

THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

February 21, 2023

A regular meeting of the Board of Trustees of the Cincinnati Southern Railway (the “Board”) was held on Tuesday, February 21, 2023, at 3 p.m. at the Walnut Hills Branch of the Cincinnati and Hamilton County Public Library at 2533 Kemper Lane, Cincinnati, Ohio 45206. Amy Murray, Mark Mallory, Paul Sylvester, and Charlie Luken and Paul Muething were present in-person. Emily Woerner, City Solicitor; Will Hicks, Chief Counsel; Kaitlyn Geiger, Assistant City Solicitor; Nick Vehr, consultant for the Board; and members of the public were in attendance as well.

PUBLIC COMMENT

The Board heard public comments from three individuals regarding the sale of the railway. Two of the individuals opposed the sale of the railway. One individual provided advice on how to build consensus regarding the sale of the railway.

STATE LAW UPDATE

Mr. Mallory provided an update to the Board regarding the proposed state law changes. Mr. Mallory confirmed that the Board’s requested language was included as part of the Governor’s transportation budget. Mr. Muething testified to the Finance Subcommittee on Transportation regarding the state law changes and will need to testify again in a couple of weeks to a committee in the Senate. Mr. Luken stated that the proposed changes being in the Governor’s transportation budget is a big win for the Board. No action taken.

APPROVAL OF MINUTES

Mr. Muething presented the Board with the draft minutes from the December 19, 2022 special meeting. The Board reviewed them. Ms. Murray moved to approve, and Mr. Luken seconded. Unanimously approved.

INVOICES FOR APPROVAL

Mr. Sylvester presented three invoices for lobbying services from Shumaker Advisors, LLC through March 2023. 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 February 2023. Mr. Mallory moved to approve. Mr. Luken seconded. Unanimously approved. Mr. Sylvester presented the board with two invoices for lobbying services through January 2023 from Bricker & Eckler LLP. Mr. Mallory moved to approve. Mr. Luken seconded. Unanimously approved. Mr. Sylvester then presented an invoice for legal services through November 2022 from Squire Patton Boggs (US) LLP. Mr. Mallory moved to approve. Ms. Murray seconded. Unanimously approved. Mr. Sylvester presented three invoices for legal services through January 2023 from Stinson LLP. Mr. Luken moved to approve. Mr. Mallory seconded. Unanimously approved. Mr. Sylvester presented an invoice for the City Solicitor's Office's legal services through calendar year 2022. Mr. Luken moved to approve. Mr. Mallory seconded. Unanimously approved. Mr. Sylvester presented the board with two invoices for communications consulting services through January 2023 from Vehr Communications. Mr. Luken moved to approve. Mr. Mallory seconded. Unanimously approved. Mr. Luken noted that he hopes that the Board needs less communications services as time passes.

MISCELLANEOUS ADMINISTRATION

Mr. Sylvester requested that the Board consider beginning the procurement process for retaining an investment advisor in case the sale is approved in November of this year. Mr. Muething agreed that the Board need to have someone retained in time for the transmission of any sale proceeds. Ms. Murray suggested that local financial experts

Mr. Mallory asked Ms. Geiger if the retention of investment advisors would be competitively bid, and Ms. Geiger confirmed that it would.

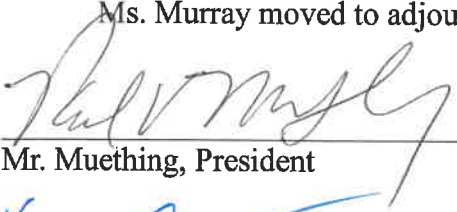
Mr. Muething provided a statement regarding the derailment in East Palestine, Ohio. He stated that the Board's role is to maximize the value of the CSR for the benefit of the citizens of Cincinnati. He also said that the situation in East Palestine is tragic and federal, state, and Norfolk Southern resources are being marshalled to respond to it. Mr. Luken agreed and stated that the derailment in East Palestine shows that it is important to sell the CSR now in order to mitigate the City's and Board's risk and diversify its investments. Mr. Luken stated that no matter what, Norfolk Southern has the right to operate the CSR until the end of the lease. Mr. Luken also stated that the Board does not control safety on the CSR since it is federally regulated. Ms. Murray agreed with Mr. Luken about diversifying the Board's investment since the future is unknown.

EXECUTIVE SESSION

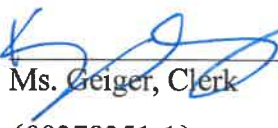
Mr. Muething moved that the Board enter executive session for the purposes of discussing pending litigation against the Board with its attorneys pursuant to Ohio Revised Code Section 121.22(G). Mr. Luken seconded. Ms. Geiger took a roll call vote: Mr. Luken – aye; Mr. Mallory – aye; Mr. Muething – aye; Ms. Murray – aye; Mr. Sylvester – aye. The Board entered executive session at 3:36 p.m. Executive session ended at 4:16 p.m. No further action taken.

ADJOURN

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



Mr. Muething, President



Ms. Geiger, Clerk

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THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

April 18, 2023

A special meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Tuesday, April 18, 2023, at 1 p.m. at 3 East Fourth Street, Cincinnati, Ohio, in the Leadership Room. Amy Murray, Mark Mallory, Paul Sylvester, Charlie Luken and Paul Muething were present in-person. Kaitlyn Geiger, Assistant City Solicitor; Nick Vehr, consultant for the Board; and members of the public were in attendance as well.

STATE LAW UPDATE

Mr. Mallory provided an update to the Board regarding the changes to the Ferguson Act that were included as part of the enacted Transportation Budget. Ms. Geiger summarized the differences between the language that was passed, and the language last reviewed by the Board. Mr. Mallory thanked the members of the Cincinnati delegation for their support in getting the language passed, particularly Senator Blessing, Senator Ingram, and Representative Seitz. Mr. Muething to send thank you notes to the delegation. No action taken.

TERMINATION OF LOBBYING CONTRACTS

Mr. Mallory explained that the three state lobbyists, Shumaker Advisors, LLC, Byers, Minton & Associates, LLC, and Bricker Graydon LLP, are no longer necessary given the passage of the state law changes. Ms. Geiger explained that she asked them to stop invoicing the Board and that formal approval of termination of the three contracts is necessary. She further explained that Shumaker Advisors, LLC and Byers, Minton & Associates, LLC agreed their last invoice was through the month of April and Bricker Graydon LLP agreed their last invoice was through April 15. Mr. Mallory moved to terminate the three lobbyist contracts in accordance with the above agreements obtained by Ms. Geiger. Mr. Luken seconded. Unanimously approved.

SALE TRANSACTION UPDATE

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Mr. Muething stated that the Board is not currently in a position to decide regarding which election the sale will be voted on today. He also stated that the Board will likely be deliberating which election to take the matter to at the next regular meeting. Mr. Muething further summarized the various stakeholders whose input the Board will want to seek, such as the Mayor's office and Norfolk Southern. Ms. Geiger summarized a provision of the sale agreement that allows the Board to receive an additional payment from Norfolk Southern in the event the sale is delayed until 2024 or beyond. Ms. Geiger also confirmed that Norfolk Southern intends to file for Surface Transportation Board approval of the sale by the end of the month. No action taken.

PROCUREMENT FOR INVESTMENT CONSULTANT

Mr. Sylvester summarized a conversation he had with Ms. Geiger, Assistant City Manager Billy Weber, and the City's Director of Finance Karen Alder regarding the procurement of an investment consultant. He stated that the City is currently in the process of drafting a Request for Proposals for an investment consultant for the Cincinnati Retirement System. Ms. Geiger confirmed that she spoke with Mr. Weber and that the Finance Department, including its existing financial consultants under contract, could aid the Board in facilitating the Request for Proposals. Mr. Mallory asked whether there would be inclusion requirements associated with this procurement. Ms. Geiger suggested that a conversation be had with the City's Purchasing Department in that regard. Mr. Mallory clarified for the benefit of members of the public that the investment fund the Board will be managing is distinct from the Cincinnati Retirement System since the Board's fund will not have liabilities it has to manage, unlike the Cincinnati Retirement System. Ms. Murray advocated that the Board engage with local Fortune 500 companies to assist the Board through the procurement process. Mr. Muething agreed,

provided that the Board is careful about not engaging companies that may be applying to the Request for Proposals. No action taken.

PRIOR MEETING MINUTES

Mr. Muething presented the Board with the draft minutes from the February 21, 2023 regular meeting. The Board reviewed them. Mr. Luken moved to approve, and Ms. Murray seconded. Unanimously approved.

INVOICES FOR APPROVAL

Mr. Sylvester presented the following invoices for the Board's approval: (i) an invoice for lobbying services from Shumaker Advisors, LLC through April 2023, (ii) two invoices from Byers, Minton & Associates, LLC for lobbying services through April 2023, (iii) two invoices for lobbying services through April 2023 from Bricker Graydon LLP, (iv) one invoice for legal services from Stinson LLP, and (v) two invoices for communications consulting services through March 2023 from Vehr Communications. Mr. Mallory moved to approve all of the foregoing invoices. Mr. Luken seconded. Unanimously approved.

ADJOURN

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



Mr. Muething, President



Ms. Geiger, Clerk

THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

May 16, 2023

A regular meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Tuesday, May 16, 2023, at 3 p.m. at the Walnut Hills Branch of the Cincinnati and Hamilton County Public Library at 2533 Kemper Lane, Cincinnati, Ohio 45206. Amy Murray, Mark Mallory, Paul Sylvester, Charlie Luken, and Paul Muething were present in-person. Emily Smart Woerner, City Solicitor; Marion Haynes, Deputy City Solicitor; Will Hicks, Chief Counsel; Kaitlyn Geiger, Assistant City Solicitor; Nick Vehr, consultant for the Board; Scott Kane, outside counsel for the Board; and members of the public were in attendance as well.

APPROVAL OF STATE LAW

Mr. Muething summarized the Board's need to approve the recently passed changes to the Ferguson Act as meeting the requirements of the Board pursuant to the Asset Purchase and Sale Agreement with Norfolk Southern. Mr. Luken moved for approval of such changes and Mr. Mallory seconded. Unanimously approved.

BALLOT INITIATIVE

Ms. Geiger summarized the timing requirements of the Board's approval of an election date for the proposed sale pursuant to the recently passed state law. Ms. Geiger recommended that the Board meet no later than mid-July to set such date, so that Council can approve the language at its August meeting if the November 7, 2023 election date is chosen by the Board. The Board discussed the timing of a special meeting and chose July 11, 2023 at 3 p.m., location to be determined. Ms. Geiger then summarized a memo drafted by the Solicitor's Office, at the request of the Board, regarding permissible behavior of the Board in connection with the ballot initiative for the proposed sale. Ms. Geiger explained that no CSR resources may be used in connection with the proposed ballot initiative but Board members in their individual capacity may express their support of the proposed sale and use their own personal resources to do so. Ms. Geiger asked if the Board needed any additional information to make its decision and suggested that the {00383925-1}

Board obtain a letter from Norfolk Southern to demonstrate compliance with the terms of the Asset Sale and Purchase Agreement. Mr. Muething to discuss further with Mr. McClellan. No action taken.

RETENTION OF SQUIRE PATTON BOGGS (US) LLP FOR LEGAL SERVICES

Mr. Muething presented the retention of Squire Patton Boggs (US) LLP (“Squire”) for legal services in connection with the request to remove the trustees that was submitted to the Solicitor’s Office. Mr. Luken proposed expanding the scope of Squire’s engagement to also include the litigation related to the Open Meetings Act because he felt that the Solicitor’s Office could also be conflicted in such litigation. Ms. Geiger explained that retention of outside counsel on behalf of the Board is the decision of the City Solicitor. Ms. Woerner explained that she is supportive of the Board’s retention of outside counsel for the purposes of Open Meetings Act litigation and clarified the rules regarding conflicts of interest for municipal attorneys. Mr. Luken proposed having Squire’s retention on the Open Meetings Act litigation be contingent on Mr. Muething’s determination such retention is necessary. Mr. Mallory proposed in lieu of that, to set a dollar amount for their services. Mr. Mallory moved to retain Squire for the purposes of the removal letter and the Open Meetings Act litigation at an amount not to exceed \$100,000. Mr. Luken seconded. Unanimously approved.

APPROVAL OF MINUTES

Mr. Muething presented the Board with the draft minutes from the April 18, 2023 special meeting. The Board reviewed them. Ms. Murray moved to approve, and Mr. Luken seconded. Unanimously approved.

TREASURER’S REPORT

Mr. Sylvester presented the draft 2022 and 2021 Financial Statements and Additional Financial Information. Mr. Sylvester highlighted the amount of cash on hand and the expenses the Board incurred in connection with the proposed sale transaction within the financial statements.

Given the amount of cash on hand and the projected future expenses of the Board, Mr. Sylvester proposed remitting \$6 million to the City of Cincinnati on June 2, 2023. Mr. Mallory moved to remit \$6 million to the City of Cincinnati and Mr. Muething seconded. Unanimously approved.

Mr. Mallory moved to approve the draft financial statements. Ms. Murray seconded. Unanimously approved.

Mr. Sylvester then presented to the Board a scope of services prepared by Davenport & Company LLC ("Davenport") to assist the Board in its procurement of investment managers. Mr. Sylvester explained that he has been working with Finance Director Karen Alder on the future procurement. Mr. Muething expressed concern on whether Davenport could assist the Board in a consulting capacity and apply to the future procurement. Ms. Woerner confirmed that the City's procurement laws prohibit that from happening. Mr. Mallory stated that the City's inclusion policy should apply to this procurement. Ms. Murray suggested that the Board engage an advisory committee consisting of members from the local business community and Mr. Mallory confirmed that would not be unusual to the City's procurement practices. Mr. Muething recommended that the Board consider who they would like to serve on the advisory committee, contact those individuals, and bring recommendations to the July special meeting. Mr. Muething moved to approve the retention of Davenport consistent with the provided scope. Mr. Luken seconded. Unanimously approved.

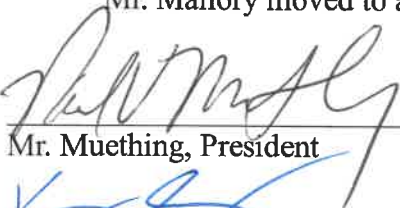
Mr. Sylvester presented two invoices to the Board, one from Squire for legal services and one from Vehr Communications for communications services. Mr. Luken moved to approve both invoices. Mr. Mallory seconded. Unanimously approved.

EXECUTIVE SESSION

Mr. Muething moved that the Board enter executive session for the purposes of discussing pending litigation against the Board with its attorneys pursuant to Ohio Revised Code Section 121.22(G). Mr. Mallory seconded. Ms. Geiger took a roll call vote: Mr. Luken – aye; Mr. Mallory – aye; Mr. Muething – aye; Ms. Murray – aye; Mr. Sylvester – aye. The Board entered executive session at 3:41 p.m. Executive session ended at 4:49 p.m. No further action taken.

ADJOURN

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



Mr. Muething, President

Ms. Geiger, Clerk

THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

June 27, 2023

A special meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Tuesday, June 27, 2023, at 2:30 p.m. in City Council Chambers at 801 Plum Street, Cincinnati, Ohio 45202. Amy Murray, Mark Mallory, Paul Sylvester, Charlie Luken, and Paul Muething were present in-person. Marion Haynes, Deputy City Solicitor; Kaitlyn Geiger, Assistant City Solicitor; Nick Vehr, consultant for the Board; Jim Bertrand, outside counsel for the Board; Scott Kane, outside counsel for the Board; and members of the public were in attendance as well. Bob Dovenberg, consultant for the Board, appeared via videoconference.

FIRST AMENDED AND RESTATED ASSET PURCHASE AND SALE AGREEMENT AND RELATED RESOLUTION

Ms. Geiger introduced the purpose of the meeting is to consider a First Amended and Restated Asset Purchase and Sale Agreement for the sale of the Cincinnati Southern Railway (the "2023 Agreement") and consider voting upon the related Resolution 1-2023 that would authorize execution of the 2023 Agreement. Ms. Geiger explained that there have been a few circumstances since the execution of the Asset Purchase and Sale Agreement (the "2022 Agreement") that gave rise to the need for a new agreement. These circumstances include the adoption of the amendments to the Ferguson Act, which Ms. Geiger summarized, and a request by Norfolk Southern to delay closing in the event that the Board elects to submit the sale of the Cincinnati Southern Railway ("CSR") to the November 2023 general election, and certain financial changes related to the payment of additional consideration by Norfolk Southern if closing is delayed. Ms. Geiger explained that the 2023 Agreement, if approved, would replace, and supersede the 2022 Agreement. She noted that the Board would consider all of the terms of the 2023 Agreement and not merely changes since the 2022 Agreement. Ms. Geiger then introduced Mr. Dovenberg and Mr. Bertrand as the expert consultants for the Board, providing financial and legal advice, respectively.

Mr. Dovenberg summarized the analysis BMO Capital Markets Corp. (“BMO”) performed related to the proposed purchase price of \$1,600,000,000 (the “Base Purchase Price”). As context for the financial analysis and advice to the Board from BMO, Mr. Dovenberg noted that, unlike other railroad sale transactions, the Board does not own an operating company and does not have, for example, customers, freight revenue, rail cars, or other assets like an operating rail company would. Rather, the Board owns only the railway itself.

With this context, Mr. Dovenberg reviewed with the Board BMO’s methodology and analysis of the Base Purchase Price reflected in the 2023 Agreement. Mr. Dovenberg explained that the Next Best Alternative model BMO created provides a calculation of what it would cost Norfolk Southern to re-route the traffic away from the CSR and that the lowest such amount is the maximum Norfolk Southern logically would be willing to pay for the CSR. He then explained the next analysis BMO performed, which is what a third-party purchaser would be willing to pay for the CSR. The last analysis performed by BMO calculated the present value of an offer Norfolk Southern made in 2009 at \$500 million. BMO also reviewed with the Board its calculation of the difference between the potential return on investment of the Base Purchase Price and the annual lease payments proposed by Norfolk Southern, which return on investment is more than 60% higher than the lease payments.

Mr. Mallory asked Mr. Dovenberg to explain whether Amtrak could purchase the CSR in the near term. Mr. Dovenberg explained the differences between passenger and freight rail that would need to be considered to perform such analysis. Mr. Bertrand clarified that an act of Congress would be necessary before Amtrak could purchase the CSR. In response to question by Mr. Muething, Mr. Dovenberg also explained that a hypothetical alternative sale of the CSR would be affected by Norfolk Southern’s existing lease rights through 2051.

Mr. Bertrand then summarized and discussed with the Board the terms and conditions of the 2023 Agreement, including that:

- The 2023 Agreement supersedes the 2022 Agreement.
- Norfolk Southern pays the Base Purchase Price for the CSR to the Board, and the Board also receives a \$25 million transaction fee for its expenses, \$5 million up front, with both the Base Purchase Price and \$20 million deferred transaction fee escalating in certain scenarios.
- Norfolk Southern acquires the CSR on an “as-is, where is, with all faults” basis.
- Norfolk Southern assumes all obligations and liabilities arising before or after the closing including environmental liabilities and indemnifies the City and the Board of the CSR for any claims related to such obligations and liabilities.
- If Norfolk Southern terminates the agreement prior to closing in certain situations, Norfolk Southern must pay at least a \$20 million (subject to escalation) termination fee.
- Subject to certain conditions, Norfolk Southern will donate the East Peavine line to the State of Ohio under the rails to trails program.
- The earliest closing could occur is March 15, 2024, which would occur if the Board submits the matter to the November 2023 election and all other conditions to closing are satisfied.

Mr. Mallory asked Mr. Bertrand to confirm of the assets the Board owns. Mr. Bertrand explained that the Board only owns the land and certain improvements thereto, such as the track and tunnels. Ms. Geiger added that, unlike many other railways, the Board does not own the freight traffic or the railcars. In response to questions by Mr. Luken, Mr. Bertrand explained that the 2023 Agreement would decrease the risk of claims against the Board or the City of Cincinnati

for a future incident like the East Palestine derailment because of the change of ownership. He noted that the terms of the 2023 Agreement required Norfolk Southern to indemnify the Board and the City. In response to follow-up questions from the Board, he noted that while the Board is indemnified under the existing lease with Norfolk Southern, the 2023 Agreement provided further practical protection, including because it removed the risk from the hypothetical inability of the lessee to perform its indemnity obligations. Mr. Bertrand noted that there is a risk when dealing with only one company and, unlike the current favorable position of the rail industry, railroad bankruptcies were not uncommon in other periods. Ms. Murray asked how the \$25 million in transaction fees will be used. Mr. Bertrand stated that it would be used for the Board's expenses and Mr. Sylvester provided a breakdown of what those expenses are. All of their questions being answered to the Board's satisfaction, Mr. Muething thanked Mr. Bertrand for his presentation regarding the 2023 Agreement.

Ms. Geiger summarized the terms of the resolution before the Board. These terms include: (i) the 2022 Agreement and resolution approving it are superseded, (ii) the 2023 Agreement would be approved, which contemplates the Base Purchase Price and other fees, and (iii) the minimum amount required to be transmitted to the City by the Board if closing of the sale of the CSR occurs in 2024 is \$26,500,000 and such amount would increase similar to the manner contemplated in the existing lease. Mr. Muething noted that the Board is obtaining a Parent Guaranty from Norfolk Southern regarding obligations owed under the 2023 Agreement, which further protects the Board's financial position. Mr. Mallory emphasized that the \$26,500,000 is only a floor and the Board can transmit additional funds. Mr. Muething noted that the anticipated returns from investment of the purchase price from the 2023 Agreement are substantially more than the minimum. Mr. Mallory thanked the Cincinnati delegation of the Ohio

House and Senate for the changes to the Ferguson Act. Mr. Luken moved to approve the resolution, including Attachments A and B. Mr. Muething seconded. Ms. Geiger took a roll call vote on the items. Mr. Luken – aye; Mr. Sylvester – aye; Mr. Muething – aye; Mr. Mallory – aye; and Ms. Murray – aye.

APPROVAL OF MINUTES

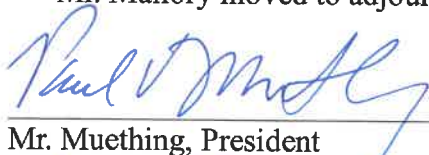
Mr. Muething presented the Board with the draft minutes from the May 16, 2023 regular meeting. The Board reviewed them. Mr. Mallory moved to approve, and Mr. Sylvester seconded. The minutes were unanimously approved.

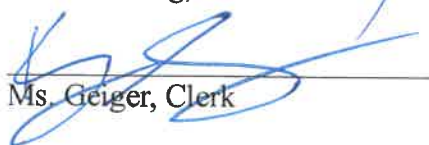
INVOICES FOR APPROVAL

Mr. Sylvester presented the following invoices for the Board's approval: (i) two invoices for legal services through May 2023 from Stinson LLP, (ii) one invoice for communications consulting services through May 2023 from Vehr Communications, (iii) one invoice for financial reporting related to the year ended December 31, 2022 from Clark Shaefer and Hackett, and (iv) one invoice for website-hosting services through May 2023 from U.S. Digital Partners. Mr. Mallory moved to approve all of the foregoing invoices. Mr. Luken seconded. Payment of the invoices was unanimously approved.

ADJOURN

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


Mr. Muething, President


Ms. Geiger, Clerk

THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

July 13, 2023

A special meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Thursday, July 13, 2023, at 3:00 p.m. Walnut Hills Branch of the Cincinnati and Hamilton County Public Library at 2533 Kemper Lane, Cincinnati, Ohio 45206. Amy Murray, Mark Mallory, Paul Sylvester, Charlie Luken, and Paul Muething were present in-person. Marion Haynes, Deputy City Solicitor; Kaitlyn Geiger, Assistant City Solicitor; Nick Vehr, consultant for the Board; and members of the public were in attendance as well.

TIMING OF BALLOT MEASURE FOR SALE OF THE CSR

Ms. Geiger noted that she drafted the resolution before the Board for the November election because of the requirements necessary for the matter to be submitted to the ballot at that time. Ms. Geiger then summarized the relevant provisions of the amended Ferguson Act relevant to the Board's determination with regard to which election to submit the sale of the Cincinnati Southern Railway ("CSR"). Those provisions include: (i) the sale may only be voted upon at the general election in 2023, or the primary or general election of 2024; (ii) prescribes the ballot language so the Board does not have flexibility in changing it; (iii) the Board must pass a resolution setting the date and language for the election to sell the CSR; and (iv) the sale of the CSR can only be submitted to the electorate once.

Ms. Geiger then summarized the relevant terms and conditions of the *First Amended and Restated Asset Purchase and Sale Agreement* executed by the Board as of June 28, 2023 (the "Agreement"). Those provisions include: (i) the Board is required to consult with Norfolk Southern regarding the timing of the election; (ii) closing is no later than five days after all closing conditions are satisfied, with the exception of if the Board elects for the November election, then closing is no sooner than March 15, 2023; (iii) in the event that the vote is not successful, then either party has the right to terminate the Agreement within 30 days and if neither party terminates it, then they agree to work together to approach the State legislature to

amend state law; and (iv) in the event the Agreement is terminated, then neither party can commence arbitration proceedings for 60 days and the parties agree to work together streamline that process if closing does not occur by December 31, 2024.

Mr. Muething noted that the Board received a letter from Norfolk Southern indicating their strong preference for a November 2023 election. Mr. Muething stated that he is proud of the work that the Board has done to get to this point. He indicated that his position is to invest the money in trust sooner rather than later but acknowledged that he does not know what political reasons may exist to consider an election in 2024.

Ms. Murray stated that she wishes to diversify the risk of owning an operating railway as soon as possible. She noted that the Councilmembers who are running for reelection in November 2023 understand the merits of the transaction and are supportive. She also noted that if the Board chooses to submit the matter to the ballot in 2024, the sale could get politicized with the presidential election.

Mr. Mallory noted that the timing of next year's primary is still uncertain. He stated that if the sale is on the ballot next November it could be overlooked due to it being a presidential election. Mr. Mallory stated that the citizens of Cincinnati need an opportunity to clearly express their views on the merits of the sale and the November 2023 election is the best opportunity for them to be heard. He also noted that the Board should strike while the iron is hot, which ultimately could lead to the City and the Board receiving revenue sooner.

Mr. Sylvester agreed with all of the comments made so far by the other trustees. He noted that the Board is best off maximizing cash flow if it chooses the November 2023 election. By doing so, he stated the Board will triple the amount of money for infrastructure and that Norfolk Southern would not match that level of revenue in an extended lease.

Mr. Luken thanked Mr. Muething for his leadership and efforts in furthering the transaction. Mr. Luken noted that he initially thought 2024 would be a better time to submit the sale to the electorate since 2023 is a City Council election year and that the electorate could still be concerned about the derailment in East Palestine. Over the passage of time, the issues changed. As a result, Mr. Luken stated that the matter should be submitted to the electorate as soon as possible so that the Board and the City are no longer financially dependent on the business operations of Norfolk Southern.

Mr. Luken asked if it was appropriate to move to approve Resolution 2-2023. Mr. Muething asked Ms. Geiger if there was anything in the resolution she wanted to highlight for the Board. Ms. Geiger noted that the resolution establishes the election for the sale of the CSR as November 7, 2023. She also noted the ballot language and that it contained the minimum amount to be paid to the City as \$26,500,000 in accordance with Resolution 1-2023.

Mr. Luken moved to approve the resolution. Mr. Mallory seconded the resolution. Mr. Mallory stated that he wanted to provide clarity to people that the Board only owns the land with the tracks on it from Cincinnati. Mr. Muething noted that the Board views the CSR as a financial asset. Ms. Geiger took a roll call vote on the resolution. Ms. Murray – aye; Mr. Mallory – aye; Mr. Muething – aye; Mr. Sylvester – aye; and Mr. Luken – aye.

PROCUREMENT OF INVESTMENT CONSULTANT

Ms. Geiger provided an update on the procurement of an investment consultant. She noted that the draft request for proposals should be available for the Board's review at its next regular meeting, with the goal of the Board approving the retention of a consultant at its November meeting. Ms. Geiger stated the intent is to get the consultant under contract by the end of the year so that the consultant has enough time prior to closing in March. Ms. Geiger noted

that there would be two trustees on the committee, with three City employees who were still in the process of being identified. Ms. Geiger noted that there could be a non-voting advisor to the evaluation committee as well. Mr. Muething asked that there be more than one, with there being at least two to three.

The Board then discussed which trustees would sit on the evaluation committee. Mr. Muething noted that the committee would provide a recommendation to the Board, who has the ultimate vote regarding the selection of a consultant. Ms. Murray requested that the trustees on the committee be bipartisan. Mr. Mallory requested to be one of the trustees. Ms. Murray suggested Mr. Muething be the other trustee. Mr. Luken recommended that Mr. Sylvester be considered given his financial experience. The Board agreed to Mr. Sylvester and Mr. Muething serving on the evaluation committee.

Mr. Mallory highlighted the importance of following the City's inclusion guidelines. Ms. Murray noted that she wants to have options as a result of the request for proposals on the best strategy to move forward, whether that be one investment advisor managing managers or multiple advisors. She also recommended that as the trustees terms expire, at least one trustee has investment experience.

PENDING LITIGATION

Ms. Geiger provided an update as to the status of the pending litigation against the Board. Ms. Geiger stated that there is a status conference in the open meetings case on July 18 and mediation in the public records case on July 24. No action taken.

APPROVAL OF MINUTES

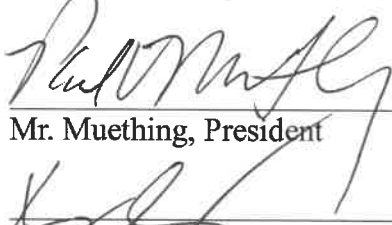
Mr. Muething presented the Board with the draft minutes from the June 27, 2023 special meeting. The Board reviewed them. Mr. Sylvester moved to approve, and Ms. Murray seconded. The minutes were unanimously approved.

INVOICES FOR APPROVAL

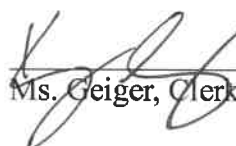
Mr. Sylvester presented the following invoices for the Board's approval: (i) one invoice for legal services through June 2023 from Stinson LLP; and (ii) one invoice for website-hosting services through June 2023 from U.S. Digital Partners. Mr. Mallory moved to approve all of the foregoing invoices. Mr. Luken seconded. Payment of the invoices was unanimously approved.

ADJOURN

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



Mr. Muething, President



Ms. Geiger, Clerk

THE MINUTES OF THE TRUSTEES OF THE CINCINNATI SOUTHERN RAILWAY

August 15, 2023

A regular meeting of the Board of Trustees of the Cincinnati Southern Railway (the "Board") was held on Tuesday, August 15, 2023, at 3:00 p.m. at the Walnut Hills Branch of the Cincinnati and Hamilton County Public Library at 2533 Kemper Lane, Cincinnati, Ohio 45206. Amy Murray, Mark Mallory, Paul Sylvester, Charlie Luken, and Paul Muething were present in-person. Emily Smart Woerner, City Solicitor; Marion Haynes, Deputy City Solicitor; Kaitlyn Geiger, Assistant City Solicitor; Nick Vehr, consultant for the Board; Scott Kane, outside counsel for the Board; Roland Kooch, consultant for the Board, and members of the public were in attendance as well.

PROCUREMENT OF AN INVESTMENT ADVISOR

Mr. Kooch, of Davenport & Company, LLC serving as consultant to the Board, provided an overview of the procurement process for an investment advisor that the Board will be undertaking in the event that the electorate of the City of Cincinnati approves the sale of the Cincinnati Southern Railway (the "Railway"). Mr. Kooch emphasized that the Board will be seeking an independent advisor to serve as a fiduciary to the Board related to the investment of the sale proceeds. Mr. Kooch also discussed the Board's the goals and objectives to preserve the corpus of the trust fund while remitting annual payments to the City, ideally in excess of the minimum amount that the Board is required to transmit.

Ms. Murray summarized issues on which she is seeking the Board's feedback. These include (i) how many investment advisors to retain, (ii) whether the investment advisor should be permitted to invest in its own products, with appropriate safeguards, (iii) the term of the contract for the investment advisor, and (iv) when and how the entire Board expects to be engaged in the procurement process. Mr. Sylvester recommended that there just be one investment advisor retained so that it could serve as the quarterback of the investment fund managers, as Mr. Kooch recommended. The Board agreed with

that approach. With respect to the term of the contract, the Board discussed and agreed to a three-year term, renewable for an additional seven years for a total ten-year contract with the understanding that the Board could terminate the contract for convenience and in the event of a default.

Mr. Luken expressed concern about members of the City staff voting on recommendations to the Board on the procurement because the City is the ultimate beneficiary of the funds and should be further removed from the process of determining how much funds and when the funds are transmitted to the City. There was general consensus from the Board that Mr. Sylvester and Ms. Murray should be the only voters on recommendations to the Board from the procurement, with City staff and external advisors assisting in purely an advisory capacity. Ms. Murray also raised the idea that at a later date, the Board should consider if it wants to retain someone to interface with the City and the investment advisor.

Mr. Luken expressed concern about the selected investment advisor being able to invest in its own products, even with safeguards. Mr. Kooch stated that the safeguards would have to be some metric demonstrating that the advisor's fund is outperforming funds in the marketplace. Mr. Muething stated that it would be unlikely for a fund to do that consistently. Mr. Mallory stated that even if it were possible to create the safeguards, he was concerned about the optics. The Board agreed to prohibit the selected investment advisor from investing in its own products.

Mr. Luken asked Mr. Kooch to detail the rationale with respect to the inclusion criterion, particularly given Mr. Mallory's request to ensure that the Board is emphasizing inclusion throughout the process to select the investment advisor. Mr. Kooch detailed that he has seen advisors prioritize inclusion in determining which investment fund managers

to utilize. Ms. Geiger summarized how the City determines when to add inclusion goals to a contract, and stated that the City's Department of Economic Inclusion determined that this contract should have no goals given the lack of capacity in City certified minority and women owned enterprises. Mr. Mallory thanked Mr. Luken for raising the issue and emphasized the priority of the Board to consider diversity in both the retention of the investment advisor and the ultimate investment policies of the Board.

Mr. Muething asked Ms. Geiger to detail the next steps for the procurement process. Ms. Geiger stated that the request for proposals would be issued no later than August 22, with responses being due September 29.

APPROVAL OF MINUTES

Mr. Muething presented the Board with the draft minutes from the July 13, 2023 special meeting. The Board reviewed them. Ms. Murray moved to approve, and Mr. Luken seconded. Unanimously approved.

TREASURER'S REPORT

Mr. Sylvester presented four invoices to the Board, which include (i) two invoices from Vehr Communications for communications services, (ii) one invoice from Stinson LLP for legal services, and (iii) one invoice from US Digital Partners for website hosting services. Mr. Muething asked if these invoices encompass all invoices that needed to be paid between now and the Board's next meeting in November. Mr. Sylvester stated that there will be expenses related to the procurement of an investment advisor, including meeting room charges, that will need to be paid between now and then and that he requested a budget of \$5,000 to do so. Mr. Muething moved to approve all presented invoices and the budget for the procurement of \$5,000 for the payment of expenses

related to the procurement of an investment advisor. Mr. Luken seconded. Unanimously approved.

Mr. Kane provided an overview of Squire Patton Boggs (US) LLP's legal services to date and the costs associated therewith. Mr. Kane requested that the Board increase the cap on Squire Patton Boggs (US) LLP's contract from \$100,000 to \$200,000 and authorize the payment of invoices up to that cap. Mr. Muething moved to increase the cap of the contract to \$200,000 and authorize the payment of invoices up to that amount. Mr. Syvester seconded. Unanimously approved.

EXECUTIVE SESSION

Mr. Muething moved that the Board enter executive session for the purposes of discussing pending litigation against the Board with its attorneys pursuant to Ohio Revised Code Section 121.22(G). Mr. Mallory seconded. Ms. Geiger took a roll call vote: Mr. Luken – aye; Mr. Mallory – aye; Mr. Muething – aye; Ms. Murray – aye; Mr. Sylvester – aye. The Board entered executive session at 3:50 p.m. Executive session ended at 4:29 p.m. Following executive session, the Board reconvened and Mr. Kane outlined the terms of a proposed settlement of all pending litigation against the Board, as detailed further below.

SETTLEMENT OF PENDING LITIGATION

Mr. Kane summarized the terms of the proposed settlement of the pending litigation, which were as follows: (i) counsel for parties will present an Agreed Final Judgment Entry to the judge in the Open Meetings Act litigation that will fully resolve that matter; (ii) the parties will execute a Settlement and Release Agreement; (iii) the Board will pay \$90,000 for the relator's attorneys' fees and a civil forfeiture of \$500 related to the Open Meeting Act litigation; and (iv) the City will pay \$10,000 for the

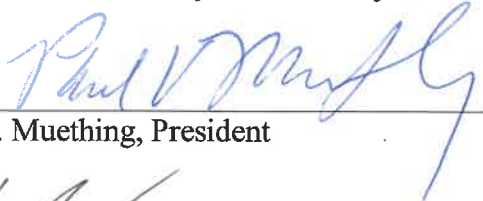
relator's attorneys' fees related to the public records litigation. Mr. Luken stated that the settlement is distasteful but fair. Mr. Luken emphasized that the settlement of the litigation would remove a distraction and allow the Board and the public to move on to the important business of determining whether to sell the railway. Mr. Kane shared that if the Board opted to continue the litigation, he was optimistic that the Board would prevail, but noted the possibility of additional claims and the likelihood of appeals even if the Board prevails. Mr. Kane also noted the significant expense that continued litigation, including appeals, would force the Board to incur. Mr. Kane observed that the settlement would allow the voters to freely consider the benefits of the proposed sale of the Railway.

Mr. Luken moved to (i) authorize Mr. Muething to execute a Settlement and Release Agreement, (ii) authorize the Board's counsel to tender the Agreed Final Judgment Entry to the Court, and (iii) authorize the payment of \$90,000 in relator's attorneys' fees for the Open Meetings Act case and a civil forfeiture of \$500. Mr. Mallory seconded the motion.

Mr. Muething noted that pursuant to the First Amended and Restated Asset Purchase and Sale Agreement, the Board would receive \$25 million in transaction fees and the Board's desire to ensure that the full \$1.6 billion in sale proceeds to be received upon closing of the sale of the Railway is available to be invested. Mr. Muething stated that he also finds the settlement distasteful, but it is the prudent thing to do. The motion, as outlined by Mr. Luken and seconded by Mr. Mallory, was unanimously approved by the Board.

ADJOURN

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



Mr. Muething, President



Ms. Geiger, Clerk