



Friends of the
WEISER RIVER TRAIL
Desert Canyons to Alpine Meadows

2350321
ENTERED
Office of Proceedings
November 4, 2013
Part of
Public Record

DIRECTORS

Shirley Atteberry
President
Cambridge, Idaho 83610
208-257-3562
jsatt@ctcweb.net

October 28, 2013

Via electronic mail <http://www.stb.dot.gov>

The Honorable Cynthia T. Brown,
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W., Room #100
Washington, DC 20423-0001

Re: Proposed Abandonment of the New Meadows Industrial Lead from Milepost 0.22 to Milepost 0.50 at Weiser, a total distance of 0.28 miles in Washington County, Idaho; STB Docket No. AB-33(Sub-No. 311X)

Dear Ms. Brown:

I am writing on behalf of the Friends of Weiser River Trail, Inc. (FWRT) to request a 180-day extension of the deadline for negotiations with the Union Pacific Railroad Company (UPRR) regarding the Notice of Interim Trail Use in the above captioned proceeding. Pursuant to the May 9, 2013, initial decision of the Surface Transportation Board, FWRT was allowed to negotiate with UPRR for a period of 180-days commencing from the May 10, 2013 effective date of the exemption until November 6, 2013.

FWRT and UPRR have agreed upon a purchase price and a draft Purchase and Sale Agreement has been prepared. A modification of the agreement is now necessary because the salvage operation will not take place until the spring of 2014. Therefore, FWRT respectfully requests a 180-day extension of the NITU deadline to May 5, 2014, or such time so indicated by the Board. UPRR has agreed to this request for an extension of time.

By my signature below, I certify service upon Union Pacific Railroad c/o Mack H. Shumate, 101 North Wacker Drive, Room 1920, Chicago, Illinois 60606-1718, by U.S. Mail, postage prepaid, first class, this 28th day of October, 2013.

Enclosed please find a check in the amount of \$450, the current filing fee for an extension of time request.

Thank you for your consideration of this request.

Sincerely yours,

Shirley S. Atteberry
Shirley S. Atteberry, President
Friends of Weiser River Trail, Inc.

FILED
November 4, 2013
SURFACE
TRANSPORTATION BOARD



Encl.: Check

FEE RECEIVED
November 4, 2013
SURFACE
TRANSPORTATION BOARD

Barb McGann
Vice President
Eagle, Idaho 83616
208-286-7620
megsolutions@inbox.com

David Hieber
Vice President & Corresponding Secretary
Nampa, Idaho 83687
208-465-8868
hieberdavid@gmail.com

Rocky Bogert
Treasurer
Boise, Idaho 83712
208-388-0343
ebogert@micron.com

Pam Haynes
Secretary
Meridian, Idaho 83642
208-887-2068
pchaynes@earthlink.com

Dot Wiggins
Eagle, Idaho 83616
208-286-7620
dotwigs@ruralnetwork.net

Pattie Heldt
Cambridge, Idaho 83610
208-257-3564
pjheldt@gmail.com

Diane Pulsipher
Weiser, Idaho 83672
208-549-1442
dianepulsipher@me.com

Pat Trainor
Council, Idaho 83612
208-253-4433
blheron@ctcweb.net

2787-39

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into this 1st day of November, 2013 ("Execution Date"), by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (formerly known as Southern Pacific Transportation Company, a Delaware corporation, successor in interest through merger with Union Pacific Railroad Company, a Utah corporation, successor in interest through merger with Oregon Short Line Railroad, a Utah corporation), whose address is 1400 Douglas Street, Omaha, Nebraska 68179 ("Seller"), and FRIENDS OF WEISER RIVER TRAIL, INC., an Idaho corporation, whose address is 3494 Rush Creek Road, Cambridge, Idaho 83610 ("Buyer"), WITNESSETH:

IT IS MUTUALLY AGREED by and between the parties hereto as follows:

Section 1. Purchase and Sale of the Property.

(a) Seller hereby agrees to sell and Buyer hereby agrees to purchase, on the terms and conditions of this Agreement, all of Seller's right, title and interest in and to the real property in the City of Weiser, Washington County, Idaho, described in **Exhibit A**, attached hereto and hereby made a part hereof (the "Land"), together with the trestle, bridge, and appurtenances thereto (the "Bridge"), which crosses Monroe Creek located within the Land. The Land and the Bridge are hereafter sometimes collectively called the "Property".

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

(i) All minerals and all mineral rights of every kind and character now known to exist or hereafter discovered, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Seller, its successors and assigns, but without entering upon or using the surface of the lands hereby conveyed, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Buyer, its successors or assigns.

(ii) The railroad trackage and track appurtenances thereto now located upon, along and across the Property, and the right (but not the obligation) to enter the Property for the purposes of removing said railroad trackage and appurtenances for a period of nine (9) months after Closing [as defined in Section 6(a)] to comply with the requirements of the Surface Transportation Board Abandonment Decision AB-33 (Sub-No. 31 IX), New Meadows Industrial Lead, served May 9, 2013, with respect to such removal. Any trackage and appurtenances not removed within said ninety (90) day period shall vest in Buyer in their existing condition, and Seller shall not have any right or obligation to remove same. Any trackage and appurtenances vesting in

2787-39

Buyer shall be deemed to be without warranty or representation, oral or written, express or implied with respect thereto or in connection therewith.

(b) Seller further agrees to quitclaim all of its right, title and interest in and to the PERPETUAL EXCLUSIVE EASEMENT (the "Easement") reserved by Seller in that certain Quitclaim Deed dated February 3, 2012, and recorded on February 6, 2012, as Instrument #219283, in the Records of the County Recorder of Washington County, Idaho, over and across the property described in **Exhibit A**.

(c) 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.

Section 2. Purchase Price.

The purchase price for the Property is SIXTEEN THOUSAND NINE HUNDRED THIRTY-FOUR DOLLARS (\$16,934.00) ("Purchase Price").

Section 3. 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 served May 9, 2013 by the Surface Transportation Board in STB Docket No. AB 33 (Sub-No. 311X) ("Trails Use Decision"). After Closing, Buyer agrees to assume full responsibility for management of the Property and for any legal liability arising out of such transfer or use. If rail service on the Property is reactivated pursuant to the National Trails System Act, then Seller shall have the right to repurchase the Property for the then-current fair market value of the Property (including all improvements thereon) as determined by appraisal. The provisions of this Section 3 shall survive the Closing and the delivery of the deed.

Section 4. Trails Use Decision.

In the event the Trails Use Decision applicable to the Property lapses, expires or is invalidated prior to Closing, 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.

Section 5. Seller's Management Approval.

The terms and conditions of this transaction are subject to approval in accordance with Seller's Management Policy Statement. 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 within said time period shall be deemed notice of disapproval. If, within such sixty (60) day period the terms of this Agreement are not approved for any reason in accordance with Seller's Management Policy Statement, then this Agreement shall be deemed terminated forthwith. In the event of such

2787-39

termination, the Escrow Fund shall be returned to Buyer, and this Agreement shall be without any further force and effect, and without further obligation of either party to the other.

Section 6. Closing.

(a) The sale and purchase of the Property shall close ("Close" or "Closing") on or before November 5, 2013 ("Closing Date"). Possession of the Property shall pass to Buyer on Closing. Buyer shall have no right to possession or occupancy of or entry upon any portion of the Property and title thereto shall be and remain vested in Seller until Closing.

(b) At the Closing, Buyer shall deliver to Seller the Purchase Price, and Seller shall then deliver to Buyer the Quitclaim Deed and Bill of Sale referred to in Section 7.

(c) 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) At Closing, Buyer shall pay the following costs:

- (i) 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;
- (ii) The cost of recording the Quitclaim Deed;
- (iii) The Idaho State real estate excise tax, if any; and
- (iv) The cost of the required state revenue stamps, if any.

Section 7. Form of Quitclaim Deed and Bill of Sale.

Upon Closing as set forth in Section 6, Seller's right, title and interest in and to the Land shall be transferred by Seller to Buyer by a duly executed Quitclaim Deed in the form marked **Exhibit B**, attached hereto and hereby made a part hereof, and Seller's right, title and interest in and to the Bridge shall be transferred by Seller to Buyer by a duly executed Bill of Sale in the form marked **Exhibit C**, attached hereto and hereby made a part hereof.

Section 8. Assignment of Licenses.

(a) Identified Licenses. Upon Closing, Seller shall assign or partially assign to Buyer (as applicable), and Buyer shall assume or partially assume (as applicable), all of Seller's right, title and interest in and to the License Agreements (the "Licenses") identified in **Exhibit B to Exhibit D**. The Licenses shall be assigned by Seller to Buyer at Closing and assumed by Buyer by duly executed Assignment and Assumption Agreement in the form attached hereto as **Exhibit D** and made a part hereof. Rentals and other payments under the Licenses which are fully assigned shall be prorated between Seller and Buyer as of the Closing Date and other payments under the Licenses which are partially assigned shall be allocated between Seller and Buyer on a proportionate basis.

2787-39

(b) Unidentified Licenses. Buyer acknowledges that the Property may be subject to licenses and other third party rights that have not been identified by Seller to Buyer after Seller's search of its real estate records. It is the responsibility of Buyer to determine if any of these undisclosed rights exist. If any license that affects the Property is identified after the Closing Date, Seller's rights (including, without limitation, any income) and obligations under such license will be assigned to and assumed by Buyer after Closing to the extent such license affects the Property.

Section 9. 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 Buyer in an "as is" condition with all faults. Buyer further acknowledges that the Property was used for railroad right-of-way purposes. 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.

2787-39

(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 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 10. Notices.

(a) 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: Daniel Parker, Assistant Manager-Real Estate
1400 Douglas Street, Mail Stop 1690 (Folder No. 2787-39)
Omaha, Nebraska 68179
Telephone: (402) 544-8624

2787-39

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

Buyer: FRIENDS OF WEISER RIVER TRAIL, INC.
 ATTN: Shirley Atteberry
 3494 Rush Creek Road
 Cambridge, Idaho 83610
 Telephone: (208) 257-3562

(b) 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 11. 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 12. Waiver of Breach.

A waiver by either party hereto of a breach of the other party hereto 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 herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

Section 13. Time of the Essence.

Time is of the essence of this Agreement.

Section 14. Law Governing.

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

Section 15. Merger.

The terms, provisions, covenants and conditions herein contained shall merge into the deed to be delivered by Seller to Buyer at Closing and shall not survive the closing of escrow, except for the provisions of Sections 3, 8(b), 9, 16 and 18.

2787-39

Section 16. 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 hereto for brokerage commissions or other like payment. Each party hereto 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 17. Successors and Assigns.

Subject to the provisions of Section 11, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

Section 18. Certification of Non-Foreign Status.

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 E.

Section 19. Not An Offer.

The submission of this Agreement to Buyer for review or signature does not constitute an offer to sell and donate 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 donation and 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 20. 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 21. Entire Agreement.

It is understood and agreed that all understandings and agreements, whether written or oral, heretofore had between the parties hereto 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.

2787-39

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

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

By: 
Name: RODNEY S. CARROLL
Title: DIRECTOR - REAL ESTATE

**FRIENDS OF WEISER RIVER TRAIL, INC.,
an Idaho corporation**

By: 
Name: Shirley S. Atteberry
Title: President