

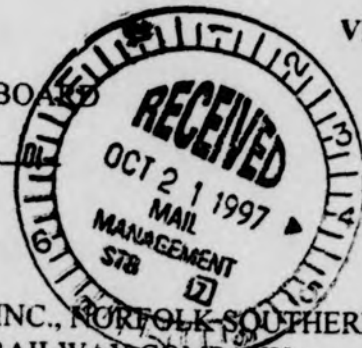
STB FD 33388 (Sub 37) 10-21-97 D 182890 1/3

182872

BEFORE THE
SURFACE TRANSPORTATION BOARD

VRE-9

Finance Docket No. 33388



CSX CORPORATION AND CSX TRANSPORTATION, INC., NORFOLK SOUTHERN
CORPORATION AND NORFOLK SOUTHERN RAILWAY COMPANY
-- CONTROL AND OPERATING LEASES/AGREEMENTS --
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION

Finance Docket No. 33388 (Sub-No. 37)

-182890

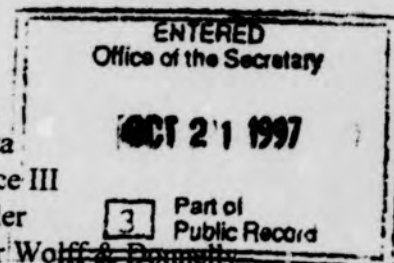
NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND POTOMAC
AND RAPPAHANNOCK TRANSPORTATION COMMISSION
-- OPERATING RIGHTS --
LINES OF CSX TRANSPORTATION, INC., NORFOLK SOUTHERN
RAILWAY COMPANY AND CONSOLIDATED RAIL CORPORATION

**COMMENTS AND REQUEST FOR CONDITIONS OF
NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND
POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION**

VOLUME II

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Commission and Potomac and Rappahannock
Transportation Commission

Dated: October 21, 1997



One James Center
Richmond, Virginia 23219
(804) 782-1434

John W. Snow
Chairman, President
Chief Executive Officer

June 28, 1995

Mr. Terrence Spellane
Chairman
Potomac and Rappahannock Transportation Commission
1549 Old Bridge Road
Woodbridge, Virginia 22191-2737

Dear Mr. Spellane:

Thank you for your letter of June 1 regarding special train service on the Virginia Rail Express. In contrast to what your letter suggests, CSX is under no contractual obligation to run any special trains for VRE. The contract clearly states that special train requests are to be decided at the sole discretion of CSX.

It is the intent of CSX to review each special train request on an individual basis and respond accordingly. By their nature, special trains involve movements that are not part of the normal scheduled operations. For this reason, we will take a conservative approach to avoid conflicts with freight and Amtrak service. The line from Fredericksburg to Washington is one of the most capacity constrained segments of the entire CSX system.

However, we will try to accommodate those special train requests that we believe minimize conflict with other movements. As you know, we approved two Camden Yard trains from the Manassas line. We also approved the 4th of July special train. This should be enough of an indication that we will not arbitrarily deny all special train requests made by VRE.

It is my understanding that our Passenger Services Department in Jacksonville has made important concessions in several areas with important benefits to VRE. In particular, we are allowing the first scheduled VRE train to turn around and come back against the flow of the other commuter trains each day. This has caused a number of conflicts with other trains on the system. We have also given the VRE permission to change the Manassas schedule to run outside the agreed upon times in the contract.

I site these examples as evidence of our continuing desire to work together with the VRE to help you achieve success. In the coming months, there will be a number of opportunities for us to work together on issues of mutual benefit to our organizations. The current debate in Congress to eliminate or lessen punitive damages on commuter and Amtrak trains would be one important example. We will also need to work together to secure funding for the third main line between Fredericksburg and Washington.

RECEIVED JUN 30 1995

Mr. Terrence Spellane
June 28, 1995
Page 2

Thank you again for your letter, and I welcome your continued communication and cooperation in the future. Best of luck for the continued success of VRE.

With best regards,

Sincerely,

John Snow

Washington Post 8/15/97

Officials Say Drop in Riders, Revenue Has VRE Headed for Doom

By Leef Smith

Washington Post Staff Writer

The Virginia Railway Express is headed for a "death spiral" if the commuter line cannot reverse the sharp declines in ridership and revenue that stem from a July freight train derailment, officials said yesterday.

VRE officials attributed the line's troubles largely to the owner of its track, CSX Transportation, saying that the derailment and subsequent repair work were handled without regard to the commuter railroad's needs.

The work has forced VRE to cancel and delay train service, frustrating its riders.

Morning ridership in July plummeted to 2,554 trips, down 32 percent from the same month last year, and revenue for the month was more than \$100,000 below normal, officials said.

If CSX does not make a commitment to see that VRE's trains run on time, the commuter line is doomed, VRE officials said.

"No commitment, no railroad," said Steve Roberts, VRE's director of operations. "This is a very serious problem. Clearly the railroad couldn't sustain this amount of ridership. It would be a death spiral."

For their part, CSX officials said they have been doing all they can to help VRE, which

pays about \$2 million annually to lease the track. "We understand their concerns and we're working toward addressing their concerns," spokesman Rob Gould said. "We want them to be successful."

The five-year-old railroad, which runs trains on two lines between Washington, Manassas and Fredricksburg, has been battling a drop in ridership since last summer, but officials say scheduled maintenance and the July 8 train derailment accelerated the trend.

Transportation officials said the accident, which occurred in Arlington just south of the 14th Street bridge, apparently occurred when

an unbalanced load of heavy paper rolls on a northbound CSX freight train caused a flatcar to derail and sideswipe an Amtrak passenger train.

For several days after the accident, VRE was plagued with delays, forcing the line to provide free-ride coupons to thousands of riders. Then on July 24, a last-minute decision was made by CSX to curtail the number of trains passing through the area where the tracks were being repaired, and VRE was forced to adopt a modified schedule and remove some of its trains from service.

The repairs were completed on Aug. 8, but

See VRE, D6, Col. 1

VRE Says Woes Caused by Work on CSX Tracks

VRE, From D1

cheduled maintenance being performed by CSX to tracks in Stafford County have gone on two weeks beyond the deadline, VRE officials said, and as a result two trains between Washington and Fredericksburg will remain out of service until Monday.

Earlier this week, a very frustrated Roberts said he received a logo in the mail from a rider who changed VRE's slogan to read "Virginia Railway Excuse."

"The guy said, 'I know this isn't your fault but what good are you?'" Roberts lamented. "I'm not going to make this railroad a laughing stock, and I'm not going to spend any more money on advertising without a commitment from CSX."

CSX's Gould said that after the derailment, his company vowed to improve its communication with VRE and provide an early warning system to alert the railroad to possible delays.

"We have a very professional organization, and we will continue to cooperate with them," Gould said.

Roberts said riders have been vocal and for the most part understand the delays are beyond the line's control, but many have chosen to find other, more reliable ways to



FILE PHOTO BY JOHN C. GAROFALO—THE WASHINGTON POST

Assistant conductor William Boggs helps passengers at a stop in Woodbridge. Track repair work has forced VRE to cancel and delay trains, officials say.

travel. Roberts said that has meant a loss of \$126,000 in expected fare revenue, and the railroad estimates a similar drop this month.

In addition, he said, the railroad has had to shell out \$100,000 more in coupons for free rides to commuters whose trains were more than a half-hour late, which is policy.

Many VRE riders say they plan to stick with the commuter line, delays or not, to avoid driving or joining a car pool.

"It seems like every day I get a free ride ticket," said longtime rider Lowell Davis, who commutes on the train from Fredericksburg to Crystal City. Still, he added, "I would rather get home on time."

FOR MORE INFORMATION

To see VRE fares, schedules and service updates, click on the above symbol on the front page of The Post's Web site at www.washingtonpost.com

ATTACHMENT 3

AMENDED AND RESTATED
OPERATING/ACCESS AGREEMENT

Between

CSX TRANSPORTATION, INC.

and

**NORTHERN VIRGINIA TRANSPORTATION COMMISSION AND
POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION**

CONCERNING COMMUTER RAIL SERVICE

THIS AMENDED AND RESTATED OPERATING ACCESS AGREEMENT,
made and entered into this ~~10th day of January, 1995~~ day of , 1997,
is by and between CSX TRANSPORTATION, INC., a corporation organized and
existing under the laws of the Commonwealth of Virginia, with a principal place of
business at 500 Water Street, Jacksonville, Florida 32202 (hereinafter the "Railroad"),
and the NORTHERN VIRGINIA TRANSPORTATION COMMISSION and the
POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION, bodies
politic and corporate and political subdivisions of the Commonwealth of Virginia,
established under the provisions of the Transportation District Act of 1964, as amended,
and having principal places of business at 4350 N. Fairfax Drive, Suite 720, Arlington,
Virginia 22203, and 1549 Old Bridge Road, Suite 209, Woodbridge, Virginia 22192,
respectively (hereinafter, individually, a "Commission" and, collectively, the
"Commissions");

EXPLANATORY STATEMENT

A. The Railroad is engaged in the business of providing efficient, reliable
freight rail transportation services to industrial and commercial enterprises. The Railroad
has obligations to its key constituents: (i) to its shippers: to provide high quality, reliable
service; (ii) to its employees: to provide a safe place to work where their skills and talents
can be fairly and productively utilized; and (iii) to its shareholders: to engage in efficient
operations that will assure superior returns.

B. The Railroad is the owner of a system of railroad lines, including the
railroad line between Richmond, Virginia and Arlington, Virginia (the "RF&P

Subdivision"). The RF&P Subdivision is a fully integrated component of the Railroad's system and serves as a primary link between its operations in the North and the South.

C. The Railroad's freight rail operations also promote significant economic interests within the Commonwealth of Virginia and thereby enhance the welfare of its citizens. Within the RF&P Subdivision, the Railroad currently serves substantial utilities and business enterprises, annually transporting over 72,000 carloads of coal, non-metallic mineral, paper and food and consumer commodities in a safe and environmentally superior manner. It is the Railroad's intention to attract more traffic off the already overburdened highway system, thus helping to ease congestion and reduce pollution. In addition to the jobs created and sustained by these business enterprises, the Railroad currently employs at least 1,600 of its work force directly in the support and operation of freight rail services to these enterprises.

D. The National Rail Passenger Corporation ("NRPC" or "AMTRAK") also utilizes the RF&P Subdivision to provide intercity passenger rail services, pursuant to its mandate and authority under Federal law.

E. The Commissions are engaged in planning and operating a high quality, world-class public transportation rail system, known as the Virginia Railway Express ("VRE"), that is reliable, safe and economical, with financial assistance from Commonwealth of Virginia (the "Commonwealth"). The Commissions have become leaders in providing an efficient and environmentally sound alternative to single occupant automobile travel on the overcrowded highway network at significantly lower cost. By foregoing automobile travel, the Commissions' commuters make a significant contribution in reducing automobile generated pollution, which is responsible for nearly

two-thirds of all air pollution in Northern Virginia. The Commissions' commuter rail service is an important component of the region's approach to meeting the air quality standards set by the Federal Government in the Clean Air Act Amendments of 1990. In addition to the mobility provided to the daily commuters and reduction in air pollution, the Commissions' commuter service provides significant meaningful employment. Energy conservation from this mass transit service reduces dependence on foreign oil.

F. In view of potential benefits of commuter rail services to the Commonwealth, the Railroad and the Commissions undertook cooperative efforts to initiate certain commuter rail services, within that portion of the RF&P Subdivision between MP 110.0 (RO Interlocking) and MP 53.2 (Olive) (the "Corridor"), pursuant to an Operating/Access Agreement dated December 1, 1989 between Richmond, Fredericksburg and Potomac Railroad Company (the Railroad's predecessor) and the Commissions (the "Original Agreement"). The Original Agreement was to expire on November 30, 1994, but was extended for an additional period ending January 10, 1995, pursuant to a Forty Day Extension Agreement dated November 30, 1994, and a Second Extension Agreement dated January 9, 1995 (collectively, the "Extension Agreement"). Thereafter, a subsequent agreement was entered into dated January 10, 1995 (the "1995 Agreement") providing for the continued operation of the Commissions' commuter rail services.

G. During the initial term of the Original Agreement, and continuing through to the 1995 Agreement, the Commissions' commuter rail service has been well-received by the citizens of the Commonwealth and the Commissions ~~now seek to renew the term of the Original Agreement and to expand its existing commuter service.~~ and the Railroad

now seek to extend the term, and amend and restate the conditions of the 1995 Agreement.

H. However, all parties acknowledge that the finite capacity of the Railroad's RF&P Subdivision (particularly within the Corridor) presents a challenge to the concurrent operation of freight, commuter, and intercity passenger rail services. The Railroad has informed the Commissions that, in the Railroad's judgment, Railroad's ability to operate its freight service on its railroad lines is constrained by existing passenger rail service within the Corridor, and that the ability of the Commissions to provide reliable, on-time service within the Corridor is impaired by the finite capacity of the Railroad's RF&P Subdivision. In essence, the Railroad believes that it will not be possible to accommodate future growth of passenger service on its existing system and that a new course must be chartered.

I. It is clearly in the best interests of the Commonwealth and its citizens, and crucial to the Commissions and its commuters, the Railroad and its shippers, employees and shareholders, to maintain the highest standards of service on the RF&P Subdivision. To do otherwise would result in the increase of freight and commuter traffic on the already overburdened highway system. Maintenance of those standards requires that capital improvements be made to increase the capacity of the Corridor.

J. In view of its freight and intercity passenger rail service commitments and the capacity constraints of its RF&P Subdivision, the Railroad has determined that it can allow the expansion of the Commissions' commuter service only upon obtaining assurances from the Commissions, working with the Commonwealth, that the capacity of the RF&P Subdivision must be expanded to accommodate the contemplated commuter

traffic within this vital and growing corridor in the manner described below.

Accordingly, it is the intention of the Commissions and the Railroad to work cooperatively to seek long-term solutions that will accommodate the growing freight and intercity passenger operations and further expansion of commuter rail services in the Corridor. It is believed that such a long-term solution will require the construction of a third parallel mainline to be operated in coordination with Railroad's existing double track mainline system.

 K. By letter dated January 10, 1995, from Robert Martinez, the Secretary of the Commonwealth's Department of Transportation, to John Snow, the Chairman and President of CSX Corporation, the Commonwealth has acknowledged the need for capital improvements to allow the operation of the Railroad's freight service and NRPC's S intercity passenger service without interference from the Commissions' commuter service, and the Commonwealth's willingness to provide financial assistance to the Commissions to enable them to fund such improvements as well as a portion of the fees payable to the Railroad under this Agreement. While the Railroad understands that such acknowledgment does not constitute a legally binding commitment, the Railroad has relied upon such acknowledgement in the formulation and its acceptance of the terms and conditions of this Agreement.

 L. In view of the foregoing, the Commissions acknowledge and agree that: (i) the Commissions' service may be modified as identified on the annexed Exhibit A-1, subject to the construction of certain capital improvements, pursuant to Section 2.9(b) of this Agreement, at the Commissions' sole cost and expense; (ii) the Commissions have expressed their desire to expand commuter service even further, but acknowledge that no

further expansion shall be allowed within the Corridor, unless and until the Commissions have committed to undertake, with the financial assistance of the Commonwealth and at no expense to the Railroad, pursuant to Section 2.9(c) of this Agreement, the construction of a third parallel mainline to be operated in coordination with the Railroad's existing double-track mainline system and such other improvements and conditions as the Railroad may require, to ensure that commuter operations will not interfere with the operations of the Railroad or NRPC; (iii) the Commissions will undertake in good faith to obtain the public funding necessary, with the financial assistance of the Commonwealth, to so construct such aforesaid improvements which the Railroad requires; (iv) for the purpose of facilitating discussions, representatives of the Railroad and the Commissions will meet regularly (no less than four times a year) to consider issues and to make non-binding recommendations to the Railroad and the Commissions pertinent to safe and economical operations within the Corridor; (v) the Railroad will cooperate with the Commissions in obtaining the agreement of NRPC to allow holders of commuter service tickets to use those tickets on NRPC intercity passenger trains within the Corridor, but such cooperation shall not entail the expansion of the existing intercity passenger service; and (vi) to induce Railroad to strive toward on-time performance for the Service, the Commissions will provide Railroad with economic incentives, but in no event will Railroad suffer any penalty or incur any damage claim for or arising from delays or disruptions in the Service for any reason, including maintenance or conflicting freight and intercity passenger service operations.

M. In view of the foregoing, the parties agree to the continuation of the Commissions' existing commuter rail service and the terms on which such service might be expanded, all as more particularly set forth in this Agreement.

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

ARTICLE

ARTICLE ONE

DEFINITIONS

 1.1 The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the meanings hereinafter specified:

 Contract Fee: The monthly payment to be made by the Commissions to Railroad pursuant to Article Five hereof as compensation for ~~the privilege of~~ operating the Service.

 Corridor: The Railroad's railroad line between MP 110.0 (RO Interlocking) and MP 53.2 (Olive), it being understood and agreed that this Agreement does not address or contemplate operation of the Service beyond the limits of such railroad line.

 Equipment: The locomotives and cars complying with Section 2.4 of this Agreement which are at any time used by the Commissions, or either of them, or by an agent or Operator, to provide rail commuter Service over Railroad's tracks.

 Joint Operations Committee: The committee described pursuant to Section 2.6(c) of this Agreement.

 Operator: Shall mean any person, firm, corporation or other legal entity contracting with or utilized by the Commissions to operate all or any part of the Service

or to be responsible for providing and supervising on-train personnel for operation of the Equipment and Trains. The term may include one or both of the Commissions. An Operator must be approved by and remain subject to the continuing approval of the Railroad.

~~RF&P Subdivision or Subdivision:~~ RF&P Subdivision or Subdivision: The RF&P Subdivision consists of the Railroad's railroad line between Richmond, Virginia and Arlington, Virginia.

~~Rush Hour Periods: The Rush Hour Periods shall consist of those periods of time established by the Railroad, from time to time, and shall consist initially of the hours between 5:00 a.m. and 9:02 a.m. and between 3:30 p.m. and 7:54 p.m. on weekdays. The establishment of Rush Hour Periods shall not affect, by itself or in conjunction with other provisions of this Agreement, the relative priorities of freight, intercity passenger, and commuter rail operations.~~

Service: The Service shall consist of the Trains, whether occupied or empty, which are used to provide commuter rail service pursuant to the authority granted by this Agreement. Service includes the movement of Trains operated at the times, between the mile posts, with the frequencies, and Equipment specified in Exhibit A, attached hereto, and the movement of Special Trains allowed pursuant to Section 3.1. Service, as specified in Exhibit A, may be amended at any time by written agreement of the parties with an appropriate adjustment to the Contract Fee, if any.

Station Leases: The Station Leases shall consist of the separate Lease Agreements between the Commissions and Railroad, for the leasing of certain real property for the operation of commuter rail passenger service stations, including those stations enumerated on the annexed Exhibit F, as amended from time to time.

Tracks: The Tracks subject to this Agreement shall be the railroad operating facilities shown or described in the attached Exhibit B, including but not

limited to signaling facilities. The Tracks shall include such other parallel or related railroad operating facilities of Railroad as may at the instruction of Railroad from time to time be temporarily used for the operation of the Service. The rail facilities within the definition of Tracks shall include the Improvements to such rail facilities identified by Exhibit E hereto, and may be further changed at any time by written agreement of the parties.

Train: A Train subject to this Agreement shall consist of a locomotive unit, or more than one unit coupled, with or without cars, whether or not carrying passengers, having not less than 4.0 horsepower per trailing ton, displaying markers or carrying an end of train device, and capable of adhering to the schedule standards specified for the Service.

Improvements: Shall mean changes in, additions and betterments to, or retirements from, made pursuant to Section 2.9 of this Agreement, the Tracks, facilities (including, without limitation, signal and communication systems) or freight locomotives, cars or other equipment of the Railroad, its affiliates or any other railroad companies entitled to use the Tracks.

Special Train: A Train operated other than as specified in Exhibit A or Exhibit A-1, as may be allowed pursuant to Section 3.1 of this Agreement.

ARTICLE

ARTICLE TWO

CONDITIONS

2.1 This Agreement shall supersede and replace the ~~Original~~ 1995 Agreement (as extended by the Extension Agreement) and shall be effective retroactively as of

~~December 1, 1994, the date, and~~ for the term hereof. The Commissions acknowledge that they have executed separate agreements with Consolidated Rail Corporation, Norfolk Southern Railway and NRPC, which are comparable to this Agreement, and that, upon the expiration of such agreements, the Commissions anticipate the execution of new agreements with such railroads or their successors, which agreements grant (or will grant) the Commissions the right to operate commuter rail service over the lines of each of those railroads. The Commissions shall promptly provide Railroad with current copies of such agreements and any subsequent amendments thereto, upon the execution of such agreements or amendments.

2.2 In the event that the terms and provisions of any agreement described in Section 2.1 shall at any time be interpreted, modified or amended so as to become more favorable to another railroad contracting with the Commissions than the terms and provisions of this Agreement are to Railroad, Railroad may (but need not) require the Commissions to modify this Agreement so as to incorporate such interpretation, modification or amendment, in whole or in part; such modifications shall become effective retroactively as of ~~December 1, 1994~~ the date of this Agreement, except that modifications affecting compensation due to Railroad shall become effective as the date Railroad delivers notice to the Commissions. The foregoing shall not apply to any terms and provisions of the agreement between the Norfolk Southern Railway and the Commissions that address the Commissions' concerns in connection with the control of the Consolidated Rail Corporation by the Railroad and Norfolk Southern Railway.

2.3 The Commissions have informed Railroad that they may desire to operate the Service through an agent. Any person, firm, corporation or other legal entity

contracting with or utilized by the Commissions to operate all or any part of the Service shall be an Operator within the meaning of this Agreement, must be approved in advance by Railroad, which approval shall not be unreasonably withheld, and must at all times during the term of this Agreement remain acceptable to Railroad. If at any time an Operator becomes unacceptable to Railroad, Railroad shall notify the Commissions of such unacceptability and the Commissions shall promptly select a new Operator acceptable to Railroad. An Operator must comply at all times with all applicable provisions of this Agreement. The Commissions shall not have the right to assign this Agreement or any portion hereof to any other person or entity, or to permit any person or entity other than an Operator acceptable to Railroad to exercise such rights or enter upon the property of Railroad without the written consent of Railroad. The retention of an Operator by the Commissions shall not relieve the Commissions of any of their obligations under this Agreement.

2.4 (a) Railroad shall have no responsibility, but shall have the right, to inspect any Equipment of the Commissions. Railroad shall have no responsibility to maintain, service or repair any Equipment of the Commissions, but all such Equipment shall at all times comply with applicable federal, state and local requirements and with Railroad's standards for locomotives and cars permitted to operate over Railroad's Tracks, which standards, as adopted and revised from time to time by the Railroad in its sole discretion, shall be identified and specified in writing to the Commissions.

(b) All Equipment used in the Service shall comply with the provisions of the federal Locomotive Inspection Act and the federal Safety Appliance Acts, as amended, and with all regulations adopted pursuant to either Act. The

Commissions and any Operator shall also comply with any other applicable laws, regulations or rules, state or federal, covering the operation, condition, inspection or safety of the Equipment.

(c) The Commissions shall defend, indemnify, protect and save wholly harmless Railroad, its corporate affiliates, and its and their respective officers, directors, agents and employees from all fines, penalties, costs, expenses and liabilities imposed upon or asserted against Railroad, its corporate affiliates or any of its or their officers, agents or employees as a result of an alleged violation by the Commissions or an Operator of either (i) any of the laws, rules and regulations to which reference is made in Subsection 2.4(b) or (ii) any of the terms of this Agreement.

2.5 (a) Operation of the Service shall at all times comply with the Railroad's operating rules, safety rules, instructions (including verbal or written directives of the Railroad's operating officers) and other regulations. The Commissions, an Operator and all personnel of either and of the Railroad who are present on the Equipment at any time shall comply fully with all applicable laws, regulations or rules, whether federal, state or local, covering the operation, maintenance, condition, inspection, testing or safety of personnel or Equipment employed in the maintenance and operation of any of the Train.

(b) The Commissions shall defend, indemnify, protect and save wholly harmless Railroad, its corporate affiliates and its and their respective officers, directors, agents and employees from all fines, penalties, costs, expenses and liabilities imposed upon or asserted against Railroad, its corporate affiliates, or ~~its or their~~ any of its respective officers, directors, agents or employees as the result of an alleged violation by

the Commissions or an Operator of any of the laws, rules and regulations to which reference is made in Subsection 2.5(a).

(c) Commissions shall make such arrangements with Railroad as may be required to ensure that all persons operating Equipment or Trains over the Tracks must be fully competent, trained and qualified for the tasks they are performing. All persons operating Equipment or Trains must be approved by and remain subject to approval by Railroad. Upon the request of the Commissions, Railroad shall provide training appropriate to qualify the Operator's crew in accordance with then current Federal certification procedures and operating rules of Railroad, and shall conduct periodic orientation sessions with the participation of Railroad's dispatchers (including the chief dispatcher for the territory) and the Operator's personnel. The Commissions shall pay to Railroad, promptly upon receipt of bills therefor, all expenses incurred by Railroad for qualifying, testing and maintaining the qualifications of the Operator's personnel and conducting the orientation sessions, pursuant to this Section 2.5(c). In addition, the Commissions shall pay to Railroad promptly upon receipt of bills all expenses incurred by Railroad for training Railroad personnel as a result of the Service. Reimbursable costs shall include the costs of all labor furnished by Railroad, including pilots, if any.

(d) Whenever the Service shall be modified so as by such modification alone to require a change in Railroad's Timetables, Railroad will furnish the Commissions or their designee with Timetables, Switch Keys, Operating Rule Books, Safety Rule Books, and any related publications or material deemed necessary by Railroad, and the Commissions shall pay Railroad the cost of such related publications or

material, including, but not limited to the actual cost of printing and distributing new Timetables.

(e) The Commissions, at their sole expense, shall obtain, install and maintain, in all locomotives used with Commission's Trains operating over the Tracks, functioning radios to transmit and receive appropriate Railroad frequencies.

(f) Any investigation or hearing concerning the violation of any operating rule, safety rule or instructions of Railroad by any of the employees of the Commissions or of an Operator may be attended by any official of the Commissions or of the Operator designated by the Commissions, and any such investigation or hearing shall be conducted in accordance with any applicable collective bargaining agreements.

(g) Railroad shall have the right to exclude from the Tracks or Railroad property any employee of the Commissions or of an Operator determined by Railroad to be in violation of Railroad's rules, regulations, orders or instructions, whether issued by Timetable, bulletin or otherwise. The Commissions shall indemnify, defend and save wholly harmless Railroad, its corporate affiliates and its and their respective officers, agents and employees from and against any and all claims, liabilities and expenses resulting from such exclusion or from performance by an employee who has been so excluded.

2.6 (a) The Commissions acknowledge that their right to use of the Tracks is subject to the paramount right of Railroad to use its own tracks, and that the right of Railroad to use the Tracks shall not be diminished by this Agreement. The Commissions understand that Railroad heretofore granted rights to use of the Tracks to other railroad companies, to NRPC, and to MCI, Plantation Pipeline, and WilTel, and that the rights

herein granted are subject to such prior rights of others ~~and to such rights as the~~ Railroad ~~has granted or~~ may elect, in its sole discretion (subject to the terms of any then existing Station Lease), to grant in the future rights for the use of the Tracks to other persons or corporations; provided, however, that any grants made after January 10, 1995, shall be subject to the Commissions' rights to use the Tracks for the then-current Service and for changed or other Service agreed to by the Commissions and Railroad. Commissions hereby agree that they will not assert, directly or through any Operator, that the Trains or the Service is entitled to preference over the Railroad's freight operations, or over the freight operations of another railroad company ~~entitled to use the Tracks,~~ that Railroad has granted rights to the use of the Tracks before January 10, 1995, or over the intercity passenger trains of NRPC, in the use of any part of the Tracks. Railroad hereby agrees that it will make reasonable efforts to secure adherence to the Service specifications set out in Exhibit A, and as it may be amended, on the Tracks subject to this Agreement. To induce Railroad to strive toward adherence to such Service specifications, the Commissions shall make incentive compensation payments to Railroad in accordance with Section 5.2 and Exhibit C-2, but in no event shall Railroad suffer any penalty or incur any damage claim for or arising from delays or disruptions in Service for any reason, including, but not limited to, basic or restorative maintenance or improvements undertaken within the ~~E~~corridor or conflicting freight or intercity passenger services.

(b) Commissions may propose modifications to the Service's scheduled operations. Railroad shall review the proposed modifications with the Joint Operations Committee, and if the Joint Operations Committee is unable to timely reach an agreement as to the proposed modifications, the proposed modifications ~~(b)~~ may be

referred to the Railroad's Chief Operating Officer and the Commissions' Chairmen for their review and recommendations. Notwithstanding such consultation and review,

Railroad retains exclusive authority to approve or reject, in its sole discretion, any proposed modification of the Service's ~~or of its scheduled operations, and the right to require the construction of Improvements pursuant to Section 2.9 of this Agreement and modifications to the Service or to its scheduled operations (with,~~

~~appropriate modification to the Contract Fee) whenever, in its exclusive good faith discretion, the Service or its schedule of operations should be changed or modified or such improvements should be made. Railroad shall endeavor, when operationally practicable in the judgment of Railroad, to give the Commissions prior notice of modifications to the Service or its scheduled operations which Railroad intends to initiate.~~

(c) The parties hereby agree to maintain the existing operating committee (the "Joint Operations Committee"), which shall consist of such representatives of Railroad and the Commissions as they each shall designate from time to time. The Joint Operations Committee shall meet at least quarterly, at a time and place to be determined by the parties (but shall alternate between Northern Virginia and Jacksonville, Florida), to discuss issues pertinent to the safe and efficient operation of rail services within the Corridor, to review service and performance, and to make findings and to formulate recommendations for the consideration of the Railroad and the Commissions, concerning the operation of the Service, including Improvements which may enhance the operation of the Service. Notwithstanding the foregoing, the findings and recommendations of the Committee or its members are advisory only and shall not be binding upon either the Commissions or Railroad. Railroad reserves the right to make its own determinations, which shall be binding and conclusive, as to all matters which, by

the terms and conditions of this Agreement, are subject to the judgment, discretion, control, approval or consent of Railroad.

2.7 In the event that operation of the Service requires the prior approval of or exemption from regulations by the ~~Interstate Commerce Commission~~ Surface Transportation Board or any other governmental agency, securing such approval or exemptions shall be the exclusive responsibility of the Commissions. The Commissions shall not commence the Service, either in their own behalf or by means of any third party Operator, until any such approval or exemptions becomes effective. To the extent Railroad deems appropriate, Railroad will make reasonable efforts to support the actions which the Commissions may initiate pursuant to this Section.

2.8 Railroad shall at all times have exclusive control of the management of all operations over the Tracks. The Commissions recognize that occasional delays or cancellations of the Service due to conflicts with Railroad's freight service, NRPC's intercity passenger service, weather, labor difficulties, track or equipment failure, conflicting schedules or missed connections of NRPC trains, or of trains of Railroad, or trains of other railroads entitled to priority in use of the Tracks, or from other causes, are probable. Although Railroad will make reasonable efforts to avoid such delays or cancellations, Railroad shall in no event be responsible for or liable to the Commissions, an Operator, or any passenger for the consequences of any such delay or cancellation, but such delays or cancellations will be taken into account in the calculation of incentive compensation to the extent provided by Exhibit C-2 hereto.

(a) Ongoing Operation 2.9 (a) Improvements Required by Law: Improvements may be made when, in the judgment of Railroad, they are necessary or desirable for the safe or economical operation of the RF&P Subdivision, or if required by any law, rule, order, regulation or ordinance promulgated by any governmental body having jurisdiction. To the extent such Improvements are occasioned or required by the operation of the Service: (i) ~~the Railroad shall review the proposed Improvements with the Joint Operations Committee;~~ (ii) ~~if the Joint Operations Committee is unable to timely reach an agreement as to the necessary Improvements, the issue may be referred to the Railroad's Chief Operating Officer and the Commissions' Chairmen for their review and recommendations;~~ (iii) ~~after such consultation and review, the Railroad shall determine, in its sole discretion, the Improvements which are to be constructed;~~ (iv) Railroad shall construct or make, or cause to be constructed or made, such Improvements and Service; and (vi) the Contract Fee shall be amended to include the expense of maintaining, repairing and renewing such Improvements. Improvements, subject to: (1) the Commissions' binding agreement to fund, at no cost to Railroad, the entire cost of such Improvements; and (2) the appropriation of funds sufficient to reimburse Railroad for such costs; (v) i. In the event that the Commissions fail to so agree or to obtain the necessary appropriation, as required by (iv) above, or Railroad is unable to construct or make such Improvements for any other reason, in the manner or time required, in the Railroad's sole judgment, to permit the safe, economical or lawful operation of the RF&P Subdivision, Railroad shall be entitled to suspend all or part of the Service. ~~the Contract Fee shall be amended to include the expense of maintaining, repairing and renewing~~

Upon the request of the Commissions, Railroad will consider financing the cost of Improvements undertaken pursuant to this Section 2.9(a) (other than the maintenance and repair of such Improvements), upon terms and conditions mutually acceptable to Railroad and the Commissions. All Improvements (and all replacements thereof) shall become part of the Tracks and property of Railroad, and retirements of such shall be excluded from the Tracks when effected, except to the extent otherwise provided by Section 2.9(e).

(b) Proposed Expansion of Service: The Commissions wish to expand the existing Sservice, as more particularly described in the Operating Plan for Commuter Rail Sservice which is annexed to this Agreement as Exhibit A-1. Railroad agrees to allow only such expansion of the Service (and, except as otherwise provided by Section 2.9(c), no further expansion or modification); provided that prior to initiation of that expansion: (i) the Commissions shall have provided such evidence, as Railroad may require in its sole discretion, of the Commissions' commitment and ability to diligently proceed with and timely complete the construction of those Improvements at Lorton, Virginia, and Virginia Avenue, Washington, DC, all as more particularly described by the annexed Exhibit E, at no expense to Railroad (including, without limitation, the execution by the Commissions of a binding agreement with Railroad for the construction of Improvements at Lorton, Virginia, subject to a resolution of the manner in which the existing Lorton tube is to be altered and extended); and (ii) the Commissions have agreed to fund, and have obtained all necessary governmental commitments to fund, the entire cost and expense of such Improvements. In the event that the Improvements are not substantially completed by the dates set forth on the annexed Exhibit E, or Railroad determines that the Commissions are not diligently proceeding with the prosecution of

such Improvements, Railroad shall have, in addition to all other available rights or remedies, the right to limit the Service to those trains and operations described by Exhibit A.

~~(c) Additional Expansion of Service.~~

~~The Commissions have expressed a desire to expand the Service beyond the level called for in Section 2.9(b), but acknowledge that the Railroad retains the right, in its sole discretion, to reject any proposal for expansion of the Service. Further expansion of the Service beyond the expansion contemplated by Section 2.9(b) shall not be allowed, unless and until the Commissions have committed to undertake, at no cost to Railroad, the construction of a third parallel mainline in the Corridor to be operated in coordination with Railroad's existing double track mainline system and such other Improvements and conditions as Railroad determines, in its sole judgment, to be necessary to ensure that commuter operations will not interfere with freight operations or intercity passenger service. It is contemplated that the new mainline will be primarily utilized for commuter operations and that Railroad will be appropriately compensated for that portion of its right of way which is dedicated to such new mainline~~

2.9 (c) Additional Expansion of Service.

Accordingly, the Commissions may request (i) The Commissions may obtain further expansion of the Service beyond the level called for in Section 2.9(b) by presenting to Railroad evidence of the Commissions' commitment to implement and to fund, at no expense to Railroad, all or a significant portion of the aforesaid third mainline and such through a cooperative effort between Commissions and Railroad to design, construct and fund a third parallel mainline in the Corridor, to be operated in coordination with

Railroad's existing double-track ~~other Improvements as Railroad deems necessary to ensure that commuter operations will not interfere with freight and intercity passenger service operations. Upon such request, Railroad shall enter into discussions with the Commissions regarding the expansion of the Service, including the size of and effective date for the expansion, the timing of Improvements, the compensation due to Railroad for that portion of its right of way which is dedicated to such Improvements and other appropriate charges and the like, and the parties' respective rights, title and interest in such Improvements (including, without limitation, the removal of such Improvements upon termination of this Agreement). If Railroad decides, in its sole discretion, to allow the expansion on terms and conditions acceptable to the Commissions, the parties shall execute definitive agreements to proceed with such expansion on such terms and conditions.~~ mainline system. The aforesaid third mainline shall be implemented through a Master Service and Capital Improvements Plan (the "Master Plan") jointly developed by a task force comprised of senior officials of Railroad, Commission, and the Commonwealth, and thereafter agreed upon by Commissions and Railroad. The contents of the Master Plan shall include the results of a comprehensive, jointly-commissioned study recommending a priority list of capital and other improvements and additional trains that could be accommodated by such improvements. The Master Plan will also contain details regarding other rights and responsibilities of Commissions and Railroad with respect to the third mainline. If, after meeting and conferring in good faith, the parties are unable to establish a Master Plan, Commissions shall have the right to continue running existing Trains without any obligation (other than under Section 2.9(a))

to fund additional capital improvements, but shall not be permitted to run an increased number of Trains. Specific improvements agreed to under the Master Plan shall be implemented pursuant to one or more definitive agreement(s) containing terms and conditions consistent with the Master Plan.

(ii) Railroad agrees to cooperate with the Commissions in obtaining the agreement of NRPC to allow holders of the Commissions' commuter service tickets to use those tickets on NRPC passenger trains within the Corridor, but such cooperation shall not entail the addition of, or changes in the scheduling of NRPC trains, or any other expansion of NRPC service.

(d) The Commissions agree to make good faith efforts to obtain the public funding necessary to undertake, and shall pay when due to Railroad the cost of, the construction and installation of the Improvements as outlined in Subsections 2.9(a), (b) and (c) which are undertaken by Railroad. All such Improvements which are made on or to property of Railroad shall become part of the tracks and property of the Railroad, except to the extent otherwise agreed by the parties to accommodate the terms and conditions of federal agencies which furnish financial assistance for such Improvements. It is understood and agreed that the construction of Improvements pursuant to Subsections 2.9(a) or (b) or, except as otherwise expressly agreed by the parties, Section 2.9(c) shall not affect the priority of freight and intercity passenger operations over commuter operations or otherwise limit the Railroad in the exercise of its rights, discretion or judgment pursuant to this Agreement.

(e) At the termination of this Agreement, the Railroad shall have the option of retaining or, at the entire cost of the Commissions, of removing, or of requiring

the removal of, all or any portion of any Improvement made on or to the property of Railroad pursuant to the provisions of subsections (a) and (b) of this Section 2.9, and of restoring the Tracks, facilities, or freight equipment, to their original condition (ordinary wear and tear excepted), following such removal. If the Railroad elects to retain all or any portion of the Improvements for continued rail service, then, the Railroad shall pay to the Commissions the amount by which the then net salvage value of such Improvements exceeds the removal and restoration costs otherwise to be incurred by the Commissions.

 (f) In the event of the replacement of any Improvements, the parties' respective rights and obligations with respect to such Improvements shall extend to replacements thereof, and Railroad shall be entitled to use and dispose of replaced materials as it determines, except to the extent the cost of such Improvement and replacement is borne by the Commissions.

 2.10 Performance by Railroad of its maintenance obligations, including (but not limited to) those in Article Six hereof, will occasionally result in delays or cancellations of operations of the commuter rail passenger service. Delays or cancellations so occasioned will not relieve the Commissions of any obligations herein set forth, or give rise to any rights in the Commissions not otherwise set forth, but shall affect incentive compensation to the extent provided by Exhibit C-2 hereto.

 2.11(a) If, by any reason of mechanical failure or for any other cause, Equipment or a Train of the Commissions becomes stalled or disabled and is unable to proceed, or fails to maintain the speed required of Trains in order to meet normal schedules, or if in emergencies crippled or otherwise defective Equipment is set out of the Commissions' Trains on the Tracks, Railroad may at its option furnish motive power or such other

assistance as may be necessary to haul, help or push such Equipment or Trains, or to properly move the disabled Equipment, and the Commissions shall reimburse Railroad for the cost of rendering any such assistance in lieu of payment of the variable portion of the Contract Fee otherwise applicable to movement of such Trains or Equipment.

(b) If it becomes necessary to make repairs to, or to transfer the passengers on, crippled or defective Equipment in order to move it, such work may be done by Railroad, and the Commissions shall reimburse Railroad for the cost thereof in accordance with the then current Code of Rules of the Association of American Railroads, or in the absence of such rules, in an amount mutually agreed upon or in the absence of such agreement, in an amount determined by arbitration conducted in accordance with Article Eleven hereof.

(c) Whenever the Commissions' Equipment on the Tracks requires re~~ra~~ilailing, wrecking service or wrecking train service, Railroad will perform such service, including the repair and restoration of roadbed, track and structure. The cost and expense of such service shall be paid by the Commissions to Railroad. The Commissions shall also hold the Railroad harmless under the provisions of Article Nine hereof, from and against all liability for loss of, damage to and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting from services provided by Railroad under this Section. All Equipment and salvage from the same shall be promptly moved by the Commissions or the Operator or delivered to the Commissions and all cost and expense therefor incurred by Railroad shall likewise be paid by the Commissions to the Railroad. The movement of damaged or disabled Equipment by the Railroad shall not be taken into account for the purpose of determining the variable

portion of the Contract Fee. If the incident requiring cleanup involves hazardous materials, Railroad shall be responsible for filing reports required by governmental authorities and shall advise the Commissions of the nature of the hazardous materials involved.

2.12 If during the term of this Agreement the Tracks should be appropriated or otherwise acquired by a governmental body or agency thereof, or by a quasi-public body, this Agreement shall terminate. If a part only of the Tracks is so acquired, and in the reasonable judgment of the Commissions or Railroad, the balance of the said Tracks is no longer suitable for the maintenance of the Service, or if part of the Tracks (including any right to the use, access or occupancy of the Tracks) is acquired for the specific purpose of providing passenger or commuter rail service, this Agreement, at the option of the Commissions or Railroad, shall terminate upon delivery of written notice to the other of its exercise of said option to terminate within thirty (30) days of said acquisition, such exercise being within the sole discretion of such party. All awards or compensation for the Tracks, or part thereof, resulting from such appropriation or acquisition shall be paid to Railroad; provided, however, the Commissions shall be entitled to participate in condemnation proceedings to seek recovery of compensation attributable to property which it owns to the extent permissible under applicable law. In the event of a partial appropriation or acquisition as herein contemplated and neither party elects to terminate this Agreement, the parties hereto shall endeavor to reach agreement as to the appropriate adjustment, if any, to the Contract Fee. In the event agreement is not reached, this Agreement shall terminate upon thirty (30) days' notice by either party to the other.

ARTICLE**ARTICLE THREE****ACCESS**

3.1 Railroad hereby grants to the Commissions, subject to the terms and conditions of this Agreement, the right to use the Tracks with the Commissions' Trains in the provision of the Service. With the written consent of Railroad, and subject to such terms and conditions as the Railroad may prescribe, the Commissions may operate test trains and trains required for employee training. In addition, Railroad ~~may~~ shall allow the annual operation of at least ten (10) Special Trains by the Commissions at such times as may be agreed. The Railroad, at its sole discretion, may permit additional Special Trains. The operation of all Special Trains by the Commissions, upon the Commissions' request, shall be at the rates set forth on the annexed Exhibit G and upon such other terms and conditions (including, without limitation, provisions for and evidence of such indemnification and insurance), as the Railroad may require in its sole discretion.

3.2 The rights granted to the Commissions herein shall relate solely to use of the Tracks of Railroad for the operation of Trains in the provision of the Service. Immediately upon the execution and delivery of this Agreement, the parties will execute and deliver a Station Lease whereby Railroad will lease to the Commissions certain real property for the operation of the station facilities enumerated in the annexed Exhibit F. It is contemplated that an additional agreement or agreements (including Station Leases and amendments thereto) may be entered into between the Commissions and Railroad concerning the construction, maintenance and use, during the term of this Agreement, of certain additional, ancillary facilities, including, among others, stations, platforms,

canopies, parking areas and depots, for the accommodation of the Commissions' employees and passengers. Such Station Leases and other agreements shall impose no cost or liability on Railroad (or its licensees, its corporate affiliates, or its and their respective officers, agents and employees), shall terminate no later than this Agreement and shall grant Railroad the right, at termination, to require removal from Railroad property at the Commissions' expense of all property of or Improvements effected by the Commissions on Railroad property.

ARTICLE

ARTICLE FOUR

TERM

4.1 This Agreement shall become effective retroactively and shall commence as of ~~December 1, 1994~~ the date hereof, and unless terminated earlier in accordance with its provisions, or with the written consent of both parties, shall terminate on June 30, ~~1999~~ 2008. At or about six (6) months prior to the expiration of this Agreement, representatives of the Commissions and Railroad shall meet to review operation of this Agreement and discuss extensions and possible modifications thereof. However, it is understood that neither party is obligated to agree to any extension of this Agreement and that any extension shall be conditioned upon payment to the Railroad by the Commissions of such compensation as Railroad may require in its sole discretion.

4.2 The Commissions shall have the right to terminate this Agreement at any time on sixty (60) days written notice to Railroad.

4.3 Termination of this Agreement for any cause shall not relieve any of the parties hereto from any obligations or liabilities accrued under this Agreement as of the time such termination becomes effective. Without limiting the generality of the foregoing, it is specifically recognized that any obligation on the part of a party to assume financial responsibility, to indemnify and insure or to make a payment of money shall survive termination of this Agreement.

ARTICLE

ARTICLE FIVE

PAYMENT

5.1 (a) The premise upon which Railroad and the Commissions have agreed to the initiation of the Service pursuant to the Original Agreement and the continuation of the Service pursuant to this Agreement is that Railroad will permit operation of the Service with the following conditions: (1) the Commissions will make payment to Railroad of the Contract Fee pursuant to Section 5.1(b); and (2) the Railroad (and its licensees, its corporate affiliates and its and their respective officers, agents and employees) will incur no liability or losses from the ~~Service; and (3) if there is interference with the Railroad's ability to provide freight operations as a result of the operation of Trains other than at their regularly scheduled times due to reasons attributable to events or conditions which are enumerated in Section 2 of Exhibit C-2, the Commissions will participate fully in the costs incurred and revenues lost~~ Service. The Commissions, therefore, hereby undertake to hold harmless Railroad (which term, as used in this Section 5.1, shall include Railroad, its licensees, its corporate affiliates, and its and

their respective officers, agents and employees) against all loss, cost, expense, obligation, maintenance or discontinuance of the Service. The enumeration of any such costs or expenses and inclusion of provisions requiring payment to or indemnification of Railroad by the Commissions for such expenses, costs and risks elsewhere in this Agreement shall in no way diminish the liability of the Commissions to compensate or indemnify Railroad for any such costs, liabilities, expenses or obligations as hereafter occur, it being the intent of the parties that Railroad be fully protected, indemnified and made whole by the Commissions against any such costs, expenses, liabilities and obligations so caused or so exacerbated, whether or not specifically described in this Agreement.

 (b) In addition to such other sums which accrue under other provisions of this Agreement, the Commissions agree to pay Railroad ~~a monthly Contract Fee as follows:~~

~~For the period beginning with the initiation of the Service under the Original Agreement and ending January 31, 1995, the Contract Fee shall accrue and be payable monthly in advance, in accordance with the Exhibit C of the Original Agreement.~~

~~On or before January 30, 1995, in consideration of the extension of the Original Agreement pursuant to the Extension Agreement, the Commissions shall pay to Railroad the sum equal to the difference between: (1) the Contract Fee set forth in Exhibit C-1 for the period beginning December 1, 1994 and ending January 31, 1995; and (2) the compensation payable to Railroad pursuant to subparagraph (i) above; and For the period commencing February 1, 1995 and continuing through the expiration or termination of this Agreement, the Commission shall pay to Railroad monthly in advance the Contract Fee set forth in Exhibit C-1.~~

(c) Upon the Commissions' request, Railroad may agree to accept an annual payment of the Contract Fee with an appropriate discount and such other terms which are mutually acceptable to the parties.

~~(d) On and after December 1, 1994, the Contract Fee (as calculated pursuant to Section 5.1(b) (ii) and (iii))~~ (d) On and after June 30, 1999, the Contract Fee shall be subject to adjustment during the term of this Agreement ~~only~~ with respect to: (i) the amount specified for Station I leases, upon the expiration, termination or grant of leases by Railroad to the Commissions, from time to time, to reflect the amounts due and payable by the Commissions under such Leases; (ii) adjustments contemplated by Section 2.9; and (iii) adjustments for the variable component of the Contract Fee, which adjustments shall be made within 180 days of the first day of the month for which such Contract Fee accrues.

(e) In addition to the foregoing adjustments, the Contract Fee shall be adjusted annually during the Term of this Agreement on the annual anniversary date, by the greater of the following amounts:

(i) Four (4) percent per year; or

(ii) the CPI Urban Wage Earners and Clerical Workers for Washington, D.C. - Maryland - Virginia;

provided, however, that the Contract Fee shall not increase in any year in which the total number of passengers using the Service decreases from the previous annual period by 15 percent or more; and provided that any increase above the amount of the Contract Fee in the first annual period of the Agreement shall only be earned on an on-time performance incentive basis as provided in Exhibit C-2.

(e) (f) Payment of the Contract Fee shall be made no less than five days prior to the first day of each month by wire transfer to such account as Railroad designates in writing to the Commissions.

(f) (g) The amounts payable to the Railroad under this Agreement shall be subject to audit or review for up to three years following payment thereof.

Notwithstanding the foregoing, the Contract Fee shall be subject to audit and review only to the extent necessary to verify the number of train miles for the purpose of its variable component.

~~In addition to the Contract Fee, the Commissions shall pay Railroad incentive compensation, as determined in accordance with Exhibit C-2 annexed to this Agreement.~~

5.2 In addition to the payments specified hereinabove, the Commissions shall also pay to Railroad monthly, within thirty (30) days of demand when supported by appropriate documentation, any amounts which Railroad shall have failed to earn from NRPC pursuant to Appendix V (as it may from time to time be amended) of the Basic Agreement between Railroad and NRPC governing the operation of intercity passenger service over lines of Railroad and Railroad reasonably attributes to the presence of Equipment, personnel, passengers or property of the Commissions or of an Operator or to the normal or abnormal operation or to the malfunction of the Service.

5.3 In addition to the payments specified elsewhere in this Article Five, the Commissions shall also pay to Railroad, within thirty (30) days of demand, when supported by appropriate documentation, any amounts which become due to be so paid pursuant to the provisions of Article Two, Article Seven, Article Eight and Article Nine.

Railroad's reimbursable labor costs shall include the overhead percentage agreed upon by Railroad and the Commonwealth's Department of Transportation.

5.4 Invoices for amounts due to Railroad under this Agreement shall be prepared substantially in accordance with the format annexed to this Agreement as Exhibit C-3, as it may be changed from time to time by Railroad.

5.5 If Railroad is at any time required by law, rule, regulation or ordinance or by order of a court or of any administrative agency to give the commuter rail service priority over Railroad's freight operations or NRPC's intercity passenger service, the Railroad shall be entitled to terminate this Agreement immediately upon delivery of written notice to the Commissions, unless the Commissions provide Railroad with a legally binding and effective waiver of all such priority as it may relate to the Service and indemnification against all liability attributable to or arising from the Commissions' waiver of, and Railroad's failure to comply with, the otherwise applicable priority requirements, which waiver and indemnification shall be in form and substance acceptable to Railroad in Railroad's sole judgment.

ARTICLE

ARTICLE SIX

MAINTENANCE

6.1 Subject to the provisions of Section 2.7, 2.8 and 2.9 hereof, and excepting force majeure, Railroad shall, during the term of this Agreement, keep and maintain the Tracks in a condition which will permit the operation of the Service. Railroad does not guarantee the condition of the Tracks or that the Service will not be delayed or

interrupted. Failure on the part of the Railroad to maintain the Tracks as required in this Article Six shall in no event impose any liability on the Railroad (or its licensees, its corporate affiliates, or its or their respective officers, agents or employees), nor shall any such failure absolve the Commissions of any of the obligations imposed upon them by Article Nine hereof.

ARTICLE

ARTICLE SEVEN

CLAIMS SERVICE

7.1 The provision of claims handling service in connection with any aspect of the commuter rail service shall be exclusive responsibility of the Commissions, and in no event shall the Commissions or any Operator assert any right to require provision of such service from the Railroad or any affiliate thereof, the terms of any pre-existing agreement between any Operator and Railroad to the contrary notwithstanding. The Commissions hereby agree to indemnify, protect and save Railroad (and its licensees, its corporate affiliates, and their respective officers, agents or employees) harmless against any cost or expense for the provision of claims handling service which is attributable to the existence of the Service and which is sought to be imposed on Railroad under the terms of such a pre-existing agreement.

ARTICLE**ARTICLE EIGHT****RAILROAD POLICE**

8.1 The provision of the services of railroad police or law enforcement personnel in connection with any aspect of the commuter rail service shall be the exclusive responsibility of the Commissions, and in no event shall the Commissions or any Operator assert any right to require provision of the services of such railroad police or law enforcement personnel from the Railroad or any affiliate thereof, the terms of any pre-existing agreement between any Operator and Railroad to the contrary notwithstanding. The Commissions hereby agree to indemnify, protect and save Railroad, its licensees, its affiliates, and its and their respective officers, agents and employees harmless against any liability, cost or expense arising from or related to the failure to provide the services of railroad police or law enforcement personnel which is attributable to the existence of the Service and is sought to be imposed under the terms of such a pre-existing agreement.

ARTICLE**ARTICLE NINE****RISK OF LIABILITY**

9.1 (a) The Commissions shall protect, defend, indemnify and save harmless Railroad from any loss, cost or expense incurred by Railroad (including, but not limited to, lost incentives, penalties, detour and rerouting expenses), and all liability for death, personal injury or property damage, (including, but not limited to the property and

employees of Railroad), which is attributable in any way to, or which is exacerbated by, the operation of the Service over the Tracks of Railroad, or to the presence of cars, equipment, personnel, contractors, agents or passengers of the Commissions or an Operator on or about the property of Railroad. The Commissions shall indemnify and save Railroad harmless under this Article Nine whether or not such death, injury or damage is caused, in whole or in part, by the negligence, regardless of its character or degree, of Railroad, and whether the damages are compensatory, punitive or exemplary; provided, that the liability of the Commissions under this Article Nine shall not exceed Two Hundred Million Dollars (\$200,000,000.00) (or such greater sum as may be required by the provisions of Section 9.2 hereof) in any one calendar year.

(b) To guarantee payment of their obligations under this Article Nine, the Commissions shall, subject to the approval and continuing supervision of the Division of Risk Management of the Commonwealth of Virginia (the "Division"), procure and at all times maintain a policy or policies of liability insurance, with annual aggregate limits of at least Two Hundred Million Dollars (\$200,000,000.00) (or with such additional limits as may be required by the provisions of Section 9.2 hereof) covering the liability assumed by the Commissions under this Article Nine. Such insurance may consist of a program of self-insurance approved and administered by the Division for up to Five Million Dollars (\$5,000,000.00), with the balance of the coverage (at least \$195 million in excess of the \$5 million self-insured retention) to be obtained through commercial insurance. All insurance policies shall name Railroad as an insured, shall provide liability insurance covering the liabilities assumed by the Commissions under this Agreement, and shall be endorsed to provide that the insurance company will give

Railroad thirty (30) days prior written notice if the policies are to be terminated or modified during the term of this Agreement. The Commissions shall provide Railroad with copies of all commercial insurance policies, including all current endorsements, carried by the Commissions pursuant to this Section 9.1, and a copy of all agreements, including amendments thereto, between the Commissions and the Division of Risk Management of the Commonwealth of Virginia relating to the coverage, structure, administration or funding of the Commissions' insurance program.

(c) In accordance with Section 2.1-526.8:1 of the Code of Virginia, the Division has established the Northern Virginia and Potomac and Rappahannock Transportation Commissions Commuter Rail Operations Liability Insurance Plan, a copy of which is annexed as Exhibit D (the "Plan"). The Plan is and shall be maintained by the Commissions and administered by the Division in accordance with Section 15.1-1358~~3~~ of the Virginia Code and constitutes a "liability policy" for the purposes of that Section and Section 15.1-1364 of the Virginia Code. It is the intention of the parties that the Plan provide coverage for all liability which is or may be imposed upon or assumed by the Commissions under this Article Nine. The parties further agree that, subject to the additional criteria set forth in this Article Nine (including, but not limited to Sections 9.1(b), 9.1(d) and 9.2), the Plan is sufficient, as of the date hereof, to fulfill the obligations of the Commissions with respect to the procurement and maintenance of liability insurance pursuant to Section 9.1(b).

(d) The Commissions shall provide to Railroad a copy of all reports which AMTRAK submits pursuant to Part B(2)(b) of the Plan. The reports to be made

pursuant to Part C(3) of the Plan shall include the balance sheets and income statements of the Trust Fund (as defined by Section 9.1(f)).

(e) If, at any time, the total insurance coverage applicable to the liabilities assumed by the Commissions under this Article Nine falls below Two Hundred Million Dollars (\$200,000,000.00) or, because of pending claims, is reasonably expected to fall below Two Hundred Million Dollars (\$200,000,000.00) (or, in each case, such greater coverage as may be required by the provisions of Section 9.2), or such coverage is otherwise subject to challenge or diminution for any reason (including, without limitation, court decisions or applicable laws or regulations affecting the validity or enforceability of the Plan or this Article Nine), notice of such fact shall be given promptly by the Division to the Commissions, the Railroad and the Operator. If the Commissions fail to immediately (i.e., the day of such notice) restore the available insurance coverage to Two Hundred Million Dollars (\$200,000,000.00) (or such higher level as may be required by the provisions of Section 9.2), or to otherwise obtain relief from any other causes which may diminish such coverage for any reason, the Service and all rights granted the Commissions under Article Three of this Agreement shall immediately cease and shall not be resumed until the full Two Hundred Million Dollars (\$200,000,000.00) in insurance coverage (or such higher levels as may be required by the provisions of Section 9.2) has been obtained; provided, however, the cessation of passenger service shall not occur until after the Railroad has consulted with the Commissions and determined, in its sole judgment, that the coverage specified herein will not be promptly restored; and provided further that the Service and all rights granted the Commissions under Article Three of this Agreement shall immediately cease at any time the total

insurance coverage falls below \$150,000,000. Any determination by Railroad under this subparagraph (e) shall be conclusive and not subject to challenge by the Commissions.

(f) Pursuant to the Plan, the Division administers the Commuter Rail Operations Liability Insurance Trust Fund (the "Trust Fund") for the purposes of implementing and funding the Commissions' obligations under the Plan and this Article Nine. The Commissions shall ensure that, at all times, the Trust fund is solvent and adequately funded for the purposes contemplated by this Article Nine, and shall arrange for a review by the Division of the financial condition of such Trust Fund and the commercial insurance and self-insurance maintained under the Plan, from time to time, as requested by Railroad. Such review shall include a written certification to Railroad that the Trust Fund is solvent, and that the Plan's insurance program complies with the requirements of this Article Nine. If at any time the Division determines that the Plan's insurance program fails to comply with the requirements of this Article Nine, or that the Trust Fund is not adequately funded, the Division shall promptly give notice of such fact to Railroad, the Commissions and the Operator. If Railroad determines that the Trust Fund is not adequately funded, Railroad may give notice of such fact to the Commissions. If the Commissions fail to immediately (i.e., the day of such notice by the Division or Railroad) provide funding in amounts determined by the Division or by Railroad to be adequate or obtain the required insurance, the Service and all rights of the Commissions under Article Three of this Agreement shall immediately cease until such funding and/or insurance is provided; provided, however, the cessation of passenger service shall not occur until after the Railroad has consulted with the Commissions and determined, in its sole judgment, that adequate funding and/or insurance will not be

promptly restored. Any determination by Railroad under this subparagraph (f) shall be conclusive and not subject to challenge by the Commissions.

(g) In the event that Railroad determines, in its sole judgment, that either this Article Nine or the Plan (or the insurance coverage provided thereunder) is invalid or unenforceable for any reason, or that the Commissions have otherwise failed to comply with its obligations under this Article Nine, such determination shall constitute a default pursuant to Section 12.2 of this Agreement. Any determination by Railroad under this subparagraph (g) shall be conclusive and not subject to challenge by the Commissions.

(h) The term "Railroad," as used in this Article Nine, shall include not only CSX Transportation, Inc., but also its licensees, corporate affiliates and its and their respective officers, directors, agents and employees.

9.2 (a) If, as a result of any statute enacted by the Commonwealth of Virginia or the Federal Government, the minimum liability limitation of Commissions is increased to an amount in excess of \$200,000,000, the amount of liability insurance that Commissions are required to procure and maintain in order to guarantee its obligations under this Article or to the general public, is increased to an amount in excess of \$200,000,000, then the minimum liability limit of \$200,000,000 (or higher amount if increased pursuant to subparagraph 9.2(b) below) set forth in Section 9.1 of this Article shall be automatically increased and the liability insurance shall be amended to reflect such higher amount. In the event the Commissions fail to obtain and maintain the insurance required by this Section for any reason (including the unavailability of such

insurance), then either party shall have the right to terminate this Agreement by delivery of written notice to the other.

(b) On September 1, 1996, and every two years thereafter during the term of this Agreement, as provided herein or as extended, the parties hereto will review and evaluate the number and cost of claims which have been made against the insurance carried by the Commissions, the actual and potential liabilities incurred by the Commissions for death, personal injury or property damage, any relevant judicial decisions, inflation and current trends in the cost of tort claims, and the likelihood and potential cost of future claims. Based on this review and evaluation, the parties will determine whether there are reasonable grounds to increase the limit of the Commissions' liability under Subsection 9.1(a) or to increase the limits and expand the coverage of the insurance required to be carried by the Commissions under Subsection 9.1(b) and Subsection 9.1(d) hereof. If the parties are unable to agree, the dispute shall be arbitrated pursuant to Article Eleven hereof; provided, however, that in no event shall the liability of the Commissions or the amount of insurance to be carried by the Commissions be reduced below the limits required by Section 9.1 hereof. Any increase in the amount of insurance coverage which results from the application of this Section 9.2 shall automatically cause a proportionate adjustment to the limits specified in Subsection 9.1(d) hereof.

9.3 The rights granted to the Commissions in this Agreement relate to use of the Tracks of Railroad for the operation of Trains. Immediately upon the execution and delivery of this Agreement, the parties shall execute and deliver a Station Lease with respect to the station Facilities enumerated in the annexed Exhibit F. It is contemplated

that an additional agreements (including Station Leases and amendments thereto) may be entered into between Commissions and Railroad concerning the construction, maintenance, use and removal of certain ancillary facilities, including, among others, stations, platforms, canopies, parking areas and depots, for the accommodation of the Commissions' employees and, particularly, passengers. It is understood that the indemnification and insurance provisions of this Article Nine of this Agreement shall apply with respect to such construction, maintenance, use and removal by the Commissions, any Operator, its or their employees, agents, contractors, passengers, invitees and the general public of any such facilities.

9.4 The Commissions expressly understand and agree that their obligations to indemnify Railroad and hold Railroad harmless under the provisions of this Article Nine also extend to and include the obligation to indemnify and hold Railroad harmless from and against any and all damages (including punitive and exemplary damages), penalties, losses, fines, claims, liens, suits, liabilities, costs (including cleanup costs), judgments and expenses (including attorneys, consultants or experts fees and expenses) of every kind and nature suffered by or asserted against Railroad as a direct or indirect result of or due to the presence or escape of any hazardous materials, substances, wastes or other environmentally regulated substances on or from the Tracks, a Train or Equipment which presence or escape is attributable in any way to, or is exacerbated by, the operation of the Service over the Tracks of Railroad or to the presence of the Commissions' or any Operator's Equipment, personnel or passengers on or about Railroad's property.

9.5 (a) Railroad shall give notice to the Division of Risk Management and to the Commissions as soon as reasonably practicable whenever the Railroad receives

credible notice from any party that it is the intention of such party to hold Railroad responsible for an incident for which the Commissions are potentially liable under Section 9.1 hereof.

 (b) Railroad agrees: (1) to cooperate in the defense of claims of which it gives the Division of Risk Management notice hereunder; (2) to allow the Division of Risk Management, within its sole discretion, to settle or defend any such claim; and (3) to execute all documents reasonably required to enable the Division of Risk Management to recover amounts paid by the Division of Risk Management on behalf of the Commissions to persons other than Railroad.

ARTICLE

ARTICLE TEN

LABOR CLAIMS

10.1 The Commissions will indemnify and hold harmless Railroad, its corporate affiliates, and its and their respective officers, agents and employees against any and all costs and payments, including, but not limited to, awards of benefits, back pay, penalty pay, allowances and awards of damages of any kind, however they may be denominated, and all arbitration, administrative and litigation expenses, arising out of claims or grievances made by or on behalf of employees of Railroad, or its corporate affiliates in connection with the implementation, operation or termination of this Agreement, whether pursuant to employee protective conditions imposed by a governmental agency as conditions for that agency's approval or exemption of the Service or this Agreement, or pursuant to a collective bargaining agreement.

ARTICLE**ARTICLE ELEVEN****dispute DISPUTE RESOLUTION**

 The parties hereto shall make every reasonable effort to settle any dispute arising out of this Agreement without resorting to arbitration. If the parties so agree, they may retain a disinterested person experienced in railroad operations, or an accountant or attorney if appropriate, to render his or her objective advice and opinions, which shall be advisory only and not binding unless the parties agree in writing to be bound by his or her judgment in a particular instance.

 Any claims or controversy between the Commissions and Railroad, except matters which are within the discretion or judgment of the Railroad, which cannot be resolved by the parties concerning the interpretation, application or implementation of this Agreement shall be resolved by submitting such claim or controversy to arbitration. Any controversy which is subject to this arbitration provision that cannot be resolved within thirty (30) calendar days of the notice of intent to seek arbitration (unless the parties agree in writing to another time period), shall be submitted to disinterested arbitrators, one of whom shall be appointed by Railroad and the other of whom shall be appointed by the Commissions, and the two arbitrators so chosen shall select a third arbitrator. The decisions of a majority of the arbitrators shall be final and conclusive as to the dispute(s) between the parties hereto. In case either of the said parties shall fail or refuse to appoint an arbitrator as aforesaid for the period of thirty (30) days after written notice given by the other party to make such appointment, then the arbitrator appointed

by the party not in default shall appoint a like competent and disinterested arbitrator for the defaulting party, and the said two arbitrators, so appointed, shall select a third arbitrator, and the three so chosen shall hear and decide such difference or dispute, and their decision, or that of a majority of the arbitrators, shall be final and conclusive upon the parties hereto. In the event that the two appointed arbitrators shall be unable to agree upon a third arbitrator within thirty (30) days after the appointment of the second arbitrator, such third arbitrator shall be appointed, upon the application of either party hereto and upon reasonable notice to the other party, by the American Arbitration Association. If any arbitrator shall decline or fail to act, the party or persons by whom said arbitrator was chosen or appointed, as the case may be, shall act to appoint another arbitrator.

 During the pendency of such arbitration proceeding, the business, operations to be conducted and compensation for service under this Agreement, to the extent that they are the subject of such controversy, shall continue to be transacted, used and paid in the manner and form existing prior to the arising of such controversy, unless the arbitrators shall make a preliminary ruling to the contrary. Each party shall bear the costs and expenses incurred by it in connection with the arbitration, including the cost of the arbitrator appointed by it, and both parties shall share equally the costs and expenses of the third arbitrator.

ARTICLE**ARTICLE TWELVE****DEFAULT**

12.1 Failure on the part of the Commissions or an Operator to comply with the conditions of Article Two related to safety of operations or as provided in Subsection 2.5(a) of Article Two shall result in the immediate termination of the rights of access granted the Commissions in Article Three hereof and failure to comply with any other conditions of Article Two shall give the Railroad the right to terminate such rights of access on ten (10) days' prior written notice.

12.2 Failure on the part of the Commissions to comply with any of the provisions of Article Nine hereof or the Plan shall constitute a default giving rise to a right in Railroad to immediately terminate this Agreement upon delivery of written notice by Railroad to the Commissions.

12.3 Failure on the part of the Commissions to replace any Operator which becomes unacceptable to Railroad within a reasonable time following notice under Section 2.3 hereof shall constitute a default giving the Railroad the immediate right to terminate this Agreement without further notice.

12.4 Failure of the Commissions timely to make any payment required to be made to Railroad under any provision of this Agreement shall constitute a default giving rise to a right in Railroad, on ten days prior written notice, to suspend the rights of access granted the Commissions in Article Three hereof. If any such default shall persist for 30 days, or if any such default of the sort provided for in this ~~§~~12.4, having been previously

cured, shall recur more than two times during the term of this Agreement, then Railroad may terminate this Agreement on ten days prior written notice.

12.5 Failure on the part of the Commissions to substantially comply with any of its other obligations under this Agreement shall constitute a default giving Railroad the right to terminate this Agreement on ten (10) days prior notice.

12.6 Failure on the part of Railroad to substantially comply with its obligations under Article Six of this Agreement shall constitute a default by Railroad giving the Commission the right to terminate this Agreement on ten (10) days prior written notice.

ARTICLE

ARTICLE THIRTEEN

NOTICES

13.1 Any report, notice or other communication required or permitted hereunder shall, unless otherwise specified, be in writing and shall be delivered by hand or deposited in the United States mail, postage prepaid, addressed as follows:

If to Railroad:

CSX Transportation, Inc.
500 Water Street
Jacksonville, Florida 32202

Attention: Assistant Vice President - Passenger Services

(with a copy to its General Counsel at the same address as set forth above)

If to Commissions:

~~Director of Operations~~
~~Virginia Railway Express~~
~~6800 Versar Center, Suite 247~~

~~Springfield, Virginia 221521~~

~~(with a copy to the
County Attorney of Prince William County
One County Complex Court
Prince William, Virginia 22192-9201)~~

~~Either party may change the address at which it shall receive communications and notifications hereunder by notifying the other party in writing of such change.~~

ARTICLE

MISCELL If to Commissions:

Director of Operations
Virginia Railway Express
1500 King Street, Suite 202
Alexandria, Virginia 22314-2730

ARTICLE FOURTEEN

MISCELLANEOUS

~~Force Majeure~~ 14.1 Force Majeure. Each party will be excused from performance of any of its obligations hereunder (except Article Nine), to the other party, where such nonperformance is occasioned by any event beyond its control, which shall include, without limitation, any order, rule or regulations of any federal, state or local government body, agent or instrumentality, work stoppage, accident, natural disaster or civil disorder, provided that the party excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy or remove such event in the shortest practical time. Railroad shall promptly undertake and complete the repair, restoration or replacement of any property which is necessary for the provision of the Service, or for the performance of any of the Railroad's other obligations hereunder which

is damaged or destroyed as a result of the force majeure occurrence, subject to the Commissions' agreement to reimburse Railroad for the full cost of such repair, restoration or replacement.

14.2 The article and section headings herein are for convenience only and shall not affect the construction hereof. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by all of the parties hereto, unless a specific provision hereof expressly permits one party to effect termination, amendment, supplementation, waiver or modification hereunder, in which case such change shall be made in accordance with the terms of such provision. All exhibits attached hereto, and as they may be amended, are integral parts of this Agreement and the provisions set forth in the exhibits shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the main body of this Agreement.

14.3 In the event that any material provision of this Agreement is found to be invalid or unenforceable in any respect, either party may immediately terminate this Agreement by delivery of written notice to the other party.

14.4 The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy in this Agreement, shall not impair any such right or remedy to be construed as a waiver or relinquishment thereof.

14.5 This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein

contained shall be construed as creating or increasing any right in any third party to recovery by way of damages or otherwise against either of the parties hereto.

14.6 The rights and obligations of the Railroad and the Commissions hereunder may be assigned only with the prior written consent of the other party, except in the event of the dissolution, merger or other event terminating the existence of either the Railroad as a corporate entity or one or both of the Commissions, as bodies politic, in which case the rights and obligations of either party hereunder shall be assumed by the party's successor and assigns.

14.7 While it is understood and agreed that the Commissions shall act together in all matters affecting the Service, the rights and obligations of the Commissions hereunder shall be shared jointly and severally.

14.8 This Agreement shall be governed by the laws of the Commonwealth of Virginia.

____IN WITNESS WHEREOF, the Railroad and the Commissions have caused their names to be signed hereto by their officers thereunto duly authorized and their seals, duly attested, to be hereunto affixed as of the day and year first above written.

Attest: _____ CSX TRANSPORTATION, INC.

By: _____
Secretary _____
Title: _____

Attest: _____ NORTHERN VIRGINIA TRANSPORTATION
COMMISSION

By: _____
Secretary _____ Title: Chairman

Attest: _____ POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION

By: _____
Secretary _____ Title: Chairman

~~COMMISSION~~

Secretary

By: _____
Title: _____

Attest:

~~POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION~~

Secretary

By: _____
Title: _____

EXHIBITS TO
OPERATING/ACCESS AGREEMENT

EXHIBITS

- A OPERATING PLAN FOR EIGHT TRAINS
- A-1 OPERATING PLAN FOR TWELVE TRAINS
- A-2 OPERATING PLAN FOR FOURTEEN TRAINS
- B TRACKS
- C-1 CONTRACT FEE SCHEDULE
- C-2 INCENTIVE AGREEMENT
- C-3 COST APPENDIX - INVOICE FORMAT
- D LIABILITY INSURANCE PLAN
- E IMPROVEMENTS REQUIRED BY SECTION 2.9(b)
- F STATION LEASE SITES
- G SPECIAL TRAIN RATES

Attest:

CSX TRANSPORTATION, INC.

Secretary

By: _____
Title: _____

OPERATING PLAN FOR COMMUTER RAIL SERVICE

Train Operations

The commuter rail service to be provided shall include operation of the following number of commuter trains on each day of every week, Monday through Friday, other than holidays:

Mornings

<u>From</u>	<u>To</u>	
Olive	Washington	4
Manassas Airport	Alexandria	1
Alexandria	Manassas Airport	1 ^A
Manassas Airport	Washington	3

Evenings

<u>From</u>	<u>To</u>	
Washington	Olive	4
Washington	Manassas Airport	3
Manassas Airport	Alexandria	1 ^A
Alexandria	Manassas Airport	1

^A Non-Stop.

The advertised schedules of trains may be modified under snow emergency conditions and will not be operated on the following holidays:

New Year's Day	Labor Day
Jackson-King-Lee Day	Columbus Day
Washington's Birthday	Veteran's Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

Service Configuration

The trains indicated at page 1 of this Exhibit shall come into Railroad's line at AF Interlocking or depart from their origin stations at approximately the times indicated below:

Mornings

<u>From</u>	<u>To</u>				
Olive	Washington	0520	0530	0620	0645
AF	Alexandria	0620			
Alexandria	AF	0625			
AF	Washington		0652	0717	0747

Evenings

<u>From</u>	<u>To</u>				
Washington	Olive	1625	1655	1720	1745
Washington	AF	1635	1710	1735	
AF	Alexandria	1847			
Alexandria	AF	1855			

Schedule Standards

Elapsed times between station stops of trains indicated at page 1 of this Exhibit shall be as follows:

	<u>Northbound</u>	<u>Southbound</u>
	<u>Minutes</u>	<u>Minutes</u>
Washington Union Station/L'Enfant Plaza	5	5
L'Enfant Plaza/Crystal City	5	5
Crystal City/Alexandria	6	5
Alexandria/AF	5	5
Alexandria/Springfield	9	9

	<u>Northbound</u>	<u>Southbound</u>
	<u>Minutes</u>	
Springfield/Lorton	6	6
Lorton/Woodbridge	5	5
Woodbridge/Leesylvania	6	5
Leesylvania/Quantico	6	6
Quantico/Brooke	12	12
Brooke/Leeland Road	5	6
Leeland Road/Fredericksburg	5	5
Fredericksburg/Olive	8	10

NOTE: Excludes station dwell time. Running times to be adjusted, as appropriate, after operation of test trains.

Equipment

Equipment used in providing the commuter rail service will be locomotives and cars owned, leased, rented or otherwise controlled by the Commissions. It will consist of locomotive-hauled coaches in a push/pull configuration, bids for which are being requested for submission prior to the end of 1989. Copies of the solicitation will be supplied to Railroad by Commissions, and Commissions invite comments from the Railroads.

STB FD 33388 (Sub 37) 10-21-97 D 182890 2/3

EXHIBIT A - 1

The following operations plan shall become effective as of January 1, 1995, subject to compliance with the terms and conditions of Section 2.9 (b) and subject further to the following restriction:

ANY MIDDAY MANASSAS TRAINS TO ALEXANDRIA MUST CLEAR AT NORTH ALEXANDRIA INTERLOCKING TO SWAP ENDS. CANNOT HOLD MAINLINE TRACK.

PROPOSAL 10/05/94

0
1
2
3
2
0

F R E D E R I C K S B U R G

WITH 99

SOUTHBOUND

PROPOSAL 10/05/94

	79	95	301	303	305	307	93/99		309	662
WASHINGTON	11:15	3:05	3:30	4:15	4:45	5:15	5:40		6:24	8:10
L'ENFANT			3:37	4:22	4:52	5:22			6:30	
CRYSTAL CITY			3:43	4:28	4:58	5:28			6:36	
ALEXANDRIA	11:30	3:22	3:51	4:36	5:06	5:36	5:57		6:44	8:29
SPRINGFIELD										
LORTON			4:05	4:50	5:20	5:50			6:56	
WOODBIDGE	11:47	3:40	4:10	4:55	5:25	5:55	6:15		7:01	8:4
RIPPON			4:15	5:00	5:30	6:00			7:06	
QUANTICO	11:56	3:49	4:24	5:09	5:39	6:09	6:24		7:15	8:5
BROOKE			4:36	5:20	5:50	6:20			7:26	
LEELAND ROAD			4:43	5:28	5:58	6:28			7:32	
FREDERICKSBURG	12:14	4:07	4:55	5:40	6:10	6:40	6:42		7:44	9:1
CROSSROADS				5:50	6:20	6:50			7:54	
ASHLAND		4:45					7:20			9:5
RICHMOND	1:15	5:05					7:40			10:0
			T u r n s b a c k f o r 3 0 9							

[illegible]

MANASSAS

NORTHBOUND

PROPOSAL 10/05/94

	320	322	324	326	328		330	332	334	336
BROAD RUN	5:15	6:15	7:00	7:30	8:00		9:14			
MANASSAS	5:21	6:21	7:06	7:36	8:06		9:20	11:20	1:20	3:20
MANASSAS PARK	5:26	6:26	7:11	7:41	8:11		9:25	11:25	1:25	3:25
BURKE CENTRE	5:39	6:39	7:24	7:54	8:23		9:37	11:37	1:37	3:37
ROLLING ROAD	5:43	6:43	7:28	7:58	8:27		9:41	11:41	1:41	3:41
BACKLICK ROAD	5:50	6:50	7:35	8:05	8:33		9:47	11:47	1:47	3:47
ALEXANDRIA	6:03	7:03	7:48	8:18	8:46		9:59	11:59	1:59	3:59
CRYSTAL CITY	6:12	7:12	7:57	8:27	8:55					DH
L'ENFANT	6:17	7:17	8:02	8:32	9:00					DH
WASHINGTON		7:29	8:14	8:44	9:10					4:20
	DH to FBG FOR 308	DH to BRU FOR 330			from 300 DH from WAS					DH to WAS

MANASSAS

SOUTHB/UND

PROPOSAL 10/05/94

	321	323	325		327	329	331	333	335	337
WASHINGTON					3:45	4:25	4:55	5:25		7:15
L'ENFANT					3:52	4:32	5:02	5:32	6:02	7:22
CRYSTAL CITY					3:57	4:38	5:08	5:38	6:08	7:28
ALEXANDRIA	10:20	12:20	2:20		4:05	4:46	5:16	5:46	6:16	7:36
BACKLICK ROAD	10:33	12:33	2:33		4:18	4:59	5:29	5:59	6:29	7:39
ROLLING ROAD	10:38	12:38	2:38		4:24	5:05	5:35	6:05	6:35	7:55
BURKE CENTRE	10:42	12:42	2:42		4:28	5:09	5:39	6:09	6:39	7:59
MANASSAS PARK	10:55	12:55	2:55		4:42	5:23	5:53	6:23	6:53	8:13
MANASSAS	11:00	1:00	3:00		4:47	5:28	5:58	6:28	6:58	8:18
BROAD RUN						5:39	6:09	6:39	7:09	8:29
					DH BACK TO LEF	DH BACK TO WAS			FROM DH 327	FROM DH 329

FREDERICKSBURG LINE

Post Featherstone and Lorton
draft of 10/15/97

NORTH

	300	302	304	306	308	310	312
frequency	m-f	m-f	m-f	m-f	m-f	m-f	m-f
XR	5 07a	5 38a	6 14a	6 49a	7 20a	turn	turn
FREDRICKSBG	5 15	5 46	6 22	6 57	7 28	8 10a	5 26p
LEELAND RD	5 21	5 52	6 28	7 03	7 34	8 16	
BROOKE	5 26	5 57	6 33	7 08	7 39	8 21	
QUANTICO	5 38	6 09	6 45	7 20	7 51	8 33	5 46
RIPPON	5 47	6 18	6 54	7 29	8 00	8 41	
WOODBIDGE	5 52	6 24	7 00	7 35	8 06	8 47	
LORTON	5 58	6 31	7 07	7 42	8 12	8 52	
FRANCONIA (d)	6 04	6 38	7 14	7 49	8 18	8 59	
ALEXANDRIA (d)	6 17	6 48	7 24	7 59	8 30	9 10	6 14
CRYSTAL CITY (d)	6 26	6 57	7 33	8 08	8 39	9 19	
RO	6 28	6 59	7 35	8 10	8 41	9 25	
L'ENFANT (d)	6 33	7 04	7 40	8 15	8 46	9 26	
UNION STATION	6 43a	7 14	7 50a	8 25a	8 56a	9 38a	6 40p

(d) = train may leave ahead of schedule

SOUTH

	319	301	303	303	305	307	309
frequency	m-f	m-f	m-f	m-f	m-f	m-f	m-f
UNION STATION	6 53a	3 45p	4 15p	4 45p	5 15p	5 55p	6 55p
L'ENFANT		3 53	4 23	4 53	5 23	6 02	7 02
RO	6 59	3 57	4 27	4 57	5 27	6 06	7 06
CRYSTAL CITY		4 01	4 31	5 01	5 31	6 11	7 11
ALEXANDRIA	7 07	4 09	4 39	5 09	5 39	6 19	7 19
FRANCONIA		4 18	4 48	5 18	5 48	6 28	7 28
LORTON		4 25	4 55	5 25	5 55	6 34	7 34
WOODBIDGE		4 33	5 03	5 33	6 03	6 41	7 41
RIPPON		4 38	5 08	5 38	6 08	6 46	7 46
QUANTICO	7 35	4 47	5 17	5 47	6 17	6 55	7 55
BROOKE		4 58	5 28	5 58	6 28	7 06	8 05
LEELAND RD		5 04	5 34	6 04	6 34	7 12	8 10
FREDRICKSBG (d)	8 00a	5 16	5 46	6 16	6 46	7 26	8 20
XR	turn	turn	5 55p	6 25p	6 55p	7 38p	8 30p

(d) = train may leave ahead of schedule

EXHIBIT B

TRACKS

For the purposes of this Agreement, Tracks shall be defined to include the following operating facilities owned by CSX Transportation, Inc.

1. No. 2 Main Track and no. 3 Main Track between Mile Post 53.2 and Mile Post and appurtenant facilities.
2. No. 1 Track between Hamilton interlocking and FB interlocking and appurtenant facilities.
3. Main Line associated side tracks between Mile Post 53.2 and Mile Post 110, for the purpose of emergency clearing, and appurtenant facilities.
4. No. 1 Track between PP and NPP interlockings and appurtenant facilities.
5. Signal equipment associated with tracks in 1-4 above.

VRE CONTRACT FEES ON CSXT CONTRACT

CSXT MAINLINE CONTRACT FEE	FIRST YEAR 7/1/98-6/30/99 ANNUAL: 12 MONTH BASIS 12 TRAINS		FIRST YEAR 7/1/98-6/30/99 ANNUAL: 12 MONTH BASIS 14 TRAINS	
	MONTHLY	ANNUALIZED	MONTHLY	ANNUALIZED
I. FIXED PRICE				
A. DIRECT SERVICES				
1. COMMUTER DESK	\$3,333	\$40,000	\$3,333	\$40,000
2. GEN & ADMIN	\$9,000	\$108,000	\$9,000	\$108,000
3. STATION LEASES	<u>\$8,333</u>	<u>\$100,000</u>	<u>\$8,333</u>	<u>\$100,000</u>
SUBTOTAL	\$20,666	\$248,000	\$20,666	\$248,000
II. VARIABLE PRICE --- PER TRAIN MILE ^{1,2,3}				
<u>FREDERICKSBURG LINE TRAINS</u>				
A. MAINT, SIGNAL, ETC.	\$2.94	\$41,289	\$47,599	\$571,169
B. ACCESS COMPONENTS	\$5.63	\$79,068	\$91,150	\$1,093,768
<u>MANASSAS LINE TRAINS</u>				
A. MAINT, SIGNAL, ETC.	\$2.94	\$13,726	\$13,726	\$85,995
SUBTOTAL	\$134,083	\$1,530,254	\$152,474	\$1,750,932
III. CONTRACT BASE (I&II) TOTAL:	\$154,749	\$1,778,254	\$173,140	\$1,998,932
IV. INCENTIVES FOR YEAR ONE:	\$42,833	\$514,000	\$42,833	\$514,000
V. CONTRACT TOTAL FOR YEAR ONE:	\$197,582	\$2,292,254	\$215,973	\$2,512,932
YEAR TWO: 7/1/99 - 6/30/00				
INCENTIVE FOR YEAR TWO ⁴	\$50,736	\$605,690	\$51,472	\$614,517
CONTRACT TOTAL FOR YR TWO	\$205,485	\$2,383,944	\$224,612	\$2,613,449
YEAR THREE: 7/1/00 - 6/30/01				
INCENTIVE FOR YEAR THREE	\$58,956	\$701,048	\$60,456	\$719,055
CONTRACT TOTAL FOR YR THREE	\$213,705	\$2,479,302	\$233,597	\$2,717,987
YEAR FOUR: 7/1/01 - 6/30/02				
INCENTIVE FOR YEAR FOUR	\$67,504	\$800,220	\$69,800	\$827,775
CONTRACT TOTAL FOR YR FOUR	\$222,253	\$2,578,474	\$242,941	\$2,826,706
YEAR FIVE: 7/1/02 - 6/30/03				
INCENTIVE FOR YEAR FIVE	\$76,394	\$903,359	\$79,518	\$940,843
CONTRACT TOTAL FOR YR FIVE	\$231,143	\$2,681,613	\$252,658	\$2,939,775
YEAR SIX: 7/1/03 - 6/30/04				
INCENTIVE FOR YEAR SIX	\$85,640	\$1,010,624	\$89,624	\$1,058,434
CONTRACT TOTAL FOR YR SIX	\$240,389	\$2,788,878	\$262,764	\$3,057,366
YEAR SEVEN: 7/1/04 - 6/30/05				
INCENTIVE FOR YEAR SEVEN	\$95,255	\$1,122,179	\$100,135	\$1,180,729
CONTRACT TOTAL FOR YR SEVEN	\$250,004	\$2,900,433	\$273,215	\$3,179,660

VRE CONTRACT FEES ON CSXT CONTRACT

YEAR EIGHT: 7/1/05 - 6/30/06				
INCENTIVE FOR YEAR EIGHT	\$105,255	\$1,238,196	\$111,066	\$1,307,915
CONTRACT TOTAL FOR YR EIGHT	\$260,004	\$3,016,450	\$284,206	\$3,306,847
YEAR NINE: 7/1/06 - 6/30/07				
INCENTIVE FOR YEAR NINE	\$115,656	\$1,358,854	\$122,434	\$1,440,189
CONTRACT TOTAL FOR YR NINE	\$270,405	\$3,137,108	\$295,574	\$3,439,121
YEAR TEN: 7/1/07 - 6/30/08				
INCENTIVE FOR YEAR TEN	\$126,472	\$1,484,338	\$134,257	\$1,577,754
CONTRACT TOTAL FOR YR TEN	\$281,221	\$3,262,593	\$307,397	\$3,576,685

¹ ESTIMATE BASED UPON 168,525 MILES FOR 12 FREDERICKSBURG LINE TRAINS

² ESTIMATE BASED UPON 194,275 MILES FOR 14 FREDERICKSBURG LINE TRAINS

³ ESTIMATE BASED UPON 29,250 MILES FOR 18 MANASSAS LINE TRAINS
MANASSAS LINE TRAINS PAY ONLY THE MAINT, SIGNAL COMPONENT

⁴ INCENTIVE INCREASES FOR YEAR TWO AND EACH YEAR THEREAFTER, EQUAL TO 4% OF PREVIOUS YEAR'S TOTAL CONTRACT COST, ARE SHOWN BY WAY OF ILLUSTRATION. ANNUAL INCREASES SHALL BE MADE IN ACCORDANCE WITH SECTION 5.1 OF THE OPERATING ACCESS AGREEMENT.

VIRGINIA RAILWAY EXPRESS
INCENTIVE AGREEMENT

Incentive payments will be paid for each regularly scheduled Train (excluding Special Trains), as set forth in Exhibit A or A-1, which obtains an on-time performance of at least 90% during a month, at the following check points:

Northward Trains - the check point will be the arrival at "RO" Interlocking.

Southward Trains - the check point will be the arrival at "XR" Interlocking.

A. Performance Calculation

Percentage on-time performance at a check point identified above during a calendar month will be calculated by dividing the number of times the Trains arrived on-time at the check point by the total number of trips operated during the month. For purposes of this calculation, the following conditions will apply:

1. A Train is considered "on-time" if the Train arrives at a check point on or before the scheduled arrival time of such Train (as set forth in Exhibit A or Exhibit A-1), plus:

(a) Five (5) minutes of standard tolerance, northward Trains only.

(b) The actual number of minutes a southward Train is late leaving "RO" Tower.

- (c) The actual number of minutes a northward Train is late leaving "XR" Tower.
- (d) The actual number of minutes the Train is delayed due to mechanical failures or deficiencies of the Commissions' equipment.
- (e) The actual number of minutes the Train is delayed as a result of complying with ADA standards or the loading or unloading of passengers, ~~for any other reason other than Railroad's failure to comply with the Agreement.~~
- (f) The actual number of minutes the Train is delayed by law enforcement or other governmental agencies or for emergency medical services or FRA efficiency testing or by reason of force majeure events.
- (g) The actual number of minutes the Train is late because the Train is under powered ~~or is not operating at authorized speeds for any reason.~~
- (h) The actual number of minutes the Train is delayed as a result of ~~holding or consolidating a Train at~~ VRE's request.
- ~~(i) The actual number of minutes the Train is delayed as result of the construction of Improvements undertaken pursuant to Section 2.9 or any other improvements agreed to by the parties or FRA operational efficiency testing.~~

NOTE: Delays accruing because of either Item a (known as standard tolerance) or Items b through ~~h~~ (known as extended tolerance), will be added to the scheduled time in determining the on-time performance of any such Train that is affected.

2. A Train shall not be counted as operated when:

(a) The Train is annulled or terminated by VRE.

(b) The Train strikes a trespasser, ~~vehicle or a foreign object or is directly involved in any other accident or derailment.~~

(c) The Train is delayed, directly or indirectly, as a result of the operation of another Train.

(d) CSXT is unable to allow operation of the Train because of force majeure events.

3. Incentive Earnings Table

The Commissions shall pay CSXT incentive compensation based on the percentage of on-time performance for the month as shown on the annexed tables. The earnings (accompanied by appropriate documentation) shall be included in the monthly bill for services provided under the Agreement.

NOTE 1: CSXT will not obtain any incentive payments for a Train having on time performance ~~en~~of less than 90%.

NOTE 2: Special Trains are excluded from the provisions of this portion of the Agreement.

NOTE 3: Disputes over the on-time performance or payments regarding on-time performance will be resolved between the parties during the first ~~S~~service review meeting following the

month in which the Train(s) in question operated. In addition, in instances of delays greater than 30 minutes, Railroad shall promptly review the circumstances causing such delays and advise the Commissions of its findings, including corrective action, if any, which Railroad proposes to prevent the recurrence of such delays.

B. Construction of Schedules for Modified Service

(1) When the Service is modified for any reason (including, but not limited to, changes in authorized speeds, the consist of existing Trains, the Service, the freight operations of CSXT, or the intercity rail passenger service of NRPC), scheduled running times, including adequate dwell times and adequate recovery time will be established by a joint field test conducted by operating officers of CSXT and the Commissions or its Operator. Such operating officers will be qualified on the territory and the current operating rules of CSXT.

(2) Field tests will be made riding aboard the Train(s) documenting the running times, delays and special conditions in order to determine schedule minutes for the Train(s). Test study records will be retained by CSXT for three (3) years.

(3) When scheduled field tests are required, such test will be conducted, completed and agreed upon at least 60 days prior to any timetable change.

ANNUAL INCENTIVE TABLES
CSYT - VRE CONTRACT - EXHIBIT C-2

A. FOR UP TO 8 TRAINS

AVERAGE ON TIME PERFORMANCE	PER CENT AVAILABLE	YR # 1 (7 MONTHS)	YR # 2 (12 MONTHS)	YR # 3 (12 MONTHS)	YR # 4 (12 MONTHS)	YR # 5 (12 MONTHS)
100 %	100	\$44,333	\$176,000	\$276,000	\$376,000	\$476,000
99 %	95	\$42,116	\$167,200	\$262,200	\$357,200	\$452,200
98 %	90	\$39,900	\$158,400	\$248,400	\$338,400	\$428,400
97 %	85	\$37,683	\$149,600	\$234,600	\$319,600	\$404,600
96 %	80	\$35,466	\$140,800	\$220,800	\$300,800	\$380,800
95 %	75	\$33,250	\$132,000	\$207,000	\$282,000	\$357,000
94 %	70	\$31,033	\$123,200	\$193,200	\$263,200	\$333,200
93 %	65	\$28,816	\$114,400	\$179,400	\$244,400	\$309,400
92 %	60	\$26,600	\$105,600	\$165,600	\$225,600	\$285,600
91 %	65	\$28,816	\$114,400	\$179,400	\$244,400	\$309,400
90 %	50	\$22,167	\$88,000	\$138,000	\$188,000	\$238,000

B. FROM 9 TO 12 TRAINS *

AVERAGE ON TIME PERFORMANCE	PER CENT AVAILABLE	YR # 1 (7 MONTHS)	YR # 2 (12 MONTHS)	YR # 3 (12 MONTHS)	YR # 4 (12 MONTHS)	YR # 5 (12 MONTHS)
100 %	100	\$66,500	\$214,000	\$314,000	\$414,000	\$514,000
99 %	95	\$63,175	\$203,300	\$298,300	\$393,300	\$488,300
98 %	90	\$59,850	\$192,600	\$282,600	\$372,600	\$462,600
97 %	85	\$56,525	\$181,900	\$266,900	\$351,900	\$436,900
96 %	80	\$53,200	\$171,200	\$251,200	\$331,200	\$411,200
95 %	75	\$49,875	\$160,500	\$235,500	\$310,500	\$385,500
94 %	70	\$46,550	\$149,800	\$219,800	\$289,800	\$359,800
93 %	65	\$43,225	\$139,100	\$204,100	\$269,100	\$334,100
92 %	60	\$39,900	\$128,400	\$188,400	\$248,400	\$308,400
91 %	65	\$43,225	\$139,100	\$204,100	\$269,100	\$334,100
90 %	50	\$33,250	\$107,000	\$157,000	\$207,000	\$257,000

* OVER 12 TRAINS WILL REQUIRE A NEW INCENTIVE AMOUNT.

EXHIBIT C-3
COST APPENDIX AND INVOICE FORMAT

CONTRACT FEE

Monthly

Annual

I. FIXED PRICE

1. Commuter Desk
2. Gen and Admin
- 3 Station Leases

Sub Total

II. VARIABLE PRICE.....per train mile

- A. Maint, Signal, Etc.
- B. Access Components

Sub Total

III. Contract Fee Total (I+II)

IV. INCENTIVE PAYMENTS

SUPPLIED SERVICES

ITEM 1: LOCOMOTIVE RENT (REFERENCE 2.11 A. PG)

Actual cost of rental of railroad supplied locomotive and crew, in VRE service. (EB rates apply) Fuel and placement cost additional.

ACTUAL COST _____

ITEM 2: RAILROAD SUPPLIED PASSENGER SERVICES

(REFERENCE 2.11 B. PG)

Actual cost incurred by railroad to transfer, relocate or attend to passengers of VRE when/if railroad required to.

ACTUAL COST _____

ITEM 3: ACCIDENT EXPENSE (REFERENCE 2.11 C. PG.)

A. Actual cost of recovering VRE equipment and placement at designated location.

B. Actual cost of repair to railroad plant including but not limited to track, signal etc.

C. Recovery and remediation of fuel oil and other hazardous material

D. Other

ACTUAL COST _____

ITEM 4: COST TO SUPPLY TRANSPORTATION RELATED NEEDS.

(REFERENCE 2.5 C PG)

cost related to qualifying and testing operating
personal engaged in the service. ACTUAL COST _____

ITEM 5: COST OF SUPPLYING REQUESTED PILOTS

(REFERENCE 2.5 C PG) ACTUAL COST _____

ITEM 6: COST OF OPERATING SUPPLIES (REFERENCE 2.5 D PG)

Actual cost of supplying operating rules, safety rules,
switch keys and other supplies.

ACTUAL COST _____

ITEM 7: COST OF CONDUCTING HEARING FOR OPERATING PERSONAL
RELATED TO THE SERVICE. (REFERENCE 2.5 F PG)

ACTUAL COST _____

ITEM 8: COST TO MODIFY RAILROAD PLANT (REFERENCE 2.9 A PG)

Cost to add to, change, modify or abandon railroad property,
right-of-way or other changes to the railroad plant requested
by the commission or required by a governing agency related
to the service.

ACTUAL COST _____

ITEM 9: COST FOR ANY RAILROAD SUPPLIED POLICING SERVICE.

(REFERENCE 8.1 PG)

ACTUAL COST _____

ITEM 10: CLAIMS COST, SERVICE RENDERED OR PAYMENTS MADE RELATED TO
THE SERVICE. (REFERENCE 9 PG)

ACTUAL COST _____

ITEM 11: LABOR CLAIMS PAID BY RAILROAD RESULTING FROM THE SERVICE.

(REFERENCE 10.1 PG)

ACTUAL COST _____

ITEM 12: SPECIAL TRAINS CHARGE (REFERENCE 1. PG , 3.1 PG)

Cost to run special trains. NEGOTIATED CHARGE _____

ITEM 13: OTHER CHARGES Billable charges listed in the body of this
agreement and not listed specifically in this Cost Appendix

ACTUAL COST _____

11/27/89

NORTHERN VIRGINIA AND POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSIONS
COMMUTER RAIL OPERATIONS LIABILITY INSURANCE PLAN

The Department of General Services, Division of Risk Management, in accordance with Section 2.1-526.8:1 of the Code of Virginia (1950), as amended, with the approval of the Governor, hereby establishes the terms and conditions of the Northern Virginia and Potomac and Rappahannock Transportation Commissions (hereinafter the "Commissions") Liability Insurance Plan (hereinafter the "Plan") established to fulfill the liabilities created by the indemnification portions of the various Operating and/or Access Agreements entered into between the Commissions and the several Rail Entities as well as direct liabilities of the Commissions arising out of the operation of the Commuter Services. -

The Plan and all INSUREDS/INDEMNITEES, as defined herein, agree as follows:

PART A. INSURING AGREEMENT

The Plan will pay on behalf of the INSURED/INDEMNITEE as defined hereafter all sums which the INSURED/INDEMNITEE shall become legally obligated to pay as DAMAGES as a result of OCCURRENCES. Such coverage provided hereunder shall be applicable despite the fact that such liability may have been caused, in whole or in part, by the negligence, regardless of its character or degree, of any employee, agent, or officer of any Rail Entity which has entered into an Agreement with the Commissions for the provision of COMMUTER RAIL SERVICE.

PART B. DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS

- 1) The Plan shall have the right and duty to defend any suit against the INSURED/INDEMNITEE seeking DAMAGES on account of such OCCURRENCE for which the Commissions are responsible pursuant to the respective Agreements, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation and settlement, subject to the provisions of B(2)(b), of any claim or suit as it deems expedient; provided, however, the Plan shall not be obligated to pay any claim or judgment or defend any suit, after the applicable limit of the Plan's liability has been exhausted by payment of judgments, settlements, or supplementary expense payments, except as provided in Part B(4) below.

With respect to claims for which the Commissions are responsible and which involve litigation against the INSURED/INDEMNITEE, the Commissions will provide, at the Plan's expense, legal representation. Selection of counsel to represent any INSURED/INDEMNITEE in such litigation shall be determined by the Plan. The INSURED/INDEMNITEES may, at their own expense, provide for legal representation with respect to claims which involve litigation against them.

- 2)
 - a) An INSURED/INDEMNITEE shall not, except at his own cost and for his own account, make any payment, admit any liability, settle any claim, assume any obligation, or incur any expense for which the Plan would be liable without the written consent of the Plan except as provided below.
 - b) Each INSURED/INDEMNITEE, as the case may be, will promptly advise the Plan of claims. The Plan, however, agrees that AMTRAK will handle, subject to the Division of Risk Management's oversight, the investigation and settlement of all claims arising out of the COMMUTER RAIL SERVICE. The Division of Risk Management and AMTRAK will coordinate the investigation of all claims. Specifically, AMTRAK will evaluate each claim it receives upon receipt and provide the Commissions and the Division of Risk Management with an initial report. AMTRAK will also submit, at least semi-annually, a report on all claims of which it is aware of indicating status. The Division of Risk Management specifically agrees that AMTRAK has the authority to settle and pay individual claims up to \$10,000.00 for any one claim. Any proposed settlement or payment of a single claim which is in excess of \$10,000 will be submitted to the Division of Risk Management for prior approval.
- 3) The Plan will pay, as supplementary expenses:
 - a) expenses for reasonable attorneys fees incurred in the defense of claims;
 - b) expenses incurred by the INSURED/INDEMNITEES for outside manpower and for other extraordinary expenses of handling individual claims, as set out in the Operating and/or Access Agreements, provided prompt and advance notice of such expenses is provided the Plan;
 - c) costs assessed against the INSURED/INDEMNITEE in any suit covered by the Plan and all interest on the amount of any judgment therein which accrues after entry of the judgment and before the Plan has paid or tendered or deposited in court that part of the judgment;

- d) premiums on appeal bonds required in any suit covered by the Plan and costs of attachment or similar bonds.
- 4) a) The expenses referred to in subparagraphs 3(a) through 3(d) above shall be in addition to the \$75,000 per claimant limit set out in Part C(1), but shall be included within the limits set out in Part C(2).
- b) If suit is brought against an INSURED/INDEMNITEE alleging claims not arising out of an OCCURRENCE and for which the Commissions are not responsible together with claims arising out of an Occurrence for which the Commissions are responsible, the INSURED/INDEMNITEE and the Commissions, with the Plan's approval, will agree on a method of allocating equitably the costs of defense described in subparagraphs 3(a) through 3(d) above.

PART C. LIMITS OF LIABILITY

Regardless of the number of (1) INSUREDS/INDEMNITEES under this Plan, (2) persons or organizations who sustain DAMAGES payable under this PLAN, or (3) suits brought on account of insurance afforded by this Plan, the Plan's liability is limited as follows:

- 1) The Plan's liability with respect to any Insured defined in Part E(4)(a) shall not exceed \$75,000.00 per claimant;
- 2) With regard to the liability of any Insured Rail Entity or Liability Assumed by the Commissions by specific contractual indemnity;
 - a) The limit of liability under this Plan, regardless of the number of claims or the number of Insureds, shall not exceed \$200,000,000 as a result of, or arising from, OCCURRENCES in any one ANNUAL TERM.
 - b) This limit of liability required by 2(a) above may be fulfilled by self-insurance, purchased commercial insurance or participation in any alternative insurance mechanism, provided, however, that the extent of liability covered under this Plan shall not be reduced by, or limited to, the coverage provided by any such insurance. The reinstatement of all or any portion of any insurance coverage purchased by the Plan shall not operate to increase the annual aggregate liability of the Commissions under the Plan's self-insurance provisions to a sum in excess of \$200,000,000.
 - c) The Plan shall consist of a \$5 million self-insured retention and the balance of the coverage up to \$200 million shall consist of commercial insurance or participation in any financially sound alternative insurance mechanism. Except for the initial \$5 million

self-insurance retention, self-insurance shall be used only to the extent that commercial insurance or alternative insurance mechanisms are not available.

- 3) In the event that the Commuter Rail Operations Liability Insurance Trust Fund created and maintained for the purpose of implementing this Plan is rendered or becomes insolvent, neither the Commonwealth of Virginia, the General Assembly of Virginia nor any department, agency, institution, board, commission or officer, agent or employee, or any of the constituent jurisdictions of either Commission or any officer, agent or employee thereof, shall be liable for any claim that would have been covered under this Plan but for such insolvency. The establishment of this Plan does not, and shall not be deemed or construed to, pledge or obligate the full faith and credit of the Commonwealth of Virginia or any political subdivision thereof.

The determination of such insolvency rests solely with the Department of General Services, Division of Risk Management, and will be communicated promptly to all INSURED/INDEMNITEES. The financial status of the Plan shall be reported to the INSURED/INDEMNITEES at least semi-annually.

PART D. EXCLUSIONS

- 1) The Plan shall not be obligated to make any payment or defend any lawsuit in connection with any claim made against the INSURED/INDEMNITEE:
- a) Based upon or attributed to their gaining in fact any profit, advantage or remuneration to which they were not legally entitled;
 - b) Brought about or contributed to by fraud or dishonesty of an INSURED/INDEMNITEE; provided, however, such exclusion shall not be effective unless a judgment or other final adjudication thereof adverse to such INSURED/INDEMNITEE shall establish that acts of active or deliberate dishonesty or fraud committed by such INSURED/INDEMNITEE were material to the cause of action so adjudicated; and further provided that this exclusion shall not apply to any INSURED/INDEMNITEE other than the entity, including its officers and employees, who committed such fraud or dishonesty.
 - c) Based on liability arising out of the ownership, maintenance and operation, loading or unloading of vehicles of any kind licensed for use on public highways, except that this exclusion shall not apply to vehicles hired by AMTRAK to provide transportation for commuters due to the necessity which arises on account of an interruption

of service due to malfunction of the train, accident or other conditions which require passengers to be transported by means other than trains or hyrail vehicles when not covered by automobile insurance. Any insurance or self-insurance provided by this Plan shall be excess over any other valid and collectable insurance maintained with respect to those hired vehicles.

In no event will any coverage by the Plan accrue to owners or operators of such hired vehicles.

Notwithstanding this exclusion, the Plan shall cover liability arising from a collision between a train and vehicle licensed for use on public highways, which occurs at a grade crossing, or anywhere else on the tracks over which a commuter rail train is being operated.

- d) Based on any injury or death to employees of any INSURED/INDEMNITEE arising out of the COMMUTER RAIL SERVICE, except this exclusion shall not apply to any injury or death to employees of Conrail, RF&P or Southern.
- e) Based on property damage to property owned or leased by the Northern Virginia Transportation Commission or the Potomac and Rappahannock Transportation Commission unless such claim is asserted against one or more of the rail entities named in Part E (4) (b2), (b3) and (b4) and (5) of this Plan.

This exclusion shall not apply to property of any other INSURED/INDEMNITEE or to property of other persons. Further, this exclusion shall not apply to the deductible amount of any property insurance for property owned or leased by the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission.

- f) Based on any claims arising from any contract dispute, provided however that this exclusion shall in no way apply to liability assumed by the Commissions by contract with Rail Entities, namely the National Railroad Passenger Corporation (AMTRAK), Richmond, Fredericksburg & Potomac Railroad Company (RF&P), Southern Railway Company (Southern), and Consolidated Rail Corporation (Conrail).
- g) Any claim for, or arising out of, normal wear or deterioration of roadbed and track, routine personnel requirements, delays, or any other loss or damage attributable to or exacerbated by the normal operations

of the COMMUTER RAIL SERVICE, which are taken into account under the compensation provisions of any OPERATING AND/OR ACCESS AGREEMENTS.

PART E. DEFINITIONS

Whenever used in this Plan, the following words have these meanings:

1) ANNUAL TERM - means:

Any twelve month period beginning July 1. If the Commuter Rail Service begins operation, which may or may not be the date that passengers are first transported, other than on 1 July. That period between the date operations begin and the July 1 next ensuing shall constitute an annual term.

2) COMMUTER RAIL SERVICE (also known as Contract Service) - means all activities relating to the provision of rail passenger service along two lines between a point at or near Fredericksburg, Virginia and the Washington, D.C. Union Station, and between a point at or near Manassas Airport, Virginia and Washington, D.C. Union Station over the railroad tracks of the Richmond, Fredericksburg and Potomac Railroad Company, Southern Railway Company, AMTRAK and Conrail with various intermediate stops. This term includes switching, maintenance, train storage and other services related to the provision of Commuter Rail Service as set forth in the Operating and/or Access Agreements.

3) DAMAGES - includes compensatory, liabilities assumed under the Operating and/or Access Agreements--Risk of Liability Article, punitive and equitable damages.

4) INSURED - means:

a) The Northern Virginia Transportation Commission, the Potomac and Rappahannock Transportation Commission, and any other Transportation Commission subject to the Virginia Tort Claims Act that may become a participant in the Commuter Rail Service operated by or for the Commissions.

b) 1) the officers and employees of the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission;

2) the National Railroad Passenger Corporation (AMTRAK), its officers, directors, agents and

employees, including the Washington Terminal Company, its officers, directors, agents and employees;

- 3) The Richmond, Fredericksburg and Potomac Railroad Company (RF&P), the RF&P Corporation, its corporate affiliates, its licensees including entities which have trackage rights with RF&P to the extent RF&P may be liable, its officers, directors, agents and employees; and
- 4) The Consolidated Rail Corporation (CONRAIL), its corporate affiliates, its licensees, officers and employees.
- 5) INDEMNITEE - means Southern Railway Company, its officers, agents, employees and corporate affiliates.
- 6) OCCURRENCE - means an event or series of events which are attributable in any way to or which are exacerbated by the operation of or the performance of the Commuter Rail Service or to the presence of cars, equipment, personnel or passengers of the Commuter Rail Service on or about the property of any Rail Entity.
- 7) OPERATING AND/OR ACCESS AGREEMENTS - means Agreements between the Commissions and any railroad for use of its respective facilities and for services to operate the Commuter Rail Service.

PART F. NOTICE OF CLAIM

- 1) The INSURED/INDEMNITEE, as a condition precedent to coverage under this Plan, shall give the Plan notice in writing as soon as practicable of any claim made and shall give the Plan such information and cooperation as it may reasonably require. Such notice shall be given to the Division of Risk Management, Department of General Services, Commonwealth of Virginia.
- 2) If, during the period of coverage, an INSURED/INDEMNITEE receives written or oral notice from any party that it is the intention of such party to hold an INSURED/INDEMNITEE responsible for loss or damage arising from an OCCURRENCE, such INSURED/INDEMNITEE shall, as soon as practicable, give written notice to the Plan of the receipt of such notice, whether or not such notice is expressed in the form of a claim.

PART G. CONDITIONS

- 1) ACTION UNDER THIS PLAN. No action shall be brought by any INSURED/INDEMNITEE under this Plan unless, as a condition precedent thereto, such INSURED/INDEMNITEE has fully complied with all the terms hereof nor until the amount of the INSURED/INDEMNITEE'S obligation to pay shall have been finally determined either by judgment against the

INSURED/INDEMNITEE after actual trial or by written agreement of the INSURED/INDEMNITEE, the claimant and the Plan. In the event of the bankruptcy or insolvency of the INSURED/INDEMNITEE, the Plan shall not be relieved of the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency.

- 2) ASSIGNMENT. Assignment of interest under this Plan shall not bind the Plan until its consent is endorsed thereon by the Division of Risk Management.
- 3) CHANGES. Notice to any agent or knowledge possessed by any agent or by any other person shall neither effect a waiver or a change in any part of this Plan nor estop the Plan from asserting any right under the terms hereof. No provisions of this Plan may be waived or changed, except by amendment hereto approved in accordance with Section 2.1-526:8.1 of the Code and except with the approval of all INSUREDS/INDEMNITEES.
- 4) SUBROGATION CLAUSE. In the event of any payment under this Plan, the Plan shall be subrogated to the extent of such payment to all rights of recovery therefor, and the INSUREDS/INDEMNITEES shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents necessary to enable the Plan effectively to bring suit in the name of the INSURED/INDEMNITEE.
- 5) SETTLEMENT OF DISPUTES.
 - a) To the extent permitted by law, issues that arise about the coverage or operation of this Plan, excluding interpretations or applications of provisions of an Operating and/or Access Agreement between the Commissions and an INSURED/INDEMNITEE, that cannot be resolved between any INSURED/INDEMNITEE and the Plan, shall be resolved by submitting the matter to arbitration as provided in Part G(5)(b) below.
 - b) Any controversy which is referable to arbitration shall be submitted to disinterested arbitrators, one of which shall be appointed by each disputant; and the arbitrators so chosen shall select a third arbitrator, or such numbers of arbitrators that would result in an uneven number of arbitrators if there are an odd number of disputants, and the decisions of a majority of them shall be final and conclusive between the parties hereto. In case either of the said parties shall fail or refuse to appoint an arbitrator as aforesaid for the period of thirty (30) calendar days after written notice given by the other party to make such appointment, then and in that event, a second arbitrator shall be appointed, upon application of the first arbitrator, by

the American Arbitration Association, and the said two arbitrators, so appointed, shall select a third arbitrator, and the three so chosen shall hear and decide such difference or dispute, and their decision, or that of a majority of them, shall be final and conclusive upon the parties hereto. In the event that the appointed arbitrators shall be unable to agree upon a third or such additional arbitrators within thirty (30) days after the appointment of the last of the disputant's arbitrators, as needed to comprise an odd-numbered panel, such additional arbitrator or arbitrators shall be appointed, upon the application of any party hereto, upon reasonable notice to the other parties, by the American Arbitration Association. If any arbitrator shall decline or fail to act, the party or person by whom he was chosen or appointed, as the case may be, shall appoint another to act in his place.

- c) Each party hereto shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by or for it. The parties shall share equally the costs and expenses attributable to the services of the third arbitrator or additional arbitrators provided for herein.
- d) Any findings made in any other proceeding involving the conduct out of which the dispute arises may be considered by the arbitrators, but shall not be conclusive, unless the arbitrators so determine.
- e) No person or organization shall have any right under this plan to join the Commonwealth of Virginia, the Division of Risk Management, or any of its employees as a party to any action against an INSURED/INDEMNITEE to determine the liability of the INSURED/INDEMNITEE, nor shall the Commonwealth of Virginia, the Division of Risk Management, or any of its employees be impleaded by the INSURED/INDEMNITEE or its legal representative.

PART H. NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(Broad Form)

This endorsement modifies the provisions of this Plan relating to ALL COVERAGE.

It is agreed that:

- 1) This Plan does not apply:

- A) Under any Liability Coverage,

- 1) with respect to which an INSURED/INDEMNITEE under this policy is also an INSURED under a nuclear

energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an INSURED under any such policy but for its termination upon exhaustion of its limit of liability; or

- 2) resulting from the HAZARDOUS PROPERTIES OF NUCLEAR MATERIAL and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the INSURED/INDEMNITEE is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B) Liability resulting from the HAZARDOUS PROPERTIES of NUCLEAR MATERIAL, if

- 1) the NUCLEAR MATERIAL a) is at any NUCLEAR FACILITY owned by, or operated by or on behalf of an INSURED/INDEMNITEE or b) has been discharged or dispersed therefrom.
- 2) the NUCLEAR MATERIAL is contained in SPENT FUEL or WASTE at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of the INSURED/INDEMNITEE, or
- 3) Any injury or damage arises out of the furnishing by an INSURED/INDEMNITEE of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any NUCLEAR FACILITY, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to damage to such NUCLEAR FACILITY and any property threat.

2) As used in this endorsement:

"HAZARDOUS PROPERTIES" include radioactive, toxic or explosive properties.

"NUCLEAR MATERIAL" means SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL or BY-PRODUCT MATERIAL.

"SOURCE MATERIAL", "SPECIAL NUCLEAR MATERIAL", and "BY-PRODUCT MATERIAL" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"SPENT FUEL" means any fuel element or fuel component, solid or liquid, which has been used; or exposed to radiation in a NUCLEAR REACTOR.

"WASTE" means any waste material (a) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its SOURCE MATERIAL content, and (b) resulting from the operation by any person or organization of any NUCLEAR FACILITY included under the first two paragraphs of the definition of NUCLEAR FACILITY.

"NUCLEAR FACILITY" means

- a) any NUCLEAR REACTOR.
- b) any equipment or device designed or used for
 - (1) separating the isotopes of uranium or plutonium,
 - (2) processing or utilizing SPENT FUEL, or (3) handling, processing, or packaging WASTE.
- c) any equipment or device used for the processing, fabricating or alloying of SPECIAL NUCLEAR MATERIAL if at any time the total amount of such material in the custody of the INSURED/INDEMNITEE at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of WASTE.

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"NUCLEAR REACTOR" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"DAMAGE" includes all forms of radioactive contamination of property..

IN WITNESS WHEREOF, this Plan has been executed this 27th day of October, 1989.

APPROVED:

Wendell L. Seldon, Director
Department of General Services

Don W. LeMond, Director
Division of Risk Management

APPROVED BY THE GOVERNOR:

Secretary of Administration, pursuant
to the authority of Executive Order 25
(Revised), dated November 14, 1986

56-Ins-PP/JJB/263

EXHIBIT E

IMPROVEMENTS REQUIRED PURSUANT TO SECTION 2.9(b)

<u>SYSTEM</u>	<u>LOCATION</u>	<u>REQUIREMENT</u>
Conrail	Virginia Avenue	Upgrade existing #15 turnout signal aspect to obtain 30 mph capability no later than December 31, 1995.
CSXT	AF Interlocking	Continue current operation via Horn Track (No capital improvements required so long as this practice continues).
CSXT	Lorton (Amtrak lead)	Connect existing lead to Lorton team track. Upgrade turnout to #16 and retire existing Amtrak turnout. Upgrade team track to at least 30 mph capability. All such improvements are to be completed no later than June 30, 1996.

Initiation of the Service as described by Exhibit A-1 (12 Train Schedule) shall be subject to the following conditions precedent:

- 1) those conditions stated in Section 2.9 (b);
- 2) Conrail shall have finalized all plans and specifications for the improvements to be made at Virginia Avenue; and
- 3) the Commonwealth's Department of Transportation shall have encumbered funds necessary to extend the Lorton tube so as to permit the construction of the other improvements to be made by CSXT at Lorton.

EXHIBIT F
STATION LEASES

The station facilities located at the sites set forth below are or shall be the subject of Station Leases:

Brooke

Leeland

Rippon

Woodbridge

Lorton

Fredericksburg

Quantico

Franconia/Springfield (pending)

EXHIBIT G

SPECIAL TRAIN RATES

Following are Railroad's rates for Special Train operations as of ~~December 12,~~
~~1994~~ the effective date of this Agreement.

- * \$1,500 flat rate for first 25 miles
- * Over 25 miles, flat rate, plus:

<u>Trains Per Year</u>	<u>Rate Per Train-Mile</u>	
	<u>Within the Corridor</u>	<u>Outside the Corridor</u>
1 to 6	\$12.00	\$36.00
7 to 12	\$18.00	\$44.00
Over 12	\$24.00	\$55.00

NOTES:

- * The foregoing rates are subject to change at any time by Railroad without prior notice to the Commissions.
- * No commingling of rates. If the Special Train is at any time outside of the Corridor, the rate for outside the Corridor shall apply to all miles traveled by that Train.
- * These rates presume that Railroad will not furnish equipment or crews.
- * No Special Train shall be run without the prior written agreement of Railroad and the Commissions and on terms and conditions and with such proof of insurance and indemnification as are satisfactory to Railroad in its sole judgment.
- * Special Trains will not be granted any dispatching preference or priority.
- * The Commissions shall submit their requests for Special Trains in writing at least seven business days prior to the proposed date of operation.

NOTWITHSTANDING THE FOREGOING, RAILROAD RETAINS THE RIGHT TO REJECT ANY AND ALL PROPOSED SPECIAL TRAIN OPERATIONS AS IT DETERMINES IN ITS SOLE DISCRETION SUBJECT TO THE PROVISIONS OF SECTION 3.1 OF THE AGREEMENT.

AMENDED

AND

RESTATED

OPERATING ACCESS AGREEMENT

BETWEEN

NORFOLK SOUTHERN RAILWAY COMPANY

AND

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

&

POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION

(d/b/a Virginia Railway Express)

BETWEEN ALEXANDRIA, VIRGINIA
AND
MANASSAS, VIRGINIA

THIS [AMENDED AND RESTATED OPERATING ACCESS] AGREEMENT, made and entered into as of this ~~FIRST~~ day of ~~December, 1994~~ [1997], by and between NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation, with its principal place of business at Three Commercial Place, Norfolk, Virginia, 23510-2191 (hereinafter the "Railroad"), and the NORTHERN VIRGINIA TRANSPORTATION COMMISSION and the POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION, bodies politic and corporate and political subdivisions of the Commonwealth of Virginia established under the provisions of the Transportation District Act of 1964, as amended, and having principal places of business at 4350 N. Fairfax Drive, Suite 720, Arlington, Virginia 22203 and 1549 Old Bridge Road, Suite 209, Woodbridge, Virginia 22191, respectively (hereinafter, individually, a "Commission" and, collectively, the "Commissions");

W I T N E S S E T H:

WHEREAS, pursuant to the Operating Access Agreement dated December 1, 1989 between Southern Railway Company and Commissions, as supplemented and amended (the "Original Agreement"), Commissions have operated rail commuter services publicly promoted as the "Virginia Railway Express" over existing rail lines owned or controlled by Railroad between Alexandria, Virginia and Manassas, Virginia more specifically described therein; and

WHEREAS, the Original Agreement was to expire on November 30, 1994, but was extended for an additional period of one-hundred and thirty-five (135) days ending April 15, 1995 by letter agreements dated November 29, 1994, January 18, 1995 and March 10, 1995 (the "Extension Agreements"); and

[WHEREAS, The Commissions and the Railroad entered into a revised Operating Agreement dated as of December 1, 1994, which was extended by agreement dated July 12, 1996, for an additional period ending July 15, 1998.]

WHEREAS, Commissions desire to continue to operate or have operated rail commuter services over said rail lines between Alexandria and Manassas; and

WHEREAS, Commissions also desire contemporaneously to operate or have operated rail commuter services over rail lines owned by the CSX Transportation Co. ("CSX"), by the National Railroad Passenger Corporation ("NRPC"), and by Consolidated Rail Corporation ("Conrail"); and

WHEREAS, Railroad is willing, on the terms and conditions hereafter set forth, to permit the continued use of certain of its rail lines and certain of its related facilities and services for operation of rail commuter services;

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

ARTICLE ONE - Definitions

Section 1.1. The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the meanings hereinafter specified:

BASE PAYMENT: the monthly payment to be made by Commissions to Railroad pursuant to ARTICLE FIVE hereof as partial compensation for the privilege of using the TRACKS and facilities of Railroad to the extent authorized in this Agreement. The elements of the BASE PAYMENT are set forth in APPENDIX A attached hereto.

EQUIPMENT: the locomotives and passenger cars complying with Section 2.4 of this Agreement which are at any time used by Commissions, or either of them, or by an agent or OPERATOR, to provide rail commuter SERVICE over Railroad's TRACKS.

IMPROVEMENTS: shall mean changes in, additions and betterments to or retirements from the TRACKS, facilities, or freight equipment of Railroad made pursuant to any of the provisions of Section 2.9 of this Agreement.

OPERATOR: shall mean any person, firm, corporation, or other legal entity contracting with or utilized by Commissions to operate all or any part of the SERVICE or to be responsible for providing and supervising on-TRAIN personnel for operation of the EQUIPMENT and TRAINS. The terms may include one or both of Commissions. An OPERATOR must be approved by and

remain subject to the continuing approval of Railroad, which approval shall not be unreasonably withheld.

SERVICE: The SERVICE shall consist of the TRAINS, whether occupied or empty, which are used to provide commuter rail service pursuant to the authority granted by this Agreement. The SERVICE is expected to include the movement of TRAINS operated at the times, with the frequencies, and utilizing the EQUIPMENT specified in APPENDIX B, attached hereto. The provisions of APPENDIX B may be amended at any time by written agreement of the parties, which agreement shall also specify the appropriate agreed amendment to the BASE PAYMENT or TRAIN-MILE LEASE FEE.

SPECIAL TRAIN: A train operated other than as specified in APPENDIX B, as may be allowed pursuant to Section 3.1 of this Agreement on the terms and conditions stated in APPENDIX E.

TRACKS: The TRACKS subject to this Agreement shall be the railroad operating facilities shown or described in the attached APPENDIX C, including but not limited to signaling facilities and crossing warning devices, but shall not include passenger related facilities (such as passenger stations or platforms). The TRACKS shall include such other parallel or related railroad operating facilities of Railroad as may in the discretion of Railroad be temporarily used for the operation of the SERVICE. The rail facilities included within the definition of TRACKS may be changed ~~unilaterally by Railroad at any time~~ pursuant to Section 2.9 hereof. Such rail facilities may also be changed by written agreement of the parties, which agreement shall also specify the appropriate agreed amendment, if any, to the BASE PAYMENT.

TRAIN or TRAINS: A TRAIN shall consist of a locomotive unit or passenger-carrying cab car, or more than one such unit or car coupled, with or without passenger cars, whether or not carrying passengers, up to but in no event exceeding a total of eight coupled locomotive units, cab cars, or passenger cars, having not less than 4.0 horsepower per gross ton of load, displaying markers or

carrying an end of train device, and capable of adhering to the schedule standards specified for the SERVICE.

TRAIN-MILE LEASE FEE: A fee for each mile of the TRACKS traversed by any TRAIN to be paid monthly by Commissions to Railroad pursuant to ARTICLE FIVE hereof as partial compensation for the privilege of using the TRACKS and facilities of Railroad to the extent authorized in this Agreement. The elements of the TRAIN-MILE LEASE FEE are set forth in APPENDIX A attached hereto.

ARTICLE TWO - Conditions

Section 2. This Agreement shall supersede and replace the Original Agreement (as extended by the Extension Agreements), and shall be effective ~~retroactively as of December 1, 1994~~ [as of the date hereof.] for the term hereof. The obligations of Railroad hereunder are conditioned upon presentation to Railroad of evidence satisfactory to it that Commissions have executed or will execute separate agreements with CSX, Conrail, or its successor, and NRPC which grant Commissions the right to operate commuter rail service over the lines of each of those railroads. Commissions shall provide Railroad with current copies of such agreements and shall promptly provide Railroad with any subsequent amendments thereto.

Section 2.2. In the event that the terms and provisions of any agreement described in Section 2.1 shall at any time be interpreted, modified or amended so as to become, in the sole judgment of Railroad, more favorable to another railroad contracting with Commissions than the terms and provisions of this Agreement are to Railroad, Railroad may (but need not) require Commissions to modify this Agreement so as to incorporate such interpretation, modification, or amendment, in whole or in part, effective as of the date of this Agreement. The provisions of this Section 2.2 shall not be applicable to the amount of the BASE PAYMENT during the term of this Agreement [, or to any changes in the agreement between CSX and the Commissions made to address the Commissions' concerns in connection with the control of Conrail by Railroad and CSX].

Section 2.3. (a) Commissions have informed Railroad that they intend to continue operation of the SERVICE through an agent. Any person, firm, corporation, or other legal entity contracting with or utilized by Commissions to operate all or any part of

the SERVICE shall be an OPERATOR within the meaning of this Agreement, must be approved in advance in writing by Railroad, which approval shall not be unreasonably withheld, and must at all times during the term of this Agreement remain acceptable to Railroad. If at any time an OPERATOR becomes unacceptable to Railroad, Railroad shall notify Commissions of such unacceptability and Commissions shall promptly select a new OPERATOR acceptable to Railroad. An OPERATOR must comply at all times with all applicable provisions of this Agreement, and no contract whereby Commissions employ an OPERATOR shall relieve Commissions of any of their obligations hereunder. Commissions shall not have the right to assign this Agreement or any portion hereof to any other person or entity, or to permit any person or entity other than an OPERATOR acceptable to Railroad to exercise such rights or enter upon the property of Railroad without the written consent of Railroad.

(b) If Commissions or any OPERATOR shall at any time assert in an administrative, legislative, or judicial proceeding that the TRAINS being used to provide the SERVICE are entitled to preference over the freight operations of Railroad in the use of the TRACKS, or if such a preference is ordered by any court or administrative agency as a consequence of the legal status of an OPERATOR, such assertion or order shall constitute notice to Commissions that the incumbent OPERATOR is unacceptable to Railroad and must immediately be replaced.

Section 2.4. (a) Railroad shall have no responsibility to inspect, maintain, service or repair any EQUIPMENT, but all EQUIPMENT shall at all times comply with applicable Association of American Railroads, federal, state, and local requirements and with Railroad's standards for locomotives and cars permitted to operate over Railroad's TRACKS, which standards shall be identified and specified in writing to Commissions.

(b) All EQUIPMENT used in the SERVICE shall comply with the provisions of the federal Locomotive Inspection Act and the federal Safety Appliance Acts, as amended, and with all regulations adopted pursuant to either Act. Commissions and any OPERATOR shall also comply with any other applicable laws, regulations or rules, state or federal, covering the operation, condition, inspection or safety of the EQUIPMENT.

(c) Commissions shall defend, indemnify, protect and save wholly harmless Railroad, its corporate affiliates, and its and their respective officers, agents, and employees from all fines, penalties, costs, expenses and liabilities imposed upon or asserted against Railroad, its corporate affiliates, or any of its or their officers, agents, or employees as a result of an alleged violation by Commissions or an OPERATOR of either (i) any of the laws, rules and regulations to which reference is made in Section 2.4(b) or (ii) any of the terms of this Agreement.

Section 2.5. (a) Operation of the SERVICE shall at all times comply with Railroad's operating rules, safety rules, instructions, and regulations. Commissions, an OPERATOR, and all personnel of either who are present on the EQUIPMENT at any time shall comply fully with the federal Rail Safety Act, as amended, and with all applicable laws, regulations or rules, whether federal, state or local, covering the operation, maintenance, condition, licensing, certification, inspection, testing or safety of personnel or EQUIPMENT employed in the maintenance and operation of any of the TRAINS.

(b) Commissions shall defend, indemnify, protect and save wholly harmless Railroad, its corporate affiliates, and its and their respective officers, agents, and employees from all fines, penalties, costs, expenses and liabilities imposed upon or asserted against Railroad, its corporate affiliates, or its or their respective officers, agents, or employees as the result of an alleged violation by Commissions or an OPERATOR of any of the laws, rules and regulations to which reference is made in Section 2.5(a).

(c) Commissions shall make such arrangements with Railroad as may be required to insure that all persons operating EQUIPMENT or TRAINS over the TRACKS are fully competent, trained and qualified for the task they are performing. Commissions shall pay to Railroad, promptly upon receipt of bills therefor, all expenses incurred by Railroad, including the cost of pilots, for qualifying, testing, and maintaining the qualifications of each such employee in accordance with Railroad's operating rules and federal locomotive engineer certification requirements. Railroad will furnish Commissions or their designee with current Timetables, Operating Rule Books, Safety Rule Books, and any related publications or matériel, or Keys.

(d) Whenever the SERVICE shall be modified so as to require a change in Railroad's Timetables, Commissions shall pay Railroad the total cost of printing and distributing new Timetables.

(e) Commissions, at their sole expense, shall obtain, install and maintain, in all locomotives used with Commissions' TRAINS operating over the TRACKS, functioning radios equipped to transmit and receive appropriate Railroad frequencies.

(f) Railroad will, at least three (3) days in advance, where feasible, notify Commissions or OPERATOR of any investigation or hearing concerning the violation of any operating rule, safety rule, or instructions of Railroad by any of the employees of Commissions or of an OPERATOR. Such investigation or hearing may be attended by any official of Commissions or of their OPERATOR designated by Commissions.

(g) Railroad shall have the right to exclude from the TRACKS any employee of Commissions or of an OPERATOR determined to be in violation of Railroad's rules, regulations, orders, or instructions whether issued by Timetable, bulletin, or otherwise. Commissions shall indemnify, defend, and save wholly harmless Railroad, its corporate affiliates, and its and their respective officers, agents, and employees from and against any and all claims, liabilities, and expenses resulting from such exclusion or from performance, by an employee who has been so excluded, of any part of the commuter rail operations.

Section 2.6. (a) Commissions acknowledge that their right to use of the TRACKS is subject to the paramount right of Railroad to use its own tracks, and that the right of Railroad to use the TRACKS shall not be diminished by this Agreement. Commissions understand that Railroad has heretofore granted rights to the use of the TRACKS to other railroad companies and to NRPC, and that the rights herein granted are subject to such obligations as Railroad incurred by such prior grants ~~and to such rights as~~ Railroad may elect, in its sole discretion, to grant in the future [rights for the use of the TRACKS] to other persons or corporations[, provided that any grants made after September 1, 1996 shall be subject to the Commissions' rights to use the TRACKS for the then-current Service and for changed, or other Service which may be agreed to by Commissions and Railroad]. Commissions hereby agree that they will not assert, directly

or through any OPERATOR, that the TRAINS or the SERVICE is entitled to preference over Railroad's freight operations, or over the freight operations of another railroad company ~~entitled to use the TRACKS~~ [that Railroad has granted rights to the use of the TRACKS before September 1, 1996], or over the intercity passenger trains of NRPC, in the use of any part of the TRACKS. Railroad agrees that it will make reasonable efforts to avoid unnecessary interference with, and to maintain the current SERVICE set out in APPENDIX B. Railroad agrees further that it will make reasonable efforts to attain the proposed SERVICE also set out in APPENDIX B, and, conditioned upon effectuation of necessary IMPROVEMENTS, other SERVICE which may be agreed to by Commissions and Railroad.

(b) If any proposal is made to modify the SERVICE, TRAIN-MILE LEASE FEE, or BASE PAYMENT, Commissions, an OPERATOR (if any), and Railroad shall make every effort to coordinate scheduling to minimize conflicts between Commissions' TRAINS and the operations of Railroad, NRPC, or others entitled to the use of the TRACKS. Railroad retains exclusive authority to approve or reject any modification of the SERVICE, and also retains the right to ~~require~~ [request] modifications to the SERVICE (with appropriate modification to the TRAIN-MILE LEASE FEE or BASE PAYMENT) whenever, in its exclusive good faith discretion, the SERVICE should be changed or modified.

Section 2.7. In the event that operation of the SERVICE requires the prior approval of or exemption from regulation by the ~~Interstate Commerce Commission~~ [Surface Transportation Board] or any other governmental agency, securing such approval or exemption shall be the exclusive responsibility of Commissions. Commissions shall not continue the SERVICE, either in their own behalf or by means of any third party OPERATOR, until any such approval or exemption becomes effective. Railroad will, to the extent Railroad deems appropriate, make reasonable efforts to support the actions which Commissions may initiate pursuant to this sub-section.

Section 2.8. Railroad shall at all times have exclusive control of the management of and all operations over the TRACKS. Commissions recognize that [occasional] delays or cancellations of the SERVICE due to unavoidable conflicts with Railroad's freight

service, maintenance activities, weather, labor difficulties, track or equipment failure, conflicting schedules or missed connections of NRPC trains, or of trains of Railroad, or trains of other railroads entitled to [priority in] use of the TRACKS, or from other causes, are probable. Although Railroad will make reasonable efforts to avoid such delays or cancellations, Railroad shall in no event be responsible for or liable to Commissions, an OPERATOR, or any passenger for the consequences of any such delay or cancellation.

Section 2.9.(a) Railroad, from time to time during the life of this Agreement, may make such changes in, additions and betterments to, or retirements from the TRACKS (including without limitation the installation of additional crossing protection devices or the modification of existing devices) 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. To the extent such changes, additions and betterments are occasioned or required by the operation of the SERVICE, [Railroad and Commissions shall meet and confer, and negotiate in good faith for the purpose of determining whether and to what extent the Commissions and Railroad should share the costs of such changes in, additions and betterments to, or retirements from the TRACKS. If, after attempting such good faith negotiations, Railroad and Commissions are unable to agree on whether and to what extent the Commissions and Railroad should share the costs of such changes in, additions and betterments to, or retirements from the TRACKS, the issues shall be submitted to arbitration in accordance with the terms of Section 11.1. Once such costs are agreed-to or established through arbitration, the] Commissions shall promptly pursue appropriation of the required funds [for the Commissions' share of the costs of such changes in, additions and betterments to, or retirements from the TRACKS] and shall pay to Railroad ~~the cost of effecting such changes, additions and betterments~~ [such share], and the BASE PAYMENT shall be amended to include [the Commissions' proportionate share of] the normalized expense of maintaining, repairing and renewing such changed, additional or modified facilities. In the event Commissions fail to appropriate and pay to Railroad sufficient funds for [the Commissions' share of the cost of] such changes, additions and betterments, Railroad may suspend all or a part of the SERVICE. ~~Where practicable,~~

Railroad will give Commissions sufficient advance notice of such changes, additions, and betterments to permit Commissions to budget for [their share of] the cost thereof. Except to the extent otherwise agreed by the parties to accommodate the terms and conditions of federal agencies furnishing financial assistance, all such changes, additions and betterments, as well as all changes, additions and modifications described in subparagraph (b) and all additional or altered facilities described in subparagraph (c) of this Section 2.9, shall become part of the TRACKS and property of Railroad, and such retirements shall be excluded from the TRACKS when effected.

(b) Certain changes in or additions and betterments to the TRACKS, including, without limitation, changes in communication or signal facilities and crossing warning devices, are or may be required to permit ~~continuation~~, modification or expansion of the SERVICE. Upon adequate written notice by Commissions to Railroad of the anticipated modification or expansion of the SERVICE, [and after provision by Railroad of estimated costs, with an opportunity for review and comment by Commissions.] Railroad shall effect such changes, additions, and signal modifications as it shall determine ~~may be~~ [are] required. Commissions shall promptly pay Railroad in advance the cost of constructing and installing such changes, additions, and modifications, and the BASE PAYMENT shall be amended to include the normalized expense of maintaining, repairing and renewing such changed, additional or modified facilities.

(c) If the parties mutually agree that any changes in or additions and betterments to the TRACKS, including changes in communication or signal facilities, are required to accommodate Commissions' rail passenger service beyond the level of utilization herein set forth, Railroad shall construct the additional or altered facilities and Commissions shall promptly pay Railroad the cost of constructing, installing, and replacing such additions or alterations. In addition, the BASE PAYMENT shall be amended to include the normalized expense of maintaining and repairing such additional or altered facilities.

(d) ~~In April 1991, Commissions approved payment to Railroad of an annual amount not to exceed \$152,000 in consideration for Railroad's agreement to~~ [(i) Subject

to the terms of this Section 2.9(d), Railroad will defer retirement of a [the] portion of its double track between West Springfield and Manassas, Virginia. ~~The parties thereafter determined that Commissions' annual obligation for such deferral would be \$143,830, and Commissions have paid such an amount to Railroad in equal monthly installments during the term of the Original Agreement. It is hereby agreed that Railroad will continue to defer retirement of said track for the period [(the "Second Track") for the term]~~of this Agreement, for the amount stated in APPENDIX A, on the terms and conditions stated in Section 5.1 below.

(ii) If the parties agree, additional retirements from the TRACKS proposed to be effected by Railroad pursuant to Section 2.9(a) hereof may be deferred on condition that Commissions increase the BASE PAYMENT to Railroad by the amount necessary to compensate Railroad for such deferral, including maintenance, repair, renewal, taxes, and any lost opportunity costs.

(e) In the event that any future statutory or regulatory action by governmental authorities pursuant to the Americans With Disabilities Act or any other statute or regulation requires the installation and maintenance of additional or modified equipment, signals, facilities, instrumentation, or devices on the TRACKS or on the freight equipment, including but not limited to the locomotives, of Railroad and its corporate affiliates, or on the freight or passenger equipment of other railroad companies entitled to use of the TRACKS, or on any other property or facilities of Railroad (including passenger related facilities such as passenger stations or platforms), which action is attributable in whole or in part to the existence of the SERVICE, Commissions shall pay Railroad an appropriate share of the capital costs, and any other actual costs incurred by Railroad, in complying with such statutory or regulatory action, and the BASE PAYMENT shall be amended to include the normalized expense of maintaining and repairing such additional or modified equipment, signals, facilities, instrumentation, or devices on the TRACKS or on the freight equipment of Railroad or its corporate affiliates or on other property or facilities of Railroad.

(f) At the termination of this Agreement, Railroad shall have the option, at the entire cost of Commissions, of removing, or of requiring the removal of, all or any

portion of any IMPROVEMENT made pursuant to the provisions of subparagraphs (a) through (e) of this Section 2.9, and of restoring the TRACKS, facilities, or freight equipment following such removal. If Railroad elects to retain all or any portion of such IMPROVEMENT, and if the estimated cost of removal and restoration does not exceed the value of the remaining useful life of the portion retained, Railroad will pay to Commissions the value of the remaining useful life of that portion of the IMPROVEMENT which is retained, less the estimated cost of removal and restoration.

Section 2.10. Performance by Railroad of its maintenance obligations, including (but not limited to) those in ARTICLE SIX hereof, will occasionally result in delays or cancellations of operations of the commuter rail passenger service. Delays or cancellations so occasioned will not relieve Commissions of any obligations herein set forth, or give rise to any rights in Commissions not otherwise herein set forth, but may, if unreasonably prolonged, be used to adjust the BASE PAYMENT.

Section 2.11. (a) If, by reason of any mechanical failure or for any other cause, EQUIPMENT or a TRAIN of Commissions becomes stalled or disabled and is unable to proceed, or fails to maintain the speed required of TRAINS in order to meet normal schedules, or if in emergencies crippled or otherwise defective EQUIPMENT is set out of Commissions' TRAINS on the TRACKS, Railroad may at its option furnish motive power or such other assistance as may be necessary to haul, help or push such EQUIPMENT or TRAINS, or to properly move the disabled EQUIPMENT, and Commissions shall reimburse Railroad for the cost of rendering any such assistance.

(b) If it becomes necessary to make repairs to, or to transfer the passengers on, crippled or defective EQUIPMENT in order to move it, such work may be done by Railroad, and Commissions shall reimburse Railroad for the cost thereof at the then current Association of American Railroads dollar rate for labor charges found in the Office Manual of the A.A.R. Interchange Rules.

(c) Whenever Commissions' EQUIPMENT on the TRACKS requires rerailing, wrecking service or wrecking train service, Railroad may perform such service, including the repair and restoration of roadbed, track, and structures. Except with the permission of Railroad, Commissions shall not perform such service. The cost and

expense of such service, including, without limitation, loss of, damage to, and destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be paid by Commissions to Railroad, and such cost or expense shall be included as a cost or expense for which Commissions shall hold Railroad harmless under the provisions of ARTICLE NINE hereof. All EQUIPMENT and salvage from the same shall be promptly picked up by Commissions or the OPERATOR or delivered to Commissions or the OPERATOR and all cost and expense therefor incurred by Railroad shall likewise be paid by Commissions to Railroad.

Section 2.12. If during the term of this Agreement the TRACKS should be appropriated or otherwise acquired by a governmental body or agency thereof, or by a quasi-public body, this Agreement shall terminate. If a part only of the TRACKS is so acquired and, in the opinion of Commissions, the balance of the said TRACKS is no longer suitable for the maintenance of the SERVICE, this Agreement, at the option of Commissions, shall terminate, provided, however, that Commissions first give written notice to Railroad of Commissions' exercise of said option to terminate within thirty (30) days of said acquisition. All awards or compensation for the TRACKS, or part thereof, resulting from such appropriation or acquisition shall be paid to Railroad; insofar, however, as an award or compensation reflects in whole or in part the value of the remaining useful life of IMPROVEMENTS Commissions have paid for during the period of this Agreement or the Original Agreement, Commissions shall receive such value. In the event of a partial appropriation or acquisition as herein contemplated, should Commissions elect to continue the use of the balance of the TRACKS, the parties hereto shall endeavor to reach agreement as to the appropriate adjustment, if any, to the BASE PAYMENT. In the event agreement is not reached, this Agreement shall terminate upon thirty (30) days notice by either party to the other.

ARTICLE THREE - Access

Section 3.1. Railroad hereby grants to Commissions, subject to the terms and conditions of this Agreement, the right to use the TRACKS with Commissions' TRAINS in the provision of the SERVICE. In addition, Railroad shall allow the annual operation

of at least ten (10) SPECIAL TRAINS by the Commissions at such times as may be agreed on the terms and conditions stated in Appendix E. The Commissions may also request permission from Railroad to use the TRACKS for additional SPECIAL TRAINS on the terms and conditions stated in APPENDIX E; provided that, solely, wWith respect to all requests for SPECIAL TRAINS, the Director of Operations, Virginia Railway Express shall have express authority to represent and bind Commissions. SPECIAL TRAINS shall in every instance be deemed a part of Commissions' commuter rail service operated pursuant to ARTICLE NINE hereof.

Section 3.2. The rights granted to Commissions herein shall relate solely to use of the TRACKS of Railroad for the operation of TRAINS. Separate Commuter Facilities Agreements (the "CFAs") have been entered into between Commissions and Railroad concerning the construction, maintenance, and use, during the term of the Original Agreement, of certain ancillary facilities (scheduled in APPENDIX F), including, among others, stations, platforms, canopies, parking areas, and depots, for the accommodation of Commissions' employees and passengers. Pursuant to the Original Agreement, the CFAs were to terminate no later than the Original Agreement. Except as herein extended, all other provisions of the several CFAs, including those providing for termination due to default or other cause excepting the expiration of the stated term, shall remain in effect; provided, however, that should any provision of a CFA conflict materially with the terms of this Agreement, the latter shall govern; provided, further, that the amended compensation payable by Commissions to Railroad under the CFAs shall be as set forth in APPENDIX A. The CFAs, as hereby extended, shall impose no cost or liability on Railroad and shall grant Railroad the right, at termination, to require removal from Railroad property at Commissions' expense of all property of or improvements effected by Commissions on Railroad property.

ARTICLE FOUR - Term

Section 4.1. This Agreement shall ~~become effective retroactively and shall commence as of December 1, 1994, and, [be effective as of the date hereof, and] unless terminated earlier in accordance with its provisions, or with the written consent of both parties, shall automatically terminate on July 15, 1996 [31, 2006].~~ Representatives of

Commissions and Railroad shall meet during [the last twelve (12) months of] the term of this Agreement to discuss extension and possible modification hereof. It is understood that any extension of the rail commuter service will be conditioned upon payment to Railroad by Commissions of an appropriate return for the use of Railroad's property. It is also understood that neither party is obligated to agree to any such extension.

Section 4.2. (a) -Commissions acknowledge that Railroad's agreement to permit the continuation of rail commuter services for the period covered by this Agreement, ~~as well as its agreement to permit the substantial expansion of such commuter services as contemplated by this Agreement,~~ is conditioned upon: (1) the assurances of Commissions that they will work in good faith to develop a plan to purchase [lease or acquire an interest in] Railroad's line between Manassas and Alexandria ~~at a mutually acceptable price,~~ which assurances they hereby affirm, but with the understanding that such assurances do not constitute a binding commitment to purchase [lease or acquire an interest in] said line; (2) the assurances of the Commonwealth of Virginia that the Commonwealth supports ~~the purchase~~ [such purchase, lease or acquisition of an interest]; and (3) the agreement by Commissions, which they hereby affirm, to make reasonable good faith efforts during the term of this Agreement to identify suitable funding necessary to purchase [lease or acquire an interest in] the Manassas to Alexandria line. Railroad agrees to cooperate closely with Commissions in their efforts to develop such a plan and to negotiate with Commissions in good faith in an effort to establish the terms of a mutually satisfactory purchase [, lease or other acquisition of an interest in] agreement, including an acceptable purchase price and method of payment [(in the case of a purchase) or rent or other compensation (in the case of a lease or other conveyance)]. Railroad acknowledges, further, that any such purchase price [, rent or other compensation] shall not include the value of the remaining useful life of IMPROVEMENTS paid for by Commissions during the period of this Agreement or the Original Agreement. Commissions understand that any sale ~~of~~ [, lease or other acquisition of an interest in] the Manassas to Alexandria line by Railroad will be contingent upon Railroad's retention of mutually acceptable [exclusive] rights to continue

freight operations over the line which do not interfere unreasonably with the Commissions' use of the line for commuter services.

(b) If [Representatives of Commissions and Railroad shall meet during the last twelve (12) months of the term of this Agreement to negotiate the terms and conditions for Commissions' purchase, lease or other acquisition of an interest in Railroad's line between Manassas and Alexandria. If the parties have not reached agreement on the terms and conditions for Commissions' purchase, lease or other acquisition of an interest in of such line before the beginning of the last three (3) month period of the term of this Agreement, either party may submit the issues on which the parties do not agree to mandatory arbitration in accordance with Section 11.1. In the event neither party seeks arbitration and] a final agreement concerning acquisition of [purchase, lease or other acquisition of an interest in] Railroad's line between Manassas and Alexandria has not been reached prior to the expiration of this agreement, or if in the sole judgment of Railroad substantial progress toward such an agreement has not been made, Commissions understand that their rights under this Agreement will end. [In the event arbitration is invoked and a final arbitration decision is issued, the decision shall be binding on Railroad, and Commissions shall have thirty (30) days within which to accept the terms and conditions set by the arbitrator. If the Commissions do not accept the terms and conditions set by the arbitrator, Commissions understand that continuation of their rights under the Agreement shall be subject to revised terms regarding compensation, which terms shall provide the Railroad with compensation reflecting the fair market value of Commissions right to use the TRACKS. Railroad and Commissions shall meet and confer and negotiate in good faith for the purpose of determining such revised terms regarding compensation. If, after attempting such good faith negotiations, Railroad and Commissions are unable to agree, the issue shall be submitted to arbitration in accordance with terms of Section 11.1.]

Section 4.3. Commissions shall have the right to terminate this Agreement at any time on sixty (60) days written notice to Railroad, but no such termination of this Agreement will relieve any of the parties hereto from any obligations or liabilities accrued under this Agreement as of the time such termination becomes effective.

Section 4.4. Termination of this Agreement for any cause shall not eliminate, limit, or otherwise affect an obligation imposed upon any party by the terms hereof. Without limiting the generality of the foregoing, it is specifically recognized that any obligation on the part of a party to assume financial responsibility, to indemnify, or to make a payment of money shall survive termination of this Agreement.

ARTICLE FIVE - Payment

Section 5.1. (a) Railroad and Commissions have agreed to the continuation of the SERVICE for the period of this Agreement contingent upon Commissions' payment of the compensation described below and in APPENDIX A. In addition, it being the premise of the Original Agreement and of this Agreement that Railroad incur no added cost or liability and no substantial interference with freight operations as a result of the SERVICE, Commissions hereby undertake to hold harmless Railroad (which term, as used in this Section 5.1, shall include Railroad, its corporate affiliates, and its and their respective officers, agents, and employees) against all loss, cost, expense, obligation or liability caused or exacerbated by the institution, operation, maintenance, or discontinuance of the SERVICE. The enumeration of any such costs or expenses and inclusion of provisions requiring payment to or indemnification of Railroad by Commissions for such expenses, costs, and risks elsewhere in this Agreement shall in no way diminish the liability of Commissions to compensate or indemnify Railroad for any such costs, liabilities, expenses, or obligations as may hereafter occur, it being the intent of the parties that Railroad be fully protected, indemnified and made whole by Commissions against any such costs, expenses, or obligations as may hereafter occur, it being the intent of the parties that Railroad be fully protected, indemnified and made whole by Commissions against any such costs, expenses, liabilities and obligations so caused or so exacerbated, whether or not specifically described in this Agreement; provided, however, that this section shall not be deemed to override the provisions of Section 9.1(a).

(b) In addition to such other amounts as may be due under other provisions of this Agreement, Commissions agree to pay to Railroad the following compensation:

~~(i) On or before April 15, 1995, Commissions shall pay to Railroad the difference between: (1) the BASE PAYMENT and the TRAIN-MILE LEASE FEE for the period commencing December 1, 1994 and ending April 15, 1995; and (2) monthly charges of \$30,664.83 paid to Railroad under the Original Agreement, as modified by the Extension Agreements, during such period; and~~

(ii) For the period commencing ~~April 15, 1995~~ with the effective date of this Agreement, and continuing until the expiration of this Agreement, Commissions shall pay to Railroad monthly in advance the BASE PAYMENT and the TRAIN-MILE LEASE FEE.

(c) Payment of the BASE PAYMENT and TRAIN-MILE LEASE FEE (based on estimated train-mileage for the following month under current schedules) shall be rendered no fewer than five (5) days prior to the first day of each month by wire transfer to Railroad's account as designated in writing to Commissions. Should actual train-mileage deviate from the estimated train-mileage on which the TRAIN-MILE LEASE FEE was based, the parties shall make such adjustments and payments as shall be necessary to reconcile accounts. To facilitate such reconciliation of accounts, Commissions shall provide to Railroad by the tenth (10th) day of each month a statement of actual train-mileage for the preceding month.

(d) Upon Commissions' request, Railroad may agree to accept the BASE PAYMENT for all or part of the period of this Agreement in a lump-sum, with an appropriate discount rate applied, according to such terms as may be agreed to by the parties.

[(e) The BASE PAYMENT shall be adjusted annually during the Term of this Agreement on the annual anniversary date, by the greater of the following amounts:

- (i) Four (4) percent per year; or
- (ii) the CPI Urban Wage Earners and Clerical Workers for
Washington, D.C. - Maryland - Virginia;

provided, however, that the BASE PAYMENT shall not increase in any year in which the total number of passengers using the Service decreases from the previous annual period by 15 percent or more; and provided that any increase above the amount of the Base

Payment in the first annual period of the Agreement shall only be earned on an on-time performance incentive basis as provided in Exhibit A-2.]

Section 5.2. In addition to the payments specified herein above, Commissions shall also pay to Railroad monthly, within thirty (30) days of demand when supported by appropriate documentation, any amounts which Railroad shall have failed to earn from NRPC pursuant to APPENDIX V (as it may from time to time be amended) of the Basic Agreement between Railroad and NRPC governing the operation of intercity passenger service over lines of Railroad where such failure is attributable to the presence of EQUIPMENT, personnel, passengers, or property of Commissions or of an OPERATOR or to the operation, normal or abnormal, or to the malfunction, of the SERVICE.

Section 5.3. In addition to the payments specified elsewhere in this ARTICLE FIVE, Commissions shall also pay to Railroad, within 30 days of demand when supported by appropriate documentation, any amounts which become due to be so paid pursuant to the provisions of ARTICLE TWO. Whenever in this Agreement, including, without limitation, the provisions of ARTICLE TWO hereof, Commissions are obligated to pay to Railroad the cost of any item or service, including, without limitation, the cost of any installation, maintenance, repair, modification, renewal, change, removal, construction, assistance, restoration, salvage, replacement, supply, or the cost to furnish, Railroad's cost shall include additives as shown in the then current Norfolk Southern Schedule of Rates and Surcharges for Billing Railroads and Others for Use of Facilities, Services and Equipment, current copies of which shall be furnished to Commissions.

Section 5.4. In the event that any contract governing the relationship of Commissions with an OPERATOR contains provisions specifying additional compensation to the OPERATOR contingent upon particular levels of schedule adherence in the operation of the SERVICE, then, in addition to the payments specified elsewhere in this ARTICLE FIVE, such payments shall be shared by Railroad and OPERATOR on such terms as they may agree upon.

Section 5.5. If Railroad is at any time required by order of a court or of any administrative agency to give the commuter rail service priority over Railroad's freight operations, and if Commissions do not accede to immediate termination of this

Agreement upon request of Railroad, Commissions shall pay Railroad, as liquidated damages for injury to Railroad's business and the increased costs to Railroad of transacting its business, \$5.00 per minute of freight train delay occasioned by Railroad's compliance with such order for the remaining term of the Agreement.

Section 5.6. During the Agreement term, Railroad shall keep full and accurate records from which Railroad's costs and charges are determined. Commissions may inspect and audit at their own expense and obtain copies of the accounting and operating records of Railroad pertaining to the SERVICE at any mutually agreeable time during regular business hours at Railroad's place of business where said records are regularly kept. Such actions shall not unreasonably interfere with the business or accounting functions of Railroad. Railroad shall cooperate fully with Commissions in the explanation of the contents of said records. All charges shall be deemed to have been finally accepted and approved by Commissions unless exceptions, in writing, shall be made thereto within thirty-six (36) months after the submission of such charges. Once a charge has been audited, that charge shall be considered closed and not open to further audit.

ARTICLE SIX - Maintenance

Section 6.1. Subject to the provisions of Sections 2.8, 2.9, and 2.10 hereof, and excepting force majeure, Railroad shall, during the term of this Agreement, keep and maintain the TRACKS in a condition which will permit the operation of the SERVICE. Railroad does not guarantee the condition of the TRACKS or that the SERVICE will not be delayed or interrupted. Failure on the part of Railroad to maintain the TRACKS as required in this ARTICLE SIX shall in no event impose any liability on Railroad, nor shall any such failure absolve Commissions of any of the obligations imposed upon them by ARTICLE NINE hereof.

ARTICLE SEVEN - Claims Service

Section 7.1. The provision of claims handling service in connection with any aspect of the commuter rail service shall be the exclusive responsibility of Commissions, and in no event shall Commissions or any OPERATOR assert any right to require provision of such service from Railroad or any affiliate thereof, the terms of any

preexisting agreement between any OPERATOR and Railroad to the contrary notwithstanding. Commissions hereby agree to indemnify, protect, and save Railroad harmless against any cost or expense for the provision of claims handling service which Railroad may incur attributable to the institution, operation, maintenance, or discontinuance of the SERVICE and which is sought to be imposed on Railroad under the terms of such a preexisting agreement.

ARTICLE EIGHT - Railroad Police

Section 8.1. The provision of the services of railroad police or law enforcement personnel in connection with any aspect of the commuter rail service shall be the exclusive responsibility of Commissions, and in no event shall Commissions or any OPERATOR assert any right to require provision of the services of such railroad police or law enforcement personnel from Railroad or any affiliate thereof, the terms of any preexisting agreement between any OPERATOR and Railroad to the contrary notwithstanding. Commissions hereby agree to indemnify, protect, and save Railroad harmless against any cost or expense for the provision of the services of railroad police or law enforcement personnel which Railroad may incur and which is attributable to the institution, operation, maintenance, or discontinuance of the SERVICE and is sought to be imposed on Railroad under the terms of such a preexisting agreement.

ARTICLE NINE - Risk of Liability

Section 9.1. (a) Commissions shall protect, defend, indemnify, and save harmless Railroad from any loss, cost, expense, or liability for death, personal injury or property damage, including the property and employees of Railroad, which is attributable in any way to, or which is exacerbated by, the institution, operation, maintenance, or discontinuance of the commuter rail service over the TRACKS of Railroad, or to the presence of cars, equipment, personnel, contractors, agents, or passengers of Commissions or an OPERATOR on or about the property of Railroad. Commissions shall indemnify and save Railroad harmless under this ARTICLE whether or not such death, injury, or damage is caused, in whole or in part, by the negligence, regardless of its character or degree, of Railroad, and whether the damages are compensatory or exemplary; provided, that the liability of Commissions under this ARTICLE shall

not exceed \$200,000,000 (or such greater sum as may be required by the provisions of Sections 9.2 or 9.3 hereof) in any one calendar year.

(b) To guarantee payment of their obligations under this ARTICLE, Commissions shall, subject to the approval and continuing supervision of the Department of General Services, Division of Risk Management of the Commonwealth of Virginia (the "Division"), procure and at all times maintain a policy or policies of liability insurance, with annual aggregate limits of at least \$200,000,000 (or with such additional limits as may be required by the provisions of Sections 9.2 or 9.3 hereof) covering the liability assumed by Commissions under this ARTICLE. Such insurance may consist, in whole or in part, of a program of self-insurance approved and administered by the Division, or may consist, in whole or in part, of commercial insurance. All insurance policies obtained by Commissions pursuant to this Agreement shall be endorsed to require thirty (30) days prior written notice to Railroad if the policies are to be terminated or modified during the term of this Agreement. Commissions shall provide Railroad with copies of all commercial or other insurance policies, including all current endorsements, carried by Commissions pursuant to this Section 9.1, and a copy of all agreements, including amendments thereto, between Commissions and the Division relating to the coverage, structure, administration, or funding of Commissions' insurance program.

(c) In accordance with Section 2.1-526.8:1 of the Code of Virginia, the Division has established the Northern Virginia and Potomac and Rappahannock Transportation Commissions Commuter Rail Operations Liability Insurance Plan (the "Plan"), a copy of which is annexed as APPENDIX D. The Plan is maintained by Commissions and administered by the Division in accordance with Section 15.1-1358 of the Code of Virginia and constitutes a "liability policy" for purposes of that Section and Section 15.1-1364. The parties agree that implementation and maintenance of the Plan shall fulfill the obligations of Commissions under this ARTICLE NINE with respect to the procurement and maintenance of liability insurance.

(d) It is anticipated that Commissions, in fulfilling their obligation to obtain the insurance required by this ARTICLE NINE, may purchase commercial insurance policies providing annual aggregate limits, and that a claim or claims against such

policies may reduce the available coverage in any one policy year below \$200,000,000. Should this occur, and should claims paid, or reasonably expected to be paid, in any one calendar year reduce the available coverage below \$175,000,000 notice of such fact shall be given promptly by the Division to Commissions, Railroad, and the OPERATOR. If Commissions fail within ten (10) days to restore the available insurance coverage to a level of at least \$200,000,000 (or such higher level as may be required by the provisions of Sections 9.2 or 9.3), the SERVICE and all rights granted Commissions under ARTICLE THREE of this Agreement shall immediately cease and shall not be resumed until the full \$200,000,000 in insurance coverage (or such higher level as may be required by the provisions of Sections 9.2 or 9.3) has been obtained.

(e) The Division administers the Commuter Rail Operations Liability Insurance Trust Fund for the purpose of implementing and funding Commissions' obligations under the Plan and this ARTICLE NINE, including obligations under the CFAs. Commissions shall arrange for a review by the Division of the financial condition of such Trust Fund and the adequacy of commercial insurance and self-insurance maintained under the Plan from time to time as may be requested by Railroad. Such review shall include written certification to Railroad that the Trust Fund is solvent and that the Plan's insurance program is adequate and actuarially sound for the purposes contemplated by this Agreement. If, at any time, the Division determines that the Plan is not adequately funded, the Division shall promptly give notice of such inadequacy to Commissions, Railroad, and the OPERATOR. If Commissions fail within ten (10) calendar days thereafter to provide funding in amounts determined by the Division to be adequate, all operations under this Agreement shall immediately cease until funding deemed adequate by the Division and Railroad is provided.

(f) The term "Railroad," as used in this ARTICLE NINE, shall include not only Norfolk Southern Railway Company but also its corporate affiliates and its and their respective officers, agents, and employees.

Section 9.2. At any time during the term of this Agreement, Railroad may request a review of the number and cost of claims which have been made against the Plan, including the actual and potential liabilities incurred by Commissions for death, personal

injury or property damage since its inception. The review shall include consideration of inflationary and other relevant trends in the cost of tort claims, and the likelihood and potential cost of future claims. Based on this review and evaluation, the parties will determine whether there are reasonable grounds to increase the limit of Commissions' liability under Section 9.1(a) or to increase the limit and expand the coverage of the insurance required to be carried by Commissions under Section 9.1(b) and Section 9.1(d) hereof. If the parties are unable to agree, the dispute shall be arbitrated pursuant to ARTICLE ELEVEN hereof; provided, however, that in no event shall the liability of Commissions or the amount of insurance to be carried by Commissions be reduced below the limits required by Section 9.1 hereof. Any increase in the amount of insurance coverage which results from the application of this Section 9.2 shall automatically cause a proportionate adjustment to the limits specified in Sections 9.1(b) and 9.1(d) hereof.

Section 9.3. If as a result of any statute enacted by the Commonwealth of Virginia or the United States, the limits on the liability of Commissions stated in Section 9.1(a) are increased to an amount in excess of \$200,000,000; ~~or~~ or if for any reason the amount of liability insurance Commissions are required to procure and maintain in order to guarantee their obligations under this ARTICLE NINE or to the general public is increased to an amount in excess of \$200,000,000; or if the exposure of Railroad to liability under this Agreement or under the CFAs is substantially increased by statute or judicial decision, then, and in any of such events, the limits on the liability of Commissions pursuant to this Agreement shall be increased proportionately and the limits of liability insurance carried by Commissions shall be increased to reflect such higher amount or increased exposure. As a condition of employing self-insurance to cover such higher amount or increased exposure, Commissions agree to obtain the advance approval of Railroad and the Division. In the event Commissions fail to maintain the insurance required by this Section for any reason (including unavailability of such insurance), either party shall have the right to terminate this Agreement by delivery of written notice to the other party.

Section 9.4. The rights granted to Commissions in this Agreement relate to use of the TRACKS of Railroad for the operation of TRAINS. As set forth in ARTICLE

THREE hereof, the CFAs have been entered into between Commissions and Railroad (and have been extended by the terms of this Agreement) concerning the construction, maintenance, use, and removal of certain ancillary facilities (scheduled in APPENDIX F of this Agreement), including, among others, stations, platforms, canopies, parking areas, and depots, for the accommodation of Commissions' employees and, particularly, passengers. It is understood and agreed that the indemnification and insurance provisions of this ARTICLE NINE of this Agreement shall apply with respect to such construction, maintenance, use, and removal by Commissions, any OPERATOR, its or their employees, agents, contractors, passengers, invitees, and the general public of any such facilities.

Section 9.5. Commissions expressly understand and agree that their obligations to indemnify Railroad and hold Railroad harmless under the provisions of this ARTICLE NINE also extend to and include the obligation to indemnify and hold Railroad harmless from and against any and all damages (including exemplary damages), penalties, losses, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants', or experts' fees and expenses) of every kind and nature suffered by or asserted against Railroad as a direct or indirect result of or due to the presence or escape of any hazardous materials, substances, wastes or other environmentally regulated substances on or from the TRACKS, a TRAIN, or EQUIPMENT, or on or at property subject to a CFA, which presence or escape is attributable in any way to, or is exacerbated by, the institution, operation, maintenance, or discontinuance of the SERVICE over the TRACKS of Railroad or to the presence of Commissions' or any OPERATOR'S EQUIPMENT, personnel or passengers on or about Railroad's property including property subject to a CFA.

Section 9.6. (a) Railroad shall give notice to the Division and to Commissions as soon as reasonably practicable whenever Railroad receives credible notice from any party that it is the intention of such party to hold Railroad responsible for an incident for which Commissions are potentially liable under Section 9.1 hereof.

(b) Railroad agrees: (i) to cooperate in the defense of claims of which it gives the Division notice hereunder; (ii) to allow the Division, within its sole discretion, to

settle or defend any claim which falls within the limits for which Commissions have agreed to assume responsibility hereunder; and (iii) to execute all documents reasonably required to enable the Division to recover amounts paid by the Division on behalf of Commissions to persons other than Railroad.

ARTICLE TEN - Labor Claims

Section 10.1. Commissions will indemnify and hold harmless Railroad, its corporate affiliates, and its and their respective officers, agents, and employees against any and all costs and payments, including, but not limited to, awards of benefits, back pay, penalty pay, allowances, and awards of damages of any kind, however they may be denominated, and all arbitration, administrative, and litigation expenses, arising out of claims or grievances made by or on behalf of employees of Railroad or its corporate affiliates in connection with the implementation, operation, or termination of this Agreement or any CFA, whether under employee protective conditions imposed by a governmental agency as conditions for that agency's approval or exemption of the SERVICE or this Agreement, or under a collective bargaining agreement.

ARTICLE ELEVEN - Arbitration

Section 11.1. Any claim, dispute or controversy arising out of or relating to this Agreement, the parties' relationship under this Agreement, or a claim of breach of this Agreement, shall be determined by arbitration by a single arbitrator pursuant to the applicable Rules of Practice and Procedure of The Private Adjudication Center, Inc. (an affiliate of the Duke University School of Law) in effect at the time the demand for arbitration is filed. The location of the arbitration shall be at the Center's facilities at the North Carolina Bar Center, Cary, North Carolina. The decision of the arbitrator shall be final and [, except to the extent otherwise provided in Section 4.2,] binding.

Service of process in connection therewith shall be made by certified mail. In any judicial proceeding to enforce this Agreement to arbitrate, the only issues to be determined shall be the existence of the agreement to arbitrate and the failure of one party to comply with that agreement, and those issues shall be determined summarily by the court without a jury. All other issues shall be decided by the arbitrator, whose decision thereon shall be final and [, except to the extent otherwise provided in Section 4.2,] binding. There may be no appeal of an order compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator.

ARTICLE TWELVE - Default

Section 12.1. Failure on the part of Commissions or an OPERATOR to comply with the conditions of ARTICLE TWO shall, in the case of conditions related to safety of operations or to Commissions' agreement in Section 2.6(a) of ARTICLE TWO, immediately terminate the rights of access granted Commissions in ARTICLE THREE hereof and shall, in the case of any other conditions of ARTICLE TWO, give Railroad the right to terminate such rights of access on ten (10) days prior written notice.

Section 12.2. Failure on the part of Commissions to comply with any of the provisions of ARTICLE NINE hereof shall constitute a default giving rise to a right in Railroad, on ten (10) days prior written notice, to terminate this Agreement.

Section 12.3. Failure on the part of Commissions immediately to replace any OPERATOR which becomes unacceptable to Railroad following notice delivered to Commissions by Railroad of such OPERATOR'S unacceptability shall constitute a default giving Railroad the immediate right to terminate this Agreement.

Section 12.4. Failure of Commissions timely to make any payment required to be made to Railroad under any provision of this Agreement shall constitute a default giving rise to a right in Railroad, on ten (10) days prior written notice, to suspend the rights of access granted Commissions in ARTICLE THREE hereof. If any such default shall persist for thirty (30) days, or if any such default of the sort provided for in this Section 12.4, having been previously cured, shall recur more than two (2) times during the term of this Agreement, then Railroad may terminate this Agreement on ten (10) days prior written notice.

Section 12.5. Failure on the part of Railroad to comply with its obligations under ARTICLE SIX of this Agreement shall constitute a default by Railroad giving Commissions the right to terminate this Agreement on ten days prior written notice. Nothing in this Section 12.5 shall affect any other legal or equitable remedy available to Commissions.

ARTICLE THIRTEEN - Notices

Section 13.1. Any report, notice, or other communication required or permitted hereunder shall, unless otherwise specified, be in writing and shall be delivered by hand or deposited in the United States mail, postage prepaid, addressed as follows:

If to Railroad:

Manager, Amtrak Operations
Norfolk Southern Railway Company
Operations Control Center
185 Spring Street, S.W.
Atlanta, Georgia 30303

[tel. (404) 529-1737; fax. (404) 529-1645]

If to Commissions:

Director of Operations
Virginia Railway Express
~~6800 Versar Center, Suite 247~~ [1500 King Street, Suite 202]
~~Springfield, Virginia 22151~~ [Alexandria, Virginia 22314]

~~[tel. (703) 642-3808; fax. (703) 642-3820]~~ [[tel. (703) 684-1001;
fax. (703) 684-1313]]

Either party may change the address or officer title at which it shall receive communications and notifications hereunder by notifying the other party in writing of such change.

ARTICLE FOURTEEN - Miscellaneous

Section 14.1. Neither party shall be liable to the other in damages nor shall this Agreement be terminated nor a default be deemed to have occurred because of any failure to perform hereunder caused by a "Force Majeure." Each party will be excused from performance of any of its obligations hereunder, except obligations involving the payment hereunder of money to the other party or to a third party, where such non-performance is occasioned by Force Majeure. Force Majeure shall mean fire, earthquake, flood, explosion, wreck, casualty, strike, unavoidable accident, riot, insurrection, civil disturbance, act of public enemy, embargo, war, act of God, inability to obtain labor,

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materials or supplies, any governmental regulation, restriction or prohibition, or any other similar cause beyond the party's reasonable control.

Section 14.2. This Agreement is being executed and delivered in the Commonwealth of Virginia and shall be governed by and construed and interpreted in accordance with the internal laws of the Commonwealth of Virginia.

Section 14.3. All Appendices and Exhibits referred to in this Agreement are integral parts of this Agreement, incorporated by reference and made a part hereof, and shall bind the parties hereto to the same extent as if such provisions had been set forth in their entirety in the body of this Agreement. All terms defined in the Agreement and the Appendices and Exhibits shall have the same meaning throughout the Agreement and such Appendices and Exhibits.

Section 14.4. The Article and Section headings herein are for convenience only, and shall in no way be held or deemed to define, modify, or add to the meaning, scope, or intent of any provision of this Agreement.

Section 14.5. In the event that any provision of this Agreement is found to be invalid or unenforceable in any respect, the remaining provisions shall nevertheless be binding with the same effect as if the invalid or unenforceable provision were originally deleted; provided, however, if the deletion of an invalid or unenforceable provision materially or substantially alters or changes the rights or obligations of either party under this Agreement, either party shall have the right to terminate the Agreement on sixty (60) days written notice to the other. During the pendency of any such notice, the parties shall meet to reach agreement on new provisions to substitute for the invalid or unenforceable provision.

Section 14.6. The failure of either party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof.

Section 14.7. This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to

any person, firm or corporation, other than the parties hereto, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors.

Section 14.8. The rights and obligations of Railroad and of Commissions hereunder may be assigned only with the prior written consent of the other party, or its or their successors.

Section 14.9. While it is understood and agreed that Commissions shall act together in all matters affecting the SERVICE, reference to Commissions shall include either Commission and the rights and obligations of Commissions hereunder shall be joint and several.

Section 14.10. This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 14.11. This Agreement shall not be terminated, amended, supplemented, waived, or modified except upon execution of a written document duly signed by both parties hereto, unless a specific provision of this Agreement otherwise permits one party to effect such termination, amendment, supplementation, waiver, or modification.

IN WITNESS WHEREOF, Commissions and Railroad have caused their names to be signed hereby by their offices thereunto duly authorized and their seals, duly attested, to be hereunto affixed as of the day and year first above written.

NORTHERN VIRGINIA
TRANSPORTATION COMMISSION

by: _____
(Chairman)

[Seal]
Attest:

(title)

POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION

by: _____
(Chairman)

[Seal]
Attest:

(title)

NORFOLK SOUTHERN RAILWAY
COMPANY

by: _____
(title)

[Seal]
Attest:

(title)
A:opacagr

VRE CONTRACT FEES ON NORFOLK SOUTHERN CONTRACT

NS CONTRACT FEE	FIRST YEAR 7/1/98-6/30/99 ANNUAL: 12 MONTH BASIS 14 TRAINS		FIRST YEAR 7/1/98-6/30/99 ANNUAL: 12 MONTH BASIS 18 TRAINS	
	MONTHLY	ANNUALIZED	MONTHLY	ANNUALIZED
I. FIXED PRICE:				
BASE PAYMENT	\$24,833.95	\$298,007	24,834	298,007
II. VARIABLE PRICE --- PER TRAIN MILE ^{1,2,4}				
PER TRAIN MILE FEE \$11.36	87,170	1,046,038	112,075	1,344,906
III. CONTRACT BASE (I&II) TOTAL:	112,004	1,344,045	136,909	1,642,913
IV. INCENTIVES FOR YEAR ONE:	4,480	53,762	5,476	65,717
V. CONTRACT TOTAL FOR YEAR ONE:	116,484	1,397,807	142,386	1,708,630
<hr/>				
YEAR TWO: 7/1/99 - 6/30/00				
INCENTIVE FOR YEAR TWO ³	\$9,140	\$109,674	\$11,172	\$134,062
CONTRACT TOTAL FOR YR TWO	\$121,143	\$1,453,719	\$148,081	\$1,776,975
YEAR THREE: 7/1/00 - 6/30/01				
INCENTIVE FOR YEAR THREE	\$13,985	\$167,823	\$17,095	\$205,141
CONTRACT TOTAL FOR YR THREE	\$125,989	\$1,511,868	\$154,004	\$1,848,054
YEAR FOUR: 7/1/01 - 6/30/02				
INCENTIVE FOR YEAR FOUR	\$19,025	\$228,298	\$23,255	\$279,063
CONTRACT TOTAL FOR YR FOUR	\$131,029	\$1,572,343	\$160,165	\$1,921,976
YEAR FIVE: 7/1/02 - 6/30/03				
INCENTIVE FOR YEAR FIVE	\$24,266	\$291,191	\$29,662	\$355,942
CONTRACT TOTAL FOR YR FIVE	\$136,270	\$1,635,237	\$166,571	\$1,998,855
YEAR SIX: 7/1/03 - 6/30/04				
INCENTIVE FOR YEAR SIX	\$29,717	\$356,601	\$36,325	\$435,896
CONTRACT TOTAL FOR YR SIX	\$141,721	\$1,700,646	\$173,234	\$2,078,809
YEAR SEVEN: 7/1/04 - 6/30/05				
INCENTIVE FOR YEAR SEVEN	\$35,386	\$424,627	\$43,254	\$519,049
CONTRACT TOTAL FOR YR SEVEN	\$147,389	\$1,768,672	\$180,163	\$2,161,962
YEAR EIGHT: 7/1/05 - 6/30/06				
INCENTIVE FOR YEAR EIGHT	\$41,281	\$495,373	\$50,461	\$605,527
CONTRACT TOTAL FOR YR EIGHT	\$153,285	\$1,839,419	\$187,370	\$2,248,440
YEAR NINE: 7/1/06 - 6/30/07				
INCENTIVE FOR YEAR NINE	\$47,413	\$568,950	\$57,955	\$695,465
CONTRACT TOTAL FOR YR NINE	\$159,416	\$1,912,996	\$194,865	\$2,338,378

VRE CONTRACT FEES ON NORFOLK SOUTHERN CONTRACT

YEAR TEN: 7/1/07 - 6/30/08

INCENTIVE FOR YEAR TEN

CONTRACT TOTAL FOR YR TEN

\$53,789

\$645,470

\$165,793

\$1,989,515

\$65,750

\$202,659

\$789,000

\$2,431,913

¹ ESTIMATE BASED UPON 365.4 MILES PER DAY FOR 14 TRAINS WITH 21 SERVICE DAYS PER MONTH.

² ESTIMATE BASED UPON 469.8 MILES PER DAY FOR 18 TRAINS WITH 21 SERVICE DAYS PER MONTH.

³ INCENTIVE INCREASES FOR YEAR TWO AND EACH YEAR THEREAFTER, EQUAL TO 4% OF PREVIOUS YEAR'S TOTAL CONTRACT COST, ARE SHOWN BY WAY OF ILLUSTRATION. ANNUAL INCREASES SHALL BE MADE IN ACCORDANCE WITH THE OPERATING ACCESS AGREEMENT.

⁴ LIGHT ENGINES OR SINGLE UNIT MOVES WILL BE CHARGED AT \$3.50 PER MILE.

VIRGINIA RAILWAY EXPRESS
INCENTIVE AGREEMENT

Incentive payments will be paid for each regularly scheduled Train (excluding Special Trains), as set forth in Appendix B, which obtains an on-time performance of at least 90% during a month, at the following check points:

Northward Trains - the check point will be the arrival at "AF" Interlocking.

Southward Trains - the check point will be the arrival at Manassas Airport, approximately M.P. 35.8.

A. Performance Calculations

Percentage on-time performance at a check point identified above during a calendar month will be calculated by dividing the number of times the Trains arrived on-time at the check point by the total number of trips operated during the month. For purposes of this calculation, the following conditions will apply:

1. A Train is considered "on-time" if the Train arrives at a check point on or before the scheduled arrival time of such Train (as set forth in Appendix B), plus:
 - (a) Five (5) minutes of standard tolerance, northward Trains only.
 - (b) The actual number of minutes a southward Train is late leaving "AF" Tower.
 - (c) The actual number of minutes a northward Train is late leaving Manassas Airport (M.P. 35.8)

- (d) The actual number of minutes the Train is delayed due to mechanical failures or deficiencies of the Commissions' equipment.
- (e) The actual number of minutes the Train is delayed as a result of complying with ADA standards or the loading or unloading of passengers.
- (f) The actual number of minutes the Train is delayed by law enforcement or other governmental agencies or for emergency medical services or FRA efficiency testing or by reason of force majeure events.
- (g) The actual number of minutes the Train is late because the Train is under powered.
- (h) The actual number of minutes the Train is delayed as a result of VRE's request.

NOTE: Delays accruing because of either Item a (known as standard tolerance) or Items b through h (known as extended tolerance), will be added to the schedule time in determining the on-time performance of any such Train that is affected.

2. A Train shall not be counted as operated when:

- (a) The Train is annulled or terminated by VRE.
- (b) The Train strikes a trespasser.
- (c) The Train is delayed, directly or indirectly, as a result of the operation of another Train.

- (d) CSXT is unable to allow operation of the Train because of force majeure events.

3. Incentive Earnings Table

The Commissions shall pay CSXT incentive compensation based on the percentage of on-time performance for the month as shown on the annexed tables.

The earnings (accompanied by appropriate documentation) shall be included in the monthly bill for services provided under the Agreement.

NOTE 1: CSXT will not obtain any incentive payments for a Train having on time performance of less than 90%.

NOTE 2: Special Trains are excluded from the provisions of this portion of the Agreement.

NOTE 3: Disputes over the on-time performance or payments regarding on-time performance will be resolved between the parties during the first Service review meeting following the month in which the Train(s) in question operated. In addition, in instances of delays greater than 30 minutes, Railroad shall promptly review the circumstances causing such delays and advise the Commissions of its findings, including corrective action, if any, which Railroad proposes to prevent the recurrence of such delays.

B. Construction of Schedules for Modified Service

(1) When the Service is modified for any reason (including, but not limited to, changes in authorized speeds, the consist of existing Trains, the Service, the freight operations of NS, or the intercity rail passenger service of NRPC), scheduled running times, including adequate dwell times and adequate recovery time will be established by a

joint field test conducted by operating officers of NS and the Commissions or its Operator. Such operating officers will be qualified on the territory and the current operating rules of NS.

(2) Field tests will be made riding aboard the Train(s) documenting the running times, delays and special conditions in order to determine schedule minutes for the Train(s). Test study records will be retained by NS for three (3) years.

(3) When scheduled field tests are required, such test will be conducted, completed and agreed upon at least 60 days prior to any timetable change.

APPENDIX B

Operating Plan for Commuter Service

Train Operations:

Commuter rail service is to include operation of trains on each day of every week, Monday through Friday, other than holidays, on the approximate schedules indicated on the following pages. The schedules and frequencies of trains may be modified under snow emergency conditions, and trains will not be operated on the following holidays:

New Year's Day
Jackson-King-Lee Day
Presidents' Day
Memorial Day
Independence Day

Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Christmas Day

Equipment used in providing the commuter rail service will be locomotives and cars owned, leased, rented, or otherwise controlled by the Commissions and complying with Section 2.4 of the Agreement to which this APPENDIX B is attached. The Equipment will consist of locomotive-hauled coaches used in a push/pull configuration.

Note that on the following schedules, the stations "Washington, L'Enfant or L'Enfant Plaza, Crystal City, and Alexandria," and the times opposite such station designations, are included solely for convenience; such points are not on the TRACKS owned or controlled by Railroad.

The timetables "CURRENT OPERATION" identify the existing schedule of operations of the commuter service. The timetables "PROPOSED - SPRING 1995" identify an approximate schedule of operation of the commuter service which it might be possible to operate over the TRACKS of Railroad without a need to make substantial IMPROVEMENTS or changes in existing freight service, and which the Commissions hope to institute in the first half of 1995. Railroad has not agreed, and does not by entering into this Agreement agree, to the operation of commuter service adhering to the schedule "PROPOSED - SPRING 1995"; any modification of scheduled SERVICE shall require the Railroad's agreement, in accord with the provisions of Section 2.6(b) of the Agreement.

**NORTHBOUND
CURRENT OPERATION**

	32	34	36	38	20	50
<i>frequency</i>	<i>m-f</i>	<i>m-f</i>	<i>m-f</i>	<i>m-f</i>	<i>daily</i>	<i>s-w-f</i>
Broad Run	5:26a	6:26a	6:56a	7:21a	-	-
Manassas	5:32a	6:32a	7:02a	7:27a	8:10a	5:50p
Manassas Park	5:37a	6:37a	7:07a	7:32a	-	-
Burke Center	5:50a	6:50a	7:20a	7:45a	-	-
Rolling Rd	5:54a	6:54a	7:24a	7:49a	-	-
Backlick Rd	6:00a	7:01a	7:31a	7:56a	-	-
Alexandria	6:13a	7:14a	7:44a	8:09a	8:45a	6:40p
Crystal City	6:20a	7:23a	7:53a	8:18a	-	-
L'Enfant Plaza	6:25a	7:30a	8:00a	8:25a	-	-
Washington	6:35a	7:40a	8:10a	8:35a	9:28a	7:05p

SHADED TRAINS are Amtrak: They do NOT accept VRE tickets
Train 50 runs Sun, Wed, and Fri.

**SOUTHBOUND
CURRENT OPERATION**

	51	31	33	35	37	19
<i>frequency</i>	<i>s-w-f</i>	<i>m-f</i>	<i>m-f</i>	<i>m-f</i>	<i>m-f</i>	<i>daily</i>
Washington	1:30p	4:25p	5:25p	6:00p	6:25p	6:50p
L'Enfant Plaza	-	4:32p	5:32p	6:07p	6:32p	-
Crystal City	-	4:38p	5:38p	6:13p	6:38p	-
Alexandria	1:49p	4:45p	5:45p	6:20p	6:45p	7:07p
Backlick Rd	-	4:57p	5:57p	6:32p	6:57p	-
Rolling Rd	-	5:04p	6:04p	6:39p	7:03p	-
Burke Center	-	5:08p	6:08p	6:43p	7:07p	-
Manassas Park	-	5:22p	6:22p	6:57p	7:21p	-
Manassas	2:24p	5:28p	6:28p	7:03p	7:26p	7:40p
Broad Run	-	5:39p	6:39p	7:14p	7:37p	-

SHADED TRAINS are Amtrak: They do NOT accept VRE tickets
Train 51 runs Sun, Wed, and Fri.

NORTHBOUND
PROPOSED - SPRING 1995

	330	332	334	336	338	20	340	342	344	50
frequency	m-f	m-f	m-f	m-f	m-f	daily	m-f	m-f	m-f	s-w-f
Brood Run	5:20a	6:20a	6:56a	7:21a	8:20a		9:30a	2:00p	5:05p	
Manassas	5:25a	6:26a	7:02a	7:27a	8:26a	8:10a	9:35a	2:05p		5:50p
Manassas Park	5:30a	6:31a	7:07a	7:32a	8:31a		9:40a	2:10p		
Burke Centre	5:43a	6:44a	7:20a	7:45a	8:44a		9:53a	2:23p		
Rolling Rd	5:47a	6:48a	7:24a	7:49a	8:48a		9:57a	2:27p		
Backlick Rd	5:53a	6:55a	7:31a	7:56a	8:54a		10:04a	2:34p		
Alexandria	6:05a	7:07a	7:44a	8:09a	9:07a	8:45a	10:16a	2:46p		6:40p
Crystal City	6:13a	7:16a	7:53a	8:19a	9:15a					
L'Enfant	6:18a	7:23a	8:00a	8:25a	9:21a					
Washington	6:28a	7:33a	8:10a	8:35a	9:31a	9:28a		3:10p	6:05p	7:05p

SHADED TRAINS are Amtrak: They do NOT accept VRE tickets
NOTE: Train 50 runs Sun, Wed, and Fri

SOUTHBOUND
PROPOSED - SPRING 1995

	331	333	335	51	337	339	341	343	345	19
frequency	m-f	m-f	m-f	s-w-f	m-f	m-f	m-f	m-f	m-f	daily
Washington	6:50a	8:00a		1:30p	3:40p	4:30p	5:05p	5:30p	6:25p	6:50p
L'Enfant					3:48p	4:37p	5:12p	5:38p	6:32p	
Crystal City					3:53p	4:43p	5:18p	5:43p	6:38p	
Alexandria		8:20a	1:00p	1:49p	4:01p	4:51p	5:27p	5:51p	6:45p	7:07p
Backlick Rd			1:10p		4:12p	5:02p	5:39p	6:02p	6:56p	
Rolling Rd			1:16p		4:18p	5:08p	5:45p	6:08p	7:02p	
Burke Center			1:20p		4:23p	5:13p	5:52p	6:13p	7:07p	
Manassas Park			1:34p		4:37p	5:27p	6:06p	6:27p	7:21p	
Manassas		8:53a	1:39p	2:24p	4:44p	5:33p	6:12p	6:32p	7:26p	7:40p
Brood Run	7:57a	9:04a	1:40p		4:55p	5:40p	6:25p	6:43p	7:37p	

SHADED TRAINS are Amtrak: They do NOT accept VRE tickets
NOTE: Train 51 runs Sun, Wed, and Fri.

MANASSAS LINE

1997 - EXPANDED

NORTH

July 1997	322	324	326	328	330	332	334	336	338	
frequency	m-f	m-f	m-f	m-f	m-f	m-f	m-f	m-f	m-f	
equipment										
BROAD RUN	5 20a	5 50a	6 20a	6 50a	7 20a	7 50a	8 50a	1 50p	4 40p	
MANASSAS	5 25	5 57	6 27	6 57	7 27	7 57	8 57	1 57	4 46p	
MSS PARK	5 30	6 02	6 32	7 02	7 32	8 02	9 02	2 02		
BURKE CENTRE	5 43	6 15	6 45	7 15	7 45	8 15	9 15	2 15		
ROLLING ROAD	5 47	6 19	6 49	7 19	7 49	8 19	9 19	2 19		
BACKLICK RD	5 53	6 26	6 56	7 26	7 56	8 26	9 26	2 26		
ALEXANDRIA	6 05	6 38	7 08	7 38	8 08	8 38	9 38	2 38	5 18	
CRYSTAL CITY	6 13	6 48	7 18	7 48	8 18	8 48	9 48	2 48		
L'ENFANT	6 18	6 55	7 25	7 55	8 25	8 55	9 55	2 55		
WASHINGTON	6 28a	7 05a	7 35a	8 05a	8 35a	9 05a	10 05	3 05	5 40p	

SOUTH

	321	323	325	327	329	331	333	335	337	
frequency	m-f	m-f	m-f	m-f	m-f	m-f	m-f	m-f	m-f	
equipment										
WASHINGTON	6 38a	7 15a	12 30p	3 15p	3 55p	4 25p	5 05p	5 35p	6 25p	
L'ENFANT			12 37	3 22	4 02	4 32	5 12	5 43	6 32	
CRYSTAL CITY			12 42	3 28	4 08	4 38	5 18	5 49	6 38	
ALEXANDRIA	6 57	7 34	12 48	3 35	4 15	4 45	5 25	5 56	6 44	
BACKLICK ROAD			12 59	3 46	4 26	4 56	5 36	6 07	6 55	
ROLLING ROAD			1 06	3 53	4 33	5 03	5 43	6 13	7 01	
BURKE CENTRE			1 11	3 58	4 38	5 08	5 49	6 19	7 06	
MSS PARK			1 24	4 11	4 51	5 21	6 03	6 33	7 20	
MANASSAS	7 30	8 07	1 30	4 17	4 57	5 27	6 10	6 38	7 25	
BROAD RUN	7 40a	8 15a	1 40p	4 28p	5 08p	5 38p	6 21p	6 50p	7 37p	

APPENDIX C

Tracks

The railroad operating facilities included within the TRACKS are those owned or controlled by Railroad and operated as a part of its Piedmont Division beginning at the connection with CSX, A.F. Tower, M.P. 9.7, and extending in a southwesterly direction to Manassas Airport, approximately M.P. 35.8, a total of 26.1± miles, as shown in the attached plan made a part hereof and marked "EXHIBIT No. 1".

29 28 27 26 25 24 23

CLIFTON

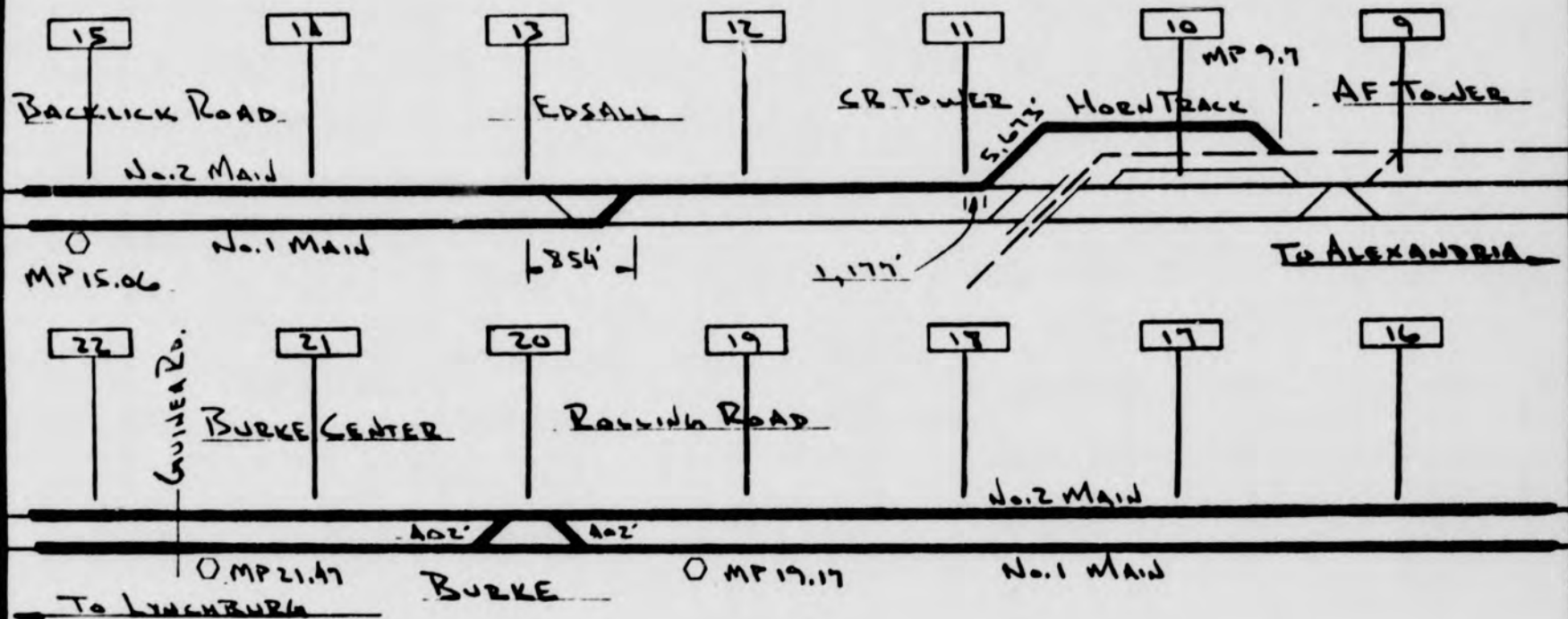
July 2nd



OFFICE OF CHIEF ENGINEER - DESIGN & CONSTRUCTION ATLANTA, GA.

CASE FILE		
FIELD CODE	SHEET	OF

FAIRFAX COUNTY & PRINCE WILLIAM CO.
APPENDIX C - EXHIBIT No. 1
SHEET 2 OF 2



NS TRACKS _____
CSX (RF&P) TRACKS _____
NS TRACKS USED BY VRE _____
VRE STATION w/ TRACKSIDE PLATFORM ○
SCALE: NO SCALE

DO NOT SCALE THIS DRAWING FOR DIMENSIONS NOT GIVEN

NS NORFOLK SOUTHERN

NORFOLK SOUTHERN RAILWAY COMPANY

OWNER COMPANY

STATE OF NEW YORK - DESIGN & CONSTRUCTION ATLANTA, GA.

REV	BY	DATE	DESCRIPTION
LOCATION: ALEXANDRIA TO MANASSAS, VIRGINIA			
TITLE: TRACKS TO BE USED BY VIRGINIA RAILWAY EXPRESS FOR COMMUTER SERVICE			
DESIGN	FILE	DATE	SCALE POST 9 TO 36
DESIGN	FILE 158-30	DATE 3-27-95	DESIGNED BY
DATE	3-27-95		TA 95-1000

CADD FILE
FIELD BOOK

SHEET OF

ALLS REPRODUCTION 310127

APPENDIX D

NORTHERN VIRGINIA AND POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSIONS COMMUTER RAIL OPERATIONS LIABILITY INSURANCE PLAN

The Department of General Services, Division of Risk Management, in accordance with Section 2.1-526.8:1 of the Code of Virginia (1950), as amended, with the approval of the Governor, hereby establishes the terms and conditions of the Northern Virginia and Potomac and Rappahannock Transportation Commissions (hereinafter the "Commissions") Liability Insurance Plan (hereinafter the "Plan") established to fulfill the liabilities created by the indemnification portions of the various Operating and/or Access Agreements entered into between the Commissions and the several Rail Entities as well as direct liabilities of the Commissions arising out of the operation of the Commuter Services.

The Plan and all INSURED/INDEMNITEES, as defined herein, agree as follows:

PART A. INSURING AGREEMENT

The Plan will pay on behalf of the INSURED/INDEMNITEE as defined hereafter all sums which the INSURED/INDEMNITEE shall become legally obligated to pay as DAMAGES as a result of OCCURRENCES. Such coverage provided hereunder shall be applicable despite the fact that such liability may have been caused, in whole or in part, by the negligence, regardless of its character or degree, of any employee, agent, or officer of any Rail Entity which has entered into an Agreement with the Commissions for the provision of COMMUTER RAIL SERVICE.

PART B. DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS

- 1) The Plan shall have the right and duty to defend any suit against the INSURED/INDEMNITEE seeking DAMAGES on account of such OCCURRENCE for which the Commissions are responsible pursuant to the respective Agreements, even if any of the allegations of the suit are groundless, false, or fraudulent, and may make such investigation and settlement, subject to the provisions of B(2)(b), of any claim or suit as it deems expedient; provided, however, the Plan shall not be obligated to pay any claim or judgment or defend any suit, after the applicable limit of the Plan's liability has been exhausted by payment of judgments, settlements, or supplementary expense payments, except as provided in Part B(4) below.

With respect to claims for which the Commissions are responsible and which involve litigation against the INSURED/INDEMNITEE, the Commissions will provide, at the Plan's expense, legal representation. Selection of counsel to represent any INSURED/INDEMNITEE in such litigation shall be determined by the Plan. The INSUREDS/INDEMNITEES may, at their own expense, provide for legal representation with respect to claims which involve litigation against them.

- 2) a) An INSURED/INDEMNITEE shall not, except at his own cost and for his own account, make any payment, admit any liability, settle any claim, assume any obligation, or incur any expense for which the Plan would be liable without the written consent of the Plan except as provided below.
 - b) Each INSURED/INDEMNITEE, as the case may be, will promptly advise the Plan of claims. The Plan, however, agrees that AMTRAK will handle, subject to the Division of Risk Management's oversight, the investigation and settlement of all claims arising out of the COMMUTER RAIL SERVICE. The Division of Risk Management and AMTRAK will coordinate the investigation of all claims. Specifically, AMTRAK will evaluate each claim it receives upon receipt and provide the Commissions and the Division of Risk Management with an initial report. AMTRAK will also submit, at least semi-annually, a report on all claims of which it is aware of indicating status. The Division of Risk Management specifically agrees that AMTRAK has the authority to settle and pay individual claims up to \$10,000.00 for any one claim. Any proposed settlement or payment of a single claim which is in excess of \$10,000 will be submitted to the Division of Risk Management for prior approval.
- 3) The Plan will pay, as supplementary expenses:
 - a) expenses for reasonable attorneys fees incurred in the defense of claims;
 - b) expenses incurred by the INSUREDS/INDEMNITEES for outside manpower and for other extraordinary expenses of handling individual claims, as set out in the Operating and/or Access Agreements, provided prompt and advance notice of such expenses is provided the Plan;
 - c) costs assessed against the INSURED/INDEMNITEE in any suit covered by the Plan and all interest on the amount of any judgment therein which accrues after entry of the judgment and before the Plan has paid or tendered or deposited in court that part of the judgment;

- d) premiums on appeal bonds required in any suit covered by the Plan and costs of attachment or similar bonds.
- 4) a) The expenses referred to in subparagraphs 3(a) through 3(d) above shall be in addition to the \$75,000 per claimant limit set out in Part C(1), but shall be included within the limits set out in Part C(2).
- b) If suit is brought against an INSURED/INDEMNITEE alleging claims not arising out of an OCCURRENCE and for which the Commissions are not responsible together with claims arising out of an Occurrence for which the Commissions are responsible, the INSURED/INDEMNITEE and the Commissions, with the Plan's approval, will agree on a method of allocating equitably the costs of defense described in subparagraphs 3(a) through 3(d) above.

PART C. LIMITS OF LIABILITY

Regardless of the number of (1) INSUREDS/INDEMNITEES under this Plan, (2) persons or organizations who sustain DAMAGES payable under this PLAN, or (3) suits brought on account of insurance afforded by this Plan, the Plan's liability is limited as follows:

- 1) The Plan's liability with respect to any Insured defined in Part E(4)(a) shall not exceed \$75,000.00 per claimant;
- 2) With regard to the liability of any Insured Rail Entity or Liability Assumed by the Commissions by specific contractual indemnity;
 - a) The limit of liability under this Plan, regardless of the number of claims or the number of Insureds, shall not exceed \$200,000,000 as a result of, or arising from, OCCURRENCES in any one ANNUAL TERM.
 - b) This limit of liability required by 2(a) above may be fulfilled by self-insurance, purchased commercial insurance or participation in any alternative insurance mechanism, provided, however, that the extent of liability covered under this Plan shall not be reduced by, or limited to, the coverage provided by any such insurance. The reinstatement of all or any portion of any insurance coverage purchased by the Plan shall not operate to increase the annual aggregate liability of the Commissions under the Plan's self-insurance provisions to a sum in excess of \$200,000,000.
 - c) The Plan shall consist of a \$5 million self-insured retention and the balance of the coverage up to \$200 million shall consist of commercial insurance or participation in any financially sound alternative insurance mechanism. Except for the initial \$5 million

self-insurance retention, self-insurance shall be used only to the extent that commercial insurance or alternative insurance mechanisms are not available.

- 3) In the event that the Commuter Rail Operations Liability Insurance Trust Fund created and maintained for the purpose of implementing this Plan is rendered or becomes insolvent, neither the Commonwealth of Virginia, the General Assembly of Virginia nor any department, agency, institution, board, commission or officer, agent or employee, or any of the constituent jurisdictions of either Commission or any officer, agent or employee thereof, shall be liable for any claim that would have been covered under this Plan but for such insolvency. The establishment of this Plan does not, and shall not be deemed or construed to, pledge or obligate the full faith and credit of the Commonwealth of Virginia or any political subdivision thereof.

The determination of such insolvency rests solely with the Department of General Services, Division of Risk Management, and will be communicated promptly to all INSURED/INDEMNITEES. The financial status of the Plan shall be reported to the INSURED/INDEMNITEES at least semi-annually.

PART D. EXCLUSIONS

- 1) The Plan shall not be obligated to make any payment or defend any lawsuit in connection with any claim made against the INSURED/INDEMNITEE:
 - a) Based upon or attributed to their gaining in fact any profit, advantage or remuneration to which they were not legally entitled;
 - b) Brought about or contributed to by fraud or dishonesty of an INSURED/INDEMNITEE; provided, however, such exclusion shall not be effective unless a judgment or other final adjudication thereof adverse to such INSURED/INDEMNITEE shall establish that acts of active or deliberate dishonesty or fraud committed by such INSURED/INDEMNITEE were material to the cause of action so adjudicated; and further provided that this exclusion shall not apply to any INSURED/INDEMNITEE other than the entity, including its officers and employees, who committed such fraud or dishonesty.
 - c) Based on liability arising out of the ownership, maintenance and operation, loading or unloading of vehicles of any kind licensed for use on public highways, except that this exclusion shall not apply to vehicles hired by AMTRAK to provide transportation for commuters due to the necessity which arises on account of an interruption

of service due to malfunction of the train, accident or other conditions which require passengers to be transported by means other than trains or hyrail vehicles when not covered by automobile insurance. Any insurance or self-insurance provided by this Plan shall be excess over any other valid and collectable insurance maintained with respect to those hired vehicles.

In no event will any coverage by the Plan accrue to owners or operators of such hired vehicles.

Notwithstanding this exclusion, the Plan shall cover liability arising from a collision between a train and vehicle licensed for use on public highways, which occurs at a grade crossing, or anywhere else on the tracks over which a commuter rail train is being operated.

- d) Based on any injury or death to employees of any INSURED/INDEMNITEE arising out of the COMMUTER RAIL SERVICE, except this exclusion shall not apply to any injury or death to employees of Conrail, RF&P or Southern.
- e) Based on property damage to property owned or leased by the Northern Virginia Transportation Commission or the Potomac and Rappahannock Transportation Commission unless such claim is asserted against one or more of the rail entities named in Part E (4) (b2), (b3) and (b4) and (5) of this Plan.

This exclusion shall not apply to property of any other INSURED/INDEMNITEE or to property of other persons. Further, this exclusion shall not apply to the deductible amount of any property insurance for property owned or leased by the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission.

- f) Based on any claims arising from any contract dispute, provided however that this exclusion shall in no way apply to liability assumed by the Commissions by contract with Rail Entities, namely the National Railroad Passenger Corporation (AMTRAK), Richmond, Fredericksburg & Potomac Railroad Company (RF&P), Southern Railway Company (Southern), and Consolidated Rail Corporation (Conrail).
- g) Any claim for, or arising out of, normal wear or deterioration of roadbed and track, routine personnel requirements, delays, or any other loss or damage attributable to or exacerbated by the normal operations

of the COMMUTER RAIL SERVICE, which are taken into account under the compensation provisions of any OPERATING AND/OR ACCESS AGREEMENTS.

PART E. DEFINITIONS

Whenever used in this Plan, the following words have these meanings:

1) **ANNUAL TERM** - means:

Any twelve month period beginning July 1. If the Commuter Rail Service begins operation, which may or may not be the date that passengers are first transported, other than on 1 July. That period between the date operations begin and the July 1 next ensuing shall constitute an annual term.

2) **COMMUTER RAIL SERVICE** (also known as Contract Service) - means all activities relating to the provision of rail passenger service along two lines between a point at or near Fredericksburg, Virginia and the Washington, D.C. Union Station, and between a point at or near Manassas Airport, Virginia and Washington, D.C. Union Station over the railroad tracks of the Richmond, Fredericksburg and Potomac Railroad Company, Southern Railway Company, AMTRAK and Conrail with various intermediate stops. This term includes switching, maintenance, train storage and other services related to the provision of Commuter Rail Service as set forth in the Operating and/or Access Agreements.

3) **DAMAGES** - includes compensatory, liabilities assumed under the Operating and/or Access Agreements--Risk of Liability Article, punitive and equitable damages.

4) **INSURED** - means:

a) The Northern Virginia Transportation Commission, the Potomac and Rappahannock Transportation Commission, and any other Transportation Commission subject to the Virginia Tort Claims Act that may become a participant in the Commuter Rail Service operated by or for the Commissions.

b) 1) the officers and employees of the Northern Virginia Transportation Commission and the Potomac and Rappahannock Transportation Commission;

2) the National Railroad Passenger Corporation (AMTRAK), its officers, directors, agents and employees, including the Washington Terminal Company, its officers, directors, agents and employees;

- 3) The Richmond, Fredericksburg and Potomac Railroad Company (RF&P), the RF&P Corporation, its corporate affiliates, its licensee including entities which have trackage rights with RF&P to the extent RF&P may be liable, its officers, directors, agents and employees; and
- 4) The Consolidated Rail Corporation (CONRAIL), its corporate affiliates, its licensees including entities which have trackage rights with Conrail to the extent Conrail may be liable, its licensees, officers and employees.
- 5) INDEMNITEE - means Southern Railway Company, its officers, agents, employees and corporate affiliates.
- 6) OCCURRENCE - means an event or series of events which are attributable in any way to or which are exacerbated by the operation of or the performance of the Commuter Rail Service or to the presence of cars, equipment, personnel or passengers of the Commuter Rail Service on or about the property of any Rail Entity.
- 7) OPERATING AND/OR ACCESS AGREEMENTS - means Agreements between the Commissions and any railroad for use of its respective facilities and for services to operate the Commuter Rail Service.

PART F. NOTICE OF CLAIM

- 1) The INSURED/INDEMNITEE, as a condition precedent to coverage under this Plan, shall give the Plan notice in writing as soon as practicable of any claim made and shall give the Plan such information and cooperation as it may reasonably require. Such notice shall be given to the Division of Risk Management, Department of General Services, Commonwealth of Virginia.
- 2) If, during the period of coverage, an INSURED/INDEMNITEE receives written or oral notice from any party that it is the intention of such party to hold an INSURED/INDEMNITEE responsible for loss or damage arising from an OCCURRENCE, such INSURED/INDEMNITEE shall, as soon as practicable, give written notice to the Plan of the receipt of such notice, whether or not such notice is expressed in the form of a claim.

PART G. CONDITIONS

- 1) ACTION UNDER THIS PLAN. No action shall be brought by any INSURED/INDEMNITEE under this Plan unless, as a condition precedent thereto, such INSURED/INDEMNITEE has fully complied with all the terms hereof nor until the amount of the INSURED/INDEMNITEE'S obligation to pay shall have been finally determined either by judgment against the

INSURED/INDEMNITEE after actual trial or by written agreement of the INSURED/INDEMNITEE, the claimant and the Plan. In the event of the bankruptcy or insolvency of the INSURED/INDEMNITEE, the Plan shall not be relieved of the payment of such indemnity hereunder as would have been payable but for such bankruptcy or insolvency.

- 2) **ASSIGNMENT.** Assignment of interest under this Plan shall not bind the Plan until its consent is endorsed thereon by the Division of Risk Management.
- 3) **CHANGES.** Notice to any agent or knowledge possessed by any agent or by any other person shall neither effect a waiver or a change in any part of this Plan nor estop the Plan from asserting any right under the terms hereof. No provisions of this Plan may be waived or changed, except by amendment hereto approved in accordance with Section 2.1-526:8.1 of the Code and except with the approval of all INSURED/INDEMNITEES.
- 4) **SUBROGATION CLAUSE.** In the event of any payment under this Plan, the Plan shall be subrogated to the extent of such payment to all rights of recovery therefor, and the INSURED/INDEMNITEES shall execute all papers required and shall do everything that may be necessary to secure and preserve such rights including the execution of such documents necessary to enable the Plan effectively to bring suit in the name of the INSURED/INDEMNITEE.
- 5) **SETTLEMENT OF DISPUTES.**
 - a) To the extent permitted by law, issues that arise about the coverage or operation of this Plan, excluding interpretations or applications of provisions of an Operating and/or Access Agreement between the Commissions and an INSURED/INDEMNITEE, that cannot be resolved between any INSURED/INDEMNITEE and the Plan, shall be resolved by submitting the matter to arbitration as provided in Part G(5)(b) below.
 - b) Any controversy which is referable to arbitration shall be submitted to disinterested arbitrators, one of which shall be appointed by each disputant; and the arbitrators so chosen shall select a third arbitrator, or such numbers of arbitrators that would result in an uneven number of arbitrators if there are an odd number of disputants, and the decisions of a majority of them shall be final and conclusive between the parties hereto. In case either of the said parties shall fail or refuse to appoint an arbitrator as aforesaid for the period of thirty (30) calendar days after written notice given by the other party to make such appointment, then and in that event, a second arbitrator shall be appointed, upon application of the first arbitrator, by

the American Arbitration Association, and the said two arbitrators, so appointed, shall select a third arbitrator, and the three so chosen shall hear and decide such difference or dispute, and their decision, or that of a majority of them, shall be final and conclusive upon the parties hereto. In the event that the appointed arbitrators shall be unable to agree upon a third or such additional arbitrators within thirty (30) days after the appointment of the last of the disputant's arbitrators, as needed to comprise an odd-numbered panel, such additional arbitrator or arbitrators shall be appointed, upon the application of any party hereto, upon reasonable notice to the other parties, by the American Arbitration Association. If any arbitrator shall decline or fail to act, the party or person by whom he was chosen or appointed, as the case may be, shall appoint another to act in his place.

- c) Each party hereto shall bear the costs and expenses incurred by it in connection with such arbitration, including the cost of the arbitrator appointed by or for it. The parties shall share equally the costs and expenses attributable to the services of the third arbitrator or additional arbitrators provided for herein.
 - d) Any findings made in any other proceeding involving the conduct out of which the dispute arises may be considered by the arbitrators, but shall not be conclusive, unless the arbitrators so determine.
- 6) No person or organization shall have any right under this plan to join the Commonwealth of Virginia, the Division of Risk Management, or any of its employees as a party to any action against an INSURED/INDEMNITEE to determine the liability of the INSURED/INDEMNITEE, nor shall the Commonwealth of Virginia, the Division of Risk Management, or any of its employees be impleaded by the INSURED/INDEMNITEE or its legal representative.

PART H. NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(Broad Form)

This endorsement modifies the provisions of this Plan relating to ALL COVERAGE.

It is agreed that:

- 1) This Plan does not apply:
 - A) Under any Liability Coverage,
 - 1) with respect to which an INSURED/INDEMNITEE under this policy is also an INSURED under a nuclear

energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an INSURED under any such policy but for its termination upon exhaustion of its limit of liability; or

- 2) resulting from the HAZARDOUS PROPERTIES OF NUCLEAR MATERIAL and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the INSURED/INDEMNITEE is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B) Liability resulting from the HAZARDOUS PROPERTIES of NUCLEAR MATERIAL, if

- 1) the NUCLEAR MATERIAL a) is at any NUCLEAR FACILITY owned by, or operated by or on behalf of an INSURED/INDEMNITEE or b) has been discharged or dispersed therefrom.
- 2) the NUCLEAR MATERIAL is contained in SPENT FUEL or WASTE at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of the INSURED/INDEMNITEE, or
- 3) Any injury or damage arises out of the furnishing by an INSURED/INDEMNITEE of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any NUCLEAR FACILITY, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to damage to such NUCLEAR FACILITY and any property threat.

2) As used in this endorsement:

"HAZARDOUS PROPERTIES" include radioactive, toxic or explosive properties.

"NUCLEAR MATERIAL" means SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL or BY-PRODUCT MATERIAL.

"SOURCE MATERIAL", "SPECIAL NUCLEAR MATERIAL", and "BY-PRODUCT MATERIAL" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"SPENT FUEL" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a NUCLEAR REACTOR.

"WASTE" means any waste material (a) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its SOURCE MATERIAL content, and (b) resulting from the operation by any person or organization of any NUCLEAR FACILITY included under the first two paragraphs of the definition of NUCLEAR FACILITY.

"NUCLEAR FACILITY" means

- a) any NUCLEAR REACTOR.
- b) any equipment or device designed or used for
 - (1) separating the isotopes of uranium or plutonium,
 - (2) processing or utilizing SPENT FUEL, or (3) handling, processing, or packaging WASTE.
- c) any equipment or device used for the processing, fabricating or alloying of SPECIAL NUCLEAR MATERIAL if at any time the total amount of such material in the custody of the INSURED/INDEMNITEE at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of WASTE.

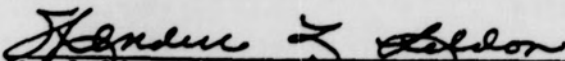
and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

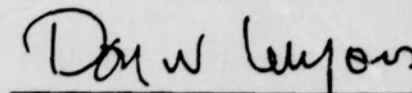
"NUCLEAR REACTOR" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"DAMAGE" includes all forms of radioactive contamination of property.

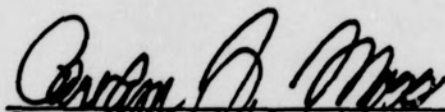
IN WITNESS WHEREOF, this Plan has been executed this 20th day of December, 1989.

APPROVED:


Wendell L. Seldon, Director
Department of General Services


Don W. LeMond, Director
Division of Risk Management

APPROVED BY THE GOVERNOR:


Secretary of Administration, pursuant
to the authority of Executive Order 25
(Revised), dated November 14, 1986

56-Ins-QQ/JJB/263

APPENDIX E

Special Trains

The following terms and conditions shall apply to the operation of SPECIAL TRAINS, which Railroad may permit from time to time as stated in ARTICLE THREE of this Agreement.

The rate for SPECIAL TRAINS shall be \$1,500.00 for the first fifty-five (55) miles. For SPECIAL TRAINS operated more than fifty-five (55) miles, the rate shall be \$1,500.00 plus:

<u>Trains Per Year</u>	<u>Rate Per Train-Mile</u>
1 to 6	\$10.50
7 to 12	\$18.00
Over 12	\$27.00

Rates for SPECIAL TRAINS are based on the assumption that Railroad will not furnish equipment or crews.

The Director shall submit requests for SPECIAL TRAINS in writing at least ten (10) business days prior to the proposed date of operation. No SPECIAL TRAIN shall be run without the prior written agreement of Railroad, on terms and conditions and with such proof of insurance and indemnification as are satisfactory to Railroad. SPECIAL TRAINS shall not be entitled to dispatching priority or preference. Railroad shall have the right to reject any and all SPECIAL TRAINS subject to the provisions of Section 3.1 of the Agreement.

APPENDIX F

Schedule of Commuter Facilities

<u>Location</u>	<u>Mile Post</u>
S. Manassas (Broad Run)	35.7
Manassas	32.6
Manassas Park	30.6
Burke Center	21.5
Rolling Road	19.2
Backlick Road	15.0