



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

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Agenda item # 16

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD December 7, 2016

MOTION

**Made By: Ms. Valentine, Seconded By: Ms. Hynes
Action: Motion Carried**

Title: A RESOLUTION AUTHORIZING A LOAN FROM THE STATE INFRASTRUCTURE BANK TO I-66 EXPRESS MOBILITY PARTNERS LLC. FOR THE TRANSFORM 66 P3 PROJECT IN VIRGINIA

WHEREAS, on March 25, 1995, the Governor of the Commonwealth of Virginia signed into law, effective July 1, 1995, the Public-Private Transportation Act (as amended, the "PPTA"). In enacting the PPTA as amended, the Virginia General Assembly has declared, among other things, that (i) there is a public need for timely development and/or operation transportation facilities within the Commonwealth that address the needs identified by the appropriate state, regional or local transportation plan, (ii) such public need may not be wholly satisfied by existing ways in which transportation facilities are developed and/or operated; and (iii) authorizing private entities to develop and/or operate one or more transportation facilities may result in the development and/or operation of such transportation facilities to the public in a more timely, more efficient, or less costly fashion, thereby serving the public safety and welfare; and

WHEREAS, the PPTA grants the Virginia Department of Transportation (the "Department") the authority to allow private entities to develop and/or operate qualifying transportation facilities if the Department determines there is a need for the facilities and private involvement would provide the facilities to the public in a timely and cost-effective fashion, thereby serving the public safety and welfare; and

WHEREAS, the Commonwealth Transportation Board (the "CTB") is authorized by §33.2-1529 of the Code of Virginia to make allocations from funds in the Toll Facilities Revolving Account of the Transportation Trust Fund to make a loan to a private operator to pay any cost of a qualifying transportation facility pursuant to the terms of a comprehensive or interim agreement entered into under the PPTA between a responsible public entity and a private operator; and

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WHEREAS, on September 27, 1996, the CTB, the Department, the Federal Highway Administration and the Federal Transit Administration entered into a Cooperative Agreement providing for the establishment of the Toll Facilities Revolving Account as a State Infrastructure Bank (the "SIB") pursuant to section 350 of the National Highway System Designation Act of 1995 (the "NHS Act"), Public Law 104-59, 23 U.S.C. § 101 note, dedicated solely to providing loans and other forms of financial assistance consistent with the NHS Act and as permitted under State law; and

WHEREAS, pursuant to a Request for Proposals dated July 29, 2016 (the "RFP"), the Department selected I-66 Express Mobility Partners LLC (the "Developer" or the "SIB Borrower") as the Preferred Proposer (as defined in the RFP and the PPTA Implementation Manual); and

WHEREAS, pursuant to the PPTA, the Department and the SIB Borrower intend to enter into a Comprehensive Agreement to develop, design, finance, build, operate and maintain the Transform 66 P3 Project in Virginia (the "Comprehensive Agreement"), to deliver high occupancy/toll lanes ("Express Lanes") and associated facilities and services along the I-66 corridor between U.S. Route 15 in Prince William County and Interstate 495 in Fairfax County (as more particularly described in the Comprehensive Agreement as the "Project"); and

WHEREAS, pursuant to Article 7 of the contemplated Comprehensive Agreement, the SIB Borrower will solely be responsible for obtaining and repaying each and every financing, at its own cost and risk without recourse to any State Party (as defined in the Comprehensive Agreement), necessary to develop, build, construct, maintain and operate the Project.

NOW, THEREFORE, BE IT RESOLVED THAT subject to the successful completion of final negotiation, execution and delivery of the Comprehensive Agreement and of the SIB Loan Agreement, the CTB authorizes:

1. A SIB Loan to be made to the SIB Borrower in the maximum principal amount not to exceed \$30,000,000 for the Project in accordance with the provisions of the SIB Loan Agreement, which is approved in substantially the form presented to this meeting of the CTB with such changes as may be approved by the Commissioner of Highways (the "Commissioner").
2. The Commissioner to execute the SIB Loan Agreement on behalf of the CTB, his execution conclusively evidencing his approval, on behalf of the CTB, of any changes from the draft presented to this meeting of the CTB.
3. The Chief Financial Officer, and any other person designated by the Commissioner, to take all actions necessary to effect the SIB Loan in accordance with the SIB Loan Agreement.
4. This resolution to take effect immediately.

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EXHIBIT Y
SIB LOAN AGREEMENT

This **SIB LOAN AGREEMENT** (this “Agreement”) is made and entered into as of [•], by and among the **COMMONWEALTH TRANSPORTATION BOARD** (the “CTB”), a state board of the Commonwealth of Virginia with oversight authority of the Virginia Department of Transportation (VDOT or the “Department”), whose address is 1401 East Broad Street, Richmond, Virginia 23219, and I-66 Express Mobility Partners LLC (“SIB Borrower”).

Explanatory Statement

- A. On March 25, 1995 the Governor of the State signed into law, effective July 1, 1995, the Public-Private Transportation Act (as amended, the “PPTA”). In enacting the PPTA, the State General Assembly found and declared, among other things, that (i) there is a public need for timely acquisition or construction of and improvements to qualifying transportation facilities within the State that address the needs identified by the appropriate state, regional or local transportation plans, (ii) such public need may not be wholly satisfied by existing ways in which transportation facilities are acquired, constructed or improved; and (iii) authorizing private entities to develop and/or operate one or more transportation facilities may result in the availability of such transportation facilities to the public in a more timely or less costly fashion, thereby serving the public safety and welfare.
- B. The PPTA grants the Department the authority to allow private entities to develop and/or operate qualifying transportation facilities if the Department determines there is a need for the facilities and private involvement would provide the facilities to the public in a timely and cost-effective fashion, thereby serving the public safety and welfare.
- C. The CTB is authorized by §33.2-1529 of the Code of Virginia to make allocations from funds in the Toll Facilities Revolving Account of the Transportation Trust Fund to make a loan to a private operator to pay any cost of a qualifying transportation facility pursuant to the terms of a comprehensive or interim agreement entered into under the PPTA between a responsible public entity and a private operator.
- D. On September 27, 1996, the CTB, the Department, the Federal Highway Administration and the Federal Transit Administration entered into a Cooperative Agreement providing for the establishment of the Toll Facilities Revolving Account as a State Infrastructure Bank (the “SIB”) pursuant to section 350 of the National Highway System Designation Act of 1995 (the “NHS Act”), Public Law 104-59, 23 U.S.C. § 101 note, dedicated solely to providing loans and other forms of financial assistance consistent with the NHS Act and as permitted under State law.

- E. Pursuant to a Request for Proposal dated July 29, 2016 and Addenda issued on August 19, 2016 and September 12, 2016 (together the “RFP”), the Department selected the Developer as the Preferred Proposer (as defined in the RFP).
- F. Pursuant to the PPTA, the Department and the SIB Borrower have entered into a Comprehensive Agreement to develop, design, finance, build, operate and maintain the Transform 66 P3 Project in Virginia, dated as of [•] (the “Comprehensive Agreement”), in connection with the high occupancy/toll lanes (“Express Lanes”) and associated facilities and services along the I-66 corridor between U.S. Route 29 in Prince William County and Interstate 495 in Fairfax County (as more particularly described in the Comprehensive Agreement as the “Project”).
- G. Pursuant to Article 7 of the Comprehensive Agreement, SIB Borrower is solely responsible for obtaining and repaying each and every financing, at its own cost and risk without recourse to any State Party, necessary to develop, build, construct, maintain and operate the Project.
- H. To assist in financing certain costs of the Project, the CTB has authorized a loan (the “loan” or the “SIB Loan”) to be made from the Federal Subaccount of the Toll Facilities Revolving Account in the maximum principal amount of \$30,000,000, subject to the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable considerations and the mutual covenants hereinafter contained, the receipt and sufficiency or which are acknowledged by the parties, the parties agree as follows:

ARTICLE I
PURPOSE

Section 1.1 Purpose of Agreement. The purpose of the Agreement is to provide for the terms and conditions for making the Loan, the disbursement and application or use of the Loan proceeds and other matters related thereto.

Section 1.2 Rules of interpretation.

- a) The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.
- b) References in this instrument to this Agreement mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference

in this instrument. Any references to any covenant, condition, obligation and/or undertaking “herein,” “hereunder” or “pursuant hereto” (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. All references to Articles and Sections refer to the Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement or the Comprehensive Agreement, words which have well-known technical or construction industry meanings are used in this Agreement or the Comprehensive Agreement in accordance with such recognized meaning. All references to a subsection “above” or “below” refer to the denoted subsection within the Section in which the reference appears.

- c) Unless otherwise stated in this Agreement, all terms in this Agreement have the meaning set forth in the Comprehensive Agreement.
- d) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the SIB Borrower

SIB Borrower represents and warrants to the CTB as follows:

- (a) SIB Borrower has full right, power and authority to execute and deliver this Agreement, to perform its obligations under the Agreement and to carry out the tasks associated with the Work and the Project.
- (b) There are no pending or, to its knowledge, threatened suits or actions of any nature that may have a material adverse effect on its condition (financial or otherwise) or their ability to perform its obligations under this Agreement and there has been no material adverse change in its financial conditions as indicated in the SOQs, Conceptual Financial Proposals and in the SIB Borrower’s RFP response.

ARTICLE III

SIB LOAN

Section 3.1 SIB Loan. The CTB hereby agrees, upon the terms and conditions contained in this Agreement, to authorize the SIB Loan to be made to the SIB Borrower from funds deposited in the Federal Subaccount of the Toll Facilities Revolving Account in the Transportation Trust Fund in the maximum principal amount of \$30,000,000, for purposes of paying certain costs of the Project described in Section

3.4. The SIB Borrower's obligation to repay the SIB Loan shall be further evidenced by a Note in the form attached as Attachment 1. No interest shall accrue on the SIB Loan.

Section 3.2 Security.

(a) Grant of Security Interests. The SIB Borrower pledges and assigns to the CTB a first lien and security interest in and to the following (the "Collateral"): (i) the proceeds of the initial debt and equity issuances obtained at the first Financial Close Date (as defined by the Comprehensive Agreement) as security for the SIB Loan; (ii) all subcontracts entered into by the SIB Borrower in connection with the Early Work, all of which shall be assignable to the Department, without the necessity of the consent of the other parties to such contracts; and (iii) the balance in the Loan Account (as defined by Section 3.5 of this Agreement). The SIB Borrower agrees to execute and deliver to the CTB such further agreements and instruments necessary to perfect the security interests created by this Agreement as may be requested by the CTB. The SIB Borrower further agrees that it shall not otherwise encumber or permit any liens or claims upon the Collateral.

Section 3.3 Repayment. The entire principal of the SIB Loan shall be due and payable on the earliest to occur of the following: (i) the Financial Close Date (as defined by the Comprehensive Agreement), (ii) the occurrence of a default under this Agreement or the Comprehensive Agreement or (iii) on or before the terms outlined in Section 350(e)(7) of the National Highway Designation Act of 1995.

Section 3.4 Use of Proceeds. Proceeds of the SIB Loan shall be used only for payment of costs for Early Work, as described in and in accordance with Exhibit B-3 to the Comprehensive Agreement (the "Scope of Early Work") and Exhibit B-2 to the Comprehensive Agreement (the "Initial Baseline Schedule"), as these exhibits may be updated or amended by mutual agreement of the parties.

Section 3.5 Conditions Precedent to Disbursement of Loan Proceeds.

- (a) Requisition. The CTB shall have no obligation to authorize any disbursement of proceeds of the SIB Loan unless and until the SIB Borrower shall have satisfied all the conditions precedent and requirements for draws and set forth as follows:
- (i) the SIB Borrower is in compliance with all provisions of the Comprehensive Agreement related to the SIB Loan and funding for Early Work, including but not limited to Section 8.02 thereof; and
 - (ii) At a frequency not to exceed once a month, the SIB Borrower shall submit to the Department a completed requisition for disbursement of an amount of SIB Loan proceeds corresponding to costs incurred for the portion of Early Work for which payment is sought. The requisition must be signed by an authorized representative of the SIB Borrower. The requisition will contain all information called for by, and otherwise be substantially in the form of Exhibit Z (the "Early Work Payment Terms") to the Comprehensive Agreement.

(b) Disbursement.

- (i) Disbursement of SIB Loan proceeds shall not occur until the Department determines that the SIB Borrower has complied with all requisite conditions set out in Section 3.5(a).
- (ii) If the Department determines that any portion of the Disbursement Request is not eligible for funding pursuant hereto, the Department may disapprove the requested funds corresponding to such portion of the Disbursement Request. The Department will notify the Developer for the reasons of such disapproval; with the remaining approved and undisputed amount to be paid to the Developer within 30 Days after such approval. Any disapproved amounts will be available for payment in a subsequent Disbursement Request if the reasons for disapproval are remedied.
- (iii) In no event will disbursements of SIB Loan proceeds exceed an aggregated total of \$30,000,000.

Section 3.6 Not a Debt of the United States or the Commonwealth. In no event shall this Agreement or the SIB Loan be deemed to constitute a commitment, guarantee or obligation of the United States. In no event shall this Agreement or the SIB Loan be deemed a debt of the State, the CTB, the Department or any other agency, instrumentality or political subdivision of the State. Neither this Agreement nor the SIB Loan shall constitute or be deemed or interpreted to be a public debt within the meaning of Article X of the Virginia Constitution.

ARTICLE IV

COVENANTS

Section 4.1. Compliance with Federal Requirements. The SIB Borrower hereby covenants and agrees that so long as the SIB Loan is outstanding, the design and construction of the Project will comply with all Federal requirements that generally apply to projects under Title 23 to the extent applicable to the loan of federal funds under this Agreement for the purposes set forth in Section 3.4.

Section 4.2 Agreement to Repay. The SIB Loan will be limited recourse in nature and will be due and payable as required by Section 3.3. The SIB Borrower covenants and agrees to repay the SIB Loan from funds available for the Project as identified in this Agreement, the Comprehensive Agreement and the Project Financing Agreements.

Section 4.3 Initial Baseline Schedule.

(a) Completion Pursuant to Initial Baseline Schedule. The SIB Borrower shall make every good faith effort to cause the completion of components of the Early Work in accordance with the Initial Baseline Schedule. The SIB Borrower further agrees to fund, as needed, that portion of the funding necessary to accomplish the Early Work, in accordance with Section 8.02(e) of the Comprehensive Agreement.

(b) Monthly Progress Reports. The SIB Borrower shall submit to the Department, Monthly Progress Reports as required pursuant to the Comprehensive Agreement

4.4 Ownership of Early Work Product and Third Party Claims

(a) The provisions of the Comprehensive Agreement as applicable to Work Product shall apply to ownership of the Early Work Product and Third Party Claims.

ARTICLE V

DEFAULTS AND REMEDIES; TERMINATION

Section 5.1. Defaults and Remedies.

(a) Event of Default. An Event of Default shall be deemed to have occurred under this Agreement in the event of the occurrence of any of the conditions or events enumerated below:

(i) The SIB Borrower fails to perform any of its obligations under this Agreement, which failure continues for more than ten (10) business days following delivery of notice by the Department to the SIB Borrower of such failure; or

(ii) Any occurrence of a default or other means of termination as defined under Article 19 of the Comprehensive Agreement.

(b) Default Remedies. Upon the occurrence of an Event of Default that has not been fully cured within the specified timeframe, the CTB may elect, by delivery of notice to the SIB Borrower, to terminate this Agreement and to require immediate repayment of the SIB Loan in full subject to the provisions of Section 4.2 and/or to resort to any other available remedies, including those liabilities outlined in Section 20.04 of the Comprehensive Agreement.

Section 5.2 Consequences of Termination

In the event the CTB terminates this Agreement pursuant to Section 5.1, the SIB Borrower shall cease all further Early Work and, within ten (10) business days following delivery of notice of termination, the SIB Borrower: (i) shall wire to an account designated by the Department a sum equal to the outstanding amount of the SIB Loan.

ARTICLE VI

MISCELLANEOUS

Section 6.1. Term of the Agreement. This Agreement shall remain in full force and effect from the date hereof, until the first to occur of (i) such time as the SIB Loan shall have been fully paid and all other obligations due to the CTB and the Department hereunder have been paid or satisfied, or (ii) the end date of the effectiveness of this Agreement.

Section 6.2. Notices. Whenever under the provisions of this Agreement it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the provisions of Section 25.05 of the Comprehensive Agreement shall apply.

Section 6.3. Assignment. The SIB Borrower may not assign, convey, transfer, pledge, mortgage or otherwise encumber all or part or its rights or interests in or to this Agreement.

Section 6.4 Binding Effect. Subject to Section 6.3, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 6.5 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.6 No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligation of any of the parties to, any person that is not a party to this Agreement other than the Department.

Section 6.7 Governing Law and Venue. This Agreement shall be governed and construed in accordance with the provisions of the Comprehensive Agreement.

Section 6.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 6.9 Incorporation of Comprehensive Agreement Provisions. The parties agree that the provisions of the Comprehensive Agreement shall be deemed to apply to the Early Work and this Agreement and shall be deemed incorporated in this Agreement

Section 6.10 Amendments. This Agreement shall not be modified, amended, canceled or revoked without the prior written consent of the SIB Borrower and the CTB.

Section 6.11 Entire Agreement. This Agreement and other Project Agreements, as amended by this Agreement, constitute the entire and exclusive agreement between the parties relating to the specific matters covered herein and therein. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

COMMONWEALTH TRANSPORTATION BOARD

By: _____

Name: Charles Kilpatrick, PE

Title: Commissioner of Highways

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

I-66 EXPRESS MOBILITY PARTNERS LLC

By: _____

Name: _____

Title: Authorized Person

By: _____

Name: _____

Title: Authorized Person

ATTACHMENT 1

SIB LOAN NOTE

I-66 EXPRESS MOBILITY PARTNERS LLC

TRANSFORM 66 P3 PROJECT

[•], 2016

FOR VALUE RECEIVED, the undersigned, I-66 EXPRESS MOBILITY PARTNERS LLC (the “Obligor”) unconditionally, promises to pay to the order of the Commonwealth Transportation Board (“CTB”), at the offices of CTB at 1401 East Broad Street, Richmond, Virginia 23219 solely from the sources and as herein provided the sum of \$30,000,000 in immediately available funds.

This SIB Loan Note is made by Obligor pursuant to Section 3.1 of the SIB Loan Agreement dated as of **[•]** (the “SIB Loan Agreement”) by and among the CTB and Obligor and evidences the obligation of Obligor to repay the SIB Loan which has been made to it pursuant to the SIB Loan Agreement and to pay interest on the unpaid principal amount thereof as provided in the SIB Loan Agreement. All capitalized terms used herein which are defined in the SIB Loan Agreement shall have the same meanings herein as therein.

Obligor agrees that this Note shall be due and payable in the principal amount of \$30,000,000, as provided in Section 3.3 of the SIB Loan Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, I-66 EXPRESS MOBILITY PARTNERS LLC has caused this Note to be signed in its name by such person(s) authorized to do so by resolution of its sole member by his/her/their manual signature(s), and this Note to be dated the date set forth above.

I-66 EXPRESS MOBILITY PARTNERS LLC

By: _____

Name: _____

Title: Authorized Person

By: _____

Name: _____

Title: Authorized Person

ATTACHMENT 1

Schedule A

Date	Principal Advanced	Principal Balance	Date of Exchange or Satisfaction	Signature of authorized Department Representative

Exhibit A
AMENDED AND RESTATED
MEMORANDUM OF AGREEMENT
TRANSFORM66: INSIDE THE BELTWAY PROJECT

This Amended and Restated Memorandum of Agreement (“MOA”) is entered into on _____, 2016, between the Commonwealth Transportation Board (“CTB”), and the Virginia Department of Transportation (“VDOT”), both acting by and through the Commissioner of Highways, and the Northern Virginia Transportation Commission (“NVTC”) (collectively, the “Parties”).

RECITALS

WHEREAS, the CTB, VDOT, and the Virginia Department of Rail and Public Transportation (“DRPT”) have embarked upon a multimodal transportation program, Transform66, which seeks to fund and implement solutions to move more people in the Interstate 66 (“I-66”) corridor between Haymarket, Virginia and Route 29 in the Rosslyn area of Arlington County, Virginia; and

WHEREAS, the Transform66 program is composed of two distinct projects: (1) the Transform66: Inside the Beltway Project, which involves multimodal transportation improvements in the I-66 corridor beginning at the intersection of I-66 and I-495 (the “Beltway”) and ending at U.S. Route 29 in the Rosslyn area of Arlington County, Virginia (the “Transform66: Inside the Beltway Project” or the “Project”), and (2) the Transform66: Outside the Beltway Project, which involves multimodal transportation improvements in the I-66 corridor beginning at Haymarket, Virginia, and ending at the Beltway; and

WHEREAS, the goals of the Transform66: Inside the Beltway Project are to (1) move more people; (2) enhance transportation connectivity; (3) improve transit service; (4) reduce roadway congestion; and (5) increase travel options (collectively, the “Improvement Goals”), all of which will benefit the users of the portion of I-66 beginning at the Beltway and ending at U.S. Route 29 in the Rosslyn area of Arlington County, Virginia (the “Facility”); and

WHEREAS, the Project will facilitate implementation of recommendations from VDOT’s June 2012 *Final Report of the I-66 Multimodal Study Inside the Beltway*, and the further refinements found in the *August 2013 Supplemental Report*, as well as recommendations

32 from DRPT's 2009 Transportation Demand Management/Transit Report (collectively, the
33 "Commonwealth Reports"), and projects in the region's constrained long range plan, as such
34 plan may be updated from time to time, including but not limited to multimodal transportation
35 improvements to the roadways and associated transportation and transit facilities in the vicinity
36 of the Facility ("Components") as described in the aforesaid VDOT and DRPT reports and
37 depicted in the diagram attached hereto and incorporated herein as Exhibit 1 (such area together
38 with the Facility, the "Corridor"); and

39 WHEREAS, the Transform66: Inside the Beltway Project is intended to achieve the
40 Improvement Goals by (1) converting the existing Facility to a tolled facility with dynamic
41 tolling during the peak periods; (2) allowing mass transit and commuter buses to ride free at all
42 times; (3) permitting HOV-2 vehicles to ride free at all times until the later of 2020 or until any
43 increase to HOV-3 occupancy requirements for HOV lanes of I-66 outside the Beltway; (4)
44 thereafter permitting HOV-3 vehicles to ride free at all times; (5) improving transit services; and
45 (6) improving the Facility, including widening of I-66 eastbound from two lanes to three lanes
46 between Exit 67 at the Dulles Connector Road ("Exit 67") and Exit 71, the Fairfax Drive/Glebe
47 Road exit ("Exit 71"), all subject to the conditions provided herein; and

48 WHEREAS, the multimodal transportation Components in the Transform66: Inside the
49 Beltway Project must meet the criteria enunciated in this MOA; and

50 WHEREAS, VDOT, on behalf of the CTB, will control and manage tolling on the
51 Facility, with the toll revenues being utilized and distributed according to this MOA, to support
52 the tolling operations and tolling maintenance of the Facility, and to fund Components selected
53 by NVTC and approved by the CTB for the Project, designed specifically to attain the
54 Improvement Goals; and

55 WHEREAS, the CTB intends to finance the widening of the Facility eastbound between
56 Exits 67 and 71 from funds of the Commonwealth other than toll revenues of the Facility; and

57 WHEREAS, the CTB desires to delegate to NVTC the authority to select and administer
58 the implementation of Components designed specifically to attain the Improvement Goals to be
59 financed in whole or in part from the portion of the toll revenues of the Facility transferred to
60 NVTC as provided in this MOA;

61 WHEREAS, such delegation to NVTC shall not constitute approval by NVTC of the
62 Commonwealth's actions to impose tolling along the Facility; and,

63 WHEREAS, the Parties initially memorialized their agreement regarding the allocation
64 and expenditure of certain toll revenue arising from travel on the Facility, the criteria for use of
65 toll revenue to implement Components and the relationship between the Parties in a
66 Memorandum of Agreement dated January 5, 2016, and now wish to amend and restate that
67 agreement to reflect the time frame in which the eastbound widening of the Facility will occur
68 and the funding to be used therefor, as well as other amendments related to use of toll revenue,
69 duration of tolling and debt financing by NVTC to fund Components.

70 NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants and
71 agreements contained herein, and the mutual benefit to the Parties of attaining the Improvement
72 Goals, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

73 **I. Nature of the Parties’ Interest under This MOA**

74 This MOA provides for the transfer to and use by NVTC of specified funds collected
75 from the CTB’s tolling of the Facility, as allowed by law and according to the terms of this
76 MOA, for the selection and administration of Components to attain the Improvement Goals.
77 This MOA is specifically subject to, and is governed by applicable state and federal laws
78 concerning the allowable use of tolls, including but not limited to § 33.2-309 of the *Code of*
79 *Virginia* (1950), as amended (“Virginia Code”), 23 U.S.C. §§ 129 and 166 and the terms of any
80 agreement by and between the Federal Highway Administration (“FHWA”) and VDOT that may
81 be required in order to toll the Facility.

82 This MOA does not grant NVTC any authority over I-66, the tolling of I-66, or any other
83 roadways in the I-66 corridor. It also does not address toll revenues that may be derived from
84 the tolling of I-66 outside the Beltway. It also does not obligate VDOT or the CTB to provide
85 any specified amount of revenues beyond the toll revenues generated from the Facility, and
86 allocated by the CTB in compliance with Virginia Code § 33.2-309 as provided in this MOA, all
87 subject to appropriation by the General Assembly.

88 **II. Basic Agreement; Roles and Responsibilities**

- 89 A. VDOT and the CTB shall have the following roles and responsibilities:
- 90 **1. Design and Construction of Dynamic Tolling Operation on I-66 Inside the**
 - 91 **Beltway.** VDOT shall be responsible for the design and construction of all
 - 92 improvements and facilities to convert the existing Facility to a dynamic tolled
 - 93 operation (the "Conversion"). Funding to accomplish this Conversion will be

94 advanced from the Toll Facilities Revolving Account pursuant to Virginia Code §
95 33.2-1529 and repaid out of toll revenues collected from the Facility.

96 **2. Toll Collection and Establishment.** Subject to the necessary approvals of the
97 CTB and FHWA, and in accordance with law, VDOT and the CTB, as applicable,
98 shall establish, charge, modify and collect tolls throughout the term of this MOA
99 for vehicles using the Facility during peak hours in the peak direction, which shall
100 include dynamic pricing to ensure travel speeds in accordance with 23 U.S.C. §
101 166. The CTB reserves the right to make any changes to the tolling of the Facility
102 that increase the hours or directions of tolling and any toll revenue generated from
103 any change shall be governed by this MOA.

104 **3. HOV Requirements.** In accordance with the long range plan adopted by the
105 National Capital Region Transportation Planning Board, VDOT and the CTB
106 shall take the required actions necessary to change the Project HOV-2 designation
107 to HOV-3 by the later of January 2, 2020, or upon any increase to HOV-3
108 occupancy requirements for HOV lanes of I-66 outside the Beltway

109 **4. Use of Toll Revenues.** VDOT shall include in the annual budget presented to
110 the CTB for approval in June of each year, an estimate of the toll revenues
111 anticipated to be collected in the upcoming year and the proposed allocation of all
112 such toll revenues, including to pay any Debt Service (as defined below) in the
113 upcoming year. Allocation of these toll revenues shall be provided as follows
114 with the intent that after the allocations provided for in (a), (b), (c), and (d) all
115 remaining toll revenues shall be made available for Components selected by
116 NVTC in accordance with (e):

117 (a) reasonable costs and expenses of tolling operation and tolling
118 maintenance, including reasonable reserves for major maintenance of
119 tolling operations of the Facility;

120 (b) repayments to the Toll Facilities Revolving Account (i) for any
121 allocation advanced from the Toll Facilities Revolving Account for the
122 Conversion and (ii) the initial allocation to NVTC of \$10 million for the
123 Project described in I.C., with a repayment schedule for the Conversion
124 allocation and the initial allocation to NVTC (x) of not less than 25 years

125 from the first date of disbursement, (y) reflecting a 0% interest rate, and
126 (z) annually committing not more than six percent of anticipated toll
127 revenues to such repayment; provided, however, if toll revenues remaining
128 after the allocation described above in II.A.4(a) is below two times the
129 amount budgeted for allocation described below in II.A.4(c), then the
130 repayment to the Toll Facilities Revolving Account shall not exceed an
131 amount that would result in the toll revenues remaining after the
132 allocations described in II.A.4(a) and II.A.4(b) of less than one and a half
133 times the amount budgeted for allocation in II.A.4(c);

134 (c) Debt Service on NVTC Debt (as defined below) incurred to finance
135 Components selected by NVTC and approved by the CTB under the terms
136 of this MOA: provided that the annual amount of the Debt Service
137 payments does not exceed 60 percent of toll revenues remaining after the
138 allocations described above in II.A.4(a) and (b); provided further that no
139 NVTC Debt may be incurred unless the toll revenues remaining after the
140 allocation described above in II.A.4(a) in the fiscal year prior to the fiscal
141 year the NVTC Debt will be incurred must be at least two times the
142 maximum annual scheduled Debt Service on all outstanding NVTC Debt
143 and the proposed NVTC Debt in the then-current or any future fiscal year;

144 (d) repayment to the Toll Facilities Revolving Account not paid in any
145 prior and current year in accordance with II.A.4(b) as a result of not
146 meeting the coverage requirements specified in II.A.4(b);

147 (e) for Components selected by NVTC and approved by the CTB under
148 the terms of this MOA, and any implementation costs related to
149 Components as well as operating costs related to Components, provided
150 that in any fiscal year not more than 50 percent of the average amount of
151 toll revenues remaining after the allocation described above in II.A.4(a),
152 (b), (c) and (d) over the preceding five (5) fiscal year period may be used
153 for Component operating costs, however: Operating costs may not be
154 provided for any Component for more than eight (8) years subject to the
155 following maximum amounts: (i) up to 100% for the first five (5) years;

156 (ii) up to 75% for year six (6); (iii) up to 50% for year seven (7); and (iv)
157 up to 25% for year eight (8).

158 "NVTC Debt" means (i) any bonds, promissory notes, loan, financing or credit
159 agreements under which NVTC is obligated to repay money borrowed to finance
160 a Component, (ii) all installment sales, conditional sales and capital lease
161 obligations incurred or assumed by NVTC to finance a Component. The term
162 "incurred" as used in the MOA with respect to NVTC Debt shall also mean issued
163 or assumed. "Debt Service" means for a fiscal year or other measurement period
164 the aggregate of the payments to be made in respect of the principal of and
165 interest on NVTC Debt and the associated financing or trustee's fees or charges
166 and required deposits to any reserve funds.

167 **5. Approval of Components of the Project.** Provided NVTC complies with the
168 criteria established herein for selection of Components, and subject to II.A.4.
169 above, the CTB shall consider, approve, and allocate toll revenue funding for such
170 Components.

171 **6. Suspension of Tolling.** VDOT shall, in its sole discretion, and in accordance
172 with Virginia Code § 33.2-613(B) as amended, have the right to order immediate
173 suspension of Facility tolling in the event I-66 is required for use as an emergency
174 mass evacuation route. VDOT shall lift any such emergency toll suspension as
175 soon as the need for emergency mass evacuation ceases. Neither the
176 Commonwealth of Virginia, the CTB, nor VDOT shall have any liability to
177 NVTC for any loss of toll revenues or any increase in costs and expenses
178 attributable to any such toll suspension to facilitate emergency mass evacuation.

179 If I-66 is designated for immediate use as any alternate route for diversion of
180 traffic from another highway or is temporarily closed to all lanes in one or both
181 directions due to a significant incident or emergency, VDOT shall have the right
182 to order the immediate suspension of tolling in the direction(s) of any diversion.
183 Neither the Commonwealth of Virginia, the CTB, nor VDOT shall have any
184 liability to NVTC for the loss of any toll revenues or any increase in costs and
185 expenses attributable to the hours the toll suspension is in effect.

186 **7. Duration of Tolling:** Nothing in this MOA shall obligate or be construed as
187 obligating VDOT to continue or cease tolls after the end of this MOA's term
188 except as provided in III and IV.

189 **8. Operation and Maintenance of I-66.** Except as set forth in II.A.4(a), VDOT
190 shall throughout the term of this MOA, maintain and operate, or cause others to
191 maintain and operate the Facility from Highway Maintenance and Operating Fund
192 revenues.

193 **9. Annual Budget Process.** In preparation for the CTB's annual budget process,
194 VDOT shall estimate toll revenues and anticipated allocation of the estimated toll
195 revenues for the upcoming six-year period presented in the Six Year Financial
196 Plan and Six Year Improvement Program and provide said estimates to NVTC not
197 later than January 30th of each year.

198 The CTB agrees to do the following:

199 (a) Each year and in accordance with the schedule of the Department of
200 Planning and Budget of the Commonwealth, the CTB or the CTB's
201 designee shall request that the Governor include in the budget to be
202 delivered to the General Assembly during their next session a provision
203 that there be appropriated from the revenues expected from the Facility
204 amounts sufficient to pay the budgeted amount of funds expected to be
205 provided to NVTC during the next succeeding fiscal year or biennial
206 period, as applicable.

207 (b) The CTB shall use its best efforts to have (i) the Governor include, in
208 each biennial or any supplemental budget that is presented to the General
209 Assembly, the amounts described in (a) above and (ii) the General
210 Assembly deposit, appropriate and reappropriate, as applicable, such
211 amounts.

212 (c) The CTB shall take all actions necessary to have payments which are
213 made pursuant to (b) above charged against the proper appropriation made
214 by the General Assembly.

215 (d) The CTB shall notify the NVTC promptly upon becoming aware of
216 any failure by the General Assembly to appropriate for the next

217 succeeding fiscal year or biennial period, as applicable, amounts sufficient
218 to pay the budgeted amounts due NVTC.

219 **10. Quarterly Payments.** VDOT shall provide quarterly payments of actual toll
220 revenues to NVTC of those toll revenues allocated pursuant to II.A.4(c) and (e) of
221 this MOA by the 15th day of each quarter. The quarterly payment shall be equal
222 to the lesser of 25 percent of the amount appropriated and allocated under
223 II.A.4(c) and (e), or the toll revenues available to make such payment. To the
224 extent VDOT is unable in any quarter to provide the full 25 percent of the amount
225 appropriated and allocated, the VDOT shall make up the deficiency in subsequent
226 quarters to the extent toll revenues are available to do so after the allocations are
227 made pursuant to II.A.4(a), (b) and (d). Neither VDOT nor DRPT shall deduct
228 from such quarterly payments any administrative fee or other charges. At
229 NVTC's request, VDOT may elect to provide monthly payments of the actual toll
230 revenues to NVTC. If VDOT so elects, the payments shall be made on a monthly
231 basis with the necessary changes to the foregoing in points of detail.

232 **11. Reports.** VDOT shall provide quarterly reports documenting the actual
233 revenues and distributions of said toll revenues to NVTC.

234 B. NVTC shall have the following roles and responsibilities:

235 **1. Coordination and Development of Transportation Plan; Use of Toll**
236 **Revenues; Compliance with Laws Limiting Use.** As part of the Six Year
237 Improvement Program presented to the CTB for approval in June of each year,
238 NVTC shall submit to the CTB, a list of Components proposed to be funded in
239 whole or in part with toll revenues from the Facility. Such Components shall be
240 selected by NVTC in accordance with a process established by NVTC pursuant to
241 this MOA. Such Components shall be separately identified with supporting
242 documentation as set forth in Exhibit 2. The CTB shall consider and approve the
243 Components selected by NVTC, and allocate toll revenues for them, pursuant to
244 II.A.4, provided the Components meet the criteria below and are selected in
245 accordance with NVTC's selection process described in II.B.2. Each proposed
246 Component must meet each of the following five criteria:

247 (a) Must benefit the toll-paying users of the Facility;

- 248 (b) Must have the capacity to attain one or more of the Improvement
249 Goals;
- 250 (c) Must be one of the following multimodal transportation improvements
251 serving the Corridor:
- 252 i. New or enhanced local and commuter bus service, including
253 capital and operating expenses (e.g., fuel, tires, maintenance, labor
254 and insurance), subject to the limitations in IIA.4.(e), and transit
255 priority improvements;
 - 256 ii. Vanpool, and formal and informal carpooling programs and
257 assistance;
 - 258 iii. Capital improvements for Washington Metropolitan Area
259 Transit Authority rail and bus service, including capital and
260 operating expenses, subject to the limitations in II.A.4(e), and
261 improved access to Metrorail stations and Metrobus stops;
 - 262 iv. Park and ride lot(s) and access or improved access thereto;
 - 263 v. Roadway improvements to address impacts from the dynamic
264 tolling of the Facility on roadways in the Corridor (including but
265 not limited to Routes 7, 29, 50, and 309, and Washington
266 Boulevard, Wilson Boulevard, and Westmoreland Street);
 - 267 vii. Roadway operational improvements in the Corridor;
 - 268 viii. Transportation Systems Management and Operations as
269 defined in 23 U.S.C. § 101(a)(30) on December 1, 2015; and
 - 270 ix. Projects identified in the Commonwealth Reports or projects in
271 the region's constrained long range plan, as such plan may be
272 updated from time to time.
- 273 (d) For non-debt financed Components, must demonstrate the ability to
274 obligate the toll revenues to the cost of the Component within two fiscal
275 years and to expend the toll revenues within five fiscal years of the fiscal
276 year in which the funds are allocated by the CTB except to the extent to

277 which the CTB approves an extension of such timeframes upon the
278 request of NVTC; and

279 (e) Must demonstrate that the Components will be in compliance with all
280 applicable laws, rules and regulations and have received or will receive all
281 required regulatory approvals.

282 Under no circumstances shall the aforesaid criteria be modified except by
283 written amendment to this MOA agreed to in writing by the Parties.

284 NVTC shall have no right to use the toll revenues to pay any debt,
285 obligation or liability unrelated to the Project, or for any purposes other
286 than those specified in this MOA.

287 NVTC understands and agrees that in the selection and implementation of
288 Components using the toll revenues, it is bound by the provisions of
289 Virginia Code § 33.2-309 as well as all other state and federal laws and
290 regulations that limit the use of toll revenues, and toll revenues from
291 interstate highways specifically. Accordingly, NVTC agrees to provide
292 VDOT access to all records relating to Components and the use of the toll
293 revenues. Further, NVTC will provide all such records for inspection and
294 audit by VDOT, DRPT, and federal agencies, including but not limited to
295 the United States Department of Transportation, the Federal Highway
296 Administration, and the Federal Transit Administration, or their designees,
297 upon reasonable notice at all times during the term of this MOA.

298 NVTC agrees to promptly furnish to VDOT and DRPT copies of all
299 reports and notices it delivers to bondholders or other credit providers or
300 any trustee relating to the use of the toll revenues.

301 **2. Project Component Selection Process:** Any Component to be proposed for
302 CTB approval shall be selected by NVTC through a process established by
303 NVTC. Such process shall include the following three elements:

304 (a) A request to submit proposed Components issued by NVTC to all
305 jurisdictions and other public transportation providers in Planning District
306 8;

307 (b) The evaluation, prioritization, and selection of proposed Components
308 by NVTC, and the submission of selected Components by NVTC to the
309 CTB; and

310 (c) A public hearing held by NVTC prior to NVTC's selection of
311 Components for submission to the CTB.

312 The CTB shall consider and approve the Components selected by NVTC
313 and, subject to appropriation by the General Assembly, shall allocate toll
314 revenues for such Components, pursuant to II.A.4, provided the
315 Components meet the criteria in II.B.1. As part of the list of Components
316 submitted to the CTB for consideration and approval and allocation of toll
317 revenues, NVTC may submit for CTB consideration and approval
318 additional Components that exceed the annual estimated toll revenues for
319 that year. Provided those Components meet the criteria in II.B.1, the CTB
320 shall consider and approve such additional Components and, pursuant to
321 II.A.4 and subject to any other approvals that may be necessary, approve
322 the allocation of toll revenues for such Components up to the amount of
323 actual toll revenues for that year that are sufficient to fund one or more of
324 those additional Components.

325 **3. Financing of Components of the Project.** NVTC may use toll revenues
326 appropriated by the General Assembly and allocated by the CTB to NVTC to
327 support the financing of approved Components, however, the amount of annual
328 Debt Service to be paid from toll revenues shall be limited as set forth in
329 II.A.4(c).

330 NVTC is solely responsible for obtaining and repaying all NVTC Debt at
331 its own cost and risk, and without recourse to the Commonwealth of Virginia, the
332 CTB, VDOT, and/or DRPT, for any Component for which toll revenues have
333 been provided to NVTC under this MOA.

334 The Commonwealth of Virginia, the CTB, VDOT, and DRPT have no
335 liability whatsoever for payment of any Debt Service on any NVTC Debt incurred
336 by NVTC in connection with this MOA, or any other sum secured by or accruing
337 under any financing document entered into by NVTC as a result of this MOA. No

338 document evidencing or associated with any NVTC Debt for the financing of any
339 Component shall contain any provisions whereby a trustee would be entitled to
340 seek any damages or other amounts from the Commonwealth of Virginia, CTB, or
341 VDOT due to any breach of this MOA.

342 Each bond, promissory note or other document evidencing NVTC Debt
343 must include a conspicuous recital on its face stating: (a) payment of the principal
344 and interest does not constitute a claim against VDOT's interest in I-66 or any
345 part thereof; (b) payment is not an obligation of the Commonwealth of Virginia,
346 VDOT, DRPT, the CTB, or any other agency, instrumentality or political
347 subdivision of the Commonwealth of Virginia moral or otherwise; and (c) neither
348 the full faith and credit nor the taxing power of the Commonwealth of Virginia,
349 VDOT, DRPT, the CTB, or any other agency, instrumentality, or political
350 subdivision of the Commonwealth of Virginia and/or its member jurisdictions, is
351 pledged to the payment of the principal and interest on such NVTC Debt.

352 NVTC shall not enter into agreements with holders of any NVTC Debt
353 incurred by NVTC or its member jurisdictions that contain a pledge or claim on
354 the toll revenues or NVTC's interest in the toll revenue under this MOA except
355 such debt issued for Components. If, despite such efforts, toll revenues are
356 applied to satisfy any debt of NVTC that is not properly payable out of toll
357 revenues in accordance with this MOA and state and federal law, NVTC shall
358 reimburse in full any such toll revenues or accounts from any other available
359 revenues other than the toll revenues.

360 **4. Monitoring:** NVTC shall provide an annual report to the CTB within 120 days
361 of the end of NVTC's fiscal year. The report shall contain at a minimum the
362 following three items:

- 363 (a) A description of the Components selected for funding in the past fiscal
364 year and the benefits that were the basis for evaluation and selection of
365 each such Component;
- 366 (b) Starting five years after the effective date of this MOA, a review of the
367 Components funded in past fiscal years describing the degree to which the
368 expected benefits were realized or are being realized; and,

369 (c) In the event that a funded Component is not providing substantially
370 similar benefits to those that were the basis for evaluation and selection of
371 the Component, the report shall evaluate the viability of a plan to either,
372 (i) modify such Component; or (ii) redeploy assets in such Component to
373 other eligible Components that are expected to provide greater benefits.

374 **5. Accounting.** NVTC shall receive and manage, as a fiduciary, the toll revenue
375 appropriated by the General Assembly, allocated by the CTB, and distributed to it
376 by VDOT. NVTC shall maintain all funds and accounts containing said toll
377 revenues from this MOA separate and apart from all other funds and accounts of
378 NVTC. The revenues and expenses relating to the use of the toll revenues, and
379 the Components undertaken with the toll revenues from this MOA, shall not be
380 commingled with any other funds, accounts, venues, or expenses of NVTC.
381 NVTC shall create and maintain for the term of this MOA segregated accounting
382 and financial reporting for the Components financed by toll revenues provided by
383 this MOA and reported as a separate fund in NVTC’s financial statements, and
384 such accounting shall constitute a proprietary “special revenue fund” as defined
385 by the Governmental Accounting Standards Board. Expenditures will be
386 recorded and reported for each Component.

387 All toll revenues provided to NVTC pursuant to the terms of this MOA
388 shall be held by NVTC in accounts with a financial institution under an
389 arrangement that, to the extent reasonably practicable, preclude such funds from
390 being an asset subject to the claims of creditors of NVTC, other than a holder of
391 NVTC Debt, or other claims related to the Components undertaken in accordance
392 with this MOA.

393 **6. Quality Management.** NVTC shall be responsible for all quality assurance
394 and quality control activities necessary to properly manage the funding of the
395 development, design, construction, purchases, acquisition, operation and
396 maintenance of any Component it has undertaken pursuant to this MOA, and will
397 develop and provide to VDOT and DRPT for information purposes its manuals,
398 policies, and procedures to accomplish the same.

399 **7. Public Information.** During the term of this MOA, NVTC shall provide
400 information to the public concerning the Components it has undertaken, including
401 any public meetings and public hearing that may be required by law or regulation.

402 **8. Regulatory Approvals.** NVTC shall obtain, keep in effect, maintain, and
403 comply with all regulatory approvals necessary for funding the development,
404 operation, and maintenance of any Components funded under this MOA.

405 **9. Contracting Practices.** During the term of this MOA, NVTC covenants and
406 agrees, that with respect to the Components it has undertaken, it will comply with
407 all requirements of state and federal laws relating to anti-discrimination, including
408 but not limited to Titles VI and VII of the Civil Rights Act of 1964, as amended,
409 and the Americans with Disabilities Act, and shall contractually require the same
410 of all contractors, subcontractors, vendors, and recipients of any funding. NVTC
411 recognizes the importance of the participation of minority, women-owned and
412 small businesses through the federal and local Disadvantaged Business Enterprise
413 programs and will abide by such programs in implementing Components.

414 NVTC shall comply with all applicable federal requirements, including
415 those applicable to highways that are part of the National Highway System.

416 **10. Insurance and Indemnity by Contractors.** NVTC shall include the
417 Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers,
418 employees and agents, as additional insureds on NVTC's insurance policies so
419 that they are protected from and against any losses actually suffered or incurred,
420 except for losses to the extent caused by the negligence or willful misconduct of
421 such entity or person, from third party claims that are directly related to or arise
422 out of: (a) any failure by NVTC to comply with, to observe or to perform in any
423 material respect any of the covenants, obligations, agreements, terms or
424 conditions in this MOA, or any breach by NVTC of its representations or
425 warranties in this MOA; (b) any actual or willful misconduct or negligence of
426 NVTC, its employees or agents in direct connection with the Project or any
427 related Components; (c) any actual or alleged patent or copyright infringement or
428 other actual or alleged improper appropriation or use of trade secrets, patents,
429 proprietary information, know-how, trademarked or service-marked materials,

430 equipment devices or processes, copyright rights or inventions by NVTC in direct
431 connection with the Project or; (d) inverse condemnation, trespass, nuisance or
432 similar taking of or harm to real property committed or caused by NVTC, its
433 employees or agents in direct connection with the Project; or (e) any assumed
434 liabilities. NVTC shall contractually require its contractors, subcontractors,
435 vendors, and others working or performing services related to any Component it
436 has funded to indemnify the Commonwealth of Virginia, the CTB, VDOT,
437 DRPT, and their officers, employees and agents from the same losses.

438 All insurance purchased by NVTC or its contractors pursuant to this
439 section shall name the Commonwealth of Virginia, the CTB, VDOT, DRPT, and
440 their officers, employees and agents as additional insureds.

441 This provision shall survive the expiration or earlier termination of this
442 MOA.

443 In the event any third-party claim to which this section applies is asserted
444 in writing against the Commonwealth, the CTB, VDOT, DRPT, or their officers,
445 employees, and agents, VDOT will as promptly as practicable notify NVTC in
446 writing of such claim, which shall include a copy and any related correspondence
447 or documentation from the third party asserting the claim. However, any failure
448 to give such prompt notice shall not constitute a waiver of any rights of VDOT
449 unless such failure limits or precludes the availability of those rights.

450 **C. Initial Multimodal Transportation Improvements.** NVTC shall undertake a
451 Component selection process upon execution of this MOA, and submit to the CTB a list
452 of Components for an advanced allocation of funding in the amount of \$10 million
453 (which shall be provided upon commencement of construction of the dynamic tolling of
454 the Facility as provided in II.A.1, and shall be repaid as specified in II.A.4). Components
455 shall be multimodal transportation improvements that meet the criteria set forth in II.B.1
456 and are capable of being obligated not later than at the time tolling begins on the Facility.
457 In the event litigation is filed challenging the implementation of the Project, or a
458 Component of the Project, prior to the initiation of tolling, or in the event any other action
459 prohibits or restricts the ability to toll the Facility, then the CTB may withhold this
460 funding until such time that the litigation or other event or action is resolved in a manner

461 that allows the Project to be implemented. NVTC may choose to expend other funds after
462 the execution of this MOA for Components identified through the selection process
463 described in this MOA prior to the commencement of construction. Any such
464 expenditures are at NVTC's risk but shall be reimbursable from the advanced allocation
465 identified in this paragraph provided the expenditures otherwise comply with the
466 provisions of the MOA.

467 **D. Widening and Related Improvements to I-66.** VDOT will proceed with plans to
468 widen the eastbound lanes of the Facility from two lanes to three lanes between the
469 Dulles Connector Road and Exit 71.

470 The design for the widening shall be limited to increasing the number of
471 eastbound lanes of the Facility from two lanes to three lanes consistent with an approved
472 environmental assessment conducted pursuant to the National Environmental Policy Act,
473 and other laws and regulations applicable to the widening, and shall apply the principals
474 of Context Sensitive Solutions as described in FHWA's Publication FHWA-HEP-07-014
475 as follows:

- 476 • Avoid, minimize or mitigate impacts to the parks, stream corridors, and
477 vegetation along the corridor and within the right-of-way;
- 478 • Avoid, minimize or mitigate impacts to the W&OD Trail and the Custis
479 Trail;
- 480 • Reduce the cost of this component of the Project; and
- 481 • Avoid, minimize or mitigate the need for acquisition of additional right-
482 of-way.

483 **III. Term.** Unless this MOA is otherwise terminated in accordance with VII, the term of this
484 MOA shall commence on the date last signed by the Parties ("the Effective Date") and shall
485 expire on the 40th anniversary of the Effective Date subject to the provisions of IV.

486 **IV. Debt Financing:** NVTC shall not incur any NVTC Debt that is dependent on toll
487 revenue from the Project and which matures or extends beyond the 40th anniversary of the
488 Effective Date. If this MOA is terminated in accordance with VII prior to the 40th Anniversary
489 of the Effective Date, and there is outstanding NVTC Debt for which toll revenues has been
490 pledged to pay Debt Service or there are pay-go Components which are yet to be completed, and
further provided the

491 use of toll revenues to pay Debt Service or the costs of the pay-go Components is not a misuse of
492 toll revenues under this MOA and the cause or basis of the termination, then, subject to CTB
493 approval, tolls shall continue to be imposed on the Facility and toll revenues shall continue to be
494 allocated in accordance with II.A.4(a), (b), (c), (d) and (e) to pay Debt Service or to complete the
495 pay-go Components. The CTB will not approve funding for pay-go Components for more than
496 two fiscal years past the termination of the MOA in accordance with VII prior to the 40th
497 Anniversary of the effective Date.

498 **V. Entire Agreement.** This MOA constitutes the entire and exclusive agreement between the
499 Parties relating to the specific matters covered. All prior written, and prior or contemporaneous
500 verbal agreements, understandings, and representations are superseded, revoked, and rendered
501 ineffective for any purpose.

502 **VI. Amendment.** This MOA may be altered, amended or revoked only by an instrument in
503 writing signed by all Parties or their permitted successor(s) or assignee(s).

504 **VII. Termination.** This MOA may be terminated (a) by a Party for material non-compliance
505 with this MOA which has not either been remedied, or a remedy commenced and diligently
506 pursued thereafter, within 120 days after written notice from the other Party, and (b) by written
507 agreement of the Parties. However, prior to any termination, the Parties shall meet and confer to
508 make a good faith attempt to resolve any non-compliance issues as follows. Within 30 days of
509 the notice, the Commissioner of Highways and the NVTC Executive Director shall meet to
510 discuss resolution of the non-compliance issues. If a resolution cannot be reached within 30
511 days, the Secretary of Transportation and the Chairman of NVTC shall meet within 30 days to
512 discuss resolution of the non-compliance issues. If a resolution cannot be agreed upon within 30
513 days, the termination shall be effective as set forth in the written notice and in accordance with
514 this MOA.

515 **VIII. Notices.** Notices shall be made in writing and shall not be effective for any purpose unless
516 and until actually received by the addressee or unless served personally, by independent
517 reputable overnight commercial courier, by facsimile transmission followed by a timely service
518 of the original, or by deposit in the United States mail, postage and fees fully prepaid, registered
519 or certified mail, with return receipt requested, addressed as follows:

520 **If to NVTC:**

521 Executive Director
522 Northern Virginia Transportation Commission
523 2300 Wilson Boulevard, Suite 620
524 Arlington, VA 22201

525 Fax:

526 **If to VDOT:**

527 Virginia Department of Transportation
528 1401 East Broad Street
529 Richmond, Virginia 23219

530 Attn: Commissioner of Highways

531 Fax: (804) 786-2940

532 *With a copy to:*

533 Office of the Attorney General

534 Chief, Transportation Section

535 202 North Ninth Street

536 Richmond, Virginia 23219

537 Fax: (804) 692-1647

538 Any Party may, by notice as specified above, in writing designate an additional or a
539 different entity or mailing address to which all such notices should be sent.

540 **VIII. Relationship of the Parties.** The relationship of NVTC to VDOT shall be one of an
541 independent contractor, not an agent, partner, lessee, joint venture, or employee.

542 **IX. No Third Party Beneficiaries.** Nothing contained in this MOA is intended or shall be
543 construed as creating or conferring any rights benefits or remedies upon or creating any
544 obligations of the Parties toward any person or entity not a party to this MOA .

545 **X. Governing Law.** This MOA shall be governed and construed in accordance with the laws of
546 the Commonwealth of Virginia.

547 **XI. Assignment.** This MOA may be assigned only with the written approval of the other Party.
548 In the event of an agreed assignment, there will be an amendment to this MOA to reflect the
549 change in Parties.

550 **XII. Survival.** If any provisions in this MOA are rendered obsolete or ineffective, the Parties
551 agree to negotiate in good faith appropriate amendments to, or replacement of such provisions, in

552 order to restore and carry out the original purposes to the extent practicable. If any provision is
553 rendered void or invalid, all remaining provisions shall survive.

554 **XII. Notice of Legal Proceedings.** The Parties agree to promptly notify each other if they
555 become aware of any claim or legal proceeding that could impact the program, projects, and
556 activities undertaken pursuant to this MOA.

557 **XIII. Construction of Agreement.** This MOA is intended by the Parties to be construed as a
558 whole, and indivisible, and its meaning is to be ascertained from the entire instrument. All parts
559 of the MOA are to be given effect with equal dignity, including but not limited to the recitals at
560 the beginning of this MOA, and all such parts, including the recitals, are to be given full force
561 and effect in construing this MOA. No provision of any recital shall be construed as being
562 controlled by, or having less force and effect, than any other part of this MOA because the
563 provision is set forth in a recital.

564 **XIV. No Personal Liability.** This Agreement shall not be construed as creating any personal
565 liability on the part of any officer, employee, or agent of the Parties; nor shall it be construed as
566 giving any rights or benefits to anyone other than the Parties.

567 **XV. No Waiver of Sovereign Immunity.** Nothing in this MOA shall be deemed a waiver of
568 sovereign immunity by any Party.

569 **XVI. Appropriations.** All obligations of the CTB to allocate toll revenues are subject to
570 appropriation by the Virginia General Assembly.

571

572 *This space intentionally left blank*

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576 In witness whereof, the Parties hereby cause this MOA to be executed, each by its duly
577 authorized officers, as of the date below.

578

579

COMMONWEALTH TRANSPORTATION BOARD

580

581

582

The Honorable Aubrey L. Layne, Jr
Secretary of Transportation

583

584

585

586

Date: _____

587

588

VIRGINIA DEPARTMENT OF TRANSPORTATION

589

590

Charles A. Kilpatrick, P.E.
Commissioner of Highways

591

592

593

594

Date: _____

595

596

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

597

598

Katherine A. Mattice
Acting Executive Director

599

600

601

602

Date: _____

603

604

605

606