

## TRAIL USE AGREEMENT

This Trail Use Agreement ("Agreement") is entered into this 21<sup>st</sup> day of February, 2020 ("Effective Date"), between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, whose address is 1400 Douglas Street, Omaha, Nebraska 68179 ("UPRR") and JACKSON COUNTY, a Missouri political subdivision, whose address is 415 East 12<sup>th</sup> Street, Kansas City, MO 64106 ("County").

## RECITALS

On December 31, 2015, UPRR and the County entered into an agreement (the "Line Sale Agreement") for UPRR to sell to the County and the County to purchase from UPRR, UPRR's interest in approximately 17.7 miles of UPRR's former Rock Island rail corridor, between Milepost 288.3 and Milepost 270.6 (the "Line") near Lee's Summit, Jackson County, Missouri, as more specifically described and provided in the Line Sale Agreement.

On January 22, 2016, the County received authority through the Surface Transportation Board's (the "Board") class exemption process at 49 C.F.R. § 1150.31 to acquire the Line from UPRR and to operate the Line for common carrier rail freight service.

On April 28, 2016, the sale of the Line contemplated by the Line Sale Agreement closed, and UPRR delivered to the County a Quitclaim Deed for UPRR's interest in the Line (the "Closing"). Thereafter, the County initiated a project to construct a trail on the Line.

On October 22, 2018, certain landowners jointly filed a petition asking the Board to revoke the exemption. In a decision served on July 31, 2019, the Board revoked the County's acquisition and operation exemption.

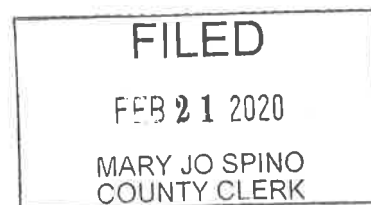
On August 27, 2019, UPRR and the County entered into a letter agreement ("Letter Agreement") regarding UPRR's willingness to cooperate with the County by jointly filing documentation with the Board to secure abandonment authority on the Line and addressing other aspects of the situation.

On October 4, 2019, UPRR and the County jointly filed a Petition for Exemption (the "Petition") under the Board's exemption procedures at 49 C.F.R. § 1152.60, seeking an exemption from 49 U.S.C. § 10903 under 49 U.S.C. §10502 for authority to abandon the Line.

## AGREEMENT

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

**Section 1. Compliance with Trails Act.** This Agreement is being entered into in accordance with and subject to the National Trails System Act, 16 U.S.C. § 1247(d), and the terms and conditions contained in the decision to be served by the Board ("Trails Use Decision"), as set forth in Section 3 below. The County acknowledges it currently has, and shall retain, full responsibility for management of the Line and for any legal liability arising out of such use or any other use.



**Section 2. Conditions to Abandonment.** If the Board imposes any condition to the Petition, the County acknowledges the County shall use its best efforts to satisfy all such conditions as quickly as is reasonably practicable and the County will be responsible for the cost of satisfying all such conditions. Any assistance provided by UPRR to the County in satisfying such conditions shall be undertaken at UPRR's election, in UPRR's sole discretion, and in all events at the County's sole cost and expense, as also provided in the Letter Agreement.

**Section 3. Board Abandonment; Trails Use Decision.** In the event the Board does not issue a Trails Use Decision, , or the Trails Use Decision applicable to the Line lapses, expires or is invalidated, for reasons other than UPRR's breach of this Agreement:

(a) if the Board has not issued any decision authorizing the abandonment of freight rail common carrier obligations on the Line, the County shall still own and retain responsibility for the Line and the County shall, upon a reasonable request for freight rail service on the Line, restore the railroad track on the Line, or otherwise demonstrate to the Board that the County is ready to provide any such freight rail service (or substitute service such as truck transload to rail service) on the Line, and the County shall seek authority from the Board to replace the authority revoked in the Board's July 31, 2019 decision; or

(b) if the Board has issued a decision authorizing the abandonment of freight rail common carrier obligations on the Line, UPRR may consummate that abandonment authority, the County's interest in the Line shall be subject to the rights and interests of any other parties affected by such abandonment, and the County will have no recourse against UPRR arising out of UPRR's exercise of that abandonment authority; provided that UPRR may not consummate such abandonment, if Jackson County has filed an offer of financial assistance ("OFA") to continue freight rail service on the Line (which UPRR will not oppose), and the Board has not denied the OFA in a decision found to be valid by a final, unappealable judgment of a court of competent jurisdiction.

(c) If any person requests freight rail service on the Line, then the County, not UPRR, shall be responsible to provide any such requested freight rail service. In the event the Board orders UPRR to provide any freight rail service on the Line, or UP is otherwise required to provide freight rail service on the Line, then, except for the portion of the Line over which UPRR has reserved a an easement for railroad purposes, the County shall reimburse any cost of UPRR in providing such freight rail service, including any cost to restore the Line to a condition over which freight rail service is possible.

(d) The County may decide to appeal any decision by the Board, or any failure of the Board to issue a decision, contemplated in this Section. If the County appeals, it must also request an order from the Board or the appropriate court to preserve the status quo pending the outcome of the appeal. If such an order is not granted then UPRR may proceed as allowed under this Section. If the County desires that UPRR not invoke any course of action while the appeal is pending, then the County must so notify UPRR. UPRR agrees to cooperate in the County's request provided the County agrees to hold harmless, indemnify, and defend UPRR in any proceedings or claims that arise out of UPRR's cooperation and the County agrees to reimburse UPRR for any costs and expenses, including reasonable attorney's fees, incurred by UPRR due to UPRR's cooperation.

**Section 4. Joint Notice to Surface Transportation Board.** In accordance with the requirements of 49 C.F.R. § 1152.29(h), the County and UPRR agree to execute (1) a Joint Notice to the Board certifying that this Agreement includes a provision requiring the County to fulfill the responsibilities described at 49 C.F.R. § 1152.29(a)(3) ("Joint Notice"), and (ii) a Statement of Willingness to Assume

Financial Responsibility ("Statement of Willingness"), both in the form attached hereto as Exhibit A and made a part hereof.

**Section 5. Notice.** 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:

UPRR: UNION PACIFIC RAILROAD COMPANY  
ATTN: Chris Boble  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 68179  
Telephone: (402) 544-8640

With copy to: UNION PACIFIC RAILROAD COMPANY  
ATTN: Jeremy Berman  
1400 Douglas Street, Mail Stop 1580  
Omaha, Nebraska 68179  
Telephone: (402) 544-4735

County: Jackson County, Missouri  
ATTN: Caleb Clifford  
415 E. 12<sup>th</sup> Street  
Kansas City, Missouri 64106  
Telephone: 816-881-3333

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.

**Section 6. Assignment.**

The County shall not transfer or assign this Agreement, or any interest therein, without the consent in writing of UPRR, 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 UPRR, terminate this Agreement.

**Section 7. 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 8. Time of the Essence.**

Time is of the essence of this Agreement.

**Section 9. Law Governing.**

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

**Section 10. Successors and Assigns.**

Subject to the provisions of Section 6, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

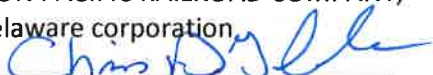
**Section 11. Severability.**


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.

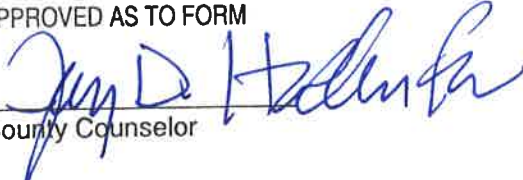
**Section 12. Entire Agreement.**

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

**Section 13. Survival.** The terms and provisions of the Line Sale Agreement and the Letter Agreement continue in full force and effect.

UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation  
By:   
Name: CHRIS D. GOBLE  
Title: Assistant Vice President - Real Estate

JACKSON COUNTY, MISSOURI,  
a Missouri political subdivision  
By:   
Name: Frank White Jr.  
Title: Jackson County Executive

APPROVED AS TO FORM  
  
County Counselor

ATTEST:  
  
Clerk of the County Legislature

**EXHIBIT A**

**FORM OF JOINT NOTICE AND STATEMENT OF WILLINGNESS**

\_\_\_\_\_, 20\_\_

VIA E-FILE

The Honorable \_\_\_\_\_

Title

Surface Transportation Board

395 "E" Street, S.W., Room \_\_\_\_\_

Washington, D.C. 20423

**JOINT NOTICE OF INTERIM TRAIL USE / RAIL BANKING AGREEMENT  
BETWEEN UNION PACIFIC RAILROAD COMPANY AND  
JACKSON COUNTY, MISSOURI IN ACCORDANCE WITH 49 C.F.R. § 1152.29(h)**

Re: Abandonment of and Discontinuance of Service on the Rock Island Line from M.P. 288.3 to M.P. 270.6 near Lee's Summit, Jackson County, Missouri; STB Docket No. AB-33 (Sub No. 342X)

Dear \_\_\_\_\_:

Union Pacific Railroad Company ("Union Pacific") and the Jackson County, Missouri (the "County") have entered into a trail use/rail banking agreement (the "Trail Use Agreement") covering the rail line from Milepost 288.3 to Milepost 270.6 near Lee's Summit, Jackson County, Missouri on Union Pacific's former Rock Island Subdivision (the "Line"). Attached to this Joint Notice as Exhibit A is a map depicting an accurate description of the Line, including mileposts, that is the subject of said Trail Use Agreement. In accordance with the requirements of 49 C.F.R. § 1152.29(h), Union Pacific and the County hereby certify that the Trail Use Agreement includes provisions requiring the trail sponsor, the County, to fulfill responsibilities described at 49 C.F.R. § 1152.29(a)(3). A copy of the County's Statement of Willingness to Assume Financial Responsibility under the Trail Use Agreement is attached hereto as Exhibit B and is hereby made a part hereof.

Sincerely,

UNION PACIFIC RAILROAD COMPANY


By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sincerely,

JACKSON COUNTY, MISSOURI

By: 

Printed Name: Frank White Jr

Title: Jackson County Executive

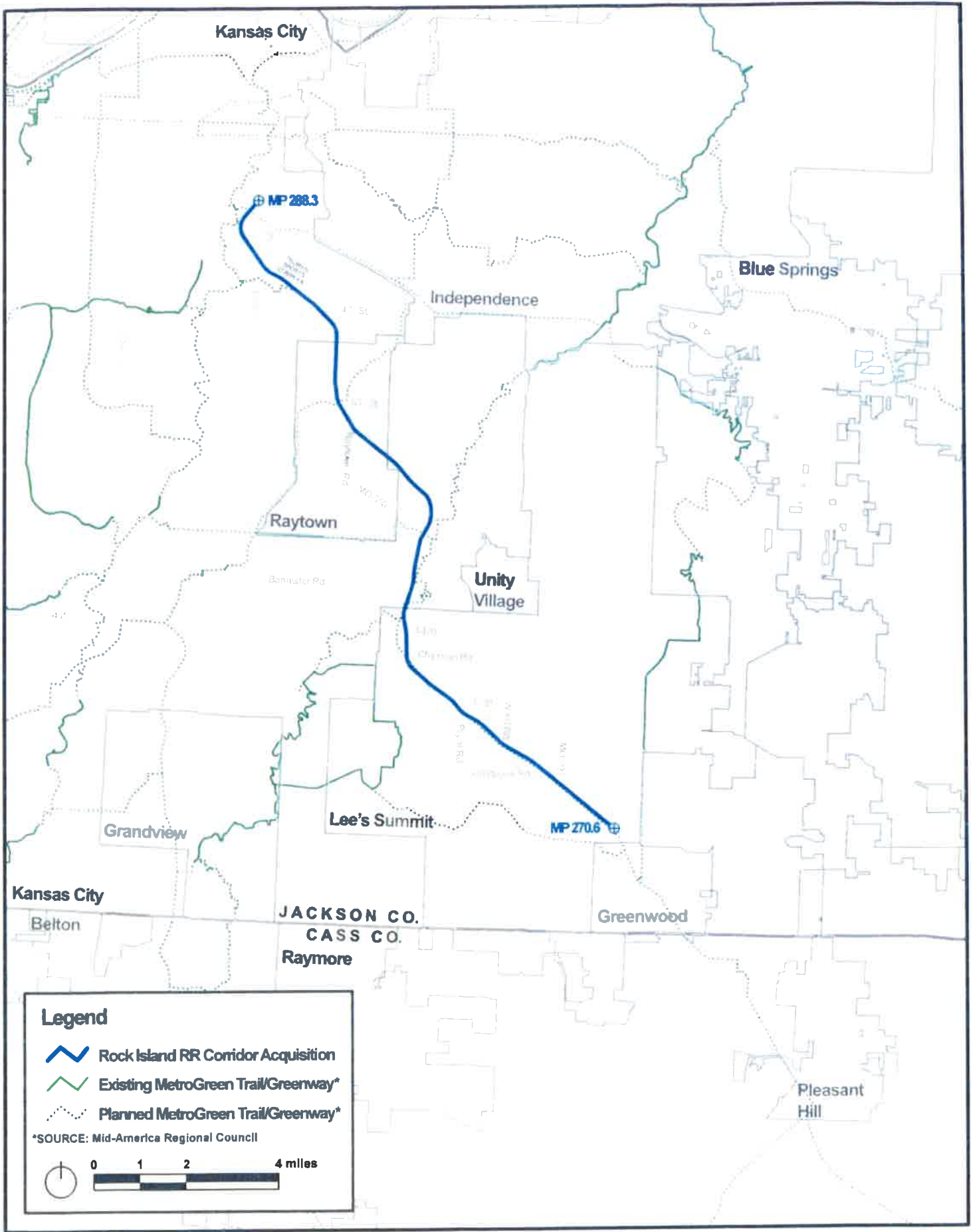
Enclosures

cc: \_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

**TO FORM OF JOINT NOTICE AND STATEMENT OF WILLINGNESS**

**PRINT/DEPICTION OF THE LINE  
(TO BE ATTACHED)**



**Legend**

-  Rock Island RR Corridor Acquisition
-  Existing MetroGreen Trail/Greenway\*
-  Planned MetroGreen Trail/Greenway\*

\*SOURCE: Mid-America Regional Council



**Rock Island Acquisition and Project Extents**



**EXHIBIT B**

**TO FORM OF JOINT NOTICE AND STATEMENT OF WILLINGNESS**

**JACKSON COUNTY, MISSOURI  
STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY  
UNDER THE TRAIL USE AGREEMENT**

Jackson County, Missouri (the "County") acquired the Line (defined below) on April 28, 2016, under a Line Sale Agreement between Union Pacific Railroad Company and the County, dated December 31, 2015.

In order to establish interim trail use and rail banking under 16 U.S.C. § 1247(d) and 49 CFR § 1152.29 with respect to the Line, the County hereby represents to the Surface Transportation Board and Union Pacific Railroad Company that the County assumes or has assumed responsibility for (1) managing the Line, (2) any legal liability arising out of the transfer or use of the Line, and (3) the payment of any and all taxes that may be levied or assessed against the Line. The Line is a portion of the right of way known as the Rock Island Line extending from Milepost 288.3 to Milepost 270.6 near Lee's Summit, Jackson County, Missouri. The Line is part of a longer line of railroad proposed for abandonment by Union Pacific Railroad and the County in Docket No. AB-33 (Sub No. 342X). A map of the property depicting the Line is attached hereto as Exhibit A and is hereby made a part hereof.

The County acknowledges that use of the Line is subject to the County's continuing to meet its responsibilities described above and subject to possible further reconstruction and reactivation of the Line for rail service. A copy of this statement is being served on Union Pacific Railroad Company on the same date it is being served on the Surface Transportation Board.

JACKSON COUNTY, MISSOURI

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed to and acknowledged by Union Pacific Railroad Company, this \_\_\_\_ day of

\_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**TO STATEMENT OF WILLINGNESS TO ASSUME FINANCIAL RESPONSIBILITY  
PRINT/DEPICTION OF THE LINE  
(TO BE ATTACHED)**