

CLARK HILL

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Office of Proceedings
March 26, 2019
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Eric M. Hocky
T 215.640.8523
F 215.640.8501
Email: ehocky@clarkhill.com

Clark Hill PLC
One Commerce Square
2005 Market Street
Suite 1000
Philadelphia, PA 19103
T 215.640.8500
F 215.640.8501
clarkhill.com

March 25, 2019

VIA FEDEX

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

Re: York Railway Company -
Joint Relocation Project Exemption -
In Hanover, PA
(contains color images)
STB Docket No. FD 36285

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of the Notice of Exemption being filed on behalf of York Railway Company. Twenty unbound copies of the map attached to the Notice as Exhibit A are also included. A check in the amount of \$2,700 representing the filing fee is also enclosed.

Also enclosed are the original and 10 copies of a Motion for Protective Order. In accordance with the proposed protective order, enclosed in a separate envelope "under seal" are the original and 10 copies of the "Highly Confidential" versions of the agreements attached as Exhibits B and C to the Notice.

Please time stamp the extra copy of this letter to indicate receipt of all of the foregoing, and return it to me in the stamped, self-addressed envelope provided for your convenience.

FEE RECEIVED

March 26, 2019

SURFACE

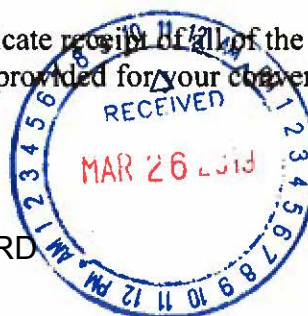
TRANSPORTATION BOARD

FILED

March 26, 2019

SURFACE

TRANSPORTATION BOARD



Cynthia T. Brown
March 25, 2019
Page 2

Please let me know if there are any questions regarding this filing.

Respectfully,

CLARK HILL PLC



Eric M. Hocky

EMH/e

Encls.

cc: All persons shown on the service list

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. FD 36285

**YORK RAILWAY COMPANY
- JOINT RELOCATION PROJECT EXEMPTION -
IN HANOVER, PA**

NOTICE OF EXEMPTION

(color images included)



**ERIC M. HOCKY
CLARK HILL, PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com**

Attorneys for York Railway Company

Dated: March 25, 2019

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36285

**YORK RAILWAY COMPANY
- JOINT RELOCATION PROJECT EXEMPTION -
IN HANOVER, PA**

NOTICE OF EXEMPTION

York Railway Company ("YRC") files this Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(5) to exempt the joint relocation project described herein. The project involves the relocation of a YRC line of railroad that will not disrupt service to any shippers, expand the operations of YRC into new territory, or alter the existing competitive situation among carriers.

Required Information

In accordance with the provisions of 49 C.F.R. 1180.4(g), YRC 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):

1180.6(a)(1)

(i) YRC is a Class III carrier that operates, as relevant here, a line of railroad in Hanover, PA. CSXT is a Class I carrier that also operates a line of railroad in Hanover, PA. The lines of CSXT and YRC parallel each other in close proximity as they cross Broadway Street requiring complicated signaling, and then cross each other at a diamond a short distance to the west of the Broadway Street crossings (and near the end of YRC's line).

The proposed joint relocation project involves (1) the installation of a switch and switch lead (connecting track) by CSXT within its right of way, and the realignment of YRC's main line track to connect with the switch lead, (2) the abandonment by YRC of approximately 0.32 miles

of track between MP 31.35 and MP 31.67 (including removal of a CSXT-YRC diamond and a YRC at-grade crossing), and (3) the grant of permanent trackage rights by CSXT to YRC over the CSXT line between the proposed future connection of CSXT and YRC at the west end of the Hanover Storage Track at approximate CSXT MP BAS 53.98 and the connection of CSXT and YRC trackage near South Railroad Street at approximate CSXT MP BAS 54.33. All of the elements of the project are located in Hanover, York County, Pennsylvania.

YRC does not serve any customers on the segment of track to be abandoned, and existing service to shippers and potential shippers at the west end of YRC's line will be preserved by the trackage rights. Because the trackage rights are overhead only, YRC will not gain access to any additional shippers. Thus, no shippers will be affected by the relocation or lose access to any rail service provided by YRC.

It is well established that the Board (like its predecessor the Interstate Commerce Commission) will exercise jurisdiction over the abandonment and/or construction components of a joint relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in the existing competitive situation. *See The Indiana Rail Road Company and CSX Transportation Inc. – Joint Relocation Project Exemption – Terre Haute, Ind. (“INRD – Terre Haute”),* STB Docket No. FD 36123 (served August 4, 2017); *City of Detroit v. Canadian Nat’l Ry.*, 9 ICC 2d 1208 (1993), *aff’d sub nom. Detroit/Wayne Cty. Port Auth. v. ICC*, 59 F.3d 1314 (D.C. Cir. 1995). Since this project merely involves the relocation of YRC overhead operations onto an alternative, roughly parallel CSXT line without any change in service to shippers or expansion of YRC's operations into new territory, the Board should not exercise jurisdiction over the abandonment or construction elements of this joint relocation project.

The remaining portion of this joint relocation project, the overhead trackage rights being granted by CSXT to YRC, is eligible for the exemption under the Board's regulations at 49 CFR §1180.2(d)(5). Line relocation projects may embrace trackage rights transactions such as the one involved here. See *INRD – Terre Haute; Detroit, Toledo & Ironton R.R.—Trackage Rights—Between Wash. Court House & Greggs, Ohio—Exemption*, 363 ICC 878 (1981).

The full name and address of the applicant is York Railway Company, 2790 West Market Street, York, PA 17404.

The name, address and telephone number of applicant's counsel who should receive correspondence is Eric M. Hocky, Esquire, Clark Hill PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

(ii) YRC and CSXT expect to proceed with the project as of April 25, 2019 (30 days after the filing of this Notice).

(iii) The purpose of the transaction is to simplify rail operations and maintenance by elimination of a crossing diamond and YRC track that will no longer be used, and to allow for the improvement of adjacent CSXT and YRC at-grade crossings by elimination of the YRC crossing.

1180.6(a)(5)

YRC operates lines of railroad in Pennsylvania.

1180.6(a)(6)

A map showing the elements of the proposed project is attached hereto as Exhibit A. Twenty extra copies of the map are also included.

1180.6(a)(7)(ii)

A redacted Public Version of the project agreement between YRC and CSXT setting forth the elements of the joint relocation project is attached hereto as Exhibit B. A redacted Public Version of the trackage rights agreement between YRC and CSXT is attached hereto as Exhibit C. YRC has separately filed a Motion for a Protective Order to protect the confidentiality of certain terms of the agreements. Highly Confidential versions of the project agreement and of the trackage rights agreement have been filed together with the Motion for a Protective Order.

Interchange Commitments

YRC hereby certifies that the joint relocation project does not involve an interchange commitment.

Labor Protection

YRC recognizes that the trackage rights will be subject to labor protection in accordance with the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 ICC 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

The Board does not exercise jurisdiction over the construction or abandonment elements of a joint relocation project that qualifies for the exemption, and accordingly no labor protection is applicable to those elements.

Environmental and Historic Reports

Trackage rights are exempt from the Board's environmental reporting requirements pursuant to 49 C.F.R. §1105.6(c)(3), and from the historic preservation reporting requirements

pursuant to 49 C.F.R. §1105.8(b)(3) since the proposed transaction will not substantially change the level of maintenance of railroad property.

The Board does not exercise jurisdiction over the construction or abandonment elements of a joint relocation project that qualifies for the exemption, and accordingly the environmental and historic reporting requirements are not applicable.

Conclusion

For the foregoing reasons, YRC requests that the Board issue a notice of exemption pursuant to 49 C.F.R. §1180.2(d)(5).

Respectfully submitted,



ERIC M. HOCKY
CLARK HILL, PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Attorneys for York Railway Company

Dated: March 25, 2019

VERIFICATION

I, Andrew T. Chunko, President of York Railway Company, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file the foregoing document.

Executed on March 25, 2019.



Andrew T. Chunko

CERTIFICATE OF SERVICE

I hereby certify that on this date, a copy of the foregoing Motion for Protective Order was served upon the following person by email:

Louis E. Gitomer
600 Baltimore Avenue, Suite 301
Towson, MD 21204
lou@lgraillaw.com

Counsel for CSX Transportation, Inc.



ERIC M. HOCKY

Dated: March 25, 2019

EXHIBIT A

MAP

Exhibit A
YRC-Proposed Layout in Hanover, PA
(Not to Scale)
June 22, 2017

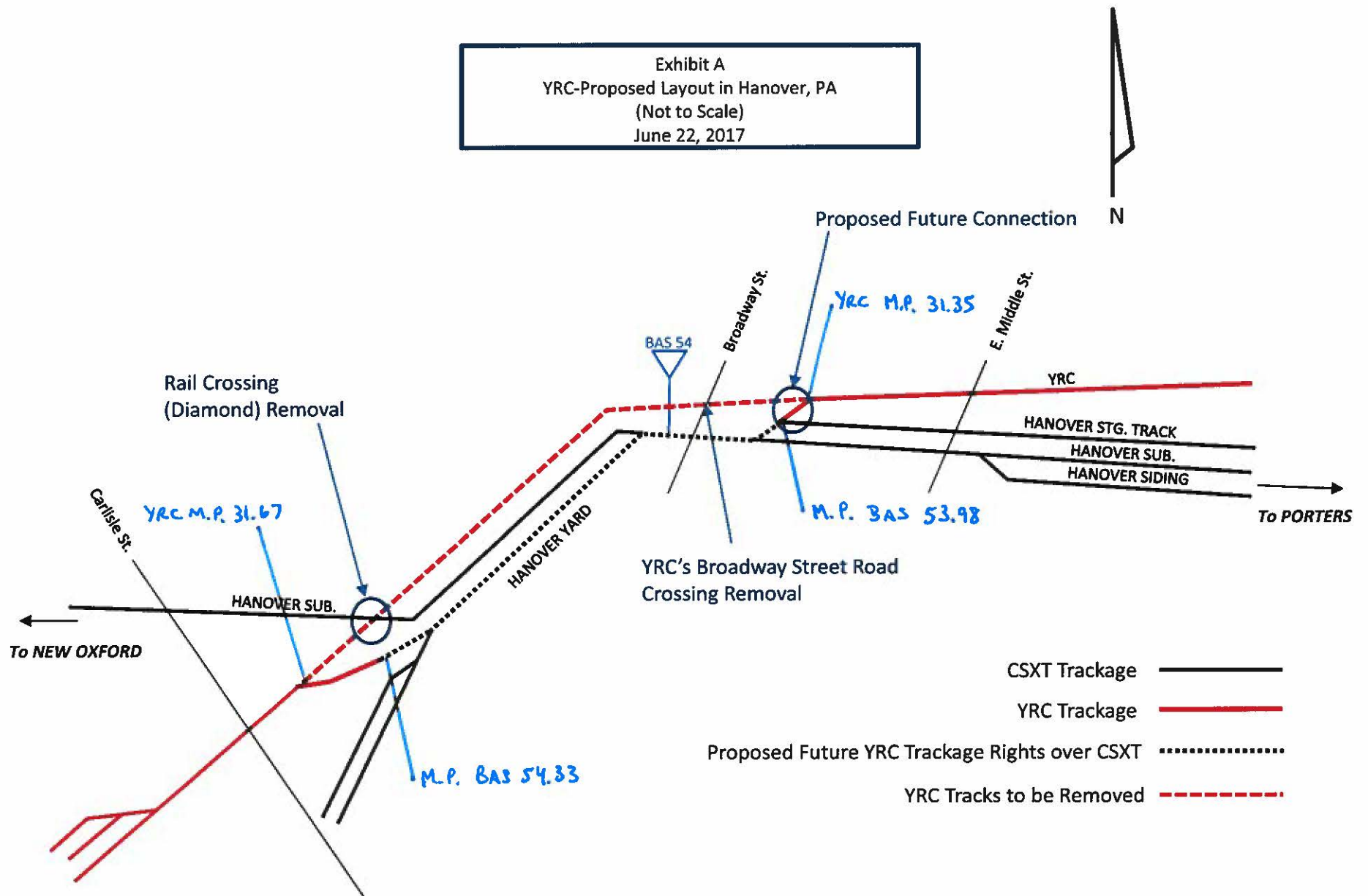


EXHIBIT B

PROJECT AGREEMENT

(Public Version)



500 Water Street – J801
Jacksonville, Florida 32202
Office (904) 366-4631
Fax (904) 245-2352
Jason L. Young@csx.com

November 28, 2018

Re: Broadway St. – Hanover, PA

Mr. David Hart
General Manager – York Railway ("YRC")
Genesee and Wyoming Railroads
2790 West Market St.
York, PA 17404

RE: YRC-Proposed Track Reconfiguration in Hanover, PA and Future Trackage Rights over CSXT

Dear Mr. Hart,

As a result of mutual negotiations with CSX Transportation, Inc. ("CSXT"), YRC has recently proposed a track reconfiguration plan (the "Reconfiguration") in Hanover, PA to remove its rail crossing with CSXT, its Broadway Street road crossing and to turn over maintenance of the remaining road crossings and highway warning devices at Broadway Street over to CSXT, as shown on the drawing labeled "Exhibit A", dated June 22, 2017, attached hereto and made a part hereof. YRC acknowledges that the Reconfiguration will sever their connectivity between its tracks north and south of CSXT's mainline (the "Lines") as, currently, YRC doesn't have a need for this connectivity but is required to have the ability to connect in furtherance of YRC's common carrier obligation. Therefore, the parties hereto agree that the Reconfiguration and the commitments set forth below are contingent on, and subject to the approval of the U.S. Surface Transportation Board (the "STB"). The intent of this letter agreement ("Letter") is to define the general terms and conditions pursuant to which the Reconfiguration will be executed, as well as matter of future construction and trackage rights to ensure YRC retains connectivity of the Lines.

In consideration of the mutual commitments of the parties as described in this Letter, CSXT and YRC agree as follows:

1. CSXT agrees to grant to YRC the right to connect to and trackage rights (in the form attached hereto) over CSXT's main line, in order to restore connectivity of YRC's Lines, (collectively, the "Rights"), which Rights shall be included in YRC's filing with the STB.
2. YRC shall work with the Pennsylvania District 8 Department of Transportation ("PA DOT") to remove YRC's Broadway Street road crossing and restore the road surface to a condition satisfactory to the applicable local, state and/or federal entity that governs such road surface. PA DOT has agreed to fund YRC's removal and restoration, which shall be at no cost or expense to CSXT.
3. Within a reasonable period following YRC's removal of its Broadway Street road crossing and restoration of the road surface in accordance with Item 2, above, CSXT, at its sole cost and expense, shall reconfigure and/or renew the highway warning devices to comply with applicable local, state and/or federal requirements. CSXT shall be responsible for the ongoing maintenance and operation of its two Broadway Street road crossings and associated highway warning devices and following removal and restoration by YRC, CSXT shall indemnify and defend YRC in any suit in court or a challenge, complaint or claim related to the Broadway Street road crossing, including all third party claims, unless such claims involve a YRC train or arise from YRC's gross negligence or intentional misconduct.
4. YRC shall consent to CSXT's removal of YRC's rail crossing with CSXT in Hanover, PA and CSXT shall restore its own line after removal of the rail crossing. CSXT shall bear all cost associated with said removal and restoration. YRC shall indemnify CSXT for any costs incurred if a shipper brings a suit in court or a challenge, complaint or similar action at the STB related to removal of said rail crossing.

5. To enable YRC to complete the removal of its Broadway Street road crossing and Hanover, PA rail crossing, CSXT will grant YRC permanent overhead trackage rights over a portion of its mainline in Hanover, PA (the "CSXT Segment") for the purpose of YRC's restoring connectivity of the Lines (the "Trackage Rights"). YRC shall provide to CSXT design plans for the new connection to facilitate the connectivity of the Lines within 45 days following execution of this Letter Agreement, which design plans shall be subject to CSXT's prior review and approval in all respects. Following such approval, which shall not be unreasonably withheld, YRC shall reimburse CSXT for any and all costs associated with the construction of the new connection and any track rehabilitation needed to handle YRC operations pursuant to the Trackage Rights subject to [REDACTED], for all associated work. Following such work, CSXT shall maintain the connection thereafter at CSXT's sole expense.

The Trackage Rights as described in this paragraph, together with compensation and other related terms and conditions, will be embodied in a trackage rights agreement (attached hereto) to be executed and delivered by CSXT and YRC to support YRC's STB filing. If YRC's intended operations over the Lines pursuant to the Trackage Rights (excluding traffic interchanged to CSXT) would trigger an obligation for CSXT to implement a Positive Train Control ("PTC") system that would not otherwise be required under federal law, YRC will - before any such operations are undertaken - implement an alternate operational solution at its sole cost and expense to obviate the need for such PTC system.

6. YRC shall, at its sole cost and expense, take all actions necessary to secure the STB's approval of the provision of Trackage Rights and Reconfiguration, including the initiation and submission of an appropriate application or petition, in form and substance satisfactory to CSXT, and the satisfaction of any conditions imposed by the STB as a condition to its approval, and the parties hereto expressly agree that the removal of the Broadway Street road crossing and the Hanover, PA rail crossing are contingent on receipt of STB approval that is satisfactory to YRC.

YRC is in agreement with the above terms and conditions regarding the Reconfiguration and Rights in Hanover, PA. Please indicate acceptance of the foregoing terms and conditions by signing this Letter, and returning a signed copy via email.

Sincerely,

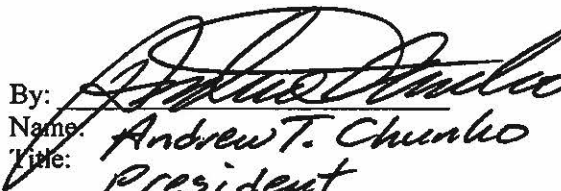
AGREED TO AND ACCEPTED
on this 2 day of January, ~~2018~~ 2019

THE YORK RAILWAY

By:

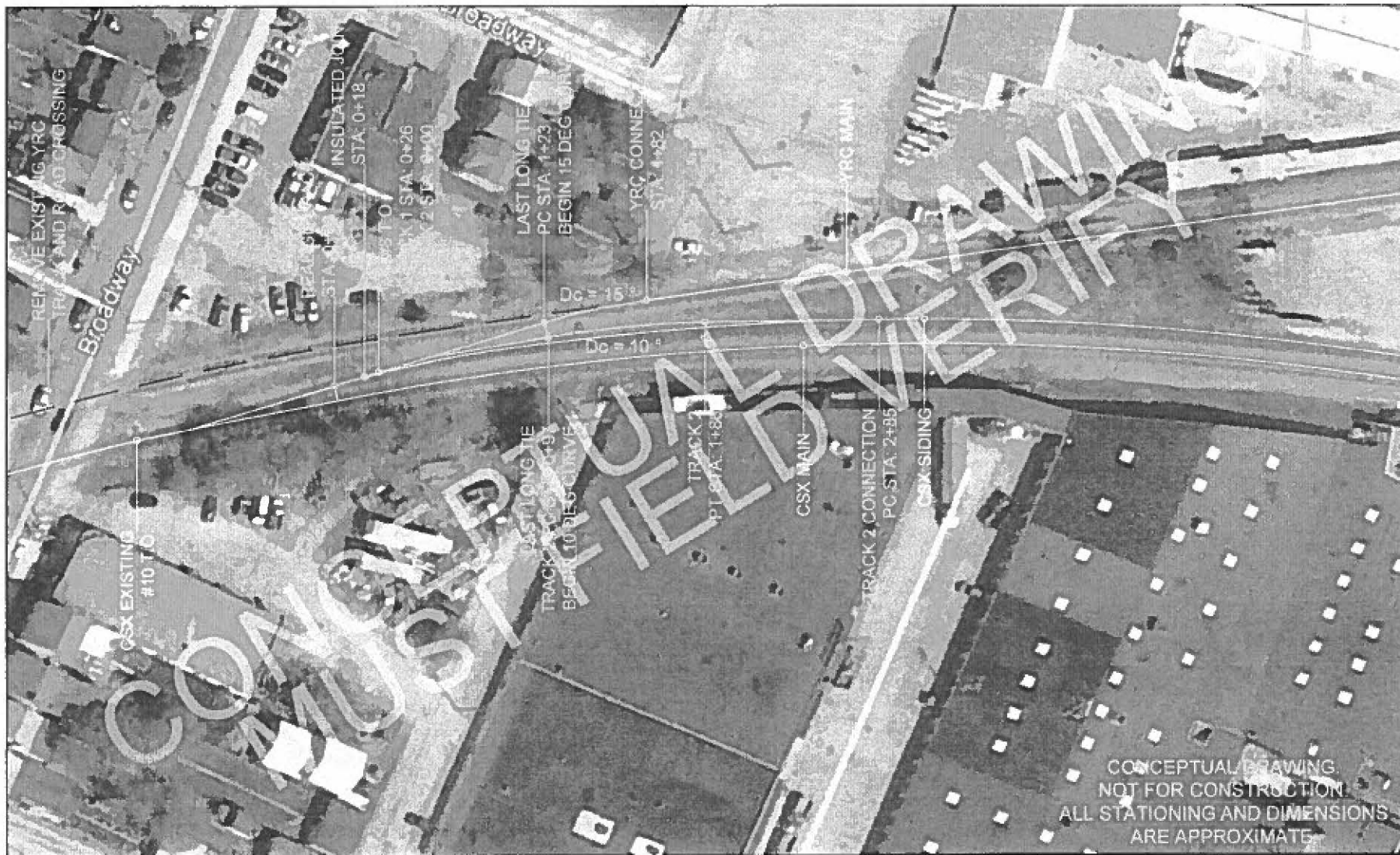
Name:

Title:


Andrew T. Chumko
President


Jason Young
Sr. Manager Intercarrier Agreements

EXHIBIT "A"



REVISIONS								YRC PROPOSED YRC REMOVED YRC EXISTING	CSX GENESEE & WYOMING, INC.	YRC - YORK RAILWAY COMPANY		
							DRAWN: BJA			NOT TO SCALE	DRAWING NO. XXX.XX	
								DESIGNED: YRC - CSX CONNECTION	YRC - CSX CONNECTION			
								CHECKED: HANOVER, PA	HANOVER, PA	SHEET 1 OF 1		
								DATE: 10/8/2017	LAYOUT 1			

EXHIBIT C

TRACKAGE RIGHTS AGREEMENT

(Public Version)

**AGREEMENT
between
CSX TRANSPORTATION, INC.
and the
YORK RAILWAY COMPANY**

**In the Matter of
Trackage Rights over CSXT Hanover Subdivision in Hanover, PA**

THIS AGREEMENT, made and effective as of this 2 day of January, 201~~8~~¹⁹, by and between CSX TRANSPORTATION, INC., a Virginia corporation, whose principal place of business is Jacksonville, FL, referred to as "CSXT" or "Owner", and the YORK RAILWAY COMPANY, hereinafter referred to as "YRC" or "User". CSXT and YRC are sometimes referred to individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, as a result of mutual negotiations, CSXT and YRC have agreed to a proposed track reconfiguration plan (the "Reconfiguration") in Hanover, PA to remove YRC's rail crossing with CSXT, YRC's Broadway Street road crossing and to turn over maintenance of the Broadway Street road crossings and highway warning devices over to CSXT; and

WHEREAS, as a result of the Reconfiguration, YRC's connectivity between its tracks north and south of CSXT's mainline will be severed; and

WHEREAS, YRC has requested trackage rights over the CSXT Hanover Subdivision to maintain its connectivity and fulfill its common carrier responsibility; and

WHEREAS, the Parties desire to cover the operation of YRC's trains over CSXT by formal trackage rights agreement;

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, Owner hereby grants to User the right to operate its trains (locomotives or cars) with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of Owner's railroad shown on the plan attached hereto, made a part hereof, marked "Exhibit A" and dated June 22, 2017 (hereinafter referred to as the "Subject Trackage"):

CSXT's main line on the Hanover Subdivision, between the proposed future connection of CSXT and YRC trackage at the west end of the Hanover Storage Track at approximate

CSXT Milepost (MP) BAS 53.98 and the connection of CSXT and YRC trackage near South Railroad Street at approximate CSXT MP BAS 54.33, all in Hanover, PA, a distance of approximately 0.35 miles.

ARTICLE 2. USE OF SUBJECT TRACKAGE

- A. 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.
- B. User may use the Subject Trackage solely for the purpose of the overhead movement of its own trains between the end points of the Subject Trackage.
- C. User 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 Owner, preclude the emergency use by User of such auxiliary Subject Trackage as may be designated by Owner for such purposes.
- D. 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.

ARTICLE 3. RESTRICTION ON USE

- A. There shall be no restriction as to User's right to operate any number or type of trains over the Subject Trackage so long as such operation by User is coordinated between the parties to the reasonable satisfaction of Owner's operating officer in charge, does not unreasonably interfere with Owner's operations on the Subject Trackage and does not trigger an obligation for CSXT to implement Positive Train Control ("PTC") system that would not otherwise be required under federal law.
- B. User shall not perform any other freight service whatsoever at any point located on the Subject Trackage.
- C. Shipments transported by User over the Subject Trackage are limited to shipments moving solely in the accounts of User. User shall not transport any other shipments over the Subject Trackage unless otherwise provided in a written amendment to this Agreement.

ARTICLE 4. MISCELLANEOUS SPECIAL PROVISIONS

- A. When operating over the Subject Trackage, User's locomotives and crews shall be equipped to communicate with Owner on radio frequencies normally used by Owner 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 reasonable approval of Owner's representative or his designee.
- C. If YRC's operations over the Subject Trackage result in an obligation for CSXT to implement a PTC system that would not otherwise be required under federal law, such system shall be installed at YRC's sole cost and expense.

ARTICLE 5. COMPENSATION

- A. The annual flat rate payment to be made by User for the Trackage Rights covered by this Agreement shall be [REDACTED] per year (hereinafter referred to as the "Current Charge"), with the first payment due in 2019 for the period from July 1st 2018 to June 30, 2019.
- B. Within thirty (30) days of the end of each month, User shall report to Owner the number of loaded and empty cars (hereinafter referred to as Car Counts) moving over the Subject Trackage Rights.
- C. On or about July 1st of each year, Owner (or its agent) shall render to User a statement of accounts for July 1st of the previous year to June 30th of the current year. All payments called for under this agreement shall be made within thirty (30) days of the date of the bills therefor.

ARTICLE 6. REVISION OF CURRENT CHARGE

- A. The Current Charge shall be subject to change to reflect any increases or decreases in labor, material and other costs as hereinafter provided.
- B. The Current Charge shall be revised upward or downward each year, beginning with the bill rendered for the year 2019 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 Association of American Railroads (hereinafter referred to as "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 to the third decimal place by calculating the percent of increase or decrease in the index of the latest calendar year (2018 Index for the

first annual adjustment) as related to the index for the previous calendar year (2017 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 2018; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2017; "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:

$$(1) \frac{B - A}{A} = D$$

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

- 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. At the option of either party hereto, the compensation provided for in this Agreement shall be open for renegotiation every five (5) years from the Commencement Date, as hereinafter defined. In the event the parties fail to reach agreement upon such renegotiation, such failure shall not constitute a breach of this Agreement, and the parties shall continue to be bound by the terms of compensation provided in this Agreement until the matter is settled or submitted to binding arbitration.

ARTICLE 7. PAYMENT OF BILLS

- A. All payments called for under this Agreement shall be made by User 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 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 two (2) years from the date of billing.
- B. Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Article 5, shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by Owner at the time any work is performed by Owner for User.

ARTICLE 8. MAINTENANCE OF SUBJECT TRACKAGE

- A. Owner shall maintain, repair and renew the Subject Trackage with its own supervision and labor. Owner shall use best efforts to keep and maintain the Subject Trackage in condition (or any replacement of it) for the use herein contemplated, but Owner does not guarantee the condition of the Subject Trackage at any time during the term hereof or that operations thereover shall not be interrupted. Owner shall take all reasonable steps to ensure that any interruptions shall be kept to a minimum and shall use its best efforts to avoid such interruptions. Furthermore, except as may be otherwise provided in Article 14, 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.
- B. Owner shall perform, at the expense of User, such additional maintenance as User may reasonably require or request.

ARTICLE 9. 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 the agreements concerning such facilities or connections.
- B. Subject to the provisions of Paragraph 5 of the Letter Agreement related to YRC-Proposed Track Reconfiguration in Hanover, PA and Future Trackage Rights over CSXT dated November 28, 2018, any additional connections to the Subject Trackage which may be required shall be subject to the Owner's approval (including design) and shall be constructed, maintained, repaired and renewed as follows:
 - (i). User 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 User.
 - (ii). Owner shall furnish all labor and material and shall construct, maintain, repair and renew at the sole cost and expense of User such portions of the additional tracks located on the right-of-way of Owner which connect the respective lines of the Parties hereto. Upon termination of this Agreement, Owner may at its option remove the portion of such trackage and appurtenances as may be located on property of Owner, at the sole cost and expense of User. If Owner elects to remove such trackage and appurtenances, the salvage material removed shall be

released to User or, as otherwise agreed upon, Owner shall credit User the current fair market value for said salvage.

ARTICLE 10. ADDITIONS, RETIREMENTS AND ALTERATIONS

- A. Owner, 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. If the Parties agree that additional changes in or additions and betterments to the Subject Trackage, including changes in communication or signal facilities, are required to accommodate User's operations beyond that required by Owner to accommodate its operations, Owner shall construct the additional or altered facilities, and User shall pay to Owner the cost thereof, including the annual expense of maintaining, repairing and renewing such additional or altered facilities. All such additional or altered facilities shall be owned by Owner. For the avoidance of doubt, the new connection contemplated to facilitate the User's exercise of the Trackage Rights hereunder shall not be deemed an addition or betterment.

ARTICLE 11. MANAGEMENT AND OPERATIONS

- A. User 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. 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 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 User to comply with its obligations in this regard.
- B. User in its use of the Subject Trackage shall comply in all respects with the safety rules, operating rules and other regulations of Owner, and the movement of User's trains (locomotives and cars,) over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner, except that User shall not be prohibited from utilizing crew consists in accordance with User's labor agreements. User'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 Owner's operating rules and regulations without the prior consent of Owner.

- C. After proper supervisory training by Owner, User will be responsible to qualify User's crews over the Subject Trackage. User will qualify its crews by adding a qualified supervisor to the crew traversing the Subject Trackage. The parties shall make a reasonable effort to have all crews qualified within sixty (60) days of service startup. After such date, pilots provided by one party upon request of the other shall be billed at the rate of [REDACTED] daily.
- D. Owner may at its option, request User to conduct an investigation of User's employee(s) working on Owner's property, and alleged to have violated Owner's safety rules, regulations, orders, practices or instructions, or if an incident occurs which requires an investigation under applicable agreement rules. Upon receipt of such notification, User's local Transportation Officer shall arrange to issue proper notice to the User's employee(s) of the investigation. Owner's request to schedule the investigation must comply with the time limits provided in the applicable agreement on User's railroad. Owner shall provide its regulations, supplements, safety rules and any necessary witnesses to User at no cost.
- E. If Owner timely requested User to conduct an investigation, Owner shall have the right to suggest appropriate discipline including the right to exclude from the Subject Trackage and Interchange Trackage any employee of User, except officers, determined as the result of User's investigation or hearing described below, to be in violation of Owner'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 Owner desires to bar User's employee from service on Owner's territory pending an investigation by User, immediate verbal notification will be given to the appropriate Transportation Officer of User so that proper written notice can be issued to the employee.
- G. If User conducts an investigation, its officer shall conduct the investigation, but an officer of Owner shall be present. After the investigation is concluded, User shall make a recommendation as to the discipline to be assessed, and furnish a copy of that recommendation to Owner. If the Owner or User shall disagree on the discipline to be imposed, User shall have the right to determine the discipline, if any, that is imposed. User's Transportation Officer shall arrange to assess discipline within the applicable time limits.
- H. In the event a claim is progressed to arbitration challenging the discipline assessed, Owner shall be given an opportunity to review User's submission. If the discipline assessed is "overturned" by the arbitration, and the discipline assessed was being banned from Owner's property, Owner shall permit User's employee to return to Owner's property.

- I. 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 to any party and in such manner as shall afford the most economical and efficient manner of movement of all traffic over the Subject Trackage.
- J. In the event that a train of User shall be forced to stop on Subject Trackage, and such stoppage is due to insufficient hours of service remaining among User's crew, or due to mechanical failure of User'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 User 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 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.
- K. 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.
- L. 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 retained or additional employees provided, 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 retained or additional employees not been provided.

ARTICLE 12. MILEAGE AND CAR HIRE

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

ARTICLE 13. CLEARING OF WRECKS

Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, Owner shall perform or provide such service, or by mutual agreement between the parties at the time, User may 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 User at the time of such wreck, shall be promptly delivered to it.

ARTICLE 14. LIABILITY

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, judgements, 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 divided as follows:

- A. If a Loss occurs involving the trains, locomotives, engines and/or employees of only one of the Parties, then the involved Party should 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 Owner and User, then: (i) each Party shall be solely responsible for any Loss to its own employees, locomotives and equipment and those cars in its own revenue account (including lading), and (ii) the Parties shall be equally responsible for any Loss to the Subject Trackage and 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 for 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 (i) forever protect, 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 (including without limitation attorney's fees and expenses and court or regulatory expenses) assumed by that Party or apportioned to it, and (ii) shall defend at its cost such indemnified Party against any claims for such liabilities, loss and expenses with counsel selected by the indemnifying Party and reasonably acceptable to the indemnified Party, 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. Notwithstanding anything to the contrary in this Article 14, whenever Loss occurs with one or more trains being involved, and one or more of the involved trains is a User train, and such Loss is attributable solely to the gross negligence or willful or wanton

misconduct of only one of the Parties to this Agreement, and such gross negligence or willful or wanton misconduct is the direct or proximate cause of such Loss, then the Party to which such gross negligence or willful or wanton misconduct is attributable shall assume all liability, cost and expense in connection with such Loss. The Parties agree that, for purposes of this Article 14 D, "gross negligence or willful or wanton misconduct" shall be defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness."

- F. Notwithstanding any provision of this Article 14 to the contrary, each Party shall assume and bear all responsibility for any Loss caused by acts or omissions of any its employees while under the influence of drugs or alcohol.
- G. In every case of death or injury suffered by an employee of either User or Owner, 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.
- H. 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 duty as pilots.
- I. Except as may otherwise be provided in separate construction agreements between the Parties, for the purpose of determining liability associated with construction, maintenance, repair and renewal of connections as provided in Article 9 B (ii), all work performed by Owner shall be deemed performed for the sole benefit of User and, User 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 Owner. User shall protect, indemnify, and save harmless Owner 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 User is responsible.
- J. 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.

- K. In the event of a Loss as set out herein, the Parties to this Agreement, unless otherwise agreed between them in writing, shall be bound by the Freight Claim Rules, Principles and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- L. Notwithstanding any and all of the forgoing provisions of this article, in the event a Loss occurs while the Subject Trackage is being used by Owner and/or User, and such Loss is attributable solely to the willful or wanton negligence of only one of the Parties to this Agreement, then the Party hereto which was so willfully or wantonly negligent shall be solely responsible for such Loss.

ARTICLE 15. 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.
- C. In the event of a Loss as defined in Article 14, the Parties to this Agreement shall be bound by the Freight Claim Rules, Principles, and Practices of the Association of American Railroads (AAR) as to the handling of any claims for the loss or damage to lading.
- D. 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.
- E. 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.
- F. Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11706, 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].
- G. 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.

- H. It is understood that nothing in this Article 15 shall modify or waive the conditions, obligations, assumptions or apportionments provided in Article 14.

ARTICLE 16. INSURANCE

- A. During the term of this Agreement YRC, at its sole cost and expense, shall procure and maintain in effect a policy of 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 and provides for a minimum of thirty (30) days' advance written notice to CSXT prior to any changes or cancellation. Failure to procure and maintain such insurance in force shall constitute a breach of Contract hereunder.
- B. This Insurance coverage shall be effected under standard form policies issued by insurers of financial responsibility. All insurance companies must be A. M. Best rated A- and Class VII or better. CSXT reserves the right to reject, as inadequate, coverage by an insurance company with ratings lower than the foregoing.
- C. The Insurance shall be evidenced by a current certificate of insurance furnished by YRC to CSXT as an additional insured with its return of executed Agreement. Subsequently, annual renewal certificates of insurance shall be furnished to:

Insurance Department
CSX Transportation, Inc.
500 Water Street, C907
Jacksonville, FL 32202
insurancedocuments@csx.com

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, YRC shall provide CSXT's Insurance Department notice of any claim and any other correspondence dealing with insurance and

insurance matters.

- D. During the term of this Agreement, it is understood that CSXT is self-insured.

ARTICLE 17. DEFAULT AND TERMINATION

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, subject to any regulatory approval or exemption that may be required under governing law. 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.

ARTICLE 18. REGULATORY APPROVAL

- A. Should this Agreement require the prior approval of the Surface Transportation Board (STB), User at its own cost and expense shall initiate and thereafter diligently pursue an appropriate application or petition to secure such approval. Owner shall assist and support efforts of User 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, User, solely, shall be responsible for any and all payments in satisfaction of such conditions.

ARTICLE 19. ABANDONMENT OF SUBJECT TRACKAGE

- A. Notwithstanding the provisions of Article 20, Owner shall have the right, subject to securing any necessary regulatory approval, to abandon the Subject Trackage or any portion thereof. Before filing an application for regulatory approval of such abandonment, Owner shall give User ninety (90) days' advance notice in writing of its intention to do so in order that User may determine whether it desires to purchase the Subject Trackage (or portion thereof) or to discontinue its use thereof.
- B. If User desires to purchase the Subject Trackage (or such portion thereof as Owner has notified User will be abandoned), it shall submit an offer of financial assistance under 49 U.S.C. Section 10904. In the event the offer meets the requirements of the aforesaid section and Owner receives more than one such offer, Owner shall exercise its statutory right to negotiate with User rather than with the other offeror(s). Thereafter, the rights and obligations of the Parties in respect to User's acquisition of the Subject Trackage or portion thereof shall be governed by applicable provisions of the law.

- C. In any one of the circumstances listed below User shall be deemed to have determined that it does not desire to purchase the Subject Trackage or portion thereof and that it desires to discontinue its use thereof:
- (i). User fails to submit an offer of financial assistance to purchase the Subject Trackage or portion thereof within the time prescribed by statute and applicable regulations, or
 - (ii). User, having made an offer of financial assistance to purchase the Subject Trackage or portion thereof, but being unable to reach agreement with Owner as to the sale price, fails within the statutory period to request the proper regulatory authority to establish the terms and conditions of the sale, or
 - (iii). User, having requested the proper regulatory authority to establish the terms and conditions of sale, withdraws its offer of financial assistance, or
 - (iv). User, having requested the proper regulatory authority to establish the terms of the sale, rejects the authority's order establishing said terms or fails to accept said terms within the time prescribed by said order.

In such event User shall promptly file an application with the proper regulatory authority seeking approval of the discontinuance of its operations over the Subject Trackage or portion thereof. If User does not promptly file an application seeking approval of the discontinuance of User's operations over the Subject Trackage or portion thereof, Owner shall be deemed to have been given User's power of attorney to take such action on User's behalf.

- D. In the event any application filed by Owner is granted but an application filed by User under Subsection C above is denied by the proper regulatory authority, the Parties shall cooperate in taking such action as is reasonably necessary to effect a sale of the Subject Trackage or portion thereof to User (including securing any necessary regulatory authority) for a price consistent with the principles of 49 U.S.C. Section 10904.
- E. In the event Owner abandons any portion (or all) of the Subject Trackage or portion thereof under circumstances which (because of changes in the law or otherwise) are not subject to handling under the procedures outlined above, the Parties shall cooperate and take such action as is necessary to assure that User either promptly terminates its operations over the segment to be abandoned or purchases said segment at a price consistent with the principles of 49 U.S.C. Section 10904 as interpreted on the date of this Agreement.
- F. In the event Owner's application for authority to abandon is denied, User shall withdraw any application it has filed under Subsection C above.
- G. Except as otherwise expressly agreed in writing, in the event any actions taken by the

Parties under this Article 19 result in an obligation imposed by any competent authority on either or both Parties hereto to protect the interests of affected employees, the responsibility for bearing the cost thereof shall be borne by the Party which is the employer of the affected employee or employees, notwithstanding the manner in which said cost may be apportioned in any order or decision imposing the protection.

ARTICLE 20. TERM

- A. This Agreement shall be effective the day and year first above written or, in the event STB authority is required, on the date upon which any required Notice of Exemption before the STB becomes effective (the "Effective Date"), and shall remain in full force and effect until terminated by mutual agreement by both Parties.
- B. Within thirty (30) days following the date of this Agreement, User, at its sole expense, shall submit to the STB (or successor agency) regulatory filing(s) to obtain any necessary authority or exemption to exercise the Trackage Rights. Owner will join in any such application or pleading to the STB, upon request of User. User shall provide Owner with an opportunity to review and comment on User's regulatory filing prior to their submission to the STB. In the even that one or more Parties oppose the granting of the regulatory authority or exemption sought by User or appeal a determination to grant such authority or exemption, User shall promptly respond to such opponents and shall pursue in good faith appeals of any adverse decision by the STB.
- C. 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 21. FORCE MAJEURE

Owner shall not be responsible to User for delays or failure to perform under this Agreement if such delays or failure to perform are caused by circumstances beyond its control, including, but not limited to, Acts of God, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders; FRA orders, or governmental laws, orders or regulations.

ARTICLE 22. ARBITRATION

- A. Either Party may initiate binding arbitration pursuant to this Article 22 by providing written notice to the other Party (the "Notice Recipient"). The date on which the Notice

Recipient receives the written notice shall be the "Notice Date". The arbitrator shall be a national engineering firm if the dispute relates to an engineering matter, or a national accounting firm if the dispute relates to an accounting or billing matter. If the Parties are able to agree on an arbitrator to resolve the dispute within five (5) days after the Notice Date, then such firm shall act as the arbitrator.

- B. If the Parties are unable to agree upon an arbitrator within five (5) days after the Notice Date, then, within ten (10) days after the Notice Date, each Party shall provide to the other a list of up to three (3) national engineering firms with experience in railroad engineering or national accounting firms with experience in railroad accounting (as applicable) that have not been engaged by such Party in the past five (5) years. After the exchange of the lists, each Party shall notify promptly the other Party of any firm on the other Party's list that has been engaged by it in the past five (5) years, and such firm(s) shall be removed from consideration. Within fifteen (15) days after the Notice Date, the Parties shall agree on one of the remaining firms on the lists to act as the arbitrator, or the arbitrator will be chosen by lot by a representative of the Party that initiated the arbitration in the presence of a representative of the Notice Recipient. If the dispute at issue is not an engineering, accounting or billing issue, but is subject to fast-track arbitration under this Agreement, then either Party may request the AAA to select three candidates knowledgeable in railroad commercial and operational matters, and each Party shall eliminate one candidate. The remaining candidate shall serve as arbitrator.
- C. Within thirty (30) days after the Notice Date, each Party shall submit to the arbitrator and to the other Party its position regarding the disputed item(s) (including, if applicable, the scope of work and budget for each disputed item). Within thirty-five (35) days after the Notice Date, each Party shall submit to the arbitrator and the other Party a reply to the other Party's position.
- D. The arbitration shall be conducted "baseball style." Within sixty (60) days after the Notice Date, the arbitrator shall select the position of one of the Parties, without modification. In making its decision regarding a dispute over maintenance items, the arbitrator shall determine, to the extent applicable, the appropriate level of normalized maintenance and capital projects and the related budget for the disputed items, taking into consideration the current conditions, FRA track class, projected train frequency and tonnage in the upcoming calendar year and applicable AREMA standards, and shall select the Party's position that most closely reflects these determinations. In making its decision regarding a dispute over dispatching items, the arbitrator shall apply, to the extent applicable, the Dispatching Protocols to resolve the dispute. If the Dispatching Protocols do not apply to, or do not resolve, the dispute, the arbitrator shall determine such additional protocols to resolve the dispute, consistent with industry standards and the intent of the Parties, as reflected by the terms of this Agreement.
- E. The decision of the arbitrator shall be binding, final and conclusive upon the parties hereto. Each party to the arbitration shall pay the compensations, 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 hereto. The arbitrator shall not have the power

to award consequential or punitive damages or to determine violations of criminal or antitrust laws.

ARTICLE 23. SUCCESSORS AND ASSIGNS

Neither Party hereto shall transfer or assign this Agreement, or any of its rights, interests, or obligations hereunder, to any person, firm, partnership or corporation without obtaining the prior written consent of the other Party. This Agreement shall inure to the benefit of and be binding upon the respective SUCCESSORS and assigns of the Parties.

ARTICLE 24. NOTICE

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 express carrier, or by such other means as the Parties may agree, and shall be addressed as follows:

If to User: General Manager
 York Railway Company
 2790 West Market Street
 York, PA 17404

If to Owner: Director Intercarrier Agreements
 CSX Transportation, Inc.
 500 Water Street, J801
 Jacksonville, FL 32202

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

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 oral understandings between the Parties.
- 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. 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 and lettering 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, subsidiary or affiliate company, without the written consent of the other Party, except as otherwise required by law, regulation or ruling.
- J. The recitals to this Agreement are, by this reference, incorporated into and made a part of this Agreement.
- K. 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 Commonwealth of Pennsylvania, 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 Commonwealth of Pennsylvania.
- L. 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.

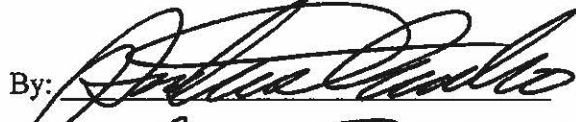
- M. Except as may be expressly provided by this Agreement, nothing in this Agreement shall modify or amend any other agreement between YRC and CSXT.

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

Witness for YRC:

Michael Holben

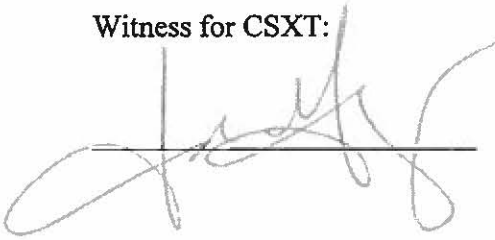
YORK RAILWAY COMPANY

By: 

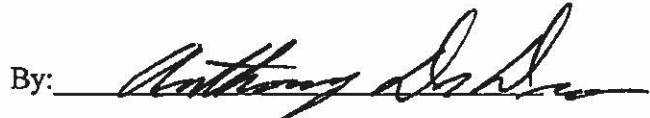
Name: Andrew T. Chumko

Title: President

Witness for CSXT:



CSX TRANSPORTATION, INC.

By: 

Name: Anthony DiDese

Title: Director Inter-carrier Mgt

EXHIBIT "A"

