

**AGENDA ITEM 8-A**  
**ACTION ITEM**

**TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD**

**FROM: DALE ZEHNER**

**DATE: OCTOBER 19, 2007**

**RE: AUTHORIZATION TO AMEND INSURANCE FUND AGREEMENT  
AND AGREEMENT FOR THE MANAGEMENT OF THE LIABILITY  
INSURANCE PLAN**

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**RECOMMENDATION:**

The VRE Operations Board is being asked to recommend that the Commissions authorize the Chief Executive Officer to amend the Insurance Fund Agreement for Commuter Rail Operation Liability Insurance Plan and the Agreement for the Management of the Liability Insurance Plan for Commuter Rail Services.

**BACKGROUND:**

NVTC and PRTC established the Commuter Rail Liability Insurance Plan ("Insurance Plan") in 1989. The Insurance Plan, which is administered by the Commonwealth of Virginia Division of Risk Management (DRM), provides for the indemnification obligations accepted by the Commissions in each of their agreements with the railroads as a condition of gaining access to the railroads' rights of way.

At the time the Insurance Plan was established, the Commissions entered into two agreements with DRM to first, create the Insurance Trust Fund and second, to manage the Insurance Plan. These two agreements have not been modified since their original execution and it is appropriate to update them. In discussions with DRM, a request was made to amend both documents to reflect current conditions. The proposed changes update the names of the insureds under the

Insurance Plan, correct citations to the Code of Virginia, and clarify administrative procedures and addresses. The changes are reflected in the attached drafts.

**FISCAL IMPACT:**

There is no fiscal impact associated with this action.

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**FROM: DALE ZEHNER**  
**DATE: OCTOBER 19, 2007**  
**RE: AUTHORIZATION TO AMEND INSURANCE FUND AGREEMENT**  
**AND AGREEMENT FOR THE MANAGEMENT OF THE LIABILITY**  
**INSURANCE PLAN**

**RESOLUTION**  
**8A-10-2007**  
**OF THE**  
**VIRGINIA RAILWAY EXPRESS**  
**OPERATIONS BOARD**

**WHEREAS**, NVTC and PRTC established the Commuter Rail Liability Insurance Plan (“Insurance Plan”), Insurance Fund Agreement and the Agreement for the Management of the Liability Insurance Plan in 1989; and,

**WHEREAS**, the Insurance Plan is administered by the Commonwealth of Virginia Division of Risk Management (DRM provides for the indemnification obligations accepted by the Commissions in agreements with railroads); and,

**WHEREAS**, the Insurance Fund Agreement and the Agreement for the Management of the Liability Insurance Plan have not been modified or updated since their original execution; and,

**WHEREAS**, it is appropriate to update them.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the VRE Operations Board recommends that the Commissions authorize the Chief Executive Officer to amend the Insurance Fund Agreement for Commuter Rail Operation Liability Insurance Plan and the Agreement for the Management of the Liability Insurance Plan for Commuter Rail Services.

NORTHERN VIRGINIA COMMUTER RAIL PROJECT  
VIRGINIA RAILWAY EXPRESS

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| AMENDED AND RESTATED  
INSURANCE FUND AGREEMENT

FOR

COMMUTER RAIL OPERATION LIABILITY INSURANCE PLAN





reserves to be administered by the Division of Risk Management (“Administrator”) of the Department of Treasury of the Commonwealth of Virginia.

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In order to meet their obligations under the Access Agreements and pursuant to §2.2-1839 of the Code of Virginia, as amended (“Code”), the Commissions have entered into an Amended and Restated Management Agreement, dated as of \_\_\_\_\_, 2007, with the Administrator for management of the Insurance Plan (“Management Agreement”). The Commissions desire to establish this fund with the Administrator for the purposes of holding the reserves provided for under the Insurance Plan and Management Agreement.

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## ARTICLE I

### Creation of Fund

Section 1.1 Creation of Fund. In order to establish insurance reserve required by the Insurance Plan and the Management Agreement, the Commissions establish with the Administrator this Insurance Fund to be held and administered under the terms of this Agreement. The Commission will pay or cause to be paid the Administrator to be administered under this Agreement all amounts required by the Management Agreement.

## ARTICLE II

### Authorized Payments

Section 2.1 Authorized Payments. The Administrator is authorized to make the following payments from the money held under this Agreement:

- (a) Administrative costs of the Administrator and the Commissions, including actuarial costs, professional administrative expense, personnel costs and all other direct and indirect expenses related to the administration of the Insurance Plan;

(b) Liquidated liability insurance claims in amounts and to parties determined by the Administrator;

(c) Investigation and legal defense costs;

(d) Fees incurred by the Administrator in the administration of this Agreement;

(e) Amounts to be paid to Amtrak to establish and maintain the impress fund of \$50,000 as described in the Management Agreement at such time in such amounts as directed by the Administrator;

(f) Premiums on insurance purchased pursuant to the Insurance Plan including deductible amounts if applicable;

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(g) Purchase of stock in any excess or captive in insurance company for the purpose of obtaining insurance coverage and

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(h) Costs related to subrogation.

All payments will be made at the sole discretion of the Administrator, unless otherwise noted above.

Section 2.2 Form of Application for Payment. Before any payment is made, the Administrator may require such written evidence to support the payment as the Administrator deems appropriate, including in the case of any payment to the Commission, a written request, signed by an authorized representative of the Commissions, stating:

(a) The name or names of the person, firm or corporation to whom the payment is due;

(b) The amount to be paid; and

(c) The purpose in reasonable detail for which the obligation to be paid was incurred.

Section 2.3 Prompt Payment. The practice of the Administrator and the two Commissions shall be to effect prompt payment of all amounts due under the terms of the Insurance Plan and the Management Agreement.

### ARTICLE III

#### Authorized Investments

Section 3.1 Investments. In addition to the making of payments authorized hereunder, any money held by the Administrator under this Agreement may be invested and reinvested by the Administrator in investments which are at the time permitted by ~~§§2.2-1839 and 1806, and~~ §§2.2-4500 et seq., the Investment of Public Funds Act, of the Code, and approved by the Treasury Board. These may include but are not limited to the following:

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(a) Bonds, notes and other evidence of indebtedness to which the full faith and credit of the Commonwealth or of any of its political subdivisions is pledged for payment of its political subdivisions, agencies, districts, authorities or other public bodies and are rated in one of the two highest long-term debt rating categories by at least one of the Rating Agencies, without regard to any refinement or gradation of such rating category by numerical modifier or otherwise;

(b) Bonds, notes and other obligations of the United States of America and securities unconditionally guaranteed as to the payment of principal and interest by the United States of America;

(c) Certificates representing ownership of United State Treasury bond principal at maturity or coupons for accrued periods, which bonds or coupons are held by a bank or trust company organized and existing under the laws of the United States of America or any of its

states acceptable to the Administrator in the capacity of custodian and independent to the seller of such certificates.

(d) Bond, notes and other evidence of indebtedness issued by an agency of the United States of America; and

(e) Savings accounts, time deposits and certificates of deposit in any bank and its affiliates, within or without the Commonwealth, provided that such funds are secured in the manner required by [§§2.2-4400 et seq. of the Code](#), the Virginia Security for Public Deposits Act, or any successor legislation.

Any investments described in subsections (b) and (d) above may be purchased pursuant to a repurchase agreement with any bank within or without the Commonwealth having a combined capital, surplus and undivided profits of not less than \$50,000,000 or any Primary Government Securities Dealers reporting to the Federal Reserve Bank of New York. Such repurchase agreement shall be considered a purchase of such investments even if title to and/or possession of such securities is not transferred to the Administrator so long as (i) the repurchase obligation is collateralized by the investments themselves, (ii) the investments have on each day that the repurchase agreement is in effect a fair market value equal to at least 102% of the amount of term repurchase obligations, and, at least 100% of the amount of overnight repurchase obligations including principal and interest, (iii) the investments are held by a third party (not as agent for the bank) for the benefit of the Administrator as fiduciary under this Agreement and segregated from securities owned generally by such third party or the bank, and (iv) a perfected security interest under the Uniform Commercial Code of Virginia or book entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.0 et seq., as amended, in the investments is created for the benefit of the beneficiaries under this Agreement.

All such investments shall be held by or under the control of the Administrator and while so held shall be deemed a part of the Insurance Fund. The interest accruing on and any profit realized from such investments shall be credited to the Insurance Fund and any loss resulting from such investments shall be charged to the Fund. The Administrator shall sell or cause to be sold a sufficient amount of such investments whenever the cash balance in the Insurance Fund is insufficient for its purposes.

In determining the amount on deposit in the Insurance Fund, investments will be valued at their market price, exclusive of accrued interest.

Section 3.2 Department of Treasury. Any investment of money held by the Administrator may be made through the Department of Treasury in accordance with such policies and procedures for investments as may then be in effect.

#### ARTICLE IV

##### The Administrator

Section 4.1 Reports by Administrator. Within fifteen business days following the end of each calendar quarter, the Administrator will deliver to the Railroads, Amtrak, and the Commissions a statement describing the amounts held under this Agreement on the last day of the previous quarter, deposits to the Fund by the Commissions and others during the quarter, income earned during the quarter, and all payments made from the Insurance Fund since the last statement furnished pursuant to this Section.

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Section 4.2 Liability of Administrator. The Administrator will have no responsibility to the Commissions, the Railroads, Amtrak, or any other person in connection with this Agreement, except as specifically provided, and will not be responsible for anything done or omitted to be done by it except for its own negligence or default in the performance of any obligation imposed

on it under this Agreement in accordance with the provisions of the Virginia Tort Claims Act. The Administrator is not a party to, nor bound by or need it give consideration to the terms or provisions of any other person, and the Administrator assents to and is to give consideration only to the terms and provisions of this Agreement. Unless specifically provided in this Agreement, the Administrator has no duty to determine or inquire into the happening or occurrence of any event or contingency or the performance or failure of performance of the Commissions with respect to arrangements or contracts with others, the Administrator's sole duty being to safeguard the Insurance Fund and to invest, pay out, and dispose of it in accordance with this Agreement. If the Administrator is called upon by the terms of this Agreement to determine the occurrence of any event or contingency, the Administrator may reasonably request from the Commissions or any other person such additional evidence as the Administrator in its discretion may deem necessary to determine any fact relating to the occurrence of such event or contingency, and in this connection may inquire and consult with the Commissions at any time.

Section 4.3 Evidence Upon Which Administrator May Act. The Administrator may act upon any notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other instrument of document which the Administrator in good faith believes to be genuine and to be what it purports to be.

Section 4.4 Replacement of Administrator. The Administrator may resign, and thereby become discharged from the Commissions. Such resignation shall take effect immediately, however, except as may hereafter be provided by law, the Administrator shall continue to serve as Administrator until a successor is appointed, the funds held under this Agreement, this or any successor Administrator shall rebate to the Commissions a ratable portion of any fee paid by the Commission to the Administrator for its services under this Agreement.

Section 4.5 Fees, Charges and Expenses of the Administrator. The Administrator is entitled to payment of and reimbursement for reasonable fees for its services and all expenses reasonably incurred by it under this Agreement, including the reasonable fees and disbursements of its counsel.

## ARTICLE V

### Termination

Section 5.1 Termination of Agreement. This Agreement shall terminate upon final payment of all distribution set forth in Section 5.2.

Section 5.2 Distribution of Funds on Termination. On termination of the Access Agreements with the Railroads, the Commissions reserve the right to terminate this Agreement with the Administrator. On receipt of written notice of termination from the Commissions, the Administrator will continue to perform its obligation under this Agreement until the expiration of those years after the date of the termination notice at which time any amounts remaining in the Insurance Fund, less any amounts to be reserved for the payment of pending claims and expenses, shall be paid by the Administrator to the Commissions or as the Commissions may direct.

## ARTICLE VI

### Miscellaneous

Section 6.1 Notices. Unless otherwise provided in this Agreement, all demands, notices, approvals, consents requests, opinions and other communications hereunder will be in writing and will be deemed to have been given when delivered in person or mailed by registered or certified mail, postage prepaid, addressed as follows:

(a) If to the Commissions, ~~Virginia Railway Express, 1500 King Street, Suite 202, Alexandria, Virginia 22314, Attention: Chief Executive Officer;~~ and

(b) if to the Administrator, ~~101 North 14<sup>th</sup> Street, 6<sup>th</sup> Floor, Richmond, Virginia~~ 23219, Attention Director.

The parties may, by notice given under this Agreement, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications will be sent or persons to whose attention they will be directed.

Section 6.2 Successors and Assigns. This Agreement will be binding upon, inure to the benefit or and be enforceable by its parties and their respective successors and assigns.

Section 6.3 Counterparts. This Agreement may be executed in several counterparts each of which will be an original and all of which together will constitute but one and the same instrument.

Section 6.4 Conflicts between various Agreements. Except with respect to the naming of the parties to the Insurance Fund Agreement, appearing on Page 2 of the Management Agreement, in which case the Insurance Fund Agreement will control, in the event of any conflict between the terms of this Agreement and the terms of the Management Agreement, the terms of the Management Agreement shall control. In the event of any conflict between the terms of this Agreement and/or the terms of the Management Agreement and the terms of the Master Agreement, the terms of the Master Agreement shall control.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their dully authorized officers.

**Deleted:** c/o Northern Virginia Transportation Commission, Arlington Executive Building, 2009 North 14<sup>th</sup> Street, Suite 300, Arlington, Virginia 22201, Attention: Executive Director, with a copy to the Potomac and Rappahannock Transportation Commission, 9257 Lee Avenue, Manassas, Virginia 22110

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COMMONWEALTH OF VIRGINIA  
OFFICE OF THE GOVERNOR

NORTHERN VIRGINIA  
TRANSPORTATION COMMISSION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA  
TRANSPORTATION COMMISSION  
DEPARTMENT OF TREASURY

POTOMAC AND RAPPAHANNOCK

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GENERAL SERVICES

By: \_\_\_\_\_

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COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF TREASURY  
DIVISION OF RISK MANAGEMENT

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GENERAL SERVICES

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By: \_\_\_\_\_

Title: \_\_\_\_\_

AMENDED AND RESTATED AGREEMENT

BETWEEN THE DIVISION OF RISK MANAGEMENT AND THE NORTHERN VIRGINIA AND POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSIONS FOR MANAGEMENT OF THE LIABILITY INSURANCE PLAN FOR COMMUTER RAIL SERVICES

This Amended and Restated Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2007, between the DIVISION OF RISK MANAGEMENT of the DEPARTMENT OF TREASURY for the COMMONWEALTH OF VIRGINIA, ("Risk Management"), and the NORTHERN VIRGINIA TRANSPORTATION DISTRICT COMMISSION and the POTOMAC AND RAPPAHANNOCK TRANSPORTATION DISTRICT COMMISSION (collectively the "Commissions"),

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The Commissions have entered into a Master Agreement, dated as of October 3, 1989

("Master Agreement") and amended April 2, 1992, and July, 2007, for the Provision of Commuter Rail Services in Northern Virginia – The Establishment of the Virginia Railway Express, which serves as the framework for a regional rail transit project providing service from terminals located in the Fredericksburg and Manassas areas to Union Station in the District of Columbia ("Rail Service"). In addition to the Commissions, the parties to the Master Agreement include Fairfax County, Prince William County, Stafford County, the City of Manassas, the City of Manassas Park, and the City of Fredericksburg ("Participating Jurisdictions") and Arlington County and the City of Alexandria ("Contributing Jurisdictions").

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The Rail Service has and will continue to use existing railroad tracks owned by the Norfolk Southern Railway Company ("Norfolk Southern"), and CSX Transportation, Inc. (collectively "Railroads"), pursuant to Operating Access Agreements, dated

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May 5, 2000, as amended and extended, and February 10, 1995, as amended and extended,  
respectively, (“Access Agreements”) with each of the Railroads. The Rail Service has been and  
will continue to be operated by the National Railroad Passenger Corporation (“Amtrak”), under a  
Purchase of Service Agreement, dated March 1, 1998, as amended (“Operating Agreement”),  
between the Commissions and Amtrak;

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1989

The terms of the Access Agreements and the Operating Agreement require the  
indemnification of the Railroads and Amtrak by the Commissions in the annual aggregate  
amount of \$250,000,000, through a plan of insurance described in Exhibit A, originally dated  
December 20, 1989, and thereafter amended \_\_\_\_\_, 2007 (“Insurance Plan”).

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The Commissions are authorized pursuant to §15.2-4518(13) of the Code of Virginia, as  
amended (“Code”), to provide third party indemnification through such an Insurance Plan  
administered by Risk Management. In accordance with the Insurance Plan, the Commissions  
have established and funded certain insurance reserves pursuant to an Insurance Fund

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Code of Virginia, 1950, as amended  
 (“Code”),

Agreement, dated as of December 1, 1989 (“Insurance Fund”), as such has been amended and  
restated effective \_\_\_\_\_, 2007, between Risk Management and the Department of  
Treasury of the Commonwealth of Virginia, as trustee (“Trustee”).

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The Insurance Plan is acceptable to Risk Management, and Risk Management, pursuant  
to its authority under §2.2-1839 of the Code, has agreed to manage the Insurance Plan and the  
Insurance Fund.

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The parties desire to amend and restate the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

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1. The term of this Agreement, as amended and restated, shall commence on \_\_\_\_\_, 2007 and will continue in force until terminated by agreement of the parties.

2. Risk Management agrees to act as the third party administrator for the Insurance Plan in accordance with its terms and this Agreement.

3. The Commissions agree to maintain, subject to the approval of Risk Management, an actuarially and financially sound Insurance Plan to satisfy the indemnity requirements of the Master Agreement, the Access Agreements, and the Operating Agreement. No material change to the Insurance Plan will become effective until it has been submitted to and approved by Risk Management.

4. (a) The Commissions' Insurance Plan will consist of a combination of actuarially sound self-insurance reserves for retained risks and purchased insurance to meet the indemnification obligations of the Commissions as set forth in the following documents:

- (1) The Insurance Plan attached as Exhibit A;
- (2) the Master Agreement;
- (3) the Operating Agreement; and
- (4) the Access Agreements.

(b) The scope of indemnification provided by the Commissions through the Insurance Plan will be defined and conditioned by the limitations and exclusions, other than the monetary limits, contained in the Insurance Plan.

(c) The funding and insurance policies underlying the Commissions' Insurance Plan shall consist of the insurance reserves and purchased insurance approved by Risk Management hereunder from time to time.

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5. The Commissions shall be responsible to:

(a) Provide, using funds from the Insurance Fund, for the procurement, implementation and maintenance of all excess insurance or alternative insurance mechanisms needed to fulfill the required limits of liability under the Insurance Plan and will designate Risk Management, with such excess insurance carrier(s), as the representative of the Commissions for purposes of claims defense, administration, coordination and settlement. The Commissions may further provide, using funds from the Insurance Fund, with the approval of Risk Management, for other coverage and services which may either protect the property used in the Rail Service or reduce the risk of loss generated by the Rail Services; and

(b) Provide funding, through the mechanisms provided in the Master Agreement, for the commercial insurance, alternative insurance mechanisms and self-insurance reserves provided for in the Insurance Plan.

6. The Commissions will contract for the services of an actuary, as needed, but in no event less than annually, to determine the adequacy of the amounts in the Insurance Fund to fund the risks retained by the Commissions under the Insurance Plan at a 90% confidence level. Risk Management may, at its option, retain a second actuary to review the work of the Commissions' actuary, to consult with the Commissions' actuary regarding possible needed revisions to its study, and to provide such advice to Risk Management as may be needed to enable Risk Management to perform its duties under this Agreement and §2.2-1839 of the Code. The reasonable cost and fees of the actuary retained by the Commissions and, if applicable, Risk Management will be paid from the Insurance Fund.

7. The Commissions will deposit or cause to be deposited annually with Risk Management such amounts to be held as part of the Insurance Fund as Risk Management deems

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reasonable necessary to ensure the financial stability of the Insurance Plan, it being agreed that the sum of \$10 million is the minimum level of funding the Commissions should endeavor to achieve and maintain for the Insurance Fund. The Commissions also agree to acquire such purchased insurance as Risk Management deems sufficient to fulfill the requirements of Section 4. and to pay the applicable premiums from the Insurance Fund. The Commissions will deliver to Risk Management evidence that such insurance is in effect on or before July 1 of each year.

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The Commissions agree to provide to Risk Management within 30 days of receiving written notice from Risk Management additional funds with Risk Management to be held in the Insurance Fund to ensure the financial stability of the Insurance Plan, as determined by Risk

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Management under §2.2-1839 of the Code (“Required Level”). With the approval of Risk

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Management, the Commissions may purchase additional insurance in lieu of making additional deposits to the Insurance Fund. It is understood that the determination of what constitutes the

Required Level of funds to ensure the financial stability of the Insurance Plan is to be made in the sole discretion of Risk Management. Risk Management may in its sole discretion authorize

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payments from Insurance Fund as authorized by the Insurance Fund Agreement and the Insurance Plan.

8. In addition to the provisions of Section 5, the Commissions will be responsible for the following:

(a) Requiring all insurers to provide certificates of insurance and copies of all contracts and terms of coverage to Risk Management;

(b) Requiring that copies of all legal notices affecting any aspect of coverage be sent by the insurers to Risk Management and to each Insured and Indemnitee under the Insurance Plan; and

(c) Establishing with Risk Management procedures, in conjunction with the excess broker, for the proper and timely “notice of loss” and coordination of claims management with excess insurers.

9. Risk Management will be responsible for the management of all claims under the Insurance Plan, including the following:

(a) Risk Management will establish with the Commissions, and agrees to establish with other insureds or parties indemnified under the Insurance Plan, procedures for the proper notification of any claims or suits instituted against any Insured or Indemnitee, as defined in the Insurance Plan;

(b) Upon receipt of notice of a claim or the institution of a suit Risk Management will review the claim for the applicability of coverage, provide for the assignment of counsel, if needed, or provide for the declination of coverage, in whole or in part, to each affected Insured or Indemnitee.

10. Upon determination that a claim is covered by the Insurance Plan, Risk Management will evaluate the claims and reserve sufficient funds to meet the anticipated liability for the claim in accordance with generally accepted industry standards and practices. To the extent the amount of a claim or claims exceed the limits of the Commissions’ retained insurance under the Insurance Plan, Risk Management will notify the appropriate commercial insurance carriers, coordinating claims activity as needed.

11. (a) Except for the provisions for the settlement of claims by Amtrak provided for under the Operating Agreement and for claims covered by purchased insurance or alternative insurance mechanisms, Risk Management has the sole authority to negotiate, compromise and settle all claims covered by the Insurance Plan.

(b) When practicable, Risk Management will provide notice of settlement of a claim to each party covered by the Insurance Plan whose liability would be affected by the settlement, but Risk Management shall have no obligation to notify any party covered by the Insurance Plan who is not a party to the particular claim.

(c) All payments for claims settlement, defense costs, or investigative services shall be made from the Insurance Fund and shall be properly recorded by Risk Management. Summaries of such transactions will be provided by Risk Management to all Insureds or Indemnitees under the Insurance Plan on an annual and semi-annual basis.

12. Subject to the provisions of Sections 1 and 2(b) of the Insurance Plan, Risk Management agrees with the Commissions as follows:

(a) Original notice of a claim will be received, for all Insureds and Indemnitees, by Amtrak.

(b) Risk Management will establish a \$50,000 revolving impress fund with Amtrak for the payment of claims within its authority. Amounts paid to the impress fund will be paid from the Insurance Fund. Amtrak will report, quarterly, any and all payments made from this impress fund and Risk Management will reinstitute the \$50,000 fund level from money in the Insurance Fund.

(c) Amtrak will handle the administration of all claims up to \$10,000. Risk Management will handle the administration of all claims over \$10,000.

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(d) Risk Management will be responsible for the administration of all legal suits instituted against any Insured or Indemnitee under the Insurance Plan, however, Risk Management may contract for the services of claims personnel for the investigation of such suits.

(e) The Commissions agree to delegate to Risk Management the right to negotiate and establish all policies and procedures relating to the respective role of Amtrak and Risk Management.

13. Subject to any limitations in the Insurance Plan, in the event that, in any calendar year, the commercial insurance policies purchased by the Commissions expire, lapse, or otherwise become subject to cancellation, the Commissions agree, with approval of Risk Management, to purchase other insurance or to retain such risk by establishing and maintaining additional, actuarially sound reserves for the risks previously insured through commercial insurance. The Commissions will notify Risk Management, the Railroads, and Amtrak of the action taken to provide such other insurance coverage or retained risk. Thereafter, Exhibit A will be amended with the approval of Risk Management to reflect such changes to the Insurance Plan.

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14. Risk Management agrees to perform at least the following services as part of its management responsibilities:

(a) Establish procedures for the prompt review and processing of all claims for which the Commissions or any party covered by the Insurance Plan are or may become liable.

(b) Maintain current estimates for each claim of the anticipated cost to the Insurance Plan.

(c) Maintain historical data of claims brought against the Commissions, the Railroads, and Amtrak.

(d) Investigate or contract for the investigation of all claims, except those administered by Amtrak.

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(e) Coordinate the investigation and settlement of claims administered by Amtrak and contract for the necessary services for the investigation of claims or suits not administered by Amtrak.

(f) Develop an appropriate payment system for claims and expenses of claims administration.

(g) Issue periodic, but not less than quarterly incurred/reserved progress reports on pending claims to the Commissions.

(h) Maintain a detailed statistical record of all claims and payments.

(i) Provide quarterly claims and other computerized reports so that claim trends and problem areas can be readily identified by the Commissions.

(j) Employ loss control consultants and other professionals to advise Risk Management and the Commissions on matters involving the Insurance Plan.

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(k) Monitor all cases for potential subrogation recoveries, initiate correspondence to effect collection, and retain using funds from the Insurance Fund and assist legal counsel when litigation is required to effect recovery.

(l) Secure professional services and other experts as necessary to adequately respond to claims against any Insured or Indemnitee under the Insurance Plan.

(m) Procure, recommend, direct, and monitor the work and charges of specialized and professional investigation services when such service is needed.

(n) Provide such funds from the Insurance Fund as may be necessary to enable the Commissions, in consultation with Risk Management, to pursue legal remedies against any insurer providing insurance coverage under the Insurance Plan denying coverage.

(o) Perform such other related services as may be reasonably necessary for proper management of the Insurance Plan.

(p) Manage all claims in such a manner as to best benefit the Insureds and Indemnitees under the Insurance Plan.

15. Risk Management agrees to grant access to the Commissions upon reasonable written notice to all records it maintains in the management of the Insurance Plan and to respond to inquiries by the Commissions on the status of particular cases, provided, however, that Risk Management is under no duty to provide information in any particular format and may charge the Commissions as an administrative cost, for time and materials incurred in granting such access, nor shall Risk Management be obligated to provide information which may impair administration of pending claims.

16. Risk Management is entitled to be reimbursed or paid for all expenses associated with claims administration and management of the Insurance Plan and for its actual personnel and administrative costs related to its services under this Agreement, in accordance with procedures established under the Insurance Fund [Agreement](#).

17. In the event that either Rail Service is terminated or suspended, sufficient funds, as determined by Risk Management with the assistance of actuarial services, shall be maintained by Risk Management to provide for all current and future liabilities.

In the event that funds are deemed inadequate to assure the discharge of such liabilities, Risk Management will notify the Commissions who shall take the appropriate action as provided in Section III.D. of the Master Agreement and Section 7 of the Management Agreement. Risk Management shall, periodically, reassess the nature and extent of such liabilities and in its sole

discretion may release to the Commissions a portion of any funds, if any, which Risk Management deems as unnecessary to discharge such current and future liabilities.

Risk Management, with the concurrence of the Commissions, may contract for the administration of all subsequent claims. The Commissions, subject to the approval of Risk Management, may purchase separate “run off” insurance either as an extension of existing coverage or as a new policy or combination thereof and Risk Management shall consider the nature and adequacy of such “run off” insurance in determining whether and, to what extent, it may release funds to the Commissions as provided in the paragraph above.

At such time as all known claims have been resolved and the actuary has determined that the reasonable likelihood of further claims has approached zero, Risk Management shall dissolve the Insurance Plan and Management Agreement.

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18. The Commonwealth of Virginia shall incur no financial obligation for liabilities created under any portion of the Insurance Plan by virtue of this Agreement, as a result of the activities of Risk Management as the third party administrator of the Insurance Plan, or any other reason.

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19. Notice. All demands, notices, approvals, consents, requests, opinions and other communications under this Agreement will be in writing and will be deemed to have been given when delivered in person or mailed by registered or certified mail, postage prepaid, addressed (i) if to the Commissions, to Virginia Railway Express, 1500 King Street, Suite 202, Alexandria, Virginia 22314, Attention: Chief Executive Officer, (ii) if to Risk Management, at 101 North 14<sup>th</sup> Street, 6<sup>th</sup> Floor, Richmond, Virginia 23219, Attention: Director. The Commissions and Risk Management may, by notice given under this Section, designate and further or different

Deleted: Arlington Executive Building, 2009 North 14<sup>th</sup> Street, Suite 300, Arlington, Virginia 22201, Attention: Rail Manager, with copies to Northern Virginia Transportation Commissions, Arlington Executive Building, 2009 North 14<sup>th</sup> Street, Suite 300, Arlington, Virginia 22201, Attention: Executive Director, and the Potomac and Rappahannock Transportation Commission, 9257 Lee Avenue, Suite 205, Manassas, Virginia 22110, Attention: Executive Director

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**AGENDA ITEM 8B**  
**ACTION ITEM**

**TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD**

**FROM: DALE ZEHNER**

**DATE: OCTOBER 19, 2007**

**RE: AUTHORIZATION TO SELL FOUR BUDD CARS**

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**RECOMMENDATION:**

The VRE Operations Board is being asked to recommend that the Commissions authorize the Chief Executive Officer to sell four Budd cars to the Collis P. Huntington Railroad Historical Society, Inc. of Huntington, West Virginia, for \$1 per car.

**BACKGROUND:**

In March of 2007, the Operations Board granted the CEO authority to sell up to 25 railcars, including the Budds, in anticipation of the new railcar delivery beginning this December. Since that time, the equipment was posted on VRE's web site for public sale and staff received a proposal from the Collis P. Huntington Railroad Historical Society, Inc. of Huntington, West Virginia, to purchase four Budd cars (car numbers 501, 502, 503, and 504) for \$1 each.

VRE staff recommend execution of this sales agreement as no other offers have been received and the disposition cost of the cars is higher than this proposal. The sales agreement requires the buyer to deposit freight costs into an escrow account to ensure removal of all cars. There is no federal, state, or local interest remaining in these cars.

**FISCAL IMPACT:**

This additional revenue will be allocated to the restoration of the operating reserve as required by the bond indenture.

**TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD**  
**FROM: DALE ZEHNER**  
**DATE: OCTOBER 19, 2007**  
**RE: AUTHORIZATION TO SELL FOUR BUDD CARS**

**RESOLUTION  
8B-10-2007  
OF THE  
VIRGINIA RAILWAY EXPRESS  
OPERATIONS BOARD**

**WHEREAS**, in March 2007, the Operations Board granted authority to sell up to 25 railcars, including the Budd cars, in anticipation of the new railcar delivery beginning this December; and,

**WHEREAS**, VRE received an offer to purchase Budd cars 501, 502, 503 and 504 for \$1 each; and,

**WHEREAS**, VRE staff have determined that this offer is acceptable.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the VRE Operations Board recommends that the Commissions authorize the Chief Executive Officer to sell four Budd cars, numbers 501, 502, 503, and 504 to the Collis P. Huntington Railroad Historical Society, Inc. for \$1.00 each.

**AGENDA ITEM 8-C**  
**ACTION ITEM**

**TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD**

**FROM: DALE ZEHNER**

**DATE: OCTOBER 19, 2007**

**RE: AUTHORIZATION TO SELL MAFERSA INVENTORY**

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**RECOMMENDATION:**

The VRE Operations Board is being asked to authorize the Chief Executive Officer to sell the remaining Mafersa inventory to the Connecticut Department of Transportation (ConnDOT) for \$100,000 or the next best offeror.

**BACKGROUND:**

In May of 2007, the Operations Board granted the CEO authority to solicit proposals for the sale of spare inventory associated with the Mafersa equipment being retired from VRE service. Since February, VRE staff has been attempting to induce an interest in this material from both of the purchasers of the Mafersa cars. Recently, a proposal was received from the Connecticut Department of Transportation in New Haven, Connecticut, to purchase all of VRE's remaining Mafersa inventory of parts. The value of these parts is consistent with the proposal and there is no federal, state, or local interest in these materials.

**FISCAL IMPACT:**

This additional revenue will be allocated to the restoration of the operating reserve as required by the bond indenture.

**TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD**  
**FROM: DALE ZEHNER**  
**DATE: OCTOBER 19, 2007**  
**RE: AUTHORIZATION TO SELL MAFERSA INVENTORY**

**RESOLUTION  
8C-10-2007  
OF THE  
VIRGINIA RAILWAY EXPRESS  
OPERATIONS BOARD**

**WHEREAS**, in May of 2007, the Operations Board granted the CEO authority to solicit proposals for the sale of residual Mafersa inventory; and,

**WHEREAS**, VRE received an offer to purchase the entire inventory for \$100,000; and,

**WHEREAS**, VRE staff have determined that this offer is acceptable.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the VRE Operations Board authorizes the Chief Executive Officer to sell the remaining Mafersa inventory to the Connecticut Department of Transportation (ConnDOT) for \$100,000 or the next best offeror.

**AGENDA ITEM 8-D**  
**ACTION ITEM**

**TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD**

**FROM: DALE ZEHNER**

**DATE: OCTOBER 19, 2007**

**RE: AUTHORIZATION TO AMEND A TASK ORDER FOR  
LOCOMOTIVE DIAGNOSTIC WORK**

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**RECOMMENDATION:**

The VRE Operations Board is being asked to authorize the Chief Executive Officer to increase the authorization limit of a task order with Transportation Technologies, Inc. (TTI) for locomotive diagnostic work by \$50,000, for a total amount not to exceed \$100,000.

**BACKGROUND:**

On November 20, 2006, a task order was issued to TTI, under the authority of the Chief Executive Officer, for locomotive diagnostic work in the amount of \$50,000. While Amtrak is currently responsible for VRE's locomotive maintenance, TTI is under contract with VRE to perform major repairs as well as repair work that Amtrak cannot accommodate in their schedule.

The aforementioned task order was issued to TTI to facilitate immediate investigations into locomotive failures and, if minor repairs are required, to immediately make those repairs. If higher level repairs are required, an independent task order is written for that locomotive.

This task order lasted almost one year, even with the higher than expected number of locomotive failures. While related to the amount of work requested, this task order increase is estimated to last approximately one additional year.

**FISCAL IMPACT:**

Funding for this project is available from the FY 2008 Operating budget.

**TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD**  
**FROM: DALE ZEHNER**  
**DATE: OCTOBER 19, 2007**  
**RE: AUTHORIZATION TO AMEND A TASK ORDER FOR**  
**LOCOMOTIVE DIAGNOSTIC WORK**

**RESOLUTION**  
**8D-10-2007**  
**OF THE**  
**VIRGINIA RAILWAY EXPRESS**  
**OPERATIONS BOARD**

**WHEREAS**, on November 20, 2007, VRE's Chief Executive Officer executed a task order with Transportation Technologies, Inc. (TTI) for locomotive diagnostic work in the amount of \$50,000; and,

**WHEREAS**, this task order allows TTI to facilitate immediate investigations into locomotive failures and, if minor repairs are required, to immediately make those repairs; and,

**WHEREAS**, VRE staff is requesting that \$50,000 be added to this task order so that this activity can continue for approximately one additional year.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the VRE Operations Board authorizes the Chief Executive Officer to increase the authorization limit of a task order with Transportation Technologies, Inc. (TTI) for locomotive diagnostic work by \$50,000, for a total amount not to exceed \$100,000.

**AGENDA ITEM 8-E**  
**ACTION ITEM**

**TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD**

**FROM: DALE ZEHNER**

**DATE: OCTOBER 19, 2007**

**RE: AUTHORIZATION TO ACCEPT ADDITIONAL FIVE YEAR TERM  
FROM SUNTRUST BANK FOR LOAN FOR VRE OFFICE  
CONDOMINIUM**

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**RECOMMENDATION:**

The VRE Operations Board is being asked to recommend that the Commissions authorize the Chief Executive Officer to execute financial documentation necessary to accept an additional five-year term, with a fixed rate of 4.31%, for VRE's loan with SunTrust Bank for the VRE office condominium at 1500 King Street, Alexandria, Virginia.

**BACKGROUND:**

During FY 1998, VRE entered into a financing agreement with Central Fidelity, now Wachovia Bank, in the amount of \$900,000 for the purchase of the administrative office space in Alexandria. In May 2002, staff solicited proposals for a refinancing of this loan at more advantageous terms and entered into a new financing agreement with SunTrust Bank in June 2002.

The loan with SunTrust amortized over a 15 year period, with a variable interest rate loan of 68% of the one-month LIBOR (London Interbank Offered Rate), plus 0.47%, to be reset monthly. The loan had a five-year term, at which time the bank reserved the right to renegotiate the terms for an additional loan period or require payment of the outstanding balance. In June of 2007, SunTrust continued the current loan terms for several months.

For the five-year period beginning November 2007, SunTrust has offered both a fixed rate and a variable rate option. The fixed rate is 4.31% and the variable rate is 68% of one-month LIBOR plus .63%, based on the bank's current calculations of the value to them of tax-exempt debt. Currently, the variable rate would be 4.09%. For both options, monthly principal payments will continue to be \$5,000 per month; the current balance due is \$600,000. The variable rate loan allows for prepayment at any time, without penalty. The fixed rate option allows for prepayment after two years. Staff recommends that VRE accept the fixed rate option. The variable rate is not significantly lower than the fixed rate at this time and acceptance of a fixed rate decreases the overall risk.

**FISCAL IMPACT:**

Funds are allocated in the FY 2008 operating budget for the payment of principal and interest on this loan.

**TO: CHAIRMAN KAUFFMAN AND THE VRE OPERATIONS BOARD**  
**FROM: DALE ZEHNER**  
**DATE: OCTOBER 19, 2007**  
**RE: AUTHORIZATION TO ACCEPT ADDITIONAL FIVE YEAR TERM**  
**FROM SUNTRUST BANK FOR LOAN FOR VRE OFFICE**  
**CONDOMINIUM**

**RESOLUTION**  
**8E-10-2007**  
**OF THE**  
**VIRGINIA RAILWAY EXPRESS**  
**OPERATIONS BOARD**

**WHEREAS**, in June 2002, VRE entered into a loan agreement with SunTrust Bank in the amount of \$900,000 to refinance the original loan for the VRE office condominium at 1500 King Street, Alexandria, Virginia; and,

**WHEREAS**, the refinanced loan had a five-year term, at which time the bank reserved the right to renegotiate the terms for an additional loan period or require payment of the outstanding balance; and,

**WHEREAS**, the bank has offered an additional five-year term for the outstanding balance.

**NOW, THEREFORE, BE IT RESOLVED THAT**, the VRE Operations Board recommends that the Commissions authorize the Chief Executive Officer to execute financial documentation necessary to accept an additional five-year term, with a fixed rate of 4.31%, for VRE's loan with SunTrust Bank for the VRE office condominium at 1500 King Street, Alexandria, Virginia.