

# 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.

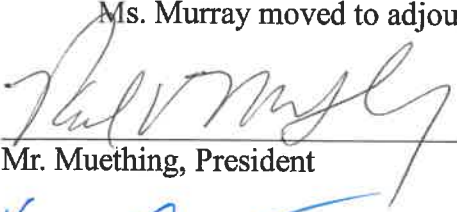
Mr. Muething provided a statement regarding the derailment in East Palestine, Ohio. He stated that the Board's role is to maximize the value of the CSR for the benefit of the citizens of Cincinnati. He also said that the situation in East Palestine is tragic and federal, state, and Norfolk Southern resources 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

{00379351-1}

# 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

{00382306-1}

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