


RESOLUTION #2497

- SUBJECT:** Authorize the VRE CEO to Execute a Funding Agreement with Amtrak
- WHEREAS:** The Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission (the “Commissions”) have a 2020 Access and Storage Agreement with Amtrak;
- WHEREAS:** VRE and Amtrak staff worked collaboratively to identify funding sources to support the proposed Track 22 Rehabilitation Project to mitigate congestion at the station;
- WHEREAS:** Amtrak received a grant from the Federal Railroad Administration (FRA) for 50% of the cost of the project, or approximately \$19.1 million;
- WHEREAS:** The FRA grant requires local matching funds from Amtrak and VRE;
- WHEREAS:** Based on the cost sharing methodology for operations at Washington Union Station developed by the Northeast Corridor Commission (NEC) in accordance with the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), and agreed to by the Commissions in the 2020 Amtrak Access and Storage Agreement, Amtrak will be responsible for 66.7% (approximately \$12.7 million) of the local match and the Commissions will be responsible for 33.3% (approximately \$6.34 million) of the local match;
- WHEREAS:** Final design and construction was allowed to proceed as Amtrak and VRE staff finalized a funding plan for the local match requirement;
- WHEREAS:** The Track 22 Rehabilitation Project is scheduled to be completed in the summer of 2023; and
- WHEREAS:** The VRE Operations Board recommends the following action.
- NOW, THEREFORE, BE IT RESOLVED** that the Northern Virginia Transportation Commission hereby authorizes the VRE Chief Executive Officer to execute the Track 22 Rehabilitation Funding Agreement with Amtrak (attached) in a form approved by legal counsel.

Approved this 2nd day of February 2023.



David F. Snyder
Secretary-Treasurer



Dalia Palchik
Chair

**AGREEMENT BETWEEN
NATIONAL RAILROAD PASSENGER CORPORATON
AND
THE NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND
POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION
FOR WASHINGTON UNION STATION TRACK 22 REHABILITATION PROJECT**

This Agreement (“Agreement”), with an effective date of _____, 2023 (“Effective Date”), is between National Railroad Passenger Corporation, a corporation organized under 49 U.S.C. §24101 *et seq.* and the laws of the District of Columbia, having its principal place of business at 1 Massachusetts Avenue N.W., Washington, DC 20001 (“Amtrak”) and the Northern Virginia Transportation Commission and Potomac and Rappahannock Transportation Commission, bodies politic and corporate and political subdivisions of the Commonwealth of Virginia, established under the provisions of the Transportation District Act of 1964, as amended, and having principal places of business at 2300 Wilson Blvd Suite 230 , Arlington, VA 22201, and 14700 Potomac Mills Road, Woodbridge, VA 22192, respectively (hereinafter referred to as the “Commissions”). In executing this Agreement, Amtrak is acting on its own behalf and on behalf of its subsidiary, the Washington Terminal Company. (Commissions and Amtrak are referred to, collectively, as the "Parties".)

WHEREAS, the Parties agreed to an Agreement for Commuter Rail Passenger Service Access to Washington Union Terminal and Station and Storage of Commuter Rail Passenger Equipment, effective July 1, 2020, as amended (hereinafter the "Access Agreement"); and,

WHEREAS, pursuant to Section 5.2 of the Access Agreement, the Commissions have committed to fund normalized replacement of systems and facilities at Washington Union Station as well as the enhancement of all rail system infrastructure within Washington Terminal ("Section 5.2 Payments"); and,

WHEREAS, under PRIIA the Northeast Corridor Infrastructure and Operations Advisory Commission ("NEC Commission") was established to develop a standardized formula for determining and allocating costs, revenues, and compensation for Northeast Corridor commuter rail passenger transportation that uses Amtrak facilities or services or that provides facilities or services to Amtrak; and,

WHEREAS, In September 2018, Amtrak was awarded a grant by the FRA in the total amount of \$38,074,074 for the construction of an additional revenue Track 22 and platform to serve the run through tracks at Washington Union Station and described further in Exhibit A (the “Project”); and,

WHEREAS, the Commissions have agreed to provide funding in the amount of \$2,429,390 for the Project in accordance with their commitment under Section 5.2 of the Access Agreement; and,

WHEREAS, the Commissions have agreed to provide funding in the amount of \$3,916,289 for

the Project from various grant sources in accordance with the commitment to their share of the Local Match (as defined in Section 4 below); and,

WHEREAS, Amtrak had progressed the design phase of the Project and will be solely responsible for managing the construction phase of the Project; and,

WHEREAS, the Project is of mutual benefit to both VRE and Amtrak passenger rail service.

NOW THEREFORE, for and in consideration of the promises and the mutual covenants herein contained, and with the intent to be legally bound hereby, the Parties agree as follows:

1. Recitals
The recitals are hereby incorporated into this Agreement as if set forth in their entirety.
2. Overview of the Project
Currently, Track 22 at Washington Union Station (“Station”) is a non-revenue track that is used for engine pooling. The adjacent platform is currently used for the storage of materials. In connection with the Project, as that term is defined above, Amtrak will rehabilitate Track 22 and the platform. The track will be converted to a revenue track. The track and platform will serve the run through tracks at the Station and will include ADA compliant vertical circulation elements from the North Hangar area of the Claytor Concourse at the Station. The scope of work for the Project is more fully described in Exhibit A.
3. Services to be Performed by Amtrak and Amtrak Contractors and Consultants
The total estimated cost of the Project is \$38,074,074 of which the FRA, pursuant to that certain Cooperative Agreement No. 69A36518500210AMTDC executed by FRA and Amtrak on September 21, 2018, has agreed to contribute fifty percent (50%), i.e., \$19,037,037. The remaining \$19,037,037 represents the local match (“Local Match”). In accordance with the cost sharing methodology for operations at the Station developed by the NEC Commission, Amtrak will be responsible for 66.7% (\$12.7 million) of the Local Match and the Commissions will be responsible for 33.3% (\$6.34 million) of the Local Match.
 - a) Construction Management
 - 1) Amtrak’s Construction Manager (ACM) will assure that construction is performed according to the design shown in the final design plans, as specified in the contract documents, and to Amtrak’s engineering standards.
 - 2) 3rd party CM will provide necessary construction management services to coordinate, facilitate, schedule, and interface with all related construction activities to assure an optimized cost, schedule, and quality construction effort is achieved.
 - 3) The PWP will be drafted by the CM with support from the ACM and will include a detailed project schedule, a detailed project budget, scope documentation, and operational phasing plan.

- 4) Amtrak shall permit the Commissions to schedule visits to the work site and review the progress of the Project upon request and in accordance with such site visit requirements as Amtrak may reasonably require not less than monthly.

b) Construction:

- 1) Amtrak will perform the following tasks: Overhead Contact System (OCS) work; track alignment including installation of new ballast, ties, and rail; signage installation; and railroad/contractor protection.
- 2) The GC, including sub-contractors, will perform the following tasks: demolition and replacement of concrete platform; construction of overhead walkway connecting platform to the Station; installation of elevator and escalators; historic existing column rehabilitation; and fire life safety items.

c) Amtrak Additional Services:

- 1) Amtrak shall perform such additional related services as may be needed in connection with the Project.

4. Funding Responsibilities

The total estimated cost of the Project is \$38,074,074 of which the FRA, pursuant to that certain Cooperative Agreement No. 69A36518500210AMTDC executed by FRA and Amtrak on September 21, 2018, has agreed to contribute fifty percent (50%), i.e., \$19,037,037. The remaining \$19,037,037 represents the local match ("Local Match"). In accordance with the cost sharing methodology for operations at the Station developed by the NEC Commission, Amtrak will be responsible for 66.7% (\$12.7 million) of the Local Match and the Commissions will be responsible for 33.3% (\$6.34 million) of the Local Match. The Commissions' share of the Local Match shall be paid in the manner and according to the schedule set forth in Exhibit B. The Commissions will pay their share of the Local Match with funding from various sources including but not limited to, funds from the Commonwealth of Virginia and other local funding sources. Neither Party shall be responsible for complying with any Project funding related requirements that apply to the other Party unless such requirements are expressly set forth in this Agreement, even if those requirements would be read into this Agreement by applicable law, regulation, rule of construction or by operation of law.

5. Billing

Amtrak will invoice the Commissions for the Commissions' share of the Local Match in the amount of \$3,916,289 upon execution of this Agreement.

Amtrak shall provide a statement of actual charges and any additional supporting documentation showing the actual costs ("Invoice Statement").

Payment of Amtrak Invoice Statement is due within thirty (30) days of receipt of invoice by the Commissions. Payment shall be made in full without deduction, setoff

or counterclaim. In the event of a dispute with the Invoice Statement with respect to the determination of actual cost, the terms of Sections 6.3 and 15 of the Access Agreement shall apply. Payment not made by the Commissions by the due date shall be subject to an interest charge at the rate of the Wall Street Journal prime rate plus 2%. Nonpayment of the invoice, not otherwise disputed, shall constitute a failure to meet material obligations pursuant to Section 13.1 of the Access Agreement in addition to any other right or remedy to which Amtrak may be entitled as a result of such breach.

Upon execution of this Agreement, Amtrak will credit Commissions' \$2,429,390 share of the Local Match against payments it has already made to Amtrak pursuant to Section 5.2 of the Access Agreement.

6. Schedule

Amtrak will endeavor to progress the completion of the Project in accordance with the Project Schedule set forth in Exhibit C. However, the Commissions acknowledge that Amtrak has other work commitments and demands that may preclude Amtrak from performing the services hereunder according to the schedule most advantageous to the Commissions. In no event shall Amtrak be liable for any costs or damages attributable to any delays.

7. Compliance with Laws

The bid packages for the construction of the Project will require contractors to perform all work in accordance with applicable federal, state and local laws.

8. Communication of Information to the Public

The Parties agree to coordinate communications and outreach to the public, media, and other stakeholders on the Project and shall keep each other informed, in advance to the extent possible, of public presentations, media requests, appearances before government agencies or officials or other instances where information about the Project and the planning work contemplated by this Agreement is proposed to be made available to people other than the Parties themselves.

9. Entire Agreement

This Agreement constitutes the entire agreement between the Parties as to the Project. All prior discussions and understandings concerning such scope and subject matter are superseded by this Agreement. This Agreement or any part hereof may not be changed, amended or modified, except by written agreement of the Parties.

10. Notices

Any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by this Agreement to be made, given, furnished to, or filed with one Party by another Party shall be in writing and shall be delivered by hand or by certified mail, return receipt requested or by overnight delivery service, in an envelope addressed as follows:

If to the Commissions:
Virginia Railway Express
1500 King Street, Suite 202
Alexandria, VA 22314
Attn: Rich Dalton, Chief Executive Officer

If to Amtrak:
National Railroad Passenger Corporation
30th Street Station
2955 Market Street
Philadelphia, PA 19104
Attn: Thomas Moritz,
Assistant Vice President, Infrastructure, Access and Investment

11. Rights and Remedies; Dispute Resolution; Governing Law
- a) No failure on the part of either Party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right or remedy. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.
 - b) Nothing in this Agreement shall be deemed to create any right in any person not a Party hereto other than permitted successors and assigns of a Party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.
 - c) In the event that good faith negotiation and agreement of both Parties does not resolve a claim or dispute, either Party may pursue any right or remedy available to it by law or may propose a method of alternative dispute resolution. Arbitration of a dispute may be agreed upon by the Parties; however, neither Party will be required to submit to arbitration.
 - d) This Agreement shall be governed by and construed under the laws of the District of Columbia, excluding that portion of District of Columbia law relating to the application of laws of another jurisdiction. Each Party agrees that all legal proceedings in connection with any dispute arising under or relating to this Agreement shall be brought in the United States District Court for the District of Columbia. Commissions hereby accept the jurisdiction of the United States District Court for the District of Columbia and agree to accept service of process as if they were personally served within the District of Columbia.
12. Labor Rights
This Agreement shall not require Amtrak to contravene the provisions of any of its labor agreements. In the event of a conflict or inconsistency between this Agreement and such labor agreements, the labor agreements shall control as to such provision.

13. Authority

Each Party covenants and agrees that it has full power and authority to enter into this Agreement upon the terms and conditions as set forth herein and that the person signing on its behalf is authorized to do so.

14. Effective Date; Term

a) The Effective Date of this Agreement shall be the date when it has been signed by both Parties.

b) The term of this Agreement is for one (1) year commencing on the Effective Date hereof. The term of the Agreement shall automatically renew for consecutive one-year terms until the Project has been completed.

15. Miscellaneous

a) Ownership of the Project Improvements. Amtrak will own all of the Project improvements.

b) Maintenance of the Project Improvements. Amtrak will maintain all of the Project improvements. Maintenance costs thereof will be shared by the Parties in accordance with the Access Agreement and the Northeast Corridor Commuter and Intercity Rail Cost Allocation Policy.

[Signatures on Next Page]

IN WITNESS WHEREOF, the Parties have set their hands hereto on this Agreement as of the date first set forth above.

NATIONAL PASSENGER RAILROAD CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

By: _____

Name: _____

Title: _____

Date: _____

POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION

By: _____

Name: _____

Title: _____

Date: _____