

DOCUMENT VET SHEET
for
Karen McConnaughay
Chairman, Kane County Board


Name of Document: Intergovernmental Agreement with St. Charles, St. Charles Park
District, and Kane County Forest Preserve to Pursue Abandonment of UP Railroad

Submitted by: Linda Haines

Phone Number: 630/406-7173

Date Submitted: November 24, 2010

Examined by: Pat Jaeger
(Print name)


(Signature)

Nov 24 2010
(Date)

Comments:

Chairman signed: Yes No 3-17-11
(Date)

Document returned to: Co Clerk

KANE COUNTY
DIVISION of TRANSPORTATION

Carl Schoedel, P.E.
Director of Transportation
County Engineer



41W011 Burlington Road
St. Charles, IL 60175
Phone: (630) 584-1170
Fax: (630) 584-5265

DATE: March 11, 2011
TO: Jean Weems
County Board Office
FROM: Linda Haines *Linda*
SUBJECT: Abandonment of UP Railroad

4 – Intergovernmental Agreement with City of St. Charles, St. Charles Park District, and the Kane County Forest Preserve District to pursue abandonment of the UP Railroad with document vet sheet (Kane County Resolution #11-38)

TRANSMITTED FOR:

- YOUR INFORMATION AND FILE
- YOUR APPROVAL AND/OR CORRECTION
- AS REQUESTED
- SEE BELOW

REMARKS: Please have the Chairman sign, send to County Clerk for signature and seal, and return to our office for further processing.

Thanks.

c: Carl Schoedel
Tom Rickert

City of St. Charles, Illinois
Resolution No. 2011-25

**A Resolution Approving the Execution of Intergovernmental Agreement
between the City of St. Charles, the County of Kane, the St. Charles Park
District, the Forest Preserve District of Kane County and the Union
Pacific Railroad**

**Presented & Passed by the
City Council on February 22, 2011**

BE IT RESOLVED by the Mayor and City Council of the City of St. Charles, Kane and DuPage Counties, Illinois, that the Mayor and City Clerk be and the same are hereby authorized to execute an Intergovernmental Agreement between the City of St. Charles, the County of Kane, the St. Charles Park District, the Forest Preserve District of Kane County and the Union Pacific Railroad

PRESENTED to the City Council of the City of St. Charles, Illinois, this 22nd day of February 2011.

PASSED by the City Council of the City of St. Charles, Illinois, this 22nd day of February 2011.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 22nd day of February 2011.



ATTEST

Nancy Garrison
City Clerk

Donald P. DeWitte
Donald P. DeWitte, Mayor

COUNCIL VOTE:

Ayes: 9
Nays: 0
Absent: 1
Abstain:

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") is entered into this 22 day of February, 2011, by and between the CITY OF ST. CHARLES (hereinafter the "CITY"), Kane and DuPage Counties, Illinois, a municipal corporation of the State of Illinois, the COUNTY OF KANE (hereinafter referred to as the "COUNTY"), a body corporate and politic of the State of Illinois, the ST. CHARLES PARK DISTRICT, Kane and DuPage Counties, Illinois (hereinafter referred to as the "PARK DISTRICT"), a body corporate and politic of the State of Illinois, and the FOREST PRESERVE DISTRICT OF KANE COUNTY (hereinafter referred to as the "FOREST PRESERVE DISTRICT"), a downstate forest preserve district of the State of Illinois. The CITY, the COUNTY, the PARK DISTRICT and the FOREST PRESERVE DISTRICT are sometimes hereinafter referred to individually as "PARTY" and collectively as the "PARTIES".

W I T N E S S E T H:

WHEREAS, the Illinois Constitution of 1970 Article VII, Section 10 and the Intergovernmental Cooperation Act of the Illinois Compiled Statutes (5 ILCS 220/1, *et seq.*) authorizes the PARTIES to cooperate in the performance of their respective duties and responsibilities by contracts and other agreements; and

WHEREAS, the CITY is authorized, among other matters, to acquire and hold real property for corporate purposes pursuant to the provisions of the Illinois Municipal Code (65 ILCS 5/1-1-1, *et seq.*) and is a home rule unit of government pursuant to Article VII, Section 6 of the Illinois Constitution of 1970, thereby having the power to exercise any power and perform any function pertaining to its government and affairs, unless otherwise limited by law; and

WHEREAS, the COUNTY is authorized, among other matters, to acquire and hold title to real property for the uses of the County, including, but not limited to, recreational purposes, pursuant to the provisions of the Counties Code (55 ILCS 5/1-1001, *et seq.*); and

WHEREAS, the PARK DISTRICT is authorized, among other matters, to establish recreation programs and to acquire real property to effect any of the powers or purposes granted under the Park District Code (70 ILCS 1205/1-1 *et seq.*); and

WHEREAS, the FOREST PRESERVE DISTRICT is authorized, among other matters, to acquire real property for various purposes, including acquiring and improving pathways that will connect forest preserves pursuant to the provisions of the Downstate Forest Preserve District Act (70 ILCS 805/0.001, *et seq.*); and

WHEREAS, the Union Pacific Railroad Company (hereinafter referred to as the “UP”) has filed a petition with the Surface Transportation Board to abandon and discontinue service on a certain portion of its railroad track commonly known as the St. Charles Industrial Lead, located from Milepost 35.13 to the end of the line at Milepost 38.3, shown on Exhibit A attached hereto (hereinafter referred to as the “UP PARCEL”), which is located wholly within the corporate limits of the COUNTY, FOREST PRESERVE DISTRICT, the PARK DISTRICT and partially within the corporate limits of the, CITY and

WHEREAS, the PARTIES mutually agree that the UP PARCEL would be appropriate for a variety of purposes including but not necessarily limited to recreation trail opportunities and utility service and towards that end, the PARTIES have filed a request, dated July 9, 2010, with the Surface Transportation Board for a Public Use Condition, as well as a Certificate or Notice of Interim Trail Use, regarding the UP PARCEL; and

WHEREAS, the PARTIES mutually desire to set forth their respective rights and responsibilities with respect to determining the feasibility of the acquisition and development of the UP PARCEL for the uses stated above, or such other uses as may be appropriate.

NOW, THEREFORE, in consideration of the mutual covenants contained herein the PARTIES mutually agree and bind themselves as follows, to wit:

Section 1. Recitals Incorporated. The foregoing recitals of fact are incorporated into this Agreement as though fully set forth in this Section 1.

Section 2. Abandonment Proceedings. The PARTIES shall cooperate in filing any additional documentation, attending hearings or other activities in connection with the abandonment proceedings regarding the UP PARCEL that are necessary to support the request for Public Use and/or Interim Trail Use conditions referenced above. Unless otherwise agreed to by the PARTIES, the CITY shall act as the lead agency in instituting and coordinating such actions.

Section 3. Engineering Assessment. The PARTIES recognize that it will be necessary to have an engineering assessment prepared in order to identify potential appropriate uses for the UP PARCEL, including, but not limited to recreation trail and utility use, to identify any physical or other restraints or limitations, to prepare a cost estimate and compile other relevant information regarding the acquisition and development of the UP PARCEL with the desired uses. The costs for the engineering assessment shall be shared among the PARTIES based upon the scope of engineering services and the corresponding anticipated benefit to each PARTY. The PARTIES shall confer prior to the execution of any contract for the engineering assessment to determine the specific amount payable by each PARTY. The CITY shall act as the lead agency in preparing a list of qualified firms to prepare such an assessment, and shall consult with

and receive input from the other PARTIES prior to hiring an engineering firm to prepare the assessment.

Section 4. Future Agreements. The PARTIES recognize that there are additional issues that will need to be addressed and resolved, and that the rights and responsibilities of each of the PARTIES will need to be more clearly defined, as they work together towards the ultimate goal of the acquisition and redevelopment of the UP PARCEL. These issues include, but are not necessarily limited to the following matters:

- appraisal/title research issues
- financing issues, including grant applications
- identifying which PARTY or PARTIES will take title to the property
- development of a capital improvement plan
- assigning construction and maintenance responsibilities
- determining the cost-sharing responsibilities of each PARTY with respect to the activities contemplated under this Agreement and future agreements

The PARTIES agree to work cooperatively on such issues and to enter into such additional future agreements as are necessary to address such matters. Notwithstanding anything in this Agreement to the contrary, nothing set forth in this Agreement shall bind a PARTY to make specific financial contributions, fund specific expenditures or otherwise incur financial liability for any action contemplated to occur pursuant hereto. Any contributions or expenditures to be made or binding financial obligations to be incurred shall require further approval of the governing body of each of the respective PARTIES intending to be bound thereby prior to any PARTY making any contribution or funding any expenditure or incurring any financial obligation on behalf of any other PARTY to this Agreement.

Section 5. Mutual Assistance. The PARTIES shall endeavor to do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the objectives of this Agreement and the intent of the PARTIES as reflected by the terms of this Agreement, including, without limitation, the enactment by the PARTIES of such

resolutions and ordinances, the execution of such applications and agreements and the taking of such other actions as may be necessary to enable the PARTIES' compliance with the terms and provisions of this Agreement.

Section 6. No Third-Party Beneficiaries/Relationship of Parties. Nothing contained in this Agreement, nor any act of a PARTY, shall be deemed or construed by any of the other PARTIES, or by third persons, to create any relationship of third party beneficiary, or of principal or agent, or of limited or general partnership, or of joint venture, or of any association or relationship involving the Parties other than that expressly provided for herein.

Section 7. Paragraph Headings. The paragraph headings and references are for the convenience of the PARTIES and are not intended to limit, vary, define or expand the terms and provisions contained in this Agreement and shall not be used to interpret or construe the terms and provisions of this Agreement.

Section 8. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same Agreement.

Section 9. Contact Person. The following persons shall be the primary contact person for each of the PARTIES:

CITY: Mark Koenen, Director of Public Works
City of St. Charles
2 East Main Street
St. Charles, Illinois 60174
630/377-4486
mkoenen@stcharlesil.gov

COUNTY: Carl Schoedel, Director
Kane County Division of Transportation
41W011 Burlington Road
St. Charles, Illinois 60175
630-584-1170
schoedelcarl@co.kane.il.us

PARK DISTRICT: Ray Ochromowicz, Director
St. Charles Park District
101 N. 2nd Street
St. Charles, IL 60174

FOREST PRESERVE DISTRICT: Monica Meyers, Executive Director
Forest Preserve District of Kane County
1996 S. Kirk Road, Suite 320
Geneva, IL 60134

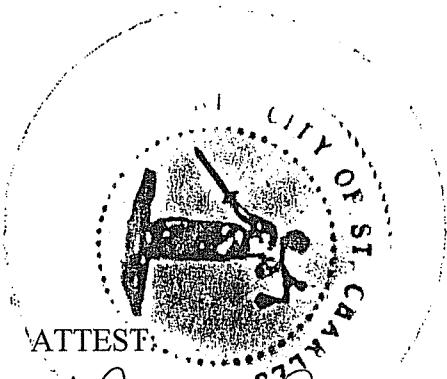
Section 10. Amendment. This Agreement may be amended only by written instrument properly executed by the PARTIES. Execution of any such amendment by a PARTY shall first have been authorized by an ordinance or resolution duly adopted by the corporate authorities of the PARTY.

Section 11. Severability. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is held invalid, the remainder of the Agreement shall be construed as if such invalid part were never included herein and the Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

Section 12. Governing Law. The laws of the State of Illinois shall govern the interpretation and enforcement of this Agreement. Venue for any litigation arising hereunder shall be in the Sixteenth Judicial Circuit, Kane County, Illinois.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the PARTIES hereto have hereunto set their hands and seals on the day and year first above written.



ATTEST:

Nancy Garrison
City Clerk

CITY OF ST. CHARLES, an Illinois municipal corporation,

By: Donald P. DeWitte
Mayor Donald P. DeWitte

COUNTY OF KANE, a body corporate and politic of the State of Illinois

By: Karen McConnaughay
Karen McConnaughay, Chairman

ATTEST:

County Clerk

ST. CHARLES PARK DISTRICT, a body corporate and politic of the State of Illinois

By: James F. Cooke
James F. Cooke, President

ATTEST:

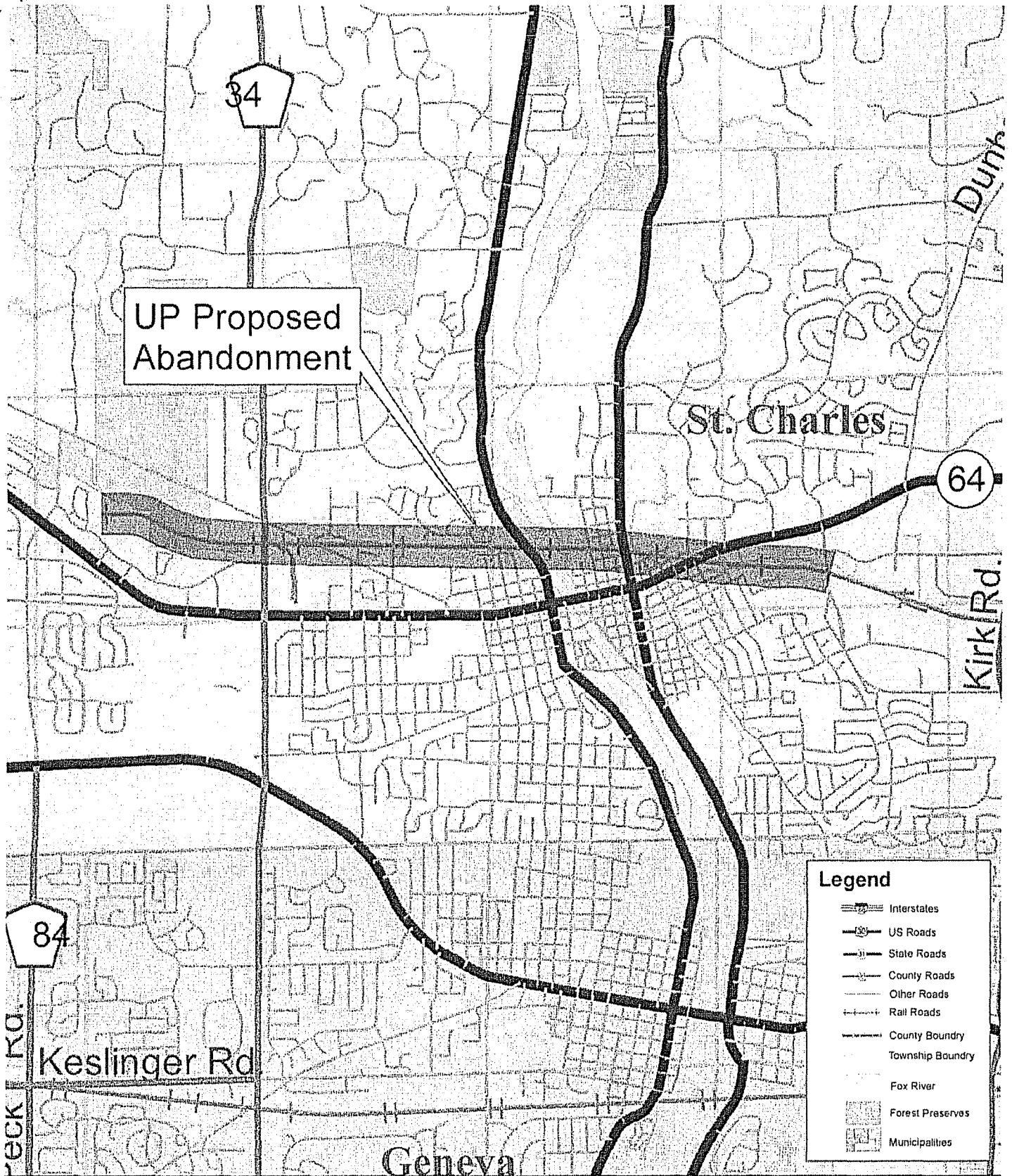
Robert Thomas
Secretary

FOREST PRESERVE DISTRICT OF KANE COUNTY, a body corporate and politic of the State of Illinois

By: John Hoscheit
John Hoscheit, President

ATTEST:

John Thill
Secretary



UP Proposed Abandonment

St. Charles

64

Kirk Rd.

84

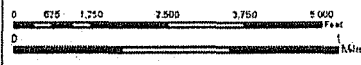
Keslinger Rd

Geneva

Legend

- Interstates
- US Roads
- State Roads
- County Roads
- Other Roads
- Rail Roads
- County Boundry
- Township Boundry
- Fox River
- Forest Preserves
- Municipalities

UP Abandonment
East of Randall Road to Tyler Road



MOUSE COUNTY
Division of Transportation

M:\dotserver2\USERS\Committee\201011 November\Implementation\Bliss, Ke-De-Ka to Merrill\Map Standard_Bliss Rd-KeDeKa to Merrill loc map.mxd

Exhibit A