

Sponsor Elliott/Smith

RESOLUTION NO. 18-12

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF JACKSON TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE STATE OF OHIO, OHIO RAIL DEVELOPMENT COMMISSION REGARDING OWNERSHIP AND CONTINUED OPERATION OF THE CITY OF JACKSON RAIL LINE AND DECLARING AN EMERGENCY.

WHEREAS, the City of Jackson and the Ohio Rail Development Commission have been in negotiation regarding obtaining a new operator of the Jackson Rail line upon the termination of the current lease with US Rail and the future ownership and the continued operation of the Jackson Rail Line; and

WHEREAS, it is necessary that a new operator for the City owned rail line be located and approved at the earliest possible date so as to ensure no disruption of service to customers on the City owned rail line and that this is necessary for the preservation of the public peace, health, safety or welfare of the City and this matter constitutes an emergency; now therefore,

BE IT RESOLVED by the legislative authority of the City of Jackson, Ohio:

SECTION 1. That the Mayor of the City of Jackson or his designated agent be and is hereby authorized execute, on behalf of the City of Jackson, the Memorandum of Understanding attached hereto.

SECTION 2. This Resolution is hereby declared to be an emergency Resolution necessary for the immediate preservation of the public peace, health or safety of the City of Jackson, Ohio. Therefore, this Resolution shall go into effect upon passage and approval by the Mayor, as provided in Ohio Revised Code Section 73.1.30.

SECTION 3. In the event this Resolution receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Resolution shall be deemed to have passed but with no emergency clause, and shall take effect at the earliest time permitted by law.

It is hereby found and determined that all formal actions of this Council relating to the adoption of this Resolution 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.

PASSED AND ADOPTED by the Legislative Authority of the Political Subdivision on this 27th day of December, 2012.

ATTEST:
Julia Brown
Clerk of the Legislative Authority

Rebecca B. Robinson
President of Council

Approved this 27th day of December, 2012.

Randy Heath
Mayor

Memorandum of Agreement

between the

**State of Ohio,
Ohio Rail Development Commission,**

and the

City of Jackson, Ohio,

for the

Ownership and Continued Operation of the City of Jackson Rail Line

PURPOSE OF THE AGREEMENT

The purpose of this Memorandum of Agreement ("Agreement") is to establish the roles and responsibilities of the Ohio Rail Development Commission ("ORDC"), and the City of Jackson ("City") (hereinafter known as the "Parties"). The Parties will jointly participate in the selection of a new operator for the Jackson Line and will consider a transfer of ownership of the Jackson Rail Line from the City to the ORDC.

BACKGROUND

WHEREAS, the City of Jackson owns approximately 70 miles of railroad lines in Jackson, Vinton, and Ross Counties ("Jackson Line"); and

WHEREAS, the current operator of the Jackson Rail Line has notified the City of the operator's intent to discontinue operations on the line as of April 30, 2014; and

WHEREAS, the ORDC under ORC § 4981.03 has the power to "develop, promote, and support safe, adequate and efficient rail service throughout the state;" and

WHEREAS, the ORDC under ORC § 4981.06 may "purchase or lease any portion of the rail property of a railroad corporation, and may purchase or lease any other property, facilities, or equipment considered necessary by the commission for the operation of rail services, and the maintenance of track and other rail property;"

NOW THEREFORE, the ORDC and the City do hereby mutually agree as follows:

ARTICLE I: GOALS OF THE AGREEMENT

The ORDC and the City will work together with a goal of securing a new operator for the Jackson Line to ensure continued and adequate rail service to shippers along the Jackson Line. The ORDC and the City shall also evaluate a transfer of ownership of the Jackson Line from the City to the ORDC to determine whether such a transfer benefits the shippers along the Jackson Line, the new operator, the City, the ORDC, and the general public good.

ARTICLE II: SCOPE OF WORK (Obligations, Responsibilities)**A. The ORDC agrees to:**

1. Work with the City and shippers along the Jackson Line to secure a new operator for the Jackson Line, including:
 - a. Developing a selection methodology;
 - b. Soliciting proposals from interested operators;
 - c. Evaluating potential operators;
 - d. Selecting a new operator;
 - e. Negotiating an operating agreement with the new operator.
2. Consider the potential benefits and risks of ORDC acquisition of the Jackson Line.
3. If staff so recommends, present acquisition of the Jackson Line by the ORDC to the Commissioners of the ORDC and to the State Controlling Board for approval, as required by law.
4. Present the negotiated operating agreement to the Commissioners of the ORDC for approval, if the ORDC is to be a signatory to the operating agreement.

B. The City agrees to:

1. Work with the ORDC and shippers along the Jackson Line to secure a new operator for the Jackson Line, including:
 - a. Developing a selection methodology;
 - b. Soliciting proposals from interested operators;
 - c. Evaluating potential operators;
 - d. Selecting a new operator;
 - e. Negotiating an operating agreement with the new operator.
2. Provide railroad carloading and financial data, as available, to prospective operators, to aid their evaluation of the line.
3. Maintain responsibility for the current operating agreement with the current operator to ensure continued rail service through the conclusion of said operating agreement.
4. Recover any past-due monies owed as of April 30, 2014, by the current operator, if any. If such funds are recovered and ORDC has taken ownership of the line, the City shall pay those monies to the ORDC, less any monies the City's Railroad Fund owes other funds of the City for railroad-related capital expenses, and less any attorney fees and litigation expenses associated with collecting such funds.
5. Present any potential transfer of the Jackson Line to the ORDC to City Council for approval, as may be required by law.
6. Present the negotiated operating agreement to City Council for approval, if the City is to be a signatory to the operating agreement, as may be required by law.

C. Both parties agree to:

1. Solicit and consider public input, especially from the shippers along the Jackson Line, during the proceedings outlined by this Agreement.

D. Responsibility of all Parties to Cooperate

All Parties to this Agreement understand that this effort will require coordination and cooperation for its success.

ARTICLE III: OTHER TERMS OF AGREEMENT

1. This Agreement and the authorizations granted in it shall be effective only after the execution and approval by all Parties to this Agreement.
2. This Agreement shall be in force and effect and shall remain in effect until the work contemplated in it has been completed to the mutual satisfaction of all Parties.
3. The Agreement may be modified by written consent of all of the Parties.
4. The Parties will be afforded an opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation.
5. The Parties will be afforded an opportunity to participate in all meetings and field reviews.
6. This Agreement shall be governed by the laws of the State of Ohio as to all matters including, but not limited to, its validity, construction, effect and performance. All actions regarding this Agreement shall be in a forum and venue in a court of competent subject matter jurisdiction in Franklin County, Ohio.

ARTICLE IV: KEY OFFICIALS AND CONTACTS

Designated points of contact for the coordination of this Agreement are as follows:

For the ORDC:

Matthew R. Dietrich
 Executive Director
 Ohio Rail Development Commission
 Mail Stop 3140
 1980 West Broad Street
 Columbus, Ohio 43223
 Phone: (614) 644-0306
 Email: matt.dietrich@dot.state.oh.us

For the City:

Honorable Randy Heath
Mayor
City of Jackson
Memorial Building
145 Broadway Street
Jackson, Ohio 45640
Phone: (740) 286-3224
Email: rheath@jacksonohio.us

ARTICLE V: TERMINATION

This Agreement will terminate upon thirty (30) days notice given by either Party to the other Party at any time.

In the absence of a notice of termination, this agreement shall terminate upon completion of the all activities listed in Article II.

ARTICLE VI: ASSIGNMENT

No transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by both Parties.

ARTICLE IX. EXECUTION IN COUNTERPARTS

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

ARTICLE X. ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire Agreement and understanding of the Parties with respect to the Project. No oral or other written provisions shall have any force or effect except those contained in a written amendment to this Agreement executed by the parties.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**OHIO RAIL DEVELOPMENT COMMISSION
STATE OF OHIO**

Matthew R. Dietrich Date
Executive Director

CITY OF JACKSON

Randy Heath Date
Mayor

