

City Council Agenda Items  
and  
Contracts, Leases or Agreements

October <sup>15th</sup> 1st 2013  
City Council Meeting Date  
Agenda Items Only

Matt Mihalevich                      Engineering                      Development Services  
Submitted By                      Division                      Department

Action Required:

Staff requests approval of an intent to cost share with the Arkansas & Missouri Railroad for crossing safety improvements at the railroad intersection with Dickson Street contingent on the Arkansas & Missouri Railroad executing Amendment No. 1 to the 2008 License and Agreement and not reasonably withholding of future easements with the City of Fayetteville <sup>in</sup>

<u>N/A</u> Cost of this request	<u>N/A</u> Category / Project Budget	<u>N/A</u> Program Category / Project Name
<u>N/A</u> Account Number	<u>N/A</u> Funds Used to Date	<u>N/A</u> Program / Project Category Name
<u>N/A</u> Project Number	<u>N/A</u> Remaining Balance	<u>N/A</u> Fund Name

Budgeted Item                       Budget Adjustment Attached

[Signature]                      9-27-2013                      Previous Ordinance or Resolution # \_\_\_\_\_  
Department Director                      Date

Original Contract Date: \_\_\_\_\_

[Signature]                      9-27-13                      Original Contract Number: \_\_\_\_\_  
City Attorney                      Date

Paul a. Becher                      9-27-2013  
Finance and Internal Services Director                      Date

Received in City Clerk's Office 09-27-13 10:00:00 RCVD  
[Signature]

[Signature]                      9-30-13  
Chief of Staff                      Date

Received in Mayor's Office  
**ENTERED**  
9/27/13  
[Signature]

[Signature]                      9/30/13  
Mayor                      Date

Comments:

## MEMO

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**To:** Transportation Committee

**Thru:** Chris Brown, City Engineer *CB*

**From:** Matt Mihalevich, Trails Coordinator *MM*

**Date:** September 11th, 2013

**Subject:** Intent to Cost Share with the Arkansas & Missouri Railroad for Dickson St. Crossing Safety Improvements

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### RECOMMENDATION:

Approval of an intent to cost share with the Arkansas & Missouri Railroad for crossing safety improvements at the railroad intersection with Dickson Street contingent on the Arkansas & Missouri Railroad executing Amendment No. 1 to the 2008 License and Agreement and not reasonably withholding of future easements with the City of Fayetteville.

### PROPOSAL:

There have been three crashes between vehicles and trains at the Dickson Street crossing of the Arkansas & Missouri Railroad (AMRR) since 1999 including one in September of 2012 that destroyed the fence along Frisco Trail. In addition, a 21-year old University of Arkansas student was hit by a train in March of 2009 and lost his left arm. Due to these accidents and the high number of pedestrians crossing the railroad tracks at this location, the AMRR has requested the City enter into a 50/50 cost share to upgrade the crossing signals to current standards including gate arms for both the sidewalks and roadway.

On July, 15<sup>th</sup> 2008 the City of Fayetteville entered into a License and Agreement with the AMRR to enable the construction of sections of Scull Creek Trail and Frisco Trail along the railroad. As we continue to expand the trail system there are four additional areas that were not included in the original License and Agreement and are now necessary to construct a trail across property owned by the AMRR. These areas are along the Town Branch, Cato Springs and Tsa La Gi Trails as described in Exhibits G, H, J, and K of Amendment No. 1. Acquisition of these areas will provide all of the easements on Railroad property necessary to complete the current Master Trail Plan. Two of these easements are necessary for the Tsa La Gi Trail which is currently under construction by the in-house trail construction crew.

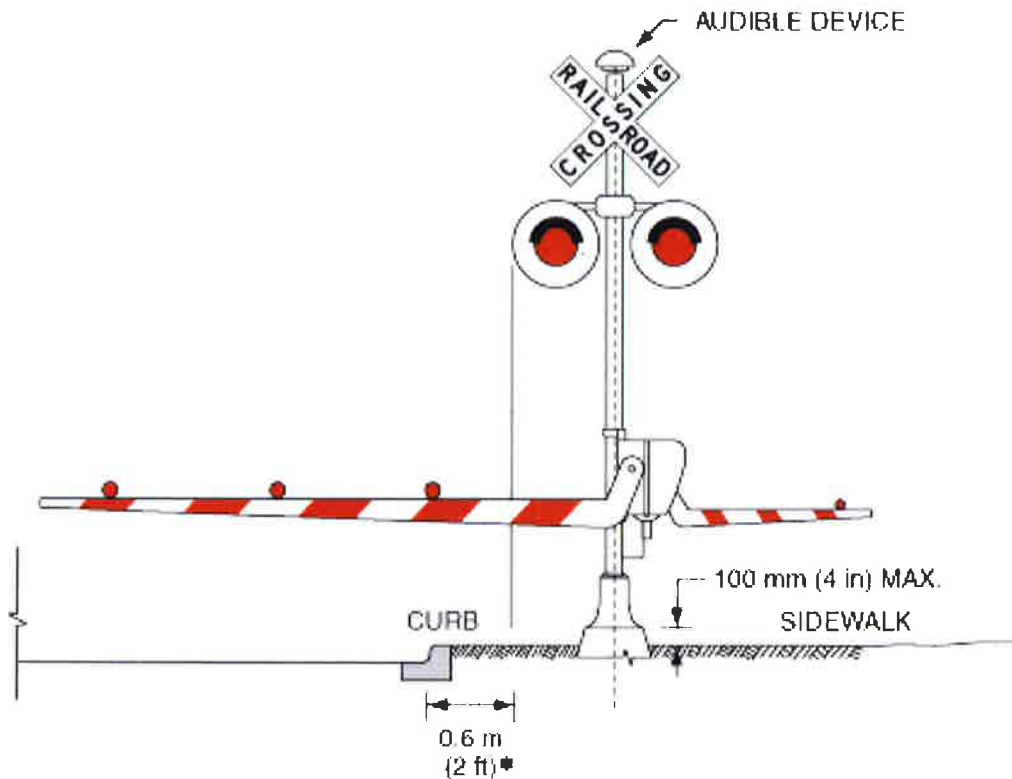
The City and AMRR have enjoyed an excellent partnership in developing the trail system on railroad property. In the spirit of this partnership, the proposed cost share will improve public safety at Dickson Street. While the letter from AMRR does not specifically mention the request for the City to extend our license agreement and add the additional four easement areas, staff recommends that the resolution of intent to cost share be contingent

on the AMRR executing Agreement No. 1. Although the value of the easements is less than the expense of the cost share, the value of the public safety improvement at this busy intersection is a strong factor in the staff recommendation to participate in the cost share.

**BUDGET IMPACT:**

The estimated cost for the crossing signal safety improvements is \$500,000 therefore the City’s share would be \$250,000 plus any cost necessary to adjust the street, trail, lighting and landscape areas to accommodate the new crossing equipment. There is potential grant funding through the Arkansas State Highway and Transportation Department Railroad Safety Crossing program. This program favors projects with a cost share involved and where there are high numbers of pedestrians crossing. The AMRR plans to build the proposed safety improvements by the end of the year 2015, so there will be time for staff to apply for grant funding to cover the City portion of the cost share. This item will be brought back before the City Council for approval once a funding source is identified.

**Figure 10D-4. Example of Pedestrian Gate Placement with Pedestrian Gate Arm**



\* For locating this reference line at other than curb section installation, see Section 8D.01.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION EXPRESSING THE INTENT OF THE CITY OF FAYETTEVILLE TO ENTER INTO A COST-SHARE AGREEMENT WITH ARKANSAS & MISSOURI RAILROAD CO. FOR CROSSING SAFETY IMPROVEMENTS AT THE DICKSON STREET RAILROAD CROSSING, CONTINGENT UPON APPROVAL BY ARKANSAS & MISSOURI RAILROAD CO. OF AMENDMENT NO. 1 TO THE 2008 TRAIL LICENSE AGREEMENT AND NOT UNREASONABLY WITHHOLDING ASSENT TO FUTURE TRAIL EASEMENTS FOR THE CITY

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby expresses the intent of the City of Fayetteville to enter into a cost-share agreement with Arkansas & Missouri Railroad Co. for crossing safety improvements at the Dickson Street railroad crossing, contingent upon approval by Arkansas & Missouri Railroad Co. of Amendment No. 1 to the 2008 trail license agreement and not unreasonably withholding assent to future trail easements for the City.

**PASSED and APPROVED** this 15<sup>th</sup> day of August, 2013.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**



## ARKANSAS & MISSOURI RAILROAD

306 East Emma • Springdale, AR 72764

(479) 751-8600 • Fax (479) 751-2225

[www.amrailroad.com](http://www.amrailroad.com)

August 8, 2013

Honorable Mayor Lioneld Jordan  
City of Fayetteville  
125 West Mountain St.  
Fayetteville, Arkansas

Re: Dickson Street Rail Crossings

Dear Mr. Jordan:

I appreciate your June 18, 2013 letter and the spirit of cooperation between the Arkansas Missouri Railroad (AMRR) and the City of Fayetteville. The City of Fayetteville's leadership is the catalyst for the multi-use trail construction within our region. Thank you for continued compliance regarding our current License and Agreement. This compliance helps ensure safety for all enjoying the trails near the railroad.

The AMRR is investigating upgrading the safety equipment at the Dickson Street crossing. As you know both pedestrian and vehicular traffic continues to increase near and at this crossing. It is regarding this higher traffic and increased speed and train traffic we are considering this safety upgrade. While the full extent of the upgrade is still being considered, we know that it will impact the location and possible width of the trail paralleling the railroad at the crossing.

Our preliminary investigation has determined that the upgrades will cost approximately \$500,000 for the safety improvements. To construct these improvements specific street, trail and landscape areas within and parallel to the AMRR right-of-way will be disturbed.

The AMRR is requesting the City commit to cost sharing in these safety improvements up to \$250,000 and for the City to commit to reconstruct the street, trail and landscape areas disturbed by this construction. Once the final improvements have been identified we will rely on the City's engineering department and City land agents to secure any additional right-of-way that may be needed for any trail relocation or widening.

As the City continues to expand its trail system near our facilities we are confident safety will be priority.

If the City agrees to participate in this cost share and the items mentioned above, please confirm this commitment with a resolution approved by City Council.

The AMRR agrees to build the proposed safety improvements by end of year 2015.

Please call me with any questions.

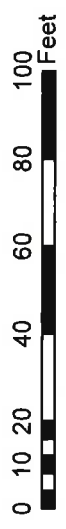
Sincerely,

  
Brent G. McCready  
President



Existing Railroad Crossing Signals

Proposed Railroad Crossing Safety Improvements



Dickson Street Railroad Crossing Safety Improvements

BAKERS, JAMES V  
765-9930-0000

MPTIX HOLDINGS LLC  
85-99914-0000

TROY LINK ENTERPRISE LLC  
765-12874-0000

TROY LINK ENTERPRISE LLC  
765-12874-0000

ALLEY 318

FAYETTEVILLE DEPOT LLC  
765-12875-0000

BANK OF FAYETTEVILLE  
765-017-0000

DICKSON ST

Frisco Trail

BRIAN CROWNE HOLDINGS LLC  
765-0174-0000

FRISCO RAILWAY  
765-01745-0000

Walton Arts Center Parking Lot  
CITY OF FAYETTEVILLE, ARKANSAS  
765-01739-0000

WEST DICKSON STREET DEVELOPMENT  
765-28774-0000

CITY OF FAYETTEVILLE, ARKANSAS  
765-01740-0000

CITY OF FAYETTEVILLE, ARKANSAS  
765-01726-0000

WEST AVE

POWERHOUSE AVE





www.accessfayetteville.org

June 18, 2013

Mr. Brent McCready  
President  
Arkansas & Missouri Railroad Company  
306 East Emma  
Springdale, AR 72764  
(479) 751-8600

Dear Mr. McCready:

We appreciate your support of the growing system of multi-use trails in Fayetteville and throughout the region. The original License and Agreement from July 15<sup>th</sup>, 2008 has enabled the City of Fayetteville to construct the backbone of the trail system, Scull Creek Trail which experiences an average of over 600 people daily. This partnership has worked well by limiting the access for people to walk the railroad tracks and instead giving a safe well lighted place to travel by foot or bicycle. The City has complied with every item in the License and Agreement including keeping the required insurance policy up to date and current.

The City of Fayetteville is continuing to expand the trail system and would like to request the addition of four new exhibit areas to the original License and Agreement. Based on our current trail master plan, these will be the final remaining areas where the trail will cross Arkansas & Missouri Railroad property. Please find the attached Amendment to the License and Agreement for the addition of the four areas to be used for multi-use trail construction as described in Exhibits G,H,J & K. All terms and conditions of the original License and Agreement would apply to the new areas described.

We look forward to continuing this positive partnership and hope we have your support to continue to expand the system of trails in Fayetteville.

Lioneld Jordan  
City of Fayetteville, Mayor

**AMENDMENT TO LICENSE AND AGREEMENT**

**AMENDMENT NO. 1**

This Amendment No. 1, dated \_\_\_\_\_, 2013 shall amend the original LICENSE AND AGREEMENT between the ARKANSAS & MISSOURI RAILROAD COMPANY, a Virginia Corporation, whose local address is 306 East Emma, Springdale, Arkansas 72764, and the CITY OF FAYETTEVILLE, ARKANSAS, a Municipal Corporation, whose address is 113 W. Mountain St., Fayetteville Arkansas 72701 dated July 15<sup>th</sup>, 2008 for the installation and maintenance of a multi-use trail along and across the ARKANSAS & MISSOURI RAILROAD COMPANY'S right-of way in the City of Fayetteville, County of Washington, State of Arkansas.

WHEREAS, The LICENSE AND AGREEMENT is hereby modified to include Exhibits G, H, J & K as described and attached hereto and made a part here of, said multi-use trail to be installed and maintained at the sole cost and expense of the CITY OF FAYETTEVILLE.

WHEREAS, At any point where the trail is to cross any existing tracks within the exhibited areas, it shall only pass under existing tracks and not across the top of them. All plans for the trail, including protection for the users of the trail, where it passes beside, along, over, or under any existing railroad tracks or existing operations, shall be subject to the approval of the ARKANSAS & MISSOURI RAILROAD COMPANY, which approval will not be unreasonably withheld. No work shall be performed upon any part of the trail on ARKANSAS & MISSOURI RAILROAD COMPANY right of way, including but not limited to the those portions of the trail as described in the original Memorandum of License and Agreement dated July 15, 2008, until after obtaining a work permit from the ARKANSAS & MISSOURI RAILROAD COMPANY and only if the permittee complies with any and all conditions of such work permit.

WHEREAS, the ARKANSAS & MISSOURI RAILROAD COMPANY is agreeable to the installation and use by the CITY OF FAYETTEVILLE, its agents, servants, employees, guests and the public generally of said multi-use trail over the property of the ARKANSAS & MISSOURI RAILROAD COMPANY as described in Exhibits G, H, J, & K over the property of the ARKANSAS & MISSOURI RAILROAD COMPANY at the City of Fayetteville, Arkansas at the sole cost and expense of the CITY OF FAYETTEVILLE, and according to the terms and conditions hereinafter set forth in the original LICENSE AND AGREEMENT dated July, 15<sup>th</sup> 2008

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

City of Fayetteville, Arkansas

Arkansas & Missouri Railroad Co.

By: \_\_\_\_\_  
LIONELD JORDAN, Mayor

By: \_\_\_\_\_  
BRENT McCREADY, President

ATTEST:

By: \_\_\_\_\_  
SONDRA E. SMITH, City Clerk/Treasurer

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary



**Between Government and Hill Avenue (As shown on Exhibit G)**

**Arkansas & Missouri Railroad Company**  
**No Parcel Number**  
**Instrument No. 2001-28071, Exhibit "A", Page 6**

**Description:**

A part of the old Pacific & Great Eastern right-of-way upon, over, and across the Northeast Quarter (NE ¼) of the Northwest Quarter (NW ¼) of Section Twenty-one (21), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas, being more particularly described as follows:

The forty foot (40') strip described in Instrument Number 2001-28071, Exhibit "A", Page 6, second tract description, said document filed with the Circuit Clerk of said county, being of equal and uniform width, the Northerly line of said strip being adjacent and parallel to the Southerly lines of those properties described in Instrument No. 2007-16543 and Instrument No. 2012-36003 (Tract B) both being filed with said Circuit Clerk; the Southerly line of said strip being adjacent and parallel to those properties described in Instrument No. 2004-4951 and in said Instrument 2012-36003 (5<sup>th</sup> description, Tract A) both being filed with said Circuit Clerk, the sidelines of said strip being prolonged or shortened to terminate at the Easterly right-of-way of Hill Avenue and at the Westerly right-of-way of Government Avenue, containing 24,866 square feet, more or less.

A portion of the Arkansas and Missouri Railroad Co. property.

**At Beechwood Avenue (As shown on Exhibit H)**

**Arkansas & Missouri Railroad Company**  
**Parcel No. 765-14843-000**  
**Instrument No. 2001-28071**

**Description:**

A part of the Northwest Quarter (NW ¼) of the Northeast Quarter (NE ¼) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas, being more particularly described as follows:

A twenty-five (25) foot wide proposed multi-purpose trail easement being twelve and one half feet (12.5') either side of a centerline with sidelines of said easement to be extended or shortened to terminate at the Easterly right-of-way of Beechwood Avenue and the Easterly property line of the Arkansas and Missouri Railroad Co., said centerline being described as follows:

Commencing at a set brass cap (P.S. 1514) at the Northwest Corner of said forty (40) acre tract; thence along the Westerly line of said tract South 02°18'47" West 217.68 feet; thence leaving said Westerly line South 87°41'13" East 21.15 feet to the Easterly right-of-way line of said Beechwood Avenue, being the Point of Beginning; thence leaving said right-of-way North 41°18'55" East 29.29 feet to the beginning of a curve to the right having a radius of 50.00 feet and a delta of 47°39'01"; thence along said curve an arc length of 41.58 feet and a chord bearing and distance of North 61°50'32" East 40.39 feet; thence North 85°40'03 East 161.56 feet; thence South 88°14'58" East 96.76 feet; thence North 85°42'57" East 111.70 feet to the centerline terminus being on the Westerly line of a property described in Instrument No. 2008-22052 as filed with the Circuit Clerk of said county said centerline terminus being North 04°16'41" West 7.50 feet from the Southwest corner of said property, containing 11,073 square feet, more or less.

### **At Town Branch (As shown on Exhibit J)**

A portion of the Arkansas and Missouri Railroad Co. property.

#### **Description:**

A part of the North Half (N ½) of the Southeast Quarter (SE ¼) of Section Twenty (20) in Township Sixteen (16) North, Range Thirty (30) West, Washington County Arkansas, being more particularly described as follows:

A fifty foot (50') wide multi-use trail easement being a portion of the Arkansas and Missouri Railroad Company's Monett to Fort Smith Main Track fifty foot (50') right-of-way as shown on Frisco Lines Yard Plat for Fayette Junction dated December 28, 1916 (correction date of June 7, 1916) and being described in Deed Bk. 1206, Pg. 317 and Instrument No. 2001-28071 as filed with the Circuit Clerk, Washington County, Arkansas, said right-of-way being twenty-five feet (25') either side of said Main Track centerline also being the centerline of said trail easement, said centerline being described as follows:

Commencing at a found iron pin being the Southwest Corner of the Northeast Quarter (NE ¼) of the Southeast Quarter (SE ¼) of said Section Twenty (20); thence along the Westerly line of said forty (40) acre tract North 03°17'44" East 374.73 feet; thence North 79°55'28" West 12.49 feet to Station 4034 + 01.15 of said Main Track centerline as per said Frisco Lines Yard Plat being the POINT OF BEGINNING, being the beginning of a curve to the right having a delta angle of 00°20'29" and a radius of 6712.49 feet; thence along said centerline an arc length of forty feet (40') and a chord bearing and distance of North 09°54'18" East 40.00 feet to Station 4033 + 81.15 of said Main Track centerline being the terminus, containing 2,000 square feet, more or less.

### **At Town Branch (As shown on Exhibit K)**

A portion of the Arkansas and Missouri Railroad Co. property.

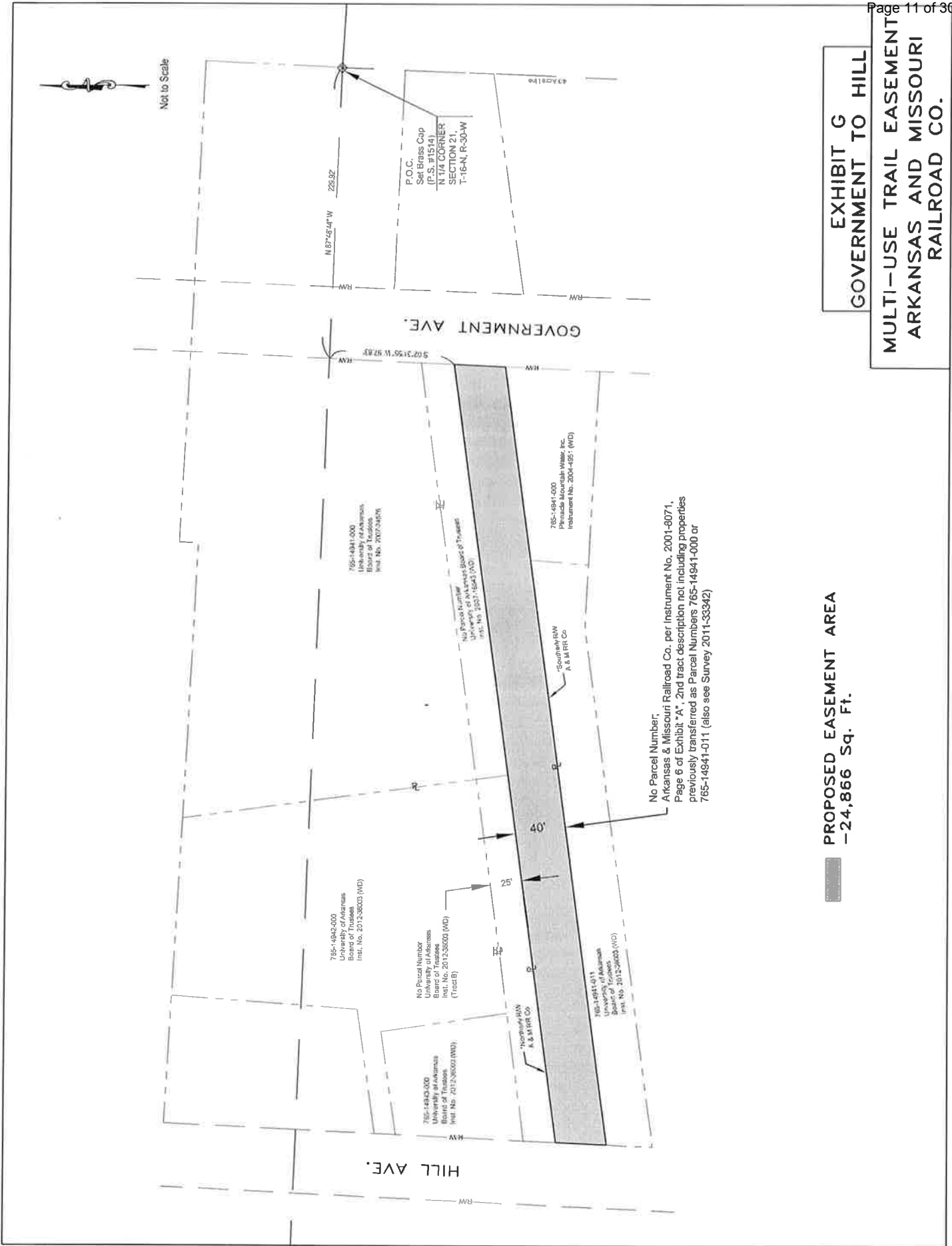
#### **Description:**

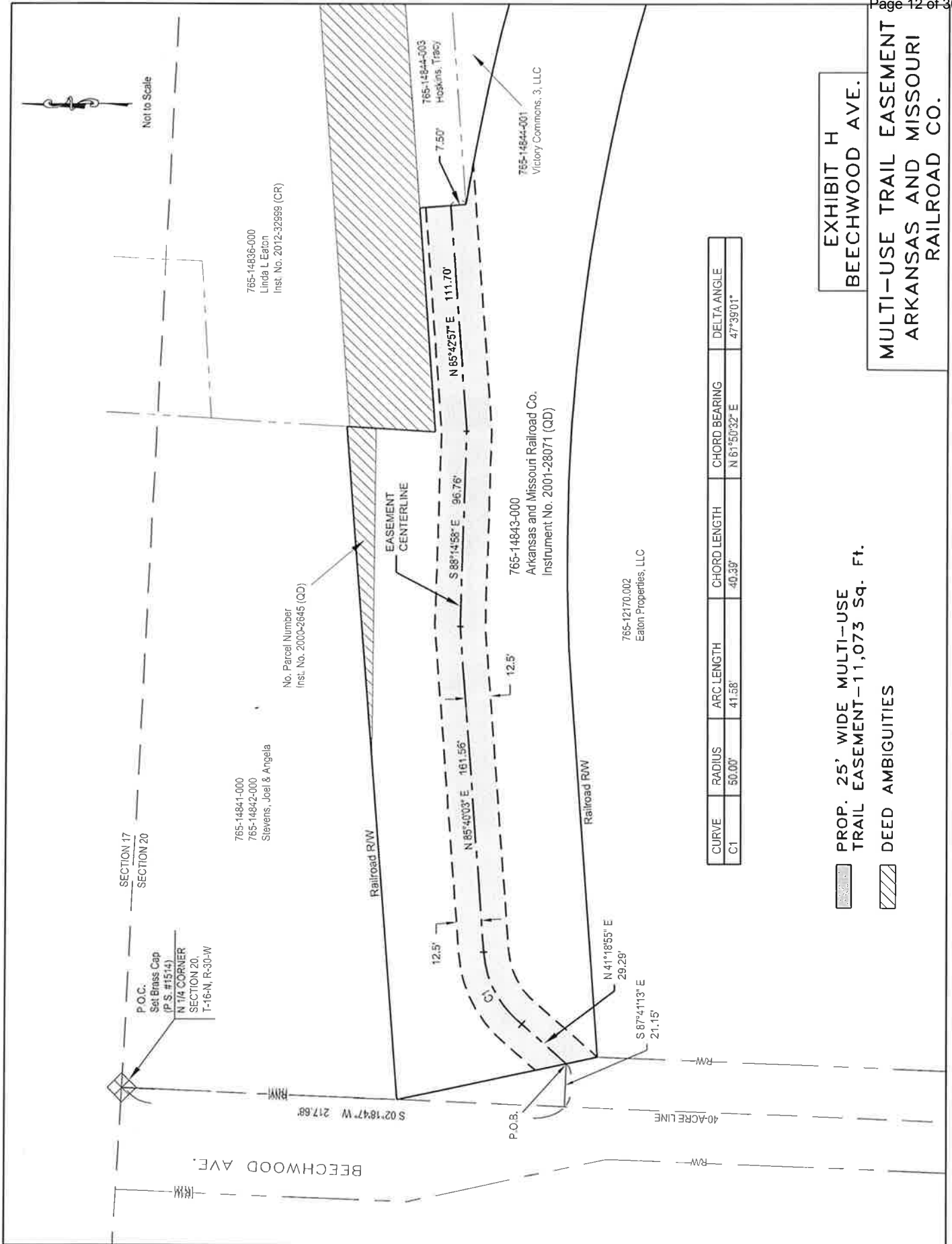
A part of the Southeast Quarter (SE ¼) of the Northeast Quarter (NE ¼) of Section Twenty-nine (29) in Township Sixteen (16) North, Range Thirty (30) West, Washington County Arkansas, being more particularly described as follows:

A one hundred foot (100') wide multi-use trail easement being a portion of the Arkansas and Missouri Railroad Company's Monett to Fort Smith Branch Line right-of-way as shown on Frisco Lines Yard Plat for Fayette Junction dated December 28, 1916 (correction date of June 7, 1916) and being described in Deed Bk. 1206, Pg. 317 as filed with the Circuit Clerk, Washington County, Arkansas, said right-of-way being fifty feet (50') either side of the Main Track centerline also being the centerline of said trail easement, said centerline being described as follows:

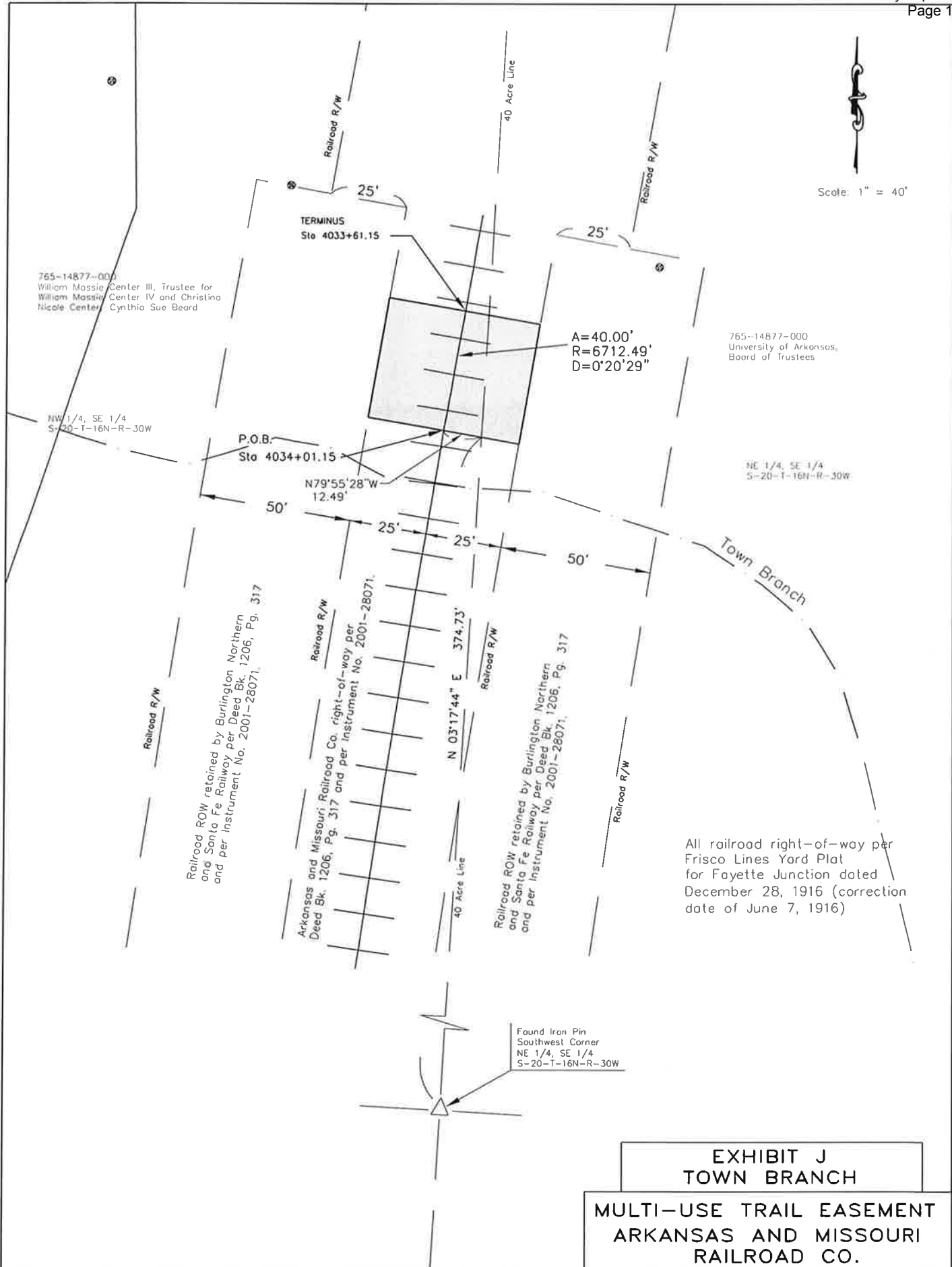
Commencing at the Northwest Corner of said forty (40) acre tract; thence along the Northerly line of said tract South 87°03'43" East 281.03 feet to Station 4064 + 79.68 (±) of said Main Track centerline as per said Frisco Lines Yard Plat; thence along said centerline South 08°12'00" East 166.72 feet to Station 4066 + 46.40 (±), being the POINT OF BEGINNING; thence continuing along said centerline South 08°12'00" East 130.00 feet to Station 4067 + 76.40 (±) being the terminus, containing 13,000 square feet, more or less.

**EXHIBIT G**  
**GOVERNMENT TO HILL**  
**MULTI-USE TRAIL EASEMENT**  
**ARKANSAS AND MISSOURI RAILROAD CO.**





**EXHIBIT H**  
**BEECHWOOD AVE.**  
**MULTI-USE TRAIL EASEMENT**  
**ARKANSAS AND MISSOURI**  
**RAILROAD CO.**



765-14877-000  
 William Massie Center III, Trustee for  
 William Massie Center IV and Christina  
 Nicole Center, Cynthia Sue Beard

765-14877-000  
 University of Arkansas,  
 Board of Trustees

NW 1/4, SE 1/4  
 S-20-T-16N-R-30W

NE 1/4, SE 1/4  
 S-20-T-16N-R-30W

Railroad ROW retained by Burlington Northern  
 and Santa Fe Railway per Deed Bk. 1206, Pg. 317  
 and per Instrument No. 2001-28071.

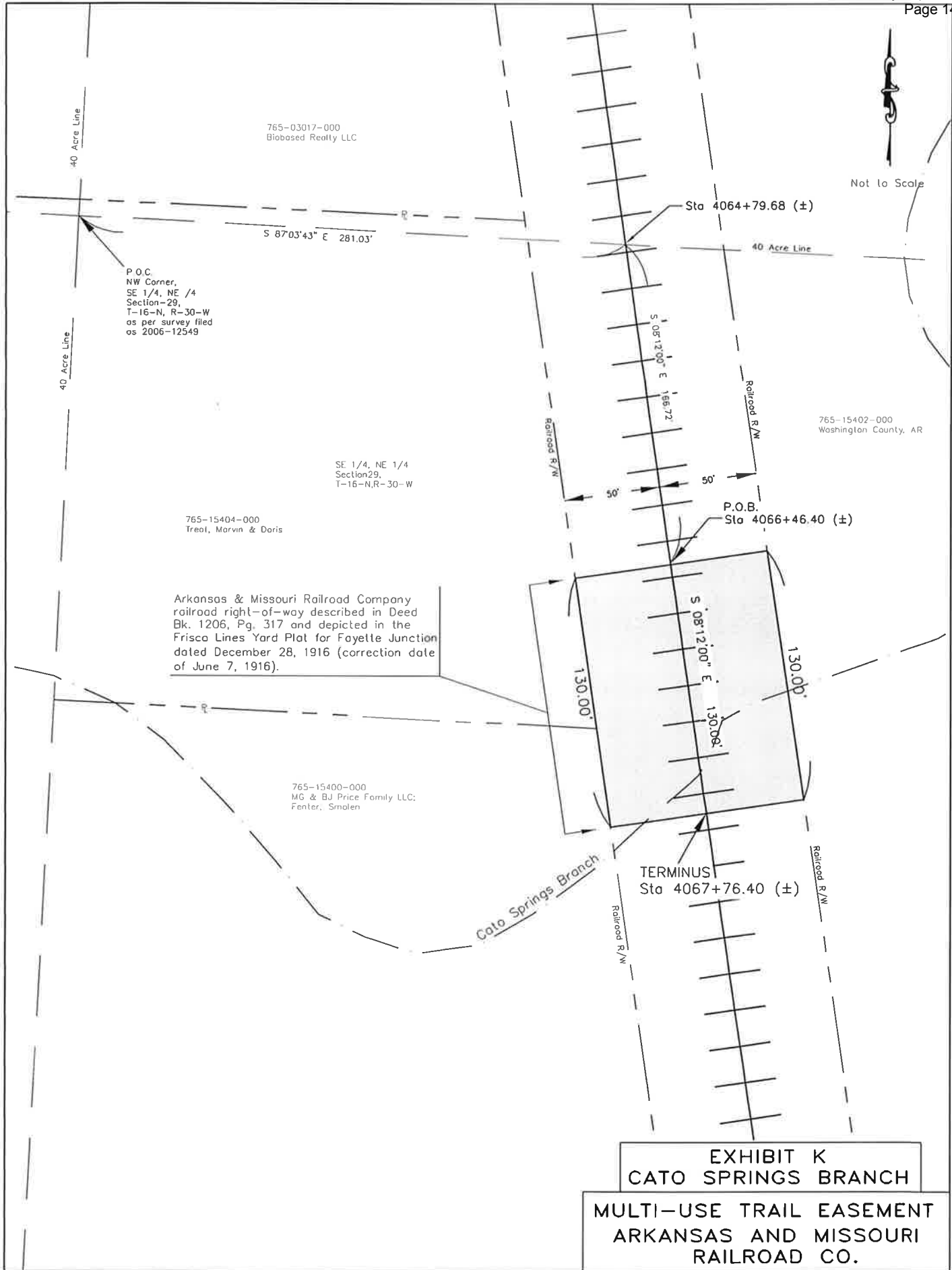
Arkansas and Missouri Railroad Co. right-of-way per  
 Deed Bk. 1206, Pg. 317 and per Instrument No. 2001-28071.

Railroad ROW retained by Burlington Northern  
 and Santa Fe Railway per Deed Bk. 1206, Pg. 317  
 and per Instrument No. 2001-28071.

All railroad right-of-way per  
 Frisco Lines Yard Plat  
 for Fayette Junction dated  
 December 28, 1916 (correction  
 date of June 7, 1916)

Found Iron Pin  
 Southwest Corner  
 NE 1/4, SE 1/4  
 S-20-T-16N-R-30W

**EXHIBIT J**  
**TOWN BRANCH**  
**MULTI-USE TRAIL EASEMENT**  
**ARKANSAS AND MISSOURI**  
**RAILROAD CO.**





Doc ID: 014770230014 Type: REL  
Kind: AGREEMENTS  
Recorded: 08/30/2012 at 02:03:19 PM  
Fee Amt: \$80.00 Page 1 of 14  
Washington County, AR  
Bette Stamps Circuit Clerk

File **2012-00026010**

**LICENSE AND  
AGREEMENT**

MEMORANDUM OF LICENSE AND AGREEMENT, effective the 15<sup>th</sup> day of July, 2008, by and between the ARKANSAS & MISSOURI RAILROAD COMPANY, a Virginia Corporation, whose local address is 306 East Emma, Springdale, Arkansas 72764, and the CITY OF FAYETTEVILLE, ARKANSAS, a Municipal Corporation, whose address is 113 W. Mountain St., Fayetteville, Arkansas 72701,

WHEREAS, the CITY OF FAYETTEVILLE has requested to install and maintain for the use of CITY OF FAYETTEVILLE and the public generally, a multi-use trail along and across the ARKANSAS & MISSOURI RAILROAD COMPANY's right-of way in the City of Fayetteville, County of Washington, State of Arkansas substantially as shown on and more particularly described the Exhibits attached hereto and made a part hereof, said multi-use trail to be installed and maintained at the sole cost and expense of the CITY OF FAYETTEVILLE; and

WHEREAS, the ARKANSAS & MISSOURI RAILROAD COMPANY is agreeable to the installation and use by CITY OF FAYETTEVILLE, its agents, servants, employees, guests and the public generally of said multi-use trail over the property of the ARKANSAS & MISSOURI RAILROAD COMPANY at the City of Fayetteville, Arkansas at the sole cost and expense of the CITY OF FAYETTEVILLE, but only on the terms and conditions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. The CITY OF FAYETTEVILLE will furnish the labor and materials necessary to install and maintain said multi-use trail over the property of the ARKANSAS & MISSOURI RAILROAD COMPANY at City of Fayetteville, Arkansas.
2. The ARKANSAS & MISSOURI RAILROAD COMPANY hereby grants license unto the CITY OF FAYETTEVILLE to install and maintain said multi-use trail over the property of the ARKANSAS & MISSOURI RAILROAD COMPANY at the locations described on Exhibit "1" and as diagramed on Exhibits "A-F" attached hereto, and permission to use said multi-use trail during the continuance hereof, together with the agents, servants, employees, guests and invitees of CITY OF FAYETTEVILLE, and the public generally.
3. Should any changes be required in the location, construction, reconstruction or protection of the multi-use trail, due to ARKANSAS & MISSOURI RAILROAD COMPANY's use of its property and facilities, including changes to or installation of ARKANSAS & MISSOURI RAILROAD COMPANY's track at the locations of the multi-use trail, or due to the requirements of any Local, State or Federal regulations, the CITY OF FAYETTEVILLE at its sole cost and expense shall make changes required to the multi-use trail, or the ARKANSAS & MISSOURI RAILROAD COMPANY will make the changes, additions or modifications to the multi-use trail, at the sole cost and expense of the CITY OF FAYETTEVILLE.
4. The CITY OF FAYETTEVILLE shall not create or permit to be created or to exist upon said multi-use trail any nuisance, public or private, during the continuance of this License.

5. The term of this Agreement and License shall continue in full force and effect for a term of Ninety-Nine (99) years unless it shall become necessary for the ARKANSAS & MISSOURI RAILROAD COMPANY to construct a second set of tracks or other improvements for its operation, at which time the ARKANSAS & MISSOURI RAILROAD COMPANY shall give the CITY OF FAYETTEVILLE One Hundred Eighty (180) days notice in writing of its intention so to do. The ARKANSAS & MISSOURI RAILROAD COMPANY can also terminate this License for cause if after written notice to the CITY OF FAYETTEVILLE it has not cured a breach of its obligations within thirty (30) days notice to do so. Upon termination or expiration of this agreement, the CITY OF FAYETTEVILLE shall, at the sole cost and expense of the CITY OF FAYETTEVILLE, remove the multi-use trail described herein and restore the portion of ARKANSAS & MISSOURI RAILROAD COMPANY's property used for the multi-use trail to its former condition. If the improvements are not removed within 30 days of the termination, the ARKANSAS & MISSOURI RAILROAD COMPANY shall remove or cause to be removed the multi-use trail, of which reasonable cost and expense shall be paid by the CITY OF FAYETTEVILLE.

6. As consideration for the privileges herein contained the CITY OF FAYETTEVILLE agrees, at the sole cost and expense of the CITY OF FAYETTEVILLE, to erect, own, and maintain a 6' black vinyl coated chain link fence to be located between the trail and the tracks to discourage pedestrian access to the multi-use trail; to install signage at every point where it is possible for the public to access the right-of-way, warning that trespassing upon railroad tracks and right-of-way is both illegal and dangerous; and to construct and maintain freestanding roof structures at those points where the multi-use trail passes under the trestles of the ARKANSAS & MISSOURI RAILROAD COMPANY. The freestanding roof structures shall extend to the right-of-way of the ARKANSAS & MISSOURI RAILROAD COMPANY, and be constructed in such a manner as to deter the users of the multi-use trail from using them as leverage to access the trestles or other railroad structures.

7. Notwithstanding anything above to the contrary, CITY OF FAYETTEVILLE, its successors and assigns, including any contractors or subcontractors providing work for it, shall not perform any construction or any significant maintenance other than mowing, weed-eating, trash pick up, and the like, within Exhibit "A" without first obtaining a work permit from ARKANSAS & MISSOURI RAILROAD COMPANY and shall comply with all conditions of such work permit, including the furnishing of a railroad protected insurance policy.

8. The CITY OF FAYETTEVILLE shall cause any contractor engaged by it to obtain and furnish to the ARKANSAS & MISSOURI RAILROAD COMPANY a policy of public liability and property damage insurance in an amount of not less than \$5,000,000.00. Such policy shall name the ARKANSAS & MISSOURI RAILROAD COMPANY as an additional insured and shall provide that notice shall be given to the ARKANSAS & MISSOURI RAILROAD COMPANY not less than thirty (30) days prior to the cancellation of such policy. Such policy shall be subject to the approval of the ARKANSAS & MISSOURI RAILROAD COMPANY and shall remain in effect during the construction of the improvements contemplated by this agreement.

9. The CITY OF FAYETTEVILLE shall, at its sole cost and expense, reimburse for any delays to train operations, and repair any and all damage to the ARKANSAS & MISSOURI RAILROAD COMPANY'S property, any property within its possession as a bailee or lessee, trackage, and other facilities, which delays or damage are caused by the installation, repair and maintenance of the improvements contemplated this agreement and shall, to the reasonable



satisfaction of the ARKANSAS & MISSOURI RAILROAD COMPANY, restore such property, trackage and other facilities to their original condition. The CITY OF FAYETTEVILLE shall cause the contractor, if any, to be bound by this provision.

10. The CITY OF FAYETTEVILLE shall cause any contractor employed by it or engaged by it to construct the improvements contemplated by this agreement to assume any and all liability for injury to or death of persons, all loss or damage to property, in any manner arising from or during the construction of the improvements contemplated by this agreement, however, such injury, death, loss, damage or destruction as aforesaid may occur or be caused. The CITY OF FAYETTEVILLE shall further cause any contractor engaged by it to construct the improvements contemplated by this agreement to indemnify and save and hold harmless the ARKANSAS & MISSOURI RAILROAD COMPANY from any and all claims, demands, suits, actions, damages, recoveries, judgments, costs and expenses arising or growing out of or in connection with such injury, death, loss, damage, or destruction as aforesaid, which expense shall include the cost ARKANSAS & MISSOURI RAILROAD COMPANY incurs defending itself, including attorney fees and expenses.

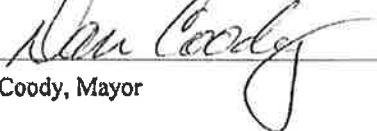
11. In consideration of the grant of this License, the CITY OF FAYETTEVILLE shall purchase a policy of liability insurance which shall insure the ARKANSAS & MISSOURI RAILROAD COMPANY in the amount of \$5,000,000.00 from liability for injury or death to persons or damage to property arising from persons using the trail described on Exhibit "A," including persons who are injured at any place upon the right of way of the ARKANSAS & MISSOURI RAILROAD COMPANY adjacent to such trail, whether injuries are caused by the operation of trains by the ARKANSAS & MISSOURI RAILROAD COMPANY or otherwise. At the option of the ARKANSAS & MISSOURI RAILROAD COMPANY such policy shall either name the ARKANSAS & MISSOURI RAILROAD COMPANY as a named insured of such policy or an additional insured. Such policy shall be kept in full force and effect during the existence of this License and shall continue to insure the ARKANSAS & MISSOURI RAILROAD COMPANY for incidents arising during the existence of this License and until such trail and any improvements installed by the CITY OF FAYETTEVILLE are removed in accordance with the provisions of paragraph 5 above, regardless of when the claim is made. Such policy shall be subject to the approval of the ARKANSAS & MISSOURI RAILROAD COMPANY and shall provide notice to the ARKANSAS & MISSOURI RAILROAD COMPANY not less than thirty (30) days of cancellation of such policy. If the CITY OF FAYETTEVILLE engages a contractor to construct such trail and such policy acquired by the contractor pursuant to paragraph 8 would cover the same potential liability of the ARKANSAS & MISSOURI RAILROAD COMPANY as the policy to be acquired by the CITY OF FAYETTEVILLE as required above, then the CITY OF FAYETTEVILLE shall not be required to provide the insurance required herein above until the construction of such trail is complete (so long as there is no lapse of coverage). Otherwise, such policy required of the CITY OF FAYETTEVILLE shall be acquired and made effective prior to the commencement of any construction of such trail.

12. This Agreement shall not be assigned or in any manner transferred without the express written consent of the President of the ARKANSAS & MISSOURI RAILROAD COMPANY, or his duly authorized representative.

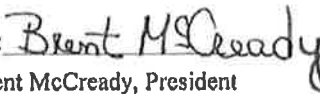
Until terminated as herein provided, this Agreement shall inure to the benefit of and be binding upon the legal representative and successors of the parties respectively.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

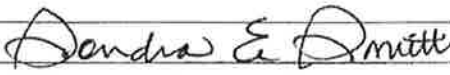
City of Fayetteville, Arkansas

By:   
Dan Coody, Mayor

Arkansas & Missouri Railroad Co.

By:   
Brent McCready, President

ATTEST:

By:   
SONDRA E. SMITH, City Clerk/Treasurer



**ACKNOWLEDGMENT**

STATE OF ARKANSAS                    )  
  )  
COUNTY OF WASHINGTON            )        ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Dan Coody** and **Sondra Smith**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the **Mayor** and **City Clerk** of the **City of Fayetteville, Arkansas, a municipal corporation**, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 15TH day of July, 2018.

MY COMMISSION EXPIRES:

09-18-2017

  
\_\_\_\_\_  
Notary Public



ACKNOWLEDGMENT

STATE OF ARKANSAS            )  
  )ss.  
COUNTY OF WASHINGTON    )

On this the 7<sup>th</sup> day of August, 2012, before me, the undersigned officer, personally appeared Brent McCready, who acknowledged himself to be the President of the Arkansas & Missouri Railroad Co., a corporation, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:  
5-2-2013

  
\_\_\_\_\_  
Notary Public



ARKANSAS AND MISSOURI RAILROAD COMPANY, INC.

As shown on Exhibit "A":

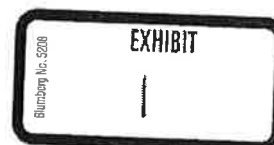
Part of the Southwest Quarter (SW¼) of the Northeast Quarter (NE¼) Section Sixteen (16), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas and all within the Arkansas and Missouri Railroad right-of-way being more particularly described as follows: Beginning at the intersection of the Southerly right-of-way Dickson Street and a point eight (8) feet easterly of the existing centerline main track Arkansas and Missouri Railroad; thence along the said Southerly right-of-way of Dickson Street South 87°10'56" East 17.00 feet to a point twenty-five (25) feet Easterly of and parallel to said existing centerline main track; thence leaving said Southerly right-of-way Dickson Street parallel to said existing centerline main track South 02°43'39" West 45.00 feet to the beginning of a curve to the right, said curve having a central angle of 23°22'50" and a radius of 980.37 feet; thence along said curve concentric to said existing centerline main track an arc length of 400.05 feet; thence parallel to said existing centerline main track South 27°19'38" West 87.88 feet; thence North 62°40'22" West 17.00 feet to a point perpendicular and parallel to eight (8) feet easterly of said existing centerline main track; thence parallel to said existing main track North 27°19'38" East 87.88 feet to the beginning of a curve to the left, said curve having a central angle of 23°22'11" and a radius of 963.37 feet; thence concentric to said existing main track along said curve an arc length of 392.94 feet; thence continuing parallel to said existing main track North 02°43'39" East 44.85 feet to the Point of Beginning, containing 8998 square feet, more or less.

As shown on Exhibit "B":

Part of the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) Section Sixteen (16), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas and all within the Arkansas and Missouri Railroad right-of-way being more particularly described as follows: Beginning at the intersection of the Northerly right-of-way Dickson Street and a point eight (8) feet easterly of the existing centerline main track Arkansas and Missouri Railroad; thence parallel to said existing main track North 02°43'39" East 415.61 feet to the beginning of a curve to the left, said curve having a central angle of 12°45'24" and a radius of 1335.51 feet; thence concentric to said existing main track along said curve an arc length of 297.35 feet to the Southerly right-of-way Lafayette Street; thence along said Southerly right-of-way Lafayette Street North 74°24'22" East 17.08 feet to the beginning of a non-tangent curve to the right; thence leaving said Southerly right-of-way Lafayette Street along said curve, said curve having a central angle of 12°49'37" and a radius of 1352.51 feet, an arc length of 302.79 feet to a point, said point having a chord bearing and distance from said beginning of curve of South 03°41'10" East 302.16 feet; thence South 02°43'39" West 415.61 feet to the said Northerly right-of-way Dickson Street; thence along said Northerly right-of-way Dickson Street North 87°16'21" West 17.00 feet the Point of Beginning, containing 12167 square feet, more or less.

As shown on Exhibit "C":

Part of the Northwest Quarter (NW¼) of the Northeast Quarter (NE¼) and part of the Northeast Quarter (NE¼) of the Northwest Quarter (NW¼) Section Sixteen (16), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas and all within the Arkansas and Missouri Railroad right-of-way being more particularly described as follows: Beginning at the intersection of the Southerly right-of-way of Maple Street and a point eight (8) feet easterly and radial of the existing centerline main track of the Arkansas and Missouri Railroad; thence along said Southerly right-of-way of Maple Street South 81°39'25" East 18.71 feet to a point twenty-five (25) feet Easterly of and concentric to said existing centerline main track; thence leaving said Southerly right-of-way of Maple Street along a curve concave Northeasterly concentric to said existing centerline main track an arc length of 206.26 feet through a central angle 03°06'51", said curve having a radius of 3794.83 feet to the West line of Lot 1, Frisco Addition to the City of Fayetteville; thence along said West line South 02°46'46" West 15.67 feet to the Southwest corner of said Lot 1; thence along the South line of said Lot 1 South 87°34'14" East 6.44 feet to a point 25' feet Easterly of and concentric to said existing centerline main track; thence along a curve concave Northeasterly concentric to said existing centerline main track an arc length of 74.61 feet through a central angle 01°07'35", said curve having a radius of 3794.83 feet; parallel to said existing centerline main track South 20°52'25" East 37.70 feet to the beginning of a curve to the right, said curve having a central angle of 08°38'58" and a radius of 1352.51 feet; thence along said curve an arc length of 204.17 feet to the North right-of-way of Lafayette Street; thence along said North right-of-way of Lafayette Street South 74°24'21" West 17.03 feet; thence leaving said Northerly right-of-way of Lafayette Street along a curve concave Southwesterly, eight (8) feet Easterly of and concentric to said existing centerline main track an arc length of 202.61 feet through a central angle 08°41'32", said curve having a radius of 1335.51 feet; thence parallel to said existing centerline main track North 20°52'25" West 37.70 feet to the beginning of a curve to the right, said curve having a central angle of 04°36'49" and a radius of 3811.83 feet; thence along said curve concentric to said existing centerline main track an arc length of 306.94 feet to the point of beginning, containing 9188 square feet, more or less.



As shown on Exhibit "D":

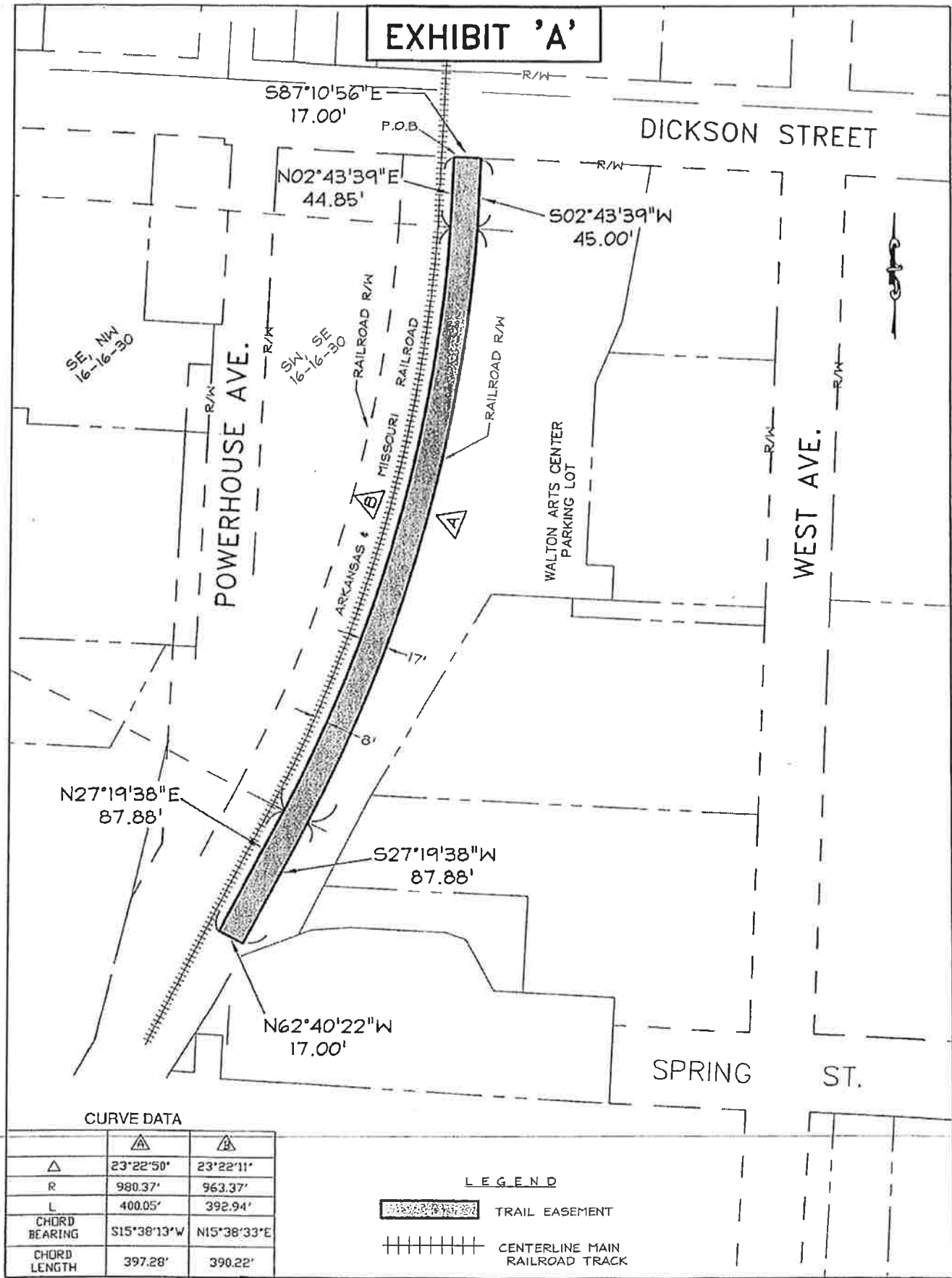
Part of the Northeast Quarter (NE¼) of the Southwest Quarter (SW¼) and part of Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of Section Nine (9), Township Sixteen (16) North, Range Thirty (30) West, Washington County, Arkansas and all within the Arkansas and Missouri Railroad right-of-way being more particularly described as follows: Beginning at the intersection of the Northerly right-of-way of Maple Street and a point eight (8) feet easterly and radial of the existing centerline main track of the Arkansas and Missouri Railroad; thence concentric to said existing centerline main track along a curve through a central angle of 8°16'43" and a radius of 3811.83 feet an arc length of 550.77 feet; thence parallel with said existing centerline main track North 07°19'18" West 665.64 feet; thence South 82°40'14" West 33.00 feet to a point twenty-five (25) feet westerly and parallel of the said existing centerline main track; thence parallel with said existing centerline main track North 07°19'18" West 424.85 feet; thence South 25°50'26" East 53.52 feet a point eight (8) feet westerly and parallel of the said existing centerline main track; thence parallel with said existing centerline main track South 07°19'18" East 316.66 feet; thence North 82°38'56" East 16.00 feet to a point eight (8) feet easterly and parallel of the said existing centerline main track; thence parallel with said existing centerline main track North 07°19'18" West 151.90 feet; thence North 82°40'14" East 17.00 feet to a point twenty-five (25) feet easterly and parallel of the said existing centerline main track; thence parallel with said existing centerline main track South 07°19'18" East 874.98 feet to the beginning of a curve to the left said curve having a central angle of 8°23'33" and a radius of 3794.83 feet; thence along said curve, concentric to said existing centerline main track an arc length 555.86 feet to the said Northerly right-of-way of Maple Street, thence along said Northerly right-of-way of Maple Street North 81°39'25" West 18.61 feet to the point of beginning containing 31991 square feet, more or less.

At Drake Street (as shown on Exhibit)E :

Part of the Southeast Quarter (SE ¼) of Section Thirty-Four (34), Township Seventeen (17) North, Range Thirty (30) West, Washington County, Arkansas being more particularly described as follows: Commencing at the Northwest (NW) Corner of the Northwest Quarter (NW ¼) of the Southeast Quarter (SE ¼) of said Section; thence South 87°24'44" East 694.98 feet; thence South 02°35'16" West 845.46 feet; thence South 87°24'44" East 596.01 feet to the POINT OF BEGINNING, said point being the Southeast property corner for a property described in Instrument Number 2007-5939 with the Circuit Clerk of Washington County, Arkansas; thence along the Easterly line of said property North 20°44'51" West 13.90 feet; thence leaving said Easterly line North 69°24'43" East 106.41 feet to the Easterly right-of-way line of the Arkansas & Missouri Railroad, said line also being the Westerly line of a property described in Instrument Number 2001-172188 recorded with said Circuit Clerk; thence Southeasterly along said right-of-way South 21°08'15" East 60.03 feet; thence leaving said right-of-way South 69°24'43" West 74.41 feet to the Westerly right-of-way of said railroad; thence Northeasterly along said right-of-way North 23°06'44" West 32.83 feet; thence leaving said right-of-way North 87°24'44" West 33.82 feet to the Point of Beginning, containing 5150 square feet, more or less.

At Aspen Ridge (as shown on Exhibit)F :



A part of the Southwest Quarter (SW ¼) of the Southwest Quarter (SW ¼) Section Sixteen (16), And a part of the Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼) Section Twenty-One (21), all in Township Sixteen (16) North , Range Thirty (30) West, Washington County Arkansas, that portion of Arkansas and Missouri Rail Road right-of-way being more particularly described as follows: Commencing at the Northwest (NW) Corner of said Northwest Quarter (NW ¼) of the Northwest Quarter (NW ¼) Section Twenty-One (21); thence South 86° 14' 58" East 227.88 feet; thence North 03°45'07" East 73.83 feet to the intersection of the Easterly right-of-way South Paris Avenue and the Southerly right-of-way Arkansas and Missouri Rail Road and the **Point of Beginning** ; thence along said Easterly right-of-way South Paris Avenue North 00°34'41" West 101.51 feet to a point on a curve on the Northerly right-of-way Arkansas and Missouri Rail Road said curve having a central angle of 25°42'31" and a radius of 1195.92 feet concave southwesterly; thence along said Northerly right-of-way Arkansas and Missouri Rail Road an arc length of 536.61 also having a chord bearing and distance of South 68°16'05" East 532.12 feet; thence South 55°24'50" East 148.23 feet to a point on a curve on the Easterly right-of-way Arkansas and Missouri Rail Road said curve having a central angle of 04°16'32" and a radius of 1340.84 feet concave southeasterly; thence along said Easterly right-of-way Arkansas and Missouri Rail Road an arc length of 100.07 also having a chord bearing and distance of South 36°23'18" West 100.05 feet; thence leaving said Easterly right-of-way North 55°24'50" West 145.08 feet a point on the said Southerly right-of-way Arkansas and Missouri Rail Road and the beginning of a curve to the left, said curve having a central angle of 24°50'12" and a radius of 1095.92 feet; thence along said curve an arc length of 475.06 feet to the Point of Beginning; and containing 1.496 acres more or less.



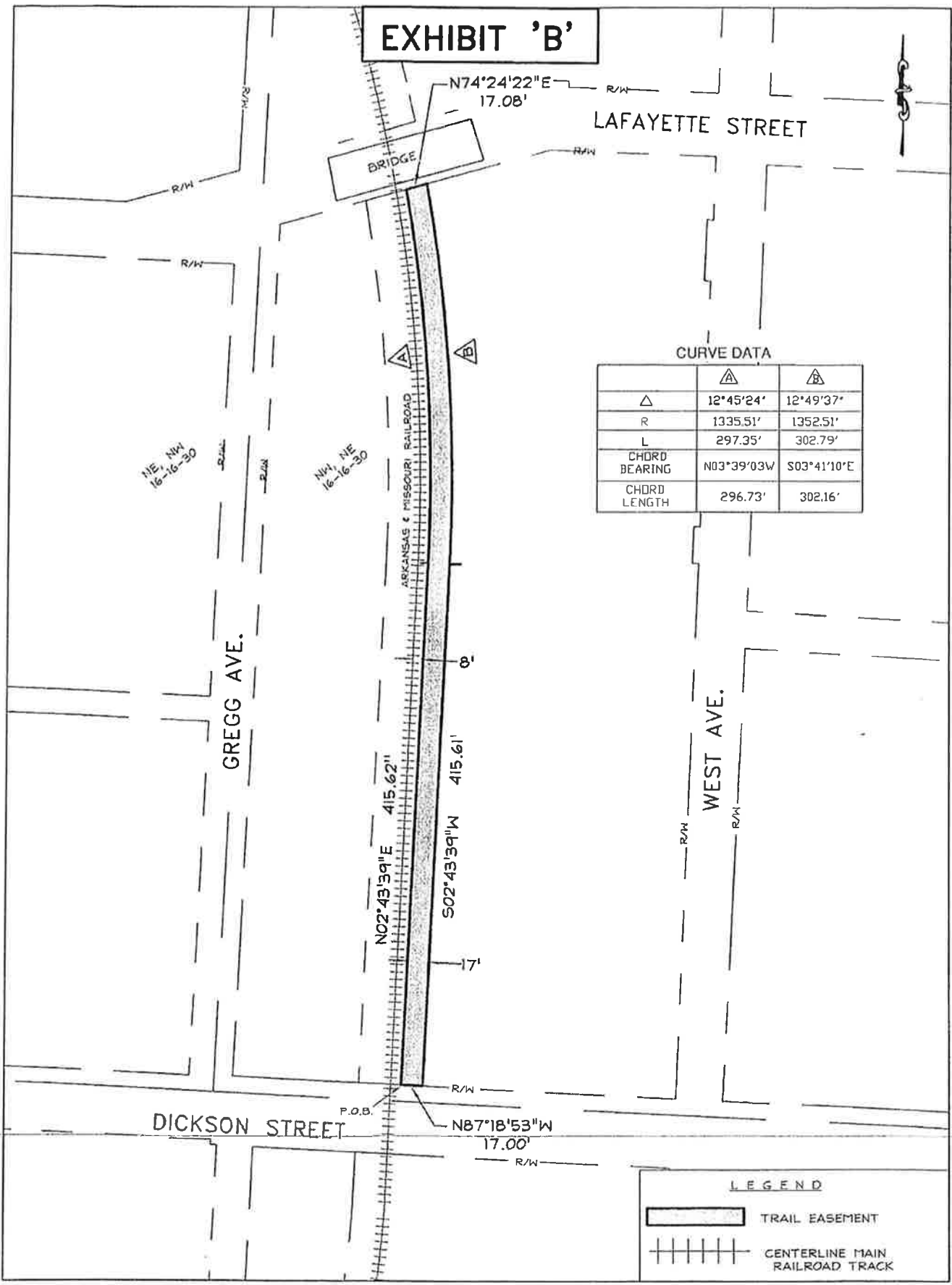
CURVE DATA

	△	△
△	23°22'50"	23°22'11"
R	980.37'	963.37'
L	400.05'	392.94'
CHORD BEARING	S15°38'13"W	N15°38'33"E
CHORD LENGTH	397.28'	390.22'

LEGEND

-  TRAIL EASEMENT
-  CENTERLINE MAIN RAILROAD TRACK

# EXHIBIT 'B'



CURVE DATA

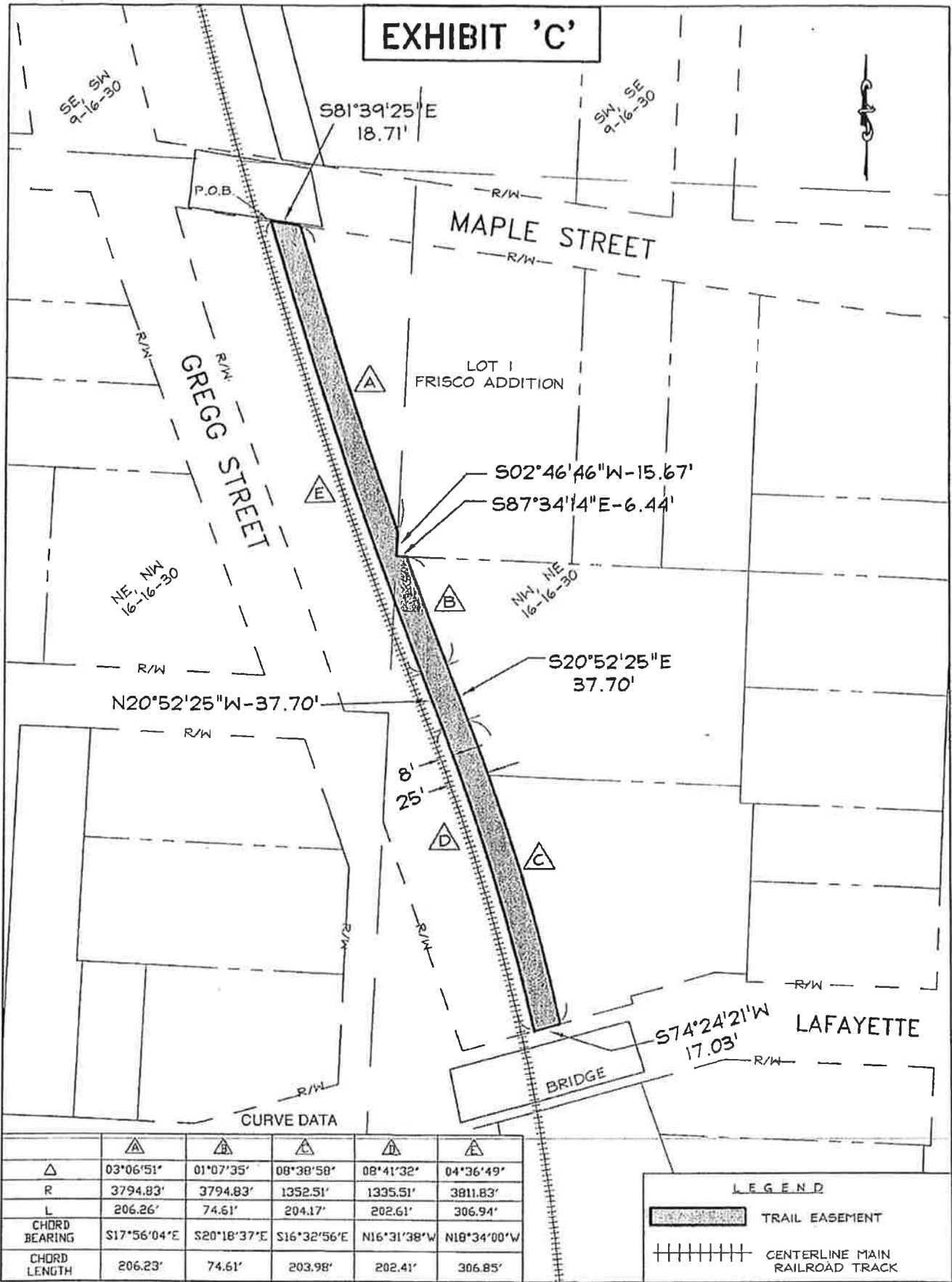
	△	△
△	12°45'24"	12°49'37"
R	1335.51'	1352.51'
L	297.35'	302.79'
CHORD BEARING	N03°39'03"W	S03°41'10"E
CHORD LENGTH	296.73'	302.16'

LEGEND

- TRAIL EASEMENT
- CENTERLINE MAIN RAILROAD TRACK



# EXHIBIT 'C'



NE, NW  
16-16-30

SE, SW  
9-16-30

SW, SE  
9-16-30

S81°39'25"E  
18.71'

MAPLE STREET

GREGG STREET

LOT 1  
FRISCO ADDITION

S02°46'46"W-15.67'  
S87°34'14"E-6.44'

NW, NE  
16-16-30

S20°52'25"E  
37.70'

N20°52'25"W-37.70'

8'  
25'

S74°24'21"W  
17.03'


LAFAYETTE

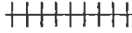
BRIDGE

CURVE DATA

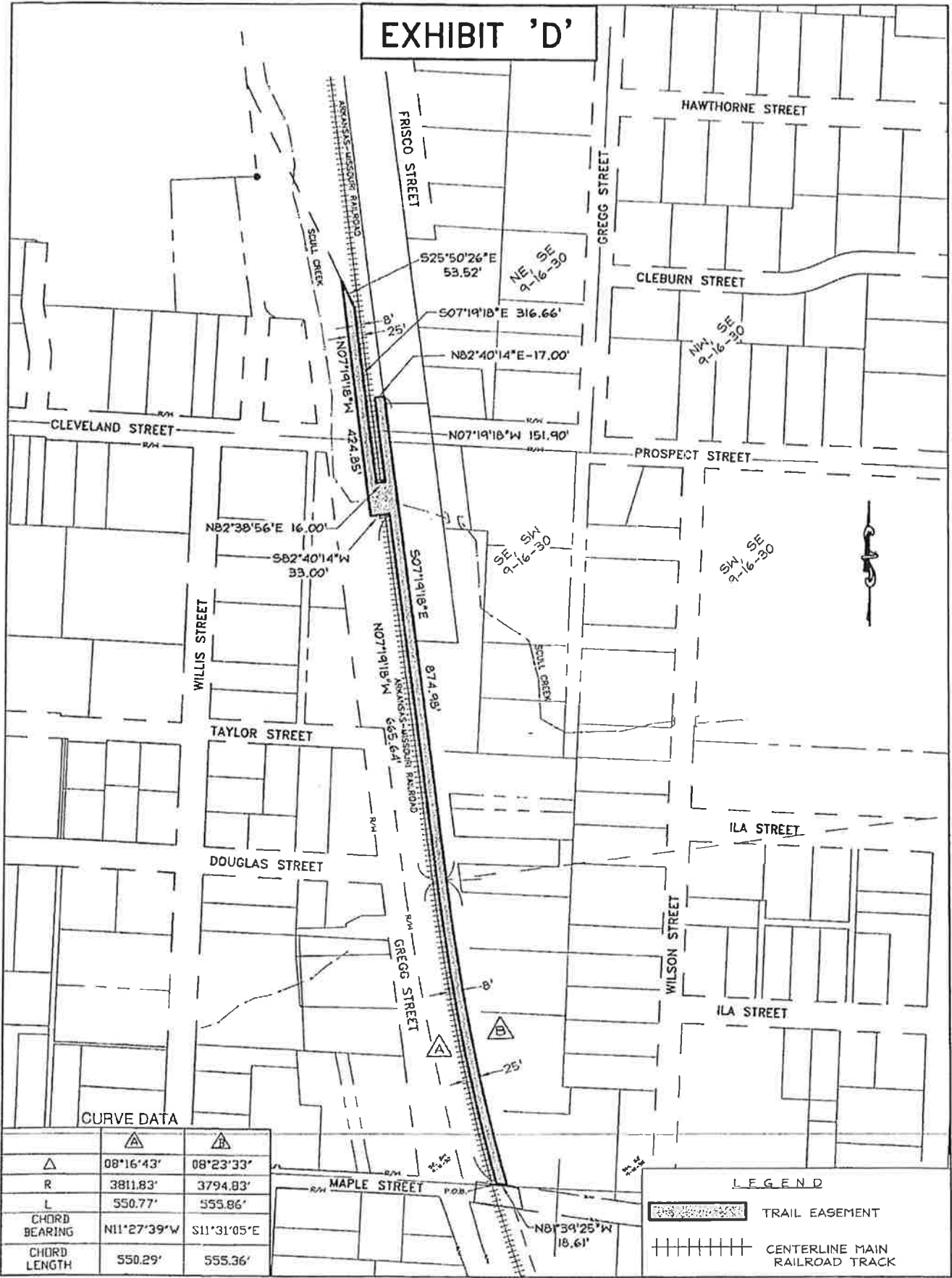
	△	△	△	△	△
△	03°06'51"	01°07'35"	08°38'58"	08°41'32"	04°36'49"
R	3794.83'	3794.83'	1352.51'	1335.51'	3811.83'
L	206.26'	74.61'	204.17'	202.61'	306.94'
CHORD BEARING	S17°56'04"E	S20°18'37"E	S16°32'56"E	N16°31'38"W	N18°34'00"W
CHORD LENGTH	206.23'	74.61'	203.98'	202.41'	306.85'

**LEGEND**

 TRAIL EASEMENT

 CENTERLINE MAIN RAILROAD TRACK

# EXHIBIT 'D'



**CURVE DATA**

	△	△
△	08°16'43'	08°23'33'
R	3811.83'	3794.83'
L	550.77'	555.86'
CHORD BEARING	N11°27'39"W	S11°31'05"E
CHORD LENGTH	550.29'	555.36'

**LEGEND**

-  TRAIL EASEMENT
-  CENTERLINE MAIN RAILROAD TRACK

# EXHIBIT E



DRAKE STREET HOLDINGS, LLC  
765-15903-000

EXT. REBAR  
NW CORNER  
NW 1/4 SE 1/4  
34-17-30

S87°24'44"E  
694.98'

S02°35'16"W  
845.46'

N 20°44'51" W  
13.90'

S87°24'44"E 596.01'

P.O.B.

N 87°24'44" W  
33.82'

N 23°06'44" W  
32.83'

765-15904-001  
JAX DEVELOPMENT  
COMPANY, LLC.

30' TRAIL EASEMENT

765-15904-002  
SCULL CREEK  
LIMITED  
PARTNERSHIP

765-15904-000  
QUALITY LIFE ASSOC. INC.

OWNERSHIP OF THIS TRACT UNKNOWN: MAY BE REMNANT  
OF A PUBLIC RIGHT-OF-WAY (AS PER INSTR. 2007-8610)

ARKANSAS & MISSOURI RAILROAD  
CITY OF FAYETTEVILLE (AS PER INST. 2001-172186)

GREGG AVE.

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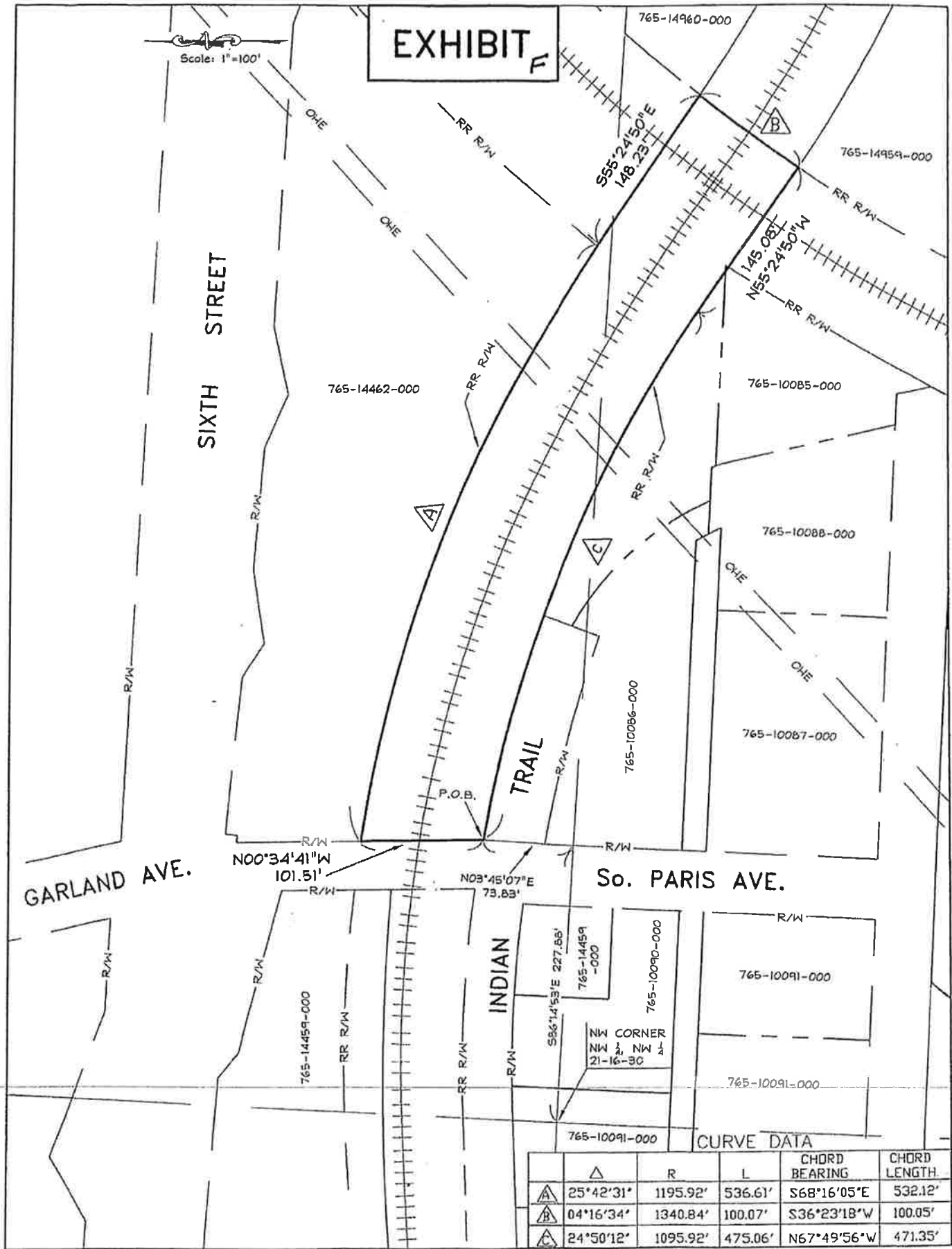
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CYPERT, CROUCH, CLARK & HARWELL, PLLC  
Attorneys at Law

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*OF COUNSEL*

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CHARLES L. HARWELL

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www.ccchlaw.com

R. JEFFREY REYNERSON ◊  
MATTHEW L. FRYAR

WRITER'S EMAIL:  
jcrouch@ccchlaw.com

◊ LICENSED IN AR AND MO

August 8, 2012

Matt Mihalevich  
Trails Coordinator  
City of Fayetteville  
113 West Mountain Street  
Fayetteville, AR 72701

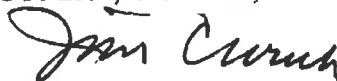
Re: A&M Railroad/City of Fayetteville

Dear Matt:

Enclosed please find an Acknowledgment of the trail license agreement of the signature of Brent McCready.

Kindest regards.

Sincerely,  
CYPERT, CROUCH, CLARK & HARWELL, PLLC



James E. Crouch

JEC/td  
Enclosure

