



# COMMONWEALTH of VIRGINIA

## *Commonwealth Transportation Board*

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*Agenda item # 6*

### **RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD**

**February 19, 2020**

#### **MOTION**

**Made By: Ms. Hynes, Seconded By: Mr. Rucker**

**Action: Motion Carried, Unanimously**

**Title: Approval of Second 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 a Memorandum of Agreement (MOA) between the Virginia Department of Transportation (VDOT), the Commonwealth Transportation Board (CTB) and the NVTC relating to the 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, set forth the responsibilities of the Parties relating to the Project and provided 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**, the Parties subsequently negotiated an Amended and Restated Memorandum of Agreement (Amended and Restated MOA), which was approved by the CTB on December 7, 2016 and entered into by the Parties in January 2017, that: (i) addressed the time frame and funding for the eastbound widening of the Facility, (ii) documented an increase in the allocation to NVTC from \$5 million to \$10 million, (iii) modified terms relating to payback of borrowed funds to the Toll Facilities Revolving Account, (iv) clarified the duration and nature of tolling for the Project, (v) addressed debt financing by NVTC to fund certain Project Components, and (v) addressed certain technical issues; and

**WHEREAS**, there is now a need to amend the Amended and Restated MOA to: (i) add the Virginia Department of Rail and Public Transportation (DRPT) as a signatory and party to the agreement and to document its formal role, (ii) to permit the Commonwealth to use toll revenues for debt service and pay-go expenses for specific Rail Components, including improvements to the Long Bridge and the Rosslyn Metrorail Station, (iii) to provide NVTC with a guaranteed minimum payment of \$10 million per year (with a 2.5% annual escalation) for the I-66 Commuter Choice Program, (iv) to provide an additional \$5 million per year (with a 2.5% annual escalation) to NVTC for the I-66 Commuter Choice Program from annual transit funding payments made to the Commonwealth by I-66 Express Mobility Partners, LLC as required by the “Amended and Restated Comprehensive Agreement Relating to the Transform 66 P3 Project” with such payments to NVTC beginning in FY 22, (v) to eliminate the existing restriction on the use of funds for transit operations beyond five years for those projects that cross jurisdictional lines or that connect to a VRE or Metrorail station and to allow NVTC to have the discretion to set the duration of funding for transit operations, and (v) to modify and conform language to make the agreement more similar to the 2017 “MOA Regarding the Annual Transit Investment from the 395 HOT Lanes” between the CTB, VDOT, DRPT, NVTC and the Potomac and Rappahannock Transportation Commission (PRTC); and

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

**NOW THEREFORE, BE IT RESOLVED** by the Commonwealth Transportation Board, that the *Second Amended and Restated Memorandum of Agreement, Transform66: Inside the Beltway Project*, attached hereto as Exhibit A, is hereby approved and the Secretary, Commissioner of Highways and the Director of the Department of Rail and Public Transportation are authorized to execute the Amended and Restated MOA on behalf of the Board, VDOT and DRPT, respectively.

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

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## CTB Decision Brief

### **Approval of proposed Second Amended and Restated Memorandum of Agreement with the Northern Virginia Transportation Commission Relating to the Transform66: Inside the Beltway Project February 19, 2020**

**Issue:** The Commonwealth has negotiated a second amendment to the “Memorandum of Agreement (MOA) with the Northern Virginia Transportation Commission (NVTC) Relating to the Transform66: Inside the Beltway Project”. The Commonwealth Transportation Board (CTB) was briefed on the new proposed changes to the MOA (described below) at its Workshop on December 9, 2019. The Second Amended and Restated MOA requires approval by the CTB.

**Facts:** In December 2015, the Commonwealth Transportation Board (CTB) approved a Memorandum of Agreement (MOA) between the CTB, the Virginia Department of Transportation (VDOT) and the Northern Virginia Transportation Commission (NVTC) that set forth the responsibilities of the Parties relating to the Transform 66: Inside the Beltway Project, including the use of the toll funding collected by VDOT from the I-66 Inside the Beltway facility. The MOA was signed on January 5, 2016. An Amended and Restated MOA between the Commonwealth and NVTC was approved in December 2016 and executed by the Parties on January 5, 2017 that further defined how toll revenues are to be used. In the 2016 MOA and the 2017 Amended and Restated MOA, the CTB delegated to NVTC the responsibility to select and administer, as approved by the CTB with designated toll revenues, the implementation of multimodal projects designed to attain the Improvement Goals of the Transform 66: Inside the Beltway Project.

The Parties now desire to make additional amendments to the Amended and Restated MOA. The proposed Second Amended and Restated MOA (attached as Exhibit A to the accompanying resolution) reflects the following changes to the 2017 Amended and Restated MOA:

- Adds the Virginia Department of Rail and Public Transportation (DRPT) as a signatory and party to the MOA and formally documents its role with the Commuter Choice program.
- Permits the Commonwealth to use toll revenues for debt service and pay-go expenses for specific Rail Components, including improvements to the Long Bridge and Metrorail.
- Provides NVTC with a guaranteed minimum payment of \$10 million per year (with a 2.5% annual escalation) for the I-66 Commuter Choice Program
- Provides an additional \$5 million per year (with a 2.5% annual escalation) to NVTC for the I-66 Commuter Choice Program from annual transit funding payments made to the Commonwealth by I-66 Express Mobility Partners, LLC as required by the “Amended and Restated Comprehensive Agreement Relating to the Transform 66 P3 Project” with such payments to NVTC beginning in FY 22
- Eliminates the existing restriction on the use of funds for transit operations beyond five years for those projects that cross jurisdictional lines or that connect to a VRE or Metrorail station and allows NVTC to have the discretion to set the duration of funding for transit operations.

- Modifies and conforms language to make the MOA more similar to the 2017 “MOA Regarding the Annual Transit Investment from the 395 HOT Lanes” between the CTB, VDOT, DRPT, NVTC and the Potomac and Rappahannock Transportation Commission (PRTC)

**Recommendation:** DRPT recommends approval of the attached resolution.

**Action Required by CTB:** Approval of the attached resolution.

**Options:** Approve, Deny or Defer.

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

5           This Second Amended and Restated Memorandum of Agreement (“MOA”) is entered into  
6 on \_\_\_\_\_, 2020, between the Commonwealth Transportation Board (“CTB”), the Virginia  
7 Department of Transportation (“VDOT”), both acting by and through the Commissioner of  
8 Highways, and the Virginia Department of Rail and Public Transportation (“DRPT”), and the  
9 Northern Virginia Transportation Commission (“NVTC”) (collectively, the “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 improvements  
18 in the I-66 corridor beginning at the intersection of I-66 and I-495 (the “Beltway”) and ending at  
19 U.S. Route 29 in the Rosslyn area of Arlington County, Virginia (the “Transform66: Inside the  
20 Beltway Project” or the “Project”); the foregoing geographical limits are hereafter referred to as the  
21 “Project Corridor” or the “Corridor” which, for avoidance of doubt includes adjacent and nearby  
22 routes), and (2) the Transform66: Outside the Beltway Project, which involves multimodal  
23 transportation improvements in the I-66 corridor beginning at Haymarket, Virginia, and ending at  
24 the Beltway; and

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

31           **WHEREAS**, in order to permit consistency and efficiency in NVTC’s administration of  
32 the use of toll funds in the Corridor and concessionaire funds in the I-395 corridor, the Parties  
33 desire to restate the aforesaid improvement goals as follows: (1) maximize person throughput in  
34 the Corridor; and (2) implement multimodal improvements to: (i) improve mobility along the  
35 Corridor, (ii) support new, diverse travel choices, and (iii) enhance transportation safety and travel  
36 reliability (collectively, the “Improvement Goals”) each of which will benefit the users of the  
37 Facility; and

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

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

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

58           **WHEREAS**, VDOT, on behalf of the CTB, will control and manage tolling on the Facility,  
59 with the toll revenues being utilized and distributed according to this MOA, to support the tolling  
60 operations and tolling maintenance of the Facility, and to fund Components selected by NVTC

61 and approved by the CTB for the Project, designed specifically to attain the Improvement Goals;  
62 and

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

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

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

71 **WHEREAS**, the Parties desire that, in addition to funding Components selected by NVTC  
72 and approved by the CTB, toll revenues may be used to fund one or both of the following two  
73 Components, including through issuance of debt, direct funding, a public private partnership, or  
74 other means: (1) a new bridge structure that crosses the Potomac River between Arlington County  
75 and the District of Columbia in the vicinity of the 14<sup>th</sup> Street Bridge complex and the Metro  
76 Fenwick Bridge to expand the capacity for commuter and intercity rail passenger service as defined  
77 by 49 U.S.C. §§ 24102(3) and (4) on July 1, 2019, and which may include, in addition to the river  
78 crossing, reasonably related new track approaches to the new bridge, as well as property  
79 acquisition and upgrades to the existing tracks on the Virginia and the District of Columbia sides  
80 of the new bridge (the "Potomac River Passenger Rail Bridge Component"); and (2) new Metrorail  
81 related improvements to, and serving, the Rosslyn Metrorail station in Arlington County that  
82 would facilitate the movement of passengers and relieve train congestion on the Blue, Orange, and  
83 Silver Metrorail lines, and which may include, but not be limited to, a new platform and station,  
84 pedestrian connections to the existing Rosslyn Metrorail station, and a future new extension of  
85 Metrorail under the Potomac River (the "Rosslyn Metrorail Station Component") (collectively, the  
86 "Passenger Rail and Metrorail Components" or "Rail Components"); and

87 **WHEREAS**, the Rail Components will achieve the Improvement Goals, and will benefit  
88 the users of the Facility, and satisfy the criteria hereafter set forth; and

89 **WHEREAS**, the Parties initially memorialized their agreement regarding the allocation  
90 and expenditure of certain toll revenue arising from travel on the Facility, the criteria for use of  
91 toll revenue to implement Components and the relationship between the Parties in a Memorandum

92 of Agreement dated January 5, 2016, and thereafter entered into an Amended and Restated  
93 Memorandum of Agreement dated January 5, 2017 (“the 2017 Amended and Restated MOA”), to  
94 reflect the time frame in which the eastbound widening of the Facility will occur and the funding  
95 to be used therefor, as well as other amendments related to use of toll revenue, duration of tolling  
96 and debt financing by NVTC to fund Components, and now wish to further amend and restate that  
97 agreement to include provisions for the potential use of toll revenues to fund one or both of the  
98 Rail Components.

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

## 102 **I. Nature of the Parties’ Interest Under This MOA**

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

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

## 117 **II. Basic Agreement; Roles and Responsibilities**

118 A. VDOT, DRPT, and the CTB shall have the following roles and responsibilities:

119 **1. Design and Construction of Dynamic Tolling Operation on I-66 Inside the**  
120 **Beltway.** VDOT shall be responsible for the design and construction of all  
121 improvements and facilities to convert the existing Facility to a dynamic tolled  
122 operation (the "Conversion"). Funding to accomplish this Conversion will be



123 advanced from the Toll Facilities Revolving Account pursuant to Virginia Code §  
124 33.2-1529 and repaid out of toll revenues collected from the Facility.

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

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

138 **4. Use of Toll Revenues.** VDOT shall include in the annual budget presented to  
139 the CTB for approval in June of each year, an estimate of the toll revenues  
140 anticipated to be collected in the upcoming year and the proposed allocation of all  
141 such toll revenues, including to pay the NVTC Payment (as defined below) and any  
142 NVTC or Rail Component Debt Service (as defined below) in the upcoming year.  
143 Allocation of these toll revenues shall be provided in the following order with the  
144 intent that, after the allocations provided for in (a), (b), (c), (d), (e), (f), and (g), all  
145 remaining toll revenues, including those carried forward in accordance with  
146 II.A.4(c), shall be made available for additional Components selected by NVTC in  
147 accordance with (c):

148 (a) reasonable costs and expenses of tolling operation and tolling  
149 maintenance, including reasonable reserves for major maintenance of  
150 tolling operations of the Facility;

151 (b) Debt Service on Rail Component Debt (as defined below) for one or  
152 both of the Rail Components not to exceed the NVTC Payment (as defined  
153 below);

154 (c) the NVTC Payment (as defined below) for Components selected by  
155 NVTC and approved by the CTB under the terms of this MOA, and any  
156 implementation costs related to Components, as well as operating costs  
157 related to Components;

158 (d) Pay go for Rail Components between the estimated start of the Long  
159 Bridge construction in 2022 and 2034;

160 (e) repayments to the Toll Facilities Revolving Account (i) for any  
161 allocation advanced from the Toll Facilities Revolving Account for the  
162 Conversion and (ii) the initial allocation to NVTC of \$10 million for the  
163 Project described in II.C., with a repayment schedule for the Conversion  
164 allocation and the initial allocation to NVTC (x) of not less than 25 years  
165 from the first date of disbursement, (y) reflecting a 0% interest rate, and (z)  
166 annually committing not more than six percent of anticipated toll revenues  
167 to such repayment; provided, however, if toll revenues remaining after the  
168 allocation described above in II.A.4(a), (b), (c) and (d) is below two times  
169 the amount budgeted for allocation described below in II.A.4(f), then the  
170 repayment to the Toll Facilities Revolving Account shall not exceed an  
171 amount that would result in the toll revenues remaining after the allocations  
172 described in II.A.4(a), (b), (c), and (d) of less than one and a half times the  
173 amount budgeted for allocation in II.A.4(f);

174 (f) Debt Service on NVTC Debt (as defined below) incurred to finance  
175 Components selected by NVTC and approved by the CTB under the terms  
176 of this MOA: provided that the annual amount of the Debt Service payments  
177 does not exceed 60 percent of toll revenues remaining after the allocations  
178 described above in II.A.4(a), (b), (c), and (d); provided further that no  
179 NVTC Debt may be incurred unless the toll revenues remaining after the  
180 allocation described above in II.A.4(a), (b), (c), and (d) in the fiscal year  
181 prior to the fiscal year the NVTC Debt will be incurred must be at least two  
182 times the maximum annual scheduled Debt Service on all outstanding  
183 NVTC Debt and the proposed NVTC Debt in the then-current or any future  
184 fiscal year;

185 (g) repayment to the Toll Facilities Revolving Account not paid in any prior  
186 and current year in accordance with II.A.4(e) as a result of not meeting the  
187 coverage requirements specified in II.A.4(f);

188 (h) any remaining revenues for Components selected by NVTC and  
189 approved by the CTB under the terms of this MOA, and any implementation  
190 costs related to Components, as well as operating costs related to  
191 Components. To the extent Components have not yet been selected by  
192 NVTC and approved by the CTB for funding with any remaining revenues,  
193 the remaining revenues shall be carried forward to the next fiscal year and  
194 made available to NVTC for Components approved in accordance with the  
195 provisions of this MOA.

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

205 "Rail Component Debt" means (i) any bonds, promissory notes, loan,  
206 financing or credit agreements under which the issuer is obligated to repay money  
207 borrowed to finance a Rail Component, (ii) all installment sales, conditional sales  
208 and capital lease obligations incurred or assumed by the issuer to finance a Rail  
209 Component. The term "incurred" as used in the MOA with respect to Rail  
210 Component Debt shall also mean issued or assumed.

211 "Debt Service on Rail Component Debt" means for a fiscal year or other  
212 measurement period the aggregate of the payments to be made in respect of the  
213 principal of and interest on Rail Component Debt and the associated financing or  
214 trustee's fees or charges and required deposits to any reserve funds.

215 “NVTC Payment” means an annual payment calculated as follows: \$10  
216 million increased by 2.5% each year starting in fiscal year 2021 as set forth in the  
217 attached Exhibit 2.

218 **5. Limit on Operating Costs.** NVTC may not expend more than 50% of the  
219 allocation described above in II.A.4(c) during the preceding nine fiscal-year period  
220 for operating costs. In addition, with respect to operating costs, NVTC may only  
221 use the toll revenues:

222 (a) to pay operating costs for toll revenue funded Components that are transit  
223 operations and are regional in nature because: (i) the service crosses  
224 jurisdictional boundaries and/or (ii) the service provides a direct connection  
225 to Metrorail or VRE stations; and

226 (b) to pay operating costs for all other individual toll revenue-funded  
227 Components only in the following maximum amounts: (i) up to 100% of  
228 operating costs for the first five years, (ii) up to 75% of operating costs for  
229 year six, (iii) up to 50% of operating costs for year seven, (iv) up to 25% of  
230 operating costs for year eight, and (v) 0% of operating costs after year eight.

231 **6. Approval of Components of the Project.** Provided NVTC complies with the  
232 criteria established herein for selection of Components, and subject to II.A.4.  
233 above, the CTB shall consider, approve, and allocate toll revenue funding for such  
234 Components. Each year, NVTC shall submit to DRPT a list of proposed  
235 Components for funding (“Funded Components”) for presentation by DRPT and  
236 NVTC at a regularly-scheduled CTB workshop. Such proposed Funded  
237 Components shall be selected by NVTC in accordance with a process established  
238 by NVTC consistent with the terms of this MOA. In addition, NVTC must provide  
239 to DRPT for DRPT's review and input any draft written materials, presentations, or  
240 recommendations that NVTC intends to provide to the CTB for any workshop  
241 relating to proposed Funded Components at least fifteen working days before  
242 NVTC finalize any such written materials, presentations, or recommendations.  
243 Each proposed Funded Component presented to the CTB for approval shall be  
244 identified separately with supporting documentation, including a description of the  
245 benefits that were the basis for evaluation and selection of each such proposed

246 Funded Component. If the proposed Funded Components are selected in  
247 accordance with NVTC's selection process and the proposed Components whether  
248 funded with the NVTC Payment of the Concessionaire Payment (as defined below)  
249 meet the Project Criteria (defined below), then the CTB will consider and approve  
250 the proposed Funded Components by an affirmative vote and, subject to  
251 appropriation by the General Assembly, allocate NVTC Payment and NVTC  
252 Concessionaire funds for such Funded Components.

253 VDOT and DRPT may provide technical assistance to NVTC in its preparation of  
254 recommendations to the CTB for funding of Components, as well as in the  
255 implementation of Components approved by the CTB for funding. DRPT will  
256 provide the CTB with an analysis of whether Components proposed by NVTC meet  
257 the requirements of this MOA and DRPT will provide a copy of the analysis to  
258 NVTC for review and input at least fifteen working days prior to it being sent to  
259 the CTB.

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

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

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

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

282 **10. Annual Budget Process.** In preparation for the CTB's annual budget process,  
283 VDOT shall estimate toll revenues and anticipated allocation of the estimated toll  
284 revenues for the upcoming six-year period presented in the Six Year Financial Plan  
285 and Six Year Improvement Program and provide said estimates to NVTC not later  
286 than January 30<sup>th</sup> of each year.

287 The CTB agrees to do the following:

288 (a) Each year and in accordance with the schedule of the Department of  
289 Planning and Budget of the Commonwealth, the CTB or the CTB's designee  
290 shall request that the Governor include in the budget to be delivered to the  
291 General Assembly during their next session a provision that there be  
292 appropriated from the revenues expected from the Facility amounts  
293 sufficient to pay the budgeted amount of funds expected to be provided to  
294 NVTC during the next succeeding fiscal year or biennial period, as  
295 applicable.

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

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

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

306 fiscal year or biennial period, as applicable, amounts sufficient to pay the  
307 budgeted amounts due NVTC.

308 **11. Quarterly Payments.** VDOT shall provide quarterly payments of actual toll  
309 revenues to NVTC of those toll revenues allocated pursuant to II.A.4(c) of this  
310 MOA by the 15<sup>th</sup> day of each quarter. The quarterly payment shall be equal to the  
311 lesser of 25 percent of the amount appropriated and allocated under II.A.4(c), or  
312 the toll revenues available to make such payment. To the extent VDOT is unable  
313 in any quarter to provide the full 25 percent of the amount appropriated and  
314 allocated, the VDOT shall make up the deficiency in subsequent quarters and fiscal  
315 years to the extent toll revenues are available to do so after the allocations are made  
316 pursuant to II.A.4(a), (b), (c), (d), (e), (f), and (g). Neither VDOT nor DRPT shall  
317 deduct from such quarterly payments any administrative fee or other charges. At  
318 NVTC's request, VDOT may elect to provide monthly payments of the actual toll  
319 revenues to NVTC. If VDOT so elects, the payments shall be made on a monthly  
320 basis with the necessary changes to the foregoing in points of detail.

321 **1. Reports.** VDOT shall provide quarterly reports documenting the actual  
322 revenues and distributions of said toll revenues to NVTC.

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

324 **1. Coordination and Development of Transportation Plan; Use of Toll**  
325 **Revenues; Compliance with Laws Limiting Use.** As part of the Six Year  
326 Improvement Program presented to the CTB for approval in June of each year,  
327 NVTC shall submit to the CTB, a list of Components proposed to be funded in  
328 whole or in part with toll revenues from the Facility. Such Components shall be  
329 selected by NVTC in accordance with a process established by NVTC pursuant to  
330 this MOA. Such Components shall be separately identified with supporting  
331 documentation as set forth in Exhibit 3. The CTB shall consider and approve the  
332 Components selected by NVTC, and allocate toll revenues for them, pursuant to  
333 II.A.4, provided the Components meet the criteria below and are selected in  
334 accordance with NVTC's selection process described in II.B.2. Each proposed  
335 Component must meet each of the following five criteria:

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

- 337 (b) Must have the capacity to attain one or more of the Improvement Goals;  
338 (c) Must be one of the following multimodal transportation improvements  
339 serving the Corridor:
- 340 i. New or enhanced local and commuter bus service, including  
341 capital and operating expenses (e.g., fuel, tires, maintenance, labor  
342 and insurance), subject to the limitations in II.A.5, and transit  
343 priority improvements;
  - 344 ii. Expansion or enhancement of transportation demand  
345 management strategies, including without limitation vanpool, and  
346 formal and informal carpooling programs and assistance;
  - 347 iii. Capital improvements for Washington Metropolitan Area  
348 Transit Authority rail and bus service, including capital and  
349 operating expenses, subject to the limitations in II.A.5, and  
350 improved access to Metrorail stations and Metrobus stops;
  - 351 iv. New or enhanced park and ride lot(s) and access or improved  
352 access thereto;
  - 353 v. New or enhanced VRE improvements or services, including  
354 capital and operating expenses, subject to the limitations in II.A.5.
  - 355 vi. Roadway improvements to address impacts from the dynamic  
356 tolling of the Facility on roadways in the Corridor (including but not  
357 limited to Routes 7, 29, 50, and 309, and Washington Boulevard,  
358 Wilson Boulevard, and Westmoreland Street);
  - 359 vii. Transportation Systems Management and Operations as defined  
360 in 23 U.S.C. § 101(a)(30) on December 1, 2015; and
  - 361 viii. Projects identified in the Commonwealth Reports or projects in  
362 the region's constrained long-range plan or regional transportation  
363 plans approved by the Northern Virginia Transportation Authority,  
364 as any such plan may be updated from time to time.



365 (d) For non-debt financed Components, must demonstrate the ability to  
366 obligate the toll revenues to the cost of the Component within two fiscal  
367 year and to expend the toll revenues within five fiscal years of the fiscal  
368 year in which the funds are allocated by the CTB except to the extent to  
369 which the CTB approves an extension of such timeframes upon the request  
370 of NVTC; and

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

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

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

379 NVTC understands and agrees that in the selection and implementation of  
380 Components using the toll revenues, it is bound by the provisions of Virginia Code  
381 § 33.2-309 as well as all other state and federal laws and regulations that limit the  
382 use of toll revenues, and toll revenues from interstate highways specifically.  
383 Accordingly, NVTC agrees to provide VDOT access to all records relating to  
384 Components and the use of the toll revenues. Further, NVTC will provide all such  
385 records for inspection and audit by VDOT, DRPT, and federal agencies, including  
386 but not limited to the United States Department of Transportation, the Federal  
387 Highway Administration, and the Federal Transit Administration, or their  
388 designees, upon reasonable notice at all times during the term of this MOA.

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

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

395 (a) A request to submit proposed Components issued by NVTC to all  
396 jurisdictions and other public transportation providers in Planning District  
397 8;

398 (b) The evaluation, prioritization, and selection of proposed Components by  
399 NVTC, the development of a funding strategy for each proposed  
400 Component, and the submission of selected Components by NVTC to the  
401 CTB; and

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

404 The CTB shall consider and approve the Components selected by NVTC  
405 and, subject to appropriation by the General Assembly, shall allocate toll  
406 revenues for such Components, pursuant to II.A.4, provided the  
407 Components meet the criteria in II.B.1. As part of the list of Components  
408 submitted to the CTB for consideration and approval and allocation of toll  
409 revenues, NVTC may submit for CTB consideration and approval  
410 additional Components that exceed the annual estimated toll revenues for  
411 that year. Provided those Components meet the criteria in II.B.1, the CTB  
412 shall consider and approve such additional Components and, pursuant to  
413 II.A.4 and subject to any other approvals that may be necessary, approve  
414 the allocation of toll revenues for such Components up to the amount of  
415 actual toll revenues for that year that are sufficient to fund one or more of  
416 those additional Components.

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

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

425           The Commonwealth of Virginia, the CTB, VDOT, and DRPT have no  
426 liability whatsoever for payment of any Debt Service on any NVTC Debt incurred  
427 by NVTC in connection with this MOA, or any other sum secured by or accruing  
428 under any financing document entered into by NVTC as a result of this MOA. No  
429 document evidencing or associated with any NVTC Debt for the financing of any  
430 Component shall contain any provisions whereby a trustee would be entitled to seek  
431 any damages or other amounts from the Commonwealth of Virginia, CTB, or  
432 VDOT due to any breach of this MOA.

433           Each bond, promissory note or other document evidencing NVTC Debt  
434 must include a conspicuous recital on its face stating: (a) payment of the principal  
435 and interest does not constitute a claim against VDOT's interest in I-66 or any part  
436 thereof; (b) payment is not an obligation of the Commonwealth of Virginia, VDOT,  
437 DRPT, the CTB, or any other agency, instrumentality or political subdivision of the  
438 Commonwealth of Virginia moral or otherwise; and (c) neither the full faith and  
439 credit nor the taxing power of the Commonwealth of Virginia, VDOT, DRPT, the  
440 CTB, or any other agency, instrumentality, or political subdivision of the  
441 Commonwealth of Virginia and/or its member jurisdictions, is pledged to the  
442 payment of the principal and interest on such NVTC Debt.

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

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

454 (a) A description of the Components selected for funding in the past fiscal  
455 year and the benefits that were the basis for evaluation and selection of each  
456 such Component;

457 (b) Starting in 2020, a review of the Components funded in past fiscal years  
458 describing the degree to which the expected benefits were realized or are  
459 being realized; and,

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

465 (d) The proposed uses of: (i) residual, unobligated balances of toll revenue  
466 funds carried over from prior years, and (ii) interest earned on such toll  
467 revenue funds.

468 **5. Accounting.** NVTC shall receive and manage, as a fiduciary, the toll revenue  
469 appropriated by the General Assembly, allocated by the CTB, and distributed to it  
470 by VDOT. NVTC shall maintain all funds and accounts containing said toll  
471 revenues from this MOA separate and apart from all other funds and accounts of  
472 NVTC. The revenues and expenses relating to the use of the toll revenues, and the  
473 Components undertaken with the toll revenues from this MOA, shall not be  
474 commingled with any other funds, accounts, venues, or expenses of NVTC. NVTC  
475 shall create and maintain for the term of this MOA segregated accounting and  
476 financial reporting for the Components financed by toll revenues provided by this  
477 MOA and reported as a separate fund in NVTC's financial statements, and such  
478 accounting shall constitute a "special revenue fund" as defined by the  
479 Governmental Accounting Standards Board. Expenditures will be recorded and  
480 reported for each Component.

481 All toll revenues provided to NVTC pursuant to the terms of this MOA shall  
482 be held by NVTC in accounts with a financial institution under an arrangement that,  
483 to the extent reasonably practicable, preclude such funds from being an asset

484 subject to the claims of creditors of NVTC, other than a holder of NVTC Debt, or  
485 other claims related to the Components undertaken in accordance with this MOA.

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

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

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

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

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

509 **10. Insurance and Indemnity by Contractors.** NVTC shall include the  
510 Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees  
511 and agents, as additional insureds on NVTC's insurance policies so that they are  
512 protected from and against any losses actually suffered or incurred, except for  
513 losses to the extent caused by the negligence or willful misconduct of such entity  
514 or person, from third party claims that are directly related to or arise out of: (a) any

515 failure by NVTC to comply with, to observe or to perform in any material respect  
516 any of the covenants, obligations, agreements, terms or conditions in this MOA, or  
517 any breach by NVTC of its representations or warranties in this MOA; (b) any  
518 actual or willful misconduct or negligence of NVTC, its employees or agents in  
519 direct connection with the Project or any related Components; (c) any actual or  
520 alleged patent or copyright infringement or other actual or alleged improper  
521 appropriation or use of trade secrets, patents, proprietary information, know-how,  
522 trademarked or service-marked materials, equipment devices or processes,  
523 copyright rights or inventions by NVTC in direct connection with the Project or;  
524 (d) inverse condemnation, trespass, nuisance or similar taking of or harm to real  
525 property committed or caused by NVTC, its employees or agents in direct  
526 connection with the Project; or (e) any assumed liabilities. NVTC shall  
527 contractually require its contractors, subcontractors, vendors, and others working  
528 or performing services related to any Component it has funded to indemnify the  
529 Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees  
530 and agents from the same losses.

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

534 This provision shall survive the expiration or earlier termination of this  
535 MOA.

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

543 **C. Initial Multimodal Transportation Improvements.** NVTC shall undertake a  
544 Component selection process upon execution of this MOA, and submit to the CTB a list of  
545 Components for an advanced allocation of funding in the amount of \$10 million (which

546 shall be provided upon commencement of construction of the dynamic tolling of the  
547 Facility as provided in II.A.1, and shall be repaid as specified in II.A.4). Components shall  
548 be multimodal transportation improvements that meet the criteria set forth in II.B.1 and are  
549 capable of being obligated not later than at the time tolling begins on the Facility. In the  
550 event litigation is filed challenging the implementation of the Project, or a Component of  
551 the Project, prior to the initiation of tolling, or in the event any other action prohibits or  
552 restricts the ability to toll the Facility, then the CTB may withhold this funding until such  
553 time that the litigation or other event or action is resolved in a manner that allows the  
554 Project to be implemented. NVTC may choose to expend other funds after the execution  
555 of this MOA for Components identified through the selection process described in this  
556 MOA prior to the commencement of construction. Any such expenditures are at NVTC's  
557 risk but shall be reimbursable from the advanced allocation identified in this paragraph  
558 provided the expenditures otherwise comply with the provisions of the MOA.

559 **D. Annual Concessionaire Payment to NVTC.** In addition to the toll revenues paid  
560 to NVTC as provided in II.A.4, DRPT shall transfer to NVTC in any year toll revenues are  
561 being used pursuant to II.A.4.(b) or II.A.4.(d) the sum of \$5 million, escalated each year  
562 by 2.5% (the "Concessionaire Payment"), as set forth in Exhibit 4, subject to the following:

563 1. The Concessionaire Payment shall be subject to appropriation by the General  
564 Assembly to the CTB, and shall be made available to NVTC each year in  
565 accordance with the annual budget process set forth in Section II.A.10.,  
566 specifically including the request each year by the CTB to the Governor, with  
567 the assistance of VDOT and DRPT, to include the Concessionaire Payment in  
568 the budget for the upcoming fiscal year.

569 2. Upon appropriation, the Concessionaire Payment shall be transferred by DRPT  
570 to NVTC within 30 days of DRPT's receipt of the funds.

571 3. The Concessionaire Payment shall be used for Components in accordance with  
572 the requirements of Section II.B.

573 **E. Widening and Related Improvements to I-66.** VDOT will proceed with plans to  
574 widen the eastbound lanes of the Facility from two lanes to three lanes between the Dulles  
575 Connector Road and Exit 71.

576           The design for the widening shall be limited to increasing the number of eastbound  
577 lanes of the Facility from two lanes to three lanes consistent with an approved  
578 environmental assessment conducted pursuant to the National Environmental Policy Act,  
579 and other laws and regulations applicable to the widening, and shall apply the principals of  
580 Context Sensitive Solutions as described in FHWA’s Publication FHWA-HEP-07-014 as  
581 follows:

- 582           • Avoid, minimize or mitigate impacts to the parks, stream corridors, and  
583           vegetation along the corridor and within the right-of-way;
- 584           • Avoid, minimize or mitigate impacts to the W&OD Trail and the Custis  
585           Trail;
- 586           • Reduce the cost of this component of the Project; and
- 587           • Avoid, minimize or mitigate the need for acquisition of additional right-of-  
588           way.

589 **III. Term.** Unless this MOA is otherwise terminated in accordance with VII, the term of this  
590 MOA shall expire on January 11, 2057 (the “Expiration Date”) subject to the provisions of IV.

591 **IV. Debt Financing:** NVTC shall not incur any NVTC Debt that is dependent on toll revenue  
592 from the Project and which matures or extends beyond Expiration Date. If this MOA is terminated  
593 in accordance with VII prior to the Expiration Date, and there is outstanding NVTC Debt for which  
594 toll revenues has been pledged to pay Debt Service or there are pay-go Components which are yet  
595 to be completed, and further provided the use of toll revenues to pay Debt Service or the costs of  
596 the pay-go Components is not a misuse of toll revenues under this MOA and the cause or basis of  
597 the termination, then, subject to CTB approval, tolls shall continue to be imposed on the Facility  
598 and toll revenues shall continue to be allocated in accordance with II.A.4(a), (b), (c), (d), (e), (f)g  
599 to pay Debt Service or to complete the pay-go Components. The CTB will not approve funding  
600 for pay-go Components for more than two fiscal years past the termination of the MOA in  
601 accordance with VII prior to the Expiration Date.

602 **V. Amended and Restated Agreement.** This Second Amended and Restated MOA is intended  
603 to represent a continuation of the 2017 Amended and Restated MOA, as amended and restated  
604 upon the terms and conditions set out herein, and from and after the date hereof supersedes and



605 replaces the 2017 Amended and Restated MOA and supersedes all other prior agreements,  
606 understandings, representations, or communications, whether written or oral.

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

609 **VII. Termination.** This MOA may be terminated (a) by a Party for material non-compliance with  
610 this MOA which has not either been remedied, or a remedy commenced and diligently pursued  
611 thereafter, within 120 days after written notice from the other Party, and (b) by written agreement  
612 of the Parties. However, prior to any termination, the Parties shall meet and confer to make a good  
613 faith attempt to resolve any non-compliance issues as follows. Within 30 days of the notice, the  
614 Commissioner of Highways, the Director of Rail and Public Transportation and the NVTC  
615 Executive Director shall meet to discuss resolution of the non-compliance issues. If a resolution  
616 cannot be reached within 30 days, the Secretary of Transportation and the Chairman of NVTC  
617 shall meet within 30 days to discuss resolution of the non-compliance issues. If a resolution cannot  
618 be agreed upon within 30 days, the termination shall be effective as set forth in the written notice  
619 and in accordance with this MOA.

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

625 **If to NVTC:**

626 Executive Director  
627 Northern Virginia Transportation Commission  
628 2300 Wilson Boulevard, Suite 230  
629 Arlington, VA 22201  
630 Fax: 703-524-1756

631 **If to VDOT:**

632 Virginia Department of Transportation  
633 1401 East Broad Street  
634 Richmond, Virginia 23219

635 Attn: Commissioner of Highways

636 Fax: 804-786-2940

637 **If to DRPT:**

638 Virginia Department of Rail and Public Transportation

639 600 East Main Street, Suite 2102

640 Richmond, VA 23219

641 Attn: Director of Rail and Public Transportation

642 Fax: 804-225-3752

643 *With a copy to:*

644 Office of the Attorney General

645 Chief, Transportation Section

646 202 North Ninth Street

647 Richmond, Virginia 23219

648 Fax: 804-692-1647

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

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

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

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

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

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

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

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

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

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

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

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695 In Witness Whereof, the Parties hereby cause this MOA to be executed, each by its duly  
696 authorized officers, as of the date below.

697 COMMONWEALTH TRANSPORTATION BOARD

698  
699 \_\_\_\_\_

700 Secretary of Transportation

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

702  
703 VIRGINIA DEPARTMENT OF TRANSPORTATION

704  
705 \_\_\_\_\_

706 Commissioner of Highways

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

708  
709 VIRGINIA DEPARTMENT OF RAIL AND PUBLIC  
710 TRANSPORTATION

711  
712 \_\_\_\_\_

713 Director of Rail and Public Transportation

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

715  
716 NORTHERN VIRGINIA TRANSPORTATION COMMISSION

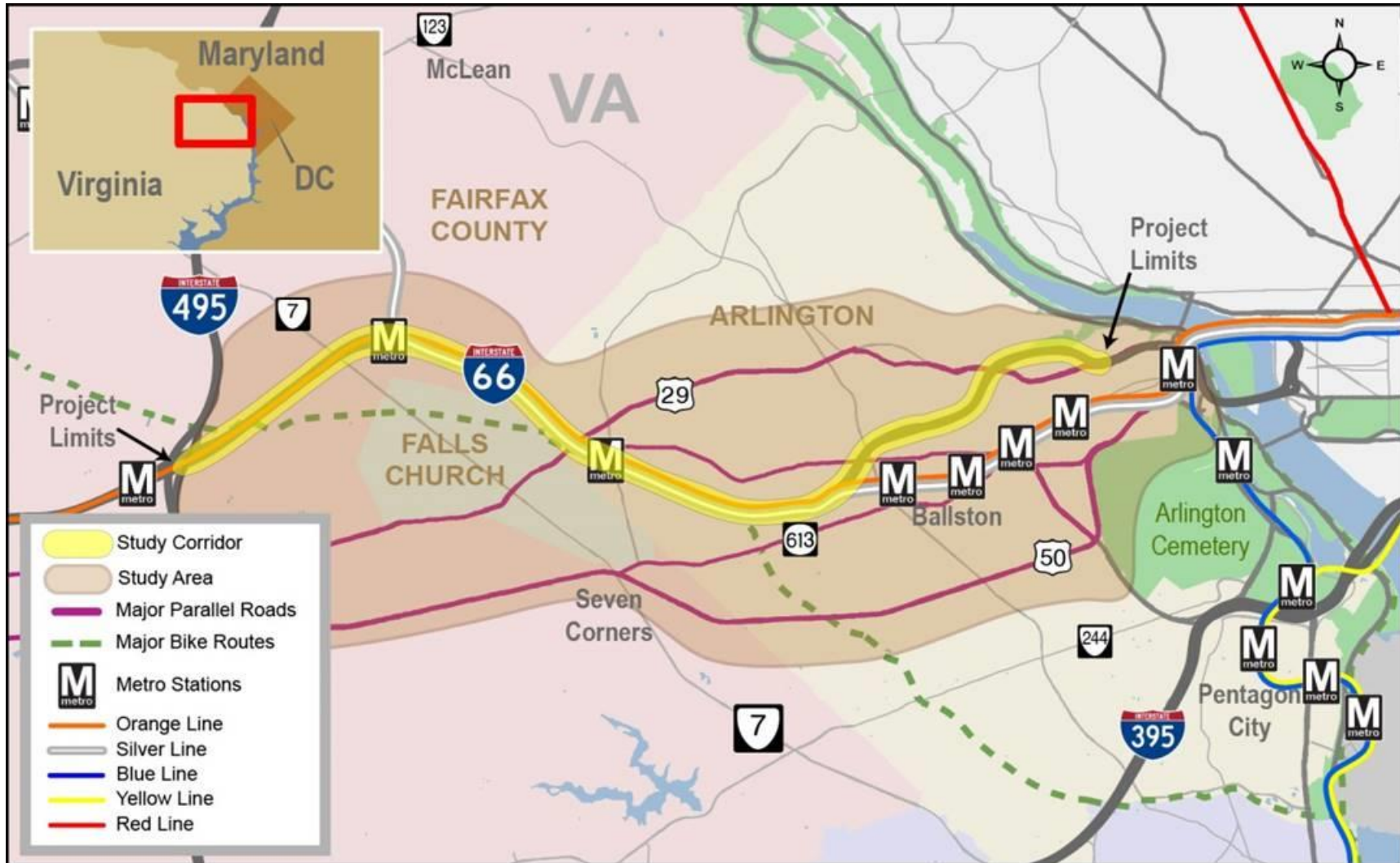
717  
718 \_\_\_\_\_

719 Katherine A. Mattice

720 Executive Director

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

Exhibit 1



<b>Exhibit 2</b>			
<b>MINIMUM ANNUAL TRANSIT INVESTMENT</b>			
<b>Payment Due Date</b>	<b>Minimum Annual Transit Investment (\$ Nominal)</b>	<b>Payment Due Date</b>	<b>Minimum Transit Investment (\$ Nominal)</b>
FY 2021	\$10,000,000	FY 2042	\$16,795,819
FY 2022	\$10,250,000	FY 2043	\$17,215,714
FY 2023	\$10,506,250	FY 2044	\$17,646,107
FY 2024	\$10,768,906	FY 2045	\$18,087,259
FY 2025	\$11,038,129	FY 2046	\$18,539,441
FY 2026	\$11,314,082	FY 2047	\$19,002,927
FY 2027	\$11,596,934	FY 2048	\$19,478,000
FY 2028	\$11,886,858	FY 2049	\$19,964,950
FY 2029	\$12,184,029	FY 2050	\$20,464,074
FY 2030	\$12,488,630	FY 2051	\$20,975,676
FY 2031	\$12,800,845	FY 2052	\$21,500,068
FY 2032	\$13,120,867	FY 2053	\$22,037,569
FY 2033	\$13,448,888	FY 2054	\$22,588,509
FY 2034	\$13,785,110	FY 2055	\$23,153,221
FY 2035	\$14,129,738	FY 2056	\$23,732,052
FY 2036	\$14,482,982	FY 2057	\$24,325,353
FY 2037	\$14,845,056		
FY 2038	\$15,216,183		
FY 2039	\$15,596,587		
FY 2040	\$15,986,502		
FY 2041	\$16,386,164	<b>Total</b>	<b>\$597,339,480</b>

**Exhibit 3**

**Components Selected by NVTC in Accordance with the Memorandum of Agreement Transform66: Inside the Beltway Project**

**Sample Documentation**

Component Name	Component Description	Component Location	Component Budget	Improvement Goal	Multimodal Component Type	Compliance with Terms of the MOA
1.						<p><i>This component has been approved by NVTC pursuant to the Project Component Selection Process. Documentation is included to support this compliance.</i></p>

<b>Exhibit 4</b>			
<b>Concessionaire Payment to NVTC</b>			
<b>Payment Due Date</b>	<b>Concessionaire Payment (\$ Nominal)</b>	<b>Payment Due Date</b>	<b>Concessionaire Payment (\$ Nominal)</b>
		FY 2042	\$8,193,082
FY 2022	\$5,000,000	FY 2043	\$8,397,909
FY 2023	\$5,125,000	FY 2044	\$8,607,857
FY 2024	\$5,253,125	FY 2045	\$8,823,053
FY 2025	\$5,384,453	FY 2046	\$9,043,630
FY 2026	\$5,519,064	FY 2047	\$9,269,720
FY 2027	\$5,657,041	FY 2048	\$9,501,464
FY 2028	\$5,798,467	FY 2049	\$9,739,000
FY 2029	\$5,943,429	FY 2050	\$9,982,475
FY 2030	\$6,092,014	FY 2051	\$10,232,037
FY 2031	\$6,244,315	FY 2052	\$10,487,838
FY 2032	\$6,400,423	FY 2053	\$10,750,034
FY 2033	\$6,560,433	FY 2054	\$11,018,785
FY 2034	\$6,724,444	FY 2055	\$11,294,254
FY 2035	\$6,892,555	FY 2056	\$11,576,611
FY 2036	\$6,064,869	FY 2057	\$11,866,026
FY 2037	\$7,241,491		
FY 2038	\$7,422,528		
FY 2039	\$7,608,091		
FY 2040	\$7,798,294		
FY 2041	\$7,993,251	<b>Total</b>	<b>\$298,669,741</b>