

THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

February 24, 2022

A special meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Thursday, February 24, 2022, at 4 p.m. at the Queen City Club, 331 E. 4th St, Cincinnati, OH 45202. Paul Muething, Paul Sylvester, Charlie Luken, Mark Mallory, and Amy Murray were all present in-person. Kaitlyn Geiger, Assistant City Solicitor; Bob Dovenberg and John Dale, consultants from BMO Capital Markets (participating via Zoom); and Jim Bertrand, legal counsel from Stinson LLP (participating via Zoom) were in attendance as well.

EXECUTIVE SESSION

Mr. Muething moved that the Board enter executive session for the purposes of discussing the potential sale or lease of real estate pursuant to Ohio Revised Code Section 121.22(g). Mr. Malloy seconded. Ms. Geiger took a roll call vote: Mr. Sylvester – aye; Mr. Mallory – aye; Mr. Luken – aye; Mr. Muething – aye; Ms. Murray – aye. The Board entered executive session at 4:17 p.m. Executive session ended at 5:44 p.m.

APPROVAL OF MINUTES

Ms. Geiger presented the Board with the draft minutes from the December 28, 2021, rescheduled regular meeting. The Board reviewed them. Mr. Sylvester moved to approve, and Ms. Murray seconded. Unanimously approved.

ADJOURN

Mr. Mallory moved to adjourn. Ms. Murray seconded. Unanimously approved.

  
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Mr. Muething, President

  
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Ms. Geiger, Clerk

# THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

March 15, 2022

A regular meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Tuesday, March 15, 2022 at 4 p.m. at the Queen City Club, 331 E. 4th St, Cincinnati, OH 45202. Amy Murray, Mark Mallory, Paul Muething, Charlie Luken, and Paul Sylvester were present in-person. Kaitlyn Geiger, Assistant City Solicitor; Kerry Roe, of Clark Schaefer and Hackett; and Jim Bertrand legal counsel from Stinson LLP (participating via Zoom) were in attendance as well.

## FINANCIAL STATEMENTS

Mr. Roe presented to the Board the draft 2020 and 2021 Financial Statements and Additional Financial Information and Report Upon Applying Agreed-Upon Procedures. Mr. Roe provided a brief overview of the draft statements and noted that the document presented is a compilation report. Mr. Sylvester provided further detail on the status of the Board's finances, including current account balances.

## EXECUTIVE SESSION

Mr. Muething moved that the Board enter executive session for the purposes of discussing the potential sale or lease of real estate pursuant to Ohio Revised Code Section 121.22(g). Mr. Mallory seconded. Ms. Geiger took a roll call vote: Mr. Sylvester – aye; Mr. Mallory – aye; Mr. Luken – aye; Mr. Muething – aye; Ms. Murray – aye. The Board entered executive session at 4:09 p.m. Executive session ended at 5:25 p.m. No further action taken.

## APPROVAL OF MINUTES

Ms. Geiger presented the Board with the draft minutes from the February 24, 2022 special meeting. The Board reviewed them. Mr. Luken moved to approve, and Mr. Mallory seconded. Unanimously approved.

## TREASURER'S REPORT

Mr. Sylvester then presented to the Board invoices for legal services provided by Stinson LLP associated with the negotiation with Norfolk Southern. Mr. Muething moved to approve. Mr. Mallory seconded. Unanimously approved.

Mr. Sylvester presented to the Board an invoice for website management for 2022. Mr. Mallory moved to approve. Ms. Murray seconded. Unanimously approved.

Mr. Sylvester presented an invoice for Clark Schaefer and Hackett for accounting services for preparing the Board's financial statements. Ms. Murray made a motion to approve. Mr. Mallory seconded. Unanimously approved.

Mr. Sylvester presented an invoice related to the legal services provided by the Solicitor's Office from July 1, 2021 through December 31, 2021. Mr. Muething moved to approve. Mr. Mallory seconded. Unanimously approved.

Mr. Sylvester presented an invoice related to valuation services through January 31, 2022. Mr. Luken moved to approve. Mr. Muething seconded. Unanimously approved.

#### RETENTION OF APPRAISERS

Ms. Geiger requested that the Board take action to approve Stinson LLP's engagement of appraisers for an across the fence appraisal of the line. Mr. Sylvester moved to approve. Mr. Mallory seconded. Unanimously approved.

#### BMO CONTRACT

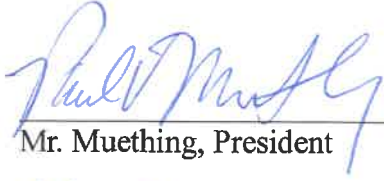
The Board discussed the terms of its contract with BMO Capital Markets. Mr. Muething to contact Mr. Dovenberg regarding the contract. No further action taken.

#### MISCELLANEOUS ADMINISTRATION

The Board discussed scheduling for a special meeting once Norfolk Southern responds to the proposed term sheet. No further action taken.

ADJOURN

Mr. Luken moved to adjourn. Ms. Murray seconded. Unanimously approved.



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Mr. Muething, President



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Ms. Geiger, Clerk

## THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

May 5, 2022

A special meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Thursday, May 5, 2022, at 3:30 p.m. at the Queen City Club, 331 E. 4th St, Cincinnati, OH 45202. Paul Muething, Paul Sylvester, Charlie Luken, Mark Mallory, and Amy Murray were all present in-person. Kaitlyn Geiger, Assistant City Solicitor; Billy Weber, Assistant City Manager; Bob Dovenberg, Mathew Marcussen, and John Dale, consultants from BMO Capital Markets (participating virtually); and Jim Bertrand, legal counsel from Stinson LLP (participating virtually) were in attendance as well.

### EXECUTIVE SESSION

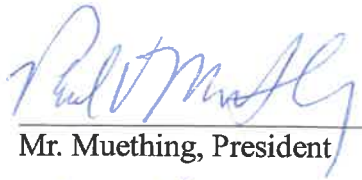
Mr. Muething moved that the Board enter executive session for the purposes of discussing the potential sale or lease of real estate pursuant to Ohio Revised Code Section 121.22(g). Mr. Mallory seconded. Ms. Geiger took a roll call vote: Mr. Sylvester – aye; Mr. Mallory – aye; Mr. Luken – aye; Mr. Muething – aye; Ms. Murray – aye. The Board entered executive session at 3:38 p.m. Executive session ended at 5:29 p.m. No further action taken.

### APPROVAL OF EASEMENTS

Ms. Geiger provided a summary of requested easements related to an existing bridge over Hinton Road in Scott County, Kentucky. Norfolk Southern was named in a condemnation proceeding with respect to the easements and the Commonwealth of Kentucky offered a payment of \$5,000 in exchange for the easements. Mr. Luken made a motion to approve the easement documents. Mr. Sylvester seconded. Unanimously approved.

### ADJOURN

Mr. Luken moved to adjourn. Mr. Muething seconded. Unanimously approved.



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Mr. Muething, President



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Ms. Geiger, Clerk

## THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

June 2, 2022

A special meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Thursday, June 2, 2022, at 4 p.m. at the Queen City Club, 331 E. 4th St, Cincinnati, OH 45202. Paul Muething, Paul Sylvester, Charlie Luken, Mark Mallory, and Amy Murray were all present in-person. Kaitlyn Geiger, Assistant City Solicitor; Billy Weber, Assistant City Manager; Bob Dovenberg, consultant from BMO Capital Markets (participating virtually); and Jim Bertrand, legal counsel from Stinson LLP (participating virtually) were in attendance as well.

### EXECUTIVE SESSION

Mr. Muething moved that the Board enter executive session for the purposes of discussing the potential sale or lease of real estate pursuant to Ohio Revised Code Section 121.22(g). Mr. Luken seconded. Ms. Geiger took a roll call vote: Mr. Sylvester – aye; Mr. Mallory – aye; Mr. Luken – aye; Mr. Muething – aye; Ms. Murray – aye. The Board entered executive session at 4:04 p.m. Executive session ended at 5:28 p.m.

### EXTENSION OF ARBITRATION TIMING

Following executive session, Ms. Geiger provided a summary regarding the arbitration procedures in the existing lease. Additionally, Ms. Geiger detailed Norfolk Southern's request to extend the timing either party could submit the lease renewal to arbitration from June 30, 2022, to December 31, 2023, such extension as contemplated in the existing lease. Mr. Mallory made a motion to approve the extension. Mr. Luken seconded. Unanimously approved.

### STATE LOBBYIST AND COMMUNICATIONS CONSULTANT

Mr. Mallory detailed his upcoming meetings with potential state lobbyists. Mr. Mallory will update the Board on the outcomes of those conversations. Ms. Geiger asked the Board if they also intended to engage a communications consultant. Mr. Muething did

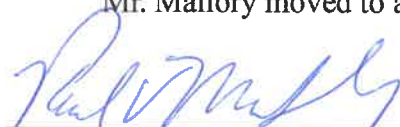
not feel that such engagement is necessary and the rest of the Board agreed. No further action taken.

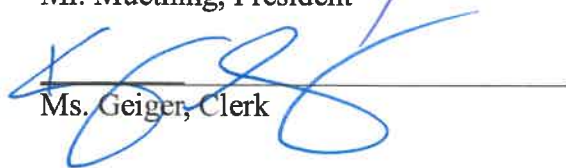
APPROVAL OF MINUTES

Ms. Geiger presented the Board with the draft minutes from the March 15, 2022 regular meeting. The Board reviewed them. Mr. Luken moved to approve, and Mr. Mallory seconded. Unanimously approved. Ms. Geiger also presented the Board with the draft minutes from the May 5, 2022 special meeting. Mr. Luken moved to approve and Ms. Murray seconded. Unanimously approved.

ADJOURN

Mr. Mallory moved to adjourn. Mr. Muething seconded. Unanimously approved.

  
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Mr. Muething, President

  
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Ms. Geiger, Clerk



# THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

June 21, 2022

A regular meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Tuesday, June 21, 2022 at 3 p.m. at the Queen City Club, 331 E. 4th St, Cincinnati, OH 45202. Amy Murray, Mark Mallory, Paul Muething, Charlie Luken, and Paul Sylvester were present in-person. Kaitlyn Geiger, Assistant City Solicitor; Billy Weber, Assistant City Manager; Bob Dovenberg, consultant from BMO Capital Markets (participating virtually); and Jim Bertrand legal counsel from Stinson LLP (participating virtually); were in attendance as well.

## EXECUTIVE SESSION

Mr. Muething moved that the Board enter executive session for the purposes of discussing the potential sale or lease of real estate pursuant to Ohio Revised Code Section 121.22(G). Mr. Luken seconded. Ms. Geiger took a roll call vote: Mr. Sylvester – aye; Mr. Mallory – aye; Mr. Luken – aye; Mr. Muething – aye; Ms. Murray – aye. The Board entered executive session at 3:14 p.m. Executive session ended at 4:09 p.m. No further action taken.

## APPROVAL OF MINUTES

Mr. Muething presented the Board with the draft minutes from the June 2, 2022 special meeting. The Board reviewed them. Ms. Murray moved to approve, and Mr. Luken seconded. Unanimously approved.

## TREASURER'S REPORT

Mr. Sylvester then presented to the Board invoices for legal services provided by Stinson LLP associated with the negotiation with Norfolk Southern. The most recent series of invoices total about \$95,000 and to date, the Board has paid Stinson LLP about \$533,000 for legal services. Mr. Mallory moved to approve. Mr. Luken seconded. Unanimously approved.

Mr. Sylvester presented an invoice related to Brattle's valuation services through February 28, 2022. To date, the Board has paid Brattle about \$77,000. Mr. Luken moved to approve. Mr. Mallory seconded. Unanimously approved.

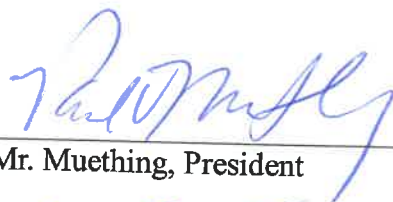
Mr. Sylvester presented an invoice related to the legal services provided by the Solicitor's Office from January 1, 2019 through June 30, 2021. Ms. Geiger confirmed that with the payment of this invoice, there are no outstanding invoices for the Solicitor's Office. Ms. Murray moved to approve. Mr. Luken seconded. Unanimously approved.


MISCELLANEOUS ADMINISTRATION

The Board discussed scheduling the annual inspection trip in the fall with Norfolk Southern. Mr. Muething to contact Mr. McClellan to discuss further. The Board also discussed scheduling a special meeting. Ms. Geiger to send a poll for a special meeting when requested by Mr. Mallory.

ADJOURN

Mr. Mallory moved to adjourn. Ms. Murray seconded. Unanimously approved.

  
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Mr. Muething, President

  
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Ms. Geiger, Clerk

## THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

August 24, 2022

A special meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Wednesday August 24, 2022, at 3 p.m. at the Queen City Club, 331 E. 4th St, Cincinnati, OH 45202. Paul Muething, Paul Sylvester, Charlie Luken, and Mark Mallory were all present in-person. Kaitlyn Geiger, Assistant City Solicitor; Billy Weber, Assistant City Manager; Andrew Minton and Mara White, consultants from Byers, Minton, and Associates, LLC (participating virtually); Bob Dovenberg, consultant from BMO Capital Markets (participating virtually); and Jim Bertrand, legal counsel from Stinson LLP (participating virtually) were in attendance as well. Ms. Murray was absent.

### STATE LAW CHANGES

Mr. Muething presented the proposed draft state law changes to the Ferguson Act for discussion. Ms. Geiger provided a summary of the provisions to the Board, which primarily change how the proceeds from any future sale of the railway are to be used. Mr. Sylvester asked the Board if a parallel board should be established to oversee such proceeds and Mr. Muething suggested a subcommittee of the existing board to serve in that function. Mr. Luken requested that additional controls be included in the draft provision to further restrict future Boards in their engagement of consultants so that (i) appropriate procurement rules are followed and (ii) the amount administration expenses does not become unreasonable. Mr. Sylvester requested that the Board receive quarterly reporting from the City regarding how funds provided by the Board are spent. Mr. Mallory proposed that a reserve fund be established for any proceeds so that it can accrue and be used on capital expenditures in the event of an emergency. Mr. Weber recommended revising the restriction that the City use any funds received on permanent improvements owned by the City to existing infrastructure and the Board was agreeable to that approach. Ms. Geiger to engage outside legal counsel to review draft language.

Final draft language to be delivered to Messrs. Luken and Mallory from Ms. Geiger no later than September 16. No action taken.

#### STATE LOBBYIST RETENTION

Mr. Mallory introduced Andrew Minton and Mara White from Byers, Minton, and Associates, LLC. Mr. Minton presented information to the Board about their experience as a lobbying firm and how they intend to serve the Board. Mr. Mallory then asked Mr. Minton about the proposed timing of the state law changes. Mr. Minton responded that it is dependent on the legislature, but it could be as early as the end of this year. Ms. Geiger asked if the Board wished to approve the retention of Byers, Minton, and Associates, LLC and if the Board wanted to authorize Mr. Muething to execute any necessary agreements to do so. Mr. Mallory moved to approve the retention and execution of related contracts of Byers, Minton, and Associates, LLC. Mr. Sylvester seconded. Unanimously approved.

#### EXECUTIVE SESSION

Mr. Muething moved that the Board enter executive session for the purposes of discussing the potential sale or lease of real estate pursuant to Ohio Revised Code Section 121.22(g). Mr. Sylvester seconded. Ms. Geiger took a roll call vote: Mr. Sylvester – aye; Mr. Luken – aye; Mr. Muething – aye. Mr. Mallory was not present for the roll call vote but returned at the beginning of executive session. The Board entered executive session at 4:38 p.m. Executive session ended at 5:01 p.m. Following executive session, Mr. Luken left the meeting.

#### APPROVAL OF MINUTES

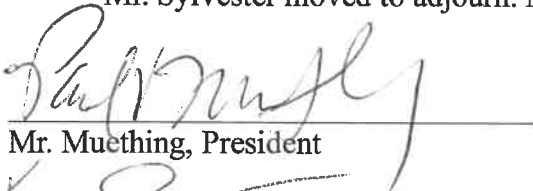
Ms. Geiger presented the Board with the draft minutes from the June 21, 2022 regular meeting. The Board reviewed them. Mr. Sylvester moved to approve, and Mr. Muething seconded. Unanimously approved.

APPROVAL OF STINSON INVOICES

Mr. Sylvester then presented to the Board invoices for legal services provided by Stinson LLP associated with the negotiation with Norfolk Southern. Mr. Mallory moved to approve. Mr. Muething seconded. Unanimously approved.

ADJOURN

Mr. Sylvester moved to adjourn. Mr. Mallory seconded. Unanimously approved.



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Mr. Muething, President



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Ms. Geiger, Clerk

# THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

September 13, 2022

A regular meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Tuesday, September 13, 2022 at 3 p.m. at the Queen City Club, 331 E. 4th St, Cincinnati, OH 45202. Amy Murray, Mark Mallory, and Paul Muething were present in-person. Paul Sylvester participated virtually in accordance with Cincinnati Municipal Code Chapter 121. Mr. Luken was not in attendance. Kaitlyn Geiger, Assistant City Solicitor; Billy Weber, Assistant City Manager; Bob Dovenberg, consultant from BMO Capital Markets (participating virtually); Greg Daniels legal counsel from Squire Patton Boggs LLP (participating virtually); and Jim Bertrand legal counsel from Stinson LLP (participating virtually); were in attendance as well.

## EXECUTIVE SESSION

Mr. Muething moved that the Board enter executive session for the purposes of discussing the potential sale or lease of real estate pursuant to Ohio Revised Code Section 121.22(G). Mr. Mallory seconded. Ms. Geiger took a roll call vote: Mr. Sylvester – aye; Mr. Mallory – aye; Mr. Muething – aye; Ms. Murray – aye. The Board entered executive session at 3:03 p.m. Executive session ended at 3:20 p.m. No further action taken.

## STATE LAW CHANGES

Mr. Muething presented the revisions to the proposed draft state law changes to the Ferguson Act for discussion. Mr. Sylvester presented his comments and Mr. Luken's comments to the proposed draft. Mr. Sylvester's first comment related to the role of the fiscal officer in the proposed language. The Board agreed to modify the language to consultation with the City's fiscal officer as opposed to approvals. Mr. Sylvester's next comment related to the timing and nature of the reporting from the Board to the City. Mr. Mallory asked Mr. Weber to confirm the process that the City uses to appropriate CSR proceeds. Mr. Weber explained the intent of the language is to allow enough notice for the City to have certainty as it prepares its capital budget for the following fiscal year. The Board agreed to keep the September 30 deadline for certification of funds but to

change the financial reporting to audited financials. Mr. Sylvester then asked about the purpose of the investment committee. Ms. Geiger indicated that this was based on the prior Board meeting but is not necessary to include. Mr. Mallory proposed to delete that language and require the Board to retain a financial advisor and the Board agreed. Mr. Sylvester also asked if the language regarding a written opinion from an independent financial advisor was necessary. Mr. Muething directed the question to Mr. Daniels. Mr. Daniels stated that it is not necessary unless it is in the existing state law. Mr. Sylvester also expressed concern about the timing of passage of a resolution declaring which election the vote of the electorate will occur. Ms. Geiger suggested a 90-day deadline and the Board agreed. Ms. Geiger to redistribute revised language by the following morning. No action taken.

#### COMMUNICATIONS CONSULTANT

Ms. Murray presented the need for the Board to retain a communications consultant. Ms. Murray recommended that the Board engage Communications Counsel, Inc. to provide such services based on their experience. Mr. Mallory moved to approve that the Board retain Communications Counsel, Inc. to provide the Board communications services and authorize Mr. Muething to execute all related contracts. Ms. Murray seconded. Unanimously approved.

#### STATE LOBBYIST RETENTION AND AUTHORIZATION TO EXECUTE AGREEMENT WITH SQUIRE PATTON BOGGS LLP

Mr. Mallory summarized the qualifications of two additional lobbying firms for the Board to retain, Bricker and Eckler LLP and Shumaker Advisors, LLC. Mr. Mallory recommended engaging both firms to ensure every stakeholder is consulted on the proposed state law changes. Ms. Geiger also recommended authorizing Mr. Muething to

execute a contract with Squire Patton Boggs LLP to continue providing the Board legal services with respect to the state law change. Ms. Murray moved to approve the retention of Bricker and Eckler LLP and Shumaker Advisors, LLC and to authorize Mr. Muething to execute contracts with the Bricker and Eckler LLP, Shumaker Advisors, LLC, and Squire Patton Boggs LLP. Mr. Sylvester seconded. Unanimously approved.

APPROVAL OF MINUTES

Ms. Geiger presented the Board with the draft minutes from the August 24, 2022 special meeting. The Board reviewed them. Mr. Sylvester moved to approve, and Mr. Mallory seconded. Unanimously approved.


MISCELLANEOUS ADMINISTRATION

The Board discussed scheduling the annual inspection trip in the fall with Norfolk Southern. Mr. Muething is in the process of discussing the date for such trip with Norfolk Southern. The Board also discussed scheduling a special meeting.

ADJOURN

Mr. Mallory moved to adjourn. Ms. Murray seconded. Unanimously approved.

  
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Mr. Muething, President

  
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Ms. Geiger, Clerk



## THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

October 27, 2022

A special meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Thursday October 27, 2022, at 3 p.m. at the Queen City Club, 331 E. 4th St, Cincinnati, OH 45202. Paul Muething, Paul Sylvester, Charlie Luken, Amy Murray, and Mark Mallory were all present in-person. Kaitlyn Geiger, Assistant City Solicitor; Billy Weber, Assistant City Manager; Greg Daniels, legal counsel from Squire Patton Boggs LLP (participating virtually); and Jim Bertrand, legal counsel from Stinson LLP (participating virtually) were in attendance as well.

### COMMUNICATIONS CONSULTANT

Mr. Muething presented the retention of Vehr Communications, LLC to the Board. Mr. Muething explained that he could not reach an agreement with Communications Counsel, Inc. regarding a scope of services and fees. Mr. Muething confirmed that Vehr Communications, LLC would be compensated on an hourly basis. Ms. Geiger stated that she would draft an agreement to retain Vehr Communications, LLC in accordance with the other forms used by the Board, upon approval of the Board of such retention. Mr. Mallory moved to approve the retention of Vehr Communications, LLC and authorize Mr. Muething to execute the related agreement. Mr. Luken seconded. Unanimously approved.

### STATE LAW CHANGES

Ms. Geiger provided the Board with a summary of the Legislative Service Commission's proposed draft of the revisions to the Ferguson Act. Ms. Geiger highlighted the differences between the Legislative Service Commission's draft and the draft previously reviewed by the Board. Mr. Mallory asked about requirement that future trustees possess general knowledge and experience in matters of finance and investment. Ms. Geiger explained that the language is from the prior draft. Mr. Luken suggested either the language be clarified or removed. Following discussion, the Board agreed to

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remove the language. Mr. Mallory detailed the process for changing state law. Ms. Geiger requested that the Board provide any remaining feedback on the provisions to her by the end of the week.

#### APPROVAL OF MINUTES

Ms. Geiger presented the Board with the draft minutes from the September 13, 2022 regular meeting. The Board reviewed them. Mr. Sylvester moved to approve, and Mr. Mallory seconded. Unanimously approved.

#### SPECIAL MEETING

The Board discussed scheduling the next special meeting. The Board selected November 18, 2022 at 3 p.m. Ms. Geiger to arrange a location for the meeting.

#### APPROVAL OF INVOICES

Mr. Sylvester presented the board with two invoices for legal services through September 30, 2022 from Stinson LLP. Mr. Mallory moved to approve. Mr. Luken seconded. Unanimously approved. Mr. Sylvester then presented an invoice for the Board's directors and officers coverage from Arthur J. Gallagher Risk Management Services, Inc. Mr. Luken moved to approve. Mr. Mallory seconded. Unanimously approved. Mr. Sylvester also presented two invoices for lobbying services from Shumaker Advisors, LLC through November 2022. Mr. Luken moved to approve. Mr. Mallory seconded. Unanimously approved. Mr. Sylvester then presented two invoices from Byers, Minton & Associates, LLC for lobbying services through October 2022. Ms. Murray moved to approve. Mr. Mallory seconded. Unanimously approved.

#### EXECUTIVE SESSION

Mr. Muething moved that the Board enter executive session for the purposes of discussing the potential sale or lease of real estate pursuant to Ohio Revised Code Section

121.22(g). Mr. Mallory seconded. Ms. Geiger took a roll call vote: Mr. Sylvester – aye; Mr. Mallory – aye; Mr. Luken – aye; Mr. Muething – aye; Ms. Murray – aye. The Board entered executive session at 3:37 p.m. Executive session ended at 4:31 p.m. No action taken.


INSPECTION TRIP

The Board discussed the timing of the annual inspection trip pursuant to the lease. Mr. Muething stated that he is still working with Norfolk Southern to establish some proposed dates.

ADJOURN

Mr. Luken moved to adjourn. Ms. Murray seconded. Unanimously approved.

  
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Mr. Muething, President

  
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Ms. Geiger, Clerk

# THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

November 21, 2022

A special meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Monday November 21, 2022, at 1 p.m. at 301 Western Avenue, Cincinnati, Ohio 45203 in the Cincinnati Dining Room. Paul Muething, Paul Sylvester, Charlie Luken, Amy Murray, and Mark Mallory were all present in-person. Kaitlyn Geiger, Assistant City Solicitor, members of the City Administration, and members of the general public and media were in attendance as well.

## AUTHORIZATION OF ASSET PURCHASE AND SALE AGREEMENT

Mr. Muething asked Mr. Sylvester to introduce Resolution 1-2022 for authorizing the execution of (i) an Asset Purchase and Sale Agreement contemplating the sale of the Cincinnati Southern Railway to Norfolk Southern Railway Company for \$1.6 billion plus \$24.5 million in transaction fees and (ii) a related Parent Guaranty. Mr. Sylvester introduced the resolution by reading the caption of the resolution for the benefit of the Board.

Mr. Muething gave a statement in support of the resolution, stating that the deal was fair and in the best interests of the City of Cincinnati and the Board. Mr. Muething emphasized the planned future use of the proceeds for the rehabilitation and modernization of existing infrastructure in the City of Cincinnati. Mr. Sylvester also stated his support for the resolution, noting that the sale of the Cincinnati Southern Railway would provide additional cash flow for the City of Cincinnati that far exceeds the amount that could be received under a renewed lease. Mr. Luken then said that the Cincinnati Southern Railway existed for the benefit of the City of Cincinnati and will continue to do so after the sale. He noted that the only difference between now and after the sale takes place is that the City of Cincinnati would have more money but ultimately, it is up to the voters to decide. Ms. Murray gave her position that it is better to sell the Cincinnati Southern Railway, noting that the Board previously said no often. Ms. Murray {00374677-1}

stated that as negotiations continued, in light of the Board's responsibilities to the citizens of Cincinnati, it was better to sell than continue leasing. However, Ms. Murray would not be supportive of a sale if the proposed state law changes do not occur. Mr. Mallory noted the differing perspectives that the Board members have but that they all have shared values. Mr. Mallory recalled a quote from Edward A. Ferguson that the Cincinnati Southern Railway served a higher and nobler use. He stated that the City of Cincinnati is the only city that owns a railroad and as a result, at the beginning of negotiations, he wanted to continue leasing it. The sale proceeds allow the Board and the City of Cincinnati to continue investing the future of Cincinnati, thus continuing its higher and nobler use. Mr. Mallory thanked Mr. Muething for his role in the negotiations.

Ms. Geiger then took a roll call vote on Resolution 1-2022. Mr. Sylvester – aye; Mr. Mallory – aye; Mr. Muething – aye; Ms. Murray – aye; Mr. Luken – aye.

#### APPROVAL OF MINUTES

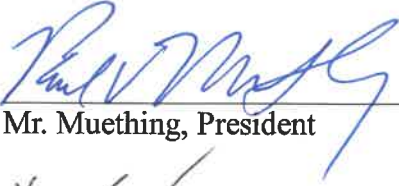
Ms. Geiger presented the Board with the draft minutes from the October 27, 2022 special meeting. The Board reviewed them. Mr. Luken moved to approve, and Mr. Mallory seconded. Unanimously approved.

#### BMO CONTRACT AMENDMENT

Mr. Muething introduced an amendment to BMO Capital Markets Corp.'s ("BMO") contract. He stated that the amendment reflects the agreed upon fee that BMO would be paid for the sale transaction, noting at the time the original contract was executed the Board was not contemplating a sale. Mr. Muething stated that he worked closely with Mr. Sylvester regarding this amendment. Mr. Mallory moved to authorize Mr. Muething to execute the amendment, and Ms. Murray seconded. Unanimously approved.

ADJOURN

Mr. Luken moved to adjourn. Mr. Sylvester seconded. Unanimously approved.



Mr. Muething, President



Ms. Geiger, Clerk

# THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

December 19, 2022

A special meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Monday December 19, 2022, at 3 p.m. at East Fourth Street, Cincinnati, Ohio in the River Room. Paul Muething, Paul Sylvester, Charlie Luken, Amy Murray, and Mark Mallory were all present in-person. Kaitlyn Geiger, Assistant City Solicitor; Marion Haynes, Deputy City Solicitor; Nick Vehr, a consultant for the Board; and Jim Bertrand, legal counsel from Stinson LLP (participating virtually) were in attendance as well.

## PUBLIC COMMENT POLICY

Mr. Muething presented a proposed public comment policy. Mr. Muething explained that the proposed policy is consistent with the policy used by City Council. Mr. Luken moved to approve the public comment policy. Ms. Murray seconded. Unanimously approved.

## PUBLIC RECORDS REQUESTS

Mr. Muething introduced a resolution regarding the release of the valuations prepared for the benefit of the Board to date. Mr. Luken asked about Norfolk Southern's involvement in the release of records. Ms. Geiger explained that the resolution is contingent upon reaching an agreement with Norfolk Southern on the use of records in the arbitration process. Mr. Muething asked about communicating with the consultants retained on behalf of the Board and Ms. Geiger committed to alerting both consultants that the valuations are being released prior to the release of such documents. Mr. Luken moved to approve the resolution. Mr. Mallory seconded. Unanimously approved.

## PENDING LITIGATION

Mr. Haynes provided an update to the Board regarding the status of the pending litigation against the Board. On January 3, there is a status conference and on January 6, the Board's answer is due. Mr. Muething agreed with the Solicitor's Office's

recommendation to not pursue a claim under the Board's insurance. The Board generally agreed with this approach. No action taken.

#### REVISED STATE LAW AND SALE TRANSACTION UPDATES

Mr. Mallory provided the Board an update regarding the timing of the proposed revisions to state law. Ms. Geiger stated Norfolk Southern may request some documents for the federal regulatory approvals. Mr. Sylvester confirmed the initial transaction fee was received and that BMO Capital Markets Corp. was paid its initial fee. No action taken.

#### PRIOR MEETING MINUTES

Mr. Muething presented the Board with the draft minutes from the November 21, 2022 special meeting. The Board reviewed them. Mr. Luken moved to approve, and Ms. Murray seconded. Unanimously approved.

#### TAX CREDIT AGREEMENTS

Ms. Geiger provided a summary of the draft tax credit agreements and explained that the recent changes to federal law regarding the federal tax credits is delaying the payment with respect to 2018. Ms. Geiger then presented two draft agreements from Norfolk Southern to cover the 2022 federal and Kentucky tax credits. Mr. Sylvester proposed adding a requirement that Norfolk Southern notify the Board when remitting payment pursuant to these agreements. Mr. Mallory moved to approve Mr. Muething to execute the agreements with that change. Ms. Murray seconded. Unanimously approved.

#### INVOICES FOR APPROVAL

Mr. Sylvester presented an invoice for lobbying services from Shumaker Advisors, LLC through December 2022. Mr. Luken moved to approve. Ms. Murray seconded. Unanimously approved. Mr. Sylvester then presented two invoices from Byers,



Minton & Associates, LLC for lobbying services through December 2022. Ms. Murray moved to approve. Mr. Luken seconded. Unanimously approved. Mr. Sylvester presented the board with two invoices for lobbying services through November 2022 from Bricker & Eckler LLP. Ms. Murray moved to approve. Mr. Luken seconded. Unanimously approved. Mr. Sylvester then presented an invoice for legal services through October 2022 from Squire Patton Boggs (US) LLP. Mr. Mallory moved to approve. Mr. Luken seconded. Unanimously approved. Mr. Sylvester presented an invoice for legal services through October 2022 from Stinson LLP. Mr. Mallory moved to approve. Mr. Luken seconded. Unanimously approved. Mr. Sylvester presented an invoice for website services through 2023 from US Digital Partners. Mr. Mallory moved to approve. Mr. Luken seconded. Unanimously approved.


#### 2023 MEETING CALENDAR

Ms. Geiger asked if the Board wanted to continue meeting on a quarterly basis for its regular meetings. The Board generally agreed with that approach, but Mr. Mallory requested that the first regular meeting be in February as opposed to March. The regular meeting schedule adopted by the Board is as follows: February 21, May 16, August 15, and November 14, all starting at 3 P.M. Mr. Luken to inquire about a new meeting location. Mr. Muething is still collaborating with Norfolk Southern regarding an annual inspection trip in Spring of 2023.

#### ADJOURN

Mr. Luken moved to adjourn. Mr. Mallory seconded. Unanimously approved.

  
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Mr. Muething, President

  
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Ms. Geiger, Clerk

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