



George V. Volnovich
Governor

OHIO DEPARTMENT OF TRANSPORTATION

25 South Front Street
P.O. Box 899
Columbus, Ohio 43216-0899

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TUSCARAWAS COUNTY
COMMISSIONERS OFFICE

October 31, 1991

Tuscarawas County Commissioners
125 East High Avenue
New Philadelphia, OH 44663

Dear Commissioners:

Thank you for your letter expressing concern over the way in which traffic on the Panhandle line is currently routed and the length of time the new railroad will be required to operate this line.

Enclosed is a draft copy of the Ohio Department of Transportation's (ODOT) Agreement with the Columbus and Ohio River Railroad (C&OR). We believe that it addresses many of the concerns raised in your letter, and underscores ODOT's moral and financial commitment to preserve the Panhandle should the C&OR default on its loan.

As you may recall from my previous letter, ODOT remains strongly committed to the preservation of the entire portion of the Panhandle rail line. We agree that maintaining the eastern portion of the line is extremely important to economic growth in the area and Ohio's future. Both ODOT and the C&OR are optimistic about the future of the east end. In particular, we are pleased about American Electric Power's (AEP) plans to move over 3,000 annual carloadings of eastern Ohio Coal to its Conesville facility. A major portion of that coal will originate on the east-end (Harrison County). In addition, a proposed tire burning facility and two landfills, when in operation, will fully utilize the eastern portion of the Panhandle line.

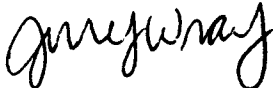
In response to the way in which traffic is routed on the line, we believe that a win-win situation exists between the C&OR and its customers. According to the C&OR, the routing of traffic is largely determined by the geographic distribution of traffic, economics of the movement, timeliness of the movement, and customer wishes. One of the hallmarks of shortline railroads is their ability to meet specific needs of their customers.

Recently, the C&OR met with officials from Penzoil and Coshocton Grain to discuss the routing of traffic. Penzoil has indicated that it would like its traffic to continue to go to Columbus where there is an adequate supply of cars and good transit time can be obtained. On the other hand, Coshocton Grain has asked the railroad to explore the possibility of moving its grain east via Mingo Junction to Conrail or Bowerston via the Wheeling & Lake Erie Railroad (W&LE). The C&OR has assured both Penzoil and Coshocton Grain that their traffic will be routed in such a manner.

Finally, in response to the three year requirement, ODOT has historically imposed a three year operating requirement on all railroad acquisitions for which we have provided financial assistance. As outlined in our Agreement, you will notice that ODOT has pledged its moral and financial commitment (through its right of first refusal) to preserve the Panhandle for future years to come.

Again, thank you for writing. I hope this information is helpful to you. Should you have any further questions, please contact Jeff G. Honefanger, Deputy Director of ODOT's Division of Rail at (614) 466-0137.

Respectfully,



Jerry Wray
Director

JW:sja

c: Representative Gregory L. DiDonato

AGREEMENT

BETWEEN

THE STATE OF OHIO

OHIO DEPARTMENT OF TRANSPORTATION

and

THE COLUMBUS & OHIO RIVER RAILROAD

October, 1991

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AGREEMENT

This Agreement, made this _____ day of _____, 1991 by and between the STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "ODOT", with principal offices at 25 South Front Street, Columbus, Ohio 43216-0899; and THE COLUMBUS & OHIO RIVER RAILROAD, hereinafter referred to as the "C&OR" with principal offices at 136 South Fifth Street, Coshocton, Ohio 43812.

WITNESSETH

WHEREAS, ODOT is committed to the preservation of rail infrastructure and jobs; and

WHEREAS, ODOT recognizes the importance of promoting the development of short line railroad companies throughout the State of Ohio; and

WHEREAS, the Consolidated Rail Corporation (hereinafter referred to as Conrail) has offered for sale its 160.93 mile rail lines located in Coshocton, Franklin, Harrison, Jefferson, Licking, Muskingum, and Tuscarawas Counties, known as the Panhandle line; and

WHEREAS, the C&OR plans to purchase from Conrail 160.93 miles of line including the mainline and sidetracks between Milepost 191.1 at Columbus, Ohio and Milepost 49.5 to a point east of Gould's Tunnel, in Jefferson County; and

WHEREAS, the present owner of the property, Conrail, has agreed to transfer the abovementioned rail line to the C&OR, including all real estate constituting the right-of-way, all track structures, communication equipment, signals and buildings thereon as agreed upon by Conrail and the C&OR; and

WHEREAS, the proposed acquisition project will preserve over 200 jobs at rail-served industries; assist in the development of four economic development projects currently underway; allow the AEP Conesville Power Plant to receive eastern Ohio Coal by rail; and preserve the last direct rail line between Columbus and Pittsburgh; and

WHEREAS, ODOT is willing to make available to the C&OR FOUR HUNDRED AND FIFTY THOUSAND DOLLARS (\$450,000) in state funds for the purchase of the Panhandle rail line.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto, with the intention of being bound, hereby agree as follows:

ARTICLE 1 - DEFINITIONS

As used in this Agreement.

- A) "Agreement" means the terms and conditions as agreed to by and between The Ohio Department of Transportation (ODOT) and The Columbus & Ohio River Railroad (C&OR) on _____, 1991 for the sole purpose of the C&OR receiving a \$450,000 grant to assist it in purchasing 160.93 miles of track from Conrail.

- B) "Rail Property" includes all in-place main and side track and devices appurtenant thereto including right-of-way, track materials, wires, pipes, conduits, poles, guys, structures, buildings, signals and bridges as well as all rights of Conrail, in and to any leases, easements, licenses, agreements, and privileges pertaining to the real property on the Conrail tracks to be purchased by the C&OR as defined in the Conrail - C&OR Purchase and Sale Agreement herein included as Exhibit "A".
- C) "Legislative Authority" means any county which granted the new railroad carrier a tax exemption under Section 5709.84 of the Ohio Revised Code.
- D) "ODOT Grant" means funds used under Section 5501.57 of the Ohio Revised Code to assist in the rehabilitation, construction, planning, relocation, or acquisition of rail transportation, rail property, or substitute service so long as the purpose of said grant is the continuation or institution of freight rail transportation in the State of Ohio.
- E) "Displaced Employee" includes any and all non-management Conrail employees who lose their present jobs due to the sale of the Panhandle rail line. Such a person must be a worker currently on Conrail's active roster.
- F) "Purchase and Sale Agreement" means the conveyance documents which lists the terms and conditions to which the seller

(Conrail) and the buyer (C&OR) have agreed and which is herein included as Exhibit "A".

- G) "Sole Owner" means that the title to the Rail Property mentioned in Paragraph (A) of this Agreement shall be solely in the name of the C&OR, except in the case where public ownership is necessary to obtain a federal grant from the Appalachian Regional Commission.
- H) "Panhandle Mainline" means the so called Weirton Secondary track situated between Milepost 157.8 at Newark, Ohio, and Milepost 49.5 at the east side of Gould's Tunnel and the so called C&N track between Milepost 191.0 at Columbus and Milepost 157.8 at Newark, containing a total of 141.50 route miles of railroad line.
- I) "Panhandle Branchline" means any and all side tracks including the Cadiz Running Track situated between Milepost 0.0 at Cadiz Junction to Milepost 12.8 at the Georgetown Mine; the Hebron Industrial Track between Milepost 133.0 at Hebron and Milepost 138.5 at Heath, Ohio; and the Trinway Secondary Track situated between Milepost 0.3 at its connection to the Panhandle main line, and Milepost 1.43 at Trinway, Ohio, containing a total of 19.43 route miles of railroad line.
- J) "Director" means the Director of the Ohio Department of Transportation.

ARTICLE 2 - THE RAIL PROPERTY

The property which is to be purchased by the C&OR is that on the Conrail Panhandle lines as described in the Purchase and Sale Agreement herein included as Exhibit "A" and is hereinafter referred to as the Rail Property.

ARTICLE 3 - PAYMENTS

A) ODOT agrees to provide to the C&OR the sum of FOUR HUNDRED AND FIFTY THOUSAND DOLLARS (\$450,000) in state funds for the purchase of the Rail Property.

B) The C&OR is solely responsible for the balance of purchase price from other sources and parties, including an Ohio Department of Development Enterprise Bond loan (\$5,500,000), an Ohio Department of Development 412 grant (\$450,000), a Community Development Block Grant (\$300,000), and an Appalachia Regional Commission grant (\$300,000). Further, the C&OR agrees to provide \$300,000 in C&OR equity funding for equipment purchase and other costs associated with the purchase and start-up.

ARTICLE 4 - INSPECTION AND AUDIT

The C&OR agrees that ODOT, or any of its duly authorized representatives, or any Legislative Authority which granted the railroad an exemption from taxation under Section 5709.84 of the Ohio Revised Code, shall, at all reasonable times and upon reasonable notice, be permitted to inspect said Rail Property, payrolls, and other data and records, financial, personnel and others, with regard to the sale, operation, and maintenance of the Rail Property for the purpose of audit and examination.

ARTICLE 5 - ANCILLARY REQUIREMENTS

A) This Agreement is without force and effect until such time as the C&OR and Conrail implement the Purchase and Sales Agreement for the acquisition of the Rail Property. Copies of the aforementioned agreement shall be provided to the Director of the Ohio Department of Transportation.

B) This Agreement is without force and effect until such time as the C&OR demonstrates to ODOT's satisfaction that the C&OR will be able to provide the balance of funds required to purchase the Property.

C) ODOT will not provide funding as pursuant to Article 3 until such time as the C&OR complies with the above conditions.

D) In the event that the C&OR fails to secure the execution of the Purchase and Sale Agreement and its agreements with other funding sources, within one-hundred and twenty (120) days from the date of this Agreement, this Agreement shall be rendered null and void.

ARTICLE 6 - CONTINGENCIES

It is expressly understood by the parties that none of the rights, duties and obligations described in this Agreement shall be binding on either part until:

- A. the expenditure of ODOT funds is certified by the Director of Administrative Services pursuant to Section 126.07, Revised Code.

- B. this Agreement is approved by the Office of Budget and Management, pursuant to Section 126.08, Revised Code.
- C. this Agreement, if necessary, is approved by the Controlling Board, pursuant to Section 127.16, Ohio Revised Code.

ARTICLE 7 - REQUIRED COUNTY FILINGS

The C&OR shall cause to be filed with the County Recorders Offices of Franklin, Licking, Muskingum, Coshocton, Tuscarawas, Harrison and Jefferson Counties as an attachment to the deed for the purchase of the Rail Property, a notice reciting that the property was acquired with State of Ohio assistance under this ODOT-C&OR Agreement and that its use and disposition are subject to the terms of this Agreement. The C&OR shall provide to ODOT, within thirty (30) days upon receiving final payment of funds from ODOT awarded under this Agreement, a copy of such notice.

ARTICLE 8 - RAIL MAINTENANCE AND REPAIR/TEN YEAR REQUIREMENT

All maintenance and repair of the Property shall be the sole responsibility of the C&OR except as otherwise provided by law. Further, the C&OR agrees to ensure that the "Panhandle Mainline" track and fixtures on the Rail Property are maintained at a level which equals or exceeds the Federal Railroad Administration's Class III standards, and that Panhandle Branchlines are maintained to Class I standards, for a ten (10) year period, as long as the C&OR, and/or its successor and/or assigns, remains as the owner or the designated operator of the Rail Property.

If during this ten (10) year period, ODOT determines that the Rail Property does not meet the abovementioned standards of quality, ODOT may notify the C&OR in writing and the C&OR shall perform, or cause to be performed, all work necessary to bring said Rail Property to the standard. ODOT shall be sole arbiter in determining if work to restore the Rail Property to the standard is sufficient.

ARTICLE 9 - SOLE OWNER

The parties agree that the C&OR shall be the sole owner of the Rail Property and shall assume all rights, privileges, obligations and responsibilities as specified in the decision of the Interstate Commerce Commission (ICC) and pursuant to the Purchase and Sale Agreement. Therefore, title to the property acquired from Conrail shall be solely in the name of the C&OR except that the C&OR may cede its right of ownership to a portion of the Rail Property in Coshocton County for the sole purpose of facilitating a grant from the Appalachian Regional Commission.

ARTICLE 10 - TAX LIABILITY

ODOT, by virtue of entering into this Agreement, does not assume any tax responsibility that arises due to the C&OR's purchase and operation of the Rail Property.

ARTICLE 11 - ASSIGNMENT

This Agreement and all the terms and conditions hereof shall inure in favor of and be binding upon the parties hereto and upon their respective successors and assigns. The C&OR shall not

assign this Agreement to any party without obtaining the prior written approval of ODOT's Director.

ARTICLE 12 - INSURANCE AND INDEMNIFICATION

This Agreement is without force and effect until such time that the C&OR demonstrates to the satisfaction of ODOT, that the C&OR has liability insurance coverage, i.e., bodily and property insurance coverage, in an amount not less than FIVE MILLION DOLLARS (\$5,000,000.00) per each individual claim in regard to the operation of rail service on the Rail Property. The C&OR shall provide to ODOT ten (10) days before the execution of this Agreement, a copy of such insurance coverage. ODOT's acceptance of operators insurance shall be in writing from ODOT's Director.

The C&OR agrees to indemnify and hold ODOT harmless from and against any loss, claim, damage, cause of action, destruction, liability, (including without limitation, strict or absolute liability in tort or by statute imposed) charge, cost or expense (including, without limitation, counsel fees to the extent remitted by law) caused by the C&OR's negligent, intentional, willful or wanton actions or inactions, including such actions or the failures to act of any contractors, subcontractors or employees hired by the C&OR under this Agreement.

In no event shall the C&OR or any of its employees, agents, contractors or subcontractors be considered agents or employees of ODOT. The C&OR agrees that none of its employees, agents, contractors or subcontractor shall hold themselves out as, or claim to be, agents, officers or employees of ODOT, and will not,

be reason of any relationship with ODOT, make any claim, demand or application to any agent, officer, or employee of the State including, but not limited to, rights and privileges concerning worker's compensation benefits, social security coverage or retirement membership or credit.

ARTICLE 13 - CESSATION OF SERVICE/CONTINGENT INTEREST/C&OR DEFAULT

- A) The C&OR shall not sell, transfer, or abandon any portion of the Rail Property without first offering in writing to sell to ODOT said portion of the Rail Property, or any part of it thereof, for the price of THIRTY-THOUSAND, FIVE-HUNDRED AND FIFTY-FIVE DOLLARS (\$30,555) per track mile, or for the net liquidation value per track mile of said portion of the Rail Property, whichever is the lesser. ODOT shall have 180 days from the receipt of the abovementioned C&OR written notice to implement ODOT's right to purchase. This part shall remain in effect for ten (10) years from the date of the closing of the C&OR acquisition on the Property.
- B) In the event that ODOT does not implement its right to purchase described in part "A" above, and the C&OR sells, transfers, or abandons any portion of the Rail Property (except Property in Coshocton County Transferred for the purpose of obtaining a grant from the Appalachian Regional Commission as stipulated in Article 9 - "Sole Owner", of this Agreement) then the C&OR shall make repayments to ODOT of ODOT's share of acquisition costs. In the two years after the C&OR takes over the operation of the Rail Property, the

C&OR's repayment to ODOT shall be \$5,000 per track mile. In years three and four, the C&OR's repayment to ODOT shall be reduced to \$4,500 per track mile. In years five and six, the C&OR's repayment to ODOT shall be \$4,000 per track mile. In years seven and eight the C&OR's repayment to Conrail shall be \$3,500 per track mile. In years nine and ten and any year thereafter the C&OR's repayment to ODOT shall be \$3,000 per track mile. Day one of year one will be the date that C&OR begins operating the Rail Property. Said C&OR repayments to ODOT shall be subordinate to any C&OR payments to the Ohio Department of Development, BancOhio, and Conrail that would result from the sale, transfer, or abandonment of any portion of the Rail Property. This part shall remain in effect for perpetuity. This part shall not apply in the event ODOT implements part "C" below.

- C) In the event that the C&OR defaults on any repayment of loans made by the Ohio Department of Development for the purpose of the C&OR acquisition of the Rail Property, ODOT shall have the right to acquire the Rail Property from the C&OR for the price equivalent to one year of C&OR debt service on the abovementioned Ohio Department of Development loans. Further, the C&OR shall use said ODOT acquisition payment to pay to the Ohio Department of Development the amount of the default. This part shall remain in effect for TEN (10) years from the date of the closing of the C&OR acquisition on the Rail Property. ODOT shall implement its rights under this part within 240 days from the date of the C&OR default.

D) In the event that ODOT exercises its rights under part "C" above and acquires the Rail Property, the C&OR shall have the right of first refusal to continue as ODOT's designated operator for the Rail Property. If ODOT acquires the Rail Property from the C&OR, the C&OR shall continue to operate the line for a period not less than NINETY (90) days from the date of ODOT's acquisition. Within this 90 day period ODOT shall make its best faith efforts to reach an agreement with the C&OR for the continued C&OR operation of rail service on the Rail Property. In its negotiations with the C&OR, ODOT shall offer to C&OR fair and reasonable terms that shall enable the C&OR to re-acquire the Rail Property through a C&OR repayment to ODOT of ODOT's acquisition costs if the C&OR can reasonably demonstrate that the conditions that caused the C&OR default have been remedied. Further, ODOT shall offer to C&OR fair and reasonable terms that permit the C&OR to retain profits above and beyond any on-going debts ODOT may incur as the owner of the Rail Property.

ARTICLE 14 - NOTICES

Unless otherwise specified herein, all notices, requests, consents, demands, or other communications desired or required to be given by one party to the other shall have been deemed to have been given only when received via United States mail, certified, return receipt requested, directed to the recipient as follows (or at such other addresses either of the parties hereto may designate by written notice to the other party hereto):

If to ODOT:

Director
Ohio Department of Transportation
25 South Front Street
Columbus, OH 43216-0899

If to the C&OR:

Chief Operating Officer/Chief Marketing Officer
The Columbus & Ohio River Railroad
136 South Fifth Street
Coshocton, OH 43812

ARTICLE 15 - REMEDIES

No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be, in addition to every other remedy given under the Agreement now or hereafter existing at law or in equity.

ARTICLE 16 - NO WAIVER

No delay or omission to exercise any right or option accruing to ODOT upon any breach by the C&OR shall impair any such right or option or shall be construed to be waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed necessary by ODOT.

Further, if any term, provision, covenant or condition contained in this Agreement is breached by either party and thereafter such breach is waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. A written record of such waiver shall be included in the records of this Agreement.

ARTICLE 17 - COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS REQUIREMENTS

The C&OR agrees to comply with applicable federal, State, and local laws, regulations in the conduct of this Agreement. In the event that any provision of this Agreement conflicts with any law or regulations, the law or regulation shall prevail.

ARTICLE 18 - SEVERABILITY

If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or enforceability of the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

ARTICLE 19 - STATE REQUIREMENTS

- A) It is expressly understood that the C&OR, as the sole owner of the Property as stipulated in Article 9 "Sole Owner", shall operate and maintain the Panhandle Line in its entirety for a period of at least three (3) years.
- B) As a condition to receiving state funds described in Article 3 - "Payments", the C&OR shall offer any Conrail Displaced Employee the first opportunity for employment for any non-management job on the C&OR or the Ohio Central Railroad (hereinafter referred to as the OCRR) that is created within two years of the closing of the sale of the Rail Property and which is created as a result of said sale. The C&OR shall provide to ODOT thirty (30) days before the execution of this

Agreement evidence that the C&OR has supplied Conrail a list of job openings, including but not limited to job description, skills required to perform the job, filing deadline, and pay range, (hereinafter referred to as Job Postings), needed on both the C&OR and OCRR a result of the C&OR purchase of the Rail Property. Further, within the abovementioned two-year period, the C&OR will provide to ODOT evidence that any non-management Job Postings for any additional C&OR or OCRR jobs resulting from the sale of the Rail Property have been circulated to Conrail. Within THIRTY (30) days of ODOT's receipt of the abovementioned evidence that start-up or additional C&OR/OCRR Job Postings have been sent to Conrail, ODOT will in writing notify the C&OR whether said evidence is acceptable to ODOT. In the event that ODOT does not accept C&OR's evidence in relation to start-up jobs, this Agreement shall be null and void. In the event that ODOT does not accept C&OR's evidence in relations to additional C&OR and OCRR jobs, then ODOT's commitments for future grant assistance to the C&OR shall be null and void.

- C) The C&OR shall provide to ODOT any and all annually audited financial statements showing the company's profit and loss situation, and any accompanying audits which were conducted. ODOT shall keep the abovementioned information strictly confidential.

ARTICLE 20 - ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. No terms shall be altered or otherwise amended except by an instrument in writing signed by each party hereto.

ARTICLE 21 - CAPTIONS

The article captions in this Agreement are for the convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or any part hereof and shall not be considered in any construction hereof.

ARTICLE 22 - CONSTRUCTION

This Agreement shall be construed, interpreted, and the right of all parties determined, in accordance with the laws of the State of Ohio.

ARTICLE 23 - EFFECTIVE DATE

This Agreement shall become effective on _____ which will be termed the "effective date".

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the day and year first above:

ATTEST:

By _____

Jerry Jacobson
President and Chief Executive
Officer
The Columbus & Ohio River
Railroad

Attest:

By _____

State of Ohio
Ohio Department of
Transportation
Jerry Wray, Director

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