



COMMONWEALTH of VIRGINIA

Virginia Passenger Rail Authority

DJ Stadtler
Executive Director

919 East Main Street, Suite 2400
Richmond, Virginia 23219

(804) 303-8700
www.vpra.virginia.gov

Zach Trogdon
Interim Chairperson

RESOLUTION OF THE VIRGINIA PASSENGER RAIL AUTHORITY BOARD

August 27, 2024

MOTION

Made By: Bulova Seconded By: Watkins

Action: Motion carried, unanimously

Title: Authority to Execute Manassas Line Funding Agreement between Virginia Passenger Rail Authority and VRE Commissions

WHEREAS, the Virginia Passenger Rail Authority (“VPRA”) intends to acquire from Norfolk Southern Railway Company ownership and other real property interests in the railroad corridor between approximately milepost 9.25 and 36.23 in northern Virginia (the “**Manassas Line**”); and

WHEREAS, the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission (collectively, the “**VRE Commissions**”) operate the commuter rail service known as the Virginia Railway Express over the Manassas Line; and

WHEREAS, VPRA staff and staff for the VRE Commissions have negotiated a funding agreement, the form of which is attached hereto as **EXHIBIT A** (the “**Manassas Line Funding Agreement**”), and under which the VRE Commissions would supply to VPRA \$155,000,000 in support of VPRA’s acquisition of the Manassas Line and other VPRA initiatives.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby authorizes the VPRA Executive Director to execute the Manassas Line 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]

####

VERSION FOR BOARD REVIEW

MANASSAS LINE FUNDING AGREEMENT

Dated [●]

between

NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND POTOMAC AND
RAPPAHANNOCK TRANSPORTATION COMMISSION
owners of Virginia Railway Express

and

VIRGINIA PASSENGER RAIL AUTHORITY

MANASSAS LINE FUNDING AGREEMENT

This MANASSAS LINE FUNDING AGREEMENT (this “**Agreement**”) is made and entered into this [●] day of [●], 2024 and is between the (i) Virginia Passenger Rail Authority (“**VPRA**”), a political subdivision of the Commonwealth of Virginia (“**Commonwealth**”) and (ii) The Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, bodies politic and corporate and political subdivisions of the Commonwealth, established under the provisions of the Transportation District Act of 1964, as amended, and having principal places of business at 2300 Wilson Boulevard, Suite 203, Arlington, Virginia 22201, and 14700 Potomac Mills Road, Woodbridge, Virginia 22192, respectively (hereinafter, individually, a “**Commission**” and collectively the “**Commissions**”, which together VPRA and the Commissions shall be referred to as the “**Parties**”).

RECITALS

WHEREAS, VPRA entered into a *Comprehensive Rail Agreement* with Norfolk Southern Railway Company (“**NSR**”) dated [●] (the “**CRA**”); and

WHEREAS, under the CRA, VPRA has purchased or will purchase from NSR the following interests in railroad property over which the Commissions operate daily commuter rail service (collectively, the acquisition of such interests being the “**Manassas Territory Acquisitions**”):

1. the “**Seminary Passage**”, which is NSR’s rail lines between approximately mileposts 9.25 and 10.76 (inclusive of NSR’s interests in the so-called “Horn Track” and also inclusive of Seminary Yard);
2. the “**Manassas Main Line**” which is NSR’s rail lines between approximately mileposts 10.76 and 32.75;
3. a passenger rail easement interest through the “**Manassas Yard**” which is NSR’s rail lines between approximately mileposts 32.75 and 33.6; and
4. a continuous strip of land referred to as the “**Broad Run Strip**” currently without tracks between approximately mileposts 33.6 and 36.23, sufficient for the construction of an additional passenger-dedicated track leading into the passenger station at Broad Run and the rail yard in the vicinity of such station; and

WHEREAS, the Parties are committed to a substantial increase in commuter rail service provided by the Commissions between Washington, DC and Virginia counties and cities; and

WHEREAS, the Parties have entered into a *Master Funding Agreement for VPRA Track Access Elective Contributions for VRE Track Access Fees* dated August 4, 2022 (the “**Master Track Access Fee Agreement**”) under which VPRA may elect to make annual contributions towards the Commissions’ annual access fees paid to railroad owners; and

WHEREAS, the Commissions will supply VPRA funding set forth in this Agreement to achieve this increase in commuter passenger rail service among other benefits to the Commissions.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Funding Responsibilities.

- 1.1 Commissions Manassas Line Funding Commitment. The Commissions agree to provide to VPRA **ONE HUNDRED FIFTY-FIVE MILLION DOLLARS (\$155,000,000)** (the “**Commissions Manassas Line Funding Commitment**”). The Commissions Manassas Line Funding

Commitment shall not include any federally-sourced, funds except as provided for herein. At the Commissions' election, the Commissions Manassas Line Funding Commitment will be provided to VPRA:

- (a) as direct payments from the Commissions to VPRA, from sources including but not limited to:
 - (i) reprogramming of existing state funding for other VRE related capital projects,
 - (ii) I-66 Outside the Beltway funding,
 - (iii) federal funds for the Commissions' acquisition from VPRA of all of VPRA's right, title, and interest in Seminary Yard and the Broad Run Strip, *provided that*,
 - a. the amount of the Commissions Manassas Line Funding Commitment allocable to the Commissions' purchase of Seminary Yard and for the Broad Run Strip shall be based on the fair market appraisals obtained by the Commissions for Seminary Yard and the Broad Run Strip, and delivered to VPRA for its review and comment (if VPRA deems an appraisal, or any portion thereof, as unreasonable then VPRA shall have the right to dispute such appraisal, or portion thereof, under section 10 of this Agreement), and
 - b. the use of federal funds in exchange for such right, title, and interest does not result in the Federalization of any VPRA-retained land or assets within the Manassas Territory Acquisitions,
 - (iv) federal or other funds for a commuter rail passenger station easement in land underlying existing and future passenger rail platforms located within the Manassas Territory Acquisitions under terms and conditions satisfactory to both Parties, including that the easement shall be exclusive and non-revocable (except in limited circumstances defined within such easement documents) but not perpetual, *provided that* the use of federal funds in exchange for such easement interest does not result in the Federalization of any VPRA land or assets within the Manassas Territory Acquisitions, and
 - (v) federal or other funds for a commuter rail operations easement in the Manassas Territory Acquisitions under terms and conditions satisfactory to both Parties, *provided that* the use of federal funds in exchange for such easement interest does not result in the Federalization of any VPRA land or assets within the Manassas Territory Acquisitions;
- (b) as a reduction to a VPRA Track Access Elective Contribution (as that term is defined under the Master Track Access Fee Agreement), not to exceed the following amounts per railroad owner for the relevant fiscal year of the Commissions:

FISCAL	CAP FOR AMTRAK-	CAP FOR CSX-CHARGED
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YEAR	CHARGED FEES	FEES
2025	\$7,980,000	\$8,988,000
2026	\$8,219,000	\$9,257,000
2027	\$10,577,000	\$13,555,000
2028	\$10,894,000	\$13,962,000
2029	\$11,221,000	\$14,381,000

(c) or any combination of (a) and (b) above.

1.2 VPRA Funding Responsibilities. VPRA will be responsible for sourcing the balance of funding needed in excess of the Commissions Manassas Line Funding Commitment to fund the Manassas Territory Acquisitions, whether through local, regional, state, federal, or other non-Commissions funding sources.

1.3 Timing of Real Property Interests. VPRA will convey to the Commissions the interests described in Section 1.1(a)(iii), (iv), and (v) above within a reasonable time after (a) the Commissions provide written notice that they are ready to accept such interests, (b) the Parties have agreed on the terms of such conveyances and have acquired any necessary third-party consents, and (c) the Commissions' have made payment no. 1 set forth in Section 2.1 below in full.

1.4 Definition of Federalization. “**Federalization**” means the application of otherwise inapplicable requirements promulgated by any branch of the federal government, including any governmental entity taking an interest in VPRA’s land or assets within the Manassas Territory Acquisitions, which requirements apply solely by virtue of federal funds used by the Commissions to secure the interests described in Section 1.1(a)(iii), (iv), and (v) above.

2. Timing of Commissions Manassas Line Funding Commitment.

2.1 The Commissions will make the Commissions Manassas Line Funding Commitment available to VPRA on or before the dates set forth in the following schedule and in the following amounts:

PAYMENT NO.	DATE	AMOUNT
1	December 15, 2024	\$26,000,000
2	July 10, 2025	\$25,800,000
3	July 10, 2026	\$25,800,000
4	July 10, 2027	\$25,800,000
5	July 10, 2028	\$25,800,000
6	July 10, 2029	\$25,800,000

2.2 The Commissions shall make all payments timely. However, except for payments 1 and 2 above (which must be made timely in all cases), if the Commissions, through no fault of their own, and in the exercise of commercially reasonable efforts, are unable to make payments 3, 4, 5, or 6 set forth above on or before the scheduled dates or in the full scheduled amounts, then the Commissions shall make a payment in such amount as is feasible at the earliest time possible after the scheduled date, and the balance shall be carried forward to the next ensuing year’s payment date. Notwithstanding the foregoing, the Commissions shall pay to VPRA the full amount of the Commissions Manassas Line Funding Commitment on or before July 10, 2031.

2.3 The Commissions may pay more than the scheduled amounts on the scheduled dates and may, with the concurrence of VPRA, make additional payments at times other than the scheduled dates, and may pay the balance of Commissions Manassas Line Funding Commitment at any time.

3. Appropriation and Approvals.

3.1 VPRA'S PAYMENT OF ANY AMOUNTS DUE PURSUANT TO THIS AGREEMENT, OR ITS COMMITMENT TO FUND ANY ACQUISITIONS HEREUNDER, IS SUBJECT TO APPROPRIATION BY THE GENERAL ASSEMBLY AND ALLOCATION BY THE COMMONWEALTH TRANSPORTATION BOARD OR THE VPRA BOARD OF DIRECTORS.

3.2 THE COMMISSIONS' DUTY TO SUPPLY THE COMMISSIONS MANASSAS LINE FUNDING COMMITMENT IS SUBJECT TO ANNUAL APPROPRIATIONS BY THE COMMISSIONS' BOARDS.

4. Governing Law.

This Agreement shall be governed by the laws of the Commonwealth, without regard for conflict of laws principles.

5. Compliance with Law.

The Parties will comply with all applicable state, federal, and local laws and regulations in the performance of this Agreement. The Commissions certify they do not and shall not during the performance of this Agreement knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

6. Entire Agreement; Amendment and Modification.

This Agreement between the Parties shall supersede all prior communications and negotiations concerning the subject matter herein. This agreement may not be modified or amended, except pursuant to a written agreement that is duly authorized, executed and delivered by both Parties.

7. Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder shall not be affected thereby and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. Sovereign Immunity.

Nothing in this Agreement shall be construed to waive or abrogate either Party's sovereign immunity, in part or in whole, in any manner, under any theory, hereunder.

9. Effective Date; Expiration.

This Agreement will be effective upon the signature of the last Party to sign. It will expire automatically ninety (90) days after the date the Commissions provide the final installment of the Commissions Manassas Line Funding Commitment to VPRA.

10. Dispute Resolution.

- 10.1 Efforts to Resolve; Advisory Opinions. The Parties hereto shall make every reasonable effort to settle any dispute arising out of this Agreement without resorting to litigation. If the Parties so agree, they may retain a disinterested person experienced in railroad operations, including, but not limited to, the financing of railroads, or an accountant or attorney if appropriate, to render his or her objective advice and opinions, which shall be advisory only and not binding unless the Parties agree in writing to be bound by his or her judgment in a particular instance.
- 10.2 Legal Actions. Any claims or controversy between the Commissions and VPRA may be resolved by either party filing a legal action. All litigation between the Parties arising out of or pertaining to this Agreement shall be filed, heard, and decided in either the Virginia state courts or the United States District Court for the Eastern District of Virginia.
- 10.3 Duty to Continue Performance. Except as may be ordered or permitted by a court of competent jurisdiction, pending final resolution of any dispute, the Parties will continue to fulfill their respective obligations under this Agreement.
- 10.4 Dispute Resolution Costs. Each Party shall bear the costs and expenses incurred by it in connection with any litigation, and neither Party will seek or accept an award of attorneys' fees or costs incurred in connection with the resolution of a dispute pursuant to this Article.

11. Notices.

All notices or communications with respect to this Agreement shall be in writing and shall be deemed delivered upon delivery by hand, upon the next business day if sent prepaid overnight delivery service, or on the third business day following mailing by U.S. Mail, certified, postage prepaid, return receipt requested, to the addresses set forth below, or by email that clearly is marked notice in both the text and the subject line. The representatives and/or addresses set forth herein may be changed at any time by written notice to the other Parties sent by a below-listed representative, his/her designee, or interim replacement.

For the Commissions: Chief Financial Officer
Virginia Railway Express
1500 King Street, Suite 202
Alexandria, VA 22314
mschofield@vre.org

Chief Executive Officer
Virginia Railway Express
1500 King Street, Suite 202
Alexandria, VA 22314
rdalton@vre.org

Counsel for the Commissions

1500 King Street, Suite 202
Alexandria, VA 22314
smacisaac@vre.org

For VPRA:

Chief Financial Officer
919 East Main Street, Suite 2400
Richmond, VA 23219
Steve.pittard@vpra.virginia.gov

Executive Director
919 East Main Street, Suite 2400
Richmond, VA 23219
Dj.stadtler@vpra.virginia.gov

General Counsel
919 East Main Street, Suite 2400
Richmond, VA 23219
Michael.westermann@vpra.virginia.gov

[SIGNATURE PAGE FOLLOWS]

VIRGINIA PASSENGER RAIL AUTHORITY

By: _____ Date _____
DJ Stadtler
Executive Director

**NORTHERN VIRGINIA TRANSPORTATION COMMISSION
and
POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION**

By: _____ Date _____
Rich Dalton
VRE Chief Executive Officer