



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701

Agenda item # 21

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

September 18, 2018

MOTION

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

Title: Approval and Authorization for the Commissioner of Highways to Execute a Letter Agreement with the Washington Metropolitan Area Transit Authority (WMATA) to provide funding for WMATA's Reimbursable Costs, and a Project Principles Agreement between WMATA, the Virginia Department of Transportation, I-66 Express Mobility Partners, and FAM Construction, LLC for the Transform 66 Outside the Beltway Project

WHEREAS, the Transform 66 Outside the Beltway Project (Project) entails multimodal transportation improvements on the approximately 22-mile corridor on I-66 between U.S. Route 29 near Gainesville in Prince William County and the I-495 Capital Beltway in Fairfax County (Outside the Beltway Component) and is designed to address existing and future transportation challenges in the I-66 Corridor in a cost-effective and timely manner, to improve multimodal mobility by providing diverse travel choices through an efficient network of park-and-ride, HOV, transit, and Express Lane opportunities, and to enhance transportation safety and travel reliability for the public; and

WHEREAS, the Project will be designed, built, financed, maintained, and operated by I-66 Express Mobility Partners LLC (the Concessionaire or Developer), pursuant to a Comprehensive Agreement developed under the Public Private Transportation Act of 1995 (PPTA) and entered into on December 8, 2016 (Transform 66 Comprehensive Agreement); and

Resolution of the Board

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WHEREAS, Ferrovia Agroman/Allan Myers (FAM) Construction, LLC is responsible for designing and building the Project pursuant to a design-build contract with I-66 Express Mobility Partners; and

WHEREAS, pursuant to that certain "Easement Between Washington Metropolitan Area Transit Authority and Virginia Department of Transportation" (Department) made and executed as of November 25, 1991 (the Easement Agreement), VDOT granted to WMATA within the median of Interstate Route 66 (I-66) a permanent easement for its transit facilities in the locations (Easement Areas) and on the terms and conditions set forth therein; and

WHEREAS, certain portions of the Project will require work within the Easement Areas or require access to WMATA facilities located outside of the Easement Areas that are used in connection with the facilities located in the Easement Areas; and

WHEREAS, based upon the current Project design, impacts to WMATA's operations and facilities may include, but are not limited to Project Work directly over tracks and station platforms, relocation of the Dunn Loring Traction Power Substation, modification of the Dunn Loring Station Platform, relocation of the Prosperity Tiebreaker Station, relocation of Orange Line power and communication conduits and cables; and

WHEREAS, WMATA resources will be required for plan reviews, plan approvals, coordination and support of station closures, station access adjustments, bus detours, bus bridges, non-revenue work hours and special work sequencing, single tracking, and shut-down events and WMATA will incur costs associated with these activities, the reimbursement of which is addressed in the Transform 66 Comprehensive Agreement; and

WHEREAS, the Transform 66 Comprehensive Agreement stipulates that the Developer will be solely responsible for reimbursing WMATA for WMATA Reimbursable Costs up to \$10 million, the Parties (the Department and Developer) will share equally in the next \$10 million of WMATA Reimbursable Costs, and the Department will be solely responsible for WMATA Reimbursable Costs over \$20 million and there is a need to document details concerning said reimbursement; and

WHEREAS, WMATA, the Department, I-66 Express Mobility Partners, and FAM Construction seek to ensure public safety (including all modes of travel) regardless of property, Right-of-Way, or easement ownership impacted by the Transform 66 Project to create a project team that is empowered to deliver the project for the benefit of all organizations, and to document overarching principles to guide the project team and the manner in which it will accomplish the Project.

Resolution of the Board

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NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves and authorizes the Commissioner of Highways or his designee to execute a letter agreement between the Department and WMATA establishing a WMATA Reimbursable Project for the payment of WMATA Reimbursable Costs, attached hereto as Appendix A, with such changes as the Commissioner deems appropriate; and

BE IT FURTHER RESOLVED, that the Board hereby approves and authorizes the Commissioner of Highways or his designee to execute a Project Principles Agreement between the Department, WMATA, I-66 Express Mobility Partners, and FAM Construction, LLC establishing the manner in which the Parties will work together to accomplish the Transform 66 Project, attached hereto as Appendix B, with such changes as the Commissioner deems appropriate.

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CTB Decision Brief

Approval and Authorization for the Commissioner of Highways to Execute a Letter Agreement with the Washington Metropolitan Area Transit Authority (WMATA) to provide funding for WMATA's Reimbursable Costs, and a Project Principles Agreement between WMATA, the Virginia Department of Transportation, I-66 Express Mobility Partners, and FAM Construction, LLC for the Transform 66 Outside the Beltway Project

Issue: In furtherance of the Transform 66 Outside the Beltway Project (Project), the Virginia Department of Transportation (VDOT) seeks from the Commonwealth Transportation Board approval to enter into two agreements: a letter agreement with WMATA; and a Project Principles Agreement between VDOT, WMATA, I-66 Express Mobility Partners, and FAM Construction, LLC. For the reasons set out below, these approvals and authorizations by the CTB are being requested at the September action meeting.

Facts: On December 8, 2016, VDOT entered into a Comprehensive Agreement Relating to the Transform 66 P3 Project with I-66 Express Mobility Partners following procurement of a private developer through the Public Private Transportation Act (PPTA) (§§33.2-1800 et. seq. of the *Code of Virginia*) to build High Occupancy Toll (HOT) Lanes from between U.S. Route 29 near Gainesville/Prince William County to the Capital Beltway in Fairfax County.

The Project will be designed, built, financed, maintained and operated by I-66 Express Mobility Partners LLC (the Concessionaire or Developer). Ferrovia Agroman/Allan Myers (FAM) Construction, LLC is responsible for designing and building the Project pursuant to a design-build contract with I-66 Express Mobility Partners.

In November 1991, VDOT and WMATA made and executed an Easement Agreement, whereby VDOT granted to WMATA a permanent easement so that WMATA can construct, operate, maintain, repair, relocate, remove or replace transit facilities located within the permanent easement, generally located in the median of I-66, and as described in the Easement Agreement.

Based upon the current Project design, there will be potential impacts to WMATA's operations and facilities which may include, but are not limited to Project Work directly over tracks and station platforms, relocation of the Dunn Loring Traction Power Substation, modification of the Dunn Loring Station Platform, relocation of the Prosperity Tiebreaker station, and relocation of Orange Line power and communications conduits and cables. These impacts will require WMATA to incur costs as they provide resources to review and approve plans for their facilities: review plans for work that will impact their facilities and/or the operation of their facilities: and provide coordination and support of station closures, station access adjustments, bus detours, bus bridges, non-revenue work hours and special work sequencing, single tracking, and shut-down events.

The reimbursement of these costs is addressed within the Comprehensive Agreement, which stipulates that the Developer will be solely responsible for reimbursing WMATA for WMATA Reimbursable Costs up to \$10 million, the Department and the Developer will share equally in the next \$10 million of WMATA Reimbursable Costs, and the Department will be solely

responsible for WMATA Reimbursable Costs over \$20 million. However, there is a need to more fully document details concerning said reimbursement.

Since entering into the Transform 66 Comprehensive Agreement, the Department and its private partners, along with WMATA have worked to advance the design of the Transform 66 Project. WMATA, the Department, I-66 Mobility Partners, and FAM Construction seek to ensure public safety (including all modes of travel) regardless of property, Right-of-Way, or easement ownership impacted by the Project. In addition, these parties seek to create a project team that is empowered to deliver the project for the benefit of all organizations. Each entity is committed to working together to accomplish the Transform 66 Project, resolving issues efficiently, delivering the Project in a cost effective manner, while maintaining safety and minimizing travel disruptions, recognizing that the team serves the general public and seeks to document guiding principles to address the manner in which the Project will be accomplished.

Recommendations: VDOT recommends that the CTB:

- (i) approve and authorize the Commissioner or his designee to execute a Letter Agreement between the Washington Metropolitan Area Transit Authority to provide details for payment of WMATA's Reimbursable Costs, with such changes as the Commissioner deems appropriate; and
- (ii) approve and authorize the Commissioner of Highways or his designee to execute a Project Principles Agreement between the Department, WMATA, I-66 Express Mobility Partners, and FAM Construction, LLC establishing the manner in which the Parties will work together to accomplish the Transform 66 Project.

Action Required by CTB: The CTB will be presented with a resolution for a formal vote.

Results, if Approved: If approved, the resolution will result in VDOT entering into an agreement with WMATA for the reimbursement of their costs in direct support of the Transform 66 Project, consistent with the Transform 66 Comprehensive Agreement; and if approved, an agreement between the Department, WMATA, I-66 Express Mobility Partners, and FAM Construction, LLC establishing the manner in which the Parties will work together to accomplish the Transform 66 Project.

Options: Approve, Deny, or Defer.

DRAFT

September ____, 2018

Mr. Paul J. Wiedefeld
General Manager and Chief Executive Officer
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

Dear Mr. Wiedefeld:

The Virginia Department of Transportation (**VDOT**) and its concessionaire, Express Mobility Partners (EMP), are ready to commence the construction phase of the Transform 66 project (“Project”) that will impact WMATA’s operations and physical infrastructure. Such impacts include, but are not limited to, rebuilding bridges above WMATA’s operations and reconstructing certain facilities owned and/or used by WMATA. VDOT and WMATA have long partnered on various projects in Northern Virginia. This Project provides another opportunity for our two organizations to join together to demonstrate mutual good stewardship of public funds, minimize unnecessary expense, and create best value for the Northern Virginia region. VDOT and WMATA mutually agree to partner together for the timely communication and coordination of Project design and construction information in order to create a successful Project for both organizations.

Accordingly, VDOT requests that WMATA establish a “WMATA Reimbursable Project” for the Project. VDOT will provide funding for WMATA’s reasonable substantiated and documented Project costs (including all direct and indirect costs, insurance, and associated overhead costs directly related to the Project).

VDOT shall provide WMATA with periodic updated documentation to enable WMATA to estimate its costs in connection with the Project. WMATA will then provide the estimate of its future costs to VDOT. Within 30 days of receiving and approving an invoice for the upcoming 90 to 120 days estimated costs, subject to appropriation and allocation, VDOT will provide payment for the invoiced amount and WMATA will credit the payment to the WMATA Reimbursable Project. WMATA will draw upon such funds as it incurs costs related to the Project. As the Project advances, WMATA will provide VDOT quarterly reports reconciling WMATA’s draws with actual costs incurred. Along with the quarterly reports, WMATA will also provide updated cost estimates for future work and an invoice for the estimated costs for,

unless otherwise agreed to by VDOT and WMATA, the upcoming 90 to 120 days as necessary for WMATA to maintain a minimum amount of \$50,000 on deposit in the WMATA Reimbursable Project. VDOT shall have the right to audit records relating to the WMATA Reimbursable Project Costs and funds not used for the Project shall be returned to VDOT following Project completion.

VDOT acknowledges that the cost to relocate Dominion Energy infrastructure elements providing services solely to WMATA will be considered a Project cost.

VDOT acknowledges and agrees that all access to WMATA's property and/or facilities for work related to the Project shall be subject to a separate global real estate permit agreement executed by WMATA and the Transform 66 Design-Build Contractor (Ferrovia Agroman/Allan Myers Construction, LLC or "FAM").

VDOT's work on the Project will require WMATA to alter its train operations for the safe performance of the work as well as the safe operation of the trains. VDOT acknowledges and agrees that service enhancements provided by WMATA in response to such alteration of train operations shall be a Project cost (*e.g.*, the cost of WMATA replacing rail service with bus bridges during a complete rail shutdown). WMATA acknowledges that maintenance activities on the existing WMATA system during the construction period of the Project will require WMATA to alter its train operations. The Parties agree to explore cost sharing opportunities if more than one party is taking advantage of such altered train operations.

VDOT will have FAM develop a schedule that projects when the work will require either single tracking or complete shutdowns outbound from the West Falls Church Metro Station that affect rail service at the Dunn Loring and Vienna Metro Stations (**Revenue Service Adjustments** or **RSA**). VDOT shall adhere to the procedures and requirements described in **Attachment A** in relation to scheduling RSAs and will have FAM adhere to these procedures and requirements. WMATA shall provide its schedule of maintenance activities that will require either single tracking or complete shutdowns so that disruption to rail operations can be coordinated and minimized by both Parties.

By committing to these principles above, the organizations will be positioned for a successful delivery of the Transform I-66 project and the accommodation of future Orange Line work performed by WMATA. In keeping with this commitment to partner together, the organizations will follow a mutually agreed issue resolution process that allows for the quick resolution of any disagreements during the course of the work. A mutually agreed escalation matrix will be developed that will identify the pathway for the quick resolution of any issue that may arise. Good planning, great execution, and consistent communication will allow our organizations to realize success.

All terms and conditions of the Easement Agreement executed on November 25, 1991, by VDOT and WMATA are hereby incorporated by reference with the same force and effect as though fully set forth herein. Nothing in this agreement shall be deemed to modify the Easement Agreement or the rights and obligations of WMATA and VDOT thereunder. WMATA and VDOT each reserves all of its respective rights under and with respect to the Easement Agreement.

Sincerely,

Stephen C. Brich, PE
Commissioner of Highways

AGREED:

Name (print)

Telephone No.

Organization and Title

Signature

Date

CTB Resolution: WMATA Project Principles Agreement: APPENDIX B

**INTERSTATE 66 (OUTSIDE THE BELTWAY)
MULTI-MODAL CORRIDOR
IMPROVEMENTS PROJECT**

PROJECT PRINCIPLES AGREEMENT

by and between

**WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY**

VIRGINIA DEPARTMENT OF TRANSPORTATION

I-66 EXPRESS MOBILITY PARTNERS

and

FAM CONSTRUCTION, LLC

DATED: SEPTEMBER 2018

PROJECT PRINCIPLES AGREEMENT

THIS PROJECT PRINCIPLES AGREEMENT (“Agreement”), dated as of **September , 2018 (this is a projected date)** is made by and between the WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, an interstate compact agency (“**WMATA**”), the VIRGINIA DEPARTMENT OF TRANSPORTATION (“**VDOT**”), I-66 Express Mobility Partners, and FAM Construction, LLC (collectively, the Parties).

WHEREAS, as Chief Engineers and Chief Executive Officers, we and our organizations, are responsible for ensuring public safety (including all modes of travel) resulting from our actions regardless of property, Right-of-Way, or easement ownership impacted by the project. As Chief Engineers and Chief Executive Officers, we are responsible for creating a project team that is empowered to deliver the project for the benefit of all organizations.

NOW THEREFORE, in consideration of the mutual benefits arising from this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree to work together on the Transform 66 project (“Project”) as follows:

1. The Parties will each identify personnel to serve on a Project Team. The Project Team is responsible to minimize travel disruptions (all modes), and service and business disruptions in support of the economy and essential services. The Project Team is serving the general public ultimately. Only one reporting chain can be accountable for any engineering, construction, operations, or maintenance action or decision. Appropriate levels of management and leadership are required for accountability. Clear decision-making authority is essential for crisp project delivery and for accountability of actions.
2. The simplest and easiest demarcation for accountability and decision authority is the easement line between VDOT and WMATA per the 1991 Easement. The organization having potential impact across the easement line for actions within their boundary will coordinate with and receive the recommendations of the organization on the other side of the boundary line. The organization having property rights for the transportation system within the area where the work is being done is ultimately responsible for the outcome and is the ultimate decision maker.
3. The Parties agree to resolve issues at the lowest possible level of leadership. An issue resolution escalation chart is attached to this charter to identify responsible individuals within each organization. If there is a major concern of an action across a boundary line, where a recommendation is not fully implemented, the issue resolution escalation chart may be used resulting ultimately with a chief engineer (or operations) to chief engineer (operations) discussion. In the event of an imminent hazard, the Parties agree to resolve the problem quickly. Should it be necessary to escalate the imminent hazard issue, the Parties agree to move the issue to the highest possible level necessary to resolve the dispute. Ultimate authority to resolve the imminent hazard still resides with the agency having property rights for the transportation system within the boundary line where work is performed.

4. The Project Team will quickly develop plans, review plans, give approvals, and reach decisions for the mutual success of all parties and for the success of the project. The organizations will review any plan, report, or other document requiring review within 14 calendar days. When the work is performed by third parties (i.e. utility companies, etc.), those third parties will be part of the process for more effective and efficient project delivery. The organizations will endeavor to resolve matters quickly and directly rather than indirectly.
5. Design and Construction of WMATA facilities will be done to WMATA's Design Criteria and Standards. Space will be made available at a co-located office for WMATA staff to facilitate review, WMATA coordination efforts, and collaboration.
6. WMATA will provide the necessary escort for the work being performed on WMATA property. The purpose of a WMATA escort is protection of WMATA assets at all times. WMATA will provide an escort(s) for the continuous prosecution of the work on WMATA property. For work on VDOT property, WMATA will monitor the performance of the work only as necessary to confirm WMATA's assets are protected.
7. All Parties will endeavor to minimize costs, and exercise deliberate cost control, including reports and quarterly cost review. All Parties are committed to ensuring only those costs are expended that are necessary for the safe, smooth and continuous prosecution of the work with minimum disruption to the traveling public.
8. The Parties will establish a regular meeting schedule for the purpose of weekly, monthly, and quarterly coordination of the Project work.
9. The agreement for reimbursing WMATA for approved costs associated with the project is attached for reference. All funds to be provided by VDOT are subject to appropriation and allocation.
10. The Revenue Service Adjustment Procedures are attached for reference.

IN TESTIMONY THEREOF, the Parties have caused this Project Principles Agreement to be executed, each by its duly authorized officers, all as of the day, month, and year first written.

VIRGINIA DEPARTMENT OF TRANSPORTATION

Garrett Moore, P.E.
Chief Engineer

WASHINGTON METROPOLITAN AREA TRANSIT
AUTHORITY

John Thomas
Chief Engineer

I-66 EXPRESS MOBILITY PARTNERS

Name: _____

Title: _____

FAM CONSTRUCTION, LLC

Name: _____

Title: _____