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247442

April 8, 2019

Via UPS Overnight

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20024

ENTERED
Office of Proceedings
April 9, 2019
Part of
Public Record

Re: STB Docket No. FD 36290; Union Pacific Railroad Company -- Trackage Rights Exemption -- Norfolk Southern Railway Company

Dear Ms. Brown

Enclosed for filing in the above proceeding are the following:

1. An original and ten (10) copies of a Verified Notice of Exemption and Caption Summary (Exhibit 3 to the Notice) pursuant to the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7).
2. A payment form in the amount of \$ 1,300.00 for the filing fees required by 49 C.F.R. § 1002.2(f).
3. Twenty (20) unbound copies of the Exhibit 1 map.
4. A Motion for Protective Order pursuant to 49 C.F.R. § 1104.14(b).
5. A copy of a confidential, unredacted document to be filed under seal subject to the requested protective order.

Sincerely,

Jeremy M. Berman

FILED
April 9, 2019
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
April 9, 2019
SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36290

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

UNION PACIFIC RAILROAD COMPANY

Jeremy M. Berman
General Attorney
1400 Douglas Street, Stop 1580
Omaha, NE 68179
(402) 544-4735
(402) 501-3773 (FAX)
jmberman@up.com

Dated: April 8, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36290

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

VERIFIED NOTICE OF EXEMPTION

Union Pacific Railroad Company ("UP") submits this Verified Notice of Exemption, pursuant to 49 C.F.R. § 1180.2(d)(7), for exemption of a limited term overhead trackage rights over a line of railroad of Norfolk Southern Railway Company ("NSR") between the connection between UP and NSR at Control Point West MC at Birmingham, Missouri near Milepost S266.3 and the connection between UP and NSR at Control Point Iles at Springfield, Illinois near Milepost DH 416.5, for a total distance of approximately 288 miles.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition of trackage rights by a rail carrier over lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on written agreements, and (ii) not filed or sought in responsive applications in rail consolidation proceedings. The trackage rights covered by this Notice are based on the written agreement attached hereto as Exhibit 2,¹ and are not filed or sought in responsive applications in a rail consolidation proceeding. As such, the § 1180.2(d)(7) exemption is applicable.

¹ A redacted copy of the agreement for the public record is attached as Exhibit 2. UP has filed a Motion for Protective Order along with an unredacted copy of the agreement to protect confidential commercial terms in the agreement.

In accordance with the requirements of 49 C.F.R. § 1180.4(g), UP submits the following information:

§ 1180.6(a)(1) Description of the Proposed Transaction

The transaction covered by this Notice is the acquisition of overhead trackage rights by UP over approximately 288 miles of NSR's trackage extending between Birmingham, Missouri (Milepost S266.3) and Springfield, Illinois (Milepost DH 416.5). These trackage rights will provide UP with an alternate route between Kansas City and Springfield, Illinois providing for increased efficiency in operations.

§ 1180.6(a)(1)(i) Summary of the Proposed Transaction

See answer to § 1180.6(a)(1), above.

§ 1180.6(a)(1)(i) Name, Business Address and Telephone Number of Applicant, and the Name of Counsel to whom Questions can be Addressed

The name and business address of the applicant is:

Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179

Questions regarding this transaction are to be addressed to the representative named below:

Jeremy Berman
1400 Douglas Street, Stop 1580
Omaha, NE 68179
(402) 544-4735
(402) 501-0129 (FAX)
jmberman@up.com

§ 1180.6(a)(1)(ii) Consummation Date

The agreement will be consummated on the effective date of this Notice of Exemption.

§ 1180.6(a)(1)(iii) Purpose of the Transaction

The trackage rights covered by this Notice will provide UP with an alternate route between Kansas City and Springfield, Illinois providing for increased efficiency in operations.

§ 1180.6(a)(5) States in which the Applicant Operates

UP operates in the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

§ 1180.6(a)(6) Map (Exhibit 1)

A map is provided as Exhibit 1.

§ 1180.6(a)(7)(ii) Agreement (Exhibit 2)

A redacted public copy of the executed trackage rights agreement is attached as Exhibit 2. An unredacted copy of the agreement is being filed separately along with a motion for protective order.

§ 1180.4(g)(1)(i) Labor Protection

The applicable labor protection conditions are those imposed in Norfolk and Western Ry. Co. -- Trackage Rights -- BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc. -- Lease and Operate, 360 I.C.C. 653 (1980).

§ 1180.4(g)(2)(i) Caption Summary (Exhibit 3)

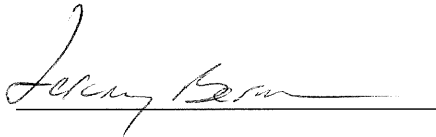
A caption summary of this transaction suitable for publication in the Federal Register is attached as Exhibit 3.

§ 1180.4(g)(3) Environmental Documentation

Environmental documentation is not required for this transaction. See 49 C.F.R. § 1105.6(c)(4) (no environmental documentation required for common use of rail terminals and trackage rights). UP's proposed trackage rights acquisition also is exempt from historic preservation reporting requirements. See 49 C.F.R. § 1105.8(b)(3).

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY

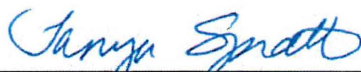
By: 

Jeremy M. Berman
1400 Douglas Street, Stop 1580
Omaha, NE 68179
(402) 544-4735
(402) 501-3773 (FAX)
jmberman@up.com

VERIFICATION

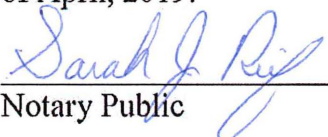
I, Tanya Spratt, Director Joint Facilities for Union Pacific Railroad Company, under penalty of perjury, declare and verify that I am authorized to make this verification and I have read the foregoing Notice of Exemption, know the facts stated therein, and believe that said facts are true as stated to the best of my knowledge, information and belief.

Dated: April 8, 2019



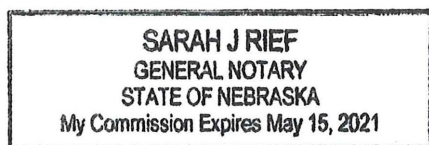
Tanya Spratt

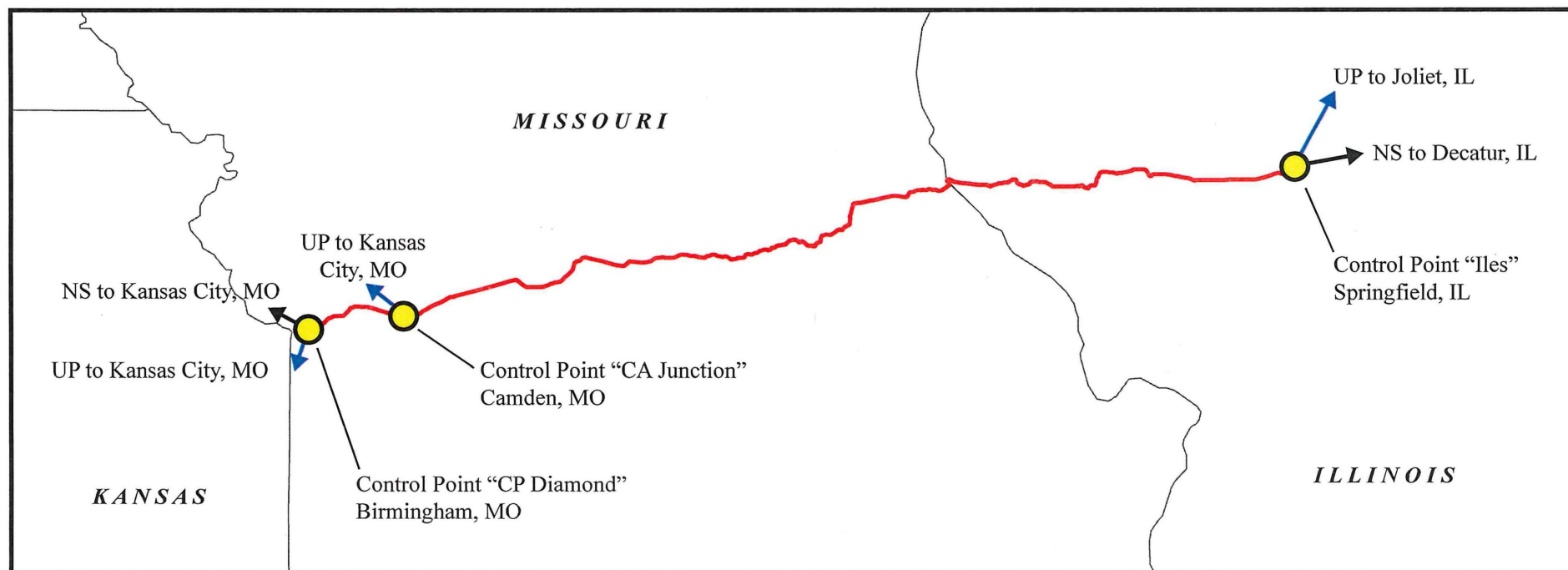
SUBSCRIBED AND SWORN TO
before me this 8th day
of April, 2019.



Notary Public

My Commission expires: May 15, 2021





LIMITED TERM TRACKAGE RIGHTS AGREEMENT

Between

NORFOLK SOUTHERN RAILWAY COMPANY

And

UNION PACIFIC RAILROAD COMPANY

THIS LIMITED TERM TRACKAGE RIGHTS AGREEMENT, ("Agreement"), entered into as of this 30th day of April, 2018 (the "Effective Date"), by and between UNION PACIFIC RAILROAD COMPANY, (hereinafter referred to as "User" or "UP") and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter referred to as "NSR"). Each of User and NSR shall individually be referred to as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, NSR owns and operates a rail line from Kansas City, MO to Springfield, IL; and

WHEREAS, in accordance with a Memorandum of Understanding, dated February 27, 2017, NSR is agreeable to granting User limited trackage rights for the movement of traffic over NSR's line, subject to the terms and conditions set forth herein.

NOW, THEREFORE, User and NSR, intending to be legally bound, agree as follows:

ARTICLE 1. GRANT OF LIMITED TERM TRACKAGE RIGHTS

- 1.1 Subject to the terms and conditions herein provided, NSR hereby grants to User the right to operate, in overhead service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of NSR's railroad (hereinafter referred to as the "Subject Trackage"):

From the connection of the Parties at Control Point West MC at Birmingham, MO, at or near milepost S266.3 on NSR's Kansas City District, continuing over NSR's Kansas City District to Moberly, MO, continuing over NSR's Hannibal District between Moberly, MO and Hannibal MO, and continuing over NSR's Springfield District from Hannibal, MO to the connection of the Parties at CP Iles at Springfield, IL, at or near milepost DH 416.5.

- 1.2 Such rights shall include the right to enter and exit the Subject Trackage at only the following points: either Control Point CP Diamond in Birmingham, MO at MP S 266.2 or Control Point CA Junction in Camden, MO at MP S 241.9, at the western terminus of the Subject Trackage, and Control Point Iles in Springfield, IL at MP DH 416.5, at the eastern terminus of the Subject Trackage.

- 1.3 User shall have the right to utilize a siding at or near Hannibal, MO to facilitate crew changes for User's trains operating over the Subject Trackage.

ARTICLE 2. USE OF LINE

- 2.1 User's use of the Subject Trackage shall be in common with NSR and any other user of the Subject Trackage and NSR's right to use the Subject Trackage shall not be diminished by this Agreement. NSR shall retain the exclusive right to grant to other persons rights of any nature on the Subject Trackage.
- 2.2 Except as may be otherwise provided by this Agreement, User shall not use any part of the Subject Trackage for the purpose of switching, storage, or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein will, upon prior approval of NSR, preclude the emergency use by User of such auxiliary tracks as may be designated by NSR for such purposes.
- 2.3 NSR shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against NSR for liability account of loss or damage of any kind in the event the use of the Subject Trackage by User is interrupted or delayed at any time from any cause.
- 2.4 User shall have the right to operate in either direction over the Subject Trackage.

ARTICLE 3. RESTRICTIONS ON USE

ARTICLE 4. COMPENSATION

ARTICLE 5. PAYMENT OF BILLS

- 5.1 All payments called for under this Agreement shall be made by User within sixty (60) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties shall be adjusted in the accounts of a subsequent month. The records of each Party, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of three (3) years from the date of billing. No bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established.

- 5.2 Bills rendered pursuant to the provisions of this Agreement, if any, other than those set forth in Article 4, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by the performing party at the time any work is performed by one Party for the other Party.

ARTICLE 6. MAINTENANCE OF LINE

- 6.1 Except as provided by this Article, NSR shall be responsible for all maintenance of the Subject Trackage, including but not limited to track, bridges, signals, detectors and highway grade crossing equipment as applicable. NSR shall maintain the Subject Trackage in reasonably good condition, for the use herein contemplated, but NSR does not guarantee the condition of the Subject Trackage, or that operation thereover will not be interrupted. Furthermore, except as may be otherwise provided in Article 12 hereof, User shall not by reason of failure or neglect on the part of NSR to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against NSR or its parent corporation, subsidiaries and affiliates and any or all of their respective directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by a party resulting from any such failure or neglect. If the use of the Subject Trackage shall at any time be interrupted or traffic thereon is delayed for any cause, NSR shall with reasonable diligence restore the Subject Trackage for the movement of cars.

ARTICLE 7. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- 7.1 Existing connections or facilities which are jointly used by the Parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the Party or Parties responsible for such maintenance, repair, and renewal under such agreements or practices.
- 7.2 Any new or upgraded connections to the Subject Trackage at a point of permitted entry or exit which may be required shall be subject to NSR's approval (including design) and shall be constructed, maintained, repaired, and renewed as follows:
- (a) User or others shall furnish all labor and material and shall construct, maintain, repair, and renew at its sole cost, liability, and expense such portions of the tracks located on the right of way of User or others which connect the respective lines of the Parties hereto; and
 - (b) NSR shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability, and expense of User such portions of the tracks located on the right of way of NSR which connect the respective lines of the Parties hereto.

ARTICLE 8. ADDITIONS, RETIREMENTS, AND ALTERATIONS

- 8.1 NSR, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage.
- 8.2 If User requests NSR make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes required to accommodate User's operations beyond that required for NSR's operation, NSR shall have the option to either make such changes in or additions and betterments to the Subject Trackage, in which case User shall pay to NSR the cost thereof including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request. Notwithstanding the foregoing, NSR shall not deny any request to perform work at UP's sole expense to maintain the Subject Trackage at the speed and FRA Track Safety Standard in effect at the time of the Effective Date should NSR subsequently desire to downgrade the Subject Trackage to a condition below the current standard as of the Effective Date of this Agreement.

ARTICLE 9. MANAGEMENT AND OPERATIONS

- 9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with NSR on radio frequencies normally used by NSR in directing train movements on the Subject Trackage.
- 9.2 Before its locomotives enter onto the Subject Trackage, User shall request permission from NSR's dispatcher or other designated representative at NSR's rail traffic control center or such other location as NSR may designate. Further, User shall ascertain that said Subject Trackage is clear and shall await confirmation from said representative that such permission has been issued to allow User's movements on or over the Subject Trackage. Upon completing its operations and clearing the Subject Trackage, User will notify NSR's designated representative that it has completed its operations and that its equipment has cleared the Subject Trackage. Once User has notified NSR's representatives that it has cleared the Subject Trackage, User will not reenter the Subject Trackage without again obtaining permission from NSR's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by NSR to permit User to use NSR's trackage.
- 9.3 User shall comply with the provisions of the Federal Railroad Safety Act, the Federal Locomotive Inspection Act, and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless NSR and its parent corporation,

subsidiaries, and affiliates, and all of their respective directors, officers, agents and employees from and against all fines, penalties and liabilities imposed upon NSR and its parent corporation, subsidiaries, and affiliates, and all of their respective directors, officers, agents and employees under such laws, rules, and regulations by any public agency, authority, or court having jurisdiction over the Subject Trackage or over User's operations on the Subject Trackage, when attributable to the failure of User to comply with its obligations in this regard.

- 9.4 User in its use of the Subject Trackage shall comply in all respects with its own safety and general conduct rules, equipment operation and train handling rules, and hazardous materials instructions. While using the Subject Trackage, User shall comply in all respects with the operating rules, timetables, and special instructions of NSR, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of NSR; provided, however, that such operating rules, timetables, and special instructions and orders of the transportation officers of NSR shall not unjustly discriminate between the Parties and shall apply equally to owner and user. NSR will not make any rule or restriction applying to User's trains that does not apply equally to NSR's trains. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by NSR's operating rules and regulations, without the prior consent of NSR. The Parties shall make proper accommodation for exceptions, should that be reasonable, necessary and practicable. All User trains shall be powered to permit operation at the maximum track speed allowed for the Subject Trackage's class of track.
- 9.5 User shall make such arrangements with NSR as may be required to have all of its employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and User shall pay to NSR, upon receipt of bills therefor, any reasonable cost incurred by NSR in connection with the qualification of such employees of User, as well as the reasonable cost of pilots furnished by NSR, until such time as such employees are deemed by the appropriate examining officer of NSR to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed.
- 9.6 NSR shall have the right to exclude from its tracks any employee of User, except officers, determined by NSR to be in violation of NSR's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by NSR in its timetable or otherwise, and provided in advance to User. The decision to bar any employee of User from its tracks will not be interpreted as a request for User to fire the individual(s). User shall release, indemnify, defend, and save harmless NSR from and against any and all claims and expenses resulting from such exclusion.
- 9.7 The trains, locomotives, cars and equipment of User, NSR, and any other present or future user of the Subject Trackage or any portion thereof, will be operated without prejudice or partiality to any party and in such manner as shall afford the most

economical and efficient manner of movement of all traffic.

- 9.8 User shall insure that the locomotives are fueled to a capacity that enables User's trains to traverse the Subject Trackage without having to be fueled.
- 9.9 In the event that (i) one of User's trains is forced to stop on the Subject Trackage and is unable to proceed due to mechanical failure of User's equipment or any other cause not resulting from an accident or derailment, (ii) one of User's trains fails to maintain the speed required by NSR on the Subject Trackage; or (iii) in emergencies, crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, NSR will have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and User will reimburse NSR for the cost incurred by NSR in rendering any such assistance.
- 9.10 If it becomes necessary to make repairs to or adjust or transfer the lading of such crippled or defective cars in order to move them off the Subject Trackage, NSR will have the option to perform such work and User will reimburse NSR for the cost incurred by NSR with respect thereto.
- 9.11 Any dispute arising under this Agreement must first be presented to the Chief Operating Officers ("COOs") of the parties or their respective designee(s) for potential resolution prior to bringing any litigation related to this Agreement. Either Party may present a dispute to the COOs by providing a written notice describing the nature of the dispute, and requesting a COO meeting to discuss the dispute (the "Dispute Notice"). The COO or his or her designee(s) from the non-requesting Party must participate, live or via teleconference, in a meeting to discuss a dispute. Such a meeting shall take place no more than 30 days after the Dispute Notice is received. If the dispute is not resolved at the meeting, or if the meeting does not take place within 30 days after receipt of the Dispute Notice, the Party sending the Dispute Notice may elect to proceed to litigation within the next 30 days thereafter. If litigation is not initiated within those 30 days, the dispute must be re-presented to the COOs through a new Dispute Notice, and another meeting of the COOs or their designees must occur or 30 days must pass following issuance of the Dispute Notice before litigation can be initiated.
- 9.12 In the event NSR and User agree that NSR should retain employees or provide additional employees for the sole benefit of User, the Parties will enter into a separate agreement under which User will bear all cost and expense for any such retained or additional employees provided, including recruitment and training cost, and including without limitation all cost and expense associated with labor protective payments which are made by NSR and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 10. MILEAGE AND CAR HIRE

- 10.1 All mileage and car hire charges accruing on cars in User's trains on the Subject

Trackage shall be assumed by User and reported and paid by User directly to the owner(s) of such cars.

ARTICLE 11. CLEARING OF WRECKS

- 11.1 Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, NSR shall be responsible for the provision of such service, including the repair and restoration of roadbed, track and structures so as to minimize the impact on NSR and User operations. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 12 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck, shall be promptly delivered to User.

ARTICLE 12. LIABILITY

ARTICLE 13. CLAIMS

13.1 Except as provided in Section 13.1(a) below, all claims, injuries, death, property damages, and losses arising out of or connected with this Agreement will be investigated, adjusted, and defended by the Party bearing the liability, cost, and expense therefor under Article 12 of this Agreement.

- (a) Each Party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with U.S.C. § 11706 and 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. § 10709.
- (b) In the event a claim or suit is asserted against NSR or User which is the other's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other Party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.
- (c) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either Party engaged directly or indirectly in such work shall be borne by such Party.
- (d) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. § 11706 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. § 10709, neither Party shall settle or compromise any claim, demand, suit or cause of action for which the other Party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds

13.2 It is understood that nothing in this Article 13 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 12.

ARTICLE 14. INDEMNITY COVERAGE

14.1 As part of the consideration hereof, each Party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other Party shall also extend to and indemnify the parent corporation, subsidiaries, and affiliates of such other Party, and all of their respective directors, officers, agents, and employees.

ARTICLE 15. INSURANCE

ARTICLE 16. TERM, TERMINATION, AND DEFAULT

- 16.1 This Agreement shall become effective (the "Effective Date") as of the first date executed by both of the Parties. However, User operations over the Subject Trackage shall not commence until a date (the "Commencement Date") mutually agreed to in writing between User and NSR, which date shall not occur until the effective date of any required Surface Transportation Board ("STB") authorization or exemption of User's Trackage Rights granted by this Agreement (including compliance with any condition(s) imposed by the STB in connection with such approval or exemption).
- 16.2 This Agreement shall remain in full force and effect for a period of not less than two (2) years following the Commencement Date, and shall thereafter continue in effect until cancelled by either Party upon not less than 90-days' written notice to the other Party. This agreement shall expire by its own terms fifteen (15) years after the Commencement Date.
- 16.3 Termination of this Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability which may have arisen or been incurred by such Party under the terms of this Agreement prior to termination thereof.
- 16.4 In the event of any material failure on the part of User to perform its obligations under this Agreement and the continuation of such failure for a period of sixty (60) days after written notice thereof by certified mail from NSR, NSR shall have the right at its option and after first giving thirty (30) days' written notice thereof by certified mail, and notwithstanding any waiver by NSR of any prior breach thereof, to terminate the Agreement and User's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by NSR will not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

- 17.1 Should implementation of this Agreement require the prior approval and authorization of the STB or other regulatory authority, User, at its own cost and expense, will initiate and thereafter diligently pursue such approval and authorization or an exemption therefrom. Prior to making any submission to the STB, User shall present said submission to NSR for NSR's review and approval prior to filing, which approval shall not be unreasonably withheld or delayed.

- 17.2 User shall, within sixty (60) days of the date of termination (including by NSR pursuant to Sections 16.2 or 16.4) or non-renewal of this Agreement or the date that the obligation to discontinue the Trackage Rights arises for any other reason under the terms of this Agreement, initiate and thereafter diligently prosecute any action to obtain approval from STB or other regulatory body having jurisdiction authorizing abandonment or discontinuance of the Trackage Rights herein granted. If User fails to file within (60) days, User hereby expressly authorizes NSR and grants to NSR a limited, irrevocable Power of Attorney for the sole purpose of NSR filing with the STB, or other regulatory body having jurisdiction, on behalf of User to abandon or discontinue the Trackage Rights granted hereunder, and User further agrees to reimburse NSR for all costs incurred.

ARTICLE 18. FORCE MAJEURE

- 18.1 The obligations, other than payment obligations, of the Parties to this Agreement shall be subject to force majeure (including Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders; Federal Railroad Administration (FRA) orders, or governmental laws, orders, or regulations, and other causes or circumstances beyond the control of the Party invoking such force majeure as an excuse for nonperformance), but only as long as, and to the extent that, such force majeure shall reasonably prevent performance of such obligations by the affected Party.

ARTICLE 19. ABANDONMENT

- 19.1 Notwithstanding the provisions of Article 16 of this Agreement, NSR may abandon all or part of the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than six (6) months written notice of NSR's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with or oppose NSR's actions to seek and to exercise such authority. In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek and diligently pursue such regulatory authority at the same time that NSR seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as User may do so in accordance with applicable statutes and regulations, unless User intends to acquire the Subject Trackage from NSR pursuant to 49 U.S.C. § 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. § 10904 or any similar provision which may be in effect to subsidize operations on or to acquire the Subject Trackage. Unless User or another party acquires the Subject Trackage for continued rail use or subsidizes NSR's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by NSR for abandonment of the Subject Trackage by its aforesaid notice to User, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of User's operations is not required, User shall discontinue its operations hereunder on the date that NSR is authorized to abandon the Subject Trackage. Upon discontinuance of

User's operations, this Agreement shall terminate and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

ARTICLE 20. SUCCESSORS AND ASSIGNS

20.1 Neither party hereto may assign this Agreement, in whole or in part, or any rights granted herein, or delegate to another party any duties hereunder, except a subsidiary, or an affiliate, without the prior written consent of the other party. Any transfer, assignment, or delegation of this Agreement, or of any rights or duties herein granted or imposed, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void, and at the option of the party whose written consent should have been obtained, this Agreement may be terminated. Subject to this Article, this Agreement shall be binding upon and inure to the benefits of the Parties hereto, their successors and assigns.

ARTICLE 21. NOTICE

21.1 Any notice required or permitted to be given by one Party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the Parties may mutually agree, and shall be addressed as follows:

If intended for User/UP:

Executive Vice President-Operation
Mail Stop 1180
1400 Douglas Street
Omaha, Nebraska 68179

With a copy to:

Senior Director Joint Facilities
Mail Stop 1180
1400 Douglas Street
Omaha, Nebraska 68179

If to NSR:

Norfolk Southern Railway Company
Attn: Senior Director – Interline Management
1200 Peachtree Street, NE – Box 158
Atlanta, Georgia 30309

Either Party may provide changes in the above addresses to the other Party by personal service or U.S. mail.

ARTICLE 22. GENERAL PROVISIONS

22.1 This Agreement and each and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing herein contained shall be taken

as creating or increasing any right of any third party to recover by way of damages or otherwise against either of the Parties.

- 22.2 This Agreement contains the entire understanding of the Parties and supersedes any and all oral understandings between the Parties.
- 22.3 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing and signed by both Parties.
- 22.4 No consent or waiver, expressed or implied, by a Party of any breach or default by the other Party in the performance by such other Party of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance hereunder by such other Party. Failure on the part of a Party to complain of any act or failure of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such first mentioned Party of its rights hereunder.
- 22.5 All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms, and phrases in the railroad industry.
- 22.6 All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 22.7 As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the Parties, such expression means the trains, locomotives, cars, and equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars, and equipment which are owned by, leased to, or in the account of such Party. Whenever such locomotives, cars, or equipment are owned or leased by one Party and are in the possession or account of the other Party, such locomotives, cars, and equipment shall be considered those of that other Party in whose possession or train such locomotives, cars and equipment are located.
- 22.8 This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.
- 22.9 This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without giving effect to any choice or conflict of laws provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of laws of any jurisdiction other than the State of Illinois.
- 22.10 If any provision of this Agreement or the application thereof to any Party hereto or to any circumstance shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent or for any reason, the remainder of this Agreement or the application of the provisions thereof to such Party or circumstance, other than those determined to be invalid or unenforceable, shall not be affected thereby and shall be enforced to the fullest extent permitted by law, and the Parties shall promptly enter into

such other agreement(s) as their respective legal counsel may deem appropriate in order to replace such invalid or unenforceable provisions in a manner which produces a result which is substantially equivalent to the terms of this Agreement in all material respects.

- 22.11 This Agreement may be executed in several counterparts, each of which will be deemed an original, and such counterparts shall constitute one and the same instrument.

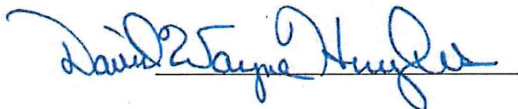
ARTICLE 23. CONFIDENTIALITY

- 23.1 Except as provided by law or by rule, order, or regulation of any court or regulatory agency with jurisdiction over the subject matter of this Agreement or as may be necessary or appropriate for a Party to enforce its rights under this Agreement, during the term of this Agreement and during a period of three (3) years subsequent to termination of this Agreement, the terms and provisions of this Agreement and all information to which access is provided or obtained hereunder shall be kept confidential and shall not be disclosed by either NSR or User to any party other than each Party's respective parent corporation, subsidiaries, and affiliates, and their respective directors, officers, agents, employees and attorneys, without the prior written approval of the other Party.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written.

Witness for USER:

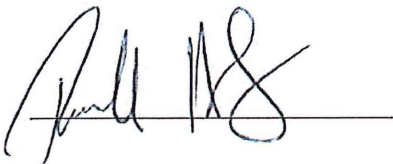
UNION PACIFIC RAILROAD COMPANY



By: Thomas C. Haley
Title: VP - Network Planning

Witness for NSR:

NORFOLK SOUTHERN RAILWAY COMPANY



By: [Signature]
John Friedmann
Vice President

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
DOCKET NO. FD 36290**

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
NORFOLK SOUTHERN RAILWAY COMPANY**

Norfolk Southern Railway Company has agreed to grant overhead trackage rights to Union Pacific Railroad Company between Birmingham, Missouri (Milepost S266.3) and Springfield, Illinois (Milepost DH 416.5), a distance of approximately 288 miles. The trackage rights will be consummated on May 29, 2019.

This Notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: April __, 2019

By the Board,

Rachael D. Campbell
Director, Office of Proceedings