

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

ENTERED
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February 16, 2022
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FINANCE DOCKET NO. 36588

**VIRGINIA PASSENGER RAIL AUTHORITY – ACQUISITION AND OPERATION OF
CERTAIN ASSETS OF
NORFOLK SOUTHERN RAILWAY COMPANY IN MONTGOMERY AND ROANOKE
COUNTIES, AND THE CITIES OF SALEM AND ROANOKE, VIRGINIA**

**MOTION TO DISMISS
PETITION FOR EXEMPTION**

EXPEDITED CONSIDERATION REQUESTED

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Dated: February 16, 2022

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**MOTION TO DISMISS
PETITION FOR EXEMPTION**

The Commonwealth of Virginia, acting by and through its Virginia Passenger Rail Authority (“VPRA”), hereby requests that the Petition for Exemption (the “Petition”) concurrently filed in the above-referenced docket be dismissed because the transaction in the Petition, VPRA’s acquisition of certain real property, equipment, fixtures and improvements from Norfolk Southern Railway Company (“Norfolk Southern”), does not require Surface Transportation Board (“STB” or “Board”) authorization under 49 U.S.C. § 10901. *See, e.g., Commonwealth of Virginia – Acquisition Exemption – Certain Assets of CSX Transportation, Inc.*, FD 36441 (STB served Dec. 14, 2020), citing Maine, DOT – Acq. Exemption – ME Central R. Co., (“State of Maine”) 8 I.C.C. 2d 835 (1991).

As explained in the Petition, VPRA and Norfolk Southern have reached an agreement pursuant to which VPRA will acquire from Norfolk Southern certain real property, equipment, fixtures and improvements of Norfolk Southern Railway between a point near the Salem Crossovers (at or about MP V-250.9304) in the City of Salem and Merrimac (Christiansburg), Virginia at MP V-279.0, located in Montgomery County, Roanoke County, and the Cities of

Salem and Roanoke, all in the Commonwealth of Virginia (the “Subject Line”).¹ Norfolk Southern will retain an exclusive, perpetual easement to provide common carrier freight service on the Subject Line. Additionally, VPRA will acquire from Norfolk Southern an easement for rail passenger purposes (“Passenger Rail Easement”) between the passenger platform in the City of Roanoke and a connection with the Subject Line in the City of Salem (the “Passenger Rail Easement Area”).² As explained below, the sale of the Subject Line and the grant of the Passenger Rail Easement will not include the transfer of property or other rights that would allow VPRA to conduct common carrier freight rail service or to interfere with common carrier freight rail service.

I. Statement of Facts

VPRA is a public authority created under the laws of the Commonwealth of Virginia and is a non-carrier. Norfolk Southern is a Class I common carrier by rail that owns the rail line within the Passenger Rail Easement Area and the Subject Line.

a. Sale of Subject Line and Reservation of Freight Easement

VPRA and Norfolk Southern have agreed that Norfolk Southern will convey real property, equipment, fixtures, and improvements of the Subject Line to VPRA by quitclaim deed.³ With respect to the Subject Line, VPRA will only provide passenger service.

Specifically, VPRA may provide Intercity Passenger Rail Service, Excursion Passenger Rail

¹ See Comprehensive Rail Agreement §§ 2.1(b), (c). The Comprehensive Rail Agreement is provided herein as Exhibit A. A public, redacted version of the Comprehensive Rail Agreement is filed in the public docket and a confidential, unredacted version is concurrently filed under seal pursuant to an accompanying Motion for Protective Order.

² See Comprehensive Rail Agreement § 2.1(a). What is referred to in this Motion and the Petition as the “Passenger Rail Easement Area” is referred to as the “Roanoke Easement Area” in the Comprehensive Rail Agreement.

³ See Comprehensive Rail Agreement § 5.3.

Service, and Commuter Rail Service (all as defined in the Comprehensive Rail Agreement) at frequencies that do not unreasonably interfere with Norfolk Southern's freight common carrier obligations.⁴ VPRA is prohibited from using the Subject Line "for any freight rail purposes other than for the movement of VPRA company material (including any maintenance materials)."⁵

The Comprehensive Rail Agreement requires, and the quitclaim deed includes, the reservation by Norfolk Southern on the Subject Line of "an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable" easement for freight service by Norfolk Southern (the "Freight Easement").⁶ Norfolk Southern will reserve the Freight Easement to (among other things) facilitate "bridging its freight trains, connecting with other freight railroads, serving existing and future freight industries located along, adjacent and near the Purchased V-Line, having connections made to the Purchased V-Line to serve existing and future industries, operating freight trains and other equipment over the Purchased V-Line and haulage rights for freight operations over the Purchased V-Line."⁷ Norfolk Southern has the right to provide freight service on the Subject Line "at such levels of activity that Norfolk Southern Railway deems to be appropriate. . ."⁸ Additionally, Norfolk Southern may "expand, modify, discontinue

⁴ See Comprehensive Rail Agreement § 8.1(a)(iii). For the purposes of the Petition and this Motion, the term "freight common carrier service" is used to describe what the Comprehensive Rail Agreement terms "Freight Rail Service." The Comprehensive Rail Agreement preserves not only Norfolk Southern's common carrier rights and obligations, but also Norfolk Southern's rights and obligations under transportation agreements, so the Comprehensive Rail Agreement uses the term "Freight Rail Service" to describe both types of freight service in one term.

⁵ See Comprehensive Rail Agreement § 5.4; *see also* Comprehensive Rail Agreement, Exhibit C-1.

⁶ See Comprehensive Rail Agreement § 5.3(e); *see also* Comprehensive Rail Agreement, Exhibit C-1.

⁷ *Id.* References in the quoted language to the "Purchased V-Line" are equivalent to the Subject Line as defined in this Motion and the Petition.

⁸ See Comprehensive Rail Agreement § 8.3(c).

or abandon freight service as is reasonable or necessary to respond to market demands and conditions. . .”⁹

Norfolk Southern will dispatch the Subject Line unless or until the Norfolk Southern V-Line portion of the Norfolk Southern corridor between Merrimac, Virginia and the Narrows, Virginia (which V-Line portion includes the Subject Line) is either sold or removed from service, at which time a replacement party will be mutually agreed upon.¹⁰ Dispatching preference will be given to passenger rail service.¹¹ However, that preference is subject to the limitation that passenger rail service may not unreasonably interfere with freight service.¹²

VPRA and Norfolk Southern have allocated maintenance responsibilities on the Subject Line in stages. First, during the “Transition Period” between the effective date of the Comprehensive Rail Agreement and the commencement of passenger service on the Subject Line, Norfolk Southern will perform all maintenance but VPRA will approve all plans, pay maintenance costs, and have the option of hiring a contractor to perform maintenance in lieu of Norfolk Southern.¹³ VPRA’s approval will not be withheld if Norfolk Southern determines certain maintenance is required to fulfill its freight common carrier obligations.¹⁴ Norfolk Southern will ensure that the Subject Line “meets the FRA track classification approved by VPRA. . .”¹⁵ After the Transition Period, VPRA will be responsible for maintenance of the Subject Line, but, should the VPRA maintenance not be sufficient to permit Norfolk Southern to perform its anticipated freight service, Norfolk Southern will have the right to perform maintenance at its own cost that it determines is “reasonable or necessary for the provision of the

⁹ See Comprehensive Rail Agreement § 8.3(d).

¹⁰ See Comprehensive Rail Agreement, Exhibit A (“Dispatcher”).

¹¹ See Comprehensive Rail Agreement § 11.1.

¹² See Comprehensive Rail Agreement § 8.1(a)(iii).

¹³ See Comprehensive Rail Agreement § 12.1(c).

¹⁴ *Id.*

¹⁵ See Comprehensive Rail Agreement § 12.1(d).

current or anticipated Freight Rail Service.”¹⁶ VPRA will maintain the tracks and facilities within the Subject Line “at not less than the Level of Utility existing as of the Closing Date” of the Comprehensive Rail Agreement.¹⁷

If at any point a Norfolk Southern train on the Subject Line needs rerailing, wrecking service, or wrecking train service, Norfolk Southern will be responsible for providing such service.¹⁸

VPRA and Norfolk Southern agreed to form a Performance Managers Committee, consisting of at least two representatives from each party, that will meet quarterly to discuss and resolve issues.¹⁹ VPRA or Norfolk Southern “may raise in good faith any topic relevant” to the Comprehensive Rail Agreement, including operations on the Subject Line, and the other party must consider that topic in good faith in return.²⁰ Dispatching, maintenance, wreck clearing, and other operational issues would be within the purview of the Performance Managers Committee.

b. Passenger Rail Easement

Norfolk Southern has also agreed to grant a non-exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement for rail passenger purposes to VPRA.²¹ This Passenger Rail Easement will not transfer any ownership rights or any rights other than the non-exclusive right to perform passenger rail operations from Norfolk Southern to VPRA.

Passenger rail operations may commence in the Passenger Rail Easement Area after the completion of certain improvements detailed in the Comprehensive Rail Agreement.²² The

¹⁶ See Comprehensive Rail Agreement §§ 12.2(b), (c), (d).

¹⁷ See Comprehensive Rail Agreement § 12.2(d).

¹⁸ See Comprehensive Rail Agreement § 14.1.

¹⁹ See Comprehensive Rail Agreement § 19.1.

²⁰ *Id.*

²¹ See Comprehensive Rail Agreement § 5.2; Comprehensive Rail Agreement, Exhibit C-3.

²² See Comprehensive Rail Agreement § 8.1(a)(ii).

Passenger Rail Easement includes passenger rail service performed by VPRA, Amtrak, or other parties providing passenger rail service pursuant to an agreement with VPRA.²³ Such passenger operations will be subject to the Norfolk Southern Operating Rules.²⁴ Norfolk Southern has determined that after the completion of the corresponding improvements, the rail line in the Passenger Rail Easement Area will be able to accommodate the Extended First Frequency and the Extended Second Frequency, as defined in the Comprehensive Rail Agreement.²⁵ Excursion service and the Third Frequency (as defined in the Comprehensive Rail Agreement) are only permitted if Norfolk Southern and VPRA agree they do not interfere with Norfolk Southern freight common carrier service.²⁶

Norfolk Southern will continue to own, control, dispatch and maintain the Passenger Rail Easement Area. Although passenger rail service will be given dispatching preference in the Passenger Rail Easement Area (as on the Subject Line), dispatching issues may be raised by the Performance Managers Committee.²⁷

II. Discussion

a. State of Maine Doctrine

State of Maine and its progeny hold that when a carrier sells the physical assets of a rail line by to a non-carrier (including a state or other public agency) and the selling carrier retains a permanent and exclusive freight rail operating easement, together with the common carrier obligation on the subject line, and that the terms of the sale protect the carrier from undue

²³ See Comprehensive Rail Agreement § 8.1(a)(ii); Comprehensive Rail Agreement, Exhibit A (“Extended First Frequency,” “Intercity Passenger Rail Service – Commonwealth-Supported,” “Intercity Passenger Rail Service – Long Distance,” “VPRA User”). See also Comprehensive Rail Agreement, Exhibit C-3.

²⁴ See Comprehensive Rail Agreement § 8.1(a).

²⁵ See Comprehensive Rail Agreement §§ 8.1(a)(ii)(1), (2).

²⁶ See Comprehensive Rail Agreement §§ 8.1(a)(ii)(3), (4); 8.1(g).

²⁷ See Comprehensive Rail Agreement §§ 11.1, 19.1.

interference with the provision of common carrier freight rail service, such transaction does not constitute the sale of a railroad line within the meaning of 49 U.S.C. § 10901. State of Maine, 8 I.C.C. 2d 835 (1991). Since 1991, the I.C.C. and the Board have followed State of Maine in more than 60 cases, and most of those decisions have involved acquisition of the physical assets of rail lines by public agencies for passenger transportation.

In a State of Maine transaction, the parties' intent is very different than in the more typical sale from a carrier to a non-carrier. Ordinarily where a non-carrier acquires a railroad line, the non-carrier is acquiring the rail line in order to become a rail carrier and provide the transportation in place of the selling carrier, which typically relinquishes some or all of its right to use the line. The Board exercises its regulatory authority under 49 U.S.C. § 10901(a)(4) in those circumstances. In contrast, in a State of Maine transaction, the parties' intent is that the seller will not relinquish its common carrier rights and obligations with respect to providing freight rail transportation, and the buyer will not assume those rights and obligations or provide freight service. The seller retains the exclusive right and common carrier obligation to provide freight rail service by retaining a permanent and exclusive freight railroad operating easement. Likewise, the non-carrier that purchases the physical assets of the rail line does not have the right or intent to assume any common carrier obligation within the jurisdiction of the STB.

As the Board observed in State of Maine and subsequent decisions applying the precedent, there are sound policy reasons for permitting a non-carrier (especially a public agency such as VPRA) to purchase the physical assets of the line without becoming a rail carrier subject to STB jurisdiction, provided that the selling rail carrier retains a permanent and exclusive freight rail easement over a rail line in order to continue to provide rail carrier service to existing and future shippers.

Allocation of duties such as dispatching or maintenance to the purchasing non-carrier does not necessarily eliminate the applicability of the State of Maine doctrine to a transaction. Rather, the Board has held that operating agreements should be “considered as a whole” with “the circumstances surrounding [the agreements]” to analyze whether an operating agreement is likely to impair freight service. See, e.g., Los Angeles County Transportation Commission—Petition for Exemption—Acquisition from Union Pacific Railroad Company, FD 32374, slip op. at 3 (STB served Jul. 23, 1996).²⁸

b. The Subject Line Sale and the Granting of the Passenger Rail Easement Meet the State of Maine Criteria

The conveyance of the Subject Line from Norfolk Southern to VPRA meets the criteria set forth in State of Maine and its progeny.

First, the quitclaim deed that conveys the Subject Line to VPRA retains a perpetual, exclusive easement for Norfolk Southern to provide freight common carrier service. In addition, the deed contains a permanent, restrictive covenant that runs with and touches the land constituting the Subject Line that will prohibit VPRA or any operator, contractor, agent or licensee, and all successors and assigns – except for Norfolk Southern and its successors, assigns, or parties under agreement with Norfolk Southern – from providing freight rail service (except for the movement of VPRA company material).²⁹

Second, the Comprehensive Rail Agreement contains contractual obligations that ensure that VPRA cannot unreasonably interfere with Norfolk Southern’s provision of freight common carrier service on the Subject Line. Passenger rail service on the Subject Line may not be

²⁸ See also, Commonwealth of Virginia—Acquisition Exemption—Certain Assets of CSX Transportation, Inc., FD 36441, slip op. at 4 (STB served Dec. 14, 2020); Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of CSX Transportation, Inc., FD 35312, slip op. at 7 (STB served May 3, 2010).

²⁹ See Comprehensive Rail Agreement § 5.4.

offered at a frequency that unreasonably interferes with Norfolk Southern’s freight common carrier obligations.³⁰ Furthermore, Norfolk Southern may provide freight service at whatever activity level it deems to be appropriate, and may “expand, modify, discontinue or abandon” freight operations at its discretion to meet market demand.³¹ Norfolk Southern will continue to control wreck clearing and maintenance that could impact its ability to provide freight service.³² If issues arise with dispatching or any other operations, Norfolk Southern may raise these issues and protect its interests through the Performance Managers Committee.³³

Accordingly, the conveyance of the Subject Line to VPRA fully aligns with the State of Maine doctrine and does not require Board authorization.

The grant of the Passenger Rail Easement to VPRA also will not require Board authorization. The Passenger Rail Easement will not unduly interfere with freight common carrier service, consistent with State of Maine. The Passenger Rail Easement only grants VPRA non-exclusive passenger operational rights. Norfolk Southern has determined that after the completion of corresponding improvements, the Passenger Rail Easement Area will be able to accommodate the Extended First Frequency and the Extended Second Frequency and the contemplated additional passenger service (*i.e.*, excursion or Third Frequency) is conditioned upon the parties agreeing that such passenger service does not interfere with Norfolk Southern freight common carrier service.³⁴ Unreasonable interference with freight common carrier service is explicitly prohibited for excursion passenger service and passenger service provided under the Third Frequency.³⁵ Although passenger rail service will receive dispatching preference in the

³⁰ See Comprehensive Rail Agreement § 8.1(a)(iii); 8.4(d).

³¹ See Comprehensive Rail Agreement §§ 8.3(c), (d).

³² See Comprehensive Rail Agreement § 14.1.

³³ See Comprehensive Rail Agreement §§ 11.1, 19.1.

³⁴ See Comprehensive Rail Agreement §§ 8.1(a)(ii)(1), (2).

³⁵ See Comprehensive Rail Agreement §§ 8.1(a)(ii)(3), (4); 8.1(g).

Passenger Rail Easement Area, Norfolk Southern will be empowered to address any dispatching concerns through the Performance Managers Committee.³⁶

III. Request for Expedited Consideration

VPRA respectfully requests that the Board issue a decision granting VPRA's Motion to Dismiss in a decision effective on or before May 31, 2022.

It is the intention of the parties to close on this proposed transaction on June 30, 2022. Although the Parties sought to file this Motion and the Petition in 2021 in order to avoid the need for this request for expedited consideration, negotiation of the commercial terms took longer than anticipated. No party will be prejudiced by expedited consideration by the Board.

A Board decision granting VPRA's Motion to Dismiss effective on or before May 31, 2022 would allow the consummation of the sale of the Subject Line and granting of the Passenger Rail Easement in accord with the project timeline established by the parties.

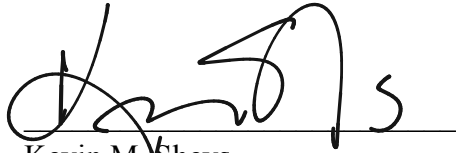
IV. Conclusion

For the reasons stated above, VPRA respectfully requests that the Board dismiss VPRA's concurrently-filed Petition for Exemption in this docket.

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³⁶ See Comprehensive Rail Agreement §§ 11.1, 19.1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Sheys', written over a horizontal line.

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Dated: February 16, 2022

Exhibit A

CONFIDENTIAL MATERIALS SUBJECT TO A
MOTION FOR A PROTECTIVE ORDER

Comprehensive Rail Agreement
(Confidential Business Information Redacted)

COMPREHENSIVE RAIL AGREEMENT
BETWEEN
NORFOLK SOUTHERN RAILWAY COMPANY
AND
THE VIRGINIA PASSENGER RAIL AUTHORITY

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Exhibits

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Exhibit O	Roanoke Easement Area Improvements
Exhibit P	Purchased V-Line Level of Utility

COMPREHENSIVE RAIL AGREEMENT

THIS COMPREHENSIVE RAIL AGREEMENT (“Agreement”), is made and entered into as of this tenth (10th) day January, 2022 (the **“Execution Date”**), by and between **NORFOLK SOUTHERN RAILWAY COMPANY**, a Virginia corporation (herein referred to as **“Norfolk Southern Railway”**), and the **VIRGINIA PASSENGER RAIL AUTHORITY**, a political subdivision of the Commonwealth of Virginia (hereinafter referred to as **“VPRA”**). Norfolk Southern Railway and VPRA hereinafter sometimes may be referred to collectively as the **“Parties”** or individually as a **“Party.”**

RECITALS

WHEREAS, VPRA desires to improve Passenger Rail Service in western Virginia in the rail corridor between Washington D.C. and Merrimac (Christiansburg), Virginia (the **“Corridor”**), including over railway assets between Alexandria, Virginia and Merrimac (Christiansburg), Virginia currently owned by, or under the primary control of, Norfolk Southern Railway (as such assets may change over time, the **“NSR ROW”** which term, for the avoidance of doubt will not include the Purchased V-Line (defined below) upon and after the Closing Date);

WHEREAS, VPRA has negotiated with Norfolk Southern Railway to purchase a portion of the NSR ROW and to acquire other rights, to design and construct certain improvements within the Corridor for the benefit of one or both Parties, and to increase passenger trains operating in the Corridor;

WHEREAS, VPRA has agreed to make certain funds available to Norfolk Southern Railway to fund Capital Improvements and Capital Maintenance on or affecting the railroad corridor south and west of Manassas, Virginia (including infrastructure potentially located between Alta Vista, Virginia and the Narrows, Virginia, on Norfolk Southern Railway’s Alta Vista Line) in order for Norfolk Southern Railway to develop, maintain, and otherwise mitigate the effects of Passenger Rail Service under this Agreement (such purposes being the **“Grant Purposes”**);

WHEREAS, on April 2, 2021, the Parties executed a binding term sheet (**“Term Sheet”**) summarizing the principal elements of the foregoing; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of establishing their respective rights, responsibilities, and obligations for the consummation of the foregoing (the **“Transaction”**).

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

Article 1 Definitions; Exhibits and Schedules

1.1 Definitions

All capitalized terms used in this Agreement, and not otherwise expressly defined in this Agreement, shall have the respective meanings set forth in Exhibit A (Definitions).

1.2 Exhibit and Schedules

Attached hereto and forming an integral part of this Agreement are Exhibits A – P, all of which are incorporated into this Agreement as fully as if the contents thereof were set out in full herein at each point of reference thereto.

Article 2 Sale and Purchase

2.1 Passenger Easement over the Roanoke Easement Area; Purchased V-Line

Norfolk Southern Railway agrees to sell to VPRA and VPRA agrees to purchase from Norfolk Southern Railway, subject to the terms and conditions hereinafter set forth:

- (a) a perpetual, irrevocable, assignable, divisible, licensable and transferable easement for passenger rail purposes (“**Passenger Easement**”) over the NSR ROW between the passenger platform in Roanoke, through the Norfolk Southern railway yard to and through the Salem Crossovers (including MP SX-0.0 and MP SX 1.0) to the boundary of the Purchased V-Line (the “**Roanoke Easement Area**”) all as generally shown as the areas on the maps referenced as the Roanoke Easement Area in Exhibit B-1 (List of Existing Valuation Maps) made a part hereof, with cut points to be indicated on the diagram in Exhibit B-1 (List of Existing Valuation Maps) prior to Closing in accordance with the legal description prepared in accordance with Section 5.7 (*Purchased V-Line and Roanoke Easement Area Legal Description*);
- (b) the following real property, equipment, fixtures and improvements of Norfolk Southern Railway between a point just east of the connection of the Salem Crossovers (at or about MP V-250.9304) to Merrimac (Christiansburg), Virginia at MP V-279.0, located in Montgomery County, Roanoke County, and the City of Salem, all in the Commonwealth of Virginia, as set forth herein:
 - (i) all right, title and interest in the land and improvements of Norfolk Southern Railway, together with all servitudes, easements, appurtenances and hereditaments appertaining thereto, all as generally shown as the areas on the maps referenced as the Purchased V-Line Maps in Exhibit B-1 (List of Existing Valuation Maps) made a part hereof, with cut points to be indicated on the diagram in Exhibit B-1 (List of Existing Valuation Maps) prior to Closing in accordance with the legal description prepared in accordance with Section 5.7 (*Purchased V-Line and Roanoke Easement Area Legal Description*), including only those improvements identified on the Bill of Sale attached hereto and made part hereof as Exhibit B-2 (Bill of Sale) and being situated generally within the boundaries of Montgomery County, Roanoke County, and the City of Salem all within the Commonwealth of Virginia (“**Real Property**”); and

- (ii) all right, title and interest in and to any and all personal property, fixtures, and improvements located upon the Real Property including, without limitation, all of Norfolk Southern Railway's interest in all rail, ballast, tracks, communications equipment, signals, structures, landscaping, and appurtenances located on the Real Property, except as may be excluded as Excluded Property (hereinafter defined) ("**Personal Property**"); and
 - (iii) all right, title and interest in and to any easements, drainage rights, licenses, privileges, adjacent streets, roads, alleys or rights of way, bridges, and all development rights, entitlements, licenses, permits, certificates of occupancy, consents and approvals whether governmental or otherwise, located on the Real Property or relating to the use, operation or maintenance of the Real Property or Personal Property ("**Miscellaneous Property**").
- (c) The Real Property, Personal Property, and Miscellaneous Property is collectively referenced in this Agreement as the "**Purchased V-Line**" for the purposes of this Agreement.
- (d) Norfolk Southern Railway and VPRA expressly agree that the Purchased V-Line shall not include any of the following excluded property ("**Excluded Property**"):
 - (i) rail, other track material, ties, switches, turnouts, signal systems and other similar improvements that are not affixed to the Real Property, but which may be stored on the Purchased V-Line; and
 - (ii) any other such non-affixed personal property, trade fixtures, or equipment owned by, in the possession of, or utilized by, Norfolk Southern Railway, including without limitation locomotives, rolling stock, railroad cars, chassis, vehicles, or other moveable equipment owned by, in the possession of, or utilized by, Norfolk Southern Railway and located on the Purchased V-Line; and
 - (iii) all right, title and interest to certain third-party agreements, along with the various easements necessary to facilitate Norfolk Southern Railway's continued use and administration of the excluded right, title and interest in the certain third-party agreements, as more particularly given effect by the Pipe and Wire Easement Agreement, as more particularly defined in this Agreement; and
 - (iv) all rights reserved to Norfolk Southern Railway to that Freight Easement, as reserved and set forth in the Deed, as more particularly defined in this Agreement; and
 - (v) facilities, equipment, and personal property owned or operated by Norfolk Southern Railway (or third parties under agreement with Norfolk Southern Railway) that are to be retained by Norfolk Southern Railway and operated pursuant to easements for Communications Facilities, Billboard Facilities, and Utility Facilities, as otherwise set forth in this Agreement.

2.2 Purchase Price

The purchase price for the Passenger Easement over the Roanoke Easement Area and for the Purchased V-Line is Thirty-Eight Million Two Hundred Thousand Dollars (\$38,200,000) (the “**Purchase Price**”). The Purchase Price shall be paid in one payment by wire transfer at Closing (as otherwise defined herein). The Purchase Price shall be allocated between the Real Property, Personal Property and Miscellaneous Property as Norfolk Southern Railway deems necessary, in Norfolk Southern Railway’s sole discretion, provided that Norfolk Southern Railway agrees to make good faith efforts to refrain from any allocation that grossly undervalues or overvalues any aspect of the Real Property, Personal Property or Miscellaneous Property.

2.3 Earnest Money

No earnest money shall be due under this Agreement.

2.4 Property Rights Needed for Station

Norfolk Southern Railway acknowledges that VPRA will need to identify and secure access to property adjacent to the Purchased V-Line in order to construct and access future passenger stations needed to facilitate Passenger Rail Service on the Purchased V-Line, and that VPRA is currently considering multiple alternative locations, including locations owned or controlled by Norfolk Southern Railway and locations for which VPRA would require access across parcels owned or controlled by Norfolk Southern Railway. Upon VPRA establishing a preferred alternative location for any such passenger rail stations, for National Environmental Policy Act purposes and otherwise, the Parties may negotiate in good faith the conveyance of any necessary real property rights to VPRA on terms and at a price to be mutually agreed by the Parties, including VPRA rights to locate a station on property owned or controlled by Norfolk Southern Railway, and VPRA rights to cross property owned or controlled by Norfolk Southern Railway to access a station location that itself is not owned or controlled by Norfolk Southern Railway.

Article 3 Pre-Closing Activities

3.1 Title Examination

VPRA shall have until June 30, 2022 to examine title to the Purchased V-Line and to furnish Norfolk Southern Railway with a written statement of objections affecting the receipt of Marketable Title. At the option of Norfolk Southern Railway, Norfolk Southern Railway shall have thirty (30) days after receipt of such objections to satisfy them. If Norfolk Southern Railway does not satisfy such objections within the prescribed time, then, at VPRA’s option evidenced by written notice to Norfolk Southern Railway, VPRA may either (i) terminate this Agreement pursuant to Section 4.4(b)(ii) or (ii) waive any or all objections not cured by Norfolk Southern Railway and proceed to Closing hereunder without diminution in the Purchase Price. VPRA may, at its expense, elect to obtain a policy of title insurance acceptable to VPRA pursuant to which title to the Property shall

be insured, provided, however, that procurement of said policy shall not be a Closing contingency.

3.2 Environmental Right of Entry Agreement

VPRA and Norfolk Southern Railway have entered into an Environmental Right of Entry Agreement For Due Diligence Purposes dated November 29, 2021 (the “**Environmental Right of Entry Agreement**”) under which VPRA and its contractors may enter the Property to conduct certain due diligence environmental inspections and testing prior to the Closing Date.

3.3 Discovery of Environmental Conditions

If VPRA’s due diligence inspections and testing reveal either any conditions concerning the Purchased V-Line that render it unsuitable for VPRA’s use of the Purchased V-Line or the existence of Hazardous Materials in such quantities that render it unsuitable for VPRA’s use of the Purchased V-Line as an operating railroad under applicable Hazardous Materials Laws, VPRA shall furnish Norfolk Southern Railway with a written statement that the Purchased V-Line is unsuitable for VPRA’s use. The written statement shall not include the results of any environmental sampling without the prior consent of Norfolk Southern Railway. VPRA acknowledges and agrees that the Purchased V-Line has been used as an operating railroad and the mere presence of an operating railroad does not constitute a recognized environmental condition under ASTM standards. Norfolk Southern Railway shall have fifteen (15) days after receipt of such notice to remedy such identified conditions, but shall be under no obligation so to do, and if Norfolk Southern Railway declines to or fails to remedy such conditions within the prescribed time, or if Norfolk Southern Railway declines to give VPRA permission to perform any invasive due diligence inspection or testing, then, at VPRA’s option evidenced by written notice to Norfolk Southern Railway, VPRA may either (i) terminate this Agreement pursuant to Section 4.4(b)(iii), or (ii) waive any or all objections not cured by Norfolk Southern Railway and proceed to Closing hereunder without diminution in the Purchase Price.

3.4 Liability for Inspections

VPRA shall be solely responsible for any and all Claims arising out of its own acts and/or omissions, and those of its employees and agents, during the performance of its due diligence inspections and testing contemplated in this Article 3 (*Pre-Closing Activities*), provided, however, that this provision is not intended to give, nor will it be interpreted as giving, a right of indemnification to Norfolk Southern Railway by VPRA, either by contract or by Law, for Claims arising out of the performance of this Article 3 (*Pre-Closing Activities*). Should any third-party contractor file a lien against the Purchased V-Line as a result of VPRA’s due diligence inspections and testing, VPRA shall have the same cancelled, satisfied, or otherwise discharged of record within ten (10) Business Days after actual notice thereof. VPRA shall restore any portion of the Purchased V-Line affected or disturbed by its due diligence inspections and testing to the condition the Purchased V-Line existed prior to any such inspection or testing. However, other than removal from the Purchased V-Line of soil, fill, debris, or other materials actually excavated by VPRA or its

contractors, nothing in this Article 3 (*Pre-Closing Activities*) shall be construed to require VPRA to remediate any pre-existing environmental condition(s) discovered or released during the activities covered by the Environmental Right of Entry Agreement.

3.5 Cost of Consents

Costs associated with the acquisition of any Consents, if any, shall be borne solely by the Party requesting the Consent.

3.6 Pre-Closing Covenants

- (a) **Provision of Information on Releases.** Norfolk Southern Railway shall provide to VPRA, no later than thirty (30) days after the Execution Date, copies of all information in the possession of the real estate and environmental departments of Norfolk Southern Railway with regards to any releases of Hazardous Materials on the Purchased V-Line prior to the Execution Date that were reportable to a state or federal government agency under Laws or which required investigation and/or remediation activities under Laws;
- (b) **STB Approval.** Should implementation of this Agreement require the prior approval, or a jurisdictional determination from or declaration of the STB as to the lack of the need for approval, of the STB, VPRA at its own cost and expense shall initiate and thereafter diligently pursue the same. Norfolk Southern Railway shall assist and support efforts of VPRA to secure any necessary STB approval of this Agreement or the determination/declaration of the STB as to the lack of the need for STB approval.
- (c) **Encumbrances.** Norfolk Southern Railway does hereby covenant and agree with respect to the Purchased V-Line that from and after the Execution Date to the date and time of the Closing Date, Norfolk Southern Railway shall not, without prior written consent of VPRA, convey any portion of the Purchased V-Line or any rights therein, nor enter into any conveyance or other agreement or amendment to agreement granting to any Person or entity any rights with respect thereto or any part thereof, or any interest whatsoever therein, or any option thereto, unless such conveyance, right or other interest is subordinate to the rights of VPRA under this Agreement, and any such conveyance or other agreement entered into in violation of this Section 3.6(c) shall be null and void and of no force or effect. Norfolk Southern Railway further agrees that from and after the Execution Date, Norfolk Southern Railway shall not fail to make any payments to any Person or entity who, as a result of such failure, would have the right to claim any lien rights with respect to any of the Purchased V-Line or any interest of Norfolk Southern Railway therein. Norfolk Southern Railway shall have the right to convert any such payment so long as Norfolk Southern Railway bonds off any liens filed with respect thereto or provides VPRA with reasonably adequate security with respect thereto. Notwithstanding the foregoing, Norfolk Southern Railway may enter into usual and customary agreements related to crossings for utilities, pipe, wire, operations, or other usual agreements typical of Norfolk Southern Railway's business or railroad

operations without the aforementioned consent of VPRA, provided that, Norfolk Southern Railway shall notify VPRA of all such agreements that Norfolk Southern Railway may execute after the Execution Date of this Agreement.

- (d) **Payment of Taxes.** Without waiving any right to contest any and all amounts which may be levied against Norfolk Southern Railway for ad valorem taxes, Norfolk Southern Railway shall continue to pay all ad valorem taxes for which it is responsible under this Agreement in its usual course of business.
- (e) **No Lease Modifications.** As of the Execution Date, to the extent that any third-party agreement is of a type that will be assigned by Norfolk Southern Railway to VPRA as of the Closing Date, Norfolk Southern Railway has not, and will not, modify any such third-party agreement in effect as of the Execution Date. Notwithstanding the foregoing, Norfolk Southern Railway may enter into usual and customary modifications of third-party agreements usual and customary to Norfolk Southern Railway's business or railroad operations without the consent of VPRA, provided that, Norfolk Southern Railway shall notify VPRA of all such modifications that Norfolk Southern Railway may execute after the Execution Date of this Agreement.
- (f) **Notification of Environmental Releases.** From and after the Execution Date to the Closing Date, in the event a release of Hazardous Materials occurs on the Purchased V-Line that is reportable to a state or federal government agency under Laws, Norfolk Southern Railway shall report such release to VPRA at the earlier of (i) the date that Norfolk Southern Railway reports such release to the applicable agency, or (ii) ten (10) days prior to the Closing Date for known releases that occur prior to such date.
- (g) **Signs and Advertising.** Before Closing, VPRA will not place any advertising or promotional signs on the Purchased V-Line or on any of Norfolk Southern Railway's other property without the written consent of Norfolk Southern Railway.

3.7 Pre-Closing Casualty

Except for any damage or liability arising from VPRA's activities on the Purchased V-Line pursuant to this Agreement, Norfolk Southern Railway shall bear the risk of loss or damage to the Purchased V-Line prior to Closing by fire, flood, casualty, or other unforeseen event affecting the Purchased V-Line. If, at any time prior to the Closing hereunder, any action or proceeding is filed under which it is reasonably likely that the Purchased V-Line or a substantial portion thereof, may be taken pursuant to any Law, ordinance or regulation or by condemnation or the right of eminent domain, then either Norfolk Southern Railway or VPRA may terminate this Agreement by delivering to the other party written notice of termination on or before the thirtieth (30th) day following the day on which the terminating party receives notice that such suit has been filed. If neither party elects to terminate this Agreement pursuant to the preceding sentence, then Norfolk Southern Railway, at the time of Closing hereunder, shall transfer and assign to VPRA all of Norfolk Southern Railway's

right, title and interest in any proceeds received or which may be received by the taking, or a sale in lieu thereof.

Article 4

Conditions Precedent to Closing

4.1 VPRA's Conditions

The obligation of VPRA to consummate Closing pursuant to this Agreement shall be contingent upon the satisfaction (or waiver by VPRA) of all following conditions precedent:

- (a) Norfolk Southern Railway shall not be in breach in any material respect of any of its covenants and agreements under this Agreement;
- (b) Norfolk Southern Railway shall have complied in all material respects with all of its obligations required to be performed by it under this Agreement prior to Closing;
- (c) the representations and warranties of Norfolk Southern Railway set forth in Section 7.1 (*Norfolk Southern Railway's Representations*) shall be true and correct in all material respects on and as of the Closing Date as if made and as of such date;
- (d) Norfolk Southern Railway shall have provided to VPRA copies of all information in the possession of the real estate and environmental departments of Norfolk Southern Railway with regards to any releases of Hazardous Materials on the Purchased V-Line prior to the Execution Date that were reportable to a state or federal government agency under Laws or which required investigation and/or remediation activities under Laws;
- (e) no change shall have occurred in Law between the Execution Date and the Closing Date that would materially adversely affect the ability of VPRA to consummate the Closing or to provide the Passenger Rail Service as set forth in this Agreement;
- (f) VPRA shall have determined, in its sole discretion, that the conditions of the Purchased V-Line are not unsatisfactory in any way.

4.2 Norfolk Southern Railway's Conditions

The obligation of Norfolk Southern Railway to consummate Closing pursuant to this Agreement shall be contingent upon the satisfaction (or waiver by Norfolk Southern Railway) of all following conditions precedent:

- (a) VPRA shall not be in breach in any material respect of any of its covenants and agreements under this Agreement;
- (b) VPRA shall have complied in all material respects with all of its obligations required to be performed by it under this Agreement prior to Closing;

- (c) the representations and warranties of VPRA set forth in Section 7.2 (*VPRA's Representations*) shall be true and correct in all material respects on and as of the Closing Date as if made and as of such date; and
- (d) VPRA shall have delivered to Norfolk Southern Railway a certificate certifying that funds to support the Early Compensation: (i) have been appropriated by the General Assembly, and (ii) are included within approved capital and/or operating plans under VPRA's annual budget process, and with respect to both (i) and (ii), certifying that such funds are available to VPRA to make the corresponding payments as they come due under this Agreement.

4.3 Mutual Conditions

The obligation of both Parties to consummate Closing pursuant to this Agreement shall be contingent upon the satisfaction (or waiver by both Parties) of all of the following conditions precedent:

- (a) all necessary material Consents from third parties, Governmental Authorities, or any other necessary material Consent to effectuate the Transaction have been acquired;
- (b) the Transaction shall not have been stayed or enjoined by any Governmental Authority; and
- (c) there shall be no material claim, litigation, labor dispute or work stoppage threatened or pending in connection with the Transaction that materially affects the ability of Parties to consummate the Closing or carry out the Transaction.

4.4 Termination Prior to Closing

This Agreement may be terminated at any time prior to the Closing:

- (a) by either Party, upon notice to the other Party, in the event that:
 - (i) following presentment of the Transaction contemplated by this Agreement to the STB:
 - (1) the STB shall have found any part of the Transaction requires STB authorization;
 - (2) the STB shall have found that it has jurisdiction over the Transaction; or
 - (3) regulatory or other action (including that of the STB) shall have resulted in the imposition of any conditions, including labor protective conditions, which Norfolk Southern Railway, in its sole and absolute discretion, deems unacceptable;

- (ii) the Transaction shall have been stayed or enjoined by any Governmental Authority; or
 - (iii) any material Claim, litigation, labor dispute or work stoppage shall be threatened or pending in connection with the Transaction that materially affects the ability of Parties to consummate the Closing or carry out the Transaction;
- (b) by VPRA, upon written notice to Norfolk Southern Railway, in the event that:
 - (i) the Closing has not occurred on or prior to the Outside Closing Date (or such later date agreed to in writing by the Parties) due to the non-satisfaction of any condition set forth in Section 4.1 (*VPRA's Conditions*) or Section 4.3 (*Mutual Conditions*);
 - (ii) Norfolk Southern Railway has not satisfied objections affecting the marketability of title within the timeframe set forth in Section 3.1 (*Title Examination*); or
 - (iii) Norfolk Southern Railway declines or fails to remedy required conditions within the timeframe set forth in Section 3.3 (*Discovery of Environmental Conditions*);
- (c) by Norfolk Southern Railway, upon written notice to VPRA, in the event that the Closing has not occurred on or prior to the Outside Closing Date (or such later date agreed to in writing by the Parties) due to the non-satisfaction of any condition set forth in Section 4.2 (*Norfolk Southern Railway's Conditions*) or Section 4.3 (*Mutual Conditions*).

4.5 Effect of Termination Prior to Closing

In the event of termination of this Agreement by either VPRA or Norfolk Southern Railway as provided in Section 4.4 (*Termination Prior to Closing*) only, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of VPRA or Norfolk Southern Railway.

4.6 Failure to Close

- (a) In the event that either Party does not materially discharge all duties and obligations applicable to that Party at Closing (except as this Agreement may otherwise be terminated prior to Closing as set forth herein) as and when required pursuant to this Agreement, the other Party may, at its option and in its discretion:
 - (i) terminate the Agreement by giving notice, such termination to be immediately effective upon the provision of such notice; and
 - (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance of the other Party related to the Closing and/or to

recover Damages (provided that, notwithstanding any other provision of this Agreement to the contrary, any Damages awarded pursuant to this Section 4.6 (*Failure to Close*) shall be limited to direct and actual costs and expenses of the Party claiming such Damages), and/or to seek other remedies; and

- (iii) without limitation to Section 26.4 (*Forum and Venue*), no provision of this Section 4.6 (*Failure to Close*) shall require either Party to engage in, or otherwise exhaust the procedures set forth at Article 26 (*Dispute Resolution*) prior to that Party availing itself of any right or remedy otherwise set forth in this Section 4.6 (*Failure to Close*).
- (b) The rights and remedies described in this Section 4.6 (*Failure to Close*) are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise at any time of a different remedy otherwise permitted by this Section 4.6 (*Failure to Close*).
- (c) Any waiver by either Party of a failure to proceed to Closing or any delay of either Party in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date, nor shall any such waiver in any way affect either Party's right to enforce the Agreement.

Article 5

Closing

5.1 Closing Date

Closing on the grant of the Passenger Easement over the Roanoke Easement Area and the purchase and sale of the Purchased V-Line (the "**Closing**") shall occur on or before the Outside Closing Date and on the fifth Business Day following satisfaction of the conditions precedent to Closing set forth in Article 4 (*Conditions Precedent to Closing*), subject to satisfaction of the conditions precedent to Closing set forth in Article 4 (*Conditions Precedent to Closing*) and to any extensions mutually agreed by the Parties in the sole discretion of each Party. The date on which Closing occurs shall be referred to as the "**Closing Date**". At Closing:

- (a) Norfolk Southern Railway shall deliver to the settlement agent, in a form that is recordable in the applicable Virginia circuit court(s), the duly executed and acknowledged Deed and one or more deeds of release to release the lien of any mortgage or trust (if any) that may apply to the Purchased V-Line. Upon settlement the Deed shall be recorded by the settlement agent in all appropriate Clerks' Offices where the Purchased V-Line and the Passenger Easement are located.
- (b) VPRA shall pay to Norfolk Southern Railway the Purchase Price for the purchase of the Purchased V-Line and grant of the Passenger Easement, such payment to be made by wire transfer.

- (c) General ad valorem real estate taxes (whether assessed for the county, city or state, as applicable) for the then-current year relating to any portions of the Purchased V-Line assessed by the local county or city taxing authority shall be prorated as of the Closing Date and shall be so adjusted at Closing. If the Closing shall occur before the tax rate or assessed value of the Purchased V-Line is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate or assessed value of the Purchased V-Line for the immediately preceding year. For any portion of the Purchased V-Line that is not assessed locally and upon which Norfolk Southern Railway pays taxes upon a franchise operating tax return basis, then there shall not be pro-rations at Closing for the portion of such taxes or assessments that are on the franchise operating tax return basis, with Norfolk Southern Railway continuing to pay such obligations through the Closing Date in the usual course of its business, and VPRA assuming any such liability arising on or after the Closing Date based on VPRA's specific tax considerations.
- (d) All rents or other sums due pursuant to any applicable leases or other third-party agreements that are to be assigned to VPRA at Closing, if any, shall be pro-rated as of the Closing Date. Further, all special taxes or assessments of any type of which Norfolk Southern Railway is aware to be due and payable prior to the Closing Date shall be paid by Norfolk Southern Railway. After the Closing Date, all such special taxes or assessments (including, without limitation, sanitary sewer, water and utility charges and assessments) arising after the Closing, or arising before the Closing Date but of which Norfolk Southern Railway was not aware on the Closing Date, shall be paid by VPRA as the same may become due and payable. Further, for any sanitary sewer, water and utility charges and assessments affecting the Purchased V-Line, either party may elect to require, prior to Closing, that the meters for all utility charges, if any, be read and new accounts therefor established as of midnight of the Business Day prior to Closing, whereupon Norfolk Southern Railway shall be responsible for and shall pay for all such charges relating to the period prior to the Closing Date, and VPRA shall pay and be responsible for all such charges from and after the Closing Date. Any such pro-rations shall be pro-rated based on the amount due for the then-current payment period as divided by the number of days within the then-current payment period, with each party receiving a credit or debit, as applicable, for each party's period of ownership through the Closing Date. If no such bill has been provided for the then-current payment period, then the parties shall make the pro-rations discussed herein based on the amounts paid in satisfaction of the immediately preceding payment period as calculated based on the number of days in the then-current payment period, with each party being credited or debited at Closing as otherwise set forth herein.
- (e) Each Party shall deliver to the settlement agent a settlement statement executed by Norfolk Southern Railway and VPRA setting forth the Purchase Price, applicable pro-rations, and other matters as may be mutually agreed to be included on such statement.
- (f) Norfolk Southern Railway shall deliver to the settlement agent an affidavit with respect to Norfolk Southern Railway's non-foreign status in compliance with

Section 1445 of the Internal Revenue Code, in a form substantially similar to the form set forth in Exhibit H (*Form of FIRPTA*).

- (g) Norfolk Southern Railway shall deliver to the settlement agent an Owner's Affidavit speaking to certain matters of title in a form substantially similar to that form set forth in Exhibit G (*Owner's Affidavit*).
- (h) Norfolk Southern Railway shall deliver to the settlement agent a certificate of good standing from the Virginia State Corporation Commission, Certificate of Incumbency documenting Norfolk Southern Railway's authority to proceed with the Closing, form 1099-S (upon request), an R-5E (upon request), and other forms, in mutually agreeable form to Norfolk Southern Railway, settlement agent, and the title insurance company, that are necessary to consummate the Closing set forth herein.
- (i) Each Party shall deliver to the settlement agent an Assignment and Assumption Agreement ("**Assignment and Assumption Agreement**") executed by Norfolk Southern Railway and VPRA, in which Norfolk Southern Railway assigns all right, title, and interest to certain third-party agreements, with VPRA assuming the same, in a form substantially similar to that form set forth in Exhibit F (*Form of Assignment and Assumption Agreement*).
- (j) Each Party shall deliver to the settlement agent an easement agreement ("**Pipe and Wire Easement Agreement**") executed by Norfolk Southern Railway and VPRA, in a form substantially similar to that form set forth in Exhibit L (*Form of Pipe and Wire Easement Agreement*).
- (k) Each Party shall deliver to the settlement agent a Bill of Sale ("**Bill of Sale**") executed by Norfolk Southern Railway and VPRA, in a form substantially similar to that form set forth in Exhibit B-2 (*Bill of Sale*).

5.2 Conveyance of Passenger Easement over the Roanoke Easement Area

At Closing, Norfolk Southern Railway shall convey to VPRA the Passenger Easement over the Roanoke Easement Area by a deed of easement (the "**Deed of Easement**") attached hereto as Exhibit C-2 (*Form of Deed of Easement*) (which shall be based on the Valuation Maps described in Section 5.7 (*Purchased V-Line and Roanoke Easement Area Legal Description*)).

5.3 Conveyance of Purchased V-Line

At Closing, Norfolk Southern Railway shall convey all of its right, title and interest to the Purchased V-Line to VPRA by quitclaim deed (the "**Deed**"), in the form substantially as set forth in Exhibit C-1 (*Form of Quitclaim Deed for Purchased V-Line*) (which shall be based on the Valuation Maps described in Section 5.7 (*Purchased V-Line and Roanoke Easement Area Legal Description*)) subject to the following:

- (a) General real estate taxes (prorated in accordance with Section 5.1(c)) for the year of Closing and subsequent years not yet due and payable.
- (b) Applicable existing Laws, orders, rules and regulations.
- (c) All rights, restrictions, encumbrances, easements, tenancies, reservations, leases, licenses, permits, privileges, agreements, third-party agreements, conditions, covenants, rights of reentry, or other reversionary interests whether or not of record.
- (d) All rights of any third party (or the general public) in all roads, alleys, bridges, streets, streams, rivers, creeks, or waterways affecting the Purchased V-Line (including, without limitation, any culverts, ditches, drainage systems or other facilities affecting the Purchased V-Line).
- (e) Norfolk Southern Railway shall reserve, in the text of the Deed, a freight easement for Norfolk Southern Railway's continued use and operation of a freight railroad across the Purchased V-Line after Closing ("**Freight Easement**"). The Freight Easement shall be an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable (in whole or in part) easement (subject to the prior written approval of VPRA, in the sole discretion of VPRA, of any such assignment, division, license, or transfer to any Person other than (i) to any Norfolk Southern Railway affiliate or Norfolk Southern Railway successor or (ii) for any license related to haulage) in, over, under, across, and upon the Purchased V-Line for all freight railroad purposes, including without limitation, the right to operate over the existing Purchased V-Line hereby transferred, as well as any future modifications thereto, and any other improvements made to the Purchased V-Line; provided, however, that the Freight Easement shall not extend to modifications and improvements to the Purchased V-Line, specifically identified by VPRA from time to time, such as passenger station tracks or passenger train overnight and service facilities ("**Passenger Exclusive Use Property**"). The rights hereby reserved pursuant to the Freight Easement are for the purpose of Norfolk Southern Railway (including any affiliates, parent companies, subsidiaries, successors or assigns, whether now existing or to come into existence at a future date) using the same for bridging its freight trains, connecting with other freight railroads, serving existing and future freight industries located along, adjacent and near the Purchased V-Line, having connections made to the Purchased V-Line to serve existing and future industries, and operating freight trains and other equipment over the Purchased V-Line.
- (f) Norfolk Southern Railway shall reserve, in the text of the Deed, an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement over, under, across and upon the Purchased V-Line for the purposes of constructing, accessing (ingress/egress), owning, repairing, renewing, replacing, installing, operating and maintaining existing or new communication, signal and fiber optic communications systems and appurtenant facilities and equipment and any other communication systems, including, without limitation, existing telecommunication and other towers (the "**Communication Facilities**"), provided that (a) the exercise

of such rights does not Unreasonably Interfere with Passenger Rail Operations and (b) Norfolk Southern Railway may license rights reserved under said easement, but not assign, divide, or transfer such easement itself without the prior written consent of VPRA, which may be withheld in the sole discretion of VPRA. Norfolk Southern Railway acknowledges that VPRA shall have the right to pursue, by itself or through third-party contractors or licensees, the development, construction, operation, maintenance, repair, renewal and replacement of separate Communication Facilities over, under, across and upon the Purchased V-Line as necessary or desirable for use in the operation of VPRA's passenger operations on the tracks conveyed by this Agreement and in connection with any Public Rural Broadband Initiative, but not for any other purpose (with Norfolk Southern Railway making no representation or warranty as to title or suitability of the property for any such purpose or use). The deed shall provide that the exercise of such Public Rural Broadband Initiative rights (including any assignment, division, license or transfer of such rights) shall not unreasonably interfere with the use and enjoyment of Norfolk Southern Railway's exercise of its Communication Facilities easement. The exercise of such right by Norfolk Southern Railway will not be construed to Unreasonably Interfere with Passenger Rail Operations solely on account of the location of any Communication Facilities in place at the Closing Date.

- (g) Norfolk Southern Railway shall reserve, in the text of the Deed, an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable non-terminable billboard easement upon the Purchased V-Line for any existing or new billboards or signboards and appurtenant facilities and equipment (including, without limitation, utility connections to service such billboards and/or signboards or appurtenant facilities) upon the Purchased V-Line for purposes of accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining such billboards and/or signboards and appurtenant facilities and equipment of Norfolk Southern Railway or its grantees, lessees or licensees ("**Billboard Facilities**"), provided that (a) the exercise of such rights does not Unreasonably Interfere with Passenger Rail Operations and (b) Norfolk Southern Railway may license rights reserved under said easement, but not assign, divide, or transfer such easement itself without the prior written consent of VPRA, which may be withheld in the sole discretion of VPRA. The exercise of such right by Norfolk Southern Railway will not be construed to Unreasonably Interfere with Passenger Rail Operation solely on account of the location of any Billboard Facilities in place at the Closing Date.
- (h) Norfolk Southern Railway shall reserve, in the text of the Deed, an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement (or easements, as applicable) over, under, across and upon the Purchased V-Line for the purposes of constructing, accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining existing or new utility lines (including without limitation those for water, sewer, electrical, gas or telecommunication lines, which are parallel to the main tracks on the Purchased V-Line, as well as appurtenant facilities and equipment ("**Utility Facilities**")), provided that (a) the exercise of such rights does not Unreasonably Interfere with

Passenger Rail Operations and (b) Norfolk Southern Railway may license rights reserved under said easement, but not assign, divide, or transfer such easement itself without the prior written consent of VPRA, which may be withheld in the sole discretion of VPRA. The exercise of such right by Norfolk Southern Railway will not be construed to Unreasonably Interfere with Passenger Rail Operation solely on account of the location of any Utility Facilities in place at the Closing Date.

- (i) The Pipe and Wire Easement Agreement as otherwise described by this Agreement.

5.4 Restrictive Covenants for Purchased V-Line

Notwithstanding any other provision of this Agreement, VPRA agrees that the Deed executed as part of the Transaction shall include as a permanent covenant of VPRA running with and touching the land that VPRA (or any operator, contractor, agent or licensee, and all permitted successors and assigns, except Norfolk Southern Railway and its successors and assigns) shall not use the Purchased V-Line (or any portion thereof) for any freight rail purposes other than for the movement of company material of VRPA, a VRPA User, or VRPA contractor (including any maintenance materials).

5.5 Deed Preparation

Norfolk Southern Railway shall pay for the Deed preparation, costs to cure any matters that Norfolk Southern Railway may agree to cure pursuant to any other provision of this Agreement (namely, costs arising from the cure of any matters to which VPRA may otherwise object pursuant to the Survey, title, or due diligence inspection provisions of this Agreement), costs to prepare any other documents for Closing that Norfolk Southern Railway has expressly agreed herein to produce at Closing, grantor's tax (including those due pursuant to § 58.1-802 and 58.1-802.3 of the Code of Virginia) and Norfolk Southern Railway's attorney's fees. For the purpose of calculating grantor's tax, the price due and payable to each county or city shall be calculated upon the portion of the Purchase Price allocated to that respective county or city.

5.6 Other Closing Costs

VPRA shall pay for all other Closing costs not paid by Norfolk Southern Railway, including, without limitation, taxes related to Closing (excluding grantor's tax), filing or recording fees, Survey costs, title examination fees, title insurance premiums, escrow or settlement agent fees, and VPRA's attorney's fees.

5.7 Purchased V-Line and Roanoke Easement Area Legal Description

Prior to Closing, Norfolk Southern Railway shall prepare a legal description for the Purchased V-Line and the Roanoke Easement Area based on a reference to the center line of the track as located in reference to the existing Valuation Maps for the Purchased V-Line and the Roanoke Easement Area (the "**Purchased V-Line and Roanoke Easement Area Valuation Maps**") and deliver the same to VPRA, which Valuation Maps shall be divided into eight and one-half (8 ½) by fourteen (14) sheets and attached to the Deed and the Deed of Easement as exhibits and recorded therewith as part of the legal description.

The aforementioned legal description shall also clearly describe the mileposts applicable to the Purchased V-Line and Roanoke Easement Area, as well as any applicable locally assessed tax map parcels to be conveyed as part of the Purchased V-Line set forth herein. Further, VPRA, at the cost and expense of VPRA, shall commission the Cut Points Survey (as described herein), and any additional Survey, as applicable, pursuant to Article 6 (*Survey; Deeds of Confirmation*) of this Agreement and subject to review and approval of Norfolk Southern Railway and VPRA, that accurately depict the termination points of the Purchased V-Line (such approved Cut Point Survey or additional Survey will be included as part of the aforementioned legal description if completed and approved in advance of Closing). Such Purchased V-Line and Roanoke Easement Area Valuation Maps shall be included in Exhibit B-1 (*List of Existing Valuation Maps*), with the aforementioned legal description being prepared and approved by VPRA and Norfolk Southern Railway prior to the Closing Date. Norfolk Southern Railway agrees to assist VPRA in procuring the Cut Points Survey by recommending surveyors, providing collaborative comments, and timely review of survey work, and otherwise advise VPRA of Norfolk Southern Railway survey standards to expedite the required approvals.

5.8 Recording

On Closing, the Parties shall record the Deed with the Circuit Court Clerk in the relevant localities where such rights and interest exist.

Article 6 Survey; Deeds of Confirmation

6.1 Cut Points Survey

On or before the Closing Date, VPRA shall make good faith efforts to diligently secure, at the cost and expense of VPRA but with the cooperation of Norfolk Southern Railway as set forth in Section 5.7 (*Purchased V-Line and Roanoke Easement Area Legal Description*), a survey made by a registered land surveyor licensed in the Commonwealth of Virginia depicting (a) thirty (30) feet from the clearance point east of the connection of the Salem Crossovers and the Purchased V-Line (at or about MP V-250.9304), (b) a point of termination near Merrimac (Christiansburg), Virginia at MP V-279.0, (c) thirty feet from the clearance point on the connection track with the N Line, which connection track branches from the V-Line at or about MP V253.39, (d) thirty (30) feet east of the clearance point from the connection with the spur track, known as the “**Bradshaw Spur Track**” located between MP V-264 and MP V-265 where such spur track departs from the northern side of the Purchased V-Line, and (e) any applicable Excluded Property listed in Exhibit B (*Excluded Purchased V-Line Parcels*) to Exhibit C-1 (*Form of Quitclaim Deed for Purchased V-Line*), and the points of termination for the Roanoke Easement Area (each such survey a “**Cut Points Survey**” and collectively the “**Cut Point Surveys**”). The Cut Points Survey, which is subject to approval of Norfolk Southern Railway and VPRA, shall be obtained by VPRA at the sole cost of VPRA. VPRA shall arrange for the Cut Points Survey (with all Parties working diligently and in good faith to provide Norfolk Southern Railway at least thirty (30) days for any review, comment, and approval of applicable survey drafts, but with failure to meet such thirty (30) day time period not being deemed

an Event of Default) and furnish to Norfolk Southern Railway three (3) copies of the metes and bounds description (including the applicable CADD file) describing the applicable points of termination and Excluded Property, acceptable to Norfolk Southern Railway, VPRA and to the officials responsible for recordation of deeds in the county or city in which the applicable portion of the Purchased V-Line and Roanoke Easement Area lies. If completed and approved by Norfolk Southern Railway sufficiently in advance of the Closing Date, Norfolk Southern Railway shall utilize the Cut Points Survey, along with the legal description described in Section 5.7 (*Purchased V-Line and Roanoke Easement Area Legal Description*), in preparation of conveyance documents, all other applicable instruments contemplated by this Agreement. If the Cut Points Survey is completed and/or approved by Norfolk Southern Railway after the Closing Date, then the Cut Points Survey shall be placed of record in the applicable locality pursuant to Section 6.3 (*Deeds of Confirmation*). The Cut Points Survey shall depict the location of all improvements and tracks on or adjacent to the Purchased V-Line (as applicable), together with a metes and bounds description of the applicable cut points, as well as any Excluded Property.

6.2 Additional Survey

VPRA may cause, in its sole discretion and at its sole expense, a boundary Survey, or other survey plats based on title work and field surveys described in Section 3.1 (*Title Examination*) and Article 6 (*Survey; Deeds of Confirmation*), respectively, (“**Survey**”) to be conducted of the Purchased V-Line or any portion thereof by a land survey duly registered under the Laws of the Commonwealth of Virginia. The Survey shall include a depiction of the in-place improvements and tracks on or adjacent to the Purchased V-Line together with a metes and bounds description of the applicable property. If VPRA desires that the Survey is utilized in any applicable conveyance document on the Closing Date, then the Survey shall be reviewed and approved by Norfolk Southern Railway pursuant to the same approval process set forth in Section 6.1 (*Cut Points Survey*) prior to being utilized in the conveyance documents. To the extent the Survey is approved by Norfolk Southern Railway and completed prior to the Closing Date, then the same shall be utilized to depict the applicable portion of the interests conveyed herein, as applicable, as a supplement to, and not in lieu of, any other legal description otherwise prepared in compliance with this Agreement. In the event that the Survey is completed and/or approved by Norfolk Southern Railway after the Closing Date, then, so long as the Parties mutually agree that such Survey should be placed of record, the Survey shall be placed of record in the applicable locality pursuant to Section 6.3 (*Deeds of Confirmation*).

6.3 Deeds of Confirmation

In the event that one or more Cut Points Surveys, or additional Surveys (provided that the parties have mutually agreed that such additional Surveys in question are necessary to further the terms of this Agreement) are not completed and approved by Norfolk Southern Railway in sufficient time to utilize as part of the legal description described in Section 5.7 (*Purchased V-Line and Roanoke Easement Area Legal Description*) on the Closing Date, then, upon completion and approval of such Cut Points Surveys or additional Surveys after the Closing Date, Norfolk Southern Railway and VPRA shall execute a quitclaim Deed of Confirmation in a form substantially similar to that form set forth at Exhibit C-3 (*Form of*

Deed of Confirmation) (“**Deed of Confirmation**”), with such Cut Points Surveys or additional Surveys being placed of record as an exhibit to the aforementioned Deed of Confirmation at the sole cost and expense of VPRA in the applicable locality. Notwithstanding the foregoing, VPRA shall make good faith efforts to diligently pursue the completion of all Cut Points Surveys and any additional Surveys prior to Closing. Any Cut Points Survey and/or additional Survey completed or approved by Norfolk Southern Railway after the Closing Date shall only serve to confirm ownership to the applicable portions of the Purchased V-Line. No Cut Points Survey or additional Survey completed or approved after the Closing shall serve to: (a) alter or amend the transaction contemplated by this Agreement (except to the extent of confirming the acreage conveyed herein), or (b) amend the Purchase Price, or any other sum, payable by any Party pursuant to this Agreement in any way, or (c) extend, revive, or otherwise modify any time period for objection, due diligence, or any rights of evaluation or termination that have otherwise expired, terminated, or been waived by a Party pursuant to the terms of the Agreement, with regards to any matter revealed by the Cut Points Survey or additional Survey, or (d) limit or otherwise amend the nature of the quitclaim conveyance contemplated by this Agreement, and VPRA’s corresponding acceptance of the Purchased V-Line and Roanoke Easement Area at Closing AS-IS, WHERE-IS without representation or warranty at Closing (excepting the specific representations and warranties expressly set forth in this Agreement). Further, Norfolk Southern Railway shall not assume any costs, liability, or other obligation (in addition to the terms of this Agreement) to execute any additional documentation other than the Deed of Confirmation and any applicable signatures within the Cut Points Surveys or additional Surveys (including, without limitation, title insurance company or settlement agent documentation) to facilitate additional title insurance coverage or other uses of the Cut Points Surveys or additional Surveys that VPRA, VPRA’s title insurance company, settlement agent, or other party associated with the transaction may deem desirable. Any dispute arising after Closing as a result of this Deeds of Confirmation process set forth herein shall be governed by Article 26 (*Dispute Resolution*).

Article 7

Representations and Warranties

7.1 Norfolk Southern Railway’s Representations

Norfolk Southern Railway hereby represents and warrants to VPRA, as of the Execution Date and the Closing Date, as follows:

- (a) *Knowledge of Norfolk Southern Railway.* As used herein and elsewhere in this Agreement, the phrase “actual knowledge of Norfolk Southern Railway” or similar reference shall refer to the actual knowledge of (i) Allen Winston with respect to the representations in subsection (b) below; (ii) Malcolm Roop with respect to the representations in subsections (c), (d) and (k) below; (iii) Thomas Zoeller with respect to subsection (h) below; and (iv) Jackie Corletto with respect to subsection (i) and (j) below, as of the Execution Date and the Closing Date, and after reasonable inquiry with regard to such representations (which reasonable inquiry shall be limited to review of internal documents in the actual possession of Norfolk Southern Railway).

- (b) *Assessments.* To Norfolk Southern Railway's actual knowledge, no assessments have been made against the Purchased V-Line or the Roanoke Easement Area that are unpaid (except ad valorem taxes for the current year), whether or not they have become liens.
- (c) *Boundary Lines of Land.* To Norfolk Southern Railway's actual knowledge, there is no pending litigation or dispute concerning the location of the lines and corners of the Purchased V-Line or the Roanoke Easement Area.
- (d) *No Condemnation.* To Norfolk Southern Railway's actual knowledge, there is no pending (or to Norfolk Southern Railway's actual knowledge, threatened) condemnation, expropriation, eminent domain, change in grade of public street or similar proceeding affecting all or any portion of the Purchased V-Line or the Roanoke Easement Area.
- (e) *Authorization.* Norfolk Southern Railway has taken all necessary corporate action to authorize the execution of this Agreement, and those Persons executing this Agreement on behalf of Norfolk Southern Railway, are authorized to do so; provided, however, that no officer, director, shareholder, beneficial owner, agent or employee of Norfolk Southern Railway shall be personally liable for any obligation hereunder.
- (f) *Good Standing.* Norfolk Southern Railway is a duly organized and validly existing corporation under the Laws of the Commonwealth of Virginia and duly authorized and registered to transact business in the Commonwealth of Virginia.
- (g) *Binding.* This Agreement is a legal, valid and binding agreement of Norfolk Southern Railway, enforceable against Norfolk Southern Railway in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar Laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law).
- (h) *No Violation.* To Norfolk Southern Railway's actual knowledge, entering into this Agreement by Norfolk Southern Railway is not in violation of any applicable Law or order.
- (i) *No Consummated Abandonment.* To Norfolk Southern Railway's actual knowledge, except as provided in Exhibit I (*Abandonments*), from January 1, 2020 to present, there have been no consummated abandonments, as that term is used in the Interstate Commerce Commission Termination Act of 1995, concerning the mainline trackage of Norfolk Southern Railway which are located on the Purchased V-Line or the Roanoke Easement Area.
- (j) *Trackage Rights Agreements.* To Norfolk Southern Railway's actual knowledge, the list of Trackage Rights Agreements contained in Exhibit J (*Trackage Rights Agreements*) are all of the Trackage Rights held by other rail carriers on the Purchased V-Line or the Roanoke Easement Area.

- (k) *Assigned Agreements and Instruments.* To Norfolk Southern Railway's actual knowledge, Norfolk Southern Railway is not a party to any pending litigation alleging a material breach of any agreement or instrument that will be assigned to VPRA.
- (l) *Disclaimer.* Other than as expressly set forth in this Agreement, Norfolk Southern Railway has not and does not hereby make any express or implied representation or warranty or give any indemnification of any kind to VPRA concerning the Purchased V-Line or the Roanoke Easement Area.

7.2 VPRA's Representations

VPRA hereby represents and warrants to Norfolk Southern Railway, as of the Execution Date and at the Closing Date, as follows:

- (a) *Binding.* This Agreement is a legal, valid and binding agreement of VPRA, enforceable against VPRA in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or at law).
- (b) *No Violation.* Entering into this Agreement by VPRA is not a violation of any Law or order.
- (c) *Authorization.* VPRA has taken all necessary action to authorize the execution of this Agreement, and those Persons executing this Agreement on behalf of VPRA are authorized to do so; provided, however, that no officer, director, beneficial owner, agent or employee of VPRA shall be personally liable for any obligation hereunder.

7.3 Survival and Breach of Representations

Norfolk Southern Railway's and VPRA's representations and warranties in this Article 7 (*Representations and Warranties*) shall survive until the sixth (6th) anniversary of the Closing Date. Any Claims related to breaches of representations and warranties in this Article 7 (*Representations and Warranties*) must be (a) based on a material breach of a representation or warranty and (b) made on or prior to the sixth (6th) anniversary of the Closing Date.

Article 8 Corridor Rail Services

8.1 Passenger Rail Service

- (a) VPRA shall have the right to provide or cause to be provided by a VPRA User the following passenger rail service (together, "**Passenger Rail Service**"), subject to

the NSR Operating Rules and the terms and conditions of this Agreement and the Operating Schedule:

- (i) over the NSR ROW (excluding the Roanoke Easement Area) upon and after the execution date of this Agreement, the Baseline First Frequency, and upon and after the Closing Date, the Baseline Second Frequency;
 - (ii) over the Roanoke Easement Area upon and after the completion of: (i) the Roanoke Easement Area Improvements (or after the REA Long Stop Date as provided in Section 9.1 (*Roanoke Easement Area Improvements*; *REA Long Stop Date*) and (ii) the Salem-Christiansburg Improvements:
 - (1) the Extended First Frequency,
 - (2) the Extended Second Frequency,
 - (3) upon a determination in accordance with Section 8.1(g), the Third Frequency, and
 - (4) Excursion Passenger Rail Service (which Norfolk Southern Railway shall accommodate, including on weekends and holidays, if such service does not unreasonably interfere with Norfolk Southern Railway's freight rail service); and
 - (iii) over the Purchased V-Line, any passenger rail service (including Intercity Passenger Rail Service, Excursion Passenger Rail Service, and Commuter Rail Service) at frequencies that do not unreasonably interfere with Norfolk Southern Railway's freight rail service.
- (b) VPRA shall be responsible for arranging with Amtrak access to and use of the passenger platform in Roanoke if the operator of VPRA service is a party other than Amtrak.
 - (c) Subject to the statutory and contract rights of Amtrak, Norfolk Southern Railway shall not provide, and may not assign license, transfer (in whole or in part and including the grant of any passenger Trackage Rights to others) or otherwise permit any other Person to use the NSR ROW to provide passenger rail service that would have a material adverse effect on the Blended Quarterly OTP Percentage or the Operating Schedule without the prior written consent of VPRA, such consent not to be unreasonably withheld or delayed.
 - (d) VPRA's use of the NSR ROW shall be in common with any NSR User. Norfolk Southern Railway's right to use the NSR ROW shall not be diminished by this Agreement. Subject to the terms of this Agreement, it is the intention of the Parties that the NSR ROW shall be used in an integrated way by all Users providing passenger or freight rail services such that there shall be no assigned windows for the operation of either without agreement of the Parties.

- (e) VPRA may designate the Passenger Rail Service Provider of its choosing as a VPRA User. Any Passenger Rail Service Provider other than Amtrak will be required to provide to Norfolk Southern Railway, under a direct agreement with Norfolk Southern Railway (hereinafter referred to as a “**Future VPRA User Contract**”), the indemnification and insurance protections set forth in Exhibit N (*Liability Provisions Applicable to Future VPRA Users other than Amtrak*), unless waived by Norfolk Southern Railway in writing at the time. No Passenger Rail Service on NSR ROW shall be performed by any VPRA User other than Amtrak unless and until such VPRA User has entered into a Future VPRA User Contract with Norfolk Southern Railway in conformance with the provisions of this Section 8.1(e). Should the Passenger Rail service be provided by Amtrak, such service will be provided pursuant to the existing NSR Off-Corridor Agreement, or future replacement of the same, and terms and conditions of the NSR Off-Corridor Agreement shall apply.
- (f) If a VPRA User is abolished or otherwise ceases to exist without a designated successor or assign, VPRA shall have the right to designate the successor for the purposes of this Agreement and the designated successor shall have the right to operate passenger trains on the same routes and at the same frequencies as the former VPRA User subject to the provisions of Section 8.1(e).
- (g) VPRA may, at any time following the commencement of the Extended First Frequency and the Extended Second Frequency, propose the commencement of the Third Frequency, on a frequency and operating schedule that it, in its sole discretion, determines. Upon receipt of such proposal, Norfolk Southern Railway shall promptly make a determination as to whether the commencement of the Third Frequency, on the frequency and operating schedule that is proposed (or with slight modifications thereto) would not unreasonably interfere with Freight Rail Service, and, if so, VPRA may initiate the proposed Third Frequency upon thirty (30) days’ notice. Should Norfolk Southern Railway not make such a determination, the Parties agree that Norfolk Southern Railway will develop, and the Parties will implement, a targeted analysis that will inform the Parties on whether introduction of the Third Frequency would unreasonably interfere with Freight Rail Service, or whether there would be a reasonably implemented modification to either the Freight Rail Service (other than adjustments to premium freight trains such as intermodal or automotive trains) or adjustments to any of the Extended First Frequency, the Extended Second Frequency, or the proposed Third Frequency, the construction of infrastructure, or a combination of the foregoing, that would permit the introduction of the proposed Third Frequency without unreasonable interference with Freight Rail Service. Either Party may direct a dispute as to the targeted analysis process or disagreement with regard to the implementation or results thereof in accordance with Article 26 (*Dispute Resolution*).

8.2 Passenger Performance Regime

- (a) The Passenger Performance Regime will begin upon the earlier of: (i) the first day of the first full month following the completion of the Nokesville-Calverton Double

Track Project and (ii) if VPRA has provided at least Fifty Million Dollars (\$50,000,000) through the first four WVRI Grant Funds installment payments, then January 1, 2026.

- (i) However, the Parties may mutually agree to restructure the sizing of one or more WVRI Grant Funds installment payments so that Norfolk Southern Railway receives at least Fifty Million Dollars (\$50,000,000) through the first three WVRI Grant Funds installment payments. If the Parties so agree, then the Passenger Performance Regime will begin upon the earlier of: (i) the first day of the first full month following the completion of the Nokesville to Calverton Double-Track Project, and (ii) January 1, 2025. For clarity, any such restructuring of the sizing of one or more WVRI Grant Funds installment payments will not change the overall One Hundred Thirty-One Million Five Hundred Thousand Dollars (\$131,500,000) payable from VPRA to Norfolk Southern Railway.
- (b) The Passenger Performance Regime will apply to the Baseline Second Frequency, the Extended First Frequency, the Extended Second Frequency, and the Third Frequency only.
- (c) For Non-Late Trains, the Parties shall measure on-time performance using the customer on-time performance metric (“**Standard Customer OTP**”) defined in the November 16, 2020 FRA *Final Rule on Metrics and Minimum Standards for Intercity Passenger Rail Services* (49 C.F.R. Part 273). Standard Customer OTP will measure the percentage of applicable Intercity Passenger Rail Service customers arriving at their station destination within fifteen minutes of the applicable published schedule. Standard Customer OTP shall be measured quarterly using data collected by Amtrak and provided to the Parties.
- (d) For each Late Train, the Parties shall measure on-time performance by comparing the Actual Run Time to the Adjusted Run Time, in all cases between the same two points. Measured at each individual passenger station, if the Actual Run Time is less than the Adjusted Run Time, the corresponding passengers delivered to such individual passenger station shall be considered on time.
 - (i) If either Party believes that additional Capital Improvements to the Corridor have been accomplished such that the Late Run Time Cushions should be readjusted, then such Party may provide written notice to the other Party and the Parties will meet within forty-five (45) days after delivery of such written notice to negotiate in good faith to adjust the Late Run Time Cushions. However, neither Party shall be compelled to agree to any such adjustment.
- (e) Upon the close of each quarter, and the Parties receiving the applicable data from Amtrak, VPRA shall use such data to calculate a single percentage combining the number of passengers delivered on time for both Non-Late Trains and Late Trains as a percentage of all passengers during such quarter (the “**Blended Quarterly**

OTP Percentage”). Thereafter, VPRA shall be permitted to discount the Passenger Per Train Mile Rate in accordance with the following table during the next-occurring full quarter.

Blended Quarterly OTP Percentage	Permitted Discount Applied to the Next Full Quarter
100% - 91%	0%
90% - 81%	10%
80% - 71%	20%
70% - 61%	30%
60% - 51%	40%
50% - 31%	50%
30% - 0%	100%

- (f) VPRA shall provide its calculation of each Blended Quarterly OTP Percentage to Norfolk Southern Railway, which shall have the right to give notice of its intent to audit and dispute VPRA’s calculation, such notice to be provided within thirty (30) days of VPRA delivering said calculation. If Norfolk Southern Railway fails to give notice of its intent to dispute such calculation within said thirty (30) days, then Norfolk Southern Railway will be deemed to have waived the right to dispute such calculation. If Norfolk Southern Railway disputes any Blended Quarterly OTP Percentage calculation provided by VPRA, VPRA shall be permitted to apply the corresponding discount (if any) to the Passenger Per Train Mile Rate pending the outcome of such dispute, with a true-up being applied once the dispute is resolved.
- (g) If, for any quarter, the Blended Quarterly OTP Percentage falls below eighty percent (80%), then the Performance Managers Committee shall meet within thirty (30) days following the end of such quarter to address the causational factors. Thereafter, the Performance Managers Committee shall meet quarterly (or less frequently if mutually agreed) until such factors are addressed to the satisfaction of each Party.
- (h) Should VPRA assume control of dispatching of the Purchased V-Line in accordance with the terms of this Agreement, then all performance measures, including the Blended Quarterly OTP Percentage for the applicable Trains, shall be measured from the Salem Crossovers as the farthest point south and west for both northbound and southbound Trains.

8.3 Freight Rail Service

- (a) The Freight Rail Service rights include the right of Norfolk Southern Railway to operate Trains, cars, and Equipment with its own crews over the Purchased V-Line. The Parties acknowledge that the Freight Rail Service rights reserved pursuant to the Freight Easement are for the purpose of Norfolk Southern Railway using the same for bridging their Freight Rail Trains, serving existing and future freight industries located along, adjacent and near the Purchased V-Line, having connections made, after prior notice and subject to ongoing coordination with

VPRA, to the Purchased V-Line to serve existing and future industries, and operating haulage or any other freight service of any kind of character for itself or any other freight rail carrier. Subject to Section 27.1 (*Abandonment*), VPRA shall not provide, and may not assign, license, transfer (in whole or in part and including the grant of any freight trackage rights to others) or otherwise permit any other Person to use the Purchased V-Line to provide Freight Rail Service.

- (b) Without limitation to the granting of priority in Section 11.1 (*Dispatching*), Norfolk Southern Railway's use of the Purchased V-Line shall be in common with Amtrak and any other Passenger Rail Service Provider. VPRA's right to use the Purchased V-Line shall not be diminished by this Agreement. Subject to the terms of this Agreement, it is the intention of the Parties that the Purchased V-Line shall be used in an integrated way by all Users providing passenger or freight rail service, such that there shall be no assigned windows for the operation of either without prior consent of the Parties, which consent may be withheld in their respective discretion.
- (c) Norfolk Southern Railway shall have the right to perform the Freight Rail Service over the Purchased V-Line at such levels of activity that Norfolk Southern Railway deems to be appropriate, consistent with the terms of this Agreement. Norfolk Southern Railway shall have the right to operate in either direction on the Purchased V-Line trackage, and shall have the right to provide overhead and local freight rail service to existing and future customers located on or near the Purchased V-Line. The rights hereunder shall be connective with the Norfolk Southern Railway N-Line, the Salem Crossovers, and the remainder of the NSR ROW.
- (d) Norfolk Southern Railway's rights shall include the right to expand, modify, discontinue or abandon freight service as is reasonable or necessary to respond to market demands and conditions, including the right to locate and serve new freight customers on either side of the Purchased V-Line at Norfolk Southern Railway's sole expense and definition of the Purchased V-Line shall be expanded, modified or contracted in conformance thereof; provided, however, that any such expansion or modification of the freight service shall be coordinated with VPRA and any Passenger Rail Service Provider so as to minimize material interference with Passenger Rail Service.

8.4 Operating Schedule

- (a) The Parties acknowledge and agree that the schedule for Passenger Rail Service (other than for Excursion Passenger Rail Service) set forth in Exhibit D (*Operating Schedule*) (the "**Operating Schedule**") is intended to be permanent in accordance with conditions described therein, subject to amendment of the Operating Schedule by the mutual consent of the Parties. In the event that either Party desires to amend the Operating Schedule and makes such request in writing, the Parties shall cooperate in good faith to conduct capacity analysis and rail traffic capacity modeling to determine the feasibility of such request, as reasonably required and at the cost of the requesting party, and to negotiate in good faith any such proposed amendment to the Operating Schedule.

- (b) From the Closing Date, VPRA shall be entitled to begin the Baseline First Frequency and Baseline Second Frequency in accordance with the Operating Schedule.
- (c) Upon and after the completion of: (i) the Roanoke Easement Area Improvements (or after the REA Long Stop Date) and (ii) the Salem-Christiansburg Improvements, VPRA shall be entitled to begin the Extended First Frequency and Extended Second Frequency in accordance with the Operating Schedule.
- (d) In the event that the operation of the Third Frequency, running at a VPRA-proposed schedule, would not unreasonably interfere with Freight Rail Service, the Operating Schedule shall be amended to include such VPRA-proposed schedule, and VPRA shall be entitled to begin the Third Frequency in accordance with the Operating Schedule, as amended.

Article 9

Roanoke Easement Area Improvements

9.1 Roanoke Easement Area Improvements; REA Long Stop Date

Norfolk Southern Railway shall expeditiously design and construct the improvements to the Roanoke Easement Area depicted in Exhibit O (*Roanoke Easement Area Improvements*) (the “**Roanoke Easement Area Improvements**”), and shall achieve final completion of the Roanoke Easement Area Improvements no later than the fourth (4th) anniversary of the Closing Date (“**REA Long Stop Date**”). In the event that Norfolk Southern Railway fails to achieve final completion prior to the REA Long Stop Date then Norfolk Southern Railway shall provide alternative priority access through the Roanoke Easement Area such that full Passenger Rail Service commences in accordance with the Operating Schedule and without additional travel time through the Roanoke Easement Area (and without other material adverse impact to Passenger Rail Service through the Roanoke Easement Area).

9.2 VPRA Review

Norfolk Southern Railway shall provide to VPRA preliminary plans for the Roanoke Easement Area Improvements, including the track and other rail facility additions, modifications, or betterments, as well as a proposed schedule for the same (“**Description of REA Work**”) for its review and approval, not to be unreasonably withheld or delayed. VPRA shall have sixty (60) days to review the Description of REA Work, provide comments and propose any changes it reasonably deems necessary. Within sixty (60) days of receipt of VPRA’s comments, VPRA and Norfolk Southern Railway shall consult and work in good faith until the Parties agree on a final Description of REA Work. VPRA’s review of the Description of REA Work shall focus on interoperability. If Norfolk Southern Railway intends to incorporate any proposed VPRA Betterment, then Norfolk Southern Railway shall formally notify VPRA and promptly provide VPRA with the estimated incremental cost of and a construction schedule for the VPRA Betterment. If VPRA thereafter elects to move forward with such VPRA Betterment, such VPRA

Betterment shall be at the sole cost and expense of VPRA, and shall not be included in the Thirty-Six Million Five Hundred Thousand Dollars (\$36,500,000) allocated for the REA Reimbursement Cap or the Roanoke Easement Area Improvements Residue. Adjustments to the proposed schedule to accommodate any material change in the Description of the REA Work proposed by VPRA and agreed to by Norfolk Southern Railway shall extend the REA Long Stop Date by an equal amount.

9.3 Reimbursement

Payments shall be made by VPRA to Norfolk Southern Railway upon approval of an invoice. Such invoices shall include: (i) the actual REA Work Costs incurred by Norfolk Southern Railway during the preceding month, (ii) a certification that the REA Work Costs incurred are correct and reflect the total amount expended for the month, (iii) supporting documentation to substantiate a payment, and (iv) the total REA Work Costs reimbursed by VPRA to date. Norfolk Southern Railway agrees that it shall bear all REA Work Costs that it is unable to reasonably substantiate, provided that VPRA gives Norfolk Southern Railway reasonable notice and opportunity to provide supporting documentation or other means of substantiating the relevant costs. VPRA shall remit payment to Norfolk Southern Railway within a timely manner, subject to state or federal prompt payment requirements as applicable for delivery of such invoice to VPRA.

9.4 REA Work Costs

The obligation of VPRA to reimburse REA Work Costs hereunder shall be capped at the REA Reimbursement Cap, such that (i) VPRA shall be under no obligation to reimburse REA Work Costs hereunder once the total reimbursements by VPRA for REA Work Costs exceeds the REA Reimbursement Cap, and (ii) Norfolk Southern Railway shall be solely financially responsible for REA Work Costs hereunder once the total reimbursements by VPRA for REA Work Costs exceeds the REA Reimbursement Cap. REA Work Costs shall be computed in accordance with and subject to the following conditions:

- (a) *General and Administrative Costs.* In order to properly charge for Norfolk Southern Railway's related indirect costs, Norfolk Southern Railway's labor costs incurred in performing the REA Work shall be multiplied by the applicable percentages established by Norfolk Southern Railway for its labor additives. These applicable percentages are subject to approval by VPRA per agreed upon multi-state audits through AASHTO, as may be amended from time to time. The products of these multiplication processes will be added to Norfolk Southern Railway's labor cost as REA Work Costs.
- (b) *Travel Expenses.* The direct cost of travel incurred by the personnel of Norfolk Southern Railway and REA Contractor(s) related to the Roanoke Easement Area Improvements shall be reimbursed in accordance with Commonwealth travel policies.
- (c) *Rental Rates of NSR-Owned Equipment.* Equipment rates for equipment owned by Norfolk Southern Railway or its affiliates shall be billed on an hourly or daily basis.

Hourly rates for equipment being operated or on standby shall be established by dividing the Blue Book monthly rate by one hundred seventy-six (176). The result of this calculation yields the “**Ownership Hourly Rate.**” Reimbursement for the equipment being operated shall be at one hundred percent (100%) of the Blue Book hourly operating costs. Reimbursement for equipment required to be idled and on standby shall be at fifty percent (50%) of the Ownership Hourly Rate only. No more than ten (10) hours of standby will be paid on a single day nor more than forty (40) hours per week. The cost of fuels, lubricants, repairs, parts, electrical power consumed by the equipment and all similar operating costs shall be included in the rental rates.

- (d) *Rental Rates of Rented Equipment.* If Norfolk Southern Railway rents or leases equipment for a Project from an entity other than an affiliate of Norfolk Southern Railway, VPRA will reimburse Norfolk Southern Railway for full leased cost, insurance, fuel, lubricants, electrical power and all similar operating costs. Norfolk Southern Railway will endeavor to control these costs, utilizing purchasing strategies such as competitive bidding and annual contracts. Norfolk Southern Railway may use existing contracts for engineering services, warehousing, logistics services, equipment rental or lease, and material purchase without separately obtaining bids for individual projects, provided that Norfolk Southern Railway shall provide and make available all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate contracted costs incurred under this Agreement.
- (e) *Materials and Supplies.* Reimbursement by VPRA to Norfolk Southern Railway for materials and supplies purchased new shall be made in an amount equal to the invoice price of such materials and supplies. Reimbursement for materials and supplies currently on hand and used by Norfolk Southern Railway, shall be in the amount equal to Norfolk Southern Railway’s stock (inventory) prices. In addition, Norfolk Southern Railway shall be entitled to payment of the lesser of: (i) all actual direct costs of both handling and loading out materials and supplies from Norfolk Southern Railway’s stock or (ii) five percent (5%) of the amounts billed for such materials and supplies. Used materials released from service shall be credited against the REA Work Cost in an amount equal to the scrap value less five percent (5%) for both handling and transportation of same. The only used materials for which such a credit will be given shall be: rail, joint bars, ties, tie plates, signal materials and turnout materials. All other materials shall be considered disposable for the purposes of this Agreement.
- (f) *Sales Use and Other Taxes.* Any and all sales, use and other taxes applicable to the purchase or use of materials and supplies utilized in the Roanoke Easement Area Improvements shall be a REA Work Cost.
- (g) *Cost of Mobilization.* All costs reasonably incurred by Norfolk Southern Railway and REA Contractors in mobilizing to perform work will be reimbursed at the full cost of same.

- (h) *Demobilization Costs.* All costs reasonably incurred in ceasing performance of the REA Work (including but not limited to costs associated with continued safe rail operations) shall constitute reimbursable REA Work Costs.

9.5 Audit

Subject to any additional requirements that may be imposed by federal requirements all cost records and accounts for the Roanoke Easement Area Improvements shall be subject to audit by VPRA for a period of three (3) years following Norfolk Southern Railway's receipt of final payment for the Roanoke Easement Area Improvements. Norfolk Southern Railway shall maintain/make all books, documents, papers, accounting records, and such other evidence either in hard copy or electronic form as may be appropriate to substantiate costs incurred under this Agreement. Further, Norfolk Southern Railway shall make such materials available at its office at all reasonable times during the contract period, and for three (3) years from the date of final payment under this Article 9 (*Roanoke Easement Area Improvements*), for inspection and audit by VPRA. Representatives of VPRA shall have such access to the books and accounts of Norfolk Southern Railway as may be required to audit said bill. After the bill has been audited by VPRA, VPRA will pay to Norfolk Southern Railway any amount remaining due to Norfolk Southern Railway in addition to the amount previously paid within thirty (30) days following the audit, provided, however, in the event of overpayment, Norfolk Southern Railway shall remit such overpayment to VPRA within thirty (30) days following receipt of written notice of such overpayment if Norfolk Southern Railway agrees with the audit finding. If Norfolk Southern Railway disagrees with a finding of overpayment, the finding will be subject to the procedures set forth in Article 26 (*Dispute Resolution*).

9.6 Consequence of Early Termination

In the event that this Agreement terminates prior to the completion of the Roanoke Easement Area Improvements, then Norfolk Southern Railway shall have no further obligation to continue any REA Work and VPRA shall make reimbursements to Norfolk Southern Railway for REA Work Costs actually incurred before the date of termination, plus, following a termination for any reason other than an NSR Default, any reasonable demobilization costs, but shall have no further obligation to make any reimbursements for future REA Work Costs incurred after the date of termination pursuant to this Article 9 (*Roanoke Easement Area Improvements*).

9.7 Compliance with Law

Norfolk Southern Railway shall at all times observe and comply in all material respects with all Laws applicable to the REA Work.

Article 10 Western Virginia Rail Initiative Grant

10.1 Limitation on use of funds

- (a) Norfolk Southern Railway shall apply the WVRI Grant Funds only for the Grant Purposes.
- (b) At least Fifty Million Dollars (\$50,000,000) of the funds from the WVRI Grant Funds shall be dedicated to the engineering, construction, and other costs of implementing the Nokesville-Calverton Double Track Project. Norfolk Southern Railway shall achieve final completion of the Nokesville-Calverton Double Track Project expeditiously. Any of the Fifty Million Dollars (\$50,000,000) dedicated to the Nokesville-Calverton Double Track Project not used for the completion of the Nokesville-Calverton Double Track Project shall remain available to Norfolk Southern Railway for other purposes consistent with this Agreement.
- (c) The WVRI Grant Funds shall not fund Roanoke Easement Area Improvements or the Bedford Rail Traffic Capacity Study.

10.2 Timing of Payment of WVRI Grant Funds; WVRI Grant Funds Sunset Date

- (a) VPRA shall make the WVRI Grant Funds available in a total amount of One Hundred Thirty-One Million Five Hundred Thousand Dollars (\$131,500,000) (to be paid in ten equal annual installments of Thirteen Million One Hundred Fifty Thousand Dollars (\$13,150,000)), plus the Roanoke Easement Area Improvement Residue. The first annual WVRI Grant Funds installment payment date shall be within thirty (30) days after the Closing Date, and each annual installment thereafter will be due and payable on each anniversary of the Closing Date.
- (b) In addition to the funds made available by VPRA in the ten equal annual installments pursuant to Section 10.2(a), VPRA will make available the Roanoke Easement Area Improvements Residue, if any, in accordance with the timing of the WVRI Grant Funds set forth in Section 10.2(a). Upon disbursement to Norfolk Southern Railway, the Roanoke Easement Area Improvements Residue will be added to the annual installment of the WVRI Grant Funds provided to Norfolk Southern Railway under Section 10.2(a) for the calendar year following completion of the Roanoke Easement Area Improvements.
- (c) If Norfolk Southern Railway anticipates there will be an Unused Disbursement at the tenth (10th) anniversary of the first annual WVRI Grant Funds installment payment, then no less than six (6) months prior to such tenth (10th) anniversary, Norfolk Southern Railway shall provide to VPRA for review and comment detailed plans for utilizing the Unused Disbursement during the subsequent two (2) years in a manner that is consistent with Grant Purposes. Although not subject to VPRA approval, the detailed plans submitted by Norfolk Southern Railway shall include information demonstrating compliance with Grant Purposes. VPRA's review of the detailed plans shall not constitute a waiver of any right of VPRA under this Agreement. Nothing in this Agreement shall prevent VPRA from deciding that the funds could be used more optimally if VPRA were to permit additional time beyond the twelfth (12th) anniversary of the first annual WVRI Grant Funds installment payment, and therefore provide Norfolk Southern Railway additional time to use

the funds. If any portion of the Unused Disbursement remains unused at the twelfth (12th) anniversary of the first annual WVRI Grant Funds installment payment (or such later period as VPRA may designate, in its sole discretion), such portion shall be returned to VPRA, within thirty (30) days after the twelfth (12th) anniversary of the first annual installment payment (or such later period as VPRA may designate, in its sole discretion) (such repayment date being hereinafter referred to as the **“Unused Disbursement Repayment Date”**).

10.3 Documentation of Costs and Audit Rights

- (a) Norfolk Southern Railway shall retain for a period of three (3) years after the end of the Disbursement Period all records such as properly executed payrolls, time records, invoices, contracts, vouchers, and other documentation describing in detail the nature and purposes of the uses of the WVRI Grant Funds. Norfolk Southern Railway shall clearly identify and keep all records relating to the WVRI Grant Funds. Norfolk Southern Railway shall maintain accounting records in accordance with U.S. generally accepted accounting principles and project records in accordance with generally accepted business and industry practices.
- (b) On or before December 31 of each year during the Disbursement Period, Norfolk Southern Railway shall provide to VPRA written reports demonstrating the uses of the WVRI Grant Funds. In addition, after all WVRI Grant Funds have been expended and/or returned to VPRA, Norfolk Southern Railway shall provide to VPRA a final report demonstrating all the uses of the WVRI Grant Funds provided by VPRA.
- (c) VPRA shall have the right to audit the uses of the WVRI Grant Funds and Norfolk Southern Railway's records relating to the WVRI Grant Funds to determine if Norfolk Southern Railway has complied with the terms of the Agreement.
- (d) Norfolk Southern Railway shall make its records related to WVRI Grant Funds available for inspection and audit at Norfolk Southern Railway's offices upon reasonable notice by VPRA during the Disbursement Period and for a period of three (3) years thereafter. Copies of such information shall be furnished to VPRA upon request.

10.4 Repayment

- (a) Within thirty (30) days after written notice delivered to Norfolk Southern Railway by VPRA, Norfolk Southern Railway shall either (i) repay VPRA for any WVRI Grant Funds used by Norfolk Southern Railway for costs other than Eligible Project Costs, or (ii) provide VPRA documentation as to other expenditures for WVRI Grant Funds not previously submitted to VPRA that would constitute Grant Purposes. Any disputes between the Parties with respect to whether a cost is an Eligible Project Cost shall be handled under the procedures set forth in Article 26 (*Dispute Resolution*). VPRA's audit rights and right to repayment by Norfolk Southern Railway shall survive any termination of this Agreement.

- (b) Any repayment by Norfolk Southern Railway to VPRA of WVRI Grant Funds, shall also require the payment of interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date payment was made by the VPRA to the date the cost that was not an Eligible Project Cost was incurred by Norfolk Southern Railway. However, if Norfolk Southern Railway must repay VPRA an Unused Disbursement under this Agreement, Norfolk Southern Railway shall pay interest calculated from the Unused Disbursement Reimbursement Date.
- (c) In no event shall the Norfolk Southern Railway's total repayment pursuant to this Section 10.4 (*Repayment*) exceed the sums paid by the VPRA to Norfolk Southern Railway under this Article 10 (*Western Virginia Rail Initiative Grant*), excluding any interest the Norfolk Southern Railway may owe on such repayments pursuant to Section 10.4(b).

10.5 Consequence of Early Termination

In the event that this Agreement terminates prior to the end of the Disbursement Period, then VPRA shall have no further obligation to make any payments of WVRI Grant Funds to Norfolk Southern Railway pursuant to this Article 10 (*Western Virginia Rail Initiative Grant*).

10.6 Compliance with Law

Norfolk Southern Railway shall at all times observe and comply in all material respects with all Laws applicable to the Grant Work.

10.7 Indemnification

Norfolk Southern Railway shall indemnify and hold harmless the Commonwealth and the VPRA, and their respective officers, agents, and employees from and against all Damages and Claims arising out of, resulting from, or in any way relating to the negligent performance of the Grant Work, but only to the extent such Grant Work is occurring on the Purchased V-Line. Nothing in this Section 10.7 (*Indemnification*) shall be interpreted as amending or modifying the allocation of liability and indemnification regarding the performance of freight or passenger rail operations over or associated with any project constructed, improved or modified by the Grant Work.

Article 11 Management and Operations

11.1 Dispatching

The Purchased V-Line and the Roanoke Easement Area shall be dispatched in accordance with sound dispatching principles. The Dispatcher for the Purchased V-Line and the dispatcher for the Roanoke Easement Area shall give due regard to the needs of freight and passenger carriers and their respective customers, provided that Intercity Passenger Rail Service on the Purchased V-Line and the Roanoke Easement Area shall be given

dispatching preference. For the avoidance of doubt, the Parties acknowledge that the Current Charges compensate Norfolk Southern Railway for, among other things, dispatching services provided by Norfolk Southern Railway with respect to the Purchased V-Line, and that no other amounts will be payable for such services.

11.2 Compliance

- (a) Norfolk Southern Railway shall comply and shall require all NSR Users to comply, and VPRA shall require all VPRA Users to comply, with any and all applicable provisions of the Federal Railroad Safety Act, the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other applicable federal and state and local Laws, regulations and rules respecting the operation, condition, inspection and safety of its Trains, locomotives, cars and Equipment while such Trains, locomotives, cars, and Equipment are being operated over the Purchased V-Line. VPRA shall require all VPRA Users to comply with any and all applicable provisions of the Federal Railroad Safety Act, the Federal Locomotive Inspection Act and the Federal Safety Appliance Act, as amended, and any other applicable federal and state and local Laws, regulations and rules respecting the operation, condition, inspection and safety of its Trains, locomotives, cars and Equipment while such Trains, locomotives, cars, and Equipment are being operated over the NSR ROW. Norfolk Southern Railway shall indemnify, protect, defend, and hold harmless VPRA and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, “**VPRA Indemnified Parties**”) from and against all fines, penalties and liabilities imposed upon VPRA Indemnified Parties under such Laws, rules, and regulations by any public authority or court having jurisdiction in the Purchased V-Line, when attributable solely to the failure of Norfolk Southern Railway to comply with its obligations set forth in this Section 11.2 (*Compliance*). VPRA will require VPRA Users other than Amtrak to indemnify, protect, defend, and hold harmless Norfolk Southern Railway from and against all fines, penalties and liabilities imposed upon Norfolk Southern Railway under such Laws, rules, and regulations by any public authority or court having jurisdiction in the Purchased V-Line, when attributable solely to the failure of such VPRA User to comply with its obligations set forth in this Section 11.2 (*Compliance*).
- (b) In its use of the Purchased V-Line, Norfolk Southern Railway shall comply in all respects with its own safety and general conduct rules, airbrake and train handling rules, and Hazardous Material instructions. In its use of the Purchased V-Line and the NSR ROW, VPRA shall require all VPRA Users to comply, in all respects with the safety and general conduct rules, airbrake and train handling rules, and Hazardous Material instructions of the VPRA User. While using the Purchased V-Line, Norfolk Southern Railway shall comply, and while using the Purchased V-Line and the NSR ROW, VPRA shall require all VPRA Users to comply with the applicable operating rules, timetables, equipment handling rules and special instructions of the applicable Dispatcher. The movement of Trains, locomotives, cars, and Equipment over the NSR ROW shall at all times be subject to the orders of the transportation officers of Norfolk Southern Railway, and the movement of

Trains, locomotives, cars, and Equipment over the Purchased V-Line shall at all times be subject to the orders of the Chief Operating Officer of VPRA, or such other Person as VPRA shall designate from time to time; provided, however, that such operating rules, timetables, and special instructions and orders of such transportation officers shall not unjustly discriminate between the Users, except that Intercity Passenger Rail Service shall be given dispatching preference on the Purchased V-Line and the Roanoke Easement Area. VPRA shall not make any rule or restriction applying to Trains of Norfolk Southern Railway that does not apply equally to all other Users' Trains. No User's Trains shall include locomotives, cars or Equipment which exceed the width, height, weight or other restrictions or capacities of the Purchased V-Line and the Roanoke Easement Area. Any issues related to this Article 11 (*Management and Operations*) may be raised for discussion at the Performance Management Committee in accordance with Article 19 (*Performance Managers Committee*) of this Agreement.

11.3 Removal of Employees

Norfolk Southern Railway (as to the NSR ROW) and VPRA (as to the Purchased V-Line) (in each case, the **"Respective Owner"**) shall have the right to exclude from its tracks any employee of Norfolk Southern Railway (as to the Purchased V-Line) or VPRA or a VPRA User (as to the NSR ROW) determined by the Respective Owner to be in violation of the Respective Owner's rules, regulations, orders, practices, or instructions promulgated in the normal course of business in writing by the Respective Owner in its timetable or otherwise, and provided in advance to the other Party. The decision to bar any employee(s) of Norfolk Southern Railway from VPRA's tracks will not be interpreted as a request for Norfolk Southern Railway to fire the individual(s). The decision to bar any employee(s) of VPRA or a VPRA User will not be interpreted as a request for VPRA or said VPRA User to fire the individual(s). Each Party shall be responsible with respect to its own employees for any Claims and expenses arising from a Respective Owner excluding such employee from its tracks.

11.4 Qualification of Crews

Procedures for qualification and occupancy of any portion of the Norfolk Southern Railway owned and/or controlled trackage shall be arranged by the local supervision of Norfolk Southern Railway. Procedures for qualification and occupancy of any portion of the Purchased V-Line shall be arranged by the local supervision of the Purchased V-Line. Procedures for qualification and occupancy shall be administered in a non-discriminatory manner.

11.5 Communications with Dispatcher

When operating over the Purchased V-Line, each of Norfolk Southern Railway's locomotives and crews shall be equipped to communicate with the Dispatcher on radio frequencies normally used by said Dispatcher in directing train movements on the Purchased V-Line. When operating over the NSR ROW, each VPRA User's locomotives and crews shall be equipped to communicate with the Roanoke Easement Area's dispatcher

on radio frequencies normally used by said dispatcher in directing train movements on the relevant section of NSR ROW.

11.6 PTC

- (a) Any future Positive Train Control or other automatic train control system installation on any and all portions of the Purchased V-Line shall be compatible with the Norfolk Southern Railway Positive Train Control or other automatic train control system as it then-exists, including any upgrades and modifications to the same.
- (b) During and after the Transition Period, and on a Fully-allocated Cost Basis, without profit mark-up, Norfolk Southern Railway will provide, at the option of VPRA in VPRA's sole discretion, Positive Train Control services on the portion of the Purchased V-Line so long as Norfolk Southern Railway is dispatching the Purchased V-Line.

11.7 Train Consist Information

In the event Norfolk Southern Railway is not the Dispatcher of the Purchased V-Line, Norfolk Southern Railway shall furnish to the Dispatcher customary train consist information via EDI transmission. This procedure shall be governed by AAR standard reporting procedures for trackage rights carriers.

Article 12

Purchased V-Line Improvements and Maintenance

12.1 Transition Period for the Purchased V-Line

- (a) The Parties acknowledge the need to provide for maintenance of the Purchased V-Line during a transition period which is the period of time between (i) the Closing Date and (ii) the commencement of Passenger Rail Service on the Purchased V-Line (the "**Transition Period**").
- (b) During the Transition Period, VPRA shall be responsible for the design, financing, and construction of the Salem-Christiansburg Improvements. VPRA shall provide to Norfolk Southern Railway preliminary plans for track and other rail facility additions, modifications, or betterments and a proposed schedule for the same ("**Description of SCI Work**") for its review and approval, not to be unreasonably withheld or delayed. During the Transition Period, Norfolk Southern Railway shall have sixty (60) days to review the Description of SCI Work, provide comments and propose any changes it reasonably deems necessary. Within sixty (60) days of receipt of Norfolk Southern Railway's comments, VPRA and Norfolk Southern Railway shall consult and work in good faith until the Parties agree on a final Description of SCI Work, including at the option of either Party through discussion at the Performance Management Committee in accordance with Article 19 (*Performance Managers Committee*). Norfolk Southern Railway's review of the Description of SCI Work shall focus on freight interoperability, operation and

maintenance, and ensuring that storage, overnight and other passenger train sustenance services are performed off the mainline so that Norfolk Southern Railway Trains using the Purchased V-Line are not unduly delayed.

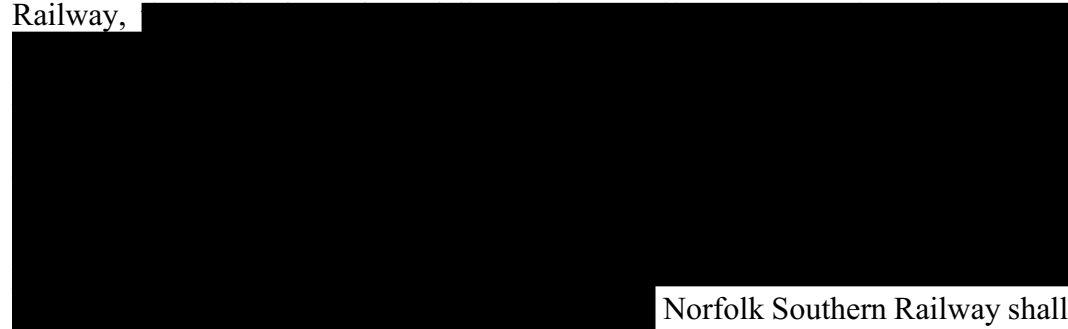
- (c) During the Transition Period, Norfolk Southern Railway shall perform Expense Maintenance and Capital Maintenance on the Purchased V-Line on a Fully-allocated Cost Basis, without profit mark-up. Norfolk Southern Railway shall submit Capital Maintenance plans to VPRA prior to September 15 of each year and any Capital Maintenance plan shall be approved annually in advance by VPRA, such approval not to be withheld or delayed if Norfolk Southern Railway reasonably demonstrates that such Capital Maintenance is required for Norfolk Southern Railway to be able to fulfill its freight common carrier obligations, or otherwise to ensure that the Purchased V-Line mainline tracks meet the requirements set forth in Section 12.1(d). VPRA shall have the option, in its sole discretion and at its sole cost, to contract with a third party to perform in lieu of Norfolk Southern Railway any Expense Maintenance and Capital Maintenance. The Parties shall endeavor to minimize Expense Maintenance and Capital Maintenance during the Transition Period. Norfolk Southern Railway shall submit Expense Maintenance budget estimates to VPRA for planning on a quarterly and annual basis, with the annual budget estimate provided prior to September 15 of each year.
- (d) Norfolk Southern Railway shall ensure that the Purchased V-Line meets the FRA track classification approved by VPRA prior to the end of the Transition Period and the handover of maintenance responsibilities to VPRA.

12.2 After the Transition Period

- (a) The provisions of this Section 12.2 (*After the Transition Period*) shall apply except as provided for in Section 12.1 (*Transition Period for the Purchased V-Line*).
- (b) As between the Parties, VPRA shall be responsible, at its sole cost, risk and expense, for the maintenance, repair and renewal of the Purchased V-Line, which may be performed either with its own supervision and labor or through that of a contractor. VPRA shall cause VPRA Users to hold harmless Norfolk Southern Railway for any such Claims. Responsibility for any Claims arising from either Party's performance or non-performance of maintenance activities after the Transition Period will be handled without regard to fault under the provisions of Article 22 (*Liability on the Purchased V-Line*) (as between Norfolk Southern Railway and any applicable Passenger Service Provider).
- (c) Norfolk Southern Railway shall have the right, but not the obligation, with its own forces or with those of a contractor, to provide for maintenance at its own cost on such sections of the Purchased V-Line as may be, in the reasonable judgment of Norfolk Southern Railway, reasonable or necessary for provision of the current or anticipated Freight Rail Service. VPRA shall promptly work with Norfolk Southern Railway to restore VPRA maintenance services over the Purchased V-

Line. Any such maintenance undertaken by Norfolk Southern Railway pursuant to this Agreement shall be without warranty that the Purchased V-Line or any portion thereof is suitable for the operation of passenger trains, including Intercity Passenger Rail Service; provided, however, that nothing in this Section 12.2(c) shall be interpreted to alter the liability allocation set forth in the NSR-Amtrak Liability Allocation Agreement. Norfolk Southern Railway shall not have the right to maintain the Passenger Exclusive Use Property. Responsibility for any Claims arising from Norfolk Southern Railway's performance or non-performance of maintenance undertaken pursuant to this Section 12.2(c) will be handled without regard to fault under the provisions of Article 22 (*Liability on the Purchased V-Line*).

- (d) VPRA (through its contractors, which may include NSR) shall keep and maintain the tracks and facilities within the Purchased V-Line at not less than the Level of Utility existing as of the Closing Date, including the speeds shown in Exhibit P (*Purchased V-Line Level of Utility*). In the event that VPRA fails to do so and such failure continues for sixty (60) days after written notice from Norfolk Southern Railway,



Norfolk Southern Railway shall have the right, but not the obligation, with its own forces or with those of a contractor, to provide for maintenance at its own cost on such sections of the Purchased V-Line as may be, in the reasonable judgment of Norfolk Southern Railway, reasonable or necessary for provision of the current or anticipated Freight Rail Service. The reasonable cost incurred by Norfolk Southern Railway in undertaking such work shall reduce, dollar for dollar, any trackage rights charges due from Norfolk Southern Railway in the calendar year in which the maintenance costs were incurred. VPRA shall promptly work with Norfolk Southern Railway to restore VPRA maintenance services over the Purchased V-Line. Any such maintenance undertaken by Norfolk Southern Railway pursuant to this Section 12.2(d) shall be without warranty that the Purchased V-Line or any portion thereof is suitable for the operation of passenger Trains, including Intercity Passenger Rail Service; provided, however, that nothing in this Section 12.2(d) shall be interpreted to alter the liability allocation set forth in the NSR-Amtrak Liability Allocation Agreement. VPRA shall cause all VPRA Users to indemnify and hold harmless the NSR Indemnified Parties for any Claims arising from Norfolk Southern Railway's performance or non-performance of maintenance undertaken pursuant to this Section 12.2(d). VPRA shall have no Claim against Norfolk Southern Railway arising from Norfolk Southern Railway's performance or non-performance of maintenance undertaken pursuant to this Section 12.2(d), provided that liability will be addressed in accordance with Article 22 (*Liability on the*

Purchased V-Line) and nothing in this Section 12.2(d) shall negate Article 22 (*Liability on the Purchased V-Line*).

Article 13

Additional Capital Improvements

13.1 Existing Connections

Existing connections or facilities on or connected to the Purchased V-Line segment that are jointly used by the Users hereto shall continue to be maintained, repaired by and at the expense of the party or parties responsible for such maintenance, repair and renewal under such agreements.

13.2 Right to Propose and Prosecute Future Capital Improvements

This Article 13 (*Additional Capital Improvements*) applies to Capital Improvements to either the Purchased V-Line or the NSR ROW that are in addition to the (i) Roanoke Easement Area Improvements, (ii) Salem-Christiansburg Improvements, (iii) and improvement undertaken as part of the Western Virginia Rail Initiative Grant.

- (a) Except as may be required to maintain a continuous route capable of handling at least the current weight and clearance capacity, including, where extra-dimensional (high/wide) loads can be currently operated, VPRA, from time to time and at its sole cost and expense, may make changes in, additions and betterments to or retirements from the Purchased V-Line as shall, in its judgment, be necessary or desirable for the economical or safe operation thereof or as shall be required by any Law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Purchased V-Line and such retirements shall be excluded from the Purchased V-Line. Financial responsibility for the on-going maintenance costs of any modifications and/or improvements made pursuant to this Section 13.2(a) shall be allocated to VPRA. VPRA shall have the right, with sixty (60) days advance notice and the provision of supporting materials detailing any reasonably anticipated negative impact to Norfolk Southern Railway or delay to Freight Rail Service arising therefrom, to prosecute future Capital Improvements on the Purchased V-Line.
- (b) Norfolk Southern Railway shall have the right to propose future Capital Improvements to the Purchased V-Line reasonable or necessary to serve new or existing customers. In such a case, Norfolk Southern Railway shall submit plans for track and other rail facility additions, modifications, or betterments and a proposed schedule for the same (“**Description of Future Work**”) to VPRA. VPRA shall have sixty (60) days to review the Description of Future Work, provide comments and propose any changes it reasonably deems necessary. The Parties shall work reasonably and in good faith, provided that VPRA shall be obligated to accept any proposal for Capital Improvements, but the design and construction thereof shall be subject to the procedures set forth in Article 26 (*Dispute Resolution*).

13.3 Responsibility for Performance of Work

All work associated with Capital Improvements undertaken pursuant to this Article 13 (*Additional Capital Improvements*) shall be the responsibility of Norfolk Southern Railway when the Capital Improvement is made on NSR ROW (excluding, for the avoidance of doubt, the Purchased V-Line). All work associated with Capital Improvements undertaken pursuant to this Article 13 (*Additional Capital Improvements*) shall be the responsibility of VPRA when the Capital Improvement is made on the Purchased V-Line, unless otherwise agreed by the Parties. However, either Party shall be entitled to freely subcontract any components of such work for which it is responsible under this Section 13.3 (*Responsibility for Performance of Work*).

13.4 Funding Responsibility for Capital Improvements

Unless the Parties otherwise agree to share costs, the upfront capital costs of any Capital Improvement undertaken pursuant to this Article 13 (*Additional Capital Improvements*) shall be borne by the Party proposing the Capital Improvement. Prior to placing any Capital Improvement into operations, the Parties shall collaborate in good faith to allocate financial responsibility for ongoing maintenance costs between the Parties in proportion to the anticipated maintenance needs arising from each Party's anticipated use of the corresponding Capital Improvement. However, whenever deemed appropriate by the Parties, they may adjust such responsibility for ongoing maintenance or agree to another basis by which to allocate ongoing maintenance costs for a particular Capital Improvement.

Article 14 Clearing of Wrecks

14.1 Clearing of Wrecks

Whenever Norfolk Southern Railway's use of the Purchased V-Line requires rerailling, wrecking service or wrecking train service, Norfolk Southern Railway shall be responsible to perform or provide such service, including the repair and restoration of roadbed, track, and structures so as to minimize the impact on VPRA and Norfolk Southern Railway operations, unless otherwise agreed to in writing between the Parties. The cost, liability, and expense of the foregoing, including without limitation any Damages, shall be apportioned in accordance with the provisions of Article 12 (*Purchased V-Line Improvements and Maintenance*) hereof. All locomotives, cars, and Equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by a VPRA User at the time of such wreck, shall be promptly delivered to the VPRA User.

Article 15 Catastrophic Events

15.1 Catastrophic Event

In the event that the respective portion of the Corridor owned by such Party (the "**Respective Portion**") of a Party (a "**Casualty Party**") is damaged or destroyed as a result

of a catastrophic event (including cyberattack, fire, earthquake, flood, tornado, hurricane, explosion, wreck (including derailment) act of terrorism or other casualty) (each a “**Catastrophic Event**”), the Casualty Party shall not have an obligation under this Agreement to restore its Respective Portion except to the extent of a failure to fulfill the Casualty Party’s obligation under Article 12 (*Purchased V-Line Improvements and Maintenance*). Notwithstanding the foregoing, within sixty (60) days of the occurrence of any such Catastrophic Event, the Casualty Party shall either (i) notify the other Party (the “**Non-Casualty Party**”) of its intent to restore the Respective Portion or (ii) notify the Non-Casualty Party of its intent to not restore the Respective Portion.

15.2 Non-Casualty Party Option

If the Casualty Party makes the notification in clause (ii) of Section 15.1 (*Catastrophic Event*), the Non-Casualty Party shall have the right (but not the obligation) to bear the cost and expense of restoration of the Respective Portion to a level it deems necessary for Freight Rail Service or Passenger Rail Service, as the case may be; provided that the terms and conditions for construction of such restored Respective Portion shall be determined in accordance with Article 13 (*Additional Capital Improvements*).

15.3

[REDACTED]

[REDACTED]

Article 16 Compensation and Payment of Bills

16.1 Trackage Rights Compensation

- (a) During the Term, Norfolk Southern Railway shall compensate VPRA monthly in arrears for any NSR User’s use of the Purchased V-Line by paying to VPRA a sum computed by multiplying (a) the Current Charge (Purchased V-Line), as hereinafter defined, by (b) the number of cars (loaded or empty) moved by an NSR User over the Purchased V-Line by (c) the miles of the Purchased V-Line over which the cars are moved by an NSR User.
- (b) VPRA shall compensate Norfolk Southern Railway monthly in arrears for each VPRA User’s use of the Roanoke Easement Area by paying to Norfolk Southern Railway, for a period of twenty (20) years, a sum computed by multiplying (a) the Current Charge (Roanoke Easement Area), as hereinafter defined, by (b) the number of Trains moved by a VPRA User over the Roanoke Easement Area by (c) the miles of the Roanoke Easement Area over which the Trains are moved by a

VPRA User; provided that payments for each Train moved by a VPRA User over the Roanoke Easement Area that are made by Amtrak to Norfolk Southern Railway pursuant to the NSR Off-Corridor Agreement as the host railroad shall be credited towards this VPRA payment to Norfolk Southern Railway; provided further that no less than six (6) months prior to the end of the twenty-year period, the Parties shall negotiate in good faith the Current Charge (Roanoke Easement Area), if any, that shall apply beyond such twenty-year period.

- (c) VPRA shall compensate Norfolk Southern Railway monthly in arrears for each VPRA User's use of the NSR ROW between Alexandria and Roanoke beyond the Amtrak service that existed at the Closing Date (each "**Additional VPRA User**") by paying to Norfolk Southern Railway, for a period of twenty (20) years, a sum computed by multiplying (a) the Current Charge (Alexandria-Roanoke Segment), as hereinafter defined, by (b) the number of Trains moved by an Additional VPRA User over the Alexandria Station to Roanoke Station segment (the "**Alexandria-Roanoke Segment**") by (c) the miles of the Alexandria-Roanoke Segment over which the Trains are moved by an Additional VPRA User; provided that payments for each Train moved by an Additional VPRA User over the Alexandria-Roanoke Segment that are made by Amtrak to Norfolk Southern Railway pursuant to the NSR Off-Corridor Agreement as the host railroad shall be credited towards this VPRA payment to Norfolk Southern Railway; provided further that no less than six (6) months prior to the end of the twenty-year period, the Parties shall negotiate in good faith the Current Charge (Alexandria-Roanoke Segment), if any, that shall apply beyond such twenty-year period. For the avoidance of doubt, there is no compensation pursuant to this agreement for the Amtrak service that existed at the Closing Date. For the avoidance of doubt, a reference to "each VPRA User's use of the NSR ROW between Alexandria and Roanoke beyond the Amtrak service that existed at the Closing Date" shall in no way be interpreted as implying that the Parties have agreed or discussed any service that might operate on the NSR ROW between Alexandria and Roanoke beyond the Baseline Second Frequency.

16.2 The Current Charges

The "**Current Charges**" shall be as follows:

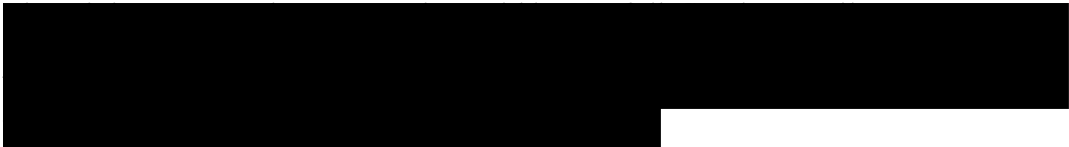
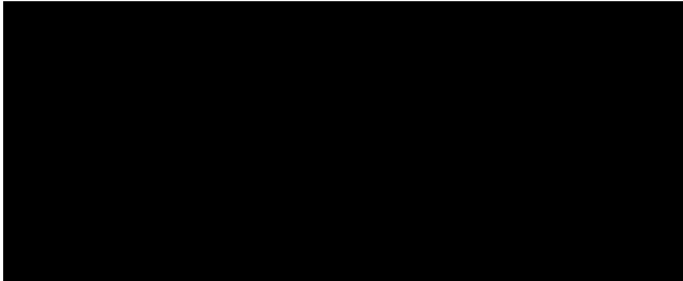
- (a) The "**Current Charge (Purchased V-Line)**" shall initially be set at 45/100 Dollars (\$0.45) per car mile. The Current Charge (Purchased V-Line) shall be subject to change to reflect any increase or decrease subsequent to the Execution Date in labor, material and other costs, as more fully set forth below in Section 16.2(d).
- (b) The "**Current Charge (Roanoke Easement Area)**" shall initially be set at Twenty-Four and 91/100 Dollars (\$24.91) per Train mile. The Current Charge (Roanoke Easement Area) shall be subject to change to reflect any increase or decrease subsequent to the Execution Date in labor, material and other costs, as more fully set forth below in Section 16.2(d).

- (c) The “**Current Charge (Alexandria-Roanoke Segment)**” shall initially be set at Twenty-Four and 91/100 Dollars (\$24.91) per Train mile. The Current Charge (Alexandria-Roanoke Segment) shall be subject to change to reflect any increase or decrease subsequent to the Execution Date in labor, material and other costs, as more fully set forth below in Section 16.2(d).
- (d) The Current Charges shall be revised and made effective July 1 of each year, beginning July 1, 2021, 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 Current Charges 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 Current Charge to be escalated. Notwithstanding the foregoing, under no circumstances shall the Current Charges be less than those set forth in Section 16.2(a), Section 16.2(b), and Section 16.2(c) above.

16.3 Car Counts

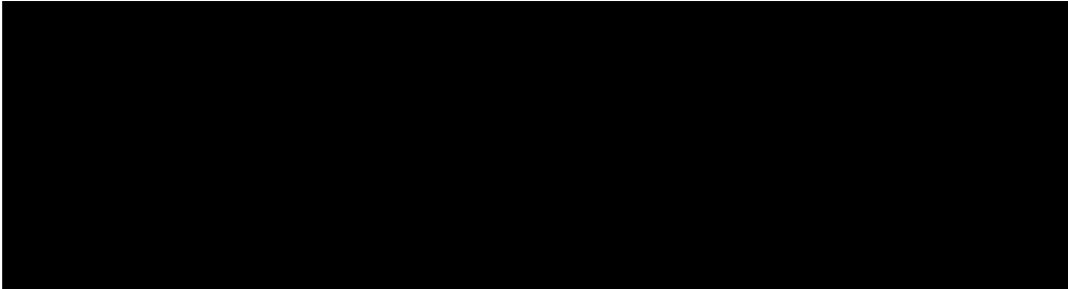
Norfolk Southern Railway shall furnish VPRA, in care of the Chief Operating Officer of VPRA, or such other person as VPRA shall designate in writing from time to time, by the fifteenth (15th) of each month, a statement of the number of loaded and empty cars that operated over the Purchased V-Line during the prior month. If possible, Norfolk Southern Railway will provide car counts by AAR Car Code to facilitate the administration of billing per this Agreement. VPRA shall render billing to Norfolk Southern Railway for Norfolk Southern Railway’s previous month’s use of the Purchased V-Line computed in accordance with the terms and conditions of this Agreement.

16.4

- (a) 




(b)



(c)



16.5 Payments

- (a) Bills rendered for charges other than those set forth in Section 16.1 (*Trackage Rights Compensation*) shall include direct labor and material costs, together with the surcharges, overhead percentages and equipment rentals as specified by VPRA at the time any work is performed by VPRA for Norfolk Southern Railway or by Norfolk Southern Railway at the time any work is performed by Norfolk Southern Railway for VPRA.
- (b) All payments called for under this Agreement shall be made within thirty (30) days after receipt of bills therefore. No such payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the Parties hereto shall be adjusted in the accounts of a subsequent month. The records of each Party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other Party for a period of three (3) years from the date of billing. The Parties acknowledge that a significant amount of the information contained in the records will be commercially sensitive and highly confidential information and will implement this Section 16.5(b) in a manner so as to best protect that information from public disclosure, subject to Section 30.12 (*FOIA*).
- (c) In the event the AAR or any successor organization discontinues publication of the Quarterly Indexes of Chargeout Prices and Wage Rates (1977=100), an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the Parties hereto.
- (d) All payments shall be made by wire transfer according to instructions supplied on the invoice.
- (e) In the event that a Party fails to pay an invoice within thirty (30) days, the paying Party shall also pay the other Party interest at the rate of one-half ($\frac{1}{2}$) of one percent

(1.0%) per month late charge on the delinquent sum until paid in full. Interest would begin accruing upon one-hundred twenty (120) days after due date of the specific invoice.

- (f) With respect to payments by VPRA, Norfolk Southern Railway shall provide reports as required based on the particular funding source for each project by the Federal Funding Accountability and Transparency Act for the Projects. Reimbursement to Norfolk Southern Railway shall also be subject to the guidance contained in 2 C.F.R. § 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB).

16.6 Audits and Record-keeping

- (a) The Parties shall establish and maintain accurate records, in accordance with U.S. generally accepted accounting principles, of all expenses incurred for which payment is sought or made under this Agreement (the “**Records**”). Separate records shall be established and maintained for all payments incurred under this Agreement.
- (b) Norfolk Southern Railway shall maintain the Records for at least three (3) years from the date of the final payment for that year made to VPRA under this Agreement. VPRA shall maintain the Records for at least three (3) years from the date of the final payment for that year made to Norfolk Southern Railway under this Agreement. In the event of a dispute with regard to the allowable expenses or any other issue under this Agreement, the Parties shall thereafter continue to maintain the Records at least until that dispute has been finally decided and the time for all available challenges or appeals of that decision has expired.
- (c) The Parties or their representatives may inspect, copy, or audit the Records at any reasonable time after giving reasonable notice during the three (3) year period specified in Section 16.6(b). The Parties acknowledge that a significant amount of the information contained in the Records will be commercially sensitive and highly confidential information, and will cooperate to implement this Section 16.6 (*Audits and Record-keeping*) in a manner so as to best protect that information from public disclosure.

Article 17 Mileage and Car Hire

17.1 Mileage and Car Hire

All mileage and car hire charges accruing on cars in Norfolk Southern Railway’s Trains on the Purchased V-Line shall be assumed by Norfolk Southern Railway and reported and paid by it directly to the owner of such cars.

Article 18

Bedford Station

18.1 Bedford Station

- (a) The Parties have separately undertaken a rail traffic capacity study to determine what rail infrastructure may be needed for the introduction of a new passenger station at the so-called “Merchants Site” in Bedford, Virginia, which study was performed by Norfolk Southern Railway at the expense of VPRA and in full cooperation with VPRA, with the goal of determining the additional infrastructure required in order to permit the addition of a Bedford passenger station without any degradation of freight rail and Amtrak passenger train fluidity for current and future services (twenty (20) year time horizon).
- (b) Norfolk Southern Railway currently owns a parcel of property reasonably necessary for the construction of the Bedford station at the Merchants Site, which parcel is identified in Exhibit M (*Proposed Site of Bedford Amtrak Station at Macon Street between MP 229 and 230*) hereto. The current delineations of that parcel include mainline property, which Norfolk Southern Railway will not sell to VPRA. If the Bedford station is to be constructed, Norfolk Southern Railway shall sell to VPRA the reasonably necessary portion of the real estate parcel (approximately 2.5 acres) for an amount to be agreed based on an independent appraisal performed by VPRA by an appraiser of VPRA’s choice, but performed pursuant to mutually-agreed-upon instructions.

Article 19

Performance Managers Committee

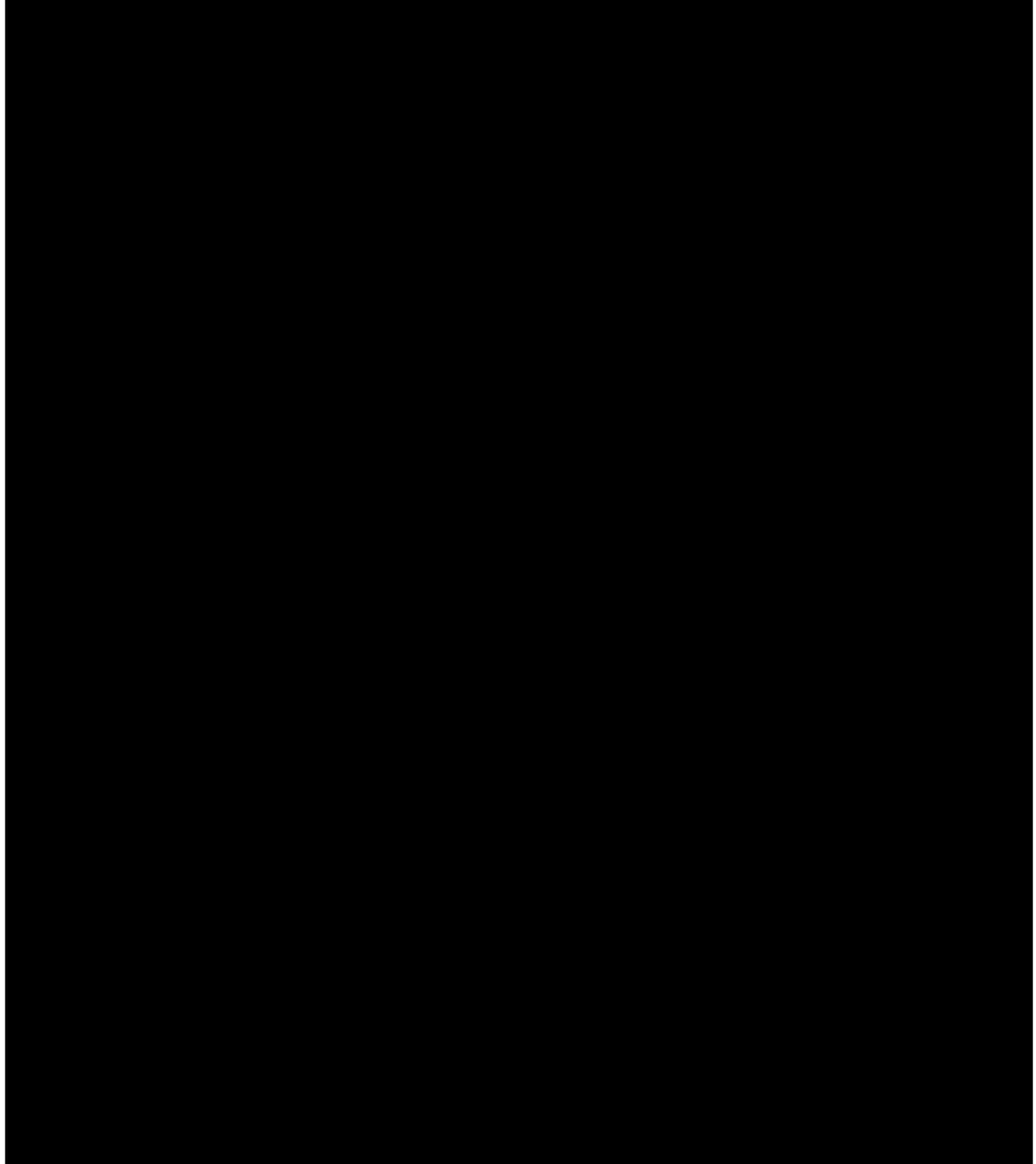
19.1 Performance Managers Committee

The Parties shall form a committee consisting of at least two (2) representatives of each Party (the “**Performance Managers Committee**”). Unless otherwise agreed, the Performance Managers Committee shall meet quarterly (in person or telephonically) and more often (i) when necessary to address issues between the Parties that require prompt resolution or (ii) when required pursuant to Section 8.2(h). The Performance Managers Committee shall be a forum for the Parties to share information, discuss matters submitted by one Party to the other Party for review and/or approval, and progress resolution of any issues between the Parties with respect to this Agreement. Without limiting the generality of the foregoing, either Party may raise in good faith any topic relevant to this Agreement and the other Party shall be obligated to consider such topic in good faith, provided, however, that neither Party shall be obligated by the Performance Management Committee to amend this Agreement other than upon mutual agreement of the Parties, or for Norfolk Southern Railway to agree to provide additional frequencies, permit modifications to existing infrastructure, or to permit the construction of new infrastructure on the NSR ROW, except as it may determine to do so in its sole discretion.

Article 20 Environmental

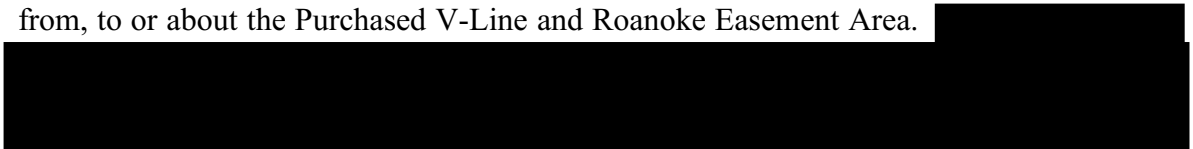
20.1

(a)



20.2 Claims Against Third Parties

The Parties reserve any and all rights that they may have against third parties under Law, including but not limited to the presence or release of Hazardous Materials in, on, under, from, to or about the Purchased V-Line and Roanoke Easement Area.





Article 21 Insurance

21.1 Insurance Requirement

Each Party shall provide and maintain throughout the Term insurance in the kinds and amounts specified herein. Such insurance may be obtained from one or more insurers: (i) licensed to transact insurance business in the Commonwealth of Virginia and (ii) with a current A.M. Best Rating of A:VII or better or a comparable successor rating.

21.2 Norfolk Southern Railway Liability – Losses/Claims arising from Operations on the Purchased V-Line

During the pendency of this Agreement, Norfolk Southern Railway undertakes to act and will continue to act as a self-insurer with respect to certain of its liabilities, if any, and will pay all sums which it will become legally obligated to pay in connection with this Agreement. VPRA shall be named as an additional insured on premises and liability policies acquired and maintained by Norfolk Southern Railway pertaining to the Corridor. In the event that Norfolk Southern Railway assigns this Agreement to any Person, firm, partnership or corporation that is not affiliated with Norfolk Southern Railway, then as a condition to the conduct of operations by such Person, firm, partnership or corporation on the Purchased V-Line, VPRA may require such entity to maintain during the remainder of the Term of this Agreement insurance having a limit of Thirty Million Dollars (\$30,000,000) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of One Million Dollars (\$1,000,000). To the extent and in the event mutually agreeable to VPRA and such other entity, the aforesaid limits and/or amounts of insurance required of such other entity may be changed from time to time during the Term of this Agreement. VPRA shall be named as an additional insured on any such policies maintained by such entity.

21.3 VPRA Obligations

- (a) VPRA shall not permit a VPRA User other than Amtrak to operate on the Purchased V-Line without said other VPRA User first entering into an agreement with Norfolk Southern Railway that provides the indemnification and insurance protections and remedies set forth in Exhibit N (*Liability Provisions Applicable to Future VPRA Users other than Amtrak*), unless waived by Norfolk Southern Railway in writing at the time, such waiver to be provided by Norfolk Southern Railway in its sole discretion.
- (b) VPRA shall cause its contractors (other than a VPRA User) performing construction or maintenance on the Purchased V-Line to indemnify, defend, and hold harmless Norfolk Southern Railway to the same extent VPRA itself is entitled to indemnity under its agreements with any such contractor. In addition, VPRA shall require that each contractor engaged by VPRA (other than a VPRA User) for

the performance of construction or maintenance services on the Purchased V-Line is adequately insured in accordance with the requirements outlined in Exhibit K (*Liability Insurance Requirements for VPRA Contractors*). VPRA shall require each contractor and operator to name VPRA and Norfolk Southern Railway as indemnitees under any contract let by VPRA. Further, VPRA shall obtain and maintain premises liability insurance with respect to the Purchased V-Line with combined limits of Fifteen Million Dollars (\$15,000,000) (per occurrence) and Thirty Million Dollars (\$30,000,000) (annual aggregate) and shall name Norfolk Southern Railway as an additional insured for any residual liability risk.

Article 22

Liability on the Purchased V-Line

22.1 Applicability of Article

This Article 22 (*Liability on the Purchased V-Line*) applies to the Purchased V-Line and does not apply to the NSR ROW. Nothing in this Article 22 (*Liability on the Purchased V-Line*) is intended to modify or supersede any Freight/Passenger Liability Provisions that exist in agreements between Norfolk Southern Railway and third parties. For the purposes of this Article 22 (*Liability on the Purchased V-Line*), the term “Norfolk Southern Railway” shall include the parent and any operating railroad subsidiary of Norfolk Southern Railway.

22.2 Norfolk Southern Railway Indemnity

- (a) Subject to Section 22.2(b) below, on and after the Closing Date, Norfolk Southern Railway agrees to protect, indemnify, defend, and hold harmless the VPRA Indemnified Parties against Claims arising on the Purchased V-Line, without regard to fault, as follows.
 - (i) Norfolk Southern Railway shall indemnify, defend, and hold harmless the VPRA Indemnified Parties, irrespective of any negligence or fault of the VPRA Indemnified Parties, their respective agents, employees or servants, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any NSR Agents or Employees, and for loss of, damage to or destruction of his or her property.
 - (ii) Norfolk Southern Railway shall indemnify, defend, and hold harmless the VPRA Indemnified Parties, irrespective of any negligence or fault of VPRA, its employees, agents, or servants, or howsoever the same shall occur or be caused, (a) from any and all liability for injury to or death of any Person or Persons (other than a Non-NSR Person) and (b) from any and all liability for loss, damage, or destruction to any property (other than Non-NSR Property) which arises from the operations of Trains conducted by or for the account of Norfolk Southern Railway pursuant to this Agreement.
 - (iii) Norfolk Southern Railway shall indemnify, defend, and hold harmless the VPRA Indemnified Parties, irrespective of any negligence or fault of

VPRA, its employees, agents, or servants, or howsoever the same shall occur or be caused, from any loss, damage, or destruction to VPRA-owned real property and rail assets (including without limitation, tracks, structures, and passenger facilities), which arises from the operations of Trains conducted by or for the account of Norfolk Southern Railway pursuant to this Agreement.

- (iv) Norfolk Southern Railway shall indemnify, defend, and hold harmless the VPRA Indemnified Parties, irrespective of any negligence or fault of VPRA, its employees, agents, or servants, or howsoever the same shall occur or be caused, for any liabilities against which Norfolk Southern Railway is obliged to indemnify a Passenger Rail Service Provider pursuant to any Freight/Passenger Liability Provisions applicable to the Purchased V-Line, including any agreement entered into between Norfolk Southern Railway and a VPRA User pursuant to Section 21.3(a).
- (v) Notwithstanding anything to the contrary contained herein, Norfolk Southern Railway's provision of maintenance, dispatch, and/or PTC services over the Purchased V-Line will not be considered when determining whether Norfolk Southern Railway has a duty to indemnify the VPRA Indemnified Parties under this Section 22.2(a). Rather, Norfolk Southern Railway's duty to indemnify the VPRA Indemnified Parties under this Section 22.2(a) in connection with any Claims or Damages shall be the same without regard to whether Norfolk Southern Railway was the provider of maintenance, dispatch, and/or PTC services over the Purchased V-Line in connection with the events giving rise to such Claims or Damages, or whether such services were provided by a third party.
- (b) Notwithstanding Section 22.2(a), above, Norfolk Southern Railway's duty to indemnify, defend, and hold harmless VPRA under this Section 22.2 (*Norfolk Southern Railway Indemnity*) for the Claims on the Purchased V-Line shall not include:
 - (i) any Claim or Damages, irrespective of any negligence or fault of Norfolk Southern Railway, its employees, agents, or servants or howsoever the same shall occur or be caused, which arises as a result of activities conducted by or for the account of VPRA or a VPRA User pursuant to this Agreement, except as provided in Section 22.2(a)(iv). For the avoidance of doubt Norfolk Southern Railway's performance of dispatch, maintenance, and PTC services neither expands nor contracts the categories of injuries/damages for which Norfolk Southern Railway indemnifies VPRA under this Section 22.2 (*Norfolk Southern Railway Indemnity*).
 - (ii) Norfolk Southern Railway property on which fuel oil has been spilled, which arises from activities conducted by or for the account of VPRA or a VPRA User pursuant to this Agreement;

- (iii) Coincidental NSR Employee Passengers; and
 - (iv) any Claim or loss with respect to NSR Agents and Employees, whose injury or loss is proximately caused as a result of (i) a collision of a vehicle or a Person with a Passenger Rail Train, or (ii) a collision of a derailed Passenger Rail Train or any part thereof with any Person, property, or object on or off the Corridor.
- (c) In case a suit asserting liability shall at any time be brought against Norfolk Southern Railway or any of Norfolk Southern Railway Indemnified Parties for which Section 22.2(b) applies, VPRA shall cooperate in good faith with Norfolk Southern Railway to require any third parties having a duty to defend and indemnify Norfolk Southern Railway for such liabilities (as described on Exhibit N (*Liability Provisions Applicable to Future VPRA Users other than Amtrak*)), to in fact defend and indemnify Norfolk Southern Railway for such liabilities.

22.3 Release of Hazardous Materials

In the event Norfolk Southern Railway's continued freight operations over the Purchased V-Line result in a Release of Hazardous Materials, Norfolk Southern Railway shall remediate or cause to be remediated such Release of Hazardous Materials to the extent required by Hazardous Materials Laws utilizing institutional and engineering controls to achieve an industrial/commercial level of remediation consistent with the use of the Purchased V-Line for railroad purposes, the initial cost for which shall be borne by Norfolk Southern Railway; provided, however, that Norfolk Southern Railway shall remain entitled to pursue any right or remedy to which it is entitled at law or equity against any Person, including VPRA, for the recovery of such cost, and Damages, if any, sustained by Norfolk Southern Railway, provided, further that if Norfolk Southern Railway is determined, by final judgement, after all appeals, to be at fault for the Release of Hazardous Materials, Norfolk Southern Railway shall indemnify, but not defend, the VPRA Indemnified Parties for the categories of loss or damage identified in Sections 22.2(a)(i), 22.2(a)(ii), and 22.2(a)(iii), proximately caused by the Release of Hazardous Materials.

22.4 VPRA User other than Amtrak

As a condition precedent to any VPRA User other than Amtrak providing the Passenger Rail Service, any such VPRA User shall enter into one or more direct agreements with Norfolk Southern Railway containing the indemnification and liability provisions set forth in Exhibit N (*Liability Provisions Applicable to Future VPRA Users other than Amtrak*), unless waived by Norfolk Southern Railway in writing at the time.

22.5 VPRA Liability Insurance

VPRA shall obtain and maintain liability insurance covering the Purchased V-Line and naming Norfolk Southern Railway as an additional insured, if and as required under Section 21.3 (*VPRA Obligations*).

Article 23

Employee Claims and Remedies

23.1 Employee Claims and Remedies

Each Party shall be responsible for any and all costs and payments, including benefits, allowances, and arbitration, administrative and litigation expenses, arising out of Claims or grievances made by or on behalf of its own employees or their collective bargaining representatives, either pursuant to employee protective conditions imposed by a Governmental Authority upon the agency's approval or exemption of this Agreement and operations hereunder or pursuant to a collective bargaining agreement, provided, however, that the Parties will share said costs as follows: (i) NSR will bear the first Fifty Thousand Dollars (\$50,000); (ii) VPRA will bear the next Fifty Thousand Dollars (\$50,000); (iii) the Parties will each bear fifty percent (50%) of additional costs, provided that VPRA's liability for such costs shall be capped at Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate; and provided further that Norfolk Southern shall engage in good faith efforts to avoid such costs and payments through offers of relocation to other locations. It is the Parties' intention that, other than as provided in the immediately-preceding sentence, each Party shall bear the full costs of protection of its own employees under employee protective conditions that may be imposed, and of grievances filed by its own employees arising under its collective bargaining agreements with its employees.

Article 24

Funding Partners

24.1 Funding Partners

The Parties agree to work cooperatively and creatively to reach agreements as may be required for VPRA to satisfy the requirements of any Funding Partner, including any necessary amendment to this Agreement. Notwithstanding the foregoing, nothing in this Agreement, expressed or implied, shall be construed as to commit Norfolk Southern Railway to agree to any service outcome in any agreement. Any increase in costs reasonably determined to be the direct result of satisfying the requirements of any Funding Partner providing funds shall be borne solely by VPRA, unless the funds involved are, or have the typical obligations associated with federal formula funds or Virginia general fund allocations, or would have resulted in the absence of such funding. By way of example and not limitation to the foregoing, if any projects Norfolk Southern Railway constructs with funding provided by the WVRI Grant Funds is more costly due to the use of funds from a Funding Partner contributing the funds through a CRISI Grant, that increase in cost shall be paid for by VPRA and such amounts shall not count against either the WVRI Grant Funds (including but not limited to the Roanoke Easement Area Improvement Residual) due to Norfolk Southern Railway.

Article 25

Assignment

25.1 Assignment

This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto including any Person, firm or corporation succeeding to the ownership of substantially all of the assets or business of Norfolk Southern Railway or into which Norfolk Southern Railway is merged or consolidated. Upon prior notice to Norfolk Southern Railway, VPRA may assign this Agreement to another agency of the Commonwealth or to an authority or commission authorized by the Virginia General Assembly or the Governor of Virginia to undertake VPRA's obligation and the activities contemplated by this Agreement. Norfolk Southern Railway expressly reserves the right to assign or delegate all or any part of Norfolk Southern Railway's rights and duties hereunder to one or more third parties, including without limitation a qualified intermediary as defined by Treasury Regulation Section 1.1031(k)1(g)(4), in connection with a tax deferred exchange pursuant to Section 1031 of the Internal Revenue Code (this last type of assignment being called a "**Intermediary Assignment**"), provided, however, that except for an Intermediary Assignment, any such assignment and/or delegation shall be subject to the consent of VPRA, such consent not to be withheld or delayed unreasonably, and provided further that for any such assignment pursuant to a sale of all or substantially all of the assets of Norfolk Southern Railway by conveyance or the operation of law, such consent shall not be required. Any other assignment, division, license, or transfer of its rights, interests or obligations hereunder to any other entity shall not result in more than one freight operator operating on any segment of the Purchased V-Line.

Article 26

Dispute Resolution

26.1 Generally

- (a) All Disputes arising out of or relating to this Agreement that are not otherwise resolved by the Parties, except as set forth in 4.6 (*Failure to Close*) of this Agreement, must be resolved in accordance with this Article 26 (*Dispute Resolution*).
- (b) Upon the occurrence of any Dispute that is not otherwise resolved by the Parties:
 - (i) the Parties must first use all reasonable efforts to resolve the Dispute through a Senior Representative Negotiation in accordance with Section 26.2 (*Senior Representative Negotiations*); and
 - (ii) if the Parties fail to achieve a resolution through a Senior Representative Negotiation, before either Party may institute legal action against the other in connection with the Dispute, the Parties must first attempt to resolve the Dispute by referring the matter to a Mediation in accordance with Section 26.3 (*Mediation*).

26.2 Senior Representative Negotiations

- (a) If either Party notifies the other Party of a Dispute, senior representatives of each Party (with authority to make decisions for the respective Parties) must meet and

use all reasonable efforts to resolve the Dispute (“**Senior Representative Negotiations**”).

- (b) The Senior Representative Negotiation must commence within seven (7) days of receipt of notification from a Party initiating a Dispute and will not exceed thirty (30) consecutive days (or such longer period agreed by the Parties).
- (c) Written statements, materials and information prepared for, made or presented at or during a Senior Representative Negotiation (including any meeting of the senior representatives) are deemed privileged and confidential (and shall be marked as such) and may not be used as evidence in any proceedings.
- (d) If the Senior Representative Negotiation resolves the Dispute, the Parties shall enter into a written agreement acknowledging such resolution.

26.3 Mediation

- (a) If the Parties are unable to come to a resolution through Senior Representative Negotiations, then the Parties may submit such Dispute to non-binding mediation proceedings (a “**Mediation**”). Mediation is intended to assist the Parties in resolving Disputes over the correct interpretation of this Agreement.
- (b) The mediator for any Mediation shall be selected by mutual agreement of the Parties or, if an agreement cannot be reached by the Parties within seven (7) Business Days of submission of the Dispute to Mediation, the mediator must be selected by the American Arbitration Association (“**AAA**”) in accordance with its Commercial Industry Mediation Rules and Procedures then in effect. Any mediator selected by mutual agreement of the Parties or through the AAA selection process must have no current or ongoing relationship with either Party (or an affiliate of either Party). The Parties agree that only one (1) mediator shall be selected as the AAA mediator.
- (c) Each Mediation must:
 - (i) be administered in accordance with AAA’s Commercial Industry Mediation Rules and Procedures then in effect;
 - (ii) be held in Richmond, Virginia, unless the Parties mutually agree, in writing, to the Mediation being held in a different location;
 - (iii) be concluded within thirty (30) days of the date of selection of the mediator, or within such other time period as may be agreed by the Parties (acting reasonably in regard to the nature of the Dispute).
- (d) The Parties shall share the mediator’s fee and any filing or administrative fees equally.

- (e) No mediator will be empowered to render a binding decision as to any Dispute. Any Mediation will be nonbinding.

26.4 Forum and Venue

Any and all Disputes arising out of this Agreement, or any performances made hereunder that are not otherwise resolved through Senior Representative Negotiations or Mediation, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia or the United States District Court for the Eastern District of Virginia, Richmond Division. Norfolk Southern Railway does not waive any rights it may have to remove any such Dispute from the Circuit Court of the City of Richmond, Virginia to the United States District Court for the Eastern District of Virginia, Richmond Division.

Article 27

Abandonment; Force Majeure

27.1 Abandonment

Norfolk Southern Railway shall have, in its sole and absolute discretion, the right to continue to have current use, or future use, of Purchased V-Line or any portion thereof. Norfolk Southern Railway shall have, in its sole and absolute discretion but, subject to securing any necessary regulatory approval, the right to formally discontinue, pursuant to federal law, its use of the Purchased V-Line or any portion thereof. In the event that Norfolk Southern Railway seeks any regulatory approval (or, as may be applicable in Norfolk Southern Railway's sole and absolute discretion, exemption from the need to obtain said regulatory approval) for the discontinuance of its use of the Purchased V-Line or any portion thereof, VPRA agrees (1) not to oppose such discontinuance and (2) to provide reasonable cooperation in order to effectuate the same; provided that Norfolk Southern Railway will give VPRA one hundred eighty (180) days' notice of its intention to seek authority to discontinue its use of the Purchased V-Line (or any portion thereof) and within one hundred fifty (150) days of such notice, VPRA designates a successor rail carrier. Should VPRA choose to designate a successor rail carrier, VPRA shall, as a condition of such designation, (a) waive any Claims against Norfolk Southern Railway arising out of the designation, including any Claims arising from the potential adverse effect that the operations of such successor (including as to any adverse effect such operations would have on the Passenger Rail Service operating over the Purchased V-Line and the NSR ROW), (b) cause such successor to indemnify and hold harmless Norfolk Southern Railway from any Claims arising from operations of such successor (including as to any adverse effect such operations would have on the Passenger Rail Service operating over the Purchased V-Line and the NSR ROW), (c) cause such successor to provide reasonable insurance to back up (but not limit) such indemnity, (d) cause such successor or other entity (but not including Norfolk Southern Railway) to pay to Norfolk Southern Railway or reimburse Norfolk Southern Railway for all costs and expenses incurred by Norfolk Southern Railway reasonably related to establishment of operations of such successor (including such costs and expenses for the establishment of interchange between Norfolk Southern Railway and such successor), and for any infrastructure

improvements necessary to address any current or reasonably anticipated impairment to Freight Rail Service that such establishment of interchange shall create). In the event that VPRA makes such designation, and such designation and conditions underlying said designation are reasonably determined to be enforceable, Norfolk Southern Railway shall transfer its Freight Easement to such designee for Ten Dollars (\$10). Should Norfolk Southern Railway obtain any approval for abandonment (or, as the case may be, exemption from said approval), Norfolk Southern Railway shall have the sole and absolute discretion to exercise any approval (or, as the case may be, exemption from said approval) so received. VPRA shall not seek any such discontinuance or abandonment (or, as the case may be, exemption from approval therefor) adverse to the rights of Norfolk Southern Railway. If Norfolk Southern Railway elects to discontinue the Freight Easement and VPRA or a party designated by VPRA files an offer of financial assistance under 49 U.S.C. §10904, Norfolk Southern Railway shall agree to negotiate with VPRA or VPRA's designee and to convey the Freight Easement to VPRA or VPRA's designee pursuant to the same conditions set forth in this Section 27.1 (*Abandonment*) (and specifically provisions (a) through (d) above, inclusive); provided, that VPRA agrees to pay Norfolk Southern Railway an amount equal to the highest amount offered by another financially responsible party, or One Dollar (\$1.00), whichever is greater.

27.2 Force Majeure

VPRA shall not be responsible to Norfolk Southern Railway, and Norfolk Southern Railway shall not be responsible to VPRA, for delays or failure to perform under this Agreement if such delays or failure to perform are covered by circumstances beyond its control, including, but not limited to, acts of God, pandemics, floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions, acts of public enemy, war, blockade, insurrection, actual or threatened acts of terrorism, vandalism or sabotage, fire, accident, wreck, derailment, washout or explosion, strike, lockout or labor disputes experienced by the Parties hereto, embargoes or AAR service orders, FRA orders, or other Laws.

Article 28 Term, Default and Remedies

28.1 Term

This Agreement shall become effective as of the Execution Date and, unless earlier terminated in accordance with the terms of Section 4.4 (*Termination Prior to Closing*), shall remain in full force and effect for a period of ninety-nine (99) years from the Closing Date (the “**Initial Term**”), provided that the Initial Term shall be automatically extended and the Agreement shall remain in effect after the Initial Term unless either Party elects to terminate the Agreement following the end of the Initial Term by providing six (6) months prior written notice of such termination (together with the Initial Term, the “**Term**”).

28.2 NSR Defaults

Following the Closing Date, the occurrence of any one or more of the following events during the Term will constitute a “**NSR Default**” pursuant to this Agreement:

- (a) Norfolk Southern Railway fails to comply with, perform or observe any other material obligation, covenant, agreement, term or condition in this Agreement, which failure materially and adversely affects VPRA’s rights or obligations under this Agreement, and such failure continues without cure for a period of sixty (60) days following the date VPRA delivers to Norfolk Southern Railway written notice thereof (giving particulars of the failure in reasonable detail); provided, that, if such failure arises out of construction related obligations and if Norfolk Southern Railway is attempting to cure such failure, the foregoing cure period shall be extended for an additional ninety (90) days (for a total of one hundred fifty (150) days), but only for so long as Norfolk Southern Railway is attempting to cure such failure; and provided further that this Section 28.2(a) shall not apply to events covered by other provisions in this Section 28.2 (*NSR Defaults*);
- (b) Norfolk Southern Railway fails to pay to VPRA when due any undisputed amount payable to VPRA pursuant to this Agreement, and such failure continues without cure for a period of sixty (60) days following the date VPRA delivers to Norfolk Southern Railway written notice thereof;
- (c) In the event that Norfolk Southern Railway (i) fails to achieve final completion of the Roanoke Easement Area Improvements prior to the REA Long Stop Date, and (ii) Norfolk Southern also fails, prior to the REA Long Stop Date, to provide alternative priority access through the Roanoke Easement Area such that full Passenger Rail Service commences without additional travel time through the Roanoke Easement Area (and without other material adverse impact to Passenger Rail Service through the Roanoke Easement Area), provided that such provision of alternative priority access through Roanoke Easement Area pursuant to this Section 28.2(c) shall have no effect on the ability of Norfolk Southern Railway to complete the Roanoke Easement Area Improvements (subject to the cure rights in Section 28.2(a)), the obligation of VPRA to reimburse Norfolk Southern Railway for the costs of the Roanoke Easement Area Improvements, or the requirement of VPRA to pay to Norfolk Southern Railway the Roanoke Easement Area Improvement Residual;
- (d) Norfolk Southern Railway (i) admits, in writing, that it is unable to pay its debts as they become due, (ii) makes an assignment for the benefit of its creditors, (iii) files a voluntary petition under Subchapter IV (Railroad Reorganization) of Title 11 of the U.S. Code, or files any other petition or answer seeking, consenting to or acquiescing in any reorganization, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any similar Law, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Norfolk Southern Railway, or of all or any substantial part of its properties (so long as such person continues to have obligations hereunder); and

- (e) within ninety (90) days after the commencement of any proceeding against Norfolk Southern Railway seeking any reorganization, liquidation, dissolution or similar relief under the present or any future U.S. bankruptcy code or any similar Law, such proceeding has not been dismissed, or, within ninety (90) days after the appointment, without the consent or acquiescence of Norfolk Southern Railway, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Norfolk Southern Railway or of all or any substantial part of its properties, such appointment has not been vacated or stayed on appeal or otherwise, or, within sixty (60) days after the expiration of any such stay, such appointment has not been vacated.

If VPRA provides notice to Norfolk Southern Railway of a condition or failure that could, with the passage of time and a failure of Norfolk Southern Railway to cure, become an Event of Default pursuant to Sections 28.2(a) or 28.2(b), or 28.2(c), the Parties shall meet and confer within thirty (30) days of such notice to discuss how and when such condition or failure may be cured, provided that the failure to meet and confer shall not toll the applicable cure period or otherwise limit any rights or remedies that VPRA may have hereunder.

28.3 VPRA Defaults

Following the Closing Date, the occurrence of any one or more of the following events during the Term will constitute a “**VPRA Default**” pursuant to this Agreement:

- (a) VPRA fails to comply with, perform or observe any other material obligation, covenant, agreement, term or condition in this Agreement, which failure materially and adversely affects Norfolk Southern Railway’s rights or obligations under this Agreement, and such failure continues without cure for a period of sixty (60) days following the date Norfolk Southern Railway delivers to VPRA written notice thereof (giving particulars of the failure in reasonable detail); provided that this Section 28.3(a) shall not apply to events covered by other provisions in this Section 28.3 (*VPRA Defaults*);
- (b) Subject to Section 30.25 (*Availability of Funds for VPRA’s Performance*), VPRA fails to pay to Norfolk Southern Railway when due any undisputed amount payable to VPRA pursuant to this Agreement, and such failure continues without cure for a period of sixty (60) days following the date Norfolk Southern Railway delivers to VPRA written notice thereof; and

If Norfolk Southern Railway provides notice to VPRA of a condition or failure that could, with the passage of time and a failure of VPRA to cure, become an Event of Default pursuant to Sections 28.3(a) or 28.3(b), the Parties shall meet and confer within thirty (30) days of such notice to discuss how and when such condition or failure may be cured, provided that the failure to meet and confer shall not toll the applicable cure period or otherwise limit any rights or remedies that Norfolk Southern Railway may have hereunder.

28.4 Remedies Upon Default

- (a) Upon the occurrence of an Event of Default, the Parties shall cause the Event of Default that is the subject of a Dispute to be subject to the procedures set forth in Article 26 (*Dispute Resolution*), and, to the extent not resolved thereunder, the other Party may, at its option and in its discretion:
 - (i) exercise any rights it has under this Agreement;
 - (ii) proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by the Defaulting Party of the applicable provisions of this Agreement and/or to recover Damages, and/or to seek other remedies; and/or
 - (iii) cure the Event of Default by making any such payment or performing any such obligation, as applicable, at the Defaulting Party's sole expense, without waiving or releasing the Defaulting Party from any obligation.
- (b) In addition to the remedies specified in Section 28.4(a), upon the occurrence of a NSR Default occurring or continuing after VPRA has provided at least Fifty Million Dollars (\$50,000,000) through the WVRI Grant Funds installment payment, VPRA may, at its option and in its discretion, without being required to cause the NSR Default that is the subject of a dispute to be subject to the procedures set forth in Article 26 (*Dispute Resolution*), withhold WVRI Grant Funds installment payments due under this Agreement until such time as such NSR Default is cured; provided that upon the curing of such NSR Default, VPRA shall pay to Norfolk Southern Railway within thirty (30) days of such cure any WVRI Grant Funds that have been withheld pursuant to this 28.4(b); provided further that the Disbursement Period shall be extended day for day for the period during which such funds were withheld by VPRA.

28.5 Cumulative Rights and Remedies

The rights and remedies described in this Article 28 (*Term, Default and Remedies*) are and shall be deemed to be cumulative and the exercise of any of them shall not be deemed to be an election excluding the exercise at any time of a different remedy, subject to the limitations set forth in the first sentence of this Article 28 (*Term, Default and Remedies*).

28.6 No Waiver of Remedies

Any waiver by either Party of any Event of Default under this Agreement or any delay of either Party in enforcing any remedy set forth herein shall not constitute a waiver of the right to pursue any remedy at a later date, nor shall any such waiver in any way affect either Party's right to enforce the Agreement.

28.7 Survival

- (a) Expiration or early termination of this Agreement shall not relieve or release either Party hereto from any obligations assumed or from any liability which may have

arisen or been incurred by such Party under the terms of this Agreement and prior to expiration thereof.

- (b) Expiration or early termination of this Agreement shall have no effect on the underlying right to perform Freight Rail Service, which shall continue until terminated pursuant to Law. Should this Agreement expire or terminate prior to the termination of the underlying right to perform Freight Rail Service, such Freight Rail Service shall continue under terms and conditions agreed to by the Parties or prescribed therefor pursuant to Law.
- (c) For the avoidance of doubt, the grants of the easements and the conveyances of the Purchased V-Line at the Closing are intended to be final and irrevocable, such that the early termination or expiration of this Agreement after the Closing shall not affect or undo in any way the grants and conveyances consummated at the Closing.
- (d) The following provisions shall survive expiration of this Agreement:
 - (i) Section 9.5 (*Audit*);
 - (ii) Section 9.6 (*Consequence of Early Termination*);
 - (iii) Section 9.7 (*Compliance with Law*);
 - (iv) Section 10.2(b);
 - (v) Section 10.3 (*Documentation of Costs and Audit Rights*);
 - (vi) Section 10.4 (*Repayment*);
 - (vii) Section 10.6 (*Compliance with Law*);
 - (viii) Section 10.7 (*Indemnification*);
 - (ix) Section 16.6 (*Audits and Record-keeping*);
 - (x) Article 29 (*Notices*);
 - (xi) Article 30 (*Miscellaneous*); and
 - (xii) Exhibit A (*Definitions*).

Article 29

Notices

29.1 Notices

- (a) Notice under this Agreement shall be in writing and sent by registered or certified mail, return receipt requested, or by courier, express or overnight delivery, and by confirmed e-mail.

- (b) The date such notice shall be deemed to have been given shall be the Business Day of receipt if received during business hours, the first Business Day after the Business Day of receipt if received after business hours on the preceding Business Day, the first Business Day after the date sent by courier, express or overnight (“next day delivery”) service, or the third Business Day after the date of the postmark on the envelope if mailed, whichever occurs first.

If to Norfolk Southern Railway:

Norfolk Southern Railway Company
Director -Real Estate
650 W. Peachtree Street, NW
Atlanta, GA 30308
Attn: Kristi D. Blair

With a Copy to:
Norfolk Southern Railway Company
General Attorney -Real Estate
650 W. Peachtree Street, NW
Atlanta, GA 30308
Attn: Ryan Hankins

With a Copy to:
Norfolk Southern Railway Company
c/o Norfolk Southern Corporation
Attn: Senior Director Interline Services
650 W. Peachtree Street, NW
Atlanta, GA 30308

If to VPRA:

Virginia Passenger Rail Authority
600 E. Main St.
21st Floor, Suite 2125
Richmond, VA 23219
Attn: Executive Director
E-mail: dj.stadtler@vpra.virginia.gov

With a Copy to:
Virginia Passenger Rail Authority
600 E. Main St.
21st Floor, Suite 2125
Richmond, VA 23219
Attn: General Counsel
E-mail: michael.westermann@vpra.virginia.gov
Phone 804-241-5881

With a Copy to:
Virginia Passenger Rail Authority
600 E. Main St.
21st Floor, Suite 2125
Richmond, VA 23219
Attn: Chief Operating Officer
Email: michael.mclaughlin@vpra.virginia.gov

Article 30 Miscellaneous

30.1 Disadvantaged Business Enterprises

In any subcontract related to activities under this Agreement, each Party agrees to include appropriate provisions regarding the utilization of Disadvantaged Business Enterprises as required in Title 49 Part 26 of the Code of Federal Regulations.

30.2 Unauthorized Aliens

Norfolk Southern Railway certifies that it does not, and that it and its contractors shall not, during the performance of this Agreement knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (“**Act**”). Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.

30.3 Discrimination in Employment

Each Party acknowledges and agrees that is an equal employment employer and that it will not discriminate against any of their respective employees or applicants for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment.

30.4 Drug-free Workplace

During the term of this Agreement, Norfolk Southern Railway agrees to provide a drugfree workplace for its employees and subcontractors. Any subcontract subject to 49 C.F.R. Part 219 will be required to ensure maintenance of a drug-free workplace to qualify as a subcontractor. For the purposes of this Section 30.4 (*Drug-free Workplace*), “drug-free workplace” means a site for the performance of work done in connection with a specific contract awarded to a contractor or subcontractor in accordance with the Virginia Public Procurement Act, §§ 2.2-4300 et seq. of the Code of Virginia (1950), as amended, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance listed in the Federal Controlled Substances Act (Title 21 US Code) to include schedule I drugs and any schedule II through V drugs without a valid prescription.

30.5 No Liability of Directors

No Party shall hold or attempt to hold any director, officer, member, manager, agent, or employee of any other Party acting within the scope of their employment personally liable for a breach of this Agreement or an Event of Default.

30.6 Brokerage Commission

VPRA and Norfolk Southern Railway each represent that no real estate or investment bank commissions are due and owing to any party with respect to the Transaction contemplated by this Agreement. To the extent that any third-party broker or agent shall assert a Claim for any such commission, then the party against which such a Claim is asserted shall fully assume and discharge any alleged Claims or liability.

30.7 Benefit

This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right of any third party to recover by way of Damages or otherwise against either of the Parties hereto.

30.8 Interpretation

All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition or meaning of such words, terms and phrases in the railroad industry.

30.9 Headings

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

30.10 Reference to Trains, locomotives, cars or Equipment

As used in this Agreement, whenever reference is made to the Trains, locomotives, cars or Equipment of one of the Parties or Users, such expression means the Trains, locomotives, cars and Equipment in the possession of or operated by one of the Parties and Users and includes such Trains, locomotives, cars and Equipment which are owned by, leased to, or in the account of such Party or User. Whenever such locomotives, cars or Equipment are owned or leased by one Party or User and are in the possession or account of another Party or User, such locomotives, cars, and Equipment shall be considered those of the other Party or User.

30.11 Drafter

This Agreement is the result of mutual negotiations of the Parties hereto, neither of whom shall be considered the drafter for purposes of contract construction.

30.12 VFOIA

Norfolk Southern Railway acknowledges that information provided by Norfolk Southern Railway to VPRA is subject to public inspection in accordance with the Virginia Freedom of Information Act (“**VFOIA**”). If Norfolk Southern Railway believes any such information qualifies for an exemption from disclosure under VFOIA, Norfolk Southern Railway may designate the information as subject to a VFOIA exemption claim prior to, or upon or after submission of, the information to VPRA, or upon notice from VPRA that the undesignated information provided (“**Designated Information**”). Upon receipt of a request for disclosure of proprietary or Designated Information pursuant to the VFOIA, VPRA shall provide prompt written notice to Norfolk Southern Railway of the request. The Parties shall review the request to determine whether the requested information qualifies for VFOIA exemption and whether action to oppose disclosure of the information is warranted. Nothing in this Section 30.12 (*VFOIA*), however, shall be construed to prevent VPRA from complying with the VFOIA, including performing its own analysis of the applicability of VFOIA exemptions and timely responding to any VFOIA requests it receives.

30.13 Illegality

The Parties agree that if any part, term or provision of this Agreement is held to be illegal or in conflict with any Law, such provision shall be severable, with the remaining provisions remaining valid and enforceable.

30.14 Compliance with Law

Each Party shall be responsible for compliance with any applicable Laws that arise for the rights and obligations found in this Agreement. Subject to the foregoing, to the extent permitted by Law, and as to any VPRA User operations, VPRA may delegate responsibility for the same by requiring any VPRA User to be responsible for compliance with any such Laws or regulations to said VPRA User.

30.15 Procurement

The Parties acknowledge that Commonwealth procurement professionals are subject to §2.2-4367 et seq. of the Code of Virginia: Ethics in Public Contracting and State and Local Government Conflict of Interests Act (§2.2-3100 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.) and Articles 2 (§18.2-438 et seq.) and 3 (§18.2-446 et seq.) of Chapter 10 of Title 18.2.

30.16 Governing Law

This Agreement shall be construed and interpreted under the laws of the United States of America and the Commonwealth of Virginia.

30.17 Remedies Cumulative

Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon the Parties hereto shall be cumulative and in addition to all other rights, powers and remedies hereunder and those available at Law or in equity. All such rights, powers and remedies may be exercised separately or at once, and no exercise of any right, power or remedy shall be construed to be an election of remedies or shall preclude the future exercise of any or all other rights, powers and remedies granted hereunder or available at law or in equity, except as expressly provided herein.

30.18 No Waiver

Except as otherwise expressly provided herein, neither the failure of either Party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof.

30.19 Condemnation

No provision of this Agreement, including but not limited to the provisions of Section 5.2 (*Passenger Easement over the Roanoke Easement Area*) and Section 5.3 (*Conveyance of Purchased V-Line*), shall be construed to limit or expand the power of eminent domain vested in VPRA by Law.

30.20 Entire Agreement

This Agreement (including all exhibits, which are to be considered a part of the Agreement) contains the entire agreement of the Parties hereto with respect to the Transaction, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein or incorporated herein by reference shall be of any force or effect. Any previous agreements or understandings among the Parties regarding the subject matter hereof are merged into and superseded by this Agreement.

30.21 Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective personal representatives, successors and assigns.

30.22 Amendments

No amendment to this Agreement shall be binding on any of the Parties hereto unless such amendment is in writing and is executed by the Party against whom enforcement of such amendment is sought.

30.23 Counterparts

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

30.24 Severability

If any term, covenant or provision of this Agreement, or the application thereof to any person or circumstance, shall ever be held to be illegal, invalid or unenforceable, then, in such event, the remainder of this Agreement or the application of such terms, covenants and provisions hereof shall nevertheless remain in full force and effect.

30.25 Availability of Funds for VPRA's Performance

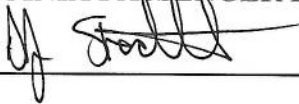
- (a) The obligation of VPRA to make payment of amounts due and owing by VPRA pursuant to, and accruing from, this Agreement shall be subject to and dependent upon appropriation being made from time to time by the General Assembly and allocation by the Commonwealth Transportation Board. Any failure to appropriate funds by the General Assembly or to allocate funds by the Commonwealth Transportation board will not constitute a VPRA Default under this Agreement, provided that, in the event that any such failure results in a failure of VPRA to make payments due to Norfolk Southern Railway hereunder, VPRA staff responsible for the management of this Agreement shall take reasonable steps (i) to identify and utilize other lawful funds that may be available to VPRA for payment to Norfolk Southern Railway, to the extent permitted by Law, and (ii) to obtain an appropriation or allocation in the full amount required under this Agreement, including through the resubmission of budget requests that are sufficient to cover VPRA's payment obligations.
- (b) If prior to the tenth (10th) anniversary of the Closing Date, VPRA fails to make any material payment when it is due under this Agreement because of a failure of the General Assembly to appropriate funds or the Commonwealth Transportation Board to allocate funds, after written notice of such failure is delivered from Norfolk Southern Railway to VPRA and after the applicable Non-Appropriation Cure Period ends, then, as Norfolk Southern Railway's sole remedy for such failure, VPRA shall elect one of the following options in VPRA's sole and absolute discretion:
 - (i) VPRA shall pay to Norfolk Southern Railway within ninety (90) days an amount equal to the Non-Appropriation Compensation Amount; or
 - (ii) VPRA shall deliver to Amtrak within thirty (30) days written notice under Section 1.(b) (or similar successor provision) of the Virginia-Supported Services Agreement directing Amtrak to remove the Second Baseline Frequency or Second Extended Frequency, as applicable, from the Passenger Rail Service until VPRA catches up all undisputed payments under this Agreement, together with interest accruing from the date the undisputed payments were due at the rate of one-half (½) of one percent (1.0%) per month late charge on the delinquent sum until paid in full. Service suspended under this Section 30.25(b)(ii) shall not be reinstated no earlier than sixty (60) days following payment of all amounts due under this Section 30.25(b)(ii).

- (c) VPRA's payment of the Non-Appropriation Compensation Amount shall satisfy and extinguish (i) VPRA's duty to pay the WVRI Grant Funds to Norfolk Southern Railway under this Agreement, and (ii) VPRA's duty to pay to Norfolk Southern Railway trackage rights compensation pursuant to Section 16.1 (*Trackage Rights Compensation*) through the tenth (10th) anniversary of the Closing Date.
- (d) The portion of the Non-Appropriation Compensation Amount attributable to WVRI Grant Funds shall be considered WVRI Grant Funds and shall be subject to the same conditions as such funds under this Agreement.
- (e) The portion of a Non-Appropriation Compensation Amount attributable to trackage rights compensation pursuant to Section 16.1 (*Trackage Rights Compensation*) will be adjusted (up or down) by the Parties within sixty (60) days after each anniversary of the Closing Date based on actual Trains moved by VPRA Users during the twelve-month period ending on such anniversary; if VPRA overpaid it will be due a corresponding payment from Norfolk Southern Railway and if VPRA underpaid it will make a supplemental payment to Norfolk Southern Railway for the difference.
- (f) VPRA shall have no duty to pay the Non-Appropriation Compensation Amount arising from a failure of the General Assembly to appropriate funds or the Commonwealth Transportation Board to allocate funds that occurs after the tenth (10th) anniversary of the Closing Date. For clarity, any Non-Appropriation Compensation Amount is subject to appropriation by the General Assembly and, to the extent required by Law, allocation by the Commonwealth Transportation Board.

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EXECUTED by VPRA as of the date first written above.

VIRGINIA PASSENGER RAIL AUTHORITY

By:  _____

Name: Donald A. Stadtler, Jr.

Title: Executive Director

EXECUTED by Norfolk Southern Railway as of the date first written above.

NORFOLK SOUTHERN RAILWAY COMPANY

By: Alan H. Shaw

Name: Alan H. Shaw

Title: President of Norfolk Southern Corporation

EXHIBIT A

Definitions

“**AAA**” shall have the meaning ascribed thereto in Section 26.3(b).

“**AAR**” shall mean the Association of American Railroads.

“**AAR Car Code**” shall mean the combination of one letter and three numbers used to describe the category of a rail car. The first letter of the code identifies the major category of the railcar while the following three numbers identify more specific characteristics about the railcar such as dimension, roof type, door type, capacity, etc.

“**Act**” shall have the meaning ascribed thereto in Section 30.2 (*Unauthorized Aliens*).

“**AAR Railroad Cost Indexes**” shall have the meaning ascribed thereto in the AAR official website: <https://www.aar.org/rail-cost-indexes/> or similar AAR official publication.

“**Actual Run Time**” means, with respect to any particular passenger station, the total number of actual minutes elapsed for (i) a northbound Passenger Service Train to travel from the Southern-Most Station to such particular passenger station (with the passenger station at Alexandria, Virginia being the last-measured passenger station), and (ii) a southbound Passenger Service Train to travel from Alexandria, Virginia (AF interlocking, milepost CFP 104.3) to such particular passenger station.

“**Additional VPRA User**” shall have the meaning ascribed thereto in Section 16.1(c).

“**Adjusted Run Time**” shall mean the Base Run Time plus the applicable Late Run Time Cushion. For clarity, Adjusted Run Times for northbound Passenger Service Trains shall be measured from the Southern-Most Station, and Adjusted Run Times for southbound Passenger Service Trains shall be measured from Alexandria, Virginia (AF interlocking, milepost CFP 104.3).

“**Agreement**” shall have the meaning ascribed thereto in the Preamble.

“**Alexandria-Roanoke Segment**” shall have the meaning ascribed thereto in Section 16.1(c).

“**A.M. Best Rating**” shall mean the financial strength rating of an insurance company published by A.M. Best & Company, Inc.

“**Amtrak**” shall mean the National Railroad Passenger Corporation and its successors or assigns.

“**Assignment and Assumption Agreement**” shall have the meaning ascribed thereto in Section 5.1(i).

“**Baseline First Frequency**” shall mean the daily passenger rail round trip operated by Amtrak, already in operation under separate and independent agreements prior to the Execution Date between Alexandria, Virginia and the passenger platform at Roanoke, Virginia.

“Baseline Second Frequency” shall mean a daily passenger rail round trip between Alexandria, Virginia and the passenger platform at Roanoke, Virginia, which round trip is in addition to, and not in the place of, the Baseline First Frequency.

“Base Run Time” shall mean the run time (expressed in number of minutes) established between Norfolk Southern Railway and Amtrak (or other VPRA User, if applicable) from point to point for each discrete frequency within the Corridor, including scheduled recovery time and scheduled dwell time between those points.

“Bedford Rail Traffic Capacity Study” shall mean the “RTC Study” as defined in Section 6(a)(i) of the Term Sheet.

“Bill of Sale” shall have the meaning ascribed thereto in Section 5.1(k).

“Billboard Facilities” shall have the meaning ascribed thereto in Section 5.3(g).

“Blended Quarterly OTP Percentage” shall have the meaning ascribed thereto in Section 8.2(e).

“Blue Book” shall mean the Rental Rate Blue Book for Construction Equipment published by EquipmentWatch to provide benchmark ownership and operating costs for construction equipment models.

“Bradshaw Spur Track” shall have the meaning ascribed thereto in Section 6.1 (*Cut Points Survey*).

“Business Day(s)” shall mean that day that is neither a Saturday, a Sunday nor a day observed as a legal holiday by the Commonwealth of Virginia or the United States Government.

“Capital Improvements” shall mean design, construction, renewal, replacement, or material modification or rehabilitation of track and any structures or things necessary for the support or use thereof, including signals and communications systems, but excluding aesthetic improvements or maintenance work conducted in the ordinary course of business.

“Capital Maintenance” shall mean any repair and maintenance that does not qualify as Expense Maintenance.

“Casualty Party” shall have the meaning ascribed thereto in Section 15.1 (*Catastrophic Event*).

“Catastrophic Event” shall have the meaning ascribed thereto in Section 15.1 (*Catastrophic Event*).

“C.F.R.” shall mean the Code of Federal Regulations.

“Claim” or **“Claims”** shall mean any and all claims, demands, losses (including the loss of use), costs (including investigation, remedial and clean-up costs), expenses (including attorneys’, consultants’ or experts’ fees and expenses), judgments, awards, penalties, governmental action (including fines and liens), causes of action, liens, suits or liability of every kind and nature suffered, but excluding special or consequential losses or Damages.

“**Closing**” shall have the meaning ascribed thereto in Section 5.1 (*Closing Date*).

“**Closing Date**” shall have the meaning ascribed thereto in Section 5.1 (*Closing Date*).

“**Coincidental NSR Employee Passengers**” shall mean any employee or agent of Norfolk Southern Railway that is a fare-paying passenger of a VPRA User at the time such employee or agent suffers injury, death, or property damage.

“**Commercial Industry Mediation Rules and Procedures**” shall mean the rules and procedures created by AAA for commercial industry transactions.

“**Commonwealth**” shall mean the Commonwealth of Virginia.

“**Communication Facilities**” shall have the meaning ascribed thereto in Section 5.3(f).

“**Commuter Rail Service**” shall mean passenger rail service in an urban area, its suburbs and more distant outlying communities in the applicable greater metropolitan area, excluding (1) urban rapid transit operations not connected to the general railroad system; (2) Intercity Passenger Rail Service – Commonwealth-Supported; (3) Intercity Passenger Rail Service – Long-Distance; and (4) Excursion Passenger Rail Service.

“**Consent**” shall mean any approval, consent, ratification, waiver, exemption, franchise, license, permit, novation, certificate of occupancy, jurisdictional determination or other authorization of any Person, including any Consent issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law.

“**Corridor**” shall have the meaning ascribed thereto in the Recitals.

“**Current Charges**” shall have the meaning ascribed thereto in Section 16.2 (*The Current Charges*).

“**Current Charge (Alexandria-Roanoke Segment)**” shall have the meaning ascribed thereto in Section 16.2(c).

“**Current Charge (Purchased V-Line)**” shall have the meaning ascribed thereto in Section 16.2(a).

“**Current Charge (Roanoke Easement Area)**” shall have the meaning ascribed thereto in Section 16.2(b).

“**Cut Points Survey**” shall have the meaning ascribed thereto in Section 6.1 (*Cut Points Survey*).

“**Damages**” shall mean death, personal injury, property loss or damage or damage to the environment, including but not limited to:

- (i) loss or damage to, or loss of use of, the property and death or personal injury to a Person; and

(ii) environmental investigation, cleanup or remediation costs, fines, and penalties; and

(iii) any and all damages suffered by or asserted against a Party hereto or third party as a direct or indirect result of or due to the presence, disposal, release or other escape of any Hazardous Materials on or from the Purchased V-Line trackage, a Train or other Equipment, or on or at property subject to this Agreement or any related agreement; and

(iv) attorney, expert and witness fees, and salaries, wages and benefits of a Party's employees investigating, adjusting or defending Claims, suits or proceedings for which another Party is potentially liable under this Agreement, together with associated support staff and out of pocket costs, and any investigation, litigation, appeal, arbitration, administrative hearing or governmental action cost.

"Deed" shall have the meaning ascribed thereto in Section 5.3 (*Conveyance of Purchased V-Line*).

"Deed of Confirmation" shall have the meaning ascribed thereto in Section 6.3 (*Deeds of Confirmation*).

"Deed of Easement" shall have the meaning ascribed thereto in Section 5.2 (*Conveyance of Passenger Easement over the Roanoke Easement Area*).

"Defaulting Party" shall mean, when an Event of Default has occurred, the Party which fails to meet any material obligation under this Agreement where such failure continues sixty (60) days after written notice from the other Party.

"Description of Future Work" shall have the meaning ascribed thereto in Section 13.2(b).

"Description of REA Work" shall have the meaning ascribed thereto in Section 9.2 (*VPRA Review*).

"Description of SCI Work" shall have the meaning ascribed thereto in Section 12.1(b).

"Designated Information" shall have the meaning ascribed thereto in Section 30.12 (*VFOIA*).

"Disadvantaged Business Enterprises" shall have the meaning ascribed thereto in 49 C.F.R. 26.

"Dispatcher" shall mean, with regards to the Purchased V-Line, Norfolk Southern Railway unless or until the rest of the Corridor between Merrimac and the Narrows is either sold or removed from service, at which time Dispatcher shall refer to a replacement party meeting mutually agreed criteria.

"Disbursement Period" shall mean the period of time beginning with the first installment payment of the WVRI Grant Funds to Norfolk Southern Railway and ending on the Unused Disbursement Repayment Date, as it may or may not be extended in accordance with Section 10.2(b).

“Dispute” shall mean any claim, dispute, disagreement or controversy between Norfolk Southern Railway and VPRA concerning their respective rights and obligations under this Agreement, including concerning any NSR Default, any VPRA Default, or any other alleged breach or failure to perform any remedy under this Agreement.

“Early Compensation” shall mean amounts equal to or materially similar to Thirty-Eight Million Two Hundred Thousand Dollars (\$38,200,000) in support of the Purchase Price, plus Thirty-Six Million Five Hundred Thousand Dollars (\$36,500,000) in support of the Roanoke Easement Area Improvements, plus Thirty-Nine Million Five Hundred Thousand Dollars (\$39,500,000) in support of the WVRI Grant Fund payments, plus Eleven Million Eight Hundred Thousand Dollars (\$11,800,000) in support of trackage rights compensation pursuant to Section 16.1 (*Trackage Rights Compensation*).

“EDI” shall mean electronic data interchange.

“Eligible Project Cost” shall mean a cost incurred by Norfolk Southern Railway in support of the Grant Purposes, which is directly associated with the Grant Work and properly payable from the WVRI Grant Funds.

“Environmental Right of Entry Agreement” shall have the meaning ascribed thereto in Section 3.2 (*Environmental Right of Entry Agreement*).

“Equipment” shall mean and be confined to hi-rail vehicles, track inspection equipment and other non-revenue vehicles and machinery (other than locomotives) capable of being operated on railroad tracks that, at the time of an occurrence, are (i) being operated on the trackage upon which such occurrence takes place, or (ii) are on the trackage upon which such occurrence takes place, or on the adjoining right-of-way, for the purpose of maintenance or repair thereof or the clearing of wrecks thereon.

“Event of Default” shall mean an NSR Default or VPRA Default, as applicable.

“Excluded Property” shall have the meaning ascribed thereto in Section 2.1(d).

“Excursion Passenger Rail Service” shall mean passenger rail service and special passenger rail service that is (i) occasional and intermittent, not exceeding two (2) roundtrips per week (subject to an increase in the number of roundtrips per week that may be proposed by VPRA and considered for approval by Norfolk Southern Railway in good faith); (ii) is operated for purposes of promoting tourism, events, and holidays; and (iii) operating only on the Purchased V-Line and the Roanoke Easement Area.

“Execution Date” shall have the meaning ascribed thereto in the opening paragraph of this Agreement.

“Expense Maintenance” shall mean repair and maintenance that (i) does not constitute a betterment, restoration, or adaptation, and (ii) the expenses of which may be deducted for Federal tax purposes.

“Extended First Frequency” shall mean the extension of the Baseline First Frequency west of Roanoke, Virginia to the station to be constructed in New River Valley of Virginia.

“Extended Second Frequency” shall mean the extension of the Baseline Second Frequency west of Roanoke, Virginia to the station to be constructed in the New River Valley of Virginia.

“Federal Funding Accountability and Transparency Act” shall mean 31 U.S.C. §6101.

“Federal Locomotive Inspection Act” shall mean 49 U.S.C. §20701.

“Federal Safety Appliance Act” shall mean 49 U.S.C. §20302.

“FRA” shall mean the Federal Railroad Administration.

“Freight Easement” shall have the meaning ascribed thereto in Section 5.3(e).

“Freight/Passenger Liability Provisions” shall mean the no-fault liability provisions between Norfolk Southern Railway and Amtrak under the NSR Off-Corridor Agreement (or future replacement of the same), the NSR-Amtrak Liability Allocation Agreement, or any similar provisions under a future agreement applicable to the Purchased V-Line between Norfolk Southern Railway and a Passenger Rail Service Provider other than Amtrak, in all cases governing the no-fault allocation of liability for injuries occurring within or near the Corridor.

“Freight Rail Service” shall mean the use of Trains to transport cargo and not passengers.

“Freight Rail Trains” shall mean Trains operated by an NSR User to transport cargo and not passengers.

“Fully-allocated Cost Basis” shall mean the costs of labor (including allocable employee benefits and employment taxes), material, energy, utilities or other costs directly incurred and normal overhead (including, without limitation, administrative labor costs, maintenance, relevant insurance, depreciation of the equipment and depreciation of the facility) all determined in accordance with GAAP applied on a consistent basis.

“Funding Partners” shall mean Amtrak or any federal or state entity that provides funds to VPRA in support of the Transaction.

“Future VPRA User Contract” shall have the meaning ascribed thereto in Section 8.1(e).

“Governmental Authority” shall mean any court, federal, state, local or foreign government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority, which shall include the STB but shall not include VPRA.

“Grant Purposes” shall have the meaning ascribed thereto in the recitals.

“Grant Work” shall mean, in support of the Grant Purposes, any and all tasks, duties, obligations, services, requirements, and activities of whatever kind or nature, express or implied, direct or incidental, performed or to be performed, and all items tangible and intangible, provided or to be

provided by Norfolk Southern Railway pursuant to Article 10 (*Western Virginia Rail Initiative Grant*).

“Hazardous Materials” shall mean any material that is regulated under Hazardous Materials Laws, because of its quantity, concentration, or physical or chemical characteristics, is defined or included within the definition of a “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic chemical,” “toxic substance,” “hazardous chemical,” “extremely hazardous substance,” “pollutant,” “contaminant,” “solid waste,” or any other words of similar meaning or significance within the context used under any applicable Hazardous Materials Laws. “Hazardous Material” includes, without limitation, any material or substance defined as a “hazardous substance” or a “pollutant or contaminant” under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., including asbestos-containing materials and lead-based paint, as well as petroleum, including crude oil or any fraction thereof.

“Hazardous Materials Law” shall mean all present and future federal, state, or local Law relating to pollution, protection of the environment or natural resources or to human health and safety as it is affected by environmental conditions in, on, under, or about the Purchased V-Line and the Roanoke Easement Area, including, without limitation, soil, air quality, water, water quality, and groundwater conditions, including, without limitation, the Resource Conservation and Recovery Act of 1976 (**“RCRA”**), 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (**“CERCLA”**), 42 U.S.C. §§ 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (**“SARA”**), the Hazardous Materials Transportation Act, 49 U.S.A. §§ 5101 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j.

“Initial Term” shall have the meaning ascribed thereto in Section 28.1 (*Term*).

“Intercity Passenger Rail Service” shall mean Intercity Passenger Rail Service – Commonwealth-Supported and Intercity Passenger Rail Service – Long-Distance.

“Intercity Passenger Rail Service – Commonwealth-Supported” shall mean passenger rail routes of not more than seven hundred fifty (750) miles operated by a VPRA User in the Commonwealth and funded in part by the Commonwealth: (a) pursuant to Section 209 of the Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432, 122 State. 4848, or (b) otherwise.

“Intercity Passenger Rail Service – Long-Distance” shall mean any intercity passenger rail route or service operated by a VPRA User in the Commonwealth other than Intercity Passenger Rail Service – Commonwealth-Supported.

“Intermediary Assignment” shall have the meaning ascribed thereto in Section 25.1 (*Assignment*).

“Late Run Time Cushion” shall mean additional minutes added to the Base Run Time for Late Trains, as follows:

NORTHBOUND PASSENGER SERVICE TRAINS		
Arriving Stations	Southern-Most Station through to and including Lynchburg	Charlottesville, Culpeper, Manassas, and Burke Center, and Alexandria ²
Late Run Time Cushion	5 minutes	20 minutes

SOUTHBOUND PASSENGER SERVICE TRAINS			
Arriving Stations	Burke Center and Manassas	Culpeper, Charlottesville, Lynchburg	Roanoke and Southern-Most Station (if not Roanoke)
Late Run Time Cushion	5 minutes	15 minutes	25 minutes

“Late Trains” shall mean those (i) northbound Passenger Service Trains departing the Southern-Most Station more than sixteen minutes and zero seconds later than the applicable schedule, which delay is due to no fault of Norfolk Southern Railway, and (ii) southbound Passenger Service Trains that are actually handed off to Norfolk Southern Railway for dispatch at Alexandria, Virginia (AF interlocking, milepost CFP 104.3) more than sixteen minutes and zero seconds later than the applicable schedule.

“Law” or **“Laws”** shall mean any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the Parties, the Transaction, trackage, infrastructure, other facilities, and the Corridor or any portion thereof, including, without limitation, Hazardous Materials Laws, whether or not in the present contemplation of the Parties, including without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws or, all federal, state, and local governments, authorities, courts, and any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Corridor or any part thereof and of the trackage, infrastructure, and other facilities thereon.

“Level of Utility” shall mean a condition which permits both freight trains and passenger trains to operate at the Federal Railroad Administration maximum authorized freight train or passenger train speeds, respectively, corresponding to the FRA track classification existing as of the Closing Date, with a reasonable degree of reliability.

“Marketable Title” shall mean title that a title insurance company licensed to do business in the Commonwealth of Virginia will insure at its regular rates subject only to standard exceptions and those stated in Section 5.3 (*Conveyance of Purchased V-Line*).

“Mediation” shall have the meaning ascribed thereto in Section 26.3(a).

“Miscellaneous Property” shall have the meaning ascribed thereto in Section 2.1(b)(iii).

“Nokesville-Calverton Double Track Project” shall mean an improvement project containing all material components of the project depicted in Exhibit E (*Nokesville-Calverton Double Track Project*).

“Non-Appropriation Compensation Amount” shall mean (One Hundred Thirty-One Million Five Hundred Thousand Dollars (\$131,500,000) plus Thirty-Four Million Dollars (\$34,000,000) minus an amount equal to all WVRI Grant Fund payments actually made by VPRA to Norfolk Southern Railway, and minus an amount equal to all payments actually made by VPRA to Norfolk Southern Railway as trackage rights compensation pursuant to Section 16.1 (*Trackage Rights Compensation*)).

“Non-Appropriation Cure Period” shall mean the period of time between (i) a written notice delivered by Norfolk Southern Railway pursuant to Section 30.25 (*Availability of Funds for VPRA’s Performance*) and (ii) August 1 during the calendar year immediately following the calendar year in which Norfolk Southern Railway delivered the written notice to VPRA.

“Non-Casualty Party” shall have the meaning ascribed thereto in Section 15.1 (*Catastrophic Event*).

“Non-Late Trains” shall mean those Passenger Service Trains that do not meet the definition of Late Trains.

“Non-NSR Person” shall mean any of the following Persons:

- (i) employees of VPRA (but it is expressly understood and agreed that any labor furnished by Norfolk Southern Railway for and on behalf of VPRA under any provision of this Agreement shall not be regarded for the purposes of this definition as employees of VPRA);
- (ii) employees of a VPRA User (but it is expressly understood and agreed that any labor furnished by Norfolk Southern Railway for and on behalf of any VPRA User under any provision of this Agreement shall not be regarded for the purposes of this definition as employees of a VPRA User);
- (iii) any Person (including any Coincidental NSR Employee Passenger, but excluding all other NSR Agents or Employees) who is on a Passenger Rail Train (including private cars but excluding business cars of Norfolk Southern Railway) operated by or for the account of VPRA or a VPRA User;

(iv) any Person (including any Coincidental NSR Employee Passenger, but excluding all other NSR Agents or Employees) at or adjacent to a passenger station used by any VPRA User who is there in connection with the Passenger Rail Service for the purpose of boarding or detraining from any Passenger Rail Train, meeting a Passenger Rail Train, purchasing a ticket, making a reservation, or obtaining information about VPRA User's service, conducting business with VPRA or any VPRA User (including a vendor from whom VPRA or any VPRA User receives compensation), or passengers riding on a Passenger Rail Train;

(v) any Person at or adjacent to a passenger station who is providing local transportation to or accompanying a Person described in (iv) above;

(vi) at stations that are used by a VPRA User and that are not used by Norfolk Southern Railway or by tenants of Norfolk Southern Railway, all Persons other than: (a) NSR Agents or Employees (unless the NSR Agents or Employees also meet the definition of Coincidental NSR Employee Passenger) and (b) Persons accompanying or doing business with such NSR Agents or Employees; and

(vii) at stations used jointly by Norfolk Southern Railway and a VPRA User, or in which Norfolk Southern Railway leases space to third parties, any Persons who are at the station for a purpose directly related to VPRA's use, or VPRA User's use, of the station (including Persons dealing with a lessee of VPRA and/or a VPRA User in that station), and including but not limited to those described in (iii), (iv) or (v), above (including any Coincidental NSR Employee Passenger, but excluding all other NSR Agents or Employees).

provided, however, that in all cases the definition of Non-NSR Person shall exclude any Person who is struck by improperly secured equipment or cargo of a Norfolk Southern Railway Train operated on tracks at or adjacent to a passenger station, other than an employee of VPRA or an employee of a VPRA User.

"Non-NSR Property" shall mean (i) the property of a Person at the time such Person meets the definition of a Non-NSR Person; (ii) any locomotive, passenger car, or any other property or equipment owned by, leased to, used by or otherwise in control, custody, or possession of VPRA and/or a VPRA User; (iii) Norfolk Southern Railway property on which it demonstrates fuel oil was spilled from a VPRA or VPRA User locomotive or on which fuel oil spilled by VPRA or a VPRA User or a contractor thereof while fueling a VPRA or a VPRA User locomotive; or (iv) the property of third parties on which fuel oil was spilled by VPRA or a VPRA User or a contractor thereof while fueling a VPRA or a VPRA User locomotive.

"Norfolk Southern Railway" shall have the meaning ascribed thereto in the Preamble.

"Norfolk Southern Railway Indemnified Parties" shall mean Norfolk Southern Railway, its parent company, its affiliates, and any and all of their respective officers, directors, employees, agents, affiliates, successors, and permitted assigns.

"NSR Agents and Employees" shall mean any agents or employees of Norfolk Southern Railway in the course of their agency or employment.

“NSR-Amtrak Liability Allocation Agreement” shall mean the agreement to be entered into by Norfolk Southern Railway and Amtrak related to the allocation of liability and risk of damage with respect to the Purchased V-Line.

“NSR Default” shall have the meaning ascribed thereto in Section 28.2 (*NSR Defaults*).

“NSR Off-Corridor Agreement” shall mean the Amended and Restated Off-Corridor Operating Agreement between Norfolk Southern Railway and National Railroad Passenger Corporation, dated February 1, 2006 (as amended from time to time).

“NSR Operating Rules” shall mean the codification of Norfolk Southern Railway’s practices and guidelines for the operation of a Class 1 railroad as required by the Federal Railroad Administration at 49 C.F.R. Part 217.

“NSR ROW” shall have the meaning ascribed thereto in the Recitals.

“Operating Schedule” shall mean the weekday and weekend Operating Schedule as Section forth in Exhibit D (*Operating Schedule*).

“Outside Closing Date” shall mean October 31, 2022.

“Ownership Hourly Rate” shall have the meaning ascribed to it in Section 9.4(c).

“Party” and **“Parties”** shall have the meaning ascribed thereto in the opening paragraph of this Agreement.

“Passenger Easement” shall have the meaning ascribed thereto in Section 2.1(a).

“Passenger Exclusive Use Property” shall have the meaning ascribed thereto in Section 5.3(e)

“Passenger Per Train Mile Rate” shall mean the dollars-per-Train-mile rate that is applied to VPRA User Trains with respect to the Current Charges, which rate is initially set at Twenty-Four and 91/100 Dollars (\$24.91) per Train mile and escalated in accordance with Section 16.2 (*The Current Charges*).

“Passenger Performance Regime” shall mean the system of measuring on time performance of the Passenger Rail Service, and applying discounts to the Passenger Per Train Mile Rate (if applicable) pursuant to Section 8.2 and Section 16.2 (*The Current Charges*).

“Passenger Rail Operations” shall mean the operation of the Purchased V-Line or the Roanoke Easement Area for Excursion Passenger Rail Service, Commuter Rail Service, for Intercity Passenger Rail Service – Commonwealth-Supported, and for Intercity Passenger Rail Service – Long-Distance.

“Passenger Rail Service” has the meaning ascribed thereto in Section 8.1(a).

“Passenger Rail Service Provider” shall mean any provider of Passenger Rail Service.

“Performance Managers Committee” shall have the meaning ascribed thereto in Section 19.1 (*Performance Managers Committee*).

“Personal Property” has the meaning ascribed thereto in Section 2.1(b)(ii).

“Person” shall mean any individual (including the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority, including VPRA.

“Pipe and Wire Easement Agreement” has the meaning ascribed thereto in Section 5.1(j).

“Positive Train Control” and **“PTC”** shall mean any system designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zones, and movements of Trains through switches left in the wrong position.

“Purchased V-Line” has the meaning ascribed thereto in Section 2.1(c).

“Purchased V-Line and Roanoke Easement Area Valuation Maps” shall have the meaning ascribed thereto in Section 5.7 (*Purchased V-Line and Roanoke Easement Area Legal Description*).

“Public Rural Broadband Initiative” shall mean an initiative of the Commonwealth of Virginia or one of its political subdivisions to expand high-speed broadband infrastructure to underserved rural areas and tribal lands through (i) loans and grants to provide funds for the costs of construction, improvement, or acquisition of facilities and equipment needed to provide broadband service in such areas, or (ii) other public-private partnerships and concession-based development, including in connection with or participation in any related initiative of any Federal Agency of the United States, including the U.S. Department of Agriculture, the Federal Communications Commission, the Department of the Interior, the Department of Commerce’s National Telecommunications and Information Administration.

“Purchase Price” shall have the meaning ascribed thereto in Section 2.2 (*Purchase Price*).

“Quarterly Indexes of Chargeout Prices and Wage Rates (1977=100)” shall have the meaning ascribed thereto in the AAR official website: <https://www.aar.org/rail-cost-indexes/> or similar AAR official publication as further set forth in [REDACTED].

“Quitclaim Deed” shall mean, with respect to each of the Purchased V-Line and the Passenger Easement, a deed conveying to VPRA, without warranty, such title in the Purchased V-Line and such Passenger Easement as may be held by Norfolk Southern Railway.

“REA Contractor” shall mean a private contractor, including consultants, which may be engaged by Norfolk Southern Railway to perform the REA Work.

“REA Long Stop Date” shall have the meaning ascribed thereto in Section 9.1 (*Roanoke Easement Area Improvements; REA Long Stop Date*).

“REA Reimbursement Cap” shall mean Thirty-Six Million Five Hundred Thousand Dollars (\$36,500,000).

“REA Work” shall mean design and construction services, tasks, duties, obligations, services, requirements and activities to be performed, and the administration related thereto, and all items to be provided by Norfolk Southern Railway regarding design and construction of the Roanoke Easement Area Improvements pursuant to this Agreement.

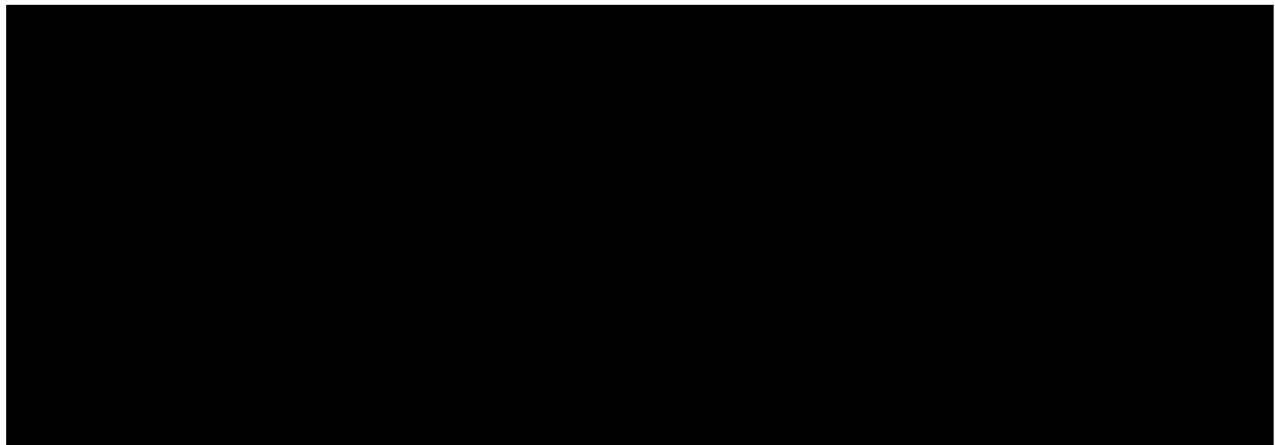
“REA Work Costs” shall mean all reasonable and actual costs and expenses, internal and external, direct and incidental, that comply with the terms and conditions of this Agreement, incurred by Norfolk Southern Railway in performing its obligations or exercising its rights pursuant to Article 9 (*Roanoke Easement Area Improvements*), including without limitation acquisition of any rights in real property to complete the Roanoke Easement Area Improvements. Overhead and indirect expenses shall be calculated using audited rates approved by the Federal Highway Administration and/or Federal Railroad Administration, as applicable.

“Real Property” has the meaning ascribed thereto in Section 2.1(b)(i).

“Records” shall have the meaning ascribed thereto in Section 16.6(a).

“Regulatory Approval” shall mean any authorization, approval or permit required or granted by any governmental entity having jurisdiction over the Corridor, including, but not limited to the Commonwealth of Virginia.

“Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing Hazardous Materials).



“Respective Owner” shall have the meaning ascribed thereto in Section 11.3 (*Removal of Employees*).

“Respective Portion” shall have the meaning ascribed thereto in Section 15.1 (*Catastrophic Event*).

“Roanoke Easement Area” shall have the meaning ascribed thereto in Section 2.1(a).

“Roanoke Easement Area Improvements” shall have the meaning ascribed thereto in Section 9.1 (*Roanoke Easement Area Improvements; REA Long Stop Date*).

“Roanoke Easement Area Improvements Residue” shall mean the difference between (i) Thirty-Six Million Five Hundred Thousand Dollars (\$36,500,000) and (ii) Norfolk Southern Railway’s actual costs incurred to achieve final completion of the Roanoke Easement Area Improvements; provided, however, that the Roanoke Easement Area Improvements Residue will equal Zero Dollars (\$0) if Norfolk Southern Railway’s actual costs incurred to achieve final completion of the Roanoke Easement Area Improvements are greater than Thirty-Six Million Five Hundred Thousand Dollars (\$36,500,000).

“Salem-Christiansburg Improvements” shall mean the construction of one new passenger station in the vicinity of Christiansburg, Virginia, and any additional track, signal and PTC improvements as may be mutually agreed by the Parties.

“Salem Crossovers” shall mean the rail line connection that extends approximately one and 75/100 (1.75) miles between the Norfolk Southern Railway N Line and the Norfolk Southern Railway V Line, west of Roanoke, Virginia, that includes MP SX 0.0 and MP SX 1.0.

“Senior Representative Negotiations” shall have the meaning ascribed thereto in Section 26.2 (*Senior Representative Negotiations*).

“Southern-Most Station” shall mean the operational passenger station used for the Passenger Rail Service under this Agreement that is the farthest south and west within territory dispatched by Norfolk Southern Railway, which initially will be the passenger platform in Roanoke, Virginia, and is eventually planned to be a passenger station to be constructed in the vicinity of Christiansburg, Virginia.

“Standard Customer OTP” shall have the meaning ascribed thereto in 8.2(c).

“STB” shall mean the United States Surface Transportation Board, an independent federal agency that is charged with the economic regulation of various modes of surface transportation, primarily freight rail.

“Survey” shall have the meaning ascribed thereto in Section 6.2 (*Additional Survey*).

“Term” shall have the meaning ascribed thereto in Section 28.1 (*Term*).

“Term Sheet” shall have the meaning ascribed thereto in the Recitals.

“Third Frequency” shall mean a daily passenger rail round trip between the passenger platform in Roanoke, Virginia and the station to be constructed in the vicinity of Christiansburg, Virginia, which is in addition to the Extended First Frequency and the Extended Second Frequency.

“Trackage Rights” shall mean those rights conferred on a third party with respect to a Trackage Rights Agreement.

“Trackage Rights Agreement” shall mean the rights arising by agreement between Norfolk Southern Railway and other rail carriers to use the tracks or right-of-way on the Purchased V-Line or the Roanoke Easement Area for the transport of rail traffic; without imparting an ownership interest to the other rail carriers.

“Train” shall mean one or more locomotives, coupled with or without cars, whether or not such locomotive or car is moving or stationary.

“Transaction” shall have the meaning ascribed thereto in the Recitals.

“Transition Period” shall have the meaning ascribed thereto in Section 12.1(a).

“Unreasonably Interfere with Passenger Rail Operations” shall mean the exercise of a proposed right that would or would reasonably be expected to unreasonably impair VPRA’s present or future ability to construct, maintain or operate any reasonable planned rail lines for the purpose of providing Passenger Rail Operations within the applicable portion of the Purchased V-Line. Any such proposed right will not be construed to Unreasonably Interfere with Passenger Rail Operations if Norfolk Southern Railway can reasonably demonstrate (i) that the conditions, location, track setback and configuration of such proposed rights would meet Norfolk Southern Railway’s then-current occupancy standards for its own operating rights of way in the Commonwealth of Virginia as applied to VPRA’s present or future ability to construct, maintain, or operate its planned rail lines within the applicable portion of the Purchased V-Line, (ii) the impairment is solely on account of the location of any Communication Facilities, Billboard Facilities, or Utility Facilities in place at the Closing Date or any agreements in effect at the Closing Date authorizing the operation and occupation of the same, (iii) the impairment is solely on account of the terms of any applicable license agreement, lease, or other third party agreement of any agreement in effect at the Closing Date, whether assigned to VPRA or reserved to Norfolk Southern Railway pursuant to the Pipe and Wire Easement, (iv) the impairment is solely on account of any renewal, modification, or replacement of any third party agreement in place on the Closing Date of any type, so long as Norfolk Southern Railway can reasonably demonstrate that the renewal, modification, or replacement does not create any new actual encroachment or actual impediment to any existing or planned projects as such planned projects are listed within the contemporaneous constrained long-range transportation plan(s) of the Roanoke Valley Transportation Planning Organization and/or the New River Valley Metropolitan Planning Organization prior to the date of such renewal, modification or replacement, or (v) that Norfolk Southern Railway’s exercise of the proposed right would not (or would not reasonably be expected to) preclude or have a material adverse effect on one or more projects listed within the contemporaneous constrained long-range transportation plan(s) of the Roanoke Valley Transportation Planning Organization and/or the New River Valley Metropolitan Planning Organization.

“Unused Disbursement” shall mean any of the WVRI Grant Funds that have not been expended by Norfolk Southern Railway.

“Unused Disbursement Repayment Date” shall have the meaning set forth in Section 10.2(c).

“User” shall mean any NSR User or any VPRA User.

“Utility Facilities” shall have the meaning ascribed thereto in Section 5.3(h).

“Valuation Maps” shall mean a map or plat created or maintained by Norfolk Southern Railway that depicts the location of the rail corridor in the Purchased V-Line or Roanoke Easement Area.

“Virginia-Supported Services Agreement” shall mean the Grant Agreement for the Provision of Rail Passenger Operations between National Railroad Passenger Corporation and the Virginia Passenger Rail Authority for Fiscal Year 2021, or any substantially similar successor agreement between VPRA and Amtrak governing Intercity Passenger Rail Service – Commonwealth-Supported.

“VFOIA” shall have the meaning ascribed thereto in Section 30.12 (*VFOIA*).

“VPRA” shall mean the meaning ascribed thereto in the Preamble.

“VPRA Betterment” shall mean any material change to the Description of REA Work delivered by Norfolk Southern Railway, which change is proposed by VPRA and is not required by applicable Law and is not required to preserve reasonable interoperability for the Passenger Rail Service.

“VPRA Default” shall have the meaning ascribed thereto in Section 28.3 (*VPRA Defaults*).

“VPRA Indemnified Parties” shall have the meaning ascribed thereto in Section 11.2(a).

“VPRA User” shall mean Amtrak, and/or any provider of Passenger Rail Service on the Purchased V-Line, the Roanoke Easement Area, or on the NSR ROW between Alexandria and Roanoke pursuant to one or more direct agreements with VPRA, provided that neither VPRA nor any entity for which the principles of sovereign immunity would prevent the VPRA User from providing to Norfolk Southern Railway the protections set forth in Exhibit N (*Liability Provisions Applicable to Future VPRA Users other than Amtrak*), including the indemnity protections, shall be a VPRA User.

“WVRI Grant Funds” shall mean the funds distributed, or to be distributed, to Norfolk Southern Railway pursuant to Article 10 (*Western Virginia Rail Initiative Grant*).

EXHIBIT B

Purchased V-Line and Roanoke Easement Area Descriptions

[To be agreed prior to Closing]

EXHIBIT B-1**List of Existing Valuation Maps**

Valuation Section/Map

Purchased V-Line Valuation Maps:

2/66
2/66AS
2/66BS
2/66CS
2/66DS
2/67
2/67AST
2/67BST
2/68
2/68BST
2/68CST
2/68DS
2/69
2/70
2/70AST
2/70BS
2/70CS
2/70DS
2/71
2/71AST
2/71CST
2/72
2/72CST
2/72DST
2/73
2/73AST
2/73BST

Roanoke Easement Area:

10/3
10/3ASL
10/3BSL
10/4
10/4SL
10/5
10/5SL/6SL
10/6
10/6AA
10/7A
10/7B

2/65

2/65DS

[Cut points diagram to be added prior to Closing, which will identify the Bradshaw Spur Track and any other spurs not intended to be included in the Purchased V-Line.]

EXHIBIT B-2**Bill of Sale**

KNOW ALL MEN BY THESE PRESENTS, that **Norfolk Southern Railway Company**, a corporation of the State of Virginia, with a mailing address of 650 West Peachtree Street, NW, Atlanta GA 30308, hereinafter referred to as “**Norfolk Southern Railway**”, for good and valuable consideration, the receipt of which is hereby acknowledged by VPRA, does hereby GRANT, SELL and TRANSFER unto **Virginia Passenger Rail Authority**, a political subdivision of the Commonwealth of Virginia, with an address of _____, hereinafter referred to as “**VPRA**”, all its right, title and interest, insofar as its title or right permits it so to do, in all the personal property located on the property more particularly described and depicted on **Exhibit A**, including but not limited to improvements, fixtures, tracks, ties, ballast, bridges, communications equipment, towers, signals, structures, landscaping, and other track materials and all other property and appurtenances, both fixed and moveable, located on the property depicted on **Exhibit A** and which constitutes personal property under the laws of the Commonwealth of Virginia, but excepting and excluding the personal property set forth on **Exhibit B**; subject however upon and to the covenants, conditions and restrictions hereinafter contained, to which VPRA, for itself, its successors and assigns, agrees to be bound as part of the consideration hereof.

FIRST: That the said personal property is conveyed by Norfolk Southern Railway and accepted by VPRA as is and where is, and without any warranties or representations of any nature or kind expressed or implied by Norfolk Southern Railway.

SECOND: That VPRA, as of the date of this Bill of Sale, will assume all obligations for future maintenance, repair or removal of said personal property, and any future maintenance, repair, improvement, replacement, removal or other expenses, whether required by any court or governmental agency, or otherwise.

The terms “Norfolk Southern Railway” and “VPRA”, as used herein, shall be deemed to include at all times and in all cases their respective successors or assigns.

IN WITNESS WHEREOF, _____ has executed this Instrument on this _____ day of _____, 20____.

WITNESS:

By

EXHIBIT A TO BILL OF SALE

(Description of the Purchased V-Line)

[To be agreed prior to Closing.]

EXHIBIT B TO BILL OF SALE

Excluded Personal Property

None.

EXHIBIT C

Forms of Deeds

EXHIBIT C-1**Form of Quitclaim Deed**

This instrument prepared by:

Ryan M. Hankins
General Attorney – Real Estate
Norfolk Southern Corporation
1200 Peachtree St., NE
Atlanta, GA 30309-3579

After recording return to:

Michael Westermann
General Counsel
Virginia Passenger Rail Authority
600 E. Main Street
Suite 2125
Richmond, VA 23219

Property Address:

Tax Parcel:

Consideration:

This Deed is exempt (i) from recordation taxes pursuant to §58.1-811.A.3 and §58.1-811.C.4 of the Code of Virginia (1950), as amended, and (ii) from the payment of Clerk's fees pursuant to §§ 17.1-266 and 17.1-279.E.

THIS DEED, made this ____ day of _____ 20____ by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter called Norfolk Southern Railway), and VIRGINIA PASSENGER RAIL AUTHORITY, a political subdivision of the Commonwealth of Virginia, with a mailing address of _____ (hereinafter called VPRA);

W I T N E S E T H:

That Norfolk Southern Railway, for and in consideration of the sum of [[●] MILLION [●] HUNDRED THOUSAND AND NO/100 DOLLARS (\$[●]00,000.00)] and other good and valuable consideration paid by VPRA to Norfolk Southern Railway, receipt of which is hereby acknowledged, Norfolk Southern Railway does hereby quitclaim and convey unto VPRA, and its successors, and assigns the following described Purchased V-Line, portions of which are located in City of Salem, Roanoke County, and Montgomery County, Virginia; to wit:

SEE **EXHIBIT A**, attached hereto and made a part hereof (hereinafter referenced as the **“Purchased V-Line”**).

For purposes of this Deed, “CRA” shall mean the Comprehensive Rail Agreement dated as of _____, 2022 between Grantor and the Grantee, as amended, restated or supplemented from time to time.

The foregoing conveyance is made, however, expressly subject to a) any conditions, restrictions, reservations, licenses, tenancies, leases, permits, privileges, agreements, covenants, encumbrances, trackage rights, reversionary rights, rights of re-entry, or easements, whether or not of record, and b) general real estate taxes for the year of closing and subsequent years not yet due and payable, and c) existing laws, orders and regulations, including applicable zoning laws and regulations, and d) rights of the public or any third party to use any roads, alleys, bridges, streets, streams, rivers, creeks and waterways passing under, across, through, or otherwise affecting the Purchased V-Line, and e) all rights reserved unto Norfolk Southern Railway (or any third party under agreement with Norfolk Southern Railway) as part of this conveyance.

FURTHER, such conveyance shall include all improvements affixed to the Purchased V-Line and appurtenances, but expressly excludes:

(1) Any rail, other track material, ties, switches, turnouts, signal systems and other similar improvements that are not affixed to the Real Property, but which may be stored on the Purchased V-Line;

(2) Any other such non-affixed personal property owned by, in the possession of, or utilized by, Norfolk Southern Railway, including without limitation locomotives, rolling stock, railroad cars, chassis, vehicles, or other moveable equipment owned by, in the possession of, or utilized by, Norfolk Southern Railway and located on the Purchased V-Line; and

(3) Those parcels described and or depicted on **Exhibit B**, attached hereto and made a part hereof, which are specifically reserved to Norfolk Southern Railway.

FURTHER, Norfolk Southern Railway hereby reserves an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable (in whole or in part) easement (subject to the prior written approval of VPRA, in the sole discretion of VPRA, of any such assignment, division, license, or transfer to any Person other than (i) to any Norfolk Southern Railway affiliate or Norfolk Southern Railway successor or (ii) for any license related to haulage) in, over, under, across, and upon the Purchased V-Line for all freight railroad purposes, including without limitation, the right to operate over the existing Purchased V-Line hereby transferred, as well as any future modifications thereto, and any other improvements made to the Purchased V-Line (“**Freight Easement**”); provided, however, that the Freight Easement shall not extend to modifications and improvements to the Purchased V-Line, specifically identified by VPRA from time to time, such as passenger station tracks or passenger train overnight and service facilities. The rights hereby reserved pursuant to the Freight Easement are for the purpose of Seller (including any affiliates, parent companies, subsidiaries, successors or assigns, whether now existing or to come into existence at a future date) using the same for bridging its freight trains,

connecting with other freight railroads, serving existing and future freight industries located along, adjacent and near the Purchased V-Line, having connections made to the Purchased V-Line to serve existing and future industries, operating freight trains and other equipment over the Purchased V-Line and haulage rights for freight operations over the Purchased V-Line.

FURTHER, Norfolk Southern Railway hereby reserves an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement over, under, across and upon the Purchased V-Line for the purposes of constructing, accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining existing or new communication, signal and fiber optic communications systems and appurtenant facilities and equipment and any other communication systems, including, without limitation, existing telecommunication and other towers (the “**Communication Facilities**”), provided that (a) the exercise of such rights does not Unreasonably Interfere with Passenger Rail Operations and (b) Norfolk Southern Railway may license rights reserved under said easement, but not assign, divide, or transfer such easement itself without the prior written consent of VPRA, which may be withheld in the sole discretion of VPRA, and (c) VPRA shall have the right to pursue, by itself or through third-party contractors or licensees, the development, construction, operation, maintenance, repair, renewal and replacement of separate Communication Facilities over, under, across and upon the Purchased V-Line as necessary or desirable for use in the operation of VPRA’s passenger operations on the tracks conveyed by this Agreement and in connection with any Public Rural Broadband Initiative, but not for any other purpose (with Norfolk Southern Railway making no representation or warranty as to title or suitability of the property for any such purpose or use). The exercise of such Public Rural Broadband Initiative rights (including any assignment, division, license or transfer of such rights) shall not unreasonably interfere with the use and enjoyment of

Norfolk Southern Railway's exercise of its Communication Facilities Easement. For purposes of this Deed, "Unreasonably Interfere with Passenger Rail Operations" and "Public Rural Broadband Initiative" shall have the meaning ascribed thereto in the CRA.

FURTHER, Norfolk Southern Railway hereby reserves an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable non-terminable billboard easement(s) upon the Purchased V-Line for any existing billboards listed on **Exhibit C** or new billboards or signboards and appurtenant facilities and equipment (including, without limitation, utility connections to service such billboards and/or signboards or appurtenant facilities) upon the Purchased V-Line for purposes of accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining such billboards and/or signboards and appurtenant facilities and equipment of Norfolk Southern Railway or its grantees, lessees or licensees ("**Billboard Facilities**"), provided that (a) the exercise of such rights does not Unreasonably Interfere with Passenger Rail Operations and (b) Norfolk Southern Railway may license any rights reserved under said easement, but not assign, divide, or transfer such easement itself without the prior written consent of VPRA, which may be withheld in the sole discretion of VPRA.

FURTHER, Norfolk Southern Railway hereby reserves an exclusive, perpetual, irrevocable, assignable, divisible, licensable and transferable easement (or easements, as applicable) over, under, across and upon the Purchased V-Line for the purposes of constructing, accessing (ingress/egress), owning, repairing, renewing, replacing, installing, constructing, operating and maintaining existing or new utility lines (including without limitation those for water, sewer, electrical, gas or telecommunication lines, which are parallel to the main tracks on the Purchased V-Line, as well as appurtenant facilities and equipment ("**Utility Facilities**")),

provided that (a) the exercise of such rights does not Unreasonably Interfere with Passenger Rail Operations and (b) Norfolk Southern Railway may license rights reserved under said easement, but not assign, divide, or transfer such easement itself without the prior written consent of VPRA, which may be withheld in the sole discretion of VPRA.

For the purposes of this conveyance, any exercise of any rights reserved pursuant to this conveyance by Norfolk Southern Railway (including its subsidiaries, affiliates, successors, assigns, or any third parties under the direction of Norfolk Southern Railway) shall be deemed not to Unreasonably Interfere with Passenger Rail Operations if Norfolk Southern Railway can reasonably demonstrate that one or more of the following is applicable: (i) that the conditions, location, track setback and configuration of such proposed rights would meet Norfolk Southern Railway's then-current occupancy standards for its own operating rights of way in the Commonwealth of Virginia as applied to VPRA's present or future ability to construct, maintain, or operate its planned rail lines within the applicable portion of the Purchased V-Line, (ii) the impairment is solely on account of the location of any Communication Facilities, Billboard Facilities, or Utility Facilities in place at *[Insert "Closing Date" under the CRA]* or any agreements in effect at the Closing Date authorizing the operation and occupation of the same, (iii) the impairment is solely on account of the terms of any applicable license agreement, lease, or other third party agreement of any agreement in effect at the *[Insert "Closing Date" under the CRA]*, whether assigned to VPRA or reserved to Norfolk Southern Railway pursuant to the Pipe and Wire Easement, (iv) the impairment is solely on account of any renewal, modification, or replacement of any third party agreement in place on the *[Insert "Closing Date" under the CRA]* of any type, so long as Norfolk Southern Railway can reasonably demonstrate that the renewal, modification, or replacement does not create any new actual encroachment or actual impediment to any existing

or planned projects as such planned projects are listed within the contemporaneous constrained long-range transportation plan(s) of the Roanoke Valley Transportation Planning Organization and/or the New River Valley Metropolitan Planning Organization prior to the date of such renewal, modification or replacement, or (v) that Norfolk Southern Railway's exercise of the proposed right would not (or would not reasonably be expected to) preclude or have a material adverse effect on one or more projects listed within the contemporaneous constrained long-range transportation plan(s) of the Roanoke Valley Transportation Planning Organization and/or the New River Valley Metropolitan Planning Organization.

In the event that Norfolk Southern Railway abandons any easement rights (or a specific portion thereof) reserved herein to Norfolk Southern Railway, Norfolk Southern Railway agrees that Norfolk Southern Railway will, upon request by VPRA, execute and deliver to VPRA a written release of the applicable abandoned rights (or the applicable portion of the easement area). For the purposes of this conveyance, the term "abandon" shall only be defined as Norfolk Southern Railway's written notice to VPRA that Norfolk Southern Railway intends to permanently cease use and enjoyment of the rights reserved herein (or a certain portion thereof) and the term "abandonment" shall only be defined as the completion of any regulatory or other proceedings required to fully effect the abandonment. It is the intent of Norfolk Southern Railway and VPRA that all easement rights reserved to Norfolk Southern Railway hereunder shall be treated as separate and independent easement interests, with abandonment of one (or any portion) being only effective for the easements rights specifically referenced in any such written notice of abandonment.

FURTHER, VPRA agrees and, by acceptance of the Purchased V-Line conveyed herein does accept, as permanent covenants running with and touching the land that (a) the V-Line

Segment shall not be used for residential use, including without limitation homes, schools, nursing homes, recreational facilities (other than an existing recreational trail, as may be reasonably modified, or a new recreational trail that has been designed to provide protection from exposures to existing soils) and daycare centers, and (b) use of groundwater at and beneath the V-Line Segment for any purpose other than for investigation, monitoring, or remediation of the groundwater or for extraction in conjunction with construction or excavation activities or maintenance of subsurface utilities shall be prohibited and (c) neither VPRA, nor its operators, contractors, agents, licensees and permitted successors and assigns, except Norfolk Southern Railway and its successors and assigns or any third parties under agreement with Norfolk Southern Railway, shall use any of the Purchased V-Line for any freight rail purposes other than for the movement of company material of VPRA, a VPRA User, or VPRA contractor (including maintenance materials).

By acceptance of this deed, VPRA agrees to the terms and conditions stated herein.

(Signature Page to Follow)

WITNESS the following signatures and seal the day and year first above written.

By NORFOLK SOUTHERN RAILWAY COMPANY

Kristi D. Blair
Real Estate Manager

STATE OF GEORGIA)

COUNTY OF FULTON)

Before me, a Notary Public in and for the said County, personally appeared _____
_____ known to me to be the person who, as Real Estate Manager of Norfolk Southern
Railway Company, the corporation which executed the foregoing instrument, signed the same, and
acknowledged to me that he/she did so sign said instrument in the name and upon behalf of said
corporation as such officer; that the same is his/her free act and deed as such officer and the free
and corporate act and deed of said corporation; and that he/she was duly authorized thereunto by
its Board of Directors.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my
official seal, at Atlanta, Georgia, this _____ day of _____, 20____.

My commission expires: _____

Notary Public

VIRGINIA PASSENGER RAIL AUTHORITY

By _____

STATE OF VIRGINIA)

CITY OF RICHMOND)

Before me, a Notary Public in and for the said City, personally appeared _____
 _____ known to me to be the person who, as [*insert title*], the entity which executed the
 foregoing instrument, signed the same, and acknowledged to me that he/she did so sign said
 instrument in the name and upon behalf of said corporation as such officer; that the same is his/her
 free act and deed as such officer and the free and corporate act and deed of said entity.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my
 official seal, at Richmond, Virginia, this _____ day of _____,
 20____.

My commission expires: _____

 Notary Public

Exhibit A to Quitclaim Deed

Purchased V-Line Description

[The Existing Valuation Maps listed in Exhibit B-1 will be put into the proper form and added to this Exhibit A prior to Closing.]

Exhibit B to Quitclaim Deed

Excluded Purchased V-Line Parcels

None.

Exhibit C to Quitclaim Deed

List of Billboards

None.

EXHIBIT C-2**Form of Deed of Easement**

This instrument prepared by:

Ryan M. Hankins
General Attorney – Real Estate
Norfolk Southern Corporation
650 W. Peachtree Street, NW
Atlanta, GA 30308

After recording return to:

Michael Westermann

General Counsel
Virginia Passenger Rail Authority
600 E. Main Street
Suite 2125
Richmond, VA 23219

Property Address:

Tax Parcel:

Consideration:

This Deed is exempt (i) from recordation taxes pursuant to §58.1-811.A.3 and §58.1-811.C.4 of the Code of Virginia (1950), as amended, and (ii) from the payment of Clerk's fees pursuant to §§ 17.1-266 and 17.1-279.E.

THIS DEED, made this _____ day of _____ 20____ by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (hereinafter called Norfolk Southern Railway), and VIRGINIA PASSENGER RAIL AUTHORITY, a political subdivision of the Commonwealth of Virginia, with a mailing address of _____ - _____ (hereinafter called VPRA);

W I T N E S E T H:

That Norfolk Southern Railway herein, for and in consideration of the sum of [[●] **MILLION [●] HUNDRED THOUSAND AND NO/100 DOLLARS (\$[●],000.00)**] and other good and valuable consideration paid by VPRA to Norfolk Southern Railway, receipt of which is hereby acknowledged, Norfolk Southern Railway does hereby convey unto VPRA, and its successors, and assigns a permanent, perpetual, irrevocable, assignable, divisible, licensable and transferable easement (the “Passenger Rail Easement”) for Passenger Rail Operations (as hereinafter defined) in, over, under, across, and upon the following described Roanoke Easement Area, which are located in the vicinity of Roanoke, Virginia; to wit:

SEE **EXHIBIT A**, attached hereto and made a part hereof (hereinafter referenced as the “**Roanoke Easement Area**”).

For purposes of this Deed, “Passenger Rail Operations” shall mean the operation of the Roanoke Easement Area for Excursion Passenger Rail Service, Commuter Rail Service, for Intercity Passenger Rail Service – Commonwealth-Supported, and for Intercity Passenger Rail Service – Long-Distance, as such terms are defined in the Comprehensive Rail Agreement dated as of _____, 2022 between Norfolk Southern Railway and VPRA, as amended, restated or supplemented from time to time (“CRA”), including without limitation, the right to operate certain Passenger Rail Services over the existing trackage on the Roanoke Easement Area, as well as any future modifications thereto or replacements thereof, and any other improvements made to the Roanoke Easement Area, provided that the rights granted herein consist solely of rights to operate over the aforementioned trackage, and for no other purpose, with such rights not including the right of VPRA to designate which specific real or personal property of Norfolk Southern Railway are utilized in support of the easement rights granted herein. Further, Norfolk Southern Railway shall designate, subject to the terms of the CRA, the specific track within the Roanoke Easement

Area upon which the Passenger Rail Services may operate from time to time in enjoyment of the permanent easement rights granted herein to ensure safety and efficiency of all applicable rail operations in the vicinity of the Roanoke Easement Area.

(Signature Page to Follow)

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS the following signatures and seal the day and year first above written.

By NORFOLK SOUTHERN RAILWAY COMPANY

Kristi D. Blair
Real Estate Manager

STATE OF GEORGIA)

COUNTY OF FULTON)

Before me, a Notary Public in and for the said County, personally appeared _____
_____ known to me to be the person who, as Real Estate Manager of Norfolk Southern
Railway Company, the corporation which executed the foregoing instrument, signed the same, and
acknowledged to me that he/she did so sign said instrument in the name and upon behalf of said
corporation as such officer; that the same is his/her free act and deed as such officer and the free
and corporate act and deed of said corporation; and that he/she was duly authorized thereunto by
its Board of Directors.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my
official seal, at Atlanta, Georgia, this _____ day of _____, 20____.

My commission expires: _____

Notary Public

Exhibit A to Deed of Easement

Roanoke Easement Area Description

[The Existing Valuation Maps listed in Exhibit B-1 will be put into the proper form and added to this Exhibit A prior to Closing.]

EXHIBIT C-3**Form of Deed of Confirmation**

This instrument prepared by:

Ryan M. Hankins
General Attorney – Real Estate
Norfolk Southern Corporation
1200 Peachtree St., NE
Atlanta, GA 30309-3579

After recording return to:

Michael Westermann
General Counsel
Virginia Passenger Rail Authority
600 E. Main Street
Suite 2125
Richmond, VA 23219

Property Address:

Tax Parcel:

Consideration:

This Deed is exempt (i) from recordation taxes pursuant to §58.1-810.1, §58.1-811.A.3 and §58.1-811.C.4 of the Code of Virginia (1950), as amended, and (ii) from the payment of Clerk's fees pursuant to §§ 17.1-266 and 17.1-279.E.

[QUITCLAIM] [EASEMENT]¹ DEED OF CONFIRMATION

THIS DEED OF CONFIRMATION, made this ____ day of _____ 20____ by
and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation
(hereinafter called “Norfolk Southern Railway”), and VIRGINIA PASSENGER RAIL
AUTHORITY, a political subdivision of the Commonwealth of Virginia, with a mailing address
of _____ (hereinafter called “VPRA”)

¹ NTD – To be adapted for the Purchased V-Line or Roanoke Easement Area as applicable.

W I T N E S S E T H:

WHEREAS, Norfolk Southern Railway [quitclaimed and conveyed certain railroad corridor, equipment, and associated real property to VPRA, by that certain Quitclaim Deed] [conveyed unto VPRA, and its successors, and assigns a permanent, perpetual, irrevocable, assignable, divisible, licensable and transferable easement (the “Passenger Rail Easement”) for Passenger Rail Operations (as hereinafter defined) in, over, under, across, and upon the following described Roanoke Easement Area], which are located in the vicinity of Roanoke, Virginia dated _____ and placed of record at Instrument Number _____ in the Clerk’s Office of the Circuit Court of _____ on _____, 20____ [(“Purchased V-Line”)] [(“Roanoke Easement Area”)]; and

WHEREAS, Norfolk Southern Railway and VPRA now desire to confirm the boundaries of a certain portion of the [Purchased V-Line] [Roanoke Easement Area], with any interest retained by Norfolk Southern Railway or conveyed to VPRA being vested in each party as more particularly described on Exhibit A.

NOW, THEREFORE, That Norfolk Southern Railway herein, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration paid by VPRA to Norfolk Southern Railway, receipt of which is hereby acknowledged, Norfolk Southern Railway does hereby [quitclaim and] convey unto VPRA, and VPRA’s successors and assigns, the following described premises, located in the _____, Virginia; to wit:

See Exhibit “A”

SUBJECT, to all restrictions, covenants, conditions, reservations, licenses, and easements, whether or not of record.

(Signature Pages to Follow)

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS the following signatures and seal the day and year first above written.

By NORFOLK SOUTHERN RAILWAY COMPANY

Kristi D. Blair
Real Estate Manager

STATE OF GEORGIA)

COUNTY OF FULTON)

Before me, a Notary Public in and for the said County, personally appeared _____
_____ known to me to be the person who, as Real Estate Manager of Norfolk Southern
Railway Company, the corporation which executed the foregoing instrument, signed the same, and
acknowledged to me that he/she did so sign said instrument in the name and upon behalf of said
corporation as such officer; that the same is his/her free act and deed as such officer and the free
and corporate act and deed of said corporation; and that he/she was duly authorized thereunto by
its Board of Directors.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my
official seal, at Atlanta, Georgia, this _____ day of _____, 20____.

My commission expires: _____

Notary Public

VIRGINIA PASSENGER RAIL AUTHORITY

By _____

STATE OF VIRGINIA)

CITY OF RICHMOND)

Before me, a Notary Public in and for the said City, personally appeared _____
 _____ known to me to be the person who, as [*insert title*], the entity which executed the
 foregoing instrument, signed the same, and acknowledged to me that he/she did so sign said
 instrument in the name and upon behalf of said corporation as such officer; that the same is his/her
 free act and deed as such officer and the free and corporate act and deed of said entity.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my
 official seal, at Richmond, Virginia, this _____ day of _____,
 20____.

My commission expires: _____

 Notary Public

Exhibit A to Deed of Confirmation

[To be agreed prior to recording.]

EXHIBIT D

Operating Schedule

Important Notes:

1. This Exhibit includes the following Operating Schedules for Intercity Passenger Rail Service – Commonwealth-Supported trains:

- **Version 1.0:** adds a second Intercity Passenger Rail Service – Commonwealth-Supported frequency between Roanoke, Virginia, and Boston, Massachusetts
- **Version 1.1:** extends the first and second Intercity Passenger Rail Service – Commonwealth-Supported trains to the New River Valley in Virginia

2. All times, stopping patterns, and slot activation horizons listed are conceptual and may change subject to VPRA, Amtrak and Norfolk Southern Railway approval, changes or delays to infrastructure improvement, and/or Performance Managers Committee feedback.

3. Prior to and after completion of VPRA funded construction projects, VPRA and Norfolk Southern Railway will work with VPRA Users to readjust the schedules as appropriate to reflect changes to the infrastructure. VPRA and Norfolk Southern Railway will also work with VPRA Users to readjust the schedules as appropriate to reflect operational efficiencies related to the fleet utilized by Amtrak.

4. NEC slots are connected to all Intercity Passenger Rail Service – Commonwealth-Supported trains. As NEC schedules are developed for future phases, VPRA and Norfolk Southern Railway will be responsible for working cooperatively with Amtrak to ensure the Operating Schedule for Intercity Passenger Rail Service – Commonwealth-Supported trains maintain train connectivity between Virginia and the NEC.

5. In accordance with Section 8.1(g), VPRA may at any time following the commencement of the Extended First Frequency and the Extended Second Frequency, propose the commencement of the Third Frequency, on a frequency and operating schedule that it, in its sole discretion, determines.

6. Excursion Passenger Rail Service between Roanoke and the New River Valley may be proposed by VPRA and considered by Norfolk Southern Railway in good faith.

7. VPRA reserves the right to serve all stations that are listed on the Operating Schedules.

Version 1.0 – Washington Union Station to Roanoke, Virginia

Station	Roanoke Train #1	Roanoke Train #2
Union Station	8:05am	4:50pm
L'Enfant	---	---
Burke Centre	8:39am	5:30pm
Manassas	8:58am	5:49pm
Culpeper	9:32am	6:24pm
Charlottesville	10:31am	7:23pm
Lynchburg	11:47am	8:39pm
Roanoke	1:03pm	9:55pm

Station	Roanoke Train #1	Roanoke Train #2
Roanoke	6:20am	4:30pm
Lynchburg	7:39am	5:49pm
Charlottesville	8:53am	7:03pm
Culpeper	9:45am	7:55pm
Manassas	10:20am	8:30pm
Burke Centre	10:39am	8:49pm
L'Enfant	---	---
Union Station	11:23am	9:32pm

Note 1: Times listed between Union Station and Roanoke reflect Amtrak and Norfolk Southern Railway's agreed upon runtimes and are subject to change prior to implementation.

Note 2: Individual slot's stopping patterns are subject to change prior to implementation.

Version 1.1 – Washington Union Station to New River Valley

Station	Roanoke Train #1	Roanoke Train #2
Union Station	8:05am	4:50pm
L'Enfant	---	---
Burke Centre	8:39am	5:30pm
Manassas	8:58am	5:49pm
Culpeper	9:32am	6:24pm
Charlottesville	10:31am	7:23pm
Lynchburg	11:47am	8:39pm
Roanoke	1:04pm	9:56pm
New River Valley	1:58pm	10:50pm

Station	Roanoke Train #1	Roanoke Train #2
New River Valley	5:24am	3:34pm
Roanoke	6:20am	4:30pm
Lynchburg	7:39am	5:49pm
Charlottesville	8:53am	7:03pm
Culpeper	9:45am	7:55pm
Manassas	10:20am	8:30pm
Burke Centre	10:39am	8:49pm
L'Enfant	---	---
Union Station	11:23am	9:32pm

Note 1: Times listed between Union Station and Roanoke reflect Amtrak and Norfolk Southern Railway's agreed upon runtimes and are subject to change prior to implementation.

Note 2: Individual slot's stopping patterns are subject to change prior to implementation.

Note 3: Roanoke – New River Valley times are calculated based on anticipated passenger speeds based off Norfolk Southern Railway's freight rail speeds in this territory.

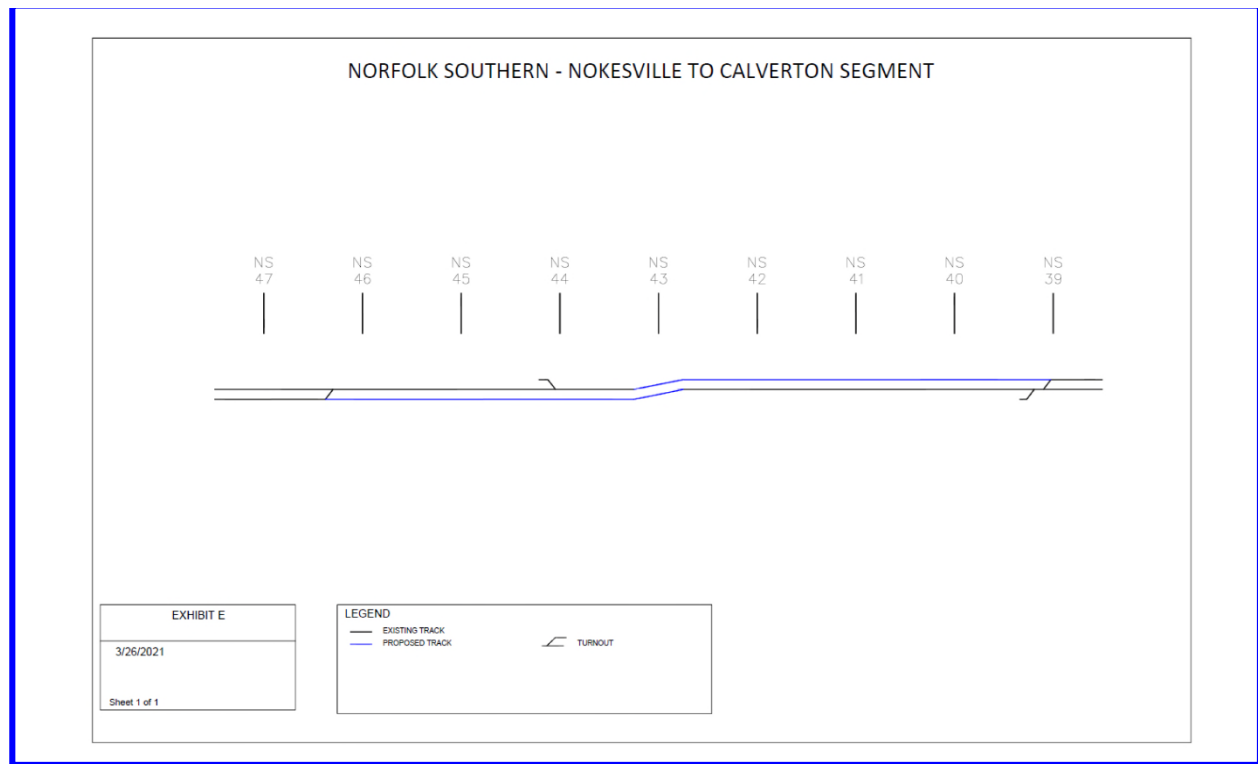
EXHIBIT E**Nokesville-Calverton Double Track Project**

EXHIBIT F**Form of Assignment and Assumption Agreement
ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of this ____ day of _____, 2022 (the “**Assignment and Assumption Agreement**”), is by and among **Norfolk Southern Railway Company**, a Virginia corporation (“**Norfolk Southern Railway**”) and the **Virginia Passenger Rail Authority**, a political subdivision of the Commonwealth of Virginia (“**VPRA**”). Norfolk Southern Railway and VPRA are referred to individually here as a “**Party**” and collectively as the “**Parties**”.

RECITALS:

WHEREAS, Norfolk Southern Railway and VPRA have entered into that certain Comprehensive Rail Agreement dated _____ (the “**Contract**”), whereby Norfolk Southern Railway has agreed to sell to VPRA the following real property, equipment, fixtures and improvements of Norfolk Southern Railway from the Salem Crossovers west of Roanoke, Virginia between a point just east of the connection of the Salem Crossovers (at or about MP V-250.9304) to Merrimac (Christiansburg), Virginia at MP V-279.0, located in Montgomery County, Roanoke County, and the City of Salem, all in the Commonwealth of Virginia (the “**Purchased V-Line**”); and

WHEREAS, Norfolk Southern Railway has agreed to assign, and VPRA has agreed to assume, certain agreements pursuant to which third parties have rights with respect to the Purchased V-Line (the “**Ancillary Agreements**”).

NOW, THEREFORE, the Parties hereto, for and in consideration of the Purchased V-Line, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, agree as follows:

Section 1. Assignments.

For value received, Norfolk Southern Railway does hereby transfer and assign unto VPRA, all of Norfolk Southern Railway’s right, title and interest, covenants, promises, and obligations to the fullest extent that Norfolk Southern Railway’s title permits, in those various Ancillary Agreements indicated on **Exhibit A**, attached hereto and made a part hereof.

Section 2. Assumption.

VPRA does hereby accept and assume all of Norfolk Southern Railway’s right, title and interest, covenants, promises, and obligations, to the fullest extent that Norfolk Southern Railway’s title permits, in those various Ancillary Agreements indicated on **Exhibit A**, and agrees to discharge all right, title and interest, covenants, promises, and obligations of Norfolk Southern Railway arising pursuant to the Ancillary Agreements in accordance with their respective terms and conditions of each of the Ancillary Agreements.

Section 3. Erroneous Assignment.

It is the intent of Norfolk Southern Railway to assign its interest in only those instruments affecting, and only to the extent that they affect, the Purchased V-Line. Should any of the Ancillary Agreements (or any portion of one of the respective Ancillary Agreements) not affect or concern the Purchased V-Line, then, notwithstanding any provision to the contrary herein, this Assignment and Assumption Agreement shall be void and of no effect as to those respective Ancillary Agreements (or the portions thereof) that do not affect or concern the Purchased V-Line. Upon determination by either party that any instruments have been erroneously included in this Assignment and Assumption Agreement, the instruments shall be promptly returned to Norfolk Southern Railway, if already in the custody of VPRA. Further, in the event that any of the respective Ancillary Agreements (or a portion thereof) affects or concerns the Purchased V-Line but also affects or concerns other property apart from the Purchased V-Line, then Norfolk Southern Railway shall continue to discharge such right, title and interest, covenants, promises, and obligations as the same affect or concern property that is not located within the Purchased V-Line, with VPRA agreeing doing the same for property that is within the boundaries of the Purchased V-Line, with each Party treating that Party's right, title and interest, covenants, promises, and obligations as wholly separate agreements with the applicable third party.

Section 4. [Reserved]

Section 5. Governing Law.

The laws of the Commonwealth of Virginia shall govern the validity of this Assignment and Assumption Agreement, the construction of its terms, and the interpretation of the rights and duties arising hereunder, without regard to the laws that might otherwise govern under the applicable principles of conflicts of law thereof.

Section 6. Counterparts.

This Assignment and Assumption Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 7. Successors and Assigns.

This Assignment and Assumption Agreement shall be binding upon and inure solely to the benefit of each Party hereto and their respective successors and permitted assigns, and nothing in this Assignment and Assumption Agreement, express or implied, is intended to or shall confer upon any other person any rights, interests, benefits or remedies of any nature whatsoever under or by reason of this Assignment and Assumption Agreement.

Section 9. Effective Date.

The effective date of this instrument is _____, 202__

(Signature Page to Follow)

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

WITNESS The Following Seals and Signatures.

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____ (Seal)
Printed Name: _____
Title: _____

VIRGINIA PASSENGER RAIL AUTHORITY

By: _____ (Seal)
Printed Name: _____
Title: _____

Exhibit A to Assignment and Assumption Agreement

[To be agreed prior to Closing]

EXHIBIT G**Form of Owner's Affidavit
OWNER'S AFFIDAVIT****[SUBJECT TO REVIEW AND APPROVAL OF TITLE COMPANY]**

STATE OF GEORGIA

COUNTY OF _____

Personally came before me, the undersigned attesting officer, Ryan M. Hankins ("Affiant"), who after first being duly sworn, did depose and aver the following:

Affiant is General Attorney - Real Estate of Norfolk Southern Corporation, ultimate parent of Norfolk Southern Railway Company, ("Norfolk Southern Railway"), the owner of land described in **Exhibit "A"**, which is attached hereto and made a part hereof ("Property"), which is being sold to Virginia Passenger Rail Authority, a political subdivision of the Commonwealth of Virginia ("VPRA"). As General Attorney – Real Estate of Norfolk Southern Corporation, Affiant in part is responsible to assist in the oversight of matters involving Norfolk Southern Railway.

Affiant avers that to his actual knowledge, Norfolk Southern Railway is in open, notorious, continuous, adverse and peaceable possession of said Property and knows of no one claiming any adverse interest in said property, except as set out below:

See Exhibit "B"

Affiant further avers that to his actual knowledge there are no suits, judgments, bankruptcies or executions pending against Norfolk Southern Railway in any court whatever that could in any way affect the title to said Property, or constitute a lien thereon, and that Norfolk Southern Railway is not surety on any bond that through default of the principal therein a lien would be created superior to any conveyance executed by Norfolk Southern Railway, nor are there any loan deeds, trust deeds, mortgages or liens of any nature whatsoever unsatisfied against said Property, except as set out below and others of record.

N/A

Affiant further avers that to his actual knowledge there are no unpaid bills or work performed by any third party within 120 days prior to the execution of this instrument, either for services of any architect, engineer, or surveyor, or for labor or materials, for any recent improvements that may have been placed on said Property, either in the construction or repair of any of the improvements thereon.

Affiant further avers that to his actual knowledge there are no liens for past due taxes, paving, sidewalk, curbing, sewer or any other street improvements of any kind against said Property.

Affiant further avers that neither he nor Norfolk Southern Railway are foreign persons as defined by Internal Revenue Code Section No. 1445 (PL 98 369, Sec. 129 at 98 Stat 655) dated July 18, 1984.

Affiant further avers that this Affidavit is made for the benefit of Buyer.

Further the Affiant sayeth not.

Sworn to and subscribed before
me, this _____ day of
_____, 2022.

NORFOLK SOUTHERN RAILWAY COMPANY
By _____

Notary Public

General Attorney – Real Estate

My commission expires _____

Exhibit A to Owner's Affidavit

Insert Legal

[To be agreed prior to Closing.]

Exhibit B To Owner's Affidavit

List of all third-party agreements

[To be agreed prior to Closing.]

EXHIBIT H**Form of FIRPTA****CERTIFICATION OF NON-FOREIGN STATUS**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation ("**Norfolk Southern Railway**"), Norfolk Southern Railway hereby certifies to the following:

Norfolk Southern Railway is not a foreign corporation, foreign partnership, foreign trust and foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

Norfolk Southern Railway's U.S. employer identification number is [REDACTED] and

Norfolk Southern Railway's address is: 650 West Peachtree, NW, Atlanta, GA 30308;

Norfolk Southern Railway understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign the document on behalf of the Transferor.

Norfolk Southern Railway Company, a Virginia corporation

BY: _____

Name: _____

Title: _____

EXHIBIT I

Abandonments

List of Consummated Abandonments affecting the Purchased V-Line Segment

None.

EXHIBIT J

Trackage Rights Agreements

List of Freight and Passenger Trackage Rights

Agreements held by other

Rail Carriers on the Purchased V-Line

None.

EXHIBIT K

Liability Insurance Requirements for VPRA Contractors

- A. Construction Contractors – The requirements below are intended to provide protection to the parties under contracts issued by VPRA for construction services along the Purchased V-Line.

1. Limits of Liability Insurance

Construction Crossing Active ROW	\$10M/\$20M
Construction Adjacent to Active ROW	\$10M/\$20M
Construction Not Impacting Active ROW	\$10M/\$20M

2. Norfolk Southern Railway included as an Additional Insured
3. Contractor and its insurer waive right of recovery/subrogation against Norfolk Southern Railway
4. No exclusion for contractual liability to railroads
5. Cross liability of insureds and severability of interests of insureds
6. Contractor coverage is primary and non-contributory with respect to coverage carried by additional insureds

- B. Maintenance Contractors – The requirements below are intended to provide protection to the parties under contracts issued by VPRA for maintenance services along the Purchased V-Line.

1. Limits of Insurance

Maintenance Within the ROW	\$10M/\$20M
Maintenance Outside of ROW	\$2M/\$2M

2. Norfolk Southern Railway included as an Additional Insured
3. Contractor and its insurer waive right of recovery/subrogation against Norfolk Southern Railway
4. No exclusion for contractual liability to railroads
5. Cross liability of insureds and severability of interests of insureds
6. Contractor coverage is primary and non-contributory with respect to coverage carried by additional insureds

EXHIBIT L**Form of Pipe and Wire Easement
PIPE AND WIRE DEED OF EASEMENT AGREEMENT**

This Deed is exempt (i) from recordation taxes pursuant to §58.1-811.A.3 and §58.1-811.C.4 of the Code of Virginia (1950), as amended, and (ii) from the payment of Clerk's fees pursuant to §§ 17.1-266 and 17.1-279.E.

This Deed of Easement Agreement (“**Agreement**”) is entered into on this ____ day of _____, 2022, between **Virginia Passenger Rail Authority** (“**VPRA**”) and **Norfolk Southern Railway Company** (“**Norfolk Southern Railway**”) for the sole purpose of granting a non-exclusive, permanent easement to across VPRA’s Purchased V-Line (as hereinafter described and defined) for the use and enjoyment of Norfolk Southern Railway and related parties in facilitating the continued administration of certain third-party agreements at various locations.

Now, therefore, with the foregoing incorporated as more fully set forth herein, and in consideration of the mutual covenants, conditions and consideration set forth herein, VPRA and Norfolk Southern Railway hereby agree as follows:

1. **Purchased V-Line Affected.** The Purchased V-Line encumbered by the Pipe and Wire Agreements is generally located west of Roanoke, Virginia between a point just east of the connection of the Salem Crossovers (at or about MP V-250.9304) to Merrimac (Christiansburg), Virginia at MP V-279.0, all in the Commonwealth of Virginia, and more particularly depicted on Exhibit A (“**Purchased V-Line**”).

2. **Easements Granted.** VPRA hereby grants to Norfolk Southern Railway, for use and enjoyment by Norfolk Southern Railway, and the successors, assigns, subsidiaries, affiliates, parent corporation of Norfolk Southern Railway, as well as any third parties under agreement with Norfolk Southern Railway (collectively referenced herein as “**NS Parties**”), non-exclusive, permanent easements over and located on the Purchased V-Line, and more fully described as follows (the “**Easement**” or “**Easements**” as the contest may require), for the construction, operation, maintenance, relocation, use, occupation, installation, repair, modification, renewal, replacement, and removal by NS Parties, of certain improvements, fixtures, facilities, and equipment (including, without limitation, facilities, improvements, fixtures or equipment related to facilitating electric transmission services, communications services, signals, signage, wire, pipe, fiber optic facilities, or other utility services) (“**Pipe and Wire Facilities**”), as otherwise permitted by Norfolk Southern Railway pursuant to certain agreements between Norfolk Southern Railway, NS Parties, or other third parties, as otherwise described on Exhibit B, attached hereto and made a part hereof, (“**Pipe and Wire Agreements**”). The aforementioned Easements shall include the actual area of occupation on, under, above, or across the Purchased V-Line (whether in the nature of sub-surface, surface, or aerial occupations) occupied by the Pipe and Wire Facilities, along with reasonable respective rights of ingress and egress to and from public roadways, and reasonable clearances on all sides of the Pipe and Wire Facilities reasonably necessary for the use and enjoyment of the rights vested in NS Parties pursuant to the respective Pipe and Wire Agreements. VPRA and Norfolk Southern Railway agree that “reasonable rights” as used in this Agreement, will be defined as rights no less substantial in quality or specificity than the rights granted to any

of the respective NS Parties pursuant to the applicable Pipe and Wire Agreements affecting the specific site or Pipe and Wire Facilities in question. Further, no provision of this Agreement shall be interpreted in any way that would limit the quality or quantity of rights vested in NS Parties pursuant to this Agreement to less than the quality or quantity of rights otherwise granted to the applicable NS Parties pursuant to the applicable Pipe and Wire Agreements.

3. Abandonment. In the event that NS Parties should abandon any Easement granted herein (or any portion thereof), without the intent by Norfolk Southern Railway to substitute another party to utilize the same, then, upon request by VPRA, Norfolk Southern Railway shall execute a release of such applicable Easement in a form acceptable for recording in the applicable land records in which the abandoned portion the Easement is located. For the purposes of this Agreement, abandonment shall be defined as written notice to VPRA memorializing the intent of Norfolk Southern Railway to permanently cease use and enjoyment of the rights granted by any such Easement. Upon delivery of such notice of abandonment, any rights specifically referenced in the aforementioned notice of abandonment shall be deemed terminated as to the date of such notice of abandonment with neither party having any further rights, duties or obligations, except for any rights, duties or obligations arising from the Pipe and Wire Agreements which may survive termination or expiration. Further, Norfolk Southern Railway may abandon all Easements, any specific Easement, or any portion of any specific Easement, at any time and at the sole discretion of Norfolk Southern Railway, without such notice being deemed a waiver or abandonment of any rights otherwise vested in NS Parties for any Easement, or Easements, that are not specifically referenced in such a notice of abandonment. After such written notice of abandonment and upon request by VPRA, Norfolk Southern Railway shall provide a release in recordable form evidencing the rights released pursuant to any such written notice of abandonment (with VPRA being responsible for recording, and any associated costs or fees, as VPRA deems necessary or convenient).

4. Maintenance. Except to the extent that any cost, claim or damage to the Pipe and Wire Facilities or Purchased V-Line may arise from the gross negligence or willful misconduct of VPRA, the subsidiaries, affiliates, or parent companies of either VPRA, or third parties working on behalf of VPRA, whether on the effective date of this Agreement or any time thereafter (“**Owner Parties**”), NS Parties shall bear all costs and expenses, claims and liability arising from the Pipe and Wire Facilities located within the Easements granted herein, and the use and enjoyment of any associated rights otherwise granted herein. Norfolk Southern Railway covenants and agrees to keep the easement areas in a reasonable state of repair so that VPRA shall retain reasonable rights of access to and across the Purchased V-Line for VPRA or for any other right holder, tenant, lessee, easement holder or other person or entity with the right to use the Purchased V-Line prior to the date of the Easements granted herein (except to the extent that any Easements reserved to NS Parties are exclusive in nature pursuant to the Pipe and Wire Agreements). VPRA shall keep, can shall cause all Owner Parties to keep, all adjacent property, in VPRA’s possession or control, in a state of repair sufficient for NS Parties to fully enjoy the Easements or associated rights granted by this Agreement.

5. Compliance with Applicable Law. Norfolk Southern Railway shall comply with all applicable federal, state, and local laws, statutes, ordinances, regulations, self-insurance requirements, and requirements applicable to its activities under this Agreement.

6. Norfolk Southern Railway Provided Insurance. For so long as Norfolk Southern Railway claims any respective Easement rights upon the Purchased V-Line hereunder, NS will act as a self-insurer of its liabilities, and will pay all sums which it shall become legally obligated to pay in connection with the enjoyment of the rights granted herein. NS further certifies that it maintains insurance coverage above its self-insured retention.

7. Property Taxes. Norfolk Southern Railway shall be responsible for all personal property taxes and special assessments arising solely from the Pipe and Wire Facilities. Any bills solely attributable to a personal property assessment or special assessment for the Pipe and Wire Facilities shall be forwarded promptly by VPRA to Norfolk Southern Railway and, if received by Norfolk Southern Railway within a reasonable amount of time, paid by the due date. However, no increase or decrease in the assessment of the Purchased V-Line shall be attributed to the presence of the Pipe and Wire Facilities, and Norfolk Southern Railway shall not be responsible for any portion of any real estate tax assessment attributed to such an increase or decrease.

(Signature Page to follow)

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

(Signature Page to Pipe and Wire Easement)

WITNESS the following signatures and seal the day and year first above written.

Virginia Passenger Rail Authority

By

TITLE:

STATE OF VIRGINIA)

COUNTY OF _____)

Before me, a Notary Public in and for the said County, personally appeared _____ known to me to be the person who, as _____ of Virginia Passenger Rail Authority, the entity that executed the foregoing instrument, signed the same, and acknowledged to me that he/she did so sign said instrument in the name and upon behalf of said corporation as such officer; that the same is his/her free act and deed as such officer and the free and corporate act and deed of said corporation; and that he/she was duly authorized thereunto by its Board of Directors.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my official seal, at _____, this _____ day of _____, 20_____.

My commission expires: _____

Notary Public

(Signature Page to Pipe and Wire Easement)

WITNESS the following signatures and seal the day and year first above written.

NORFOLK SOUTHERN RAILWAY COMPANY

By

Real Estate Manager

STATE OF GEORGIA)

COUNTY OF _____)

Before me, a Notary Public in and for the said County, personally appeared _____ known to me to be the person who, as _____ of _____, the corporation which executed the foregoing instrument, signed the same, and acknowledged to me that he/she did so sign said instrument in the name and upon behalf of said corporation as such officer; that the same is his/her free act and deed as such officer and the free and corporate act and deed of said corporation; and that he/she was duly authorized thereunto by its Board of Directors.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my official seal, at _____, Georgia, this _____ day of _____, 20____.

My commission expires: _____

Notary Public

Exhibit A
Description of Purchased V-Line

[To be agreed prior to Closing based on the corresponding exhibit in the Quitclaim Deed.]

Exhibit B
List of Pipe and Wire Agreements

[To be agreed prior to Closing.]

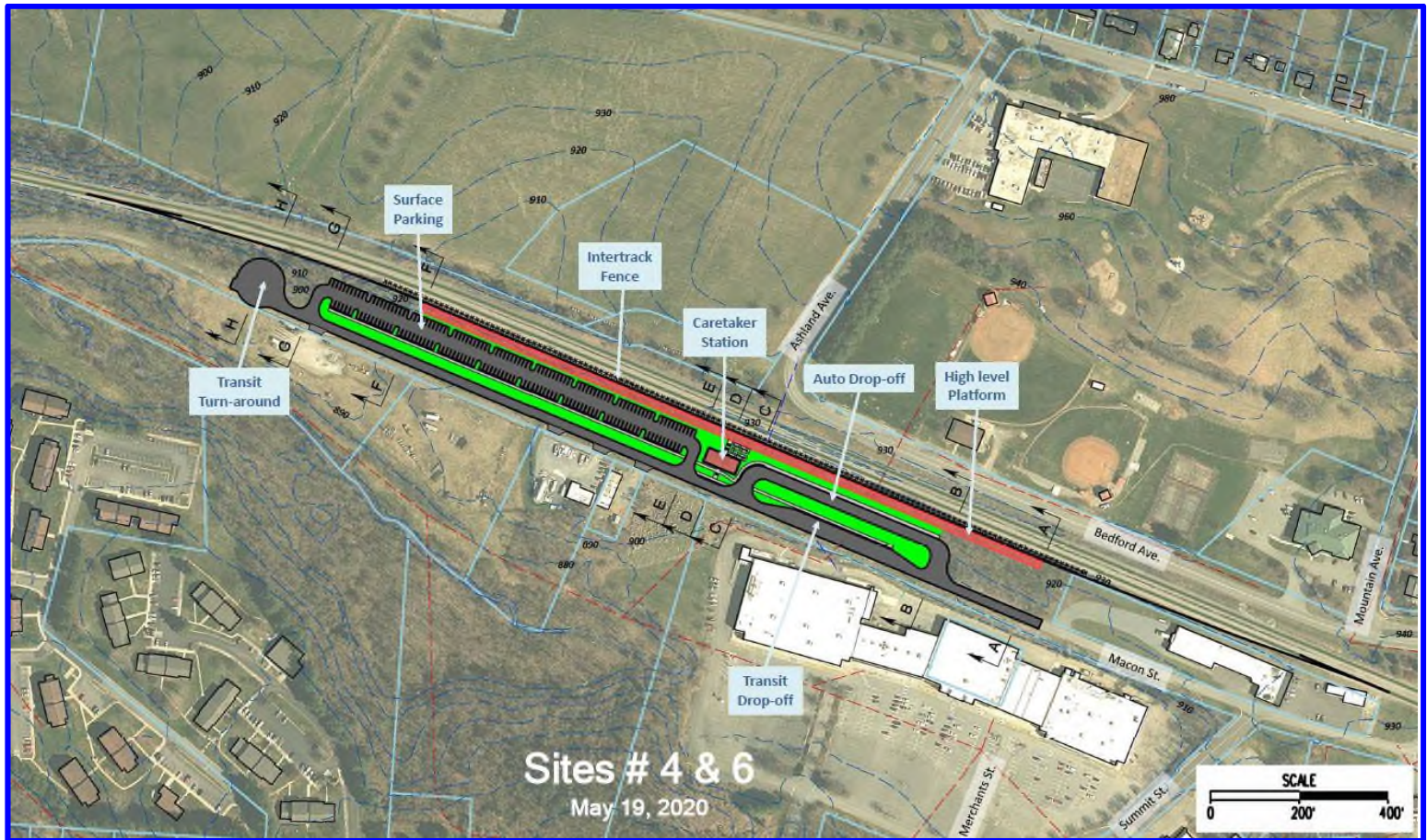
EXHIBIT M**Proposed Site of Bedford Amtrak Station at Macon Street between MP 229 and 230**

EXHIBIT N

Liability Provisions to be Included in any Contract with and Applicable to Future VPRA Users other than Amtrak

Section D.1 [VPRA USER] shall indemnify and save harmless the Norfolk Southern Railway Indemnified Parties, irrespective of any negligence or fault of Norfolk Southern Railway, its employees, agents or servants, or howsoever the same shall occur or be caused, from any and all liability for injuries to or death of any [VPRA USER] employee and for the loss of, damage to, or destruction to his or her property; but it is expressly understood and agreed that any labor furnished by Norfolk Southern Railway for and on behalf of [VPRA USER] under any provision of this Future VPRA User Contract shall not be regarded for the purposes of this Section [D.1] as employees of [VPRA USER].

Section D.2 [VPRA USER] agrees to indemnify and save harmless the Norfolk Southern Railway Indemnified Parties, irrespective of any negligence or fault of Norfolk Southern Railway, its employees, agents, or servants, or howsoever the same shall occur or be caused, from any and all liability for injuries to or death of, or property damage to (i) any person (other than an employee or agent of Norfolk Southern Railway in the course of his employment or agency, except when such employee or agent is a fare-paying passenger of [VPRA USER]) who is on a train (including private cars but excluding business cars of Norfolk Southern Railway) operated by or for the account of [VPRA USER], (ii) any person (other than an employee or agent of Norfolk Southern Railway in the course of his or her employment or agency, except when such employee or agent is a fare-paying passenger of [VPRA USER]) at or adjacent to a passenger station used by [VPRA USER] who is there in connection with the passenger rail service for the purpose of boarding or detraining from a [VPRA USER] Train, meeting a [VPRA USER] Train, purchasing a ticket, making a reservation, or obtaining information about [VPRA USER]'s service or conducting business with [VPRA USER] (including a vendor from whom [VPRA USER] receives compensation) or passengers riding on a [VPRA USER] Train, or (iii) any person at or adjacent to a passenger station who is providing local transportation to or accompanying a person described in (ii) above; or (iv) any person described in the next two sentences; provided however, that Norfolk Southern Railway shall indemnify [VPRA USER] for injury to, death of, or damage to any person, other than an employee of [VPRA USER], who is struck by improperly secured equipment or cargo of a Norfolk Southern Railway train operated on tracks at or adjacent to a passenger station. At stations that are used by [VPRA USER] and that are not used by Norfolk Southern Railway or by tenants of Norfolk Southern Railway, [VPRA USER] agrees to indemnify and hold harmless the Norfolk Southern Railway Indemnified Parties for injury to or death of, or property damage, to all persons other than Norfolk Southern Railway employees or agents for whom the [VPRA USER] is not responsible pursuant to (ii) above and persons accompanying or doing business with such Norfolk Southern Railway Employees or agents. At stations used jointly by Norfolk Southern Railway and [VPRA USER], or in which Norfolk Southern Railway leases space to third parties, [VPRA USER] agrees to indemnify and hold harmless the Norfolk Southern Railway Indemnified Parties for injury to or death of, or property damage to person who are at the station for a purpose directly related to [VPRA USER]'s use of the station (including person dealing with a lessee of VPRA and/or a VPRA User in that station), and including but not limited to those described in (i), (ii) or (iii), above, but excluding employees or agents of Norfolk Southern Railway in the course of their

employment or agency, except when such employee or agent is a fare-paying passenger of [VPRA USER].

Section D.3 [VPRA USER] agrees to indemnify and hold harmless the Norfolk Southern Railway Indemnified Parties, irrespective of any negligence or fault of Norfolk Southern Railway, its employees, agents or servants, or howsoever the same shall occur or be caused, from any and all liability for, loss of, damage to or destruction of any locomotive, passenger car or any other property or equipment owned by, leased to, used by or otherwise in control, custody or possession of [VPRA USER]. [VPRA USER] agrees to indemnify and hold harmless, irrespective of any negligence or fault of the Norfolk Southern Railway Indemnified Parties, its employees, agents, or servants, or howsoever the same shall occur or be caused, for the cost (including any related fines or penalties) of clean-up of fuel oil which Norfolk Southern demonstrates was spilled on Norfolk Southern Railway property from a [VPRA USER] locomotive or fuel oil spilled by [VPRA USER] or a contractor thereof while fueling a [VPRA USER] locomotive. [VPRA USER] further agrees to indemnify and hold harmless the Norfolk Southern Railway Indemnified Parties, irrespective of any negligence or fault of Norfolk Southern Railway, its employees, agents or servants, or howsoever the same shall occur or be caused, from any and all liability for, loss of, or damage to property of third parties caused by fuel oil spilled by [VPRA USER] or a contractor thereof while fueling a [VPRA USER] locomotive.

Section D.4 [VPRA USER] agrees to indemnify and hold harmless the Norfolk Southern Railway Indemnified Parties, irrespective of any negligence or fault of Norfolk Southern Railway, its employees, agents and servants or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person and for loss of, damage to, or destruction of any property, other than persons and property for which Norfolk Southern Railway is responsible under Section [D.5] hereof, if such injury, death, loss, damage, or destruction arises from or relates to (i) a collision of a vehicle or a person with a [VPRA USER] Train, or (ii) a collision of a derailed [VPRA USER] Train or any part thereof with any person, property, or object on or off the right-of-way.

Section D.5 Norfolk Southern Railway shall indemnify and save harmless VPRA and VPRA Users, irrespective of any negligence or fault of VPRA and/or VPRA Users, their respective agents, employees or servants, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any employee or employees of Norfolk Southern Railway (other than those employees traveling as passengers described in Section [D.2] or a Norfolk Southern Railway employee who is struck by a [VPRA User] Train or a as set forth in Section [D.4]), and for loss of, damage to or destruction of any property or equipment owned by, leased to, used by, or otherwise in control, custody, or possession of Norfolk Southern Railway or its employees described above (including Norfolk Southern cars operated in a [VPRA USER] Train), other than Norfolk Southern Railway property described in Section [D.3] hereof on which fuel oil has been spilled, which arises from activities conducted by or for the account of VPRA USER pursuant to this Future VPRA User Contract.

Section D.6 Norfolk Southern Railway shall indemnify and save harmless [VPRA USER], irrespective of any negligence or fault of [VPRA USER], their respective employees, agents or servants, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person or persons (other than those persons, employees or passengers for which

[VPRA USER] are responsible as provided for in Sections [D.1], [D.2], and [D.3] hereof) and from any and all liability for loss, damage or destruction to any property (other than property for which VPRA or VPRA Users are responsible as provided in Sections [D.1], [D.2], and [D.3] hereof) which arises from activities conducted by or for the account of Norfolk Southern Railway pursuant to this Future VPRA User Contract.

Section D.7 In case suit shall at any time be brought against [VPRA USER] or any of the Norfolk Southern Railway Indemnified Parties asserting liability against which one agrees to indemnify and/or indemnify and save harmless the party sued, the indemnifying party shall, at its own cost and expense and without any cost or expense whatsoever to the party sued, defend such suit and indemnify and save harmless the party sued against all costs and expenses thereof and promptly pay or cause to be paid any final judgment recovered against the party sued; provided, however, that the party being sued shall promptly upon the bringing of any such suit against it give notice to the indemnifying party and thereafter provide all such information as may from time to time be requested. Each party shall furnish to the other all such non-privileged information relating to claims made for injuries, deaths, losses, damage or destruction of the type covered by these Sections [D.1 to D.7] as such other party may from time to time reasonably request. Each party shall cooperate fully in the defense of claims for which the other party is responsible pursuant to these Sections [D.1 to D.7] with respect to activities conducted pursuant to this Future VPRA User Contract, including furnishing witnesses, documents, and other relevant information requested by the responsible party.

Section D.8 NORFOLK SOUTHERN RAILWAY AND [VPRA USER] INTEND, THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER FOR OPERATIONS PURSUANT TO THIS Future VPRA User Contract, SUCH INDEMNITY SHALL APPLY IRRESPECTIVE OF ANY NEGLIGENCE OR FAULT OF THE INDEMNIFIED PARTY AND WITHOUT REGARD TO STRICT LIABILITY OF THE INDEMNIFIED PARTY.

Section D.9 [VPRA USER] shall have the legal ability, and agrees to comply, with, among other requirements, the indemnity requirements set forth in this Future VPRA User Contract between Norfolk Southern Railway and the Virginia Passenger Rail Authority dated [●].

Section D.10 [VPRA USER] shall have liability insurance in an amount not less than the minimum amount prescribed in the Norfolk Southern – Amtrak Off-Corridor Agreement. The Parties acknowledge and agree that, as of the Execution Date, that amount is determined by Federal law, specifically 49 U.S. Code Section 28103. [VPRA USER] shall use commercially reasonable efforts to cause their insurance carriers to add Norfolk Southern Railway as an additional insured on all general liability policies covering [VPRA USER]'s operations on the Purchased V-Line. [VPRA USER] will require that Norfolk Southern Railway be added as an additional insured with [VPRA USER] with respect to operations by any third party utilizing [VPRA USER]'s services provided over the Purchased V-Line if [VPRA USER] requires that insurance be provided for it by such third party.

Section D.11 If at any time such [VPRA USER] fails to maintain the required insurance coverage, Norfolk Southern Railway shall have the right to immediately suspend the right of such [VPRA USER] to operate the applicable Passenger Rail Service, until such time that the default is fully cured. [VPRA USER] agrees that money damages alone would not be a sufficient remedy for a

breach of Sections [D.10 and D.11] by [*VPRA USER*] and, accordingly, that Norfolk Southern Railway shall be entitled to seek, in addition to any other remedies at law or in equity otherwise available to it, specific performance and injunctive relief as a remedy for any such breach, including, without limitation, the right to have the operating rights of [*VPRA USER*] suspended.

EXHIBIT O
Roanoke Easement Area Improvements

General Conceptual Plans
(Not Final Construction Plans)

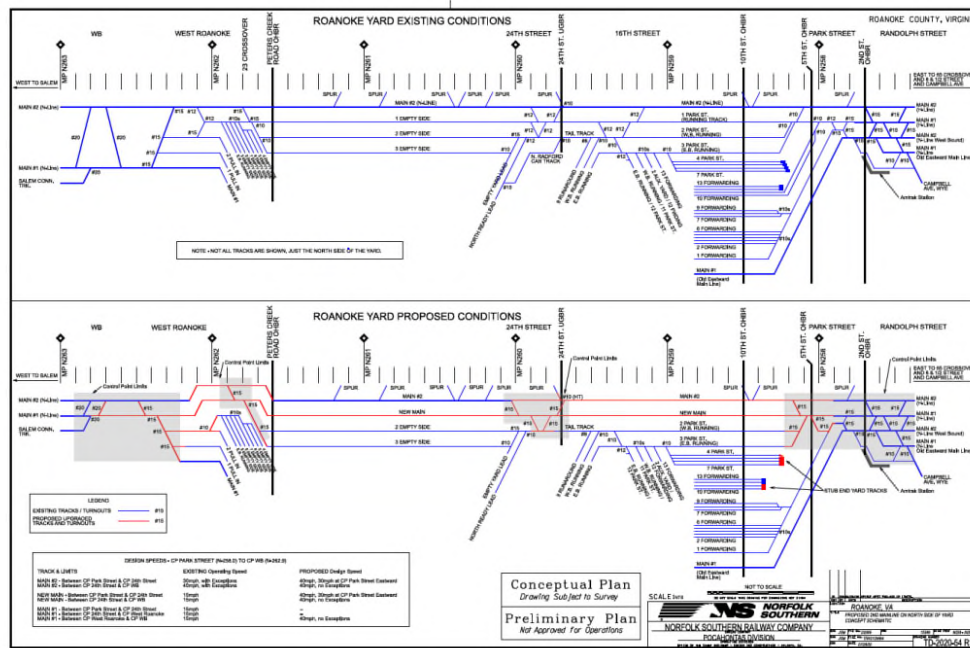
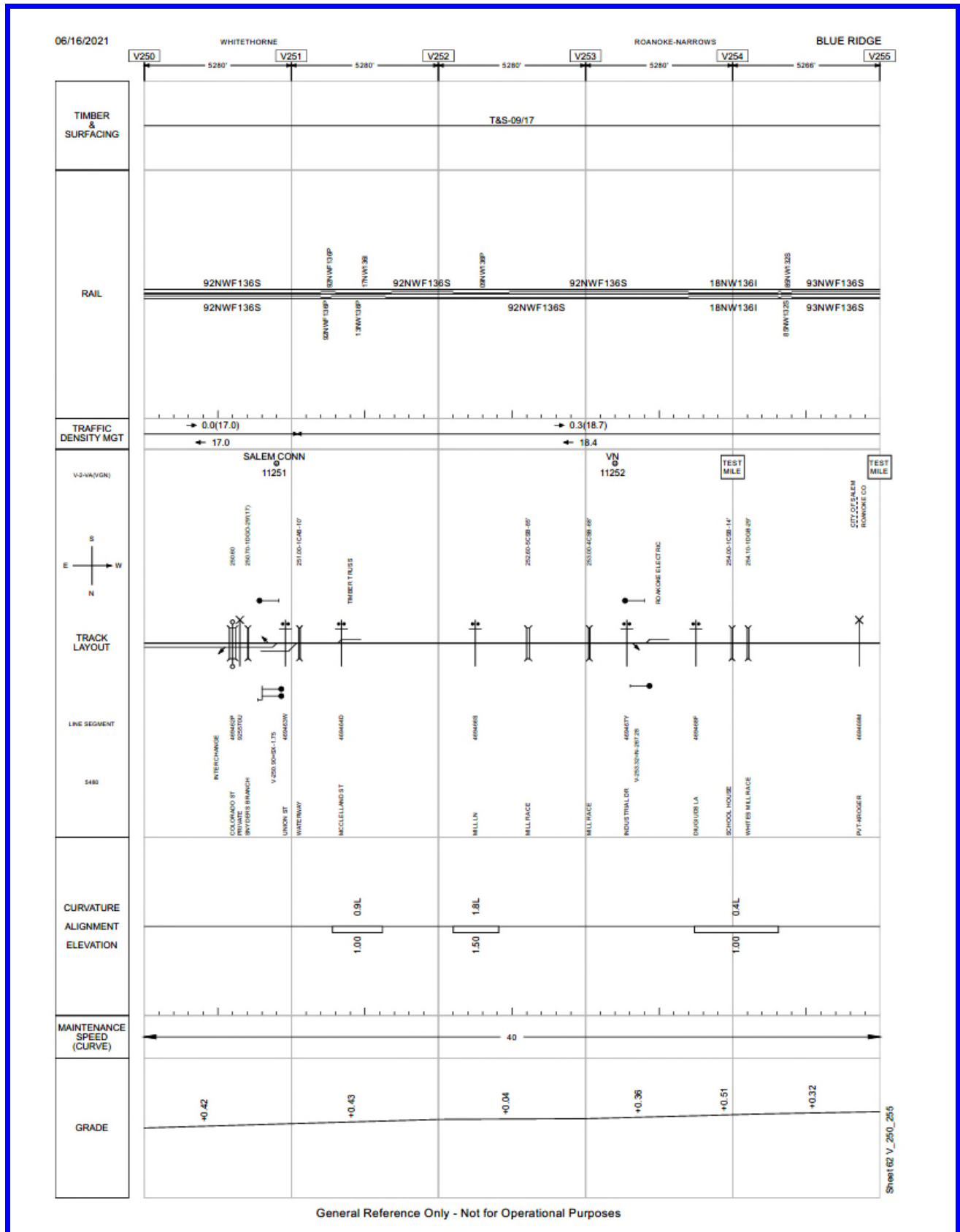
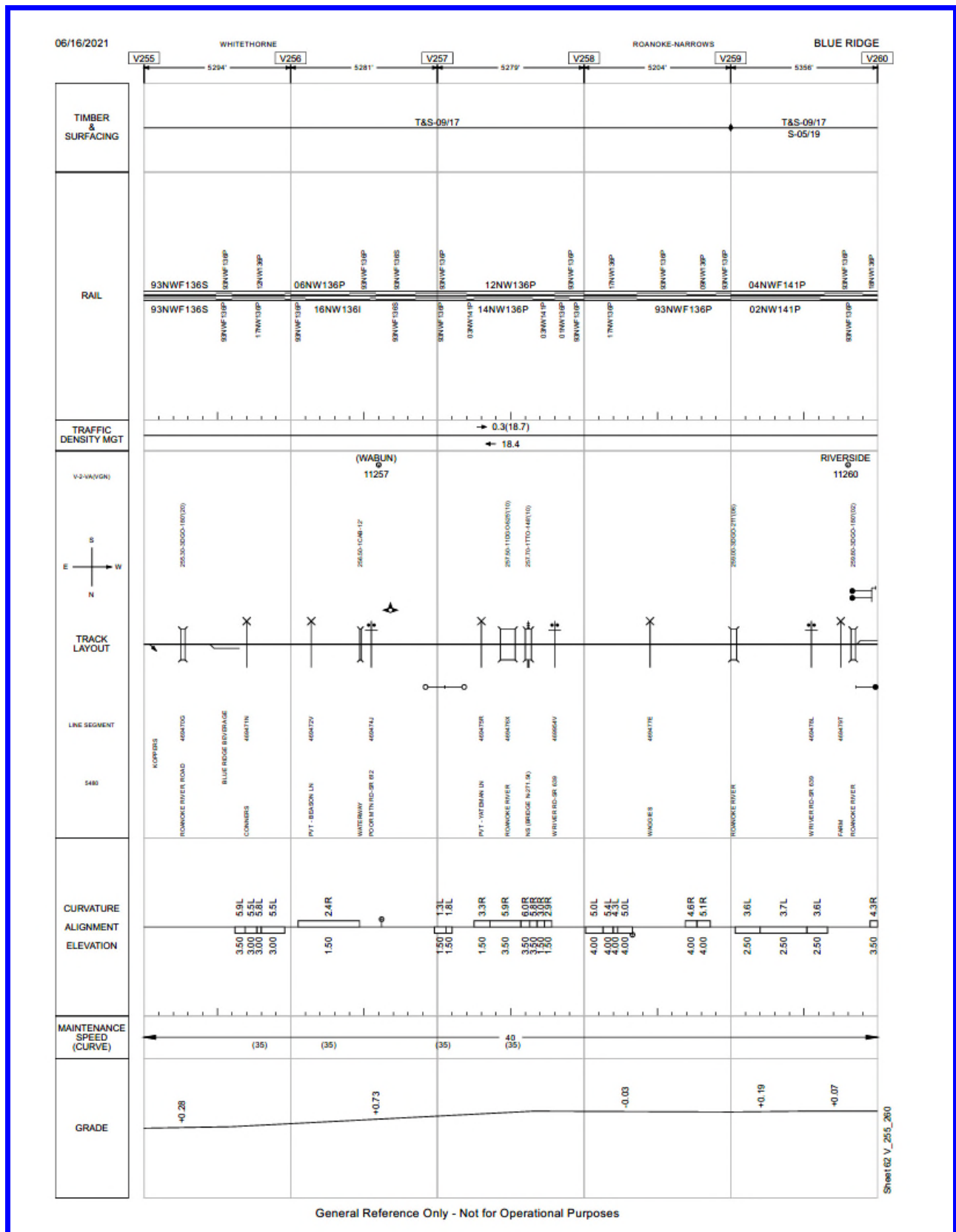
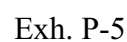
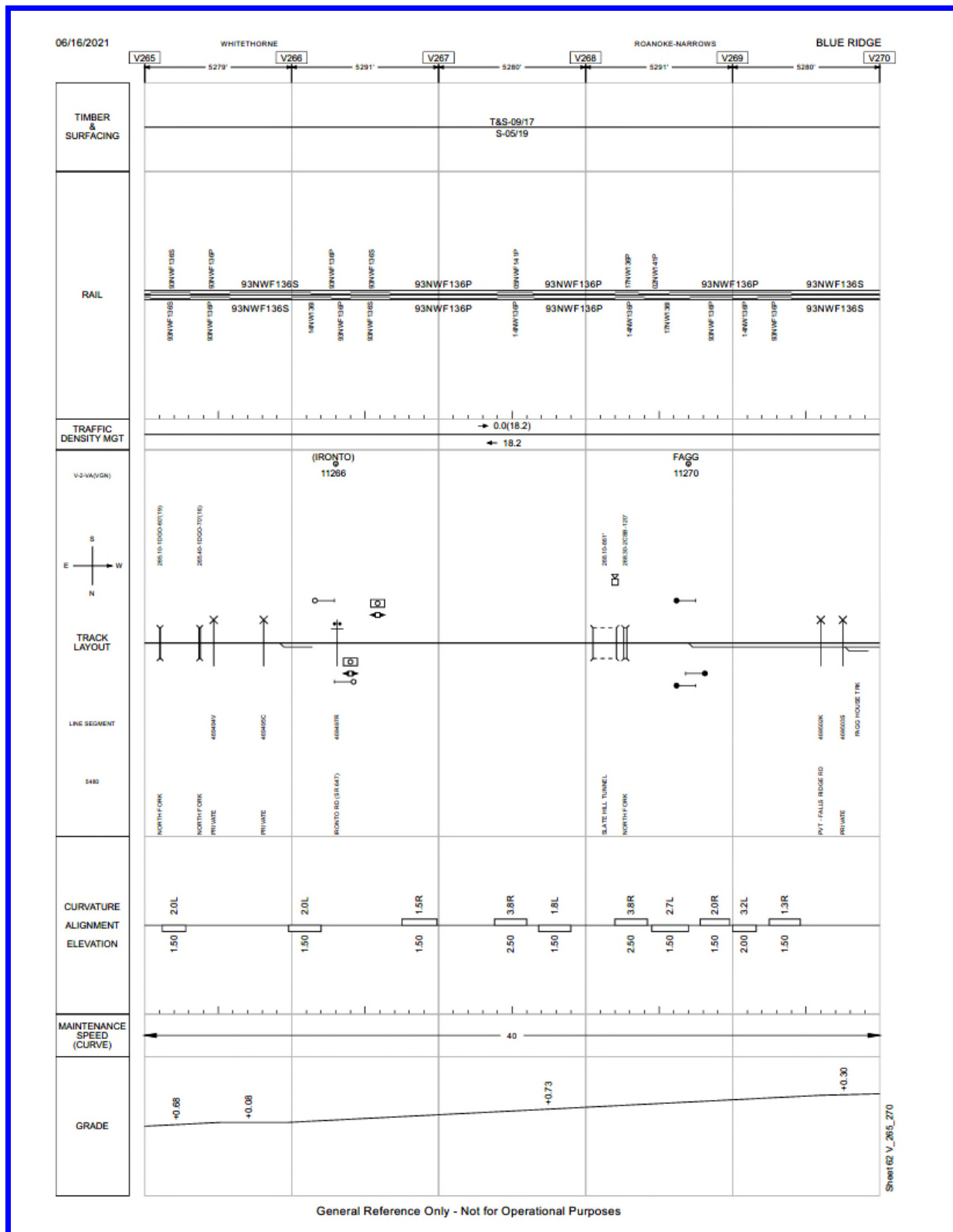


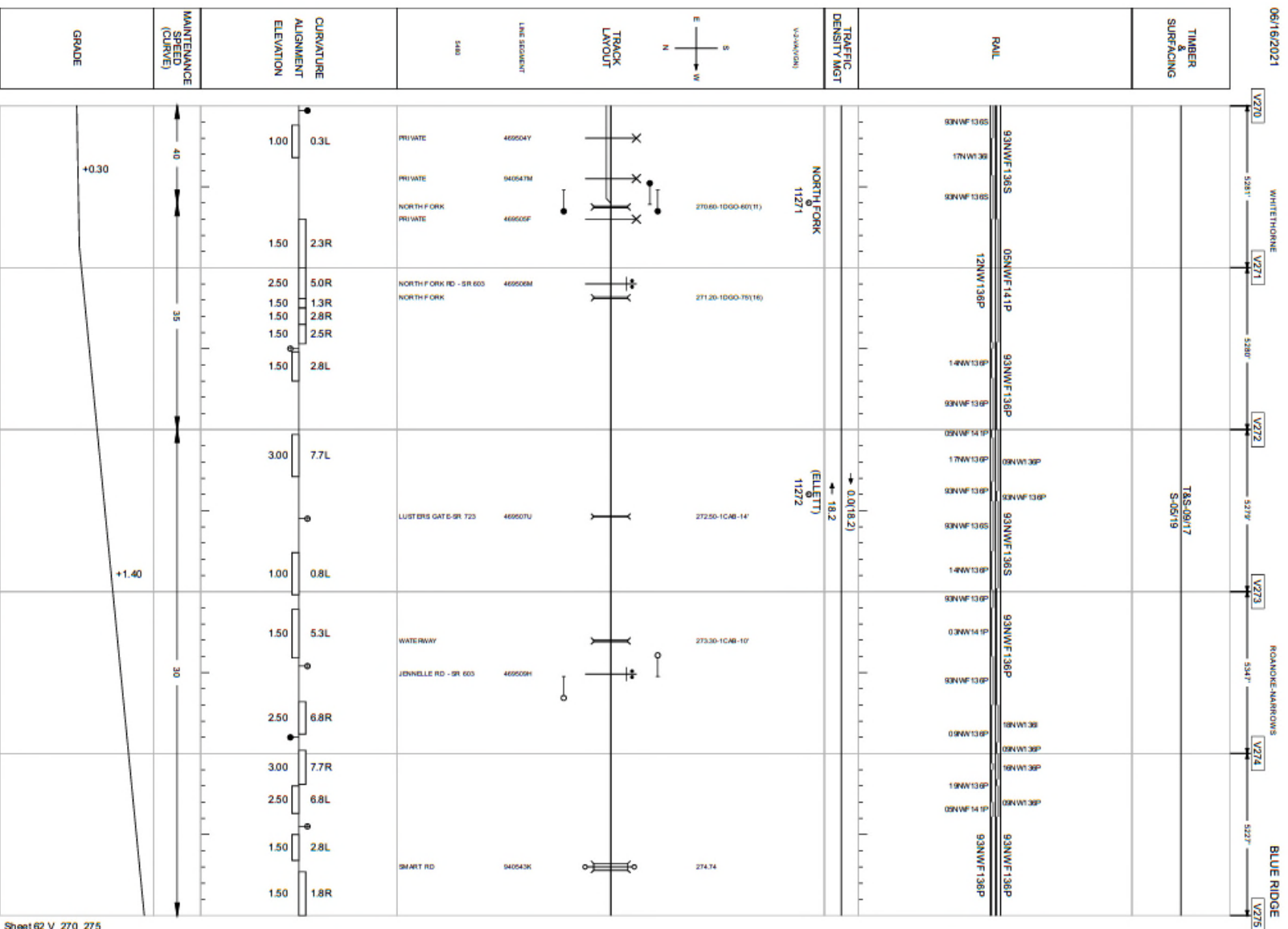
EXHIBIT P
Purchased V-Line Level of Utility











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