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September 16, 2024
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September 16, 2024

VIA E-FILING

Re: The Pittsburgh & Ohio Central Railroad Company – Trackage Rights Exemption –
CSX Transportation, Inc.
Surface Transportation Board Docket No. FD 36810

Dear Ms. Brown:

Enclosed for filing in the above referenced docket is a Trackage Rights Notice of Exemption for The Pittsburgh & Ohio Central Railroad Company ("POHC"). In addition, POHC is filing a motion for protective order under 49 CFR §1140.14(b).

The filing fee has been paid via pay.gov. If there are any questions related to this filing, please contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Justin J. Marks'.

Justin J. Marks
Counsel to The Pittsburgh & Ohio Central
Railroad Company

Enclosure

cc: Steven Armbrust, CSX Transportation, Inc.

FILED
September 16, 2024
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TRANSPORTATION BOARD

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TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36810

**THE PITTSBURGH & OHIO CENTRAL RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

(color images included)

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*Attorneys for
The Pittsburgh & Ohio Central Railroad
Company*

Dated: September 16, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 36810

**THE PITTSBURGH & OHIO CENTRAL RAILROAD COMPANY
– TRACKAGE RIGHTS EXEMPTION –
CSX TRANSPORTATION, INC.**

VERIFIED NOTICE OF EXEMPTION

The Pittsburgh & Ohio Central Railroad Company (“POHC”), a Class III railroad, files this Verified Notice of Exemption (“Notice”), pursuant to 49 C.F.R. § 1180.2(d)(7), for POHC’s acquisition of trackage rights over a line of railroad owned by CSX Transportation, Inc. (“CSXT”) pursuant to an Amended and Restated Trackage Rights Agreement (“Amended Agreement”) between POHC and CSXT. CSXT and POHC are parties by succession to a 1902 trackage rights agreement through purchases, assignments and assumptions from predecessor railroads and now seek to extend those trackage rights pursuant to the Amended Agreement. Pursuant to the Amended Agreement, CSXT has agreed to grant trackage rights to POHC between approximately Milepost PLE 5.15 and approximately Milepost PLN 0.24, including a rail bridge (the “Common Rail Bridge”) owned and operated by CSXT to access POHC customers and rail lines on Neville Island, PA (the “Subject Line”). A map of the Subject Line is attached hereto as Exhibit A. The Amended Agreement is intended to be effective on the effective date of the Board’s decision approving the trackage rights.

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal, or modification 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 a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The amended trackage rights covered by this Notice are based upon a written agreement, a copy of which is attached hereto as Exhibit B¹, and are not being sought in a responsive application in a rail consolidation proceeding. Thus, the class exemption is applicable.

Supporting Information

In accordance with the provisions of 49 C.F.R. §1180.4(g), POHC provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

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

CSXT owns and operates the Subject Line, which extends between approximately Milepost PLE 5.15 and approximately Milepost PLN 0.24, including a rail bridge (the “Common Rail Bridge”), extending approximately 4,640 feet (0.88 miles).

The name, business address and telephone number of Applicant are:

The Pittsburgh & Ohio Central Railroad Company
200 Meridian Centre, Suite 270
Rochester, NY 14618
Attention: President
(203) 202-8900

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are:

Justin J. Marks
Clark Hill PLC
1001 Pennsylvania Ave. N.W.

¹ A “public” version of the amendment is attached hereto as Exhibit B. POHC is separately filing a Motion for a Protective Order together with a “highly confidential” version of the agreement.

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(a)(1)(ii) Consummation Date

POHC intends to commence operations under the Amended Agreement on the effective date of this Notice.

(a)(1)(iii) Purpose of Transaction

CSXT and POHC have entered into the Amended Agreement for POHC to continue to access its customers and rail lines on Neville Island, PA.

(a)(5) States in which Property of the Applicant is Situated

POHC currently operates in the Commonwealth of Pennsylvania, and the Subject Line is located in Pennsylvania.

(a)(6) Map

A map showing the Subject Line is attached as Exhibit A.

(a)(7)(ii) Agreement

A "Public Version" of the Amended Agreement, is attached as Exhibit B.

Labor Protection

Applicant understands that any employees adversely affected by the amended trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company – Trackage Rights – Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by

Mendocino Coast Railway, Inc. – Lease and Operate – California Western Railroad, 360 I.C.C. 653 (1980). However, since the Amended Agreement provides for the continuation of existing trackage rights, Applicant does not expect any employees to be adversely affected.

Environmental and Historic Documentation

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

Conclusion

Based on the information provided above, POHC requests that the Board issue a notice of exemption for the trackage rights that are the subject of this Notice.

Respectfully submitted,



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*Attorneys for
The Pittsburgh & Ohio Central Railroad
Company*

Dated: September 16, 2024

VERIFICATION

I hereby verify on behalf of The Pittsburgh & Ohio Central Railroad Company, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

A handwritten signature in blue ink, appearing to read "D. Pavick", is written above a horizontal line.

Dan Pavick
President

Dated: September 16, 2024

EXHIBIT A

MAP

Exhibit A (Map)

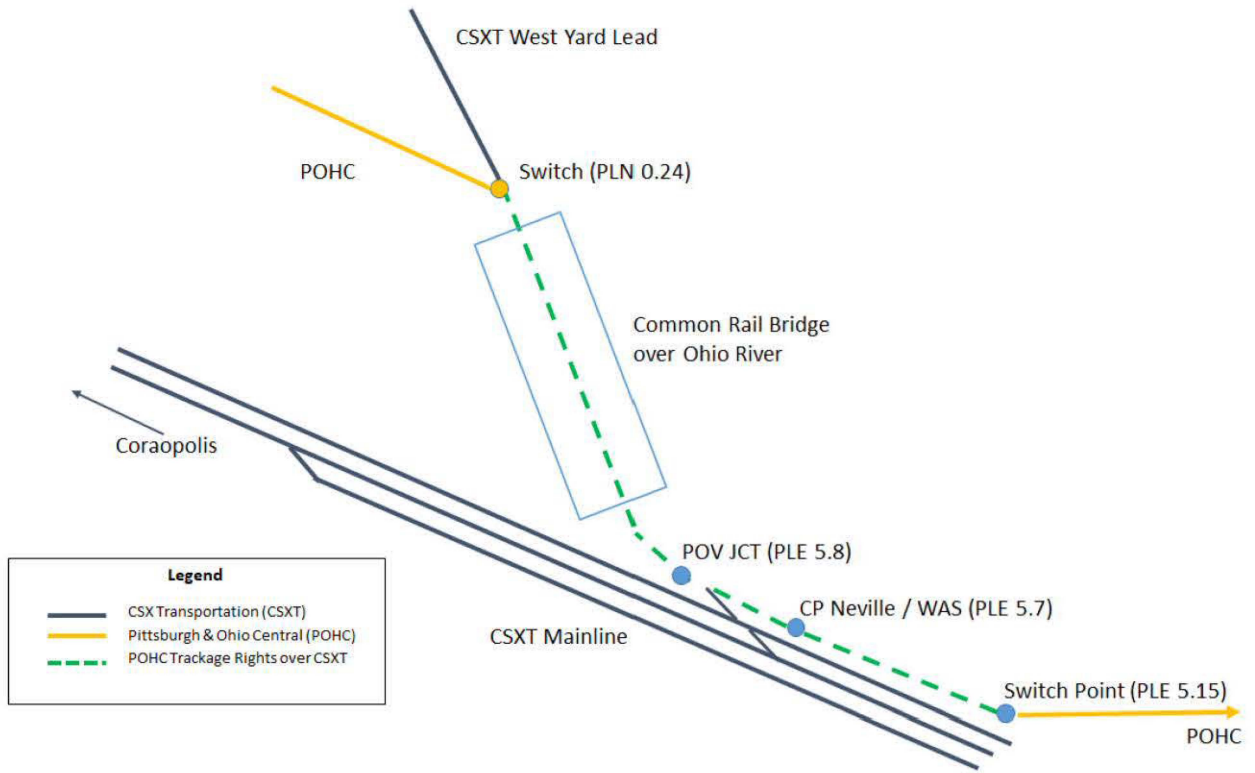


EXHIBIT B

“PUBLIC VERSION”

**AMENDED AND RESTATED
TRACKAGE RIGHTS AGREEMENT**

AMENDED AND RESTATED TRACKAGE RIGHTS AGREEMENT

Between

CSX TRANSPORTATION, INC.

And

THE PITTSBURGH & OHIO CENTRAL RAILROAD COMPANY

THIS AGREEMENT (this “Agreement”) is entered into as of this 3rd day of September 2024 (the “Effective Date”), by and between **CSX TRANSPORTATION, INC.**, a Virginia corporation, hereinafter referred to as “CSXT” and **THE PITTSBURGH & OHIO CENTRAL RAILROAD COMPANY**, an Ohio corporation, hereinafter referred to as “POHC”.

WITNESSETH:

WHEREAS, CSXT and POHC are parties to a January 1, 1902 agreement (the “1902 Agreement”) through purchases, assignments and assumptions from predecessor railroads The Pittsburgh & Lake Erie Railroad Company (P&LE) and The Pittsburgh, Chartiers & Youghiogeny Railway Company (PC&Y), respectively, granting POHC trackage rights on current CSXT lines to access Neville Island, PA; and

WHEREAS, POHC utilizes CSXT track between Milepost PLE 5.15 and Milepost PLN 0.24, including a rail bridge (the “Common Rail Bridge”) owned and operated by CSXT to access its customers and rail lines on Neville Island, PA; and

WHEREAS, CSXT has an obligation to inspect, maintain, repair, renew, change, or remove the Common Rail Bridge or portions thereof with the expense of such work divided between CSXT and POHC on a proportionate basis; and

WHEREAS, POHC has an obligation to inspect, maintain and repair the switch located on Neville Island at CSXT Milepost PLN 0.24 where POHC track diverges and moves westward, as well as the POHC lead track between CSXT designated Milepost PLE 5.15 and CSXT designated Milepost PLE 5.7(aka “WAS Neville” or “CP Neville”); and

WHEREAS, CSXT & POHC now desire to amend, in certain respects, and restate in its entirety, the 1902 Agreement and provide terms for the respective parties’ continued rights, duties and obligations with respect to the ownership, maintenance and operation of the tracks between CSXT Milepost PLE 5.15 and Milepost PLN 0.24, including the Common Rail Bridge.

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

ARTICLE 1. GRANT OF TRACKAGE RIGHTS

Subject to the terms and conditions herein provided, CSXT hereby grants to POHC the

right to operate its trains (locomotives and cars) with its own crews (hereinafter referred to as the "Trackage Rights") over the following segments of CSXT's railroad shown on the plan attached hereto, made a part hereof and marked Exhibit "A" (hereinafter referred to as the "Subject Trackage"):

Over CSXT's line of railroad beginning at switch point located at CSXT designated Milepost PLE 5.15, over the Common Rail Bridge crossing the Ohio River and terminating near the switch located at CSXT Milepost PLN 0.24 on Neville Island at the clearance point of divergence of POHC track from CSXT track; approximately 4,640 feet (0.88 miles).

ARTICLE 2. USE OF SUBJECT TRACKAGE

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

ARTICLE 3. RESTRICTION ON USE

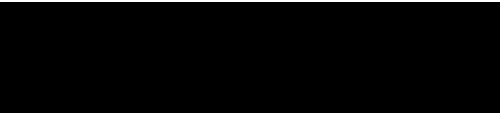

The Trackage Rights herein granted are granted for the sole purpose of POHC using the same for bridge traffic only between the terminals of the Subject Trackage and POHC shall not perform any local freight service whatsoever at any point located on the Subject Trackage.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- A. When operating over the Subject Trackage, POHC's locomotives and crews shall be equipped to communicate with CSXT on radio frequencies normally used by CSXT in directing train movements on the Subject Trackage.

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

ARTICLE 5. COMPENSATION

- A. The annual Trackage Rights fee shall consist of 


- B. The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the month of July 2025 to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the AAR. In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used. The Current Charge shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year (2024 Index for the first annual adjustment) as related to the index for the previous calendar year (2023 Index for the first annual adjustment) and applying that percent to the Current Charge.

- C. By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2023; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2024; "C" to be the Current Charge; and "D" to be the percent of increase or decrease; the revised Current Charge stated herein would be revised by the following formula:

$$(1) B - A / A = D$$
$$(2) (D \times C) + C = \text{revised Current Charge, effective July 1 of the year being revised.}$$

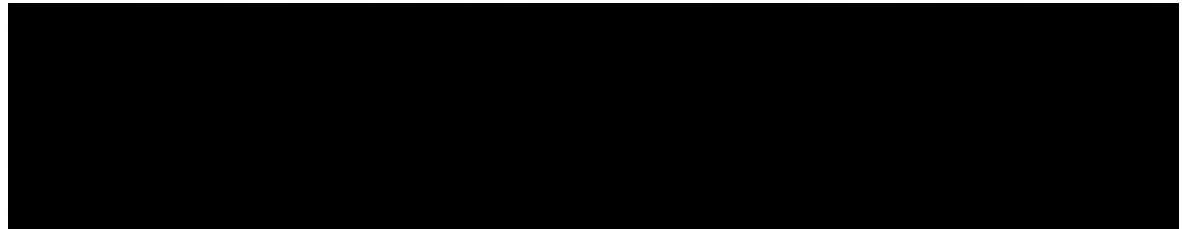
- D. In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the "Annual Indexes of Charge-Out Prices and Wage Rates," an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the parties shall submit the matter to binding arbitration as provided hereinafter.

E.



F. POHC shall furnish CSXT information concerning all loaded and empty cars in Electronic Data Interchange (EDI) transmission between the carriers. The carriers shall determine the minimal data requirements.

G.



ARTICLE 6. PAYMENT OF BILLS

A. POHC shall furnish to CSXT, in agreed upon format, care of

Director-Joint Facilities
CSX Transportation
500 Water Street, J801
Jacksonville, FL 32202,
And via email to JFreports@CSX.com

at the end of each month, a statement of the number of locomotive units and loaded and empty cars operated over the Subject Trackage during the month.

B. CSXT shall on or about the tenth day of each month, render billing to POHC for the usage of Subject Trackage computed in accordance with the terms and conditions of this Agreement.

C. All payments called for under this Agreement shall be made by POHC within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party, insofar as they pertain to matters covered by this Agreement shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of billing.

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

ARTICLE 7. MAINTENANCE OF SUBJECT TRACKAGE

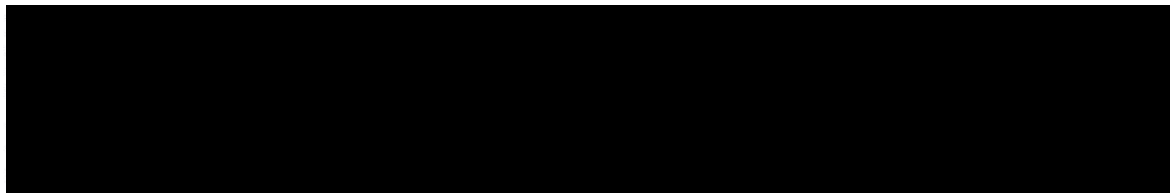
A.



CSXT shall keep and maintain said portion of Subject Trackage in reasonably good condition for the use herein contemplated, but CSXT does not guarantee the condition of said portion of the Subject Trackage or that operations thereover shall not be interrupted. CSXT shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, POHC shall not by reason of failure or neglect on the part of CSXT to maintain, repair or renew said portion of the Subject Trackage, have or make any claim or demand against CSXT 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 POHC resulting from any such failure or neglect.

- B. CSXT shall keep accurate accounts of all expenses incurred for the purposes of inspection, maintenance, repair, renewal, change or removal of the Common Rail Bridge under the terms and conditions of this Agreement.
- C. Bills for expenses incurred for the purposes of inspection, maintenance, repair, renewal, change or removal hereunder shall include direct labor and material costs, together with surcharges, overhead percentages, and equipment rentals in effect at the time any work is performed.
- D. CSXT may, at the expense of POHC, perform such additional maintenance as POHC may reasonably require or request on said portion of the Subject Trackage.

E.



POHC shall keep

and maintain said portion of the Subject Trackage in reasonably good condition for the use herein contemplated, but POHC does not guarantee the condition of said portion of the Subject Trackage or that operations thereover shall not be interrupted. POHC shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum. Furthermore, except as may be otherwise provided in Article 14, CSXT shall not by reason of failure or neglect on the part of POHC to maintain, repair or renew said portion of the Subject Trackage, have or make any claim or demand against POHC 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 CSXT resulting from any such failure or neglect.

- F. POHC may, at the expense of CSXT, perform such additional maintenance as CSXT may reasonably require or request on said portions of the Subject Trackage.

ARTICLE 8. CONSTRUCTION AND MAINTENANCE OF NEW CONNECTIONS

- A. Existing connections or facilities that are jointly used by the parties hereto 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.
- B. Any additional connections to the Subject Trackage which may be required shall be subject to the CSXT 's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
 - (i). POHC or others shall furnish all labor and material and shall construct, maintain, repair and renew at its sole cost and expense such portions of the tracks located on the right-of-way of POHC or others which connect the respective lines of the parties hereto.
 - (ii). CSXT shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of POHC such portions of the additional tracks located on the right-of-way of CSXT that connect the respective lines of the parties hereto. Upon termination of this Agreement, CSXT may at its option remove the portion of such trackage and appurtenances as may be located on property of CSXT, at the sole cost and expense of POHC. The salvage material removed shall be released to POHC or, as otherwise agreed upon, CSXT shall credit POHC the current fair market value for said salvage.

ARTICLE 9. ADDITIONS, RETIREMENTS AND ALTERATIONS

A. CSXT, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or 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.

B.



ARTICLE 10. MANAGEMENT AND OPERATIONS

A. POHC shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other federal and state and local laws, regulations and rules respecting the operation, condition, inspection and safety of its trains (locomotives and cars) while such trains, locomotives, cars, and equipment are being operated over the Subject Trackage. POHC shall indemnify, protect, defend, and save harmless CSXT 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 CSXT or its parent corporation, subsidiaries or affiliates, or their respective directors, officers, agents and employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable solely to the failure of POHC to comply with its obligations in this regard.

B. POHC in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of CSXT, and the movement of POHC's trains (locomotives and cars,) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of CSXT. POHC's trains shall not include locomotives or cars which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, and no train shall contain locomotives or cars which require speed restrictions or other movement restrictions below the maximum authorized freight speeds as provided by CSXT's operating rules and regulations without the prior written consent of CSXT.

C. POHC shall make such arrangements with CSXT as may be required to have all of its

employees who shall operate its trains, locomotives and cars over the Subject Trackage qualified for operation thereover, and POHC shall pay to CSXT, upon receipt of bills therefor, any cost incurred by CSXT in connection with the qualification of such employees of POHC, as well as the cost of pilots furnished by CSXT, until such time as such employees are deemed by the appropriate examining officer of CSXT to be properly qualified for operation as herein contemplated.

- D. CSXT may conduct an investigation at its option if a POHC employee working on CSXT's property is alleged to have violated CSXT's safety rules, operating rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. To exercise its option, CSXT shall schedule the investigation and notify POHC's local Transportation Officer in the territory thereof, who shall, in turn, arrange to issue proper notice to the POHC's employee(s) of the investigation. CSXT's scheduling of the investigation must comply with the time limits provided in the applicable labor agreement on POHC's railroad. CSXT shall provide its regulations, supplements, and safety rules to POHC at no cost.
- E. If CSXT conducts an investigation, CSXT shall have the right to exclude from the Subject Trackage any employee of POHC except officers, determined by CSXT, as the result of CSXT's investigation or hearing described below, to be in violation of CSXT's rules, regulations, orders, practices or instructions.
- F. In a major offense, such as violation of Rule "G", dishonesty, insubordination, or a serious violation of operating rules, wherein CSXT desires to bar POHC's employee from service on CSXT's territory pending an investigation by CSXT, immediate verbal notification shall be given to the appropriate Transportation Officer of POHC so that proper written notice can be issued to the employee.
- G. If CSXT conducts an investigation, its officer shall conduct the investigation, but an officer of POHC shall be present to assure compliance with POHC's labor agreement and practices with respect to investigation procedures. After the investigation is concluded, CSXT shall promptly furnish POHC with two copies of the investigative hearing transcript and a recommendation as to the discipline to be assessed. POHC's Transportation Officer shall arrange to assess discipline, subject to receipt of CSXT's recommended discipline, within the applicable time limits. If CSXT recommends dismissal, POHC reserves the right to change the recommendation to the extent of barring the individual from operating over CSXT's territory.
- H. CSXT shall reimburse POHC for all payments that POHC might be required to make as a result of a challenge being made by the employee or his representative as to the discipline recommended by CSXT and assessed by POHC. POHC agrees to notify CSXT before committing itself to making payment of any claim. In the event a claim is progressed to an Adjustment Board, CSXT shall be given an opportunity to review POHC'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 POHC may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits.

- I. The trains, locomotives, cars and equipment of POHC, CSXT, and any other present or future user of the Subject Trackage or any portion thereof, shall be operated without prejudice or partiality to either party and in such manner as shall afford the most economical and efficient manner of movement of all traffic.
- J. In the event that a train of POHC shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among POHC's crew, or due to mechanical failure of POHC's equipment, or any other cause not resulting from an accident or derailment, and such train is unable to proceed, or if a train of POHC fails to maintain the speed required by CSXT on the Subject Trackage, or if in emergencies, crippled or otherwise defective cars are set out of POHC's trains on the Subject Trackage, CSXT shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew POHC's train) as may be necessary to haul, help or push such trains, locomotives or cars, or to properly move the disabled equipment off the Subject Trackage, and POHC shall reimburse CSXT for the cost of rendering any such assistance.
- K. If it becomes necessary to make repairs to, 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 CSXT, and POHC shall reimburse CSXT for the cost thereof.
- L. In the event CSXT and POHC agree that CSXT should retain employees or provide additional employees for the sole benefit of POHC, the parties hereto shall enter into a separate agreement under which POHC shall bear all cost and expense for any such retained or additional employees provided, including without limitation all cost and expense associated with labor protective payments which are made by CSXT and which would not have been incurred had the retained or additional employees not been provided.

ARTICLE 11. MILEAGE AND CAR HIRE

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

ARTICLE 12. CLEARING OF WRECKS

Whenever POHC's use of the Subject Trackage requires rerailling, wrecking service or wrecking train service, CSXT shall perform or provide such service, including the repair and restoration of roadbed, track and structures. The cost, liability and expense of the foregoing, including without limitation loss of, damage to, or destruction of any property whatsoever and injury to and death of any person or persons whomsoever or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, resulting therefrom, shall be apportioned in accordance with the provisions of Article 14 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 POHC at the time of such wreck, shall be promptly delivered to it.

ARTICLE 13. LIABILITY

The responsibility and liability between the parties hereto 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, judgements, litigation expenses and attorney's fees resulting from the use of the Subject Trackage by either party hereto as described herein, all of which are collectively referred to as a "Loss", shall be divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the parties hereto, then the involved party shall be solely responsible for the Loss, even if caused partially or completely by the other party.
- B. If a Loss occurs on the Subject Trackage involving the trains and locomotives of both CSXT and POHC, then: (i) each party is solely responsible for any Loss to its own employees, locomotives and equipment in its own account including lading and (ii) the parties are equally responsible for any Loss to the Subject Trackage and any Loss sustained by third parties, regardless of the proportionate responsibility between them as to the cause of the Loss.
- C. For purposes of assigning responsibility of a Loss under this Article as between the parties hereto, a Loss involving one of the parties to this Agreement and a third party or parties shall be construed as being the sole responsibility of that one party to this Agreement.
- D. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents, and employees from

and against that liability, cost and expense 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.

- E. In every case of death or injury suffered by an employee of either POHC or CSXT, 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.
- F. For purposes of determining liability under this Article, pilots furnished by CSXT to POHC pursuant to this Agreement shall be considered as the employees of POHC while such employees are on duty as pilots.
- G. For the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 8.B(ii), all work performed by CSXT shall be deemed performed for the sole benefit of POHC and, POHC shall be fully liable for all cost and expense of any and all loss, damage, destruction, injury and death resulting from, arising out of, incidental to or occurring in connection with said construction, maintenance repair and renewal except when such cost and expense of loss, damage, destruction, injury or death is caused by the sole negligence of CSXT. POHC shall protect, indemnify, and save harmless CSXT and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all expense and liability for which POHC is responsible.
- H. 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.
- I. In the event of a Loss as set out herein, the parties to this Agreement 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.
- J. Neither party hereto shall have the right to prosecute any claim or make any demand against the other party for any indirect, special or consequential damages, including but not limited to loss, damage or liability accruing to it by reason of any interference with,

interruption of or delay in the operating of its trains, engines or cars or the transportation of its freight on account of delays or interruption in the use of any portion of said tracks used jointly under the terms hereof.

ARTICLE 14. CLAIMS

- A. Except as provided in Subarticle B below, all claims, injuries, death, 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 therefor under the provisions of this Agreement.
- B. Each party shall investigate, adjust and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and CFR 1005, or in accordance with any applicable transportation contract.
- C. In the event a claim or suit is asserted against CSXT or POHC, 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.
- D. All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement, except that salaries or wages of full-time agents, full-time attorneys and other full-time employees of either party engaged directly or indirectly in such work shall be borne by such party.
- E. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706 or CFR 1005, 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 [REDACTED].
- F. 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, either pursuant to a collective bargaining agreement or employee protective conditions imposed by a governmental agency upon the agency's approval or exemption of this 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.

- G. It is understood that nothing in this Article 14 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 13.

ARTICLE 15. INSURANCE

- A. During the term of this Agreement, POHC at its sole cost and expense, shall procure and maintain in effect a policy of Comprehensive Railroad liability insurance, with limits of not less than [REDACTED] single limit, bodily injury and/or property damage, for damages arising out of bodily injuries to or death of all persons in any one occurrence and for damage to, or destruction of property, including the loss of use thereof, in any one occurrence, subject to a self-insured retention limit not to exceed [REDACTED], including contractual liability insurance, which names CSXT as an additional insured. If POHC receives notification that an insurance carrier providing an insurance policy pursuant to this Article 15 is materially changing or cancelling such policy, POHC shall promptly notify CSXT of such fact. Failure to procure and maintain such insurance in force shall constitute a breach of this Agreement.
- B. This Insurance coverage shall be effected under standard form policies issued by insurers of financial responsibility, which are rated "A" or better by either Best's Insurance Reports, Standard & Poor's Insurance Rating Service or Moody's Investors Service. CSXT reserves the right to reject as inadequate coverage by an insurance company rated less than "A" by the aforementioned rating services.
- C. The insurance shall be evidenced by a current certificate furnished by POHC to CSXT as an additional insured with its return of the executed Agreement. Subsequently, annual renewal certificates of insurance shall be furnished to:
- CSX Transportation, Inc.
500 Water Street, C907
Jacksonville, FL 32202
Email: Insurancedocuments@csx.com
- D. Such certificate shall be subject to the prior approval of CSXT's Insurance Department. All of the required endorsements and notice provisions shall be stated on the certificate of insurance that is provided to CSXT. In addition, POHC shall provide CSXT's Insurance Department notice of any claim arising under this Agreement and any other correspondence dealing with insurance and insurance matters directly relating to this Agreement.
- E. During the term of this Agreement, it is understood that CSXT is self-insured.

ARTICLE 16. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of POHC to perform its obligations under this Agreement and its continuance in such default for a period of [REDACTED] [REDACTED] after written notice thereof by certified mail from CSXT, CSXT shall have the right at its option, after first giving [REDACTED] [REDACTED] written notice thereof by certified mail, and notwithstanding any waiver by CSXT of any prior breach thereof, to terminate the Trackage Rights and POHC's use of the Subject Trackage, subject to any regulatory approval or exemption that may be required under governing law. The exercise of such right by CSXT shall not impair its rights under this Agreement or any cause or causes of action it may have against POHC for the recovery of damages.

ARTICLE 17. REGULATORY APPROVAL

- A. Should this Agreement require the prior approval of the Surface Transportation Board (STB), POHC at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application, notice, or petition to secure such approval. CSXT shall assist and support efforts of POHC to secure any necessary STB approval of this Agreement.
- B. Should the STB at any time during the term of this Agreement impose any labor protective conditions upon the exemption of this Agreement from regulation, POHC, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 18. ABANDONMENT OF SUBJECT TRackage

Notwithstanding the provisions of Article 19, CSXT may abandon the Subject Trackage during the term of this Agreement or any renewals thereof, upon giving POHC not less than ninety (90) days' written notice of CSXT's intent to abandon. In the event regulatory authority is required to effect such abandonment, POHC shall not interfere with CSXT's actions to seek and to exercise such authority. In the event regulatory authority is required for POHC to discontinue its own operations over the Subject Trackage, POHC shall seek and exercise such regulatory authority at the same time that CSXT seeks regulatory authority to abandon the Subject Trackage. CSXT and POHC shall exercise the abandonment and discontinuance authority within thirty (30) days from the date CSXT and POHC obtain the aforementioned regulatory authority. Upon the date established by CSXT for abandonment of the Subject Trackage by its aforesaid notice to POHC or upon the above specified date of exercise of the regulatory authority to abandon and discontinue operations, whichever is later, 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. The foregoing provisions shall govern the parties hereto notwithstanding the provisions of 49 U.S.C. Section 10904 or any other provisions of law, and POHC hereby expressly waives any rights it may possess to subsidize operations on the Subject Trackage or to acquire the Subject Trackage pursuant to said provisions of law. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

ARTICLE 19. TERM

- A. This Agreement shall be effective and the 1902 Agreement shall be superseded and replaced, in its entirety and be of no further force and effect as of the Effective Date or, in the event STB approval is required, on the effective date such approval is secured, and shall remain in full force and effect for [REDACTED] and thereafter until terminated by either party upon sixty (60) days advance written notice to the other party of its intent to terminate this Agreement.
- B. Termination of this Agreement shall not relieve or release either party hereto from any obligation 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.

ARTICLE 20. FORCE MAJEURE

CSXT shall not be responsible to POHC for delays of any kind under this Agreement nor for failure to perform under this Agreement if such failure to perform is caused by circumstances beyond its control, including, but not limited to, acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climactic conditions, acts of public enemy, war, terrorism or threatened acts of terrorism, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, pandemic, strikes or labor disruptions, fires, governmental laws, orders or regulations, and other events beyond the reasonable control of CSXT. CSXT shall provide POHC with prompt written notice of any event of force majeure and shall take reasonable steps to resolve such event. Once the force majeure event is resolved, CSXT shall notify POHC in writing, and CSXT shall promptly re-institute operations pursuant to this Agreement.

ARTICLE 21. ARBITRATION

Other than a claim for injunctive relief, any dispute arising between the parties with respect to this Agreement that is not resolved within thirty (30) days of the date of the written notice of the dispute shall be determined exclusively by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The parties shall request that the arbitrator selected shall be knowledgeable in railroad commercial transactions. The decision of the

arbitrator shall be final and conclusive upon the parties. 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, if any, shall be borne equally by the parties. The arbitrator shall not have the power to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

ARTICLE 22. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto; provided, that neither party shall have the right to assign this Agreement without the prior, written consent of the other party which consent may be withheld at the discretion of that party.

ARTICLE 23. PRIOR AGREEMENTS

This Agreement encompasses any and all understandings between the parties hereto as to the Subject Trackage and makes null and void any previous agreements between the parties or their predecessors covering Trackage Rights over the Subject Trackage, PA. Termination of any such previous agreements shall not release any party thereto from any liability or obligation that may have been incurred by or that might have accrued against it thereunder during the term thereof.

ARTICLE 24. NOTICE

All notices required to be given by one party to the other shall be in writing and addressed as follows:

If to CSXT: Director Joint Facilities
 CSX Transportation, Inc.
 500 Water Street - J801
 Jacksonville, FL 32202

If to POHC: Vice President, Interline Management
 The Pittsburgh & Ohio Central Railroad Company
 C/o Genesee & Wyoming Railroad Services, Inc
 13901 Sutton Park Drive South, Suite 270
 Jacksonville, FL 32224

With a copy to:

Genesee & Wyoming Inc.
20 West Avenue
Darien, CT 06820
Attention: General Counsel

or to such other address as either party may notify the other party to substitute in writing.

ARTICLE 25. GENERAL PROVISIONS

- A. This Agreement and each and every provision hereof is 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 of any third party to recover by way of damages or otherwise against either of the parties hereto.
- B. This Agreement contains the entire understanding of the parties hereto and supersedes any and all written and oral understandings between the parties, including the 1902 Agreement.
- C. No term or provision of this Agreement may be changed, waived, discharged or terminated except by an instrument in writing and signed by both parties to this Agreement.
- D. Unless otherwise defined herein, 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.
- E. All Article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.
- F. Each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division, or combination thereof, for the determination of legality, so that if any separate division is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall be treated as a nullity, but such holding or determination shall have no effect upon the validity or enforceability of each and every other separate division, or any combination thereof.
- G. 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 and equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars and equipment which are owned by,

leased to, or in the account of such party. Whenever such locomotives, cars or equipment are owned or leased by one party 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.

- H. 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.
- I. Neither party hereto may disclose the provisions of this Agreement to a third party, excluding a parent, affiliate or subsidiary company and the attorneys, accountants, consultants, officers and employees of such party, parent, affiliate or subsidiary company, without the written consent of the other party, except as otherwise required by law, regulation or ruling.
- J. All matters related to the interpretation, construction, validity and enforcement of this Agreement shall be governed by and construed in accordance with the domestic laws of the State of Florida, without giving effect to any choice or conflict of laws, provision or rule that would cause the application of laws of any jurisdiction other than the State of Florida.
- K. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.
- L. Except as may be expressly provided by this Agreement, nothing in this Agreement shall modify or amend any other agreement between POHC and CSXT.

(signature page follows)

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

CSX TRANSPORTATION, INC.

By: E. Fogg

Name: Ed "Skip" Fogg

Title: Manager, Joint Facilities

THE PITTSBURGH & OHIO CENTRAL
RAILROAD COMPANY

By: D. P. Pavick
DAN PAVICK - PRESIDENT - 9/4/2024 11:46:55 AM

Name: _____

Title: _____

Exhibit A (Map)

