

AGREEMENT GOVERNING SPOTSYLVANIA COUNTY'S
ADMISSION TO MEMBERSHIP IN PRTC
AND
PARTICIPATION IN THE VRE

THIS AGREEMENT, made the ____ day of _____, 2009, between and among the Potomac and Rappahannock Transportation District Commission, (hereinafter referred to as "the Potomac and Rappahannock Transportation Commission" or "PRTC"), the Northern Virginia Transportation District Commission, (hereinafter referred to as "the Northern Virginia Transportation Commission" or "NVTC"), (PRTC and NVTC hereinafter referred to collectively as "the Commissions" or "the VRE"), and the Board of County Supervisors of Spotsylvania County, Virginia, (hereinafter referred to as "Spotsylvania County" or "the County").

WITNESSETH:

WHEREAS, by duly adopted resolution, Spotsylvania County has found, in accordance with §15.2-4504 of the Code of Virginia, 1950, as amended, that the orderly growth and development of the County and the comfort, convenience and safety of its citizens require an improved transportation system, and that joint action with the members of the Potomac and Rappahannock Transportation Commission will facilitate the planning and development of the needed transportation system; and

WHEREAS, among the elements of the Potomac and Rappahannock Transportation Commission's transportation plan that Spotsylvania County has determined furthers its transportation interests is the Virginia Railway Express commuter rail service, (hereinafter referred to as the "VRE service"), jointly owned by the Potomac and Rappahannock Transportation Commission and the Northern Virginia Transportation Commission and operated by the Virginia Railway Express Operations Group; and

WHEREAS, Spotsylvania County has requested that the Potomac and Rappahannock Transportation Commission permit it to become a member of the District in accordance with the terms and conditions hereafter set forth; and

WHEREAS, the Potomac and Rappahannock Transportation Commission has agreed to permit Spotsylvania County to become a member of the District in accordance with the terms and conditions hereafter set forth;

NOW, THEREFORE, in consideration of the foregoing and the terms hereof, the value and sufficiency of which are hereby mutually acknowledged, the Potomac and Rappahannock Transportation Commission, the Northern Virginia Transportation Commission, and Spotsylvania County agree to the following terms and conditions:

1. Effective Date.

- a) This Agreement shall be effective February 15, 2010, conditioned upon its approval and execution by PRTC, NVTC, and Spotsylvania County, and the occurrence of each of the following:
 - i. Approval by Spotsylvania County of an Amended Founding Ordinance and Master Agreement for PRTC, (hereinafter referred to as “the Amended PRTC Founding Ordinance”), providing for Spotsylvania County’s admission to PRTC as a member;
 - ii. Certification by the Secretary of the Commonwealth that the requirements of §15.2-4529 of the Code of Virginia, 1950, as amended, have been satisfied and that Spotsylvania County is a member of PRTC, and entry of such certification in the minutes of a meeting of the Spotsylvania County Board of County Supervisors; and
 - iii. Approval and execution by PRTC, NVTC, the counties of Arlington, Fairfax, Prince William, and Stafford, the cities of Alexandria, Fredericksburg, Manassas, and Manassas Park, and Spotsylvania County of an Amended Master Agreement for the Provision of Commuter Rail Services in Northern Virginia, (hereinafter referred to as “the VRE Master Agreement”), providing for Spotsylvania County becoming a participating jurisdiction as such term is used in the VRE Master Agreement.
- b) Spotsylvania County shall approve and execute this Agreement, the Amended PRTC Founding Ordinance, and the VRE Master Agreement prior to consideration of approval of any of those documents by the parties thereto.
- c) In the event the preceding events do not occur by November 30, 2009, this Agreement shall be void and of no effect.

2. Spotsylvania County’s Membership in PRTC.

- a) Not later than thirty (30) days from approval of this Agreement by Spotsylvania County, the County shall approve the Amended PRTC Founding Ordinance, and thereafter agrees to be bound by its terms.
- b) As a member of PRTC, Spotsylvania County shall be entitled to all of the rights, and obligated for all of the responsibilities, of such membership as provided by this Agreement, the Amended PRTC

Founding Ordinance, and the VRE Master Agreement, as well as the laws of the Commonwealth of Virginia.

- c) Such membership rights shall include but not be limited to participation in the transaction of PRTC business through two voting representatives of the County on the PRTC governing commission, and the levy within Spotsylvania County of a motor vehicle fuels sales tax in accordance with the laws of the Commonwealth of Virginia and its receipt by PRTC for use for transportation purposes of the District subject to the consent of Spotsylvania County as provided for in the Amended PRTC Founding Ordinance.
- d) Such membership responsibilities shall include but not be limited to payment of Spotsylvania County's proportionate share of PRTC's administrative expenses as hereafter described.
- e) If Spotsylvania County withdraws from the VRE Master Agreement, as set forth in Section XI of the VRE Master Agreement or Section 11 of this Agreement, PRTC agrees that Spotsylvania County may remain a member of PRTC and continue to collect the fuel tax set forth in § 58.1-1720 of the Code of Virginia, 1950, as amended, until it satisfies the conditions of withdrawal agreed upon by Spotsylvania County, the Commissions, and the other parties to the VRE Master Agreement.

3. Applicability of § 58.1-1721 of Code of Virginia, 1950, as amended.

- a) The parties acknowledge that Spotsylvania County is subject to the provisions of § 58.1-1721 of the Code of Virginia, 1950, as amended, requiring a reduction of Spotsylvania County's real estate tax, or its real estate and other locally levied taxes, in certain circumstances. The parties agree that this Agreement complies with those provisions and those provisions do not apply because, among other reasons, in the first full fiscal year in which the motor vehicle fuels sales tax is levied those revenues (1) will not be used for bus services the County would otherwise have paid for since the County will continue to use general fund revenues for those purposes, and (2) will not be used for rail services the County would otherwise have paid for since there are no rail services the County would have agreed to fund and the only rail services the County will participate in are those funded with the motor vehicle fuels sales tax.
- b) The parties acknowledge that, notwithstanding the foregoing, the obligation to comply with §58.1-1721 of the Code of Virginia, 1950, as amended, is Spotsylvania County's; however, the Commissions agree to provide their resources and assistance to the County in responding to any question of whether there has been compliance. In

the event there is a final determination that the County failed to comply with §58.1-1721 of the Code of Virginia, 1950, as amended, then PRTC agrees that it shall consent to the use of motor vehicle fuel sales tax revenues generated in the County, to the extent such revenues are available, to reimburse the County the amount of general fund revenue that was used for bus or rail services that might otherwise have been funded with motor fuels sales tax revenues.

4. Certification by the Secretary of the Commonwealth.

- a) Upon the occurrence of 1.a.(i) and (iii) above, PRTC shall, in accordance with §15.2-4529 of the Code of Virginia, 1950, as amended, file with the Secretary of the Commonwealth all documentation required by the laws of the Commonwealth of Virginia and the Secretary to evidence the addition of Spotsylvania County as a member of PRTC and to certify such membership as required by law.
- b) Spotsylvania County agrees to cooperate as necessary to accomplish the foregoing, and to enter such certification promptly in the minutes of a meeting of the County's Board of County Supervisors.

5. PRTC Administrative Expenses, VRE Subsidy and Debt Service.

- a) Effective upon the later of February 15, 2010, or the first full month following the date of certification of Spotsylvania County's membership in PRTC by the Secretary of the Commonwealth, Spotsylvania County shall be obligated to pay a portion, prorated by month and equal to the remaining months in the fiscal year, of its annual share of PRTC's administrative expenses for the then current fiscal year as such shares are determined for all PRTC members in the Amended PRTC Founding Ordinance. The foregoing amount shall be paid to PRTC in accordance with the provisions of paragraph 9.
- b) In the event that Spotsylvania County fails to pay the aforesaid amount in full within the stated time, PRTC may fund such unpaid amount from the motor fuels sales tax revenue generated in the County. Spotsylvania County hereby consents to the use of the tax revenue for such purpose.
- c) In each fiscal year following the fiscal year in which this Agreement becomes effective, Spotsylvania County shall, in accordance with the Amended PRTC Founding Ordinance, pay its proportionate share of PRTC's administrative expenses in the amount set forth in PRTC's adopted budget for that fiscal year. The foregoing amount shall be paid to PRTC in accordance with the provisions of paragraph 9.

- d) Notwithstanding the above, the total obligations incurred by Spotsylvania County as a result of becoming a member of PRTC and VRE, shall consist of the following: (1) PRTC administrative expenses and (2) the VRE subsidy, which includes both the existing VRE related debt service approved under the VRE Master Agreement and would include any new VRE related debt service as authorized by Spotsylvania County as a participating jurisdiction under the VRE Master Agreement.

6. Spotsylvania County's Participation in VRE.

- a) Not later than thirty (30) days from approval of this Agreement by Spotsylvania County, the County shall approve and execute the VRE Master Agreement.
- b) As a participating jurisdiction in the VRE commuter rail service, Spotsylvania County shall be entitled to all of the rights, and obligated for all of the responsibilities, of a participating jurisdiction as provided by the VRE Master Agreement, as well as by this Agreement.
- c) Spotsylvania County shall have the right to participate in the transaction of VRE related business through its membership in PRTC. The County shall have a right and be entitled, to representation on the VRE Operations Board in accordance with the formula set forth in the VRE Master Agreement.
- d) Following the later of February 15, 2010, or the date of certification of Spotsylvania County's membership in PRTC by the Secretary of the Commonwealth, and in accordance with the provisions of paragraph 9, Spotsylvania County shall pay a portion, prorated by month and equal to the remaining months in the fiscal year, of its annual share of the VRE budget for the then current fiscal year in which this Agreement was effective as such shares are determined for all VRE participating jurisdictions in the VRE Master Agreement. The foregoing amount shall be paid to the VRE in accordance with the provisions of paragraph 9.
- e) In the event that Spotsylvania County fails to pay the aforesaid amount in full within the stated time, PRTC may fund such unpaid amount from the motor fuels sales tax revenue generated in the County. Spotsylvania County hereby consents to the use of the tax revenue for such purpose.
- f) In each fiscal year following the fiscal year in which this Agreement becomes effective, Spotsylvania County shall, in accordance with the VRE Master Agreement, be obligated to consider appropriating funds

sufficient to pay its annual share of the VRE budget as set forth in the VRE adopted budget each fiscal year. Upon appropriation, the foregoing amount shall be paid to the VRE in accordance with the provisions of paragraph 9.

- g) If Spotsylvania County withdraws from the VRE Master Agreement or PRTC, it shall have no obligation or requirement as part of its withdrawal to pay for the debt service for any VRE related debt approved under the VRE Master Agreement or any debt of PRTC, which was incurred prior to Spotsylvania County becoming a member of PRTC or a participating jurisdiction under the VRE Master Agreement.

7. Spotsylvania County VRE Station.

- a) Spotsylvania County shall be responsible for funding the acquisition of property, environmental review, design, and construction of a commuter rail station, including a boarding platform in the railroad right-of-way which will be subject to a station lease between the VRE and CSX Transportation and under the operation and control of the VRE, and an adjoining commuter rail patron parking lot accessible to publicly maintained roads at a location agreed upon by Spotsylvania County and the VRE in Spotsylvania County (hereinafter collectively referred to as “Station Construction”). The station design shall be consistent with the design of stations now served by the VRE service and shall be approved by the VRE. The parking lot, which shall be subject to the operation and control of Spotsylvania County, shall have a parking capacity of not less than one thousand (1,000) spaces and may be built in phases approved by the VRE. However, the capacity of the parking lot at the time the station is initially served by the VRE shall be not less than five hundred (500) spaces, (hereinafter referred to as “the initial parking lot”). All costs associated with Station Construction shall be borne by Spotsylvania County but may be payable from grant funds or other proceeds including monies or improvements from proffers accepted by Spotsylvania County pursuant to a conditional rezoning. Such Station Construction costs may include but are not limited to property acquisition, rezoning or other local government approvals, compliance with requirements prerequisite to obtaining state or federal funding for the station or parking lot such as archeological and environmental study, and permits. To the extent some of the aforesaid responsibilities of Spotsylvania County are combined, by agreement, with work being performed by the VRE pursuant to paragraph 8, the County shall be responsible for the portion of the costs attributable to the County’s responsibilities. VRE will assist the County in gaining grant funding for Station Construction costs if the County desires such assistance.

While the VRE Operations Board policy provides that any required grant funding match for station and parking projects be provided by the jurisdiction in which the project is located, numerous options exist for providing this match beyond a cash contribution, including but not limited to in-kind services and proffered improvements. However, in the event Spotsylvania County would be required to spend more than 20% of local funding, including proffers, toward the cost of constructing the station then Spotsylvania County may defer station construction until such time as the foregoing limitation on local funding can be satisfied or the County chooses to proceed with station construction irrespective of the limitation.

- b) The construction of the station and the initial parking lot shall be completed and ready for use by the VRE service on or before the later of two (2) years from the effective date of this Agreement or at the time of completion by the VRE of an extension of the railroad line necessary to serve the station as such extension is described hereinafter in paragraph 8. The VRE and the County will work together so that the station and initial parking lot is available for service contemporaneously with the completion of the VRE line extension described in paragraph 8. Once such station and initial parking lot is available for service, the VRE shall provide VRE service to the station in accordance with the VRE's established schedules and operating policies.
- c) The VRE shall facilitate the Station Construction and in particular the boarding platform located within railroad right-of-way. VRE shall also be responsible for serving as the liaison between the County and CSX Transportation. This shall not, however, require the expenditure of funds by the VRE, nor shall it modify or relieve Spotsylvania County of its responsibilities set forth above, with the exception of any work done in the railroad right-of-way which shall be subject to obtaining all necessary approvals from CSX Transportation.
- d) By separate agreement between Spotsylvania County and the VRE, the VRE may agree to perform specified responsibilities of the County, including but not limited to hiring or managing contractors to design or construct the station or parking lot, subject to funding by the County of such responsibilities.
- e) The VRE will provide station amenities similar to those provided at other VRE stations including fare collection and passenger notification equipment.

8. Extension of Rail Line By VRE.

- a) The VRE shall be responsible for funding the property acquisition, environmental review, design, and construction of an extension of the existing railroad right-of way, and all other related infrastructure necessary to provide VRE service to the station provided for in paragraph 7 above. The extension shall be completed on or before two (2) years from the effective date of this Agreement; however, the VRE's responsibilities shall be subject to obtaining funding for the foregoing. In addition, VRE shall also be responsible for obtaining the necessary approvals from CSX Transportation for the foregoing.
- b) The VRE shall commence such environmental review, design, and construction, and shall seek funding for the same, not later than upon the effective date of this Agreement.
- c) Spotsylvania County shall cooperate with the VRE in completing the foregoing work, providing assistance in obtaining prompt plan review and permit issuance, among other things, to the extent reasonably possible.

9. Deferral of Debt Service, PRTC Administrative Expenses and VRE Subsidy.

- a) PRTC and VRE agree to defer Spotsylvania County's payment of its PRTC Administrative Expenses and any VRE annual subsidy for three (3) fiscal years as follows which would permit the County to accrue motor vehicle fuels tax revenue to fund the County's transportation related expenses and without using general fund monies. The deferral for fiscal years 2010 and 2011 would be one hundred percent (100%) each year. The deferral for fiscal year 2012 would be fifty percent (50%). Such deferral shall be without interest.
- b) Within sixty (60) days of the start of fiscal year 2013, Spotsylvania County shall pay to PRTC the full amount of PRTC administrative expenses deferred by PRTC and shall pay to the VRE the full amount of the County's annual subsidy deferred by the VRE in addition to payment of the PRTC administrative expenses and the VRE annual subsidy for that fiscal year as provided for in the Amended PRTC Founding Ordinance and the VRE Master Agreement.
- c) In the event that Spotsylvania County fails to pay either of the aforesaid amounts in full within the stated time, PRTC may fund such unpaid amounts from the motor fuels sales tax revenue generated in the County. Spotsylvania County hereby consents to the use of the tax revenue for such purposes.

10. Marketing of VRE Service in Spotsylvania County.

Contemporaneous with the commencement of VRE service to Spotsylvania County, the VRE will include, in its on-going evaluation of marketing and promotion of VRE service, an analysis of methods to reflect the expansion of service to the County, as well as other potential places, so that VRE ridership is maximized. The VRE agrees to consult with Spotsylvania County staff during the aforesaid analysis.

11. Termination.

This Agreement may be terminated by any party at any time prior to its effective date upon not less than thirty (30) days written notice addressed to the chairman of the each of the respective parties' governing bodies. After its effective date, this Agreement may not be terminated except as provided for in the Amended PRTC Founding Ordinance and the VRE Master Agreement, and with the mutual consent of each of the parties thereto.

12. Governing Law.

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

13. Entire Agreement.

This Agreement, together with the Amended PRTC Founding Ordinance and the VRE Master Agreement, constitutes the entire agreement between the parties pertaining to Spotsylvania County's admission as a member of PRTC and the County's participation in the VRE service, and supersedes all prior oral and written understandings. Amendments to this Agreement shall not be effective unless in writing and signed by all parties hereto.

14. Severability.

If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect. It is the intention of the parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

15. Time.

With respect to all time periods contained in this Agreement, it is expressly understood that time shall be of the essence.

16. Waiver.

Failure by any party to insist upon or enforce any of its rights hereunder shall not constitute a waiver thereof.

17. Authorized Signatures.

This Agreement has been duly approved by the respective governing bodies of each of the parties and the below signed individuals have each been duly authorized to execute this Agreement on behalf of the party.

18. Conflicting Provisions.

In the event of a conflict between the provisions of this Agreement and the VRE Master Agreement or the Amended PRTC Founding Ordinance, the provisions of this agreement shall control.

WHEREFORE, the parties hereto, by their duly authorized representative, have executed this Agreement as of the date aforesaid.

POTOMAC and RAPPAHANNOCK
TRANSPORTATION COMMISSION

CHAIRMAN

CLERK

NORTHERN VIRGINIA
TRANSPORTATION COMMISSION

CHAIRMAN

CLERK

BOARD OF COUNTY SUPERVISORS OF
SPOTSYLVANIA COUNTY

CHAIRMAN

Approved as to form:

Jacob P. Stroman, IV, County Attorney

CLERK