

ITEM 6-C  
October 4, 2018  
PRTC Regular Meeting  
Res. No. 18-10-\_\_

**MOTION:**

**SECOND:**

**RE:            AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE THE AGREEMENT BETWEEN  
                 NVTC AND PRTC FOR DISTRIBUTION AND ALLOCATION OF THE COMMUTER  
                 RAIL OPERATING AND CAPITAL FUND (CROC)**

**ACTION:**

**WHEREAS**, on May 18, 2018, the Virginia General Assembly approved Chapter 854 of the 2018 Acts of Assembly, adopting, among other provisions, amendments to Title 33.2 of the Code of Virginia, 1950, as amended, to add a new Chapter 35, §§ 33.2-3500 – 3502, entitled the Commuter Rail Operating and Capital Fund;

**WHEREAS**, the Northern Virginia Transportation Commission (NVTC) and the Potomac and Rappahannock Transportation Commission (PRTC) staff have reached agreement on the manner in which funds from the Commuter Rail Operating and Capital Fund are disbursed to them, and the process by which they will determine the specific purposes for which funds from the Commuter Rail Operating and Capital Fund will be expended, and wish to set forth that agreement; and

**WHEREAS**, the VRE Operations Board recommends the following action.

**NOW, THEREFORE, BE IT RESOLVED** that the Potomac and Rappahannock Transportation Commission hereby authorizes the Executive Director to execute the Agreement between NVTC and PRTC for Distribution and Allocation of the Commuter Rail Operating and Capital Fund (Attachment A).

Approved this 4th day of October 2018.

**Votes:**

**Ayes:**

**Nays:**

**Abstain:**

**Absent from Vote:**

**Alternate Present Not Voting:**

**Absent from Meeting:**



VIRGINIA RAILWAY EXPRESS  
OPERATIONS BOARD

Item 6-C  
PRTC Regular Meeting  
October 4, 2018

**Agenda Item 8-A**  
**Action Item**

**To: Chairman Nohe and the VRE Operations Board**

**From: Doug Allen**

**Date: September 21, 2018**

**Re: Recommend Authorization to Execute Agreement for  
Distribution and Allocation of Commuter Rail Operating and  
Capital Fund**

---

**Recommendation:**

The VRE Operations Board is asked to recommend the Commissions authorize the execution of an agreement between NVTC and PRTC for the distribution and allocation of the Commuter Rail Operating and Capital (CROC) Fund.

**Summary:**

NVTC and PRTC staff have reached agreement on 1) how funds from the newly created CROC Fund will be disbursed to them and 2) the process by which the Commissions, as part of the annual VRE budget process, will determine the purposes for which CROC funding will be expended.

**Background:**

In May 2018, the Virginia General Assembly created the CROC Fund. The CROC Fund is a special non-reverting fund that receives proceeds from the wholesale fuel sales taxes currently collected in the NVTC and PRTC jurisdictions. Funds in the CROC are disbursed to PRTC and NVTC on a monthly basis in accordance with the distribution set forth in the legislation. CROC funding may be used to fund the cost of operating commuter rail



Northern Virginia  
Transportation Commission  
2300 Wilson Blvd. #620  
Arlington, VA 22201  
703.524.3322



Virginia Railway Express  
1500 King Street, Suite 202  
Alexandria, VA 22314  
703.684.1001  
VRE.org



Potomac and Rappahannock  
Transportation Commission  
14700 Potomac Mills Road  
Woodbridge, VA 22192  
703.580.6121

service as well as the capital costs of acquiring, leasing, or improving railways or railroad equipment, rolling stock, rights-of-way, and facilities, including the use of debt financing where appropriate.

The proposed agreement between PRTC and NVTC will direct the manner in which funds from the CROC Fund are disbursed to the Commissions as well as the process for determining how to expend the CROC funds, including how that project selection process will be integrated into the broader annual budget process for VRE. The key points of the proposed agreement include:

- NVTC will serve on behalf of both Commissions as the recipient of all funds from the CROC Fund. This follows the existing practice of having PRTC receive and manage VRE's federal funds and NVTC receive and manage VRE's state and regional funds. NVTC will establish a depository for the CROC funds and invest the funds in accordance with Virginia statutory requirements.
- At the start of each year's VRE budget process, the VRE Operations Board will recommend to the Commissions a process and criteria to be used in determining what operating and/or capital projects are to be funded (in whole or in part) with CROC funds during the upcoming fiscal year. This process and criteria will then be used to develop a list of recommended CROC-funded projects for consideration and final action by the Commissions along with the approval of the recommended VRE budget.
- NVTC will provide quarterly reports to the Commissions regarding the receipt, investment, and expenditure of CROC funds, and the VRE CEO will provide an annual report to the Operations Board and the Commissions on the status of all CROC-funded projects.

**Fiscal Impact:**

There is no direct fiscal impact to the execution of the proposed agreement between the Commissions for the distribution and allocation of the CROC funds. However, the execution of the proposed agreement will create the necessary framework for receiving, investing, programming, and expending the CROC funds, which will total \$15 million per year.

**Virginia Railway Express  
Operations Board**

**Resolution  
8A-09-2018**

**Recommend Authorization to Execute Agreement for Distribution and  
Allocation of Commuter Rail Operating and Capital Fund**

**WHEREAS**, on May 18, 2018, the Virginia General Assembly approved Chapter 854 of the 2018 Acts of Assembly, adopting, among other provisions, amendments to Title 33.2 of the Code of Virginia, 1950, as amended, to add a new Chapter 35, §§ 33.2-3500 – 3502, entitled the Commuter Rail Operating and Capital Fund; and,

**WHEREAS**, NVTC and PRTC staff have reached agreement on the manner in which funds from the Commuter Rail Operating and Capital Fund are disbursed to them, and the process by which they will determine the specific purposes for which funds from the Commuter Rail Operating and Capital Fund will be expended, and wish to set forth that agreement;

**NOW, THEREFORE, BE IT RESOLVED THAT**, the VRE Operations Board does hereby recommend the Commissions authorize execution of the Agreement Between NVTC and PRTC for Distribution and Allocation of the Commuter Rail Operating and Capital Fund, attached hereto as Attachment A.

Approved this 21<sup>st</sup> day of September 2018

---

Martin Nohe  
Chairman

---

Maureen Caddigan  
Secretary

**AGREEMENT BETWEEN NVTC AND PRTC  
FOR DISTRIBUTION AND ALLOCATION OF THE  
COMMUTER RAIL OPERATING AND CAPITAL FUND**

THIS AGREEMENT is entered into the \_\_\_ day of \_\_\_\_\_, 2018, by and between the Northern Virginia Transportation Commission (“NVTC”) and the Potomac and Rappahannock Transportation Commission (“PRTC”), (together, the “Commissions”), for the distribution and allocation of the commuter rail operating and capital fund.

**WITNESSETH:**

**WHEREAS**, on May 18, 2018, the Virginia General Assembly approved Chapter 854 of the 2018 Acts of Assembly, adopting, among other provisions, amendments to Title 33.2 of the Code of Virginia, 1950, as amended, to add a new Chapter 35, §§ 33.2-3500 – 3502, entitled the Commuter Rail Operating and Capital Fund (“CROC Fund” or “Fund”); and

**WHEREAS**, the CROC Fund is a special non-reverting fund within the treasury of the Commonwealth of Virginia established on the books of the Comptroller for the Commonwealth of Virginia consisting of funds deposited to the Fund pursuant to § 58.1-2299.20 of the Code of Virginia, 1950, as amended, providing for a wholesale fuel sales tax, and such other funds as may be appropriated to the Fund by the General Assembly or allocated to it by the Commonwealth Transportation Board; and

**WHEREAS**, as provided in § 33.2-3500.B of the Code of Virginia, 1950, as amended, the Comptroller shall, on a monthly basis, disburse the funds in the CROC to NVTC and PRTC in accordance with the distribution set forth in the aforesaid statute; and

**WHEREAS**, as provided in § 33.2-3501.A of the Code of Virginia, 1950, as amended, the CROC shall be used to fund, including through the use of debt financing where appropriate, the cost of operating commuter rail service; acquiring, leasing, or improving railways or railroad equipment, rolling stock, rights-of-way, or facilities; or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way, or facilities for commuter rail transportation purposes whenever the Commissions have determined that such acquisition, lease, or improvement is for the common good of a region encompassed by the Commissions or the Commonwealth as a whole; and

**WHEREAS**, PRTC and NVTC have reached agreement on the manner in which funds from the CROC Fund are disbursed to them, and the process by which they will determine the specific purposes for which funds from the CROC Fund will be expended, and wish to set forth that agreement hereafter.

**NOW, THEREFORE,** based upon the foregoing, and other good and valuable consideration, NVTC and PRTC agree as follows:

1. NVTC shall serve on behalf of the Commissions as the recipient of all funds disbursed to them by the Comptroller from the CROC Fund. NVTC shall notify the Comptroller and all representatives of the Commonwealth assisting the Comptroller in the monthly disbursement of funds from the CROC Fund, including the Secretary of Transportation and the Director of the Department of Motor Vehicles, of NVTC's role in this respect, and shall request that funds from the CROC Fund be disbursed as directed by NVTC for the benefit of the Commissions. PRTC shall also provide such direction to the foregoing representatives of the Commonwealth regarding how disbursement of funds from the CROC Fund to PRTC shall be made as may be necessary for NVTC to be the recipient as described herein.
2. NVTC shall establish a depository for funds disbursed to it from the CROC Fund, and, consistent with § 33.2-3500.C of the Code of Virginia, 1950, as amended, shall invest those funds in accordance with § 33.2-1525.A of the Code of Virginia, 1950, as amended.
3. A. By September 30<sup>th</sup> of each year, as part of its consideration of the preliminary annual budget, the Virginia Railway Express Operations Board shall recommend to NVTC and PRTC, for approval by February 1 as part of the recommended annual budget, a process and the criteria to be used for the selection of operating and capital projects ("Projects") to be funded, in whole or in part, with funds from the CROC Fund. The annual Project selection process shall be based on estimates of funds available in the CROC Fund for the upcoming fiscal year.  
  
B. Not less than annually, upon approval by the Commissions of the process and criteria for selection of Projects, the Virginia Railway Express Chief Executive Officer (VRE CEO) shall develop a list of recommended Projects for consideration by the Operations Board and recommendation to the Commissions and, thereafter, consideration and final action by the Commissions to approve a final approved list of Projects. The Project selection process shall be coordinated with the annual budget process such that the total funds authorized to be expended from the CROC Fund in the upcoming fiscal year shall be incorporated in the final budget.  
  
C. The foregoing annual process shall not preclude the Commissions from approving additional Projects funded with funds from the CROC Fund as they may deem appropriate.
4. Once a Project is approved, the authority to obligate and expend funds from the CROC Fund for the Project shall be subject to approval of contracts for the Projects by the Commissions, the Operations Board, or the VRE CEO based on their respective authority to approve contracts.

5. A. NVTC shall provide reports to the Commissions quarterly, and at such additional times as either PRTC or NVTC may request, about the funds in the CROC Fund, including monthly disbursements received from the Comptroller, amounts expended and the purposes of the expenditures, the amount of funds from the CROC Fund held by NVTC, and investment and interest earnings.

B. Annually, the VRE CEO shall provide a report to the Operations Board and the Commissions of the status of all Projects for which funds from the CROC Funds have been allocated, which report shall include, on a Project by Project basis, the amount of funds from the CROC Fund authorized for expenditure on the Project, the amount expended, and the status of the Project. Once presented to the Operations Board and the Commissions, the annual report shall be provided to the Comptroller with a copy to the Secretary of Transportation.

C. The funds received by NVTC from the CROC Fund shall be included as part of the Commissions' and VRE's annual independent financial audits. The audits, once accepted by the Commissions, shall be provided to the Comptroller with a copy to the Secretary of Transportation.

6. In the event of a dispute under this Agreement, the Commissions' Executive Directors and the VRE CEO agree to meet and confer in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to the Commissions for formal confirmation and approval, as necessary. If no satisfactory resolution can be reached via the meet and confer method, either Commission may pursue all remedies it may have at law, including all judicial remedies.
7. This Agreement may be modified, in writing, upon mutual agreement of both Commissions.
8. The recitals to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The Commissions acknowledge and agree that such recitals are true and correct.
9. This Agreement shall be governed by the laws of the Commonwealth of Virginia.

**IN WITNESS WHEREOF**, the Commissions have executed this Agreement by their duly authorized agent as of the date and year aforesaid.

**NORTHERN VIRGINIA TRANSPORTATION COMMISSION**

\_\_\_\_\_

Katherine A. Mattice, Executive Director

Date: \_\_\_\_\_

**POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION**

\_\_\_\_\_

Robert A. Schneider, Executive Director

Date: \_\_\_\_\_