



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

Agenda item # 5

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

MOTION

Made By: Ms. Hynes, Seconded By: Mr. Garczynski
Action: Motion Carried, Unanimously

Title: Approval of an Amended and Restated Memorandum of Agreement with the Northern Virginia Transportation Commission Relating to the Transform66: Inside the Beltway Project

WHEREAS, the Commonwealth and the Northern Virginia Transportation Commission (NVTC) previously negotiated the terms of an Memorandum of Agreement (MOA) between the Virginia Department of Transportation (VDOT), the Commonwealth Transportation Board (CTB) and the NVTC relating to Transform66: Inside the Beltway (Project), and

WHEREAS, the MOA, which was approved by the CTB on December 9, 2015 and entered into by the Parties in January, 2016, sets forth the responsibilities of the Parties relating to the Project and provides for, among other things, the transfer to and use by NVTC of specified funds collected from the CTB's/VDOT's tolling of the I-66 Inside the Beltway Facility (Facility) for certain Project Components; and

WHEREAS, there is a need to amend the MOA (i) to address the time frame and funding for the eastbound widening of the Facility, (ii) to document an increase in the allocation to NVTC from \$5 million to \$10 million, (iii) to modify terms relating to payback of borrowed funds to the Toll Facilities Revolving Account, (iv) to clarify the duration and nature of tolling for the Project, (v) to address debt financing by NVTC to fund certain Project Components, and (v) to address certain technical issues; and

WHEREAS, NVTC and VDOT have negotiated amendments to the MOA addressing the above referenced matters, which are reflected in the *Amended and Restated Memorandum of Agreement, Transform66: Inside the Beltway Project*, attached hereto as Exhibit A.

Resolution of the Commonwealth Transportation Board
Amended and Restated Memorandum of Agreement with the Northern Virginia Transportation
Commission Relating to the Transform66: Inside the Beltway Project
December 7, 2016
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NOW THEREFORE, BE IT RESOLVED by the Commonwealth Transportation Board, that the *Amended and Restated Memorandum of Agreement, Transform66: Inside the Beltway Project* (Amended and Restated MOA) attached hereto as Exhibit A is hereby approved and the Secretary and Commissioner of Highways are authorized to execute the Amended and Restated MOA on behalf of the Board and VDOT, respectively.

BE IT FURTHER RESOLVED, that the Secretary is authorized to make and/or approve such changes to the Amended and Restated MOA as he deems necessary, provided such changes do not change the overall substance of the terms of the Amended and Restated MOA.

####

CTB Decision Brief

VDOT I-66 Inside the Beltway: Amended and Restated Memorandum of Agreement with the Northern Virginia Transportation Commission December 5, 2016

Issue: The Virginia Department of Transportation (VDOT) is converting Interstate 66 (I-66) inside the Beltway to dynamically-priced toll lanes during rush hours in the peak directions along I-66 between the Capital Beltway (Interstate 495) in Fairfax County, Virginia and U.S. Route 29 in the Rosslyn area of Arlington County, Virginia. This conversion is one component of the overall Transform 66: Inside the Beltway program that also includes:

- Multimodal Improvements benefitting the users of this corridor
- Eastbound widening from two lanes to three lanes between the Dulles Connector Road (Route 267) and Exit 71 (Fairfax Drive)

In December 2015, the Commonwealth Transportation Board (CTB) approved a Memorandum of Agreement (MOA) between VDOT, the Commonwealth Transportation Board and the Northern Virginia Transportation Commission (NVTC) which set forth the responsibilities of the Parties relating to the Project and provided for, among other things, the transfer to and use by NVTC, specified funds collected from the CTB's/VDOT's tolling of the I-66 Inside the Beltway Facility (Facility), for certain Project Components. An Amended and Restated Memorandum of Agreement (ARMOA) between the Commonwealth and NVTC further defining how the toll revenues will be used is being proposed and requires approval of the CTB.

Facts: On December 9, 2015 the Commonwealth Transportation Board (CTB) approved and in January 2016, the Parties executed the 40-year MOA between the CTB, VDOT and NVTC relating to implementation of multimodal improvements within the corridor. NVTC will be responsible for the coordination and selection of the multimodal improvements, which will be presented to the CTB for the allocation of toll revenue. Once CTB allocates the toll revenue, NVTC will be responsible for the administration of funds to multimodal improvements. VDOT is responsible for implementing the construction of cost-effective infrastructure, equipment, and services to minimize the cost of collecting these tolls, and processing toll violations, in order to maximize the net monies available for multimodal improvements within the corridor.

This Amended and Restated MOA (Exhibit A) reflects the following changes to the January 2016 executed MOA:

- Advances the time frame in which the eastbound widening of the Facility will occur and the funding source to make the improvements
- Clarifies that travel speeds would be consistent with 23 USC Section 166
- Incorporates \$10 million advance from Toll Revolving Fund Account (TFRA) (previously \$5 million), to conform the document to CTB action/allocation on July 28, 2016.
- Defines repayment schedule to the Toll Facilities and Revolving Account (TFRA) as follows:
 - Not less than 25 years from the first date of disbursement at a 0% interest rate
 - Annually committing not more than six percent of anticipated toll revenues to such repayment;

CTB Decision Brief

VDOT I-66 Inside the Beltway: Amended and Restated Memorandum of Agreement with the Northern Virginia Transportation Commission

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- Adds stipulation that if the toll revenue remaining, after repayments to TFRA at the above rate, would be below 2 times the amount that NVTC budgeted for debt service incurred to finance Components (as outlined in II.A.(c)) then repayment to TFRA shall be an amount that would result in a remaining toll revenue amount (after O&M and TFRA payments) of not less than 1-½ times the amount budgeted for debt service on NVTC debt.
- NVTC can incur debt service not to exceed 60% (previously 40%) of the toll revenues remaining after paying O&M and TFRA payments AND before debt is issued, toll revenues available to NVTC must be at least 2 times the maximum annual debt service in the current or future years
- Increased Operating cost allocation for Components from 20% to 50% of the average toll revenues remaining after O&M, TFRA repayments and debt service.
- Added qualification on how long operating cost would be available for a Component, not to exceed 8 years and established maximum amounts as follows:
 - Up to 100% first 5 years
 - Up to 75% for year 6
 - Up to 50% for year 7
 - Up to 25% for year 8
- Clarifies CTB obligation to continue to collect and distribute tolls even if MOA is terminated
- Provides CTB agreement to take certain actions with regard to the state budget and/or appropriations of the General Assembly.
- Provides NVTC the flexibility to request monthly payments
- Provides VDOT the flexibility to make up quarterly payments for Component debt service and Component operations if the 25% of the amount appropriated/allocated by CTB is not available that quarter
- Further clarifies CTB role in the consideration and approval of multimodal Components selected by NVTC
- Sets out a new Debt Financing section, but retains original language included previously under 'Term'
- Eliminates language relating to evaluation of I-66 widening and clarifies that VDOT will proceed with plans to widen eastbound lanes of the Facility

Recommendations: The Virginia Department of Transportation (VDOT) recommends that the Commonwealth Transportation Board approve, and that the Secretary and the Commissioner of Highways, be authorized to execute, the Amended and Restated MOA with NVTC.

CTB Decision Brief

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Action Required by CTB: The *Code of Virginia* requires a majority vote of the CTB to approve and authorize execution of the ARMOA. The CTB will be presented with a resolution for a formal vote to approve and authorize execution of agree to execute the ARMOA.

Result, if Approved: The Amended and Restated MOA between the CTB, VDOT and NVTC relating to implementation of multimodal improvements within the corridor will be approved and the Commissioner and Secretary of Transportation, will be authorized to execute the ARMOA..

Options: Approve, Deny, or Defer.

Public Comments/Reactions: VDOT did not receive any public comment in response to the Amendment to the MOA.

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

This Amended and Restated Memorandum of Agreement (“MOA”) is entered into on _____, 20152016, between the Commonwealth Transportation Board (“CTB”), and the Virginia Department of Transportation (“VDOT”), both acting 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 Rosslyn 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 ~~are reasonably expected to 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

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32 WHEREAS, the Project will facilitate implementation of recommendations from
33 VDOT's June 2012 Final Report of the I-66 Multimodal Study Inside the Beltway, and the
34 further refinements found in the August 2013 Supplemental Report, as well as recommendations
35 from DRPT's 2009 Transportation Demand Management/Transit Report, - (collectively, the
36 "Commonwealth Reports"), and projects in the region's constrained long range plan, as such
37 plan may be updated from time to time, including but not limited to multimodal transportation
38 improvements to the roadways and associated transportation and transit facilities in the vicinity
39 of the Facility ("Components") as described in the aforesaid VDOT and DRPT reports and
40 depicted in the diagram attached hereto and incorporated hereto as Exhibit 1 (such area together
41 with the Facility, the "Corridor"); and

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

51 WHEREAS, the multimodal transportation Components in the Transform66: Inside the
52 Beltway Project meet the criteria enunciated in this MOA; and

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

58 WHEREAS, ~~subject to the conditions contained in this MOA,~~ the CTB intends to finance
59 the widening of the Facility eastbound between Exits 67 and 71 from funds of the
60 Commonwealth other than toll revenues of the Facility; and

61 WHEREAS, the CTB desires to delegate to NVTC the authority to select and administer
62 the implementation of Components designed specifically to attain the Improvement Goals to be

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63 | financed in whole or in part from the portion of the toll revenues of the Facility transferred to
64 | NVTC as provided in this MOA;

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

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

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

77 | **I. Nature of the Parties' Interest under this MOA**

78 | This MOA provides for the transfer to and use by NVTC of specified funds collected
79 | from the CTB's tolling of the Facility, as authorized by law and according to the terms of this
80 | MOA, for the selection and administration of Components to attain the Improvement Goals.
81 | This MOA is specifically subject to, and is governed by applicable state and federal laws
82 | concerning the allowability of tolls, including but not limited to § 33.2-309 of the *Code of*
83 | *Virginia* (1996 Code as amended, "Virginia Code"), 23 U.S.C. §§ 129 and 166 and the terms of any
84 | agreement by and between the Federal Highway Administration ("FHWA") and VDOT that may
85 | be required in order to toll the Facility.

86 | This MOA does not grant NVTC any authority over I-66, the tolling of I-66, or any other
87 | roadways in the I-66 corridor. It also does not address toll revenues that may be derived from
88 | the tolling of I-66 in the Beltway. It also does not obligate VDOT or the CTB to provide
89 | any specified amount of revenues beyond ~~those~~the toll revenues generated from the Facility,
90 | ~~which have been appropriated by the General Assembly, and~~ allocated by the CTB in compliance
91 | with Virginia Code § 33.2-309 as provided in this MOA, ~~and determined according~~all subject
92 | to the terms of this MOA appropriation by the General Assembly.

93 | **II. Basic Agreement; Roles and Responsibilities**

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94 A. VDOT and the CTB shall have the following roles and responsibilities:

95 **1. Design and Construction of Dynamic Tolling Operation on I-66 Inside the**

96 **Beltway.** VDOT shall be responsible for the design and construction of all
97 improvements and facilities to convert the existing Facility to a dynamic tolled
98 Facility-operation (the "Conversion"). Funding to accomplish this
99 conversion will be advanced from the Toll Facilities Revolving
100 Account pursuant to Virginia Code § 33.2-1529 and paid out of toll revenues
101 collected from ~~this~~the Facility.

102 **2. Toll Collection and Establishment.** Subject to the necessary approvals of the
103 CTB and FHWA, and in accordance with law, VDOT and the CTB, as applicable,
104 shall establish, charge, modify and collect tolls throughout the term of this MOA
105 for vehicles using the Facility during peak hours in the peak direction, which shall
106 include dynamic pricing consistent with FHWA Value Pricing Pilot Program to
107 ensure travel speeds in accordance with 23 U.S.C. § 166. The CTB reserves the
108 right to make any changes to the timing of the tolling of the Facility that increase the hours or
109 directions of tolling and any toll revenues generated from any change shall be
110 governed by law.

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

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

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124 (a) reasonable costs and expenses of tolling operation and tolling
125 maintenance, including reasonable reserves for major maintenance of
126 tolling operations of the Facility;

127 (b) repayments to the Toll Facilities Revolving Account (i) for any
128 ~~allocations~~ allocation advanced from the Toll Facilities Revolving Account
129 ~~to design for the Conversion and construct the dynamic tolling operation of~~
130 ~~the Facility and~~ (ii) the initial allocation ~~to NVTC~~ of \$510 million for the
131 Project ~~under the terms of the CTB resolution providing said allocations,~~
132 ~~which resolution shall provide for~~ described in I.I.C., with a repayment
133 schedule for the Conversion allocation and the initial allocation to NVTC
134 (x) of not less than 25 years from the first date of disbursement, (y)
135 reflecting a 0% interest rate and that (z), annually ~~commits~~ committing not
136 more than ~~four~~ six percent of ~~each~~ toll revenues to such repayment;
137 ~~provided, however, if toll revenues remaining after the allocation~~
138 ~~described above in I.I.A.4(a) is below two times the amount budgeted for~~
139 ~~allocation described below in I.I.A.4(c) NVTC financing payments~~),
140 ~~then the repayment to the Toll Facilities Revolving Account shall not~~
141 ~~exceed an amount that would result in the toll revenues remaining after the~~
142 ~~allocations described in I.I.A.4(a) and any cost of financing for I.I.A.4(b)~~
143 ~~of less than one and a half times the amount budgeted for allocation in~~
144 ~~I.I.A.4(c);~~
145 Debt Service on NVTC Debt (as defined below) incurred to finance
146 Components selected by NVTC and approved by the CTB under the terms
147 of this MOA: provided that ~~the~~ annual financing amount of the Debt
148 Service payments, ~~to include debt service reserves, and debt service~~ does
149 not exceed ~~40~~ 60 percent of toll revenues remaining after the allocations
150 described above in ~~subparagraphs~~ I.I.A.4(a) and (b); ~~provided further that~~
151 no NVTC Debt may be incurred unless the toll revenues remaining after

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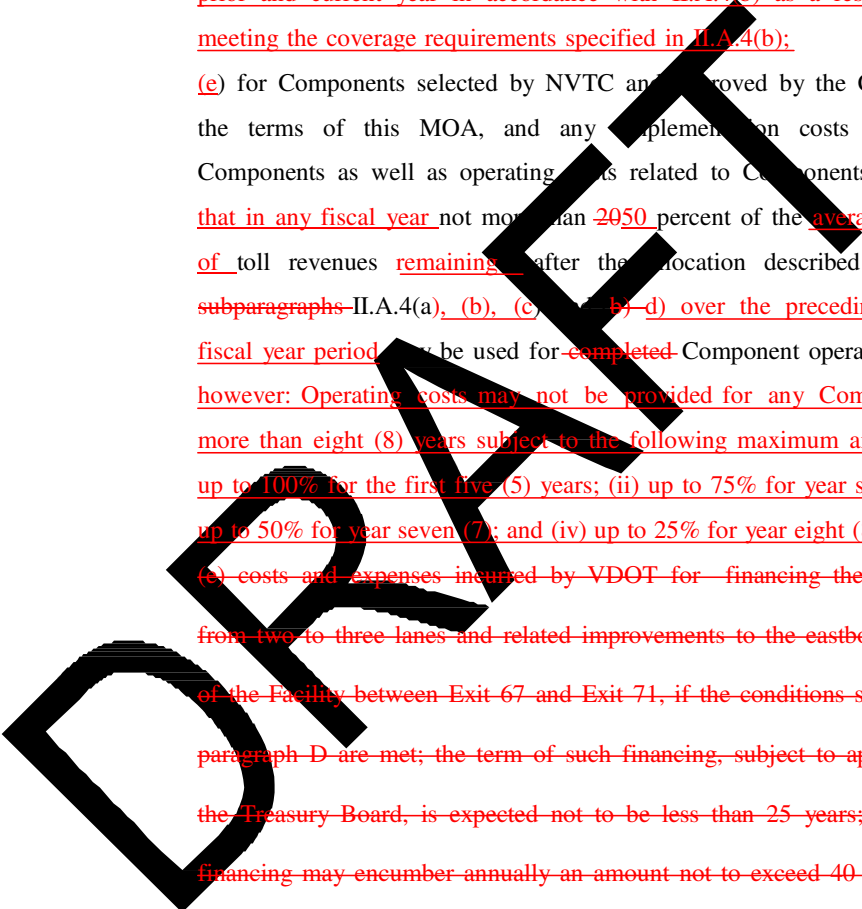
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the allocation described above in II.A.4(a) in the fiscal year prior to the
fiscal year the NVTC Debt will be incurred must be at least two times the
maximum annual scheduled Debt Service on all outstanding NVTC Debt
and the proposed NVTC Debt in the then-current or any future fiscal year;
~~(d) repayment to the Toll Facilities Revolving Account not paid in any~~
prior and current year in accordance with II.A.4(b) as a result of not
meeting the coverage requirements specified in II.A.4(b);
(e) for Components selected by NVTC and approved by the CTB under
the terms of this MOA, and any implementation costs related to
Components as well as operating costs related to Components, provided
that in any fiscal year not more than 2050 percent of the average amount
of toll revenues remaining after the allocation described above in
subparagraphs II.A.4(a), (b), (c), ~~(b)–d)~~ over the preceding five (5)
fiscal year period may be used for ~~completed~~ Component operating costs;
however: Operating costs may not be provided for any Component for
more than eight (8) years subject to the following maximum amounts: (i)
up to 100% for the first five (5) years; (ii) up to 75% for year six (6); (iii)
up to 50% for year seven (7); and (iv) up to 25% for year eight (8).
~~(e) costs and expenses incurred by VDOT for financing the widening~~
from two to three lanes and related improvements to the eastbound lanes
of the Facility between Exit 67 and Exit 71, if the conditions set forth in
paragraph D are met; the term of such financing, subject to approval by
the Treasury Board, is expected not to be less than 25 years; and such
financing may encumber annually an amount not to exceed 40 percent of
toll revenues remaining, after the allocations described above in
subparagraphs II.A.4(a) and (b). Such allocations shall begin upon a
determination that the criteria which establishes the need for the widening,
pursuant to the evaluation in paragraph D, has been met; however, an

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~~initial evaluation shall only be made at the later date of either (i) five years from the date of commencement of tolling of the Facility, or (ii) two years after any increase in occupancy requirements for high occupancy vehicles from two people to three people (which shall occur the later of 2020 or upon any increase to HOV 3 requirements for HOV lanes of I-66 outside the Beltway).~~

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

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

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

~~If I-66 is designated for immediate use as any alternate route for diversion of traffic from another highway or is temporarily closed to all lanes in one or both~~

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209 directions due to a significant incident or emergency, VDOT shall have the right
210 to order the immediate suspension of tolling in the direction(s) of any diversion.
211 Neither the Commonwealth of Virginia, the CTB, nor VDOT shall have any
212 liability to NVTC for the loss of any toll revenues or any increase in costs and
213 expenses attributable to the hours the toll suspension is in effect.

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

217 ~~8. Financial Agreements. To the extent permitted by this MOA and subject to~~
218 ~~the limits on use of toll revenue in II.A.4, VDOT and the CTB retain all rights to~~
219 ~~enter into any financial agreements encumbering toll revenues derived from the~~
220 ~~Facility for the purposes specified in this MOA.~~

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

225 **10. Annual Budget Process.** In preparation for the CTB's annual budget
226 process, VDOT shall provide to NVTC estimates of toll revenues and anticipated allocation of the
227 estimated toll revenues for the upcoming six-year period presented in the Six Year
228 Financial Plan and Six Year Improvement Program and provide said estimates to
229 NVTC no later than January 30th of each year.

230 **11. The CTB agrees to do the following:**

231 (a) Each year and in accordance with the schedule of the Department of
232 Planning and Budget of the Commonwealth, the CTB or the CTB's
233 designee shall request that the Governor include in the budget to be
234 delivered to the General Assembly during their next session a provision
235 that there be appropriated from the revenues expected from the Facility
236 amounts sufficient to pay the budgeted amount of funds expected to be
237 provided to NVTC during the next succeeding fiscal year or biennial
238 period, as applicable.

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

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

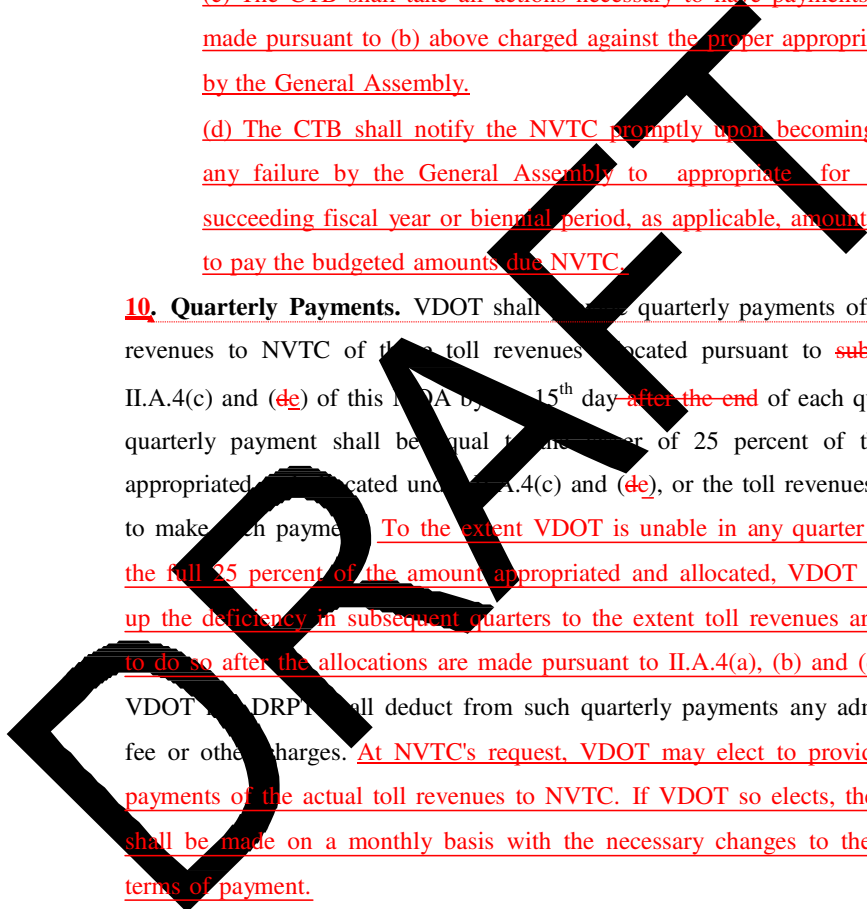
(d) The CTB shall notify the NVTC promptly upon becoming aware of any failure by the General Assembly to appropriate for the next succeeding fiscal year or biennial period, as applicable, amounts sufficient to pay the budgeted amounts due NVTC.

10. Quarterly Payments. VDOT shall make quarterly payments of actual toll revenues to NVTC of the toll revenues allocated pursuant to ~~subparagraphs~~ II.A.4(c) and ~~(de)~~ of this MOA by the 15th day ~~after the end~~ of each quarter. The quarterly payment shall be equal to the amount of 25 percent of the amount appropriated and allocated under II.A.4(c) and ~~(de)~~, or the toll revenues available to make such payment. To the extent VDOT is unable in any quarter to provide the full 25 percent of the amount appropriated and allocated, VDOT shall make up the deficiency in subsequent quarters to the extent toll revenues are available to do so after the allocations are made pursuant to II.A.4(a), (b) and (d). Neither VDOT nor DRPI shall deduct from such quarterly payments any administrative fee or other charges. At NVTC's request, VDOT may elect to provide monthly payments of the actual toll revenues to NVTC. If VDOT so elects, the payments shall be made on a monthly basis with the necessary changes to the foregoing terms of payment.

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

B. NVTC shall have the following roles and responsibilities:

1. Coordination and Development of Transportation Plan; Use of Toll Revenues; Compliance with Laws Limiting Use. As part of the Six Year



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Improvement Program presented to the CTB for approval in June of each year, NVTC shall submit to the CTB, a list of Components proposed to be funded in whole or in part with ~~Toll Revenues~~toll revenues from the Facility, ~~to be paid to NVTC as provided herein~~. Such Components shall be selected by NVTC in accordance with a process established by NVTC pursuant to this MOA. Such Components shall be separately identified with supporting documentation as set forth in Exhibit 2. The CTB shall consider and approve the Components selected by NVTC, and allocate toll revenues for them, pursuant to ~~paragraph~~ II.A.4, provided the Components meet the criteria below and are selected in accordance with NVTC's selection process described in II.B.2. Each proposed Component must meet each of the following five criteria:

- ~~(a)~~ (a) Must benefit the paying users of the Facility;
- (b) Must have the capacity to achieve one or more of the Improvement Goals;
- ~~(c)~~ (c) Must be one of the following multimodal transportation improvements serving the Corridor:
 - ~~(i)~~ (i) New or enhanced local and commuter bus service, including capital and operating expenses (e.g., fuel, tires, maintenance, labor and insurance), subject to the limitations in ~~paragraph II(A)(4)II.A.4(e)~~, and transit priority improvements;
 - ~~(ii)~~ (ii) Vanpool, and formal and informal carpooling programs and assistance;
 - ~~(iii)~~ (iii) Capital improvements for Washington Metropolitan Area Transit Authority rail and bus service, including capital and operating expenses, subject to the limitations in ~~paragraph II.A.4(e)~~, and improved access to Metrorail stations and Metrobus stops;
 - ~~(iv)~~ (iv) Park and ride lot(s) and access or improved access thereto;

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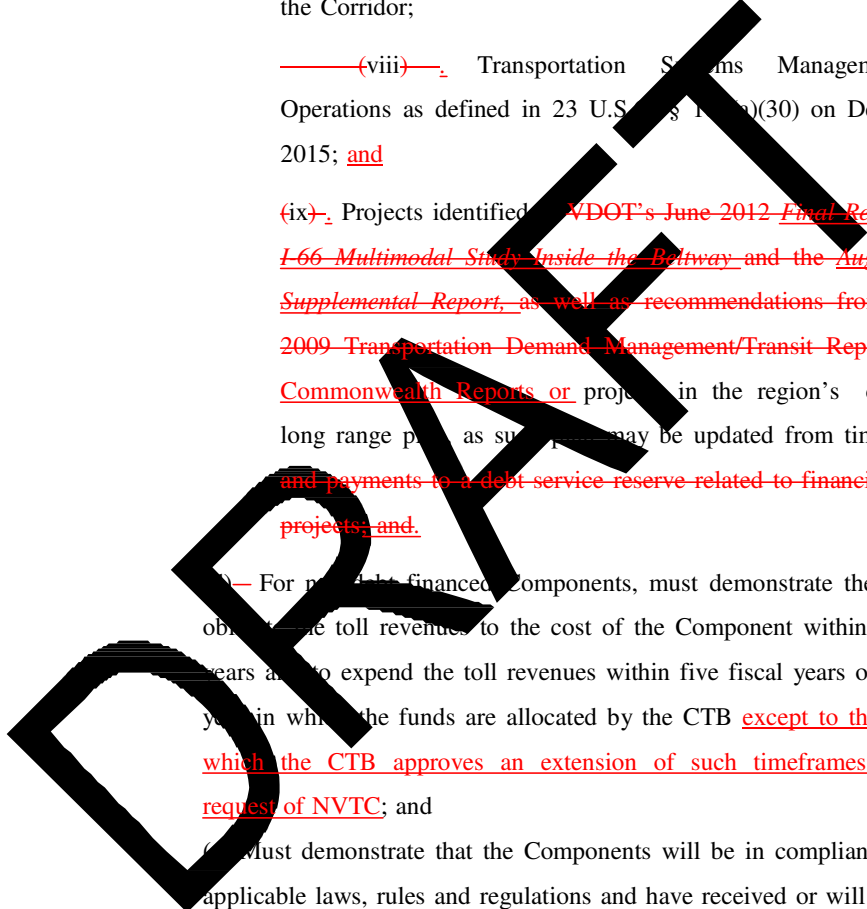
299 ~~(v)~~ Roadway improvements to address impacts from the dynamic
300 tolling of the Facility on roadways in the Corridor (including but
301 not limited to Routes 7, 29, 50, and 309, and Washington
302 Boulevard, Wilson Boulevard, and Westmoreland Street);

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303 ~~(vii)~~ Roadway operational improvements in
304 the Corridor;

305 ~~(viii)~~ Transportation Systems Management and
306 Operations as defined in 23 U.S.C. § 1090(30) on December 1,
307 2015; and

308 ~~(ix)~~ Projects identified in VDOT's June 2012 Final Report of the
309 I-66 Multimodal Study Inside the Beltway and the August 2013
310 Supplemental Report, as well as recommendations from DRPT's
311 2009 Transportation Demand Management/Transit Report, and the
312 Commonwealth Reports or projects in the region's constrained
313 long range plan as such plan may be updated from time to time,
314 and payments to a debt service reserve related to financing of such
315 projects; and.



316 ~~(d)~~ For privately financed Components, must demonstrate the ability to
317 obtain the toll revenues to the cost of the Component within two fiscal
318 years and to expend the toll revenues within five fiscal years of the fiscal
319 year in which the funds are allocated by the CTB except to the extent to
320 which the CTB approves an extension of such timeframes upon the
321 request of NVTC; and

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

325 ~~(f)~~ Under no circumstances shall the aforesaid criteria be modified
326 except by written amendment to this MOA agreed to in writing by the
327 Parties.

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328 ~~_____~~NVTC shall have no right to use the ~~Toll Revenues~~toll revenues to
329 pay any debt, obligation or liability unrelated to the Project, or for any
330 purposes other than those specified in this MOA.

331 ~~_____~~NVTC understands and agrees that in the selection and
332 implementation of Components using the toll revenues, it is bound by the
333 provisions of Virginia Code § 33.2-309 as well as all other state and
334 federal laws and regulations that limit the use of toll revenues, and toll
335 revenues from interstate highways specifically. Accordingly, NVTC
336 agrees to provide VDOT access to all records related to Components and
337 the use of the toll revenues. Further, NVTC will provide all such records
338 for inspection and audit by VDOT, DRPT, and federal agencies, including
339 but not limited to the United States Department of Transportation, the
340 Federal Highway Administration, and the Federal Transit Administration,
341 or their designees, at reasonable notice at all times during the term of
342 this MOA.

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

346 **2. Project Component Selection Process:** Any ~~such~~ Component to be proposed
347 for CTB approval shall be selected by NVTC ~~in accordance with~~through a process
348 established by NVTC. Such process shall include the following three elements:

- 349 (a) ~~a~~A request to submit proposed Components issued by NVTC to all
350 jurisdictions and other public transportation providers in Planning District
351 8;
- 352 (b) ~~the~~The evaluation, prioritization, and selection of proposed
353 Components by NVTC, and the submission of selected Components by
354 NVTC to the CTB; and
- 355 (c) ~~a~~A public hearing held by NVTC prior to NVTC's selection of
356 Components for submission to the CTB.

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357 The CTB shall consider and approve the Components selected by
358 NVTC and, subject to appropriation by the General Assembly, shall
359 allocate toll revenues for ~~these~~such Components, pursuant to ~~paragraph~~
360 II.A.4, provided the Components meet the criteria in ~~paragraph~~ II.B.1. As
361 part of the list of Components submitted to the CTB for consideration and
362 approval and allocation of toll revenues, NVTC may submit for CTB
363 consideration and approval additional Components that exceed the annual
364 estimated toll revenues for that year. Provided those Components meet
365 the criteria in ~~paragraph~~ II.B.1, the CTB shall consider and approve such
366 additional Components and, pursuant to ~~paragraph~~ II.A.4 and subject to
367 any other approvals that may be necessary, approve the allocation of toll
368 revenues for such Components up to the amount of actual toll revenues for
369 that year that are sufficient to pay one or more of those additional
370 Components. ▲

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371 **3.- Financing of Components of Project.** NVTC may use toll revenues
372 appropriated by the General Assembly and allocated by the CTB to NVTC to
373 support the financing of approved Components, however, the amount of annual
374 ~~debt service payments using~~ Debt Service to be paid from toll revenues shall be
375 limited as set forth in ~~paragraph~~ II.A.4(c).

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376 NVTC shall be solely responsible for obtaining and repaying all ~~debt and~~
377 ~~financing~~ NVTC Debt at its own cost and risk, and without recourse to the
378 Commonwealth of Virginia, the CTB, VDOT, and/or DRPT, for any Component
379 for which toll revenues have been provided to NVTC under this MOA.

380 The Commonwealth of Virginia, the CTB, VDOT, and DRPT have no
381 liability whatsoever for payment of ~~the principal of or interest~~ any Debt Service on
382 any ~~bonds or any other obligations issued or~~ NVTC Debt incurred by NVTC in
383 connection with this MOA, ~~or any interest accrued~~ or any other sum secured by or
384 accruing under any financing document entered into by NVTC as a result of this
385 MOA. No ~~financing~~ document evidencing or associated with any NVTC Debt for
386 the ~~NVTC~~ financing of any Component shall contain any provisions whereby a

387 trustee would be entitled to seek any damages or other amounts from the
388 Commonwealth of Virginia, CTB, or VDOT due to any breach of this MOA.

389 Each bond ~~or~~, promissory note or other document evidencing Revenue
390 bondsNVTC Debt must include a conspicuous recital on its face stating: (a)
391 payment of the principal and interest does not constitute a claim against VDOT's
392 interest in I-66 or any part thereof; (b) payment is not an obligation of the
393 Commonwealth of Virginia, VDOT, DRPT, the CTB, or any other agency,
394 instrumentality or political subdivision of the Commonwealth of Virginia moral
395 or otherwise; and (c) neither the full faith and credit nor the taxing power of the
396 Commonwealth of Virginia, VDOT, DRPT, the CTB, or any other agency,
397 instrumentality, or political subdivision of the Commonwealth of Virginia and/or
398 its member jurisdictions, is pledged to the payment of the principal and interest
399 on such NVTC Debt.

400 NVTC shall not enter into agreements with holders of any debtNVTC
401 Debt incurred by NVTC or its member jurisdictions that contain a pledge or claim
402 on the toll revenues or NVTC's interest in toll revenue under this MOA except
403 such debt issued for the Project Components. If, despite such efforts, toll revenues
404 are applied to satisfy any debt of NVTC that is not properly payable out of toll
405 revenues in accordance with this MOA and state and federal law, NVTC shall
406 reimburse for any such toll revenues or accounts from any other available
407 sources other than the toll revenues.

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

- 411 (a) — A description of the Components selected for funding in the past
412 fiscal year and the benefits that were the basis for evaluation and selection
413 of each such Component;
- 414 (b) — Starting five years after the effective date of this MOA, a review of
415 the Components funded in past fiscal years describing the degree to which
416 the expected benefits were realized or are being realized; and,

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

423 **5. Accounting.** NVTC shall receive and manage, as a fiduciary, the toll revenue
424 appropriated by the General Assembly, allocated by the CTB, and distributed to it
425 by VDOT. NVTC shall maintain all funds and accounts containing said toll
426 revenues from this MOA separate and apart from all other funds and accounts of
427 NVTC. The revenues and expenses relating to the use of the toll revenues, and
428 the Components undertaken with the toll revenue from this MOA, shall not be
429 commingled with any other funds, accounts, revenues, or expenses of NVTC.
430 NVTC shall create and maintain for the term of this MOA segregated accounting
431 and financial reporting for the Components financed by toll revenues provided by
432 this MOA and reported as separate funds in NVTC's financial statements, and
433 such accounts shall constitute proprietary "special revenue fund" as defined
434 by the Government Accounting Standards Board. Expenditures will be
435 recorded and reported for each Component.

436 All toll revenues provided to NVTC pursuant to the terms of this MOA
437 shall be held by NVTC in accounts with a financial institution under an
438 arrangement that, to the extent reasonably practicable, preclude such funds from
439 being an asset subject to the claims of creditors of NVTC, other than a holder of
440 ~~bonds~~ **NVTC Debt**, or other claims related to the Components undertaken in
441 accordance with this MOA.

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

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

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

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

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

465 **10. Insurance and Indemnity by Contractors.** NVTC shall include the
466 Commonwealth of Virginia, the TCB, VDOT, DRPT, and their officers,
467 employees and agents, as additional insureds on NVTC's insurance policies so
468 they are protected from and against any losses actually suffered or incurred,
469 except to the extent caused by the negligence or willful misconduct of
470 such entity or person, from third party claims that are directly related to or arise
471 out of: (a) any failure by NVTC to comply with, to observe or to perform in any
472 material respect any of the covenants, obligations, agreements, terms or
473 conditions in this MOA, or any breach by NVTC of its representations or
474 warranties in this MOA; (b) any actual or willful misconduct or negligence of
475 NVTC, its employees or agents in direct connection with the Project or any
476 related Components; (c) any actual or alleged patent or copyright infringement or
477 other actual or alleged improper appropriation or use of trade secrets, patents
478 propriety, proprietary information, know-how, trademarked or service-marked

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479 materials, equipment devices or processes, copyright rights or inventions by
480 NVTC in direct connection with the Project or; (d) inverse condemnation,
481 trespass, nuisance or similar taking of or harm to real property committed or
482 caused by NVTC, its employees or agents in direct connection with the Project; or
483 (e) any assumed liabilities. NVTC shall contractually require its contractors,
484 subcontractors, vendors, and others working or performing services related to
485 any Component it has funded to indemnify the Commonwealth of Virginia, the
486 CTB, VDOT, DRPT, and their officers, employees and agents from the same
487 losses.

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

491 This provision shall survive the completion or earlier termination of this
492 MOA.

493 In the event any third-party claim to which this section applies is asserted
494 in writing against the Commonwealth of Virginia, VDOT, DRPT, or their officers,
495 employees, or agents, VDOT shall as promptly as practicable notify NVTC in
496 writing of such claim, which shall include a copy and any related correspondence
497 or documentation from the third party asserting the claim. However, any failure
498 to give such prompt notice shall not constitute a waiver of any rights of VDOT
499 and shall not in any way limit or preclude the availability of those rights.

500 **Initial Multimodal Transportation Improvements.** NVTC shall undertake a
501 ~~project~~Component selection process upon execution of this MOA, and submit to the CTB
502 a list of Components for an advanced allocation of funding in the amount of \$510 million
503 (which shall be provided upon commencement of construction of the dynamic tolling of
504 the Facility provided in ~~paragraph~~II.A.1, and shall be repaid as specified in ~~paragraph~~II.A.4). Components shall be multimodal transportation improvements that meet the
505 criteria set forth in ~~paragraph~~II.B.1 and are capable of being obligated not later than at
506 the time tolling begins on the Facility. In the event litigation is filed challenging the
507 implementation of the Project, or a Component of the Project, prior to the initiation of
508 tolling, or in the event any other action prohibits or restricts the ability to toll the Facility,
509

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510 then the CTB may withhold this funding until such time that the litigation or other event
511 or action is resolved in a manner that allows the Project to be implemented. NVTC may
512 choose to expend other funds after the execution of this MOA for Components identified
513 through the selection process described in this MOA prior to the commencement of
514 construction. Any such expenditures are at NVTC's risk but shall be reimbursable from
515 the advanced allocation identified in this paragraph provided the expenditures otherwise
516 comply with the provisions of the MOA. ~~NVTC may choose to expend up to an
517 additional \$5 million for additional Components consistent with this subsection. Any
518 such expenditures are at NVTC's risk but shall be reimbursable from toll revenues.~~

519 ~~D. **Widening and Related Improvements to I-66.** At the later date of either (i) five
520 years from the date of commencement of tolling of the Facility, or (ii) two years after the
521 date of increase in occupancy requirements for high occupancy vehicles from two people
522 to three people (which increase shall occur the later of 2020 or the increase of occupancy
523 requirements of HOV lanes of I-66 outside the Beltway), an evaluation of the need~~
524 **Widening and Related Improvements to I-66.** VDOT will proceed with plans to widen
525 the eastbound lanes of the Facility from two lanes to three lanes between the Dulles
526 Connector Road and Exit 71. ~~Such widening will be undertaken.~~

527 ~~1. If the evaluation conducted by VDOT, in consultation with NVTC, of the
528 effectiveness of the tolling and the multimodal improvements on the performance of the
529 Facility and of traffic operations on roadways in the Corridor demonstrates one of the
530 following has occurred, or is occurring, then those funds as set forth in paragraph
531 II.A.4(e) shall be allocated by the CTB for such Facility widening and VDOT shall then
532 begin the process to widen the Facility:~~

533 ~~(a) The eastbound lanes of the Facility between the Dulles Connector Road and
534 Exit 71 are operating at an average speed of less than 50 miles per hour for more
535 than 10 percent of the time between the hours of 5:00am and 10:00am on
536 weekdays over a 180 day period as determined using commonly accepted
537 engineering practices and performance monitoring. Starting with the~~

538 commencement of tolling on the Facility, the average operating speed of I-66 will
539 be reported every 180 days (bi-annually) to NVTC.

540 (b) ~~The average travel times on the roadways listed below experience an average~~
541 ~~10 percent increase on the eastbound lanes compared to the baseline performance~~
542 ~~of the following facilities:~~

- 543 • ~~Route 50 from I-495 to Route 120 (Glebe Road);~~
- 544 • ~~Route 29 from I-495 to Route 120 (Glebe Road);~~
- 545 • ~~Route 237 (Washington Boulevard) from Route 29 to Route 120~~
546 ~~(Glebe Road); and~~
- 547 • ~~Route 7 from I-66 to Route 50.~~

548 ~~— A baseline performance of the Facility and the above roadways will be established~~
549 ~~for weekdays in a 180-day period following the commencement of tolling of the Facility~~
550 ~~using commonly accepted engineering practices and performance monitoring. Data will~~
551 ~~be collected daily and reported quarterly starting with the commencement of tolling on~~
552 ~~the Facility. —~~

553 ~~2. If the evaluation provided for in ILD.1 demonstrates the need for widening,~~
554 ~~the~~The design for the widening shall be limited to increasing the number of eastbound
555 lanes of the Facility from two lanes to three lanes consistent with an approved
556 environmental ~~document subject assessment conducted pursuant~~ to the National
557 Environmental Policy Act, and other laws and regulations applicable to the widening, and
558 shall apply the principals of Context Sensitive Solutions as described in FHWA's
559 Publication FHWA-HEP-07-014 as follows:

- 560 • ~~Minimize~~Avoid, minimize or ~~eliminate~~mitigate impacts to the parks,
561 stream corridors, and vegetation along the corridor and within the right-of-
562 way;

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- ~~Minimize~~Avoid, minimize or ~~eliminate~~mitigate impacts to the W&OD Trail and the Custis Trail;
- Reduce the cost of this component of the Project; and
- ~~Minimize~~Avoid, minimize or ~~eliminate~~mitigate the need for acquisition of additional right-of-way.

~~If during the initial evaluation the conditions referenced in subparagraphs D.1 through D.2 do not exist, then VDOT shall every two years until the earlier of (i) the end of the term of the MOA conduct a further evaluation, or (ii) such time that one of the conditions referenced in such subparagraphs is found to exist, at which time the allocation of toll revenues pursuant to paragraph II.A.4(e) shall be made and the widening of the Facility will be undertaken by VDOT.~~

III. –Term. Unless this MOA is otherwise terminated in accordance with ~~Section VIVII~~, the term of this MOA shall commence on the date last signed by the Parties (“the Effective Date”) and shall expire on the 40th anniversary of the Effective Date. ~~NVTC shall not enter into financing agreements or other financial obligations for approved Components that are dependent on toll revenue from the Project and which extend beyond the 40th anniversary of the Effective Date subject to the provisions of IV~~

~~In event~~**IV. Debt Financing:** ~~NVTC shall not incur any NVTC Debt that is dependent on toll revenue from the Project and which matures or extends beyond the 40th anniversary of the Effective Date. If the MOA is terminated in accordance with Section VIVII prior to the 40th Anniversary of the effectiveEffective Date, and there areis outstanding NVTC financing agreementsDebt for which all revenues havehas been pledged for debt service payments to pay Debt Service or there are pay-go Components which are yet to be completed, and further provided the use of toll revenues for to pay Debt Service or the financing agreement or costs of the pay-go ComponentComponents is not a misuse of toll revenues under this MOA and the cause or basis of the termination, then, subject to CTB approval, tolls shall continue to be imposed on the Facility and toll revenues shall continue to be allocated in accordance with paragraph II.A.4(a), (b), (c), (d) and (e) to pay debt serviceDebt Service or to complete the Componentpay-go Components.~~ The CTB will not approve funding for pay-go Components for

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591 | more than two fiscal years past the termination of the MOA in accordance with ~~Section VII~~
592 | prior to the 40th Anniversary of the effective Date.

593 | ~~IV~~, **Entire Agreement.** This MOA constitutes the entire and exclusive agreement between the
594 | Parties relating to the specific matters covered. All prior written, and prior or contemporaneous
595 | verbal agreements, understandings, and representations are superseded, revoked, and rendered
596 | ineffective for any purpose.

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597 | ~~V-VI~~, **Amendment.** This MOA may be altered, amended or revoked only by an instrument in
598 | writing signed by all Parties or their permitted successor(s) or assignee(s).

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599 | ~~VII~~, **Termination.** This MOA may be terminated (a) by a Party for material non-compliance
600 | with this MOA which has not either been remedied or a remedy commenced and diligently
601 | pursued thereafter, within 120 days after written notice from the other Party, and (b) by written
602 | agreement of the Parties. However, prior to any termination the Parties shall meet and confer to
603 | make a good faith attempt to resolve any non-compliance issues as follows. Within 30 days of
604 | the notice, the Commissioner of Highways and the NVTC Executive Director shall meet to
605 | discuss resolution of the non-compliance issues. If a resolution cannot be reached within 30
606 | days, the Secretary of Transportation and the Chairman of NVTC shall meet within 30 days to
607 | discuss resolution of the non-compliance issues. If a resolution cannot be agreed upon within 30
608 | days, the termination shall be effective as set forth in the written notice and in accordance with
609 | this MOA.

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

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615 | **If to NVTC:**
616 | Executive Director
617 | Northern Virginia Transportation Commission
618 | 2300 Wilson Boulevard, Suite 620
619 | Arlington, VA 22201
620 | Fax:

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621 **If to VDOT:**
622 Virginia Department of Transportation
623 1401 East Broad Street
624 Richmond, Virginia 23219
625 Attn: Commissioner of Highways
626 Fax: (804) 786-2940

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627 *With a copy to:*
628 Office of the Attorney General
629 Chief, Transportation Section
630 ~~900 East Main~~202 North Ninth Street
631 Richmond, Virginia 23219
632 Fax: (804) 692-1647

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

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635 **VIII. Relationship of the Parties.** The relationship of NVTC to VDOT shall be one of an
636 independent contractor, not an agent, partner, lessee, licensee, or employee.

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637 **IX. No Third Party Benefits.** Nothing contained in this MOA is intended or shall be
638 construed as creating or conferring any rights, benefits or remedies upon or creating any
639 obligations of the Parties toward any person or entity not a party to this MOA ~~(except rights~~
640 ~~contained herein expressly for the benefit of bondholders and/or trustees).~~

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

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

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646 **XII. Survival.** If any provisions in this MOA are rendered obsolete or ineffective, the Parties
647 agree to negotiate in good faith appropriate amendments to, or replacement of such provisions, in
648 order to restore and carry out the original purposes to the extent practicable. If any provision is
649 rendered void or invalid, all remaining provisions shall survive.

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

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

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

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

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665 **XVI. Appropriations.** All obligations of the CT to operate toll revenues are subject to
666 ~~appropriations~~appropriation by the Virginia General Assembly.

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667
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673 In witness whereof, the Parties hereby cause this MOA to be executed, each by its duly
674 authorized officers, as of the date below.

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676

COMMONWEALTH TRANSPORTATION BOARD

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679

The Honorable Aubrey L. Layne, Jr.
Secretary of Transportation

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VIRGINIA DEPARTMENT OF TRANSPORTATION

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

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NORTHERN VIRGINIA TRANSPORTATION COMMISSION

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~~Kelley Coyner~~ Katherine A. Mattice

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Acting Executive Director

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1 **AMENDED AND RESTATED**
2 **MEMORANDUM OF AGREEMENT**
3 **TRANSFORM66: INSIDE THE BELTWAY PROJECT**
4

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

10 **RECITALS**

11 WHEREAS, the CTB, VDOT, and the Virginia Department of Rail and Public
12 Transportation (“DRPT”) have embarked upon a multimodal transportation program,
13 Transform66, which seeks to fund and implement solutions to move more people in the Interstate
14 66 (“I-66”) corridor between Haymarket, Virginia and Route 29 in the Rosslyn area of Arlington
15 County, Virginia; and

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

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

28 WHEREAS, the Project will facilitate implementation of recommendations from
29 VDOT’s June 2012 Final Report of the I-66 Multimodal Study Inside the Beltway, and the
30 further refinements found in the August 2013 Supplemental Report, as well as recommendations
31 from DRPT’s 2009 Transportation Demand Management/Transit Report (collectively, the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

197 The CTB agrees to do the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

305 8;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

519

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.

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

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COMMONWEALTH TRANSPORTATION BOARD

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587

The Honorable Aubrey L. Layne, Jr
Secretary of Transportation

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Date: _____

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VIRGINIA DEPARTMENT OF TRANSPORTATION

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

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Date: _____

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NORTHERN VIRGINIA TRANSPORTATION COMMISSION

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Katherine A. Mattice
Executive Director

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Date: _____

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