

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
Case Type: 3B – Other Contracts

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Minnesota Public Radio,	)	Court File No.: _____
	)	
Plaintiff,	)	
	)	
v.	)	<b>COMPLAINT</b>
	)	
Metropolitan Council,	)	
	)	
Defendant.	)	

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Plaintiff Minnesota Public Radio (“MPR”), for its Complaint against defendant Metropolitan Council (“Met Council”), states and alleges as follows:

**OVERVIEW OF THE ACTION**

1. MPR brings this action for breach of contract, anticipatory repudiation, and declaratory judgment against Met Council.
2. MPR and Met Council entered into a binding Mitigation Agreement, the terms of which require Met Council to mitigate vibration and ground-borne noise caused by the Central Corridor Light Rail Transit (“CCLRT”) Project by, among other things, installing an approximately 700-foot floating concrete slab or its performance equivalent within Cedar Street and adjacent to MPR’s Broadcast Center.
3. Met Council selected a floating slab track (“FST”) solution, but informed MPR that it intends to use rubber pad underlayment, rather than a steel-spring underlayment system. The rubber pad underlayment design chosen by Met Council does not meet Met Council’s contractual

obligation to use “best efforts” under the Mitigation Agreement, has not been shown to adequately mitigate vibration and ground-borne noise caused by the light rail operations, and has not been shown to adequately protect the sensitive recording and broadcasting operations of MPR’s Broadcast Center, all as required by the Mitigation Agreement.

4. The rubber pad underlayment design for the FST system selected and intended to be used by Met Council (hereinafter, “the rubber pad FST”) fails to meet the specific design criteria and performance standards that are required under the terms of the parties’ Mitigation Agreement, and appears to have been chosen by Met Council not because it is a better solution, but solely because the initial installation may be less expensive, even though long-term maintenance of the rubber pad FST is likely to be more difficult and more expensive.

5. Met Council’s selection of the rubber pad FST is a breach of the Mitigation Agreement, or, alternatively, an anticipatory repudiation of the terms of the Mitigation Agreement.

6. Met Council’s selection and use of a rubber pad FST will interfere with and disrupt operations within MPR’s Broadcast Center, a state-of-the-art recording and broadcast facility that includes numerous studios and sound editing facilities that are highly sensitive to noise and vibration impacts.

7. MPR seeks a declaration that Met Council’s use of the rubber pad FST is or will be a breach of the Mitigation Agreement, together with appropriate equitable relief against Met Council, including but not limited to: an award of specific performance requiring Met Council to employ a proven steel-spring FST that complies with the requirements of the Mitigation Agreement; or, in the alternative, a requirement that Met Council post a bond sufficient to (a) cover all costs associated with removing the rubber pad FST should it fail to perform, immediately or over time, and replacing it with a new steel-spring FST that meets Met Council’s

“best efforts” obligation to address mitigation issues, and (b) cover all replacement costs and losses to MPR that will result if Met Council is permitted to proceed with the rubber pad FST; and any other equitable relief this Court deems just and appropriate.

### **PARTIES AND VENUE**

8. MPR is a not-for-profit corporation formed under the laws of the state of Minnesota, with its principal place of business at 480 Cedar Street, Saint Paul, Minnesota. MPR is one of the premier public radio organizations in the nation, operating a regional network of 39 radio stations serving an audience of 900,000 weekly listeners and producing and providing programming to a national network serving an audience of 16 million weekly listeners.

9. Met Council is a public corporation and political subdivision of the State of Minnesota, with its principal place of business at 390 Robert Street North, Saint Paul, Minnesota. Met Council is the regional planning agency charged with constructing and operating the CCLRT Project.

10. Venue is proper in this Court under Minnesota Statutes Section 542.09 and Minnesota Statutes Chapter 555, because the Mitigation Agreement that is the subject of this dispute was negotiated and executed in Ramsey County, because Met Council’s principal place of business is located in Ramsey County, and because MPR’s Broadcast Center is located in Ramsey County.

### **ALLEGATIONS COMMON TO ALL CLAIMS**

11. Met Council, through its Central Corridor Planning Office (“CCPO”), is the regional agency charged with the planning, construction, and operation of the CCLRT Project.

12. The CCLRT Project will provide light rail service along an 11-mile route connecting downtown Minneapolis with the Union Depot in downtown Saint Paul. This route was finalized by Met Council.

13. The planned CCLRT Project would run trains, at an average of one train every four minutes, on Cedar Street in the heart of downtown Saint Paul. MPR's Broadcast Center is located on Cedar Street, at the northeast corner of Cedar Street and Seventh Street.

14. MPR's Broadcast Center includes state of the art broadcasting and recording studios that are highly sensitive to noise and vibration impacts, including 32 recording, broadcast, and concert studios and listening and sound editing facilities. A quiet, vibration-free environment in its Broadcast Center is crucial to the high quality audio work that MPR produces for its regional and national audiences.

15. The MPR Broadcast Center is classified as a protected Category 1 / Special Use building under Federal Transit Administration ("FTA") guidelines, based on the sensitivity of its operations to noise and vibration impacts.

16. The extraordinary quality of the studios and facilities within MPR's Broadcast Center, including MPR's Maud Moon Weyerhaeuser Music Studio, has enabled MPR to attract and produce world-renowned musicians and recording artists and ensembles, including Keith Jarrett, Anne-Sophie Mutter, the Canadian Brass, Dawn Upshaw, and Yo-Yo Ma, among many others. The Broadcast Center has also contributed to MPR's status as one of the premier public radio organizations in the nation. MPR records and produces several nationally-syndicated classical music programs, such as *Performance Today*, a daily two-hour classical music program that features leading national and international orchestras and music ensembles and that is distributed to and broadcast by approximately 240 radio stations nationwide. In addition, MPR produces and records approximately 12 live performances in its studios each week.

17. The portion of Cedar Street that is adjacent to the MPR Broadcast Center slopes downward from Tenth Street on the north to Seventh Street on the south, at a grade of approximately 6.85%.

18. Under Met Council's planned route, CCLRT trains will run on Cedar Street and will pass within approximately 12 to 14 feet of, and along the exterior wall of, the MPR Broadcast Center (as well as several nearby historic churches and other Category 1 / Special Use buildings). Train operations will therefore expose the MPR Broadcast Center to the risk of enormous vibration and noise impacts. In addition, cars, trucks, and other vehicles that travel along Seventh Street, perpendicular to the Cedar Street route, will constantly pass over two sets of rail tracks, causing additional sound and vibration to the MPR Broadcast Center.

19. Under Minnesota law and the National Environmental Policy Act ("NEPA"), Met Council was required to prepare an Environmental Impact Statement ("EIS") to adequately address the significant environmental impacts caused by the construction and operation of the CCLRT Project.

20. Throughout the EIS process, MPR repeatedly expressed serious concerns to Met Council regarding CCLRT route selection and the decision to locate tracks and transit operations on Cedar Street, adjacent to MPR's Category 1 / Special Use broadcast and recording facilities.

21. In a letter dated August 25, 2008, counsel for MPR provided comments to Met Council on Met Council's Supplemental Draft Environmental Impact Statement ("SDEIS") for the CCLRT Project, noting that the SDEIS had failed to appropriately analyze noise and vibration impacts on MPR's Broadcast Center and failed to consider alternatives or possible mitigation measures to reduce or eliminate the noise and vibration impacts of CCLRT trains along Cedar Street.

22. In a letter to the CCPO dated December 18, 2008, MPR again notified Met Council that it considered Met Council's Draft Environmental Impact Statement ("DEIS") and the SDEIS to be inadequate, specifically with respect to the analysis of noise, vibration, and safety impacts to the MPR Broadcast Center.

23. In or around January 2009, Met Council notified MPR of an engineering design known as a steel-spring floating slab track (FST) system, which is designed to mitigate ground-borne noise and vibration caused by trains.

24. An FST system consists of a concrete slab that is placed inside a concrete foundation or vault. The rail is attached to the upper surface of the concrete slab. The concrete slab then "floats" above the floor of the concrete vault, supported by a resilient isolating underlayment system, typically comprised of either steel-springs or rubber pads, that is located between the concrete slab and the floor of the vault. Once constructed, the slab and vault used for a rubber pad FST system would not be interchangeable with the slab and vault of a steel-spring FST system, such that replacement of the rubber pad underlayment with steel springs would require replacement or substantial modification of the entire FST system.

25. Rubber pads and steel springs have different physical properties and characteristics that impact the performance of an FST system. For example, in low temperatures, such as those that occur during Minnesota winters, rubber pads stiffen. As rubber pads stiffen, their isolating performance and their ability to mitigate ground-borne noise and vibration decrease. By contrast, steel springs are insensitive to temperature changes and therefore retain their ability to mitigate ground-borne noise and vibration despite changes in temperature. In addition, steel springs can be designed for lower resonant frequencies than rubber pads, which allows steel springs to provide more effective mitigation of ground-borne noise and vibration. Rubber pads that are

designed for the lowest possible resonant frequencies may have reduced load-carrying capacity and may accelerate the rate at which the rubber degrades.

26. To MPR's knowledge, the only location in the world where a light rail train has been built in similar proximity to a noise-sensitive recording or performance center, and on a similar grade to Cedar Street, is in Basel, Switzerland, and the solution to the noise and vibration problems employed there was a steel-spring FST.

27. The steel-spring FST system in Basel was identified and brought to MPR's attention by Met Council. In Basel, a light rail line was constructed in close proximity to an historic concert hall, the Stadtcasino Basel, and on a grade of approximately 5%. Upon its initial construction, the Basel light rail line caused substantial vibration and noise impacts to the adjacent concert hall, requiring that the rail line be shut down in order to design and install an effective mitigation system. The Basel light rail authority ultimately utilized a steel-spring FST designed and supplied by the GERB engineering firm, which effectively mitigated ground-borne noise and vibration and allowed the Stadtcasino Basel to resume normal operations.

28. In light of MPR's mitigation concerns, between January and March of 2009, MPR and Met Council engaged in a series of discussions and undertook additional research and testing to evaluate the noise and vibration impacts of CCLRT trains operating on Cedar Street and to consider possible mitigation measures. MPR and Met Council identified various adverse impacts to MPR's Broadcast Center that would be caused by airborne noise and ground-borne noise and vibration resulting from the siting of CCLRT trains along Cedar Street. The discovery of the steel-spring FST system in Basel, Switzerland that effectively mitigated ground-borne noise and vibration at the Basel concert hall was a turning point in the negotiations between MPR and Met Council.

29. After months of discussion, negotiation, and compromise, on April 8, 2009, MPR and Met Council entered into a binding CCLRT Mitigation Agreement (hereinafter, the “Mitigation Agreement”), which incorporated an attached Mitigation Plan (“Mitigation Plan”). (A true and correct copy of the Mitigation Agreement, including the Mitigation Plan, is attached at Exhibit A.)

30. In the Mitigation Agreement, in reliance on Met Council’s agreement to use its “best efforts” to undertake and perform specific mitigation measures, MPR agreed not to challenge the adequacy of Met Council’s Final EIS (“FEIS”) with respect to route selection and mitigation measures. (Mitigation Agreement, at 7.)

31. The Mitigation Agreement is a long-term undertaking by Met Council and is to remain “in full force and effect for so long as MPR continues, or intends to continue, conducting broadcasting, recording or live performance activities in the MPR Broadcast Center.” (Mitigation Agreement, at 8.)

32. In undertaking the obligations of the Mitigation Agreement, Met Council expressly acknowledged that it was addressing a situation that was “unique and without precedent,” and that “there exists no similarly situated properties or operations at any other point along the proposed CCLRT corridor.” (Mitigation Agreement, at 7.)

33. Under the terms of the Mitigation Agreement, Met Council undertook detailed commitments to mitigate the vibration and ground-borne noise impacts caused by CCLRT on MPR’s Broadcast Center. These included a commitment to focus on mitigation “at the source . . . within the trackbed on which LRT will operate.” (Mitigation Agreement, at 4.)

34. To meet these commitments, Met Council agreed, under Article III.B of the Mitigation Agreement, to install a floating slab for approximately 700 feet along the full width of the MPR



Broadcast Center (as well as additional Category 1 / Special Use buildings and historic structures on Cedar Street). (Mitigation Agreement, at 4.)

35. In the Mitigation Agreement, Met Council agreed to specific design and performance criteria that must be achieved by the FST system, including, but not limited to, the following provisions:

- Met Council agreed that any FST design have “a proven track record” of meeting the agreed-upon performance criteria regarding ground-borne noise and vibration. (Mitigation Plan, at 7.)
- Met Council agreed that the FST system “shall be designed to be capable of continuously providing vibration mitigation satisfying the criteria agreed upon in the Mitigation Plan, taking into account the temperature extremes of Minnesota weather, snow and ice conditions, and the slope of Cedar Street.” (Mitigation Agreement, at 4.)
- Met Council agreed that the FST system will mitigate ground-borne noise over a range of frequencies from 16 Hz to 400 Hz. (Mitigation Plan, at 2.)
- Met Council agreed that the mitigation design must be such that, if there are vibration or ground-borne noise problems over the life of this long-term contract, Met Council will be in a position to “take all reasonable operational and/or maintenance actions within 48 hours to reduce impacts to MPR . . . .” (Mitigation Plan, at 5.)
- Met Council agreed to “consider, as one alternative, a ‘low-tuned’ slab that ‘floats’ on a spring mechanism, comparable to the GERB Engineering solution that was brought to the attention of the CCPO and MPR.” (Mitigation Agreement, at 4.)

36. As an additional contractual obligation, Met Council undertook to use its “best efforts” to meet these mitigation design and performance criteria. (Mitigation Agreement, at 8.)

37. In or around June 2009, Met Council and the FTA published notices of availability of the FEIS for the CCLRT Project.

38. In light of the Mitigation Agreement between MPR and Met Council, MPR did not lodge objections to the adequacy of the FEIS. MPR did, however, provide comments on the FEIS during the prescribed comment period. In particular, MPR stated that the FST system must be designed and maintained with due consideration to inherent uncertainties in prediction methodology, temperature extremes, the possibility of ice build-up, the slope of Cedar Street, and ease of future repair and replacement.

39. On August 18, 2009, the FTA issued a Record of Decision approving Met Council’s FEIS, and finding that the FEIS for the CCLRT Project met the federal statutory requirements under NEPA.

40. Attachment C of the FTA’s Record of Decision incorporated Met Council’s response to MPR’s comments on the FEIS, providing that “[t]he Metropolitan Council acknowledges MPR’s desire to include a floating-slab that would, in MPR’s view, account for uncertainties in the analysis, climatic and other site conditions. The Metropolitan Council will fulfill its obligations under the Mitigation Agreement [] in this matter.”

41. Attachment B of the FTA’s Record of Decision expressly incorporated the binding Mitigation Agreement between MPR and Met Council.

42. Under FTA guidelines, the CCLRT Project can enter into final design phase only upon completion of the NEPA environmental review process. During final design, Met Council prepares final construction plans, specifications, cost estimates, and bid documents.

43. The Mitigation Agreement entered into between MPR and Met Council allowed Met Council to complete the NEPA process. The Mitigation Agreement requires Met Council to comply with a number of design and performance criteria to mitigate the severe noise and vibration impacts on MPR of the CCLRT project, in return for MPR's agreement not to challenge the FEIS.

44. MPR, in reliance on the requirements of the Mitigation Agreement, fully performed its end of the bargain by not objecting to the adequacy of the FEIS, thereby allowing the FTA to issue the Record of Decision.

45. Thereafter, MPR was told that Met Council was designing and planning to install a rubber pad FST, rather than an FST system with a GERB-style steel-spring system, as its choice of a solution to mitigate ground-borne vibration and noise in the MPR Broadcast Center.

46. Met Council's selection of a rubber pad FST fails to meet Met Council's contractual obligations as set forth in the Mitigation Agreement, including, but not limited to, the following examples:

- a. The rubber pad FST design chosen by Met Council fails to comply with its contractual obligation to use "best efforts" to address the ground-borne noise and vibration mitigation issues set forth in the Mitigation Agreement and Mitigation Plan. Met Council's choice of this rubber pad FST design was not made because it is a better mitigation solution, but solely because the initial installation of this rubber pad FST design is expected to be less expensive, even though long-term maintenance of the rubber pad FST will be more difficult and more expensive.
- b. The rubber pad FST design chosen by Met Council fails to provide an FST system with a "proven track record" of mitigating ground-borne noise and vibration for a

noise-sensitive Class 1 / Special Use broadcast facility located immediately adjacent to light rail operations, as is required under the Mitigation Agreement. Met Council has been unable to identify, and MPR has been unable to find, any example of an FST system using rubber pad underlayment anywhere in the world that involves a situation with characteristics similar to those in play at the MPR Broadcast Center, such as the proximity of the rail lines to broadcast and recording studios and performance centers, the shallow bedrock, temperature and climate extremes, and the slope of the rail line.

- c. The only FST system with a “proven track record” in circumstances similar to the site of MPR’s Broadcast Center is the GERB-style steel-spring system utilized in Basel, Switzerland, but rather than employing the steel-spring FST system with a proven track record, Met Council has insisted on an untested and unproven rubber pad FST with no track record in comparable circumstances.
- d. The rubber pad underlayment design chosen by Met Council fails to provide an FST system that is maintainable and repairable within a 48-hour completion goal, as is required under the Mitigation Agreement.

47. Upon information and belief, and subject to a reasonable opportunity for further investigation and discovery, Met Council’s choice of the rubber pad FST design also fails, or will fail, to meet the design and performance criteria for mitigation of ground-borne noise and vibration set forth in the Mitigation Agreement for many other reasons, including, but not limited to, the following examples:

- a. Use of the rubber pad FST design chosen by Met Council fails to provide an FST system that meets technical performance criteria, over the anticipated term of the

Mitigation Agreement, and in weather extremes including ice, snow, and sub-freezing temperatures, as is required under the Mitigation Agreement.

- b. Use of the rubber pad FST design chosen by Met Council fails to provide an FST system that performs effectively, over the anticipated term of the Mitigation Agreement, on a sloping grade such as Cedar Street, as is specifically required under the Mitigation Agreement.
- c. Met Council has failed to provide any evidence that the rubber pad FST system it has chosen will mitigate ground-borne noise at penetrating bass frequencies between 200 Hz and 400 Hz, or over the range of anticipated temperatures in Minnesota, as is required under the Mitigation Agreement.

48. In a letter to Met Council and the CCPO dated December 17, 2009, MPR and its counsel notified Met Council that it would consider Met Council in breach of the Mitigation Agreement if Met Council submits final construction or engineering plans or specifications showing use of this rubber pad FST design rather than a properly designed steel-spring FST system.

49. On January 21, 2010, Met Council responded to MPR's December 17, 2009 letter. Met Council restated its intention to use the rubber pad FST design, rather than a steel-spring FST system, despite MPR's December 17, 2009 notice to Met Council.

50. If the CCLRT trackbed is built using the inadequate rubber pad FST system chosen by Met Council, MPR will be deprived of the mitigation criteria it bargained for in the Mitigation Agreement, and rectification efforts at that point would potentially require Met Council to remove and reconstruct approximately 700 feet of trackbed, with enormous disruptions to rail service, to downtown Saint Paul, and to MPR's operations.

51. The Mitigation Agreement expressly provides that the parties may seek equitable relief, including specific performance and mandatory and prohibitive writs.

52. Under Article V of the Mitigation Agreement, “[t]he parties expressly recognize that monetary damages may be insufficient to address the harm caused by uncorrected Project impacts that exceed agreed criteria or standards, or other breaches of this Agreement, and therefore further agree that each Party shall, in such a situation, be entitled to injunctive or other equitable relief, including specific performance and mandatory and prohibitive writs.” (Mitigation Agreement, at 6.)

53. Under Article VI of the Mitigation Agreement, the parties recognize “the unique nature of the CCLRT/MPR Broadcast Center adjacency.” (Mitigation Agreement, at 8.)

54. MPR will suffer unquantifiable and irreparable harm if Met Council is allowed to proceed with final design bidding and construction using the rubber pad FST design, rather than a proven steel-spring FST design. Among other harms, unmitigated levels of ground-borne noise and vibration resulting from an inadequate rubber pad underlayment, as initially constructed or as it degrades over time, will interfere with MPR recordings, broadcasts, live concerts, and other music, news, and cultural programming, will cause massive interruption during repair and replacement periods, and may ultimately require the relocation of MPR’s Broadcast Center away from Cedar Street in Saint Paul.

55. The disruption and/or loss of MPR’s cultural and news programming and the unique, highly-specialized, state-of-the-art recording studios and broadcast facilities in its Broadcast Center cannot be fully compensated by money damages.

56. Because FTA has approved a final Record of Decision as to the CCLRT route, and because MPR agreed not to challenge the adequacy of Met Council’s FEIS, including the

decision to locate the CCLRT line along Cedar Street, in reliance on the terms of the Mitigation Agreement, MPR cannot be restored to the position it was in before the Mitigation Agreement between MPR and Met Council was made.

**COUNT I**  
**BREACH OF CONTRACT – FAILURE TO PERFORM**

57. The allegations of Paragraphs 1 through 56 are restated and incorporated in this claim.

58. MPR and Met Council are parties to the Mitigation Agreement and Mitigation Plan, dated April 8, 2009, which is a binding contract supported by valid consideration.

59. Met Council is in material breach of the Mitigation Agreement because it failed to use its best efforts to meet its commitment to mitigate ground-borne noise and vibration. Specifically, Met Council's selection of the rubber pad FST design fails to meet the specific design and performance terms for mitigation of ground-borne noise and vibration, as set forth in the binding Mitigation Agreement and as described above.

60. MPR is entitled to equitable relief under Article V of the Mitigation Agreement for Met Council's breach, including specific performance and/or issuance of a mandatory writ against Met Council. Equitable relief is also appropriate because disruption and/or loss of MPR's Broadcast Center are irreparable harms that are not fully compensable by money damages, including harms that will be suffered by all of MPR's listeners, together with the 700 public radio stations and their audiences who receive programming fed by MPR's satellite networks, and because MPR cannot be restored to the position it was in before the Mitigation Agreement between MPR and Met Council was made.

**COUNT II**  
**BREACH OF CONTRACT – ANTICIPATORY REPUDIATION**

61. The allegations of Paragraphs 1 through 60 are restated and incorporated in this claim.

62. MPR and Met Council are parties to the Mitigation Agreement and Mitigation Plan, dated April 8, 2009, which is a binding contract supported by valid consideration.

63. Met Council is in material breach of the Mitigation Agreement because it has repudiated its contractual obligation to use best efforts in mitigation of ground-borne noise and vibration. Specifically, by insisting on its choice of the rubber pad FST design, which is subject to degradation over time and which fails to meet the specific design and performance terms for mitigation of ground-borne noise and vibration, the words and actions of Met Council clearly manifest its intention not to perform the contract according to its terms.

64. MPR is entitled to equitable relief under Article V of the Mitigation Agreement for Met Council's breach, including specific performance and/or issuance of a mandatory writ against Met Council. Equitable relief is also appropriate because disruption and/or loss of MPR's Broadcast Center are irreparable harms that are not fully compensable by money damages, including harms that will be suffered by all of MPR's listeners, together with the 700 public radio stations and their audiences who receive programming fed by MPR's satellite networks, and because MPR cannot be restored to the position it was in before the Mitigation Agreement between MPR and Met Council was made.

**COUNT III**  
**DECLARATORY JUDGMENT UNDER UNIFORM**  
**DECLARATORY JUDGMENTS ACT**

65. The allegations of Paragraphs 1 through 64 are restated and incorporated in this claim.

66. Pursuant to the Minnesota Uniform Declaratory Judgments Act, Minnesota Statutes Chapter 555, this Court has the power and authority to determine the rights and obligations of the parties under the Mitigation Agreement.



67. Based on the facts set forth above, MPR is entitled to a judgment of this Court declaring that Met Council is or will be in material breach of the Mitigation Agreement because its selection of the design for a rubber pad FST system is not a best efforts solution, and fails to meet the specific design and performance terms for mitigation of ground-borne noise and vibration, as set forth in the Mitigation Agreement.

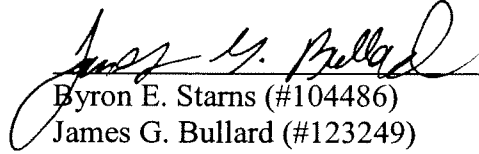
**PRAYER FOR RELIEF**

**WHEREFORE**, MPR prays that judgment be entered in its favor, and against Met Council, as follows:

1. Finding Met Council in material breach of the Mitigation Agreement;
2. In the alternative, declaring that Met Council is or will be in material breach of the Mitigation Agreement because its selection of the rubber pad FST design is not a best efforts solution and fails to meet the specific design and performance terms for mitigation of ground-borne noise and vibration as set forth in the Mitigation Agreement;
3. Ordering specific performance or other equitable relief under the Mitigation Agreement by requiring Met Council to use a proven GERB-like steel-spring FST system to mitigate vibration and ground-borne noise;
4. In the alternative, requiring Met Council to post a bond, in an amount deemed sufficient by this Court, to cover costs associated with removing the floating slab, underlayment, and vault and replacing them with a new, proven FST system, such as a GERB-like steel-spring FST system, that meets Met Council's obligation to use best efforts to address mitigation issues, and to compensate MPR for costs and damages that will be incurred in the event Met Council is permitted to proceed with its choice of the rubber pad FST system;
5. Awarding to MPR its costs and disbursements; and

6. Awarding to MPR such other relief as the Court deems just and equitable.

Dated: February 4, 2010

  
Byron E. Starns (#104486)  
James G. Bullard (#123249)  
Andrew W. Davis (#386634)

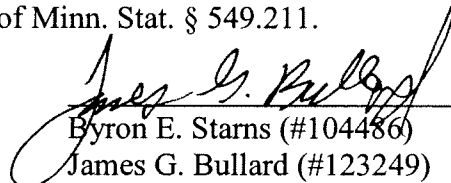
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**ATTORNEYS FOR PLAINTIFF**

**ACKNOWLEDGMENT**

Plaintiff, by its attorneys, Leonard, Street and Deinard, acknowledges that sanctions may be imposed in this civil action under the terms of Minn. Stat. § 549.211.

Dated: February 4, 2010

  
Byron E. Starns (#104486)  
James G. Bullard (#123249)  
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**ATTORNEYS FOR PLAINTIFF**

**CCLRT Mitigation Agreement**  
**(MPR Broadcast Center, Saint Paul)**

**THIS AGREEMENT** is made effective as of the 8th day of April, 2009, by and between the **METROPOLITAN COUNCIL**, a political subdivision of the state of Minnesota, including specifically its operating divisions Metro Transit and the Central Corridor Project Office (collectively "the Council"), and **MINNESOTA PUBLIC RADIO**, a Minnesota non-profit corporation ("MPR").

**WITNESSETH:**

**WHEREAS**, the Council is the owner and operator of the Central Corridor Light Rail Transit project ("CCLRT," or "the Project"), which will provide light rail service between the Union Depot in Saint Paul and the Twins' Ballpark in Minneapolis; and

**WHEREAS**, the "MPR Broadcast Center," which contains radio broadcasting and recording studios, concert venues and critical listening areas, is located along the CCLRT corridor, at Cedar and Seventh Streets in downtown Saint Paul, adjacent to the proposed CCLRT tracks; and

**WHEREAS**, since the beginning of preliminary engineering, the Central Corridor Project Office ("CCPO") has been in contact with MPR and has responded to various requests for testing, data, and information about the CCLRT project; and

**WHEREAS**, MPR has expressed serious concerns regarding details of the route selection for and design of the CCLRT, including the location of the tracks and transit operations along Cedar Street, the location of crossover tracks, and the ways in which pedestrians would access the MPR Broadcast Center; and

**WHEREAS**, the Council agrees that, for purposes of Federal Transportation Administration ("FTA") noise and vibration standards, the MPR Broadcast Center's broadcasting and recording studios are considered "Category 1" and/or "Special Use" areas that are highly sensitive to noise and vibration; and

**WHEREAS**, the Council and MPR (sometimes jointly referred to herein as "the Parties" and singly as a "Party") have identified certain adverse impacts, related to airborne noise, ground-borne noise and vibration, that the Project, without effective and continuing mitigation, may have on MPR's broadcast and recording operations, and on other sensitive operations conducted in the MPR Broadcast Center; and

**WHEREAS**, the Council and MPR both recognize the benefits that a well planned and thoughtfully-implemented CCLRT Project will bring to Saint Paul and to the Twin Cities region as a whole; and

**EXHIBIT A**

**WHEREAS**, MPR acknowledges the Council's goal to bring the Project in on time and on budget, and the Council acknowledges MPR's goal to be able to continue operating the MPR Broadcast Center as a first-class, radio broadcast, recording and performance venue after CCLRT revenue operations commence; and

**WHEREAS**, over the course of the past several weeks the Parties and their respective technical consultants have met repeatedly for the purpose of developing a mitigation plan to address known effects of CCLRT construction and operation, both parties recognizing that final information regarding the effects of CCLRT, and the types or extent of mitigation efforts required, may not be completely known until CCLRT revenue operations are underway; and

**WHEREAS**, the Council and its CCPO, working collaboratively with MPR, have developed a comprehensive CCLRT mitigation plan focusing on the mutually anticipated impacts of CCLRT construction and operations upon the MPR Broadcast Center, and a copy of that plan is attached hereto as **Exhibit A** and incorporated herein by reference (the "Mitigation Plan," defined more completely below); and

**WHEREAS**, MPR desires to have the terms of the Mitigation Plan, and any amendments and supplements thereto, and replacements or restatements thereof, incorporated into a continuing, binding and enforceable agreement, and the Council desires to have MPR waive its challenge to the adequacy of the Mitigation Plan and the route selection methodology employed for the CCLRT.

**NOW, THEREFORE**, the Parties agree as follows:

## **ARTICLE I GENERAL PROVISIONS**

**A. Purpose.** The purpose of this Agreement is to memorialize the Council's binding agreement to monitor and mitigate any CCLRT-caused vibration, airborne noise and ground-borne noise that may exceed the criteria agreed to in this Agreement or in any Mitigation Plan incorporated into this Agreement, to re-affirm the Council's commitment to ensure that CCLRT operations do not unreasonably interfere with MPR operations; and to memorialize MPR's agreement not to challenge, either in the EIS process or in court, the adequacy of the Mitigation Plan or the CCLRT route selection process.

**B. Mitigation Goal.** The goal of this Agreement is to ensure that the CCLRT's impacts upon the MPR Broadcast Center are successfully identified and addressed now and in the future, and further to ensure that CCLRT-generated noise and vibration do not interfere with the use of sensitive spaces within the MPR Broadcast Center beyond agreed criteria.

**C. Mitigation Criteria.** The CCPO and MPR agree to specific criteria to be achieved for each mitigation measure, as specified in the Mitigation Plan, and agree to specific mitigation efforts the Council shall undertake while the Project is under construction and, if necessary, during revenue operations. If, despite such mitigation efforts, the agreed criteria are not consistently met during revenue operation of the CCLRT line, this Agreement confirms that the Council will take such further corrective action, through physical mitigation, light rail vehicle repair and/or administrative relief, or other action as may then prove reasonably necessary, to address any exceedances.

**D. Mitigation Approach.** The provisions of the Mitigation Plan, incorporated into this Agreement, are intended to reduce or eliminate negative CCLRT impacts at the source, and to make certain modifications to the MPR Broadcast Center, as a mitigation cost of the Project. The Mitigation Plan and this Agreement also set out the Council's agreement to ensure the continuing viability of certain mitigation efforts through a rigorous plan of vehicle, rail and rail bed maintenance and repair.

**E. Assessment.** To ensure the continuing, long-term effectiveness of this mitigation strategy, the Council agrees to monitor noise and vibration impacts during the construction, pre-revenue testing, and the first year of revenue operations of the CCLRT line. The Council also will promptly address, at the Project's sole cost and expense and in a timely manner, continuously throughout the term of this Agreement, all exceedances of agreed-upon mitigation criteria, to the extent that such exceedances are caused by CCLRT-related construction or operations.

**F. Dynamic Definition of "Mitigation Plan."** Recognizing that the mitigation planning related to the MPR Broadcast Center is a dynamic process, requiring ongoing study, monitoring and engineering analysis, the term "Mitigation Plan," as used in this Agreement, means the Mitigation Plan attached hereto as **Exhibit A**, as the same may be amended or supplemented from time to time by the joint agreement of the Council and MPR, and also includes any restatement of the Mitigation Plan that may be adopted by the Parties in the future at junctures such as final engineering or after commencement of revenue operations. The Mitigation Plan, including all such amendments, supplements and restatements shall, by this reference, automatically be deemed to be incorporated into and to be an integral part of this Agreement, and the Council hereby agrees and commits to timely undertake all mitigation, testing and monitoring efforts that are specified as the responsibility of the Council in the Mitigation Plan, as so amended, supplemented or restated.

## ARTICLE II MITIGATION CRITERIA AND AGREEMENTS

The Parties recognize the need to establish objective, measurable criteria for determining ambient conditions, assessing CCLRT-caused impacts, and assessing the effectiveness of mitigation. The Parties hereby establish the following criteria for vibration, ground-borne noise and airborne noise mitigation:

**A. Vibration and Ground-borne Noise.** The Council hereby agrees promptly to mitigate, at the Project's expense, the measurable effects upon the MPR Broadcast Center of vibration and ground-borne noise caused by CCLRT operations, to the full extent of the specific criteria set forth in the Mitigation Plan. The Council's binding commitments to identify and address vibration or ground-borne noise in excess of such criteria are elaborated upon in subsequent portions of this Agreement and in the Mitigation Plan.

**B. Airborne Noise.** The Council hereby agrees to achieve the post-mitigation airborne noise criteria in Studios MMW (*a/k/a* the Maude Moon Weyerhaeuser Music Studio) and P, and to fund modifications to the UBS Forum, as specified in the Mitigation Plan. Moreover, the Council agrees to promulgate and enforce operating rules governing CCLRT vehicle horns and bells, specified below, within the following area: from the south edge of the planned Tenth Street Station platform to the skyway between the Wells Fargo and UBS Towers south of Seventh Street (the so-called "Quiet Zone"). Without limiting the Council's ultimate obligation to achieve the

airborne noise criteria set forth in the Mitigation Plan, the Plan establishes additional actions the Council agrees to take should those criteria be exceeded.

### ARTICLE III SPECIFIC COMMITMENTS TO MITIGATE

**A. Construction.** To the extent reasonable and practical, the Council agrees to conduct all excavation, utility relocation and construction related to the CCLRT, in the vicinity of the MPR Broadcast Center, in a manner that minimizes the disruption of MPR's ongoing broadcast, recording and performance operations. The Council understands that MPR's broadcast operations are continuous, occurring 24 hours per day, seven days per week, 52 weeks per year, and are both regional and national in scope, serving millions of listeners. Accordingly, the Council agrees to use its best efforts to ensure that utility service will be continuously maintained to the MPR Broadcast Center except during momentary "cut over" periods that the Council and MPR have jointly coordinated. If utilities are to be re-located to accommodate the CCLRT, the Council will ensure that adequate provisions are made to supply all necessary, suitable and uninterrupted substitute utilities to the MPR Broadcast Center to permit MPR to continue its operations without interruption. Moreover, during periods of excavation, utility relocation and construction in or around the "Mitigation Zone" (defined below), the Council agrees to coordinate work schedules reasonably in advance with MPR, and to cause its contractors and suppliers to stage and schedule work and deliveries so that the duration, and the noise and vibration impacts, of such work are minimized, with respect to the MPR Broadcast Center, to the full extent practical. In addition, the Council agrees to provide MPR with as much advance notice of impending excavation, utility relocation and construction work as reasonable and practical to allow MPR to appropriately schedule its discretionary operations.

**B. Vibration and Ground-Borne Noise.** Mitigation efforts for CCLRT-caused vibration and ground-borne noise will focus on improvements made at the source, in this case within the trackbed on which LRT will operate.

Results of supplemental testing conducted by the Council's technical vibration consultant (ATS Consulting) in September and October 2008, and research performed by MPR's own technical consultants, have indicated that a floating slab, or its performance equivalent, will be required to mitigate anticipated effects of LRT on ground-borne noise at MPR. The Council agrees to install a floating slab or its performance equivalent for approximately 700 feet along the full length of the MPR Broadcast Center and the neighboring churches to the north (sometimes hereinbefore and hereinafter referred to as the "Mitigation Zone"). The floating slab shall be designed to be capable of continuously providing vibration mitigation satisfying the criteria agreed upon in the Mitigation Plan, taking into account the temperature extremes of Minnesota weather, snow and ice conditions, and the slope of Cedar Street. The floating slab will have a single, continuously welded rail, and its support mechanisms shall be capable of repair and replacement without unreasonable delay or unreasonable disturbance of MPR operations. Without committing to a specific solution, because final engineering is not yet underway, the Council will consider, as one alternative, a "low-tuned" slab that "floats" on a spring mechanism, comparable to the GERB Engineering solution that was brought to the attention of the CCPO and MPR.

In addition, the Council agrees to move the planned crossover switch from a location near MPR to a new location north of I-94, removing another source of CCLRT-generated vibration.

**C. Airborne Noise.** The Council hereby commits to two forms of mitigation that will, in combination, mitigate noise impacts at MPR. Specifically, the Council commits as follows:

- 1. CCLRT Administrative Relief.** Administrative relief measures focus on how the operational procedures established for the CCLRT system can be established to minimize impacts at MPR while preserving safety.

The Council agrees to cause LRT vehicles to refrain from LRT horn use on Cedar Street in the Quiet Zone, except in emergencies (similar to existing emergency siren use along Cedar Street), in accordance with the operating protocols and limitations set forth in the Mitigation Plan. The Council and the CCPO further covenant with MPR to set LRT bells to ring at levels no higher than the levels, and for durations no longer than, those specified in the Mitigation Plan. Nothing in the Agreement or the Mitigation Plan is intended to preclude the Council from taking reasonable steps to preserve public safety (and nothing in this sentence is intended to deny MPR the benefit of the criteria and remedies in this Agreement and the Mitigation Plan).

- 2. Modifications to the MPR Broadcast Center.** The Council agrees to work cooperatively with MPR to design, engineer, purchase and install agreed-upon modifications to Studios MMW and P to achieve sufficient "acoustical isolation" from CCLRT-caused airborne noise to consistently meet the criteria specified in the Mitigation Plan, and to make upgrades to the UBS Forum as specified in the Mitigation Plan. The Council agrees promptly to reimburse MPR for the "hard" and "soft" costs of such modifications made upon the Council's approval, which approval shall not be unreasonably withheld, conditioned or delayed. It is anticipated that modifications will focus on reducing the transmission of sound into the studios through the windows and walls. These modifications are intended to: (a) improve the acoustical isolation of these studios from LRT-caused airborne noise, and (b) maintain those studios at essentially their same size, with comparable interior acoustical quality. The Council agrees that such modifications will be undertaken once the Project receives a Full Funding Grant Agreement, and the Council shall use best efforts to complete these modifications prior to construction of the segment of the CCLRT line that lies within the Quiet Zone (defined above).

**D. EMI and RFI Metrics.** The Council has concluded and will document and disclose in the forthcoming CCLRT Final Environmental Impact Statement (the "FEIS") that there will be no adverse impacts to equipment or operations in the MPR Broadcast Center resulting from Electro-Magnetic Interference (EMI) or Radio Frequency Interference (RFI) due to CCLRT construction or operations. MPR, based on its limited knowledge of and inquiry into the situation, has no current objection to, and is relying upon, the Council's conclusion. Nonetheless, should CCLRT construction or operations later be shown to produce EMI or RFI that interferes with MPR's operations in the MPR Broadcast Center beyond standards or criteria that the Council and MPR mutually and in good faith agree should apply to first-class broadcasting and recording operations such as MPR's, then the Parties agree to negotiate, in good faith, to amend the Mitigation Plan to take account of such unanticipated EMI or RFI and to agree upon the standards or criteria that will govern the Council's mitigation efforts relating to EMI or RFI exceedances.

#### **ARTICLE IV ENSURING THE CONTINUING EFFECTIVENESS OF MITIGATION**

Both Parties have a serious stake in confirming that the commitments made to mitigation are successfully implemented well into the future. Accordingly, the following commitments for testing of mitigation measures are made:

**A. Vibration and Ground-borne Noise.** The Council, at the Project's and its expense, agrees to perform all the testing and monitoring of vibration and ground-borne noise, and mitigation measures, specified in the Mitigation Plan.

**B. Maintenance.** The Council acknowledges that a rigorous program of LRT vehicle, rail and rail bed maintenance is essential for the CCLRT to operate at peak levels of efficiency and safety. The Council further acknowledges that wheel flats, corrugated rail and other elements of a deteriorated rail system, including poorly maintained rail beds or slabs, can exacerbate the effects of CCLRT-caused vibration and ground-borne noise. The Council hereby agrees to maintain its vehicle fleet and infrastructure, including the rails and rail bed in the vicinity of the MPR Broadcast Center, in generally excellent condition (as its fleet and infrastructure currently has been observed to be during field testing conducted to date), to ensure that the criteria agreed to in the Mitigation Plan are not later exceeded owing to poor or deferred maintenance.

**C. MPR Testing:** The Council understands that MPR may, from time to time, undertake additional testing and monitoring of vibration and noise, and of EFI and RFI, and that it will do so at MPR's sole expense unless otherwise specified in the Mitigation Plan.

## **ARTICLE V REMEDIES**

**A. Vibrations.** If during the term of this Agreement CCLRT vibration and ground-borne noise exceed the criteria as set forth in the Mitigation Plan, the Council agrees, at the Project's and its expense, to take all reasonable operational and/or maintenance actions, within 48 hours of receiving notice from MPR, to verify the exceedance, and to reduce impacts to MPR and pursue long term, permanent actions, as required, to meet the criteria specified in the Mitigation Plan. Operational and maintenance action may include taking trains that do not meet criteria temporarily out of service when they reach the end of the line to accomplish necessary repairs.

**B. Airborne Noise.** The Council shall use its best efforts to mitigate, as promptly as possible after receiving notice from MPR, at the Project's and its expense, any CCLRT-caused airborne noise that exceeds the criteria or operating covenants established in the Mitigation Plan and this Agreement.

**C. General Remedies.** Either Party may enforce the terms of and commitments in this Agreement by means of a suit at law or in equity, or both. The Parties expressly recognize that monetary damages may be insufficient to address the harm caused by uncorrected Project impacts that exceed agreed criteria or standards, or other breaches of this Agreement, and therefore further agree that each Party shall, in such a situation, be entitled to injunctive or other equitable relief, including specific performance and mandatory and prohibitive writs. Except as provided in Article VII herein, nothing in this Agreement, or any related Mitigation Plan, shall be construed as or deemed to be a release or waiver by MPR or the Council of any claims either of them may ever have at law or in equity relating to CCLRT construction or operation.

## **ARTICLE VI ONGOING COORDINATION AND PLANNING**

The Council and MPR are jointly committed to a continuing process of coordination and consultation regarding CCLRT construction and operations. This process will consist, among other things, of regular meetings between CCPO and MPR staff. It is anticipated that these



meetings may produce amendments or supplements to the Mitigation Plan, and/or an eventual restatement of the Mitigation Plan once revenue operations are underway, to ensure that the Council meets the criteria and standards in the Mitigation Plan should the mitigation efforts described in the current Mitigation Plan prove less effective than the Parties currently anticipate. The ongoing coordination and consultation will focus on the following subjects, understanding that during the process of coordination and consultation other issues may be discovered and brought forward for discussion and resolution:

**A. Testing and Monitoring.** Should additional testing be identified as desired by either the Council or by MPR, and should the Parties, acting in good faith, mutually agree to the need for such testing, a similar process of coordination and consultation will be followed.

**B. The Floating Slab Solution.** The Council commits to a process of coordination and consultation with MPR staff and their technical consultants, providing them timely opportunities to review vibration and ground-borne noise mitigation designs, and slab designs, as they are developed. At a minimum, this review will occur during development of concept design for mitigation, and at preliminary and final design completion levels.

**C. Mitigation of Airborne Noise.** The Council acknowledges that MPR must approve any modifications to its building, for which it will ultimately have responsibility of ownership and maintenance. The Council is committed to working in close partnership with MPR staff and its technical consultants to discuss design modifications, to refine these designs, and to approve modifications to Studios MMW and P, and any other modifications that may be called for under the Mitigation Plan. The Council commits to working with MPR to develop a process for this design development and review to the satisfaction of both MPR and the Council, and both Parties agree to not unreasonably delay or withhold their respective approvals of such proposed modifications. The Council also agrees to keep MPR advised of developments in administrative relief methods regarding airborne noise.

## ARTICLE VII SETTLEMENT OF MPR CLAIMS

MPR believes that the majority of the space in the MPR Broadcast Center, including critical listening areas, is noise and/or vibration sensitive and will suffer significant adverse effects from CCLRT-caused airborne noise. The Parties acknowledge that the situation posed by the close proximity of the CCLRT line to the MPR Broadcast Center is, to their knowledge, unique and without precedent among modern-day LRT lines in the United States, and that there exists no similarly situated properties or operations at any other point along the proposed CCLRT corridor. The Parties further acknowledge that it is manifestly in the public interest for them to resolve their good faith differences in the manner set forth in this Section VII, rather than to risk the time-delay costs that might burden the CCLRT Project if the dispute over these unique circumstances were to devolve into litigation or other form of dispute resolution.

Therefore, MPR, in consideration of the promises and undertakings of the Council set forth in the Mitigation Plan and this Agreement, hereby covenants and agrees: (1) not to file an objection to the FEIS challenging the adequacy of the Mitigation Plan or the route selection methods utilized for the CCLRT by the Council, the CCPO or their predecessors, and (2) not to file, after the Project has received a favorable Record of Decision from the FTA, a lawsuit claiming that the FEIS is inadequate or insufficient under FTA guidelines regarding mitigation for EMI, RFI, airborne noise, or vibration, or the route selection methods used for the CCLRT.

In further consideration of MPR's foregoing waiver, the Council hereby covenants and agrees that, should MPR of its own volition elect to make enhancements to or replace any part of the outer curtain wall of the MPR Broadcast Center, including without limitation the glazing, insulation or other elements of such wall, in order to provide greater acoustical isolation from CCLRT-caused airborne noise to the multitude of noise sensitive areas located throughout the MPR Broadcast Center, such as critical listening areas and future studios for new programming, MPR may request, through a member of the Central Corridor Management Committee, reimbursement of some or all of such costs, as "mitigation" costs under the Project, if total Project costs for CCLRT, including mitigation, otherwise come in under the budget for CCLRT. Any such requests must be deemed by FTA to be eligible Project costs, and would have to compete with other demands and requests for Project funding.

The Council is aware that MPR may advocate for additional funding from Federal, State or local sources to assist MPR in defraying the costs of additional airborne noise mitigation via curtain wall enhancements or improvements, and the Council, recognizing the unique nature of the CCLRT/MPR Broadcast Center adjacency, agrees to support any such efforts by MPR; provided, however, that the Council need not support any such request that would adversely impact the CEI or compete with other Project funding.

#### **ARTICLE VIII MISCELLANEOUS PROVISIONS**

**A. Best Efforts.** The Parties mutually agree to act in good faith and use their best efforts to address the mitigation issues described in the Mitigation Plan and this Agreement in a collaborative and cooperative manner.

**B. Complete Agreement.** This document, including the Mitigation Plan, constitutes the complete and entire agreement of the Parties, and supersedes any and all prior written or oral representations, understandings, communications and agreements.

**C. Amendments.** The terms of this Agreement may be changed or modified by mutual agreement of the Parties. Any such changes shall be effective only upon the execution of written amendment(s) executed by duly authorized representatives of the Council and MPR.

**D. Successors and Assigns.** This Agreement and the Mitigation Plan, including all financial obligations and operating rules therein, shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns, including specifically any successor owner or operator of the CCLRT.

**E. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

**F. Term.** This Agreement shall remain in full force and effect for so long as MPR continues, or intends to continue, conducting broadcasting, recording or live performance activities in the MPR Broadcast Center.

**G. Severability.** In the event that any provisions in this Agreement are found to be contrary to state or federal laws or regulations, such provisions shall be stricken or modified, to the extent

required to satisfy such laws or regulations, and the balance of this Agreement shall remain in full force and effect.

**H. Interpretation.** References in this Agreement to work or improvements to be done at the "Project's Expense" or as a "Project Cost" are intended only to indicate allocation of the subject cost to the Project or the Council, not to MPR or any other entity. In no event shall these indicia of cost allocation be interpreted to limit the Council's obligation to timely perform or pay any of its obligations under the Mitigation Plan or this Agreement.

**I. Pedestrian Safety/Building Access.** Although specific mitigation criteria and commitments related to pedestrian safety and building access are beyond the scope of this Agreement, the Council recognizes that the location of the CCLRT tracks in close proximity (8 to 12 feet) from the main pedestrian access to the MPR Broadcast Center may pose challenges. After revenue operations commence, the Council commits to work with MPR and the City of Saint Paul to determine whether pedestrian protection needs to be modified in the area around the main entrance to the MPR Broadcast Center. In this regard, the Council agrees to consider, as the Mitigation Plan is further developed, pedestrian safety measures such as silent electronic signage or reader boards on Seventh Street to alert pedestrians, bicyclist and others of the approach of CCLRT vehicles.

**J. Contingency.** The Council's obligations to mitigate, as detailed in this Agreement and the Mitigation Plan, are expressly contingent upon the commencement of construction of the CCLRT Project.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly-authorized representatives.

**METROPOLITAN COUNCIL**  
By: *Peter Bell*  
Its: Chair  
Date: 4-8-09

**MINNESOTA PUBLIC RADIO**  
By: *Ann Atkey*  
Its: **President**  
Date: **April 8, 2009**

ATTACHMENT

Mitigation Plan (Rev. 10) dated March 24, 2009

## Central Corridor LRT – Mitigation Plan (REV.10)

### Summary

Recognizing the benefits that Central Corridor LRT (CCLRT) will bring to St. Paul and to the Twin Cities region as a whole while being mindful of the need to identify, quantify and address any impacts associated with the project, the Metropolitan Council (Council) and its Central Corridor Project Office (CCPO) has developed this Mitigation Plan focusing on the future potential impacts associated with CCLRT at the Minnesota Public Radio Broadcast Center (MPR) on Cedar Street in downtown St. Paul.

Concerns expressed by MPR during the environmental review process focused on potential interference to their broadcast and recording operations, specifically impacts related to electromagnetic interference (EMI), airborne noise, ground-borne noise and vibration. In addition, MPR expressed interest in and concern regarding details of the design of the CCLRT, namely the location of the tracks along Cedar Street, the location of crossover tracks, and the ways in which pedestrians would access the MPR building.

A consultative process to address MPR's concerns about the ability for the CCLRT and a major recording and broadcast facility to coexist was initiated. Since the beginning of preliminary engineering, the CCPO has been in contact with MPR responding to various requests for testing, for data, and for information about the project. The process to develop this Mitigation Plan consisted of multiple meetings over a period of approximately four weeks in January and February 2009 and involved the Council, MPR and their respective technical consultants.

The focus of this Mitigation Plan is to provide information and commitments to mitigation as it relates to vibration, airborne noise and ground-borne noise, all of which have been identified as adverse impacts to MPR resulting from CCLRT operations and which will be disclosed as such in the CCLRT Final Environmental Impact Statement (FEIS).

- **Mitigation Goal:** The goal of this mitigation strategy is to successfully address identified impacts to MPR, so that CCLRT-generated noise and vibration does not interfere with the use of sensitive spaces within MPR while keeping the CCLRT project on time and on budget.
- **Mitigation Criteria:** The Council and MPR, as stated in this Mitigation Plan, will agree to criteria to be achieved for each mitigation measure. If those criteria are not met during revenue operation of the CCLRT line, commitments to take corrective action have been made.
- **Mitigation Approach:** This mitigation plan will reduce or eliminate negative impacts at the source. Where this is not possible, modifications will be made to MPR affected studios in order to meet the mitigation criteria.
- **General Mitigation Strategy:**
  - **Vibration and Ground-borne Noise:** The Council proposes to install the CCLRT guideway on a floating slab, or its performance equivalent, for approximately 700 feet outside MPR and its neighboring churches. This mitigation technique has been proven in similar situations to isolate the vibration and ground borne noise created by LRT systems. This is in addition to moving a planned switch to a location north of the interstate, removing a source of CCLRT vibration from Cedar Street.
  - **Airborne Noise:** The Council proposes two approaches to eliminating CCLRT-generated airborne noise impacts in the MPR studios. First, the Council will limit the routine use of the LRT horn outside MPR and will commit to setting the LRT bells to ring at 79 dBA  $L_{max}$  at 50 feet. Secondly, the Council proposes to modify affected Studios MMW (aka

The Maud Moon Weyerhaeuser Music Studio) and P to create greater acoustical isolation from CCLRT-generated noise to meet criteria as set forth in this Mitigation Plan.

- o **Construction:** During periods of excavation, utility relocation and construction, the Council will coordinate work schedules with MPR, and will cause its contractors to stage and schedule work so that the duration and the noise and vibration impacts of such work are also minimized, to the full extent practical. In addition, the Council shall provide MPR with as much advance notice as is practical of impending excavation, utility relocation and construction work to allow MPR to appropriately schedule its discretionary operations.

To address the long-term effectiveness of this mitigation strategy, the Council will monitor noise and vibration impacts periodically during the construction, testing and revenue operations of the CCLRT line and will deal with problems in a timely manner.

Parties may negotiate a Memorandum of Understanding (MOU) as a means of formalizing this Mitigation Plan and the commitments herein.

### **Criteria for Mitigation**

It is important to establish outcome criteria for any mitigation measure. Doing so means that the successful implementation of mitigation can be confirmed objectively and that all parties involved in the process can aim towards a common goal. The parties hereby establish the following criteria for vibration, ground-borne noise and airborne noise mitigation.

#### **Vibration and Ground-borne Noise**

Requirements for allowable vibration and ground-borne noise in the sensitive recording and broadcast studios as listed in **Attachment A**.

##### **Vibration Impact Criteria for sensitive studios:**

1. The maximum RMS vibration velocity level (integrated over a 1 second period) from train operations and vehicular traffic crossing tracks shall not exceed 65 VdB (re. 1 micro inch/sec) within the sensitive recording and broadcast studios at MPR.

##### **Ground-Borne Noise Criteria for sensitive broadcast and recording studios includes both of the following:**

1. Ground-borne noise level from train operations and for vehicular traffic crossing the CCLRT track or other facilities shall not exceed 25 dBA, and
2. Ground-borne noise from train operations and vehicular traffic crossing tracks shall not exceed the existing ambient L10 in recording and broadcast studios at any frequency between 16 Hz and 400 Hz.

#### **Airborne Noise**

Requirements for allowable airborne noise in Studios MMW and P:

1. The Council will limit CCLRT horns to emergency use only in the vicinity of MPR and neighboring churches. CCLRT horn use will not exceed four incidents during any 48-hour period between the south edge of the planned 10<sup>th</sup> Street Station platform to the skyway between the Wells Fargo and UBS towers south of 7<sup>th</sup> Street.
2. After mitigation, noise from the trains, as defined by the following measurements inside Studios

MMW and P, will not exceed the 30-second Leq whole (1/1) octave band levels in the studios with no trains present:

- a. The 30 second Leq inside the studios measured when the train is stationary outside the MPR building sounding continuous warning bells.
- b. The 10 second Leq measured inside the studios generated by the wayside noise from two trains passing simultaneously in front of the MPR building at typical operating speed for this section of the Cedar Street alignment (expected to be 20 mph).

The noise measurement method will be per ANSI/ASA S12.2-2008 section 5.2, and measured in whole (1/1) octave bands from 16 Hz to 16kHz per ANSI S1.6-1984(R 2006). Measurements within each room will be made under identical conditions and use identical microphone locations. A repeat of these measurements may be requested by MPR or CCPO, with justification, to address variability of the interior (indoors at MPR) and exterior (outdoors near MPR) noise environment, the train wayside noise, or the measurement instrumentation.

3. The Council will work with its safety department and the LRV manufacturer to explore potential reductions in CCLRT horn volume.
4. The Council recognizes MPR's concerns regarding the acoustic properties of these spaces and acknowledges that MPR will perform acoustic testing as part of its mitigation design process in order to determine if mitigation measures will maintain current acoustic conditions in Studios MMW and P.

#### **EMI and RFI**

1. The Council has concluded and will document and disclose in the FEIS that MPR will suffer no adverse impacts to MPR's operations based on levels of EMI or Radio Frequency Interference created by CCLRT operations. MPR and its consultants have determined that, judged under reasonable recording or broadcast standards, they have no present reason to dispute this conclusion.

### **Commitments to Mitigation**

#### **Vibration and Ground-borne Noise**

The Council commits to mitigation of effects to MPR from vibration and ground-borne noise to meet the criteria as set forth in this Mitigation Plan. Mitigation will focus on improvements made at the source, in this case within the trackbed on which CCLRT will operate. Mitigation measures will also focus on attenuating the effects of vibration causing ground-borne noise in excess of the agreed-upon impact criteria for vibration and ground-borne noise.

If other adverse effects within MPR's studios can be measured and can be linked to CCLRT operations, a plan to address these impacts will be developed and implemented by the Council.

Results of supplemental testing conducted by the Council's technical vibration consultant (ATS Consulting) in September and October 2008 indicated that a floating slab, or its performance equivalent, will be required to mitigate anticipated effects of CCLRT on ground-borne noise at MPR.

#### **Airborne Noise**

The Council is committed to two forms of mitigation that will, in concert, mitigate CCLRT-generated airborne noise impacts at MPR. These commitments are as follows:

### **CCLRT Administrative Relief**

Administrative relief measures focus on how the operational procedures established for the CCLRT system can be established to minimize impacts at MPR while preserving safety.

The Council commits to refrain from routine CCLRT horn use on Cedar Street between 7<sup>th</sup> and 10<sup>th</sup> streets. CCLRT horn use will be limited to emergencies, similar to existing emergency siren use currently along Cedar Street.

### **Modifications to Studios MMW and P**

Modifications to Studios MMW and P will be sufficient to fulfill the requirements set forth in this Mitigation Plan and be made at the Council's expense, to increase their resistance to the intrusion of CCLRT-generated airborne noise from Cedar Street. It is anticipated that modifications will focus on reducing the transmission of sound into the Studios MMW and P through the windows and walls in order to provide greater acoustical isolation from CCLRT-generated airborne noise from Cedar Street. These modifications will improve the acoustical isolation of these studios from current conditions.

### **Modifications to The UBS Forum**

MPR has expressed concerns regarding impacts from CCLRT-generated airborne noise that would interfere with the use and function of The UBS Forum. The Council will participate with MPR to limit the intrusion of CCLRT-generated airborne noise. Specific improvements will be limited to improving the exterior doors leading from The UBS Forum to the 5<sup>th</sup> Floor Terrace. The Council's participation will be limited to the cost of a suitable replacement door.

## **Commitments to Ensuring the Effectiveness of Mitigation**

Both the Council and MPR have a serious stake in confirming that the commitments made to mitigation are successfully implemented and that they remain a successful strategy into the future. As such, the following commitments for testing of mitigation measures are being made.

### **Vibration and Ground-borne Noise**

It is important to measure ground-borne noise attenuation after construction of the mitigation measures within the CCLRT guideway. The Council commits to the following program of testing specific to the effectiveness of vibration and ground-borne noise mitigation measures.

- Two tests of three-hour duration for vibration and ground-borne noise levels inside a designated MPR studio during LRV pre-revenue service testing will be conducted.
- Two tests of three-hour duration (summer / winter) for vibration and ground-borne noise levels inside a designated MPR studio during the first year of revenue operations will be conducted. This testing is critical to determine the effectiveness of mitigation measures during different seasonal conditions.
- Additional testing of vibration and ground-borne noise will be conducted in the event that an increase in vibration and/or ground-borne noise over pre-CCLRT ambient levels sufficient to interfere with the use of MPR's recording studios is noted by MPR. To the extent practical, MPR will notify the Council that additional testing is required. If the Council agrees beforehand to such testing, MPR will be reimbursed for testing expenses incurred if test data confirm that ground-borne noise and/or airborne noise criteria were exceeded. If agreed to, such agreement shall not be unreasonable withheld or delayed.

A rigorous program of light rail vehicle maintenance is important for a system to operate at peak levels of efficiency and safety. It is acknowledged by the Council that wheel flats, corrugated rail

and other elements of a deteriorated rail system can have adverse effects on vibration and ground-borne noise. The Council will continue to maintain its vehicle fleet and infrastructure in the generally excellent condition it is currently in and has been observed to be in during field testing conducted to date.

### **Remedies**

If CCLRT vibration and ground-borne noise exceeds the criteria and interferes with the use of MPR's recording studios, the Council agrees to take all reasonable operational and/or maintenance actions within 48 hours to reduce impacts to MPR and to pursue long term, permanent actions, as required, to reduce excessive vibration and ground-borne noise caused by CCLRT operations. Operational and maintenance action may include taking trains that do not meet criteria temporarily out of service when they reach the end of the line to accomplish necessary repairs.

## **Airborne Noise**

### **Administrative Relief Commitments**

MPR has expressed concern about the administrative relief measures being committed to and specifically how the Council can maintain commitments that there will not be excessive horn use along Cedar Street once CCLRT is operational.

The levels of CCLRT horns and bells will be tested on all LRVs being operated on CCLRT prior to beginning pre-revenue service testing and will be verified annually for compliance.

Anticipated settings for these devices are 79 dBA at 50 feet for bells and 95 dBA at 100 feet for the high horn. The Council will provide MPR with a policy for verifying horn and bell levels, including a test method and test instrumentation specifications, prior to CCLRT revenue operations. Upon request, the Council will provide to MPR results of annual verification of horn and bell levels.

MPR will be responsible to monitor for excessive horn use. Upon reasonable request, the Council will retest individual horns or bells identified by MPR that appear to operate at excessive levels and adjust any that appear to operate at excessive levels. If the level or frequency of airborne noise exceeds the provisions above, the Council will investigate the cause and, if appropriate, pursue one or more strategies to reduce noise impacts:

- Additional driver training to decrease horn usage outside the MPR studios.
- Additional physical barriers to limit pedestrian and/or vehicular access to the CCLRT tracks, thus limiting the need for emergency horns.
- Additional measures to reduce CCLRT-generated noise impacts.

### **Modifications to Studios MMW and P**

Measurements of noise inside Studios MMW and P will be made by the Metropolitan Council following installation of acoustical treatments.

- If this installation takes place prior to CCLRT beginning operations, measurements will be made using the Hiawatha LRT (HLRT) bell/horn mock-up.
- Measurements will be taken during pre-revenue service testing with an actual CCLRT light rail vehicle.
- Measurements will also be taken during revenue service to confirm that the modifications are meeting the agreed-upon mitigation criteria.

It is not anticipated that this mitigation measure will require long-term testing or monitoring by the Council. Once all testing is completed and deemed to be operating as defined by mitigation



criteria, ongoing maintenance of Modifications in Studios MMW and P will be the responsibility of MPR.

## **Commitments to Ongoing Coordination and Consultation**

The Council is committed to a continued process of coordination and consultation with MPR. This process will consist of regular meetings between CCPO and MPR staff. It is anticipated that these meetings will focus on the following subjects, understanding that during the process of coordination and consultation other issues may be discovered and brought forward for discussion and resolution.

### **Additional Testing**

Commitments for additional testing have been made by the Council. These consist of:

- Train-to-train variation of vibration levels as measured at Minnehaha Avenue and 53<sup>rd</sup> Street (*testing completed in January 2009*).
- Vibration levels generated by traffic crossing embedded tracks (*testing completed in January 2009*).
- Verification of the LSTM method used to predict CCLRT vibration on existing HLRT track, comparing actual vibration to calculated vibration inside a suitable building along the corridor.
- Outside inside transmission loss (OITL) testing inside Studios MMW and P to determine the existing weaknesses in the studio allowing transmission of outside noise (*testing completed in February 2009*).
- Ambient measurements of existing sound levels inside Studios MMW and P (*testing completed in February 2009*).
- Measurements inside Studios 4H and 4I using the HLRT horn and bell mock-up previously used inside Studios MMW and P (*testing completed in February 2009*).
- An acoustic performance profile conducted inside Studios MMW and P.

The Council and MPR are committed to a process of coordination for the above testing regime that will focus on identifying the appropriate schedule for testing, the protocol for testing, data transmittal, and sharing of results of analysis and findings. Should additional testing be identified as desired or required by either the Council or by MPR and should the parties agree to the need for such testing, a similar process of coordination and consultation will be followed.

### **Review of Mitigation Solutions**

The Council commits to mitigation criteria as set forth in this Mitigation Plan addressing identified impacts to MPR from CCLRT-generated airborne noise, ground-borne noise and vibration. The process for designing mitigation solutions includes developing design details for the installation of a floating slab or its performance equivalent that shall be constructed below the CCLRT trackbed. It also includes modifications to Studios MMW and P to improve their acoustical isolation from airborne noise generated by CCLRT operations.

#### **Design of Floating Slab**

The Council understands MPR's concern that a floating slab be designed in such a manner that it can be effectively maintained and repaired under revenue service conditions and expected climatic conditions. The Council supports this design objective and commits to meeting it.

Furthermore, the Council acknowledges MPR's concerns that any design has a proven track record in mitigating vibration caused by CCLRT operations. The Council commits to meeting this design objective.

The Council commits to a process of coordination and consultation with MPR staff and their technical consultants, providing the opportunity to review vibration and ground-borne noise mitigation designs as they are developed. At a minimum, this review will occur during development of concept design for mitigation, and at preliminary and final design completion levels. The Council will consider design comments from MPR staff and will incorporate any comments where feasible and reasonable.

### **Design of Airborne Noise Mitigation Treatments**

As described previously in this Mitigation Plan, elements of the plan to mitigate CCLRT-generated airborne noise at MPR include modifications to the MPR building in Studios MMW and P. The Council acknowledges that MPR will have an interest in ultimately approving any modifications to their building, for which they will ultimately have responsibility of ownership and maintenance.

The Council commits to working in close partnership with MPR staff and their technical consultants to discuss design modifications, to refine these designs, and to approve modifications to Studios MMW and P. The Council commits to working with MPR to develop a process for this design development and review to the satisfaction of both MPR and the Council. MPR agrees to not unreasonably delay or withhold approval of proposed modifications.

### **Studio Acoustics**

The parties recognize that any interior alterations to Studios MMW or P may change the measurable acoustical characteristics of these spaces. Where possible, it is preferred to have mitigation treatments that have minimal or no impact on the acoustic signature of Studios MMW and P. The Council is committed to identifying mitigation treatments in Studios MMW and P that will not interfere with the acoustic signature of these studios. In the event that such treatments can be identified and in the event that they prove reasonable, practicable and feasible, the Council's participation in the cost of any actual treatments to Studios MMW or P shall be limited to the cost of these identified treatments.

MPR has proposed a process for testing acoustic performance in Studios MMW and P, prior to and after mitigation and this process is included as **Attachment B**. Any testing, analysis or modeling performed by MPR or its consultant will be at MPR's expense.

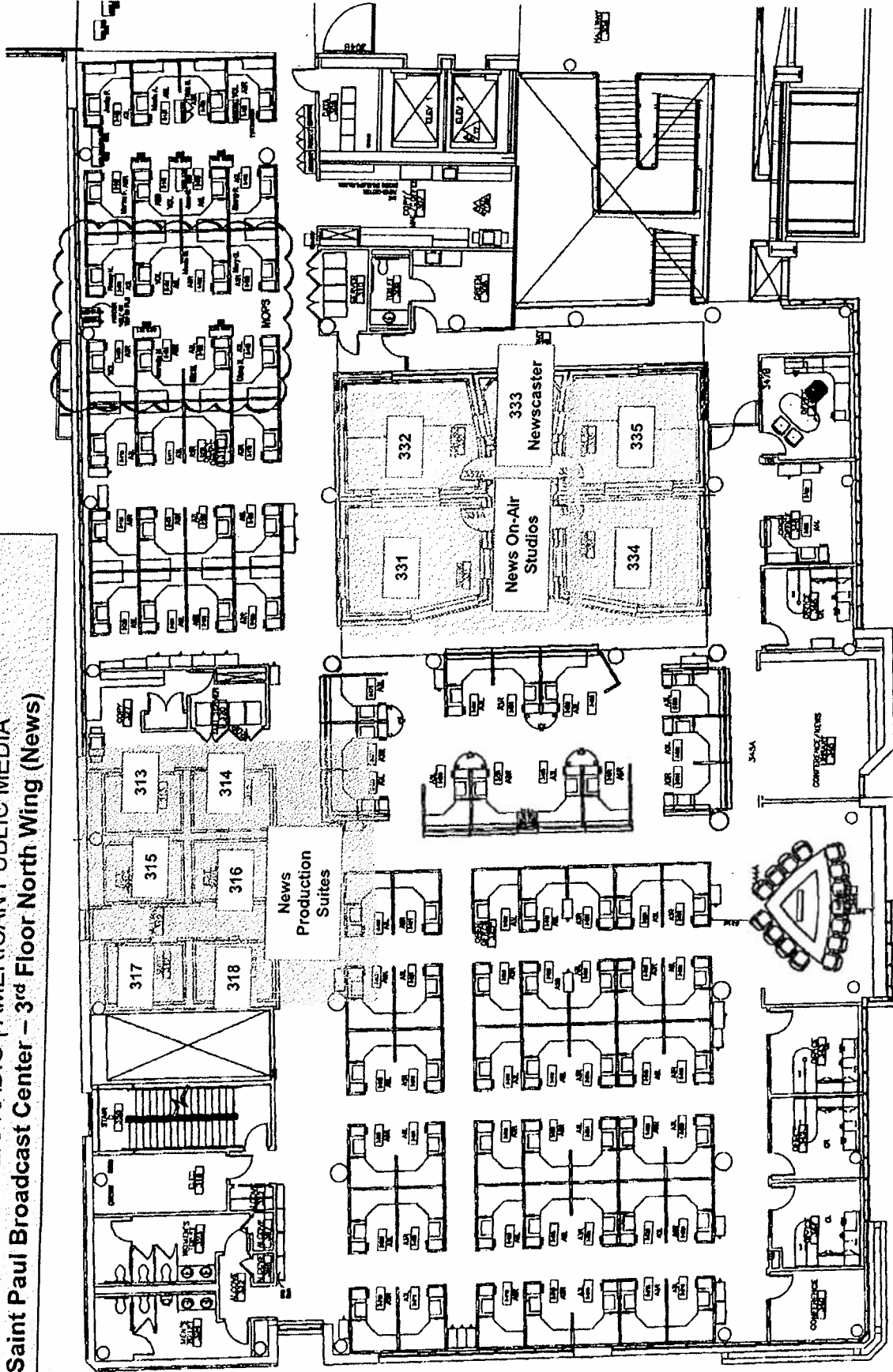
**ATTACHMENT A: List of Sensitive Recording and Broadcast Studios in the MPR Broadcast Center**

1. Studio 4A
2. Studio 4B
3. Studio 4C
4. Studio 4D
5. Studio 4E
6. Studio 4F
7. Studio 4G
8. Studio 4H
9. Studio 4I
10. Maud Moon Weyerhaeuser Music Studio
11. Studio P
12. Edit Suite 313
13. Edit Suite 314
14. Edit Suite 315
15. Edit Suite 316
16. Edit Suite 317
17. Edit Suite 318
18. Edit Suite 416
19. Edit Suite 417
20. Edit Suite 418
21. Edit Suite 419
22. On-Air Studios 331-332
23. On-Air Studios 334-335
24. Newscaster Booth
25. Studio 441
26. Studio 442
27. Studio 443
28. Studio 492
29. Studio 3A
30. Studio 3B
31. Studio 3C
32. Studio 3D

*Please note that edit suites are small, fully-isolated recording studios built to the same noise and vibration standards as other MPR studios.*

*The Council and its consultant toured the MPR studios listed above on February 27 and is in concurrence as to their status of sensitive recording and broadcast studios. A map of the location of these studios, as listed and as observed and documented by the Council, is part of this Attachment.*

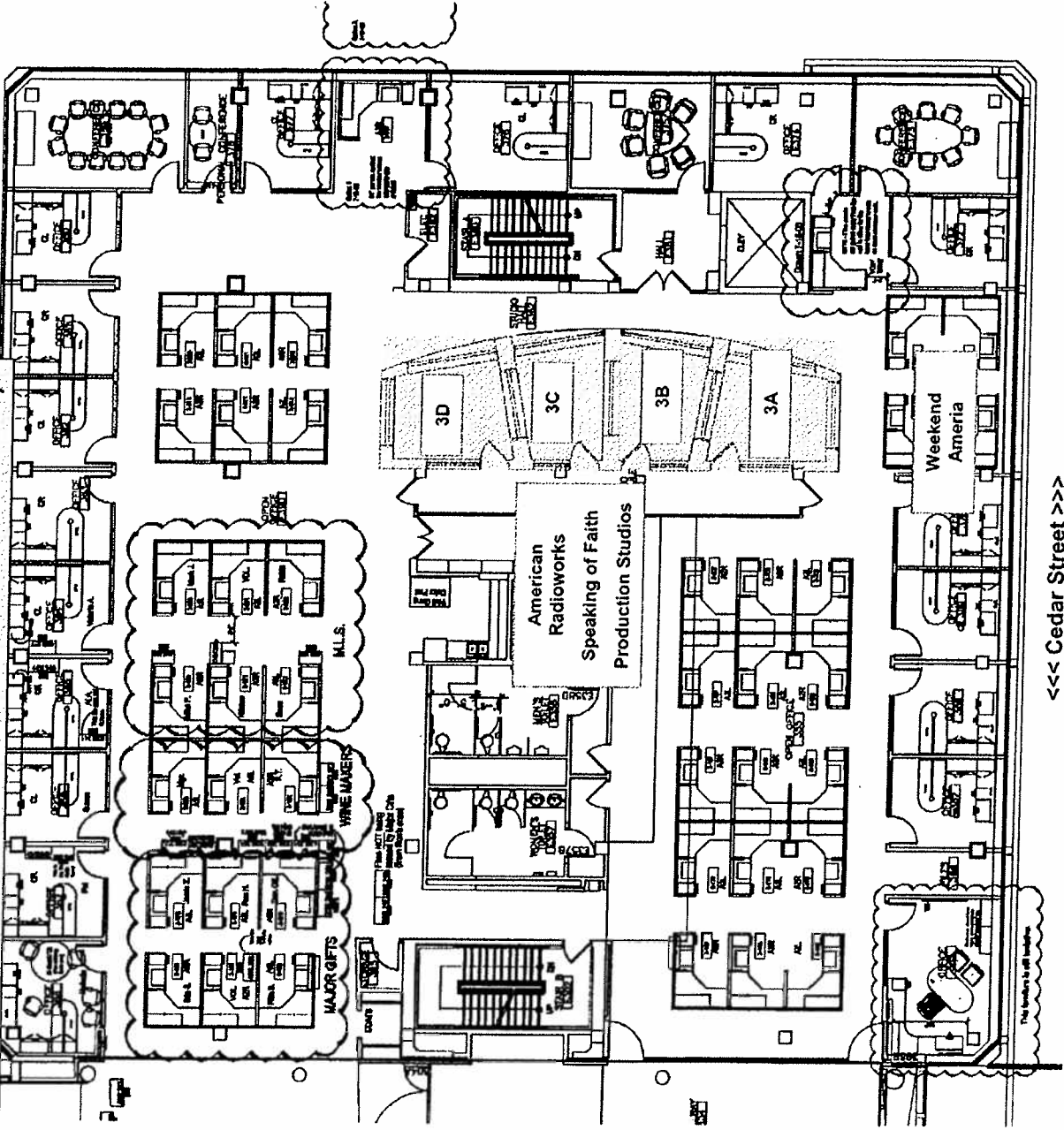
MINNESOTA PUBLIC RADIO | AMERICAN PUBLIC MEDIA  
Saint Paul Broadcast Center - 3rd Floor North Wing (News)



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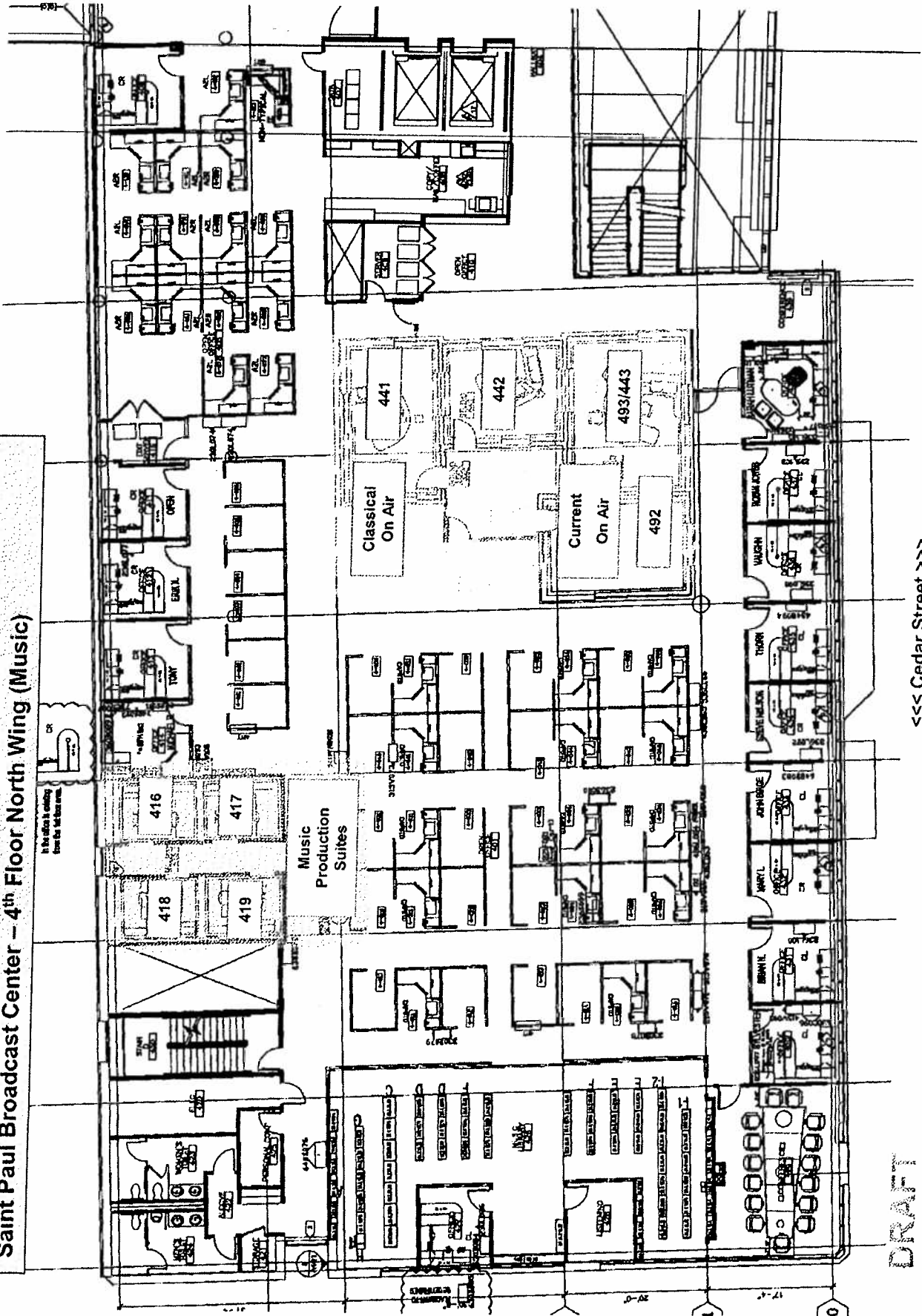
<<< Cedar Street >>>

MINNESOTA PUBLIC RADIO | AMERICAN PUBLIC MEDIA  
Saint Paul Broadcast Center - 3<sup>rd</sup> Floor South Wing (National Production)



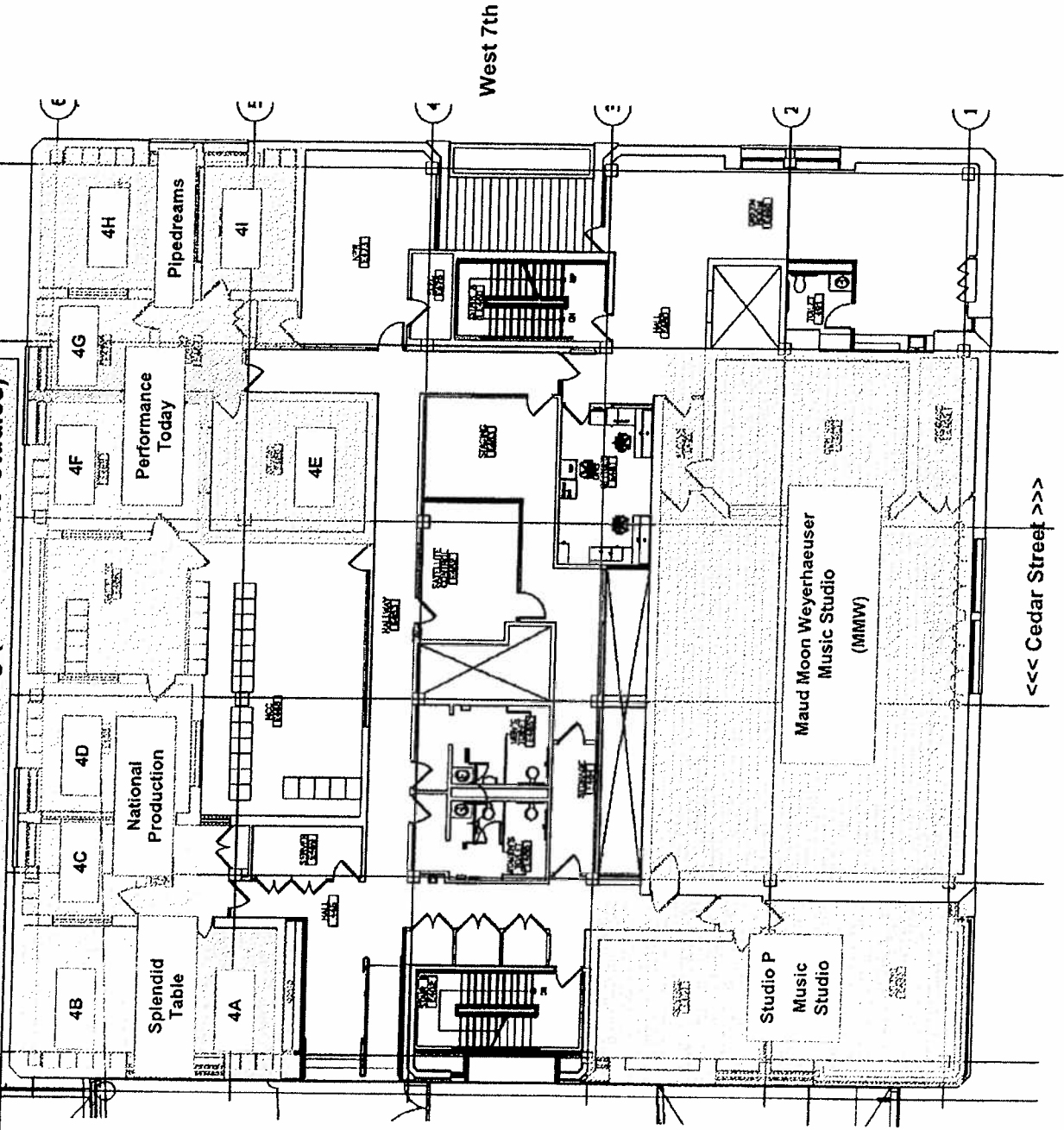
<<< Cedar Street >>>

MINNESOTA PUBLIC RADIO | AMERICAN PUBLIC MEDIA  
Saint Paul Broadcast Center - 4th Floor North Wing (Music)

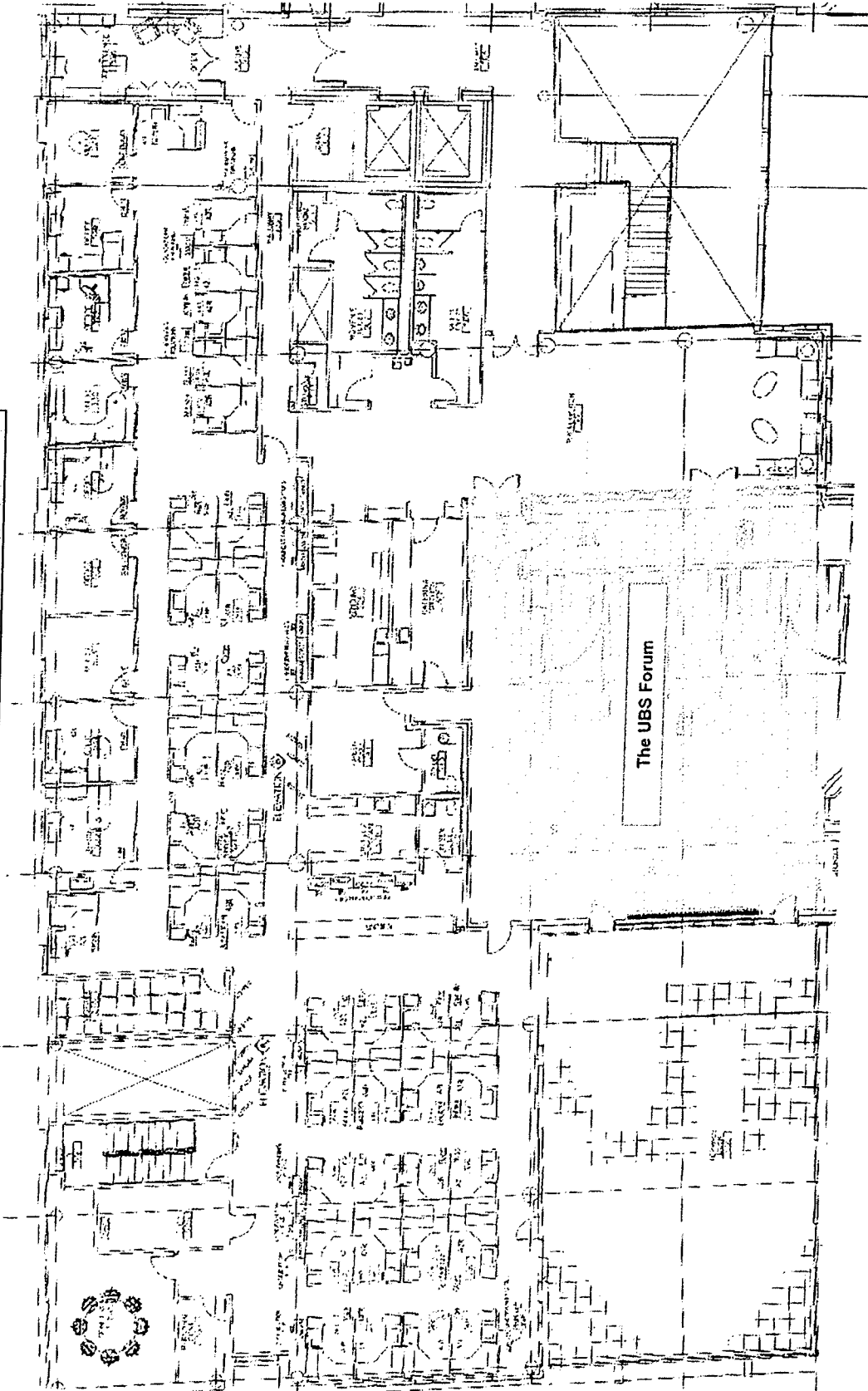


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MINNESOTA PUBLIC RADIO | AMERICAN PUBLIC MEDIA  
Saint Paul Broadcast Center - 4<sup>th</sup> Floor South Wing (Nat'l / Music Studios)



MINNESOTA PUBLIC RADIO | AMERICAN PUBLIC MEDIA  
Saint Paul Broadcast Center – 5th Floor North Wing (The UBS Forum)



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<<< Cedar Street >>>



## **ATTACHMENT B: Studios MMW & P - Studio Acoustic Properties and Performance**

Maintaining an acceptable level of acoustic performance and sound signature of MPR recording Studios MMW and P is a requirement for acceptance of any proposed noise and vibration mitigation. For the two rooms in question at MPR, Studios MMW and P – Walters-Storyk Design Group (WSDG) will review results of OITL and ambient monitoring data collected by MPR and the Council.

Following their data review, WSDG will perform an analysis to quantify the critical acoustic parameters of studios MMW and P and provide the parameters to the Council. All test results will be combined with structural data from blueprints to form a computer model which will allow WSDG to determine both the effectiveness of any proposed mitigation as well as the potential impact of physical changes on the acoustical signature of the space.

The Council's mitigation measures cannot deviate from an agreed-upon acceptable level of acoustic performance and sound signature within the MPR Studios MMW and P as defined by the acoustic performance profile developed by WSDG on behalf of MPR and once all parties are in agreement as to these acoustic parameters. All design proposals or modifications to satisfy mitigation criteria must be reviewed and approved by MPR. The following standards apply to testing procedures in Studio MMW and P:

- Gobos and other movable absorptive and reflective elements within the room must be removed with the exception of wall mounted panels, the piano, the audiometric booth and any element which is deemed a permanent fixture.
- The piano and audiometric booth must remain in the same location for tests prior to and post mitigation.
- Measurement and analysis tools such as dodecs and microphones used, as well as amplification and sound source, must be the same for tests prior to and post mitigation.
- Measurement locations and room elements must be in exactly the same place during tests performed prior to and post mitigation. This includes the number of test personnel within the room during analysis (which should be zero).

For reference:

Walters-Storyk Design Group  
262 Martin Avenue  
Highland, New York 12528

### **Tests Performed by the Council:**

**1. Transmission Loss (peak value - OITL) for isolated noise** between the street and Studio P and Control Room P, Studio MMW and Control Room MMW (example - horn of the train). Outdoor/Indoor Transmission Loss (OITL) measurement, MPR requires that this test be full frequency (16Hz-16kHz) narrow band measurements using pink noise.

**2. Ambient Noise level tests** in Studio P and Control Room P, Studio MMW and Control Room MMW. This test will be made under typical operating conditions, and measurements will be made in four locations in each room, two measurements at each location and afterwards the data can be averaged. This test will result in NC ratings values, however full frequency testing is required.

### **Tests Performed by MPR**

**1. Impulse response** of Studio P and Control Room P, Studio MMW and Control Room MMW. This

test results in detailed information pertaining to decay rates, and reflection characteristics for each room. In the control rooms, microphones shall be placed at the mix position and pink noise signal shall be run through the existing monitors. In the studios, noise-generating speakers are required to generate pink noise; measurements must be made in a minimum of four locations around the rooms with no one present within the rooms. Test will be performed by WSDG.

**Note:** SMAART software will be used to determine reverberation and early decay times across the full range of frequency bands using accepted and repeatable methods and standards. Two-channel FFT testing will be utilized along with a calibrated B&K microphone and USB preamplifier level-control box of acceptable standard.