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January 29, 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

**Re: STB Docket No. FD 36229; Union Pacific Railroad Company -- Trackage
Rights Exemption -- West Memphis Base Railroad L.L.C.**

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

FEE RECEIVED
January 30, 2019
SURFACE
TRANSPORTATION BOARD

FILED
January 30, 2019
SURFACE
TRANSPORTATION BOARD



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36229

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
WEST MEMPHIS BASE RAILROAD L.L.C.**

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: January 29, 2019

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. FD 36229



**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
WEST MEMPHIS BASE RAILROAD L.L.C.**

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 overhead trackage rights over a line of railroad controlled by West Memphis Base Railroad, L.L.C. ("WMBR") between Milepost 355.539 and Milepost 353.281 in West Memphis, Arkansas for a total distance of approximately 2.25 miles (the "Line").

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.

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

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.

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

The transaction covered by this Notice is the acquisition of overhead and local trackage rights by UP over approximately 2.25 miles of WMBR's trackage extending between in West Memphis, Arkansas. UP's predecessor, Missouri Pacific Railroad Company, sold the Line to the City of West Memphis, Arkansas (the "City") in 1992. After the sale, Missouri Pacific, and later UP, continued operating over the Line to serve customers pursuant to an operating agreement between the City and Missouri Pacific. This trackage rights agreement will allow UP to continue serving customers on the Line, as it has been doing for decades.

§ 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 allow UP to continue operating over the Line and serving customers located on the Line, in the same manner as before WMBR acquired rights over the Line.

§ 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.

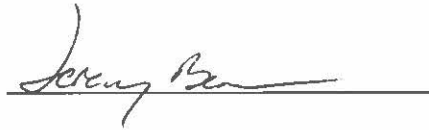
§ 1180.4(g)(3) Environmental Documentation

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) 501-0129 (FAX)
jmberman@up.com

VERIFICATION

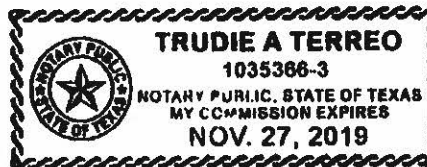
I, Lizabeth Brubeck, Director Joint Facilities for Union Pacific Railroad Company, under penalty of perjury, declare and verify that I am authorized to make this verification and I have read the foregoing Notice of Exemption, know the facts stated therein, and believe that said facts are true as stated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

December
Dated: November 13, 2018


Lizabeth Brubeck

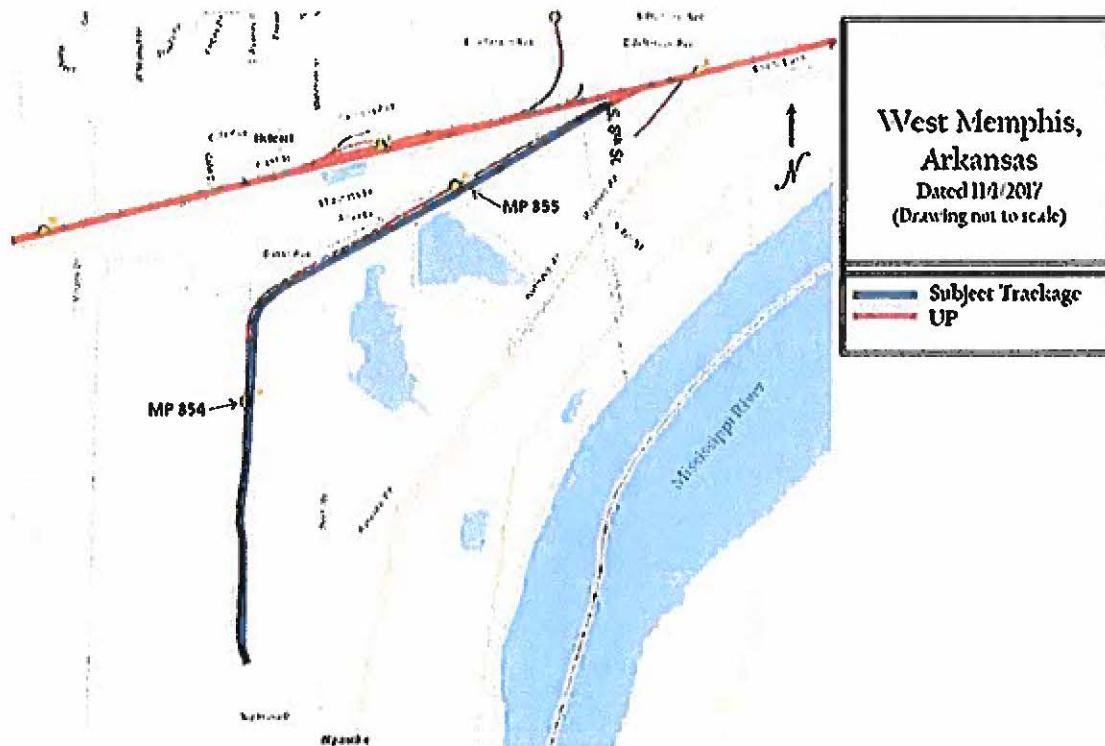
SUBSCRIBED AND SWORN TO
before me this 13th day of *December*
~~of November~~, 2018.


Notary Public



My Commission expires: 11.27.19

Exhibit 1



TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this 1st day of June 2018, by and between **WEST MEMPHIS BASE RAILROAD, LLC** (hereinafter referred to as "**Base**") and **UNION PACIFIC RAILROAD COMPANY** (hereinafter referred to as "**UP**") Base and UP are sometimes referred to individually herein as "**Party**" and collectively as the "**Parties**".

WHEREAS, Base controls a line of railroad at West Memphis, Arkansas known as the Tenark Spur (the "**Line**"); and

WHEREAS, Base agrees to grant to UP overhead and local trackage rights for the movement of freight traffic over the Line, subject to the terms and conditions set forth herein.

NOW THEREFORE, the Parties, intending to be legally bound, agree as follows:

Section 1.0 GRANT OF TRACKAGE RIGHTS

1.1 Subject to the terms and conditions herein provided, Base hereby grants to UP the right to operate, in overhead and local service, trackage rights for the movement of certain freight in its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "**Trackage Rights**") over Base's Line as shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "**Subject Trackage**");

1.2

- (i) Between UP's connection with Base just east of S 8th Street at or near Base's Milepost 355.8 and the end of the Line at or near Base's Milepost 353.281 near West Memphis, Arkansas, a total distance of approximately 3 miles including in addition (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along or at the end of the aforesaid tracks to be used hereunder, and (2) right-of-way for aforesaid tracks, signals, interlocking devices and plants, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the Parties.
- (ii) Such rights shall include the right to enter and exit the Subject Trackage at Base's connection with UP at or near milepost 355.8 in West Memphis, AR, and at any future connection with the Subject Trackage.
- (iii) For purposes of calculating compensation as further defined in Section 4.0 herein, the mileage is based on the customer's location on the line.

Section 2.0 USE OF SUBJECT TRACKAGE

2.1 UP shall have the right to perform all operations on the Subject Track related to providing freight rail service. UP's rights include, but are not limited to, the right to:

- (i) operate in either direction over the Subject Trackage.
- (ii) switch industries and participate in transload operations on the Joint Trackage.
- (iii) set out, pick up or store equipment on the Joint Trackage.
- (iv) perform all local freight service including serving all facilities and tracks on the Joint Trackage or accessed via the Joint Trackage.
- (v) build in to or build out to or from any point on or along the Joint Trackage.
- (vi) perform haulage services for any other railroad on or along the Joint Trackage.

2.2 The rights provided to UP under the terms of this Agreement are for the sole purpose of UP transporting rail traffic over the Subject Trackage.

Section 3.0 RESTRICTION ON USE

3.1 The Trackage Rights herein granted are for the sole purpose of UP using same for the movement of overhead and local traffic on Subject Trackage.

3.2 UP may operate an unlimited number of trains over the Subject Trackage.

Section 4.0 COMPENSATION

Section 5.0 PAYMENT OF BILLS

- 5.1 All payments called for under this Agreement shall be made by UP within thirty (30) days after receipt of bills therefor, which is the date Base furnishes UP its validation of the monthly statement pursuant to Section 4.3.
- 5.2 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 two (2) years from the date of billing.

Section 6.0 MAINTENANCE OF SUBJECT TRACKAGE

- 6.1 Base shall maintain, repair, and renew the Subject Trackage at its own expense and with its own or contracted supervision and labor. Base shall keep and maintain the Subject Trackage in reasonably good condition for the use herein contemplated, at no less than the Federal Railroad Administration (FRA) Class I standard. If in the opinion of the UP, Base has failed to maintain the aforementioned standard, Base shall be given written notice of such failure. If Base has not corrected such failure within 14 days of receiving notice under this section, and such failure jeopardizes in any manner the safe and efficient operation of UP's equipment, UP shall be entitled to remedy such failure and recover from Base the cost of doing so.
- 6.2 Base shall also perform, at the expense of UP, such additional maintenance as UP may reasonably require or request.
- 6.3 UP shall regularly perform inspections of the Subject Trackage at its own expense. The results of these inspections will be utilized by Base in fulfilling its obligations under this section.
- 6.4 UP shall maintain and provide, at its own expense, all signage and signals on the rights of way and roadway approaches to the Subject Trackage. UP shall also maintain and provide, at its own expense, all train signals on the Subject Trackage.
- 6.5 UP shall prepare and file, on behalf of Base, all reports required by the FRA regarding the Subject Trackage.

Section 7.0 CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

- 7.1 Any additional connections to the Subject Trackage which may be requested by UP shall be subject to the Base's approval, which shall not be unreasonably withheld or delayed, and shall be constructed, maintained, repaired, and renewed as follows:
- (i) UP or others shall furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense such portions of the tracks located on the right-of-way of UP.
 - (ii) UP or others shall also furnish all labor and material and shall construct, maintain, repair, and renew at the sole cost, liability and expense of the UP such portions of the tracks located on the right-of-way of Base which connect the respective lines of the Parties, provided, however, that UP shall have the ability to enter into agreements with

customers for the construction and maintenance of such tracks, with written approval from Base which shall not be unreasonably withheld.

Section 8.0 ADDITIONS, RETIREMENTS AND ALTERATIONS

- 8.1 Base, may 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.

Section 9.0 MANAGEMENT AND OPERATIONS

- 9.1 It is understood and agreed that UP will direct all train movements on the Subject Trackage.
- 9.2 UP shall comply with the provisions of the Federal Locomotive Inspection Act and Federal Safety Appliance Acts, as amended, and all other federal and state 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.
- 9.3 The trains, locomotives, cars, and equipment of UP, Base, and any other present or future user of the Subject Trackage or any portion thereof shall be operated on a first come, first service basis without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of traffic.

Section 10.0 MILEAGE AND CAR HIRE

- 10.1 All mileage and car hire charges accruing on cars in UP's account in UP's trains on the Subject Trackage shall be assumed by UP and reported and paid by it directly to the owner of such cars.

Section 11.0 CLEARING OF WRECKS

- 11.1 Whenever UP's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, UP shall perform such service, including the repair and restoration of roadbed, track, and structures. The cost, liability and expense thereof, including without limitation loss of, damage to, and destruction of any

property whatsoever and injury to or death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, shall be apportioned in accordance with the provisions of Section 12 hereof.

Section 12.0 LIABILITY

Section 13.0 INVESTIGATION AND CLAIMS

- 13.1 Each Party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C Section 11706 and 49 C.F.R. Part 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C Section 10709.
- 13.2 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 employees, including claim agents, attorneys, and other employees of either Party engaged directly or indirectly in such work shall be borne by such Party.
- 13.3 Excluding freight loss and damage claims filed in accordance with 49 U.S.C Section 11706 or 49 C.F.R Part 1005 or similar regulation, neither Party shall settle or compromise any claim, demand, suit, or cause of action for which the other Party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).
- 13.4 Each Party agrees to indemnify and hold harmless the other Party and its parent corporation, subsidiaries, and affiliates, and all their respective directors, officers,

agents and employees from and against any and all costs and payments, including benefits, allowances and arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of its own employees, pursuant to a collective bargaining agreement. It is the intention of the Parties that each Party shall bear the full costs of protection of its own employees under employee protective conditions which may be imposed, and of grievances filed by its own employee arising under its collective bargaining agreements with its employees.

- 13.5 It is understood that nothing in this Section 13 shall modify or waive the conditions, obligations, assumptions, or apportionments, or supersede the provisions of Section 12 hereof.

Section 14.0 DISPUTE RESOLUTION

- 14.1 If at any time a question or controversy shall arise between the Parties in connection with this Agreement upon which the Parties cannot agree, either Party shall have the right to require a meeting of designated representatives with authority to settle the matter within 30 days of written notice of a desire to meet; if it cannot be resolved within 30 days of the meeting of the Parties, then the aggrieved Party may demand arbitration. Unless other procedures are agreed to by the Parties, arbitration between the Parties pursuant to this Section 14 shall be governed by the rules and procedures set forth in this Section 14. For all purposes, this Agreement shall be governed by and construed in accordance with the laws of the State of Arkansas, regardless of its conflicts of law principles.
- 14.2 If the Parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one Party of its desire for arbitration to the other Party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any Party (the notifying Party) may notify the other Party (the noticed Party) in writing of its request for arbitration, including with notice its appointment of one arbitrator. Within twenty (20) days after receipt of said notice, the noticed Party shall appoint an arbitrator and notify the notifying Party in writing of such appointment. Should the noticed Party fail within twenty (20) days after receipt of such notice to appoint its arbitrator, said arbitrator may be appointed by the American Arbitration Association (the "AAA"), which shall designate said appointment from the CPR Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators which may be agreed upon between the Parties, upon application by either Party after ten (10) days written notice to the other

Party. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a Party, be appointed in the same manner hereto before stated by the AAA.

- 14.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both Parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either Party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the Party (or Parties in the case of a single arbitrator) by whom the arbitrator was chosen or the AAA, as the case may be, shall appoint another to act in the arbitrator's place.
- 14.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each Party shall forthwith comply with said first decision or award immediately after receiving it.
- 14.5 Each Party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all Parties to the arbitration.
- 14.6 The Parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 – 37, and Federal Rules of Evidence, as may be amended from time to time.

Section 15.0 REGULATORY APPROVAL

- 15.1 Should implementation of this Agreement require the prior approval, authorization, or exemption of the Surface Transportation Board ("STB"), UP, at

its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Base will assist and support efforts of UP to obtain any such required approval and authorization or exemption.

- 15.2 Each Party shall assume and hold the other Party harmless from all claims by their respective employees predicated on loss of, or the activities of the Parties hereunder, whether such claims are based on conditions imposed by the STB or predicated on the Railway Labor Act or labor agreements.

Section 16.0 ABANDONMENT OF SUBJECT TRACKAGE

- 16.1 Notwithstanding the provisions of Section 20 of this Agreement, Base may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving UP not less than ninety (90) days written notice of Base's intent to abandon. In the event regulatory authority is required to effect such abandonment, UP will not interfere with Base's actions to seek and to exercise such authority. In the event regulatory authority is required for UP to discontinue its own operations over the Subject Trackage, UP will seek and diligently pursue such regulatory authority at the same time that Base seeks regulatory authority to abandon the Subject Trackage, or as soon thereafter as UP may do so in accordance with applicable statutes and regulations. UP shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Base for abandonment of the Subject Trackage by its aforesaid notice to UP, or upon the earliest authorized date of exercise of the regulatory authority to discontinue operations, whichever is later. If regulatory authority for discontinuance of UP's operation is not required, UP shall discontinue its operations hereunder on the date that Base is authorized to abandon the Subject Trackage. Upon discontinuance of UP'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.
- 16.2 UP may seek discontinuance authority at any time, regardless of whether Base has or is seeking abandonment authority.
- 16.3 In the event Base seeks to abandon or desires to sell the Subject Trackage or any portion thereof, UP shall have first right of refusal to purchase the Subject

Trackage or any portion thereof either pursuant to 49 U.S.C. Section 10904 or through negotiations with Base.

Section 17.0 GENERAL PROVISIONS

- 17.1 This Agreement and each and every provision hereof are 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 in any third party to recover by way of damages or otherwise against either of the Parties.
- 17.2 All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- 17.3 This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the Parties and supersede any and all oral understandings between the Parties.
- 17.4 No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both Parties.
- 17.5 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, or equipment in the possession of or operated by one of the Parties and includes such trains, locomotives, cars, or 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 the other Party under this Agreement.
- 17.6 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.
- 17.7 This Agreement is the result of mutual negotiations of the Parties, neither of whom shall be considered the drafter for purposes of contract construction.
- 17.8 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 initial and any renewal term of this Agreement, all commercial information to which access is provided or obtained hereunder will be

kept confidential and will not be disclosed by either UP or Base to any party other than UP's and Base's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other Party.

Section 18.0 SUCCESSORS AND ASSIGNS

- 20.1 This Agreement shall inure to the benefit of and be binding upon successors and assigns of the Parties, when such assignment is made in accordance with this Section. No Party shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, by merger or otherwise, to any person, firm, or corporation, provided, however, that Base may assign this Agreement to a newly formed related entity with UP's prior written consent, and UP may assign this Agreement to any of its affiliates with Base's prior consent.

Section 19.0 NOTICE

- 19.1 Any notice required or permitted to be given by one Party to the other 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 to Base:

J. Scott Dickman, Manager
West Memphis Base Railroad, L.L.C.
420 South 145th East Avenue
Tulsa, Oklahoma 74108

If to UP:

Senior Director Joint Facilities
Union Pacific Railroad
1400 Douglas St
Omaha, NE 68179

- 19.2 Either Party may provide changes in the above addresses to the other Party by personal service or certified mail.

Section 20.0 COMMENCEMENT, TERM AND TERMINATION

- 20.1 This Agreement shall take effect on June 1, 2018, subject to STB approval, authorization, or exemption. The date that UP commences operations over the Subject Trackage pursuant to this Agreement shall be referred to herein as the

"Commencement Date", and shall be evidenced by an exchange of correspondence between the appropriate officers of the Parties. In the event that UP is unable to acquire the approval, authorization, or exemption from the STB to operate pursuant to all terms and conditions contained in this agreement then UP may terminate this agreement shall be null and void and its terms unenforceable by either Party.

- 20.2 This Agreement shall continue in full force and effect for a period of twenty (20) years from the Commencement Date, and shall continue in full force and effect, subject to renewal by either Party, for an unlimited number of additional ten (10) year terms, provided, however, UP or Base has the right to terminate this Agreement upon giving the other Party a thirty (30) day advance written notice.
- 20.3 Termination of this Agreement shall not relieve or release either Party from any obligations assumed or from any liability which may have arisen or been incurred by either Party under the terms of this Agreement prior to termination thereof.
- 20.4 Upon termination or non-renewal of this Agreement for any reason, UP shall within sixty (60) days initiate and thereafter diligently prosecute any action to obtain approval from the STB or other regulatory body having jurisdiction authorizing discontinuance of the Trackage Rights herein granted.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first hereinabove written.

UNION PACIFIC RAILROAD COMPANY

By: Lizabeth Bruback
Name: Lizabeth Bruback
Title: Director Joint Facilities

Dated: September 14, 2018

WEST MEMPHIS BASE RAILROAD, LLC

By: J. Scott Dickman
Name: J. Scott Dickman
Title: Manager

Dated: July 20, 2018

**FIRST AMENDMENT TO TRACKAGE RIGHTS AGREEMENT
BETWEEN WEST MEMPHIS BASE RAILROAD, LLC
AND UNION PACIFIC RAILROAD COMPANY**

THIS FIRST AMENDMENT (hereinafter "Amendment"), is made and entered into as of the 30th day of November, 2018, by and between West Memphis Base Railroad, LLC ("Base") and UNION PACIFIC RAILROAD COMPANY ("UP"), collectively called the "Parties".

RECITALS:

WHEREAS, Base and UP are parties to a Trackage Rights Agreement dated June 1, 2018 pursuant to which Base granted UP trackage rights over certain track controlled by base in West Memphis, Arkansas; and

WHEREAS, the Trackage Rights Agreement contained typographical errors concerning the mileposts of the Subject Trackage that the Parties now desire to correct.

NOW, THEREFORE, in consideration of the terms and conditions of this Supplement, the Parties hereto agree as follows:

1. Correction of Mileposts

All references to Milepost 355.8 in the Trackage Rights Agreement are hereby deleted and replaced with a reference to Milepost 355.539. For the avoidance of doubt, the Subject Trackage extends from the connection with UP-owned track at Milepost 355.539 to the end of the line at Milepost 353.231.

2. Effect and Effective Date

This Amendment shall be effective as of the date first written above, and shall remain in full force and effect for the same term as the Trackage Rights Agreement, including any renewals or extensions thereof. Any capitalized terms not defined in this Amendment will have the meaning given in the Trackage Rights Agreement. Except as specifically provided in this Amendment, all terms and conditions of the Trackage Rights Agreement remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the day and year first herein written.

UNION PACIFIC RAILROAD COMPANY

By: *Lizabeth Brubeck*

Printed: *Lizabeth Brubeck*

Title: *Director Joint Facilities*

Date: *12-6-2018*

WEST MEMPHIS BASE RAILROAD, LLC

By: *J. Scott Dickman*

Printed: *J. Scott Dickman*

Title: *Manager*

Date: *12-5-2018*

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION
DOCKET NO. FD 36229**

**UNION PACIFIC RAILROAD COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
WEST MEMPHIS BASE RAILROAD L.L.C.**

West Memphis Base Railroad, L.L.C. has agreed to grant overhead and local trackage rights to Union Pacific Railroad Company ("UP") in West Memphis, Arkansas between Milepost 355.539 and Milepost 353.281, a distance of approximately 2.25 miles. The trackage rights will be consummated on March 1, 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: February __, 2019

By the Board,

Rachael D. Campbell
Director, Office of Proceedings