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A Better Value for the Citizens of Cincinnati

**By: Paul Muething, President, Board of Trustees
(January 26, 2023)**

I am honored to serve as President of the Cincinnati Southern Railway (CSR) Board of Trustees with Paul Sylvester (a 39-year Board member), Charlie Luken and Mark Mallory (former Cincinnati Mayors) and Amy Murray (a former Cincinnati City Councilmember). We proudly serve as volunteers in this role.

A century-and-a-half ago, Cincinnati Southern Railway was a hot topic for discussion in Columbus and Cincinnati as the Ohio Legislature permitted Cincinnati to develop and run a railroad from Cincinnati to Chattanooga. Today, it is a hot topic again, and for good reason. With the Ohio Legislature's help, we can ensure that the railroad can provide a better value for the citizens of Cincinnati, only under certain conditions and only if Cincinnati voters agree to sell it.

That's precisely what we are recommending to Cincinnati voters. Here's some background.

The CSR Board of Trustees owns but doesn't operate the railroad. In 1881, CSR leased its operation and renewed leases with the same operator through 2026. That operator today is a wholly owned subsidiary of Norfolk Southern (NS).

Since 1987, the last time the lease was renewed, CSR has received more than \$609 million in lease payments from NS and transferred a similar amount to the City of Cincinnati for infrastructure improvements. The current lease term expires in 2026, which could extend through 2066.

In late 2020, we initiated negotiations on a new lease. Later in 2021, NS expressed interest in buying the railway. They made it clear that they would pay substantially more to own the railroad than to lease it.

After long and difficult negotiations, we agreed to a lump sum purchase price of \$1.6 billion. We executed a sale agreement on November 21, 2022, which imposed numerous conditions for the sale to occur.

Expert analysis had verified that the railroad would provide a substantially better value to the citizens of Cincinnati as a professionally managed fund of financial assets than under a new lease. Earnings transferred to the City from such a fund will likely more than double what the City might receive from a future lease. Consider:

- In 2024, based on the current lease which runs through 2026, the annual lease payment will be \$25.5 million.
- In 2024, earnings from a \$1.6 billion trust fund are projected to be \$57.1 million after reserving approximately \$30 million to grow the trust as a hedge against future inflation.
- In 2066, if we had agreed to a new lease with NS starting in 2026 at the rent then in effect, and that rent grew 2% annually, it would be \$58.6 million.
- In 2066, projected earnings from the trust fund started in 2024 with \$1.6 billion would be \$131.2 million. **That's 123.8% more than that year's hypothetical lease payment.**

With this information, and advice from outside experts, we concluded that selling the railroad provided a better value for the citizens of Cincinnati.

Importantly, there are certain conditions which are fundamental to our recommendation to sell the railroad and are included in the sale agreement with NS. We've asked the Ohio Legislature to amend the founding legislation to:

- Enable CSR to create the "trust fund" in which we must place the railway sale proceeds. Currently, sale proceeds can only be used to retire City bonded debt.
- Ensure that trust fund earnings could only be used to "rehabilitate, modernize, or replace existing infrastructure" and could never be used for the construction of new infrastructure improvements.
- Require CSR to establish investment policies and engage financial experts to advise us on the growth management of the trust fund.
- Require CSR to invest and reinvest the trust fund responsibly in accordance with another Ohio law (ORC Section 5809.02), referred to as the "prudent investor standard of care" law.
- Establish that CSR can, only in extreme circumstances (if there are "not sufficient earnings" defined as "not less than the amount approved" by the voters), use trust fund principal make a minimum annual distribution to the City in order to avoid disruption of City spending on existing infrastructure improvements.

Changes to the founding legislation will enable Cincinnati to better address its significant existing infrastructure needs. They will also prevent potentially imprudent spending of CSR investment earnings on the infrastructure project of the moment, of the day or, even, of the next decade.

We look forward to working with our legislators in Columbus, and the Mayor, Members of City Council and the citizens of Cincinnati, to dramatically increase the value of this asset to Cincinnati.

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Paul Muething has been President of the Cincinnati Southern Railway Board of Trustees since 2020. He is currently Chairman of the Board of KMK Law based in Cincinnati.