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September 21, 2023

By e-filing

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

Re: Pan Am Southern LLC
– Temporary Overhead Trackage Rights –
Boston and Maine Corporation and Springfield Terminal Railway Corporation
Docket No. FD 36726
Expedited Consideration Requested

Dear Ms. Brown:

Enclosed for e-filing on behalf of Pan Am Southern LLC ("PAS") is a Notice of Exemption being filed pursuant to 49 CFR § 1180.2(d)(8) for temporary overhead trackage rights. Also enclosed is a request for protective order pursuant to 49 CFR § 1104.14(b) to allow for the filing of certain documents that contain confidential or highly confidential commercial terms.

In addition, PAS is simultaneously filing a petition requesting a waiver of the requirement requiring PAS to file the Notice of Exemption 30 days before the transaction is consummated.

The relevant filing fees for the Notice of Exemption and for the petition for waiver were paid using Pay.gov. Please let me know if there are any questions regarding these filings.

Sincerely,

Justin J. Marks
Counsel to Pittsburg & Shawmut Railroad, LLC
d/b/a Berkshire & Eastern Railroad, contract
operator of Pan Am Southern LLC

Enclosure

FILED
September 21, 2023
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TRANSPORTATION BOARD

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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36726

PAN AM SOUTHERN LLC
—TEMPORARY OVERHEAD TRACKAGE RIGHTS—
BOSTON AND MAINE CORPORATION AND
SPRINGFIELD TERMINAL RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION
EXPEDITED HANDLING REQUESTED

(color image included)

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*Attorneys for: Pittsburg & Shawmut
Railroad, LLC d/b/a Berkshire & Eastern
Railroad, contract operator of Pan Am
Southern LLC*

Dated: September 21, 2023

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. FD 36726

PAN AM SOUTHERN LLC
—TEMPORARY OVERHEAD TRACKAGE RIGHTS—
BOSTON AND MAINE CORPORATION AND
SPRINGFIELD TERMINAL RAILWAY COMPANY

VERIFIED NOTICE OF EXEMPTION

Pan Am Southern LLC (“PAS”) submits this Verified Notice of Exemption pursuant to the class exemption at 49 C.F.R. §1180.2(d)(8) for limited overhead temporary trackage rights over a rail line owned by the Boston and Maine Corporation (“B&M”) and leased and operated by Springfield Terminal Railway Company (“ST”), generally between PAS’s existing connection to B&M/ST’s tracks at Engineering Station 215+89 at CPF 312 outside Ayer, Mass. to Engineering Station 225+00 outside Ayer, Mass., a total distance of approximately 1,000 feet (the “B&M/ST Line”). PAS’s use of the B&M/ST Line will be limited to repositioning locomotives. The temporary trackage rights are based on a written agreement and are not filed or sought in a responsive application in a rail consolidation proceeding.

Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (“B&E”) currently serves as the contract operator of PAS. *See Pittsburg & Shawmut R.R.—Operation Exemption—Pan Am Southern LLC*, FD 36472 (Sub-No. 5) (STB served Apr. 14, 2022). PAS/B&E serves a facility located on the PAS line just west of the connection to the B&M/ST Line at CPF 312. Because of the lack of space on the PAS line between the facility and CPF 312,

PAS/B&E currently does not have the necessary headroom to reposition PAS/B&E locomotives serving the facility, resulting in inefficiency and congestion on the PAS network. The parties have identified long-term and temporary solutions for this issue. As a long-term fix, PAS has agreed to install a “cross-over” on the PAS line that will permit PAS/B&E to reposition locomotives without operating off the PAS line. Procuring and installing the cross-over will take approximately 75 days. In the meantime, B&M/ST has agreed to allow PAS/B&E to use the B&M/ST Line for head and tail room in order for PAS/B&E to reposition locomotives serving the facility. The limited overhead temporary trackage rights sought here will allow PAS/B&E to perform that move while the cross-over is installed.

Based on the schedule for installing the cross-over, the parties have agreed that the temporary trackage rights will expire on December 5, 2023. Given the urgent need to reduce congestion on the PAS network by allowing PAS/B&E to use the B&M/ST Line to reposition locomotives, PAS has simultaneously filed a petition for waiver of the requirement that PAS file this verified notice of exemption at least 30 days before the transaction is consummated. Instead, PAS asks the Board to allow the exemption to take effect immediately, or no later than September 28, 2023.

Pursuant to the Surface Transportation Board’s (the “Board”) regulations at 49 C.F.R. §1180.4(g), B&E submits the following information:

Section 1180.6 Supporting Information

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

PAS is acquiring limited overhead temporary trackage rights from B&M and ST between Engineering Station 215+89 at CPF 312 outside Ayer, Mass. to Engineering Station 225+00 outside Ayer, Mass., a total distance of approximately 1,000 feet, for the purpose of repositioning PAS/B&E locomotives on the B&M/ST Line.

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

Boston and Maine Corporation
500 Water Street J-150
Jacksonville, FL 32202

Springfield Terminal Railway Company
500 Water Street J-150
Jacksonville, FL 32202

Pan Am Southern LLC
c/o Pittsburg & Shawmut Railroad, LLC
d/b/a Berkshire & Eastern Railroad, contract operator
200 Meridian Centre
Suite 270
Rochester, NY 14618

Questions and correspondence concerning this notice may be addressed to:

Eric M. Hocky
Clark Hill PLC
Two Commerce Square
2001 Market St.
Suite 2620
Philadelphia, PA 19103
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ehocky@clarkhill.com

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(a)(1)(ii) Consummation Date

PAS has today filed a Petition for Waiver of the requirement that “[t]o qualify for an exemption under §1180.2(d), a railroad must file a verified notice of the transaction with the Board ... at least 30 days before the transaction is consummated indicating the proposed consummation date.” 49 C.F.R. §1180.4(g). Should the STB grant the requested Petition for Waiver, the parties intend to consummate the transaction on or shortly after the date that the Board grants the waiver. Should the Board deny the requested Petition for Waiver; the parties intend to consummate the transaction on or shortly after October 21, 2023. Regardless of the consummation date, the temporary overhead trackage rights will expire on December 5, 2023.

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

The purpose and need for the temporary trackage rights is set forth above.

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

PAS owns rail lines in the States of Connecticut, Massachusetts, New Hampshire, New York, and Vermont. B&M owns and leases rail lines in the States of Maine, Massachusetts, New Hampshire, and Vermont. ST leases and operates rail lines in the States of Massachusetts, Maine, New Hampshire, and Vermont. The overhead temporary trackage rights are located entirely in the State of Massachusetts.

(a)(6) Map

A map illustrating the involved trackage rights is attached as Exhibit A.

(a)(7)(ii) Agreement

A “public” version of the draft trackage rights agreement is attached as Exhibit B, with highly confidential material redacted in accordance with the requested protective order filed simultaneously with this notice of exemption. A “highly confidential” version of the draft trackage rights agreement is submitted under separate cover. Public and Highly Confidential versions of the executed agreement will be submitted within 10 days of when the agreement is signed.

Labor Protection

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

Any employees who are adversely affected by the discontinuance of the temporary overhead trackage rights that are the subject of this Notice are entitled to protection under the conditions imposed in *Oregon Short Line R. Co.–Abandonment–Goshen*, 360 I.C.C. 91 (1979).

Environmental and Historic Matters

Environmental and historic impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, environmental and historical reports and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R. § 1105.6(c)(4) and § 1105.8(b)(3).

Caption Summary

Attached as Exhibit C is the caption summary required by 49 C.F.R.
§1180.4(g)(2)(ii).

Respectfully submitted,



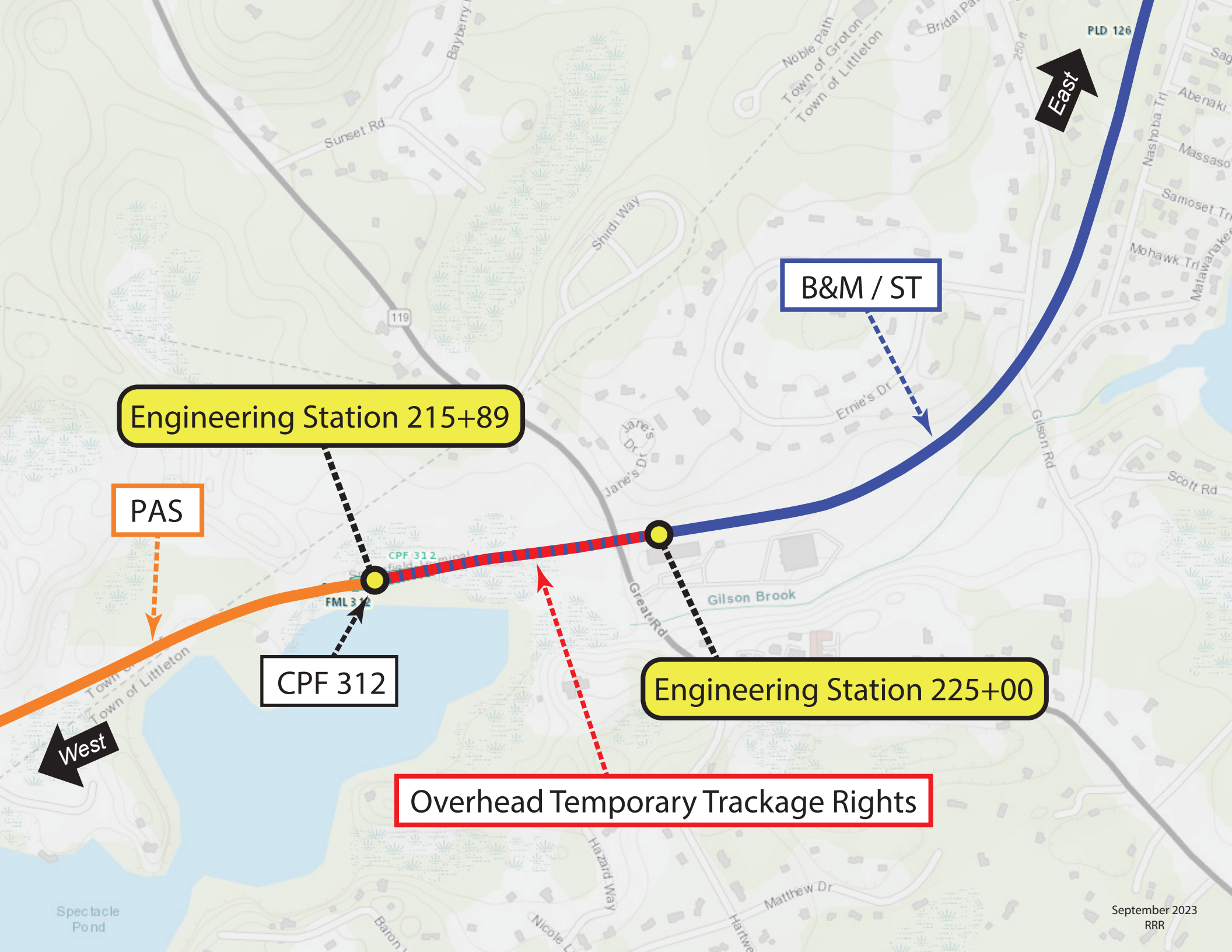
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*Attorneys for: Pittsburg & Shawmut
Railroad, LLC d/b/a Berkshire & Eastern
Railroad, contract operator of Pan Am
Southern LLC*

Dated: September 21, 2023

EXHIBIT A-MAP



Engineering Station 215+89

PAS

CPF 312

B&M / ST

Engineering Station 225+00

Overhead Temporary Trackage Rights

EXHIBIT B- DRAFT AGREEMENT – PUBLIC VERSION

TEMPORARY TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into as of this 21st day of September 2023 between **BOSTON AND MAINE CORPORATION** (hereinafter referred to as “BMC”), **SPRINGFIELD TERMINAL RAILROAD COMPANY** (hereinafter referred to as “ST”) and **PAN AM SOUTHERN LLC** (hereinafter referred to as “PAS”),

WITNESSTH;

WHEREAS, BMC owns certain trackage leased to and operated by ST (together with BMC hereinafter, “B&M”) in and around Ayer, Massachusetts including certain trackage connecting and making connections with routes of PAS; and

WHEREAS, PAS desires to obtain temporary overhead trackage rights upon certain lines of B&M’s railroad for the sole purpose of temporarily relieving inefficiency and congestion while a permanent infrastructure improvement is installed; and

WHEREAS, pursuant to that certain Letter Agreement dated September 19, 2023, B&M (through its affiliate CSX Transportation, Inc.) and PAS have agreed to enter into this TEMPORARY TRACKAGE RIGHTS AGREEMENT (the “Agreement”) for the purpose of defining the conditions under which PAS may utilize the tracks and facilities of B&M;

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

SECTION 1. GRANT OF TEMPORARY TRACKAGE RIGHTS:

PAS and B&M agree that PAS’s use of the Temporary Trackage, as defined below, granted herein by B&M shall be for movement, in both directions. Said grant of rights shall be between PAS’s connection to B&M’s tracks at Engineering Station 215+89 at CPF 312 outside Ayer, Mass. to Engineering Station 225+00 outside Ayer, Mass., including all necessary tracks designed for the purposes of movement by PAS, including head and tail

room as necessary (the "Temporary Trackage"). The Temporary Trackage consists of a total distance of approximately 1,000 feet.

SECTION 2. RESTRICTION ON USE:

(a) Such rights shall be limited to the use of the Temporary Trackage in order for PAS to reposition PAS locomotives serving a facility located on the PAS line just west of the connection to the B&M line.

(b) PAS shall not use the Temporary Trackage for any other purpose whatsoever. PAS cannot use the Temporary Trackage to interchange PAS traffic with any other carrier.

(c) It is understood and agreed that PAS's trains utilizing the Temporary Trackage may be operated by PAS's (or PAS's contract operator's) crews only.

SECTION 3 USE OF TEMPORARY TRACKAGE RIGHTS

(a) PAS's use of the Temporary Trackage shall at all times be governed by the designated transportation operating officer in charge (hereinafter referred to as "B&M's Designated Representative").

(b) Trackage to be used by PAS shall be designated by the aforesaid B&M Designated Representative at the time of movement. It shall be the responsibility of PAS to make such track use arrangements with B&M as will not cause unreasonable interruption to B&M's operations. The B&M's Designated Representative shall make track use arrangements with PAS that will not cause unreasonable interruptions to PAS's operation.

(c) Procedures for qualification and occupancy of the Temporary Trackage will be arranged by local supervision of each carrier. PAS's operation over the Temporary Trackage shall at all times be subject to the direction and control of the B&M Designated Representative in charge of the Temporary Trackage and to applicable provisions of B&M's safety and operating rules.

(d) B&M shall have exclusive control of the management and operation of the Temporary Trackage. PAS's use of the Temporary Trackage shall be in common with B&M and any other user of the Temporary Trackage, and B&M's right to use the Temporary Trackage shall not be diminished by this Agreement. B&M shall retain the

exclusive right to grant to other persons rights of any nature on the Temporary Trackage.

SECTION 4. COMPENSATION.

[REDACTED]

[REDACTED]

SECTION 5.

Intentionally omitted.

SECTION 6. TERM AND TERMINATION:

(a) This Agreement shall become effective as of the date first above written and will expire at 11:59 PM, December 5, 2023 (the "Term").

(b) Termination of this Agreement shall not relieve or release any party hereto from any obligations that by their terms or context survive termination or from any liability which may have arisen or been incurred by such party under the terms of this Agreement prior to termination hereof.

SECTION 7. MISCELLANEOUS SPECIAL PROVISIONS

(a) When operating over the Temporary Trackage, PAS's locomotives and crews will be equipped to communicate with B&M on radio frequencies normally used by B&M in directing train movements on the Temporary Trackage.

(b) Before its locomotives enter onto the Temporary Trackage, PAS shall request permission from B&M's Designated Representative. Further, PAS shall ascertain that said trackage is clear and shall await confirmation from B&M's Designated Representative that such permission has been issued to allow PAS's movements on or over the Temporary Trackage. Upon completing its operations and clearing the Temporary Trackage, PAS will notify B&M's Designated Representative that it has completed its operations and that its equipment has cleared the Temporary Trackage. Once PAS has notified B&M's Designated Representative that it has cleared the Temporary Trackage, PAS shall not reenter the Temporary Trackage without again obtaining permission from B&M's Designated Representative. PAS shall provide and maintain at its expense all

communication facilities needed and as may be required by B&M to permit PAS to use the Temporary Trackage.

SECTION 8. PAYMENT OF BILLS

(a) All payments called for under this Agreement shall be made by PAS within thirty (30) days after receipt of bills therefore. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month.

(b) The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party for a period of three (3) years from the date of billing.

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

SECTION 9. MAINTENANCE OF THE TEMPORARY TRACKAGE

(a) B&M shall maintain, repair and renew the Temporary Trackage with its own supervision and labor. B&M shall keep and maintain the Temporary Trackage in reasonably good condition for the use herein contemplated, and in accordance with the requirements of any governmental agency having jurisdiction, but B&M does not guarantee the condition of the Temporary Trackage or that operations there over will not be interrupted. B&M shall take all reasonable steps to ensure that any interruptions will be kept to a minimum. Furthermore, PAS shall not by reason of failure or neglect on the part of B&M to maintain, repair or renew the Temporary Trackage, have or make any claim or demand against B&M 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 PAS resulting from any such failure or neglect.

(b) B&M shall perform, at the expense of PAS, such additional maintenance as PAS may reasonably require or request.

SECTION 10. CONSTRUCTION AND MAINTENANCE OF CONNECTIONS

(a) Existing connections or facilities which are jointly used by the parties hereto under existing agreements or practices shall continue to be maintained, repaired, and renewed by and at the expense of the party or parties responsible for such maintenance, repair, and renewal under such agreements or practices.

(b) Any additional connections or rehabilitation to the Temporary Trackage which may be required shall be subject to the B&M's approval and provided for under separate agreement.

SECTION 11.

Intentionally omitted.

SECTION 12. MANAGEMENT AND OPERATIONS

(a) PAS shall comply with any federal and state and local governmental laws, regulations and rules applicable to the operation, condition, inspection and safety of its trains, locomotives, cars and equipment while such trains, locomotives, cars, and equipment are being operated over the Temporary Trackage. PAS shall indemnify, protect, defend, and save harmless B&M 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 B&M 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 PAS to comply with its obligations in this regard.

(b) PAS in its use of the Temporary Trackage shall comply in all respects with the safety rules, operating rules and other regulations of B&M, and the movement of PAS's

trains, locomotives, cars, and equipment over the Temporary Trackage shall at all times be subject to the orders of B&M's Designated Representative. PAS's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Temporary Trackage.

(c) PAS shall make such arrangements with B&M as may be required to have all of its employees and its contractor's employees who shall operate PAS's trains, locomotives, cars and equipment over the Temporary Trackage qualified for operation thereover, and PAS shall pay to B&M, upon receipt of bills therefor, any cost incurred by B&M in connection with the qualification of such employees of PAS, as well as the cost of pilots furnished by B&M, until such time as such employees are deemed by the appropriate examining officer of B&M to be properly qualified for operation as herein contemplated.

(d) B&M shall have the right to exclude from the Temporary Trackage any employee of PAS or its contractor to be in violation of B&M's rules, regulations, orders, practices, or instructions issued by B&M's Timetable or otherwise issued, provided the same had been previously communicated to PAS. PAS shall release, indemnify, defend, and save harmless B&M and its parent corporation, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees from and against any and all claims and expenses resulting from such exclusion.

(e) The trains, locomotives, cars and equipment of PAS, B&M, and any other present or future user of the Temporary Trackage or any portion thereof, shall be operated without prejudice or partiality to any party and in such manner as will afford the most economical and efficient manner of movement of all traffic.

(f) In the event that B&M requests PAS to remove its locomotives from the Temporary Trackage due to a need for B&M for the use of such trackage, and PAS is unable to remove its locomotives from the Temporary Trackage due to accident, breakdown or other inability, B&M shall have the option to furnish motive power or such other assistance as may be necessary to haul, help or push such locomotives, or to properly move the disabled equipment off the Temporary Trackage, and PAS shall reimburse B&M for the cost of rendering any such assistance.

(g) If it becomes necessary to make repairs such crippled locomotives in order

to move them off the Temporary Trackage, each party is to be notified and PAS shall be given the opportunity to perform such work. PAS understands and agrees that if the work is not done to the satisfaction of B&M, B&M shall perform the work and PAS shall reimburse B&M for the cost thereof.

(h) In the event B&M and PAS agree that B&M should retain employees or provide additional employees for the sole benefit of PAS, the parties hereto shall enter into a separate agreement under which PAS 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 B&M and which would not have been incurred had the retained or additional employees not been provided.

SECTION 13. MILEAGE AND CAR HIRE

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

SECTION 14. CLEARING OF WRECKS

Whenever PAS's use of the Temporary Trackage requires rerailling, wrecking service or wrecking train service, B&M 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 borne by PAS except where the same is caused by the sole negligence or wrongful act of B&M.

SECTION 15. LIABILITY

The responsibility of the parties hereto as among themselves for loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation resulting from, arising out of,

incidental to, or occurring in connection with this Agreement, shall be determined as follows:

(a) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, one party hereto being involved, without the trains, locomotives, cars or equipment of, or in the account of, the other party hereto being involved, such involved party shall assume all liability therefor and bear all cost and expense in connection therewith and shall forever protect, defend, indemnify, and hold harmless the other party hereto, its parent and subsidiaries, and each of their respective directors, officers, agents, and employees from and against any such liability, cost and expense.

(b) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars or equipment of, or in the account of, both B&M and PAS being involved, each shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their respective directors, officers, agents, and employees (including sole employees), and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, and for loss of, damage to, and destruction of all other property (including without limitation the Temporary Trackage) so occurring shall be borne equally by such parties involved.

(c) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs without the trains, locomotives, cars, or equipment of, or in the account of, any party hereto being involved, or if it cannot be determined which party's or parties' trains, locomotives, cars or equipment are involved, each party hereto shall separately assume and bear all liability, cost, and expense for injury to and death of

each of their directors, officers, agents, and employees (including sole employees), and persons in each of their care and custody, and all liability, cost, and expense for injury to and death of any other person or persons whomsoever, and for loss of, damage to, and destruction of all other property (including without limitation the Temporary Trackage) so occurring shall be borne equally by the parties hereto.

(d) Notwithstanding anything to the contrary in Sections 15(a), (b) and (c), above, when any damage to or destruction of the environment, including without limitation land, air, water, wildlife, and vegetation, occurs with one or more trains of both B&M and PAS being involved, then, as between themselves, B&M and PAS agree that (i) B&M shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in B&M equipment from which there was a release, (ii) PAS shall be solely responsible for any damage or destruction to the environment and to third parties which results solely from a substance transported in PAS equipment from which there was a release, and (iii) B&M and PAS shall be responsible, in proportion to the total number of pieces of B&M equipment and PAS equipment from which there was a release, for any damage or destruction to the environment and to third parties which results solely from one or more substances transported in both B&M equipment and PAS equipment from which there was a release.

(e) 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 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, malfeasance or misfeasance of the indemnified party or its directors, officers, agents or employees.

(f) The parties hereto agree that each and all of its indemnity commitments in this Agreement in favor of the other party hereto shall also extend to and indemnify their respective parent corporations, subsidiaries and affiliates, and all of their respective directors, officers, agents and employees.

(g) In every case of death or injury suffered by an employee of a party hereto, when compensation to such employee or employee's dependents is required to be paid

under any workmen's compensation, occupational disease, employer's liability, or other law, and a party 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) If any employee of PAS shall neglect, refuse or fail to abide by B&M's rules, instructions and restrictions governing the operation on or along the Temporary Trackage, such employee shall upon written request of B&M, be prohibited by PAS from working on the Temporary Trackage. If any party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of PAS, then upon such notice presented in writing, PAS shall promptly hold an investigation in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to a PAS employee shall be given by PAS officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between PAS and its employees. If the result of such investigation warrants, such employee shall, upon written request by B&M, be withdrawn by PAS from service on the Temporary Trackage and PAS shall release and indemnify B&M from and against any and all claims and expenses because of such withdrawal.

(i) Each party shall assume and bear all responsibility for such loss, damage, injury and death caused by acts or omissions of any of its employees while under the influence of drugs or alcohol and Section 11(a), (b) and (c) shall not apply.

(j) For the purposes of assigning responsibility for Loss or Damage under this Section 15 as between the Parties hereto, the trains, cars and equipment of a railroad other than B&M and PAS shall be considered to be the trains, cars and equipment of B&M.

SECTION 16. Intentionally omitted.

SECTION 17. INVESTIGATION

(a) Except as provided in Subsection 17(b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11706 and 49 C.F.R. Section 1005 (or any revised or substitute regulations adopted to modify, supplement or supersede the regulations herein provided), or in accordance with any applicable transportation contract entered into pursuant to 49 U.S.C. Section 10709.

(c) In the event a claim or suit is asserted against B&M or PAS 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 employees, including claim agents, attorneys, and other 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 49 C.F.R. Section 1005 or similar regulation, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds thirty-five thousand dollars (\$35,000).

(f) It is understood that nothing in this Section 17 shall modify or waive the conditions, obligations, assumptions or apportionments, or supersede the provisions of Section 15 hereof.

SECTION 18. DEFAULT AND TERMINATION

In the event of any substantial failure on the part of PAS 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 B&M, B&M shall have the right at its option, after first giving thirty (30) days' written notice thereof by certified mail; and notwithstanding any waiver by B&M of any prior breach thereof, to terminate the Temporary Trackage Rights and PAS's use of the Temporary Trackage. The exercise of such right by B&M shall not impair its rights under this Agreement or any cause or causes of action it may have against PAS for the recovery of damages.

SECTION 19. REGULATORY APPROVAL

(a) Implementation of this Agreement requires the filing of a Notice of Exemption from the prior approval and authorization requirements of the Surface Transportation Board ("STB"). PAS, at its own cost and expense, will initiate and thereafter diligently prosecute an action to obtain such approval and authorization or an exemption therefrom. B&M will assist and support efforts of PAS to obtain any such required approval and authorization or exemption. The Notice of Exemption will be filed pursuant to the temporary trackage rights regulations of the STB, as set forth in 49 CFR Part 1180. Prior to filing the Notice of Exemption, B&M must approve in writing or by electronic mail the contents of such filing. If such Notice of Exemption is not approved by B&M prior to such filing, then this Agreement will immediately terminate as of the time such unapproved Notice of Exemption is filed and shall be null and void. Operations pursuant to this Agreement may not begin until either (1) 30 days after the Notice of Exemption is filed with the STB or (2) the STB waives the 30-day period, whichever is shorter, and until after the expiration of the time period required by any applicable labor agreements.

(b) Should the STB at any time during the Term of this Agreement impose any labor protective conditions upon the arrangement; PAS, solely, shall be responsible for any and all payments in satisfaction of such conditions.

SECTION 20. Intentionally omitted.

SECTION 21. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration before three (3) arbitrators and administered by the American Arbitration Association ("AAA") under its then current Commercial Arbitration Rules. Where such rules conflict with the provisions of this Agreement, however, the provisions hereof shall govern. Either party shall have the right to request arbitration by giving written notice to the other party and to any regional office of the American Arbitration. The regional office of the AAA promptly shall send simultaneously to each party in the dispute an identical list of names of not less than eight (8) persons chosen from its panel of arbitrators who have rail transportation experience. Each party to the dispute shall have fourteen (14) days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. Each party may strike five (5) names on the submitted list on a peremptory basis. If a party does not return the list within the time specified, all persons named thereon shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of arbitrators to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without submissions of additional lists. The decision of the majority of the three- (3) arbitrators shall be final and binding on the parties as to such matters that are submitted to and determined by the arbitrators, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Unless otherwise agreed, arbitration shall take place in Washington, D.C. The reasonable compensation of the arbitrators and the cost of the arbitration shall be shared equally by the parties to this Agreement.

The parties acknowledge that the subject of this Agreement is a transaction involving interstate commerce, and that the enforceability of this provision is governed by the Federal Arbitration Act, 9 U.S.C. Section 1 et seq.

SECTION 22. Intentionally omitted.

SECTION 23. NOTICE

Any notice required or permitted to be given by one party to another under this Agreement shall be deemed given on the date sent by certified mail, or by such other means as the parties may agree, and shall be addressed as follows:

If to PAS: c/o Berkshire & Eastern Railroad
 200 Meridian Centre, Suite 270
 Rochester, NY 14618
 Attention: President

If to B&M: Director Joint Facilities
 CSX Transportation, Inc.
 500 Water St., J801
 Jacksonville, FL 32202

Any party may provide changes in the above addresses to the other parties by personal service or U.S. mail.

SECTION 24. 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 other party. Nothing herein contained shall be taken as creating or increasing any right of any other party to recover by way of damages or otherwise against any of the parties hereto.

(b) This Agreement and the Letter Agreement contain the entire understanding of the parties hereto and supersede any and all oral understandings among 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 all 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 Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(f) 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 another party to this Agreement, such locomotives, cars and equipment shall be considered those of the other party under this Agreement.

(g) This Agreement is the result of mutual negotiations of the parties hereto, none of whom shall be considered the drafter for purposes of contract construction.

(h) No party hereto may disclose the provisions of this Agreement to an outside party, excluding a parent, subsidiary or affiliate company, without the written consent of the other parties, except as otherwise required by law, regulation or ruling. Provided, however, that PAS may disclose the provisions of this Agreement to any contractor performing any of PAS's obligations hereunder.

SECTION 25. INDEMNITY COVERAGE

As part of the consideration hereof, each party hereby agrees that each and all of its indemnity commitments in this Agreement in favor of the other parties shall also extend to and indemnify the parent corporation, subsidiaries and affiliates of such other parties, and all of their respective directors, officers, agents and employees.

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

BOSTON AND MAINE CORPORATION

By:
Title: _____

SPRINGFIELD TERMINAL RAILWAY COMPANY

By:
Title: _____

PITTSBURG & SHAWMUT RAILROAD, LLC
D/B/A BERKSHIRE & EASTERN RAILROAD,
ON BEHALF OF PAN AM SOUTHERN LLC,
SOLELY IN ITS CAPACITY AS THE
CONTRACT OPERATOR

By: Brad Ovitt
Title: President

EXHIBIT C-CAPTION SUMMARY

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

DOCKET NO. FD 36726

PAN AM SOUTHERN LLC
—TEMPORARY OVERHEAD TRACKAGE RIGHTS—
BOSTON AND MAINE CORPORATION AND
SPRINGFIELD TERMINAL RAILWAY COMPANY

Boston and Maine Corporation (“B&M”) and Springfield Terminal Railway Company (“ST”) have agreed to grant limited overhead temporary trackage rights to Pan Am Southern LLC (“PAS”) from between PAS’s connection to B&M/ST’s tracks at Engineering Station 215+89 at CPF 312 outside Ayer, Mass. to Engineering Station 225+00 outside Ayer, Mass., a total distance of approximately 1,000 feet (the “B&M/ST Line”). PAS’s use of the B&M/ST Line will be limited to repositioning locomotives. The temporary trackage rights will be effective by October 21, 2023, and will expire on December 5, 2023. PAS has filed a petition for waiver requesting that the Board permit the trackage rights to be effective immediately or no later than September 28, 2023.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Railway Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. —Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the

discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR §1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Docket No. FD 36726, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Ave. N.W., Suite 1300 South, Washington, DC 20004; marks@clarkhill.com. Board decisions and notices are available on our website at “WWW.STB.DOT.GOV.”

Decided: September --, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

VERIFICATION

I hereby verify on behalf of Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad, in its capacity as contract operator of Pan Am Southern LLC, under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verification.

Executed on September 20, 2023.



Brad Ovitt, President