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September 26, 2024

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Re: **Docket No. FD 36776, CSX Transportation, Inc.—Trackage Rights—Norfolk
Southern Railway Company**

Dear Ms. Brown:

Enclosed is a public version of the Notice of Exemption. A highly confidential version is being filed concurrently. A filing fee of \$1,500 has been paid through Pay.gov for a Notice of Exemption filed under 49 CFR 1180.2(d).

Thank you for your assistance. If you have any questions, please contact me.

Sincerely yours,

/s/ *Louis E. Gitomer*

Louis E. Gitomer
Attorney for CSX Transportation, Inc.

FILED
September 26, 2024
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED
September 26, 2024
SURFACE
TRANSPORTATION BOARD

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36776

CSX TRANSPORTATION, INC.
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

Steven C. Armbrust
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250
Lou@lgrailaw.com

Attorneys for: CSX Transportation, Inc.

Dated: September 26, 2024

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36776

CSX TRANSPORTATION, INC.
—TRACKAGE RIGHTS—
NORFOLK SOUTHERN RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

CSX Transportation, Inc. (“CSXT”) submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7) to obtain the necessary Surface Transportation Board (“Board”) authority for CSXT to operate overhead trackage rights over the following rail lines of the Norfolk Southern Railway Company (“NSR”) (the “New Trackage Rights”):

- (1) **The Bay Route.** The NSR rail line between CP Bay, at or near Milepost 91.9¹, and the connection between NSR and CSXT, at or near milepost IP 0.41, a distance of approximately 2.8 miles, in Baltimore City, MD. These trackage rights will allow CSXT to operate between NSR’s Bayview Yard and CSXT’s Bayview Yard, and between NSR’s Bayview Yard and IP 0.41. *See* map attached as Exhibit A-1.
- (2) **The Harrisburg Route.** The NSR rail lines (a) between Lurgan, PA (at or near milepost LG 40.1/HW 40.1) and Norristown, PA at CP Norris, PA (at or near Milepost HP 18.0), a distance of approximately 148.3 miles; and (b) between CP Falls (at or near Milepost HP 5.4) and a connection with CSXT’s Philadelphia Subdivision at CP Laurel Hill (at or near Milepost QA 2.9), a distance of approximately 0.5 miles, a total distance of about 148.8 miles. *See* map attached as Exhibit A-2.

¹ CSXT will access the NS line at CP Bay via rights that it has to operate over Amtrak’s North East Corridor.

CSXT and NSR have agreed that CSXT could re-route traffic over certain NSR lines while CSXT's Howard Street Tunnel in Baltimore, MD (the "HST") is closed during the HST clearance project ("HST Project"). At certain times during the HST Project, CSXT will close the HST and will not be able to route traffic through the HST. During such closures, CSXT intends to reroute its current traffic away from the HST and over other CSXT lines and the lines of NSR, in order to continue to provide service to its customers whose traffic normally moves through the HST. CSXT will re-route the HST traffic using a combination of existing trackage rights and the new trackage rights that are the subject of this Notice. CSXT is also granting NSR concurrent trackage rights over certain CSXT routes, which CSXT understands will be the subject of a separate NSR request for Board authority.

CSXT has agreed with NSR that the new overhead trackage rights that are the subject of this Notice will terminate when the HST Project is complete, the HST is reopened, and CSXT has begun to move rail traffic through the HST.² Because termination of CSXT's trackage rights could occur more than one year from the effective date of this exemption, CSXT is invoking the standard overhead trackage rights class exemption set forth in 49 C.F.R. § 1180.2(d)(7), instead of temporary trackage rights class exemption set forth in 49 C.F.R. § 1180.2(d)(8). In order to allow the trackage rights to terminate at the time agreed to by CSXT and NSR, without CSXT separately obtaining discontinuance authority for that termination, CSXT is concurrently filing a Petition for Partial Revocation of Trackage Rights Exemption in Docket No. FD 36776 (Sub-No. 1), *CSX Transportation, Inc.-Trackage Rights Exemption-Norfolk Southern Railway Company* (the "Revocation").

CSXT and NSR have agreed to two Form A Trackage Rights Addendum to Master

² Any existing CSXT trackage rights over NSR would not be affected by this termination.

Trackage Rights Agreement for the overhead trackage rights (Exhibit B). These trackage rights are not sought as a responsive application in a rail consolidation proceeding.

Pursuant to the Surface Transportation Board's (the "Board") regulations at 49 C.F.R. § 1180.4(g), CSXT submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

CSXT is acquiring overhead trackage rights from NSR as follows:

- (1) **The Bay Route.** The NSR rail line between CP Bay, at or near Milepost 91.9³, and the connection between NSR and CSXT, at or near milepost IP 0.41, a distance of approximately 2.8 miles, in Baltimore City, MD. These trackage rights will allow CSXT to operate between NSR's Bayview Yard and CSXT's Bayview Yard, and between NSR's Bayview Yard and IP 0.41. *See* map attached as Exhibit A-1.
- (2) **The Harrisburg Route.** The NSR rail lines (a) between Lurgan, PA (at or near milepost LG 40.1/HW 40.1) and Norristown, PA at CP Norris, PA (at or near Milepost HP 18.0), a distance of approximately 148.3 miles; and (b) between CP Falls (at or near Milepost HP 5.4) and a connection with CSXT's Philadelphia Subdivision at CP Laurel Hill (at or near Milepost QA 2.9), a distance of approximately 0.5 miles, a total distance of about 148.8 miles. *See* map attached as Exhibit A-2.

The carriers involved in this transaction and their business addresses are:

CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Norfolk Southern Railway Company
Three Commercial Center

³ CSXT will access the NS line at CP Bay via rights that it has to operate over Amtrak's North East Corridor.

Norfolk, VA 23510

Questions and correspondence concerning this notice may be addressed to:

Steven C. Armbrust
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Louis E. Gitomer
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(401) 296-2250
Lou@lgraillaw.com

(a)(1)(ii) Consummation Date

CSX expects to consummate the transactions and start operating over the NS Bay Route and NS Harrisburg Route on or after the effective date of this exemption.

(a)(1)(iii) Purpose Sought to be Accomplished

The purpose of the trackage rights is to provide temporary alternate routes for the duration of the HST Project. Today, CSXT operates through the HST. Once the HST portion of the HST Project begins, CSXT will at times stop operating through the HST. At those times, CSXT will route traffic over the new Bay Route and Harrisburg Route. The trackage rights will allow CSXT to continue to provide service to its customers whose traffic has traditionally moved through the HST when the HST is closed during the HST Project.

The HST Project will clear the HST for double-stack rail passage, build additional resiliency into CSXT's rail network, enhance productivity at the Port of Baltimore, and improve freight rail performance and capability in the mid-Atlantic corridor. The Federal Railroad Administration ("FRA") is administering grant funding for the HST Project under the U.S. Department of Transportation's Infrastructure for Rebuilding America Grant Program

(“INFRA”) and is the lead Federal agency under the National Environmental Policy Act. The Maryland Department of Transportation (“MDOT”) / Maryland Port Administration (“MPA”) is the recipient of INFRA grant funding for the Project, and CSXT is the rail owner and operator conducting engineering design and acting in coordination with MDOT/MPA and FRA.

The anticipated improvements, consisting of tunnel reconstruction, bridge replacement/modification, and track lowering, will be constructed primarily within the existing railroad right-of-way. Once the HST Project is completed, the trackage rights that are the subject of this Notice will terminate and CSXT will resume operating through the upgraded HST. Existing trackage rights over NSR that CSXT will use in connection with the New Trackage Rights for the alternative routings will not be affected by this termination.

(a)(5) List of States in which the Party's Property is Situated

CSXT owns and operates about 20,000 miles of railroad in the States of Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and West Virginia, the District of Columbia, and the Provinces of Ontario and Québec.

NSR owns and operates about 19,300 miles in the States of Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia and the District of Columbia.

(a)(6) Map

A map illustrating the Bay Route and Harrisburg Route trackage rights are attached as Exhibit A-1 and A-2, respectively.

(a)(7)(ii) Agreement

A copy of the redacted draft trackage rights agreements are attached as Exhibit B. An unredacted copy of both of the draft trackage rights agreements has been filed under seal.

Labor Protection

Any employees who are adversely affected by the acquisition of the overhead trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Norfolk and Western Railway Ry. Co.–Trackage Rights–BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. –Lease and Operate*, 360 I.C.C. 653 (1980) (“*N&W*”).

Environmental and Historic Matters

Environmental and historic impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, environmental and historical reports and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(3) and § 1105.8(b)(3).

Respectfully submitted,

/s/ *Louis E. Gitomer*

Louis E. Gitomer, Esq.
Law Offices of Louis E. Gitomer, LLC
600 Baltimore Avenue, Suite 301
Towson, MD 21204
(410) 296-2250

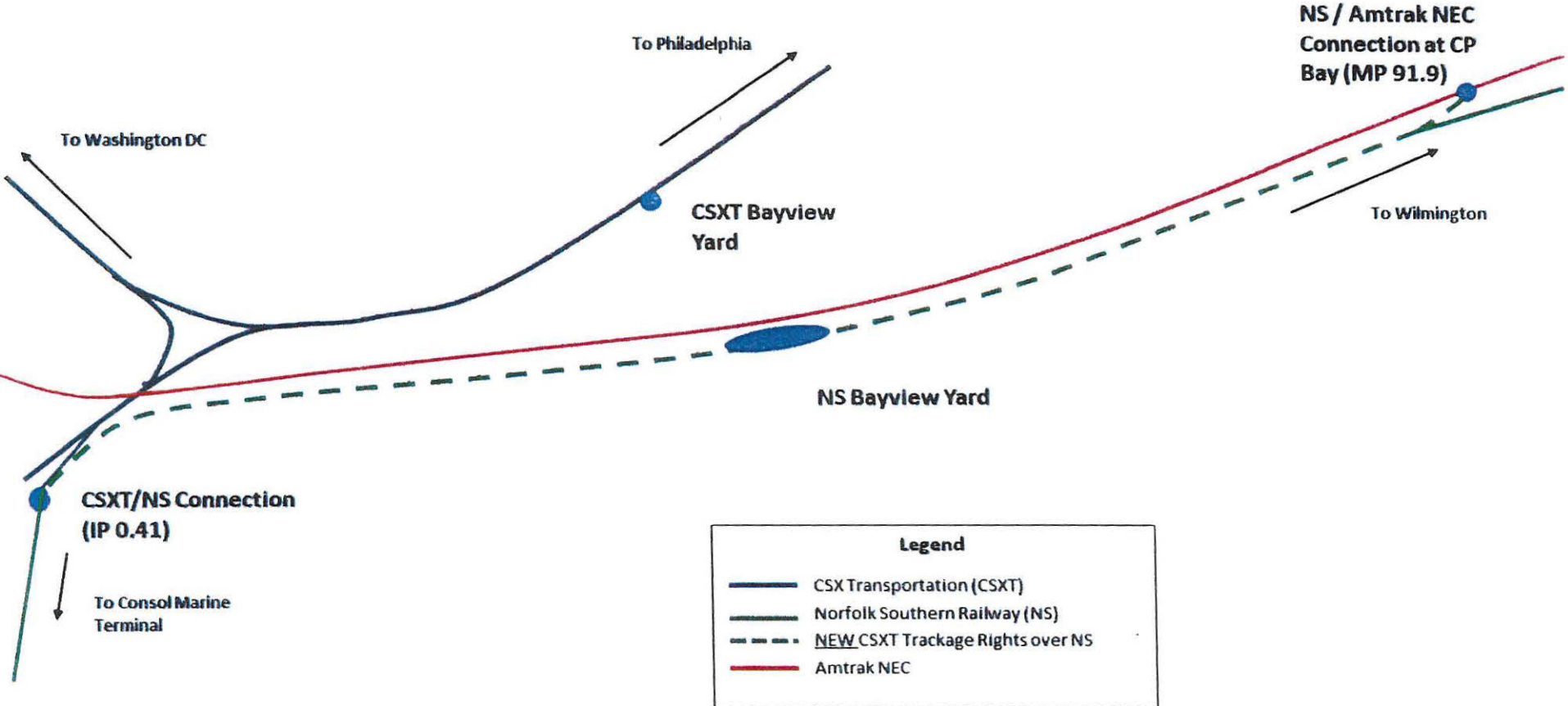
Steven C. Armbrust
CSX Transportation, Inc.
500 Water Street J-150
Jacksonville, FL 32202
(904) 359-1229

Attorneys for: CSX Transportation, Inc.

Dated: September 26, 2024

EXHIBIT A-MAPS

Attachment 1 (Map)



A-1

Attachment 1 (Map)

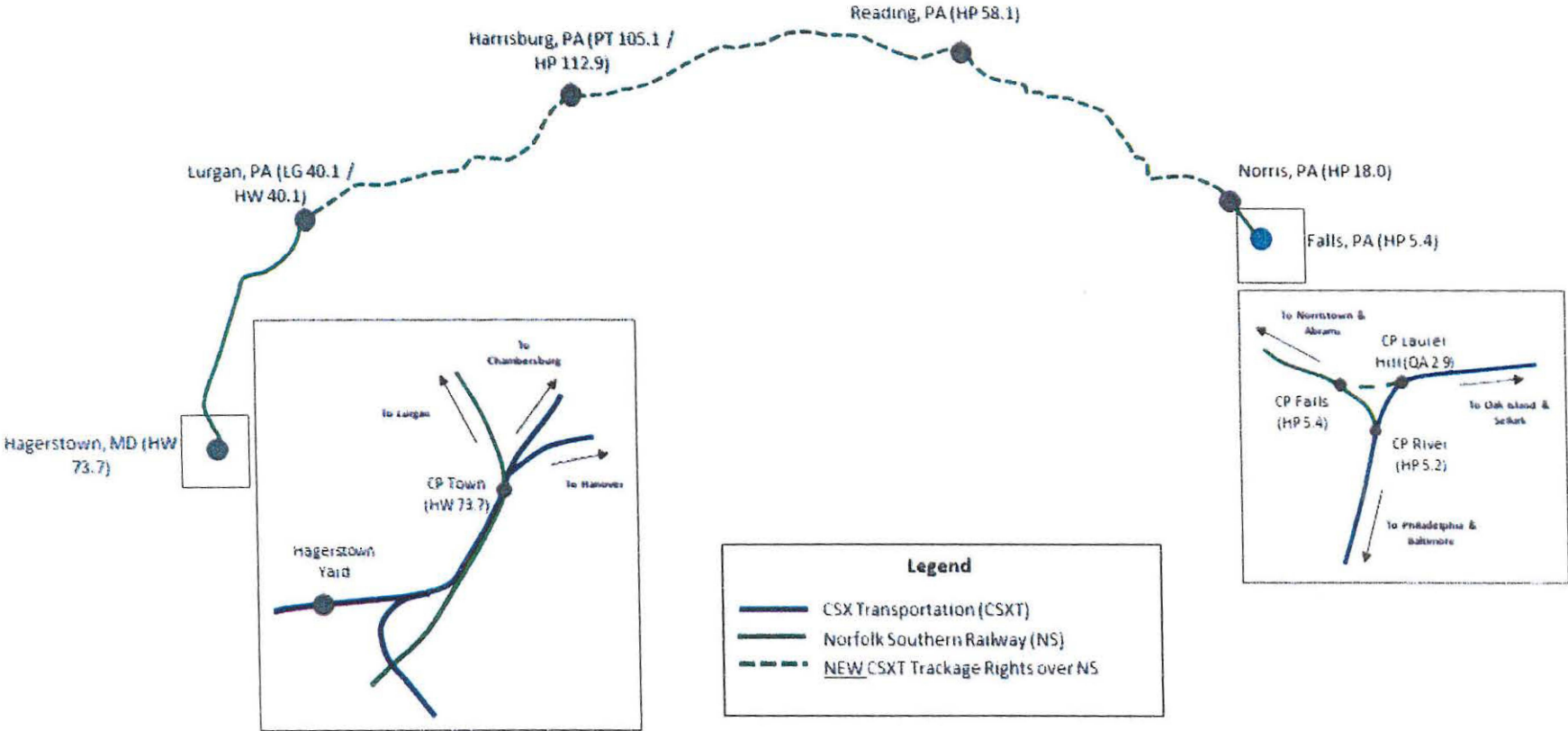


EXHIBIT B-AGREEMENTS

FORM A TRACKAGE RIGHTS ADDENDUM

To Master Trackage Rights Agreement

Dated June 1, 2002 Between

Norfolk Southern Railway Company

And

CSX Transportation, Inc.

Covering

Trackage Rights over NSR at NS' Bayview Yard

This Form A Trackage Rights Addendum dated the 20th day of September, 2024, by and between CSX TRANSPORTATION, INC., a Virginia corporation, hereinafter referred to as "User", and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, hereinafter referred to as "Owner", constitutes a Form A Trackage Rights Addendum as referenced in Article 1 of the Master Trackage Rights Agreement among the Parties dated June 1, 2002 ("Master").

SECTION 1: DESCRIPTION

Owner hereby grants to User, subject to the terms of the Master, and as further governed herein below, the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "Trackage Rights") over the following segment of railroad owned or operated by Owner (hereinafter referred to as "Subject Trackage"):

User shall have the right to get on and off Owner's trackage at CP Bay (MP 91.9) using Owner's connection with Amtrak's North East Corridor ("NEC") into Owner's Bayview Yard, including the right to operate over all other necessary Owner's trackage for the purpose of operating between Owner's Bayview Yard and CSXT's Bayview Yard and between Owner's Bayview Yard and IP 0.41; approximately 2.8 miles. (Attachment 1)

The aforesaid grant shall for the purposes of this Addendum, be considered a portion of the Reciprocal Directional Running Rights covered in Reciprocal Directional Rights Agreement of June 18, 2003, as amended, between the parties hereto, and the trackage used in connection therewith known as the Directional Running Trackage. To the extent the provisions of said Reciprocal Directional Rights Agreement may conflict with the provisions of the Master, the provisions of the Reciprocal Directional Rights Agreement shall govern.

SECTION 2: RESTRICTIONS ON USE

- A. The Trackage rights herein granted are granted for the sole purpose of User using same for overhead traffic only, and User shall not perform any local freight service whatsoever at any point located on the Subject Trackage, nor shall User enter or exit the Subject Trackage except at the designated points.
- B. User shall move no more than two (2) trains per day (one in each direction), across Subject Trackage and will endeavor to provide Owner 24 hours' notice prior to such use. User agrees to only operate trains that enter and exit Amtrak's NEC at User's connection at or near Landover, MD. User shall not move dimensional or toxic by inhalation/poisonous by inhalation ("TIH/PIH") traffic over the Subject Trackage without prior approval of Owner. User agrees that it will not use the Subject Trackage to move intermodal traffic that has an origination or termination in Baltimore, MD. User agrees to limit its trains to (inclusive of locomotives) five thousand feet (5,000'), with locomotives in a push/pull configuration.
- C. The Parties agree to work in concert with Amtrak to coordinate and manage User's movements between Amtrak's Line and Owner's Bayview Yard, ensuring fair treatment of all freight operations.

SECTION 3: COMPENSATION

SECTION 4. TERM AND TERMINATION

- A. This Form A Trackage Rights Addendum shall become effective on the later of the occurrence of (i) when regulatory approval is received, the date of such approval following the expiration of any time periods required by the issuance of labor notices by Owner, and (ii) completion of certain improvements to the existing line in Hagerstown, MD allowing CSXT to operate through CP Town at a planned speed of 25 MPH, or as otherwise authorized ("Effective Date"), and shall remain in effect until first to occur of (i) completion of the Howard Street Tunnel Project, as determined by User on at least ninety (90) days' notice to Owner; (ii) termination of the Master; or (iii) until termination of the Reciprocal Directional Rights Agreement. In the event the parties mutually agree to extend the Reciprocal Directional Rights Agreement, the

parties shall enter into a Form A Trackage Rights Addendum for the same term.

- B. Termination of this Form A Trackage Rights Addendum shall not relieve or release any party hereto from any obligations assumed or any liability which may have arisen or been incurred by such party under the terms of this Form A Trackage Rights Addendum prior to termination hereof.
- C. Upon termination of this Form A Trackage Rights Addendum for any reason, User shall exercise the revocation of these trackage rights as granted by the Surface Transportation Board.

(Signatures page to follow)

SECTION 5. SIGNATURES

The signatures below confirm the mutual agreement of Owner and User representatives to the provisions of this Form A Trackage Rights Addendum.

CSX TRANSPORTATION, INC.

By:  _____

Name: Joshua Brown

Title: Director Joint Facilities

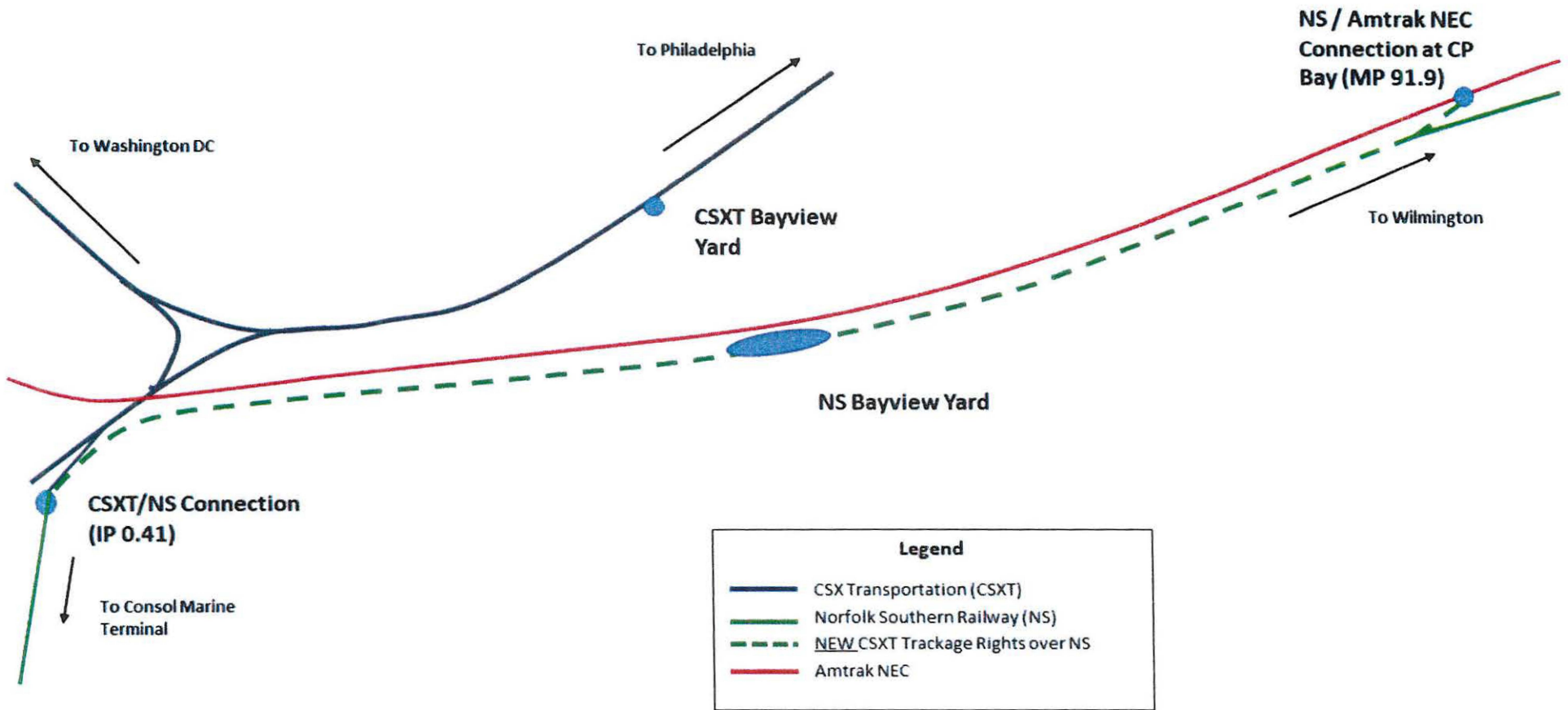
NORFOLK SOUTHERN RAILWAY COMPANY

By:  _____

Name: Jacob R. Ellum

Title: VP of Network Planning

Attachment 1 (Map)



FORM A TRACKAGE RIGHTS ADDENDUM

To Master Trackage Rights Agreement

Dated June 1, 2002 Between

Norfolk Southern Railway Company

And

CSX Transportation, Inc.

Covering

Trackage Rights over NSR between Lurgan, PA and Norris, PA

This Form A Trackage Rights Addendum dated the 20th day of September, 2024, by and between CSX TRANSPORTATION, INC., a Virginia corporation, hereinafter referred to as "User", and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, hereinafter referred to as "Owner", constitutes a Form A Trackage Rights Addendum as referenced in Article 1 of the Master Trackage Rights Agreement among the Parties dated June 1, 2002 ("Master").

SECTION 1: DESCRIPTION

Owner hereby grants to User, subject to the terms of the Master, and as further governed herein below, the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as "Trackage Rights") over the following segment of railroad owned or operated by Owner (hereinafter referred to as "Subject Trackage"):

Over Owner's Lurgan Branch and Harrisburg Line between Lurgan, PA (at or near Milepost LG 40.1/HW 40.1) and CP Norris, PA (at or near Milepost HP 18.0), a distance of approximately 148.3 miles. Over Owner's Harrisburg Line from CP Falls (HP 5.4) to a connection with User's Philadelphia Subdivision at CP Laurel Hill (QA 2.9), a distance of approximately 0.5 miles. (Attachment 1)

The aforesaid grant shall for the purposes of this Addendum, be considered a portion of the Reciprocal Directional Running Rights covered in Reciprocal Directional Rights Agreement of June 18, 2003, as amended, between the parties hereto, and the trackage used in connection therewith known as the Directional Running Trackage. To the extent the provisions of said Reciprocal Directional Rights Agreement may conflict with the provisions of the Master, the provisions of the Reciprocal Directional Rights Agreement shall govern.

SECTION 2: RESTRICTIONS ON USE

- A. The Trackage Rights herein granted are granted for the sole purpose of User using same for overhead traffic only, and User shall not perform any local freight service whatsoever at any point located on the Subject Trackage, nor shall User enter or exit the Subject Trackage except at the end points.
- B. User shall move no more than four (4) trains per day (two in each direction), across Subject Trackage.
- C. User shall not move dimensional or toxic by inhalation/ poisonous by inhalation ("TIH/PIH") traffic over the Subject Trackage without prior approval of Owner.
- D. User agrees that it will not use the Subject Trackage to move intermodal traffic that has an origination or termination in Baltimore, MD.
- E. The Parties agree to work cooperatively to develop an operating plan that supports User's ability to operate over the entire route without the need to stop or recrew User's train. In the event User must recrew a train, User shall provide the necessary crew at its sole cost and expense.
- F. Owner agrees to consider User's request to operate additional overhead trains on a case-by-case basis.

SECTION 3: COMPENSATION

SECTION 4. TERM AND TERMINATION

- A. This Form A Trackage Rights Addendum shall become effective on the occurrence of the later of (i) when regulatory approval is received, the date of such approval following the expiration of any time periods required by the issuance of labor notices by Owner, and (ii) completion of the CSXT Hagerstown Improvement (defined below), (“Effective Date”), and shall remain in effect until first to occur of (i) completion of the Howard Street Tunnel Project, as determined by User on at least ninety (90) days’ notice to Owner; (ii) termination of the Master; or (iii) until termination of the Reciprocal Directional Rights Agreement. In the event the parties mutually agree to extend the Reciprocal Directional Rights Agreement, the parties shall enter into a Form A Trackage Rights Addendum for the same term.
- B. Termination of this Form A Trackage Rights Addendum shall not relieve or release any party hereto from any obligations assumed or any liability which may have arisen or been incurred by such party under the terms of this Form A Trackage Rights Addendum prior to termination hereof.
- C. Upon termination of this Form A Trackage Rights Addendum for any reason, User shall exercise the revocation of these trackage rights as granted by the Surface Transportation Board.

SECTION 5. ADDITIONS AND ALTERATIONS

(Signatures page follows)

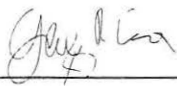
SECTION 6. SIGNATURES

The signatures below confirm the mutual agreement of Owner and User representatives to the provisions of this Form A Trackage Rights Addendum.

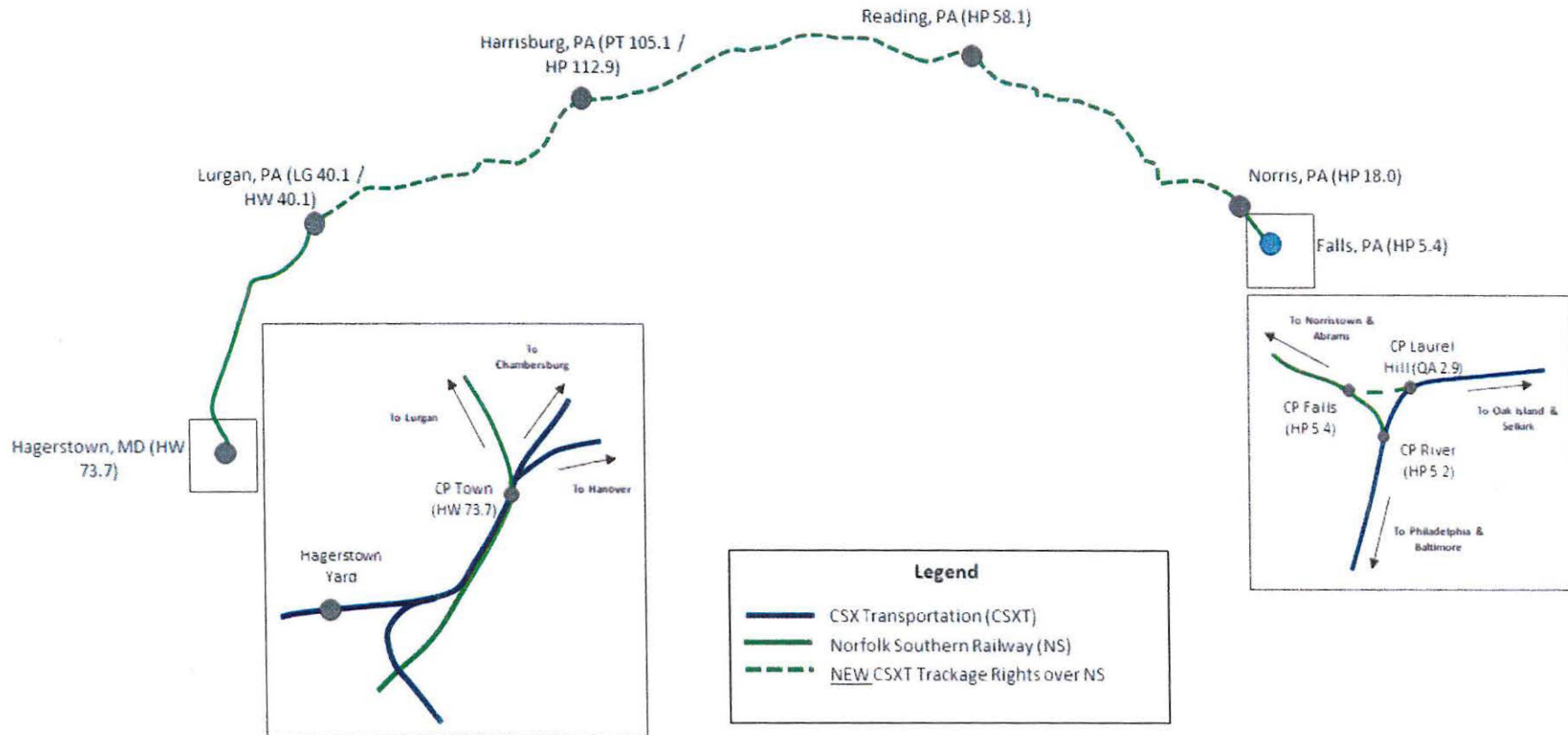
CSX TRANSPORTATION, INC.

By: 
Name: Joshua Brown
Title: Director Joint Facilities

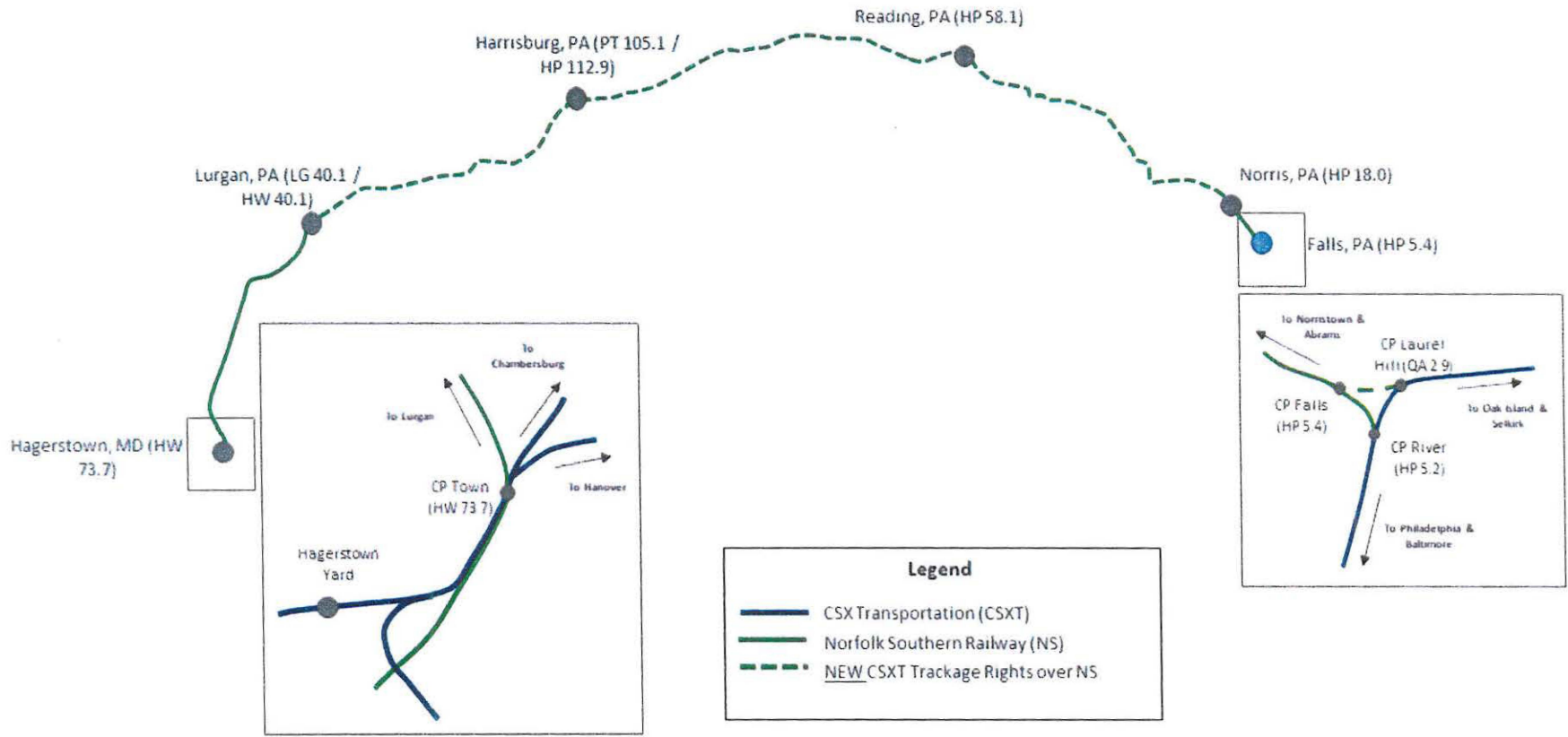
NORFOLK SOUTHERN RAILWAY COMPANY

By: 
Name: Jacob R. Ellum
Title: VP of Network Planning

Attachment 1 (Map)



Attachment 1 (Map)

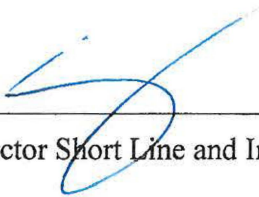


VERIFICATION

State of Florida)
)ss
County of Duval)

I, Christopher Maffett, Director Short Line and Intercarrier Strategy of CSX Transportation, Inc. (“CSXT”), hereby verify under penalty of perjury that to the best of my knowledge the foregoing trackage rights notice of exemption is true and correct. Further, I certify that I am qualified and authorized to make such verification on behalf of CSXT in connection with this proceeding before the Surface Transportation Board.

Executed this 26th day of September 2024.



Director Short Line and Intercarrier Strategy