



COMMONWEALTH of VIRGINIA

Virginia Passenger Rail Authority

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Tiffany Robinson
Chairperson

RESOLUTION OF THE VIRGINIA PASSENGER RAIL AUTHORITY BOARD

November 19, 2024

MOTION

Made By: Charles Payne Seconded By: John Delandro

Action: Motion carried, unanimously

Title: Authority to Execute Project Coordination and Funding Agreement for King and Commonwealth Bridges between Virginia Passenger Rail Authority and VRE Commissions

WHEREAS, the Virginia Passenger Rail Authority (“**VPRA**”) intends to reconstruct the railroad bridges at King Street and Commonwealth Avenue, each in Alexandria, VA; and

WHEREAS, the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission (collectively, the “**VRE Commissions**”) are undertaking a project within overlapping geography known as the Alexandria Station Improvements Project; and

WHEREAS, it will be efficient for the VRE Commissions to reconstruct the railroad bridges at King Street and Commonwealth Avenue in conjunction with the Alexandria Station Improvements Project; and

WHEREAS, VPRA staff and staff for the VRE Commissions have negotiated a project coordination and funding agreement, the form of which is attached hereto as **EXHIBIT A** (the “**the Project Coordination and Funding Agreement**”), under which the VRE Commissions would reconstruct the railroad bridges at King Street and Commonwealth Avenue concurrently with the Alexandria Station Improvements Project, and VPRA would reimburse the VRE Commissions for project costs attributable to the reconstruction of the railroad bridges at King Street and Commonwealth Avenue.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby authorizes the VPRA Executive Director to execute the Project Coordination and Funding Agreement between VPRA and the VRE Commissions in substantially the form attached hereto as **EXHIBIT A**, with any modifications he deems necessary or reasonable.

EXHIBIT A

[SEE ATTACHED]

PROJECT COORDINATION AND FUNDING AGREEMENT
FOR
KING AND COMMONWEALTH BRIDGES

DATED [●], 2024

between

NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND POTOMAC AND
RAPPAHANNOCK TRANSPORTATION COMMISSION, OWNERS AND OPERATORS OF
THE VIRGINIA RAILWAY EXPRESS

and

VIRGINIA PASSENGER RAIL AUTHORITY

PREAMBLE

This agreement is between the (A) Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission, and (B) the Virginia Passenger Rail Authority.

AGREEMENT

I. DEFINITIONS

Capitalized terms used in this agreement have the following definitions:

- a. “**Alexandria Fourth Track Project**” shall mean the project led by CSXT and funded by VPRA to install a fourth track and other related work between (A) Alexandria interlocking at CFP 104.1 and (B) Rosslyn interlocking at CFP 110.1, to include:
 - i. temporary relocation of underground fiber optic to temporary supports, and subsequent relocation to proposed permanent location;
 - ii. construction of long-term access road allowing access from Roth Street to Combined VRE-Led Construction Project, including refurbishing existing at-grade crossing west of Telegraph Road vehicular bridge over tracks; and
 - iii. construction of Track 0 (with the exception of the portions constructed as part of the Track 1 Shoofly as part of the Combined VRE-Led Construction Project).
- b. “**Alexandria Station Improvements Project**” shall mean a project led and funded by VRE to improve the passenger rail station at Alexandria, Virginia that includes:
 - i. demolition and reconstruction of existing platforms, including canopies and associated drainage, electrical, and communications infrastructure;
 - ii. installation of drainage improvements behind the west side platform;
 - iii. construction of elevators at both ends of existing pedestrian tunnel connecting to island platform;
 - iv. rehabilitation of existing pedestrian tunnel;
 - v. installation, maintenance, and removal of temporary at-grade construction crossing within existing station limits (performed by CSXT);
 - vi. removal of existing passenger at-grade crossing (performed by CSXT);

- vii. demolition and reconstruction of stairwell from tunnel to island platform;
 - viii. reconstruction of stairwell from King Street to island platform between new King Street South Abutment (which King Street South Abutment is to be constructed as part of the K&C Bridge Replacement Project);
 - ix. construction of Track 1 Shoofly on proposed Track 0 alignment, including associated asphalt underlayment and adjacent drainage ditches (some or all of which will be treated as part of one or more of the following: the Alexandria Station Improvements Project, the K&C Bridge Replacement Project, the Alexandria Fourth Track Project or as Shared Cost Items in accordance with the process set forth in Section V(a) below); and
 - x. modification of horizontal and vertical alignment of Tracks 1, 2, and 3 to the limits shown on the Alexandria Fourth Track Project plans, between approximate stations 61+25 and 95+73, including restoration of Track 1 when the Track 1 Shoofly on Track 0 alignment is no longer necessary (some or all of which will be treated as part of one or more of the following: the Alexandria Station Improvements Project, the K&C Bridge Replacement Project, the Alexandria Fourth Track Project or as Shared Cost Items in accordance with the process set forth in Section V(a) below).
- c. **“Alexandria Station Project Budget”** shall mean a written budget established by VRE and provided to VPRA after VRE has received firm bid pricing from its Construction Contractor, establishing all expected VRE costs to fund the complete Alexandria Station Improvements Project, including without limitation:
- i. funding for any pre-construction costs (*e.g.*, permitting and related professional and other engineering costs incurred as part of the Unified Design efforts allocable to VRE);
 - ii. early works and materials and storage pursuant to Section III(d) below;
 - iii. a fifteen percent (15%) contingency reserve fund (based on bid price to perform the Alexandria Station Improvements Project components plus estimated costs for Construction Management and Construction Administration and for a proportionate share of anticipated Shared Cost Items) or such other percentage as agreed by the parties at the time; and
 - iv. a proportionate share (calculated using the VRE Percentage) of all anticipated Shared Cost Items, including without limitation, Construction Management and Construction Administration Costs.
- d. **“Bridge Functional Utility”** shall mean, in accordance with Section XI below, the point in time prior to Substantial Completion at which the work for the relevant rail bridge or a portion thereof has progressed such that the bridge or a portion thereof

is structurally able to carry ongoing rail traffic while construction of the Combined VRE-Led Construction Project continues. For clarity, Bridge Functional Utility will be determined independently for each of the (A) King Street bridge, and (B) Commonwealth Avenue bridge.

- e. **“Combined VRE-Led Construction Project”** shall mean the combination of (A) the Alexandria Station Improvements Project and (B) the K&C Bridge Replacement Project, which will be delivered by VRE concurrently as a single construction project under the Construction Contract.
- f. **“Construction Administration Costs”** shall mean VRE’s costs paid to third parties to administer the Combined VRE-Led Construction Project. Construction Administration Costs shall include costs for VRE’s Design Engineer of Record and shall not include internal costs paid to VRE employees.
- g. **“Construction Contract”** shall mean the contract for construction services between VRE and the Construction Contractor with respect to the Combined VRE-Led Construction Project.
- h. **“Construction Contractor”** shall mean a qualified construction contractor competitively procured by VRE to construct the Combined VRE-Led Construction Project, and which is separate from the Construction Manager and also which is separate from any contractors procured by either party with respect to early work undertaken pursuant to Section III (d) below.
- i. **“Construction Management Costs”** shall mean VRE’s costs paid to third parties to manage the Combined VRE-Led Construction Project. Construction Management Costs shall include costs for VRE’s Construction Manager and shall not include internal costs paid to VRE employees.
- j. **“Construction Manager”** shall mean a contractor competitively procured by VRE to manage the Combined VRE-Led Construction Project, and which is separate from the Construction Contractor.
- k. **“CSXT”** shall mean CSX Transportation, Inc., a Virginia corporation.
- l. **“Design Engineer of Record”** shall mean a professional engineer competitively procured by VRE to perform the K&C Design Completion Work and the Unified Design, and shall provide construction administration services under VRE’s direction.
- m. **“Final Completion”** shall mean the point when, in accordance with Section XI below, VRE determines that all work has been fully completed in accordance with the Construction Contract for the Combined VRE-Led Construction Project, all Punch List Items have been addressed and accepted, final cleaning has been accomplished, all closeout submittals have been received in acceptable condition,

demonstration and training of systems has taken place, VRE's closeout checklist has been completed, and the final application for payment from the Construction Contractor has been reviewed and deemed acceptable by VRE.

- n. **“K&C Bridge Replacement Project”** shall mean a project constructed by VRE's Construction Contractor and funded by VPRA to reconstruct the existing rail bridges over King Street and Commonwealth Avenue, each in Alexandria, Virginia, that includes:
 - i. demolition and reconstruction of the existing undergrade rail bridges carrying railroad over King Street and Commonwealth Avenue;
 - ii. construction of tracks related to K&C Bridge Replacement Project and the Alexandria Fourth Track Project;
 - iii. demolition of existing stairwell within existing King Street South Abutment; and
 - iv. construction of wingwalls of proposed King Street South Abutment leaving space for stairwell to be constructed as part of the Alexandria Station Improvements Project.
- o. **“K&C Design Completion Work”** shall mean engineering work performed by VRE's Design Engineer of Record and funded 100% by VPRA to complete the design of the K&C Bridge Replacement Project such that it can be incorporated into the Combined VRE-Led Construction Project through the Unified Design efforts. This includes maintenance of traffic plans, work related to environmental review processes, permitting review processes, historic review processes, and other necessary design approval processes. The scope of the K&C Design Completion Work excludes the Unified Design efforts.
- p. **“K&C Project Budget”** shall mean a written budget established by VPRA and provided to VRE after VRE has received firm bid pricing from its Construction Contractor, establishing all expected VPRA costs to fund the complete K&C Bridge Replacement Project. The budget shall include without limitation:
 - i. funding for any pre-construction costs (*e.g.*, permitting and related professional and other engineering costs incurred as part of the Unified Design efforts allocable to VPRA);
 - ii. early works and materials and storage pursuant to Section III(d) below;
 - iii. a fifteen percent (15%) contingency reserve fund (based on bid price to perform the K&C Bridge Replacement Project components plus estimated costs for Construction Management and Construction Administration Costs

and for a proportionate share of anticipated Shared Cost Items) or such other percentage as agreed by the parties at the time;

- iv. a proportionate share (calculated using the VPRA Percentage) of all anticipated Shared Cost Items, including without limitation, Construction Management and Construction Administration Costs.
- q. **“Punch List Items”** shall mean the minor incidental items of work that have no adverse effect on safety or operability of the Combined VRE-Led Construction Project, and that can be performed by the Construction Contractor without shutting down rail operations or any roadway.
- r. **“Shared Cost Items”** shall mean the costs to design and construct the Combined VRE-Led Construction Project that are not reasonably allocable solely to either the Alexandria Station Improvements Project or the K&C Bridge Replacement Project. Examples of Shared Cost Items include, without limitation, Construction Management, Construction Administration, bond and insurance premiums, project environmental controls such as erosion and sediment controls, and the costs to complete the Unified Design.
- s. **“Shared TCE Parcel”** shall mean the approximately 2.145 acres depicted as parcel 008A in **EXHIBIT A** (*Acquisition Parcels*) attached hereto.
- t. **“Site Access Protocol”** shall mean the following process:
 - i. prior to accessing the project site, VPRA personnel and other agents shall check in with VRE’s designated individual and shall, upon request, provide confirmation that each individual seeking access to the project site has undergone required right-of-way training;
 - ii. VRE’s designated individual will provide a daily safety briefing for any VPRA personnel and other agents prior to project site entry;
 - iii. VRE may require that VPRA personnel and other agents be escorted while on the project site by a VRE employee or other VRE agent;
 - iv. VRE reserves the right to limit the number of VPRA personnel and other agents accessing the project site at any time, and may require VPRA’s third-party contractors to obtain a right-of-entry from CSXT and comply with all insurance and indemnity requirements of CSXT and VRE.
- u. **“Substantial Completion”** shall mean, in accordance with Section XI below, the point when VRE determines that the Combined VRE-Led Construction Project is sufficiently complete in accordance with the Construction Contract so that it can be used for the full use and function for which it was intended. The only remaining

physical work shall be the completion of Punch List Items prior to VRE's determination of Final Completion and acceptance.

- v. “**Unified Design**” shall mean a unified design package for the Combined VRE-Led Construction Project, inclusive of maintenance of traffic plans and construction phasing.
- w. “**VPRA**” shall mean the Virginia Passenger Rail Authority, a political subdivision of the Commonwealth of Virginia.
- x. “**VPRA Affordability Value**” shall mean **\$[value redacted]** *minus* (dollar-for-dollar) the value of any money expended or encumbered by VPRA to procure construction materials in advance of the completion of the procurement of the Construction Contract.
- y. “**VPRA Percentage**” shall mean, as of the execution date of the Construction Contract, the bid price to perform the K&C Bridge Replacement Project components, excluding the Shared Cost Items, expressed as a percentage of the overall bid price to perform the Combined VRE-Led Construction Project, also excluding the Shared Cost Items.
- z. “**VPRA-Delivered Parcels**” shall mean those parcels of real property necessary for the Combined VRE-Led Construction Project that are depicted in **EXHIBIT A** (*Acquisition Parcels*) and in addition are shown as to be acquired by VPRA within **EXHIBIT B** (*ROW Responsibility Matrix*).
- aa. “**VRE**” shall mean the two political subdivisions of the Commonwealth of Virginia that operate the commuter rail service known as Virginia Railway Express, namely, the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission.
- bb. “**VRE-Delivered Parcels**” shall mean those parcels of real property necessary for the Combined VRE-Led Construction Project that are depicted in **EXHIBIT A** (*Acquisition Parcels*) and in addition are shown as to be acquired by VRE within **EXHIBIT B** (*ROW Responsibility Matrix*).
- cc. “**VRE Percentage**” shall mean, as of the execution date of the Construction Contract, the bid price to perform the Alexandria Station Improvements Project components, excluding the Shared Cost Items, expressed as a percentage of the overall bid price to perform the Combined VRE-Led Construction Project, also excluding the Shared Cost Items.
- dd. “**WMATA**” shall mean the Washington Metropolitan Area Transit Authority.

II. BASIC ROLES AND RESPONSIBILITIES

- a. **VRE.** VRE will require its Design Engineer of Record to complete the K&C Design Completion Work and the Unified Design and VRE will consult with VPRA and CSXT as needed during the preparation of the Unified Design. The final Unified Design must be approved by VPRA and CSXT before it is considered finalized. Thereafter, VRE will issue an invitation for bids to procure competitively the Construction Contractor to build the Combined VRE-Led Construction Project under the Construction Contract and will oversee construction of the Combined VRE-Led Construction Project. In addition, VRE will provide Construction Management and Construction Administration services, utilizing VRE's Construction Manager and VRE's Design Engineer of Record, respectively, during construction of the Combined VRE-Led Construction Project, and will fund the Alexandria Station Improvements Project.
- b. **VPRA.** VPRA will provide funding to VRE for the K&C Bridge Replacement Project, and will coordinate with VRE with respect to the Unified Design, VRE's procurement of the Construction Contractor, and construction of the Combined VRE-Led Construction Project, in each case as provided in this agreement. Prior to issuance of an invitation for bids by VRE, the VPRA chief financial officer shall provide to VRE written certification that VPRA possesses full funding for the estimated costs to fund the complete K&C Bridge Replacement Project. Prior to award of a Construction Contract by VRE, the VPRA chief financial officer shall provide to VRE written certification that VPRA possesses full funding for the K&C Project Budget.

III. CONSTRUCTION PROCUREMENT PHASE

- a. **VRE Role in Procurement.** VRE shall competitively procure the Construction Contractor in accordance with the Virginia Public Procurement Act, §§ 2.2-4300 *et seq.* of the Code of Virginia, as amended, and all applicable federal grant requirements, and thereafter, as provided herein, enter into the Construction Contract.
- b. **VPRA Role in Procurement.** During VRE's competitive procurement of the Construction Contractor, VRE will address VPRA's informational needs, and include VPRA personnel, as follows:
 - i. VPRA may provide to VRE terms and conditions for inclusion in the invitation for bids at least sixty (60) calendar days prior to the proposed date for publication;
 - ii. not less than thirty (30) calendar days prior to publication of the invitation for bids, VRE shall provide to VPRA, upon execution of a mutually agreed upon non-disclosure agreement, a copy of the invitation for bids, and VPRA may, not less than fifteen (15) calendar days prior to publication of the invitation for bids, provide to VRE proposed edits to the invitation for bids

for VRE's review and comment and, once agreed upon by both parties, inclusion in the invitation for bids;

- iii. within fifteen (15) calendar days after publication of the invitation for bids, VPRA may provide to VRE proposed language to include by addendum into the invitation for bids for VRE's review and comment and, once agreed upon by both parties, inclusion in the invitation for bids;
- iv. VRE's invitation for bids shall require bidders to submit bids that isolate the pricing for the K&C Bridge Replacement Project into discrete line items; and
- v. VRE shall invite a VPRA representative to the bid opening.

- c. **Affordability.** If pricing for the K&C Bridge Replacement Project elements (exclusive of Shared Cost Items) of the apparent low bid is greater than the VPRA Affordability Value, then, within five (5) business days after the bid opening, VPRA may elect to request VRE, in writing, to cancel the procurement for the Combined VRE-Led Construction Project, which VRE shall do. Likewise, VRE may elect to cancel the procurement for the Combined VRE-Led Construction Project if such bid is unaffordable to VRE with respect to the Alexandria Station Improvements Project elements.
- d. **Early Work.** Prior to VRE issuing an invitation for bids for the Combined VRE-Led Construction Project, either party, upon mutual written agreement, may separately procure early work packages or construction materials for the benefit of any elements of the Combined VRE-Led Construction Project.

IV. CONSTRUCTION PHASE

- a. **VRE Role.** VRE will administer the Construction Contract utilizing the Construction Manager and the Design Engineer of Record through Final Completion of the Combined VRE-Led Construction Project.
- b. **VPRA Role.** VPRA will have the right to participate in construction of the Combined VRE-Led Construction Project as follows:
 - i. attend and participate in progress meetings relating to the Combined VRE-Led Construction Project;
 - ii. review, comment, and reach consensus with VRE on project work plans, construction management plans, quality plans, change management plans, and communications plans relating to the Combined VRE-Led Construction Project;

- iii. receive regular updates (no less frequently than monthly) from VRE with respect to the Construction Contractor's baseline schedule, monthly schedule updates, and recovery schedules relating to the Combined VRE-Led Construction Project;
 - iv. perform field visits to monitor and observe construction work relating to the K&C Bridge Replacement Project in accordance with the Site Access Protocol;
 - v. notify VRE in writing of work relating to the K&C Bridge Replacement Project considered by VPRA to be nonconforming and withhold payment to VRE in its discretion until it is resolved to VPRA's reasonable satisfaction;
 - vi. review and promptly notify VRE that it approves or rejects corrective action proposals for nonconforming work identified by VRE relating to the K&C Bridge Replacement Project and inspect and promptly notify VRE that it approves or rejects repairs or other corrective actions performed by the Construction Contractor for such nonconforming work; and
 - vii. attend punch list inspections with VRE relating to the Combined VRE-Led Construction Project and promptly notify VRE that it approves or rejects the Construction Contractor's resolutions for any noted Punch List Items.
- c. ***Project Management Information System.*** VRE shall establish its project management information system as the primary project management information system under the Construction Contract, and require the Construction Contractor and Construction Manager to upload all project records and data into VRE's system. In addition, VPRA will provide VRE and the Construction Contractor, the Construction Manager, and the Design Engineer of Record access to VPRA's project management information system and VRE shall upload, or cause the Construction Contractor and the Construction Manager to upload, all project records and data into VPRA's project management information system for VPRA's records and use.
- d. ***Performance and Payment Security.*** VRE will ensure the Construction Contract requires the Construction Contractor to provide payment and performance bonds with a penal sum of 100% of the Construction Contract price, and, subject to the provisions of this subsection, requires that VPRA be named as a dual obligee under such bonds. VPRA may only enforce or draw upon the payment and performance bonds strictly in accordance with the terms of the dual obligee rider or other such document that establishes VPRA as an obligee under the bonds, which rider or other document shall provide (A) that VPRA may enforce or draw upon the bonds only in the event that VRE fails or refuses to do so, or to dispute the need to do so, more than ten (10) business days after VPRA's written request to VRE to enforce or draw upon the bonds, and (B) that VPRA shall provide to the surety written certification

that VPRA has the right to enforce the performance or payment bond, as the case may be, under an agreement between VPRA and VRE.

- e. ***Insurance and Risk of Loss.*** VRE will ensure the Construction Contract requires the Construction Contractor to retain the risk of loss of any of the Combined VRE-Led Construction Project assets prior to Substantial Completion, other than those obtained by VRE or VPRA as part of early work packages or otherwise, and will require the Construct Contractor to have VPRA named as an additional insured, where possible, under insurance coverages required by the Construction Contract with the exception of railroad protective liability insurance.

V. **FUNDING RESPONSIBILITIES**

- a. ***Schedule of Values.*** Prior to publication of the invitation for bids for the Construction Contract procurement, VRE will prepare a schedule of values for the Combined VRE-Led Construction Project and provide it to VPRA for VPRA to review, comment, and reach consensus with VRE. Line items will be allocated to: (A) the Alexandria Station Improvements Project, (B) the K&C Bridge Replacement Project, or (C) Shared Cost Items.
- b. ***Establishing Project Budgets.***
 - i. VPRA will establish the K&C Project Budget and provide it to VRE.
 - ii. VRE will establish the Alexandria Station Project Budget and provide it to VPRA.
- c. ***VPRA Funding Duty.*** VPRA will fund the K&C Bridge Replacement Project including, without limitation, (A) the K&C Design Completion Work, (B) approved change orders, and (C) VPRA's share of the Shared Cost Items (calculated by using the VPRA Percentage). VPRA will pay reimbursements to VRE dollar-for-dollar, without markup not more than thirty (30) days after VRE's submission of a complete invoice with reasonable supporting documentation. VPRA's funding contribution will not exceed the K&C Project Budget unless otherwise agreed by VPRA. If VRE expects unbudgeted VPRA costs that exceed the K&C Project Budget, VRE shall immediately provide written notice to VPRA and the parties shall meet to determine in good faith whether: (X) the scope of work can be reduced so as not to exceed the K&C Project Budget, while maintaining the quality and meeting the intent of the K&C Bridge Replacement Project; (Y) additional funds can be secured to pay for the amount in excess of the K&C Project Budget; or (Z) the K&C Bridge Replacement Project should be suspended or terminated. In the event VPRA and VRE cannot reduce the scope of work or secure additional funding, either party may suspend performance or terminate the K&C Bridge Replacement Project. If performance is suspended, then prior to resuming work VRE may require VPRA to provide evidence satisfactory to VRE that additional

funding has been secured. The party suspending performance shall be responsible for the costs of any delay claims and other costs arising out the suspension.

- d. ***VRE Funding Duty.*** VRE will fund the Alexandria Station Improvements Project including, without limitation, approved change orders and VRE's share of the Shared Cost Items (calculated by using the VRE Percentage).
- e. ***Segregated Pay Applications.*** VRE shall require the Construction Contractor to separate on each pay application those costs associated with (A) the K&C Bridge Replacement Project, (B) the Alexandria Station Improvements Project, and (C) Shared Cost Items. If there are disputes about which costs constitute Shared Cost Items, then such disputes will be handled under Section IX.
- f. ***Change Orders Increasing VPRA Costs.*** For any change order or other Construction Contract modification increasing VPRA's funding obligations under this agreement, such changes must be agreed to in writing by VPRA before they are implemented as part of the Combined VRE-Led Construction Project. VPRA shall have sixty (60) days to review and approve or reject any proposed modification (and to coordinate with CSXT for any required approvals) and VPRA shall not unreasonably withhold, condition, or delay its approval of any such proposed change order or contract modification. VPRA shall be responsible for the costs of any delay claims arising out of its unreasonable failure to timely provide its approval.

VI. **PROJECT SCHEDULE AND DEADLINES; RETAINAGE; LIQUIDATED DAMAGES FOR LATE COMPLETION; DELAY DAMAGES**

The parties will collaborate in good faith, and work with CSXT and its design consultants, to establish a schedule for the Combined VRE-Led Construction Project that supports CSXT's substantial completion of the Alexandria Fourth Track Project on or before December 31, 2026, or such other date as the parties may agree prior to VRE's issuance of the invitation for bids. The Construction Contract will incorporate the agreed schedule and shall:

- a. require retainage of 5%;
- b. contain liquidated damages for the late achievement of Bridge Functional Utility with respect to each rail bridge, which (i) shall be established in a per day amount agreed by the parties and published within the invitation for bids, and (ii) contain a component that is payable or credited to VPRA and another component that is payable or credited to VRE; and
- c. contain liquidated damages for late Substantial Completion of the Combined VRE-Led Construction Project, which shall be payable or credited to VPRA and VRE in accordance with the VPRA Percentage and VRE Percentage unless otherwise agreed by the parties at the time.

The per day amounts for liquidated damages shall be set forth in the invitation for bids for the Combined VRE-Led Construction Project which amounts shall include, *inter alia*, an element for internal VRE staff costs and for internal VPRA staff costs agreed upon by the parties prior to

issuance of the invitation for bids. Nothing in this Section VI shall be construed to prevent VRE from establishing additional Combined VRE-Led Construction Project milestones with associated late completion liquidated damages if deemed useful or necessary by VRE at the time of the publication of the invitation for bids. In addition, nothing in this Section VI shall be construed to prevent VRE from establishing additional liquidated damages for occurrences other than late completion such as unpermitted roadway or railway closures, key personnel reassignments, or other similar matters if deemed useful or necessary by VRE at the time of the publication of the invitation for bids. Delay damages attributable to a party shall be borne by that party. To the extent the delay cannot reasonably be attributed to one party, the delay damages shall be apportioned to VPRA and VRE in accordance with the VPRA Percentage and VRE Percentage, or as otherwise may be agreed by the parties at the time.

VII. REAL PROPERTY

- a. ***Real Property Acquisition Responsibilities.*** VPRA will be responsible for ensuring VRE and the Construction Contractor have access to the VPRA-Delivered Parcels, and will lead the acquisition of the VPRA-Delivered Parcels, inclusive of the Shared TCE Parcel. VRE will be responsible for ensuring VRE and the Construction Contractor have access to the VRE-Delivered Parcels, and will lead the acquisition of the VRE-Delivered Parcels. The costs associated with the parties' acquisition of real property rights will be borne by the parties in accordance with **EXHIBIT B** (*ROW Responsibility Matrix*). If one party is acquiring real property for which the other party will contribute financially, then the acquiring party shall provide the relevant appraisal(s) of the relevant property at the time such appraisal is prepared, and shall preview to the other party for review and concurrence any offers of just compensation made to landowners, including all terms and conditions thereof, before such offers are made. The parties will cooperate in good faith (including agreeing on timing of issuing the invitation to bid, and construction notice to proceed) so as to avoid or mitigate Construction Contractor delay costs resulting from the parties' inability to provide access after the Construction Contract has been awarded by VRE, provided that the Construction Contract must limit the Construction Contractor's recovery of delay damages to critical path delays, and must require the Construction Contractor to use no less than commercially reasonable efforts to mitigate any delay damages. Any such delay damages will be borne by the party responsible for the delay.
- b. ***Shared TCE Parcel.*** VPRA will be responsible for acquiring a temporary construction easement covering the Shared TCE Parcel for the benefit of the Combined VRE-Led Construction Project. The parties will share the costs to obtain such interest in accordance with each party's expected use of the Shared TCE Parcel, as agreed by the parties at the relevant time.
- c. ***Access to VPRA Property.*** By executing this agreement, VPRA grants to VRE, the Construction Manager, the Design Engineer of Record, and the Construction Contractor access to property to which VPRA has a right of access, or in which VPRA has, or later acquires (upon such acquisition), a property interest, which shall

include access to the King Street and Commonwealth Avenue Bridges, to the extent necessary for purposes relating to the Combined VRE-Led Construction Project.

VIII. GOVERNMENT APPROVALS

VRE will lead all permitting activities for the Combined VRE-Led Construction Project. Upon request by VRE, VPRA will support VRE's permitting activities.

IX. DISPUTE RESOLUTION

The parties will endeavor to resolve disputes arising from this agreement as early as possible and at the lowest level possible, and will escalate attempts to resolve unresolved disputes as follows:

- a. first, between VRE's Chief Engineer and VPRA's Vice President of Engineering and Construction;
- b. failing complete resolution at the first step, second, between VRE's Chief Executive Officer and VPRA's Executive Director;
- c. failing complete resolution at the second step, third, the dispute will be brought to mediation with each party paying its own costs of mediation and sharing equally the costs of the mediator; and
- d. failing complete resolution after mediation, either party may then pursue available remedies in court, in which case venue will be in the Circuit Court of the City of Alexandria or the federal Eastern District of Virginia.

X. THIRD PARTY COORDINATION

- a. ***Adjacent Projects.*** VRE will coordinate the Combined VRE-Led Construction Project with the following adjacent and overlapping projects:
 - i. Alexandria Fourth Track Project (led by CSXT and funded by VPRA);
 - ii. Hoofs Run Culvert Bypass (City of Alexandria);
 - iii. King and Commonwealth Streetscape Improvements (City of Alexandria);
and
 - iv. Commonwealth Interceptor Inflow and Infiltration Study (AlexRenew (wastewater treatment authority for City of Alexandria and parts of Fairfax County)).
- b. ***CSXT.*** With respect to the Combined VRE-Led Construction Project, VRE will coordinate directly with CSXT for (A) access to CSXT property, (B) flagmen needed to support the work, (C) project coordination for the overlapping Alexandria Fourth Track Project led by CSXT, and (D) any other coordination necessary to carry out the Combined VRE-Led Construction Project.

- c. **City of Alexandria.** VRE will lead coordination activities with the City of Alexandria for the K&C Bridge Replacement Project. Upon request by VRE, VPRA will support VRE's coordination efforts.
- d. **WMATA.** CSXT will temporarily relocate an existing fiber optic duct bank on the existing King Street and Commonwealth Avenue rail bridges as part of the Alexandria Fourth Track Project through construction of a standalone temporary utility support structure installed adjacent to the bridges. This work must be completed or, in VRE's reasonable judgment, will be completed before VRE's projected issuance of a notice to proceed to the Construction Contractor. After such CSXT-led work is complete, the Construction Contractor will be responsible to install a new fiber optic duct bank on the new rail bridges and remove the temporary utility support structure as part of the K&C Bridge Replacement Project. In undertaking such work, control and custody of the temporary routing will be handed off from CSXT's contractor or VPRA to the Construction Contractor, who must work in coordination with WMATA to complete such work. Upon request by VRE, VPRA will support coordination efforts with WMATA.

XI. BRIDGE FUNCTIONAL UTILITY; SUBSTANTIAL COMPLETION; FINAL COMPLETION; AFTER-DISCOVERED DEFECTS; OPERATIONAL PERIOD

- a. **Bridge Functional Utility.** When the Construction Contractor notifies VRE that it has achieved Bridge Functional Utility with respect to either new rail bridge, then VRE shall provide notice to VPRA so that VPRA and CSXT may attend any inspections that are conducted for the purpose of confirming whether Bridge Functional Utility has been, in fact, achieved. In addition, VRE shall provide to VPRA a written list of any corrective action items for either bridge identified by VRE during such inspections that prevent achievement of Bridge Functional Utility so VPRA and CSXT may review and comment on the list and suggest the addition of items. Once VRE, CSXT, and VPRA agree that the Construction Contractor has achieved Bridge Functional Utility with respect to the relevant bridge, then VRE shall issue a written notice of Bridge Functional Utility to the Construction Contractor for that bridge.
- b. **Substantial Completion – VPRA & CSXT Role.** When the Construction Contractor notifies VRE that it has achieved Substantial Completion for the Combined VRE-Led Construction Project, then VRE shall provide notice to VPRA so that VPRA and CSXT may attend any inspections that are conducted for the purpose of confirming whether Substantial Completion has been, in fact, achieved for the Combined VRE-Led Construction Project. In addition, VRE shall provide to VPRA a written list of any Punch List Items relating to the Combined VRE-Led Construction Project identified by VRE during such inspections so VPRA and CSXT may review and comment on the list and suggest the addition of items. Once VRE, CSXT, and VPRA agree that the Construction Contractor has achieved

Substantial Completion with respect to the Combined VRE-Led Construction Project, then VPRA shall so notify VRE in writing. Thereafter, VRE shall determine whether Substantial Completion for the Combined VRE-Led Construction Project has been achieved.

c. ***Final Completion - VPRA Role.*** Once VRE is satisfied that the Construction Contractor has achieved Final Completion of the Combined VRE-Led Construction Project, and VPRA concurs with VRE that the K&C Bridge Replacement Project has been completed and that VPRA will accept it, then VRE will issue a certificate of Final Completion to the Construction Contractor. VPRA will notify VRE of its acceptance of both new bridges and any other elements of the K&C Bridge Replacement Project elements upon the following conditions:

- i. the Construction Contractor has achieved Substantial Completion with respect to both new bridges and any other elements of the K&C Bridge Replacement Project;
- ii. the Construction Contractor has removed all construction material, construction equipment, and construction refuse from the site of the K&C Bridge Replacement Project;
- iii. the Construction Contractor has completed all Punch List Items with respect to both new bridges and any other elements of the K&C Bridge Replacement Project;
- iv. VRE has delivered, or caused to be delivered, to VPRA as-built plans for the Combined VRE-Led Construction Project stamped by a professional engineer; and
- v. all subcontractors and suppliers at every tier relating to the K&C Bridge Replacement Project have been paid all amounts owed and any liens that could arise from non-payment of such amounts have been waived by such subcontractors and suppliers.

d. ***After-Discovered Defects.***

- i. Construction. Among the warranties provided by the Construction Contractor for the Combined VRE-Led Construction Project, VRE will require the Construction Contractor to provide a construction warranty covering defects in the work and materials for the two bridges and other elements of the K&C Bridge Replacement Project discovered for no less than one year after Final Completion by VRE of the Combined VRE-Led Construction Project. Such warranty shall be assignable to VPRA from VRE under the terms of the Construction Contract, so that VPRA can unilaterally enforce such warranty with respect to the components of the K&C Bridge Replacement Project.

- ii. **Design.** VPRA shall provide notice in writing to VRE of circumstances giving rise to after-discovered claims against the Design Engineer of Record or other design professionals who designed the K&C Bridge Replacement Project. If VPRA thereafter provides written notice to VRE that VPRA desires to pursue after-discovered claims arising against the Design Engineer of Record or other design professionals who designed the K&C Bridge Replacement Project, then VPRA and VRE shall agree upon one of the following (A) VRE and VPRA initiating an action against such design professionals jointly for the benefit of VPRA and VRE, (B) VRE initiating an action against such design professionals for the benefit of VPRA and VRE, or (C) assigning to VPRA VRE's right to initiate a claim against such design professionals for the benefit of VPRA and VRE.
- e. **Long-Term Operations and Maintenance.** After completion of the Combined VRE-Led Construction Project, VRE shall be responsible for the long-term operations and maintenance of the following assets: (A) elevators, (B) tunnels, (C) stairwells, (D) platform lighting, (E) canopies and support structures, (F) platform concrete, and (G) tactile strips. After completion of the Combined VRE-Led Construction Project, VPRA, or CSXT through its agreements with VPRA, shall be responsible for the long-term operations and maintenance of the following assets: (X) King Street rail bridge and supporting infrastructure, (Y) Commonwealth Avenue bridge and supporting infrastructure. Such supporting infrastructure shall include, but not be limited to: track and signal work, bridge piers, utilities on bridges, drainage ditches and other bridge drainage appurtenances, sidewalks under bridges, underbridge lighting, wingwall handrails, and embankment stabilization treatment, e.g., riprap.

XII. GENERAL

- a. **Assets Owned by VPRA and used by VRE.** For any assets constructed as part of the Combined VRE-Led Construction Project that are (i) located on real property owned by VPRA or in which VPRA has an interest and (ii) used for VRE operations, the parties will amend the *Passenger Station Ground Lease Agreement* to incorporate such assets for VRE's use.
- b. **Governing Law.** This agreement shall be governed by the laws of the Commonwealth of Virginia.
- c. **Compliance with Laws.** In undertaking the work contemplated by this agreement, each party shall comply with all applicable laws and regulations.
- d. **Entire Agreement.** This agreement represents the entire agreement between the parties and supersedes all prior communications and negotiations. This agreement may not be modified or amended, except pursuant a written agreement that is duly authorized, executed, and delivered by both parties.

- e. **Severability.** If any provision of this agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement shall not be affected thereby and each other provision of this agreement shall be valid and enforceable to the fullest extent permitted by law.
- f. **Assignment.** This agreement shall not be assigned by either party unless express written consent is given by the other party, which consent may be withheld for any reason.
- g. **No Waiver.** Except as otherwise expressly provided herein, neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.
- h. **Appropriations.** VPRA's duty to provide funding under this agreement is subject to the appropriations of the General Assembly and allocation by the relevant oversight board (VPRA's board of directors, and in some cases, the Commonwealth Transportation Board). VRE's duty to provide funding under this agreement is subject to the appropriation by the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission.
- i. **Sovereign Immunity.** Nothing in this agreement shall be construed as a waiver or limitation of VPRA's or VRE's sovereign immunity.
- j. **No Agency.** Nothing in this agreement shall constitute a partnership between or joint venture by the parties or constitute either party being the agent of the other.

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IN TESTIMONY THEREOF, the parties have caused this agreement to be executed, each by its duly authorized officer.

**NORTHERN VIRGINIA TRANSPORTATION
COMMISSION**

**VIRGINIA PASSENGER RAIL
AUTHORITY**

And

**POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION**

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

[SIGNATURE PAGE TO PROJECT COORDINATION AND FUNDING AGREEMENT FOR KING AND COMMONWEALTH BRIDGES]

EXHIBIT A
ACQUISITION PARCELS

[SEE ATTACHED ROW SCROLL]

EXHIBIT B

ROW RESPONSIBILITY MATRIX

Parcel ID	Property Owner	Tax ID #	Acquisition Type	ROW size (sq ft)	ROW size (Ac.)	Property to be acquired by	Acquisition costs to be paid by
006A	WMATA	063.04-10-01	Permanent Drainage / Slope Easement	25154	0.577	VPRA	VPRA
006B	WMATA	063.04-10-01	Property Acquisition	369	0.008	VPRA	VPRA
006C	WMATA	063.04-10-01	Land Use Permit	35170	0.807	VPRA	VPRA
007A	WMATA	063.02-13-01	Property Acquisition	500	0.011	VPRA	VPRA
007B	WMATA	063.02-13-01	Land Use Permit	12935	0.297	VPRA	VPRA
007C	WMATA	063.02-13-01	Permanent Slope Easement	1527	0.035	VPRA	VPRA
008A	City of Alexandria	073.01-03-04	Temporary Construction Easement	93456	2.145	VPRA	VRE
008B	City of Alexandria	073.01-03-04	Property Acquisition	6656	0.153	VPRA	VPRA
008C	City of Alexandria	073.01-03-04	Permanent Slope Easement	559	0.013	VPRA	VPRA
027	Virginia Department of Transportation (VDOT) or City of Alexandria - King Street	Public Right of Way	Permanent Aerial Easement	7592	0.174	VPRA	VPRA
028	City of Alexandria - Commonwealth Avenue	Public Right of Way	Permanent Aerial Easement	3230	0.074	VPRA	VPRA

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