

RHODE ISLAND PUBLIC RAIL CORPORATION BOARD OF DIRECTORS

SPECIAL BOARD MEETING, MARCH 18, 2010

MINUTES OF MEETING

The RI Public Rail Corporation (“Rail Corp” or the “Corporation”) held a duly posted special board meeting on Thursday, March 18, 2010 at 11:00 a.m. at the RI Department of Transportation (“DOT”), Two Capitol Hill, Director’s Conference Room 210, Providence, RI.

This special board meeting was requested by the Rail Corp’s Executive Director, William Alves on March 1, 2010 as permitted by Article IV, Section 3 pursuant to Rail Corp’s by-laws; and duly posted with the Secretary of State forty-eight (48) hours in advance and physically posted at DOT and at the State House forty-eight (48) hours in advance of this meeting.

A quorum being present, the meeting was called to order at 11:03 a.m. by Chairman, Michael P. Lewis.

In attendance were:

Board Members:

Director, Rhode Island Department of Transportation (“DOT”), Michael P. Lewis, Chairman
Director, Rhode Island Department of Administration (“DOA”), Rosemary Booth Gallogly
Chairperson, Rhode Island Public Transit Authority (“RIPTA”), John Rupp, Esq.

Other representatives present on DOT or Rail Corp’s behalf:

William Alves (Executive Director, Rail Corp)
Robert A. Shawver, P.E. (Treasurer, Rail Corp)
Lisa M. Martinelli, Esq. (Secretary, Rail Corp)
James Eng (South County Commuter Rail Project Manager, DOT)
Janice M. Ward, Esq. (Deputy Chief Legal Counsel, DOT)
Michael M. Mitchell, Esq. (Deputy Chief Legal Counsel, DOA)
Melanie Allen (Legal Assistant, DOT)

Other individuals present:

Meredith E. Pickering (Legislative Fiscal Analyst, RI Senate Fiscal Office)

The duly posted agenda for this meeting was as follows:

1. Approval of Minutes of Special Board Meeting Held on August 31, 2009;
2. Discussion of South County Commuter Rail Agreements;
3. Consideration of and Action upon the South County Commuter Rail Agreements;
4. Discussion of 2010 Proposed Legislation
5. Consideration of and Action upon Proposed 2010 Legislation
6. Adjournment

The first order of business was to approve the minutes of the August 31, 2009 meeting. Ms. Booth Gallogly abstained from voting.

Upon motion made by Chairman Lewis and duly seconded by Mr. Rupp, it was unanimously

- **VOTED:** To approve the minutes of the August 31, 2009 meeting.

The second order of business was to discuss the South County Commuter Rail Agreements for the expansion of commuter rail service south of Providence. By way of background, Chairman Lewis stated that RIDOT has worked for several years with Amtrak to extend commuter rail service in Rhode Island. Chairman Lewis further stated that construction of the Warwick Intermodal Station is progressing on schedule. Chairman Lewis provided an update on the status of the Wickford Junction Station, including the RI Department of Transportation's construction schedule as it pertains to building the garage and station at Wickford Junction with a design/build contractor.

Chairman Lewis provided additional background on the existing agreements with Amtrak, including the Northeast Corridor Access Agreement, dated August 25, 2008, which allows the State access to Amtrak's railroad right of way for operation of the South County Commuter Rail and allows construction of the stations, and the Assignment and Assumption Agreement between Rail Corp and RIDOT, which assigned the Access Agreement to Rail Corp.

Chairman Lewis informed the Board that the three South County Commuter Rail Agreements before them today consisted of the following:

- Amendment One to the Assignment and Assumption Agreement This amendment includes the Wickford Junction Agreements in the assignment;
- Delegation Agreement This agreement delegates back all of the rights, duties and obligations under the Access Agreement to RIDOT, except for the required insurance, indemnification of Amtrak, and duties related to the Warwick Intermodal;
- Master Force Account Agreement This agreement sets forth the terms and conditions for the construction of improvements on Amtrak's rail right of way at Wickford Station between Amtrak, Rail Corp and RIDOT.

Chairman Lewis motioned to authorize Rail Corp's Executive Director to execute the aforementioned agreements. This motion was duly seconded by Mr. Rupp; it was unanimously

- **VOTED:** To approve Amendment One to the Assignment and Assumption Agreement, the Delegation Agreement, and the Master Force Account Agreement.

The third order of business was discussion to support proposed 2010 legislation affecting Rail Corp. Chairman Lewis provided background concerning the indemnity issues raised by Amtrak

pertaining to the construction or reconstruction of bridges crossing Amtrak's railroad right-of-way, and specifically referenced the Conant Street Bridge in Pawtucket. Mr. Rupp inquired of the circumstances by which Rail Corp would be called upon to indemnify Amtrak. Chairman Lewis responded that it would likely be a circumstance in which Amtrak was found liable for negligence that would not have occurred but for the existence of the bridge. Mr. Rupp inquired also whether or not potential claims by the construction contractor would adversely affect the force account work. Chairman Lewis responded that it would likely not affect schedule as the work is mutually exclusive.

Chairman Lewis informed the Board further that Amtrak would accept the same insurance and self insured retention secured by the already existing South County Commuter Rail Letter of Credit to satisfy the bridge indemnification. Chairman Lewis cautioned, however, that Amtrak had not yet conveyed its support for any proposed legislation.

Upon motion by Mr. Rupp and duly seconded by, Ms. Booth Gallogly, it was unanimously

- **VOTED:** To support legislation in the 2010 Legislative Session that would serve to amend the Corporation's enabling statute in order to obtain the requisite real estate interest necessary to construct or reconstruct bridges on or above Amtrak's railroad right of way and to support legislation to amend the already existing South County Commuter Rail Letter of Credit to include these bridge indemnity obligations.

Chairman Lewis inquired whether the Board Members had the opportunity to review the proposed Board Resolutions and whether there was a request to recite the Resolutions. Having received indications that the proposed Resolutions were reviewed, Chairman Lewis moved to approve the proposed Board Resolutions, which was duly seconded by Mr. Rupp. It was unanimously

- **VOTED:** To approve the proposed Board Resolutions approving the execution of the South County Commuter Rail Agreements and the proposed Board Resolutions to support the 2010 legislation and amend the Letter of Credit. (Copies of approved Board Resolutions appended hereto.)

Chairman Lewis opened the meeting to public comment, none was received. There being no further business to come before the Board, a motion was made by Chairman Lewis and duly seconded by Ms. Booth Gallogly, to adjourn the meeting, The motion was passed unanimously and the meeting adjourned at 11:40 am.

**RESOLUTIONS AUTHORIZING EXECUTION OF AMENDMENT ONE TO
ASSIGNMENT AND ASSUMPTION AGREEMENT, MASTER FORCE ACCOUNT
AGREEMENT AND DELEGATION AGREEMENT
MARCH 18, 2010**

WHEREAS, National Railroad Passenger Corporation (Amtrak) and the Rhode Island Department of Transportation (RIDOT), acting on behalf of the State of Rhode Island and Providence Plantations entered into that certain Agreement for Access to Northeast Corridor Properties for Operation of South County Commuter Rail Passenger Service dated as of August, 25, 2008 (the "Access Agreement") for the purpose of running commuter rail service from Providence to the Warwick Intermodal Station at T.F. Green Airport in Warwick, RI and Wickford Junction in North Kingstown, R.I. (the "South County Commuter Service" hereinafter, SCCS);

WHEREAS, RIDOT assigned, transferred, granted, conveyed and delivered to Rhode Island Public Rail Corporation (the "Corporation") all of RIDOT's rights, title, obligations and interest in the Access Agreement by way of the execution of the Assignment and Assumption Agreement dated as of August 14, 2008 (the Assignment Agreement); and

WHEREAS, pursuant to Article V, Section 28 of the Access Agreement, following the Assignment, the Corporation is permitted to delegate certain of its rights, duties and obligations under the Access Agreement to RIDOT; and

WHEREAS, upon delegation from the Corporation, RIDOT will be responsible for constructing, owning and maintaining the Wickford Junction Station, and is also responsible for interfacing with Amtrak to build other rail-related improvements necessary for the construction of the Wickford Junction Station (the Delegation Agreement); and

WHEREAS, the Corporation, RIDOT, and Amtrak intend to enter into agreements for the construction and operation of the Wickford Junction Station (the Wickford Agreements), including but not limited to an agreement for construction of track, station platform, and related infrastructure improvements and for services furnished by Amtrak including but not limited to labor, materials and equipment, (the Master Force Account Agreement); and

WHEREAS, there may be certain restrictions on RIDOT's ability to perform its obligations under the Master Force Account Agreement; and

WHEREAS, No such restriction precludes the Corporation from performing the obligations of RIDOT under the Master Force Account Agreement and discharging its obligations thereunder; and

WHEREAS, The Assignment Agreement does not specifically include the Wickford Agreements and should be amended in order to permit the construction; maintenance; repair, and operation of the Wickford Junction Station upon Amtrak property, including indemnification by the Corporation of Amtrak for all liability created thereby.

NOW, THEREFORE, BE IT

RESOLVED, That the Executive Director of the Corporation is hereby authorized to execute that certain AMENDMENT ONE TO ASSIGNMENT AND ASSUMPTION AGREEMENT; and be it further

RESOLVED, That the Executive Director of the Corporation is hereby authorized to execute and deliver that certain MASTER FORCE ACCOUNT AGREEMENT in connection with the construction of railroad and other improvements at the Wickford Junction Station site, in furtherance of SCCS; and be it further

RESOLVED, That the Executive Director of the Corporation is hereby authorized to execute that certain DELEGATION AGREEMENT; and be it further

RESOLVED: That the officers of the Corporation be, and each of them hereby is, authorized to do and perform all such acts and things, and to execute and deliver in the name the Corporation all such documents, certificates, conveyances, transfers, instruments, agreements and assurances, and any documents relating thereto in connection with the foregoing resolutions, and to take all such other actions as each may deem necessary or advisable to carry out the intent of the foregoing resolutions (the execution and delivery thereof and the performance of any and all actions by such officer shall constitute conclusive evidence of such determination); and be it further

RESOLVED: That any and all actions heretofore taken by any officer of the Corporation and any person or persons designated and authorized to act by any such officer of the Corporation which acts would have been authorized by the foregoing resolutions except that such acts were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as acts of the Corporation.

**RESOLUTIONS AUTHORIZING SUPPORT OF LEGISLATION IN THE 2010
SESSION OF THE RHODE ISLAND GENERAL ASSEMBLY
MARCH 18, 2010**

WHEREAS, there are approximately seventy two (72) bridges in the State of Rhode Island on or above the rail line right of way owned by the National Railroad Passenger Corporation (Amtrak); and

WHEREAS, the Rhode Island Department of Transportation (RIDOT) is responsible for maintaining and constructing highways, roads, freeways, bridges and incidental structures as established by Chapter 8 of Title 24, Chapter 5 of Title 37 and Chapter 13 of Title 42 of the Rhode Island General Laws; and

WHEREAS, Amtrak requires that the Department provide certain risk management and financial assurances and indemnification covenants and obligations as a condition precedent to certain real estate agreements between the Department and Amtrak, including but not limited to permanent easements or other interests in real estate necessary to construct or reconstruct roads or bridges on or above Amtrak's railroad right-of-way (collectively the "Bridge Obligations"); and

WHEREAS, the Department may be constitutionally prohibited from providing the Bridge Obligations, and the Department therefore has designated the Corporation as the responsible party for providing Amtrak with the Bridge Obligations on behalf of the Department; and

WHEREAS, pursuant to Section 42-64.2 of the General Laws of Rhode Island, the Corporation is authorized, created, and established for the purpose of enhancing and preserving the viability of commuter transit and railroad freight operations in Rhode Island and has the power to make contracts and guarantees and incur liabilities, borrow money at any rates of interest that it may determine, and to make and execute any other contracts and instruments necessary or convenient in the exercise of the powers, purposes and functions of the Act; and

WHEREAS, the Corporation seeks to support legislation to amend Section 42-64.2-5 of the General Laws of Rhode Island to enable the Corporation to indemnify Amtrak for the Bridge Obligations; and

WHEREAS, in connection with the South County Commuter Rail Service Agreements, the Department is required to secure and maintain a liability insurance policy covering the liability of the State and Amtrak for property damage, personal injury, bodily injury and death arising out of the South County Commuter Rail Service, subject to a self-insured retention satisfied by an evergreen Letter of Credit; and

WHEREAS, the Corporation currently maintains an evergreen Letter of Credit to satisfy the self insured retention for claims arising out of the South County Commuter Rail Service; and

WHEREAS, Amtrak has agreed to accept the same evergreen Letter of Credit established for claims arising out of the South County Commuter Rail Service to satisfy the Bridge Obligations; and

WHEREAS, the Corporation seeks to support legislation authorizing it to amend and maintain the already existing South County Commuter Rail Service evergreen Letter of Credit to include the Bridge Obligations;

NOW, THEREFORE, BE IT

RESOLVED, That the Corporation shall support legislation in the 2010 Session of the Rhode Island General Assembly that will amend the Corporation's powers under Section 42-64.2-5 of the General Laws of Rhode Island to enable Rail Corp to indemnify Amtrak in order to obtain the requisite real estate interests necessary to construct or reconstruct bridges on or above Amtrak's rail line or right-of way; and be it further

RESOLVED, That the Corporation shall support legislation in the 2010 Session of the Rhode Island General Assembly that will allow for an amendment to the already existing South County Commuter Rail Service evergreen Letter of Credit to include claims arising from the Bridge Obligations.