

RHODE ISLAND PUBLIC RAIL CORPORATION
BOARD OF DIRECTORS

SPECIAL MEETING, AUGUST 12, 2010

MINUTES OF MEETING

The RI Public Rail Corporation (“Rail Corp” or the “Corporation”) held a duly posted special board meeting on Thursday, August 12, 2010 at 3:00 p.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, *ex officio* Robert V. Farley on August 6, 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 3:05 p.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:

Robert V. Farley (Executive Director, *ex officio*, Rail Corp)
Philip Kydd (Deputy Director, DOT)
Lisa M. Martinelli, Esq. (Secretary, Rail Corp)
James Eng (South County Commuter Rail Project Manager, DOT)
Robert Farley (Chief Financial Officer, DOT)
Janice M. Ward, Esq. (Deputy Chief of Legal Services, DOT)
Michael M. Mitchell, Esq. (Chief Legal Counsel, DOA)
Annette Jacques, Esq. (Senior Legal Counsel, DOT)
Kerrie Vizzacco (Clerk Secretary, DOT)
Nancy Ricci (Legal Assistant, DOT)
Ian Anderson (Intern, DOT)

Other individuals present:

Meredith E. Pickering (Legislative Fiscal Analyst, RI Senate Fiscal Office)
John-Paul Verducci (Legislative Fiscal Analyst, House Fiscal Office)
Richard Langseth (Executive Director, Greenwich Bay Watershed Group)

The duly posted agenda for this meeting was as follows:

1. Approval of Special Board Meeting of August 12, 2010
2. Amendment of By-Laws
3. Election/Appointment of Officers
4. Discussion of South County Commuter Rail Agreements
5. Consideration and Action upon South County Commuter Rail Agreements
6. Adjournment

The first order of business was to approve the minutes of the March 18, 2010 meeting. Upon motion made by Mr. Rupp and duly seconded by Ms. Gallogly, it was unanimously

- **VOTED:** To approve the minutes of the March 18, 2010 meeting.

The second order of business was to amend Rail Corp's By-laws to provide for the following: Members of the Board of Directors ("BOD") may appoint a designee pursuant to Rhode Island General Laws § 42-64.2-6, as amended in 2009; the Executive Director may call a special meeting by e-mail; the Chief Financial Officer of RIDOT shall be the *ex officio* Treasurer of Rail Corp and not the Executive Director; and RIDOT's Director shall serve as Chairperson of the Board of Directors. Chairman Lewis stated that these improvements would provide for greater efficiencies and continuity. He named Philip Kydd as his designee and after discussion about whether a specific person would be identified as designee it was agreed that each member would notify the Rail Corp's Secretary of his/her designee and if both the member and designee were to be unavailable to attend, a substitute designee could be appointed by the member. Upon motion by Chairman Lewis, it was unanimously

- **VOTED:** To amend Rail Corp's By-laws as described.

The third order of business was to elect officers of Rail Corp for a one year term pursuant to Article VI of Rail Corp's by-laws. Chairman Lewis described the Duties of the officers as follows: The Executive Director must administer contracts on behalf of Rail Corp, maintain Rail Corp's books and records, submit a proposed Rail Corp budget, and file a written report with the Secretary of State. The Executive Director also has signatory authority to bind the Corporation. Upon nomination of Robert Shawver, RIDOT's Assistant Director for Policy and Planning by Chairman Lewis seconded by Mr. Rupp, it was unanimously

- **VOTED:** To appoint Robert Shawver as Executive Director.

Chairman Lewis went on to describe the duties of the Treasurer as follows: The Treasurer has the duties customarily appurtenant to his/her office and will perform such further duties as may from time to time be assigned to him/her by the Board of Directors. He/she may sign all checks, drafts, orders, notes and other obligations of Rail Corp for the payment of money, deeds, mortgages, leases, contracts, bonds, and other corporate instruments. After discussion, it was confirmed that all expenditures would be processed through standard State procedures. Upon nomination of Robert V. Farley, RIDOT's Chief Financial Officer, by Chairman Lewis, seconded by Ms. Gallogly, it was unanimously

- **VOTED:** To appoint Robert V. Farley as Treasurer.

Chairman Lewis next described the duties of Secretary as those customarily appurtenant to his/her office and such further duties as may from time to time be assigned by the Board of Directors. Upon nomination of Stephen A. Devine, RIDOT's Chief of Intermodal Planning, described as the individual with the most experience and expertise within RIDOT on rail issues, by Chairman Lewis seconded by Mr. Rupp, it was unanimously

- **VOTED:** To appoint Stephen A. Devine as Secretary.

Under Article VI, Section 1 of Rail Corp's By-laws, the Board may appoint such other officers as it may deem necessary. With the impending commencement of start-up service and construction of the Wickford Junction Station, Chairman Lewis suggested that a new office of Special Rail Engineer be created so that the Executive Director and Board members would have a contact with specific railroad expertise. Upon motion by Chairman Lewis and seconded by Mr. Rupp, it was unanimously

- **VOTED:** To create the new office of Special Rail Engineer.

Chairman Lewis went on to nominate James Eng, RIDOT's current Project Manager for Wickford Junction Station to the office of Special Rail Engineer citing his specific rail expertise, but noting that he would remain a RIDOT engineer reporting to RIDOT's Chief Engineer. Upon second by Mr. Rupp, it was unanimously

- **VOTED:** To appoint James Eng as Special Rail Engineer.

The Fourth Order of Business was discussion of the South County Commuter Rail Agreements. As background, Chairman Lewis said that RIDOT has been working for several years to extend commuter rail service in Rhode Island south of Providence and that the schedule is currently moving forward. The groundbreaking for the construction of the Wickford station is scheduled for 8/18/10 and the opening of the Warwick station is slated for 9/23/10.

Amtrak has certain requirements for liability and indemnification that cannot be met by the State through RIDOT and since no such restriction exists on the part of Rail Corp as to indemnification, Rail Corp was legislatively authorized to assume the indemnification of Amtrak as required under certain agreements. The Agreements and Amendments discussed were the following:

1. **Wickford Station Permanent and Temporary Easement between RIDOT, Rail Corp, and Amtrak**
 - To provide access to Amtrak property during construction and for the station platform
2. **Sale Agreement and Quitclaim Deed between Amtrak and Rail Corp**
 - For parcel of land where Station and garage are to be located

- Amtrak is requiring that Rail Corp “indemnify” it for environmental hazards and also agree not to transfer the property for 12 years
- 3. **Transit Easement from Rail Corp to RIDOT**
 - Since Amtrak is requiring Rail Corp to hold property for 12 years due to environmental indemnification, Rail Corp needs to provide RIDOT with rights to access and construct the Station on this parcel
- 4. **Amendment to Previously Executed Force Account Agreement**
- 5. **Amendment Number One to NEC Access Agreement with Amtrak to allow for decrease in access fee for service to and from Providence to Warwick**
 - Assumed initial service of 8 roundtrips; start-up will be 3 roundtrips per day
- 6. **MBTA Operating Agreement between RIDOT and Rail Corp**
 - RIDOT and the MBTA executed the Pilgrim Partnership Agreement in January 1988 for commuter rail service to Providence. The agreement currently extends to December 2011. In exchange for the service, RIDOT has provided federal funds for various MBTA capital improvements that benefit the Providence Service.
 - RIDOT and MBTA executed a Letter Agreement on or about September 25, 2009 that confirmed MBTA’s agreement to provide commuter rail service south of Providence.
 - Additionally, the current draft operating agreement between RIDOT and MBTA for South County Service provides among other things:
 - Term of 10 years from commencement of service
 - RIDOT to obtain any necessary trackage rights for operation
 - RIDOT to construct: any necessary rail line improvements, a commuter rail station at Wickford, and through RIAC, a station at TF Green
 - MBTA to provide necessary equipment, transportation services, revenue collection, and on-board staff
 - Warwick designated as MBTA fare Zone 9 to South Station and Interzone 3 to Providence; Wickford as fare Zone 10 to South Station and Interzone 4 to Providence
 - RIDOT to compensate MBTA for South County Service revenue shortfall (operating costs exceed revenue) through capital funds for a project approved by FTA or as a reduction in agreement term. Chairman Lewis stated that RIDOT anticipates revenues will cover the operating costs and that RIDOT will review the actual costs after ninety (90) days.
 - MBTA to credit RIDOT for South County Service revenue surplus (revenue exceeds operating costs) toward future operating costs or as an extension of agreement term
 - Rail Corp rather than RIDOT to provide indemnification to MBTA and its operator for liabilities/damages, excepting their own negligence, that would not have been incurred “but for” South County Service.
 - Start-up Service will be available to and from Warwick prior to construction of Wickford

The Fifth Order of business was to act upon the aforementioned agreements and amendments as Chairman Lewis described them including the following:

Wickford Station Permanent and Temporary Easements

Agreement of Sale and Quitclaim Deed

Permanent Transit Easement

South County Operating Agreement

Amendment to Master Force Account Agreement

Amendment Number One to Agreement for Access to Northeast Corridor

Properties for Operation of South County Commuter Rail Passenger Service

Upon motion by Mr. Rupp seconded by Ms. Gallogly to approve the foregoing agreements and amendments, it was unanimously

- **VOTED:** To approve the South County Commuter Rail Agreements and Amendments.

Chairman Lewis inquired whether the Board Members had the opportunity to review the proposed Resolutions of the Board of Directors. Having received indications that the proposed Resolutions had been read, Ms. Gallogly motioned to waive a reading of the Resolutions and to accept same as was presented, it was unanimously

- **VOTED:** To approve the Resolutions of the Board of Directors.

Chairman Lewis opened the meeting to public comment, and Richard Langseth, who identified himself as the Executive Director of the Greenwich Watershed Group asked to speak. He asked for an explanation of the six (6) round trip runs from Providence to Warwick and one was provided to him by James Eng. Mr. Langseth went on to congratulate the Board members on the appointment of Robert Shawver as Executive Director and further opined that the commuter rail be extended beyond Wickford and for there to be improved Amtrak city service to Warwick.

Chairman Lewis informed those present that Rail Corp is looking into the provision of further commuter rail service beyond Wickford and is working with RIPTA to provide coordinated transit services.

There being no further business to come before the Board, a motion was made by Chairman Lewis and seconded by Ms. Gallogly to adjourn the meeting. The motion passed unanimously and the meeting adjourned at 3:48 p.m.

RESOLUTIONS AND RECITALS

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, the Executive Director of the Corporation executed that certain Delegation Agreement dated as of April 6, 2010, which delegated certain of its rights, duties and obligations under the Access Agreement to RIDOT, including but not limited to the construction, operation, and maintenance of the Wickford Junction Station, and specifically excepting the rights, duties and obligations set forth in Article I, Section 9 (Risk of Liability) of the Access Agreement, Article I, Section 11(b) of the Access Agreement; and

WHEREAS the Corporation, RIDOT, and Amtrak executed a Master Force Account Agreement dated April 20, 2010 (the Force Account Agreement), providing for compensation to Amtrak for its services pertaining to the construction of track, station platform, and related infrastructure improvements at Wickford Junction Station and for other services furnished by Amtrak, including but not limited to labor, materials and equipment; and

WHEREAS RIDOT will separately enter into a Design Build Contract for the completion of design and construction of the Wickford Junction Station; and

WHEREAS the Corporation, RIDOT and Amtrak intend to enter into agreements that grant RIDOT certain rights to construct, maintain, repair and operate the Wickford Junction Station upon Amtrak property (the Temporary and Permanent Easements) and amend the Force Account Agreement to include additional work at Wickford Junction Station including indemnification of Amtrak for all liability created thereby; and

WHEREAS there may be certain restrictions on RIDOT's ability to perform the indemnity obligations under the Force Account Agreement amendment and Temporary and Permanent Easements; and

WHEREAS no such restriction precludes the Corporation from performing the indemnity obligations under the Temporary and Permanent Easements and under the Force Account Agreement amendment; and

WHEREAS Amtrak intends to sell a portion of its property located at the site of the Wickford Junction Station (the Parcel) to the Corporation for good and valuable consideration, including but not limited to a covenant restricting the transfer of the property for twelve years except to another governmental agency or public instrumentality of the State of Rhode Island with a distinct legal existence from said state (the Agreement of Sale); and

WHEREAS the Corporation intends to provide RIDOT with an easement to access the Parcel for the design, planning, construction, maintenance, and operation of a commuter rail station, any other public transportation facility, an ancillary parking garage, a train station platform and other related elements including roadways, curbing and sidewalks to be constructed and operated for the benefit of the general public (the "Permanent Transit Easement"); and

WHEREAS RIDOT and the Massachusetts Bay Transit Authority (MBTA) executed that certain Letter Agreement dated September 25, 2009 whereby MBTA agreed to provide the commuter rail service to T.F. Green Airport in Warwick and to Wickford Junction in North Kingstown and agreed to be bound by an Operating Agreement to be executed by MBTA, RIDOT and the Corporation; and

WHEREAS RIDOT intends to commence SCCS on a limited basis to and from Providence and the Intermodal Station at T.F. Green Airport only in the fall of 2010 (the Start-up Service) prior to completion of the Wickford Junction Station; and

WHEREAS Amtrak agrees to amend the Access Agreement to permit RIDOT to pay its pro-rated share of the fixed fee for the Start up Service and its share of the fully allocated costs for maintenance, inspection, and other services, and agrees to other ministerial amendments to the Access Agreement as agreed upon by RIDOT, Amtrak and the Corporation;

NOW, THEREFORE, BE IT

RESOLVED That the Executive Director of the Corporation is hereby authorized to execute and deliver that certain AMENDMENT TO MASTER FORCE ACCOUNT AGREEMENT AMONG THE NATIONAL RAILROAD PASSENGER CORPORATION, THE RHODE ISLAND PUBLIC RAIL CORPORATION AND THE RHODE ISLAND DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS RELATED TO SOUTH COUNTY COMMUTER RAIL SERVICE BETWEEN PROVIDENCE AND NORTH KINGSTOWN, RHODE ISLAND; and be it further

RESOLVED That the Executive Director of the Corporation is hereby authorized to execute and deliver that certain PERMENANT EASEMENT AGREEMENT and TEMPORARY EASEMENT AGREEMENT for the construction and operation of the Wickford Junction Station on Amtrak's rail right-of-way; and be it further

RESOLVED That the Executive Director of the Corporation is hereby authorized to execute and deliver that certain AGREEMENT OF SALE and QUITCLAIM DEED for property owned by Amtrak at the site of the Wickford Junction Station; and be it further

RESOLVED That the Executive Director of the Corporation is hereby authorized to execute and deliver that certain PERMANENT TRANSIT EASEMENT; and be it further

RESOLVED That the Executive Director of the Corporation is hereby authorized to execute and deliver that certain SOUTH COUNTY OPERATING AGREEMENT BY AND BETWEEN THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, and the Corporation; and be it further

RESOLVED That the Executive Director of the Corporation is hereby authorized to execute and deliver that certain AMENDMENT NUMBER ONE TO AGREEMENT BETWEEN NATIONAL RAILROAD PASSENGER CORPORATION AND STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS FOR ACCESS TO NORTHEAST CORRIDOR PROPERTIES FOR OPERATION OF SOUTH COUNTY COMMUTER RAIL PASSENGER SERVICE; 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.