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Office of Proceedings
May 10, 2019
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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO. 35982

**JACKSON COUNTY, MISSOURI
-ACQUISITION AND OPERATION EXEMPTION-
UNION PACIFIC RAILROAD COMPANY
VERIFIED NOTICE OF EXEMPTION
PURSUANT TO 48 C.F.R. § 1150.31, *Et. Seq.***

**LANDOWNERS' RESPONSE TO JACKSON COUNTY'S
MOTION TO STRIKE**

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Dated: May 10, 2019

I. INTRODUCTION

Jackson County filed its supplemental response pertaining to the Landowners' Petition for Revocation on March 29, 2019. The Landowners filed their Reply in further support of the Petition for Revocation on April 18, 2019. Jackson County then filed a misguided and misdirected Motion to Strike on May 8, 2019. Because all of the statements made by the Landowners in their supplemental response pertaining to the Petition for Revocation are true, Jackson County's Motion to Strike should be denied.

Jackson County first cites 49 C.F.R. § 1104.8 for the proposition that any "redundant, irrelevant, immaterial, impertinent or scandalous matter may be stricken."¹ Jackson County then sets forth two purported examples of statements that should be stricken: (1) "Jackson County has perpetrated a fraud on its taxpayers by paying \$50,000,000-\$80,000,000 to UPRR when they should have railbanked the corridor"²; and (2) "the Petitioners also assert without any evidence that the corridor would have been abandoned by UPRR if not for Jackson County's plans to develop a recreational trail, and that Jackson County's actions have unfairly prejudiced the state law property rights of the Petitioners."³ The two statements cited by Jackson County are not "irrelevant, impertinent, and/or scandalous" at all because both statements are absolutely true.

The definition of a fraud is "an intentional wrongful deception." Although Jackson County states that "there is no evidentiary basis" for the Landowners' fraud accusation,⁴ under these facts, there is an overwhelming evidentiary basis for the conclusion that Jackson County committed a

¹ See Jackson County's Mot. at 2.

² *Id.* Jackson County chose to paraphrase the exact statement made by the Landowners. The exact statement made by the Landowners was "[W]hy JC did not railbank the corridor in the first place is perplexing to say the least, but why JC paid \$50,000,000-\$80,000,000 to UPRR when they should have railbanked the corridor, thereby committing a fraud on the taxpayers of JC, is yet to be answered." See Landowners' Reply at 13, fn. 26.

³ *Id.* at 3. The Landowners actually said "should" instead of "would" but, more importantly, Jackson County clearly does not understand either the status of this regulatory proceeding or the status of the litigation or the law concerning the Landowners' state law property rights (discussed in Section III *infra*).

⁴ *Id.* at 2.

fraud on the Board **and** on the taxpayers of Jackson County. In fact, as set forth in the Landowners' Reply, Jackson County's own admissions demonstrate that they obviously abused and manipulated the Board's regulations pertaining to the transfer of a common carrier's obligation to a non-carrier. As a result, Jackson County's deception amounts to a fraud on the Board by attempting to construct a hiking and biking trail on the railbed itself under the guise of a continuing common carrier obligation and, despite Jackson County's protestations to the contrary, their decision to pay \$50,117,208 to UPRR⁵ to obtain the corridor for purposes of building a hiking and biking trail is also a fraud on the taxpayers of Jackson County.

II. JACKSON COUNTY'S ACTIONS HAVE, IN FACT, PERPETRATED A FRAUD BOTH ON THE BOARD AND ON THE TAXPAYERS OF JACKSON COUNTY

The evidentiary basis for the fraud perpetrated on the Board is set forth in detail in the Landowners' Reply in further support of the Landowners' Petition for Revocation. The evidentiary basis actually comes from the documents already provided and the admissions made by Jackson County, and the conclusions are unmistakable:

1. Jackson County clearly and repeatedly admitted that they are in the process of constructing the trail on the railbed itself, which was their plan all along;
2. The evidence clearly demonstrates that Jackson County has removed the rails and ties in order to accommodate their plan to construct a hiking and biking trail, which was their intention all along, and the removal of the rails and ties is directly and specifically contrary to their prior statements to the Board and their purported continuing common carrier obligation;
3. The actual construction of the hiking and biking trail on the railbed itself is directly and specifically contrary to Jackson County's purported common carrier obligation and signifies a very specific deception on the Board;

⁵ See Line Sale Agreement, Section 2, attached hereto as Exhibit A. Jackson County agreed to pay UPRR \$50,117,208 for the corridor, ostensibly based on the premise that UPRR owned the corridor in fee, when UPRR had no legal right to even sell them any portion of the corridor, which was an easement, and the \$80,000,000 figure represents the approximate total cost to the taxpayers of Jackson County based on the bonds that were issued for the underlying \$50,117,208 payment to UPRR.

4. The evidence demonstrates that Jackson County utilized the Board's transfer regulations to acquire a common carrier obligation but never actually had any intent to maintain that common carrier obligation;
5. The evidence shows that Jackson County always intended to construct a hiking and biking trail on the railbed itself and intentionally failed to inform the Board of that very material fact;
6. The evidence also demonstrates that, by their own admissions, Jackson County stopped short of full transparency by never acknowledging and admitting that their plan all along was to construct the trail in place of the railbed and to remove the rails and ties such that it was basically impossible to properly continue with their common carrier obligation;
7. The evidence also demonstrates that Jackson County's argument that they had to expend considerable public funds to rehabilitate the southern segment of the right-of-way in order to preserve the integrity of the right-of-way for possible future rail service is a complete sham, a total deception, and a misappropriation of public funds at a minimum; and
8. The evidence demonstrates that Jackson County developed a plan to acquire the right-of-way from UPRR in order to construct a hiking and biking trail and never had any intention, as a non-carrier, to continue UPRR's common carrier obligation and rights.

Not only is the fraud that Jackson County perpetrated on the Board also a fraud on the taxpayers of Jackson County, but Jackson County also perpetrated a direct fraud on the taxpayers of Jackson County. Jackson County paid UPRR \$50,117,208 for the corridor. Although the evidence to support the fraud on the taxpayers of Jackson County is still being developed, it is clear that the payment amount of \$50,117,208 has no bearing whatsoever to the actual value of the corridor in question.

Even assuming the entire 17.7 miles at issue was owned by UPRR in fee, which it is not, a 17.7-mile corridor, which is 100 feet wide, amounts to 9,345,600 square feet. Since 9,345,600 square feet computes to 214.54 acres,⁶ that means that Jackson County paid \$233,603 per acre for

⁶ There are 43,560 square feet in an acre, so 9,245,600 divided by 43,560 equals 214.54 acres.

the corridor in question. Although it is an approximation at this point, the land in question was probably valued at approximately \$10,000 per acre at the time of Jackson County's acquisition, which means that the total value for the 214.54 acres, assuming UPRR had the ability to sell all 214.54 acres, would have amounted to a price of \$2,145,400. As a result, the evidence will ultimately be that Jackson County paid over \$50,117,208 for a potential asset that had a value in the neighborhood of \$2,145,400,⁷ and the fact that Jackson County paid approximately \$48,000,000 more than the asset was even worth is the definition of a fraud on the taxpayers of Jackson County.

There should be no question, based on Jackson County's own admissions, that Jackson County perpetrated a fraud on the Board. There should also be no question that the fraud that Jackson County perpetrated on the Board is also a fraud perpetrated on the taxpayers of Jackson County. In fact, in addition to the fraud that Jackson County perpetrated on the Board, Jackson County perpetrated a further fraud on the taxpayers of Jackson County by overpaying for an asset with taxpayers' dollars by a factor of at least 24 times. As a result, Jackson County's motion to strike must be denied because instead of making any irrelevant, impertinent, or scandalous statements, the statements made by the Landowners concerning Jackson County's conduct are absolutely true.

III. JACKSON COUNTY CLEARLY MISUNDERSTANDS AND MISCHARACTERIZES THE LANDOWNERS' STATEMENTS CONCERNING ABANDONMENT AND STATE LAW PROPERTY RIGHTS

Jackson County has also attempted to strike the Landowners' statements that (1) the right-of-way "should" have been abandoned "if not for Jackson County's plans to develop a recreational

⁷ Under the Trails Act, in most circumstances, the rails and the ties are salvaged and the salvage value, in this case approximately \$2,000,000, is paid to the railroad.

trail;” and (2) “Jackson County’s actions have unfairly prejudiced the state law property rights of the Petitioners.”⁸ The statements made by the Landowners are absolutely true as a matter of law.⁹

First, instead of saying that “the Corridor **would** have been abandoned by UPRR,” the Landowners specifically stated that the right-of-way **should** have been abandoned under these facts. The exact quotation that Jackson County now opposes is as follows:

Everything set forth by JC in their supplemental response leads to a conclusion that the Corridor should have been abandoned, such as: (1) the fact that trains had not utilized this right-of-way for decades; (2) the fact that the TranSystems report conclusively establishes that the condition of the rails and ties would not even accommodate rail traffic; and (3) the fact that the rails and ties were removed.

See Landowners’ Reply at 9.

Second, Jackson County’s statements concerning the state law property rights at issue are bizarre. For example, Jackson County states that “the Petitioners may have preferred a scenario where UPRR abandoned the Corridor before selling its interests to Jackson County.”¹⁰ The Landowners could care less whether UPRR abandoned the Corridor before selling its interests to Jackson County because the only thing that the Landowners want is for Jackson County to follow the law and the regulations of the Board. Indeed, if UPRR actually abandoned the Corridor before they attempted to sell it to Jackson County, UPRR would have nothing to sell to Jackson County.¹¹ In addition, since UPRR did not abandon the corridor, Jackson County is required to follow the law and the regulations of the Board that pertain to the common carrier obligation that they

⁸ See Jackson County’s Mot. at 3.

⁹ *Id.* Jackson County goes on to state that “[A]s previously noted by Jackson County, the state property law arguments made by the Petitioners are not germane to the issues before the Board in this proceeding and should be stricken from the record as well.” *Id.* at 3, fn. 3.

¹⁰ *Id.*

¹¹ If UPRR had abandoned the right-of-way before the transfer to Jackson County, then the Landowners’ state law reversionary rights would have already vested upon abandonment.

inherited and the potential conversion of the right-of-way to a hiking and biking trail that they ignored.

Jackson County's second statement, that "Jackson County acquired the rail line from UPRR prior to any abandonment and subject to Jackson County's common carrier obligation to provide service on the line upon reasonable request under 49 U.S.C. § 10901,"¹² although technically correct, totally avoids the actual issues in controversy as to whether Jackson County misled the Board during their acquisition of the common carrier obligation and whether Jackson County has the right to build a hiking and biking trail on the corridor whether they acquired the common carrier obligation or not. From the Board's perspective, as long as Jackson County did not mislead the Board, the Board pays no attention to any state law issues that are related to the possible construction of the hiking and biking trail on the corridor. However, under state law, even if Jackson County properly acquired the common carrier obligation from UPRR, they have no right to build a hiking and biking trail on the Corridor under either federal law, because they did not follow the Trails Act, or state law, because a hiking and biking trail is not allowed under Missouri law on top of a legitimate railroad purposes easement because it exceeds the scope of a railroad purposes easement.¹³

The final statement made by Jackson County, that "the Petitioners have failed to establish that Jackson County was required to acquire the Corridor from UPRR only after it has been abandoned,"¹⁴ is a bizarre misstatement of fact and law. As a matter of law, Jackson County is not

¹² See Jackson County's Mot. at 3.

¹³ Missouri law simply does not allow the construction of a hiking and biking trail either "on top of" or "along" a railroad purposes easement because a hiking and biking trail is beyond the scope of a railroad purposes easement as a matter of law. See *Brown v. Weare*, 152 S.W.2d 649, 652-653 (Mo. 1941); *Boyles v. Missouri Friends of the Wabash Trace Nature Trail, Inc.*, 981 S.W.2d 644, 649-650 (Mo. App. 1998); *Moore v. Missouri Friends of the Trace Nature Trail, Inc.*, 991 S.W.2d 681, 685 (Mo. App. 1999); *Glosemeyer v. United States*, 45 Fed. Cl. 771, 779 (Fed. Cl. 2000).

¹⁴ See Jackson County's Mot. at 3-4.

required to acquire the corridor after it has been abandoned but, to the contrary, whether the corridor has been abandoned or not is actually irrelevant to the issue of whether Jackson County has the right to build a hiking and biking trail on the corridor.¹⁵ Jackson County would have had no right to acquire the corridor if it had already been abandoned by UPRR. Since the corridor was not abandoned by UPRR, Jackson County did have the right to acquire the common carrier obligation (unless they mislead the Board in the process), but did not have any right to build a hiking and biking trail under federal law unless they followed the Trails Act, and did not have any right to build a hiking and biking trail under state law either. The fact is that the only way Jackson County could obtain authority to build a hiking and biking trail on the right-of-way, under either federal law or state law, is to follow the Trails Act.

All of the Landowners' statements pertaining to the jurisdiction of the Board, the federal law abandonment issues under the Trails Act, and state law property rights, are all absolutely true. The problem with Jackson County's position is that the Board does not have the authority to grant permission to build a hiking and biking trail unless the railroad, or in this case Jackson County, follows the proper procedures to railbank the line under the Trails Act. The Board can say, as they did, that they were aware of Jackson County's intention but, standing alone, that provides no authority whatsoever for Jackson County to actually build a hiking and biking trail, particularly on the railbed itself, because the question of whether Jackson County has the right to build a hiking and biking trail can only be answered by and through the provisions of the Trails Act or by state law.

The end result is that the question of whether a hiking and biking trail easement can be imposed on a railroad purposes easement (particularly one that has actually been abandoned under

¹⁵ If the Trails Act had been utilized, it specifically prevents the abandonment that otherwise would have occurred.

state law) is a question of state law. Jackson County is merely simply trying to avoid the Trails Act and the state law determination, all to the obvious detriment of these Landowners, but these Landowners are willing to continue this fight in state court so that the statutes, rules, and procedures of the Board are followed at the federal level and Missouri state law as it pertains to basic property rights is followed as well.

IV. CONCLUSION

As clearly demonstrated, Jackson County did not acquire the corridor from UPRR with any intent to ever operate trains but, instead, had the clear intent to establish a hiking and biking trail on the railbed itself. As a result, Jackson County repeatedly and systematically misled the Board and misused the procedures of the Board to avoid both the Trails Act and the Landowners' state law property rights. The statements made by the Landowners to the effect that Jackson County perpetrated a fraud both on the Board and the taxpayers of Jackson County are undoubtedly and clearly true. In addition, Jackson County's attempt to strike any statements made by the Landowners concerning the interplay between the Board's procedures and state law property rights is an intentional attempt to mislead the Board from the obvious conclusion that Jackson County's own admissions prove that they misled the Board and misused the Board's procedures. Jackson County's Motion to Strike should be denied and the Landowners' Petition for Revocation should be granted.

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CERTIFICATE OF SERVICE

I certify that I have this day served copies of document upon all parties of record in this proceeding, by U.S. Mail this 10th day of May, 2019.

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/s/ Elizabeth A. McCulley

(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).

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: THBuyer: 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 Gray
County Counselor

ATTEST:

Marie 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.

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)

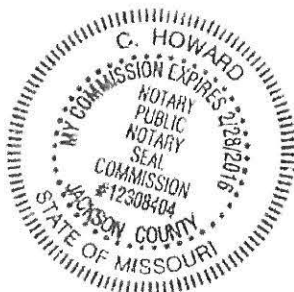


EXHIBIT A TO EXHIBIT C

**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

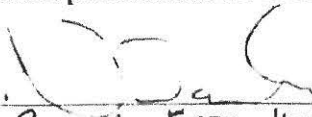
By 
Title: County Executive

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: _____

MEMORANDUM

From: Jackson County Rock Island Rail Corridor Authority
KCATA Rock Island Design and Development Team

To: Mr. Frank White, Jr. - Jackson County Executive,
Mr. Robbie Makinen - KCATA CEO

Date: June 20, 2017

Subject: Rock Island Railroad Corridor Shared Use Path Alignment and Location Policy

Guiding Principles and Corridor Conditions

1. Background and Priorities

The Kansas City Area Transportation Authority (the KCATA) and Jackson County, Missouri (the County) have developed a partnership in the acquisition, build-out, management, and maintenance of the Rock Island Railroad Corridor, with its many intended uses.

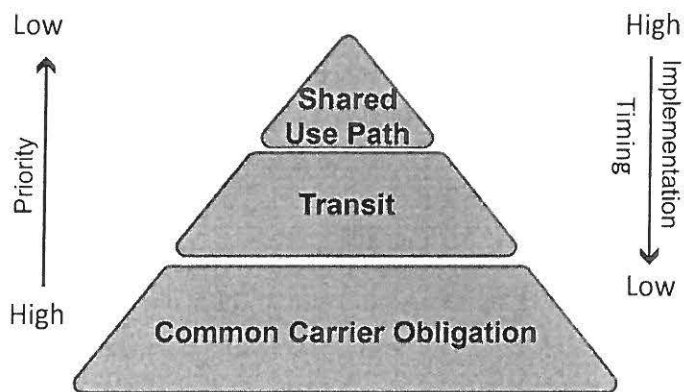


Figure 1 Hierarchy of Uses on the Rock Island Corridor (from Exhibit A in the Management and Maintenance Agreement)

Figure one represents the agreed to priorities for the corridor - with the highest priority being to maintain the railroad corridor in keeping with the County's Common Carrier obligation, followed by accommodating transit in the corridor and finally accommodating the shared use path.

Generally speaking, the Rock Island Rail Corridor has sufficient real estate to accommodate Jackson County's Shared Use Path, public mass transit, and freight rail service throughout the length of the corridor. While both the KCATA and the County agree that transit service should be prioritized over the