

THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY

An Operating Unit of the Ohio Central Railroad System

136 South Fifth Street
Coshocton, Ohio 43812
740-622-8092/Fax 740-623-4532

11 September 2001

File: Gahanna

Mr. James F. McGregor - Mayor
City of Gahanna
200 South Hamilton Road
Gahanna OH 43230

Dear Mayor McGregor;

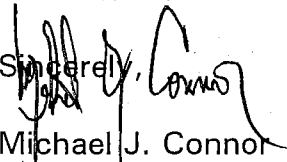
Following up on our meeting of August 15th concerning The Columbus & Ohio River Rail Road Company's interest in taking over the maintenance of the City of Gahanna-owned industrial railroad tracks in return for the exclusive right to provide railroad service on said tracks, I have drafted a Private Sidetrack Agreement (in duplicate) for your execution.

The proposed Agreement generally parallels the format of the existing Agreement between the City of Gahanna and CSXT. The primary change is in Paragraph 4.1 wherein The Columbus & Ohio River Rail Road Company commits to inspect and maintain the sidetrack at its own expense. The City of Gahanna has this obligation under the current Agreement.

Related to this is Paragraph 13 "Exclusivity" wherein there is a recitation of the plain intent of the Agreement.

In order to implement this Agreement it will be necessary for you to give CSXT the requisite 30 days' cancellation notice (per Article 10.5 of the existing Agreement) and execute the new Agreement to be effective from the cancellation date of the old Agreement.

We look forward to being a proactive factor in the development of Gahanna's industrial structure.

Sincerely,


Michael J. Connor
Vice President

Encl.: a.s.

cc.: Messrs Jacobson, Strawn, Pohlod, Fair, and Dulac - C&OR, Coshocton

EXHIBIT A

PRIVATE SIDETRACK AGREEMENT

This Private Sidetrack Agreement (hereinafter "Agreement"), made as of this _____ day of September 2001 is by and between The Columbus & Ohio River Rail Road Company (hereinafter "Railroad") an Ohio corporation, whose mailing address is 136 South 5th Street, Coshocton OH 43812, and the City of Gahanna (hereinafter "City of Gahanna") an Ohio Municipal corporation, whose mailing address is 200 South Hamilton Road, Gahanna OH 43230.

1. PURPOSE:

The purpose of this Agreement is to detail provisions of the maintenance and use of private sidetracks owned by the City of Gahanna for the receipt of rail freight traffic for the account of industries located in the City of Gahanna (hereinafter "Patrons"). The private sidetrack, which consists of the track structure (Rails, ties, and fastenings), ballast, grading, drainage structure, switches, turnouts, bumping posts, and other appurtenances (hereinafter the "Sidetrack") is located in the City of Gahanna, County of Franklin, State of Ohio, as shown in the attached plan dated 10 September 2001 and appended as Exhibit "A" to this Agreement.

2. OWNERSHIP:

2.1 The City of Gahanna owns the Sidetrack from the Point of Ownership between the Main Line of the Railroad and the end of each of the various tracks, all as more fully identified on Exhibit "A".

3. GOVERNMENTAL REQUIREMENT(S):

3.1 The City of Gahanna agrees, at its sole expense, to comply with all applicable laws and regulations and to obtain all necessary governmental permits, authorizations, orders and approvals (hereinafter collectively "Governmental Requirement(s)") necessary for the construction of the Sidetrack. The City of Gahanna agrees to assume the cost of Railroad's defense and to otherwise indemnify and hold Railroad harmless from the City of Gahanna's failure to have or to comply with the Government Requirement(s).

4. MAINTENANCE:

4.1 The Railroad will, at its own expense, inspect and maintain the sidetrack: (A) in accordance with the Federal Railroad Administration Track Safety Standards and (B) in a safe condition, consistent with the operating conditions and amount of use.

4.2 The City of Gahanna agrees to keep the Sidetrack free from temporary or permanent structures or other obstructions and/or excavations.

5. CLEARANCES:

5.1. The City of Gahanna agrees to provide and maintain (A) the lateral clearance requirements for at least eight feet six inches (8'6") from either side of the center line of the Sidetrack, and as increased 1" per one degree of central curvature; and (b) the vertical clearance requirements (at least twenty-two feet [22'] above the top of rail), both for the entire length of the Sidetrack. Any clearance not in compliance with the following is a "Close Clearance." Lateral and vertical clearances for power pole and lines must also comply with the National Electric Safety Code (hereinafter "NESC").

5.2 Notwithstanding the foregoing, the City of Gahanna may maintain close clearances if: (A) the City of Gahanna obtains a waiver from any conflicting state clearance requirements; and (B) plans for such close clearances have been provided to the Railroad and not rejected within sixty (60) days after date of receipt. The City of Gahanna agrees to install, maintain, and replace (at its sole expense) any warning signs or lighting or make any other adjustments regarding such close clearances as may be required by Railroad or Governmental Requirement(s).

5.3 Any gate installed by the City of Gahanna across the Sidetrack must provide an adequate clearance, as provided in Article 5.1. (above), and must be equipped with a double-end bar hasp so that the Railroad may install its own lock.

6. RIGHT-OF-WAY:

6.1 The City of Gahanna is responsible for obtaining all necessary right-of-way (through ownership, easement, permit, or otherwise) for the Sidetrack. The width of such right-of-way must be, at a minimum, sufficient to provide for the Sidetrack and clearances, cuts, fills, drainage ditches, walkways or roads, as determined by the Railroad.

6.2 The City of Gahanna shall not construct or allow the construction of any road (public or private), gate, tunnel, bridge, culvert, pit, gasoline, pipe or similar item on, over, under, or along the Sidetrack or right-of-way without the written permission of the Railroad. If Railroad's permission is granted, the City of Gahanna understands that a separate agreement might be necessary and that the City of Gahanna shall be responsible for all the construction, maintenance, repair, and removal costs of the foregoing items and ancillary structures, unless otherwise stated therein.

6.3 The City of Gahanna shall not block or permit the blockage of the sight view area of any road crossing over the Sidetrack.

7. RAIL SERVICE:

7.1 Railroad agrees, pursuant to the provisions of this Agreement, its tariffs, circulars, rules, and rail transportation contracts, to operate over the Sidetrack in the delivery, placement, and removal of railcars consigned to industries on the Sidetrack.

7.2 The City of Gahanna acknowledges that in consideration of the obligations accepted by the Columbus & Ohio River Railroad Company that the City of Gahanna will not permit the use of the Sidetrack by any other railroad nor any other third party without the written consent of The Columbus & Ohio River Rail Road Company.

7.3 Railroad shall have been deemed to have delivered any railcar consigned to or ordered by patrons on the Sidetrack when such railcar has been placed on the Sidetrack, so as to allow access by the patron, and Railroad's locomotive has uncoupled from the railcar. At that time, Railroad shall be relieved from its obligation as a common or contract carrier or as a bailee, and possession of the railcar and its contents transferred to the patron. Similarly, any obligation of Railroad as a common or contract carrier or as a bailee shall not begin until it has coupled its locomotive to the loaded railcar and departed the Sidetrack.

7.4 Each patron on the Sidetrack is responsible for all railcars and contents therein while in patron's possession and assumes all responsibility for payment of all damage to any railcar and its contents that may occur during that time, even if caused by third parties.

7.5 If Railroad is unable to deliver a railcar on the Sidetrack for loading or unloading due to the acts of a patron or any third party, then such railcar will be considered as constructively placed or demurrage purposes at the time of the attempted delivery.

7.6 Railroad recognizes that the City of Gahanna is not currently a user of the Sidetrack. The City of Gahanna will provide Railroad a list of current and future users of the Sidetrack so that Railroad may enter into an appropriate Sidetrack User Agreement with each.

8. HAZARDOUS MATERIALS:

8.1 The following provisions apply when the Sidetrack is used for the delivery or tender of any dangerous, flammable, explosive, or hazardous commodity (hereinafter "Hazardous Materials"), as determined by the U. S. Department of Transportation under the Hazardous Materials Transportation Act (49 USC para. 1801, et seq.) and the Hazardous Materials Regulations (40 CFR Parts 170-179) issued thereunder, as amended from time to time.

8.2 No Hazardous Material shall be placed (A) on the Sidetrack (except railcar shipments); (B) within the clearance requirements established herein; or (C) within one hundred (100) feet of Railroad's connecting main line.

8.3 The City of Gahanna, to the extent it is a shipper or receiver on the Sidetrack, will comply with all recommended practices of the American association of Railroads and all Governmental Requirement(s) concerning the loading, unloading, possession, transfer, and/or storage of Hazardous Materials, including but not limited to the installation and use of pollution abatement and control structures and other equipment that is prudent and such practices and/or Governmental Requirement(s).

8.4 In the event of Hazardous Material leak, spill, or release, to the extent it is a shipper or receiver on the Sidetrack, the City of Gahanna Industry shall immediately notify the appropriate Governmental Response Center and the Railroad's Dispatcher and, at its sole expense, take all appropriate steps to clean, neutralize, and remove the spill.

9. ALTERATIONS:

9.1 The City of Gahanna shall supply Railroad with construction plans for any addition, deletion, or modification to the Sidetrack, and obtain Railroad's written consent (which will not be unreasonably withheld) prior to making any such change.

10. SUSPENSION AND TERMINATION:

10.1 Railroad may temporarily suspend its operations over the Sidetrack if, in its sole opinion, the condition of the Sidetrack is unsafe or if such operations would interfere with its common carrier duties. Railroad may impose the suspension orally, but shall provide a written notice to the City of Gahanna regarding such suspension.

10.2 Either party may terminate this Agreement upon default by the other party of any of the terms of this Agreement.

11. LIABILITY AND INSURANCE:

11.1 Except as otherwise provided herein, any and all damages, claims, demands, causes of action, suits, expenses (including attorney's fees and costs), judgments and interest whosoever (hereinafter collectively "Losses") in connection with injury to or death of any person or persons whosoever, (including employees, invitees and agents of the parties hereto) or loss of or damage to any property whatsoever arising out of or resulting directly or indirectly from the construction, maintenance, repair, use, alteration, operation, or removal of the Sidetrack shall be divided between the parties as follows:

(A) Each party shall indemnify and hold the other party harmless for all Losses arising from the indemnifying party's will or gross negligence, its sole negligence, and/or its joint or concurring negligence with a third party.

(B) The parties agree to jointly defend and bear equally between them all Losses arising from their joint or concurring negligence.

(C) Notwithstanding the foregoing, and irrespective of the sole, joint or concurring negligence of Railroad, the City of Gahanna acknowledges that it is solely responsible for and agrees to indemnify the Railroad harmless from all Losses arising from: (i) the construction, alteration, or removal of the Sidetrack by the City of Gahanna; (ii) the presence of Close Clearances on the Sidetrack; or (iii) the explosion, spillage and /or presence of Hazardous Materials on its properties, facility or on the Sidetrack, but only when such Losses would not have occurred but for the dangerous nature of the Hazardous Materials.

(D) The City of Gahanna, at its sole cost and expense, must procure and maintain in effect during the continuance of this Agreement, a policy of Commercial General Liability Insurance insuring the liability assumed or contracted under this Agreement with a limit of not less than \$3,000,000 Combined Single Limit for personal injury and property damage per occurrence.

(E) Railroad will name the City of Gahanna as an "additional insured" in a similar Commercial General Liability Agreement covering liability of the City of Gahanna arising

out of the Railroad's exclusive maintenance and operation of the Sidetrack.

12. ASSIGNMENT:

12.1 This Agreement may not be assigned without the written consent of either party, but shall be assumed by their successors through merger or acquisition. The City of Gahanna may sell or assign the Sidetrack and right-of-way upon notice to the Railroad, but such transaction shall not affect this Agreement or carry any rights regarding any rail service described in this Agreement.

13. EXCLUSIVITY:

13.1 It is the plain intent of the contracting parties that in return for the Railroad taking responsibility for the continuing maintenance of the Sidetrack it will be given the sole and exclusive right to serve patrons on the Sidetrack. Effective with this Agreement the City of Gahanna will have taken such actions as are required to cancel the rights of any other railroad to operate on the Sidetrack.

14. NOTICES:

All notices shall be in writing and sent to the addresses below noted:

If to the City of Gahanna:

City of Gahanna
200 South Hamilton Road
Gahanna OH 43230
Attn: Mayor

If to the Railroad:

The Columbus & Ohio River Rail Road Company
136 South Fifth Street
Coshocton OH 43812
Attn: Vice-President

15. MISCELLANEOUS:

15.1 Each provision of this Agreement is severable from the other provisions. If any such provision is ruled to be void or unenforceable, the remaining provisions will continue in full force and effect.

15.2 Other documents may also describe a portion of the rail service and other provisions of this Agreement. Should any conflict arise between such other documents and this Agreement, Railroad may designate which provision will govern.

15.3 The selected captions of this Agreement are for the convenience of the parties and are not substantive in nature. All words contained in this Agreement shall be construed in accordance with their customary usage in the railroad industry.

15.4 The failure of either party to enforce any provision of this Agreement or to prosecute any default will not be considered a waiver of that provision or bar to prosecution of that default unless so indicated in writing.

16. ENTIRE UNDERSTANDING:

16.1 This Agreement constitutes the entire understanding of the parties, is to be construed under the laws of the State of Ohio, may not be modified without the written consent of both parties, and has been executed by their duly authorized officers.

CITY OF GAHANNA, OHIO

THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY

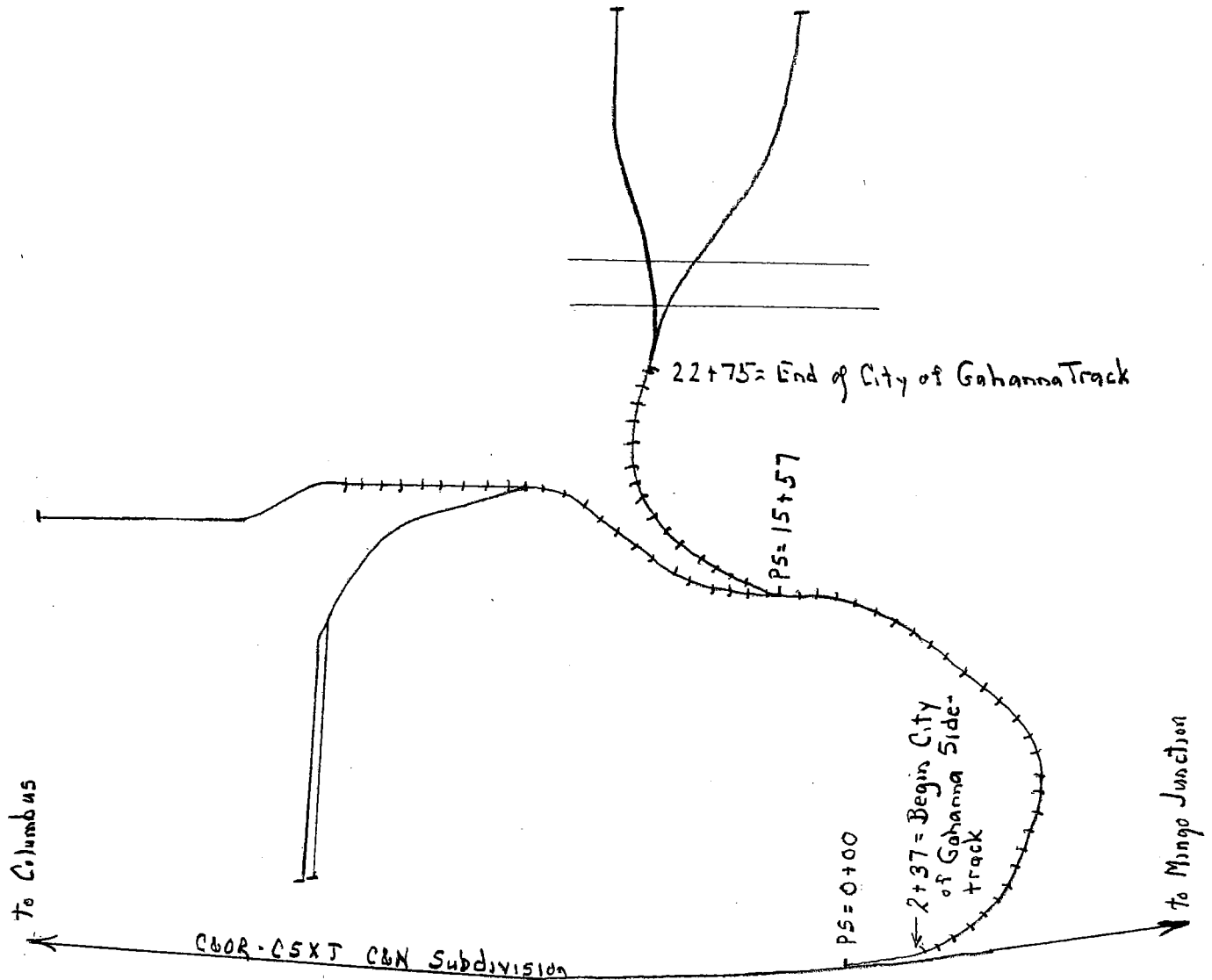
By: _____

By: _____

Its: _____

Its: _____

- 6 (End) -



THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY
An Operating Affiliate of the Ohio Central Railroad System
PLAN OF TRACKS OWNED BY THE CITY OF GAHANNA
TO BE MAINTAINED AND EXCLUSIVELY OPERATED
BY

THE COLUMBUS & OHIO RIVER RAIL ROAD COMPANY
No Scale **10 September 2001**

----- Tracks Owned by the City of Gahanna
 _____ Tracks Owned by Others