

EXECUTION VERSION

MASTER FUNDING AGREEMENT FOR VPRA-SUPPLIED FUNDING ON VRE
PROJECTS

DATED AUGUST 2022

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 (“**Agreement**”) is between the (i) Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission (collectively, the “**Commissions**”), and (ii) the Virginia Passenger Rail Authority (“**VPRA**” and together with the Commissions, the “**Parties**”).

ARTICLE 1. SCOPE; DEFINITIONS

§ 1.1 *Scope*. This Agreement establishes the general terms and conditions with respect to VPRA’s provision of funding to support Projects undertaken by the Commissions.

§ 1.2 *Definitions*. Capitalized terms used in this Agreement have the definition provided to them in **EXHIBIT A** (*Definitions*).

ARTICLE 2. PROJECTS

§ 2.1 *Initial Projects*. Under this Agreement, VPRA shall provide VPRA-Supplied Funding in support of the Initial Projects in amounts not to exceed the Initial VPRA Funding Commitments. With respect to each Initial Project not already commenced prior to the date of this Agreement, the Parties will enter into a Project-specific addendum to this Agreement (each a “**Capital Project Addendum**”) establishing the Initial Project’s scope, budget, schedule, the requirements for the Commissions to access the applicable VPRA-Supplied Funding, and any other items deemed necessary by the Parties.

§ 2.1.1 Prior to the execution of this Agreement, the DRPT-Commenced Initial Projects have begun under project-specific funding agreements entered into pursuant to either (i) the *Master Agreement for Use of Commonwealth Transportation Funds* between the Northern Virginia Transportation Commission and the Virginia Department of Rail and Public Transportation dated April 24, 2012 or (ii) the *Master Agreement for Use of Commonwealth Transportation Funds* between the Northern Virginia Transportation Commission and the Virginia Department of Rail and Public Transportation dated July 9, 2020 ((i) and (ii) collectively, the “**DRPT Funding Agreements**”). For each DRPT-Commenced Initial Project, the parties shall enter into a new Capital Project Addendum, which will each supersede and

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replace the corresponding project-specific funding agreement under the DRPT Funding Agreements. Upon entering a Capital Project Addendum for a DRPT-Commenced Initial Project, the parties acknowledge and agree that VPRA will step into the place of DRPT and fulfill the commitments under the Capital Project Addendum, and DRPT will no longer be obligated under the corresponding project-specific funding agreement under the DRPT Funding Agreements. Any such Capital Project Addenda shall be governed by this Agreement, *provided however*, that funding amounts supplied by DRPT under the DRPT Funding Agreements shall count toward the maximum funding commitments of VPRA for the corresponding Project under this Agreement.

§ 2.2 Future Projects. With respect to each Future Project, the Parties will also enter into a Capital Project Addendum establishing the Future Project's scope, budget, schedule, the VPRA Funding Commitment (which will be capped within each Capital Project Addendum), the requirements for the Commissions to access the VPRA-Supplied Funding, and any other items deemed necessary by the Parties.

§ 2.3 Conditions to VPRA-Supplied Funding for Projects. VPRA's funding for each Project under this Agreement is subject to:

- (i) appropriation by the General Assembly;
- (ii) for CTB-Controlled Funding Sources, allocation by the CTB; and
- (iii) for any given Project, execution by the Parties of a corresponding Capital Project Addendum.

§ 2.4 Subsequent Allocations. If the Commissions receive a Subsequent Allocation to be used on a Project, then the VPRA Funding Commitment for that same Project will be reduced dollar-for-dollar by an amount equal to the Subsequent Allocation. The Commissions shall notify VPRA in writing within 30 days of learning that a Subsequent Allocation has been approved for a Project.

§ 2.5 Commissions' Funding Duty. The Commissions shall provide funds, as necessary, from sources other than VPRA in an amount sufficient, together with the VPRA-Supplied Funding governed by this

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Agreement, to assure payment of the total cost of each Project. The Commissions further agree that no refund or reduction of the Commissions' Funding Commitment will be made at any time, unless there is at the same time a refund and/or de-obligation of a proportional amount of the VPRA-Supplied Funding.

§ 2.6 VPRA Funding Cap Per Project. Each Capital Project Addendum will establish the applicable VPRA Funding Commitment. If the VPRA Funding Commitment is fully consumed with respect to a Project, VPRA will not be obligated to provide any additional funding with respect to that Project.

§ 2.7 Incurrence of Costs; No Markup. The Commissions agree to incur costs in accordance with the applicable Capital Project Addendum and this Agreement. VPRA shall provide reimbursement of Eligible Project Costs submitted by the Commissions in proportion to the VPRA Percentage for each Project. All expenses for which the Commissions seek reimbursement by VPRA shall be charged at the actual cost(s) to the Commissions, with no markup by the Commissions.

§ 2.8 Requirements for Eligible Project Costs. Eligible Project Costs must meet the following requirements:

- A. be within the Project scope identified in an associated Capital Project Addendum;
- B. be reasonable for the goods or services purchased;
- C. be actual net costs charged to the Commissions (*i.e.*, the price paid minus any refunds, rebates, salvage, or other items of value received by the Commissions which have the effect of reducing the cost actually incurred and paid);
- D. be incurred during the time period specified in the associated Capital Project Addendum, which may include costs incurred prior to the execution date of a Capital Project Addendum when incurred under a letter of no prejudice or similar document;
- E. comply with 2 C.F.R. Pt. 200 Subpart E;
- F. be based on a cost allocation plan that has been approved in advance by VPRA if the costs are indirect costs;

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- G. be documented in accordance with the terms of this Agreement; and
- H. be treated uniformly and consistently under generally accepted accounting principles.

Costs incurred by the Commissions to correct deficiencies in a Project, including costs related to the Commission's failure to comply with the terms of this Agreement or a Capital Project Addendum, do not qualify as Eligible Project Costs. VPRA, in the exercise of reasonable judgment, shall make the final determination whether costs submitted for reimbursement qualify as Eligible Project Costs.

§ 2.9 Process for Reimbursement Payments. For each Project, VPRA-Supplied Funds will be distributed to the Commissions on a reimbursement basis. The Commissions shall submit requests for reimbursement using the form ("**Project Reimbursement Form**") attached as **EXHIBIT C** (*Project Reimbursement Form*) provided by VPRA as part of each Capital Project Addendum. The Commissions shall submit Project Reimbursement Forms no more frequently than once a month and within 90 days after incurrence of Eligible Project Costs. Project Reimbursement Forms must be supported by third-party documentation and VPRA shall have the right to request reasonable additional details needed for VPRA to review each reimbursement request, or for VPRA to satisfy the requirements of VPRA Funding Partners. If the Commissions' failure to provide any required details results in a VPRA Funding Partner Clawback Event, then the Commissions, and not VPRA, shall be fully responsible to make any associated repayments to the applicable VPRA Funding Partners. The Commissions shall provide information within 30 days of VPRA's request for additional information. VPRA will reimburse approved Eligible Project Costs within 30 days of its receipt and approval of the Commissions' Project Reimbursement Form. The Commissions shall submit their final reimbursement request to VPRA within 90 days of expiration of funding for the applicable Capital Project Addendum. The Parties may agree to extend the aforesaid deadlines for required action.

§ 2.10 Withholding Reimbursements. VPRA shall have the right, in its sole discretion, to withhold reimbursement for Project Reimbursement Forms or line items in Project Reimbursement Forms found to

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be incomplete or not in conformance with the requirements of this Agreement or the associated Capital Project Addendum. VPRA will notify the Commissions in writing within 30 days of its receipt of the Commissions' Project Reimbursement Form of the basis for withholding total or partial reimbursement and will work with the Commissions to resolve any incomplete or nonconforming items.

§ 2.11 Non-Waiver. Reimbursement by VPRA is not a waiver of VPRA's right to assert that such costs do not comply with this Agreement or the applicable Capital Project Addendum. Reimbursement of a cost is not a final decision by VPRA as to validity of that cost as an Eligible Project Cost.

§ 2.12 Repayment Duty. Any reimbursement paid to the Commissions by VPRA not in accordance with the provisions of this Agreement, associated Capital Project Addendum, or federal, Commonwealth, or local law, shall be repaid to VPRA by the Commissions within 60 days of VPRA's written notice to the Commission of the repayment obligation. In no event shall VPRA seek repayment by the Commissions more than 5 years after payment by VPRA of the final reimbursement request for a Capital Project Addendum.

§ 2.13 Payment to Contractors; Invoices. The Commissions are responsible for payment of all third parties performing work on behalf of the Commissions ("**Contractors**"). The Commissions shall attach copies of Contractor invoices to each Reimbursement request.

§ 2.14 Pay When Paid. The Commissions shall remit payment to Contractors within five business days of receipt of reimbursement from VPRA. If, for any reason, the Commissions cannot remit payment to one or more Contractors within five days, the Commissions shall immediately notify the Chief Financial Officer of VPRA ("**CFO**") in writing, inform the CFO of the date the Commissions will remit payment to their Contractors, and deposit the reimbursement funds received in an interest-bearing account. The Commissions shall use all interest proceeds toward the applicable Project, reducing dollar-for-dollar the corresponding VPRA Funding Commitment. Depending upon the Commissions' revised Contractor payment date, VPRA may require the Commissions to repay the funds to VPRA, rather than hold them in

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an interest-bearing account. If the Commissions fail to comply with this provision, VPRA may require the Commissions to prepay Contractors prior to submitting Project Reimbursement Forms.

§ 2.15 Payment of Debt Service. With the exception of debt service specifically identified in a Capital Project Addendum, the Commissions may not seek reimbursement for interest payments or charges on debt financing vehicles used to fund Projects.

§ 2.16 Costs Incurred after Project Expiration Date. A Capital Project Addendum obligates the Commissions to undertake and complete the corresponding Project within the period from the Project Start Date to the Project Expiration Date as identified in the Capital Project Addendum. VPRA shall not provide reimbursement for expenses incurred after the applicable Project Expiration Date, as such may be extended by written agreement.

§ 2.17 Final Payment; Certification of Completion. The Commissions' submission of a Project Reimbursement Form marked "Final" is Commissions' certification that they have completed the applicable Project. Within 90 days after a Project has been placed into service, the Commissions shall either (i) submit a Project Reimbursement Form marked "Final" or (ii) submit a written request to VPRA to submit a Project Reimbursement Form marked "Final" after such 90-day period, which VPRA may approve or reject in its sole discretion.

§ 2.18 VPRA Funding Commitment Residue. With respect to any Project, if after the final Project Reimbursement Form has been submitted and paid, the applicable VPRA Funding Commitment has not been fully exhausted, then VPRA shall be entitled to apply such residual funds for any lawful purposes (including purposes unrelated to the applicable Project), in VPRA's sole and absolute discretion.

§ 2.19 Maintenance of Books and Records. The Commissions shall maintain all books, accounting records, and any other documents supporting their activities and costs to complete a Project for every Capital Project Addendum. The Commissions shall maintain such records for four years from the end of the state fiscal year (June 30) in which the final payment is made. The Commissions shall maintain such

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records pertaining to facilities for the Useful Life of the facility. The Commissions shall maintain such records pertaining to land acquisitions in perpetuity. The Commissions shall require Contractors to maintain their books, accounting records, and any other documents supporting the Contractors' activities and costs incurred for four years from the end of the state fiscal year (June 30) in which the final payment is made, and require Contractors to contain a similar provision in their contracts with subcontractors of every tier.

§ 2.20 *Right to Inspect Records.* The Commissions shall permit the authorized representatives of VPRA to inspect and audit their records related to the performance of this Agreement, including any Capital Project Addendum entered into hereunder. Acceptable records are documents (such as timesheets, travel reimbursements, invoices, receipts, etc.) that are the basis of entries on the Payment Reimbursement Forms. VPRA may require the Commissions to furnish certified reports of all expenditures under any relevant contracts or subcontracts. In no event shall VPRA request to inspect or audit records of the Commissions related to the performance of any Capital Project Addendum more than four years from the end of the state fiscal year (June 30) in which the final payment is made for the Capital Project Addendum.

§ 2.21 *Audit Duties and Rights.* The Commissions must follow the requirements of 2 C.F.R. PART 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." A single audit¹ is required when an entity spends \$750,000 or more of Federal Funds in a year. The Commissions must maintain auditable records and adequate supporting documentation. If the Commissions are spending less than \$750,000 of Federal Funds during any one fiscal year, they are not required to undergo a single audit unless specifically requested by VPRA. VPRA reserves the right to require any recipient of Commonwealth funds to undergo an audit relating to a Capital Project Addendum

¹ Single Audit is an annual audit where all non-Federal entities that expend \$750,000 or more of Federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.*, and applicable U.S. DOT "Single Audit" requirements of 2 C.F.R. pt. 1201, which incorporate by reference 2 C.F.R. part 200.

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the scope of which will be defined by VPRA. In no event shall VPRA require an audit relating to a Capital Project Addendum more than four years from the end of the state fiscal year (June 30) in which the final payment is made for the Capital Project Addendum.

§ 2.22 Corrective Action Plan upon Finding of Non-Compliance. If an independent certified public accountant, other auditor, VPRA, or any other party conducting an authorized audit finds the Commissions to be out of compliance with any provision of this Agreement, Capital Project Addendum, or any relevant federal, Commonwealth, or local law or regulation, the Commissions must provide a satisfactory corrective action plan to VPRA within 60 days of notification of that finding. The scope of any audit conducted must include expenditures made by Contractors and any other recipients of pass-through funds.

§ 2.23 Refund Duty. The Commissions agree if any audit finds payments by VPRA were (i) unsupported by acceptable records, or (ii) in violation of any other provisions of this Agreement or associated Capital Project Addendum, then within 60 days of VPRA's written notice to the Commissions of such audit findings, the Commissions will promptly refund to VPRA any unsupported payments or payments found in violation.

§ 2.24 Financial Statements. The Commissions must submit audited financial statements to VPRA no later than December 31 of each year covering the immediately prior fiscal year (July 1 – June 30) to:

VPRA Chief Financial Officer
919 East Main Street, Suite 2400
Richmond, VA 23219
steve.pittard@vpva.virginia.gov

§ 2.25 Duty to Include Provisions in Contracts. The Commissions shall include language consistent with §§ 2.19 through 2.25 in their contracts with Contractors to ensure VPRA has the same access to Contractors' books and records through the Commissions, and requiring the Contractors to include language consistent with §§ 2.19 through 2.25 in all subcontracts of every tier.

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§ 2.26 Solicitation Documents, Contracts, and Amendments. Upon request by VPRA and prior to the publication of an associated request for proposal or invitation to bid, the Commissions shall provide to VPRA, and VPRA shall have five business days to review, the proposed scope of work, Project geography, anticipated timing and sequencing of work (to the extent known), and other reasonable information requested by VPRA so that VPRA can assess the impacts of the proposed Project on other planned or ongoing projects in the impacted corridor. In addition, VPRA may review any request for proposal or invitation to bid related to a Project that has been published by the Commissions to ensure it complies with the terms of this Agreement and the applicable Capital Project Addendum. After such review, VPRA may require the Commissions to issue addenda to the solicitation documents after publication to conform with the terms of this Agreement and the applicable Capital Project Addendum. The Commissions shall not request reimbursement for any Eligible Project Costs unless and until a corresponding Capital Project Addendum or letter of no prejudice or other similar document has been executed in full by VPRA and the Commissions.

§ 2.27 Assignment. Assignment by the Commissions of any portion of this Agreement or of any Capital Project Addendum must be preapproved by VPRA in writing.

ARTICLE 3. VPRA TRACK ACCESS ELECTIVE CONTRIBUTION

§ 3.1 In addition to any VPRA-Supplied Funding made available to the Commissions under Article 2 of this Agreement, VPRA may elect to make available to the Commissions annually all or a portion of the VPRA Track Access Elective Contribution. If VPRA so elects, then the Parties will enter into a separate Track Access Payment Agreement under which VPRA will make the applicable VPRA Track Access Elective Contribution available to the Commissions.

ARTICLE 4. TERM; ENTIRE AGREEMENT

§ 4.1 Term. This Agreement shall be effective immediately upon its execution.

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§ 4.2 *Entire Agreement.* This Agreement (inclusive of Exhibits) and executed Capital Project Addenda constitute the entire and exclusive agreement among the Parties relating to all specific matters covered therein. All prior or contemporaneous verbal or written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked, and rendered ineffective for any purpose.

ARTICLE 5. NOTICES AND DESIGNATED REPRESENTATIVE

§ 5.1 All notices or communications with respect to this Agreement and associated documents shall be in writing and shall be deemed delivered (i) by hand, upon day of delivery, (ii) by prepaid overnight delivery service, upon the next business day, (iii) by U.S. Mail, certified, postage prepaid, return receipt requested, on the third business day following mailing, or (iv) by electronic mail, upon the day of a reply communication confirming receipt of the notice or communication by the recipient. All notices or communications with respect to this Agreement and associated Projects shall be delivered to the addresses set forth below or such other addresses as may be specified by a Party.

**Designated
Representatives:**

VPRA: VPRA Chief Financial Officer
919 E. Main Street, Suite 2400
Richmond, VA 23219
Email: steve.pittard@vpra.virginia.gov

Commissions: Chief Executive Officer, Virginia Railway Express
1500 King Street, Suite 202
Alexandria, Virginia 22314
Email: rdalton@vrc.org

ARTICLE 6. TERMINATION OF CAPITAL PROJECT ADDENDA

§ 6.1 *Commissions' Termination for Convenience.* At any time, the Commissions may terminate a Capital Project Addendum for their convenience by providing written notice to VPRA. The termination will be effective 30 days after VPRA's receipt of the Commissions' notice. Upon such

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termination, the Commissions will repay all funds received from VPRA pursuant to the Capital Project Addendum. If a useable portion of the Project has been completed then, in VPRA's reasonable judgment, the funds used to complete that portion shall not be subject to repayment.

§ 6.2 *Commissions' Termination for Cause.*

§ 6.2.1 If VPRA is in material breach of a Capital Project Addendum, the Commissions may terminate that Capital Project Addendum for cause by providing written notice to VPRA stating the reasons therefor.

§ 6.2.2 VPRA will have 90 days from receipt of the Commissions notice under Section 6.2.1, or such longer time as agreed by the Parties, to cure the material breach ("**VPRA Cure Period**"). If the breach remains uncured at the end of the VPRA Cure Period, the termination shall be effective the day after expiration of the VPRA Cure Period.

§ 6.2.3 If a Capital Project Addendum is validly terminated by the Commissions for cause pursuant to this Section 6.2, the Commissions will not be required to repay funds disbursed by VPRA under that Capital Project Addendum, provided that such funds were used to pay costs that have been confirmed as Eligible Project Costs, including reasonable costs to close out the Project, by a VPRA audit.

§ 6.3 *VPRA's Termination for Convenience.*

§ 6.3.1 At any time, VPRA may terminate a Capital Project Addendum for its convenience by providing written notice of termination to the Commissions. Upon receipt of such notice, the Commissions shall cease all Project work as soon as is practicable and refrain from entering into contracts in furtherance of the Project. The termination shall be effective 30 days after the Commissions' receipt of VPRA's notice.

§ 6.3.2 If VPRA terminates a Capital Project Addendum pursuant to this Section 6.3, the Commissions will not be required to repay funds disbursed by VPRA prior to the effective date of the termination, provided that such funds were used to pay costs that have been confirmed as Eligible Project

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Costs, including reasonable costs to close out the Project, by a VPRA audit. The Commissions may seek reimbursement for Eligible Project Costs for which they have not previously sought reimbursement incurred prior to the effective date of the termination.

§ 6.3.3 The Commissions waive all claims for damages and expenses related to a termination by VPRA pursuant to this Section 6.3.

§ 6.4 *VPRA's Termination for Cause.*

§ 6.4.1 VPRA may terminate a Capital Project Addendum for cause by written notice to the Commissions upon the Commissions' material breach, insolvency, or assignment for benefit of creditors.

§ 6.4.2 The Commissions shall have 30 days from receipt of VPRA's written notice under Section 6.2.1, or such longer time as agreed by the Parties (the "**Commissions Cure Period**"), to cure the material breach or to or provide assurances acceptable to VPRA of the Commissions' solvency. If the breach remains uncured at the end of the Commissions Cure Period, or if the Commissions fail to provide acceptable assurances of their solvency, the termination shall be effective the day after expiration of the Commissions' Cure Period, except that if the breach cannot be reasonably cured within 30 days and the Commissions have diligently pursued an appropriate cure during the Commissions' Cure Period, then the Commissions' Cure Period shall be extended but in no event shall it be extended by more than 60 additional days.

§ 6.4.3 If VPRA terminates a Capital Project Addendum for cause, the Commissions shall repay to VPRA all funds received by the Commissions from VPRA pursuant to the applicable Capital Project Addendum, and shall not be entitled to further repayment. The Commissions shall make such repayment within 60 days following effective day of termination. If a useable portion of the Project has been completed then, in VPRA's reasonable judgment, the funds used to complete that portion shall not be subject to repayment.

ARTICLE 7: FORCE MAJEURE

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§ 7.1 Delays. Delays caused by a Force Majeure Event shall not be deemed a breach or default under this Agreement. A Force Majeure Event will automatically result in a day-for-day extension to the performance period of the applicable Capital Project Addendum. If VPRA determines a Force Majeure Event renders Project completion impossible or impractical, VPRA may terminate the Project Agreement pursuant to Section 6.3.

§ 7.2 Written Notice. Within five business days of occurrence, the Commissions will provide VPRA written notice and documentation of the Force Majeure Event and an initial assessment of the relief necessary and detailing any additional investigation and analysis needed to determine the extent of damage and/or delay. Within 15 days of VPRA's receipt of such initial written notice, VPRA shall review the information provided and provide a written determination of whether a Force Majeure Event has occurred. As soon as practicable after the initial written notice, and in no event more than 90 days after the Force Majeure Event unless otherwise agreed in writing by the parties, the Commissions shall update the initial written notice, which update shall contain the required remedial action(s) proposed by the Commissions and the projected duration of any delay. Within 15 days of VPRA's receipt of such updated notice, VPRA shall review the information provided and provide a written determination of whether the remedial action(s) proposed by the Commissions are appropriate. Within 30 days of VPRA's written determination relating to the proposed remedial action(s), the Commissions may appeal by requesting VPRA Executive Director's review. The VPRA Executive Director's written decision is final.

ARTICLE 8. LIABILITY AND INSURANCE

§ 8.1 VPRA Not Responsible. VPRA shall not be responsible for damage to life and property, including environmental pollution and/or contamination, arising from (a) the Commissions' Contractors, subcontractors, agents, and employees activities related to this Agreement or any Capital Project Addendum and (b) any subsequent use of a Project.

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§ 8.2 *Insurance*. In conjunction with the development of any Capital Project Addendum, VPRA and the Commissions shall agree on the types and amounts of insurance coverages required for the corresponding Project, if any. Insurance requirements will be based on the facts and circumstances of the individual Project. VPRA and the Commissions will use the form attached hereto as **EXHIBIT D** (*Indicative Insurance Requirements*) and will collaborate to add or delete language and/or coverage types and amounts, as needed, to develop the specific insurance requirements for a given Project. The Parties agree that the Commissions' Liability Insurance Plan may be used (in the sole discretion of the Commissions) to the extent possible to satisfy the Commissions' insurance requirements.

§ 8.3 *Indemnity*. To the extent permitted by law, the Commissions shall indemnify, defend, and hold harmless the Commonwealth, VPRA, and their officers, agents, and employees of these entities from and against all damages, claims, suits, judgments, expenses, actions, and costs of every name and description, arising out of or resulting from any act or omission by the Commissions, their Contractors, subcontractors, agents, or employees in the performance of the work covered by this Agreement or any associated Capital Project Addendum.

§ 8.4 *Survival*. The obligations of this Article 8 shall survive the termination or completion of this Agreement, any Capital Project Addendum, and VPRA's payment.

ARTICLE 9. COVENANT AGAINST CONTINGENT FEES

§ 9.1 The Commissions warrants that they have not, and shall not, employ or retain any company or person, other than a bona fide employee working solely for the Commissions, to solicit or secure a Capital Project Addendum, and that it has not, and shall not, pay or agree to pay any company or person, other than a bona fide employee working solely for the Commissions, any fee, commission, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award or making of a Capital Project Addendum. Upon breach or violation of this Article, VPRA shall have the right to terminate this Agreement or any Capital Project Addendum pursuant to Section 6.4 of this Agreement.

ARTICLE 10. NON-DISCRIMINATION

§ 10.1 Contract Awards. In the solicitation or awarding of any contracts directly related to this Agreement or any associated Capital Project Addendum, the Commissions shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Commonwealth law relating to discrimination in employment.

§ 10.2 Employees. During the performance of this Agreement or any associated Capital Project Addendum, the Commissions agree as follows: (i) the Commissions will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by Commonwealth law relating to discrimination in employment; (ii) the Commissions agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (iii) the Commissions, in all solicitations or advertisements for employees placed by or on behalf of the Commissions, will state that the Commissions, where applicable, are an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

§ 10.3 Notice of Obligations. In all solicitations, either by competitive bidding or negotiation made by the Commissions for work to be performed under a contract, including procurement of materials or equipment, each potential Contractor shall be notified by the Commissions of the Commissions' obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of age, race, religion, sex, color, disability, or national origin.

ARTICLE 11. DRUG-FREE WORKPLACE

§ 11.1 During the performance of this Agreement and any Capital Project Addendum, the Commissions agreed to (i) provide a drug-free workplace for their employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the

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unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Commissions that the Commissions maintain a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

ARTICLE 12. SMALL, WOMEN, AND MINORITY (SWAM) BUSINESSES

§ 12.1 The Commissions are encouraged to seek and use Small, Women, and Minority (“SWAM”) enterprises in relation to any Capital Project Addendum issued pursuant to this Agreement. § 2.2-4310 of the *Code of Virginia* (1950), as amended, addresses SWAM enterprises.

ARTICLE 13. PERSONS WITH DISABILITIES

§ 13.1 The Commissions and their agents, employees, assigns, or successors, and Contractors, shall comply with the provisions of the Virginians with Disabilities Act (§ 51.5-40 through § 51.5-46 of the *Code of Virginia* (1950), as amended), the terms of which are incorporated herein by reference.

ARTICLE 14. NONRESTRICTIVE CLAUSES

§ 14.1 Solicitation documents will be based upon clear and accurate descriptions of the technical requirements for the material, product, or service to be procured. The descriptions will not contain features that unduly restrict competition.

ARTICLE 15. SPECIAL CAPITAL PROVISIONS

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§ 15.1 Useful Life. The Commissions agree that the equipment and facilities funded under this Agreement shall remain in service in the area and be used for the purpose for which they were purchased for the duration of their Useful Life. If any such equipment or facilities are not used for the intended purpose defined in the Capital Project Addendum during the applicable Useful Life, the Commissions shall immediately notify VPRA. In the case of equipment, VPRA shall have the option of requiring the Commissions either to transfer title to the equipment to VPRA or to remit to VPRA an amount equal to a proportional share of the fair market value remaining in the equipment based upon VPRA's ratio of participation established in the applicable Capital Project Addendum. In the case of facilities, the Commissions shall remit to VPRA the proportional share of the remaining fair market value of the facilities based upon VPRA's ratio of participation established in the applicable Capital Project Addendum. The Commissions shall keep records of the use of equipment and facilities for review by VPRA upon request.

§ 15.2 Inspection. Upon written request, the Commissions shall permit VPRA or its authorized representatives to inspect the goods, services, facilities, and other Project components funded, in whole or in part, by the VPRA-Supplied Funding under this Agreement.

ARTICLE 16. MISCELLANEOUS PROVISIONS

§ 16.1 Governing Law and Venue. This Agreement and any Capital Project Addendum shall, in all respects, be governed by the laws of the Commonwealth without giving effect to its principles of conflicts of law. Nothing in this Agreement or any Capital Project Addendum shall constitute a waiver of sovereign immunity by either Party. Any legal action concerning this Agreement, or any Capital Project Addendum shall be brought in the City of Richmond Circuit Court of the Commonwealth.

§ 16.2 Compliance with Laws. The Parties shall comply with all requirements specified in this Agreement, each Capital Project Addendum, each Track Access Payment Addendum, and all applicable Federal, State, and local laws and regulations.

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§ 16.3 Severability. If any term or provision of this Agreement or any Capital Project Addendum is determined to be invalid, illegal, or unenforceable, it shall not affect the legality, validity, or enforceability of any other part of this Agreement, and the remaining parts of this Agreement or any Capital Project Addendum shall be binding upon the Parties.

§ 16.4 Successors and Assigns. All provisions of this Agreement and any Capital Project Addendum shall be binding upon the Parties and their respective successors and assigns.

§ 16.5 Grant Requirements. VPRA may develop written grant administration requirements, and upon doing so, shall provide them to the Commissions for their review prior to their application to this Agreement.

§ 16.6 Interest. Any repayment by the Commissions to VPRA for VPRA-Supplied Funds under this Agreement shall also require the payment of interest using the prevailing statutory legal rate of interest established by the General Assembly, calculated from the date reimbursement was made by VPRA to date of repayment by the Commissions.

§ 16.7 Joint and Several Liability of Commissions. While it is understood and agreed that the Commissions shall act together in all matters related to the performance of this Agreement, the rights and obligations of the Commissions hereunder shall be shared jointly and severally.

§ 16.8 Funding Partner Requirements. The Commissions shall incorporate into any contracts executed by the Commissions in support of a Project any contractual covenants and provisions required by either VPRA or VPRA Funding Partners, as applicable.

ARTICLE 17. UNAUTHORIZED ALIENS

§ 17.1 The Commissions certify that they do not, and that they shall not, during the performance of this Agreement and any Capital Project Addendum, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the “Act”). The

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Commissions will also contractually require any Contractors who participate in any Project funded pursuant to this Agreement and any Capital Project Addendum to comply with this provision.

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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

BY: 

TITLE: Chief Executive Officer

DATE: 8-9-2022

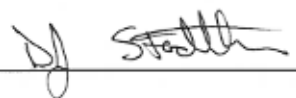
POTOMAC AND
RAPPAHANNOCK
TRANSPORTATION
COMMISSION

BY: 

TITLE: Chief Executive Officer

DATE: 8-9-2022

VIRGINIA PASSENGER RAIL
AUTHORITY

BY: 

TITLE: Executive Director

DATE: 8/9/2022

EXHIBIT A**DEFINITIONS**

1. “**Act**” is defined in Section 17.1.
2. “**Agreement**” is defined in the Preamble.
3. “**Capital Project Addendum**” is defined in Section 2.1.
4. “**CFO**” is defined in Section 2.14.
5. “**Commonwealth**” shall mean the Commonwealth of Virginia.
6. “**CTB**” shall mean the Commonwealth Transportation Board.
7. “**CTB-Controlled Funding Sources**” shall mean funding sources that are controlled and allocated by the CTB.
8. “**Commissions**” is defined in the Preamble.
9. “**Commissions Cure Period**” is defined in Section 6.4.2.
10. “**Commissions Funding Commitment**” shall mean, for each Project, the funding from sources controlled by the Commissions, which funding has been committed by the Commissions in support of each such Project pursuant to a Capital Project Addendum.
11. “**Contractors**” is defined in Section 2.13.
12. “**DRPT Funding Agreements**” is defined in Section 2.1.1.
13. “**DRPT-Commenced Initial Projects**” means the following subset of the Initial Projects for which DRPT and one or more Commissions have entered into a project-specific funding agreement under the DRPT Funding Agreements for the noted maximum amounts, and for each of which the parties will enter into a new Capital Project Addendum under this Agreement so that VPRA can take over and fulfill the existing funding commitments of DRPT (with the existing project-specific funding agreements being superseded and replaced upon the execution of each new Capital Project Addendum):

PROJECT NAME	SOURCE OF FUNDING	MAXIMUM AMOUNT	DATE OF PROJECT-SPECIFIC AGREEMENT
Broad Run Station & 3rd Track Improvements	I-66	\$64,287,000	May 27, 2020

PROJECT NAME	SOURCE OF FUNDING	MAXIMUM AMOUNT	DATE OF PROJECT-SPECIFIC AGREEMENT
	CMAQ	\$200,000	January 1, 2014
Manassas Station Platform Extension	I-66	\$9,125,000	April 9, 2020
Manassas Park Parking Garage and Bridge	I-66	\$23,483,000	April 2, 2019
Quantico Station Improvements	SMARTSCALE	\$10,350,857	March 29, 2021
Rolling Road Platform Extensions	CMAQ	\$200,000	February 2, 2016

12. **“Eligible Project Costs”** shall mean costs incurred by the Commissions in support of a Project, which costs meet the requirements set forth in Section 2.8.
13. **“Federal Funds”** shall mean funds whose original source are a federal government entity, including such funds that may originate with such an entity and flow through VPRA and/or the CTB before being provided to the Commissions.
14. **“Force Majeure Event”** shall mean fire, flood, war, pandemic, rebellion, terrorism, riots, strikes, or acts of God, which may affect or prevent either Party from timely or properly performing its obligations under the Agreement.
15. **“Future Projects”** shall mean those Projects other than the Initial Projects.
16. **“General Assembly”** shall mean the Virginia General Assembly.
17. **“Initial Projects”** shall mean those Projects set forth in **EXHIBIT B** (*Initial Projects and Initial VPRA Funding Commitments*) to be undertaken by the Commissions, which constitute the initial group of Projects for which VPRA will provide VPRA-Supplied Funding under this Agreement.
18. **“Initial VPRA Funding Commitments”** shall mean VPRA’s maximum funding commitments set forth in **EXHIBIT B** (*Initial Projects and Initial VPRA Funding Commitments*), each of which maximum funding commitments corresponds to an Initial Project.
19. **“Parties”** is defined in the Preamble.

20. **“Projects”** shall mean capital projects undertaken by the Commissions in the furtherance of VRE service for which VPRA provides VPRA-Supplied Funding under this Agreement, and includes both the (i) Initial Projects, and (ii) Future Projects.
21. **“Project Expiration Date”** shall mean the deadline by which the Commissions must incur costs to be eligible for reimbursement by VPRA under this Agreement, which deadline will be established for each Project in the applicable Capital Project Addendum and which deadline may be extended by mutual agreement of the Parties.
22. **“Project Reimbursement Form”** is defined in Section 2.9.
23. **“Project Start Date”** shall mean the date work for a Project begins, which will be established for each Project in the applicable Capital Project Addendum.
24. **“Subsequent Allocation”** shall mean a funding commitment for rail purposes directly from the Virginia Department of Transportation, the Virginia Department of Rail and Public Transportation, or another transportation agency, authority, or institution of the Commonwealth, other than VPRA or the Commissions themselves, which commitment is received by the Commissions in support of a Project, and which funding is neither (i) reflected within the applicable Capital Project Addendum at the time the Parties executed it, nor (ii) provided in support of Project elements that were not contemplated within the applicable Capital Project Addendum at the time the Parties executed it.
25. **“SWAM”** is defined in Section 12.1.
26. **“Track Access Payment Agreement”** shall mean an Agreement entered into by the Parties, under which VPRA commits to provide the VPRA Track Access Elective Contribution (or a portion thereof) for a particular one-year period.
27. **“Useful Life”** shall mean for each individual asset (*e.g.*, equipment and facilities), twenty (20) years running from the date such asset is placed into service, or any longer period that may be required by a VPRA Funding Partner.
28. **“VPRA”** is defined in the Preamble.
29. **“VPRA Cure Period”** is defined in Section 6.2.2.
30. **“VPRA Funding Commitment”** shall mean, with respect to any given Project, the maximum amount of VPRA-Supplied Funding that is available to the Project, and which is established in the corresponding Capital Project Addendum.
31. **“VPRA Funding Partner”** shall mean any entity, including a federal or Commonwealth agency, authority, or institution, other than the Commissions and VPRA, that provides funding in support of a Project, which funding flows through VPRA and is made available to the Commissions in

support of such Project, including when VPRA provides funding to the Commissions before VPRA subsequently seeks reimbursement from the applicable federal or Commonwealth entity.

32. **“VPRA Funding Partner Clawback Event”** shall mean any scenario in which a VPRA Funding Partner demands repayment of any or all funding provided by such VPRA Funding Partner in support of a Project, which demand is based on a failure of one or both of the Parties to comply with applicable law, regulations, or other requirements related to the provided funding.
33. **“VPRA Percentage”** shall mean, for any given Project, the VPRA Funding Commitment expressed as a percentage of the Project budget (inclusive of contingency reserves), established at the time of the execution of the applicable Capital Project Addendum.
34. **“VPRA-Supplied Funding”** shall mean funding from whatever source provided by VPRA to the Commissions under this Agreement in support of one or more Capital Project Addenda.
35. **“VPRA Track Access Elective Contribution”** shall mean eighty-four percent (84%) of the per-train-mile compensation paid by the Commissions to Class I host railroads with respect to maintenance, dispatch, and other related services, and referred to as the Department Provided Funding in section 5.1(d) of the Passenger Rail Operations and Access Agreement between the Virginia Department of Rail and Public Transportation (“DRPT”) and the Commissions, dated March 26, 2021, thereafter assigned by DRPT to VPRA, as such may be amended from time to time.

EXHIBIT B**INITIAL PROJECTS AND INITIAL VPRA FUNDING COMMITMENTS**

INITIAL PROJECT NAME	INITIAL VPRA FUNDING COMMITMENT²
Crystal City Platform Study	\$700,000
L'Enfant Platform Study	\$2,200,000
L'Enfant Fourth Track and Station Improvements	\$22,406,000
Alexandria Station Pedestrian Tunnel	\$19,500,000
Brooke Station Improvement	\$7,500,000
Leeland Road Station Improvements	\$5,200,000
Leeland Road Parking Improvements	\$5,500,000
Broad Run Station & 3rd Track Improvements	\$70,100,000
Manassas Station Platform Extension	\$9,100,000
Manassas Park Parking Garage and Bridge	\$23,500,000
Real Time Multimodal Information	\$3,500,000
Quantico Station Improvements	\$23,000,000
Rolling Road Platform Extensions	\$900,000
Backlick Road Station Improvement	\$500,000
Crossroads Storage Expansion	\$8,400,000

² This table establishes VPRA's commitment with respect to funds that will flow through VPRA and be made available to the Commissions in support of the scheduled Projects. It will include federally-sourced funds, but this table is not source-specific.

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EXHIBIT C
PROJECT REIMBURSEMENT FORM
[SEE ATTACHED FORM]



Project Reimbursement Form

Organization Name: _____

EIN: _____

Invoice Date _____

Invoice # _____

Project Agreement Name: _____

	Federal	State	Local	Total
	%	%	%	100%
Total Contract Amount	\$	\$	\$	\$
Total of Previous Payments	\$	\$	\$	\$
Total Expended This Period	\$	\$	\$	\$
Balance Remaining After This Invoice	\$	\$	\$	\$
Total Reimbursable Amount for This Invoice	\$			

I certify that the grantee agency has incurred expenses in accordance with the project agreement and that these funds have not been previously requested.

Grantee Authorized Signature _____

VPRA Staff Notes

Program Administrator _____

Invoice Status _____

Comments:

EXHIBIT D

INDICATIVE INSURANCE REQUIREMENTS

(a) **Workers' Compensation and Employer's Liability Insurance** for all of its employees engaged in the Project as required by Chapter 8 of Title 65.2 of the *Code of Virginia* (1950), as amended.

(b) **Commercial General Liability Insurance** including coverage for premises and operations, independent contractors, personal injury, product and completed operations, explosion, collapse and underground, and broad form contractual liability of limits of at least \$[●] per occurrence and \$[●] annual aggregate applicable on a per project basis. The Commonwealth of Virginia and VPRA are to be named as an additional insured on a primary, non-contributory basis. Completed operations coverage shall continue to be carried for a period of at least five (5) years after Project Completion. This requirement may be satisfied by the Commissions' Liability Insurance Plan, to the extent possible.

(c) **Automobile Liability Insurance** with a limit of at least \$[●] combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles on site or off. The Commonwealth of Virginia and VPRA are to be named as an additional insured on a primary, non-contributory basis.

(d) **Umbrella/Excess Liability Insurance** in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$[●] per occurrence and in the aggregate. The Commonwealth of Virginia and VPRA are to be named as an additional insured on a primary, non-contributory basis. This requirement may be satisfied by the Commissions' Liability Insurance Plan, to the extent possible.

(e) **Builder's Risk Insurance and Delayed Start Up Insurance** for physical loss, destruction, or physical damage to the Project in an amount not less than \$[●]. The Builder's Risk insurance will cover VPRA, the Commissions, the prime contractor, and subcontractors of all tiers prior to Project completion.

(f) **Contractor's Pollution Liability Insurance** to indemnify for bodily injury, property damage, or amounts which the contractor, its employees, its agents, or its subcontractors are legally obligated to pay for cleanup/remediation work arising out of the Project work. Such insurance will have minimum limits of \$[●] for any one claim and in the aggregate and will remain in full force and effect for the period of construction and five years after Project completion. The Commonwealth of Virginia and VPRA are to be named as an additional insured on a primary, non-contributory basis.

(g) **Marine Protection and Indemnity Insurance** to the extent any of the Project work requires marine operations, the prime contractor and its subcontractors shall provide protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations including damage to piers, wharves, other fixed or movable structures, and loss or damage to any other vessel, craft, or property on such other vessel or craft. Such insurance will have minimum limits of \$[●] in the aggregate. The prime contractor is not obligated to purchase a Project-specific Marine Protection and Indemnity Insurance but will cause such insurance coverage to name the Commonwealth of Virginia and VPRA as an additional insured on a primary, noncontributory basis.

(h) **Railroad Protective Liability Insurance** in an amount not less than \$[●] per occurrence. The policy shall name the Commonwealth of Virginia and VPRA as an additional insured on a primary,

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noncontributory basis. This requirement may be satisfied by the Commissions' Liability Insurance Plan, to the extent possible.

(i) **Professional Liability Insurance** on a Project-specific basis covering design engineers' liability for acts, errors, or omissions arising in connection with design work, for not less than \$[●] with respect to any one claim and in the aggregate. Such insurance, which may be purchased and maintained by a single lead design engineer, will remain in full force and effect during the performance of the design work for the relevant Project, and for a period of five years after Project completion. The Commonwealth of Virginia and VPRA are to be named on any such policies as indemnified parties.