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December 31, 2021

CSXT/PAR-48

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

**Re: STB Docket No. FD 36472, CSX Corporation and CSX Transportation, Inc., et al.—
Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and
Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am
Southern LLC, Portland Terminal Company, Springfield Terminal Railway
Company, Stony Brook Railroad Company, and Vermont & Massachusetts
Railroad Company**

Dear Ms. Brown:

CSX, NSR, and GWI are pleased to report to the Board that we have reached a settlement agreement with VTrans and VRS resolving their concerns about CSX's application in the above-referenced proceeding and B&E's Amended Petition for Exemption.¹ Enclosed for e-filing is a public version of the settlement agreement, with appropriate redactions that the Board can place in its docket. We are concurrently filing under seal a highly confidential version of this document.

Pursuant to section 8 of the settlement agreement, CSX hereby requests that the Board impose the terms and conditions of the enclosed settlement agreement as a condition of the Board's approval of the Application and B&E's Amended Petition for Exemption. Section 8 of the settlement agreement also provides that VRS will withdraw its opposition to the transactions and that VTrans will withdraw its earlier comments and inform the STB that it does not oppose the transaction.

¹ The acronyms and defined terms used in this letter are the same as those used in the Revised Application filed in the above-captioned proceeding.

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Respectfully submitted,

/s/ Anthony J. LaRocca

Anthony J. LaRocca
Peter W. Denton
Sally Mordi
*Attorneys for CSX Corporation and
CSX Transportation, Inc.*

Enclosures

cc: Louis E. Gitomer
All parties of record

Settlement Agreement

This settlement agreement (this “Settlement Agreement”) is entered into this 29th day of December, 2021, by and among the State of Vermont, acting through its Agency of Transportation (“VTrans”), Trans Rail Holding Company (“Trans Rail”) (on behalf of and for its rail carrier holdings, Vermont Railway, Inc. (“Vermont Railway”), Washington County Railroad Co. (“WCRR”), and Green Mountain Railroad Corporation (“GMRC” and collectively with Trans Rail, Vermont Railway and WCRR, “VRS”), and Norfolk Southern Railway Company (“Norfolk Southern”), Genesee & Wyoming Inc. (“GWI”), and CSX Transportation, Inc. (“CSXT”). In this Settlement Agreement, VTrans, VRS, Norfolk Southern, GWI and CSXT shall each be referred to individually as a “Party,” and collectively as the “Parties”.

Recitals

Whereas, on February 25, 2021, CSXT, among others, filed an application in STB Finance Docket No. 36472 (the “CSXT Application”) seeking the approval of the U.S. Surface Transportation Board (“STB”) for certain transactions including for the acquisition of control of Pan Am Systems, Inc. and certain named subsidiaries (collectively, “Pan Am”), and the merger of certain of the Pan Am railroads into CSXT (the “Proposed Transaction”); and

Whereas, one of the Pan Am railroads to be acquired in the Proposed Transaction is the Boston and Maine Corporation (“B&M”); and

Whereas, B&M and Norfolk Southern each owns a fifty percent (50%) interest in Pan Am Southern LLC (“PAS”); and

Whereas, one of the Pan Am railroads to be acquired in the Proposed Transaction is the Springfield Terminal Railway Company (“ST”); and

Whereas, PAS and ST are parties to the Springfield Terminal Joint Use Agreement dated as of April 9, 2009, granting ST certain trackage and haulage rights as described further therein; and

Whereas, Norfolk Southern and CSXT anticipate that, as part of the implementation of the Proposed Transaction, the Springfield Terminal Joint Use Agreement will be amended and restated as the Amended and Restated CSXT Joint Use Agreement by and among PAS, CSXT and Norfolk Southern to be entered into in connection with the Proposed Transaction (the “Amended CSXT Joint Use Agreement”);

Whereas, on February 25, 2021, Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad (“B&E”), a wholly-owned subsidiary of GWI, filed a Petition for Exemption in STB Finance Docket No. 36472 (Sub.-No. 5) (the “B&E Petition”) to authorize B&E to serve as the contract operator of the PAS rail lines (the “B&E-PAS Transaction”); and

Whereas, on March 16, 2021, VRS filed certain comments and concerns relating to the B&E-PAS Transaction as described in the B&E Petition for Exemption; and

Whereas, on March 17, 2021, VTrans filed certain comments and concerns relating to the B&E-PAS Transaction described in the B&E Petition for Exemption; and

Whereas, on April 26, 2021, in response to an STB decision served March 25, 2021, CSXT and others filed an amended CSXT Application and B&E filed an Amended Petition for Exemption; and

Whereas, on July 1, 2021, in response to an STB decision served May 26, 2021, CSXT and others filed a further amended CSXT Application (the "Amended CSXT Application") and B&E filed a Supplement to Amended Petition for Exemption (the "Amended B&E Petition"); and

Whereas, the Parties have agreed to resolve the VTrans and VRS concerns by entering into this Settlement Agreement containing the commitments set out below, and will file this Settlement Agreement in STB Docket No. FD 36472 and STB Docket No. FD 36472 (Sub.-No. 5); and

Whereas, the obligations of the Parties to one another contained in this Settlement Agreement are subject to the STB's approval of the B&E-PAS Transaction and each Party obtaining any necessary STB approvals; and

Whereas, where this Settlement Agreement describes an obligation of PAS that CSXT and Norfolk Southern agree to cause PAS to perform after CSXT acquires control of B&M and its 50% interest in PAS; and

Whereas, New England Central Railroad, Inc. ("NECR"), a wholly-owned subsidiary of GWI and an affiliate of B&E, owns and operates railroad lines in Massachusetts, New Hampshire, Connecticut and Vermont, including between White River Junction, Vermont, and Millers Falls, Massachusetts; and

Whereas, GWI is entering into this Settlement Agreement, and agreeing to cause B&E and NECR to take the actions set forth herein, in furtherance of obtaining STB approval for B&E to become the contract operator of the PAS rail lines; and

Whereas, the railroads comprising VRS are wholly-owned subsidiaries of Trans Rail, and own and/or operate railroads in the States of New York, New Hampshire and Vermont;

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

Section 1. Definitions

Except as otherwise specifically defined herein, all words, terms and phrases used in this Settlement Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

Section 2. Grant of Trackage Rights to GMRC

(a) White River Junction Trackage Rights

GWJ shall cause NECR to grant to GMRC permanent trackage rights (the "WRJ Trackage Rights") between Bellows Falls, Vermont, and White River Junction, Vermont (the "WRJ Trackage Rights Endpoints"). The WRJ Trackage Rights will be bridge (overhead) trackage rights, with no local service

rights. The WRJ Trackage Rights shall be used by GMRC solely for the purpose of moving traffic in VRS's revenue waybill account between the WRJ Trackage Rights Endpoints. The WRJ Trackage Rights are intended to be permanent, terminable only upon mutual consent of the parties or an uncured event of default. If and only if GMRC no longer operates to and from Bellows Falls, then GMRC shall promptly assign the WRJ Trackage Rights to another VRS railroad operating to and from either of the WRJ Trackage Rights Endpoints. Upon written notice from VTrans that it has selected another rail carrier to provide common carrier rail service on the VTrans owned rail lines currently operated by VRS, GMRC or such successor VRS railroad shall assign the NECR TRA (as defined below) to such third party rail carrier and such third party rail carrier will thereafter become the operator of GMRC's railroad lines and will succeed to GMRC's common carrier obligation on such lines. Such assignment shall become effective on the effective date of the STB authority permitting such successor operator to exercise the WRJ Trackage Rights.

(b) Limited Use Trackage Rights and the PAS Operating Rights

GWJ shall cause NECR to grant to GMRC certain contingent and limited use trackage rights (the "Limited Use Trackage Rights") and CSXT and Norfolk Southern shall cause PAS to grant, to GMRC certain operating rights (the "PAS Operating Rights") for the movement of VRS traffic between (i) Bellows Falls, on the one hand, and (ii) one of two connections with PAS – one being Millers Falls, Massachusetts and the other being East Northfield, Massachusetts, on the other hand (the "Limited Use Trackage Rights Endpoints"), for the sole purpose of interchanging traffic with, or delivering traffic to, PAS in East Deerfield Yard.

The Limited Use Trackage Rights and PAS Operating Rights shall exist only for so long as any GWJ subsidiary or affiliated entity operates the PAS lines as a contract operator or otherwise. The Limited Use Trackage Rights and PAS Operating Rights and the rights extended therein will terminate (i) upon mutual consent of the parties, or (ii) an uncured event of default, or (iii) a GWJ subsidiary or affiliated entity ceases to operate the PAS rail lines as contract operator or otherwise. Should the Limited Use Trackage Rights terminate pursuant to the foregoing, GMRC shall be required to seek discontinuance authority from the STB promptly following written notice from GWJ of such termination. If and only if GMRC no longer operates to and from Bellows Falls, then GMRC shall promptly assign the Limited Use Trackage Rights and PAS Operating Rights to another VRS railroad operating to and from either WRJ Trackage Rights Endpoints. Upon written notice from VTrans that it has selected another rail carrier to provide common carrier rail service on the VTrans owned rail lines currently operated by VRS, GMRC or such successor VRS railroad shall assign the NECR TRA (as defined below) to such third party rail carrier and such third party rail carrier will thereafter become the operator of GMRC's railroad lines and will succeed to GMRC's common carrier obligation on such lines. Such assignment shall become effective on the effective date of the STB authority permitting such successor operator to exercise the WRJ Trackage Rights.

Because there is no effective location for the physical interchange of traffic between PAS and GMRC at either Millers Falls or East Northfield, upon commencement of B&E's operation of the PAS rail lines, CSXT and Norfolk Southern shall cause PAS to grant to GMRC the PAS Operating Rights between (i) each of Millers Falls and East Northfield and (ii) East Deerfield Yard solely for the purpose of interchange of traffic with a prior or subsequent move over the Limited Use Trackage Rights.

The PAS Operating Rights over the East Northfield – East Deerfield Yard route will only be available for exercise by GMRC if the Commonwealth of Massachusetts Department of Transportation

(“MassDOT”), as the owner of a portion of the route between East Northfield and Greenfield (the “Greenfield Route”), has granted its written consent to the same (“MassDOT Greenfield Route Consent”). Satisfaction of any MassDOT preconditions to the exercise by GMRC of the PAS Operating Rights over MassDOT-owned trackage shall be the sole responsibility, and at the sole discretion and expense, of GMRC; provided, however, that such preconditions shall not diminish, or require PAS to relinquish, PAS’s rights over such MassDOT-owned trackage. Unless and until MassDOT has provided the MassDOT Greenfield Route Consent and any conditions MassDOT has placed on the use of the Greenfield Route have been satisfied, GMRC shall exercise the Limited Use Trackage Rights solely via the Millers Falls route. GMRC shall be responsible for all costs and liability arising from its use of any MassDOT-owned trackage.

(c) Terms and Conditions of the WRJ Trackage Rights, the Limited Use Trackage Rights and the PAS Operating Rights

The Parties shall provide terms and conditions governing the use of the WRJ Trackage Rights and the Limited Use Trackage Rights in a single trackage rights agreement between NECR and GMRC (the “NECR TRA”). The terms and conditions of the PAS Operating Rights will be reflected in an operating rights and interchange agreement between PAS and GMRC (the “PAS Operating Rights and Interchange Agreement”).

GMRC’s rights pursuant to the NECR TRA and the PAS Operating Rights and Interchange Agreement shall be in common with and not displace or unduly interfere with PAS’s provision of common carrier service over the NECR-owned trackage or the MassDOT-owned trackage. GMRC’s rights shall not otherwise adversely impact the operations of NECR or Amtrak, with the Parties acknowledging and agreeing that NECR will give priority to intercity rail passenger trains of Amtrak to the extent required by Section 402 of the Rail Passenger Service Act and that GMRC will be treated similarly to PAS.

Both the NECR TRA and the PAS Operating Rights and Interchange Agreement shall include, among other terms and conditions, the following:

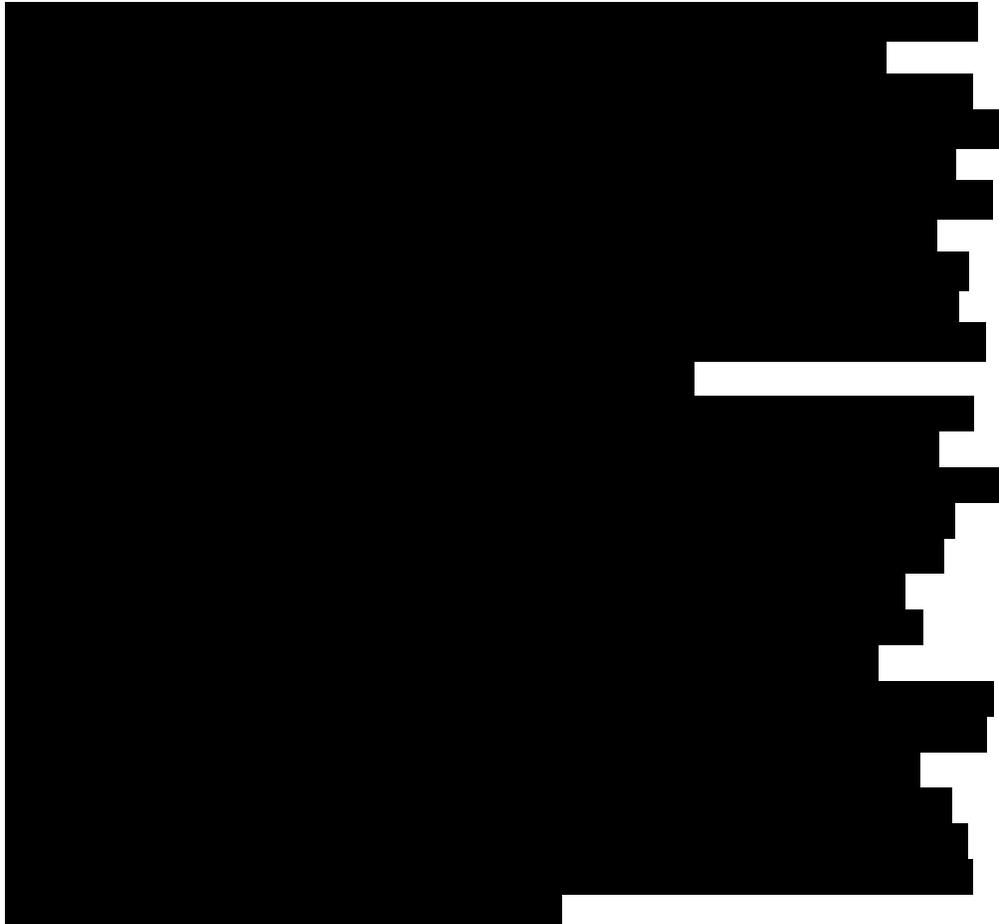
- a. Interchange and operating rights to effectuate interchange between PAS and GMRC shall take place in East Deerfield Yard pursuant to the PAS Operating Rights and Interchange Agreement.
- b. GMRC may use the Limited Use Trackage Rights and the PAS Operating Rights solely for bridge (overhead) trackage rights for the purpose of moving (i) inbound traffic between (a) Bellows Falls and (b) either of Millers Falls and East Northfield and East Deerfield Yard as the operating interchange location with PAS and (ii) outbound traffic in PAS’s revenue waybill account between Bellows Falls and (b) either of Millers Falls and East Northfield and East Deerfield Yard as the operating interchange location with PAS.
- c. Compensation payable under the trackage rights to be granted pursuant to the NECR TRA and the PAS Operating Rights and Interchange Agreement shall be as follows:
 - i. The rates payable by GMRC to NECR for movement of empty and loaded rail cars, locomotives, work equipment and other items pursuant to the NECR TRA will be equal to the then-current compensation that PAS is required to pay to NECR pursuant to the STB’s decision in Finance Docket No. 35842,

served October 31, 2017, and shall be subject to the same adjustment provisions.

- ii. There shall be no cost to GMRC for the movement of empty and loaded rail cars, locomotives, work equipment and other items pursuant to the PAS Operating Rights and Interchange Agreement as it pertains to GMRC's use of track between either Millers Falls or East Northfield and East Deerfield Yard.
- d. Insurance requirements and indemnification provisions for the NECR TRA and the PAS Operating Rights and Interchange Agreement shall be as follows:
 - i. Under the NECR TRA, GMRC must have an effective railroad liability insurance policy in place, covering the moves sought to be operated, in an amount of at least \$50,000,000 per occurrence. The NECR TRA will provide that the Parties will agree to revisit from time to time the amount of railroad liability insurance required in order to determine whether the minimum level of insurance should be adjusted in light of inflation and other relevant conditions.
 - ii. The insurance required in the PAS Operating Rights and Interchange Agreement shall be conformed to that required by the NECR TRA.
 - iii. The NECR TRA and the PAS Operating Rights and Interchange Agreement shall apply standard industry indemnity language for which insurance is intended to address.
- e. The NECR TRA and the PAS Operating Rights and Interchange Agreement will each establish reasonable minimum crew qualification requirements for GMRC.
- f.



g.



- h. The parties to the NECR TRA shall agree to a periodic review of the NECR TRA terms and conditions, including insurance, that might require modification based on changes in the regulatory and operational environment on each 10-year anniversary of the effective date thereof.
- i. GMRC may use the Limited Use Trackage Rights and the PAS Operating Rights at GMRC's discretion, subject to the conditions contained in Section 2(d).

(d) The Limited Use Trackage Rights Special Provisions

The Parties have determined that the Limited Use Trackage Rights are intended for occasional, and not consistent and daily, use in part so that GMRC crews can remain qualified to operate over NECR trackage. Therefore, the Parties have provided for GMRC to use the Limited Use Trackage Rights, at its option, a limited number of times per calendar year (the "Discretionary Option Rights"). Further, the Parties have set certain timeframes as a pre-requisite to the use of the Limited Use Trackage Rights other than pursuant to the Discretionary Option Rights (the "Excessive Dwell Option Rights"). Finally, the Parties have determined to allocate certain costs with regard to the use of the Discretionary Option Rights and the Excessive Dwell Option Rights.

(i) Discretionary Option Rights

GMRC may exercise the Discretionary Option Rights up to twenty-six (26) times per calendar year, but not more than three (3) times in any month or more than one (1) time in any week. GMRC

shall provide at least 24 hours' notice to PAS that it intends to exercise its Discretionary Option Rights, and shall obtain the prior approval of PAS, not to be unreasonably withheld or delayed. In exercising these rights, GMRC shall be required to pick up all railcars made available to it by PAS (as operated by B&E or other GWI subsidiary) at East Deerfield Yard that were otherwise destined to be brought by B&E to GMRC at Bellows Falls or Hoosick Junction and bring them north. All such railcars shall be deemed interchanged to, and in the account of, GMRC upon the coupling of the GMRC locomotives to the train consist. Should GMRC choose to exercise these Discretionary Option Rights, all costs of doing so shall be borne by GMRC, except as provided in Section 2(d)(iii) below.

(ii) Excessive Dwell Option Rights

The Parties anticipate that regular PAS service (under operation of B&E or other GWI subsidiary) will consist of the level of service set forth in Appendix A attached hereto for the two service corridors of (a) between Rotterdam Junction/Mechanicville and Hoosick Junction, and (b) between East Deerfield and Bellows Falls/White River Junction. The Parties acknowledge and agree that PAS (as operated by B&E or other GWI subsidiary) would, in most operating environments, maintain no less than 85% of the time over any rolling 90-day period (the "Service Standard"), and that failure to maintain such Service Standard is likely to result in delays in rail service transit resulting from, in this case, the excessive dwell discussed immediately below.

In certain limited circumstances as described herein, therefore, GMRC may elect to exercise the Excessive Dwell Option Rights, but not more than once per calendar day. The circumstances in which the Excessive Dwell Option Rights are exercisable by GMRC are detailed below and differ for inbound traffic and for outbound traffic, as well by commodity. VRS shall reasonably cooperate with PAS and B&E to help resolve any underlying issue causing Excessive Dwell (as defined below) delays.

(A) Inbound Excessive Dwell Option Rights

In order to effectuate these Excessive Dwell Option Rights for inbound traffic to be interchanged from PAS to GMRC at Bellows Falls, the Parties have designated two categories of traffic subject to PAS interchange with GMRC at East Deerfield Yard. The first category of such traffic has been specifically defined by the Parties as propane, heating oil and rock salt arriving in East Deerfield Yard in the winter months (specifically, during the months of October through April) when inventories are critically low based on expected needs (a "Critical Commodity") moving to a destination on a VRS rail line in a railcar (a "Critical Commodity Rail Car"). The second category of such traffic is classified as any other traffic, including propane, heating oil and rock salt other than in the winter months (i.e., October through April) (a "Non-Critical Commodity") moving to a destination on a VRS rail line in a railcar (a "Non-Critical Commodity Rail Car").

GMRC may exercise the Excessive Dwell Option Rights to receive in interchange and move Critical Commodity Rail Cars and Non-Critical Commodity Rail Cars at GMRC's option in the event that such traffic dwells in East Deerfield Yard beyond the time frames described below ("Excessive Dwell"). Should GMRC elect to exercise these inbound Excessive Dwell Option Rights, all costs of doing so shall be borne by GMRC, except as provided in Section 2(d)(iii) below.

A Critical Commodity Rail Car (inbound) experiences Excessive Dwell delays on an inbound move if (i) it dwells in East Deerfield Yard for more than 48 hours, (ii) GMRC notifies B&E in writing of that occurrence, and (iii) the Critical Commodity Rail Car has not thereafter departed from East Deerfield

Yard for purposes of interchange with GMRC at Bellows Falls within 24 hours after receipt of such notice.

A Non-Critical Commodity Rail Car (inbound) experiences Excessive Dwell delays on an inbound move if (i) it dwells in East Deerfield Yard for more than 48 hours, (ii) GMRC notifies B&E of that occurrence, and (iii) the Non-Critical Commodity Rail Car is not thereafter moved from East Deerfield Yard for the purposes of interchange with GMRC at Bellows Falls within 72 hours after receipt of such notice.

In exercising these rights, GMRC shall be required to pick up all Critical Commodity Rail Car(s) and Non-Critical Commodity Rail Car(s), including but not limited to those suffering from Excessive Dwell delays, made available to it by PAS (as operated by B&E or other GWI subsidiary) at East Deerfield Yard that were otherwise destined to be brought by PAS (as operated by B&E or other GWI subsidiary) to GMRC at Bellows Falls or Hoosick Junction. All such railcars shall be deemed interchanged to, and in the account of, GMRC upon the coupling of the GMRC locomotives to the train consist. Should GMRC choose to exercise these inbound Excessive Dwell Option Rights, all costs of doing so shall be borne by GMRC, except as provided in Section 2(d)(iii) below.

In order to exercise these rights with regard to an inbound move, the following process must be followed: (a) VRS must give notice to B&E with the identity of the specific Critical Commodity Rail Car(s) and/or Non-Critical Commodity Rail Car(s) by reporting mark and number at issue (the "Exercise Notice"); (b) the customer(s) must be in a position to accept the Critical Commodity Rail Car(s) and/or Non-Critical Commodity Rail Car(s) upon delivery; (c) the Critical Commodity Rail Car(s) and/or Non-Critical Commodity Rail Car(s) must have dwelled in East Deerfield Yard for more than 48 hours; and (d) PAS (as operated by B&E or other GWI subsidiary) shall have the opportunity to timely deliver such identified Critical Commodity Rail Cars and/or Non-Critical Commodity Rail Car(s) within the 24-hour and 72-hour time periods set forth above.

(B) Outbound Excessive Dwell Option Rights

VRS may also elect to exercise the Excessive Dwell Option Rights with regard to the outbound movement of rail cars that GMRC and Vermont Railway deliver in interchange to PAS at Bellows Falls or Hoosick Junction, as applicable, to East Deerfield for physical interchange to PAS in the event of Excessive Dwell delays following interchange of that traffic to PAS at either Bellows Falls or Hoosick Junction.

A railcar (outbound) experiences Excessive Dwell delays on an outbound move if, after VRS makes such car ready for interchange with PAS (i) it dwells in Bellows Falls or Hoosick Junction for more than 48 hours, (ii) VRS notifies B&E in writing of that occurrence, and (iii) the railcar has not thereafter departed from Bellows Falls or Hoosick Junction, as applicable, for purposes of delivery to East Deerfield Yard within 72 hours after receipt of such notice.

In exercising these rights, GMRC shall be required to pick up all railcars, including but not limited to those suffering from Excessive Dwell delays, made available to it by B&E for interchange at East Deerfield Yard for movement north. All such railcars previously interchanged to PAS by GMRC or Vermont Railway but then delivered by GMRC to East Deerfield Yard pursuant to the Excessive Dwell Option Rights shall remain in the account of PAS and all such railcars picked up by GMRC at East Deerfield Yard shall be interchanged to, and in the account of, GMRC upon the coupling of the GMRC

locomotives to the train consist. Should VRS choose to exercise these outbound Excessive Dwell Option Rights to deliver railcars to East Deerfield Yard, (i) all costs of doing so shall be borne by GMRC, except as provided in Section 2(d)(iii) below, and (ii) any cars delivered by GMRC to East Deerfield Yard shall be deemed to be in the account of GMRC for purposes of allocating liability between the relevant parties to the NECR TRA and the PAS Operating Rights and Interchange Agreement.

In order to exercise outbound Limited Use Trackage Rights, the following process must be followed: (a) VRS must give the Exercise Notice to B&E in writing; (b) such identified railcar(s) must have dwelled for more than 48 hours after being made available for interchange to PAS (as operated by B&E or other GWI subsidiary) at, as the case may be, Bellows Falls or Hoosick Junction; (c) PAS (as operated by B&E or other GWI subsidiary) shall have the opportunity to depart the traffic from Bellows Falls or Hoosick Junction, as applicable, for purposes of delivery to East Deerfield Yard within 72 hours after receipt of such notice.

(iii) Consideration Payable by PAS

The sole consideration payable by PAS to GMRC in connection with GMRC's exercise of the Limited Use Trackage Rights shall be as follows:

- a. If GMRC exercises its Discretionary Option Rights, it shall be entitled to receive a per car fee in the amount of [REDACTED] (as adjusted, the "Per Car Fee") for each railcar that it handled and was made available to it at East Deerfield Yard.
- b. If GMRC exercises the Excessive Dwell Option Rights (outbound or inbound), it shall be entitled to receive (i) a train start fee in the amount of [REDACTED] (as adjusted, the "Train Start Fee") for each exercise of such rights and (ii) a reclaim from PAS of any actual car hire mileage charges assessed by car owners and incurred by GMRC using the Limited Use Trackage Rights while exercising its Excess Dwell Option Rights (but not the Discretionary Option Rights);
- c. If GMRC exercises the inbound Excessive Dwell Option Rights, in addition to the Train Start Fee, it shall be entitled to receive the Per Car Fee for each Critical Commodity Rail Car and Non-Critical Commodity Rail Car, including but not limited to those suffering from Excessive Dwell delays, that it handled and was made available to it at East Deerfield Yard; and
- d. If GMRC exercises the outbound Excessive Dwell Option Rights, in addition to the Train Start Fee, it shall be entitled to receive the Per Car Fee for each railcar, including but not limited to any suffering from Excessive Dwell delays, that it handled and was made available to it at Bellows Falls or Hoosick Junction for delivery to East Deerfield Yard and each railcar, including but not limited to those suffering from Excessive Dwell delays, that it handled and was made available to it at East Deerfield Yard for movement north.
- e. Each of the Per Car Fee and the Train Start Fee shall be adjusted annually at the same time, and in the same manner, as the adjustment for the trackage rights fee payable by GMRC to NECR as described above.
- f. In the event that the monthly average price per gallon of highway diesel fuel (as determined below, the "HDF Average Price") equals or exceeds [REDACTED], a fuel surcharge will be assessed monthly on the adjusted Per Car Fee ("Fuel Surcharge"). The adjusted Per Car Fee will be increased by [REDACTED] for every [REDACTED] per gallon, or portion thereof, by which the HDF Average Price for the calendar month two months prior to the calendar month of shipment exceeds [REDACTED]. The "HDF Average Price" for a month will be the average price for that month of U.S. No. 2 Diesel Retail Sales by All Sellers, as determined and published by the U.

S. Department of Energy, Energy Information Administration ("DOE-EIA")¹. That average price will, in calculating the HDF Average Price, be rounded to the nearest 1/10th of a cent applying conventional rounding principles. If DOE-EIA ceases publication of the above information, VRS will employ a suitable substitute source of price or measure.

Notwithstanding the foregoing, the Per Car Fee shall not be paid by PAS in the event that it advises VRS in writing within 12 hours after receipt of the Exercise Notice that the Critical Commodity Rail Car(s) and/or the Non-Critical Commodity Rail Car(s) experienced Excessive Dwell delays primarily as a result of acts or inaction by VRS, the condition of the Critical Commodity Car(s) and/or the Non-Critical Commodity Rail Car(s), a force majeure event, or the inability of the customer(s) to receive the railcars.

Any Train Start Fees and Per Car Fees payable to GMRC shall be invoiced monthly and shall be paid by PAS within thirty (30) days after receipt of the invoice therefor. For the avoidance of doubt, there shall be no adjustment to the rate received by PAS for traffic handled by GMRC pursuant to its exercise of the Limited Use Trackage Rights.

Section 3. Protection of Commercially Sensitive Information relating to PAS Traffic

The Parties acknowledge that, in the performance of its obligations as the contract operator of the PAS rail lines, B&E (on behalf of PAS) will be performing haulage services for CSXT and Norfolk Southern for interchange to and from VRS. Further, B&E will be interchanging, on behalf of PAS, traffic to and from other rail carriers that connect with the PAS rail lines. CSXT, Norfolk Southern and GWI shall not permit B&E to share with any other rail carrier not in the route, including but not limited to any GWI subsidiary railroads not in the route, any VRS rate divisions, shipper or consignee identity, origin and destination points and commodities and volumes (the "Restricted Information") that come into its possession as a result of or in connection with its contract operation of PAS. The provisions of this Section 3 shall continue for so long as B&E remains a subsidiary of GWI, or any other GWI related entity serves as the contract operator of the PAS rail lines, and for a period of five (5) years thereafter. GWI shall cause B&E to, and VRS shall, reasonably cooperate to develop a specific mechanism for B&E to attest to its compliance with the provisions of this Section 3. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that B&E shall be permitted to (a) have access to the minimum waybill data (Transportation Waybill) required for the safe and legal movement of railcars, (b) share Transportation Waybill data with NECR in connection with the use of PAS's trackage rights over NECR and (c) share the Restricted Information with other rail carriers in connection with preparing a rate requested by a shipper or to otherwise facilitate interline movements with other rail carriers in the route.

Section 4. Haulage Services

(a) Norfolk Southern Haulage between Mechanicville and Hoosick Junction

Norfolk Southern and CSXT agree to cause PAS to modify the Norfolk Southern haulage service for Norfolk Southern traffic between Mechanicville and Hoosick Junction, currently provided pursuant to

¹ The referenced DOE-EIA publication can currently be found at www.eia.doe.gov. On the home page select "Petroleum;" under "Prices" select "Weekly Retail Gasoline and Diesel Prices;" for the "Area" select "U.S.;" for the "Period" select "Monthly;" then refer to the data on the line entitled "Diesel (On-Highway)." Monthly data is normally published Wednesday after the last Monday of a given month.

the Master Norfolk Southern Joint Use Agreement, to permit interchange with GMRC at East Deerfield Yard on current terms and conditions. The determination of the interchange location shall be made by PAS from time to time and subject solely to PAS's discretion. Norfolk Southern and CSXT agree to cause PAS to provide Price Stability² for so long as any GWI subsidiary operates the PAS rail lines as a contract operator or otherwise.

Such haulage arrangement shall remain in effect at least for so long as any GWI subsidiary is operating the PAS line extending between Mechanicville and East Deerfield Yard.

(b) CSXT Haulage between Rotterdam Junction and Hoosick Junction

Norfolk Southern and CSXT agree to cause PAS to amend the Amended CSXT Joint Use Agreement to establish certain haulage rights for traffic moving in the CSXT revenue waybill account between Rotterdam Junction and Hoosick Junction. PAS may interchange the traffic moving pursuant to this haulage service with GMRC at East Deerfield Yard on the same terms and conditions as that for moving the traffic between Rotterdam Junction and Hoosick Junction. The determination of the interchange location shall be made by PAS from time to time and subject solely to PAS's discretion. Norfolk Southern and CSXT agree to cause PAS to provide Price Stability for so long as any GWI subsidiary operates the PAS rail lines as a contract operator or otherwise.

The cost of the haulage shall mirror current interline rates and shall incorporate a fuel surcharge mechanism, with no adjustment for zero mileage per diem car hire traffic and a \$30 adjustment for other than zero mileage per diem car hire traffic, and otherwise on terms and conditions consistent with other haulage services provided pursuant to the Amended CSXT Joint Use Agreement, including but not limited to the allocation of liability and the responsibility for the payment of car hire.

Such haulage arrangement shall remain in effect at least for so long as any GWI subsidiary is operating the PAS line extending between Rotterdam Junction and East Deerfield Yard.

Section 5. Price Stability on Bellows Falls Interline Rates

Norfolk Southern and CSXT agree to cause PAS, through the actions of B&E, to provide Price Stability for interline traffic moving over PAS between Bellows Falls and PAR destinations and origins, for so long as B&E or any GWI subsidiary operates the PAS rail lines as a contract operator or otherwise.

Section 6. Intentionally Omitted.

Section 7. Consultation with the Joint Operating Committee

PAS has established an operations-level Joint Operating Committee, consisting of equal representation from CSXT and Norfolk Southern (the "JOC"), that is charged with reviewing B&E's railroad operations, safety, service, maintenance and engineering, and other matters related to the operation of PAS. Upon the written request of the JOC, VRS and/or VTrans, the JOC will meet and confer

² For the purpose of this agreement, the term "Price Stability" shall mean that pricing for an individual movement shall be consistent with the then-current pricing by car type, commodity and ownership, said pricing shall be adjusted annually by no more than by a mutually agreed-upon index, and that said pricing shall not be, by application of any adjustment factors, set at less than levels currently in effect on the Effective Date.

with either or both of VRS (or an individual railroad in the VRS corporate family, as applicable) and VTrans from time to time to address service concerns or conditions adversely impacting or delaying VRS freight (each, a “VRS/VTrans Service Meeting”). The JOC, on the one hand, and VRS or VTrans, on the other hand, will give the other a written request to hold such a VRS/VTrans Service Meeting, along with a brief description of the subject(s) to be discussed. The Parties shall hold the VRS/VTrans Service Meeting no later than 14 days after the requesting party issues the meeting request. Notwithstanding the foregoing, PAS will identify two JOC representatives (one from CSXT and one from Norfolk Southern) as VRS/VTrans liaisons for the resolution of time-sensitive VRS/VTrans issues which do not lend themselves to the formal process described above. The JOC, VRS and/or VTrans will work in good faith to promptly resolve identified concerns or conditions. In order to effectively implement this provision, within thirty (30) days of the effective date of the commencement of B&E’s operation of the PAS rail lines, PAS shall provide to VRS and VTrans the contact information for members of the JOC, and VRS and VTrans will provide to the JOC the contact information of its respective designated representative for the purpose of carrying out the rights and obligations of this provision.

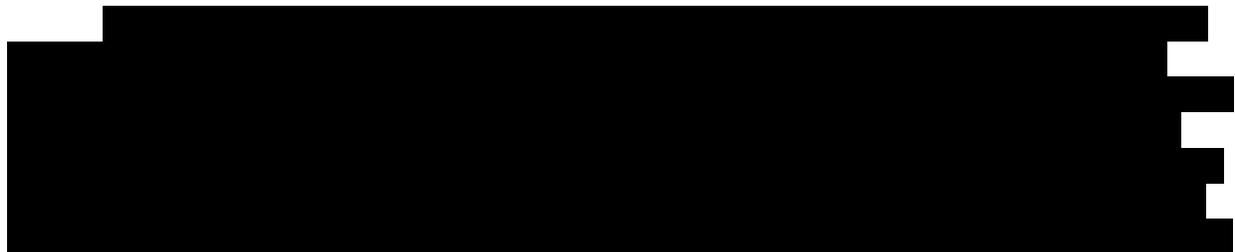
Section 8. Non-opposition to the Proposed Transaction

The Parties acknowledge that this Settlement Agreement has been negotiated and is entered into with regard to STB proceedings now underway concerning the Amended CSXT Application and the Amended B&E Petition.

Upon execution of this Settlement Agreement, VRS will file a statement with the STB, reasonably satisfactory to CSXT and B&E, stating that VRS is withdrawing its opposition to the transactions encompassed by the Amended CSXT Application and the Amended B&E Petition; provided, however, that the STB must impose the terms and conditions of this Settlement Agreement as a condition to approval of the Amended CSXT Application and the Amended B&E Petition.

VTrans hereby states that this Settlement Agreement resolves and addresses the concerns that it has earlier raised with the STB, that VTrans will withdraw its earlier comments filed with the STB, and that VTrans will take a neutral position before the STB on the Amended CSXT Application and the Amended B&E Petition, conditioned upon the STB imposing the terms and conditions of this Settlement Agreement. VTrans agrees to inform the STB that it does not oppose the transaction promptly following the execution and delivery of this Agreement by the Parties.

The obligations of the Parties contained in this Settlement Agreement are subject to the STB’s approval of the Amended CSXT Application and/or the Amended B&E Petition and the receipt of any additional STB authority required in order to fulfill the assumption of rights and obligations set forth herein. Each Party shall act in good faith and use reasonable efforts to meet its respective obligations under this Settlement Agreement.



**Section 9. Definitive Documentation.**

The Parties agree that, upon execution of this Settlement Agreement, the Parties will promptly commence and diligently pursue the finalization of the definitive agreements and amendments to existing agreements necessary to implement the terms contained in this Settlement Agreement including but not limited to the NECR TRA and the PAS Operating Rights and Interchange Agreement, with the intention of the Parties to complete those two documents prior to the service of the STB decisions concerning the transactions encompassed by the Amended CSXT Application and the Amended B&E Petition. If the NECR TRA is finalized prior to the service of said STB decisions, GMRC shall prepare and file, at its cost, with the STB a Notice of Exemption to effectuate the NECR TRA, contingent on consummation of the transactions encompassed by the Amended CSXT Application and the Amended B&E Petition. Should the Parties not conclude the definitive agreements by the start-up of B&E's operations, then the Parties hereby agree and commit themselves to present the unresolved issue(s) to STB-sponsored and managed mediation and, failing resolution, STB-sponsored and managed arbitration for the prescription of appropriate terms and conditions for the agreement or agreements that have not yet been concluded, with each involved party responsible for its costs of such a proceeding or proceedings. GMRC shall prepare and file, at its cost, a Notice of Exemption to effectuate the resulting NECR TRA.

Section 10. Void.

The Parties agree that this Settlement Agreement and all contents herein shall be void if (a) either or both of the amended CSXT Application and the Amended B&E Petition is denied by the STB, (b) the Proposed Transaction is not consummated, or (c) B&E or another GWI-controlled carrier does not assume operation of the PAS rail lines as a contract operator or otherwise.

Section 11. Governing Law.

Except to the extent governed by federal law, this Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Vermont, without regard to conflict of law principles, and all disputes arising hereunder, aside from those arising from inability to complete the trackage rights and any other agreements contemplated hereunder (which shall be handled pursuant to Section 10) may be adjudicated in the state or federal courts located in the State of Vermont, or otherwise pursuant to mutual agreement of the parties thereto.

Section 12. Counterparts.

This Settlement Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original but together shall constitute but one and the same instrument.

Section 13. Confidentiality.

Except to the extent provided herein, required by applicable law, or as authorized or directed by a court order from a Court of competent jurisdiction, the Parties agree to refrain from disclosing, and to maintain the confidentiality of any information exchanged between the Parties for the purpose of complying with this Settlement Agreement, and will not directly or indirectly publish, discuss, or reveal any such information.

Section 14. Severability.

If any provision of this Settlement Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any Party under this Settlement Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Settlement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of this Settlement Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Settlement Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

Section 15. Entire Agreement; Successors.

This Settlement Agreement contains the entire and only agreement between the Parties concerning the subject matter hereof. No modification, renewal, extension, termination or waiver of this Settlement Agreement or any of the provisions herein contained shall be binding upon any Party unless made in writing and signed by a duly authorized representative of such Party. This Settlement Agreement shall be binding upon the Parties and their successors and assigns.

Section 16. Hoosick Junction Interchange Infrastructure Improvement Project

Norfolk Southern, CSXT, VTrans and Vermont Railway acknowledge past progress on, and public funding efforts for, expanding Hoosick Junction interchange facilities and capacity. Norfolk Southern and CSXT agree to cause PAS, through B&E, to continue reasonable efforts to progress Hoosick Junction interchange infrastructure improvements and public funding initiatives, in accordance with existing agreements between PAS and the State of New York's Department of Transportation, without unreasonable delay and in a manner so as not to jeopardize public funding or timely project completion as contemplated by such agreements. VTrans and Vermont Railway agree to support such efforts.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties, intending to be legally bound hereby, have executed this Settlement Agreement as of the date first written above.

CSX TRANSPORTATION, INC., a Virginia corporation

By: 
(signature)
Name: Thomas J. Tisa
(print name)
Title: Head of Business Development
(print title)

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation

By: 
(signature)
Name: Michael R. McClellan
(print name)
Title: Vice President
(print title)

GENESEE & WYOMING INC., a Delaware corporation

By: 
(signature)
Name: Matthew O. Walsh
(print name)
Title: Executive Vice President, Global Corp. Dev.
(print title)

TRANS RAIL HOLDING COMPANY, a Vermont corporation
VERMONT RAILWAY, INC., a Vermont corporation
GREEN MOUNTAIN RAILROAD CORPORATION, a Vermont corporation
WASHINGTON COUNTY RAILROAD COMPANY, a Vermont corporation

By: 
(signature)
Name: Selden Houghton
(print name)
Title: President
(print title)

STATE OF VERMONT,
AGENCY OF TRANSPORTATION

By: Joe Flynn
(signature)
Name: Joe Flynn
(print name)
Title: Secretary of Transportation
(print title)

Appendix A

Anticipated Service Levels

Service Tier	Annual Volume (Loaded CL's) (a)	Anticipated Service Days/week
1	Less than 2,000	3
2	2001 – 3750	4
3	3750+	5

Notes:

- (a) The anticipated service levels set forth in this table apply separately by lane to traffic moving between: (i) Mechanicville and Hoosick Junction; (ii) White River Junction and East Deerfield; (iii) Bellows Falls and East Deerfield; and (iv) Rotterdam Junction and Hoosick Junction.

CERTIFICATE OF SERVICE

I hereby certify that I have caused this Letter in Docket No. FD-36472, *CSX Corporation and CSX Transportation, Inc.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company*, to be served electronically or by first class mail, postage pre-paid, on all parties of record in this proceeding.

/s/ Sally Mordi

Sally Mordi
*Attorney for CSX Corporation and
CSX Transportation, Inc.*

December 31, 2021