

**NATIONAL RAILROAD PASSENGER CORPORATION**

**BOARD OF DIRECTORS**

**MINUTES OF MEETING**

**January 19, 2022**

The Board of Directors (Board) of the National Railroad Passenger Corporation (Amtrak or Corporation) held a duly noticed conference call meeting on Wednesday, January 19, 2022. Board members participating in the meeting were Anthony Coscia (Board Chairman), Jeff Moreland (Vice-Chairman), Bert DiClemente, Tom Carper, Chris Beall, and Yvonne Burke, and Stephen Gardner (President and Chief Executive Officer, non-voting) also participated in the meeting.

Paul Nissenbaum (FRA Associate Administrator) participated in the meeting.

Eleanor D. Acheson (Executive Vice President, Chief Legal Officer, General Counsel & Corporate Secretary), Tracie Winbigler (Executive Vice President, Chief Financial Officer), Steve Predmore (Executive Vice President, Chief Safety Officer), Scot Naparstek (Executive Vice President, Service & Delivery Operations), Christian Zacariassen (Executive Vice President, Digital Technology & Innovation), Roger Harris (Executive Vice President, Marketing & Revenue), Dennis Newman (Executive Vice President, Strategy & Planning), Qiana Spain (Executive Vice President, Chief Human Resources Officer), and Laura Mason (Executive Vice President, Capital Delivery) participated in the regular session of the meeting.

Jesse Whaley (Vice President, Chief Information Security Officer), William Herrmann (Vice President, Managing Deputy General Counsel & Assistant Corporate Secretary) and Whitney Jordan (Associate General Counsel) also attended the meeting.

The minutes were recorded by Ms. Acheson and Mr. Herrmann. The meeting was convened by Mr. Coscia in Executive Session at 3:00 p.m.

**APPROVAL OF THE MINUTES**

Following discussion, upon motion made by Mr. DiClemente and seconded by Mr. Beall, the Board voted to approve the minutes of its September 24, 2021, October 12, 2021, November 18, 2021, and December 13, 2021, meetings.

(7-0)

**AUDIT & FINANCE COMMITTEE REPORT**

Mr. Moreland provided the Audit & Finance Committee report and led a discussion about the approval of the EY Engagement fees. Following discussion, upon motion made by Mr. Coscia and seconded by Mr. Moreland, the Board voted to adopt the following resolutions:

**WHEREAS**, Section 4.14 of the Amended and Restated Bylaws ("Bylaws") of National Railroad Passenger Corporation ("Corporation") adopted January 27, 2016 requires the Board of Directors ("Board") to annually appoint an independent public accountant after receiving recommendations of the Audit & Finance Committee of the Board ("AFC"); and

**WHEREAS**, Following a Request for Proposal in 2012, the Board approved the award of a contract ("Contract") to Ernst & Young, LLP ("EY"), to perform the Corporation's financial audits for FY 2012 and potentially for future years, subject to annual appointment by the Board as required by the Bylaws of the Corporation, which Contract has been amended most recently in September 2020 to provide for a fee reduction for FY 2020 and the extension of the Contract through FY 2024 at the same reduced rates, subject to annual appointment of EY by the Board for each fiscal year after FY 2020; and

**WHEREAS**, The FY 2021 consolidated audit of the Corporation has now been completed, and the AFC has recommended that the Board approve the appointment of EY to perform the Corporation's financial audits for FY 2022 and CY 2022 for the fees approved by the AFC in September 2020; therefore be it

**RESOLVED**, That the Board deems it to be in the best interests of the Corporation that EY should be appointed to perform the Corporation's financial audits for FY 2022 and CY 2022, as the case may be, for the fees approved by the AFC in September 2020, as follows:

- a fixed price of \$3,752,500 for the FY 2022 consolidated audit of the Corporation and the review of the Corporation's FY 2022 Management's Discussion and Analysis of Financial Condition and Results of Operations, plus o routine out-of-scope work identified during the course of the audit, including work to be performed on Amtrak's ASC 842 implementation, to be invoiced at actual hours x \$215/hour
  - o non-routine out-of-scope work to be invoiced at actual hours x rate to be determined based on work to be performed
  - o all out-of-scope work to be agreed upon and approved by the AFC before work is incurred
- a fixed price of \$100,000 for Passenger Railroad Insurance, Ltd.'s FY 2022 GAAP and Bermuda statutory audits;
- a fixed price of \$250,000 for the Corporation's FY 2022 Single Audit (formerly A-133); and • a fixed price of \$99,000 for the audit of the Corporation's benefit plans for CY 2022; and

**FURTHER RESOLVED**, That the Chief Executive Officer, the Chief Financial Officer, or the Vice President, Procurement & Logistics are authorized to execute an amendment to the Contract and to take all other actions necessary to give effect to the foregoing resolution.

(7-0)

Mr. Moreland also described the Fitter Interlocking project and Management's request to approve an increase in the life of project costs. Following discussion, upon motion made by Mr. Carper and seconded by Mr. Coscia, the Board voted to adopt the following resolution:

**WHEREAS**, National Railroad Passenger Corporation ("Amtrak" or "Corporation") policy requires Board of Directors ("Board") approval for any (i) capital project with life-of-project ("LOP") costs that will exceed \$50MM and (ii) increase in approved AOP capital expenditure amounts over \$10MM; and

**WHEREAS**, Management has presented to the Board and the Board has reviewed the scope and financials related to a proposed

\$32.8MM increase in the authorized LOP for "FITTER" Interlocking, which increases the total LOP cost to \$63.6MM primarily due to increased construction costs driven by current market conditions; and

**WHEREAS**, Management requests and the Audit & Finance Committee of the Board recommends Board approval of the \$32.8MM increase in LOP costs for "FITTER" Interlocking; and

**WHEREAS**, The Board deems it to be in the best interests of the Corporation to approve the increase in LOP costs for "FITTER" Interlocking because of the importance of the infrastructure improvement to train performance and the cost and other risks associated with rebidding the work or attempting to self-perform elements of the scope; and

**WHEREAS**, Pursuant to a cost sharing agreement with the Connecticut Department of Transportation, Amtrak is responsible for 65% of the total construction costs for "FITTER" Interlocking; therefore, be it

**RESOLVED**, That the Board approves the \$32.8MM increase in the authorized LOP for "FITTER" Interlocking, which increases the total LOP cost to \$63.6MM.

(6-0-1) Mr. Nissenbaum abstained.

Mr. Moreland also described Management's request to approve the option orders for fifty additional locomotives and Management's. Following discussion, upon motion made by Mr. Coscia and seconded by Mr. Boall, the Board voted to adopt the following resolution:

**WHEREAS**, on November 15, 2018, the Board of Directors ("Board") National Railroad Passenger Corporation ("Amtrak" or "Corporation") authorized the award of a contract to Siemens Mobility for the replacement of Amtrak's aging fleet of General Electric P-40 and P-42 diesels (built between 1993 and 2001) with a new locomotive-ALC 42 Charger (the "Locomotive Contract") and a twenty (20) year Technical Support Spares and Supplies Agreement ("TSSSA") (collectively the "Contracts"); and

**WHEREAS**, the Contracts have options for up to 100 additional locomotives; and

**WHEREAS**, Management has determined that Amtrak needs to procure fifty (50) additional ALC-42 diesel locomotives

("Option Locomotives") to complete the diesel locomotive fleet required to operate the federally mandated long distance network more reliably and cost effectively with locomotives that are in compliance with current emissions standards and in a state of good repair; and

**WHEREAS**, Management recommends that the procurement of the Option Locomotives be awarded to Siemens Mobility Inc.; and

**WHEREAS**, The Contracts with Siemens Mobility Inc. already contain many of Amtrak's standard terms and other terms agreed upon by Amtrak; and

**WHEREAS**, the price for the Contracts will be increased for an amount not to exceed the Option Costs (as defined below); and

**WHEREAS**, Management requests that the Board authorize execution of the options under the Contracts with Siemens Mobility Inc. for an amount not to exceed \$816 million (assuming 3% annual escalation for the TSSSA), which includes an amount not to exceed \$465 million for the Option Locomotives, and an amount not to exceed \$351 million for the TSSSA (collectively, the "Option Costs"); and

**WHEREAS**, Management has presented to the Board and the Board has reviewed the scope and financials relating to funding, in addition to the Options Costs, in an amount not to exceed \$11 million ("ALC-42 Program Costs") required for the broader program related activities, including, without limitation, testing and commissioning, shipment of units, program management and contingency (collectively, the ALC-42 Program); and

**WHEREAS**, Management requests Board approval of the ALC-42 Program Costs; and

**WHEREAS**, the Board deems it to be in the best interests of the Corporation to approve the (i) exercise of options under the Contracts to purchase the Option Locomotives, in an amount not to exceed the Options Costs and (ii) additional ALC 42 Program Costs for the ALC-42 Program; and, therefore, be it

**RESOLVED**, that the Board approves exercise of options under the Contracts to purchase the Option Locomotives, in an amount not to exceed the Options Costs; and

**FURTHER RESOLVED**, that the Board approves the additional ALC-42 Program Costs for the ALC-42 Program; and

**FURTHER RESOLVED**, that the Board authorizes any one or more of the Chief Executive Officer and President and the Executive Vice President and Chief Financial Officer (collectively, the "Authorized Officers") to take any and all action consistent with this resolution, to make, execute and deliver in the name of and on behalf of the Corporation all instruments, agreements, certifications and all other documents as may be required or contemplated by the foregoing, containing such terms as the above referenced Authorized Officers deem necessary and advisable in order to effectuate the foregoing proposed transaction; and

**FURTHER RESOLVED**, that any and all lawful actions taken on the Corporation's behalf within the scope of the foregoing be and are hereby ratified, confirmed and approved.

(6-0-1) Mr. Nissenbaum abstained.

Mr. Moreland concluded with a full overview of the Committee's agenda.

#### **PERSONNEL & COMPENSATION COMMITTEE REPORT**

Mr. DiClemente provided the Personnel & Compensation Committee report and led a discussion about the proposed adjustment to the Inspector general's salary. Following discussion, upon motion made by Mr. Moreland and seconded by Mr. Carper, the Board voted to adopt the following resolutions:

**WHEREAS**, National Railroad Passenger Corporation (the Corporation) is a federal entity for purposes of the Inspector General Act of 1978, as amended and including the Inspector General Reform Act of 2008 (the Act); and

**WHEREAS**, The Act provides the calculation methodology for setting the salary of an Inspector General of a federal entity, including how to calculate the baseline for such salary; and

**WHEREAS**, The Personnel & Compensation Committee, on behalf of the Board of Directors in its capacity as "head of entity" under the Act, has applied the methodology set forth in the Act to determine the baseline for the annual salary of the Amtrak Inspector General for CY 2022 and recommended to the Board of Directors to set said salary at \$392,865.56; therefore, be it

**RESOLVED**, That the Board of Directors approves a salary of \$392,865.56 for the Amtrak Inspector General for CY 2022, or until an effective date of any change to that salary, to be paid

beginning with the first payroll following approval of this resolution; and

**FURTHER RESOLVED**, That Management shall take all necessary actions to effect the above resolution.

(6-0) Mr. Beall did not participate in the vote.

Mr. DiClemente concluded with a full overview of the Committee's agenda.

### **SAFETY & SECURITY REPORT**

Mr. Beall provided the Safety & Security Committee report. Mr. Beall led a discussion about the proposed Strategic Plan for the Amtrak Police Department. Following discussion, upon motion made by Mr. Coscia and seconded by Mr. Carper, the Board voted to adopt the following resolutions:

**WHEREAS**, Amtrak policy requires the Board of Directors to approve any proposed action or other matter having extraordinary or material impact on the Company's statutory mission and strategic goals; and

**WHEREAS**, the Amtrak Police Department, in concert with internal and external partners has developed a Strategic Plan for the Police Department to continuously improve public safety and its law enforcement program; and

**WHEREAS**, the Board of Directors has reviewed Management's proposed the Amtrak Police Department Strategic Plan 2022-2026; therefore, be it

**RESOLVED**, that the Board of Directors approves Management's proposed Police Department Strategic Plan; and

**FURTHER RESOLVED**, That the Board of Directors directs the President & CEO and the Executive Vice President Chief Safety Officer to take any and all actions necessary to prioritize and execute all aspects of the Amtrak Police Department's Strategic Plan with the full cooperation of all other members of the Executive Leadership Team.

(7-0)

Mr. Beall also described the FY 2022 Cybersecurity Strategic Plan. Following discussion, upon motion made by Mr. DiClemente and

seconded by Mr. Carper, the Board voted to adopt the following resolutions:

**WHEREAS**, Amtrak policy requires the Board of Directors to approve any proposed action or other matter having extraordinary or material impact on the Company's statutory mission and strategic goals; and

**WHEREAS**, Management has developed a Security Strategy to continuously improve its Security program as set forth in the Executive Summary; and

**WHEREAS**, The Board of Directors has reviewed Management's proposed Security Strategy for FY 2022; therefore, be it

**RESOLVED**, That the Board of Directors approves Management's proposed FY 2022 Security Strategy; and

**FURTHER RESOLVED**, That the Board of Directors directs the CEO and the Executive Vice President Chief Safety Officer to take any and all actions necessary to prioritize and execute all aspects of the FY 2022 Security Strategy with the full cooperation of all other members of the Executive Leadership Team.

(7-0)

Mr. Beall concluded with a full overview of the Committee's agenda.

#### **GOVERNMENT RELATIONS, LEGAL & GOVERNANCE AFFAIRS COMMITTEE**

Mr. Coscia provided the Government Relations, Legal & Governance Affairs Committee report.

Mr. Coscia led a discussion about Management's proposed settlement of the arbitration with CSX involving their claims to recover Positive Train Control installation costs. Following discussion, upon motion made by Mr. Moreland and seconded by Ms. Burke, the Board voted to adopt the following resolutions:

**WHEREAS**, National Railroad Passenger Corporation ("Amtrak" or "Corporation") policy requires Board of Directors ("Board") approval of any settlement in excess of \$25 million; and

**WHEREAS**, For the reasons set out in the accompanying Executive Summary, Management recommends that the Board approve the



proposed \$41.5 million settlement of the pending National Arbitration Panel proceeding by CSX Corp. ("CSX") against Amtrak to recover Positive Train Control ("PTC") installation costs; and

**WHEREAS**, The proposed settlement also includes a waiver by CSX of PTC maintenance costs incurred on or before December 31, 2024; therefore, be it

**RESOLVED**, That the Board approves the proposed settlement of CSX's claim against Amtrak for PTC installation costs in the amount of \$41.5 million, plus CSX's waiver of maintenance costs through 2024; and

**FURTHER RESOLVED**, That the Board authorizes the General Counsel or her designee to take any and all action consistent with this resolution, including, without limitation, negotiating and executing an appropriate settlement agreement reflecting the approved settlement amount and consideration from CSX and to making, executing and delivering in the name of and on behalf of the Corporation all instruments, agreements, amendments, certifications and all other documents as may be required or contemplated by the foregoing, containing such terms deemed necessary and advisable in order to effectuate the foregoing resolution; and

**FURTHER RESOLVED**, That any and all lawful actions taken on the Corporation's behalf within the scope of the foregoing be and are hereby ratified, confirmed and approved.

(7-0)

Mr. Coscia next led a discussion of proposed amendments to the Corporate Bylaws regarding the President and Chief Executive Officer positions. Following discussion, upon motion made by Ms. Burke and seconded by Mr. Carper, the Board voted to adopt the following resolutions:

**WHEREAS**, On November 25, 2020, National Railroad Passenger Corporation's (the Corporation) Board of Directors (Board) approved the separation of the Chief Executive Officer (CEO) and President of the Corporation into two officer positions; and

**WHEREAS**, on December 13, 2021, the Board, in accordance with the Corporation's Amended and Restated Bylaws adopted by the Board on January 28, 2021 (the Bylaws), accepted the

resignation of the CEO, William J. Flynn, and appointed Stephen J. Gardner to be President and CEO of the Corporation effective January 17, 2022; and

**WHEREAS**, The Bylaws should clearly reflect the Board's authority to separate or combine the President and CEO positions as the Board deems appropriate to accomplish the efficient management of the Corporation; and

**WHEREAS**, To accomplish the foregoing, it is recommended that Bylaws Sec. 6.07 be amended as recommended in the accompanying Executive Summary; and

**WHEREAS**, The Government Relations, Legal & Corporate Governance Committee considered the proposed amendment and recommends it be adopted by the Board; therefore, be it

**RESOLVED**, That the Board hereby approves the amended Bylaws as described in the Executive Summary.

(7-0)

Mr. Coscia concluded with a full overview of the Committee's agenda.

Having concluded the Committee reports, the Executive Session was adjourned, and the meeting was called to order in regular session at 4:30 pm and the Executive Leadership Team was invited to attend.

#### **PERFORMANCE OVERVIEW AND BUSINESS STRATEGY UPDATE**

Mr. Gardner reported through December Amtrak is on track to meet or exceed financial performance and CSI on target. Mr. Gardner described staffing shortages related to COVID-19 which impacted service while noted that there had also been a related reduction in demand which we expect to continue for some period. Mr. Gardner also noted that the organizational changes that had been discussed previously were being implemented.

## **SAFETY AND SECURITY REPORT INCLUDING COVID-19 UPDATE**

Mr. Predmore first updated on the recent incidents involving Amtrak trains first by updating the Board about events at Lee Summit, MO, Train 313 shooting. Mr. Predmore then discussed the loss of life by an Amtrak conductor on train 163 NE Regional from Boston through Westerly, RI. noting that the NTSB has launched a "virtual" investigation focused on operations and human performance.

Switching topics to COVID-19, Mr. Predmore noted we had seen the same surge that everyone else was seeing. We have begun to see a decline in cases with 100 fewer mark-offs this week than last week so we are cautiously optimistic. Mr. Predmore explained that the injunction on enforcement of the Executive Order for federal contractors led Amtrak to revert to our original plan for vaccine or testing plan. Ms. Spain updated the directors on how we are implementing a testing program as a temporary measure while we wait for a final decision on the Executive Order. We have a vendor who also manages other large entities - three phases of testing with the first phase going live last Monday with about 100 management employees receiving their test kits; phase 2 will include agreement employees who are not fully vaccinated (about 500 employees), and then February 14th will begin phase three and add another 450 employees into the pool. Ms. Spain also described the pay protection in place for employees and that they had been notified we will return to workplace no sooner than March 1st and will give employees at least 30 days' notice.

## **OPERATIONS REPORT**

Mr. Naparstek summarized the reasons for recent service reductions which were primarily driven by a shortage of staff due to COVID-19. It is expected that these staffing impacts will level off as the current surge progresses, but it is difficult to estimate given uncertainty around the pandemic.

## **MARKETING AND REVENUE REPORT**

Mr. Harris reported on the revenue impact Amtrak observed because of the COVID-19 related service reductions. In January 2022, Mr. Harris reported that the NEC was down about 10%. Long Distance and State Supported service was reduced but not as much as at the peaks last year and demand has been down at least temporarily. Performance in the first quarter of FY 2022 was very good against plan but weakness in demand began to appear in December and there was a significant drop off after January 1<sup>st</sup>. Mr. Harris noted that Amtrak was seeing demand at about 70% of pre-pandemic performance at Christmas but that had receded back down to 50%. He expressed hope to see a return to previous trend sometime in March.

Mr. Naparstek then gave an overview of the reorganization within Operations noting it had been fully implemented. He then summarized Operations' performance since the last Board meeting noting particularly how weather has impacted service.

## **FINANCE REPORT**

Ms. Winbigler reported that operating adjusted results were about \$47m favorable to the plan at the end of 1Q FY 2022. However, she cautioned that they anticipate Amtrak is unfavorable to annual plan of about \$14M right now but that they are working with the departments to close this gap.

## **STRATEGY, PLANNING & ACCESSIBILITY**

Mr. Newman reported on projects in progress noting they have implemented the reorganization "Strategy, Planning and Accessibility" which now incorporates sustainability. There is also a network development function that will deliver the planning to the marketing service lines so that the network expansions are fully completed. Mr. Newman also reported that B&P tunnels are progressing and the status of pending freight rail mergers, CP & KCS and CSX & Pan Am noting that we reached agreement where they will let our Twin Cities to Chicago start, Hiawatha frequency

enhanced as well as frequencies between Baton Rouge and New Orleans. In the CSX merger, they accepted 6 of the 7 conditions we had requested. We are still attempting to negotiate the 7 involving the Berkshire Flyer. Mr. Newman also updated the Board on efforts to acquire Washington Union Station.

#### **CAPITAL DELIVERY REPORT**

Ms. Mason provided project reports and an update about the reorganization that has been accomplished in her department. She described the FY 2022 priorities for her which include pace, scale, competency based metrics with critical milestones in 2023 Gateway projects and fleet strategy. Ms. Mason noted that Program updates will grow and will be summarized in future meetings and reported that the ICT program is off to a good start with project moving according to plan. She also stated that the Gateway is progressing nicely and will be discussed at a future meeting. She concluded by noting that the New Acela project continues to face challenges that will be discussed in more detail in this Board meeting.

#### **IT AND CYBERSECURITY REPORT**

Mr. Zacariassen described changes to IT organization associated with the larger company restructuring noting that technology is integral to everything we do so IT needs to expand capabilities to do more at a faster pace. He also updated the directors on several pending IT projects.

Mr. Whaley provided a summary of events since the last meeting noting a deeper report out had been provided to the Safety and Security committee. He highlighted the cyber tabletop exercise in December and noted several action items to improve our preparedness. He also discussed the impact of the ransomware attack on our timekeeping vendor, Kronos, and the TSA security directive and the steps Amtrak has taken to comply with that. Finally, Mr. Whaley reported that Amtrak had completed a maturity assessment

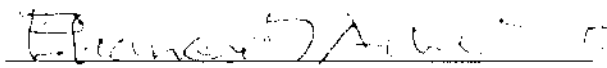
developed by NIST that was incorporated into the Cybersecurity Strategy.

**ADJOURNED**

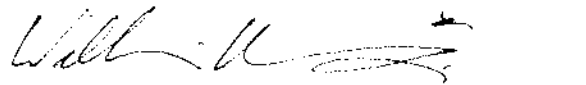
The meeting was adjourned and reconvened by Mr. Coscia in executive session at 5:50 p.m.

**ADJOURNMENT**

There being no further business before the Board, the meeting adjourned at 6:00 p.m.



Eleanor D. Acheson  
Corporate Secretary



William Herrmann  
Assistant Corporate Secretary