

RESOLUTION OF THE CITY COUNCIL

No. 317

Approved June 16, 1997

WHEREAS, Amtrak needs greater clearance under the Roger Williams Avenue Bridge for rail electrification and the State of Rhode Island needs greater clearance under the Roger Williams Avenue Bridge for the third rail; and

WHEREAS, the only acceptable option to address this requirement for increased clearance to the residents of the Reservoir Triangle Neighborhood is the construction of a new bridge; and

WHEREAS, Amtrak, the Rhode Island Department of Transportation and the Providence Department of Planning and Development have proposed a cooperative agreement for the construction and funding of a new Roger Williams Avenue Bridge,

NOW, THEREFORE BE IT RESOLVED, that the Mayor is hereby authorized to execute an agreement by and between the State of Rhode Island and Providence Plantations, the City of Providence, and the National Railroad Passenger Corporation for the replacement of the Roger Williams Avenue Bridge over the northeast corridor, Providence, Rhode Island, substantially in accordance with the attached draft agreement.

IN CITY COUNCIL
JUN 5 1997
READ AND PASSED

Eschyn V. Fargnoli
Michael S. Clement
CLERK



IN CITY COUNCIL
May 1, 1997
FIRST READING
REFERRED TO COMMITTEE ON
FINANCE

Michael R. Cleaver

THE COMMITTEE ON
FINANCE
Approves Passage of
The WPA Resolution, as amended

Richard A. Givens
May 27, 1997 Clerk

BRJ

Draft - March 24, 1997

**AGREEMENT BETWEEN
THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,
THE CITY OF PROVIDENCE, AND THE NATIONAL RAILROAD PASSENGER
CORPORATION
FOR THE REPLACEMENT OF THE ROGER WILLIAMS AVENUE BRIDGE
OVER THE NORTHEAST CORRIDOR, PROVIDENCE, RHODE ISLAND**

This Agreement is between the National Railroad Passenger Corporation ("Amtrak"), a corporation organized under the Rail Passenger Service Act and the laws of the District of Columbia, having its principal place of business at 60 Massachusetts Avenue, N.E., Washington, DC 20002, the State of Rhode Island and Providence Plantations (the "State"), through its Department of Transportation, having its principal place of business at Two Capitol Hill, Providence, RI 02903, and the City of Providence (the "City"), through its Department of Planning and Development, having its principal place of business at 400 Westminster Street, Providence, Rhode Island 02903 (collectively, the "Parties").

WHEREAS, Congress has authorized Amtrak pursuant to the Railroad Revitalization Regulatory Reform Act of 1976, 45 U.S.C. 801, (hereinafter the "4R Act"), to improve the Northeast Corridor to facilitate high-speed rail passenger service between Boston, Massachusetts and Washington, DC; and

WHEREAS, Amtrak, in order to meet the directives set out under the 4R Act, has set a three-hour trip time goal for inter-city rail passenger service between New York City and Boston, and has identified certain improvements to the right-of-way and ancillary facilities as necessary to meet this goal; and

WHEREAS, the State, the City and Amtrak are all desirous of improving and developing existing intercity rail passenger service between New York City and Boston; and

WHEREAS, one of the improvements identified by Amtrak as necessary to meet this goal is the design and construction of a catenary system to permit operation of electrified high-speed train service between New Haven, Connecticut and Boston, Massachusetts (hereinafter the "Electrification Project"); and

WHEREAS, Amtrak has awarded a contract for the design and construction of the Electrification Project; and

WHEREAS, Congress has indicated its intent to fund the Electrification Project and other improvements identified by Amtrak as necessary to meet this three-hour trip time goal and, in fact, has appropriated approximately seven hundred and thirteen million dollars (\$713,000,000) for necessary expenses related to the "New York-Boston High-Speed Rail Improvements" as authorized by Title VII of the 4R Act; and

WHEREAS, the Roger Williams Avenue Bridge (the "Bridge") spans the railroad tracks to be electrified at Mile Post 181.16 of the Northeast Corridor in the city of Providence, Rhode Island, and said Bridge does not currently provide sufficient clearance for the installation and operation of the Electrification Project; and

WHEREAS, Roger Williams Avenue is a City street, the City is currently responsible for all Bridge maintenance, and the City owns the Bridge under Rhode Island policy; and

WHEREAS, the City and the State wish to replace the current Bridge with a new structure (the "Replacement");

NOW THEREFORE, the Parties agree to share the costs and responsibilities of replacing the Bridge as follows:

A. AMTRAK SHALL:

1. Prepare all plans and specifications necessary to demolish the superstructure of the Bridge.
2. Demolish the superstructure of the Bridge.
3. Prepare all plans and specifications to construct, bond, ground and provide inserts for any necessary catenary attachments for a separate, new structure (the "Utility Bridge") sufficient to support all utilities currently carried by the Bridge.
4. Construct, bond, and ground the Utility Bridge, and install catenary attachment inserts as necessary.
5. Provide Flagging, and all other services necessary to maintain and protect railroad traffic during the above activities.
6. Provide the State with preliminary engineering, design specifications and other similar services to ensure that the designs and plans developed by the State under Section B. of this Agreement conform to Amtrak standards.
7. Provide engineering, inspection, insurance coverage, and accounting services for work related to the demolition of the Bridge and construction of the Utility Bridge. Amtrak reserves the right to inspect construction of the Replacement at its sole cost. Nothing in this paragraph shall be construed to relieve the State of its responsibility to inspect its construction of the Replacement at its own cost as described in Paragraph B. 3. of this Agreement.
8. Carry, at no cost to the City or the State, force account insurance in an amount not less than One Million Dollars (\$1,000,000), nor more than Ten Million Dollars (\$10,000,000) as determined by Amtrak. Amtrak reserves the right to self-insure at a rate comparable to those charged by commercial carriers.

9. Accomplish Items A. 1. through 8. above at its sole expense.
10. Reimburse the State for one-half the cost of relocating any utilities from the Bridge to the Utility Bridge, subject to a maximum contribution cap as outlined in this paragraph. Should the City or any other party(ies) contribute towards utility relocation costs as provided for in paragraph C. 3 of this Agreement, those payments shall be applied to said costs first, and Amtrak and the State shall each pay one-half of the remaining utility relocation costs.

In no case shall Amtrak's total financial obligation under this Agreement, including accomplishing items A. 1 through 8 above and any contribution towards utility relocation, exceed \$1.1 million, nor be less than \$828,000.
11. Notify the State and the City five (5) working days prior to starting any required work.
12. Authorize and consent to the entry by the State and the City, their representatives and contractors, upon Amtrak's land and premises shown on the Designs (as defined below) for the purpose of constructing the Replacement, and to inspect Amtrak demolition of the Bridge and construction of the Utility Bridge, provided that such authorization and consent is contingent upon compliance by the State and the City, their representatives and contractors, with all Amtrak insurance, operating and safety rules and regulations.
13. At the sole expense of the State, provide Flagging, and all other services necessary to maintain and protect railroad traffic during the construction of the Replacement. These costs are estimated in Exhibit A, attached hereto. Amtrak shall bill the State monthly for these costs.
14. After completion of the Replacement, attach bonding, grounding, and if necessary, catenary support attachments to the Replacement at its sole cost.
15. Require all contractors engaged in demolition of the Bridge and design and construction of the Utility Bridge to defend, indemnify and hold harmless the State, the City and Amtrak, their officers, directors, employees, agents, servants, successors and assignees from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto, (including cost of defense and reasonable attorney's fees), for injury (including death), disease, or occupational disease, to any person, and for damage (including loss of use) to or loss of any property arising out of or attributed to or resulting from demolition and/or design or construction performed by the contractor, contractor's officers, employees, agents, servants or subcontractors.
16. Work with City officials to develop a plan designed to minimize traffic disruptions caused by Utility Bridge construction and Bridge demolition work.

B. THE STATE SHALL:

1. Prepare all plans, specifications and estimates, hereinafter collectively referred to as the "Design", and acquire or cause to be acquired, any additional rights-of-way that may be

necessary to erect the Replacement (except as provided herein as the responsibility of the City), subject to Amtrak approval as to any changes or alterations, either temporary or permanent, to its tracks or appurtenances thereto, or facilities adjacent to, on, or over the track and right-of-way ("Changes") that may be required to construct the Replacement (the "Construction").

2. Submit the Design for the Replacement to Amtrak for its review and approval at the 30%, 90% and 100% stages. The Design shall include a solid protective barrier, provisions for inserts to accept bonding, grounding, and if necessary, catenary support attachments as determined by Amtrak.
3. Be solely responsible, at no cost to Amtrak or the City, for the construction of the Replacement, and all construction management, inspection, insurance coverage, and accounting services required to accomplish that Construction, and the cost of the Changes, except for inspection by Amtrak in accordance with Section A. herein.
4. Ensure that the Construction for which the State shall be responsible shall be done through standard contract procedures in accordance with the Replacement's approved plans and specifications on file with the Rhode Island Department of Transportation, Bureau of Engineering and Highway Operations. The State shall utilize its own procurement policies and procedures in contracting with a construction contractor subject to an audit as provided under Exhibit B attached hereto.
5. Accomplish the Design and Construction in a sound, economical and efficient manner, in good faith, with due diligence and without unreasonable delay, and at its sole expense.
6. Require that when Construction is being done on, over, under or immediately adjacent to Amtrak's right-of-way by other than Amtrak forces, all operations affecting Amtrak property, facilities, or the safe and uninterrupted operation of its trains shall be carried on in accordance with Amtrak's requirements, as established by Amtrak in Exhibit C attached hereto, to ensure safe operation of trains, avoidance of delays to trains and safety of all concerned.
7. Provide for review and approval by Amtrak, copies of all design and construction submissions that could impact Amtrak train operations. Amtrak shall also have the right to review major changes to the Construction Schedule.
8. Include the requirements contained in Exhibit C attached hereto entitled, "Specifications Regarding Safety and Protection of Railroad Traffic and Property, National Railroad Passenger Corporation (Amtrak)" in the contract documents for this Replacement.
9. Notify and provide Amtrak an opportunity to attend all construction progress meetings held between the State and its construction contractors. The notice for such meetings shall be made not less than five (5) business days prior to the scheduled meeting. The State shall also provide Amtrak with an opportunity to attend all regularly scheduled meetings.
10. Ensure that all Construction performed by its contractors complies with all applicable state,

federal, and local laws, including, but not limited to, requirements pertaining to the environment, safety, civil rights and applicable wage and labor rates.

11. Furnish to Amtrak, within twenty-five (25) days after the end of each calendar month during which the Construction is being performed, monthly progress reports on the Construction in a form acceptable to Amtrak.
12. Be responsible for obtaining all permits necessary to construct the Replacement.
13. Require all contractors engaged in the design and construction of the Replacement, to defend, indemnify and hold harmless the State, the City and Amtrak, their officers, directors, employees, agents, servants, successors and assignees from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto, (including cost of defense and reasonable attorney's fees), for injury (including death), disease, or occupational disease, to any person, and for damage (including loss of use) to or loss of any property arising out of or attributed to or resulting from Construction performed by the contractor, contractor's officers, employees, agents, servants or subcontractors on the Replacement.
14. Indemnify Amtrak, its officers, directors, employees, agents, servants, successors and assignees from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto, (including cost of defense and reasonable attorney's fees), for injury (including death), disease, or occupational disease, to any State employee, agent, servant or subcontractor engaged in activities undertaken by or for the State, and for damage (including loss of use) to or loss of any property arising out of or attributed to, or resulting from State inspection of Amtrak construction of the Utility Bridge or demolition of the Bridge.
15. Require that each contractor shall, during the entire period of performance under a contract with the State for Construction of the Replacement, be responsible for and make good at no additional cost to Amtrak, all damage to Amtrak property caused by its acts and those of its employees and subcontractors in carrying out operations required by this contract.
16. Ensure that the indemnification obligations under this Article shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or any subcontractor.
17. Include the Insurance Requirements contained in Exhibit D attached hereto entitled, "Insurance Requirements, National Railroad Passenger Corporation (Amtrak)" in any contract for the design and construction of the Replacement.
18. Take no action which would diminish or reduce the vertical or horizontal clearances attained as a result of the Replacement, without the prior written approval of Amtrak.
19. Authorize and consent to entry by Amtrak and/or its contractors onto State property to

accomplish Amtrak responsibilities under this Agreement.

20. Pay one-half the costs of relocating all utilities from the Bridge to the Utility Bridge, be solely responsible for administering all relocation costs disbursements, and providing all accounting services necessary to accomplish utility relocation. Should the City or any third party(ies) contribute to utility relocation costs as provided in paragraphs A. 10 or C. 3. of this Agreement, the State shall recalculate Amtrak's share of utility relocation costs as outlined in paragraph A.10, and immediately forward any rebate of said costs to Amtrak.
21. Design and construct at its sole cost, a new connector road between Narragansett Avenue and Burrows Street in Providence (the "Connector"). The design of the Connector shall be subject to approval by the City.
22. With respect to the Replacement, the State agrees to defend, indemnify and hold harmless Amtrak, its officers, directors, employees, agents, servants, successors, assigns and subsidiaries, from and against any and all losses and liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorney's fees), which any or all of them may hereafter incur, be responsible for or pay as a result of injury, death, disease, or occupational disease to an person, and for damage (including loss of use) to or loss of property, including property of Amtrak, arising out of or in any degree directly or indirectly caused by or resulting from activities of or work performed by the State, its officers, employees, agents, servants, contractors, subcontractors, or any other person acting for or by permission of the State. Except as otherwise required by applicable law, the foregoing obligation shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation or benefits payable by or for the State or any contractor or subcontractor, and shall survive the termination of this Agreement for any reason.
23. To whatever extent, if any, the State has any proprietary interest or responsibility in the Bridge, the State gives its permission for Amtrak to demolish said structure.

C. THE CITY SHALL:

1. Acquire property between Narragansett Avenue and Burrows Street necessary to accommodate the design of the Connector.
2. Demolish any structures on the property identified in Paragraph C.1. necessary for the State to accomplish its responsibilities under Paragraph B. 21. of this Agreement.
3. Accomplish Items C. 1. and 2. above at its sole cost, and contribute the difference between the amount actually expended in completing the above tasks and \$250,000 towards the relocation of any utilities from the Bridge to the Utility Bridge. Any City contribution towards utility relocation costs shall be applied to said costs first, with Amtrak and the State paying any remaining costs as outlined in paragraphs A. 10. and B. 20. of this Agreement.

4. Require all contractors engaged in demolition of any property necessary to fulfill the City's obligations under this Agreement to defend, indemnify and hold harmless the State, the City and Amtrak, their officers, directors, employees, agents, servants, successors and assignees from and against any and all liabilities, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto, (including cost of defense and reasonable attorney's fees), for injury (including death), disease, or occupational disease, to any person, and for damage (including loss of use) to or loss of any property arising out of or attributed to or resulting from demolition activities performed by the contractor, contractor's officers, employees, agents, servants or subcontractors.
5. Accept ownership and all maintenance responsibilities for the Utility Bridge upon its completion. It is understood by the Parties that ownership and maintenance responsibilities under this paragraph may be subsequently altered by agreements between the City and other parties.
6. Accept ownership and all maintenance responsibilities for the Replacement upon completion, except Amtrak shall maintain all catenary system attachments at its own expense. The City hereby gives Amtrak permission to enter City property to perform any such maintenance responsibilities.
7. Give permission for Amtrak to demolish the Bridge.

D. AMTRAK, THE STATE AND THE CITY FURTHER AGREE THAT:

1. To the extent that Amtrak makes funds available to the State as provided for in Paragraph A. 10. of this Agreement, the expenditures of those funds shall be subject to audit as provided for in Exhibit B attached hereto, entitled "Audit and Inspection of Records".
2. They shall designate, in writing, those individuals authorized to represent them in matters related to this Agreement. The parties shall also describe the nature and extent of the authority of all individuals so identified.
3. (a) The parties intend to attempt to resolve all issues, claims, and disputes relating to or arising under this Agreement in an informal manner. Every effort will be made to develop a business resolution to such issues, claims or disputes. To accomplish this end, the parties shall each designate at this time, a person to represent them ("Representative") in all discussions and negotiations related to this Agreement. By execution of this Agreement, the State hereby appoints James R. Capaldi, Chief Engineer, as its Representative, the City appoints John F. Palmieri, Director, Department of Planning and Development, as its Representative, and Amtrak hereby appoints David J. Carol, Vice President, High Speed Rail, as its Representative.

(b) Informal Dispute Resolution Stage. The parties shall attempt to resolve any issue, claim or dispute relating to or arising under this Agreement, through informal communications among

their Representative's staffs prior to proceeding with the formal dispute resolution processes set forth below. The informal dispute resolution procedure shall occur as promptly as practicable under the circumstances, but shall not exceed thirty (30) days from the time any issue, claim or dispute is first raised by a Representative's staff. If any issue, claim or dispute cannot be resolved informally within this time period, it shall be referred to the formal dispute resolution process set forth in paragraph © below.

© Formal Dispute Resolution Stage. The formal dispute resolution process shall be conducted by the Representative as follows: (1) each issue, claim or dispute (collectively, "Dispute") shall be set forth in writing by the Representative and mailed to the persons designated in Article 44 herein, with a copy to the other Representative; (2) within twenty-one (21) days of the date of mailing referred to in subparagraph (c)(1), the Representative shall meet to discuss a resolution of the Dispute; (3) if the Dispute is resolved, the Representatives shall prepare and sign a joint written statement of the terms of the resolution; (4) if the Dispute cannot be resolved within forty-five (45) days of the date of mailing referred to in subparagraph (c)(1), the parties shall have the right to initiate legal proceedings over the Dispute.

4. Any official notice from one party to the other such party (or parties), in order for such notice to be binding thereon, shall:

(a) be in writing addressed to:

(1) when the State is to receive such notice:

Mr. James R. Capaldi, P.E.
Chief Engineer
Rhode Island Department of Transportation
State Office Building
Two Capitol Hill
Providence, RI 02903

(2) When Amtrak is to receive such notice:

David J. Carol
Vice President - High Speed Rail
National Railroad Passenger Corporation
100 North 20th Street
Second Floor -- Suite 201
Philadelphia, Pa 19103

with a second copy of such notice mailed to:

David J. Carol
Vice President - High Speed Rail
National Railroad Passenger Corporation

455 Boston Post Road
Old Saybrook, CT 06475;

(3) When the City is to receive such notice:

John F. Palmieri
Director, Department of Planning and Development
City of Providence
400 Westminster Street
Providence, RI 02903; and

(b) be delivered in person or be mailed via United States Postal Service Certified Mail, Return Receipt Requested, to the address recited herein as being the address of the party(ies) to receive such notice; and

© contain complete and accurate information in sufficient detail to properly and adequately identify and describe the subject matter thereof.

The term "official notice" as used herein, shall be construed to include, but not be limited to, any request, demand, authorization, direction, waiver, and/or consent of the party(ies) as well as any document(s) provided, permitted, or required for the making or ratification of any change, revision, addition to or deletion from the document, contract, or agreement in which this "official notice" specification is contained.

Further, it is understood and agreed that nothing hereinabove contained shall preclude the Parties from subsequently agreeing, in writing, to designate alternate persons (by name, title and affiliation) to which such notice(s) is (are) to be addressed; alternate means of conveying such notice(s) to the particular party(ies); and/or alternate locations to which the delivery of such notice(s) is (are) to be made, provided such subsequent agreement(s) is (are) concluded pursuant to the adherence of this specification.

5. This Agreement is for the sole benefit of Amtrak, the City and the State. If any term or provision hereof is or becomes invalid or unenforceable, the City, State and Amtrak will in good faith attempt to replace the invalid or unenforceable term or provision by a term or provision which is valid and enforceable, and which comes as close as possible to expressing the intention of the invalid or unenforceable term or provision.
6. This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements and understandings with respect to the subject matter hereof, and may not be altered or amended except by written agreement signed by all the Parties.
7. This Agreement shall be executed in multiple counterparts, all of which shall be considered one and the same agreement.
8. Except as otherwise provided by this Agreement, this Agreement shall inure to the benefit of

and be binding upon the successors and assigns of the Parties, except that no party shall assign or transfer this Agreement or its right hereunder to any person, firm, or corporation without obtaining the prior written consent of all other Parties to this Agreement, which consent shall not be unreasonably withheld.

9. All obligations and indemnifications which arise, but are not satisfied during the term of this Agreement, shall survive termination of this Agreement.
10. Each Party will be excused from any obligation under this Agreement where nonperformance is occasioned by any event beyond its control. Performance shall be excused only so long as and to the extent that any such event shall prevent performance.
11. The State and the City shall permit Amtrak, the United States Department of Transportation (DOT), FRA, and the Comptroller General and their agents, contractors, and employees access to and the right to inspect all facilities, equipment and work sites at which Construction covered by this Agreement is to be performed.
12. Pursuant to 49 U.S.C. 24301(f), this Agreement shall be governed by the laws of the District of Columbia.
13. This Agreement does not alter any obligations contained in the Master Bridge Agreement between Amtrak and the State.
14. All costs billed under this Agreement are subject to audit. The parties' rights with respect to audits are subject to the provisions of Exhibit B attached hereto, entitled "Audit and Inspection of Records."

IN WITNESS WHEREOF, the Parties have affixed their signatures on the date shown.

EXHIBIT LIST

- A. Amtrak Force Account Estimates for Replacement Construction
- B. Audit and Inspection of Records [Ex. F from Horsepond]
- C. Specifications Regarding Safety and Protection of Railroad Traffic and Property, National Railroad Passenger Corporation (Amtrak) [Ex. D from Horsepond]
- D. Insurance Requirements for Contractors - add Professional Liability Insur. lang. [Ex. E from Horsepond]
- E. Utility Relocation Cost Estimates

City of Providence



Rhode Island

Department of City Clerk

MEMORANDUM

DATE: May 22, 1997

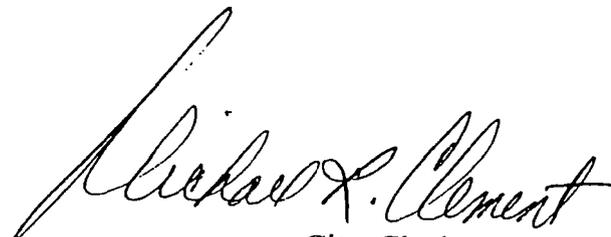
TO: Patricia McLaughlin, Deputy City Solicitor

SUBJECT: Resolution Authorizing Reimbursement for legal fees sustained by Christine Roundtree, Director of Human Relations Commission, pursuant to Rhode Island General Law 45-15-16 "Indemnity of Public Officials, Employees or Elected Officials" for approximately \$2,300.00.

Resolution Authorizing the City to enter into a Contract with the State of Rhode Island and Amtrak for the construction of a new Roger Williams Avenue Bridge.

CONSIDERED BY: Michael R. Clement, City Clerk

DISPOSITION: I have been requested by Councilwoman Patricia K. Nolan, Chairwoman of the Committee on Finance, to invite you to the next scheduled meeting on Tuesday, May 27, 1997 at 5:00 o'clock P.M., in Committee Room "A", City Clerk's Department, City Hall, relative to the above stated matter.


City Clerk

City of Providence



Rhode Island

Department of City Clerk

MEMORANDUM

DATE: May 22, 1997

TO: Councilman Ronald W. Allen

SUBJECT: Resolution Authorizing Reimbursement for legal fees sustained by Christine Roundtree, Director of Human Relations Commission, pursuant to Rhode Island General Law 45-15-16 "Indemnity of Public Officials, Employees or Elected Officials" for approximately \$2,300.00.

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CONSIDERED BY: Michael R. Clement, City Clerk

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A handwritten signature in black ink, reading "Michael R. Clement". The signature is written in a cursive style with a long, sweeping initial "M".

City Clerk