

SPONSOR:

Fair/Brown

ORDINANCE NO. 16-11

AN ORDINANCE APPROVING A STANDARD SHORT LINE LEASE AGREEMENT AND AUTHORIZING LEGAL COUNSEL TO OFFER THE AGREEMENT AS A SETTLEMENT DOCUMENT, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSON, STATE OF OHIO, as follows:

Section One. Jackson City Council hereby approves a Standard Short-Line Railroad Lease Agreement, as set forth in Exhibit "A", attached hereto and made a part hereof. Council hereby authorizes the Standard Short-Line Railroad Lease Agreement, as presented in the form as set forth in Exhibit "A", to be presented to the City's legal counsel with authority to legal counsel to use the Agreement, as presented, in any negotiations as legal counsel may deem appropriate.

Section Two. This Ordinance is hereby declared to be an emergency Ordinance, necessary for the immediate preservation of the public peace, health or safety of the City of Jackson, in that it is necessary to approve this Proposed Standard Short-Line Railroad Lease Agreement as quickly as possible. Therefore, this Ordinance shall go into effect upon passage and approval by the Mayor, as provided in Ohio Revised Code Section 731.30.


Section Three. In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be o the permitted by law.

Section Four. In is hereby found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that the deliberations of this Council that resulted in such formal actions were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Date:

4/11/11


PRESIDENT OF COUNCIL


CLERK OF COUNCIL

Approved:

Date:

4-13-11


MAYOR

Exhibit "A"

STANDARD SHORT-LINE RAILROAD LEASE AGREEMENT

This Standard Short-Line Railroad Lease Agreement ("Lease") is made between the City of Jackson, Ohio ("the City"), a municipal corporation, and _____ ("the Railroad"), in Jackson County, Ohio on the date indicated below, in light of the following circumstances:

- A. The City owns short-line railroad assets acquired from the company now known as CSX:
- B. The City desires to lease to a private railroad company all its rights to operate on the short-line rail properties, and to interchange its rail services to other carriers; and
- C. The City and the Railroad desire to enter into a lease arrangement for the Railroad to operate on the short-line rail properties, and to interchange its rail services to other carriers.

Therefore, in consideration of their mutual promises and other valuable consideration, the parties agree as follows:

1. Definitions.

a. "Short Line Properties" shall mean railroad assets owned by the City consisting of real property as follows:

- (1) from Mile Post 32.75 near Firebrick, Ohio, to Mile Post 4.64 near Wellston, Ohio;
- (2) thence from Mile Post 4.64 near Wellston, Ohio, to Mile Post 0.00 at Hamden, Ohio;
- (3) thence from Mile Post 127.8 near Hamden, Ohio, to Mile Post 112.3 at West Junction, Ohio;

(4) thence from Mile Post 95.5 at West Junction, Ohio, to Mile Post 91.6 at RA Junction near Vauces Yard on the north-south main line of CSX;

(5) thence from Mile Post 127.71 near Hamden, Vinton County, Ohio, on the CSX Main Line, to Mile Post 136.71 near Red Diamond, Vinton County, Ohio.

together with all associated main and side tracks and devices appurtenant thereto, fixtures, right-of-way, track materials, wires, pipes, conduits, poles, guys, structures, buildings, signals and bridges as well as the rights assigned to the City by CSX or its predecessors in and to any leases, easements, licenses, agreements (including but not limited to sidetrack agreements) and privileges pertaining to the real property, EXCEPT FOR the assets described in Exhibit A, attached.

b. "Freight Service" shall mean all aspects of a rail freight business on the Short Line Properties, including but not limited to handling all rail freight traffic using the Short Line Properties, whether originating or terminating on these Short Line Properties, interchanging traffic with other rail carriers, storing rail cars, advertising for customers, scheduling traffic, billing, collecting accounts receivable, performing customer service, maintaining the Short Line Properties, and the like.

c. "Closing Date" shall mean the date when this Lease is signed by both the City and the Railroad.

d. "FRA" shall mean the Federal Railroad Administration.

2. Lease of Short Line Properties. The City leases the Short Line Properties to the Railroad for the term of this Lease, subject to the provisions of this Lease.

3. Term of Lease. This Lease shall commence on the Closing Date and it shall expire on the date five years after the Closing Date. The term may not be extended without authorization by a lawfully enacted ordinance of the City of Jackson.

4. Quarterly Rental Payments; Special Railroad Fund. The Railroad shall pay a quarterly Rental Payment to the City on January 15, April 15, July 15, and October 15 throughout the term of this Lease. Each Rental Payment shall be in the amount of \$_____ for the following quarter, plus ____ percent of all revenues received for storing rail cars on the Short Line Properties during the previous quarter. The first quarterly payment shall also include an amount prorated from the Closing Date to the date of the first payment. The City shall deposit all Rental Payments into a Special Railroad Fund, which may be expended only for purposes relating to the short line railroad, except that the Special Railroad Fund may not be expended for maintenance. Expenditures from the Special Railroad Fund may be used for purposes that may include among other things the costs of independent track and fixture inspectors, expert consultants, professional services, and long-term capital improvements to railroad assets.

5. Operations on the Short Line Properties. The Railroad shall at its expense throughout the term of this Lease operate a Freight Service. The Railroad shall at its expense provide rolling stock and engines, and labor sufficient to accommodate local shippers' regular and reasonably anticipated long-term needs for rail freight, on an ongoing basis. The Railroad shall provide rail freight service to Vauces Yard no fewer than two times each week. The Railroad's delay in performing Freight Service shall be excused in the event of an Act of God or other cause entirely beyond the control of the Railroad, but only to the extent that such event directly causes the delay. In such event, the Railroad shall promptly take action to minimize its delay in performance. In addition, the Railroad may if it chooses at its expense operate other activities on the Short Line Properties, such as passenger rail

service or storing empty railroad cars for fees. Storing railroad cars which contain hazardous waste is prohibited. The Railroad shall be responsible to assure that operations on the Short Line Properties shall comply with all laws, including FRA rules and environmental regulations.

6. Maintenance. The Railroad shall at its expense repair and maintain the Short Line Properties to ensure that the tracks, bridges, tunnels, road crossings, signal gear, and the like meet or exceed the standards prescribed in FRA regulations, including the FRA Track Safety Standards Compliance Manual, as the FRA regulations are presently constituted and as they may be modified from time to time in the future. The Railroad shall at its expense establish a track inspection and maintenance program, and shall educate inspectors to identify non-compliant track conditions, and shall make any repairs necessary to maintain the Short Line Properties to the appropriate standard, and shall keep accurate records of these actions. The Railroad shall at its expense maintain the Short Line Properties south of Hamden to an FRA Class 1 standard (for traffic at ten miles per hour), and shall at its expense maintain all other Short Line Properties to an FRA Class 2 standard (for traffic at twenty-five miles per hour). Track south of Jackson shall be maintained to an FRA Class 1 standard. The Railroad shall perform track inspections as frequently as the FRA requires. The Railroad shall at its sole expense immediately abate any violations of FRA standards noticed by FRA inspectors. The Railroad shall be responsible as part of its maintenance obligation to pay for ties, ballast, rails, spikes and associated track hardware necessary for maintenance. The Railroad shall be responsible to provide qualified inspectors, including inspectors for continuous welded rail.

7. FRA and PUCO Matters. The Railroad shall be responsible at its expense to assure that it remains in good standing with FRA as the operator of this short line railroad while it continues to be the lessee under this Lease. The City shall co-operate with the Railroad by executing applications, informational forms, and the like. The Railroad shall satisfy the maintenance and operational responsibilities as to the Short Line Properties which the FRA and the Ohio Public Utilities Commission require of railroad owners.

8. Insurance and Indemnification. The Railroad shall at its expense obtain from a reputable carrier and keep a policy of comprehensive liability insurance with coverage limits in the amounts of \$5,000,000 in the aggregate and per occurrence both for bodily injury (including death) and property damage. This policy of insurance shall name the City as an additional insured. The policy may not contain provisions for deductibles greater than \$25,000. The Railroad shall deliver to the City at its Notice Address at least annually a certificate showing this insurance coverage. The Railroad shall indemnify the City and hold it harmless from liability for any losses not fully insured against by the Railroad's policy or policies of insurance, arising from injury or death to persons or from damage to any property, including the Short Line Properties and buildings and equipment, which shall arise out of or be in any way connected with any act or omission of the Railroad or its agents, employees, or contractors.

9. Termination without Cause. The Railroad may at any time terminate this Lease without cause by delivering to the City at its Notice Address a

written notice to terminate, at least twelve months before the effective date of termination.

10. Events of Default. The following shall constitute events of default:
- a. The Railroad fails to comply with any contractual obligation under this Lease; or
 - b. The Railroad becomes insolvent; or
 - c. The Railroad fails to pay any tax when due, including real estate tax.

11. Termination with Cause. The City may terminate this Lease with immediate effect by delivering a notice of termination of this Lease to the Railroad at its Notice Address, upon the occurrence of either of the following:

- a. The Railroad fails to make a quarterly Rental Payment within ten days after it is due.
- b. Any other event of default occurs, and the Railroad fails to cure the default within sixty days after the City delivers to the Railroad written notice of default.

In the event this Lease is terminated for cause, the Railroad shall immediately turn the Short Line Properties over to the City, and the Railroad shall immediately vacate the Short Line Properties. Also, the Railroad waives in advance any and all objections to a replacement operator for the Short Line Properties in the event of a termination for cause, for purposes of proceedings in the Federal Railroad Administration. In the event the City chooses to forgo a notice of termination for cause, it does not thereby waive any future termination for cause.

12. Taxes. The Railroad shall pay real estate tax, if any, assessed upon the Short Line Properties. The Railroad shall also pay all taxes attributable to its own operations, including employee payroll taxes, excise tax, personal property tax, franchise or business activity tax, and the like.

13. Required Reports; Audits. The Railroad shall provide on each January 15, April 15, July 15, and October 15 the following reports pertaining to the preceding three months:

- a. Track inspection records, showing what inspections were performed and what deficiencies were found;
- b. Maintenance records, showing what deficiencies were corrected;
- c. Purchase orders, invoices, and cancelled checks or receipts pertaining to services contracted to third parties;
- d. Freight service reports, including data showing identity of shipper, identity of freight, and number of carloads;
- e. Car storage reports, including data showing how many empty cars were stored at what locations on the Short Line Properties; and
- f. Other reports or information concerning Freight Service which the City reasonably requests.

The City may at its expense arrange with the Railroad for an audit once each year by independent auditors of the Railroad's records showing information pertinent to the contents of the quarterly reports. The City may at its expense at any time upon reasonable notice to the Railroad arrange for inspection by an independent expert of the Short Line Properties. The

Railroad shall co-operate with the City's inspections, and shall allow access to all tracks by track inspection vehicles, including HiRail vehicles, used by the City's inspectors.

14. Improvements. The Railroad is prohibited from in any way pledging the credit of the City to any third parties, as for example by representing that the City will pay in order to induce a third party to ship material or to perform services. The Railroad is prohibited from disposing of any item of the Short Line Properties, whether or not considered surplus or salvage, without prior written approval of the City. The Railroad and the City shall negotiate the Railroad's participation in any capital improvement project on a case-by-case basis. The City shall exercise its best efforts to work together with the Railroad to obtain outside funding for the improvement of track conditions on the Short Line Properties.

15. Assignments. The Railroad is prohibited from assigning any part of the lessee's interest in this Lease without the prior written approval of the City. If the Railroad is a corporation, the transfer of any shares after the Closing Date shall constitute an assignment for purposes of this prohibition. If the Railroad is a limited liability company, the transfer of any membership interest after the Closing Date shall constitute an assignment for purposes of this prohibition. If such a transfer is caused solely by the death of a shareholder or member, then the City shall not withhold consent to the transfer.

16. Remedies for Default; Venue. In the event one of the parties breaches this Lease, the other party shall have whatever remedies are

available against the breaching party either at law or in equity. These remedies are in addition to any right to terminate the Lease. Civil actions concerning this Lease may be venued in the Common Pleas Court of Jackson County, Ohio. This Lease is an Ohio contract, and shall be interpreted and enforced according to the law of Ohio, except to the extent preempted by federal law.

17. Modification of Lease. This Lease may be modified only by a writing signed by the parties and authorized by lawfully enacted ordinance of the City of Jackson.

18. Obligation of Successors. Successors and assignees of each party shall be bound by this Lease to the same extent as the parties themselves are bound.

19. Notice Addresses. The City's Notice Address shall be Office of the Mayor, City of Jackson, Municipal Building, 145 Broadway Street, Jackson, Ohio 45640 or such other address of which the City notifies the Railroad. The Railroad's Notice Address shall be _____, or such other address of which the Railroad notifies the City.

20. Severability. In the event a court holds one or more provisions of this Lease to be invalid or unenforceable, the other provisions of this Lease shall remain valid and enforceable, and shall be interpreted as if the invalid or unenforceable provision or provisions were not in it.

21. Integrated Contract. This Lease constitutes the only agreement of the parties as to the Short-Line Properties and supersedes any prior understandings and any separate written or oral agreements.

22. Authority. Each party warrants to the other that it is fully authorized by its governing body to enter into this Lease. The City's authority shall be established by a lawfully enacted ordinance of the City of Jackson. The Railroad's authority shall be established by a duly adopted Resolution of its governing body.

To execute this Standard Short-line Railroad Lease Agreement, the parties sign below as indicated, on the _____ day of _____, 20__.

THE CITY OF JACKSON, OHIO

by _____
Mayor

[RAILROAD]

by _____

[this space intentionally left blank]

STATE OF OHIO

COUNTY OF JACKSON

SS:

BE IT REMEMBERED, that on this ____ day of _____, 20__, before me, the subscriber, a notary public in and for said county, personally came _____, Mayor of the City of Jackson, the Lessor in this Lease, and acknowledged the signing to be his and its voluntary act and deed.

IN TESTIMONY THEREOF, I have subscribed my name and affixed my seal on this day and year.

STATE OF OHIO

COUNTY OF JACKSON

SS:

BE IT REMEMBERED, that on this ____ day of _____, 20__, before me, the subscriber, a notary public in and for said county, personally came _____, _____, the Lessee in this Lease, and acknowledged the signing to be his and its voluntary act and deed.

IN TESTIMONY THEREOF, I have subscribed my name and affixed my seal on this day and year.
