

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35982 (Sub-No. 1)

**JACKSON COUNTY, MISSOURI
-ACQUISITION AND OPERATION EXEMPTION-
UNION PACIFIC RAILROAD COMPANY
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 28 C.F.R. § 1150.31, *Et. Seq.***

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January 6, 2020
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Public Record

**LANDOWNERS' MOTION FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**JON KENYON
DAVE HAAKE
ELAINE HAAKE
DAVID HARDINGER
DEBORAH S. GROH
DJJHS ENTERPRISES, LLC
JHB & MEB ENTERPRISES, LLC
DAVID W. WELLS
DAWN R. WELLS
CURRENT PROPERTIES INVESTMENTS, LLC
NEPHRITE FUND 1, LLC
DOUGLAS MORRIS
BRENDA MORRIS
TAPAN CHAUDHURI
ESTATE OF WILLIAM TOMBLINSON**

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Dated: January 6, 2020

I. INTRODUCTION

Jackson County filed a Verified Notice of Exemption under 49 C.F.R. § 1150.31 to acquire and operate 17.7-miles of rail line from the Union Pacific Railroad Company (“UPRR”) in Jackson County, Missouri (the “Line”) and the Board initially granted Jackson County’s acquisition and operation exemption on February 4, 2016. See Jackson Cty, MO—Acquis. & Operation Exemption—Union Pac. R.R., FD 35982 (STB served Feb. 4, 2016). After certain Landowners filed a petition asking the Board to revoke the exemption on October 22, 2018 and, after extensive briefing, the Board issued its Decision on July 31, 2019 and revoked the 2016 exemption for Jackson County to acquire and operate the Line.

On December 31, 2015, even before the Board granted Jackson County’s exemption, UPRR and Jackson County signed a “Line Sale Agreement” whereby UPRR “sold” and Jackson County “purchased” the Line at issue for \$50,117,208.¹ As part of the transaction, UPRR issued a quitclaim deed to Jackson County. Since the federal government has exercised plenary authority over railroad abandonments since the enactment of the Transportation Act of 1920,² “[T]he authority of the [Board] to regulate abandonments is exclusive.”³ Since the Line was still within the jurisdiction of the Board when the Line Sale Agreement was executed, and since the Line still is within the jurisdiction of the Board and 49 U.S.C. § 10903 still applies, UPRR could not sell the Line to Jackson County and Jackson County could not acquire it without the knowledge and approval of the Board. UPRR and Jackson County were then and still are subject to the exemption process as set forth in 49 C.F.R. § 1150.31. The attempted Line Sale Agreement is actually nothing more than an outrageous attempt by UPRR and Jackson County to abuse the Board’s processes

¹ The Line Sale Agreement is attached hereto as Exhibit A.

² See 41 Stat. 456 (1920); see also 49 U.S.C. § 10501(b).

³ See *Chi. & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 320 (1981).

and procedures and to ignore the Board's plenary and exclusive jurisdiction over abandonments and the Board must declare that it is null and void.⁴

Unfortunately, the scheme to abuse the Board's rules and regulations was not limited to just UPRR and Jackson County. On January 5, 2016, also before the Board granted Jackson County's exemption, Jackson County and the Kansas City Area Transportation Authority ("KCATA") entered into a "Cooperative Agreement for Right-of-Way Acquisition for Construction of a Trail System and Future Rail Line for Commuter Service and Other Public Transportation Systems" (hereinafter "Cooperative Agreement")⁵ whereby Jackson County and KCATA stated that they desired to form a regional partnership to promote regional transit opportunities. The Cooperative Agreement incorrectly and illegally represented that UPRR "currently owns the railroad right-of-way" for the 17.7 mile stretch of the railroad's corridor when, in fact, UPRR merely possessed a railroad purposes easement, the Landowners herein owned the underlying fee, Jackson County purportedly acquired UPRR's common carrier obligation, and the Line was then and still is under the jurisdiction of the Board.

On February 22, 2017, during the period of time after the Board approved Jackson County's exemption and before the Board revoked Jackson County's exemption, Jackson County and KCATA entered into a "Maintenance and Management Program Agreement"⁶ where they falsely represented and repeated that "the County is the fee owner of the Railroad Corridor." The Maintenance and Management Program Agreement also provided that Jackson County would manage the construction and operation of a hiking and biking trail on the right-of-way, which they actually had no right to construct, while KCATA managed the planning, design, development,

⁴ See the discussion concerning the overall scheme to make a mockery of the Board's processes, procedures, and jurisdiction in Section IV *infra*.

⁵ The Cooperative Agreement dated January 5, 2016 is attached hereto as Exhibit B.

⁶ The Maintenance and Management Program Agreement dated February 22, 2017 is attached hereto as Exhibit C.

operation, management and maintenance of a future shared commuter rail system, alternative commuter-based transit system and other public transportation systems and uses, which Jackson County and KCATA called the “Multi-Modal Project,” which Jackson County had no ability or legal right to grant and KCATA had no ability or legal right to acquire. As of January 5, 2016 when the “Cooperative Agreement” was signed and February 22, 2017 when the “Maintenance and Management Program Agreement” was signed, Jackson County did not own, did not legally acquire, and could not own or acquire any ownership interest in the right-of-way and, as a result, had no right to grant any purported rights to KCATA by and through either agreement.

This Motion is brought by 12 Landowners⁷ who all own land adjacent to and underlying the right-of-way in fee. The Landowners seek a declaratory judgment that the Line Sale Agreement between UPRR and Jackson County is null and void, that Jackson County had no right or legal ability to grant any purported rights to KCATA, and that the Board has no jurisdiction over the purported rights granted to KCATA in any event. The Landowners also seek an injunction to prevent KCATA from any action in furtherance of any planning, design, development, operation, or management of a future shared commuter rail system or alternative commuter-based transit system and other public transportation systems and uses pursuant to either the Cooperative Agreement or the Maintenance and Management Program Agreement.

The entire scheme developed and implemented by Jackson County was specifically and intentionally designed to abuse the Board’s jurisdiction and authority over abandonments so they could achieve their desired results while intentionally ignoring the Board’s processes and

⁷ The 12 adjacent property owners who own the underlying fee in both the adjacent property and underlying the applicable right-of-way are Jon Kenyon, David & Elaine Haake, David Hardinger, Deborah S. Groh, DJJHS Enterprises, LLC, JHB & MEB Enterprises, LLC, David W. & Dawn R. Wells, Current Properties Investments, LLC, Nephrite Fund 1, LLC, Douglas & Brenda Morris, Tapan Chaudhuri and the Estate of William Tomblinson, and they are collectively referred to as “Landowners” herein.

procedures. Jackson County, with UPRR's assistance, abused and manipulated the Board's exclusive plenary and exclusive jurisdiction over abandonments, attempted to avoid the Board's rules and regulations pertaining to the Trails Act while still proceeding with the illegal construction of a trail, and knowingly and intentionally misrepresented various title issues to avoid any application of state property laws. Although the scheme started with UPRR and Jackson County, it unfortunately didn't end at that point because Jackson County illegally included KCATA on the back end too. Even if Jackson County had properly acquired the right-of-way for railroad purposes through the exemption process, which they did not, and even if the Board had not revoked Jackson County's acquisition and operation exemption, Jackson County still had no right to grant any purported rights to KCATA by and through either the Cooperative Agreement or the Maintenance and Management Program Agreement and the Board has no jurisdiction over those purported rights in any event.

II. PROCEDURAL HISTORY AND APPLICABLE FACTS

Both the procedural history and the applicable facts are not really in dispute because, with two exceptions, the Board summarized all of the pertinent facts in their decision revoking Jackson County's exemption to acquire and operate the Line on July 31, 2019. The missing critical facts are (1) that UPRR attempted to sell and Jackson County attempted to acquire the Line on December 31, 2015 in order to avoid the proper abandonment process (*see* Exhibit A); and (2) Jackson County improperly and illegally granted rights to the KCATA that they had no right or legal ability to grant (Exhibits B and C).

After Jackson County received authority through the Board's class exemption process set forth at 49 C.F.R. § 1150.31, certain Landowners filed a Petition asking the Board to revoke the exemption because Jackson County had removed the rails and ties from the right-of-way contrary

to prior assertions that they made to the Board and had placed the hiking and biking trail directly on the rail bed, and not adjacent to the track, contrary to the representations made by Jackson County to the Board. The Board revoked Jackson County's exemption on July 31, 2019 because Jackson County's actions were "no longer consistent with the acquisition exemption it invoked to acquire the Line,"⁸ because Jackson County's "recent activities shows that it had misused the Board's processes,"⁹ and because **"it is necessary to revoke the acquisition exemption to ensure the integrity of the Board's processes."**¹⁰

Although the primary issue in the Landowners' motion to revoke Jackson County's exemption addressed Jackson County's ability to construct a hiking and biking trail, the Board's Decision revoking the 2016 exemption for Jackson County to acquire and operate the rail line is relevant with respect to the Line Sale Agreement between UPRR and Jackson County and the purported agreements between Jackson County and KCATA as well. In revoking Jackson County's exemption, the Board specifically concluded that Jackson County had bypassed the Board's proper procedures to abandon the Line and/or to properly construct a hiking and biking trail. In addition, the Board specifically revoked Jackson County's exemption because Jackson County clearly misused the Board's procedures and processes. The same theme exists with respect to the Line Sale Agreement between UPRR and Jackson County and with the Cooperative Agreement and the Maintenance and Management Program Agreement between Jackson County and KCATA because UPRR had no right to sell the Line to Jackson County and Jackson County had no legal right or ability to purportedly grant any rights to KCATA in a right-of-way that was, is, and remains under the jurisdiction of the Board.

⁸ See Revocation Decision of July 31, 2019, at 6.

⁹ *Id.* at 7.

¹⁰ *Id.* (emphasis added).

Following the Board's revocation of Jackson County's exemption to acquire and operate the Line, Jackson County issued a Press Release on August 5, 2019 and, after initially stating that construction of the hiking and biking trail would cease immediately following the Board's Decision, stated that "upon further evaluation of the STB's ruling, the County, Counsel and experts authorized contractors to resume work on the trail."¹¹ The Landowners filed a motion for adverse abandonment and for injunctive and declaratory relief to stop further construction on the trail and the Board issued its Decision on November 7, 2019 and specifically ordered Jackson County to cease immediately all trail construction activity within the right-of-way of the Line.

Jackson County and UPRR both indicated during the briefing pertaining to the Landowners' motion that they "will seek the issuance of a trail condition under the Trails Act."¹² As the Board indicated, "the proper mechanism would be a Notice of Interim Trail Use as they seek an exemption."¹³ Although Jackson County and UPRR filed their Draft Environmental Assessment pertaining to the right-of-way in advance of such a request on December 6, 2019, neither have actually requested a Notice of Interim Trail Use pursuant to the Board's regulations and procedures. But, even if they ultimately do formally pursue trail use, that process actually has nothing to do with either the Line Sale Agreement or the rights Jackson County purportedly granted to KCATA by and through either the Cooperative Agreement or the Maintenance and Management Program Agreement.

The facts pertaining to Jackson County's written agreements with KCATA should not be in dispute either. The Cooperative Agreement of January 5, 2016 (Exhibit B) incorrectly and illegally stated that "Union Pacific Railroad Company... currently owns the railroad rights-of-way

¹¹ Jackson County's Press Release was attached as Exhibit A to the Landowners' Motion for Adverse Abandonment and Injunctive and Declaratory Relief as discussed in the Board's Decision of November 7, 2019.

¹² See Decision, November 7, 2019, at 3.

¹³ *Id.* at 3, fn. 4.

along the Existing Railroad Corridor,”¹⁴ expressed the desire to preserve “the Existing Railroad Corridor [for] developing a future shared commuter rail, alternative commuter-based transit systems, and other public transportation systems and trail use,”¹⁵ and expressed their shared understanding and agreement that “the foregoing Trail Project will be designed to preserve the Rock Island Multi-Modal Corridor Project for future creation and construction by the County and the Authority of a shared multi-modal corridor for commuter rail and/or other public transportation systems and trail use.”¹⁶

The Maintenance and Management Program Agreement (Exhibit C) contains a number of inappropriate and/or illegal statements. For example, Jackson County and KCATA concluded that “the County is the fee owner of the Railroad Corridor and a ‘common carrier’ under 49 U.S.C. 11101 subject to the jurisdiction of the Surface Transportation Board.”¹⁷ KCATA also agreed “to reimburse the County for KCATA’s 50-percent (50%) share of the principal of and interest on the County Bonds paid by the County” for the shared trail project and Multi-Modal Project,¹⁸ and Jackson County authorized KCATA to work on the “planning, design, development, operation, management, and maintenance of the Multi-Modal Project.”¹⁹

In essence, the entire scheme by Jackson County, with UPRR on the front end and KCATA on the back end, abused the Board’s jurisdiction concerning abandonments and misused the Board’s rules and regulations. The entire scheme, although partially unraveled already, must be stopped in order to “ensure the integrity of the Board’s processes.”²⁰ Throughout the implementation of the entire scheme, UPRR, Jackson County, and KCATA intentionally avoided

¹⁴ See Exhibit B, at 2.

¹⁵ *Id.*

¹⁶ *Id.* at § 2.2.

¹⁷ See Exhibit C, at 1.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at § 1.3.

²⁰ See Revocation Decision of July 31, 2019, at 6.

abandonment, failed to inform the Board why they were avoiding abandonment, failed to inform the Board about the Line Sale Agreement while the Line was still under jurisdiction of the Board, misrepresented the property interests at issue (ostensibly to act as if Jackson County acquired the fee and to ultimately allow Jackson County to grant any rights to KCATA), and then inconsistently acknowledged the Board's jurisdiction over the right-of-way while intentionally avoiding the Board's plenary and exclusive jurisdiction over abandonment. Jackson County attempted to use the Board's jurisdiction as both a sword and a shield because Jackson County used the fact that the Board had approved the transfer of the common carrier obligation but, at the same time, failed to acknowledge that they were intentionally avoiding the Board's rules and processes pertaining to abandonments and that UPRR sold the Line as an alternative to abandonment. Jackson County also used the Board's jurisdiction as both a sword and a shield with respect to KCATA too by using their "acquisition" and exemption as protection but without ever acknowledging that the Board has no jurisdiction over either Jackson County or KCATA for a future shared commuter rail, alternative commuter-based transit systems, or other public transportation system under the global definition of a multi-modal corridor project even if the Board maintains jurisdiction over Jackson County as a purported common carrier or, later, even if trail use is ultimately pursued.

III. THE BOARD HAS THE AUTHORITY TO ISSUE A DECLARATORY ORDER PERTAINING TO THE LINE SALE AGREEMENT, THE COOPERATIVE AGREEMENT, AND THE MAINTENANCE AND MANAGEMENT PROGRAM AGREEMENT AND TO ISSUE AN INJUNCTION AGAINST THE COOPERATIVE AGREEMENT AND THE MAINTENANCE AND MANAGEMENT PROGRAM AGREEMENT

Under 49 U.S.C. § 1321(b)(4), the Board has authority to issue an appropriate Order, such as a declaratory order or an injunction, when necessary to prevent irreparable harm. Under these facts, the Landowners are entitled to a declaratory order that the Line Sale Agreement is null and void and that Jackson County had no legal authority to grant any purported rights to KCATA by

and through either the Cooperative Agreement or the Maintenance and Management Program Agreement and that they are null and void too. In addition, the Landowners are entitled to an injunction against KCATA to prevent KCATA from any planning, design, development, operation, or management activities on the right-of-way pursuant to either the Cooperative Agreement or the Maintenance and Management Program Agreement to prevent either current or future violations of the Landowners' property rights when the agreements were signed without any legal or regulatory authority.

Jackson County had no right to acquire or attempt to purchase the Line from UPRR without following the Board's processes and procedures. The Line Sale Agreement has to be null and void because, otherwise, Jackson County is making a mockery of the integrity of the Board's processes. In addition, Jackson County had no legal right or regulatory authority to grant any purported rights to KCATA by and through either the Cooperative Agreement or the Maintenance and Management Program Agreement.

Even before Jackson County's exemption was revoked, Jackson County purportedly acquired UPRR's common carrier obligation, which was then and even now remains under the jurisdiction of the Board. As previously determined by the Board, Jackson County had no right to construct a hiking and biking trail without following the well-established regulations and procedures. In addition, however, even though Jackson County acquired UPRR's common carrier obligation before it was revoked, and the Board maintained exclusive and plenary jurisdiction over the Line, Jackson County had no legal or regulatory right to grant any purported rights to KCATA for a Multi-Modal Project that does not fall within the Board's jurisdiction and which would be contrary to the Board's continuing jurisdiction over the Line and the potential railbanking under the Trails Act too.

The Board clearly has the authority to issue declaratory orders when it is necessary to prevent unlawful activities, when actions are taken which are contrary to prior Decisions of the Board, or when it is necessary to stop activities that undermine or contravene the Board's jurisdiction. *See Del. & Hudson Ry.—Lease & Trackage Rights Exemption—Springfield Terminal Ry.*, 8 I.C.C.2d 839, 849 (1992) (citing *United States v. Chesapeake & Ohio Ry.*, 426 U.S. 500, 514 (1976)); *see also ICC v. Am. Trucking Ass'ns.*, 467 U.S. 354, 364-65 (1984) (the Board “has discretion to take actions that are ‘legitimate, reasonable, and directly adjunct to the [agency’s] explicit statutory power’”) (citing predecessor to 49 U.S.C. § 1321(a)) (internal citations omitted); *cf. Pyco Indus.—Feeder Line Application—Lines of S. Plains Switching, Ltd. Co.*, FD 34890, slip op. at 2, 5-6 (STB served Jan. 24, 2007) (voiding actions that undermine Board processes and contravene prior Board order). Here, a declaratory order is appropriate to prevent Jackson County's unlawful activities and because Jackson County, in conjunction with KCATA, is attempting to implement agreements that are null and void, are contrary to prior Decisions of the Board, and directly undermine and contravene the Board's jurisdiction.

The Landowners are also entitled to an injunction to stop KCATA from any action in furtherance of either the Cooperative Agreement or the Maintenance and Management Program Agreement pertaining to any planning, design, development, operation, or management of a future shared commuter rail system or alternative commuter-based transit system on the right-of-way. A party seeking a preliminary injunction must establish that (1) it is likely to prevail on the merits of any challenge to the action sought to be preliminarily enjoined; (2) it will be irreparably harmed in the absence of the requested relief; (3) issuance of the injunction will not substantially harm other parties; and (4) granting the injunction is in the public interest. *See, e.g., Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Union Pac. R.R. v. BNSF Ry. Co.*, FD 36197, slip op. at 3 (STB served June 29, 2018); *Am. Chemistry Council v. Ala.*

Gulf Coast Ry., NOR 42129, slip op. at 4 (STB served May 4, 2012). Since a preliminary injunction is an extraordinary remedy, the party seeking it “carries the burden of persuasion on all of the elements required for [such] extraordinary relief.” See *BP Amoco Chem. Co. v. Norfolk S. Ry.*, NOR 42093, slip op. at 4 (STB served June 6, 2005) (quoting *San Joaquin Valley R.R.—Aban. Exemption—In Tulare & Kern Ctys., Cal.*, AB 398 (Sub-No. 5X), slip op. at 4 (STB served Apr. 3, 1998)); *Middletown & New Jersey R.R.—Lease and Operation Exemption—Norfolk S. Ry.*, FD 35412 at 2 (STB served Oct. 6, 2010); 5 U.S.C. § 556(d).

Since the Landowners herein are seeking an injunction, they must establish that they are likely to succeed on the merits, will suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest. See *Ferring Pharmaceuticals, Inc. v. Watson Pharmaceuticals, Inc.*, 765 F.3d 205, 210 (3rd Cir. 2014). In this case, Jackson County’s attempt to grant rights to KCATA for a Multi-Modal Project in addition to or on top of the existing common carrier obligation by either UPRR or Jackson County is contrary to both state law and federal regulation, so there is little doubt that the Landowners will prevail on the merits. If the scheme developed over many years by Jackson County and KCATA is allowed to continue, these Landowners will be irreparably harmed because a property interest will be taken from them without compensation contrary to both the Constitution of the United States and the Constitution of Missouri. In addition, the illegal granting of purported rights to KCATA is contrary to the public interest and the issuance of an injunction will not substantially harm other parties but will, instead, promote the proper administration of justice and the Board’s rules and regulations.

IV. THE LANDOWNERS ARE ENTITLED TO BOTH A DECLARATORY ORDER AND AN INJUNCTION TO STOP THE CONTINUING CONTRAVENTION OF THE BOARD'S PROCESSES, ORDERS, AND JURISDICTION

The Line Sale Agreement between UPRR and Jackson County and the agreements entered into between Jackson County and KCATA are prime examples of Jackson County's contempt for both the law and the Board's processes, regulations, and orders. It is bad enough for Jackson County to blatantly mislead the Board and abuse the Board's rules and regulations during the exemption process, which resulted in the revocation of their exemption in the first place. Then, it is another thing entirely for Jackson County to attempt to ignore the Board's revocation of their exemption by publicly stating that they would continue construction on the hiking and biking trail without any legal authorization to do so and in direct contravention to the Board's order revoking their exemption, which resulted in the Board's Decision directing Jackson County to cease all construction of their hiking and biking trail on the right-of-way. Now, in addition, it is unfortunately evident that the Line Sale Agreement at the beginning and the agreements with KCATA at the end are all part of an overall scheme to destroy the integrity of the Board's processes and that Jackson County also improperly and illegally entered into agreements with both UPRR and KCATA, both the Cooperative Agreement and the Maintenance and Management Program Agreement, which purportedly granted rights to KCATA with respect to the right-of-way that Jackson County had no ability or right to grant in the first place, when both Jackson County and KCATA knew or should have known that their activities were both improper and illegal.

There is no question that the Board has "exclusive and plenary authority over the abandonment of rail lines."²¹ In this case, up to now, neither UPRR or Jackson County has received permission from the Board to abandon the Line (Jackson County has no authority to do

²¹ See Revocation Decision of July 31, 2019 at 7 (citing 49 U.S.C. §§ 10501(b)(2), 10502, and 10903; *see also Kalo Brick*, 450 U.S. at 320).

so anyway) and Jackson County's conduct to remove the rails and ties and place a trail on the rail bed violated all of the Board's processes and procedures and resulted in the revocation of Jackson County's exemption.²² The fundamental problem that led to the revocation of Jackson County's exemption was that Jackson County was in the process of constructing a hiking and biking trail on the Line without seeking abandonment and without following the regulations and procedures that allow for railbanking and the construction of a hiking and biking trail under the Trails Act, which would require the Board's authorization to abandon in the first place. The scheme to make a mockery of the Board's processes and procedures started with the Line Sale Agreement, which was designed to sidestep the Board's jurisdiction over abandonments, and then repeated itself when Jackson County attempted to grant rights to KCATA that they had no ability, power or legal right to grant whether their exemption was revoked or not.

Before Jackson County's exemption was revoked, Jackson County always argued that the Board "authorized" the construction of the hiking and biking trail when, in fact, the Board merely acknowledged that Jackson County expressed their intent to build a hiking and biking trail **adjacent** to the existing rail bed and not in place of or on top of the existing rail bed. Jackson County's argument ultimately vanished because the Board's Decision made it clear that Jackson County's actions in constructing a trail on this Line were not authorized by the Board. The fact is that Jackson County always attempted to utilize their exemption as both a sword and a shield and, even though their exemption was ultimately revoked, Jackson County attempted to utilize their exemption as both a sword and a shield when entering into the Cooperative Agreement and the Maintenance and Management Program Agreement with KCATA too.

²² The Board clearly stated that "[H]ere, the County has removed track and placed a trail on the railbed of a rail line that has not been authorized for abandonment." See Revocation Decision of July 31, 2019, at 7.

From December 12, 2015, when Jackson County filed the Notice of Exemption, until July 31, 2019, when the Board revoked Jackson County's exemption, Jackson County acted as if they had acquired the rail line in fee and started constructing a hiking and biking trail.²³ In addition, however, on January 5, 2016, even before the Board granted Jackson County's exemption, Jackson County and KCATA entered into the Cooperative Agreement that purportedly gave rights to KCATA to build a future rail line for commuter services and other public transportation systems on the right-of-way.

The understanding expressed in the Cooperative Agreement was later confirmed on February 22, 2017 when Jackson County and KCATA also entered into the Maintenance and Management Program Agreement where they falsely represented and repeated that Jackson County was the fee owner of the right-of-way and Jackson County granted rights to KCATA to manage, construct, design, and operate a commuter rail system and/or an alternative commuter-based transit system on the right-of-way. Jackson County once again attempted to utilize the Board's jurisdiction over the rail line as both a sword and a shield by, on the one hand, recognizing and acknowledging that the Board continued its exclusive and plenary jurisdiction over the Line and, on the other hand, by granting purported rights to KCATA that the Board actually has no jurisdiction over and which violate Missouri law and basic property law in any event.

The conspiracy between UPRR, Jackson County, and KCATA to defraud the Landowners and circumvent both the state property laws of Missouri and the Board's processes and procedures obviously began before the Line Sale Agreement was signed on December 31, 2015 and the Cooperative Agreement was signed on January 5, 2016. On December 7, 2015, representatives

²³ The planning for the hiking and biking trail actually started long before the exemption process and the actual scheme to avoid abandonment has to be related to Jackson County's knowledge that UPRR did not own the fee in the entire Line whether the Trails Act was pursued or not. See discussion of Exhibit D *infra*.

from Jackson County met with representatives from the KCATA to discuss the acquisition of the Line. The PowerPoint from that meeting and presentation is attached hereto as Exhibit D. Exhibit D sets forth the entire scheme as follows:

- 1) First, the underlying transaction was designed to completely avoid any decision concerning abandonment so as to avoid the Trails Act:
 - a. “This Transaction is Not Based Upon Abandonment in Any Sense;”²⁴
 - b. “The STB Will Not Be Asked To Find That the Rock Island Rail Corridor Has Been Abandoned;”²⁵
 - c. “Jackson County Will Acquire And Then Operate Corridor As A DBA, The Rock Island Rail Corridor Authority, As a Railroad;”²⁶ and
 - d. “Union Pacific Will Convey Title to Jackson County By Quitclaim Deed, Which Will Convey Whatever Rights, Title and Ownership The Union Pacific Owns To Jackson County.”²⁷

In essence, the conspiracy included the agreement to avoid any conclusion of abandonment, in order to avoid the Trails Act, along with the sham formation of the Rock Island Rail Corridor Authority to operate as a railroad, in order to act as a railroad to fulfill their common carrier obligation, avoid abandonment, and avoid the Trails Act while actually constructing a hiking and biking trail, in combination with their acknowledgment that the ultimate quitclaim deed from UPRR did not convey fee ownership, in order to circumvent basic property laws in Missouri while imposing an unlawful burden on the Landowners’ fee ownership.

- 2) Second, the underlying transaction and scheme actually demonstrates that both Jackson County and KCATA undertook significant work to review the status of title and, despite their knowledge that they actually did not acquire the right-of-way adjacent to these Landowners’ property in fee, acted as if they did and specifically said that they did, when they knew that they did not, thus establishing beyond a

²⁴ See Exhibit D, at 345764.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

doubt that Jackson County and KCATA intended to fraudulently trample on both the Landowners' state law property rights and the Board's processes and procedures:

- a. "Each Deed Has Been Reviewed To Determine Whether Fee Simple is Conveyed, Or a Mere Easement;"²⁸
- b. "It Appears That Most, if Not All, Of the Deeds Convey Fee Simple Title Under Missouri Law...;"²⁹
- c. "Approximately 1.7 Miles Acquired By Condemnation—Ownership Appears To Be Combination of Fee Simple Absolute and Easement—Title Work in Progress—Approximately 17 Condemnation Actions;"³⁰ and
- d. "We Know That KCATA Will Do Its Own Due Diligence in Determining The Quality of Title, And Jackson County Will Provide Information To Assist in That Process."³¹

In essence, Jackson County did not want the Line to be abandoned so UPRR could transfer the common carrier obligation to a non-carrier, which required them to set up a sham entity so they could act as if they were interested in acting as if they would continue with the common carrier obligation when they really wanted to only construct a hiking and biking trail; Jackson County, and KCATA too, knew that they didn't acquire the entire Line in fee and lied to each other, the Landowners, and the world that they did, when in reality they wanted and needed to act as if they acquired the entire Line in fee so they could avoid the application of state property laws on whether they acquired the Line in fee or as an easement when they actually knew that they did not acquire the entire Line in fee and also knew or should have

²⁸ *Id.* at 345773.

²⁹ *Id.* The Landowners disagree with the conclusion that the deeds convey fee simple under Missouri law, but it doesn't matter at the present time because the right-of-way adjacent to all of these Landowners' property was obtained by condemnation, which conveyed a clear easement under Missouri law.

³⁰ *Id.* at 346765. The Landowners disagree that any portion of the right-of-way obtained by and through a condemnation could possibly convey fee simple under Missouri law.

³¹ *Id.* at 345773.

known that they actually did not and could acquire the Line in **either** fee or an easement so long as the Line was not abandoned and remained under the jurisdiction of the Board; and the conspiracy ultimately became a complete circle when Jackson County acted is if they wanted to avoid abandonment to make sure the Line stayed under the jurisdiction of the Board while at the same time they knew or should have known that the Board does not care about state property laws, whether fee or easement, if the Line remains active, not abandoned, and under the jurisdiction of the Board.

- 3) Third, the entire transaction and conspiracy by Jackson County, including Jackson County's agreements with KCATA, intentionally circumvented the Board's processes and procedures—simply put, Jackson County committed an intentional abuse of all of the Board's processes, procedures and jurisdiction, and did it over and over again, and the result worked an incredible hardship on these Landowners and all of the taxpayers of Jackson County:
 - a. **“IT SHOULD BE NOTED THAT BECAUSE JACKSON COUNTY IS PURCHASING AN INTACT RAIL CORRIDOR WITH THE RIGHTS AND OBLIGATIONS THAT GO WITH SUCH A PURCHASE, THE DEEDS ARE SECONDARY TO THAT ACQUISITION...,”**³²
 - b. “Abandonment Will Not Be An Issue So Long As The STB Recognizes The Existence of the Corridor And Retains Jurisdiction Over It;”³³
 - c. “Any Claim Of Abandonment Is Initially Determined By the STB;”³⁴ and
 - d. “If STB Approves Abandonment, And The Abandonment Is Consummated (Does Not Go Through Rails-To-Trails), Then And Only Then Is The Issue Decided Under State Law.”³⁵

The entire scheme has now been exposed and the entire scheme is a complete fraud.

The scheme starts with a fraudulent acquisition from UPRR under the guise of a

³² *Id.* at 345773 (emphasis in original).

³³ *Id.* at 345766.

³⁴ *Id.*

³⁵ *Id.*

transfer of the common carrier obligation and ends with a fraudulent transfer of rights to KCATA. Jackson County should know that they cannot “purchase” an “intact” corridor that remains under the exclusive and plenary jurisdiction of the Board without the Board’s approval. As a result, the entire “purchase” from UPRR is a fraud and Jackson County attempted to keep the transaction from the Board by instead pursuing the transfer of UPRR’s common carrier obligation through the exemption process. The entire issue of “abandonment” was also a foundational piece of the scheme and Jackson County used the entire concept to further their conspiracy. Although Jackson County recognized that the Board had exclusive and plenary authority over the abandonment issue, they also realized that they could not allow it to be abandoned in order to accomplish their purchase from UPRR—UPRR would not have received over \$50,000,000, Jackson County would have to pursue the Trails Act, which they did not want to do,³⁶ and KCATA would have no rights whatsoever.³⁷

Jackson County also had no ability to acquire an “intact” right-of-way because UPRR, by Jackson County’s own admission, did not own the entire Line in fee, so the scheme had to include the avoidance of any state property laws on the nature of the property interest acquired by UPRR. Jackson County blatantly and boldly, and probably intentionally rather than negligently, created a scheme and a conspiracy to “acquire” the Line without the Board’s knowledge, which violated the

³⁶ Jackson County could pursue the Trails Act only if UPRR agreed, and why would UPRR agree when they could be paid over \$50,000,000 instead, so Jackson County agreed to pay UPRR over \$50,000,000 (even the fee value is nothing close to that) and came up with the plan to go ahead and build a hiking and biking trail without following the Board’s processes and procedures under the Trails Act.

³⁷ KCATA could not receive any rights from either UPRR or Jackson County while the Line was under the jurisdiction of the Board, which is why the entire fraudulent “purchase” while it was still under the jurisdiction of the Board was concocted, without the Board’s knowledge, and why KCATA ultimately agreed to pay half of the over \$50,000,000 purchase price for their purported rights. See Exhibit C.

Board's processes and procedures, commenced building a hiking and biking trail without following the Trails Act, which also abused the Board's processes and procedures, and ignored their own title research while acting as if they "acquired" the Line, the Line was still under the jurisdiction of the Board, and state law property rights were irrelevant as long as they did not follow the Trails Act and the Line was still under the jurisdiction of the Board, thus avoiding abandonment, the Trails Act, and state law property laws. The "acquisition" of the Line from UPRR is a fraud and the agreements between Jackson County and KCATA are merely additional examples of the entire scheme to abuse the Board's processes and procedures, to avoid and abuse the Board's jurisdiction and to avoid any application of state property laws to the detriment of these Landowners.

Jackson County's agreements with the KCATA are a sham on several levels. First, Jackson County represented that they acquired and owned the fee in the railroad corridor, which is and was not true, as a justification to grant rights to KCATA to use the right-of-way in a manner that could only be granted by the fee owner. Second, they flaunted the exemption that they received from the Board, thus recognizing the Board's continuing exclusive and plenary jurisdiction over the Line, as a justification for granting the right to KCATA to construct a light rail system or commuter-based transit system when Jackson County knew or should have known that the Board does not have jurisdiction over light rail systems or over KCATA.

Simply put, the Board does not maintain jurisdiction over light rail systems or commuter-based transit systems because light rail and commuter-based transit systems are not considered railroads under federal law. Although the Secretary of Transportation has jurisdiction over high-speed light rail,³⁸ the term "high-speed rail" means inner city or inter-urban passenger rail service

³⁸ See 49 U.S.C. § 26106.

that is reasonably expected to reach speeds of at least 110 miles per hour.³⁹ As a result, the proposed light rail or commuter-based transit system proposed by Jackson County and KCATA does not qualify as a “railroad” under the Board’s regulations:

The term “carrier” includes any railroad subject to the jurisdiction of the Surface Transportation Board,... Provided, however, that the term ‘carrier’ shall not include any street, inter-urban, or suburban electric railway, unless such railway is operating as part of a general steam-railroad system of transportation...

See 45 U.S.C. § 151.

As a result, since the Board specifically defines a “rail carrier” to be “a person providing common carrier railroad transportation for compensation, **but does not include street, suburban, or inter-urban electric railways not operated as part of the general system of rail transportation,**” KCATA by definition is not a railroad as defined by the Board. See 49 U.S.C. § 10102(5) (emphasis added). KCATA is not operated as part of the general system of rail transportation, is not a common carrier, and is, instead, not under the Board’s jurisdiction.

It is clear that Jackson County attempted to utilize their exemption as the recipient of UPRR’s common carrier obligation to grant purported rights to the KCATA when Jackson County remained under the jurisdiction of the Board but the rights granted to KCATA by Jackson County are not under the jurisdiction of the Board. The rights purportedly granted to KCATA are exactly like the arguments Jackson County made when they repeatedly alleged that the Board purportedly authorized a hiking and biking trail by merely acknowledging that Jackson County planned to construct the hiking and biking trail adjacent to the railbed—here, Jackson County had no right to grant any rights to KCATA whether the exemption originally granted to Jackson County was in place or not.

³⁹ *Id.*

On July 31, 2019, the Board concluded that Jackson County made material misrepresentations concerning their acquisition of UPRR's common carrier obligation and had no legal right to construct a hiking and biking trail on a right-of-way that had not been abandoned and, therefore, revoked Jackson County's acquisition and operation exemption. As of January 5, 2016 when the Cooperative Agreement was signed and February 22, 2017 when the Maintenance and Management Program Agreement was signed, even during the period of time when the exemption was in place, Jackson County did not own, did not acquire, and could not own or acquire any ownership interest in the right-of-way and, even when the exemption was in place, had no right to grant any purported rights to KCATA by and through either agreement. Even if Jackson County had properly acquired UPRR's common carrier obligation through the exemption process, which they did not, and even if the Board had not revoked Jackson County's acquisition and operation exemption, Jackson County still had no right to grant any purported rights to KCATA by and through either the Cooperative Agreement or the Maintenance and Management Program Agreement because Jackson County did not own or acquire any property rights in the right-of-way, let alone fee ownership, by and through either the exemption process before the Board or the quit claim deed from UPRR, other than the common carrier obligation that remained under the jurisdiction of the Board at all times.

Jackson County had no legal right to grant any purported rights to KCATA as a result of either the exemption process or the quit claim deed from UPRR and, as a result, KCATA did not receive and could not legally receive any rights whatsoever in the right-of-way by and through either the Cooperative Agreement or the Maintenance and Management Program Agreement. Simply put, Jackson County had no legal right to grant any such rights to KCATA and the Board does not have jurisdiction over the purported rights that were granted to KCATA. The Board does

not have any authority or jurisdiction over any of the purported rights received by KCATA from Jackson County by and through either the Cooperative Agreement or the Maintenance and Management Program Agreement, including any rights to plan, manage, design, develop, construct, operate or maintain a shared commuter-based transit system or any other public transportation system.⁴⁰ The only rights that KCATA could ever receive pertaining to the right-of-way adjacent to these Landowners' properties would have to come from the Landowners themselves, and they never granted any such rights.

The Landowners are entitled to a declaratory order from the Board stating that the Cooperative Agreement and the Maintenance and Management Program Agreement do not grant any rights to KCATA that fall under the Board's jurisdiction. The Landowners are also entitled to a declaratory order that, to the extent the agreements rely on the Board's jurisdiction, they are null and void. In addition, the Landowners are entitled to an injunction against both Jackson County and KCATA to ensure that any future plans to design, develop, construct, operate or maintain a shared commuter-based transit system or any other public transportation system on the right-of-way, which remains under the jurisdiction of the Board, does not interfere with the existing common carrier obligation that remains under the jurisdiction of the Board, just like the construction of the hiking and biking trail interfered with the continuing common carrier obligation.

V. CONCLUSION

The Line Sale Agreement was part of an overall scheme by Jackson County to abuse the Board's processes and procedures. The Landowners are entitled to a declaratory order that the Line Sale Agreement is null and void in order to protect the integrity of the Board's jurisdiction.

⁴⁰ The Board does have exclusive and plenary authority over the right-of-way and therefore has and maintains jurisdiction over the right-of-way and has jurisdiction to enjoin KCATA from ANY action.

The Cooperative Agreement and the Maintenance and Management Program Agreement also demonstrate Jackson County's continued scheme to circumvent, avoid or violate both the Board's rules and regulations, the law of Missouri, and basic property law. Jackson County has repeatedly either negligently or intentionally misused the Board's processes and procedures to the detriment of these adjacent Landowners. This scheme has got to stop and the Landowners are entitled to a declaratory order that all of the agreements are null and void and an injunction against both the Cooperative Agreement and the Maintenance and Management Program Agreement so that Jackson County cannot continue to subvert the Board's processes and procedures and the KCATA cannot trample on these Landowners basic property rights under Missouri law.

Stewart, Wald & McCulley, LLC

By: /s/ Elizabeth A. McCulley

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COUNSEL FOR PETITIONERS/LANDOWNERS

CERTIFICATE OF SERVICE

I certify that I have this day served copies of this document upon all parties of record in this proceeding, by U.S. Mail this 6th day of January, 2020.

Kevin M. Sheys

Hogan Lovells Us Llp

Columbia Square

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Washington, DC 20004

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ATTORNEY FOR UNION PACIFIC RAILROAD COMPANY

/s/ Elizabeth A. McCulley

LINE SALE AGREEMENT

This Purchase and Sale Agreement (the "Agreement") is entered into this 31 day of December, 2015 ("Execution Date"), between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, whose address is 1400 Douglas Street, Omaha, Nebraska 68179 ("Seller"), and **JACKSON COUNTY**, a Missouri political subdivision, whose address is 415 East 12th Street, Kansas City MO, 64106 ("Buyer"), WITNESSETH:

IT IS AGREED by and between the parties as follows:

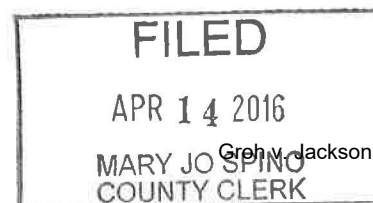
Section 1. Purchase and Sale of the Property.

Seller agrees to sell and Buyer agrees to purchase, on the terms and conditions of this Agreement, Union Pacific right of way, the former Rock Island rail corridor, between MP 288.3 and the Jackson County Line (the "Line") at MP 270.6 in Jackson County, Missouri, shown on the prints marked **Exhibit A-1** through **Exhibit A-5**, attached hereto and hereby made a part hereof ("Property"), together with improvements thereon including all railroad tracks, ties, ballast, bridges and appurtenances thereto (collectively the "Trackage").

EXCEPTING from this sale and RESERVING unto Seller, its successors and assigns, forever, the following:

(a) All coal, oil, gas, and the minerals and mineral rights of whatever nature or description, kind or character, like or unlike, known or unknown, and whether occurring in solid, liquid, vaporous or other and different forms in, under, or that may be produced from the Property; provided, however, that no operations of investigating, exploring, drilling, prospecting or mining for or storing or transporting said minerals or any of them, shall be conducted or placed upon the Property;

(b) Two (2) existing signboards and appurtenances thereto (as shown on **Exhibit A**), including without limitation wirelines for electrical service to such signboards now located upon, along, under and across the Property, and PERPETUAL EASEMENTS for the construction, maintenance, operation, repair, replacement, renewal and reconstruction of signboards and appurtenances thereto (whether now or hereafter constructed) upon, along, under and across the portions of the Property which are the current locations of the signboards and within a radius five feet (5') outside the perimeter of the land surface directly below the signboards (the "sign shadow") (collectively, the "Signboard Easement Areas") and any poles or footings if outside the sign shadow, together with (i) the right of unobstructed access, ingress and egress to and from the Signboard Easement Areas for the purpose of exercising the rights herein reserved; and (ii) an easement for roadway purposes for any existing roadway used for access to signboards.



(c) A permanent, non-exclusive easement ("Freight Easement") for freight railroad purposes upon, over, under, across, and through a portion of the Property, between MP 270.6 and MP 271.6 ("Freight Easement Area") as shown on the attached **Exhibit A**.

The sale made pursuant to this Agreement shall be subject to any and all applicable federal, state and local laws, orders, rules and regulations, and any and all outstanding rights, whether or not of record, or open and obvious on the ground.

Buyer acknowledges that a portion of the Property may be subject to reversion upon abandonment for railroad purposes. Buyer shall indemnify, defend and hold harmless Seller from and against any claims, actions, causes of action, liabilities, losses, costs or expenses (including, without limitation, attorney's fees and court costs), arising out of or in any manner connected with the sale to Buyer of Seller's interest in the Property. The foregoing indemnity is in addition to, and not in limitation of, the release and indemnity in Section 10.

Section 2. Purchase Price.

The purchase price ("Purchase Price") for the Property is FIFTY MILLION AND ONE HUNDRED SEVENTEEN THOUSAND TWO HUNDRED AND EIGHT AND NO/100TH DOLLARS (\$50,117,208.00).

Section 3. Payment of the Purchase Price.

(a) Upon execution of this Agreement by both parties, the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00), in cash, certified or cashier's check drawn on a financial institution acceptable to Seller, or by confirmed wire transfer ("Good Funds"), shall be deposited with Secured Title of Kansas City, 111 West 10th Street, Kansas city, MO 64105 ("Title Company"), in an interest-bearing account [the Two Hundred and Fifty Thousand Dollar (\$250,000.00) deposit and accrued interest thereon shall hereafter be referred to as "Escrow Fund"]. The Escrow Fund shall be applied towards the Purchase Price at Closing (as defined in Section 9) and shall become nonrefundable upon the expiration of the Feasibility Review Period described in Section 5(c), except in the event of a material default by Seller or the failure of a condition precedent to Buyer's obligations hereunder; and

(b) At the time of Closing, the balance of the Purchase Price shall be paid by Buyer to Seller in cash, certified or cashier's check drawn on a financial institution acceptable to Seller, or by confirmed wire transfer in Good Funds.

Section 4. Memorandums of Understanding.

(a) Pixley (Independence) Spur. The Buyer and Seller are parties to a Memorandum of Understanding dated November 12, 2013 ("Memorandum of Understanding"), as amended, concerning the potential purchase of both the Line and the Pixley (Independence) Spur. At Closing, Buyer and Seller agree to amend the Memorandum of Understanding in a form similar to **Exhibit B-1**, attached hereto and hereby made a part hereof, in order to clarify that this Agreement and the

Closing of the sale of the Line does not terminate or supersede the parties' understandings concerning the Pixley (Independence) Spur.

(b) Future Corridor Design and Construction. At Closing, Buyer and Seller agree to enter into a Memorandum of Understanding in a form similar to **Exhibit B-2**, attached hereto and hereby made a part hereof, in order to clarify the parties' understandings of future developments of the Line.

Section 5. Conditions Precedent to Sale.

This Agreement is subject to the following conditions precedent:

(a) Title Review. Seller shall make available for Buyer's review, Seller's records pertaining to the title or ownership of the Property. Within sixty (60) days after the Execution Date, Buyer, at its sole cost and expense, may obtain from Secured Title of Kansas City ("Title Company") a preliminary title report ("Title Report") on the Property and furnish a copy of the Title Report to Seller together with all copies of the documents referred to in the Title Report that are provided by the Title Company with the Title Report. Within the earlier to occur of (i) ten (10) days after receipt by Buyer of the Title Report and the survey referred to in subparagraph (b) below, or (ii) seventy (70) days after the Execution Date ("Title Contingency Date"), Buyer shall approve or disapprove any defects in the title or any liens, encumbrances, covenants, rights of way, easements or other outstanding rights disclosed by the Title Report or survey, except those matters set forth in Section 6. Disapproval shall be by written notice given by Buyer to Seller setting forth the specific item or items disapproved by Buyer. If no such notice of disapproval is given by Buyer by the Title Contingency Date, it shall be conclusively presumed that Buyer approves of the Title Report and survey. If Buyer disapproves of any item or items contained in or disclosed by the Title Report or survey, Seller shall have ten (10) days after receipt of Buyer's notice of disapproval ("Seller's Cure Period") in which, at Seller's election, to eliminate any disapproved items from the policy of title insurance to be issued in favor of Buyer. If any such disapproved item is not eliminated by the end of Seller's Cure Period, then this Agreement shall terminate unless Buyer shall have elected to waive its prior disapproval in writing at least five (5) days prior to the date of Closing. In the event of termination due to any such uncorrected defect in title, the Escrow Fund shall be returned to Buyer, and this Agreement shall terminate and be without any further force and effect, and without further obligation of either party to the other. In no event will Seller's failure to cure or delete as exceptions to the policy of title insurance any disapproved items be deemed to be a breach of this Agreement by Seller or entitle Buyer to any offset against the Purchase Price.

(b) Survey. Within sixty (60) days after the Execution Date, Buyer, at its sole cost and expense, may obtain a survey of all or portions of the Property, prepared and certified by a public surveyor registered in the State of Missouri, and furnish the survey to Seller and Title Company. The survey, as approved by Buyer as set forth in subparagraph (a) above and as approved by Seller, shall be used by Seller as the basis for preparation of the description of the Property and the Signboard Easement Areas. Seller shall provide a legal description for the Freight Easement Area. If Buyer does not obtain a survey, Seller shall prepare legal descriptions for the Property and Signboard Easement Area from its real estate records, and furnish same to Buyer. Buyer shall give Seller written notice of Buyer's approval or disapproval of the legal descriptions within ten (10)

days after Buyer's receipt of the legal descriptions, and failure to give such notice shall be deemed notice of approval. In the event Buyer disapproves of the legal descriptions, Buyer at its option and expense may prepare corrected legal descriptions with the surveyed property descriptions.

(c) Feasibility Studies. Upon execution of this Agreement, Buyer, and its agents and contractors, are granted the privilege for a period of one hundred twenty (120) days after the Execution Date ("Feasibility Review Period") of entering upon the Property for the purpose of performing environmental assessments, soil tests, engineering and feasibility studies of the Property as Buyer may deem necessary to determine the suitability of the soil conditions and other physical conditions of the Property, except that, within thirty (30) days after the Execution Date, Buyer will provide Seller a Phase II Environmental Assessment on the Property. If Buyer wishes to perform any environmental sampling, then Buyer shall (i) before conducting any sampling, provide Seller with Buyer's work plan for sampling and shall modify the work plan as reasonably requested by Seller, (ii) give Seller reasonable advance notice of the dates when sampling will be conducted so that Seller and/or its consultants have the opportunity to be present, (iii) conduct any sampling in accordance with the work plan referred to under (i) above and with generally accepted environmental engineering standards, and (iv) provide Seller with the draft report on such sampling for Seller's review and comments prior to the report being placed in final form, and give reasonable consideration to such comments.

If the results of such assessments, tests or studies are unsatisfactory in Buyer's reasonable opinion, Buyer may, at its option, terminate this Agreement by giving Seller written notice of termination before expiration of the Feasibility Review Period. If no such written notice of termination is given by Buyer to Seller before expiration of the Feasibility Review Period, the Property shall be deemed suitable for Buyer's purposes. In the event of such termination by Buyer, then Buyer shall surrender to Seller copies of all environmental assessments, soils, engineering and any other reports prepared for Buyer pertaining to the Property and such reports shall become the sole property of Seller without cost or expense of Seller (and the contents of such reports shall be kept confidential by Buyer and Buyer's consultants), the Escrow Fund shall be returned to Buyer and this Agreement shall terminate and be without any further force and effect, and without further obligation of either party to the other. Regardless of whether this Agreement is terminated, Buyer shall promptly furnish Seller with a copy of any and all reports on environmental assessments performed for the benefit of Buyer.

Any entry on the Property by Buyer, its agents or contractors, for the purposes set forth in this Section 4(c) shall be subject to the following terms and conditions:

(i) Buyer shall notify Seller in writing at least forty-eight (48) hours prior to the date that each and every of such testing or inspections are to be conducted on the Property and shall provide evidence, satisfactory to Seller, of the availability of adequate public liability and other insurance, which insurance shall name Seller as an additional insured;

(ii) Buyer agrees to indemnify, defend and save harmless Seller and/or Seller's affiliates ("Seller's affiliates" means any corporation which directly or indirectly controls or is controlled by or is under common control with Seller), their officers, agents, servants

and employees, against and from any and all liability, loss, costs and expense of whatsoever nature growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury, death, loss, destruction or damage arises in connection with or incident to the occupation or use of the Property by, or the presence thereon of Buyer, Buyer's agents, contractors, servants or licensees prior to Closing;

(iii) Buyer covenants and agrees to pay in full for all materials joined or affixed to the Property and to pay in full all persons who perform labor upon said Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at the instance or request or on behalf of Buyer; and Buyer agrees to indemnify, defend and hold harmless Seller against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished prior to Closing;

(iv) If the sale and purchase of the Property does not close, Buyer shall, as soon as possible and at Buyer's sole expense, restore the Property to the same condition it was in immediately prior to the time Buyer entered the Property, failing in which Seller may perform the work of restoration and Buyer shall reimburse Seller for the cost and expense of the work within thirty (30) days after rendition of bill therefor by Seller; and

(v) Notwithstanding any provisions in this Agreement to the contrary, if this Agreement is terminated for any reason, Buyer nevertheless shall be obligated to comply with the provisions of this Section 4(c).

(d) Financing Commitment. Intentionally deleted.

(e) Seller's Management Approval. The terms and conditions of this transaction are subject to Seller's management approval. Notice of approval or disapproval shall be given by Seller to Buyer within sixty (60) days after the Execution Date, and failure to give such notice shall be deemed notice of disapproval. If, within such sixty (60) day period the terms of this Agreement are not approved for any reason, then this Agreement shall be deemed terminated forthwith. In the event of such termination, this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

(f) STB Authority. Within sixty days (60) after the Execution Date ("STB Authority Period"), Buyer shall file a Notice of Exemption with the Surface Transportation Board ("STB") pursuant to 49 CFR 1150 to acquire and assume Seller's common carrier rights and obligations with respect to the Line ("STB Authority"). Buyer acknowledges that Seller is reserving a non-exclusive freight easement and non-exclusive common carrier rights on that portion of the Line identified as Freight Easement Area pursuant to Section 1(d). If the STB imposes any condition to the STB Authority (including, without limitation, labor protection) that is unsatisfactory to either party, as determined in each party's sole and absolute discretion, then either party may terminate this Agreement by giving written notice of termination to the other party before the end of the Feasibility Review Period. If for whatever reason the Property is not transferred to Buyer at

Closing as defined in Section 9 below, Buyer shall forthwith file with the STB notice that the Property will not be transferred to Buyer and Buyer withdraws and terminates its Notice of Exemption. In the event of such termination, this Agreement shall be without further force and effect, and without further obligation of either party to the other.

(g) Labor Issues. UPRR shall assure itself, in its sole discretion, that the sale of the Property to City will not result in a work stoppage on UPRR or any of its affiliate's lines of railroad, and that there are no other labor issues which might jeopardize the anticipated benefits to UPRR of the sale of the Property.

Section 6. Escrow.

(a) Escrow. Upon execution of this Agreement by both parties, an escrow account shall be opened with Title Company, and Buyer shall deposit with Title Company the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) referred to in Section 3(a), with instructions to Title Company to hold the same in accordance with the provisions of this Agreement. On or before the date of Closing, Buyer shall deposit into escrow with the Title Company, the Purchase Price, less the Escrow Fund, the Amendment to the Memorandum of Understanding referred to in Section 4(a), the Memorandum of Understanding referred to in Section 4(b), the Quitclaim Deed and Bill of Sale referred to in Section 7, and the Assignment and Assumption Agreement referred to in Section 8, as executed by Buyer, and Seller shall deposit the Amendment to the Memorandum of Understanding referred to in Section 4(a), the Memorandum of Understanding referred to in Section 4(b), the Quitclaim Deed and Bill of Sale referred to in Section 7 and the Assignment and Assumption Agreement referred to in Section 8, as executed by Seller. Title Company shall be instructed that when it is in a position to deliver to Seller the Purchase Price, and to issue a standard owner's policy of title insurance in the full amount of the Purchase Price, insuring fee simple title to the Property in Buyer, subject only to the items set forth in Section 7, Title Company shall:

- (i) record and deliver the Quitclaim Deed to Buyer;
- (ii) deliver an executed counterpart of the Amendment to the Memorandum of Understanding referred to in Section 4(a) and the Memorandum of Understanding referred to in Section 4(b) to each of Buyer and Seller;
- (iii) deliver an executed counterpart of the Bill of Sale to each of Buyer and Seller;
- (iv) deliver an executed counterpart of the Assignment and Assumption Agreement to each of Buyer and Seller;
- (v) deliver to Seller the Purchase Price; and
- (vi) issue and deliver to Buyer the standard owner's policy of title insurance.

(b) Extended Coverage. Buyer, at its option and at its sole cost and expense, shall have the right to obtain ALTA extended coverage and/or an ALTA survey; provided, however, that the

failure to obtain such extended coverage shall not be a condition to nor delay the Closing beyond the date of Closing set forth in Section 9 below, and that Seller will not be required to assume any obligations or liabilities in addition to Seller's obligations and liabilities under this Agreement.

(c) Seller's Costs. At Closing, Seller shall pay Seller's pro rata share of real estate taxes (whether general or special) assessed against the Property and due and payable for the year of Closing.

(d) Buyer's Costs. At Closing, Buyer shall pay the following costs:

- (i) All of the escrow fee;
- (ii) The cost of recording the Quitclaim Deed;
- (iii) The premium for the issuance of the owner's policy of title insurance;
- (iv) The Missouri State real estate excise tax, if any;
- (v) The cost of the required state revenue stamps, if any; and
- (vi) Buyer's pro rata share of real estate taxes (whether general or special) assessed against the Property and due and payable for the year of Closing.

Section 7. Title.

(a) Title. Upon Closing as set forth in Section 6, Seller's right, title and interest in and to the Property shall be transferred by Seller to Buyer by a duly executed Quitclaim Deed in the form marked **Exhibit C**, attached hereto and hereby made a part hereof. Title shall be insurable, free and clear of all liens, encumbrances, exceptions, and reservations other than the following:

- (i) The mineral, fiber optic, signboard and freight easement reservations set forth in Sections 1(a), (b), (c) and (d);
- (ii) Covenants referred to in Section 7(d);
- (iii) The Identified Licenses referred to in Section 8;
- (iv) Non-delinquent real property taxes (whether general or special);
- (v) Standard printed exceptions in the title policy; and
- (vi) Items disclosed in the Title Report or survey and approved or waived by Buyer as set forth in Section 5(a).

(b) Bill of Sale. Seller's right, title and interest in and to the Trackage shall be transferred by Seller to Buyer by a duly executed Bill of Sale in the form marked **Exhibit D**, attached hereto and hereby made a part hereof.

(c) Unidentified Licenses. Seller agrees to deliver to Buyer, within thirty (30) days after the Execution Date, copies of all agreements covering the Property that are disclosed by Seller's Standard Real Estate Search. Seller's Standard Real Estate Search means the following procedure: Seller's Real Estate Department (i) determines the location of the property in question and converts the information into a data base inquiry which is run against Seller's Real Estate Management System data base of over 300,000 active agreements to generate a list of documents affecting the property in question as revealed by the data base, and (ii) searches for the listed documents in the Real Estate Department records in Omaha, Nebraska, which location is where documents in Seller's Real Estate Management System data base are stored and maintained in the ordinary course of Seller's business. Seller makes no representations or warranties with respect to the accuracy or completeness of the list of agreements generated by Seller's Standard Real Estate Search. Buyer acknowledges that the Property may be subject to licenses and other third party rights ("Unidentified Licenses") that have not been identified in Seller's records by Seller to Buyer. It is the responsibility of Buyer to determine if any of these Unidentified Licenses exist. If any Unidentified License that affects the Property is identified after the Execution Date, Seller's rights (including, without limitation, any income) and obligations under such Unidentified License to the extent such License affects the Property will be assigned to and assumed by Buyer at or after Closing.

(d) Post-Sale Covenants. The Property shall be quitclaimed by Seller subject to the following covenants, conditions and restrictions which Buyer by the acceptance of the Deed shall covenant for itself, its successors and assigns, faithfully to keep, observe and perform:

(i) Restriction on Use. The Property must not be used for any of the following purposes: (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) cultural, educational, recreational (other than hike and/or bike trail use) or child-care facilities (including, without limitation, schools, kindergartens, day-care centers, gymnasiums, athletic fields, picnic grounds or parks). The restrictions in this paragraph (i) are collectively known as the "Restricted Uses".

(ii) Release of Restriction on Use Covenant. Buyer, its successors or assigns, at its sole cost and expense, may perform remediation of the Property to the extent required by the State of Missouri ("State") to qualify for one or more of the restricted uses. Any such remediation must be performed in accordance with all applicable rules, regulations, ordinances, laws and other requirements of the State, and be sufficient to obtain a certificate of completion which shall indicate that the Property is suitable for one or more of the restricted uses. Upon completion of all remediation required to obtain the certificate, Buyer may request that Seller release or partially release the restriction on use covenant above. In doing so, Buyer must provide Seller with analytical data and other evidence satisfactory to Seller to show that the Property is suitable for one or more of the restricted uses. Upon review by Seller of information sufficient to meet the aforementioned conditions, Seller shall release or partially release the restriction on use covenant

by executing a Release in recordable form and delivering same to Buyer. The request for release along with supporting documentation should be sent to the following address:

Union Pacific Railroad Company
Attn: Assistant Vice President-Real Estate (Folder: 2463-06)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179-1690

Notwithstanding any other provision herein, if remediation of the Property is not required by the State, Buyer may request that Seller release or partially release the restriction on use covenant absent the aforementioned certificate of completion. Buyer's request must be supported by analytical data and other evidence satisfactory to Seller. If Seller, in its sole reasonable discretion, determines that the analytical data and other evidence is sufficient to warrant unrestricted use of the Property or a portion thereof, then Seller shall release or partially release the restriction on use covenant for the Property, or applicable portion thereof, by executing a Release in recordable form and delivering same to Buyer.

(iii) Clarification Procedure. Should any owner of the Property ever need clarification of whether the Restricted Uses is/are allowed or prohibited, then owner may inquire to the address noted above for written confirmation from Seller of whether a use is allowed or not, and such owner shall provide a recordable document to Seller with the clarification requested by such owner. Seller agrees to execute such recordable document, or provide specific changes to such document, or deny such document (by explaining the use is a "Restricted Use") within 20 days of receipt of a request for clarification from any owner.

(iv) Fence Covenant. In the event that the Property is used for a public use, Buyer, or its successors or assigns, at its sole cost and expense, shall install before such public use, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Seller adjacent to the easterly boundary of the Property between MP 287.8 and MP 288.3 as shown on the attached **Exhibit A**. The fencing or barrier must be of a design and type satisfactory to Seller, and in compliance with applicable building codes. Buyer shall submit the plans for the fencing or barrier construction to:

Union Pacific Railroad Company
Assistant Vice President-Real Estate (Folder No. 2463-06)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Seller shall complete such review and make appropriate response to Buyer within twenty (20) days after receipt of such plans by Seller. Seller shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

The foregoing covenants, conditions and restrictions shall run with the Property, and a breach of the foregoing covenants, conditions and restrictions, or the continuance thereof,

may, at the option of Seller, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

Section 8. Assignment of Licenses.

(a) **Identified Licenses.** Upon Closing, Seller shall assign to Buyer, and Buyer shall assume, all of Seller's right, title and interest in and to the license and other agreements (the "Identified Licenses") listed on **Exhibit B to Exhibit E** attached hereto and hereby made a part hereof, but only to the extent the Identified Licenses affect the Property. Such assignment and assumption shall be by duly executed Assignment and Assumption Agreement in the form attached hereto as **Exhibit E** and hereby made a part hereof. Rentals and other payments, if any, under the Identified Licenses shall be prorated between Seller and Buyer as of the date of Closing.

Section 9. Closing; Possession.

Escrow for the Property shall close ("Close" or "Closing") within thirty (30) days after the expiration of the Feasibility Review Period ("Closing Date"). Buyer shall have no right to possession or occupancy of or entry upon any portion of the Property [except as set forth in Section 5(c)] and title to the Property shall be and remain vested in Seller until Closing.

Section 10. As Is; Release and Indemnity.

(a) **As Is.** Buyer and its representatives, prior to the date of Closing, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Buyer and its representatives desire. Buyer acknowledges and agrees that the Property is to be sold and quitclaimed to and accepted by Buyer in an "as is" condition with all faults. Buyer further acknowledges that the Property was used for railroad right-of-way purposes, and that the Property contains encroachments, including fencing and other physical structures. Seller makes no representation or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions, and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Buyer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and the purchase and sale of the Property and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.

(b) **Release.** BUYER, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, OF AND FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, CAUSES OF ACTION,

DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH BUYER NOW HAS OR WHICH BUYER MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

(c) Indemnity. FROM AND AFTER CLOSING, BUYER SHALL, TO THE MAXIMUM EXTENT PERMITTED BY LAW, INDEMNIFY, DEFEND AND SAVE HARMLESS SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, CAUSES OF ACTION, LEGAL OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, FINES, PUNITIVE DAMAGES, LOSSES, COSTS, LIABILITIES AND EXPENSES, INCLUDING ATTORNEY'S FEES, IN ANY WAY ARISING OUT OF OR CONNECTED WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING SHALL APPLY REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF SELLER, ITS AFFILIATES, THEIR EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS.

(d) General Allocation of Environmental Responsibility. With respect to any existing or future environmental contamination of the soil and/or groundwater in, on or under the Property, from and after Closing, Buyer, at no cost to Seller, agrees to be solely responsible for conducting any investigation, monitoring, remediation, removal, response or other action required by any governmental agency, court order, law or regulation or otherwise necessary to make the Property suitable for Buyer's use of the Property.

(e) Additional and Independent Consideration. The release, indemnity and general allocation of environmental responsibility by Buyer are additional and independent consideration to Seller for the sale and purchase of the Property, without which Seller would not sell the Property for the Purchase Price.

Section 11. Default; Liquidated Damages.

IN THE EVENT THE SALE AND PURCHASE OF THE PROPERTY SHALL FAIL TO CLOSE AS SET FORTH IN SECTION 6 BECAUSE OF ANY DEFAULT OF BUYER HEREUNDER, THE ESCROW FUND SHALL BE AND REMAIN THE PROPERTY OF SELLER AS SELLER'S SOLE REMEDY AND AS LIQUIDATED DAMAGES FOR SUCH DEFAULT BY BUYER, AND THIS AGREEMENT SHALL BE WITHOUT ANY FURTHER FORCE AND EFFECT, AND WITHOUT FURTHER OBLIGATION OF EITHER PARTY TO THE OTHER. SELLER'S ACTUAL DAMAGES IN THE EVENT OF SUCH DEFAULT BY BUYER WOULD BE DIFFICULT OR IMPOSSIBLE TO ASCERTAIN, AND FURTHER, BUYER DESIRES TO LIMIT ITS LIABILITY TO SELLER IN THE EVENT THE SALE AND PURCHASE OF THE PROPERTY SHALL FAIL TO CLOSE BECAUSE OF ANY DEFAULT OF BUYER HEREUNDER.

Seller: TKBuyer: NS**Section 12. Notices.**

Any notices required or desired to be given under this Agreement shall be in writing and personally served, given by overnight express delivery, or given by mail. Any notice given by mail shall be sent, postage prepaid, by certified mail, return receipt requested, addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

Seller: UNION PACIFIC RAILROAD COMPANY
ATTN: James L. Hild, Senior Manager-Real Estate
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179
Telephone: (402) 544-8614

With copy to: UNION PACIFIC RAILROAD COMPANY
ATTN: Madeline E. Roebke, General Attorney
1400 Douglas Street, Mail Stop 1580
Omaha, Nebraska 68179
Telephone: (402) 544-1121

Buyer: JACKSON COUNTY
ATTN: Calvin Williford, Executive Director
of the Rock Island Rail Corridor Authority
22501 Woods Chapel Road
Blue Springs, Missouri 64015
Telephone: _____

With copy to: JACKSON COUNTY

ATTN: Steve Nixon, County Attorney
 Jackson County Courthouse
 415 E. 12th Street, Suite 200
 Kansas City, Missouri 64106
 Telephone: _____

Title Company: _____

ATTN: _____

Telephone: _____

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service. Copies of all notices to Seller or Buyer shall be given to Title Company, and copies of all notices to Title Company shall be given to the other party to this Agreement.

Section 13. Assignment.

Buyer shall not transfer or assign this Agreement, or any interest therein, without the consent in writing of Seller, and it is agreed that any such transfer or assignment, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and shall, at the option of Seller, terminate this Agreement.

Section 14. Condemnation.

If, prior to Closing, a governmental agency commences or imminently threatens in writing to commence any eminent domain proceedings to take any material portion of the Property, Buyer and Seller shall each have the unilateral right, exercisable by giving notice of such decision to the other party within thirty (30) days after receiving written notice of such actual or threatened condemnation proceedings, to terminate this Agreement. In the event of such termination, this Agreement will be without any further force and effect and without further obligation of either party to the other. If neither party elects to terminate pursuant to this Section 14, the Purchase Price will be determined as though such condemnation had not occurred, and the net proceeds of condemnation awards paid or payable to Seller by reason of such condemnation of the Property shall be paid or assigned to Buyer at Closing.

Section 15. Waiver of Breach.

A waiver by either party of a breach by the other party of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right under this Agreement, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

Section 16. Time of the Essence.

Time is of the essence of this Agreement.

Section 17. Law Governing.

This Agreement shall be governed in all respects by the laws of the State of Missouri.

Section 18. Merger.

The terms, provisions, covenants and conditions contained in this Agreement shall merge into the deed to be delivered by Seller to Buyer at Closing and shall not survive the Closing, except for the provisions of Section 4, 5(c), 7(c), 7(d), 10, 19 and 21.

Section 19. No Brokers.

The negotiations relative to this Agreement and the transactions contemplated hereby have been carried on by the parties without the intervention of any person which would give rise to any valid claim against either of the parties for brokerage commissions or other like payment. Each party shall indemnify and hold harmless the other party against and from any and all claims for brokerage commission or other like payment arising out of the transaction contemplated by this Agreement and occasioned by the actions of such indemnifying party.

Section 20. Successors and Assigns.

Subject to the provisions of Section 13, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

Section 21. Special Provision.

Seller, Federal ID No. 94-6001323, is not a foreign corporation and withholding of Federal Income Tax from the amount realized will not be made by Buyer. A certification prepared in conformance with IRS regulations under Section 1445 of the Internal Revenue Code is attached as **Exhibit F**.

Section 22. Acquisition Under Threat of Condemnation.

The parties acknowledge that Buyer has the power of eminent domain. Buyer represents that it will institute eminent domain proceedings in the event that Seller does not sell the Property pursuant to this Agreement. The parties further acknowledge that Seller intends to treat any gain or loss realized from the sale of the Property as sold under imminent threat of condemnation pursuant to Section 1033 of the federal Internal Revenue Code of 1986.

Section 23. Not An Offer.

The submission of this Agreement to Buyer for review or signature does not constitute an offer to sell the Property to Buyer or the granting of an option or other rights with respect to the Property to Buyer. No agreement with respect to the purchase and sale of the Property shall exist, and this writing shall have no binding force or effect, until executed and delivered by both Seller and Buyer.

Section 24. Severability.

In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction under applicable law, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

Section 25. Entire Agreement.

It is understood and agreed that all understandings and agreements, whether written or oral, heretofore had between the parties are merged in this Agreement, which alone fully and completely expresses their agreement, that neither party is relying upon any statement or representation not embodied in this Agreement, made by the other, and that this Agreement may not be changed except by an instrument in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate as of the date first herein written.

SELLER:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: Tony K. Love

Name: TONY K. LOVE

Title: Assistant Vice President - Real Estate

BUYER:

JACKSON COUNTY,
a Missouri political subdivision

By: Michael Sanders

Name: Michael Sanders

Title: County Executive

APPROVED AS TO FORM

W. Stephen McCoy
County Counselor

ATTEST:

Mary Spino
Clerk of the County Legislature

EXHIBIT A

PRINT OF PROPERTY TO BE ATTACHED

EXHIBIT B-1

To attach draft Amendment to Memorandum of Understanding

EXHIBIT B-2

To attach draft Memorandum of Understanding

EXHIBIT C

SPACE ABOVE FOR RECORDER'S USE ONLY

2463-06

QUITCLAIM DEED

This Quitclaim Deed is made on _____, 201_, by **UNION PACIFIC RAILROAD COMPANY** (formerly known as Southern Pacific Transportation Company, a Delaware corporation, successor in interest to St. Louis Southwestern Railway) ("Grantor"), whose address is 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179, to **JACKSON COUNTY**, a Missouri political subdivision ("Grantee"), whose address is _____.

Grantor, in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto Grantee, its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (hereinafter the "Property") situated in Jackson County, State of Missouri, as more particularly described in **Exhibit A**, hereto attached and hereby made a part hereof.

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever, the following:

(a) All coal, oil, gas, and the minerals and mineral rights of whatever nature or description, kind or character, like or unlike, known or unknown, and whether occurring in solid, liquid, vaporous or other and different forms in, under, or that may be produced from the Property; provided, however, that no operations of investigating, exploring, drilling, prospecting or mining for or storing or transporting said minerals or any of them, shall be conducted or placed upon the Property;

(b) Two (2) existing signboards and appurtenances thereto, including without limitation wirelines for electrical service to such signboards now located upon, along, under and across the Property, and PERPETUAL EASEMENTS for

the construction, maintenance, operation, repair, replacement, renewal and reconstruction of signboards and appurtenances thereto (whether now or hereafter constructed) upon, along, under and across the portions of the Property which are the current locations of the signboards and within a radius five feet (5') outside the perimeter of the land surface directly below the signboards (the "sign shadow") (collectively, the "Signboard Easement Areas", as more particularly described in **Exhibit B** attached hereto and hereby made a part hereof and any poles or footings if outside the sign shadow, together with (i) the right of unobstructed access, ingress and egress to and from the Signboard Easement Areas for the purpose of exercising the rights herein reserved; and (ii) an easement for roadway purposes for any existing roadway used for access to signboards.

(c) A permanent, non-exclusive easement ("Freight Easement") for freight railroad purposes upon, over, under, across, and through a portion of the Property, between MP 270.6 and MP 271.6 ("Freight Easement Area") as more particularly described on **Exhibit C**.

Except as may be otherwise provided in a written assignment or other written agreement between Grantor and Grantee, Grantor reserves all income (including, without limitation, rentals, license fees and royalties) from any existing license and other existing rights to use the Property and renewals thereof granted by Grantor or Grantor's predecessors in interest. Grantee agrees that if Grantee receives any such income, Grantee will promptly forward the income to Grantor.

Covenants.

The Property is quitclaimed by Grantor subject to the following covenants, conditions and restrictions which Grantee by the acceptance of this Deed covenants for itself, its successors and assigns, faithfully to keep, observe and perform:

(a) Restriction on Use. The Property must not be used for any of the following purposes: (i) residential, (ii) lodgings or accommodations (including, without limitation, hotels, motels, boarding houses, dormitories, hospitals, nursing homes, or retirement centers), or (iii) cultural, educational, recreational (other than hike and/or bike trail use) or child-care facilities (including, without limitation, schools, kindergartens, day-care centers, gymnasiums, athletic fields, picnic grounds or parks). The restrictions in this paragraph (a) are collectively known as the "Restricted Uses".

(b) Release of Restriction on Use Covenant. Grantee, its successors or assigns, at its sole cost and expense, may perform remediation of the Property to the extent required by the State of Missouri ("State") to qualify for one or more of the restricted uses. Any such remediation must be performed in accordance with all applicable rules, regulations, ordinances, laws and other requirements of the State, and be sufficient to obtain a certificate of completion which shall indicate that the Property is suitable for one or more of the restricted uses. Upon completion of all remediation required to obtain the certificate, Grantee may request that Grantor release or partially release the restriction on use covenant above. In doing so, Grantee must provide Grantor with

analytical data and other evidence satisfactory to Grantor to show that the Property is suitable for one or more of the restricted uses. Upon review by Grantor of information sufficient to meet the aforementioned conditions, Grantor shall release or partially the restriction on use covenant by executing a Release in recordable form and delivering same to Grantee. The request for release along with supporting documentation should be sent to the following address:

Union Pacific Railroad Company
Attn: Assistant Vice President-Real Estate (Folder: 2463-06)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179-1690

Notwithstanding any other provision herein, if remediation of the Property is not required by the State, Grantee may request that Grantor release the restriction on use covenant absent the aforementioned certificate of completion. Grantee's request must be supported by analytical data and other evidence satisfactory to Grantor. If Grantor, in its sole discretion, determines that the analytical data and other evidence is sufficient to warrant unrestricted use of the Property, or a portion thereof, then Grantor shall release the restriction on use covenant for the Property, or applicable portion thereof, by executing a Release in recordable form and delivering same to Grantee.

(c) Clarification Procedure. Should any owner of the Property ever need clarification of whether the Restricted Uses is/are allowed or prohibited, then owner may inquire to the address noted above for written confirmation from Grantor of whether a use is allowed or not, and such owner shall provide a recordable document to Grantor with the clarification requested by such owner. Grantor agrees to execute such recordable document, or provide specific changes to such document, or deny such document (by explaining the use is a "Restricted Use") within 20 days of receipt of a request for clarification from any owner.

(d) Fence Covenant. In the event that the Property is used for a public use, Grantee, or its successors or assigns, at its sole cost and expense, shall install before such public use, and thereafter maintain fencing or other barriers to prevent access to or encroachment on the railroad right-of-way of Grantor adjacent to the easterly boundary of the Property between MP 287.8 and MP 288.3. The fencing or barrier must be of a design and type satisfactory to Grantor, and in compliance with applicable building codes. Grantee shall submit the plans for the fencing or barrier construction to:

Union Pacific Railroad Company
Attn: Assistant Vice President-Real Estate (Folder No. 2463-06)
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

for review and approval. Grantor shall complete such review and make appropriate response to Grantee within twenty (20) days after receipt of such plans by Grantor. Grantor shall not unreasonably withhold its approval of such plans. Such approval does not constitute a guarantee or warranty that such plans comply with applicable governmental laws, rules, regulations or ordinances, or that the fence as constructed will be structurally sound.

The foregoing covenants, conditions and restrictions shall run with the Property, and a breach of the foregoing covenants, conditions and restrictions, or the continuance thereof, may, at the option of Grantor, its successors or assigns, be enjoined, abated or remedied by appropriate proceedings.

IN WITNESS WHEREOF, the Grantor has caused this deed to be duly executed on the date first written above.

Attest:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

Printed Name: _____
Assistant Secretary

(Seal)

By: _____
Printed Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEBRASKA)
) ss.
 COUNTY OF DOUGLAS)

On this ____ day of _____, 201__, before me, _____,
 Notary Public in and for said County and State, personally appeared
 _____ and _____ who are the
 _____ and the Assistant Secretary, respectively, of
 Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me
 (or proved to me on the basis of satisfactory evidence) to be the persons whose names are
 subscribed to in the within instrument, and acknowledged to me that they executed the same in
 their authorized capacities, and that by their signatures on the instrument the persons, or the entity
 upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

 Notary Public

(Seal)

Grantee hereby accepts this Deed and agrees for itself, its successors and assigns, to be bound by the covenants set forth herein.

Dated this 31st day of December, 2015.

JACKSON COUNTY,
a Missouri political subdivision

By: [Signature]

Its: Ms

STATE OF Missouri)
) ss.
COUNTY OF Jackson)

On this 31st day of December, 2015, before me, C. Howard
Notary Public in and for said County and State, personally appeared Michael Sanders
who is the County Executive of Jackson County, a County Executive,
and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person whose name is subscribed to in the within instrument, and acknowledged to me that
he/she executed the same in his/her authorized capacity, and that by his/her signature on the
instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

C. Howard
Notary Public

(Seal)



EXHIBIT A TO EXHIBIT C

**LEGAL DESCRIPTION OF PROPERTY
TO BE ATTACHED**

EXHIBIT B TO EXHIBIT C

**LEGAL DESCRIPTIONS OF
SIGNBOARD EASEMENT AREAS TO BE ATTACHED**

EXHIBIT C TO EXHIBIT C

**LEGAL DESCRIPTION OF
FREIGHT EASEMENT AREA TO BE ATTACHED**

EXHIBIT D**BILL OF SALE**

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Seller"), for and in consideration of One Dollar (\$1.00) and other valuable consideration, does hereby sell, transfer and deliver to **JACKSON COUNTY**, a Missouri political subdivision ("Buyer"), its successors and assigns, the following described personal property, to wit:

All improvements, including all railroad tracks, ties, ballast, bridges and appurtenances thereto located on the property described on **Exhibit A** attached hereto and incorporated by reference herein.

SELLER, BY THIS INSTRUMENT, MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND FURTHER MAKES NO WARRANTY AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING UNDERSTOOD THAT THE BUYER IS PURCHASING THE PERSONAL PROPERTY DESCRIBED ABOVE IN AN "AS IS" AND "WHERE IS" CONDITION WITH ALL FAULTS, AND ASSUMES ALL RISKS IN CONNECTION THEREWITH, ACKNOWLEDGING THAT BUYER HAS EXAMINED THE PERSONAL PROPERTY AND KNOWS ITS CONDITION.

IN WITNESS WHEREOF, the Seller and Buyer have each duly executed this instrument as of the _____ day of _____, 201__.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By _____
Title:

JACKSON COUNTY,
a Missouri political subdivision

By 
Title: County Executive

EXHIBIT A TO EXHIBIT D

**LEGAL DESCRIPTION OF PROPERTY
TO BE ATTACHED**

EXHIBIT E**ASSIGNMENT AND ASSUMPTION AGREEMENT**

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Assignor"), ASSIGNS AND TRANSFERS to JACKSON COUNTY, a Missouri political subdivision ("Assignee"), its successors and assigns, all of Assignor's right, title and interest in and to the leases and licenses (collectively, "Licenses") to the extent the Licenses affect the real property ("Property") described on **Exhibit A**, which Licenses are listed on **Exhibit B**.

Assignee agrees to (a) perform all of the obligations of Assignor pursuant to the Licenses as they relate to the Property accruing on and after the date hereof, and (b) indemnify, defend and hold Assignor harmless from and against any and all claims, causes of actions and expenses (including reasonable attorney's fees) incurred by Assignor and arising out of (1) Assignee's failure to comply with terms of the Licenses as they relate to the Property on and after the date hereof, or (2) claims under the Licenses as they relate to the Property by the licensees named in the Licenses accruing on and after the date hereof.

This assignment is made and accepted without recourse against Assignor as to the performance by any party under such Licenses.

All exhibits attached to this Agreement are incorporated herein for all purposes.

Dated the ____ day of _____, 201__.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____

Title: _____

**JACKSON COUNTY,
a Missouri political subdivision**

By: [Signature]

Title: County Executive

EXHIBIT A TO EXHIBIT E

**LEGAL DESCRIPTION OF PROPERTY
TO BE ATTACHED**

EXHIBIT B TO EXHIBIT E

LIST OF LICENSES TO BE ASSIGNED

EXHIBIT F**CERTIFICATION OF NON-FOREIGN STATUS**

Under Section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform the transferee, JACKSON COUNTY, that no withholding is required with respect to the transfer of a U.S. real property interest by UNION PACIFIC RAILROAD COMPANY, the undersigned hereby certifies the following on behalf of UNION PACIFIC RAILROAD COMPANY:

1. UNION PACIFIC RAILROAD COMPANY is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. UNION PACIFIC RAILROAD COMPANY is not a disregarded entity as defined in Section 1.445.2(b)(2)(iii) of the Internal Revenue Code;
3. UNION PACIFIC RAILROAD COMPANY'S U.S. employer identification number is 94-6001323; and
4. UNION PACIFIC RAILROAD COMPANY'S office address is 1400 Douglas Street, Omaha, Nebraska 68179, and place of incorporation is Delaware.

UNION PACIFIC RAILROAD COMPANY agrees to inform the transferee if it becomes a foreign person at any time during the three-year period immediately following the date of this notice.

UNION PACIFIC RAILROAD COMPANY understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of UNION PACIFIC RAILROAD COMPANY.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Title: _____
Date: _____

COOPERATIVE AGREEMENT FOR
RIGHT-OF-WAY ACQUISITION FOR CONSTRUCTION OF
A TRAIL SYSTEM AND FUTURE RAIL LINE FOR COMMUTER SERVICE
AND OTHER PUBLIC TRANSPORTATION SYSTEMS
IN KANSAS CITY AND JACKSON COUNTY, MISSOURI

This Cooperative Agreement (the “**Agreement**”) is made and entered into as of the 5th day of January, 2016, by and between Jackson County, Missouri, a political subdivision of the State of Missouri (hereinafter sometimes referred to as the “**County**”), and the Kansas City Area Transportation Authority, a bi-state agency created under a compact between the States of Missouri and Kansas, and approved by the United States Congress (hereinafter referred to as the “**Authority**”).

WHEREAS, Sections 70.210 to 70.325 of the Revised Statutes of Missouri (“**RSMo**”) authorize a political subdivision to enter into cooperative agreements with duly authorized agencies of the State of Missouri or other states, for various purposes, including the planning, development, construction, acquisition or operation of any public improvement; and

WHEREAS, there currently exists in Jackson County a railroad corridor that extends 17.7 miles through the Cities of Kansas City, Missouri (“**Kansas City**”), Raytown, Missouri (“**Raytown**”), and Lee’s Summit, Missouri (“**Lee’s Summit**”), all within the geographic boundaries of Jackson County (the “**Existing Railroad Corridor**”); and

WHEREAS, Jackson County has a rich history with public transit that precedes its founding in 1826, and its early settlement and growth are directly tied to the development of transit and trails, including the historic crossing of the California, Oregon and Santa Fe Trails within its borders; and

WHEREAS, this tradition continued under the tutelage of Harry Truman who, as Presiding Judge of Jackson County, reinforced the commitment to invest in better and enhanced transportation and parks throughout Jackson County; and

WHEREAS, the mission of the Authority is to develop, provide, operate, manage and coordinate multi-modal public transit options and systems serving regional customers and constituencies in a safe, courteous, efficient and innovative manner; and

WHEREAS, the Authority is authorized to make capital investments in transportation facilities of the Authority; and

WHEREAS, the County and the Authority desire to form a regional partnership to enhance the condition, viability and use of the Existing Railroad Corridor within Jackson County and promote an historic regional transit opportunity while advancing the Authority’s vision and mission of creating a community connected by transit options for all; and

WHEREAS, this regional partnership between the County and the Authority continues and advances the vision and goals set by Harry Truman and Jackson County's founders with respect to the benefits of investing in transit and parks as a path to the enhancement of the quality of life of the residents of Jackson County and the broader region; and

WHEREAS, Union Pacific Railroad Company ("**Union Pacific**") currently owns the railroad rights-of-way along the Existing Railroad Corridor; and

WHEREAS, pursuant to this regional partnership, the County and the Authority desire that the County engage in the acquisition of Union Pacific's rights-of-way to a 17.7-mile stretch of the Existing Railroad Corridor, extending from mile post 288.3 to mile post 270.6 (the "**Union Pacific Rights-of-Way**"), with the County and the Authority thereafter undertaking the Trail Project and the Rock Island Multi-Modal Corridor Project (each as defined below); and

WHEREAS, the County has entered into a Memorandum of Understanding with Union Pacific to negotiate the acquisition by the County from Union Pacific of the Union Pacific Rights-of-Way (the "**Union Pacific MOU**"); and

WHEREAS, after the acquisition of the Union Pacific Rights-of-Way, the County intends to undertake a site clean-up (the "**Site Clean-Up**") and the construction of a multi-use bicycle and pedestrian trail (the "**Trail Project**"), preserving the Existing Railroad Corridor and developing a future shared commuter rail, alternative commuter-based transit systems, and other public transportation systems and trail use (the "**Rock Island Multi-Modal Corridor Project**"); and

WHEREAS, the Rock Island Multi-Modal Corridor Project is expected to link to Missouri's Katy trail and provide the nation with one of its most outstanding active transit corridors; and

WHEREAS, it is the intention of the parties to this Agreement that the Authority will have the primary role in undertaking efforts (with the support of the cities of Kansas City, Raytown and Lee's Summit) involving the planning and management of future construction and use of the Rock Island Multi-Modal Corridor Project, which future use is anticipated to consist of shared commuter rail and other public transportation systems trail use, providing the region with an historic opportunity to enhance multi-modal transit options; and

WHEREAS, the parties hereto anticipate that the Trail Project will provide significant benefits to the health, connectivity and safety of the residents of the County and the region by (i) repurposing an underutilized railroad corridor into a vibrant and productive multi-use bicycle and pedestrian trail, maximizing use of existing transportation infrastructure; (ii) ensuring that hundreds of acres of valuable transportation right-of-way will remain in a state of good repair for generations to come; (iii) permitting the County and the Authority to realize the full potential of the Rock Island Multi-Modal Corridor Project as an alternative to increasingly-congested vehicle roadways and serve as a catalyst for economic development and compact growth; (iv) connecting the Rock Island Multi-Modal Corridor Project to the Katy Trail, the State's statewide trail system, providing a significant piece in creating a singular trail connection between the cities of

Kansas City and St. Louis, which, when complete, could make the Katy Trail one of the longest rail trails in the country; (v) providing a free and sustainable transportation choice that will decrease transportation costs for households utilizing the Trail Project and connecting residents to schools, jobs, and other key services within walking distances of the Trail Project, including the Harry S. Truman Sports Complex in Kansas City, Jackson County, Missouri; and (vi) reducing vehicle miles traveled by more than 14 million, saving nearly 500,000 gallons of gasoline and reducing noxious emissions and particulate matter; and

WHEREAS, it is anticipated by the parties hereto that the costs of the Trail Project will be paid by several sources, including special purpose obligation bonds to be issued by the County in an aggregate amount not to exceed \$52,000,000 (the "**County Bonds**"); and

WHEREAS, the parties hereto intend that proceeds of the County Bonds will be used to finance the costs of the acquisition of the Union Pacific Rights-of-Way; and

WHEREAS, the parties hereto intend that each of the County and the Authority will be responsible for paying 50% of the principal of and interest on the County Bonds; and

WHEREAS, the parties hereto intend to cooperate fully for the purpose of funding future projects (including commuter rail and other public transportation systems) along the Union Pacific Rights-of-Way; and

WHEREAS, any terms of participation by the parties hereto in the Trail Project and the Multi-Modal Corridor Project not covered in this Agreement will be established and defined in one or more formal agreements to be negotiated reasonably and in good faith and executed by the parties hereto subsequent to the date of execution of this Agreement.

NOW THEREFORE, in consideration of the several promises to be faithfully performed by the parties hereto as set forth, the County and the Authority do hereby agree as follows:

Section 1 DEFINITIONS

In addition to other definitions set forth in this Agreement, the terms set out below as used in this Agreement shall have the following meanings:

- (a) "**Act**" – Sections 70.210 to 70.325 of the Revised Statutes of Missouri.
- (b) "**Authority**" – the Kansas City Area Transportation Authority, a bi-state agency created under a compact between the States of Missouri and Kansas, and approved by the United States Congress.
- (c) "**County**" – Jackson County, Missouri, a political subdivision of the State of Missouri.
- (d) "**County Bonds**" – Special purpose obligation bonds to be issued by the County in an aggregate amount not to exceed \$52,000,000, the proceeds of which will pay the costs of

the acquisition of the Union Pacific Rights-of-Way and related costs of the County and the Authority of issuing the County Bonds.

(e) **“Existing Railroad Corridor”** – An approximately 18-mile stretch of railroad right-of-way that runs through the cities of Kansas City, Missouri, Raytown, Missouri and Lee’s Summit, Missouri.

(f) **“Projects”** – The Trail Project and the Rock Island Multi-Modal Corridor Project.

(g) **“Rock Island Multi-Modal Corridor Project”** – The Existing Railroad Corridor after conversion to shared commuter rail and/or other public transportation systems and trail use.

(h) **“ROW Maintenance and Management Program”** – The program defined in Section 3.3 hereof.

(i) **“RSMo”** – Missouri Revised Statutes.

(j) **“Site Clean-Up”** – Removal of debris, brush, hazards and other environmental conditions.

(k) **“State”** – The State of Missouri.

(l) **“Trail”** – The multi-use bicycle and pedestrian trail to be constructed by the Trail Project.

(m) **“Trail Project”** – The Trail Project defined in Section 2 hereto.

(n) **“Trail Project Cost”** – The cost of the Trail Project defined in Section 3.1 and Exhibit C hereto.

(o) **“Union Pacific”** – The Union Pacific Railroad Company.

(p) **“Union Pacific MOW”** – The Memorandum of Understanding dated November 12, 2013 between the County and Union Pacific.

(q) **“Union Pacific Rights-of-Way”** – The 17.7-mile portion of the Existing Railroad Corridor that runs from mile post 288.3 to mile post 270.6.

(r) **“U.S.C.”** – United States Code.

Section 2 TRAIL PROJECT AND ROCK ISLAND MULTI-MODAL CORRIDOR PROJECT DESCRIPTIONS

2.1 The Trail Project consists of the following:

(a) The acquisition by the County of the Union Pacific Rights-of-Way (maps indicating the location and direction of the Union Pacific Rights-of-Way are attached hereto as **Exhibit A**);

(b) After acquisition of the Union Pacific Rights-of-Way, the undertaking by the County of the Site Clean-Up; and

(c) The construction by the County of a multi-use bicycle and pedestrian trail.

A comprehensive description of the Trail Project and the future uses and benefits to the County of the Rock Island Multi-Modal Corridor Project are attached hereto as **Exhibit B**.

2.2 The foregoing Trail Project will be designed to preserve the Rock Island Multi-Modal Corridor Project for future creation and construction by the County and the Authority of a shared multi-modal corridor for commuter rail and/or other public transportation systems and trail use. In order to preserve and protect the Rock Island Multi-Modal Corridor Project, the County agrees to use its reasonable best efforts to protect and defend against any challenge to the title of the Union Pacific Rights-of-Way. In addition, the County and the Authority agree to reasonably cooperate in furtherance of the development of the Rock Island Multi-Modal Corridor Project, including through the creation of a Transportation Development District ("**TDD**") or other mechanism to finance the Rock Island Multi-Modal Corridor Project.

2.3 The County and the Authority agree to reasonably cooperate to pursue and develop economic opportunities as part of the Trail Project and to enhance the future transit, rail and other public transportation infrastructure as part of the Rock Island Multi-Modal Corridor Project.

Section 3 COSTS OF PROJECTS AND SOURCES OF FUNDING; MAINTENANCE/MANAGEMENT BY AUTHORITY

3.1 The currently estimated capital cost for the acquisition of the Union Pacific Rights-of-Way and construction of the Trail Project is \$66.3 million (the "**Trail Project Cost**"). The Authority shall have no obligation to reimburse or repay the County for the Trail Project Cost, other than the Authority Debt Service Payments, as hereinafter defined. A current budget for the Trail Project Cost is attached hereto as **Exhibit C**.

3.2 The County expects to fund the Trail Project Cost from several sources. A breakdown of the anticipated sources and uses of funds for the Trail Project is attached hereto as **Exhibit D**.

3.3 In an agreement to be reasonably and in good faith negotiated and executed as soon as reasonably possible subsequent to the date of execution of this Agreement (the "**ROW Maintenance and Management Program Agreement**"), the County and the Authority will develop an interim business plan to fund the management, maintenance and operation of the Trail Project and the Union Pacific Rights-of-Way (the "**ROW Maintenance and Management Program**") that will include details on items including: (a) the intent of the Parties that the

County and the Authority will share equally in lease, license, easement and right-of-way area use and development income; (b) securing and managing private and public contributions and grants; (c) provision of annual funding for maintenance and management which will include, but may not be limited to, public funding from the County and/or other jurisdictions and/or of in-kind maintenance services; and (d) the intent of the Parties that the Authority will provide administrative and support services for the ROW Maintenance and Management Program.

Section 4 AUTHORITY ROLE FURTHER DEFINED

4.1 Pursuant to this Agreement, the Authority is partnering with the County to undertake the Trail Project.

4.2 As part of its obligations under this Agreement, subject to annual appropriation in accordance with law, the Authority shall contribute funds each year to pay fifty (50%) percent of the annual debt service on the County Bonds, as described in Section 5.3.

4.3 Further pursuant to this Agreement, the Authority is partnering with the County in the management, operation and maintenance of the Trail Project.

4.4 With the support of the cities of Kansas City, Raytown and Lee's Summit, the Authority will exercise reasonable best efforts to lead the planning for the creation and use of the Rock Island Multi-Modal Corridor Project.

4.5 The Authority also shall have the first option right to own, manage and operate the Rock Island Multi-Modal Corridor Project when it is developed.

4.6 The full rights and obligations of the County and the Authority with respect to the management and operation of the Rock Island Multi-Modal Corridor Project will be set forth, either pursuant to amendments to the ROW Maintenance and Management Program Agreement or in a separate agreement to be negotiated reasonably and in good faith and executed by the County and the Authority subsequent to the date of execution of this Agreement, whichever format is selected by the County and the Authority at the time.

4.7 The Authority shall, as of the date of the County's acquisition of the Existing Railroad Corridor, have such other rights and obligations with respect to the Existing Railroad Corridor and the Projects including, but not limited to, rights to reasonably approve the implementation aspects of the Trail Project and complete development rights for related economic development projects and the revenue generated therefrom. In addition, the Authority shall have the right to include in an amended ROW Maintenance and Management Program Agreement or new agreement to which the Authority is a party – which revised or new agreement will relate to and implement the Authority's role with respect to the Projects – all necessary and reasonable terms relating to the Authority's role with respect to the Projects. Such revised or new agreement shall set forth the full rights and obligations of each of the parties thereto.

4.8 After it has been established pursuant to a revised or new agreement executed subsequent to the date of execution of this Agreement, the Authority will operate and manage the ROW Maintenance and Management Program in a manner that is customary for such industry and that is reasonably satisfactory to the parties hereto.

Section 5 COUNTY BONDS AND PAYMENT OF DEBT SERVICE THEREON

5.1 The County and the Authority anticipate that the County will issue the County Bonds in an aggregate amount not to exceed \$52,000,000, the proceeds of which will be used as described in Exhibit D hereto, in order to pay the acquisition cost of the Union Pacific Rights-of-Way.

5.2 Provided that all conditions precedent then applicable hereunder are satisfied and this Agreement is otherwise in full force and effect, the County and the Authority agree that each shall be responsible for payment of fifty (50%) percent of the principal of and interest on the County Bonds.

5.3 The County shall initially pay the entire annual amount of principal and interest on the County Bonds. Thereafter, the Authority will reimburse the County in amounts sufficient to cover the Authority's 50% share of payment of principal of and interest on the County Bonds described in section 5.2 (the "**Authority Debt Service Payments**"). The Authority Debt Service Payments shall be made by the Authority to the County within thirty (30) days after the Authority has received from the County a statement showing that the County has paid the full amount of the annual debt service on the County Bonds.

5.4 The anticipated terms of the County Bonds are set forth in **Exhibit E** hereto.

Section 6 COOPERATION OF PARTIES WITH CITIES IN JACKSON COUNTY

6.1 The County and the Authority agree to work reasonably and in good faith to the extent funding is available with the Jackson County cities of Kansas City, Raytown and Lee's Summit to establish amenities for such cities' future transportation improvements.

6.2 The County and the Authority agree to cooperate reasonably and in good faith to the extent funding is available with the city of Kansas City, Missouri, to establish a commuter route connecting the termination point of the Union Pacific Rights-of-Way to the River Market in Kansas City, Missouri.

Section 7 TERM OF AGREEMENT

7.1 The term of this Agreement shall begin on the date this Agreement has been executed by both the County and the Authority and shall end, if at all, as provided in Section 7.2.

7.2 Prior to issuance of the County Bonds, either party may terminate this Agreement for any reason, or no reason, after providing at least thirty (30) days' notice in writing to the other party.

7.3 If this Agreement has been terminated, as provided in Section 7.2, it may be reinstated, at any time, with the consent of both parties, in their sole discretions.

Section 8 AUTHORITY PURCHASE OPTION RIGHT

8.1 In consideration of the stated cooperation and partnership between the County and the Authority and the Authority's Debt Service Payments to the County made prior to the exercise of the Authority Purchase Option Right, as defined below, the County hereby grants to Authority, or to a mutually agreeable third party formed or controlled by the Authority (such as a TDD under RSMo Chapter 238), an exclusive option to purchase the Union Pacific Rights-of-Way or necessary portions thereof, but specifically excluding the Trail (as defined in Section 1(l)), in order for the Authority to construct, own and operate the Rock Island Multi-Modal Corridor Project (the "**Authority Purchase Option Right**"). The Authority Purchase Option Right shall commence at the date of this Agreement.

8.2 The Authority Purchase Option Right may be exercised at any time by the Authority upon the Authority's giving County a written notice in accordance with Section 9 below. Prior to providing such notice, the Authority shall be entitled to inspect the Union Pacific Rights-of-Way, and to conduct standard due diligence studies that, in the reasonable discretion of the Authority are required, such as title and environmental investigations.

8.3 In the event that the Authority exercises the Authority Purchase Option Right while the County Bonds are outstanding, the Authority must provide financing satisfactory to the County to take over payment of and/or refinance the existing County Bonds. In the event of the exercise of the Authority Purchase Option Right, as soon as reasonably possible thereafter, the parties shall, for the same consideration stated in Section 8.1, enter into a standard Commercial Real Estate Contract of the type used in Jackson County which will be prepared by the Authority and reasonably approved by the County, which conveys all title and interest of the County in the Union Pacific Rights-of-Way to the Authority and warranting that title to the Union Pacific Rights-of-Way, or portions thereof, are free and clear from any encumbrance done or suffered by the County during the County's period of ownership and that County will warrant and defend its title to said Union Pacific Rights-of-Way unto the Authority. Title insurance shall not be required, but the Authority must be reasonably satisfied by its due diligence with respect to the title that the County will convey. Said Authority Purchase Option Right shall be further defined in the ROW Maintenance and Management Program Agreement and/or the Rock Island Multi-Modal Corridor Project Management Agreement.

Section 9 NOTICES

Notices hereunder shall be sufficient if delivered to:

(a) County:

Stephen Nixon, County Counselor
Jackson County Courthouse

415 E. 12th Street, Suite 200
Kansas City, MO 64106

With a copy to:

Calvin Williford, Executive Director
Rock Island Rail Corridor Authority
22501 Woods Chapel Road
Blue Springs, MO 64015

(b) Authority:

Kansas City Area Transportation Authority
Attention: Chief Executive Officer
1200 E. 18th Street
Kansas City, MO 64108

With a copy to:

Jerry Riffel, Esq.
Lathrop & Gage LLP
2345 Grand Blvd., Suite 2400
Kansas City, Mo 64108

Section 10 FURTHER ACTIONS AND CONTINGENCIES

10.1 This Agreement is intended as a basis for the reasonable and good faith negotiation, preparation and approval of one or more subsequent agreements between the County and the Authority including those specifically described herein.

10.2 This Agreement and all future agreements are subject to and contingent upon the following events occurring prior to the acquisition of the Union Pacific Rights-of-Way by the County:

- (a) execution by the County of a final agreement with Union Pacific for the acquisition by the County of the Union Pacific Rights-of-Way;
- (b) issuance by the County of the County Bonds, subject to all applicable public proceedings and approvals;
- (c) the representation and warranty of the County and receipt by Authority of an opinion letter from County's counsel stating that the corridor remains under Federal Surface Transportation Board (STB) authority, which may include the Rails-to-Trails Program (16 U.S.C. §1241 et seq.), or other federal regulation protecting future transit rights in the Union Pacific Rights-of-Way; and

(d) The Authority being satisfied, in the Authority's sole discretion, with the state of existing title on the Union Pacific Rights-of-Way within seventy-five (75) days of the date on which the County and Union Pacific have executed a purchase agreement for the Union Pacific Rights-of-Way (the "Union Pacific Purchase Agreement") and a copy has been delivered to the Authority (the "Title Review Period"), it being understood that the County anticipates closing on the County Bonds within one hundred and twenty (120) days after execution of the Union Pacific Purchase Agreement. County will not close on the County Bonds during the Title Review Period.

(e) The Authority may engage a title company or other title entity to conduct a title search and survey of the Union Pacific Rights-of-Way to identify potential encroachments or title conditions that could impede future development as part of the Rock Island Multi-Modal Corridor Project, and review the source deeds for the Union Pacific Rights-of-Way. The County agrees to cooperate with the Authority during the Title Review Period by providing copies of all documents relating to title and working with the Authority and title company.

(f) If the Authority is unable to satisfy itself with the state of such existing title within such timeframe, it will so notify the County of such fact prior to the issuance of the County Bonds.

10.3 Each party such use its reasonable and good faith efforts to cause the events or contingencies described in Section 10.2 for which such party is responsible to occur as soon as reasonably possible.

Section 11 CHOICE OF LAW

This Agreement is made in the State of Missouri under the Constitution and laws of such State and is to be so construed.

Section 12 SEVERABILITY

Should any part, term, portion or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to continue to constitute substantially the agreement that the parties intended to enter into in the first instance.

Section 13 AMENDMENT

No amendment to this Agreement shall be effective unless it is in writing and signed by both the County and the Authority.

Section 14 AUTHORIZATION

14.1 The undersigned signatory on behalf to the County hereby represents that [he/she] has been authorized by the County to execute this Agreement in the name of, and on behalf of, the County.

14.2 The undersigned signatory on behalf of the Authority hereby represents that [he/she] has been authorized by the Authority to execute this Agreement in the name of, and on behalf of, the Authority.

14.3 Upon request by the other party, each party shall provide evidence of the authority described in Sections 14.1 or 14.2 above, as the case may be, in customary form.

Section 15 ASSIGNMENT

No party to this Agreement may transfer or assign this Agreement, except with the written consent of the other party in its sole discretion.

[Remainder of page intentionally left blank]

Section 16 SUCCESSORS

This Agreement shall be binding upon and shall inure to the benefit of the successors, legal representatives and permitted assigns of the parties.

IN WITNESS WHEREOF, the parties have hereunto set their respective hands as of the day and year first written above.

JACKSON COUNTY, MISSOURI

By: 

Name: Mike Sanders

Title: County Executive

**KANSAS CITY AREA TRANSPORTATION
AUTHORITY**

By: 

Name: Joe Reardon

Title: President / CEO

List of Exhibits

Exhibit A – Maps of Union Pacific Rights-of-Way

Exhibit B – Project Descriptions

Exhibit C – Budget for Trail Project Cost

Exhibit D – Financing Sources for Trail Project

Exhibit E – Anticipated Use of Proceeds and Terms of County Bonds

Exhibit A

Maps of Union Pacific Rights-of-Way

[To be inserted before execution of Agreement]

Exhibit B

Project Descriptions

**[These Descriptions are Preliminary
and will be expanded and supplemented
as reasonably agreed to by the Parties
from time to time]**

Trail Project

The Trail Project involves the acquisition from Union Pacific of the Union Pacific Rights-of-Way, a nearly 18-mile stretch of an underutilized railroad corridor that stretches through the cities of Kansas City, Raytown and Lee's Summit, in Jackson County, Missouri (the "Existing Corridor"). Pursuant to the Trail Project, the Existing Corridor will be cleaned up and repaired for use as a multi-use bicycle and pedestrian trail.

The Trail Project will provide significant benefits to the health, connectivity and safety of the residents of Jackson County and the region by curbing further deterioration of the Existing Corridor, repurposing it into a vibrant and productive multi-use bicycle and pedestrian trail, maximizing use of existing transportation infrastructure and ensuring that the hundreds of acres of valuable transportation rights-of-way will remain in a state of good repair for generations to come.

Rock Island Multi-Modal Corridor Project

The Rock Island Multi-Modal Corridor Project will involve creation of a multi-modal corridor, with use shared by both rail and trail (the "Multi-Modal Corridor"), and permit the full realization of the potential of the Multi-Modal Corridor as alternative to increasingly-congested vehicle roadways and a catalyst for economic development and compact growth. It will connect the Multi-Modal Corridor to the Katy Trail, the State of Missouri's statewide trail system, providing a significant piece in creating a singular trail connection between the cities of Kansas City and St. Louis, which, when complete, could make the Katy Trail one of the longest rail trails in the country.

The Projects will provide a sustainable transportation choice that will decrease transportation costs for households utilizing the Projects and connecting residents to schools, jobs, and other key services within walking distances of the Projects, including the Harry S. Truman Sports Complex in Kansas City, Jackson County, Missouri.

Exhibit C

Budget for Trail Project Cost

Rock Island Trail Preliminary Construction Cost Estimate

All numbers are preliminary and subject to change

Work	Size	Cost per Unit	Total Cost	
Cleaning and Grubbing	60 Acres	\$40,000	\$ 2,400,000	
Earthwork	138,520 cub. yds	4	554,080	
Drainage	2,840 Lin. Ft.	200	568,000	
Trail Paving (Limestone)			1,122,012	
Ornamental Fence	37,400 Lin. Ft.	45	1,683,000	
10' Chain-Link Fence	37,400 Lin. Ft.	25	935,000	
RR Bridges	19,040 Sq. Ft.	150	2,856,000	
At-grade crossings	13 Each	40,000	520,000	
At-grade crossings Protection (signs)	13 Each	10,000	130,000	
Track Removal & Disposal	1,870 TF	45	84,150	
Misc. Items	1 LS	30%	4,165,800	
Professional fees	1 LS	5%	<u>902,600</u>	
TOTALS			\$15,920,642	

Exhibit D

Financing Sources for Trail Project

[All figures are preliminary and subject to change]

Acquisition	\$	50,367,208	Bonds	\$	50,367,208
Construction	\$	15,920,642	Local Match, Surface Transportation Program Funds and Other Funds	\$	15,920,642
Total Uses	\$	66,287,850	Total Project Investment	\$	66,287,850

Exhibit E

Anticipated Use of Proceeds and Terms of County Bonds

Use of Proceeds

All proceeds of County Bonds expected to be used (i) to acquire from Union Pacific, the Union Pacific Rights-of-Way and (ii) to pay costs incurred by the County and the Authority related to issuance of the County Bonds.

Terms

[All terms are preliminary, subject to change]

Par Amount	Not to exceed \$52,000,000
Dated Date:	January 1, 2016
First Interest Payment Date:	July 1, 2016
First Principal Payment Date:	January 1, 2017
Final Maturity Date:	January 1, 2046

ROCK ISLAND
MAINTENANCE AND MANAGEMENT PROGRAM AGREEMENT

THIS MAINTENANCE AND MANAGEMENT PROGRAM AGREEMENT (the “**Agreement**”) is made as of the 22nd day of February, 2017, (the “**Effective Date**”) by and between Jackson County, Missouri, a political subdivision of the State of Missouri (the “**County**”) and the Kansas City Area Transportation Authority, a bi-state agency created under a compact between the States of Missouri and Kansas, and approved by the United States Congress (the “**KCATA**”).

Recitals

WHEREAS, the KCATA was created by Mo. Rev. Stat. 238.010 as a public agency and political subdivision of the State of Missouri to plan, own, operate, and manage public transportation systems and facilities in the Kansas City Transportation District, which includes the Missouri counties of Cass, Clay, Jackson and Platte;

WHEREAS, the County and the Union Pacific Railroad (“**UP**”) signed an agreement for the acquisition by the County of approximately 17.7 miles of the former Rock Island Railroad Corridor in Jackson County, Missouri (the “**Railroad Corridor**”);

WHEREAS, the County and KCATA entered into the Cooperative Agreement for Right-of-Way Acquisition for Construction of a Trail System and Future Rail Line for Commuter Service and Other Public Transportation Systems in Kansas City and Jackson County, Missouri dated January 5, 2016 (the “**Cooperative Agreement**”);

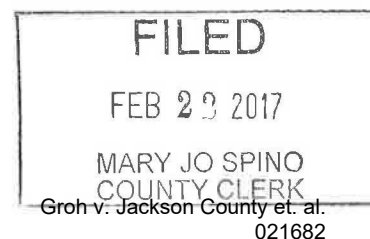
WHEREAS, through the Cooperative Agreement, County and KCATA formed a regional partnership to enhance the condition, viability and use of the Railroad Corridor and promote an historic regional transit opportunity while advancing the County’s vision and KCATA’s transit options;

WHEREAS, the County acquired the Railroad Corridor from UP on May 2, 2016;

WHEREAS, the County is the fee owner of the Railroad Corridor and a “common carrier” under 49 U.S.C. 11101 subject to the jurisdiction of the Surface Transportation Board;

WHEREAS, the County will undertake the removal of debris, brush, hazards and other environmental conditions from the Railroad Corridor and construct a multi-use bicycle and pedestrian shared use path (the “**Shared Use Path Project**”);

WHEREAS, the County has agreed to preserve and maintain the Railroad Corridor in accordance with the hierarchy pyramid attached hereto as Exhibit A and KCATA may develop a future shared commuter rail system, alternative commuter-based transit system and other public transportation systems and uses (the “**Multi-Modal Project**”);



WHEREAS, the planning and design of the Railroad Corridor will focus on preservation of the national rail network corridor's integrity while developing multi-modal transportation options including the Shared Use Path Project and Multi-Modal Project.

WHEREAS, in order to fund the acquisition of the Railroad Corridor and related initial projects, the County issued its special purpose obligation bonds in an aggregate principal amount of \$51,950,000 (the "**County Bonds**");

WHEREAS, the KCATA has agreed to reimburse the County for KCATA's fifty-percent (50%) share of the principal of and interest on the County Bonds paid by the County;

WHEREAS, the County anticipates constructing the Shared Use Path Project through a variety of sources and the KCATA does not have an obligation to fund the Shared Use Path Project;

WHEREAS, the County and KCATA desire to operate both the Shared Use Path Project and Multi-Modal Project in a self-sustaining manner;

WHEREAS, the Cooperative Agreement provides that the KCATA shall have the primary role in undertaking efforts involving the planning and management of future construction and use of the Railroad Corridor for the Multi-Modal Project;

WHEREAS, under Section 6.2 of the Cooperative Agreement, the County and KCATA agreed to cooperate reasonably and in good faith to establish a commuter route connecting the termination point of the Railroad Corridor to Downtown Kansas City, Missouri, which may include a connection to the River Market area of Kansas City;

WHEREAS, under Section 2.3 of the Cooperative Agreement, the County and the KCATA agreed to reasonably cooperate to pursue and develop economic opportunities as part of the Shared Use Path Project and to enhance future transit, rail and other public transportation infrastructure as part of the Multi-Modal Project;

WHEREAS, under Section 3.3 of the Cooperative Agreement, the County and the KCATA agreed to execute this Maintenance and Management Agreement and develop an interim business plan to fund the management, maintenance and operation of the Shared Use Path Project and the Multi-Modal Project;

WHEREAS, the County has created the Rock Island Rail Corridor Authority ("**RIRCA**") as a department of the County to administer the day-to-day servicing, maintenance and management of the Shared Use Path Project and Railroad Corridor;

WHEREAS, RIRCA may be established as a separate and distinct entity after the execution of this Agreement with the mutual agreement of the parties;

WHEREAS, the parties wish to set forth in this Agreement the respective rights and obligations of the County and the KCATA with respect to the management, maintenance and operation of the Shared Use Path Project and the Multi-Modal Project;

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

ARTICLE I

BASIC TERMS

1.1. Incorporation of Recitals

The above recitals are true and correct and are hereby incorporated and made a part of this Agreement as if fully set forth.

1.2 Purpose

The purpose of this Agreement is to provide for: (i) the operation, servicing, management and maintenance of the Shared Use Path Project and Railroad Corridor by the County; and (ii) the management, maintenance and operation of the Multi-Modal Project by KCATA. A hierarchy pyramid showing the priority and implementation of (i) freight; (ii) transit; and (iii) the Shared Use Path is attached hereto as Exhibit A. An outline showing the responsibilities of each of the parties is attached hereto as Exhibit B.

1.3. Railroad Corridor Management

The County and KCATA hereby agree that the County will be the manager for the servicing, management, operation and maintenance of the Shared Use Path Project and Railroad Corridor, and that the County shall preserve and maintain the Railroad Corridor in accordance with the hierarchy pyramid attached hereto as Exhibit A. The parties hereby appoint KCATA as the manager for the planning, design, development, operation, management and maintenance of the Multi-Modal Project. The Shared Use Path Project and the Multi-Modal Project are collectively referred to as the **"Projects"**. The County and KCATA shall be such managers as of the Commencement Date, as hereinafter defined, for the Term of this Agreement. The County hereby authorizes the KCATA to exercise such powers and take such actions with respect to the Multi-Modal Project and the Railroad Corridor as may be necessary for the performance of its obligations under this Agreement. KCATA hereby accepts its appointment on the terms and conditions hereinafter set forth.

The parties hereby acknowledge and agree that the County shall be responsible for the costs of management, security and maintenance of the Railroad Corridor for the five (5) years following the Commencement Date of this Agreement (the **"Initial Period"**). Upon the start of

construction of the Multi-Modal Project or any phase thereof, KCATA will be responsible for the management, security and maintenance of that length of the Railroad Corridor used by the Multi-Modal Project or applicable phase. The County will remain responsible for the management, maintenance and security of freight railroad activities that are independent of the Multi-Modal Project and the management, maintenance and security of the Shared Use Path, including portions of the Shared Use Path within the area of the Railroad Corridor used by the Multi-Modal Project. Similarly, if KCATA implements a transit oriented development project using portions of the Railroad Corridor, KCATA will be responsible for the management, maintenance and security of those portions of the Railroad Corridor that are impacted by the transit oriented development project.

In furtherance of the ultimate vision and intent of the parties that the Railroad Corridor be operated in a self-sustaining manner, during such Initial Period the parties shall: (i) review and analyze the costs and expenses associated with the ongoing management, security and maintenance of the Railroad Corridor; (ii) develop and pursue revenue generation through leases, licenses, easements and other agreements related to the property located over, on, across or adjacent to the Railroad Corridor, as further described in Section 4.3 herein; (iii) pursue and solicit potential cost-sharing, in-kind contributions and other involvement from local jurisdictions around the Railroad Corridor; (iv) develop and pursue revenue generation through transit oriented development projects, as will be further agreed to by the parties pursuant to Section 1.8; and (v) pursue value capture mechanisms as described in Section 3.4.

Three (3) years after the Commencement Date of this Agreement, the parties agree to meet in order to review the costs and expenses associated with the management, security and maintenance of the Railroad Corridor. At the end of the Initial Period, if funding from items (i)-(v) above does not generate sufficient funds to cover the costs of management, security and maintenance of the Railroad Corridor, the parties agree to set forth in an amendment to this Agreement or a separate agreement to be reasonably and in good faith negotiated and executed, an alternative funding plan and the method and manner by which the costs and expenses associated with the management, security and maintenance of the Railroad Corridor will be divided between the parties.

1.4 Term

The term of this Agreement shall commence on January 1, 2017 (the “**Commencement Date**”) and, unless earlier terminated as provided in Section 8.3 herein, shall continue for the longer of (i) the term of the County Bonds; or (ii) twenty-five (25) years (the “**Term**”).

1.5 Party Liaison; Joint Rock Island Committee

Each of the County and KCATA shall appoint a representative to be the party’s contact for decisions relating to the services to be performed under this Agreement. Initially, County’s representative shall be _____, and KCATA’s representative shall be _____. Any party may change its representative by providing notice to the other parties, as provided in Section 9.5 of this Agreement. The two (2) respective liaisons shall constitute the “**Joint Rock Island Committee**.” In the event that RIRCA is formed as a separate

entity, RIRCA shall also appoint a representative, resulting in three (3) liaisons constituting the Joint Rock Island Committee. The Joint Rock Island Committee shall be a governing committee and information sharing body, designed to coordinate the long term vision for the Projects and the Railroad Corridor, review plans and specifications to ensure that construction of the Shared Use Path positively impacts future transit and transportation goals, coordinate grants and to address other goals on a collaborative basis for the period prior to the establishment of RIRCA as a separate entity. The Joint Rock Island Committee shall abide by the guiding principle of focusing on the County's common carrier status and the integrity of the Railroad Corridor to protect the investment being made by the County and the KCATA.

1.6 RIRCA Governing Structure

The County and KCATA hereby acknowledge and agree that RIRCA is a department of the County. In order for RIRCA to be formed as a separate and distinct entity, both the County and KCATA must affirmatively agree, in writing, to such formation. The parties acknowledge and agree that an amendment to this Agreement or a separate agreement may be necessary upon the establishment of RIRCA as a separate entity in order to transition certain rights and obligations to RIRCA, and the parties agree to negotiate and execute such agreement or amendment reasonably and in good faith as soon as reasonably possible after the establishment of RIRCA as a separate entity.

Once established as a separate and distinct entity, RIRCA shall be governed by a seven (7) member Board of Directors, with three (3) such directors appointed by the County and three (3) such directors appointed by the KCATA. Only the six (6) members appointed by the County and the KCATA shall vote. In the event of a tie, the seventh (7th) member shall cast the tie-breaking vote. The appointment of the seventh director shall rotate between the County and KCATA every three (3) years. For example, the first such appointment shall be made by the County, and the second such appointment shall be made by the KCATA.

1.7 Construction and Operation of Shared Use Path Project

(a) Construction of Shared Use Path Project:

The County shall be solely responsible for the development and construction of the Shared Use Path Project. Pursuant to Section 3.1 of the Cooperative Agreement, KCATA shall have no obligation to reimburse or repay the County for any costs related to the construction of the Shared Use Path Project. The County shall provide KCATA with plans and specifications for the construction of the Shared Use Path Project prior to initiating construction of any portion of the Shared Use Path Project. KCATA shall in good faith review such plans and specifications in accordance with the County's Shared Use Path Project schedule to determine if the current plans interfere with or impede long term transit and transportation goals of KCATA for the Railroad Corridor. Within thirty (30) days of being provided such plans and specifications, KCATA shall either approve such plans and specifications, in writing, or shall advise the County of the necessary changes to the plans and specifications to accommodate long term transit and transportation goals. Within thirty (30) days after being provided the necessary changes, the County shall submit revised plans and specifications to KCATA. Such process shall continue

until the parties agree on the plans and specifications for construction of the Shared Use Path Project.

(b) Operation of the Shared Use Pathway Project:

The ongoing operation and security of the Shared Use Path Project shall be conducted by the County.

1.8 Transit Oriented Development Agreement

In an agreement to be reasonably and in good faith negotiated and executed as soon as reasonably possible subsequent to the date of the execution of this Agreement (the “**TOD Agreement**”), the County and KCATA will develop a business plan for the development and construction of both development projects and transit oriented development projects on or adjacent to the Railroad Corridor.

ARTICLE II

SHARED USE PATH PROJECT

2.1 General Duties and Services

The County shall use diligent efforts to manage, maintain and operate the Shared Use Path Project and Railroad Corridor consistent with the County Work Plan and Rock Island Budget, as such terms are hereinafter defined, and subject to the reasonable oversight and input of the Joint Rock Island Committee. General duties and services shall include, but not be limited to, (i) the procurement of goods for the servicing, management and maintenance of the Shared Use Path and Railroad Corridor; (ii) the negotiation and execution of contracts with vendors for the management, repair, servicing and maintenance of the Shared Use Path Project and Railroad Corridor; and (iii) the purchase of supplies and materials reasonably necessary or desirable for the servicing, management and maintenance of the Shared Use Path Project and Railroad Corridor.

2.2 Maintenance and Repairs

The responsibility for the ordinary maintenance, repairs, alterations, replacements and installations and purchase of supplies necessary for the operation of the Shared Use Path Project and the upkeep of the Railroad Corridor shall be with the County. All repairs, alterations and replacements shall be of at least equal quality and workmanship to the original work.

2.3 Technology Management; Security

The County will assume primary support and maintenance for software or technology used for the Shared Use Path Project. Security systems and security staffing, including video surveillance, security officers, and Railroad Corridor access, will be paid for and managed by the

County. The Joint Rock Island Committee will provide input to the County on security levels and access.

2.4 Other Responsibilities

As reflected in Section 2.2 of the Cooperative Agreement, the County agrees to use its reasonable best efforts to protect and defend against challenges to the title of the Railroad Corridor. In the event of unanticipated litigation challenging County's title to the Railroad Corridor, environmental claims, environmental remediation or other unanticipated lawsuits or third party expenses, County, as the fee owner of the Railroad Corridor, would remain responsible for the payment of these expenses.

2.5 Insurance

Regarding only that portion of the Railroad Corridor dedicated to the Shared Use Path Project, the County shall carry and maintain in force for the duration of this Agreement insurance coverage, underwritten by insurer(s) lawfully authorized to write insurance in the State of Missouri, of the minimum types and limits set forth below. At its option, the County may choose to satisfy any claims or judgments for which it is liable out of the County's Self-Insurance Fund, established under section 526 of the County Code.

(a) Commercial General Liability. \$2,000,000 combined single limit, for bodily injury, personal injury and property damage liability per occurrence and \$2,000,000 general aggregate.

(b) Workers' Compensation and Employer's Liability. Worker's compensation as required by statute, including Employer's Liability with limits of \$100,000 each accident, \$500,000 disease-policy limit, and \$100,000 disease each employee.

(c) Commercial Automobile Liability. \$2,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form or acceptable equivalent and will protect against claims arising out of the operation of motor vehicles.

Regarding all other portions of the Railroad Corridor, the County shall also have this same obligation regarding insurance for the Initial Period. Upon the start of construction of the Multi-Modal Project or any phase thereof, KCATA will be responsible for carrying insurance on that length of the Railroad Corridor used by the Multi-Modal Project or applicable phase. At the end of the Initial period, the parties agree to set forth in an amendment to this Agreement or a separate agreement to be reasonably and in good faith negotiated and executed, a plan and the method and manner by which the costs and expenses associated with insuring the Railroad Corridor will be divided between the parties. Such plan may take into consideration the fact that both County and KCATA may be required to maintain insurance for certain portions of the Railroad Corridor.

The party with the obligation to provide insurance or self-insurance pursuant to this section shall ensure that the other party is listed as a named insured on any applicable policies of insurance or, in the event self-insurance is substituted, will defend, indemnify, and hold harmless the other party and its agents, agencies, officers, and employees from any claims arising out of the ownership, occupancy, and/or operation of the Railroad Corridor, with the exception of claims arising out of the negligence of the indemnified party or its agents, agencies, officers, or employees.

2.6 Funding

The County shall be responsible for the costs and expenses relating to the construction, servicing, management and maintenance of the Shared Use Path Project and Railroad Corridor and may seek funding from other sources including but not limited to grants, partnerships, value capture, right-of-way area income and in-kind contributions.

ARTICLE III

MULTI-MODAL PROJECT

3.1 General Duties and Services

The KCATA shall use diligent efforts to plan, design, develop, manage, maintain and operate the Multi-Modal Project, consistent with the KCATA Work Plan and KCATA Budget (as hereinafter defined). General duties and services shall include, but not be limited to, (i) the procurement of goods relating to the planning, development and day-to-day operations of the Multi-Modal Project and any transit or transportation systems; (ii) negotiation and execution of contracts with third party vendors for the planning, development, design, operation, repair, maintenance and servicing of the Multi-Modal Project and any transit or transportation systems; (iii) the purchase of equipment and materials necessary or desirable for the planning, design, development, management and maintenance of the Multi-Modal Project and any transit or transportation systems; and (iv); security of the transit system(s). The KCATA shall provide the County with plans and specifications for construction of the Multi-Modal Project prior to initiating construction of any portion of the Multi-Modal Project. The County shall in good faith review such plans and specifications in accordance with the KCATA's Multi-Modal Project schedule to determine the plans' compatibility with the Shared Use Path Project and or the integrity of the Railroad Corridor.

3.2 Maintenance and Repairs

Subject to the KCATA Budget, KCATA shall perform, or cause to be performed, all ordinary maintenance, repairs, alterations, replacements and installations and purchase all supplies necessary for the planning, design, development and operation of the Multi-Modal Project and any transit or transportation systems installed on the Railroad Corridor.

3.3 Technology Management

The KCATA will be responsible for support and maintenance of transit specific software systems that are used by KCATA or third-party contractors for transit and transportation aspects of the Multi-Modal Project.

3.4 Transit Oriented Development; Value Capture

The KCATA shall take the lead in transit oriented development projects and the establishment of a value capture strategy for the Railroad Corridor, and the County agrees to cooperate with the KCATA, as further described in Section 7.2(b).

ARTICLE IV

SHARED RESPONSIBILITIES

4.1 Marketing and Outreach

The County, with the input of the Joint Rock Island Committee, shall develop and fund a marketing and communication plan, and shall implement and conduct all marketing for the Shared Use Path Project and Railroad Corridor. County is responsible for the coordination and administration of all marketing and advertising contracts for the Shared Use Path Project and Railroad Corridor and associated revenue.

The KCATA, with the input of the Joint Rock Island Committee, shall develop and fund a marketing and communication plan, and shall implement and conduct all marketing for the Multi-Modal Project. KCATA is responsible for the coordination and administration of all marketing and advertising contracts for the Multi-Modal Project and associated revenue.

4.2 Customer Service

The Joint Rock Island Committee shall establish a central telephone number to answer and direct all customer service inquiries. The County shall answer and distribute calls, and shall provide general information to all customers regarding the Shared Use Path Project and Railroad Corridor. The KCATA shall answer and distribute calls, and shall provide general information to all customers regarding the Multi-Modal Project.

4.3 Negotiation of Leases, Licenses, Easements and Other Agreements

(a) Responsibility. Subject to any further agreements contained in the TOD Agreement, the County shall be primarily responsible for the negotiation and execution of all leases, licenses, easements and other agreements related to property located over, on, across or adjacent to the Railroad Corridor. All such leases, licenses, easements and other agreements shall be executed by the County.

(b) Sharing of Income. Pursuant to Section 3.3 of the Cooperative Agreement, all income from the lease, license, easement and right-of-way area use and development (as may be modified in the TOD Agreement) shall be shared equally between the County and KCATA. The County shall be responsible for the invoicing of all tenants, licensees, users and other occupants of the Railroad Corridor and the accounting of all revenues. Income from the lease, license, easement and right-of-way area use shall first be credited to the operating budget for the management, security and maintenance of the Railroad Corridor which is initially the County's responsibility as outlined in Section 1.3. Thereafter, excess revenues shall be shared equally by the County and KCATA.

(c) Enforcement of Agreements. The County shall use commercially reasonable efforts to enforce the terms of all leases, licenses, easements and other agreement that it manages with respect to the Railroad Corridor.

(d) Designation of KCATA. The County and KCATA representatives designated in Section 1.5 of this Agreement may agree, in writing, that KCATA shall take the lead on certain leases, licenses, easements and other agreements related to property located over, on, across or adjacent to the Railroad Corridor.

4.4 Encroachments

The County, with the advice and input of the KCATA and the Joint Rock Island Committee, shall take the lead in addressing and/or removing the encroachments currently identified on the Railroad Corridor. In the event the County wishes KCATA to take actions to address and/or remove the encroachments or a specific encroachment, then the County may designate the KCATA to handle such encroachment(s) with the written approval of both the County and KCATA representatives designated in Section 1.5 of this Agreement.

4.5 Decisions Affecting Entirety of Railroad Corridor

Any decision or agreement which affects the entirety of the Railroad Corridor, for example the selection of a master developer or a marketing/advertiser for the entire Railroad Corridor, may only be made after the receipt of written approval from both the County and the KCATA. The guiding principle of such decisions shall focus on the County's common carrier status and the integrity of the Railroad Corridor to protect the investment being made by the County and the KCATA.

ARTICLE V

SECURING AND MANAGING GRANTS

5.1 Shared Use Path Grants

The County will undertake the clean-up of the Railroad Corridor as necessary for the development of the Projects and construction of the Shared Use Path Project. Exhibit C to the Cooperative Agreement estimates the total cost of the Shared Use Path Project to be

approximately \$16,000,000. This budgeted amount includes the local match to be provided by the County. In Exhibit D to the Cooperative Agreement, the source of this financing is described as "Local Match, Surface Transportation Program Funds and Other Funds." The County will undertake the lead between the parties to obtain additional grants from local, state and federal governments. The KCATA agrees to take all cooperative actions requested by the County in support of any administrative application and/or legislative initiatives.

5.2 Transit Grants

KCATA will undertake the planning and development of future construction, operation and use of the Railroad Corridor for the Multi-Modal Project and the establishment of a public transportation system. The KCATA shall take the lead, and the County will cooperate with KCATA, in seeking Surface Transportation Program Funds, any other funds, any incentives available from the cities that are serviced by the Railroad Corridor and in seeking state and federal grants for transit oriented development.

5.3 Cooperation

If requested by the County and agreed to by the parties, KCATA may seek, process and oversee existing and future federal and state grant applications applicable to the Projects and confirm that all grant conditions and requirements are met. KCATA will prepare grant applications for the Projects and monitor and implement FTA requirements for approved grants. The KCATA agrees to comply with all applicable federal, state and local laws, rules and regulations applicable to grants or other federal or state funding. The County agrees to do nothing that would cause the KCATA to violate any applicable law, rule or regulation and nothing in this Agreement shall be interpreted to require the KCATA to violate any such law, rule or regulation. The County and the KCATA each agrees to make its regulatory documents and records available to the other for inspection upon request.

ARTICLE VI

WORK PLAN AND BUDGETING

6.1 County Work Plan

The County shall annually prepare a work plan that will describe the desired repairs, maintenance projects, capital expenditures, problems and solutions, and proposed projects for the Shared Use Path Project and the Railroad Corridor for the upcoming calendar year (the "**County Work Plan.**") The action items described in the County Work Plan shall be funded by the County. The County Work Plan will be submitted to KCATA for its review prior to the submittal of the County Work Plan to the Jackson County Legislature. KCATA shall review the County Work Plan to determine if the proposed projects interfere with or impede long term transit and transportation goals of the KCATA for the Railroad Corridor.

6.2 Shared Use Path and Railroad Corridor Budget

(a) Formation: The County shall annually prepare and submit to the Joint Rock Island Committee for review, input and comments a proposed operating and capital budget (the “**Rock Island Budget**”) for the repair, servicing, management and maintenance of the Shared Use Path Project and Railroad Corridor described in the County Work Plan prior to the submittal of the Rock Island Budget to the Jackson County Legislature.

(b) Independent Cost Center. The County shall establish an independent cost center to administer appropriations authorized pursuant to the Rock Island Budget.

(c) Implementation: The County shall implement the Rock Island Budget and use commercially reasonable efforts to confirm that the cost of maintaining, managing and operating the Shared Use Path Project and Railroad Corridor shall not exceed the Rock Island Budget.

6.3 KCATA Work Plan

The KCATA shall annually prepare a work plan that will describe: (i) the proposed activities, projects, capital expenditures and transit infrastructure to be undertaken in furtherance of the development and initiation of the Multi-Modal Project; (ii) activities, projects, and capital expenditures to be undertaken to further transit oriented development and other transit related developments within or adjacent to the Railroad Corridor; and (iii) proposed activities, projects and capital expenditures to be undertaken in furtherance of the leasing, licensing and associated uses of the Railroad Corridor (the “**KCATA Work Plan**”). The action items described in the KCATA Work Plan shall be funded through the KCATA Budget.

6.4 KCATA Budget

(a) Formation. In connection with its annual County budget process, the KCATA shall cooperate with the County to develop a budget for: the planning, design, development, operation, management and maintenance of the Multi-Modal Project for the upcoming calendar year and the planning, design, development of any transit oriented development projects (collectively, the “**Budgeted Items**”). The KCATA shall annually prepare and submit an operating and capital budget (the “**KCATA Budget**”) which corresponds with the KCATA Work Plan to the Joint Rock Island Committee for its review, input and comments.

(b) Funding. The KCATA shall fund the Budgeted Items. As Section 1.8 states, funding for transit oriented development projects will be further defined in a TOD Agreement.

(c) Independent Cost Center. The KCATA shall establish an independent cost center to administer appropriations authorized pursuant to the KCATA Budget.

(d) Implementation. KCATA shall implement the KCATA Budget and use commercially reasonable efforts to ensure that the costs of the Budgeted Items shall not exceed the KCATA Budget. The KCATA Budget shall constitute an authorization for KCATA to

expend necessary monies in order to effectuate the Budgeted Items in accordance with the KCATA Budget and subject to the provisions of this Agreement.

6.6 Audit

The Projects, and the independent cost centers of both the County and KCATA established to administer the funding of such projects, shall be audited once every twenty-four (24) months by an independent, unaffiliated Certified Public Accountant (CPA) properly licensed in Missouri. The Audit shall be equally funded by the County and the KCATA, not to exceed Fifteen Thousand Dollars (\$15,000) for each party.

ARTICLE VII

COOPERATION OF THE PARTIES

7.1 Continued Cooperation of the Parties

Each of the County and KCATA agree, upon the request of the other party, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications and provide such other information as may be reasonably requested, necessary or appropriate to carry out the provisions, terms, covenants and intent of this Agreement, and to aid and assist the other party in carrying out said provisions, terms, covenants, and intent of this Agreement and to give full force and effect to the provisions, terms and covenants and intent of this Agreement.

7.2 Cooperation on Specific Aspects of the Projects

(a) UP Use Restrictions. Pursuant to the Line Sale Agreement dated December 31, 2015 and the Quitclaim Deed transferring the Railroad Corridor from UP to the County, UP imposed restrictions on the future use of the Railroad Corridor. Under Section 7(d)(ii) of the Line Sale Agreement, the County may perform remediation of the Railroad Corridor to qualify for one or more of the restricted uses. After completion of the remediation, the County may request that UP release or partially release the restriction on use covenant. The County agrees to cooperate with KCATA to remediate the Railroad Corridor, or portions thereof, and to work with KCATA to release the use restrictions from the Railroad Corridor, or portions thereof, so that the parties may fully exercise their rights to conduct transit oriented development on or adjacent to the Railroad Corridor, as will be detailed in the TOD Agreement.

(b) Value Capture Opportunity. In accordance with Section 2.2 of the Cooperative Agreement, KCATA, in cooperation with the County, may form a Transportation Development District ("TDD") under the authority of Section 238.200, et seq., a Community Improvement District under the authority of Section 67.1401 et seq. RSMo, or other incentive district. Following the Effective Date of this Agreement, KCATA may file a petition in accordance with RSMo Section 238.207 or RSMo Section 67.1421. The TDD, CID or other incentive district may be formed as a political subdivision, with all statutory powers, including, but not limited to, the ability to tax and levy assessments. The County and KCATA agree to take such actions,

including the execution and delivery of such documents, instruments, petitions and certifications necessary to implement the TDD, CID or other incentive district and to provide that such district shall fund the Multi-Modal Project.

Given the County's and the KCATA's sustainable approach to developing the Railroad Corridor, the same Value Capture Opportunity or a new Value Capture Opportunity may also offset Railroad Corridor, Shared Use Path and Multi-Modal Project maintenance and security costs that are not covered by grants, lease, license, easement and right-of-way area use income, in-kind contributions, partnerships or other funding opportunities.

ARTICLE VII

DEFAULT AND TERMINATION

8.1 Event of Default.

- (a) A party to this Agreement shall be in default of this Agreement (the "Defaulting Party") upon the happening of any of the following events (each an "Event of Default"):
 - i. Failure to comply with any obligations of such Defaulting Party under Articles II through VI of this Agreement;
 - ii. Taking any actions (or permitting any actions to be taken by others) that are contrary to the obligations set forth in Articles II through VI of this Agreement;
 - iii. Suspension or revocation of any act, power, license, permit or authority that has the effect of preventing and stopping either party from performing its obligations under this Agreement;
 - iv. Failure of any other obligation under this Agreement, which failure could jeopardize the purposes for which this Agreement has been entered into from being realized.
- (b) The Defaulting Party shall have the opportunity to cure the Event of Default within thirty (30) days of having received written notice of the Event of Default from the other party to this Agreement (the "Non-Defaulting Party").
- (c) In the event that the Defaulting Party does not cure the Event of Default within the 30-day period described in subsection (b) (or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than 30 days to cure), the Non-Defaulting Party may take one or more of the steps set forth in Section 8.2.

8.2 Breach; Compliance

Upon an Event of Default by the Defaulting Party and the failure to cure within the requisite period described in Section 8.1(b), the Non-Defaulting Party may take one or more of the following actions:

- (a) At its discretion, extend the period of cure described in Section 8.1(b) to afford the Defaulting Party more time in which to cure the Event of Default;
- (b) Perform the obligation the Defaulting Party failed to perform that constitutes the Event of Default and obtain reimbursement from the Defaulting Party for any expenses, including without limitation reasonable attorney's fees, which the Non-Defaulting Party may incur in performing the obligation under the Agreement; or
- (c) Initiate an action for damages.

8.3 Termination.

This Agreement shall terminate on the occurrence of any of the following:

- (a) Expiration of the Term, as defined in Section 1.4;
- (b) Exercise by the KCATA of the KCATA Purchase Option Right under Section 8 of the Cooperative Agreement; and .

ARTICLE IX

MISCELLANEOUS

9.1 Assignment

No party to this Agreement may transfer or assign this Agreement, except with the written consent of the other party, in its sole discretion.

9.2 Modification

The terms, conditions and provisions of this Agreement cannot be modified, amended or eliminated, except by the signed written agreement of the County and the KCATA.

9.3 Choice of Law

This Agreement is made in the State of Missouri under the Constitution and laws of such State and is to be construed, interpreted and governed by the laws of the State of Missouri.

9.4 Severability

Should any part, term, portion or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to continue to constitute substantially the agreement that the parties intended to enter into in the first instance.

9.5 Notice.

Notices hereunder shall be sufficient if delivered to:

(a) County:

County Counselor
Office of the County Counselor
Jackson County Courthouse
415 E. 12th Street, Suite 200
Kansas City, Mo 64106

With a copy to:

Executive Director
Rock Island Rail Corridor Authority
22501 Woods Chapel Road
Blue Springs, MO 64015

(b) KCATA:

Kansas City Area Transportation Authority
Attention: Chief Executive Officer
1200 E. 18th Street
Kansas City, MO 64108

With a copy to:

Jerry Riffel, Esq.
Lathrop & Gage LLP
2345 Grand Blvd., Suite 2400
Kansas City, MO 64108

9.6 Approval by Governing Bodies; Binding Effect; Entirety

(a) Approval by Governing Bodies. This Agreement is subject to approval by the KCATA Board of Commissioners and the Legislature of Jackson County.

(b) Binding Effect. Upon the approval of all necessary governing bodies, this Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest, provided no party may assign this Agreement or the rights or obligations hereunder without the express written consent of the other party.

(c) Entirety. This Agreement sets forth the complete understanding of the County and KCATA, and supersedes all previous negotiations and representations between them and their agents.

9.7. Multiple Counterparts

This Agreement may be executed in multiple counterpart copies, each of which will be considered an original and each of which shall constitute but one and the same instrument, binding on the parties hereto, even though both parties are not a signatory to the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages which together contain the signatures of both parties hereto shall be deemed for all purposes a fully executed original.

9.8 Agreement Runs With the Land

This Agreement shall run with the land and inure to the benefit of all future owners of the Railroad Corridor.

[Reminder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have hereunto set their respective hands as of the day and year first above written.

JACKSON COUNTY, MISSOURI

2-21-2017
Date

By:

[Signature]
Frank White, Jr.
County Executive

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

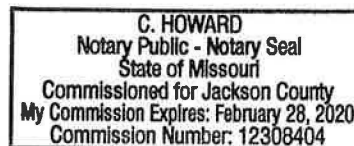
On this 21st day of February in the year 2017, before me, C. Howard, a Notary Public in and for said state, personally appeared Frank White, Jr., the County Executive of Jackson County, Missouri, a political subdivision of the State of Missouri, known to me to be the person who executed the foregoing Agreement on behalf of the County and acknowledged to me that (a) he is the County Executive of Jackson County, Missouri, a political subdivision of the state of Missouri, (b) the foregoing Agreement was signed in behalf of said authority by him as its County Executive, and (c) that the execution of the foregoing Agreement was the free act and deed of him as the County Executive of Jackson County, Missouri and that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Kansas City, Missouri, on the day and year last above written.

[Signature]
Notary Public

My Commission Expires:

2/28/2020



Approved As To Form:

[Signature]
County Counselor

Attest:

[Signature]
Mary Jo Spino, Clerk of the Legislature

2-10-17
Date

By: Steve Klika
Steve Klika
Chairman of Board of Commissioners

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this 10th day of February in the year 2017, before me, Steve Klika, a Notary Public in and for said state, personally appeared Steve Klika, Chairman of the Board of Commissioners of the Kansas City Area Transportation Authority, a Missouri body corporate and politic, known to me to be the person who executed the foregoing Agreement on behalf of said authority and acknowledged to me that (a) he is the Chairman of the Board of Commissioners of the Kansas City Area Transportation Authority, a Missouri public corporation, (b) the foregoing Agreement was signed in behalf of said authority by him as the Chairman of the Board of Commissioners, by authority of the articles of incorporation and bylaws of the Kansas City Area Transportation Authority and (c) that the execution of the foregoing Agreement was the free act and deed of him as the Chairman of the Board of Commissioners of the Kansas City Area Transportation Authority and that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Jackson County, Missouri, on the day and year last above written.

Janet Leverich
Notary Public

My Commission Expires:

JANET LEVERICH
Notary Public-Notary Seal
STATE OF MISSOURI
County of Jackson
My Commission Expires: July 05, 2020
Commission #16842770

7-5-2020

EXHIBIT A

Hierarchy Pyramid

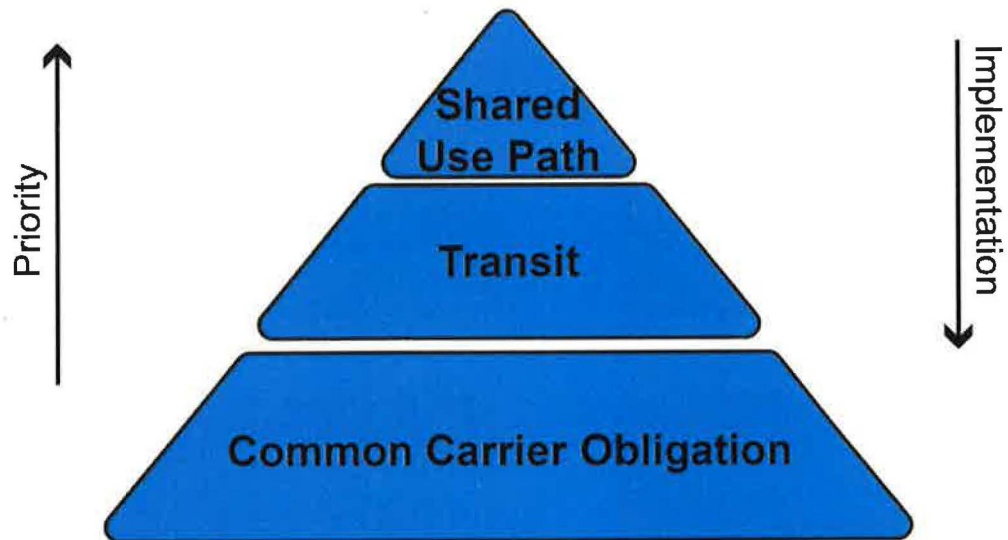


EXHIBIT B

Rock Island Management and Maintenance Agreement

Responsibilities of the Parties

Rock Island Rail Corridor Authority as Department of Jackson County

Jackson County	KCATA
• Construction of Shared Use Path • Servicing, management, maintenance and operation of Shared Use Path • Funds clean-up, maintenance and operation of the Railroad Corridor during Initial Period • Marketing for Shared Use Path and Railroad Corridor; customer service calls etc. • Leasing and licensing of Railroad Corridor	• Design and planning for the Multi-Modal Project and development of transit options • Management, maintenance and operation of transit components upon construction of multi-modal components • Takes the lead on transit oriented development projects



CONTRACT

Date: January 19, 2017

File No: 04-0278

CONTRACTING PARTY/VENDOR:

KCATA (KANSAS CITY AREA
TRANSPORTATION AUTHORITY)

TYPE OF CONTRACT:

Resolution

RESOLUTION/ORDINANCE NO:

Res. 19349

SUBJECT MATTER:

2017 Rock Island Rail Maintenance and
Management Agreement

CONTRACT AMOUNT:

\$0.00

NUMBER OF ORIGINALS:

3

ORIGINATING DEPARTMENT:

Jackson County Executive Office

CONTACT PERSON:

Sweeney, Johnny

Department	Date Sent To Department	Dated Returned To Counselor
Originating Dept.	1/19/2017	2/14/17
Counselor	2/14/17	2/14/17
Finance	N/A	N/A
Clerk	2/14/17	2-15-17
* Executive * To be notarized	2/15/2017	2-21-17
Other Signature Needed (Optional)	N/A	N/A

NOTES:

Scan to Johnny Sweeney upon execution. Mail original to Robbie Makinen at KCATA.

Mailed to Robbie Makinen 1/19/17 -

Return (3) To:
County Counselor's Office, X13355

FILED

FEB 23 2017

MARY JO SPINO
COUNTY CLERK

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

A RESOLUTION authorizing the County Executive to execute a Maintenance and Management Program Agreement with the Kansas City Area Transportation Authority related to the Rock Island Railroad Corridor.

RESOLUTION NO. 19349, January 9, 2017

INTRODUCED BY Dennis Waits, County Legislator

WHEREAS, by Resolution 19023, dated December 1, 2015, the Legislature did authorize the execution of a Cooperative Agreement with the Kansas City Area Transportation Authority (KCATA) related to the acquisition of the Rock Island Rail Corridor (RIRC); and,

WHEREAS, section 3.3 of the Cooperative Agreement expressed the intent of both parties to negotiate and agree to the management and maintenance of the RIRC; and,

WHEREAS, the attached Maintenance and Management Program Agreement sets out the rights and responsibilities of each party related to the RIRC; and,

WHEREAS, the execution of this Agreement is in the best interest of the health, safety, and welfare of the citizens of Jackson County; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the County Executive be and is hereby authorized to execute the attached Maintenance and Management Program Agreement.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:



Chief Deputy County Counselor



County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution No. 19349 of January 9, 2017, was duly passed on January 17, 2017 by the Jackson County Legislature. The votes thereon were as follows:

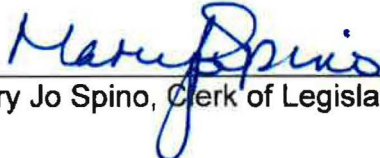
Yeas 9

Nays 0

Abstaining 0

Absent 0

1-17-17
Date



Mary Jo Spino, Clerk of Legislature

LATHROP & GAGE^{LLP}

PAUL M. LEWIS
DIRECT LINE: 816.460.5306
EMAIL: PLEWIS@LATHROPAGE.COM
WWW.LATHROPAGE.COM

2345 GRAND BOULEVARD, SUITE 2200
KANSAS CITY, MISSOURI 64108-2618
PHONE: 816.292.2000
FAX: 816.292.2001

February 13, 2017

DELIVERED VIA COURIER

County Counselor
415 E. 12th Street
Kansas City, Missouri 64106
Attn: Tedi Rowland

Re: Rock Island Management and Maintenance Agreement

Dear Ms. Rowland:

Enclosed with this letter please find three (3) executed originals of the Rock Island Management and Maintenance Program Agreement. Please have these agreements executed on behalf of Jackson County. Upon execution by the County, please send one (1) fully executed original back to my attention, for ultimate distribution to the Kansas City Area Transportation Authority.

Please let me know if you have any questions, or wish to discuss this matter further.

Very truly yours,

LATHROP & GAGE LLP

By: 
Paul M. Lewis

PML

Rock Island Line

Property Acquisition Presentation To KCATA And Legal Counsel



Presented to KCATA Staff And Legal Counsel
December 7, 2015





WELCOME TO THE MEETING

■ Presentation By Calvin Williford





Discussion About The Purchase Agreement, The Federal Process & Related Matters

■ Presentation By Lonnie Blaydes





Federal Jurisdiction & The Surface Transportation Board

- The Conveyance And Abandonment Of Rail Lines Is Governed By Federal Law
- The Surface Transportation Board (Formerly The Interstate Commerce Commission) Has Exclusive Jurisdiction to Approve The Transfer of Rail Lines And The Abandonment of Rail Lines
- No Sale, Transfer Or Abandonment Can Be Accomplished Without STB Consent and Approval.



Summary Of Transaction

- This Transaction Is For The Purchase of Rock Island Rail Corridor From Union Pacific Railroad
- This Transaction Is Not Based Upon Abandonment In Any Sense
- The STB Will Not Be Asked To Find That The Rock Island Rail Corridor Has Been Abandoned.
- Jackson County Will Acquire And Then Operate Corridor As A DBA, The Rock Island Rail Corridor Authority, As A Railroad
- Union Pacific Will Convey Title To Jackson County By Quitclaim Deed, Which Will Convey Whatever Rights, Title And Ownership The Union Pacific Owns To Jackson County
- The Rock Island Rail Corridor Being Acquired By Jackson County Will Begin At Mile Marker 270.6 And End At Mile Marker 288.3
- The Corridor Is 17.7 Miles in Length





Composition of the Rock Island Rail Corridor

- 17.7 Miles In Length
- Approximately 16 Miles Acquired By Deed-Ownership
Appears To Be Fee Simple Absolute-Title Work In Progress-95 Real Estate Parcels
 - Approximately 95 Deeds of Conveyance
 - 86 Warranty Deeds
 - 9 Deeds That Are Not Warranty Deeds
- Approximately 1.7 Miles Acquired By Condemnation-Ownership
Appears To Be Combination of Fee Simple Absolute and Easement-Title Work In Progress
 - Approximately 17 Condemnation Actions



The Abandonment Issue

- Abandonment Will Not Be An Issue So Long As The STB Recognizes The Existence of the Corridor And Retains Jurisdiction Over It
- Any Claim Of Abandonment Is Initially Determined By The STB
- If STB Approves Abandonment, And The Abandonment Is Consummated (Does Not Go Through Rails-To-Trails), Then And Only Then Is The Issue Decided Under State Law
- Fee Simple Title Eliminates The Abandonment Concern
- Easements Can Be Abandoned. However, any claim of abandonment is fact specific to the parcel in question.



Requirements For Abandonment Under Federal Law

- § 10903. Filing and procedure for application to abandon or discontinue
- (a)
 - (1) A rail carrier providing transportation subject to the jurisdiction of the Board under this part [49 USCS §§ 10101 et seq.] who intends to--
 - (A) abandon any part of its railroad lines; or
 - (B) discontinue the operation of all rail transportation over any part of its railroad lines,
 - must file an application relating thereto with the Board. An abandonment or discontinuance may be carried out only as authorized under this chapter [49 USCS §§ 10901 et seq.].
 - 49 USCS § 10903



STB History Regarding Rock Island Line Being Acquired By Jackson County

- Exhaustive Proceedings Were Held By The STB On Whether Or Not The Rock Island Corridor Between Milepost 263.5 and Leeds Junction Milepost 288.3 Had Been De Facto Abandoned.
- The Rail Corridor In The STB Proceeding Is Substantially The Same As Is The Subject Of This Transaction.
- These Issues Were Initiated By Lee's Summit and Raytown
- The STB Specifically Found That This Rail Corridor Has Not Been De Facto Abandoned
- The STB Specifically Found That Union Pacific Continues To Be The Owner Rail Corridor In Question



MISSOURI CENTRAL RAILROAD COMPANY-- ACQUISITION AND OPERATION EXEMPTION--LINES OF UNION PACIFIC RAILROAD COMPANY;

- On December 23, 1997 Missouri Central Railroad Filed A Notice Of Exemption To Acquire Trackage Rights From UP From Milepost 263.5 and Leeds Junction Milepost 288.3
- As pertinent here, on November 17, 1997, the Cities of Lee's Summit and Raytown, MO (the Cities or petitioners), jointly filed a petition to reject the notice of exemption filed in the MCRR proceeding and to find the exemption void ab initio as containing false or misleading information.
- Between November 17, 1997, and February 11, 1998, approximately 325 individuals residing in or near Lee's Summit, as well as U.S. Congresswoman Karen McCarthy, also filed opposition comments in the MCRR proceeding. The focus of the Cities' and residents' concern is the 24.8-mile "west end" line between Pleasant Hill and Leeds Junction, over which MCRR would operate pursuant to trackage rights granted by UP. The segment passes through Lee's Summit and Raytown.
- The focus of the Cities' concern is the 24.8-mile "west end," between Pleasant Hill and Leeds Junction, over which MCRR would operate pursuant to trackage rights granted by UP. The segment passes through Lee's Summit and Raytown.
- In their petition to reject Lee's Summit and Raytown asserted that, because the subject track had long been inactive and had fallen into substantial disrepair, the line was abandoned by UP and its predecessors in a de facto manner



Lee's Summit & Raytown STB Proceeding STB Findings Of Fact And Conclusions

- The Cities argue that the line was de facto abandoned from long disuse. But the Cities offer no statutory or precedential support for this proposition. Nor can they, because it is well established that a rail line is not abandoned until this agency authorizes abandonment under 49 U.S.C. 10903 or the exemption provisions at 49 U.S.C. 10502. The Phillips Company--Petition for Declaratory Order, Finance Docket No. 32518 (ICC served Apr. 18, 1995), reopening denied, Feb. 14, 1997. 1998 STB LEXIS 119
- UP's interest in acquiring and retaining the west end and that railroad's view of the line as an alternative mainline between Kansas City and Pleasant Hill indicates that UP planned and still plans to resume operations there. The right-of-way, while needing repair, remains largely intact. Under these circumstances, we cannot say that this acquisition [22] of an unabandoned rail line should be viewed differently from the way we view the acquisition of other lines that have not been abandoned. 1998 STB LEXIS 119
- UP itself might operate over the subject line after it has been rehabilitated. But as we pointed out in the 1998 Decision, because the line over which MCRR is acquiring trackage rights to operate has never been authorized to be abandoned, UP and its predecessors have long had the right to rehabilitate the line through Lee's Summit and Raytown and to recommence operations over it without even notifying the Board, much less seeking our authorization.





DC Appellate Court Decision-Lee's Summit v STB, 231 F3d 39, (US App. DC 2000)

- Lee's Summit Appealed The STB Decision
- Lee's Summit Abandoned Its Claim That Line Had Been De facto Abandoned.
- The DC Appellate Court Referenced And Accepted The STB Denial Of Lee's Summit's Claim That There Had Been A De Facto Abandonment, Stating

"... the **Board** refused to find a "de facto" abandonment here." Lee's Summit v STB, 231 F3d 39, (US App. DC 2000)





Title Documents Researched And Reviewed

- Union Pacific Valuation Maps
- Deeds Acquired By The Union Pacific And Its Predecessors
- Condemnation Documents
- Title History
- STB Decisions
- Federal Case Decisions
- Missouri Case Decisions



Fee Simple vs Easement

- **IT SHOULD BE NOTED THAT BECAUSE JACKSON COUNTY IS PURCHASING AN INTACT RAIL CORRIDOR WITH THE RIGHTS AND OBLIGATIONS THAT GO WITH SUCH A PURCHASE, THE DEEDS ARE SECONDARY TO THAT ACQUISITION. HOWEVER, IN ANTICIPATION OF POSSIBLE TITLE DISPUTES, JACKSON COUNTY HAS EXPENDED A LOT OF EFFORT AND EXPENSE TO DETERMINE THE QUALITY OF TITLE OWNED BY THE UNION PACIFIC RAILROAD**
- Each Deed Has Been Reviewed To Determine Whether Fee Simple Is Conveyed, Or A Mere Easement
- It Appears That Most, If Not All, Of the Deeds Convey Fee Simple Title Under Missouri Law. Final Confirmation Of The Quality Of Title For Each Tract Is Still A Work In Progress
- Each Condemnation Case Is Being Reviewed To Determine Whether The Acquisition Was Fee Simple Or An Easement
- We Know That KCATA Will Do Its Own Due Diligence In Determining The Quality Of Title, And Jackson County Will Provide Information To Assist In That Process



Maps Provided-Presented By Lisa Koch

- Jackson County-KCATA Project Map
- Rock Island Line Maps 4, 5, 6, 7, 8 And 9
- Presentation Of Jackson County Rock Island Line Maps
 - Reference To Railroad Valuation Map Information
 - Reference To All Deeds & Recording Information
 - Reference To All Condemnation Areas
 - Milepost Markers
 - Aerial View Of Rock Island Line
 - Color Coded To Show Areas Represented By Deeds & Condemnation Acquisition





Environmental Issues-Presented By Lisa Koch

- Phase 1 Environmental Study
- Phase 2 Environmental Study
- Response to Jerry Riffel's Questions Previously Submitted





Encroachments-Presented By Johnny Sweeney

- ▀ Description of Major Encroachments
- ▀ Surveys Of The Known Major Encroachments & Related Documents
- ▀ License Agreements With Adjoining Property Owners
- ▀ License Agreements With Utilities





Google Earth-A Bird's Eye View Of The Rock Island Line

➤ Presented By Brian Gaddie





Documents Provided To KCATA And Legal Counsel For KCATA

- ▀ Jackson County-KCATA Project Map
- ▀ Railroad Valuation Maps
- ▀ Deeds
- ▀ Condemnation Records
- ▀ Major Encroachment Documents



Documents Provided To KCATA And Legal Counsel For KCATA Continued

- Environmental Study Reports-Phase 1 and Phase 2
- Jackson County Rock Island Line Maps
 - Reference To Railroad Valuation Map Information
 - Reference To All Deeds & Recording Information
 - Reference To All Condemnation Areas
 - Milepost Markers
 - Aerial View Of Rock Island Line
 - Color Coded To Show Areas Represented By Deeds & Condemnation Acquisition





Discussion Of Steps Going Forward

► Presented By Calvin Williford

