

Memorandum of Agreement DRPT & VPRA

Steve Pittard, CFO - DRPT

VPRA Board Decision Brief

Execution of the Memorandum of Agreement between the Virginia Department of Rail and Public Transportation & the Virginia Passenger Rail Authority for support services.

October 26, 2020

Item: In order for the Virginia Department of Rail and Public Transportation (DRPT) to provide temporary services on an as-needed basis to mobilize the Virginia Passenger Rail Authority (VPRA), the Board needs to execute a Memorandum of Agreement (MOA). This MOA will set forth the types of services that will be provided by DRPT; the terms and processes for reimbursement; and reporting requirements.

Context: The VPRA is currently utilizing DRPT staff to support Board activities, undertake initial steps to mobilize the VPRA, hire VPRA staff, provide policies and benefits, perform day-to-day activities, and continue passenger rail planning, program design, program management and construction and design services for passenger rail projects across the Commonwealth.

The MOA will allow DRPT to continue operating on behalf of the VPRA on a temporary basis.

Recommendation: Staff recommends approval of the attached resolution.

Action Required by VPRA Board: Approval of the attached resolution.

Options: Approve, Deny, or Defer.



COMMONWEALTH of VIRGINIA

Virginia Passenger Rail Authority Board

Jennifer L. Mitchell
Chairperson

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RESOLUTION OF THE VIRGINIA PASSENGER RAIL AUTHORITY BOARD

October 26, 2020

MOTION

Made By: Seconded By: Action:

Title: Approval of Memorandum of Agreement Between the Virginia Passenger Rail Authority and the Virginia Department of Rail and Public Transportation

WHEREAS, the 2020 General Assembly, through Virginia Code Section 33.2-288, established the Virginia Passenger Rail Authority ("Authority") to promote, sustain, and expand the availability of passenger and commuter rail service in the Commonwealth and to increase ridership of such service by connecting population centers with passenger and commuter rail service and increasing availability of such service; and

WHEREAS, Section 33.2-292 of the Code of Virginia enumerates the powers of the Authority and Section 33.2-289 establishes the Virginia Passenger Rail Authority Board ("Board") to govern the Authority; and

WHEREAS, until such time as the Board has taken the necessary steps for the Authority to function independently, staff of the Virginia Department of Rail and Public Transportation ("DRPT") will continue to assist the Board and the Authority on an as needed basis; and

WHEREAS, the attached Memorandum of Agreement ("MOA") between the Authority and DRPT sets forth the types of services, fees and payment, the terms for payment, and information access for the assistance DRPT staff will provide the Authority

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves and adopts the attached MOA between the Authority and DRPT.

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**MEMORANDUM OF AGREEMENT
BETWEEN
THE DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION
AND
THE VIRGINIA PASSENGER RAIL AUTHORITY**

This Memorandum of Agreement (MOA) is between the Department of Rail and Public Transportation (DRPT) and the Virginia Passenger Rail Authority (VPRA) (Individually DRPT and VPRA may be referred to as “Party”, collectively as “Parties”). DRPT and VPRA want to maintain a cooperative relationship concerning the provision of financial and administrative support and operational services during the startup phase of the VPRA; therefore, the Parties agree as follows:

**Article 1
PURPOSE**

1.1 The purpose of this MOA is to set forth the terms pursuant to which DRPT will provide the following services to VPRA on a temporary basis. Additionally, this MOA shall document the terms of the initial funding transfer from DRPT to VPRA to provide working capital and to comply with provisions of the FY2021 Appropriations Act.

**Article 2
SERVICES**

2.1 Financial Services. DRPT will assist with financial and accounting services to VPRA, including reporting, establishing accounts for the deposit of funds allocated by the Virginia General Assembly, transfer of funds held by DRPT that pursuant to the Code of Virginia should be held and administered by VPRA, accounts receivable, accounts payable, purchasing and fixed asset management. DRPT shall also assist in the preparation of monthly financial reports on VPRA revenue, expenditures, and fund balances, annual financial attachments and other periodic state fiscal reporting requirements mandated by the Governor, Commonwealth Transportation Board (CTB), state legislature or otherwise required in keeping with good accounting practices.

2.2 Human Resources Services. DRPT, with support from the Department of Human Resources Management (DHRM) shall provide personnel and human resources services to VPRA, including the following:

- (1) Employment services, including criminal background investigations;
- (2) Development and maintenance of personnel policies and procedures;
- (3) Establishment and modification of VPRA positions, including entry into Virginia’s Personnel Management Information System;
- (4) Position evaluations and drafting job descriptions;
- (5) Assistance with applicable grievance policies and procedures;
- (6) Benefits administration;
- (7) Performance management and pension participation;
- (8) Management of the Virginia Sickness and Disability Program; and

(9) Maintenance of personnel files.

2.3 Payroll Services. DRPT shall assist VPRA with payroll services utilizing VPRA's system or with payroll processing through an outside payroll processor as determined by VPRA.

2.4 Procurement Services. DRPT shall provide procurement services to VPRA as requested. These services may include planning, producing, managing RFPs or purchasing needed materials, equipment or supplies needed to perform the function and purpose of VPRA. DRPT will perform these services based on the procurement laws and regulations that govern DRPT.

2.5 Information Technology Services. DRPT shall provide information technology services to VPRA as requested. These services may include setup of computers and telephones, connection to internet and systems, programming assistance and technical assistance for computer and systems related problems.

2.6 Printing and Mail Services. DRPT shall provide printing and mailing services to VPRA as requested. These services may include printing and laying out forms, periodic newsletters, and non-routine letters and documents.

2.7 Office and Meeting Facilities. DRPT shall allow VPRA employees to utilize office space within the DRPT offices in Richmond and Alexandria. DRPT and VPRA meeting or conference room facilities shall be made available to the other Party, upon timely request and reservations. The Parties shall not charge a fee for such use of meetings and meeting facilities. DRPT shall charge VPRA the direct costs related to office space utilized by VPRA employees on a full time basis. Further, DRPT will lease office space in 600 East Main Street building for a one year period to provide a physical location for the VPRA.

2.8 Passenger Rail Planning, Design, Program Management and Construction and Design Services. DRPT shall provide Passenger Rail Planning, Design, Program Design and Management and Management of Construction and Design of Passenger Rail projects on behalf of VPRA in furtherance of VPRA's mission.

2.9 Other Administrative and Communication Services. DRPT will provide personnel to perform administrative activities of VPRA as well as Communications and Marketing Services. These services may include Board meeting facilitation, website development, press releases, marketing activities of Amtrak Virginia regional services, as well as other needed assistance.

Article 3

Quarterly Reimbursement

3.1 Determination of Amount Due. Unless otherwise provided, the fee for services provided by DRPT under Article 2 of this MOA shall be determined based on the full recovery costs to DRPT in providing such services which shall include the application of an overhead rate. DRPT shall

charge VPRA the direct costs related to these services, including payroll costs, and indirect costs of DRPT's general administrative costs. The Cost Allocation Plan is based on the direct allocation method described in OMB Circular A-122. The plan treats all costs as direct costs except general administration expenses. Direct costs are those that can be identified specifically to one of the Parties activities. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified to one of the Parties.

3.2 Billing and Payment. The amount due from one of the Parties to the other under Article 2 shall be billed and paid quarterly. Any bill initiated for payment under this MOA is due no later than 30 days after receipt.

3.3 Establishment of VPRA Contributed Capital. Effective with the signing of this MOA, DRPT agrees to transfer to VPRA the cash balance as of June 30, 2020 from the prior Intercity Passenger Rail and Capital Fund and the Rail Enhancement Fund, as well as 93% of the revenues of the Commonwealth Rail Fund starting from July1, 2020. Expenditures incurred on behalf of the VPRA beginning on July 1, 2020 will be netted from the cash balances transferred.

Cash balances allocated to administrative task orders that were undertaken prior to July 1, 2020 and cash balances in the Rail Preservation Fund shall remain with DRPT.

VPRA agrees to transfer cash to DRPT within five business days of formal request to cover the expenditures of projects that had allocations of IPROC and/or REF funds prior to July 1, 2020 and that will remain under the oversight of DRPT in its new Freight Rail Program.

Article 4 CONDITIONS

4.1 Additional standards, rules, procedures, and guidelines. The Director of DRPT and the Executive Director of VPRA may establish written standards, rules, procedures and guidelines relating to this MOA in accordance with the Virginia Code and published regulations. Any such standards, rules, procedures or guidelines jointly established and signed by the Director and Executive Director shall be considered a part of this MOA.

4.2 Assignment. The rights and liabilities under the MOA may not be assigned except by written agreement of the Parties.

4.3 Relationship of Parties. Nothing in this MOA creates an agency relationship, partnership or joint venture relationship between the Parties.

4.4 Conformance to Virginia law. This MOA is subject to any restrictions, limitations or conditions enacted by the Virginia General Assembly, executive order or state regulation that may affect the provision or terms of this MOA in any manner.

4.5 Prior agreements terminated. This MOA supersedes and rescinds all previous negotiations, agreements or understandings between the Parties regarding the services described in this MOA.

4.6 Term. This MOA shall become effective when all Parties' representative with binding authority have signed it. The date of this agreement will be the date this agreement is signed by the last Party to sign it (as indicated by the date associated with that Party's signature). The term of this agreement shall commence upon execution and continue until (i) it is terminated by joint consent of the Parties, or (ii) the effective date of a written agreement signed by both Parties terminating, modifying, altering, or amending this MOA.

Article 5 INFORMATION ACCESS

VPRA requires access to DRPT record files to perform its function. Each agency's responsibilities related to records access are as follows:

- (1) DRPT shall make available to VPRA such DRPT record files as are necessary for purposes of this MOA. Information obtained through such access shall be subject to the restrictions upon use and dissemination imposed by statutes, regulations, guidelines, and agreements between the Parties.
- (2) VPRA shall limit access to the electronic equipment and to the data and information from DRPT to those persons who are authorized and whose responsibilities relate to the data and information.
- (3) DRPT may suspend or terminate without notice access privileges of VPRA and its employees upon the discovery of any breach of, or failure to fulfill, any responsibility established pursuant to this MOA or the documents incorporated by reference into this MOA. DRPT or VPRA may suspend or terminate without notice access privileges of any authorized user upon the discovery of any breach of or failure to fulfill any responsibility established pursuant to this MOA or for any violation of any successor statutes.

Each Party is signing this agreement on the date stated beneath that Party's signature.

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: _____
Jennifer L. Mitchell, Director

Date: _____

VIRGINIA PASSENGER RAIL AUTHORITY

By: _____
Secretary, VPRA Board of Directors

Date: _____