

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 643

Approved December 14, 1984

RESOLUTION AUTHORIZING ACCEPTANCE BY CITY OF CONVEYANCE OF RAILROAD TRACKS OWNED BY THE PROVIDENCE & WORCESTER RAILROAD, AND SUBSEQUENT GRANT OF EXCLUSIVE EASEMENT TO SAID PROVIDENCE & WORCESTER RAILROAD.

RESOLVED: That His Honor the Mayor be and he is hereby authorized to execute a Deed and Agreement on behalf of the City of Providence. By said Deed, the Providence & Worcester Railroad will convey to the City all of its right, title and interest to certain railroad tracks it now owns, reserving to itself an exclusive easement over those tracks. The City will also grant to the Providence & Worcester Railroad an exclusive easement over the railroad tracks now owned by the City within the Port of Providence. Said lease will be subject to such further terms and conditions as may be approved by His Honor the Mayor and the City Solicitor. The foregoing transaction will not involve any expenditure of city funds.

IN CITY COUNCIL
DEC 6 1984
READ AND PASSED

Louis R. Stravato REC.
Rosetta Mambucca CLERK

APPROVED
DEC 14 1984
[Signature]
MAYOR

IN CITY COUNCIL

APR 19 1984

FIRST READING

REFERRED TO COMMITTEE ON CITY PROPERTY

Rose M. Mendonca CLERK

THE COMMITTEE ON

CITY PROPERTY

Recommends

Be Continued

Rose M. Mendonca
CLERK

April 25, 1984

THE COMMITTEE ON

CITY PROPERTY

Approves Passage of
The Within Resolution

Rose M. Mendonca
CLERK Chairman

Nov. 14, 1984

Council President Paulino and Councilman O'Connor (By Request)

December 20, 1984

Mr. Joseph R. DiStefano
General Counsel
Providence & Worcester Railroad Company
One Depot Square
Woonsocket, Rhode Island 02895

Dear Mr. DiStefano,

Enclosed is a copy of Resolution No. 643, passed by the City Council and approved by the Mayor on December 14, 1984 the same being self-explanatory.

Very truly yours,

Rose M. Mendonca,
City Clerk.

RIM/jma
Enclosure

5/20/84

DEED AND AGREEMENT

Dated this day of , 1984, between PROVIDENCE AND WORCESTER RAILROAD COMPANY, a Rhode Island corporation whose address is One Depot Square, Woonsocket, Rhode Island 02895, hereinafter called "P&W", and the City of Providence, a municipal corporation of the State of Rhode Island, hereinafter called "City".

1. P&W, for consideration paid, the receipt whereof is hereby acknowledged, does hereby grant to the City all of its right, title and interest in and to the following described real estate together with all improvements thereon:

All that line of railroad owned by P&W being formerly the Penn Central Transportation Company's line of railroad known as the "Harbor Junction Industrial Track" and identified as Line Code 4168 in the records of the United States Railway Association and also identified in the Recorder's Office of the City of Providence in Book 1237 at Page 72 and being all of the real property owned by the P&W lying in, under, above, along contiguous to, adjacent and connecting to such line.

Reserving, however, to the P&W, its successors and assigns, the right and easement to conduct railroad operations on and over the property and improvements herein conveyed. So long as P&W shall conduct such operations, its right to do so shall be exclusive. Reserving to the P&W, its successors and assigns, an easement to construct, operate, maintain, alter, repair and replace communications lines, wires, and pipes and conduits and related facilities ancillary to railroad operations.

2. The City grants to P&W, its successors and assigns, the right and easement to conduct railroad operations on and over the railroad tracks owned by the City running through and easterly of Allens Avenue and serving that area of the City of Providence known as the Port of Providence; meaning and intending to include all City-owned and City-maintained railroad tracks that connect to and with the railroad tracks conveyed to the City hereunder. So long as P&W shall conduct such railroad operations, its right to do so shall be exclusive.

3. The rights and easements hereinabove both reserved and granted shall include, but not be limited to, the following rights:

- (a) To operate trains, cars, locomotives and other rail equipment;
- (b) To occupy and use all rail and rail-related facilities, and replacements thereof;
- (c) To construct, operate and maintain additional or substitute facilities which are reasonably necessary or legally required in connection with the provision of rail service, subject to the prior written approval of the City, which approval shall not be unreasonably withheld;
- (d) To construct contiguous or adjacent additional rail lines and trackage and install necessary track connections, subject to the prior written approval of the City, which approval shall not be unreasonably withheld;
- (e) To provide all new and additional rail service at any point, subject to the prior written approval of the City which shall not be unreasonably withheld;
- (f) To have reasonable access to permit the exercise of the foregoing easements and rights.

4. The City shall not do or perform or permit the doing or performing of any thing or act which shall interfere with the conduct of railroad operations on or over the railroad tracks described in Paragraphs 1 and 2 above, hereinafter referred to as "the lines of railroad", unless P&W shall grant written permission for such thing or act, which permission shall not be unreasonably withheld by P&W.

5. So long as it shall conduct railroad operations over said lines of railroad, the P&W shall be responsible for the maintenance of track, signals and all other related railroad facilities used by P&W. The P&W shall maintain the rail facilities to existing freight service standards; provided that if the rail facilities shall be rehabilitated, the P&W shall thereafter maintain said rail facilities to any higher freight

J, 20704

service standards resulting from such rehabilitation. If any maintenance becomes necessary because of the deliberate acts or negligence of the City or its agents or lessees, then the City shall be responsible for any maintenance so occasioned. P&W shall not be responsible for the maintenance of any City-owned tracks, signals or other rail facilities, if such maintenance is the responsibility of a third party under a lease or other agreement with the City, or otherwise. If any such lease or other agreement between the City and a third party shall provide for the payment of a sum of money from such third party to the City in return for the City agreeing to maintain tracks or other rail facilities used by such third party, then, the City agrees to make such sum available for maintenance of the tracks or other rail facilities used by such third party.

6. The P&W shall be responsible for all costs and charges associated with the operation of railroad service provided by the P&W on said lines of railroad which are levied by others.

7. P&W shall not cause any improvements to be placed upon said lines of railroad without first soliciting and obtaining the written approval of the City, which approval will not be unreasonably withheld. Any improvement so permitted by the City shall be maintained by P&W, it being understood and agreed that all improvements made by the P&W that are removable without damage to said lines of railroad are the personal property of the P&W and may be removed by the P&W.

8. The P&W will be responsible for and will indemnify, hold harmless and defend the City against and from any and all claims and suits for, and any liability, loss or expenses (including reasonable attorney fees) arising from or incidental to or in connection with damage to or loss of property of the City, P&W, or of agents, servants, or employees of either or of any person, and against and from any and all claims and suits for, and any and all liability, loss or expenses arising from or incidental to

or in connection with injury to or death of any and all persons, including agents, servants, or employees of the City or of the P&W, or any other person, which said damage, loss, injury or death shall arise in any manner, directly or indirectly, in connection with the use of said lines of railroad by P&W, unless the same shall relate to obligations hereunder which the City shall have failed to perform or relate to activities conducted by the City or by a third party.

9. The P&W shall provide and maintain in effect, so long as it shall conduct railroad operations over said lines of railroad, railroad liability insurance in an amount of not less than Two Million (\$2,000,000) Dollars, single limit bodily injury and/or property damage combined endorsed to protect the City from all claims of bodily injury (including death) and property damage arising out of any of the railroad services performed or to be performed by the P&W and its employees, agents or assignees. Provided, that P&W may be a self-insurer for the first \$500,000 of any claim. The endorsement must provide that the insurance may not be cancelled, changed or modified in any way without thirty (30) days prior written notice to the City. The P&W shall provide the City with written evidence of such insurance prior to or at the time of the execution and delivery of this Deed and Agreement, and thereafter within five (5) days of obtaining any renewals of such insurance. The providing of said insurance coverages shall not be deemed a limitation on the liability of the P&W as provided hereunder, but shall be additional security therefor.

10. If default shall be made by the P&W in any agreements herein contained on the part of the P&W to be kept or performed, and if any such default shall not be cured within ninety (90) days after the P&W has been given notice by the City to do so or within such reasonably longer time as may be necessary for P&W to diligently cure such default, then the City may, by written notice to the P&W, immediately declare the rights and easements herein reserved and granted to be terminated, and in such event,

the City shall have the right to remove the P&W by summary proceedings and thereafter the City may re-enter upon and take possession of the lines of railroad and every part thereof, either by force or otherwise, without being liable to any prosecution, action or damages therefor and have and enjoy said lines of railroad as of its former estate free, clear and discharged of the rights and easements of the P&W hereunder. If P&W shall be so removed by the City, all reasonable attorney fees incurred by the City in removing P&W from said lines of railroad shall be reimbursed to the City by P&W.

11. Any leases, licenses, easements and agreements which may hereafter affect said lines of railroad or any renewals, modifications, consolidations, replacements and extensions (unless the same shall be automatic) of any existing leases, licenses, easements and agreements affecting said lines of railroad shall be subject to the prior review and approval of P&W, with respect to impacts on rail operations which approval shall not be unreasonably withheld.

12. The rights and easements herein reserved by and granted to P&W shall be assignable by P&W subject to the prior written approval of the City, which approval shall not be unreasonably withheld, and upon any such assignment all of the rights and obligations of P&W hereunder shall cease and determine, and the same shall be assumed by said assignee. If P&W shall request approval of any such assignment in writing, the City shall act upon such request within ninety (90) days of the date of receipt of such request, and if no such action shall occur within said period of ninety (90) days, then P&W shall be free to proceed with such assignment. Provided, however, that so long as P&W shall agree to remain liable hereunder, P&W shall be free to make any transfer or assignment of its rights and easements hereunder without the prior written approval of the City.

13. Notices given under the terms of this Deed and Agreement shall be deemed sufficiently served if such notice is mailed by certified mail, return receipt requested, or is delivered personally, if in the case of the P&W, such notice is mailed or

5/20/84

delivered to the P&W at the P&W's address set forth on the first page thereof, and if in the case of the City, such notice is mailed or delivered to the City as follows:

Providence Port Commission
Port of Providence
Municipal Wharf
Providence, Rhode Island

or at such other place or places as the City or P&W may, from time to time, designate in writing to the other.

IN WITNESS WHEREOF, the P&W and the City have caused this Deed and Agreement to be duly executed by their respective and duly authorized officers this day of , 1984.

PROVIDENCE AND WORCESTER RAILROAD
COMPANY

Witness:

_____ By _____

CITY OF PROVIDENCE

Witness:

_____ By _____

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

In Providence on the day of , 1984, before me personally appeared , of the City of Providence, to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed and the free act and deed of the City of Providence.

Notary Public

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

In on the day of , 1984, before me personally appeared of Providence and Worcester Railroad Company, to me known and known by me to be the party executing the foregoing instrument, and he acknowledged said instrument by him executed to be his free act and deed and the free act and deed of said Providence and Worcester Railroad Company.

Notary Public

City of Providence



Rhode Island

Department of City Clerk

MEMORANDUM

DATE: July 18, 1984

TO: Frank Tibaldi, Director of Public Works and William H. Goddard,
Chairman of the Port Commission

SUBJECT: ATTACHED RESOLUTION AUTHORIZING ACCEPTANCE OF RAILROAD TRACKS

CONSIDERED BY: Councilman Andrew J. Annaldo, Chairman - Committee on City Property

DISPOSITION:

Chairman Annaldo requests you submit your as soon as practical to the above named Committee, relative to the accompanying Resolution.

City Clerk

CONTINGENT INTEREST AGREEMENT
HARBOR JUNCTION WHARF BRANCHLINE

THIS AGREEMENT made by and between the STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS acting by and through the RHODE ISLAND DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the "State") and the PROVIDENCE AND WORCESTER RAILROAD COMPANY (hereinafter referred to as "Railroad").

WITNESSETH

WHEREAS, the Railroad is the owner of a rail freight line known as the Harbor Junction Wharf Branchline, extending from the Amtrak owned Shore Line to the Port of Providence (hereinafter referred to as "Line"); and

WHEREAS, the State has received a grant from the U.S. Department of Transportation, Grant Agreement #LRSA-RI-84, Federal Railroad Administration for local rail service assistance under Section 5 of the Department of Transportation Act, 49U.S.C.1654, which makes available One-hundred seventy-three thousand, twenty-one dollars (\$173,021.00) to fund rehabilitation of the Line; and

WHEREAS, the Railroad will provide Seventy-four thousand, one-hundred fifty-two dollars (\$74,152.00) required to match federal funds resulting in a total of Two-hundred forty-seven thousand, one-hundred seventy-three dollars (\$247,173.00) available for rehabilitation of the Line; and

WHEREAS, Section 5(p) of the U.S. Department of Transportation Act, 49U.S.C.1654, requires the State to retain a

contingent interest in the line for an amount equal to the amount of federal assistance;

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual promises and covenants hereinafter set forth, the parties hereto agree, with the intention of being legally bound hereby, to the following:

- 1) As required by Section 5(p) of the U.S. Department of Transportation Act, 49U.S.C.1654 upon any sale or disposition of the line, which will result in the discontinuance of rail service on the Line or upon approval of an application for abandonment for the Line under Chapter 109 of Title 49, U.S.C., the Railroad agrees to pay the State the federal share of assistance received for the Line in accordance with attachment N to OMB Circular Number A-102, to be computed by applying the federal percentage of participation in the cost of the original rehabilitation project proposed herein to the depreciated value of facilities improved by such project at the time of such sale disposition or approval of said application for abandonment but in no event shall such amount due to the State exceed One-hundred seventy-three thousand, twenty-one dollars (\$173,021.00).

IN WITNESS WHEREOF, the State and Railroad have caused
this agreement to be executed as of the day of 1984.

WITNESS:

The State of Rhode Island
and Providence Plantations

BY: _____

Director, Department of Transportation

Providence and Worcester Railroad Co.
City of Providence

BY: _____

WILLIAM H. D. GODDARD
CHAIRMAN



VINCENT A. CIANCI, JR.
MAYOR

COMMISSIONERS
DAVID G. COLLINS
ROBERT P. FREEMAN
DAVID FRIEDMAN
ALICE C. MACINTOSH
THOMAS C. O'CONNOR, JR.
City Councilman
JOSEPH R. PAOLINO, JR.
City Council President

PORT COMMISSION

September 24, 1984

Mr. Frank Mastrati, Jr.
Assistant City Solicitor
City of Providence
Department of Law
55 Eddy Street
Providence, Rhode Island 02903-1727

Dear Mr. Mastrati:

As you know, the Port Commission of the city of Providence approved (at its meeting on September 20, 1984) entering into a transaction with the Providence and Worcester Railroad Company ("P&W") pursuant to which P&W will transfer its trackage within the port to the city of Providence and concurrently agree to maintenance and repair of rehabilitation of that trackage and trackage now owned by the city of Providence. This will result in substantial savings to the city and make federal funds available for rehabilitation, which might not otherwise be attainable.

I will be out of the country until the middle of October and would very much appreciate your pushing this matter along in my absence. It is probably necessary for the agreements to be submitted to the Council for approval.

I am enclosing a copy of the deed and agreement proposed with P&W as well as a copy of a "contingent interest agreement" in connection with this transaction for your review and approval prior to passing the same onto the Council. I have reviewed both agreements and have no problem with either.

It is my understanding that the city could eliminate its potential liability (which I think is extremely removed) if the rail services abandoned by transfer of the trackage to the state of Rhode Island prior to the abandonment. This option and the fact that the liability of the contingent agreement declines with depreciation of the facilities should minimize any concerns placed in that regard.

Port Administration Building
Municipal Wharf Providence, Rhode Island 02905 (401) 781-4717

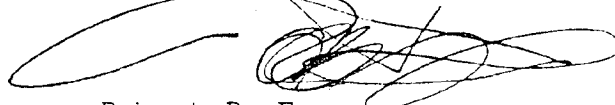
Mr. Frank Mastrati, Jr.
Page 2
September 24, 1984

Bill Goddard, who is chairman of the Port Commission, is familiar with this transaction and could be contacted in my absence. In addition, my records will be available to you in my office if that should prove to be appropriate.

Thank you in advance for your attention to this matter.

Sincerely,

PORT COMMISSION

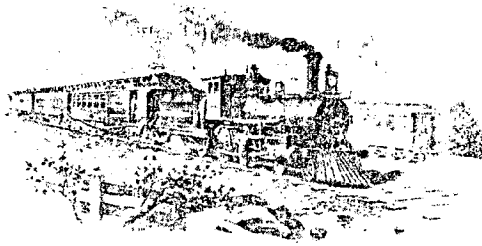
A large, stylized handwritten signature in dark ink, appearing to read 'R. Freeman', is written over the typed name and title.

Robert P. Freeman
Commissioner

RPF/epm

Enclosure

c: Mr. William H. D. Goddard
Mr. Joseph R. DiStefano



September 26, 1984

Frank Mastrati, Jr., Esq.
1441 Park Avenue
Cranston, Rhode Island 02920

Dear Frank:

With reference to our telephone conversation of this date, enclosed are documents discussed as well as a copy of a letter to you from the Providence Port Commission. The enclosed Deed and Agreement was previously reviewed by Elizabeth Emma of the Law Department and incorporates many of her suggestions. It has, however, been changed by the addition of paragraph 10 requested by the Port Commission and by the addition of paragraph 14 relating to the grant of public funds for rehabilitating the line.

Any information you may wish to obtain concerning the public grant may be obtained from John Brownell at the Rhode Island Department of Transportation (277-2481).

It is important that this matter be moved along quickly since we are trying to avoid the loss of the funds now budgeted for such rehabilitation.

It is my understanding that this matter will have to be presented to Councilman Annaldo of the City Council Properties Committee to begin the process of City Council review. The matter has also been discussed with Arthur Marcos the new Director of Development who is acting as the Mayor's representative in this matter.

Sincerely yours,

Joseph R. DiStefano
General Counsel

JRD:gph

cc: John Brownell
William Goddard
Robert Freeman
Arthur Marcos
Andrew Annaldo

PROVIDENCE AND WORCESTER RAILROAD COMPANY

Encs.

ONE DEPOT SQUARE WOONSOCKET R.I. 02895 - 1-401-765-2000

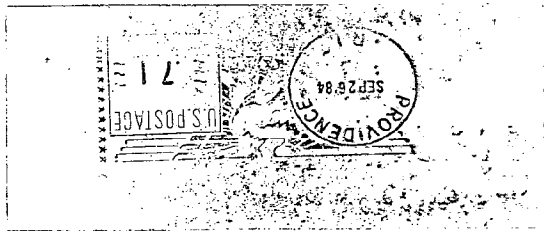
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PROVIDENCE, R. I.

Mr. Andrew Arnold, Counselor
 City of Providence
 do City Clerk's Office
 City of Providence
 Providence, Rhode Island

first class



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