

## RESOLUTION 2-2022

**RESOLVING TO** authorize the release of all existing valuations of the Cincinnati Southern Railway in the Board of Trustee's possession, contingent upon the execution of an agreement with Cincinnati, New Orleans & Texas Pacific Railway and any applicable affiliates that preserves the privileges associated with the valuations in the event of litigation.

WHEREAS, the City of Cincinnati completed a 337-mile rail line between Cincinnati and Chattanooga, TN, commonly known as the Cincinnati Southern Railway (the "Cincinnati Southern Railway"); and

WHEREAS, the Board of Trustees of the Cincinnati Southern Railway (the "Board") retains ownership of the Cincinnati Southern Railway for the benefit of the City of Cincinnati; and

WHEREAS, the Cincinnati Southern Railway has been continually leased by the Board to the Cincinnati, New Orleans & Texas Pacific Railway ("CNOTP"), which is a subsidiary of Norfolk Southern Railway Company (the "Buyer") pursuant to a Lease dated October 11, 1881 (as amended and supplemented, the "Lease"); and

WHEREAS, on November 21, 2022, the Board authorized the execution of that certain *Asset Purchase and Sale Agreement* (the "Sale Agreement") with the Buyer and CNOTP related to the potential sale of the Cincinnati Southern Railway; and

WHEREAS, in anticipation of (i) renegotiating the Lease with CNOTP and (ii) the arbitration process detailed in the Lease (the "Arbitration"), the Board, through its legal counsel, retained BMO Capital Markets Corp. and the Brattle Group to prepare valuations of the Cincinnati Southern Railway (the "Valuations"); and

WHEREAS, the Board has received requests to disclose the Valuations, pursuant to Ohio's public records laws, including Revised Code Section 149.43; and

WHEREAS, it is the Board's position that the Valuations constitute (i) attorney-work product prepared in anticipation of litigation and (ii) trade secrets and, thus, are not subject to disclosure pursuant to Ohio's public records laws; and

WHEREAS, the release of the Valuations is appropriate to further the public's understanding of the transaction contemplated by the Sale Agreement and to proactively address any potential disputes that may arise from outstanding public records requests; and

WHEREAS, in connection with its anticipated release of the Valuations, the Board is seeking an agreement with CNOTP, the Buyer, and other affiliates that the disclosure of such Valuations does not constitute a waiver of privilege in the event of potential litigation, including the Arbitration (the "Document Disclosure Agreement"); and

WHEREAS, the Board desires to authorize (i) the disclosure of the Valuations, subject to CNOTP's, the Buyer's, and other affiliates approval of a Document Disclosure Agreement that

preserves the Board's privileges associated with the Valuations in the event of litigation and (ii) the execution of the Document Disclosure Agreement; now, therefore,


BE IT RESOLVED by the Trustees of the Cincinnati Southern Railway:

Section 1. That the Trustees of the Cincinnati Southern Railway hereby authorize the disclosure of all existing valuations of the Cincinnati Southern Railway prepared by BMO Capital Markets Corp. and the Brattle Group (the "Valuations"), subject to the execution of a Document Disclosure Agreement (as defined below).

Section 2. That the Trustees of the Cincinnati Southern Railway hereby authorize Paul V. Muething, President of the Board of Trustees of the Cincinnati Southern Railway, to execute an agreement with Cincinnati, New Orleans & Texas Pacific Railway and its affiliates agreeing that that the disclosure of the Valuations does not constitute a waiver of its privileges associated with the Valuations in the event of potential litigation (the "Document Disclosure Agreement").

Section 3. That a copy of this Resolution be spread upon the minutes of the Board.

Passed: December 19, 2022

  
Paul V. Muething, President, Board  
of Trustees of the Cincinnati  
Southern Railway

ATTEST:   
Kaitlyn Geiger, Clerk to the Board