

BEFORE THE  
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 36067

NEW ORLEANS PUBLIC BELT RAILROAD  
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --  
ILLINOIS CENTRAL RAILROAD COMPANY

241602

ENTERED  
Office of Proceedings  
September 28, 2016  
Part of  
Public Record

**VERIFIED NOTICE OF EXEMPTION OF  
NEW ORLEANS PUBLIC BELT RAILROAD  
PURSUANT TO 49 C.F.R. § 1180.2(d)(8)**

FEE RECEIVED  
September 28, 2016  
SURFACE  
TRANSPORTATION BOARD

Erica Beck  
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New Orleans Public Belt Railroad  
4822 Tchoupitoulas Street  
New Orleans, Louisiana 70115

FILED  
September 28, 2016  
SURFACE  
TRANSPORTATION BOARD

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Chicago, Illinois 60606-2832  
(312) 252-1500

**ATTORNEYS FOR NEW ORLEANS PUBLIC  
BELT RAILROAD**

Dated: September 28, 2016

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 36067

NEW ORLEANS PUBLIC BELT RAILROAD  
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --  
ILLINOIS CENTRAL RAILROAD COMPANY



**VERIFIED NOTICE OF EXEMPTION OF  
NEW ORLEANS PUBLIC BELT RAILROAD  
PURSUANT TO 49 C.F.R. § 1180.2(d)(8)**

New Orleans Public Belt Railroad ("NOPB"), a common carrier by rail, hereby files this verified notice of exemption under 49 C.F.R. § 1180.2(d)(8) for its acquisition of temporary overhead trackage rights over a portion of Illinois Central Railroad Company's ("IC") McComb Subdivision, in New Orleans, Louisiana, a distance of approximately 5.6 miles and over approximately 0.7 miles of IC's contiguous Baton Rouge Subdivision, also located in New Orleans, Louisiana, for a total distance of approximately 6.3 miles.

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

**Description of the Proposed Transaction: 49 C.F.R. § 1180.6(a)(1)(i)**

Pursuant to a written temporary trackage rights agreement dated September 16, 2016, between NOPB and IC, NOPB proposes to acquire temporary overhead freight service trackage rights over two sections of IC's line of railroad in the New Orleans area for the sole purpose of permitting NOPB to interchange on a temporary basis with Kansas City Southern Railway Company ("KCS") on KCS trackage in New Orleans. In order to facilitate interchange with KCS on KCS trackage, NOPB must operate over the approximate 6.3 miles of IC trackage

that is the subject of the instant proceeding. The first section of trackage that NOPB proposes to acquire temporary overhead trackage rights over is between IC's connection with KCS at or near IC milepost 906.4 at East Bridge Junction in Shrewsbury, Louisiana to IC milepost 900.8 at Orleans Junction in New Orleans, Louisiana, located on IC's McComb Subdivision. The second contiguous section is between IC milepost 444.2 at Orleans Junction and IC milepost 443.5 at Frelsen Junction in New Orleans, Louisiana on IC's Baton Rouge Subdivision. The total distance of temporary overhead trackage rights that NOPB proposes to acquire is 6.3 miles ("the Trackage Rights"). NOPB intends to commence operations over the Trackage Rights on the effective date of the instant filing as stated below. As outlined in the agreement between NOPB and IC, the Trackage Rights will expire on January 31, 2017.

The full name and address of the applicant carrier herein is as follows:

New Orleans Public Belt Railroad  
4822 Tchoupitoulas Street  
New Orleans, Louisiana 70115  
(504)896-7410

Any questions concerning this Notice should be sent to NOPB's representative at the following address:

Audrey L. Brodrick  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1518

**Proposed Time Schedule for Consummation: 49 C.F.R. § 1180.6(a)(1)(ii)**

NOPB intends to consummate the exemption authority proposed in this notice on or after October 28, 2016.

**Purpose Sought to Be Accomplished: 49 C.F.R. § 1180.6(a)(1)(iii)**

The proposed temporary overhead trackage rights are for the sole purpose of allowing NOPB to temporarily interchange with KCS on KCS trackage, which requires NOPB to operate over IC trackage for approximately 6.3 miles.

**States in Which Applicant's Property is Located: 49 C.F.R. § 1180.6(a)(5)**

NOPB owns and operates over rail property in the State of Louisiana. IC owns and operates over rail property in the States of Louisiana, Mississippi, Alabama, Kentucky, Tennessee, and Illinois.

**Map - Exhibit 1: 49 C.F.R. § 1180.6(a)(6)**

A map of the rail line over which NOPB proposes to acquire temporary overhead trackage rights is attached hereto as Exhibit 1.

**Agreement - Exhibit 2: 49 C.F.R. § 1180.6(a)(7)(ii)**

A redacted copy of the Trackage Rights Agreement dated as of September 16, 2016 between NOPB and IC is attached hereto as Exhibit 2. An unredacted copy of the Trackage Rights Agreement is being filed separately along with a motion for protective order.

**Labor Protective Conditions: 49 C.F.R. § 1180.4(g)(1)(i)**

No employees will be adversely affected by this transaction. NOPB does not object to imposition of the employee protective conditions established 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) with respect to the trackage rights and, with respect to the discontinuance of these temporary rights, imposition of the employee protective conditions established in Oregon Short Line RR Co. -- Abandonment- Goshen, 360 I.C.C. 91

(1979). See Railroad Consolidation Procedures- Exemption For Temporary Trackage Rights, STB Ex Parte No. 282 (Sub-No. 20) (STB served May 10, 2004).

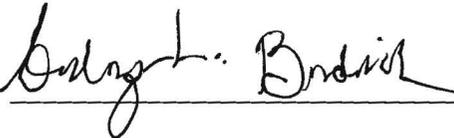
**Caption Summary: 49 C.F.R. § 1180.4(g)(2)(ii)**

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

**Environmental and Historic Preservation Matters: 49 C.F.R. § 1180.4(g)(3)**

Under 49 C.F.R. § 1105.6(c)(4), the proposed acquisition of temporary overhead trackage rights by NOPB is exempt from environmental reporting requirements. Under 49 C.F.R. § 1105.8(b)(3), NOPB's proposed temporary overhead trackage rights acquisition also is exempt from historic preservation reporting requirements.

Respectfully submitted,

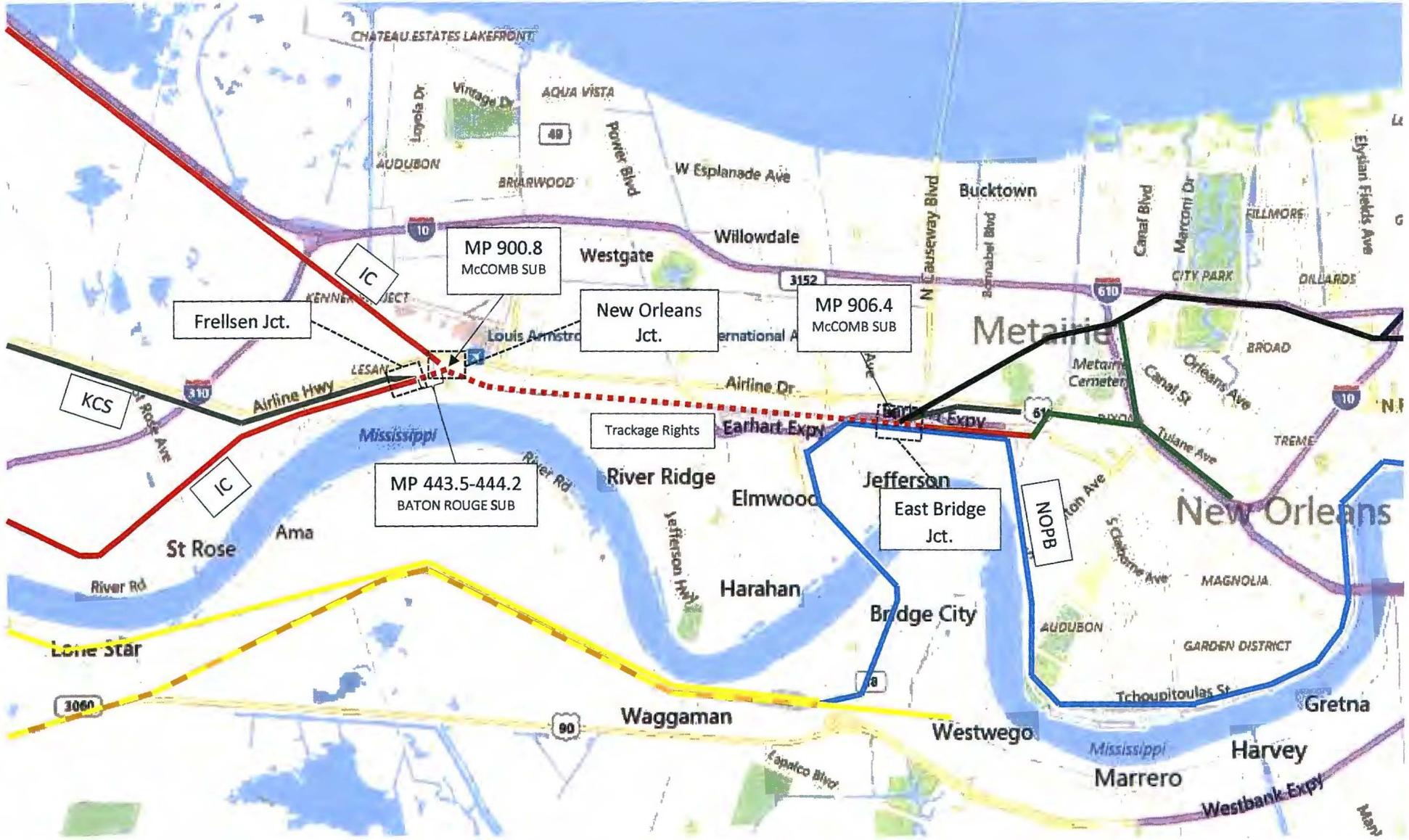
By:  \_\_\_\_\_

William C. Sippel  
Audrey L. Brodrick  
Fletcher & Sippel LLC  
29 North Wacker Drive  
Suite 920  
Chicago, Illinois 60606-2832  
(312) 252-1500

**ATTORNEYS FOR NEW ORLEANS PUBLIC  
BELT RAILROAD**

Dated: September 28, 2016

..... NOPB Temporary Trackage Rights over IC



**NEW ORLEANS GATEWAY  
EXHIBIT 1**

**TEMPORARY TRACKAGE RIGHTS AGREEMENT**

**THIS AGREEMENT** (Agreement") entered into as of this 16 day of September 2016, by and between **ILLINOIS CENTRAL RAILROAD COMPANY** (hereinafter referred to as "CN" or "OWNER") and **NEW ORLEANS PUBLIC BELT RAILROAD**, (hereinafter referred to as "NOPB" or "USER"). Each of NOPB and CN shall individually be referred to as a "Party" and collectively as the "Parties".

**WHEREAS**, CN owns and operates segments of railroad located between East Bridge Jct in Shrewsbury, LA and Orleans Jct in New Orleans, LA on CN's McComb Subdivision and between Orleans Jct and Frellsen Jct in New Orleans, LA on CN's Baton Rouge Subdivision; and

**WHEREAS**, the Kansas City Southern Railway Company (KCS) currently has overhead trackage rights on CN Trackage between East Bridge Jct and Frellsen Jct for its operations in New Orleans, LA; and

**WHEREAS**, NOPB desires to obtain limited temporary overhead trackage rights between East Bridge Jct and Frellsen Jct for the sole purpose of interchanging with KCS on KCS trackage in New Orleans; and

**WHEREAS**, CN agrees to grant NOPB limited temporary overhead trackage rights subject to the terms and conditions as set forth herein:

**NOW THEREFORE**, the parties hereto, intending to be legally bound, agree that the recitals and the introductory paragraphs above are hereby incorporated and made a part of this Agreement and the parties further agree as follows:

**SECTION 1.0      GRANT OF TEMPORARY TRACKAGE RIGHTS**

1.1 Subject to NOPB's agreement to file a "Petition for Partial Revocation of Class Exemption and for Temporary Exemption of Trackage Rights", which requests revocation of the temporary trackage rights on the dates indicated in Section 3 (or otherwise file a temporary trackage rights exemption pursuant to 49 C.F.R. 1180.2(d)(8)), jointly with its "Notice of Exemption" filing for the trackage rights with the Surface Transportation Board, and the terms and conditions herein provided, Owner hereby grants to User the temporary nonexclusive right to operate, in overhead freight service only, its trains, locomotives, cars, and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad shown in blue on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

- Between CN's connection with KCS at or near Milepost 906.4 at East Bridge Jct. in Shrewsbury, LA and at or near Milepost 900.8 at Orleans Jct. in New Orleans, LA on CN's McComb Subdivision, including (1) all sidings, yard tracks and

yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto, a distance of approximately 5.6 miles.

- Between Milepost 444.2 at Orleans Jct. and Frelsen Jct. at or near Milepost 443.5 in New Orleans, LA on CN's Baton Rouge Subdivision, including (1) all sidings, yard tracks and yard leads now existent or hereafter constructed along the aforesaid tracks to be used hereunder, and (2) right-of-way for the aforesaid tracks, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use hereunder of the aforesaid tracks by the parties hereto, a distance of approximately 0.7 miles
- The total distance of the Subject Trackage is 6.3 miles.

## **SECTION 2.0      USE OF SUBJECT TRACKAGE**

2.1 User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement. Owner shall retain the exclusive right to grant to other persons rights of any nature in the Subject Trackage.

2.2 Except as may otherwise be provided by this Agreement User shall not use any part of the Subject Trackage for the purpose of switching, interchanging, staging, storage or servicing of cars or equipment, or the making or breaking up of trains, except that nothing contained herein shall, upon prior approval of Owner, preclude the emergency use by User of such auxiliary tracks as may be designated by Owner for such purpose.

2.3 Owner shall have exclusive control of the management and operation of the Subject Trackage. User shall not have any claim against Owner 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.

## **SECTION 3.0      RESTRICTION ON USE**

3.1 The temporary trackage rights herein granted are granted for the sole purpose of User using same for bridge traffic only between the terminals of Subject Trackage and User shall not perform any local freight service whatsoever at any point located on Subject Trackage.

3.3 NOPB shall not connect or interchange with itself or with any other railroad at any location along the Subject Trackage other than at the points defined in Section 1 on the Subject Trackage.

3.4 NOPB shall have sufficient fuel for the entire movement on CN.

3.5 NOPB agrees that it shall: 1) not stage, hold, store, park or otherwise unreasonably interfere with the joint use of the Subject Trackage and 2) ensure that crews will have sufficient hours of service remaining to clear the Subject Trackage. NOPB will ensure that immediately upon arrival at Frelsen Jct. or East Bridge Jct., as the case may be, that NOPB's train will exit the Subject Trackage. If NOPB's train cannot complete its movement through the Subject Trackage for any reason, (i.e, hours of service, congestion, etc.), then such trains shall be held short of the Subject Trackage so as not to occupy or tie up the Subject Trackage for other users.

3.6 In the event NOPB's train is forced to stop on the Subject Trackage due to mechanical failure or for any other emergency and NOPB's train requires a recrew while operating on the Subject Trackage, NOPB will make the necessary arrangements with CN's Dispatcher to have a NOPB relief crew in position to relieve the NOPB crew prior to the arrival of NOPB train at the recrew location or the expiration of NOPB's crews hours of service. If NOPB doesn't have a crew available, if CN so elects, CN will recrew the NOPB train at the sole cost and expense of NOPB and move train to its destination on Subject Trackage or move train to a location where it can be held until such time as NOPB has a crew available to operate the NOPB train to destination on Subject Trackage.

3.7 NOPB shall not permit or admit any third party to the use of all or any portion of the Subject Trackage, nor have the right to detour trains of any other railroad over or upon the Subject Trackage, nor under the guise of doing its own business contract or make an agreement to handle as its own equipment over or upon the Subject Trackage, or any portion thereof, the equipment of any third party which in the normal course of business would not be considered the equipment of User; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using locomotives and cabooses of another railroad as its own under this Agreement.

3.8 The temporary trackage rights granted herein to NOPB and this Agreement shall terminate on January 31, 2017.

#### **SECTION 4.0      COMPENSATION**

4.1 The factor to be used in calculating payments to be made by User for the Trackage Rights covered by this Agreement shall be \_\_\_\_\_ (hereinafter referred to as the "Base Charge").

percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Surface Transportation Board for determination. In the event said Board is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

PROVIDED, HOWEVER that under no circumstances shall the Base Charge ever be less than the amount provided for in this section.

#### **SECTION 5.0      PAYMENT OF BILLS**

5.1 All payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefore. 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 hereto shall be adjusted in the accounts of a subsequent month.

5.2 The records of each Party hereto, 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.

5.3 Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 4, shall include direct labor and material costs, together with the surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed by one Party for the other Party.

#### **SECTION 6.0      MAINTENANCE OF SUBJECT TRACKAGE**

6.1 Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner does not guarantee the condition of the Subject Trackage or that operations there over will not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, except as may be otherwise provided in Section 12 hereof, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against Owner or its parent corporation, subsidiaries or affiliates, or 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 User 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, Owner shall with reasonable diligence restore the Subject Trackage for the movement of cars.

6.2 Owner shall also perform, at the expense of User, such additional maintenance as User may reasonably require or request.

#### **SECTION 7.0      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.

#### **SECTION 8.0      ADDITIONS, RETIREMENTS AND ALTERATIONS**

8.1 Owner, 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 Owner to 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 Owner's operation, Owner shall have the option to either make such changes in or additions and betterments to the Subject Trackage and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities, or to deny such request.

#### **SECTION 9.0      MANAGEMENT AND OPERATIONS**

9.1 When operating over the Subject Trackage, User's locomotives and crews will be equipped to communicate with Owner on radio frequencies normally used by Owner in directing train movements on the Subject Trackage.

9.2 Procedures for qualification and occupancy of the Subject Trackage will be arranged by the local supervision of each carrier. All control and usage will be subject to the approval of Owner's representative or his designee.

9.3 Before its locomotives enter onto the Subject Trackage, User shall request permission from Owner's dispatcher or other designated representative. 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 Owner's designated representative that it has completed its operations and

that its equipment has cleared the Subject Trackage. Once User has notified Owner's representatives that it has cleared the Subject Trackage, User shall not reenter the Subject Trackage without again obtaining permission from Owner's representative. User shall provide and maintain at its expense all communication facilities needed as may be required by Owner to permit User to use Owner's trackage.

9.4 User shall comply with the provisions of the Federal Locomotive Inspection Act and the 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. User shall indemnify, protect, defend, and save harmless Owner 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 Owner or its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

9.5 User, in its use of the Subject Trackage, will comply in all respects with the safety rules, operating rules and other regulations of Owner, 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 Owner. 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 as determined by Owner, and no train shall contain locomotives, cars or equipment which require speed restrictions or other movement restrictions below the authorized freight speeds as provided by Owner's operating rules and regulations without the prior consent of Owner. User shall indemnify, protect, defend, and save harmless Owner and its parent corporation, subsidiaries and affiliates, and all their directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

9.6 All employees of User engaged in or connected with the operations of User on or along the Subject Trackage shall be required to pass periodic examinations on the rules of Owner related to the Subject Trackage, provided, with respect to such examinations that, upon request of User, Owner shall qualify one or more of User's supervisory officers on Owner's rules and such supervisory officer or officers so qualified shall examine all employees of User engaged in or connected with User's operations on or along the Subject Trackage. Pending qualification of train and engine crews of User, Owner shall furnish a pilot or pilots, at the expense of User, as deemed necessary by Owner, to assist in operating trains of User over the Subject Trackage. User shall pay to Owner, upon receipt of bills therefore, any reasonable cost incurred by Owner in connection with the qualification of such employees of User, as well as the cost of pilots furnished by Owner, until such time as such employees are deemed by the appropriate examining officer of Owner to be properly qualified for operation as herein contemplated, such determination not to be unreasonably withheld, conditioned or delayed.

9.7 Owner may request an investigation at its option if User's employee working on Owner's property is alleged to have violated Owner's rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. User will schedule the investigation and notify owners Local Transportation Officer in the territory. User's scheduling of the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner will provide its regulations, supplements, and safety rules to User at no cost.

9.8 If Owner requests an investigation, Owner shall have the right to exclude from the Subject Trackage and Interchange Track(s) any employee of User, except officers, determined by Owner as the result of Owner's investigation or hearing described below, to be in violation of Owner's rules, regulations, orders, practices or instructions.

9.9 In a major offense including, but not limited to, violation of Rule G, dishonesty, insubordination, or a serious violation of operating rules or other offenses of comparable magnitude, wherein Owner desires to bar User's employee from service on Owner's territory pending an investigation by Owner, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.

9.10 If Owner requests an investigation, an officer of User will conduct the investigation, but an officer of Owner may be present. After the investigation is concluded, a Transportation Officer of User will arrange to assess discipline, within the applicable time limits. If Owner recommends dismissal, User reserves the right to change the recommendation to the extent of barring the individual from operating over Owner's territory. User shall release, indemnify, defend and save harmless Owner and its officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

9.11 If the disciplinary action is appealed by the employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not be barred from service on the Operating Trackage or Interchange Track(s) by reason of such occurrence (unless an arbitration concerning such matter is held pursuant to this Agreement and this arbitration upholds Owner's continued exclusion of such employee).

9.12 It is understood that Owner shall reimburse User for all payments that User might be required to make as a result of a successful challenge being made by the employee or his representative as to the discipline recommended by Owner and assessed by User. User agrees to notify Owner before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, Owner will be given an opportunity to review User's submission. Any payments made to employees, as a result of an investigation being "overturned", shall include not only actual wages, but in addition, shall include expenses which User may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

9.13 The trains, locomotives, cars, and equipment of User, Owner, and any other present or future user of the Subject Trackage or any portion thereof shall be operated without prejudice or partiality and in such manner as will afford the most economical and efficient manner of movement of all traffic.

9.14 If by reason of any mechanical failure, insufficient hours of service remaining among User's crew, or for any other cause not resulting from an accident or derailment, a train or locomotive of User becomes stalled or unable to proceed under its own power, or fails to maintain the speed required by Owner on the Subject Trackage, or if in emergencies crippled or otherwise defective cars are set out of User's trains on the Subject Trackage, Owner shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew User's train as provided in Section 3.5 if User's train is going to interfere with the operation on the Subject Trackage) 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 shall reimburse Owner for the cost of rendering any such assistance.

9.15 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, such work shall be done by Owner and User shall reimburse Owner for the cost thereof.

9.16 In the event Owner and User agree that Owner should retain employees or provide additional employees for the sole benefit of User, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including without limitation all cost and expense associated with labor protective payments which are made by Owner and which would not have been incurred had the additional employees not been provided.

#### **SECTION 10.0      MILEAGE AND CAR HIRE**

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

#### **SECTION 11.0      CLEARING OF WRECKS**

11.1 Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Owner 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, including without limitation land, air, water wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Section 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.

## **SECTION 12.0      LIABILITY**

12.1      The responsibility and liability between the Parties for: (i) any personal injury or death of any person (including employees of the Parties and third persons), (ii) any real or personal property damage of any person (including property of the Parties and third persons), (iii) any damage or destruction to the environment (including land, air, water, wildlife and vegetation), and (iv) all cleanup and remedial expenses, court costs, settlements, claims, judgments, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either Party as described herein, all of which are collectively referred to as a "Loss", shall be allocated as follows:

12.2      If a Loss occurs from use of the Subject Trackage involving the trains, locomotives, engines and/or employees of only one Party, then such Party shall be solely responsible for the Loss, even if caused partially or completely by the other Party.

12.3      If a Loss occurs from use of the Subject Trackage involving the trains and locomotives of both Parties, then: (i) each Party shall be solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) responsibility for any Loss to the Subject Trackage and Loss sustained by third parties shall be divided equally between the two Parties, regardless of the proportionate responsibility between them as to the cause of the Loss.

Any damage of the environment, including without limitation land, air, water wildlife, and vegetation, occurs with both Owner and User's traffic being involved, then as between themselves, (i) Owner shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such Owner's traffic and/or Owner's locomotive from which there is a release, (ii) User shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in such User's traffic and/or a User's locomotive from which there was a release, and (iii) responsibility for damage or destruction to the environment and to third parties which results from one or more substances which was (or were) being transported in equipment in the revenue waybill and car hire accounts or locomotives of both Owner and User from which there was a release, shall, to the extent not allocable under subparagraphs (i) and (ii) to the substance released, be shared by the parties in proportion to the total number of cars, in the revenue waybill and car hire account of each party, or equipment or locomotives of the respective parties, from which there was such release.

12.4      If a Loss occurs from the use of the Subject Trackage involving both User and any other third party user of the Subject Trackage not a party to this Agreement, then User's

responsibilities for the Loss shall be apportioned in the manner specified in Subsection 12.3 with the other party user being considered Owner for the purpose of determining User's share of that portion of the Loss which it must assume.

12.5 Whenever any Loss is assumed by or apportioned to a Party under the foregoing provisions, that Party shall forever protect, defend, indemnify, and save harmless the other Party and its parent corporation, subsidiaries and affiliates, and any and all of their respective directors, officers, agents, and employees from and against such Loss assumed by that Party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance, or misfeasance of the indemnitee or its directors, officers agents, or employees.

12.6 In every case of death or injury suffered by an employee of either Party, when compensation to such employees or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employers' liability or other law, and either of said Parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such Party shall not be released from paying any such future installments by reason of the expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid.

12.7 For purposes of determining liability, pilots furnished by Owner to User pursuant to this Agreement shall be considered as the employees of User while such employees , are on board or getting on or off trains of User, and as otherwise on duty as pilots for User.

12.8 If any suit or action shall be brought against either Party for damages which under the provisions of this Agreement are in whole or in part the responsibility of the other Party, said other Party shall be notified in writing by the party sued, and the party so notified shall have the right and be obligated to take part in the defense of such suit and shall pay a proportionate part of the judgment and costs, expense and attorneys' fees incurred in such suit according to its liability assumed hereunder.

12.9 In the event of a Loss as set out herein, the Parties shall be bound by the Freight Claim Rules, Principles, and Practices of the AAR as to the handling of any claims for the loss or damage to lading.

12.10 Notwithstanding the provisions of Section 18.5 of this Agreement, for the purposes of this Section 12 the word "equipment" shall mean and be confined to (i) trains, locomotives, cars and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and machinery that, at the time of an occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

**SECTION 13.0      INVESTIGATION AND CLAIMS**

13.1 Except as provided in Subsection 13.2 hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the Party bearing the liability, cost, and expense therefore under the provisions of this Agreement.

13.2 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.

13.3 In the event a claim or suit is asserted against Owner 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.

13.4 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.

13.5 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 has any liability under this Agreement without the concurrence of such other Party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

13.6 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.

13.7 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      DEFAULT AND TERMINATION**

14.1 In the event of any substantial failure on the part of User to perform its obligations under this Agreement and its continuance in such default for a period of sixty (60) days after written notice thereof by certified mail from Owner, Owner shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by Owner of any prior breach thereof, to terminate the Trackage Rights and User's use of the Subject Trackage. The exercise of such right by Owner shall not impair its rights under this Agreement or any cause or causes of action it may have against User for the recovery of damages.

**SECTION 15.0      ARBITRATION**

15.1 Except for matters concerning loss or destruction of, or damage to freight, or injury or death of persons, any irreconcilable dispute arising between the parties with respect to this Agreement shall be settled through final and binding arbitration. The parties shall jointly submit the matter to final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and conclusive upon the parties hereto. Each Party to the arbitration shall pay the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator(s), if any, shall be borne equally by the parties hereto.

**SECTION 16.0      REGULATORY APPROVAL**

16.1 Should implementation of this Agreement require the prior approval and authorization of the Surface Transportation Board ("STB"), User, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. Owner will assist and support efforts of User to obtain any such required approval and authorization or exemption.

16.2 Each Party shall assume and hold the other Party harmless from all employee claims predicated on loss of, or adverse impact on, compensation, benefits or working conditions arising from this Agreement 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 17.0      ABANDONMENT OF SUBJECT TRACKAGE**

17.1 Notwithstanding the provisions of Section 21 of this Agreement, Owner may abandon the Subject Trackage during the term of this Agreement, or any renewals hereof, upon giving User not less than ninety (90) days' written notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner'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 Owner 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 Owner pursuant to 49 U.S.C. Section 10904 or other similar provision. User hereby expressly reserves the right pursuant to 49 U.S.C. Section 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 Owner's operations thereon, User shall exercise its authority to discontinue its operations pursuant to this Agreement upon the date established by Owner 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 Owner 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.

#### **SECTION 18.0      GENERAL PROVISIONS**

18.1      This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto 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 hereto.

18.2      All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18.3      This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

18.4      No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

18.5      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 hereto 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 to this Agreement and are in the possession or account of the other Party to this Agreement, such locomotives, cars, and equipment shall be considered those of the other Party under this Agreement.

18.6 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.

18.7 This agreement is the result of mutual negotiations of the parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

18.8 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 hereto 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 CN or NOPB to any Party other than CN's and NOPB's affiliates and the respective officers, employees, and attorneys of those affiliates, without the prior written approval of the other Party.

#### **SECTION 19.0 SUCCESSORS AND ASSIGNS**

19.1 No Party hereto 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 without obtaining the prior written consent of the other Party (ies) to this Agreement.

#### **SECTION 20.0 NOTICE**

20.1 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 Owner:

Region Director Contracts and Administration  
Illinois Central Railroad Company  
17641 South Ashland Avenue  
Homewood, IL 60430

If to User:

Executive Vice President and Chief Operating Officer  
New Orleans Public Belt Railroad  
4822 Tchoupitoulas Street  
New Orleans, LA 70115

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

**SECTION 21.0**

**COMMENCEMENT, TERM AND TERMINATION**

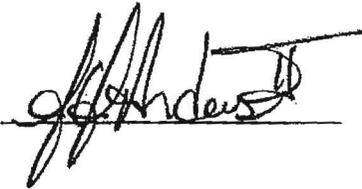
21.1 This Agreement shall take effect on the effective date of any required regulatory approvals, and shall be evidenced by an order declared by the Surface Transportation Board (herein after know as the "Commencement Date")

21.2 This Agreement shall continue in full force and effect until terminated by either Party upon thirty (30) days written notice to the other Party or until terminated under the terms and conditions as specified in Section 3.8.

21.3 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 either Party under the terms of this Agreement prior to the termination hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed in duplicate as of the day and year first hereinabove written.

**WITNESS**



**ILLINOIS CENTRAL RAILROAD  
COMPANY**

By: 

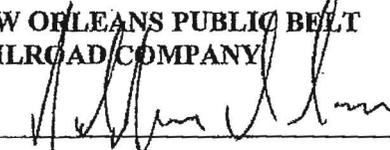
Its: **Region Director Contracts & Administration**

Date: 9-19-16

**WITNESS**



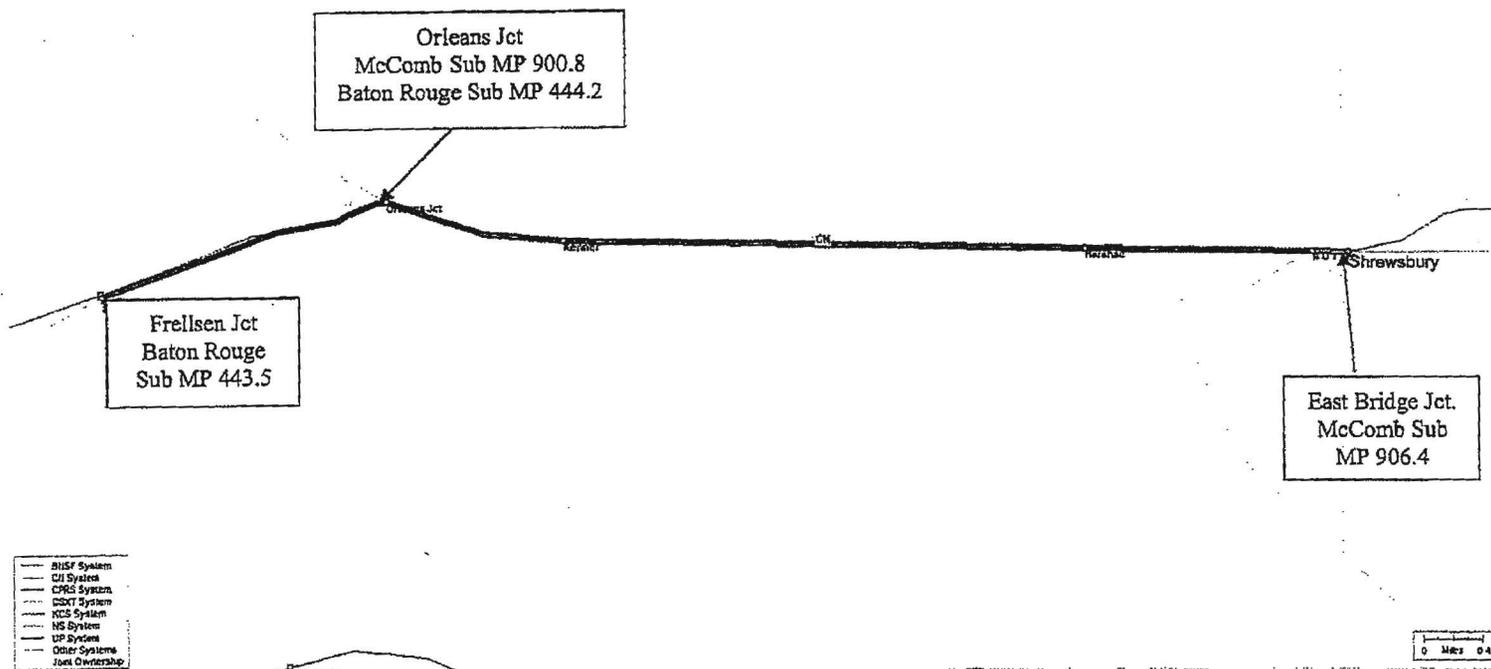
**NEW ORLEANS PUBLIC BELT  
RAILROAD COMPANY**

By: 

Its: **CEO**

Date: 9/16/16

Exhibit A



SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION**

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FINANCE DOCKET NO. 36067

NEW ORLEANS PUBLIC BELT RAILROAD  
-- TEMPORARY TRACKAGE RIGHTS EXEMPTION --  
ILLINOIS CENTRAL RAILROAD COMPANY

---

Illinois Central Railroad Company ("IC") has agreed to grant temporary overhead trackage rights to New Orleans Public Belt Railroad ("NOPB") over two contiguous segments of IC's line of railroad in the New Orleans, Louisiana area. NOPB will acquire temporary non-exclusive overhead trackage rights (i) between IC's connection with Kansas City Southern at or near IC milepost 906.4 at East Bridge Junction in Shrewsbury, Louisiana and IC milepost 900.8 at Orleans Junction in New Orleans, Louisiana, which is located on IC's McComb Subdivision and (ii) between IC milepost 444.2 at Orleans Junction and IC milepost 443.5 at Frellsen Junction located on IC's Baton Rouge Subdivision. The total distance of temporary overhead trackage rights that NOPB will acquire is 6.3 miles. The temporary trackage rights will be effective on or after October 28, 2016 and will expire on January 31, 2017.

This Notice is filed under 49 C.F.R. § 1180.2(d)(8). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

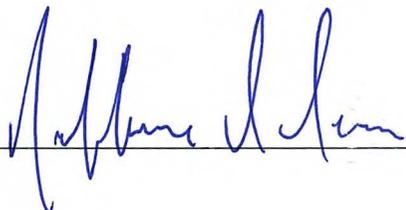
Dated: \_\_\_\_\_

By the Board

**VERIFICATION**

State of Louisiana    )  
                                  )    SS:  
Parish of Orleans    )

Jeffrey Davis, being duly sworn, deposes and says that he is Chief Executive Officer for New Orleans Public Belt Railroad, that he has read the foregoing Notice of Exemption, knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_

SUBSCRIBED AND SWORN TO  
before me this 26<sup>th</sup> day  
of September \_\_\_\_, 2016.

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

My Commission expires:

**ERICA N. BECK**  
**BAR ROLL #30000, Parish of Orleans**  
**My commission expires at my death.**