

INTERIM MANASSAS LINE COMMUTER RAIL OPERATIONS AND ACCESS AGREEMENT

Between

THE VIRGINIA PASSENGER RAIL AUTHORITY

and

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

This Interim Manassas Line Commuter Rail Operations and Access Agreement (“**Agreement**”) is entered into as of the 4th day of September, 2024, by and between the Virginia Passenger Rail Authority, a political subdivision of the Commonwealth of Virginia with offices at 919 East Main Street, Suite 2400, Richmond, Virginia, 23219 (hereafter, “**VPRA**”) and the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission, both political subdivisions of the Commonwealth of Virginia established under Transportation District Act of 1964, §§ 33.2-1900 *et seq.* of the Code of Virginia, 1950, as amended, and the owners and operators of the Virginia Railway Express commuter rail service, with offices at 2300 Wilson Boulevard Suite 203, Arlington, Virginia 22201 and 14700 Potomac Mills Road, Woodbridge, Virginia 22191, respectively, (hereafter the “**Commissions**”). Each of the VPRA and the Commissions shall be referred to individually as a “**Party**” and collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, since 1992, the Commissions have provided commuter rail service on railroad right of way owned by Norfolk Southern Railway Company (“**NSR**”) beginning at the connection with CSX, A.F. Tower, M.P. 9.75 and extending in a southwesterly direction to Manassas Airport at approximately M.P. 36.23 (the “**VRE Manassas Territory**”), pursuant to successive operating access agreements between the Commissions and NSR, the most recent of such agreements being dated April 30, 2014, as amended (the “**2014 NSR Agreement**”); and

WHEREAS, VPRA executed a term sheet with NSR on May 23, 2024, regarding a transaction that includes the purchase by VPRA of most of the VRE Manassas Territory (the “**VPRA-Acquired VRE Manassas Territory**”), with the following portions of the VRE Manassas Territory to be retained by NSR (the “**NSR-Retained VRE Manassas Territory**”):

(a) the “**Manassas Segment**” between M.P. 32.75 and M.P. 33.6, and

(b) the “**NSR-Retained Broad Run Tracks**” between M.P. 33.6 and the Virginia Railway Express (“**VRE**”) Broad Run Station and adjacent VRE rail yard,

each as further detailed in an *Amended and Restated Comprehensive Rail Agreement* between VPRA and NSR dated on or about August 29, 2024 (the “**2024 CRA**”); and

WHEREAS, once the VPRA purchase closes, it will be necessary for the Commissions to enter into an operating access agreement with VPRA and a new operating access agreement with NSR in order to continue to provide VRE commuter rail service on the VPRA-Acquired VRE Manassas Territory and the NSR-Retained VRE Manassas Territory, respectively; and

WHEREAS, the Commissions and NSR have agreed to extend the 2014 NSR Agreement until October 10, 2024, and are negotiating the terms of a new operating access agreement (the “**Future NSR-VRE Operating Agreement**”); and

WHEREAS, VPRA and the Commissions have agreed, as hereafter set forth, upon and after VPRA’s acquisition of the VPRA-Acquired VRE Manassas Territory, to continue the terms

and conditions of the 2014 NSR Agreement as applied to the VPRA-Acquired VRE Manassas Territory and as between the Commissions and VPRA, with modification of some terms as provided herein, until such time as a new operating access agreement between VPRA and the Commissions (the “**Future VPRA-VRE Operating Agreement**”) can be negotiated, finalized, and executed.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Except as otherwise provided herein, and solely for the purposes of this Agreement, the 2014 NSR Agreement is incorporated fully herein and all references in the 2014 NSR Agreement to Norfolk Southern Railway and to “Railroad” shall be replaced with “VPRA”. For clarity, the provisions of the 2014 NSR Agreement are (i) repeated and incorporated into this Agreement for expediency, (ii) apply as between the Commissions and VPRA, and (iii) have no impact on the effectiveness of the 2014 NSR Agreement between the Commissions and NSR. The 2014 NSR Agreement will remain in effect between the Commissions and NSR until modified or superseded by the Future NSR-VRE Operating Agreement.
2. The terms and conditions applicable to the Commissions’ access to and right to use the VPRA-Acquired VRE Manassas Territory (inclusive of any tracks thereon) shall be the same as those set forth in the 2014 NSR Agreement, except as such terms and conditions are modified by the provisions of this Agreement.
3. Except as otherwise provided herein, and solely for the purposes of this Agreement, the five CFAs referred to in Section 3.2 of the 2014 NSR Agreement and in Appendix A-2 (*Commuter Facilities and Annual Rent to VPRA*) to this Agreement are incorporated fully herein and all references in the CFAs to “Norfolk Southern Railway Company”, “NSR”, and “Railroad” shall be replaced with “VPRA”. For clarity, the provisions of the CFAs are (i) repeated and incorporated into this Agreement for expediency, and (ii) apply as between the Commissions and VPRA. The commuter facilities covered by the CFAs, together with the annual rent payable from the Commissions to VPRA for the use of such commuter facilities, are stated in Appendix A-2 (*Commuter Facilities and Annual Rent to VPRA*) to this Agreement. For clarity, the Commissions at their own cost and expense, and not VPRA, shall have full responsibility for operating and maintaining the commuter rail facilities that are the subject of the CFAs.
4. Sections 4.1 through 4.4 of Article Four (*Term*) of the 2014 NSR Agreement are deleted in their entirety and replaced with the following new sections:
 - a. **Section 4.1** This Agreement shall become effective and shall commence as of the date that VPRA first acquires some or all of the VPRA-Acquired VRE Manassas Territory from NSR, and unless terminated earlier in accordance with its provisions,

or with the written consent of both Parties, shall continue in effect until the Commissions cease to operate the Service. At or about the fifth anniversary of this Agreement, representatives of the Commissions and VPRA shall meet to review operation of this Agreement and discuss possible modifications thereof. Modifications agreed upon by the Parties shall be set forth in a written amendment to this Agreement signed by the Parties. Notwithstanding the foregoing, the Parties anticipate terminating this Agreement and entering into the Future VPRA-VRE Operating Agreement on or before December 31, 2024.

- b. **Section 4.2** If the Commissions are in material breach of this Agreement, then VPRA may among other remedies available to it at law or in equity, upon written notice to the Commissions, immediately suspend the Service until the Commissions have effected a cure with respect to the material breach, or until the Commissions have commenced a cure and are diligently pursuing completion thereof – in either case to the reasonable satisfaction of VPRA. Upon any written notice provided by the VPRA to the Commissions of material breach by the Commissions (and even if VPRA has not elected to suspend the Service) the Parties shall meet and confer with respect to the cure to be pursued by the Commissions. VPRA may terminate this Agreement if the Commissions have failed to cure or to commence a cure and diligently pursue the completion thereof within 180 days of the applicable notice of material breach delivered by VPRA. However, even if this Agreement is not terminated, nothing shall compel VPRA to lift any suspension of the Service until the Commissions have effected a cure with respect to the applicable material breach, or until the Commissions have commenced a cure and are diligently pursuing completion thereof – in either case to the reasonable satisfaction of VPRA.
5. Sections 5.1 through 5.5 of Article Five (*Payment*) of the 2014 NSR Agreement, together will all references to the BASE PAYMENT and TRAIN-MILE LEASE FEE are deleted in their entirety and Sections 5.1 through 5.5 are replaced with the following new sections:
- a. **Section 5.1** The Commissions shall operate the Service contingent upon their payment to NSR of the compensation required to be paid for the Commissions' access to those portions of the NSR-Retained VRE Manassas Territory and for dispatching as detailed in Appendix A-1 (*Compensation to NSR*).
 - b. **Section 5.2** “**Net Maintenance Costs**” shall mean VPRA’s actual costs incurred to maintain the VPRA-Acquired VRE Manassas Territory *minus* (A) any incremental cost amounts received by VPRA from Amtrak with respect to Amtrak service provided over the VPRA-Acquired VRE Manassas Territory and (B) any amounts received by VPRA from NSR as trackage rights compensation for NSR’s use of the VPRA-Acquired VRE Manassas Territory. After VPRA acquires any portion of the VPRA-Acquired VRE Manassas Territory, VPRA shall be entitled to seek reimbursement from the Commissions, and the Commissions shall reimburse

VPRA, for the Net Maintenance Costs. Such reimbursement shall be dollar-for-dollar without markup. VPRA may elect to forgive up to eighty-four percent (84%) of such Net Maintenance Costs during any fiscal year. The Parties will collaborate in good faith as they develop and negotiate the Future VPRA-VRE Operating Agreement to agree on compensation, based on actual costs, paid by the Commissions to VPRA for continued dispatch, once NS ceases to provide dispatching services, and maintenance of the VPRA-Acquired VRE Manassas Territory. In addition, the Future VPRA-VRE Operating Agreement will address the conditions under which the Commissions would have the right to perform (through a contractor or otherwise) maintenance directly on the VPRA-Acquired VRE Manassas Territory.

6. Appendix A (*Base Payment and Train-Mile Lease Fee*), Appendix B (*Operating Plan*), Appendix C (*Tracks*), and Appendix E (*Special Trains*) of the 2014 NSR Agreement are deleted in their entirety and replaced with the new attached Appendices A-1 (*Compensation to NSR*), B (*Operating Plan*), C (*Tracks*), and E (*Special Trains*).
7. The 2014 NSR Agreement is further modified as follows for the purposes of this Agreement:
 - a. all references to publications by “Railroad” such as standards, safety rules, operating rules, instructions, timetables, and other similar publications shall refer to publications generated by NSR and not VPRA;
 - b. all indemnifications provided by the Commissions in favor of “Railroad” (inclusive of its corporate affiliates, and its and their respective officers, agents, and employees) shall be provided in favor of the Commonwealth of Virginia and the Virginia Passenger Rail Authority, and any of the officers, directors, employees, agents, or servants of such entities;
 - c. all references to arbitration are deleted and dispute resolution shall be in accordance with paragraph 8 below;
 - d. the Parties acknowledge and agree that VPRA is prohibited from directly operating rail service under Va. Code § 33.2-292 (A)(20), and that any reference to continued freight rail operations under the 2014 NSR Agreement shall be carried out by NSR and not VPRA;
 - e. under Section 2.5 of the 2014 NSR Agreement, the Parties acknowledge and agree that VPRA has not granted rights to the use of the TRACKS, rather NSR has granted such rights prior to VPRA’s acquisition of the VPRA-Acquired VRE Manassas Territory; and

- f. the parties acknowledge and agree that notwithstanding VPRA's acquisition of the VPRA-Acquired VRE Manassas Territory, the provisions of the 2014 NSR Agreement are not terminated pursuant to Section 2.11 of that agreement.
- 8. Section 11.1 of Article Eleven (*Arbitration*) of the 2014 NSR Agreement is deleted and replaced with the following new Article 11 (*Dispute Resolution*):
 - a. **Section 11.1 *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, 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.
 - b. **Section 11.2 *Legal Actions.*** Any claims or controversy between the Commissions and VPRA, except matters which are within the discretion or judgment of VPRA, which cannot be resolved by the Parties concerning the interpretation, application, or implementation of this Agreement, 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 (i) a Virginia Circuit Court with jurisdiction, or (ii) the United States District Court for the Eastern District of Virginia.
 - c. **Section 11.3 *Duty to Continue Performance.*** Pending final resolution of any dispute, the Parties will continue to fulfill their respective obligations under this Agreement.
 - d. **Section 11.4 *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.
- 9. Section 13.1 (*Notices*) of the 2014 NSR Agreement is deleted in its entirety and replaced with the following new section:
 - a. **Section 13.1** 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 Commissions:

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

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

For VPRA:

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

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EXECUTION VERSION

IN WITNESS WHEREOF, the Parties have executed this Interim Manassas Line Commuter Rail Operations and Access Agreement by their duly authorized agents.

VIRGINIA PASSENGER RAIL AUTHORITY


By: 
DJ Stadtler
Executive Director

9/3/2024
Date

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

and

POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION

By: 
Rich Dalton
VRE Chief Executive Officer

8/29/2024
Date

APPENDIX A-1

COMPENSATION TO NSR

Under the Future NSR-VRE Operating Agreement, as compensation to NSR for the Commissions' access to, and operation of the Service on the NSR-Retained VRE Manassas Territory, the Commissions shall pay directly to NSR annually an amount equal to (x) \$750,000 in lieu of the Base Payment and Train-Mile Lease Fee (as such terms are defined in the 2014 NSR Agreement) (the "**Fixed VRE Operating Fee**") *minus* (y) any applicable deductions set forth below (and which shall escalate as set forth below (the actual contemporaneous escalated amount being the "**VRE Operating Fee**")) as consideration for (i) the Commissions' right to operate on the NSR-Retained VRE Manassas Territory, and (ii) dispatching services provided by NSR in connection with the foregoing operations.

The VRE Operating Fee shall be escalated effective July 1 of each year to compensate for the prior year increase or decrease in the cost of labor and materials, excluding fuel, as reflected in Table C, Quarterly Indexes of Chargeout Prices and Wage Rates (1977=100), Series RCR, included in AAR Railroad Cost Indexes and supplements thereto, issued by the AAR. In making such determination, the final "material prices, wage rates and supplements combined (excluding fuel)" index for the East District Quarter Three (3) shall be used. The VRE Operating Fee shall be revised by calculating the percentage of increase or decrease for the year to be revised based on the final index of the most recently completed Quarter Three (3) as related to the final index of the Quarter Three (3) of the year prior to the most recently completed calendar year; and applying this percentage of increase or decrease to the VRE Operating Fee to be escalated. Notwithstanding the foregoing, under no circumstances shall the VRE Operating Fee be less than the prior year.

The foregoing compensation to VPRA shall be applicable for at least twenty (20) years from the effective date of this Agreement provided that, no less than six (6) months prior to the end of the twenty-year period, the Parties, together with NSR, shall negotiate in good faith the VRE Operating Fee, if any, that shall apply beyond such twenty-year period.

The Commissions shall be entitled to the following deductions:

- (a) upon and after such a time that an additional passenger-dedicated track is constructed on a continuous strip of land purchased from NSR by VPRA located between approximately M.P. 33.6 and M.P. 36.23 (the "**Broad Run Pocket Track**"), the Commissions shall be entitled to deduct an amount equal to 6.67% from its payment of the VRE Operating Fee; and

- (b) upon and after VPRA's acquisition of the Seminary Passage Closing Date, the Commissions shall be entitled to deduct an amount equal to 60.00% from its payment of the VRE Operating Fee; and
- (c) upon and after such a time that VPRA or the Commissions take over dispatching of the VPRA-Acquired VRE Manassas Territory, the Commissions shall be entitled to deduct an amount equal to 23.33% from its payment of the VRE Operating Fee.

In no event shall the VRE Operating Fee equal an amount less than 10% of the contemporaneous Fixed VRE Operating Fee.

APPENDIX A-2**COMMUTER FACILITIES AND ANNUAL RENT TO VPRA**

FACILITY LOCATION	MILEPOST	ORIGINAL DATE OF GOVERNING CFA	PASSENGER OPERATOR(S)
Manassas	32.6	June 22, 1992	Amtrak (through VRE) / VRE
Manassas Park	30.4	July 22, 1991	VRE
Burke Centre	21.4	July 22, 1991	Amtrak (through VRE) / VRE
Rolling Road	19.1	July 22, 1991	VRE
Backlick Road	15.0	July 22, 1991	VRE

Commuter Facilities Rental and Platform Maintenance

Annual Rental

\$1¹

¹ Annual rent will be disappplied if/when VPRA grants VRE easement interests in the commuter rail facility sites.

APPENDIX B
OPERATING PLAN

The Commissions may operate the VRE commuter rail Service in accordance with the Operating Plan, including the weekday enhancements noted thereon, attached hereto as Appendix B-1, which Operating Plan may be implemented by the Commissions at such time as they choose in their discretion subject to not less than fourteen (14) days advance notice to VPRA. Until such time as the Commissions implement the aforesaid Operating Plan, the Commissions may operate the VRE commuter rail Service in accordance with the current Operating Plan attached hereto as Appendix B-2.

APPENDIX B-1
ENHANCED OPERATING PLAN

EXECUTION VERSION

Manassas Line								
Northbound	6	6	6	6	6	6	6	6
Days of Operation	M-F	M-F	M-F	M-F	M-F	M-F	M-F	M-F
	322	324	326	328	330	332	334	336
		S		S	S	S		
Broad Run	5:01 AM	5:21 AM	5:56 AM	6:16 AM	6:41 AM	7:21 AM	8:01 AM	3:18 PM
Manassas	5:09	5:29	6:04	6:24	6:49	7:29	8:09	3:26
Manassas Park	5:15	5:35	6:10	6:30	6:55	7:35	8:15	3:32
Burke Centre	5:29	5:49	6:24	6:44	7:09	7:49	8:29	3:46
Rolling Road	5:34	5:54	6:29	6:49	7:14	7:54	8:34	
Backlick Road	5:42	6:02	6:37	6:57	7:22	8:02	8:42	
Alexandria (L)	5:55	6:15	6:50	7:10	7:35	8:15	8:55	4:12
Crystal City (L)	6:04	6:24	6:59	7:19	7:44	8:24	9:04	
L'Enfant (L)	6:12	6:32	7:07	7:27	7:52	8:32	9:12	
Union Station	6:20 AM	6:40 AM	7:15 AM	7:35 AM		8:40 AM	9:20 AM	4:37 PM

(S) = Special schedules for holidays and snow days

(L) = Indicates train may depart when station work is completed, regardless of scheduled time.

Manassas Line								
Southbound	6	6	6	6	6	6	6	6
Days of Operation	M-F	M-F	M-F	M-F	M-F	M-F	M-F	M-F
	321	325	327	329	331	333	335	337
		S	S		S		S	
Union Station	6:35 AM		3:20 PM	4:10 PM	5:10 PM	5:30 PM	6:00 PM	7:00 PM
L'Enfant		1:23	3:28	4:18	5:18	5:38	6:08	7:08
Crystal City		1:30	3:35	4:25	5:25	5:45	6:15	7:15
Alexandria	6:52	1:38	3:43	4:33	5:33	5:53	6:23	7:23
Backlick Road		1:49	3:54	4:44	5:44	6:04	6:34	7:34
Rolling Road (L)		1:57	4:02	4:52	5:52	6:12	6:42	7:42
Burke Centre (L)		2:03	4:08	4:58	5:58	6:18	6:48	7:48
Manassas Park (L)		2:17	4:22	5:12	6:12	6:32	7:02	8:02
Manassas (L)	7:37	2:24	4:29	5:19	6:19	6:39	7:09	8:09
Broad Run	7:47 AM	2:34 PM	4:39 PM	5:29 PM	6:29 PM	6:49 PM	7:19 PM	8:19 PM

(S) = Special schedules for holidays and snow days

(L) = Indicates train may depart when station work is completed, regardless of scheduled time.

APPENDIX B-2
CURRENT OPERATING PLAN

EXECUTION VERSION

Northbound								
Days of Operation	M-F	M-F	M-F	M-F	M-F	M-F	M-F	M-F
	322	324	326	328	330	332	336	338
		S		S	S	S		
Broad Run	5:01 AM	5:21 AM	5:56 AM	6:16 AM	7:21 AM	8:01 AM	3:18 PM	5:10PM
Manassas	5:09	5:29	6:04	6:24	7:29	8:09	3:26	5:18
Manassas Park	5:15	5:35	6:10	6:30	7:35	8:15	3:32	
Burke Centre	5:29	5:49	6:24	6:44	7:49	8:29	3:46	
Rolling Road	5:34	5:54	6:29	6:49	7:54	8:34		
Backlick Road	5:42	6:02	6:37	6:57	8:02	8:42		
Alexandria (L)	5:55	6:15	6:50	7:10	8:15	8:55	4:12	6:04
Crystal City (L)	6:04	6:24	6:59	7:19	8:24	9:04		
L'Enfant (L)	6:12	6:32	7:07	7:27	8:32	9:12		
Union Station	6:20 AM	6:40 AM	7:15 AM	7:35 AM	8:40 AM	9:20 AM	4:37 PM	6:29 PM

(S) = Special schedules for holidays and snow days

(L) = Indicates train may depart when station work is completed, regardless of scheduled time.

Manassas Line								
Southbound								
Days of Operation	M-F	M-F	M-F	M-F	M-F	M-F	M-F	M-F
	321	325	327	329	331	333	335	337
		S	S			S	S	
Union Station	6:35 AM		3:20 PM	4:10 PM	5:10 PM	5:30 PM	6:00 PM	7:00 PM
L'Enfant		1:23	3:28	4:18	5:18	5:38	6:08	7:08
Crystal City		1:30	3:35	4:25	5:25	5:45	6:15	7:15
Alexandria	6:52	1:38	3:43	4:33	5:33	5:53	6:23	7:23
Backlick Road		1:49	3:54	4:44	5:44	6:04	6:34	7:34
Rolling Road (L)		1:57	4:02	4:52	5:52	6:12	6:42	7:42
Burke Centre (L)		2:03	4:08	4:58	5:58	6:18	6:48	7:48
Manassas Park (L)		2:17	4:22	5:12	6:12	6:32	7:02	8:02
Manassas (L)	7:37	2:24	4:29	5:19	6:19	6:39	7:09	8:09
Broad Run	7:47 AM	2:34 PM	4:39 PM	5:29 PM	6:29 PM	6:49 PM	7:19 PM	8:19 PM

(S) = Special schedules for holidays and snow days

(L) = Indicates train may depart when station work is completed, regardless of scheduled time.

APPENDIX C

TRACKS

The railroad operating facilities included within VPRA's Tracks are defined in detail in the 2024 CRA and include railroad tracks within the VPRA-Acquired VRE Manassas Territory.

APPENDIX E
SPECIAL TRAINS

VPRA may permit the operation of Special Trains from time to time as stated in Article Three of this Agreement. The Commissions shall submit requests for Special Trains in writing at least thirty (30) business days prior to the proposed date of operation. No Special Train shall be run without the prior written agreement of VPRA on terms and conditions and with such proof of insurance and indemnification as are satisfactory to VPRA. Special Trains shall not be entitled to dispatching priority or preference. VPRA shall have the right to reject any and all Special Trains. However, VPRA agrees that the following Special Trains may be operated each year of this Agreement on mutually agreeable dates and times, and subject to VPRA's approval of terms governing insurance and indemnification, provided that VPRA may not require greater protections from the Commissions for Special Trains as compared to the protections VPRA receives with respect to regular VRE service:

Clifton Days Celebration

Manassas Railroad Festival

Santa Claus Safety Campaign