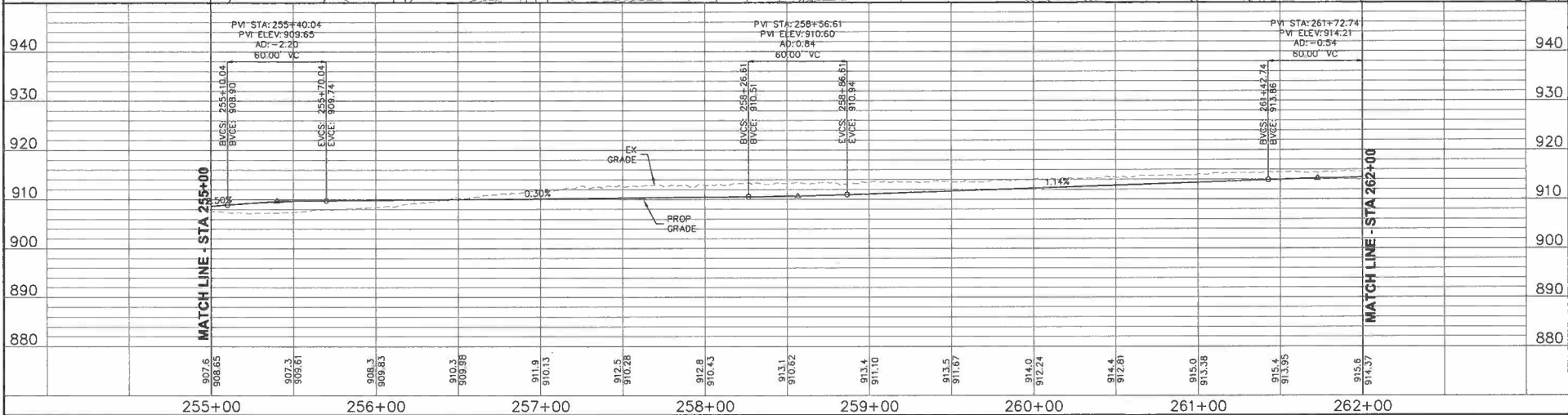
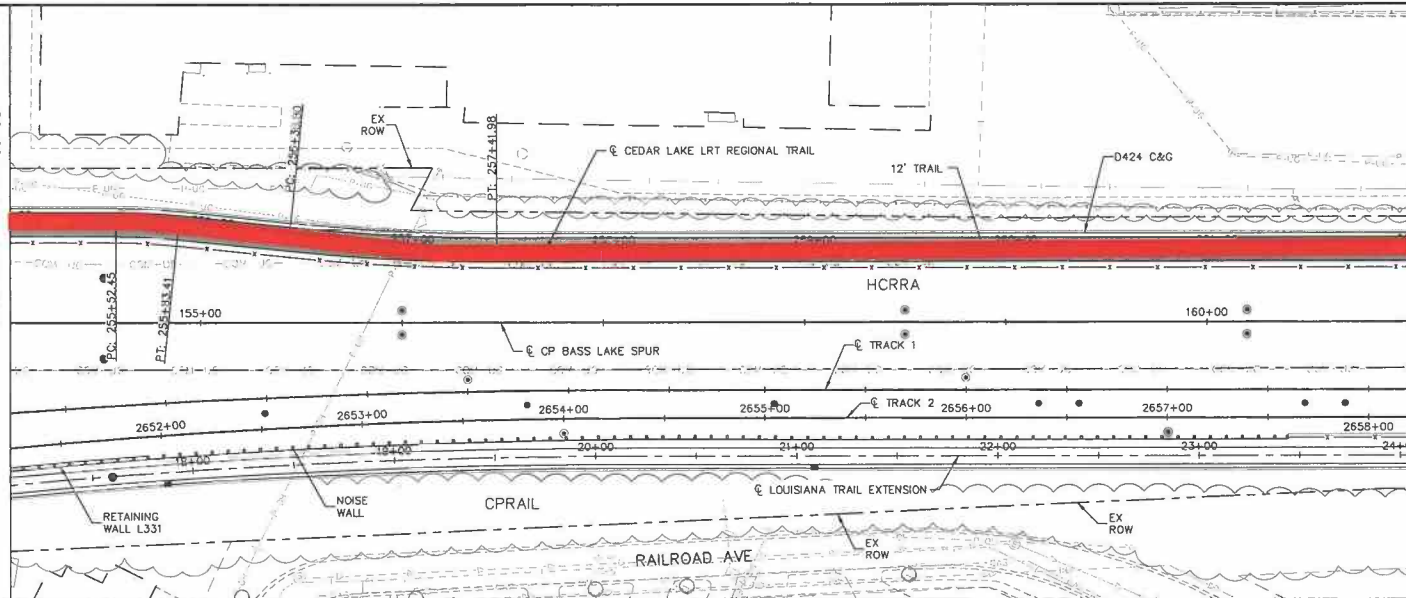
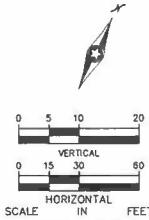
MATCH LINE - STA 255+00

MATCH LINE - STA 255+00

MATCH LINE - STA 262+00

NOTES

1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2016	EXM	TLF	AKC	ISSUED FOR BID	

AECOM Kimley»Horn

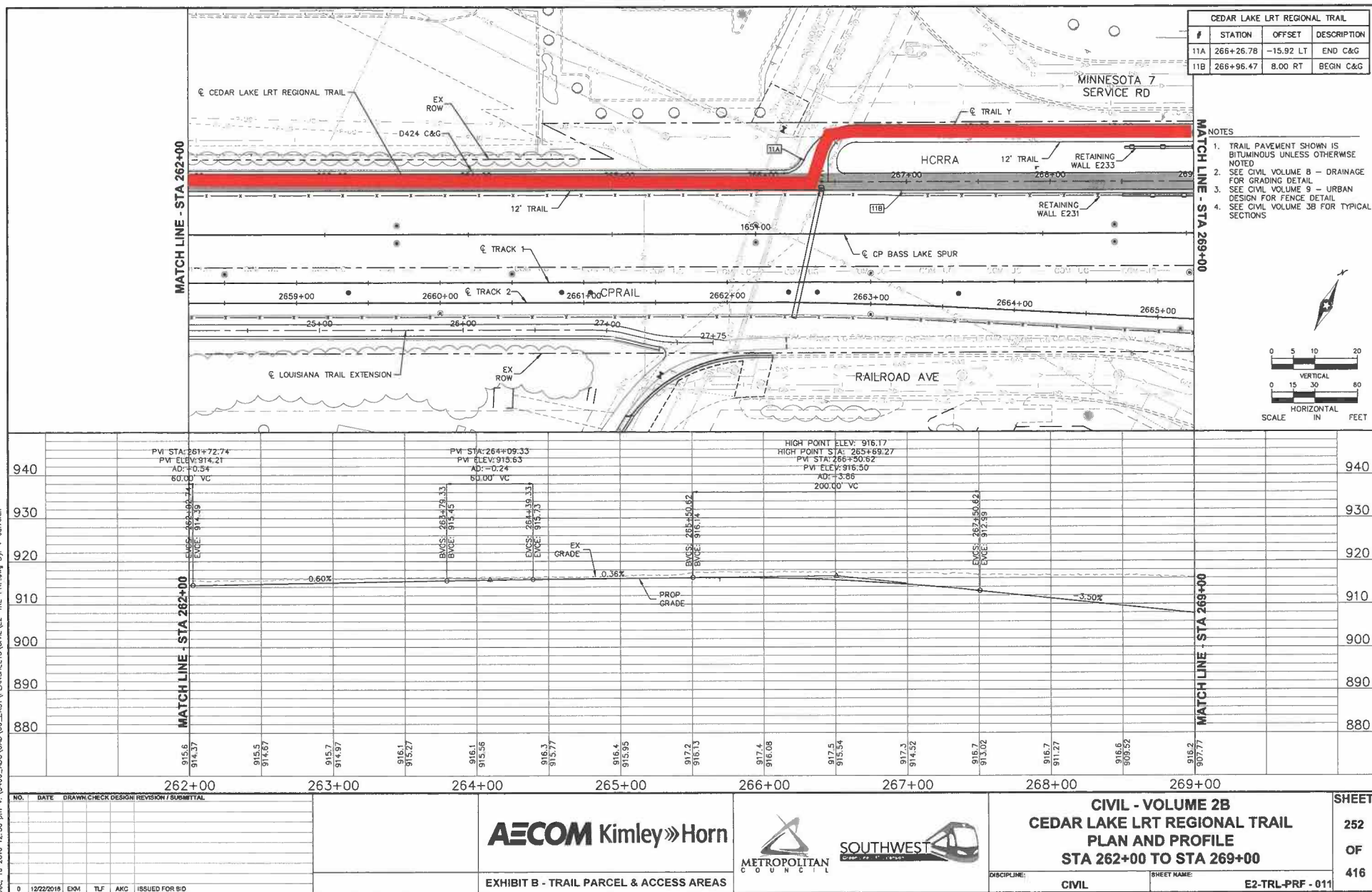
EXHIBIT B - TRAIL PARCEL & ACCESS AREAS



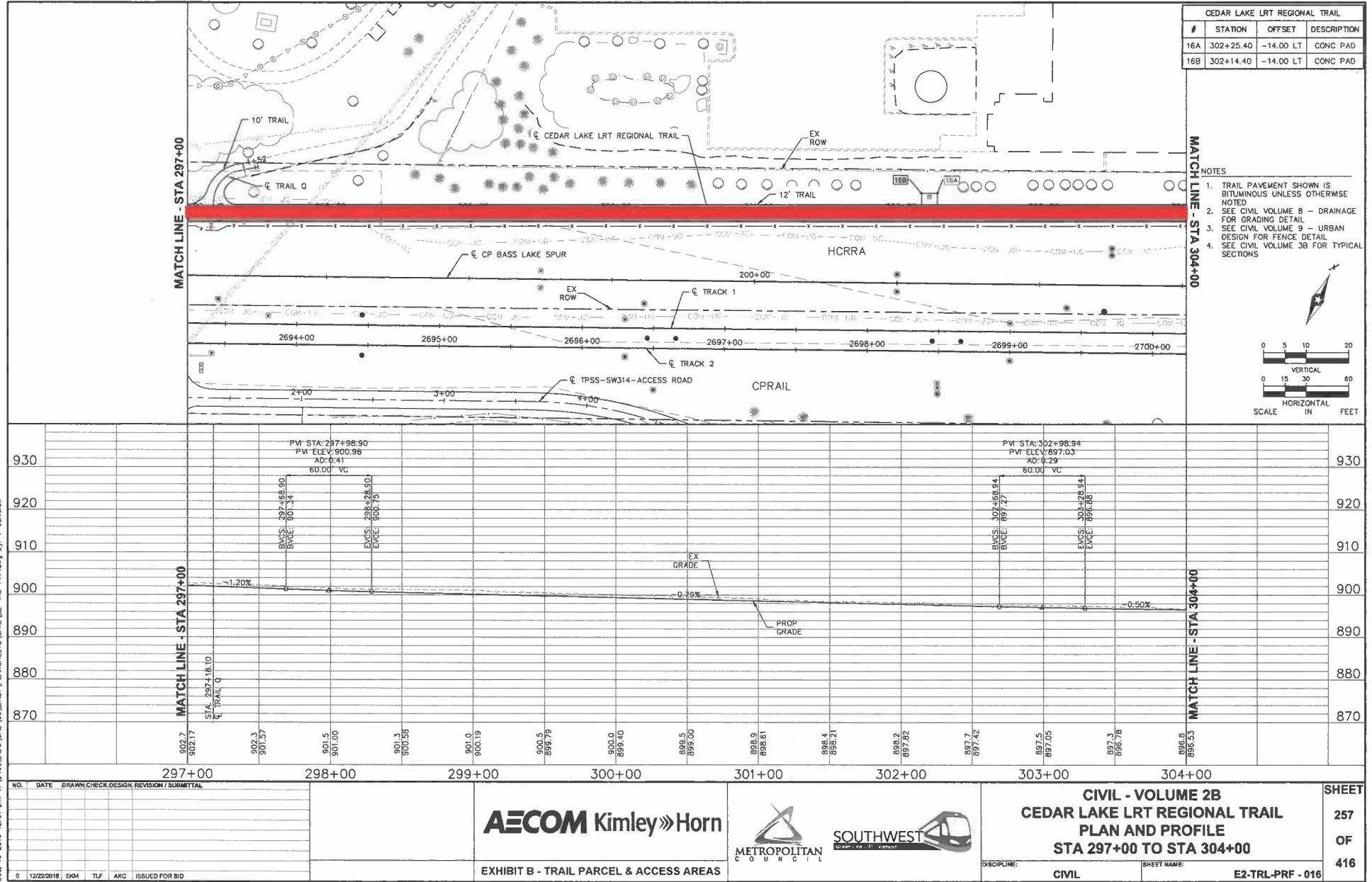
CIVIL - VOLUME 2B
CEDAR LAKE LRT REGIONAL TRAIL
PLAN AND PROFILE
STA 255+00 TO STA 262+00

DISCIPLINE: **CIVIL** SHEET NAME: **E2-TRL-PRF - 010**

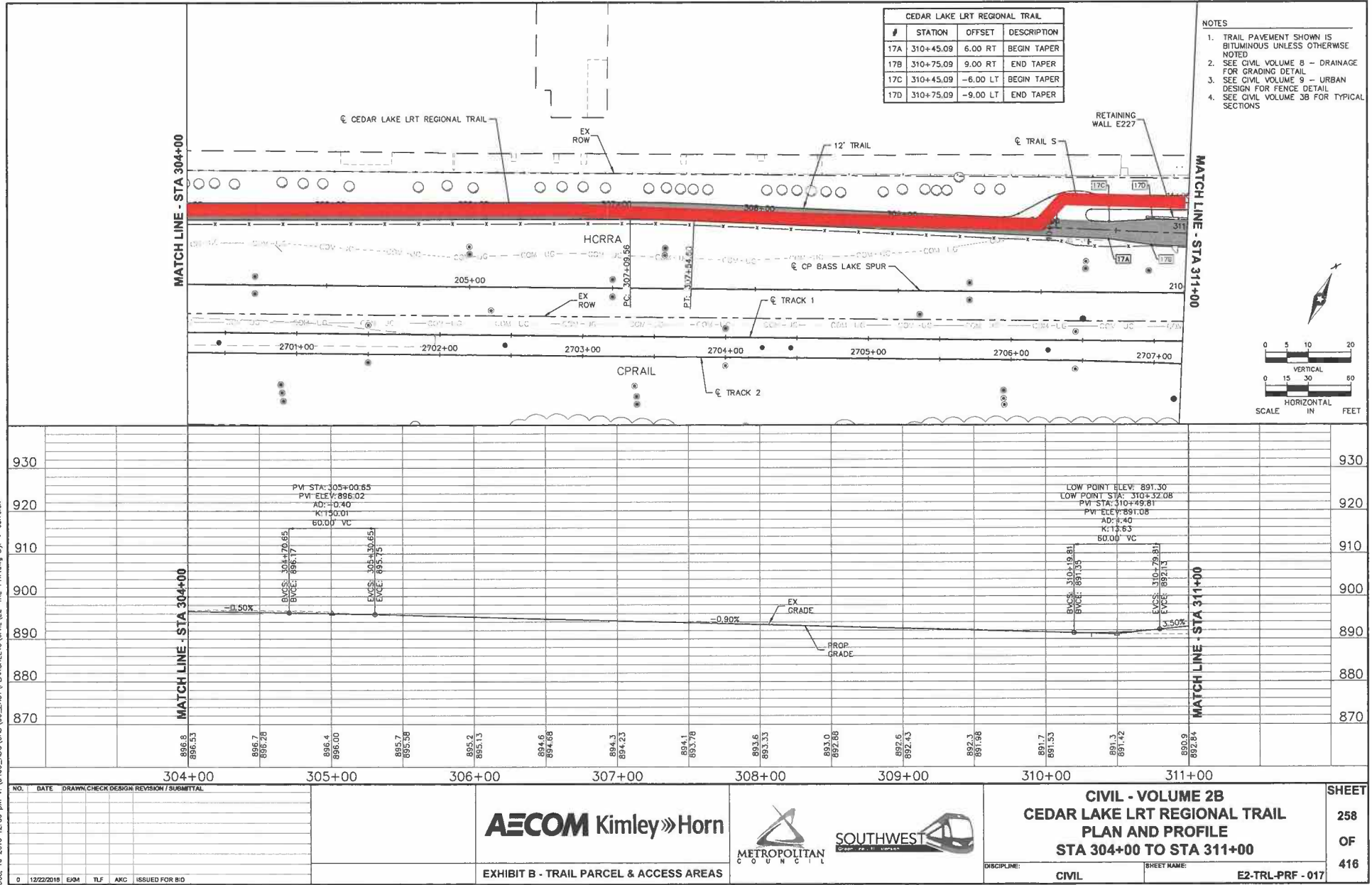
SHEET
251
OF
416



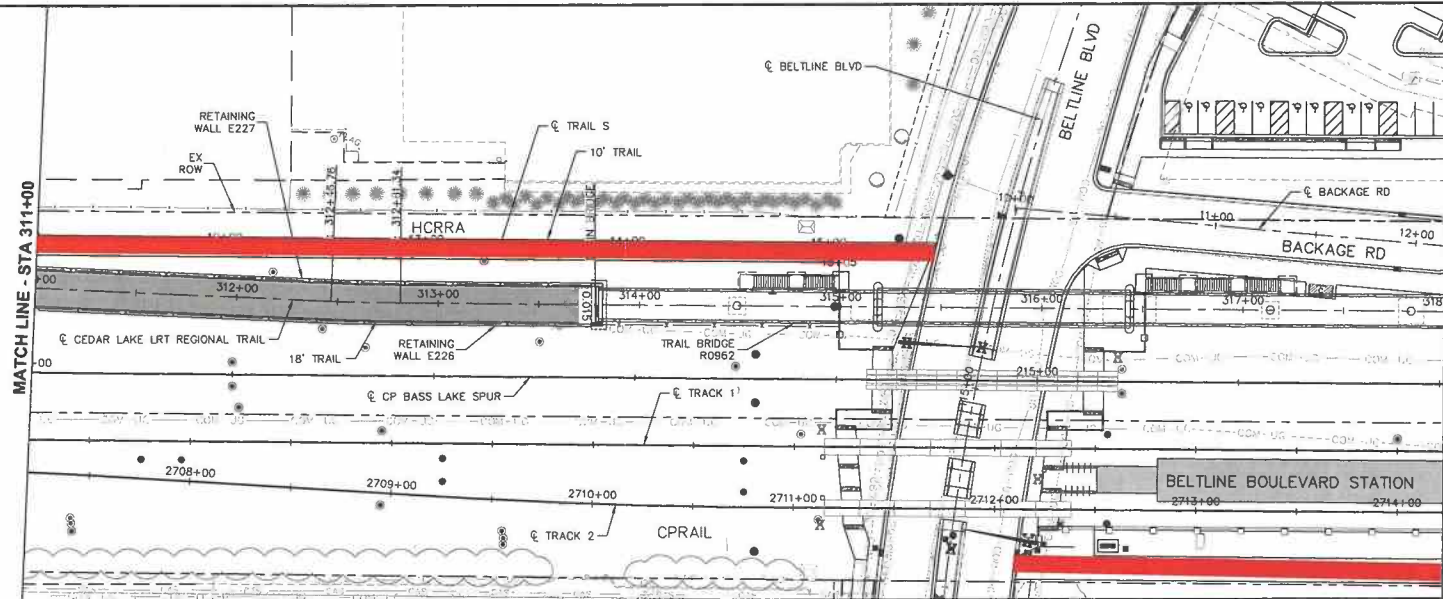
Dec. 18, 2016 12:51 pm V:\3400_ADC\CA\00_EAST\PLAN\SHEETS\CIVIL\E2-TRL-PRF.dwg By: w-corvick



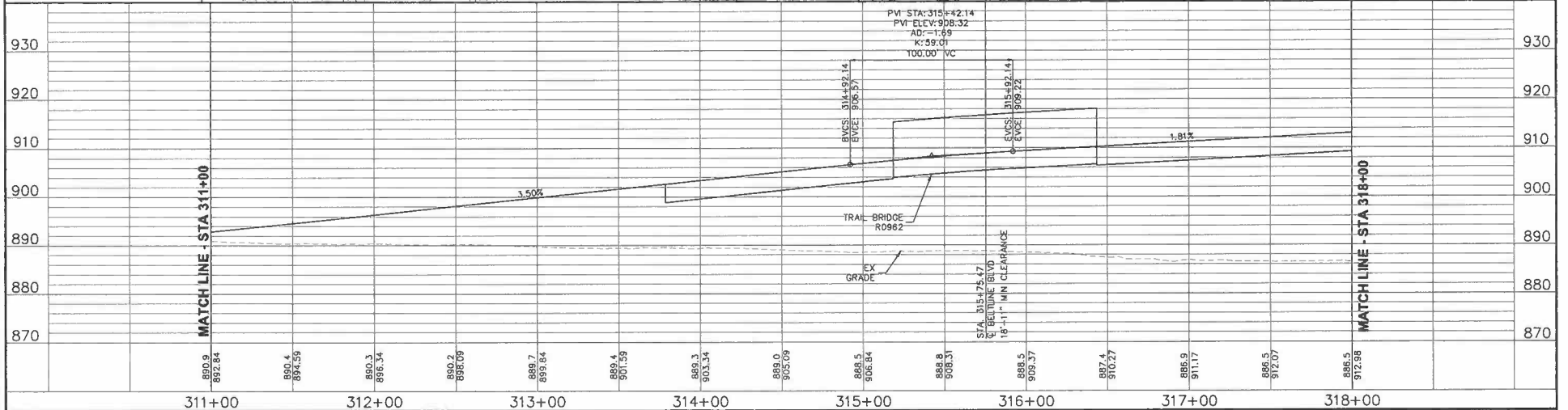
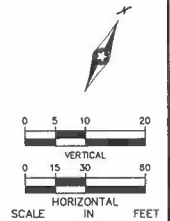
Doc. 16 2016 12:56 pm v:\3400_MCC\GAD\00_EAST\PLANS\SETS\CIVIL\E2-TRL-PRF.dwg By: v-corralda



Dec. 18 2016 01:00 pm V:\3400_AEC\CAD\00_EAST\PLANS\SHEETS\CIVIL\E2-TRL-PRF.dwg By: w-correda



- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME B - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2018	EJM	TLF	ARC	ISSUED FOR BID	

AECOM Kimley»Horn

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

METROPOLITAN COUNCIL

SOUTHWEST METRO

CIVIL - VOLUME 2B

CEDAR LAKE LRT REGIONAL TRAIL

PLAN AND PROFILE

STA 311+00 TO STA 318+00

SHEET

259

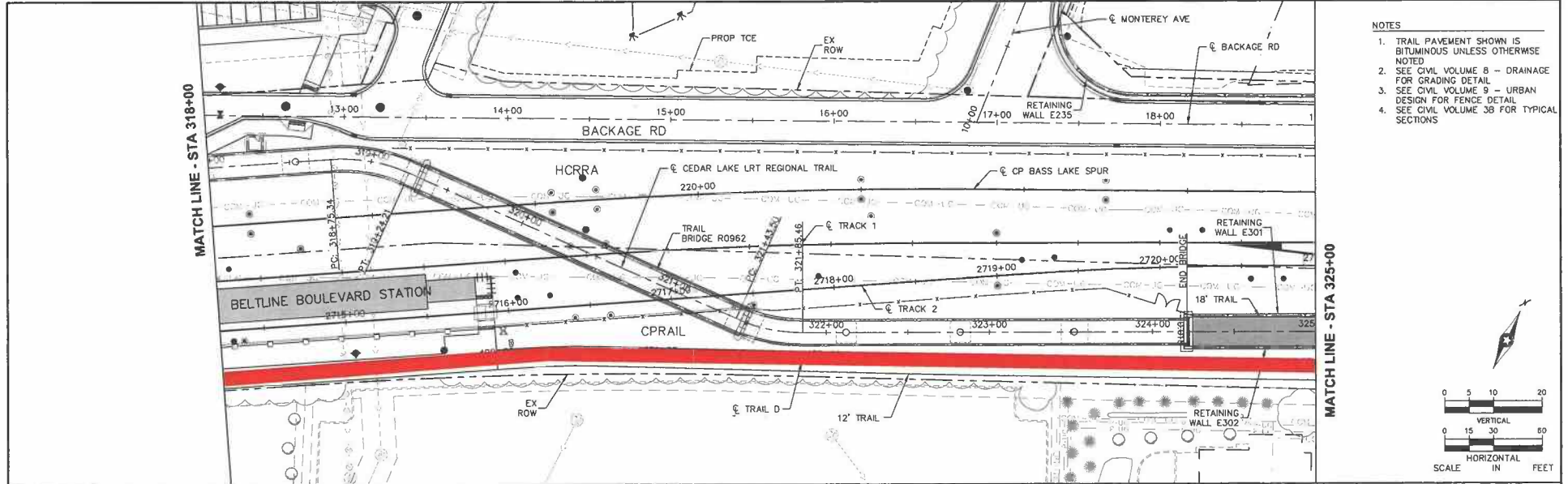
OF

416

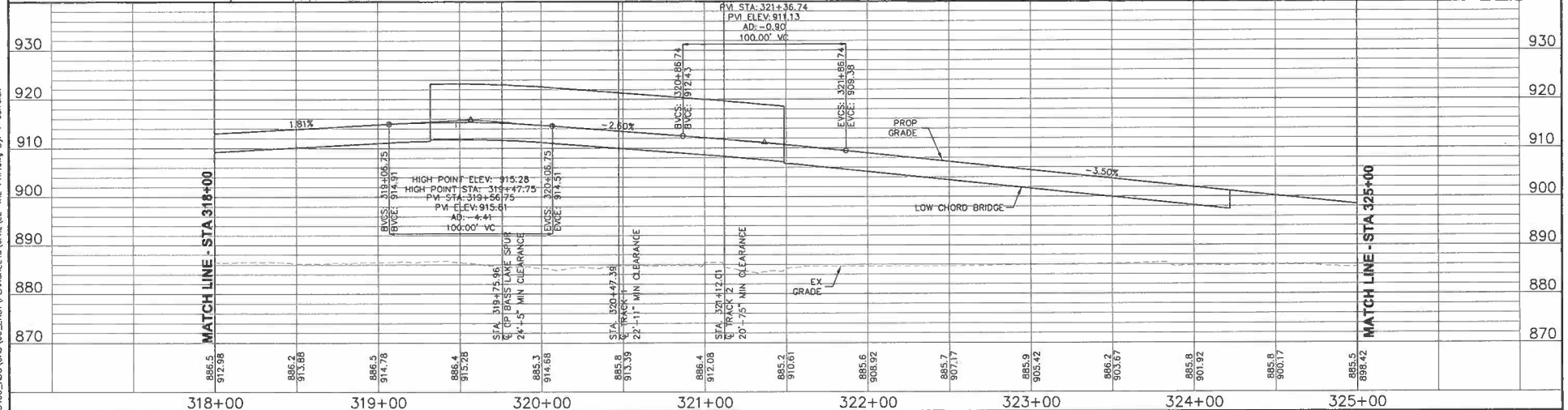
DISCIPLINE: CIVIL

SHEET NAME: E2-TRL-PRF - 018

Dec. 16 2016 01:04 pm V:\3000_ADC\GAD\00_EAST\PLANS\ETS\Civil\2-TRL-PRF.dwg By: v-corredak



- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2016	EKM	TLF	ARC	ISSUED FOR BID	

AECOM Kimley»Horn

METROPOLITAN COUNCIL

SOUTHWEST

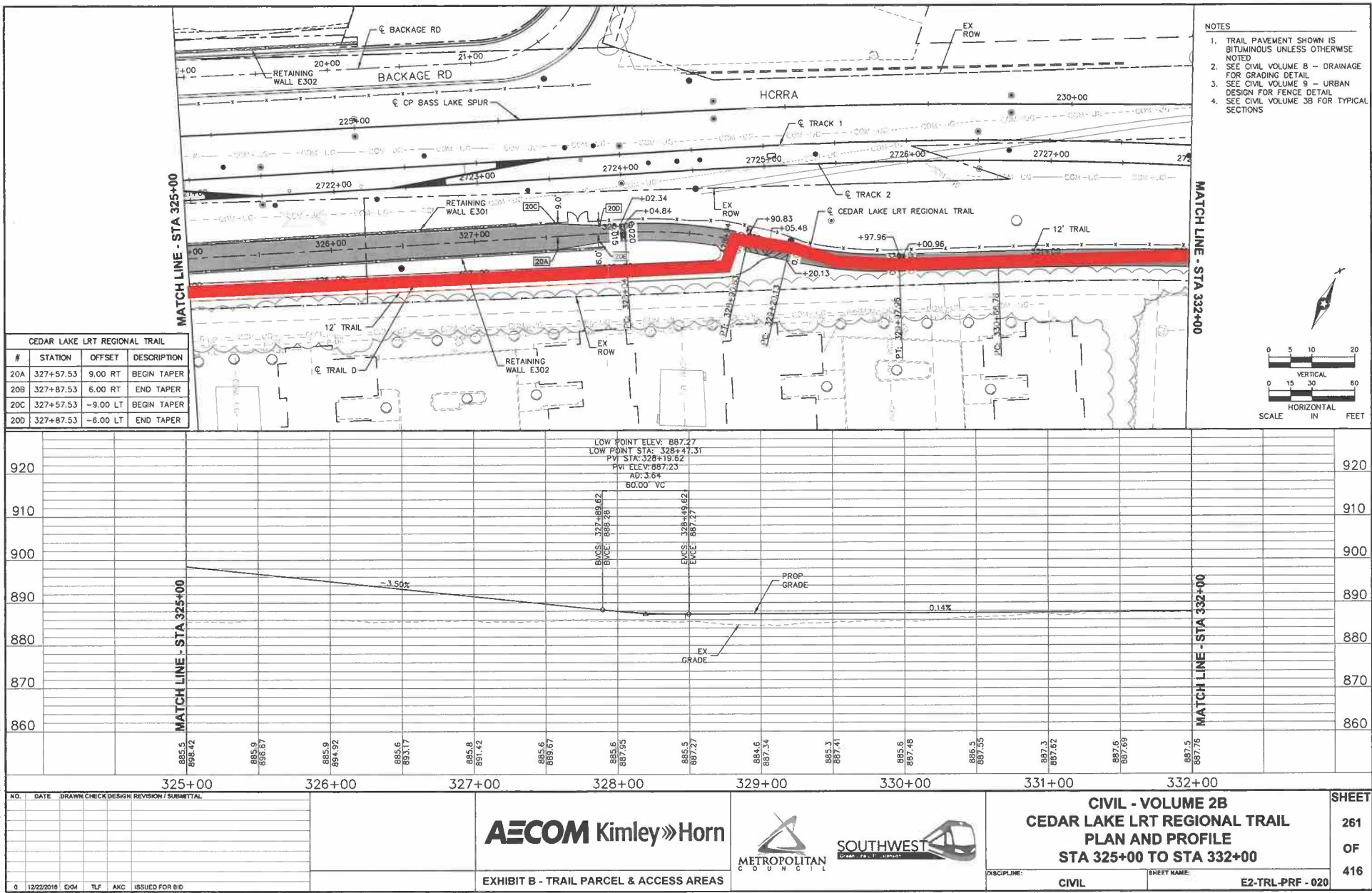
CIVIL - VOLUME 2B
CEDAR LAKE LRT REGIONAL TRAIL
PLAN AND PROFILE
STA 318+00 TO STA 325+00

DISCIPLINE: CIVIL

SHEET NAME: E2-TRL-PRF - 019

SHEET 260 OF 416

Dec. 16 2016 01:08 pm V:\3000_AOC\CAD\00_EAST\PLANSHEETS\GWL\2-TRL-PRF.dwg By: v-corredak



AECOM Kimley»Horn

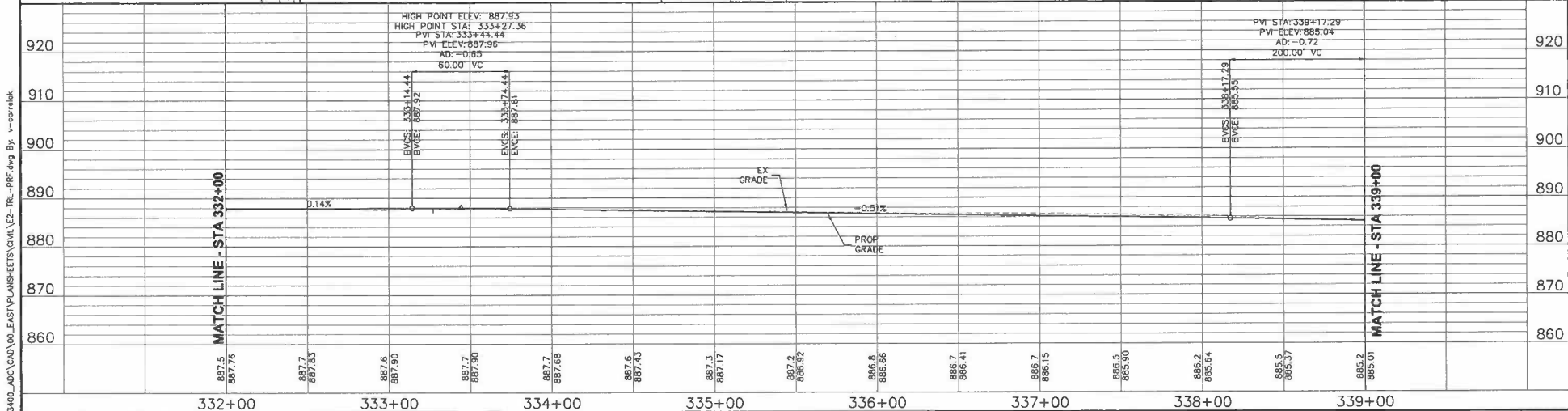
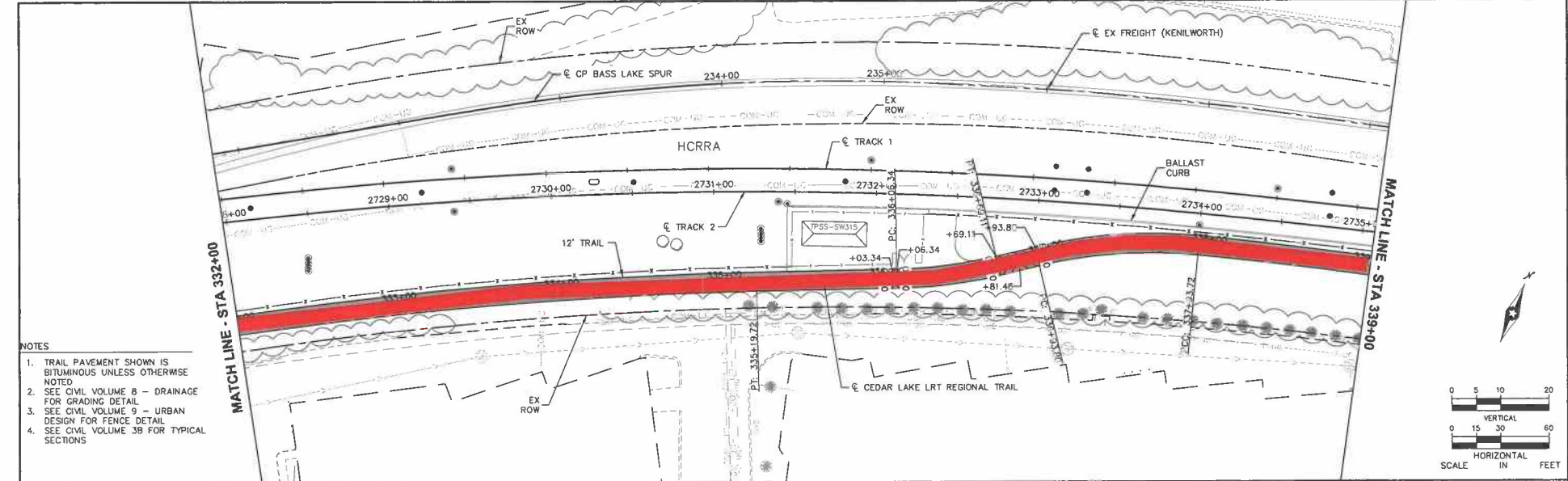


**CIVIL - VOLUME 2B
CEDAR LAKE LRT REGIONAL TRAIL
PLAN AND PROFILE
STA 325+00 TO STA 332+00**

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

DISCIPLINE: CIVIL SHEET NAME: E2-TRL-PRF - 020

SHEET
261
OF
416



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2016	EGM	TLF	AKC	ISSUED FOR BID	

AECOM Kimley»Horn



CIVIL - VOLUME 2B
CEDAR LAKE LRT REGIONAL TRAIL
PLAN AND PROFILE
STA 332+00 TO STA 339+00

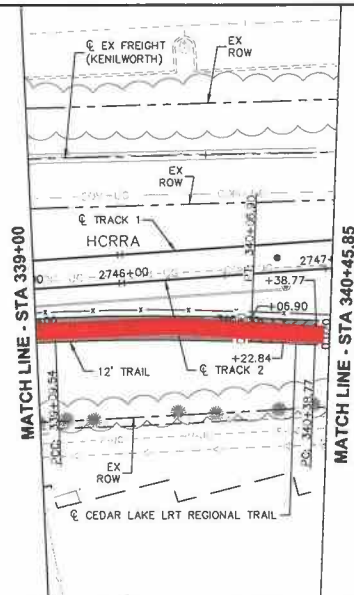
SHEET
262
OF
416

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

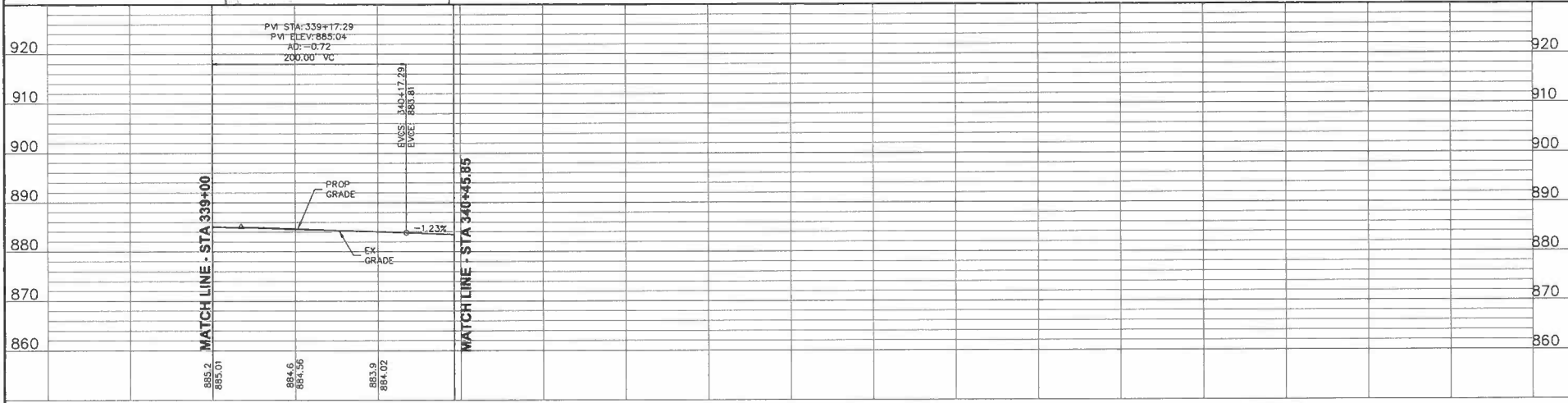
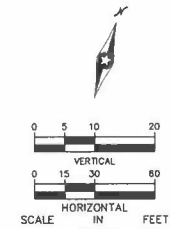
DISCIPLINE: CIVIL **SHEET NAME:** E2-TRL-PRF - 021

Dec. 16 2016 01:12 pm V:\3400_AEC\GAD\00_EAST\PLANSHEETS\Civil\E2-TRL-PRF.dwg By: v-corralda

Dec. 18 2016 01:16 pm V:\3400_ADC\AD\00_EAST\PLAN\SHEETS\CIVIL\22-TRL-PRF.dwg By: v-corralick



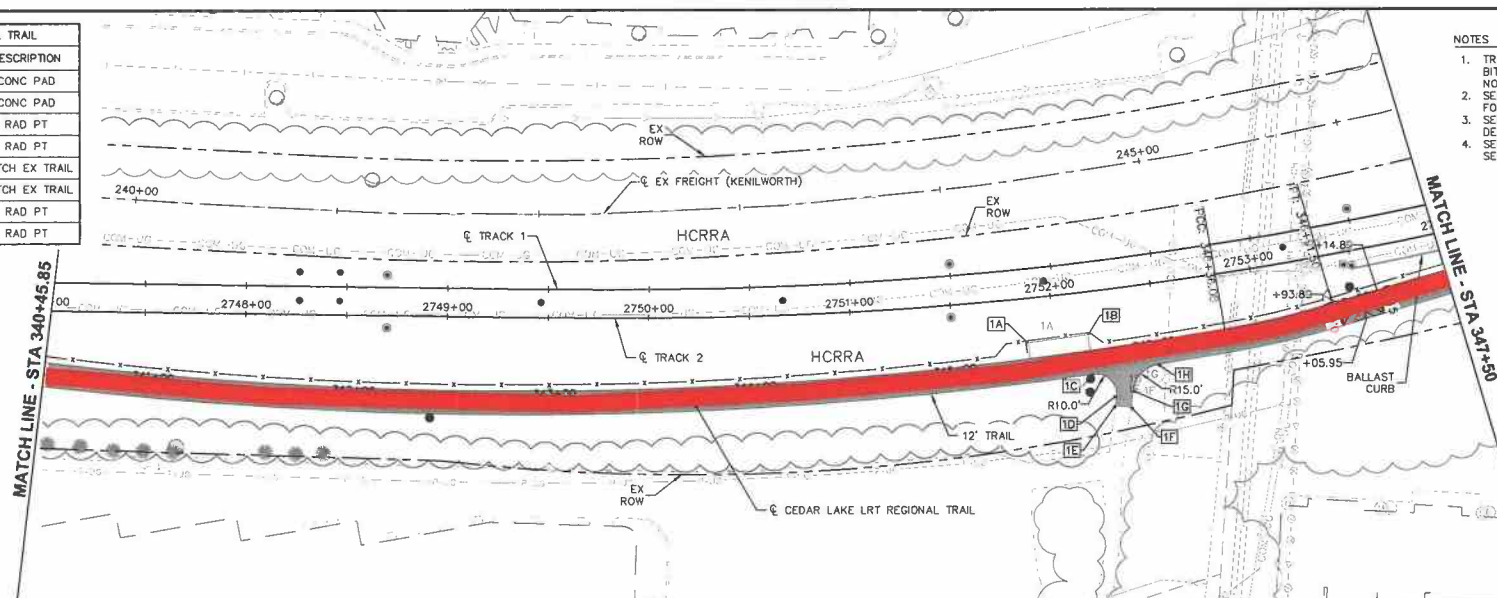
- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



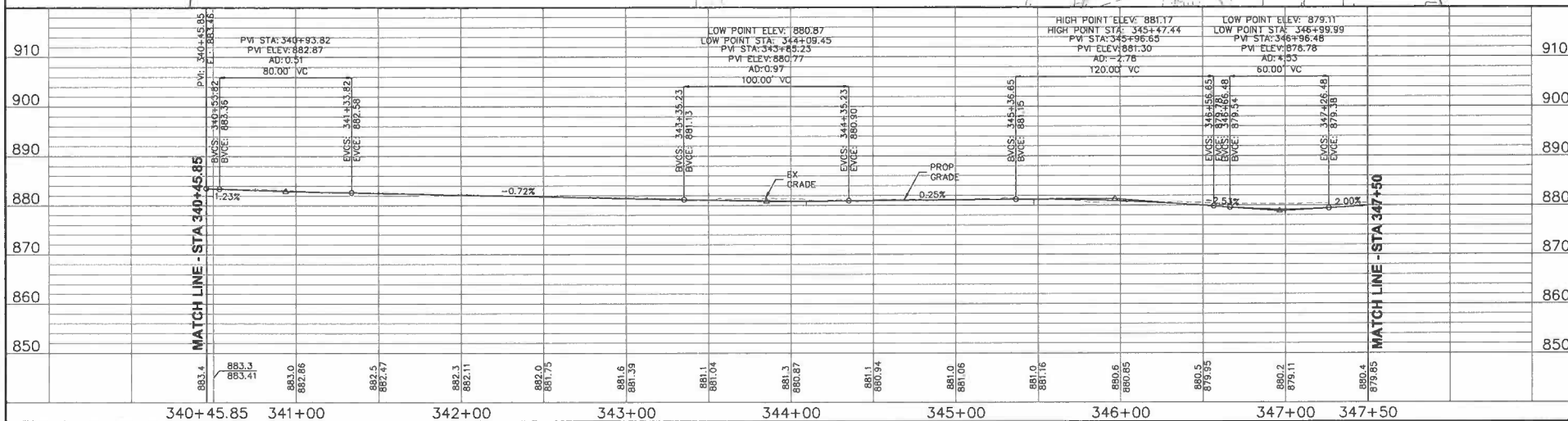
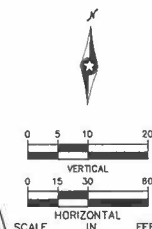
NO.					DATE		DRAWN		CHECK		DESIGN		REVISION / SUBMITTAL	
0	12/22/2016	EDM	TLF	ARC	ISSUED FOR BID									

AECOM Kimley»Horn		METROPOLITAN COUNCIL		SOUTHWEST		CIVIL - VOLUME 2B		CEDAR LAKE LRT REGIONAL TRAIL		PLAN AND PROFILE		STA 339+00 TO STA 340+45.85		SHEET	
EXHIBIT B - TRAIL PARCEL & ACCESS AREAS						DISCIPLINE		CIVIL		SHEET NAME		E2-TRL-PRF - 022		263	
														OF	
														416	

CEDAR LAKE LRT REGIONAL TRAIL			
#	STATION	OFFSET	DESCRIPTION
1A	345+37.83	-14.00 LT	CONC PAD
1B	345+68.05	-14.00 LT	CONC PAD
1C	345+68.05	6.00 RT	RAD PT
1D	345+77.70	18.28 RT	RAD PT
1E	345+76.56	23.15 RT	MATCH EX TRAIL
1F	345+84.02	25.13 RT	MATCH EX TRAIL
1G	345+86.13	17.10 RT	RAD PT
1H	346+00.47	6.00 RT	RAD PT

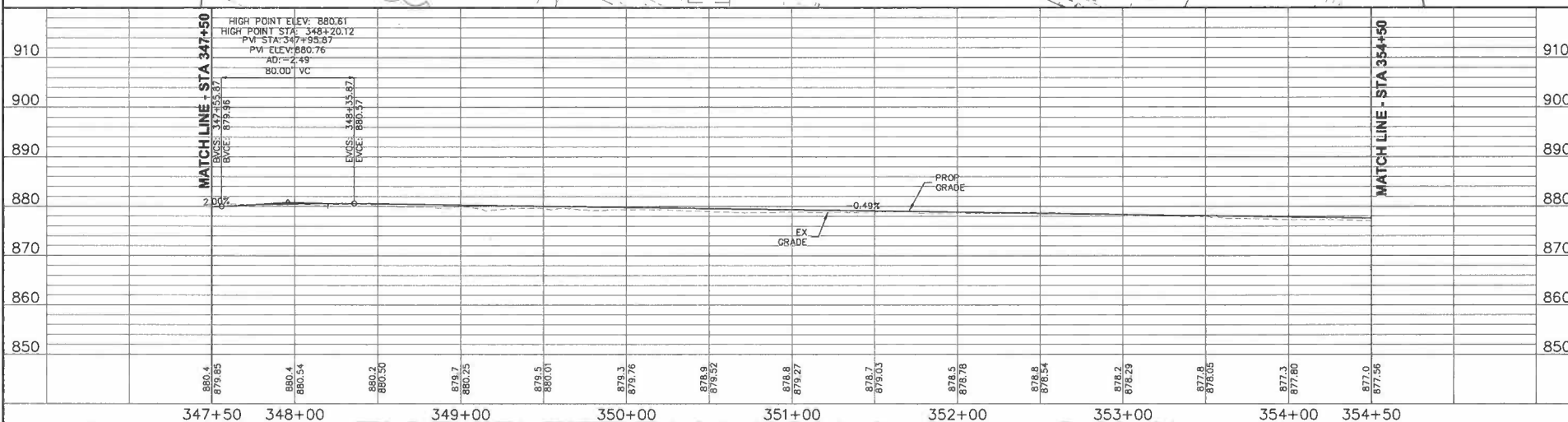
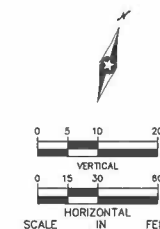
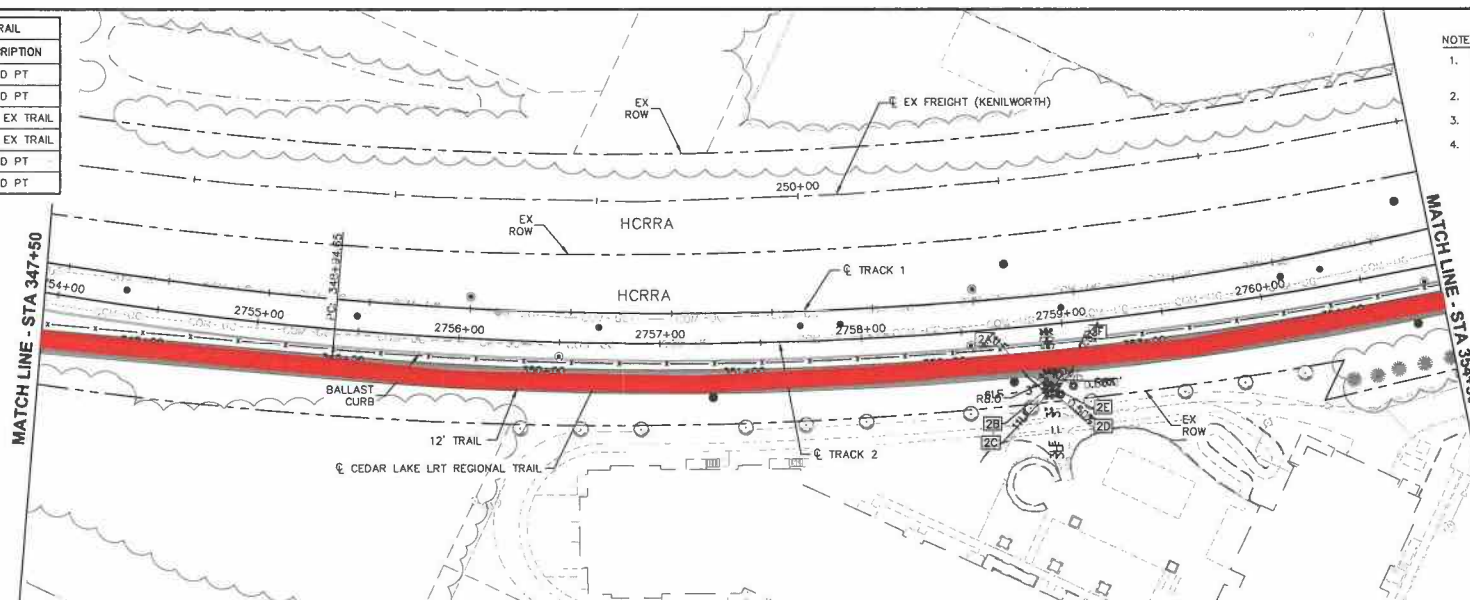


- NOTES**
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS

[illegible]

CEDAR LAKE LRT REGIONAL TRAIL			
#	STATION	OFFSET	DESCRIPTION
2A	352+40.43	6.00 RT	RAD PT
2B	352+48.37	14.06 RT	RAD PT
2C	352+48.34	16.73 RT	MATCH EX TRAIL
2D	352+53.96	16.70 RT	MATCH EX TRAIL
2E	352+54.02	13.83 RT	RAD PT
2F	352+61.96	6.00 RT	RAD PT

- NOTES**
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN CHECK DESIGN REVISION / SUBMITTAL			
0	12/22/2018	EXM	TLF	AKC	ISSUED FOR BID

AECOM Kimley»Horn



**CIVIL - VOLUME 2B
CEDAR LAKE LRT REGIONAL TRAIL
PLAN AND PROFILE
STA 347+50 TO STA 354+50**

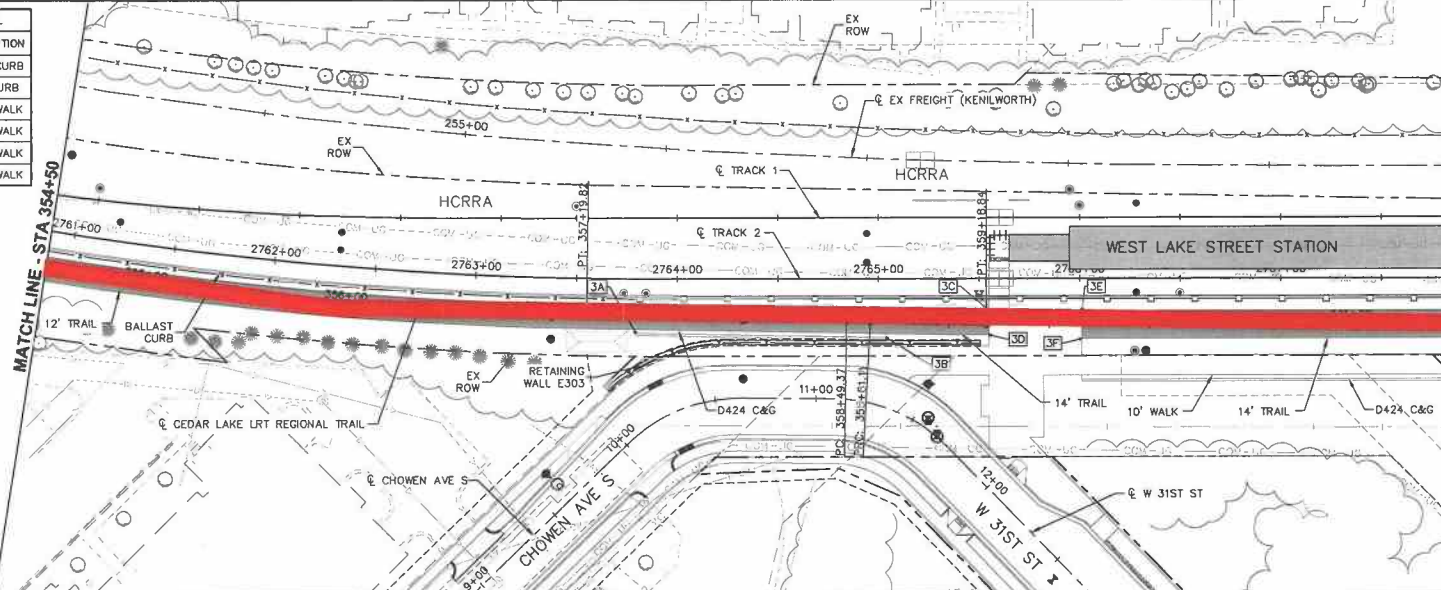
EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

DISCIPLINE: **CIVIL**

SHEET NAME: E3-TRL-PRF - 002

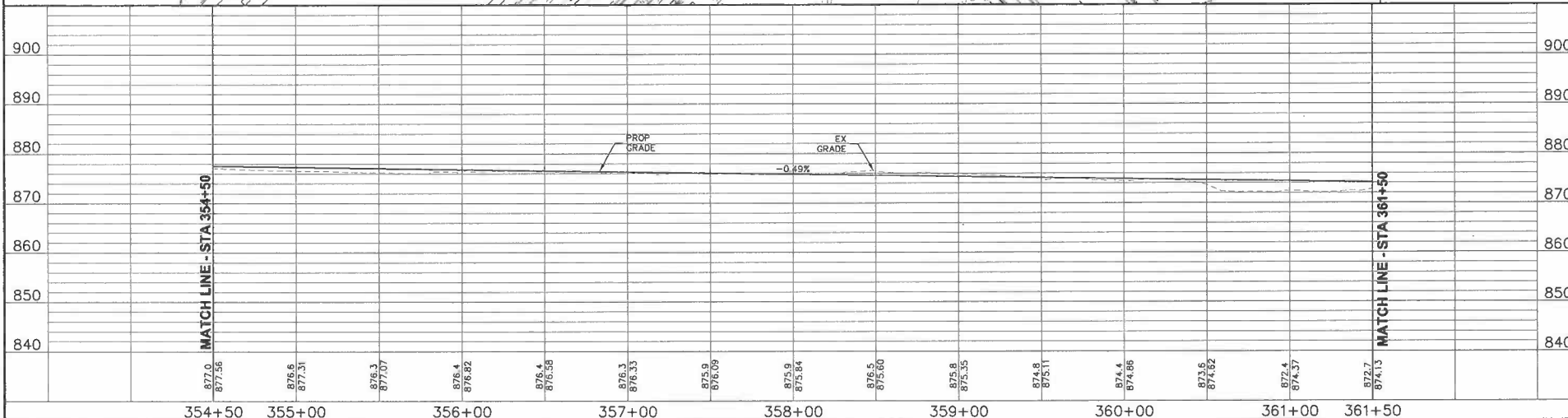
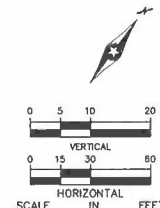
SHEET
265
OF
416

CEDAR LAKE LRT REGIONAL TRAIL			
#	STATION	OFFSET	DESCRIPTION
3A	357+44.69	8.00 RT	BEGIN CURB
3B	358+69.16	7.50 RT	END CURB
3C	359+20.15	-7.00 LT	CONC WALK
3D	359+20.15	5.00 RT	CONC WALK
3E	359+56.15	-7.00 LT	CONC WALK
3F	359+56.15	7.00 RT	CONC WALK



- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS

MATCH LINE - STA 361+50



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2016	EXM	TLF	AKC	ISSUED FOR BID	

AECOM Kimley»Horn

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

METROPOLITAN COUNCIL
SOUTHWEST

CIVIL - VOLUME 2B

CEDAR LAKE LRT REGIONAL TRAIL

PLAN AND PROFILE

STA 354+50 TO STA 361+50

DISCIPLINE: CIVIL

SHEET

266

OF

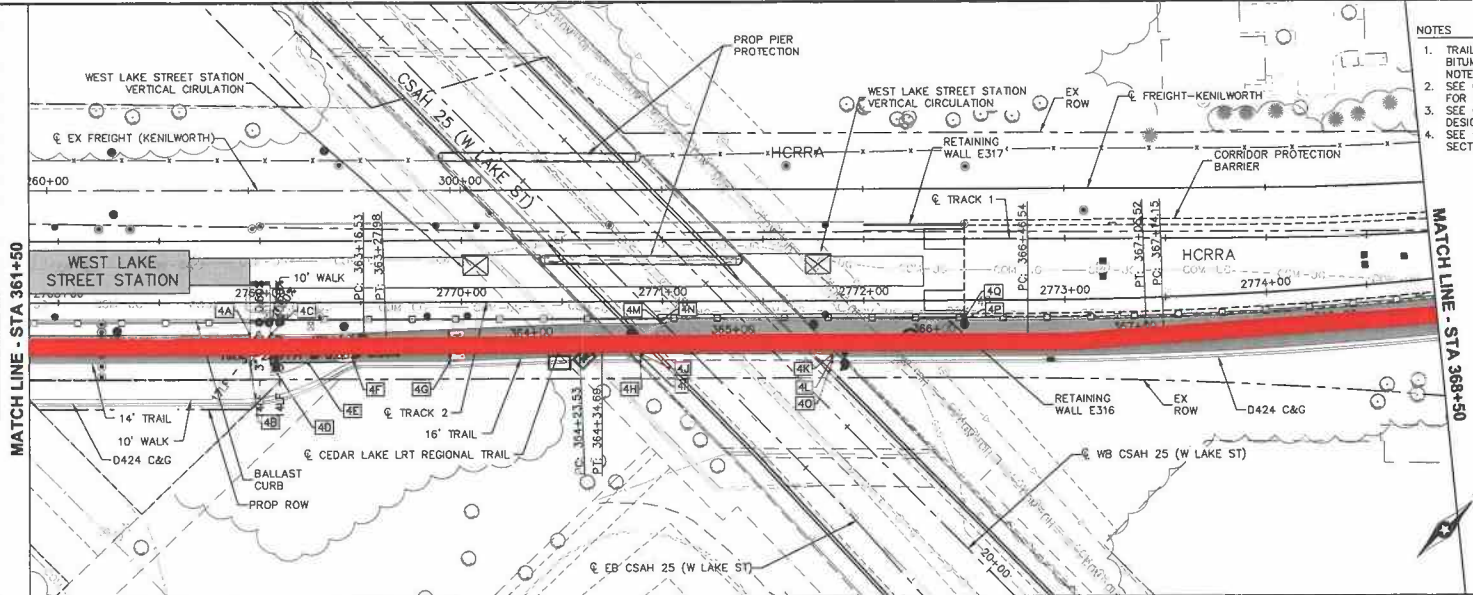
416

SHEET NAME: E3-TRL-PRF - 003

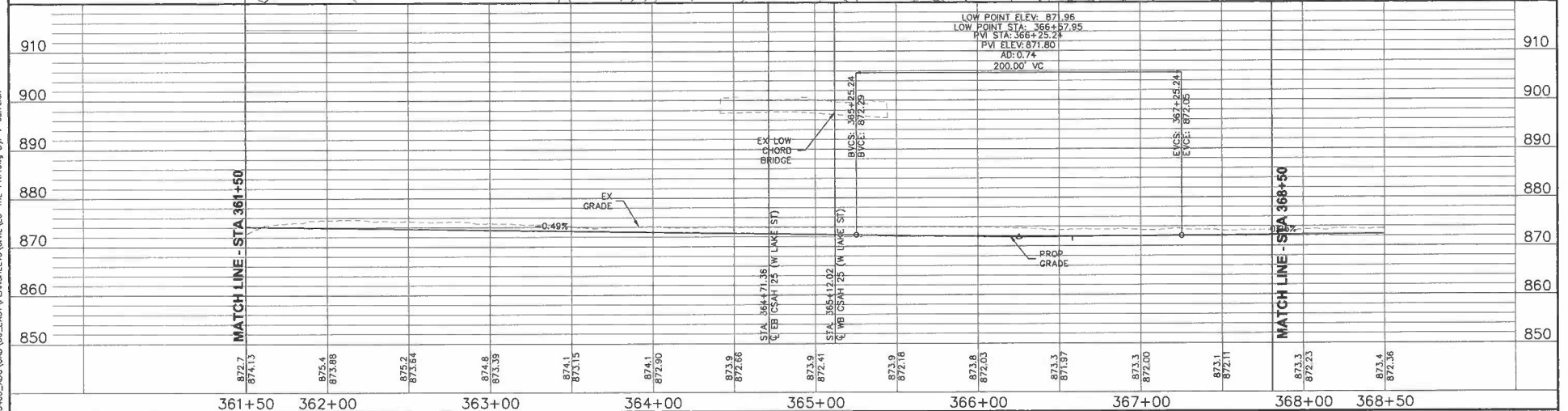
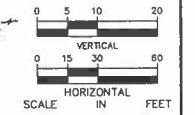
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Dec. 16 2016 01:23 pm v:\3400_AJOC\CAO\00_EAST\PLANS\SETS\Civil\3-TRL-PRF.dwg By: v-correda

CEDAR LAKE LRT REGIONAL TRAIL			
#	STATION	OFFSET	DESCRIPTION
4A	362+60.15	-7.00 LT	CONC WALK
4B	362+60.15	7.00 RT	CONC WALK
4C	362+70.15	-7.00 LT	CONC WALK
4D	362+70.15	7.00 RT	CONC WALK
4E	362+88.72	6.93 RT	CONC WALK
4F	363+11.39	6.41 RT	BEGN TAPER
4G	363+59.10	8.00 RT	END TAPER
4H	364+53.95	10.10 RT	END CURB
4I	364+53.82	8.04 RT	TRAIL CORNER
4J	364+53.95	6.93 RT	TRAIL CORNER
4K	365+49.56	7.75 RT	TRAIL CORNER
4L	365+49.61	8.95 RT	TRAIL CORNER
4M	364+64.71	-7.89 LT	TRAIL CORNER
4N	364+64.92	-9.79 LT	TRAIL CORNER
4O	365+49.59	11.00 RT	BEGIN CURB
4P	366+15.20	-9.00 LT	TRAIL CORNER
4Q	366+15.20	-10.00 LT	TRAIL CORNER



- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	1/22/2016	EXM	TLF	AKC	ISSUED FOR BID	

AECOM Kimley»Horn

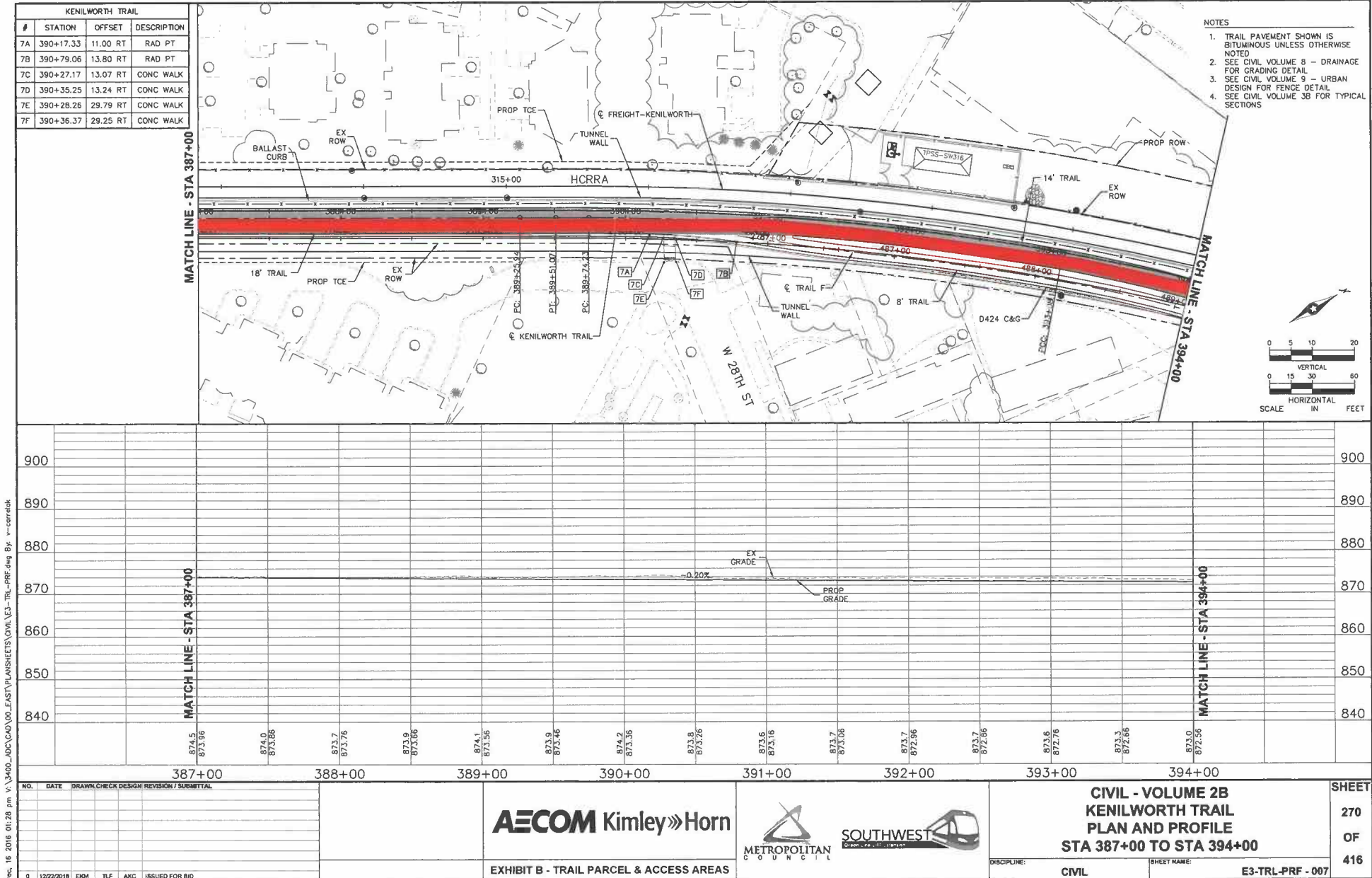
METROPOLITAN COUNCIL

SOUTHWEST

CIVIL - VOLUME 2B
CEDAR LAKE LRT REGIONAL TRAIL
PLAN AND PROFILE
STA 361+50 TO STA 368+50

DISCIPLINE: CIVIL
SHEET NAME: E3-TRL-PRF - 004

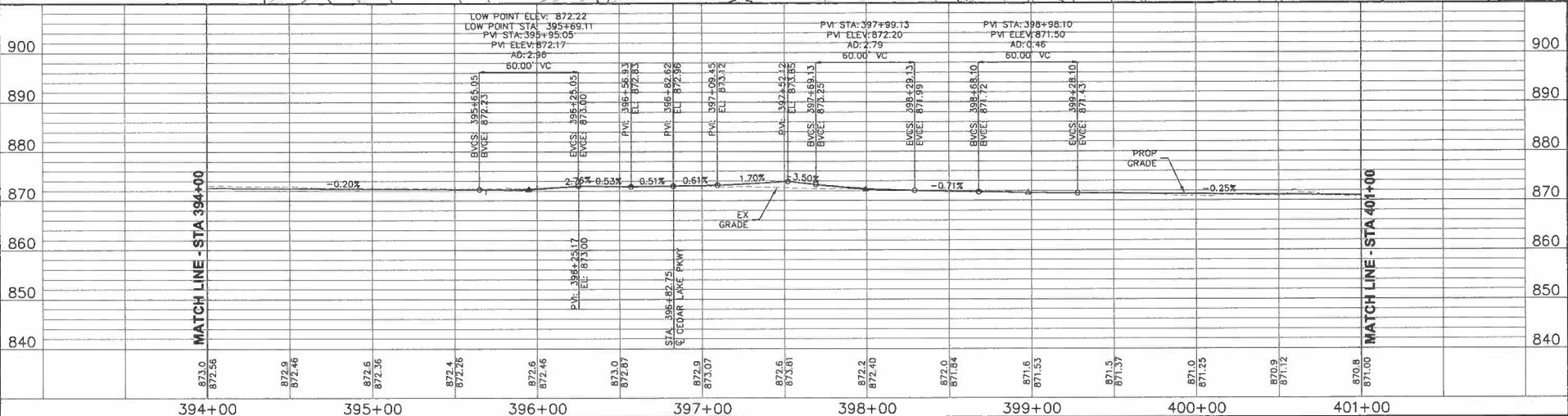
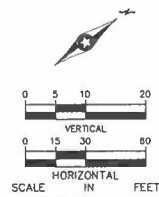
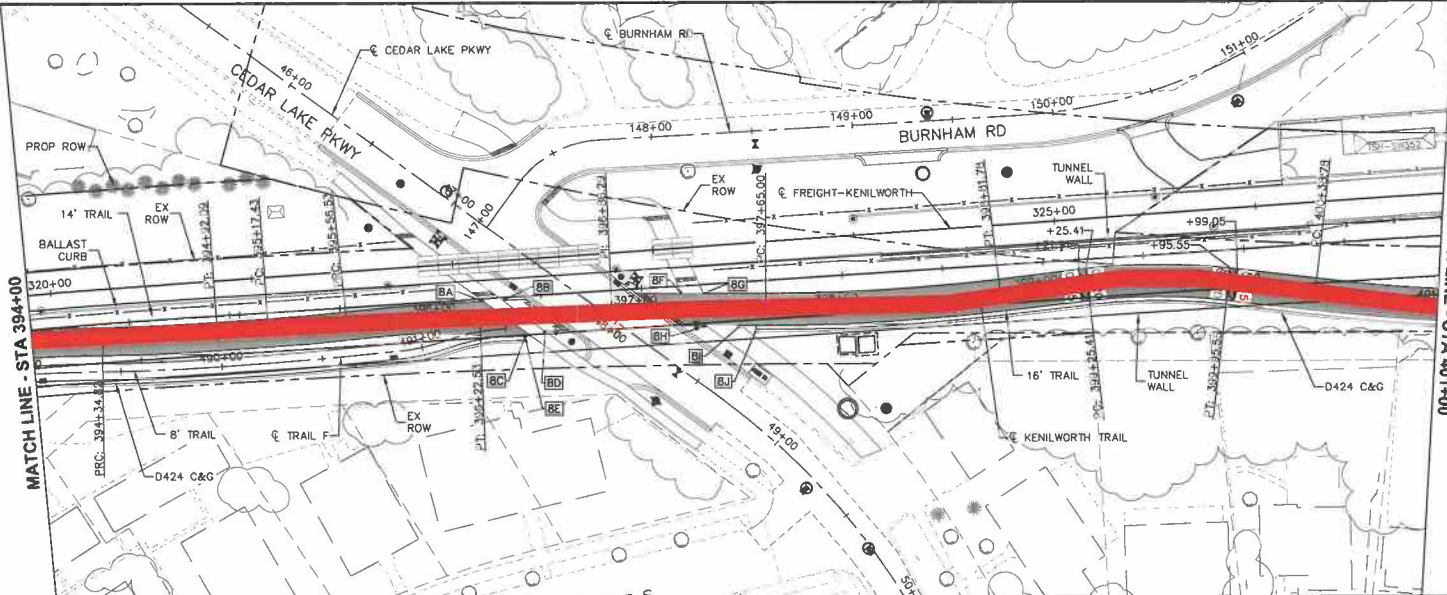
SHEET
267
OF
416



Dec. 16 2016 01:28 pm V:\3400_AOC\CAD\00_EAST\PLANS\KETS\CIVIL\E3-TRL-PRF.dwg By: v-correda

- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS

KENILWORTH TRAIL			
#	STATION	OFFSET	DESCRIPTION
8A	396+24.85	-7.00 LT	CONC WALK
8B	396+34.48	-7.00 LT	CONC WALK
8C	396+44.94	11.00 RT	CONC WALK
8D	396+54.57	9.00 RT	CONC WALK
8E	396+44.94	13.00 RT	END CURB
8F	397+22.93	-8.00 LT	BIT TRAIL
8G	397+33.87	-8.00 LT	BIT TRAIL
8H	397+35.16	8.00 RT	BIT TRAIL
8I	397+52.12	8.00 RT	BIT TRAIL
8J	397+60.00	10.00 RT	BEGIN CURB



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2016	EJM	TLF	ARC	ISSUED FOR BID	

AECOM Kimley»Horn



**CIVIL - VOLUME 2B
KENILWORTH TRAIL
PLAN AND PROFILE
STA 394+00 TO STA 401+00**

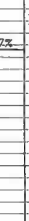
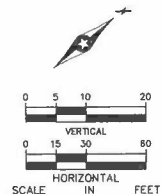
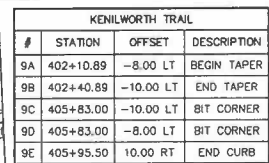
**SHEET
271
OF
416**

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

DISCIPLINE: CIVIL SHEET NAME: E3-TRL-PRF - 008

Dec. 16 2016 01:28 pm V:\3400_AOC\GAD\00_EAST\PLANS\KETS\GWL\E3-TRL-PRF.dwg By: v-correia

1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



AECOM Kimley»Horn

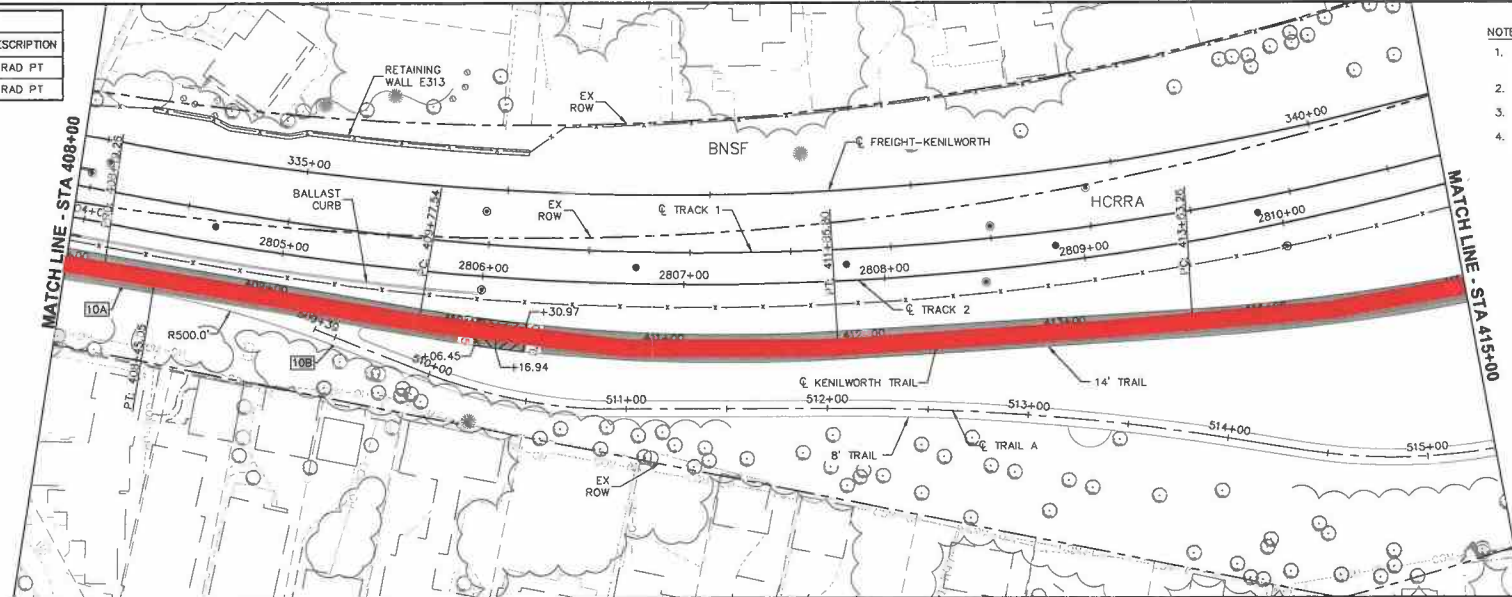


**CIVIL - VOLUME 2B
KENILWORTH TRAIL
PLAN AND PROFILE
STA 401+00 TO STA 408+00**

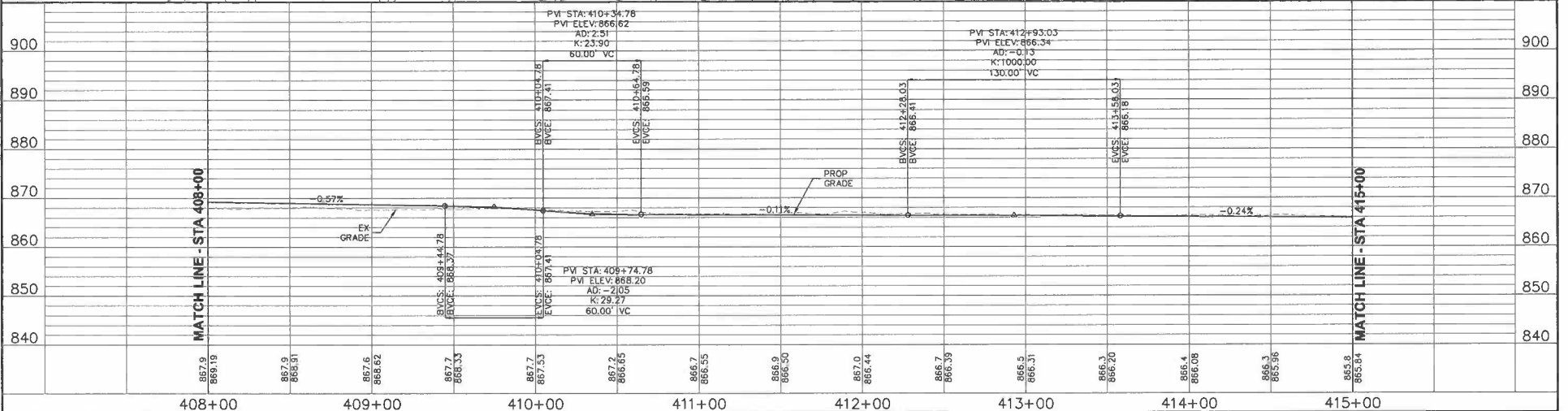
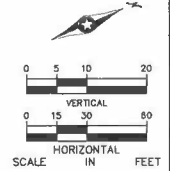
SHEET
272
OF
416

DISCIPLINE:	SHEET NAME:
CIVIL	E3-TRL-PRF - 009

KENILWORTH TRAIL			
#	STATION	OFFSET	DESCRIPTION
10A	408+29.30	8.00 RT	RAD PT
10B	409+37.76	18.26 RT	RAD PT



- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2018	EGM	TLF	ARC	ISSUED FOR BID	

AECOM Kimley»Horn

METROPOLITAN COUNCIL

SOUTHWEST

CIVIL - VOLUME 2B
KENILWORTH TRAIL
PLAN AND PROFILE
STA 408+00 TO STA 415+00

SHEET
273
OF
416

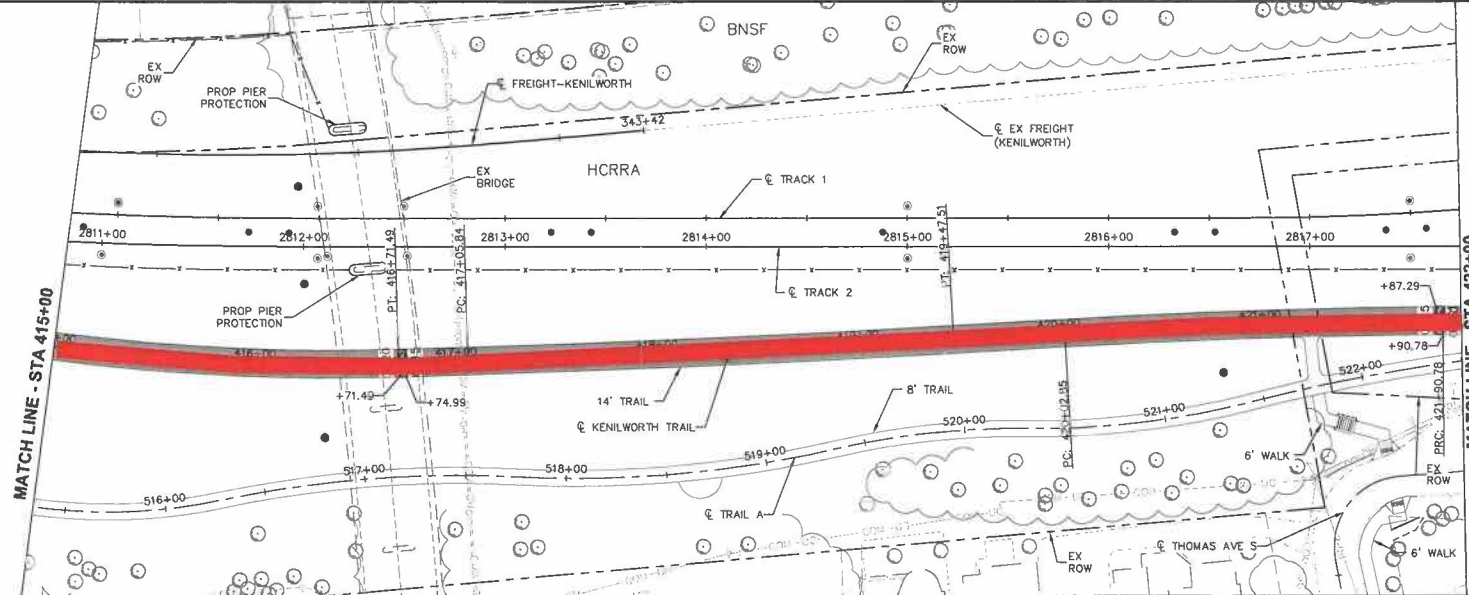
EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

DISCIPLINE: CIVIL

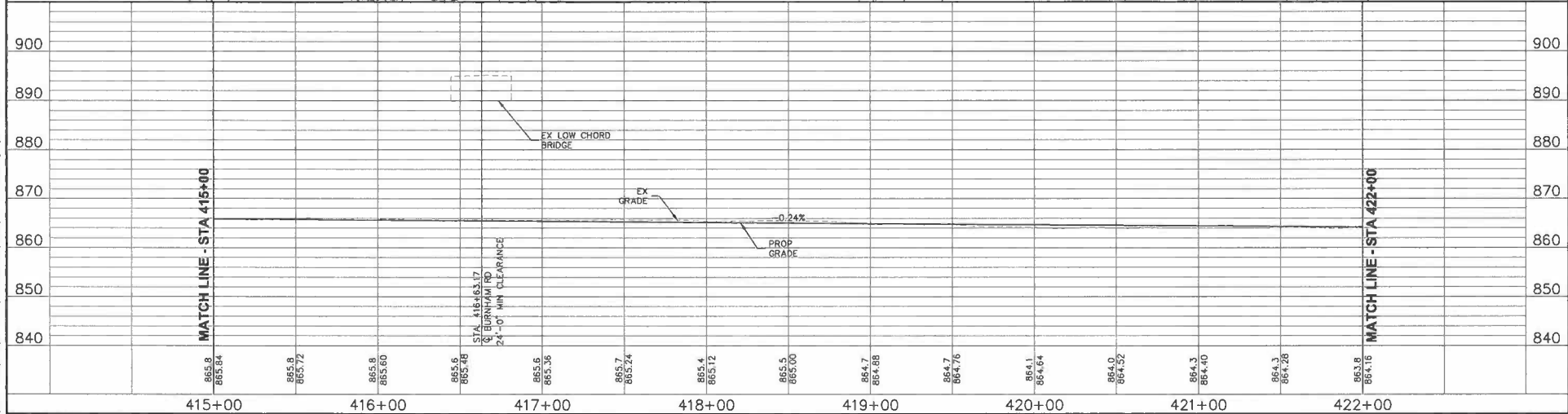
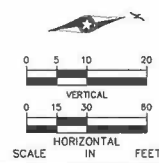
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Doc: 18 10 2016 01:34 pm V:\3400_AOC\AOC\00_EAST_PLANS\SHEETS\CIVIL\E3-TRL-PRF.dwg By: v-corredak



- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2016	EOM	TUF	ARC	ISSUED FOR BID	

AECOM Kimley»Horn

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

METROPOLITAN COUNCIL

SOUTHWEST

CIVIL - VOLUME 2B

KENILWORTH TRAIL

PLAN AND PROFILE

STA 415+00 TO STA 422+00

DISCIPLINE: CIVIL SHEET NAME: E3-TRL-PRF - 011

SHEET

274

OF

416

NOTES

1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS

KENILWORTH TRAIL			
#	STATION	OFFSET	DESCRIPTION
13A	429+03.72	9.00 RT	BEGIN CURB
13B	431+01.51	8.00 RT	RAD PT
13C	431+38.82	13.87 RT	RAD PT
13D	428+36.73	9.00 RT	CONC

NO.	DATE	DRAWN	CHECK	DESIGN	REVISION / SUBMITTAL
1	03/24/2017	DOM	TUF	TUF	UPDATED RETAINING WALL AND ROW / TCE LIMITS
0	01/12/2017	DOM	TUF	AKC	ISSUED FOR BID

CIVIL - VOLUME 2B
KENILWORTH TRAIL
PLAN AND PROFILE
STA 427+50 TO STA 434+50

DISCIPLINE: **CIVIL**

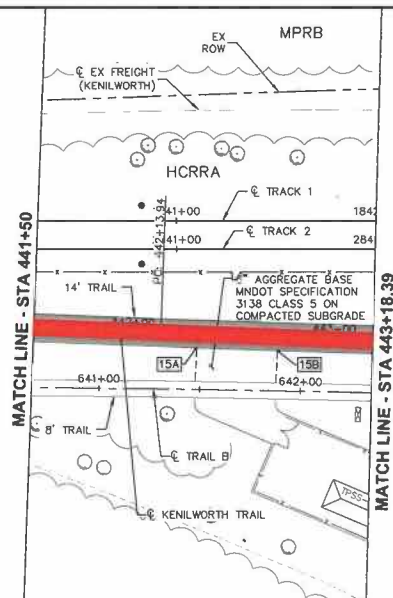
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EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

SHEET **275** OF **411**

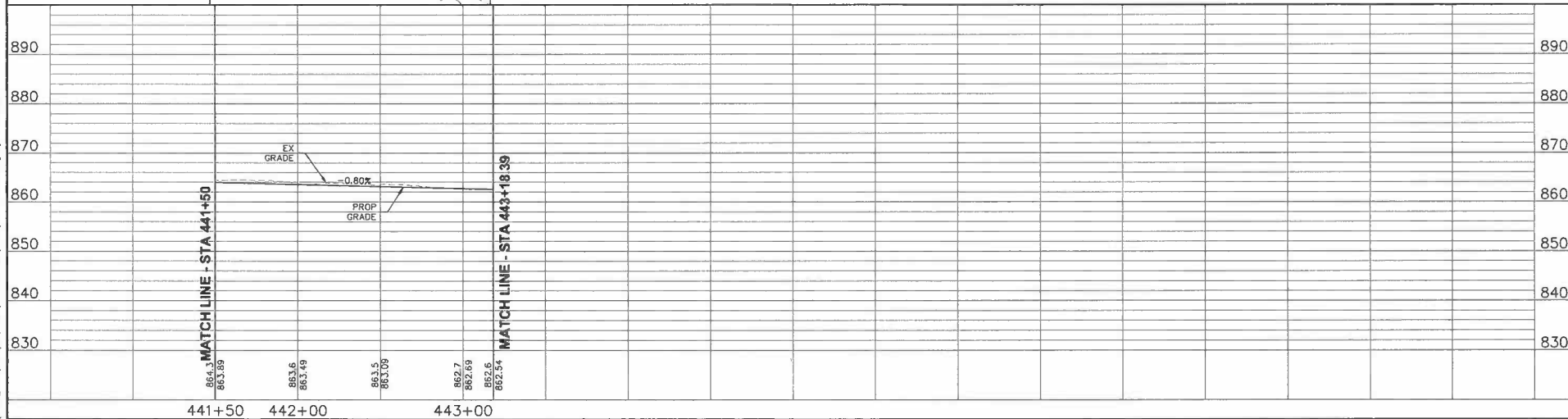
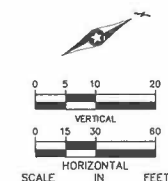
SHEET
275
OF
411

Dec 16 2016 01:40 pm V:\3400_000\CAD\00_EAST\PLAN\SHEETS\CIVIL\3-TRL-PRF.dwg By: v-correl.dwg



KENILWORTH TRAIL			
#	STATION	OFFSET	DESCRIPTION
15A	442+32.01	6.83 RT	AGG BASE
15B	442+71.99	6.87 RT	AGG BASE

- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 38 FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION / SUBMITTAL
0	12/22/2016	EQM	TLF	AKC	ISSUED FOR BID

AECOM Kimley»Horn

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS



**CIVIL - VOLUME 2B
KENILWORTH TRAIL
PLAN AND PROFILE
STA 441+50 TO STA 443+18.39**

DISCIPINE:

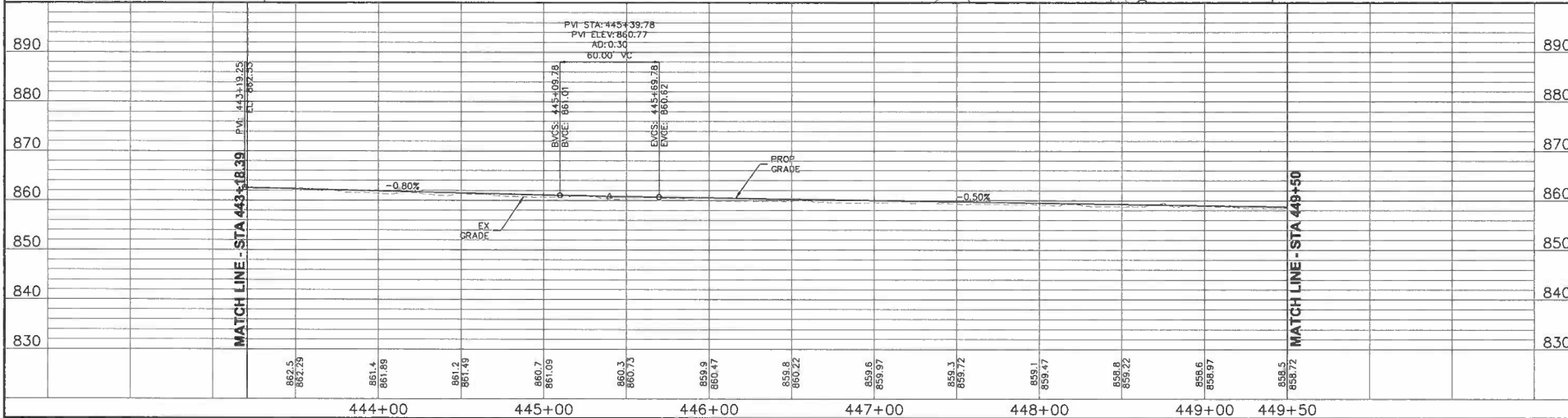
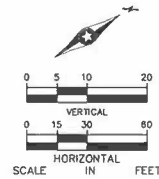
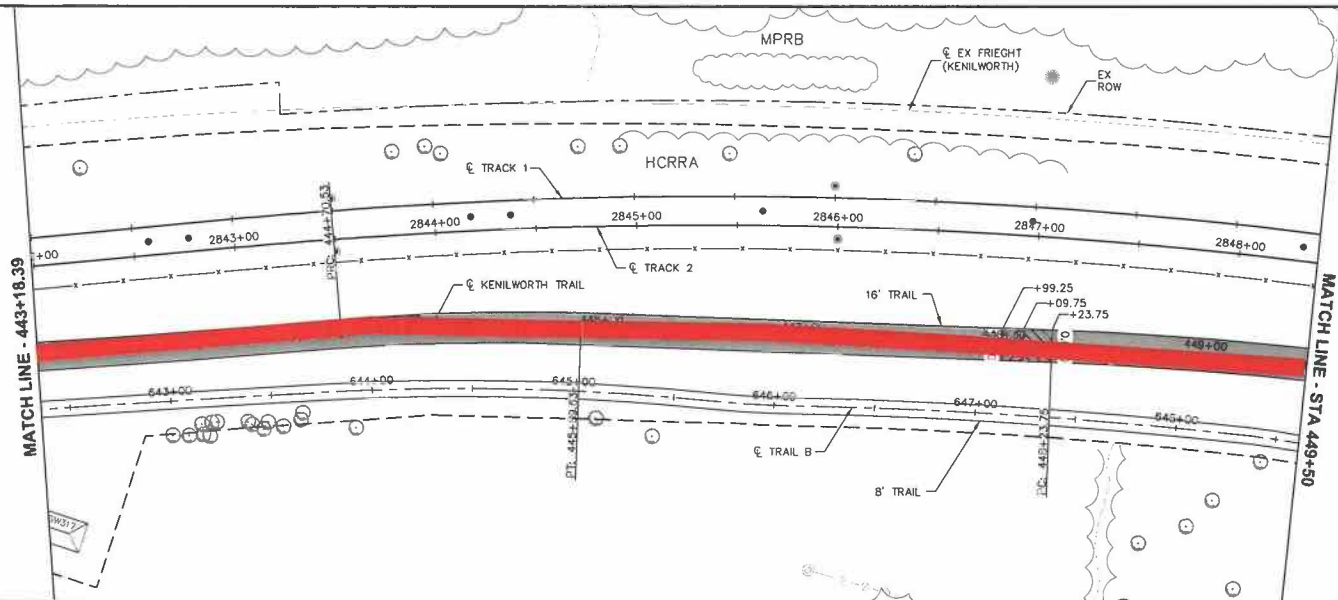
CIVIL

SHEET NAME:

E3-TRL-PRF - 015

SHEET
278
OF
416

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NO.	DATE	DRAWN	CHECK	DESIGN	REVISION	SUBMITTAL
0	12/22/2016	EHM	TLF	ARC	ISSUED FOR BID	

AECOM Kimley»Horn

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

METROPOLITAN COUNCIL

SOUTHWEST

CIVIL - VOLUME 2B

KENILWORTH TRAIL

PLAN AND PROFILE

STA 443+18.39 TO STA 449+50

SHEET

279

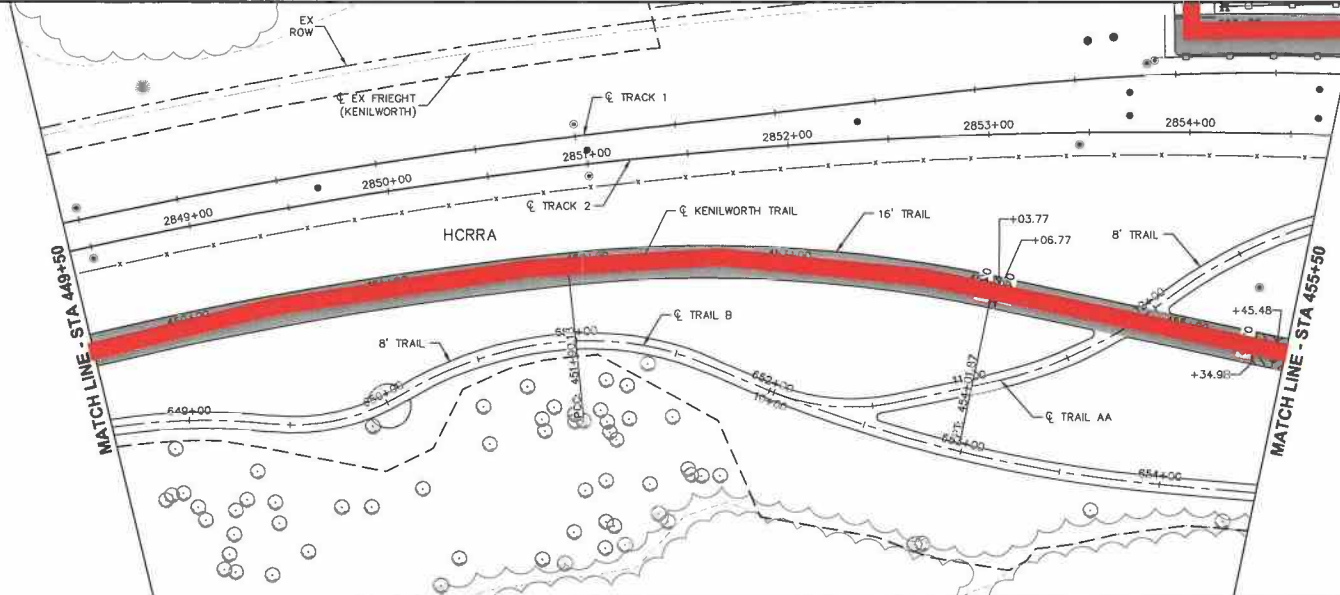
OF

416

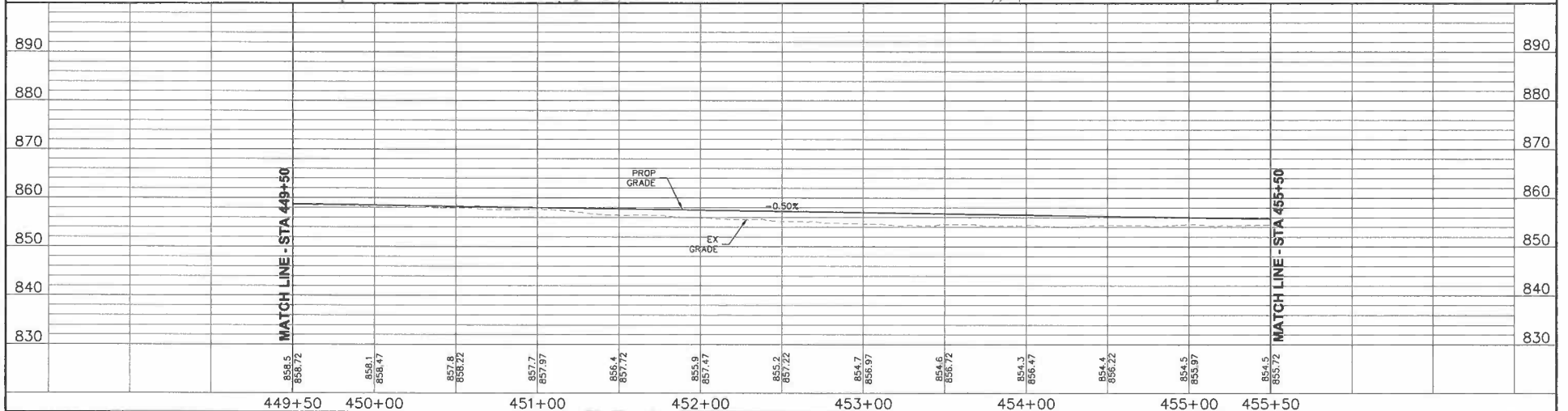
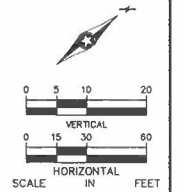
DISCIPLINE: **CIVIL**

SHEET NAME: **E4-TRL-PRF - 001**

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- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION / SUBMITTAL
0	12/22/2016	EXM	TLF	ARC	ISSUED FOR BID

AECOM Kimley»Horn

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

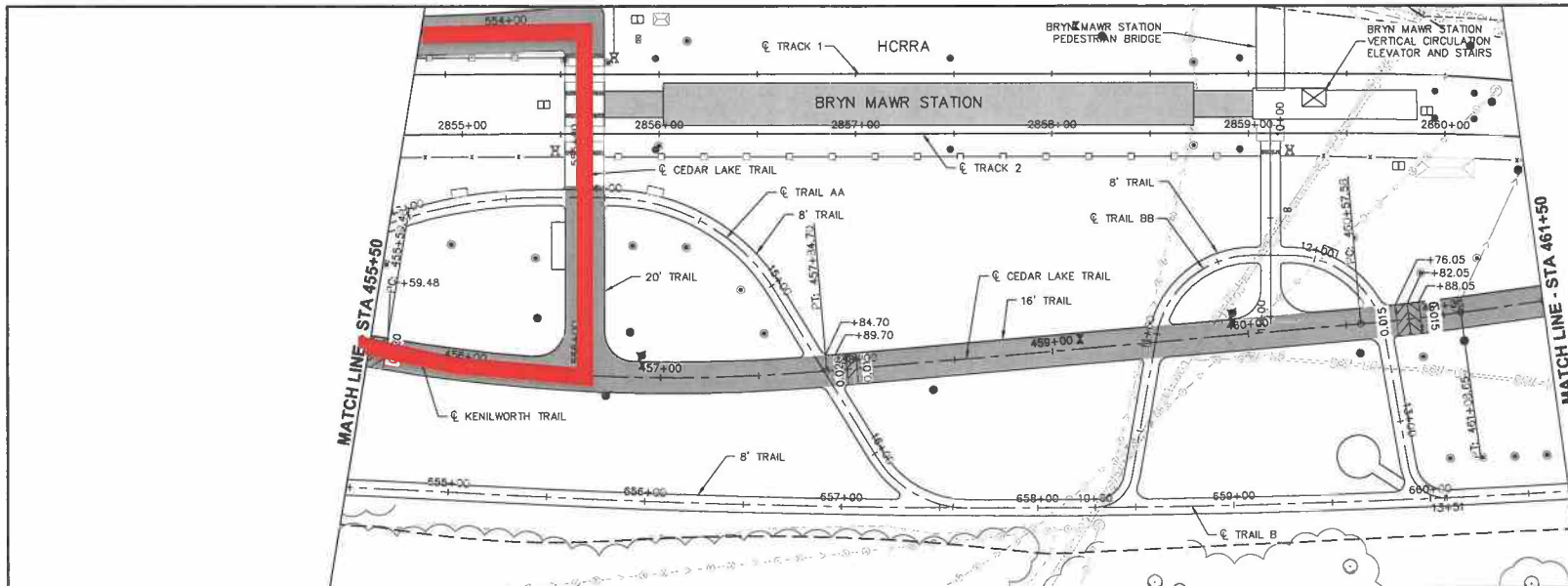


**CIVIL - VOLUME 2B
KENILWORTH TRAIL
PLAN AND PROFILE
STA 449+50 TO STA 455+50**

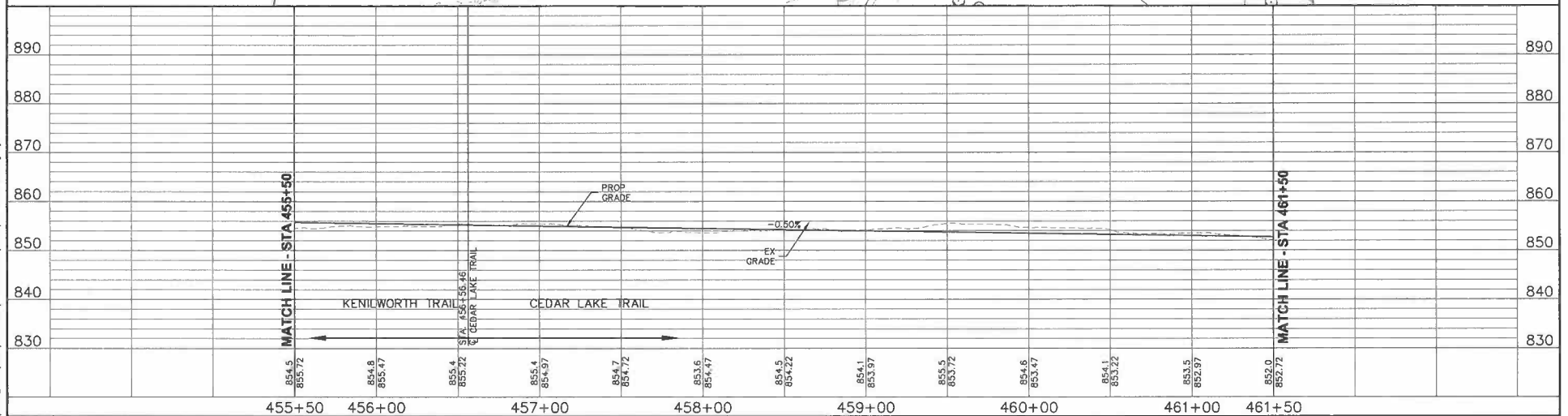
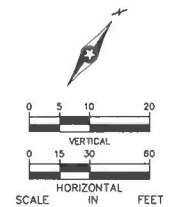
DISCIPLINE: CIVIL SHEET NAME: E4-TRL-PRF - 002

SHEET
280
OF
416

Dec 16 2016 01:43 pm V:\400_ADC\CD\00_EAST\PLANS\HETS\Civil\E4-TRL-PRF.dwg By: v-carrelak



- NOTES
1. TRAIL PAVEMENT SHOWN IS BITUMINOUS UNLESS OTHERWISE NOTED
 2. SEE CIVIL VOLUME 8 - DRAINAGE FOR GRADING DETAIL
 3. SEE CIVIL VOLUME 9 - URBAN DESIGN FOR FENCE DETAIL
 4. SEE CIVIL VOLUME 3B FOR TYPICAL SECTIONS



NO.	DATE	DRAWN	CHECK	DESIGN	REVISION / SUBMITTAL
0	12/22/2016	EDM	TLF	AKG	ISSUED FOR BID

AECOM Kimley»Horn

EXHIBIT B - TRAIL PARCEL & ACCESS AREAS

METROPOLITAN COUNCIL

SOUTHWEST

CIVIL - VOLUME 2B

KENILWORTH TRAIL/CEDAR LAKE TRAIL

PLAN AND PROFILE

STA 455+50 TO STA 461+50

DISCIPLINE: **CIVIL** SHEET NAME: **E4-TRL-PRF - 003**

SHEET

281

OF

416

Exhibit H
Coordination Committee Designees

Council	TCWR	Hennepin County
Deputy Director of Rail Operations, or Designee	TCWR General Manager Maintenance of Way, or designee	Asst. County Administrator, Hennepin County Public Works, or Designee
612-341-5601	320-864-7200	612-348-3054
1910 East Franklin Ave Minneapolis, MN 55404-2217	2925 12 th Street East Glencoe, MN 55336	300 South 6th Street Minneapolis, MN 55487-0233