



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
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AGENDA

MEETING OF THE COMMONWEALTH TRANSPORTATION BOARD

VDOT Central Auditorium
1221 East Broad Street
Richmond, Virginia 23219

December 7, 2016
9:00 a.m.

or upon adjournment of the December 6, 2016 Workshop Meeting.

Public Comments:

Approval of Minutes October 19, 2016

ENVIRONMENTAL DIVISION:

Presenting: Angel Deem
Division Administrator

1. Action on Revised Location Approval for the Hampton Roads Crossing Study.

INFRASTRUCTURE INVESTMENT DIVISION:

Presenting: Kimberly Pryor
Division Director

2. Action on Addition of Projects to the Six-Year Improvement Program for Fiscal Years 2017-2022.
3. Action on FY17-22 Six-Year Improvement Program Transfers For September 23, 2016 through November 11, 2016.

OFFICE OF THE SECRETARY OF TRANSPORTATION:

Presenting: Nick Donohue
Deputy Secretary of Transportation

4. Action on Changes to the Six-Year Improvement Program Development Policy
5. Action on Approval of an Amended and Restated Memorandum of Agreement with the Northern Virginia Transportation Commission Relating to the Transform66: Inside the Beltway Project.

HAMPTON ROADS DISTRICT:

Presenting: Richard L. Walton, Jr.
Chief of Policy

6. Action on Authorization for the Commissioner of Highways to Enter into a Project Agreement Between VDOT and the Hampton Roads Transportation Accountability Commission Relating to Segment III of the Interstate 64 Widening Project (UPC's 106689/109790).
7. Action on Authorization for the Commissioner of Highways to Enter into a Project Agreement Between VDOT and the Hampton Roads Transportation Accountability Commission Relating to Preliminary Engineering for the Interstate 64/Interstate 264 Interchange- Phase III Project (UPC 106693).

RIGHT OF WAY DIVISION:

Presenting: Richard L. Walton, Jr.
Chief of Policy

8. Action on Limited Access Control Change along Route 460 (Bluefield Bypass) located in the Town of Bluefield in the Bristol District.
9. Action on Locality-State Land Conveyance to Arlington County for right of way along various roads located in Crystal City and Pentagon City, Located in the Northern Virginia District, acquired as part of State Projects 0001-000-105, RW-201, 0095-000-101, Rw-201, 0595-000-101, RW-201/0001-000-101, RW-201.

RAIL AND PUBLIC TRANSPORTATION:

Presenting: Jennifer DeBruhl
Chief of Public Transportation

10. Action on Change in Fiscal Year 2017 Allocation to Bay Aging, a Rural Transit Provider, in the Fiscal Year 2017-2022 Six-Year Improvement Program

LOCAL ASSISTANCE DIVISION:

Presenting: Julie Brown
Division Administrator

11. Action on Economic Development Access Fund Policy (Revision)
12. Action on Economic Development Access Specifically, The Town of Front Royal, IT Federal, LLC. Located in the Staunton District.
13. Action on Recreational Access Specifically Frederick County, Sherando Park Located in the Staunton District.

Agenda

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14. Action on Virginia Byway Designation Specifically, Routes 601, 681, 55, 646, 619 (Bristow Road), 619 (Joplin Road) in Prince William County Located in the Northern Virginia District.

15. Action on Virginia Byway Designation-Routes 658, 624 and 639 Warren County Located in the Staunton District.

FINANCIAL PLANNING DIVISION:

Presenting: John Lawson
Chief Financial Officer

16. Action on Authorizing a Loan from the State Infrastructure Bank to I-66 Express Mobility Partners LLC, for the Transform 66 P3 Project in Virginia.

17. Action on Endorsement of the Commissioner's Final Finding of Public Interest for the Transform66 Outside-the Beltway Project under the Public-Private Transportation Act.

RAIL AND PUBLIC TRANSPORTATION:

Presenting: Jeremy Latimer
Rail Transportation Programs
Administrator

18. Action on Change in Fiscal Year 2017-2022 Six-Year Improvement Program Allocation for Arkendale Third Track Project in the Fredericksburg and Northern Virginia Districts.

SCHEDULING AND CONTRACT:

Presenting: Don Silies
Director of Contracts

19. Bids.

Threshold

NEW BUSINESS:

ADJOURNMENT:

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Agenda Item #1

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: Seconded By:

Action:

Title: Revised Location Approval for the Hampton Roads Crossing Study

WHEREAS, by resolution dated July 20, 2000 and entitled *Location: I-64 Hampton Roads Third Crossing*, the Commonwealth Transportation Board (CTB) approved Candidate Build Alternative 9 as the proposed location (2000 Approved Alternative) of the Hampton Roads Crossing Study (HRCS) project; and

WHEREAS, for varying reasons, the 2000 Approved Alternative did not advance, and a Draft Supplemental Environmental Impact Statement (Draft SEIS) was developed in accordance with the National Environmental Policy Act and approved by the Federal Highway Administration (FHWA) on July 25, 2016 for the consideration of alternatives to the approved location for the HRCS project; and

WHEREAS, in accordance with the statutes of the Commonwealth of Virginia and policies of the CTB, Location Public Hearings were held in the City of Hampton on September 7, 2016 at the Hampton Roads Convention Center and in the City of Norfolk on September 8, 2016 at the Quality Suites Lake Wright for the purpose of considering additional alternatives and their potential impacts as documented in the Draft SEIS; and

WHEREAS, proper notice was given in advance, and all those present were given a full opportunity to express their opinions and recommendations on the alternatives under consideration, and their statements have been duly recorded and considered by the CTB; and

WHEREAS, the economic, social, and environmental effects of the evaluated alternatives have been examined and given proper consideration and this evidence, along with all other, has been carefully reviewed; and

WHEREAS, on October 20, 2016 the Hampton Roads Transportation Planning Organization (HRTPO) and Hampton Roads Transportation Accountability Commission (HRTAC) both voted unanimously to endorse Alternative A, as identified in the Draft SEIS, as the Preferred Alternative to be included in a series of other projects implemented in the region's 2040 Long Range Transportation Plan; and

WHEREAS, based on the documentation supporting decisions by the HRTPO and HRTAC it appears the proposed capacity improvements will include managed lanes in either the form of High Occupancy Vehicle (HOV) or High Occupancy Toll (HOT) lanes; and

WHEREAS, collaboration among VDOT, FHWA, the U.S. Army Corps of Engineers (USACE), the U.S. Environmental Protection Agency, the Federal Transit Administration, the U.S. National Oceanic and Atmospheric Administration, the U.S. Navy (Navy), and the U.S. Coast Guard resulted in the recommendation for Alternative A to be identified as the Preferred Alternative; and

WHEREAS, USACE has concurred that Alternative A can be considered to be the preliminary Least Environmentally Damaging Practicable Alternative; and

WHEREAS, VDOT is committed to minimizing impacts along the I-64 corridor by confining the improvements of Alternative A to largely within the existing right of way; and

WHEREAS VDOT is committed to avoiding permanent acquisition of property owned by Hampton University and to having this commitment documented in FHWA's decision document; and

WHEREAS VDOT may have instances during project construction where temporary access to Hampton University property will be necessary; and

NOW, THEREFORE, BE IT RESOLVED that the location of this project be approved as presented under Alternative A in the Draft SEIS.

BE IT FURTHER RESOLVED that the CTB will be briefed on and have the opportunity to endorse the managed lane concept should it be identified and the appropriate analysis and financial plans are in place.

BE IT FURTHER RESOLVED that Alternative A will not include any permanent acquisition of property from Hampton University and will request this be documented in FHWA's Record of Decision.

BE IT FURTHER RESOLVED that VDOT is directed to work with Hampton University by June 30, 2017 to develop a mutually agreeable memorandum outlining the terms should temporary access to University property be necessary.

BE IT FURTHER RESOLVED that the Virginia Department of Transportation continue to work with HRTPO, HRTAC, USACE, Navy, the Port of Virginia, and other parties to advance separate studies to identify appropriate access options around Craney Island to include I-564/I-664 Connectors, I-664/MMMBT and VA 164/164 Connector.

BE IT FURTHER RESOLVED that the Virginia Department of Transportation continue to work with HRTPO, HRTAC, USACE, and other parties to advance a separate study of the Bowers Hill Interchange at I-664 and I-264 in Chesapeake.

BE IT FURTHER RESOLVED that the resolution of this Board dated July 20, 2000, entitled *Location: I-64 Hampton Roads Third Crossing*, and approval of the 2000 Approved Alternative granted therein for the HRCS project are hereby rescinded.

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Commonwealth Transportation Board
Decision Brief
December 7, 2016

Revised Location Approval for the Hampton Roads Crossing Study
State Project Number: 0064-965-081, P101

Issue: The Virginia Department of Transportation (VDOT) seeks from the Commonwealth Transportation Board (CTB) (i) approval of proposed Alternative A as set forth in the Supplemental Environmental Impact Statement (SEIS) relating to the Hampton Roads Crossing Study (HRCS)/Project as the location for this project and (ii) rescission of the prior location approved by the CTB for the Hampton Roads Crossing in the July 20, 2000 resolution entitled: *Location: I-64 Hampton Roads Third Crossing*.

Facts: On July 20, 2000 the Commonwealth Transportation Board (CTB) approved Candidate Build Alternative 9 as the proposed location of the then “I-64 Hampton Roads Third Crossing” study/project. This alternative/location was then identified as the preferred alternative in the 2001 Federal Highway Administration Record of Decision for the project.

For various reasons, the alternative approved by the CTB in 2000 did not advance and in May of 2015, the Hampton Roads Crossing Study Supplemental Environmental Impact Statement (HRCS SEIS) was initiated to re-evaluate the Hampton Roads Crossing Study. The HRCS SEIS evaluates different alignments that address Interstate 64, Interstate 664, Interstate 564, VA State Route 164, and/or proposed new alignments. Estimated project costs range from \$3.3-\$12.5 billion.

The Department held Citizen Information Meetings in July and December 2015 and Location Public Hearings in September 2016 relating to the Draft SEIS and the different alignments under consideration in the Draft SEIS. Maps, drawings, and other location studies data were presented for public review at the meetings and citizen comments were received and reviewed. Comments received on the Draft SEIS will be responded to in the Final SEIS. The SEIS was approved by FHWA on July 25, 2016 and published for public review on August 5, 2016. The public comment period was open through September 19, 2016. The public was notified of these meetings and review opportunities through press releases, media advertisements, web site announcements, and mailings. Per state code, all properties within the study area corridors received mailings announcing the document availability and Location Public Hearings 30-days prior to the meetings.

Recommendation:

Based on the findings of the Draft SEIS and comments received during the public review, the Department recommends that Alternative A be approved as the location of this project. The recommendation is based on the following factors:

- Alternative A was unanimously endorsed by the Hampton Roads TPO and Hampton Roads Transportation Accountability Commission on October 20, 2016 as part of a larger package of projects;

- Alternative A has a cost estimate of \$3.3 billion. The Hampton Roads TPO Long Range Transportation Plan currently includes \$4.8 billion for the project;
- Alternative A has the least number of wetland impacts and does not result in any permanent interference with Army Corps of Engineers or Navy operations in the region;
- Alternative A will avoid permanent acquisition of property owned by Hampton University; and,
- All of the HRCS SEIS federal Cooperating Agencies either concurred or did not object to this alternative being recommended as the preferred alternative to the Commonwealth Transportation Board (CTB);
- USACE has concurred that Alternative A can be considered to be the preliminary Least Environmentally Damaging Practicable Alternative.

Action required by the CTB:

- Approve a Resolution accomplishing the following:
 - Adopt a location decision based upon the alternatives advanced in the SEIS.
 - Require VDOT to exclude from Alternative A any permanent acquisition of property from Hampton University and request the same be documented in FHWA's Record of Decision.
 - Authorize VDOT to continue working with other parties to advance separate studies to identify appropriate access options around Craney Island to include I-564/I-664 Connectors, I-664/MMMBT and VA 164/164 Connector.
 - Authorize VDOT to continue working with other parties to advance a separate study of the Bowers Hill Interchange at I-664/I-264 in Chesapeake.
 - Reserve the opportunity to endorse future managed lane concepts options should they be identified and if the appropriate analysis and financial plans are in place.
 - Rescind the prior location decision made on July 20, 2000.

Result, if Approved: VDOT will proceed with steps necessary for finalization of the SEIS.

Options: Approve, deny, or defer.

Public Comments/Reactions: CTB was briefed on public comments during its September 2016 and October 2016 workshops. Those presentations are available here: http://www.hamptonroadscrossingstudy.org/meetings/meeting_presentations.asp



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Agenda item # 2

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By:

Seconded By:

Action:

**Title: Addition of Projects to the Six-Year Improvement Program for
Fiscal Years 2017-2022**

WHEREAS, Section 33.2-214(B) of the *Code of Virginia* requires the Commonwealth Transportation Board (Board) to adopt by July 1st of each year a Six-Year Improvement Program (Program) of anticipated projects and programs and that the Program shall be based on the most recent official revenue forecasts and a debt management policy; and

WHEREAS, after due consideration the Board adopted a Final Fiscal Years 2017-2022 Program on June 14, 2016; and

WHEREAS, the Board is required by Sections 33.2-214(B) and 33.2-221(C) of the *Code of Virginia* to administer and allocate funds in the Transportation Trust Fund; and

WHEREAS, Section 33.2-214(B) of the *Code of Virginia* provides that the Board is to coordinate the planning for financing of transportation needs, including needs for highways, railways, seaports, airports, and public transportation and is to allocate funds for these needs pursuant to Sections 33.2-358 and 58.1-638 of the *Code of Virginia*, by adopting a Program; and

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Addition of Projects to the SYIP
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WHEREAS, Section 58.1-638 authorizes allocations to local governing bodies, transportation district commissions, or public service corporations for, among other things, capital project costs for public transportation and ridesharing equipment, facilities, and associated costs; and

WHEREAS, the projects shown in Appendix A were not included in the FY 2017-2022 Program adopted by the Board on June 14, 2016; and

WHEREAS, the Board recognizes that the projects are appropriate for the efficient movement of people and freight and, therefore, for the common good of the Commonwealth.

NOW, THEREFORE, BE IT RESOLVED, by the Commonwealth Transportation Board, that the projects shown in Appendix A are added to the Six-Year Improvement Program of projects and programs for Fiscal Years 2017 through 2022 and are approved.

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CTB Decision Brief

Addition of Projects to the Six-Year Improvement Program for Fiscal Years 2017 - 2022

Issue: Each year the Commonwealth Transportation Board (CTB) must adopt a Six-Year Improvement Program (Program) and allocations in accordance with the statutory formula.

Facts: The CTB must adopt a Program of anticipated projects and programs by July 1st of each year in accordance with Section 33.2-214(B) of the *Code of Virginia*. On June 14, 2016, after due consideration, the CTB adopted a Final FY 2017-2022 Program. The projects shown in Appendix A were not in the Final FY 2017-2022 Program adopted by the CTB.

Recommendations: The Virginia Department of Transportation (VDOT) recommends the addition of the projects in Appendix A to the Program for FY 2017–2022.

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to add the projects listed in Appendix A to the Program for FY 2017–2022 to meet the CTB’s statutory requirements.

Result, if Approved: If the resolution is approved, the projects listed in Appendix A will be added to the Program for FY 2017-2022.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None

**Appendix A
Amendments to the FY2017-2022 SYIP**

Row	UPC	District	Jurisdiction	Route	Project Description	Total Cost	Total Allocation	Balance	Major Fund Source	Fully Funded
N/A	106693	Hampton	Norfolk	264	I-64/I-264 Interchange-Phase III (PE Only)	\$10,000,000	\$10,000,000	\$0	HRTAC	Yes
N/A	110321	Hampton	Norfolk	64	I-64 Express Lanes-Segment I	\$5,000,000	\$5,000,000	\$0	TFRA	Yes
N/A	110010	Fredericksburg	Stafford County	218	Falmouth Fire/EMS Emergency Signal Preemption	\$30,000	\$30,000	\$0	Accounts Receivable	Yes
C	110209	Northern Virginia	Prince William County	28	Route 28 and Route 605 Traffic Signal and Left Turn Lane	\$520,000	\$520,000	\$0	Safety	Yes
Total						\$15,550,000	\$15,550,000	\$0		



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Agenda item # 3

RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: Seconded By:

Action:

Title: FY17-22 Six-Year Improvement Program Transfers
For September 23 through November 11, 2016

WHEREAS, Section 33.2-214(B) of the Code of Virginia requires the Commonwealth Transportation Board (Board) to adopt by July 1st of each year a Six-Year Improvement Program (Program) of anticipated projects and programs. On June 14, 2016, a resolution was approved to allocate funds for the Fiscal Years 2017 through 2022 Program; and

WHEREAS, the Board authorized the Commissioner, or his designee, to make transfers of allocations programmed to projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2017 through 2022 to release funds no longer needed for the delivery of the projects and to provide additional allocations to support the delivery of eligible projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2017 through 2022 consistent with Commonwealth Transportation Board priorities for programming funds, federal/state eligibility requirements, and according to the following thresholds based on the recipient project; and

Table with 2 columns: Total Cost Estimate and Threshold. Rows include categories like <\$5 million, \$5 million to \$10 million, and >\$10 million with corresponding allocation increase thresholds.

Resolution of the Board
FY17-22 Six-Year Improvement Program Transfers
For September 23 through November 11, 2016
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WHEREAS, the Board directed that (a) the Commissioner shall notify the Board on a monthly basis should such transfers or allocations be made; and (b) the Commissioner shall bring requests for transfers of allocations exceeding the established thresholds to the Board on a monthly basis for its approval prior to taking any action to record or award such action; and

WHEREAS, the Board is being presented a list of the transfers exceeding the established thresholds attached to this resolution and agrees that the transfers are appropriate.

NOW, THEREFORE, BE IT RESOLVED, by the Commonwealth Transportation Board, that the attached list of transfer requests exceeding the established thresholds is approved and the specified funds shall be transferred to the recipient project(s) as set forth in the attached list to meet the Board's statutory requirements and policy goals.

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CTB Decision Brief

FY2017-2022 Six-Year Improvement Program Transfers For September 23 through November 11, 2016

Issue: Each year the Commonwealth Transportation Board (CTB) must adopt a Six-Year Improvement Program (Program) in accordance with statutes and federal regulations. Throughout the year, it may become necessary to transfer funds between projects to have allocations available to continue and/or initiate projects and programs adopted in the Program.

Facts: On June 14, 2016, the CTB granted authority to the Commissioner of Highways (Commissioner), or his designee, to make transfers of allocations programmed to projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2017 through 2022 to release funds no longer needed for the delivery of the projects and to provide additional allocations to support the delivery of eligible projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2017 through 2022 consistent with Commonwealth Transportation Board priorities for programming funds, federal/state eligibility requirements, and according to the following thresholds based on the recipient project:

Total Cost Estimate	Threshold
<\$5 million	up to a 20% increase in total allocations
\$5 million to \$10 million	up to a \$1 million increase in total allocations
>\$10 million	up to a 10% increase in total allocations up to a maximum of \$5 million increase in total allocations

In addition, the CTB resolved that the Commissioner should bring requests for transfers of allocations exceeding the established thresholds to the CTB on a monthly basis for its approval prior to taking any action to record or award such action.

The CTB will be presented with a resolution for formal vote to approve the transfer of funds exceeding the established thresholds. The list of transfers from September 23 through November 11, 2016 is attached.

Recommendations: VDOT recommends the approval of the transfers exceeding the established thresholds from donor projects to projects that meet the CTB's statutory requirements and policy goals.

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to adopt changes to the Program for Fiscal Years 2017 – 2022 that include transfers of allocated funds exceeding the established thresholds from donor projects to projects that meet the CTB's statutory requirements and policy goals.

Result, if Approved: If approved, the funds will be transferred from the donor projects to projects that meet the CTB's statutory requirements and policy goals.

CTB Decision Brief

FY17-22 Six-Year Improvement Program Transfers For September 23 through November 11, 2016

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Options: Approve, Deny, or Defer.

Public Comments/Reactions: None

**Six-Year Improvement Program Allocation Transfer Threshold Report
December 2016**

Row	Donor District	Donor Description	Donor UPC	Recipient District	Recipient Description	Recipient UPC	Fund Source	Transfer Amount	Total Allocation	Total Estimate	Transfer Percent	Comment
A	Fredericksburg	FREDERICKSBURG DISTRICT BRIDGE BALANCE ENTRY	-16987	Fredericksburg	#SGR Bridge Replacement, Rte. 606 over I-95, Ex. Fed ID 1798	100829	CTB Formula:Bridge - State	\$1,207,459	\$12,120,868	\$12,120,868	11.1%	Transfer of surplus funds recommended by District and Structure and Bridge Division from the District Bridge Balance Entry line item to fund a scheduled project.
B	Statewide	INNOVATIVE /ADVANCED ITTF TECHNOLOGY IMPLEMENTATION	-15660	Hampton Roads	IMPLEMENT ITS DEVICES ON I-64 @ MERCURY BOULEVARD.	105476	CTB Formula:ITS - State	\$232,153	\$1,346,898	\$1,346,898	20.8%	Transfer of surplus funds recommended by District and Traffic Engineering Division from an underway project to fund a completed project.
C	Northern Virginia	SIGNAL REBUILD AND REALIGN RTE 7 / KING STREET AND DAWES	106992	Northern Virginia	ROUTE 28 AND ROUTE 605 TRAFFIC SIGNAL AND LEFT TURN LANE	110209	Highway Safety Improvements:Federal; Highway Safety Improvements:State Match	\$520,000	\$520,000	\$520,000	100.0%	Transfer of surplus funds recommended by District and Traffic Engineering Division from a cancelled project to fund a new project.
D	Northern Virginia	ITS INTEGRATION - PHASE IV	106562	Northern Virginia	ITS INTEGRATION - PHASEIII	106563	CMAQ:MPO - Federal; CMAQ:MPO - State Match	\$1,446,610	\$3,028,345	\$3,028,345	91.5%	Transfer of surplus funds recommended by District and MPO from a scheduled project to fund a scheduled project.
E	Richmond	RICHMOND STP SAFETY/HES BALANCE ENTRY	-16919	Richmond	RTE 95 SB - RE-STRIPING	107771	Highway Safety Improvements:Federal; Highway Safety Improvements:State Match	\$490,000	\$2,490,000	\$2,490,000	24.5%	Transfer of surplus funds recommended by District and Traffic Engineering Division from the District Safety Balance Entry line item to fund an underway project.
F	Statewide	STATEWIDE PRE-MAP21 DMV Open Container Balance Entry	70698	Richmond	RTE. 54 & 671 INTERSECTION IMPROVEMENTS	108590	Open Container Funds:Statewide	\$210,000	\$210,000	\$102,647	>100%	Transfer of surplus funds recommended by District and Traffic Engineering Division from the Statewide Open Container Balance Entry line item to fund a scheduled project.
G	Statewide	SHSP Development and Implementation	98528	Statewide	Incident Management Emergency Evacuation and Detour Plans	107802	Highway Safety Improvements:Federal; Highway Safety Improvements:Soft Match	\$225,000	\$725,000	\$725,000	45.0%	Transfer of surplus fund recommended by District and Traffic Engineering Division from a completed project to fund an underway project
H	Statewide	STATEWIDE SYIP UPDATE BALANCE ENTRY	-1179	Staunton	RTE. 340 Clarke Co. VA and WV STATE LINE	-18815	STP:Statewide - Federal; STP:Statewide - Soft Match	\$3,249,000	\$3,249,000	\$3,249,000	>100%	Transfer surplus funds recommended by District from the Statewide SYIP Balance Entry line item to fund a new project
I	Staunton	I-64 EXIT 21 ALLEGHANY CO. INTERCHANGE IMPROVEMENTS	106248	Staunton	RTE 696 - Signal & TL Imprvmnts at I-64 Exit 21 and Rte 1101	108057	Bond Proceeds:CPR Bonds	\$900,000	\$4,314,976	\$4,314,976	26.4%	Transfer of surplus funds recommended by District from a cancelled project to fund a scheduled project.

**Six-Year Improvement Program Allocation Transfer Threshold Report
December 2016**

Row	Donor District	Donor Description	Donor UPC	Recipient District	Recipient Description	Recipient UPC	Fund Source	Transfer Amount	Total Allocation	Total Estimate	Transfer Percent	Comment
1	Bristol	Creep Trail at US 58 Grade Separation	109888	Bristol	Bridge (Fed ID 18969) Rte 91 Over Laurel Creek	103503	Highway Safety Improvements:Federal; Highway Safety Improvements:Soft Match	\$350,000	\$2,200,000	\$2,200,000	18.9%	Transfer of surplus funds recommended by District and Traffic Engineering Division from a cancelled project to fund a scheduled project.
2	Bristol	BRISTOL DISTRICT BRIDGE BALANCE ENTRY	-16982	Bristol	Bridge(Fed ID17390)Rte16 VA#1019 SugarGroveHwyOverSlempCreek	103557	STP:Bridge - Federal; STP:STP Bridge - Soft Match	\$25,000	\$650,000	\$650,000	4.0%	Transfer of surplus funds recommended by District and Structure and Bridge Division from the District Bridge Balance Entry line item to fund a scheduled project.
3	Fredericksburg	Formula Fund Balance Entry-Fredericksburg	-11505	Fredericksburg	RTE 1 - Intersection Improvement at Rte 1 & 606	93136	Primary Formula:State	\$184,496	\$8,326,169	\$8,141,673	2.3%	Transfer of surplus funds recommended by District from the District Balance Entry line item to fund a completed project.
4	Fredericksburg	Formula Fund Balance Entry-Fredericksburg	-11505	Fredericksburg	Pedestrian Improvement to Route 216, Guinea Road	100625	Primary Formula:State	\$4,953	\$1,949,219	\$1,944,266	0.3%	Transfer of surplus funds recommended by District from the District Balance Entry line item to fund a scheduled project.
5	Fredericksburg	Formula Fund Balance Entry-Fredericksburg	-11505	Fredericksburg	RTE. 360 - PEDESTRIAN IMPROVEMENTS	104689	Primary Formula:State	\$389	\$747,337	\$689,209	0.1%	Transfer of surplus funds recommended by District from the District Balance Entry line item to fund a completed project.
6	Hampton Roads	SOUTHEASTERN EXPRESSWAY - 4 LANE (PE ONLY IN SYIP)	64058	Hampton Roads	RTE 626 - Widen pavement and address geometric deficiencies	14924	Minimum Guarantee:Federal	\$205,607	\$2,379,485	\$2,379,485	9.5%	Transfer of surplus funds recommended by District from a scheduled project to fund a completed project.
7	Hampton Roads	I-95 Meherrin River Bridge replacement Fed ID 20236/23237	83164	Hampton Roads	#SGR Route 35 over Tarrara Creek (VA Str 1017)	101493	STP:Bridge - Federal; STP:STP Bridge - Soft Match	\$6,772	\$3,298,500	\$3,291,728	0.2%	Transfer of surplus funds recommended by District and Structure and Bridge Division from and underway project to fund an underway project.
8	Richmond	Formula Fund Balance Entry - Richmond	-11518	Richmond	RTE 155 - WIDEN SHOULDERS	92652	Primary Formula:State	\$190	\$1,120,796	\$7,569,711	0.0%	Transfer of surplus funds recommended by District from the District Balance Entry line item to fund a scheduled project.
9	Richmond	Formula Fund Balance Entry - Richmond	-11518	Richmond	RTE 1 SOUTH - BRIDGE REPAIR OVER CSX RW (Fed ID 5917)	93094	Primary Formula:State	\$12,756	\$4,978,812	\$4,966,056	0.3%	Transfer of surplus funds recommended by District from the District Balance Entry line item to fund an underway project.
10	Richmond	REALIGN INTERSECTION OF RTE 33 & RTE 54	18948	Richmond	Richmond Region-wide Traffic/Operations Improvements	101492	CMAQ:Federal	\$2,248,788	\$26,431,289	\$18,312,343	9.3%	Transfer of surplus funds recommended by District and MPO from a completed project to fund a scheduled project.
11	Richmond	Formula Fund Balance Entry - Richmond	-11518	Richmond	RTE 1 - ADD TRAFFIC SIGNAL AND TURN LANES	104661	Primary Formula:State	\$11	\$7,627,174	\$7,627,163	0.0%	Transfer of surplus funds recommended by District from the District Balance Entry line item to fund a scheduled project.
12	Richmond	Formula Fund Balance Entry - Richmond	-11518	Richmond	RTE 106 - ADD RIGHT TURN LANE	105110	Primary Formula:State	\$2,029	\$1,078,152	\$1,076,123	0.2%	Transfer of surplus funds recommended by District from the District Balance Entry line item to fund a scheduled project.

**Six-Year Improvement Program Allocation Transfer Threshold Report
December 2016**

Row	Donor District	Donor Description	Donor UPC	Recipient District	Recipient Description	Recipient UPC	Fund Source	Transfer Amount	Total Allocation	Total Estimate	Transfer Percent	Comment
13	Salem	Route 311 - Roanoke County - Pedestrian Safety Improvements	107054	Salem	I-81 Exit 140 Park & Ride Expansion & Construct NewSidewalk	99542	Highway Safety Improvements:Federal; Highway Safety Improvements:Soft Match	\$270,000	\$2,920,000	\$3,665,725	10.2%	Transfer of surplus funds recommended by District and Traffic Engineering Division from an underway project to fund a scheduled project.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

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Agenda item # 4

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By:

Seconded By:

Action:

Title: Six-Year Improvement Program Development Policy

WHEREAS, Section 33.2-214(B) of the *Code of Virginia* requires the Commonwealth Transportation Board (Board) to adopt by July 1st of each year a Six-Year Improvement Program (SYIP) of anticipated projects and programs and that the SYIP shall be based on the most recent official revenue forecasts and a debt management policy; and

WHEREAS, the Board believes it is in the public interest that transportation funds be programmed to projects and strategies that demonstrate the ability to address identified transportation needs in a cost-effective manner and that such programming of funds be prioritized to advance critical projects and strategies as quickly as possible; and,

WHEREAS, the past programming practice of providing partial funding to projects and funding projects by phase did not support the Board's commitment to advancing projects from development to completion and created inefficiencies in the use of transportation funding; and,

WHEREAS, it is the policy of the Board that any project added to the SYIP with funding from the State of Good Repair Program, High Priority Projects Program, or Construction District Grants Program shall be fully funded;

WHEREAS, in Chapter 726 of the 2014 Acts of Assembly the General Assembly declared the use of a statewide prioritization process for the programming of construction funds to be in the public interest; and,

WHEREAS, in Chapter 684 of the 2015 Acts of Assembly the General Assembly established the State of Good Repair Program (§33.2-369), High Priority Projects Program (§33.2-370), and Construction District Grants Program (§33.2-371).

WHEREAS, the Board adopted a policy entitled Six-Year Improvement Program Policy Related to HB2 (2014) and HB1887 (2015) regarding the development of the Six-Year Improvement Program pursuant to §33.2-214 on October 27, 2015 (Policy), and directed that the Policy shall sunset on January 1, 2017 unless reaffirmed by the Board; and

WHEREAS, the Board has reviewed the prior Policy and determined that amendment and adoption of a revised policy is warranted.

NOW THEREFORE, BE IT RESOLVED, that beginning with the Fiscal Year 2018-2023 SYIP update, allocations available in the following funding programs will be programmed in the SYIP annually:

- State of Good Repair Program pursuant to §33.2-369;
- Regional Surface Transportation Program funds provided to metropolitan planning; organizations pursuant to 23 U.S.C. §133;
- Congestion Mitigation Air Quality funds pursuant to 23 U.S.C. §149;
- Highway Safety Improvement Program pursuant to 23 U.S.C. §148 and §154; and

BE IT FURTHER RESOLVED, that beginning with the Fiscal Year 2018-2023 SYIP update, allocations available in the fifth and sixth year of the SYIP under development for the following funding programs will be programmed in even-numbered fiscal year SYIP updates:

- High Priority Projects Program pursuant to §33.2-370;
- Highway Construction District Grants Program pursuant to §33.2-371; and

BE IT FURTHER RESOLVED, that beginning with the fiscal year 2019 update, allocations available in the first and second year of the SYIP under development for the following funding programs will be programmed in odd-numbered fiscal year SYIP updates:

- Revenue Sharing Program pursuant to §33.2-357;
- Surface Transportation Block Grant set-aside for Transportation Alternatives pursuant to 23 U.S.C. §133; and,

BE IT FURTHER RESOLVED, in general, it is the Board's intent to demonstrate commitment to projects selected for funding in the SYIP by fully funding the projects through construction; and

BE IT FURTHER RESOLVED, it is the policy of the Board that any project added to the SYIP with funding from the State of Good Repair Program, High Priority Projects Program, or Construction District Grants Program shall be fully funded; and

BE IT FURTHER RESOLVED, subject to the provisions governing each of these programs, the Board may adjust the timing of funds programmed to projects from previously adopted programs to meet the cash flow needs of the individual projects, maximize the use of federal funds, or to address revised revenue projections and project priorities; and

BE IT FURTHER RESOLVED, that as part of the annual SYIP update, funds no longer needed for the delivery of a project will be reallocated consistent with Board's priorities for programming funds and federal/state eligibility requirements; and

BE IT FURTHER RESOLVED, it is the policy of the Board that any funds from the State of Good Repair Program, High Priority Projects Program, or Construction District Grants Program no longer needed for the delivery of a project and will be reserved to address budget adjustments on existing projects selected within those programs or reserved for allocation in the next solicitation cycle for those programs; and

BE IT FURTHER RESOLVED, the Board will develop a program of projects and strategies for the High Priority Projects Program and Highway Construction District Grants Program as follows:

- The Board may adjust the timing of funds programmed to projects selected in previous SMART SCALE cycles to meet the cash flow needs of the individual projects, but will not (1) reduce the total amount of state and federal funding committed to an individual project unless it is no longer needed for the delivery of the project or the project sponsor is unable to secure permits and environmental clearances for the project or (2) increase the total amount of state and federal funding committed to an individual project beyond the thresholds for re-scoring identified in the SMART SCALE Implementation Policy.
- The Board may only program funds from these two programs to projects selected in accordance with the SMART SCALE Prioritization Process and only if such projects will be fully-funded with the programming of such funds.
- In the event of revenue reductions that impact the funds available to support the projects previously committed to by the Board, the Board will maintain its commitment to previously approved projects by committing funds from a subsequent solicitation cycle. In the event of revenue increases that impact the

- funds available for a previous solicitation cycle, the additional funds will be set-aside and made available in the next solicitation cycle.
- A project that has been selected for funding may be cancelled only by action of the Board. In the event that a project is not advanced to the next phase of construction when requested by the Board, the locality or metropolitan planning organization may be required, pursuant to § 33.2-214 of the Code of Virginia, to reimburse the Department for all state and federal funds expended on the project.
- In cases where a project has been selected for funding which identified other sources of funding, those other funds are considered to be committed to the project so that any funds no longer needed for the delivery of the project are designated as either Highway Construction District Grant Program or High Priority Project Program funds, as applicable. Adjustments may be made to the spending priority as necessary to maximize the use of federal funds as required by the Appropriations Act.
- In the event the CTB elects to submit up to two projects to be evaluated and considered for funding, the projects will be considered for funding in the High Priority Projects Program and/or the Construction District Grant Program with the endorsement of the applicable local governments.

BE IT FURTHER RESOLVED, that development of the SMART SCALE program will be completed according to the following schedule:

- October Board meeting
 - Release of list of submitted projects to the Board and the public.
 - The Secretary will coordinate with the Board and develop, if necessary, a list of up to two additional projects identified by members of the Board to be evaluated and considered for funding.
- November/December Board meeting
 - Consideration of resolution based on the list compiled by the Secretary of up to two additional projects to be evaluated and considered for funding, if necessary.
 - Consideration of amount of funds to allocate from the High Priority Project Program to the Innovation and Technology Transportation Fund
 - Consideration of amount of funds to allocate from the Highway Construction Districts Grant Program to the Unpaved Roads Program
- January Board meeting
 - Release the results of the screening and analysis of candidate projects and strategies, including the weighting factors and the criteria used to determine the value of each factor no later than 30 days prior to a vote on such projects or strategies to the Board and the public pursuant to Section 33.2-214.1 D.
 - Release and discussion of a preliminary funding scenario determined as follows
 - For purposes of determining priorities, scores will be based on benefit relative to SMART SCALE cost. Scores based on benefit relative to total cost will also be provided to the Board for their consideration.

- Step 1 – Fund top scoring projects within each district eligible for Highway Construction District Grant Program funds using Highway Construction District Grant Program funds until remaining funds are insufficient to fund the next highest scoring project.
 - Step 2 – Fund top scoring projects within each district that would have otherwise been funded with available Highway Construction District Grant Program funds, but were not because they are only eligible for High Priority Projects Program funds, using High Priority Projects Program funds, as long as their SMART SCALE cost does not exceed the total amount of Construction District Grant Program funds available to be programmed based on their rank.
 - Step 3 – Fund projects with a benefit relative to SMART SCALE score greater than an established threshold based on the highest project benefit using High Priority Projects Program funds until funds are insufficient to fund the next unfunded project with the highest project benefit.
 - Remaining balances will be reserved to address budget adjustments on selected projects according to the thresholds established in the SMART SCALE Prioritization Process or reserved for allocation in a subsequent round.
- March Board meeting
 - Modification of the base funding scenario, if necessary.
 - April Board meeting
 - Release of the Draft SYIP for review and comment.
 - May Board meeting
 - Consideration of proposed modifications to the High Priority Projects Program, if necessary.
 - Consideration of proposed modifications to the Highway Construction District Grants Program for each district, if necessary.
 - June Board Meeting
 - Consideration of the proposed Final SYIP for adoption.

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COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

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Agenda item # 5

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

MOTION

Made By: _____ Seconded By: _____

Action: _____

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
Page Two

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.

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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

Agreement Execution

December 5, 2016

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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

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

December 5, 2016

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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 _____, ~~2015~~2016, between the Commonwealth Transportation Board (“CTB”), and the Virginia Department of Transportation (“VDOT”), both acting by and through the Commissioner of Highways, and the Northern Virginia Transportation Commission (“NVTC”) (collectively, the “Parties”).

RECITALS

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

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

WHEREAS, the goals of the Transform66: Inside the Beltway Project are to (1) move more people; (2) enhance transportation connectivity; (3) improve transit service; (4) reduce roadway congestion; and (5) increase travel options (collectively, the “Improvement Goals”), all of which ~~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 herein 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 of 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 of 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 must 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 tolling 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; and

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 Components 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 allowed 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 allowable use of tolls, including but not limited to § 33.2-309 of the *Code of*
83 | *Virginia* (1950), 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 outside 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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A. VDOT and the CTB shall have the following roles and responsibilities:

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

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

2.- Toll Collection and Establishment. Subject to the necessary approvals of the

CTB and FHWA, and in accordance with law, VDOT and the CTB, as applicable, shall establish, charge, modify and collect tolls throughout the term of this MOA for vehicles using the Facility during peak hours in the peak direction, which shall include dynamic pricing ~~consistent with FHWA Value Pricing Pilot Program to ensure travel speeds in accordance with 23 U.S.C. § 166.~~ The CTB reserves the right to make any changes to the tolling of the Facility that increase the hours or directions of tolling and any toll revenue generated from any change shall be governed by this MOA.

3. -HOV Requirements. In accordance with the long range plan adopted by the

National Capital Region Transportation Planning Board, VDOT and the CTB shall take the required actions necessary to change the Project HOV-2 designation to HOV-3 by the later of January 2, 2020, or upon any increase to HOV-3 occupancy requirements for HOV lanes of I-66 outside the Beltway

4.- Use of Toll Revenues. VDOT shall include in the annual budget presented to

the CTB for approval in June of each year, an estimate of the toll revenues anticipated to be collected in the upcoming year and the proposed allocation of all such toll revenues ~~;~~, including to pay any Debt Service (as defined below) in the upcoming year. Allocation of these toll revenues shall be provided as follows with the intent that after the allocations provided for in (a), (b), (c), and ~~(e);d)~~ all remaining toll revenues shall be made available for Components selected by 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 II.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 anticipated toll revenues to such repayment;~~
137 ~~provided, however, if toll revenues remaining after the allocation~~
138 ~~described above in II.A.4(a) is below two times the amount budgeted for~~
139 ~~allocation described below in II.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 II.A.4(a) and any cost of financing for II.A.4(b)~~
143 ~~of less than one and a half times the amount budgeted for allocation in~~
144 ~~II.A.4(c);~~

145 ~~(c) 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~~
149 ~~does not exceed 4060 percent of toll revenues remaining after the allocations~~
150 ~~described above in subparagraphs II.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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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) and ~~(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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180 ~~initial evaluation shall only be made at the later date of either (i) five years~~
181 ~~from the date of commencement of tolling of the Facility, or (ii) two years~~
182 ~~after any increase in occupancy requirements for high occupancy vehicles~~
183 ~~from two people to three people (which shall occur the later of 2020 or~~
184 ~~upon any increase to HOV 3 requirements for HOV lanes of I-66 outside~~
185 ~~the Beltway).~~

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

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

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

207 If I-66 is designated for immediate use as any alternate route for diversion of
208 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.

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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 **98. 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.

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225 **109. Annual Budget Process.** In preparation for the CTB's annual budget
226 process, VDOT shall estimate 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 not later than January 30th of each year.

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230 ~~14~~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.

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

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

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

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

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265 ~~1211.~~ **Reports.** VDOT shall provide quarterly reports documenting the actual
266 revenues and distributions of said toll revenues to NVTC.

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

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268 **1. Coordination and Development of Transportation Plan; Use of Toll**
269 **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 toll-paying users of the Facility;
- (b) Must have the capacity to attain 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)IIA.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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~~(v)~~ Roadway improvements to address impacts from the dynamic tolling of the Facility on roadways in the Corridor (including but not limited to Routes 7, 29, 50, and 309, and Washington Boulevard, Wilson Boulevard, and Westmoreland Street);

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

~~(viii)~~ Transportation Systems Management and Operations as defined in 23 U.S.C. § 101(a)(30) on December 1, 2015; and

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

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

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

Under no circumstances shall the aforesaid criteria be modified except by written amendment to this MOA agreed to in writing by the 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 relating 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, upon 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~~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 ~~thesuch~~ 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 fund one or more of those additional
370 Components.▲

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371 **3.- Financing of Components of the 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 is 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 the toll revenue under this MOA except
403 such debt issued for the ProjectComponents. 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 in full any such toll revenues or accounts from any other available
407 revenues 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 revenues from this MOA, shall not be
429 | commingled with any other funds, accounts, venues, 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 a separate fund in NVTC's financial statements, and
433 | such accounting shall constitute a proprietary "special revenue fund" as defined
434 | by the Governmental 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 the 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 CTB, VDOT, DRPT, and their officers,
467 | employees and agents, as additional insureds on NVTC's insurance policies so
468 | that they are protected from and against any losses actually suffered or incurred,
469 | except for losses 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 expiration 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, the CTB, VDOT, DRPT, or their officers,
495 employees, and agents, VDOT will 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 unless such failure limits or precludes the availability of those rights.

500 **C. 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 ~~\$5~~**10** million
503 (which shall be provided upon commencement of construction of the dynamic tolling of
504 the Facility as provided in ~~paragraph~~**II.A.1**, and shall be repaid as specified in ~~paragraph~~
505 **II.A.4**). Components shall be multimodal transportation improvements that meet the
506 criteria set forth in ~~paragraph~~**II.B.1** and are capable of being obligated not later than at
507 the time tolling begins on the Facility. In the event litigation is filed challenging the
508 implementation of the Project, or a Component of the Project, prior to the initiation of
509 tolling, or in the event any other action prohibits or restricts the ability to toll the Facility,

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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 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 H.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 II.D.1 demonstrates the need for widening,
554 theThe 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.~~

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~~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 this MOA is terminated in accordance with ~~Section VIVII~~ prior to the 40th Anniversary of the ~~effective~~Effective Date, and there ~~are~~is outstanding NVTC ~~financing agreements~~Debt for which toll revenues ~~have~~has 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 Component~~Components 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 service~~Debt Service or to complete the ~~Component~~pay-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 VIVII~~
592 | prior to the 40th Anniversary of the effective Date.

593 | ~~VV~~, **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 | ~~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:**

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

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, in writing 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, joint venture, or employee.

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637 **IX. No Third Party Beneficiaries.** 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 CTB to allocate toll revenues are subject to
666 ~~appropriations~~appropriation by the Virginia General Assembly.

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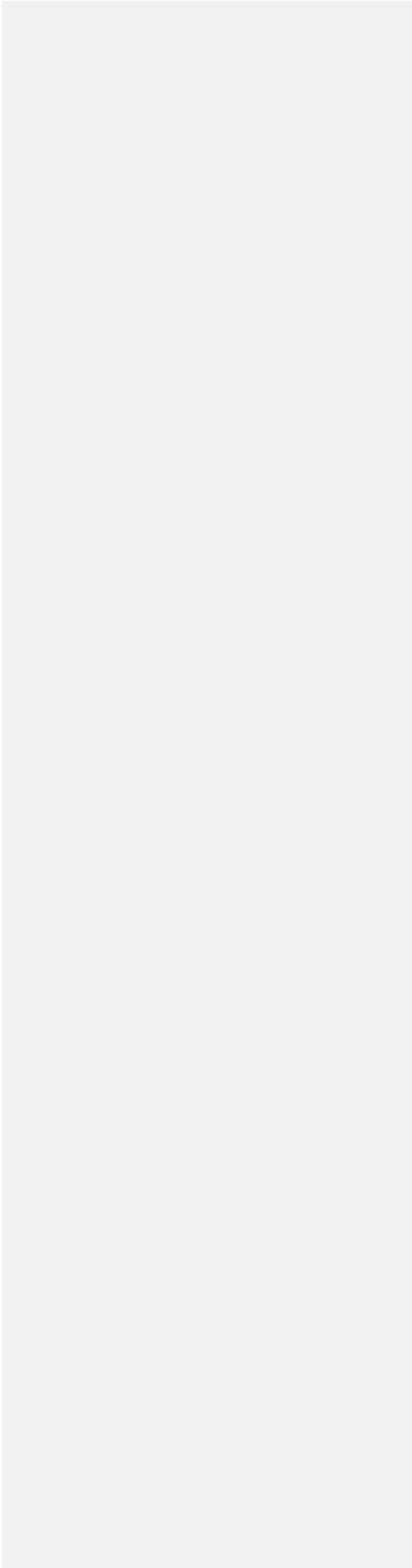
667 *This space intentionally left blank*

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672 |

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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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675
676 COMMONWEALTH TRANSPORTATION BOARD

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677
678
679 _____
680 The Honorable Aubrey L. Layne, Jr
681 Secretary of Transportation

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682
683 Date: _____

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684
685 VIRGINIA DEPARTMENT OF TRANSPORTATION

686
687 _____
688 Charles A. Kilpatrick, P.E.
689 Commissioner of Highways

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690
691 Date: _____

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692
693 NORTHERN VIRGINIA TRANSPORTATION COMMISSION

694
695 _____
696 ~~Kelley Coyner~~ Katherine A. Mattice
697 Acting Executive Director

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698
699 Date: _____

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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 II.A.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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579 *This space intentionally left blank*

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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.

583

584 COMMONWEALTH TRANSPORTATION BOARD

585

586

587 _____

588 The Honorable Aubrey L. Layne, Jr

589 Secretary of Transportation

590

591 Date: _____

592

593 VIRGINIA DEPARTMENT OF TRANSPORTATION

594

595 _____

596 Charles A. Kilpatrick, P.E.

597 Commissioner of Highways

598

599 Date: _____

600

601 NORTHERN VIRGINIA TRANSPORTATION COMMISSION

602

603 _____

604 Katherine A. Mattice

605 Executive Director

606

607 Date: _____

608

609

610

611



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 # 6

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By:

Seconded By:

Action:

Title: Authorization for the Commissioner of Highways to Enter into a Project Agreement Between VDOT and the Hampton Roads Transportation Accountability Commission Relating to Segment III of the Interstate 64 Widening Project (UPC's 106689/109790)

WHEREAS, the Virginia General Assembly, pursuant to Chapter 26 of Title 33.2 of the *Code of Virginia*, established the Hampton Roads Transportation Accountability Commission (HRTAC), a political subdivision of the Commonwealth; and

WHEREAS, the Virginia General Assembly, pursuant to §33.2-2600 of the *Code of Virginia*, also established the Hampton Roads Transportation Fund (HRTF) to fund new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23; and

WHEREAS, pursuant to §33.2-2608 the HRTAC may enter into contracts or agreements necessary or convenient for the performance of its duties and the exercises of its powers under Chapter 26; and

WHEREAS, §33.2-214 C of the *Code of Virginia* empowers the Commonwealth Transportation Board (Board) to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes; and

WHEREAS, on March 16, 2016 the Board authorized the Commissioner of Highways to enter into an agreement with HRTAC relating to the use of funds from the HRTF for preliminary engineering for Segment III of the I-64 Widening Project (Segment III Widening Project); and

Resolution of the Board

Authorization for the Commissioner of Highways to Enter into a Project Agreement Between VDOT and HRTAC
Relating to Segment III of the Interstate 64 Widening Project

December 7, 2016

Page Two

WHEREAS, on March 17, 2016 HRTAC approved use of funds from the HRTF and execution of an agreement between VDOT and HRTAC for such work; and VDOT and HRTAC entered into said agreement; and

WHEREAS, it is anticipated that HRTAC will approve use of funds from the HRTF and execution of an agreement between VDOT and HRTAC for additional work on the Segment III Widening Project, including but not limited to construction of the Project, at its December 15, 2016 meeting; and

WHEREAS, VDOT has requested that the Board authorize the Commissioner to enter into an agreement with HRTAC, attached hereto as Exhibit A, relating to the use of funding from the HRTF for work necessary for advancement and construction of the Segment III Widening Project.

NOW, THEREFORE, BE IT RESOLVED, the Commonwealth Transportation Board hereby authorizes the Commissioner of Highways to enter into the agreement with HRTAC relating to the use of HRTF funds for advancement of Segment III of the I-64 Widening Project, including but not limited to construction and other phases of said Project, in substantially the same form as Exhibit A, with such changes and additions as the Commissioner deems necessary, provided HRTAC approves execution of the agreement and use of funds from the HRTF for said purpose.

####

CTB Decision Brief

Authorization for the Commissioner of Highways to Enter into a Project Agreement Between VDOT and the Hampton Roads Transportation Accountability Commission Relating to Segment III of the Interstate 64 Widening Project (UPC 106689/109790)

Issue: VDOT is requesting that the Commonwealth Transportation Board (CTB) authorize the Commissioner of Highways (Commissioner) to enter into an agreement with Hampton Roads Transportation Accountability Commission (HRTAC) for Segment III of the Interstate 64 Widening Project located in York County (Project). The Project will entail roadway widening to increase capacity and improve safety along the I-64 corridor, including median widening of the roadway from 4 to 6 lanes from where Segment II ends at 1.05 miles West of Route 199 (Humelsine Parkway/Marquis Center Parkway) (Exit 242) to Route 199, Lightfoot (Exit 234). The project will also be adding 12 foot wide median shoulders.

Facts: In 2013, the General Assembly, established the Hampton Roads Transportation Fund (HRTAC Fund), which is to be funded by revenues from the new taxes imposed in Planning District 23 pursuant to Virginia Code §33.2-2600. In 2014, the Virginia General Assembly established HRTAC (see § 33.2-2601 of the *Code of Virginia*), a political subdivision of the Commonwealth, which among its various responsibilities is to approve use of HRTAC funds for new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23.

Section 33.2-214 C of the *Code of Virginia* empowers the CTB to enter into contracts (agreements) with local districts, commissions, agencies or other entities created for transportation purposes.

On March 16, 2016 the CTB authorized the Commissioner to enter into an agreement with HRTAC relating to the use of funds from the HRTF for preliminary engineering for Segment III of the I-64 Widening Project (Segment III Widening Project) and on March 17, 2016 HRTAC approved use of funds from the HRTF and execution of an agreement between VDOT and HRTAC for such work. VDOT and HRTAC entered into said agreement.

It is anticipated that HRTAC at its December 15, 2016 meeting will approve use of funds from the HRTAC Fund and execution of an agreement between VDOT and HRTAC relating to the use of said funds to pay the costs for additional work for the Project, including but not limited to construction. CTB authorization for the Commissioner to enter into said agreement will provide assurance of HRTAC funding for the Project and allow the additional work for this Project to commence as soon as possible.

Recommendation: VDOT recommends that the CTB delegate to the Commissioner the authority to enter into an agreement with HRTAC relating to the use of HRTAC funds for additional work for Segment III of the Interstate 64 Widening Project, including but not limited to construction, so that this work may commence as soon as possible. This would facilitate a Spring 2017 Request for Qualifications (RFQ) and a Summer 2017 Request for Proposals (RFP).

Action Required by the CTB: Approve by majority vote the resolution providing the authorization recommended herein.

Result, if Approved: The Commissioner will be authorized to enter into an agreement between VDOT and HRTAC for use of HRTAC Funds to pay the costs for additional work for Segment III of the Interstate 64 Widening Project, including but not limited to construction, thereby facilitating issuance of a Spring 2017 Request for Qualifications (RFQ) and a Summer 2017 Request for Proposals (RFP).

Options: Approve, Deny or Defer

Public Comments/Reactions: N/A

**Standard Project Agreement for Funding and Administration
between
Hampton Roads Transportation Accountability Commission
and
Virginia Department of Transportation**

HRTAC Project Number: I-64 Capacity Improvements- Segment III (UPC's 106689/109790)

This Standard Project Agreement for Funding and Administration (the "Agreement") is made and executed in duplicate on this ____ day of _____, 2016, as between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT").

WITNESSETH

WHEREAS, Chapter 766 of the 2013 Acts of Assembly established the Hampton Roads Transportation Fund (the "HRTF"), and provides that moneys deposited in the HRTF are to be used solely for new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23;

WHEREAS, Chapter 678 of the 2014 Acts of Assembly (now codified in Section 33.2-2600 *et seq.* of the Code of Virginia, as amended) (the "HRTAC Act") created HRTAC as a political subdivision of the Commonwealth of Virginia, and moved the responsibility to determine the projects that will be funded by the HRTF from the Hampton Roads Transportation Planning Organization to HRTAC;

WHEREAS, under Sections 33.2-2606 and 33.2-2607 of the Code of Virginia, HRTAC is also authorized to issue bonds and other evidences of debt, and to impose and collect certain tolls;

WHEREAS, Section 33.2-2611 of the Code of Virginia requires HRTAC to use all moneys it receives (the "HRTAC-Controlled Moneys"), which include, without limitation, moneys from the HRTF as well as any bond proceeds and collections from any tolls imposed by HRTAC, solely for the benefit of those counties and cities that are embraced by HRTAC, and in a manner that is consistent with the purposes of the HRTAC Act;

WHEREAS, VDOT is the Virginia state agency responsible for building, maintaining and operating the interstate, primary, and secondary state highway systems ("VDOT Highways");

WHEREAS, in light of VDOT's responsibilities with respect to VDOT Highways, and HRTAC's responsibilities with respect to the application of the HRTAC-Controlled Moneys, VDOT and HRTAC entered into a Memorandum of Agreement dated March 30, 2015 (the "MOA");

WHEREAS, the MOA contemplates that HRTAC may from time to time enter into Project Agreements for Funding and Administration of projects that HRTAC selects and HRTAC requests VDOT to administer and/or develop with HRTAC Controlled Moneys;

WHEREAS, HRTAC has determined that it desires to proceed with the project set forth and described on Appendix A to this Agreement (the "Project"), and that the Project would benefit the cities and counties that are embraced by HRTAC and it otherwise satisfies the requirements of the HRTAC Act;

WHEREAS, VDOT agrees to administer and/or develop the Project in accordance with the budget (the "Project Budget") and cashflow and construction schedule (the "Project Schedule") set forth and described on Appendix B to this Agreement (this Agreement and its appendices may be amended from time to time by mutual agreement of the parties to address mutually agreed changes relating to, among other things, Project scope, design, funding and regulatory approvals);

WHEREAS, HRTAC desires to provide funding for the administration and/or development of the Project out of HRTAC-Controlled Moneys, subject to the terms, conditions and limitations set forth herein;

WHEREAS, the Commonwealth Transportation Board ("CTB") has the authority, pursuant to Section 33.2-214 of the Code of Virginia, to cause VDOT to enter into this Agreement and has authorized the Commissioner of Highways to enter into agreements with HRTAC for project administration and development purposes, and Section 33.2-2608 of the Code of Virginia authorizes HRTAC to enter into this Agreement; and

WHEREAS, the CTB, by resolution passed on January 14, 2015, resolved that any agreement between VDOT and HRTAC for project services shall provide that overruns or other additional project costs shall be prorated between HRTAC and VDOT so that each party bears a proportionate share of the additional costs based on each party's percentage responsibility of the initial project budget; and

WHEREAS, HRTAC's governing body and the CTB have each authorized that their respective designee(s) execute this Agreement on their respective behalf(s) as evidenced by copies of each such entity's clerk's minutes or such other official authorizing documents which are appended hereto as Appendix E.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and agreements contained herein, the parties hereto agree as follows:

A. VDOT's Obligations

VDOT shall:

1. Complete or perform or cause to be completed or performed all work relating to the Project, as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with (i)

any and all applicable federal, state, and local laws and regulations, and (ii) all terms and conditions of this Agreement, including, without limitation, the Project Budget and Project Schedule reflected in Appendix B, which Project Budget and Project Schedule (A) VDOT represents have been prepared in good faith, in accordance with the practices and procedures that VDOT uses for projects where the state or VDOT bears the cost of the project (including, without limitation, the practices used to price and budget services that may be internally sourced, such as Construction Engineering Inspection/CEI), and (B) the parties acknowledge may be amended pursuant to Section A.8 below or as follows:

- (a) In the event that VDOT determines, after receipt of proposals or bids for any work related to the Project, that the cost of the contract for said work will result in a significant reduction in costs associated with a portion of the Project Budget reflected in Appendix B that is allocated to work covered by the contract, then VDOT shall notify HRTAC's Executive Director of the significant reduction in costs. For purposes of this Section A.1(a), HRTAC and VDOT agree that a "significant reduction in costs" shall mean a reduction in costs that has the effect of reducing, in Appendix B, (x) the costs for the particular portion of the Project Budget allocated to work covered by the contract by more than 20 percent or (y) the entire Project Budget either by more than 10 percent or \$10,000,000, whichever applies. In the event there is a significant reduction in costs, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the effect of the reduction (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state or federal contributions, then the commitment of each funding source would be reduced by its proportionate share of the reduction in costs, which proportionate share will be based on the funding source's proportionate responsibility for the total budgeted costs before the reduction was realized) (for the avoidance of doubt, the amount by which a commitment is reduced shall be considered deobligated from the Project).
- (b) In the event that any federal or state funding not previously available for the Project becomes available for any portion of the Project Budget reflected in Appendix B, then VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the benefit of the additional funding (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state contributions, but federal funding subsequently becomes available, then the respective commitments of HRTAC and the state would be reduced by each party's proportionate share of the additional funds, which proportionate share will be based on the party's proportionate responsibility for

the total budgeted cost before the additional funding became available).

2. Without limiting the foregoing,
 - (a) VDOT shall select contractors, contract with contractors, and administer and enforce contracts all in a manner that is consistent in all material respects with the policies, procedures and practices that VDOT uses where the state or VDOT bears the cost of a project; for example, VDOT shall use its customary policies, procedures and practices relating to requesting bids/proposals, negotiating/finalizing terms and conditions of contracts (using, where applicable, standard terms/forms), and monitoring and enforcing performance of contracts;
 - (b) VDOT shall not enter into any contract to perform the work related to the Project if (i) the cost of that contract would exceed the portion of the Project Budget reflected in Appendix B that is allocated to the work covered by that contract, (ii) the cost of that contract, when aggregated with the cost of all other contracts relating to the Project that have been, or are expected to be, entered into would exceed the Project Budget reflected in Appendix B, or (iii) the schedule in the contract for performing and paying for the work related to the Project would be materially different (whether accelerated or delayed) from the Project Schedule set forth in Appendix B; in addition, if the bids or proposals received for any portion of the Project are not qualitatively consistent with VDOT's standards for that work or quantitatively within VDOT's projections for that work, each as determined by VDOT in its good faith judgment, VDOT shall (i) undertake a new procurement, or (ii) recommend alternative measures to HRTAC, and seek HRTAC's advice and consent regarding pursuit of those alternative measures. If HRTAC grants its written consent to a modification to the Project Budget and/or Project Schedule in order to permit VDOT to enter into a contract to perform the work, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to reflect the modified Project Budget and Project Schedule.
3. Perform or have performed in accordance with VDOT's standards for highways, bridges and tunnels all design and engineering, all environmental work, and all right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions, as is required by this Agreement or that may be necessary for completion of the Project pursuant to the terms of this Agreement. If VDOT determines that a delay will more likely than not prevent the completion of a material phase of the Project (e.g., PE or ROW acquisition), or the entire Project, in accordance with the Project Schedule,

VDOT shall notify HRTAC in writing and provide HRTAC with such information as HRTAC may reasonably request, including information pertaining to potential corrective measures and remedies against the contractor (if VDOT and HRTAC mutually develop a model notice for such purposes, VDOT's notice will follow the format of the model).

4. Not use any funds provided by HRTAC, including the funds specified on Appendix B, to pay any Project cost if the HRTAC Act does not permit such Project cost to be paid with HRTAC funds.
5. Recognize that, if the Project contains "multiple funding phases" (as such "multiple funding phases" are set out for the Project on Appendix A), for which HRTAC will provide funding for such multiple funding phases (as scheduled on Appendix B), HRTAC may not have sufficient cash flows to permit accelerated funding to VDOT and to advance the funding schedule for the Project. In any circumstance where VDOT seeks to advance the funding schedule for the Project, VDOT shall submit a written request to HRTAC's Executive Director explaining VDOT's reasons why HRTAC should authorize acceleration to the next funding phase. (As used in this Agreement, "Executive Director" shall mean HRTAC's Chairman if at any applicable time, HRTAC has not engaged a dedicated, full-time Executive Director.) HRTAC's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and HRTAC's current and projected cash flow position and make a recommendation to HRTAC whether to authorize VDOT's requested accelerated funding. The foregoing shall not prohibit VDOT from providing its own funds to advance a future funding phase of the Project and from requesting reimbursement from HRTAC for having advance funded a future phase of the Project; however, VDOT further recognizes that HRTAC's reimbursement to VDOT for having advance funded a phase of the Project will be dependent upon HRTAC's cash flow position at the time such a request for reimbursement is submitted and may be dependent upon the extent to which the reimbursement of any such advanced funding is otherwise consistent with the terms of this Agreement, including Appendix B.
6.
 - (a) Permit HRTAC's Executive Director to periodically update HRTAC's cash flow estimates for the Project with the objective toward keeping those estimates accurate throughout the performance of the Project. VDOT shall provide all available information reasonably required by HRTAC so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the performance of the Project as described in Appendix B.
 - (b) Provide HRTAC's Executive Director with the monthly reports described on Appendix D.

7. Provide to HRTAC's Executive Director requests for payment consistent with Appendix C (and the most recently approved HRTAC cash flow estimates) that include (a) HRTAC's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by HRTAC, and (b) certifications that all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by HRTAC, VDOT can expect to receive payment within twenty (20) days upon receipt by HRTAC. Approved payments may be made by means of electronic transfer of funds from HRTAC to or for the account of VDOT.

8. (a) Promptly notify HRTAC's Executive Director if VDOT determines that any additional, unbudgeted costs may be incurred to perform and complete the Project ("Additional Costs"), which notice shall include a description of the Additional Costs, an explanation of how they arose and the assumptions in the initial budget regarding those costs, and a detailed estimate of the Additional Costs. VDOT shall make recommendations regarding any curative actions that may be available relating to such Additional Costs, including any potential modification or reduction that may be made to the Project scope or design, or any other action, in order to stay within the initial budget for the Project. If the Additional Costs can be absorbed in the Project Budget by modifying or reducing the scope or design of the Project (or avoided by cancelling the Project or any portion thereof), HRTAC may, in its sole discretion, elect to (i) authorize VDOT to proceed with such modifications or reductions, (ii) authorize the Additional Costs (or if a combination of (i) and (ii) is feasible, HRTAC may elect such combination), or (iii) elect to cancel the Project or a portion thereof; provided, however, in any case, the respective obligations of VDOT and HRTAC, as modified by the elected alternative, shall be set forth in an amendment to this Agreement (VDOT and HRTAC shall work in good faith to finalize and execute such amendment). If the Additional Costs cannot be absorbed in the initial budget by modifying or reducing the scope or design of the Project (and HRTAC elects option (ii) above), then, subject to Section F below, such Additional Costs shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget. In the event that HRTAC elects to cancel the Project (or any portion thereof) pursuant to this Section A.8(a)(iii), (A) all compensation due and owing to any and all contractors for work on the Project that has been completed at the time of cancellation, shall be paid in accord with Appendix B, and (B) subject to Section F, all reasonable costs associated with the cancellation due and owing to

said contractors pursuant to the terms of the contracts with the contractors, which terms shall be consistent with VDOT's standard contract terms relating to contract cancellation and termination, (the "Breakage Compensation"), shall be paid with HRTAC-Controlled Moneys, unless VDOT and HRTAC mutually determine that cancellation of the Project is necessary or warranted, in which case, the Breakage Compensation shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget.

- (b) VDOT shall not include in any contract with a contractor working on the Project any term, condition or remedy in respect of Additional Costs that is more favorable to the contractor than the terms, conditions or remedies VDOT includes in standard contracts where the state or VDOT bears the cost of the project.
- (c) The Additional Costs may include costs incurred by VDOT as a result of contractor claims relating to the Project made pursuant to the VDOT Roads and Bridge Specifications and §§ 33.2-1101 through 33.2-1105 of the Code, as amended. VDOT shall promptly notify HRTAC if any such claims are made or VDOT receives a notice of intent to file a claim or other written communication from a contractor relating to a claim or contractual dispute that could result in increased contract costs, and whether in each such case the claimed amount is expected to become, or result in, Additional Costs (and the estimate thereof) or is expected to have a material adverse effect on the contingency reserves established as part of the Project Budget (and the estimated effect thereon). VDOT shall be responsible to handle all such claims and notices of intent, but VDOT may not settle any claim or notice of intent to file a claim and thereafter submit it as an Additional Cost pursuant to Section A.8(a) unless the settlement has been approved by HRTAC. Funding for the settlement will be prorated based on the respective proportionate share of the HRTAC-Controlled Moneys and state and federal funds in the Project Budget. Should the claim not be settled, any final judgment from a court of competent jurisdiction shall be paid in accordance with the proration rule set forth in the preceding sentence.
- (d) Notwithstanding anything to the contrary set forth herein, if any additional cost (including, without limitation, any additional cost relating to a contractor claim described in Section A.8(c) above) arises out of or results from VDOT's negligence or breach of contract, HRTAC shall not be responsible for such additional costs.

9. Release or return any unexpended funds to HRTAC no later than 90 days after final payment has been made in respect of the Project.
10. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations.
11. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations.
12. Reimburse HRTAC (or such other entity as may have provided funds) for all funds provided by HRTAC (or on behalf of HRTAC) and, to the extent applicable and permitted by law, with interest earned at the rate earned by HRTAC, that VDOT misapplied, used or requisitioned in contravention of the HRTAC Act or any other applicable law, or any term or condition of this Agreement.
13. Acknowledge that VDOT is solely responsible for the administration and/or development of the Project and all engagements, commitments and agreements with contractors. VDOT shall ensure that VDOT's contractors maintain surety bonds and insurance in amounts and with coverages that VDOT requires under its Road and Bridge Specifications for all work to be performed for the Project, and name HRTAC and its members, officers, employees and, if applicable, any HRTAC bond trustee as additional insureds on any such insurance policy, and present HRTAC with satisfactory evidence thereof before any work on the Project commences.
14. If in connection with the work VDOT engages outside legal counsel approved by the Attorney General (as opposed to utilizing the services of the Office of the Attorney General), VDOT will give HRTAC notice of the engagement so as to ensure that no conflict of interest may arise from any such representation.
15. Subject to and consistent with the requirements of Section F of this Agreement, upon final payment to all contractors for the Project, if the Project is or is part of a VDOT Highway, VDOT will use the Project for its intended purposes for the duration of the Project's useful life. If the Project is or is part of a VDOT Highway, VDOT shall be responsible to operate and/or maintain the Project after its completion (including responsibility to correct any defects or to cause any defects to be corrected), and under no circumstances will HRTAC have any responsibility or obligation to operate and/or maintain the Project (or correct defects with respect to the Project). The provisions in this Section

A.15 will survive the completion of the Project under this Agreement and/or the termination of this Agreement.

16. Comply with all applicable federal, state and local laws and regulations, including without limitation requirements of the Virginia Public Procurement Act.
17. Recognize that VDOT or its contractors are solely responsible for obtaining, and shall obtain, all permits, permissions and approvals necessary to construct and/or operate the Project, including, but not limited to, obtaining all required VDOT and local land use permits, zoning approvals, environmental permits, and regulatory approvals.
18. Recognize that if the Project is being funded, in whole or in part, with federal and/or state funds (in addition to HRTAC Controlled-Moneys), that VDOT shall (a) take any and all necessary actions to satisfy any conditions to such additional federal and/or state funding (provided that such actions are within the control of VDOT) and to enforce any commitments made in connection therewith, (b) comply with all applicable federal and Commonwealth funding requirements within the control or purview of VDOT, and (c) include in its contracts with contractors provisions that permit such contracts to be terminated, without penalty, if the funding is rescinded or otherwise becomes unavailable (for clarification, a provision shall not be deemed to include a penalty solely as a result of terms that require payment of compensation due and owing at the time of cancellation and reasonable costs associated with cancellation provided that such costs are consistent with costs paid pursuant to VDOT's standard contract terms relating to contract cancellation and termination). VDOT acknowledges and agrees that if funding from such an additional federal or state source is rescinded or otherwise becomes unavailable HRTAC (i) shall not be responsible for any amount in excess of its commitment set forth on Appendix B, and (ii) may (A) replace said reduced funding with HRTAC Controlled-Moneys or (B) may request VDOT to immediately suspend or discontinue all work relating to the Project, provided if HRTAC requests suspension HRTAC shall be responsible for the costs reasonably incurred in connection with such suspension. Should HRTAC not replace the reduced funding or request VDOT to suspend or discontinue work, VDOT may reduce the Project scope or take any other actions needed to reduce the Project costs to the Project Budget.
19. Provide a certification to HRTAC no later than 90 days after final payment for the Project that VDOT adhered to all applicable laws and regulations and all requirements of this Agreement.

B. HRTAC's Obligations

HRTAC shall:

1. Subject to the limitations as to amounts set forth in Appendix B (and subject to Section F of this Agreement), provide to VDOT the funding authorized by HRTAC for the Project, on a reimbursement basis as set forth in this Agreement and as specified in Appendix B to this Agreement or the most updated amendment thereto, as approved by HRTAC.
2. Assign a person to serve as a Program Coordinator for the Project, who will be responsible for review of the Project on behalf of HRTAC for purposes of ensuring it is being completed in compliance with this Agreement and all HRTAC requirements. HRTAC's Program Coordinator will be responsible for overseeing, managing, reviewing, and processing, in consultation with HRTAC's Executive Director and its Chief Financial Officer ("CFO"), all payment requisitions submitted by VDOT for the Project. HRTAC's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the scope of the Project as set forth on Appendix A or to the Project Budget and Project Schedule as set forth on Appendix B.
3. Route to HRTAC's assigned Program Coordinator all VDOT payment requisitions and the summaries of actual costs submitted to HRTAC for the Project. After submission to HRTAC, HRTAC's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. HRTAC's Program Coordinator will then make a recommendation to the HRTAC's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from VDOT. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is, in HRTAC's reasonable judgment, deemed insufficient, within twenty (20) days from receipt, HRTAC's Program Coordinator will notify VDOT in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed in order to authorize the payment request. Payment will be withheld until all deficiencies identified by HRTAC have been corrected to HRTAC's reasonable satisfaction. Under no circumstances will HRTAC authorize payment for any work performed by or on behalf of VDOT that is not in conformity with the requirements of the HRTAC Act or this Agreement.
4. Route all of VDOT's accelerated or supplemental requests for funding from HRTAC under Sections A.5 and A.8, respectively, of this Agreement to HRTAC's Executive Director. HRTAC's Executive Director will initially review those requests and all supporting documentation with HRTAC's

CFO. After such initial review, HRTAC's Executive Director will make a recommendation to HRTAC's Finance Committee for its independent consideration and review. HRTAC's Finance Committee will thereafter make a recommendation on any such request to HRTAC for final determination by HRTAC.

5. Conduct periodic compliance reviews scheduled in advance for the Project so as to assess whether the work being performed likely remains within the scope of this Agreement, the HRTAC Act and other applicable law. Such compliance reviews may entail review of VDOT's financial records for the Project and on-Project site inspections.
6. Acknowledge that if, as a result of HRTAC's review of any payment requisition or of any HRTAC compliance review, HRTAC staff determines that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, HRTAC staff will promptly advise HRTAC's Executive Director and will advise VDOT's designated representative in writing. VDOT will thereafter have thirty (30) days to respond in writing to HRTAC's initial findings. HRTAC's staff will review VDOT's response and make a recommendation to HRTAC's Finance Committee. HRTAC's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to HRTAC. If HRTAC makes a final determination that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, the parties should engage in dispute resolution as provided in Section D of this Agreement. Pending final resolution of the matter, HRTAC will withhold further funding on the Project. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.
7. Upon making final payment to VDOT for the Project, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans, if any, developed pursuant to or in association with the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.
8. Be the sole determinant of the amount and source of HRTAC funds to be provided and allocated to the Project and the amounts of any HRTAC funds to be provided in excess of the amounts specified in Appendix B.

C. Term

1. This Agreement shall be effective upon adoption and execution by both parties.

2. VDOT may terminate this Agreement, for cause, in the event of a material breach by HRTAC of this Agreement. If so terminated, HRTAC shall pay for all Project costs incurred in accordance with the terms of this Agreement through the date of termination and all reasonable costs incurred by VDOT to terminate all Project-related contracts. The Virginia General Assembly's failure to appropriate funds to HRTAC as described in Section F of this Agreement and/or repeal or amendment of the legislation establishing the HRTF or HRTAC's powers shall not be considered material breaches of this Agreement by HRTAC if such failure to appropriate or such repeal or amendment eliminates funds in the HRTF to be used for the Project or renders HRTAC without legal authority to provide funding for the Project. Before initiating any proceedings to terminate under this Section, VDOT shall give HRTAC sixty (60) days written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing HRTAC an opportunity to investigate and cure any such alleged breach.
3. HRTAC may terminate this Agreement, for cause, resulting from VDOT's material breach of this Agreement. If so terminated, VDOT shall refund to HRTAC all funds HRTAC provided to VDOT for the Project and, to the extent permitted by law, with interest earned at the rate earned by HRTAC. HRTAC will provide VDOT with sixty (60) days written notice that HRTAC is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, if VDOT has substantially completed the Project or a portion that is severable (meaning it is subject to independent use), VDOT may request that HRTAC excuse VDOT from refunding funds paid in respect of the substantially completed Project or portion, and HRTAC may, in its sole discretion, excuse VDOT from refunding all or a portion of the funds HRTAC provided to VDOT for the substantially completed Project or portion thereof. No such request to be excused from refunding will be allowed where VDOT has either misused or misapplied HRTAC funds in contravention of this Agreement or applicable law.
4. Upon termination and payment of all eligible expenses as set forth in Section C.3 above, VDOT will release or return to HRTAC all unexpended HRTAC funds and, to the extent permitted by law, with interest earned at the rate earned by HRTAC, no later than sixty (60) days after the date of termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer promptly in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. HRTAC's Executive Director and the Commissioner shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to HRTAC and

to the Commissioner for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law or in equity, including all judicial remedies. The foregoing dispute resolution method shall not bar either party's right to seek equitable relief on an emergency basis.

E. HRTAC's Interest in Project Assets

VDOT agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by HRTAC under this Agreement ("Assets") for the designated transportation purposes of the Project and in accordance with applicable law throughout the useful life of each such Asset. If VDOT intends to sell, convey, or dispose any Asset funded with HRTAC funds or intends to use any Asset for a purpose inconsistent with this Agreement, VDOT shall notify HRTAC's Executive Director in writing of any such intent before further action is taken by VDOT in furtherance thereof. Upon receiving notification from VDOT, HRTAC's Executive Director shall notify HRTAC of VDOT's intended action(s). The parties shall, thereafter, meet and confer to discuss what measures need to be taken regarding VDOT's proposed sale, conveyance, disposition, or use of any such Asset(s) so as to ensure compliance with all applicable requirements of the HRTAC Act (without limiting the foregoing, VDOT acknowledges that under the HRTAC Act and applicable law, HRTAC is vested with the right to impose and collect tolls on facilities constructed by the Commission). All recommendations and/or proposed remedial actions developed by the parties' designated representatives during the meet and confer process shall be formally presented to HRTAC and the Commissioner for their respective approval.

F. Appropriations Requirements

1. Nothing herein shall require or obligate HRTAC to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by its governing body for the Project.
2. The parties acknowledge that all funding provided by HRTAC pursuant to the HRTAC Act is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the HRTF pursuant to applicable provisions of the Code of Virginia and any other moneys that the General Assembly appropriates for deposit into the HRTF are subject to appropriation by the General Assembly and (ii) HRTAC's obligations under this Agreement are subject to such moneys being appropriated to the HRTF by the General Assembly.
3. The parties agree that VDOT's obligations under this Agreement are subject to funds being appropriated by the General Assembly and allocated by the Commonwealth Transportation Board and otherwise legally available to VDOT for HRTAC projects.

4. Should VDOT be required to provide additional funds in order to proceed or complete the funding necessary for the Project, VDOT shall certify to HRTAC that such additional funds have been allocated and authorized by the CTB and/or appropriated by the Virginia General Assembly as may be applicable or have been obtained through another independent, lawful source.

G. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

- 1) to: HRTAC, to the attention of its Executive Director and Chairman;
723 Woodlake Drive
Chesapeake, VA 23320
- 2) to: VDOT, to the attention of:
Commissioner, Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219

H. Assignment

This Agreement shall not be assigned by either party unless express written consent is given by the other party.

I. Modification or Amendment

(a) This Agreement may not be modified or amended, except pursuant a written agreement that is duly authorized, executed and delivered by both parties.

(b) If HRTAC is able to obtain a source of funding for the Project that would reduce or replace the amount of HRTAC-Controlled Moneys expended on the Project, VDOT and HRTAC will work in good faith to amend this Agreement so it takes into account that other funding.

(c) If HRTAC proposes to issue bonds, VDOT and HRTAC will work in good faith to adopt such amendments to this Agreement as VDOT and HRTAC may mutually agree are necessary and desirable in connection with the bond offering, including, without limitation, tax covenants of the type made by VDOT under its Project Agreements with the Northern Virginia Transportation Authority.

J. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, member, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

K. No Agency

VDOT represents that it is not acting as a partner or agent of HRTAC; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

L. Sovereign Immunity

This Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

M. Incorporation of Recitals and Appendices

The recitals and Appendices to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that the recitals are true and correct.

N. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

O. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

[Signature page follows]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Hampton Roads Transportation Accountability Commission

By: _____

Name: _____

Title: _____

Date: _____

Virginia Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

PROJECT

NARRATIVE DESCRIPTION OF STANDARD PROJECT SERVICES

HRTAC Project Title: I-64 Capacity Improvements- Segment III (UPC 106689/109790)

Recipient Entity: Virginia Department of Transportation

VDOT Program Manager Contact Information: Tony Gibson (757) 925-2274

HRTAC Executive Director: Kevin Page (757) 420-8300

Project Scope

The Standard Project Services are intended to provide right of way and construction work for the overall project and are set forth in more detail below in the Detailed Scope of Services. Generally, the overall project entails roadway widening to increase capacity and improve safety along the I-64 corridor. The project entails median widening of the roadway from 4 to 6 lanes from where Segment II ends at 1.05 miles West of Route 199 (Humelsine Parkway/Marquis Center Parkway) (Exit 242) to Route 199, Lightfoot (Exit 234). The project will also be adding 12' wide median shoulders.

Detailed Scope of Services

The detailed scope of the Standard Project Services addressed by this Agreement (and to which the funding provided thereunder relates) consists of the Right of Way (RW) and Construction (CN) Phases for the overall design-build project described above which also includes but is not limited to work to be performed in advance, and in furtherance, of a Spring 2017 Request for Qualifications (RFQ) and a Summer 2017 Request for Proposals (RFP). Current estimates are that the project will be presented to the Commonwealth Transportation Board for award at its December 2017 meeting.

The cost estimate provided in Appendix B was developed using VDOT's Project Cost Estimating System and was current as of the date the Appendix B was executed. Any additional costs for the RW/CN Phases will be subject to and addressed in accord with the terms of this Standard Project Agreement.

**APPENDIX B
PROJECT BUDGET, PROJECT SCHEDULE, AND CASHFLOW**

APPENDIX B-PROJECT BUDGET & CASH FLOW

PROJECT IDENTIFICATION AND PROPOSED FUNDING

HRTAC Project Title:	I-64 Capacity Improvements- Segment III (UPC 106689/109790)
Scope of Project Services:	Standard Project Services to Support RW/CN Phases for I-64 Capacity Improvements- Segment III (UPC 106689/109790)
Recipient Entity:	Virginia Department of Transportation
VDOT Project Contact:	Tony Gibson (757) 925-2274
Baseline Schedule:	RW: Start Jan 2018, End Aug 2019
	CN: Start Jan 2018, End Jan 2022

PROJECT COSTS & FUNDING SOURCE

Project Cost Category	Total Project Costs	HRTAC PayGo Funds	HRTAC Financed Funds	Description Other Sources of Funds	Amount Other Sources of Funds	Recipient Entity Funds
Design Work			\$ -		\$ -	\$ -
Engineering						
Environmental Work						
Right-of-Way Acquisition	\$ 12,000,000.00	\$ -		State	\$ 12,000,000.00	
Construction	\$ 289,303,819.00	\$ 156,376,066.00		State	\$ 132,927,753.00	
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions						
Other						
Total Estimated Cost	\$ 301,303,819.00	\$ 156,376,066.00	\$ -	\$ -	\$ 144,927,753.00	\$ -

FISCAL YEAR ANNUAL PROJECT CASH FLOW

Project Phase	Total Fiscal Year 2020		Total Fiscal Year 2021		Total Fiscal Year 2022	
	PayGo	Financed	PayGo	Financed	PayGo	Financed
Design Work						
Engineering						
Environmental Work						
Right-of-Way Acquisition						
Construction	24,752,207.00		89,013,751.00		42,610,108.00	
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions						
Other						
Total Estimated Cost	\$ 24,752,207.00	\$ -	\$ 89,013,751.00	\$ -	\$ 42,610,108.00	\$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

FISCAL YEAR ESTIMATED PROJECT CASH FLOW

	FY 20 Mthly Cash Flow		FY 21 Mthly Cash Flow		FY 22 Qtrly Cash Flow	
	PayGo	Financed	PayGo	Financed	PayGo	Financed
July			\$6,478,749		\$7,503,182	
August			\$6,478,749		\$6,990,964	
September			\$6,478,749		\$5,454,315	
October			\$6,478,749		\$6,990,964	
November			\$6,990,964		\$5,454,315	
December			\$6,990,964		\$3,405,450	
January			\$7,759,292		\$1,702,730	
February			\$8,271,507		\$1,702,730	
March			\$8,271,507		\$1,702,730	
April	\$ 8,250,735.00		\$8,271,507		\$1,702,728	
May	\$ 8,250,736.00		\$8,271,507			
June	\$ 8,250,736.00		\$8,271,507			
Total per Fiscal Year	\$ 24,752,207.00	\$ -	\$ 89,013,751.00	\$ -	\$ 42,610,108.00	\$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

This attachment is certified and made an official attachment to the Standard Project Agreement document by the parties of this agreement.

Virginia Department of Transportation

Hampton Roads Transportation Accountability Commission

Signature
Commissioner

Title

Signature
HRTAC Chairman

Title

Date
Charles A. Kilpatrick, P.E.

Print name of person signing

Date
William D. Sessoms, Jr

Print name of person signing

APPENDIX C

FORM OF PAYMENT REQUISITION

HRTAC Project Title and Number: _____

Project Scope/Services Description: [From Appendix B] _____

Draw Request Number: _____

Date: _____, 20____

Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, VA 23320

Attention _____, Program Coordinator:

This requisition is submitted in connection with the Standard Project Agreement for Funding and Administration for the project services noted above and dated _____, 20____ (the "Agreement") between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT"). VDOT hereby requests \$_____ of HRTAC funds, to pay the costs of the project services described and set forth in Appendices A and B of the Agreement ("Project Services") and in accordance with the Agreement. Also included are copies of each invoice relating to the items for which this requisition is requested.

The undersigned certifies (i) the amounts included within this requisition will be applied solely and exclusively for the payment or the reimbursement of VDOT's costs of the Project Services, (ii) VDOT is responsible for payment to vendors/contractors, (iii) VDOT is not in breach or default with respect to any of its obligations under the Agreement, including without limitation (but only if applicable) the tax covenants set forth in another Appendix to the Agreement, (iv) the representations and warranties made by VDOT in the Agreement are true and correct as of the date of this Requisition and (v) to the knowledge of VDOT, no condition exists under the Agreement that would allow HRTAC to withhold the requested advance.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Recommended For Payment

By: _____

Name: _____

Title: HRTAC Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____ Request Date: _____
 HRTAC Project Number: _____ Project Title: _____

Cost Category	HRTAC Approved Project Costs	Total PayGo Requests Previously Received	PayGo Requisition Amount this Period	Remaining PAYGO Project Budget (Calculation)
Project Starting Balance	\$ -			\$ -
Design Work	\$ -	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Acquisition	-	-	-	\$ -
Construction	-	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$ -	\$ -	\$ -	\$ -

LISTING OF ATTACHED INVOICES

Vendor/Contractor Name	Item Number	Invoice Number	Cost Category	Amount
	1			\$ -
	2			-
	3			-
	4			-
	5			-
	6			-
	7			-
	8			-
	9			-
	10			-
	11			-
	12			-
Requisition Amount				\$ -

Instructions

1. Column B-Please list approved PayGo Project Cost per category.
2. Column C-Please list Total PayGo Amounts per Category Previously Reimbursed by HRTAC
3. Column D- Please list invoice amounts summarized by Category from the Listing of Attached Invoices
4. Column E - Is a calculation of the Remaining PAYGO Budget per Category

Instructions-Listing of Attached Invoices: (please list each invoice separately)

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please manually number the invoices attached with the corresponding Item number in this schedule.
3. Column C- Please list the invoice number as it appears on the Invoice
4. Column D- Please list the appropriate Cost Category based on the Project Category breakout above
5. Column E- Please enter the dollar amount listed on the invoice.
6. The calculated Requisition Amount should equal the total in Column D in the Schedule above.

APPENDIX D

REPORTS TO BE PROVIDED BY VDOT

1) Monthly Project Expenditure Report which lists, by category of expense (*e.g.*, engineering, ROW, utility relocations, construction), (a) information regarding expenditures to date against the budget, both monthly and for the life of the project, and a statement of the percent completed; and (b) such other information as VDOT customarily provides with monthly expenditure reports

2) Monthly Project Report which provides (a) an overview of progress on major project tasks; (b) information regarding the budget (such as, the baseline planned forecast, any approved changes thereto, the monthly expenditures, the cumulative expenditures, and the cumulative forecasted expenditures); (c) future key tasks; and (d) significant issues.

APPENDIX E

OFFICIAL AUTHORIZING DOCUMENTS



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 # 7

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By:

Seconded By:

Action:

Title: Authorization for the Commissioner of Highways to Enter into a Project Agreement Between VDOT and the Hampton Roads Transportation Accountability Commission Relating to Preliminary Engineering for the Interstate 64/Interstate 264 Interchange- Phase III Project (UPC 106693)

WHEREAS, the Virginia General Assembly, pursuant to Chapter 26 of Title 33.2 of the *Code of Virginia*, established the Hampton Roads Transportation Accountability Commission (HRTAC), a political subdivision of the Commonwealth; and

WHEREAS, the Virginia General Assembly, pursuant to §33.2-2600 of the *Code of Virginia* also established the Hampton Roads Transportation Fund (HRTF) to fund new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23; and

WHEREAS, pursuant to §33.2-2608 the HRTAC may enter into contracts or agreements necessary or convenient for the performance of its duties and the exercise of its powers under Chapter 26; and

WHEREAS, §33.2-214.C of the *Code of Virginia* empowers the Commonwealth Transportation Board (Board) to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes; and

WHEREAS, it is anticipated that HRTAC will approve the use of funds from the HRTF and execution of an agreement between VDOT and HRTAC for preliminary engineering work for the Interstate 64/Interstate 264 Interchange – Phase III Project (UPC 106693) (Project) at its December 15, 2016 meeting; and

Resolution of the Board

Authorization for the Commissioner of Highways to Enter into a Project Agreement Between

VDOT and HRTAC Relating to Preliminary Engineering for the Interstate 64/Interstate 264 Interchange- Phase III Project (UPC 106693)

December 7, 2016

Page Two

WHEREAS, VDOT has requested that the Board authorize the Commissioner to enter into an agreement with HRTAC, attached hereto as Exhibit A, to advance preliminary engineering for the Interstate 64/Interstate 264 Interchange– Phase III Project.

NOW, THEREFORE, BE IT RESOLVED, the Commonwealth Transportation Board hereby authorizes the Commissioner of Highways to enter into the agreement with HRTAC relating to the use of HRTF funds for preliminary engineering relating to the Interstate 64/Interstate 264 Interchange – Phase III Project, in substantially the same form as Exhibit A, with such changes and additions as the Commissioner deems necessary, provided HRTAC approves execution of the agreement and use of funds from the HRTF for said purpose.

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CTB Decision Brief

Authorization for the Commissioner of Highways to Enter into a Project Agreement Between VDOT and the Hampton Roads Transportation Accountability Commission Relating to Preliminary Engineering for the Interstate 64/Interstate 264 Interchange- Phase III Project (UPC 106693)

Issue: VDOT is requesting that the Commonwealth Transportation Board (CTB) authorize the Commissioner of Highways (Commissioner) to enter into an agreement with the Hampton Roads Transportation Accountability Commission (HRTAC) for Phase III of the Interstate 64/Interstate 264 Interchange located in the City of Norfolk (“Project”). The Project will entail improving the remaining Interstate 64/Interstate 264 movements to include Interstate 64 Eastbound (EB) movements to Interstate 264 and Interstate 264 movements to Interstate 64.

Facts: In 2013, the General Assembly established the Hampton Roads Transportation Fund (HRTAC Fund), which is to be funded by revenues from the new taxes imposed in Planning District 23 pursuant to Chapter 766, Virginia Code §33.2-2600. In 2014, the Virginia General Assembly established HRTAC (see § 33.2-2601 of the *Code of Virginia*), a political subdivision of the Commonwealth, which among its various responsibilities is to approve use of HRTAC funds for new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23.

Section 33.2-214 C of the *Code of Virginia* empowers the CTB to enter into contracts (agreements) with local districts, commissions, agencies or other entities created for transportation purposes.

It is anticipated that HRTAC at its December 15, 2016 meeting will approve use of funds from the HRTAC Fund and execution of an agreement between VDOT and HRTAC relating to the use of said funds to pay the costs for preliminary engineering (PE) for the Project with the purpose of initiating preliminary design and the NEPA process.

Recommendation: VDOT recommends that the CTB delegate to the Commissioner the authority to enter into an agreement with HRTAC relating to the use of HRTAC funds for preliminary engineering for the Interstate 64/Interstate 264 Interchange- Phase III Project so that the use of HRTAC funds for this work may commence as soon as possible.

Action Required by the CTB: Approve by majority vote the resolution providing the authorization recommended herein.

Result, if Approved: The Commissioner will be authorized to enter into an agreement between VDOT and HRTAC for use of HRTAC Funds to pay the costs of preliminary engineering for the Interstate 64/Interstate 264 Interchange- Phase III Project, thereby allowing HRTAC funds to be used for initiating preliminary design and the NEPA process for the Project.

Options: Approve, Deny or Defer

Public Comments/Reactions: N/A

**Standard Project Agreement for Funding and Administration
between
Hampton Roads Transportation Accountability Commission
and
Virginia Department of Transportation**

HRTAC Project Number: I-64/I-264 Interchange- Phase III (UPC 106693)

This Standard Project Agreement for Funding and Administration (the "Agreement") is made and executed in duplicate on this ____ day of _____, 2016, as between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT").

WITNESSETH

WHEREAS, Chapter 766 of the 2013 Acts of Assembly established the Hampton Roads Transportation Fund (the "HRTF"), and provides that moneys deposited in the HRTF are to be used solely for new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23;

WHEREAS, Chapter 678 of the 2014 Acts of Assembly (now codified in Section 33.2-2600 *et seq.* of the Code of Virginia, as amended) (the "HRTAC Act") created HRTAC as a political subdivision of the Commonwealth of Virginia, and moved the responsibility to determine the projects that will be funded by the HRTF from the Hampton Roads Transportation Planning Organization to HRTAC;

WHEREAS, under Sections 33.2-2606 and 33.2-2607 of the Code of Virginia, HRTAC is also authorized to issue bonds and other evidences of debt, and to impose and collect certain tolls;

WHEREAS, Section 33.2-2611 of the Code of Virginia requires HRTAC to use all moneys it receives (the "HRTAC-Controlled Moneys"), which include, without limitation, moneys from the HRTF as well as any bond proceeds and collections from any tolls imposed by HRTAC, solely for the benefit of those counties and cities that are embraced by HRTAC, and in a manner that is consistent with the purposes of the HRTAC Act;

WHEREAS, VDOT is the Virginia state agency responsible for building, maintaining and operating the interstate, primary, and secondary state highway systems ("VDOT Highways");

WHEREAS, in light of VDOT's responsibilities with respect to VDOT Highways, and HRTAC's responsibilities with respect to the application of the HRTAC-Controlled Moneys, VDOT and HRTAC entered into a Memorandum of Agreement dated March 30, 2015 (the "MOA");

WHEREAS, the MOA contemplates that HRTAC may from time to time enter into Project Agreements for Funding and Administration of projects that HRTAC selects and HRTAC requests VDOT to administer and/or develop with HRTAC Controlled Moneys;

WHEREAS, HRTAC has determined that it desires to proceed with the project set forth and described on Appendix A to this Agreement (the "Project"), and that the Project would benefit the cities and counties that are embraced by HRTAC and it otherwise satisfies the requirements of the HRTAC Act;

WHEREAS, VDOT agrees to administer and/or develop the Project in accordance with the budget (the "Project Budget") and cashflow and construction schedule (the "Project Schedule") set forth and described on Appendix B to this Agreement (this Agreement and its appendices may be amended from time to time by mutual agreement of the parties to address mutually agreed changes relating to, among other things, Project scope, design, funding and regulatory approvals);

WHEREAS, HRTAC desires to provide funding for the administration and/or development of the Project out of HRTAC-Controlled Moneys, subject to the terms, conditions and limitations set forth herein;

WHEREAS, the Commonwealth Transportation Board ("CTB") has the authority, pursuant to Section 33.2-214 of the Code of Virginia, to cause VDOT to enter into this Agreement and has authorized the Commissioner of Highways to enter into agreements with HRTAC for project administration and development purposes, and Section 33.2-2608 of the Code of Virginia authorizes HRTAC to enter into this Agreement; and

WHEREAS, the CTB, by resolution passed on January 14, 2015, resolved that any agreement between VDOT and HRTAC for project services shall provide that overruns or other additional project costs shall be prorated between HRTAC and VDOT so that each party bears a proportionate share of the additional costs based on each party's percentage responsibility of the initial project budget; and

WHEREAS, HRTAC's governing body and the CTB have each authorized that their respective designee(s) execute this Agreement on their respective behalf(s) as evidenced by copies of each such entity's clerk's minutes or such other official authorizing documents which are appended hereto as Appendix E.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and agreements contained herein, the parties hereto agree as follows:

A. VDOT's Obligations

VDOT shall:

1. Complete or perform or cause to be completed or performed all work relating to the Project, as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with (i)

any and all applicable federal, state, and local laws and regulations, and (ii) all terms and conditions of this Agreement, including, without limitation, the Project Budget and Project Schedule reflected in Appendix B, which Project Budget and Project Schedule (A) VDOT represents have been prepared in good faith, in accordance with the practices and procedures that VDOT uses for projects where the state or VDOT bears the cost of the project (including, without limitation, the practices used to price and budget services that may be internally sourced, such as Construction Engineering Inspection/CEI), and (B) the parties acknowledge may be amended pursuant to Section A.8 below or as follows:

- (a) In the event that VDOT determines, after receipt of proposals or bids for any work related to the Project, that the cost of the contract for said work will result in a significant reduction in costs associated with a portion of the Project Budget reflected in Appendix B that is allocated to work covered by the contract, then VDOT shall notify HRTAC's Executive Director of the significant reduction in costs. For purposes of this Section A.1(a), HRTAC and VDOT agree that a "significant reduction in costs" shall mean a reduction in costs that has the effect of reducing, in Appendix B, (x) the costs for the particular portion of the Project Budget allocated to work covered by the contract by more than 20 percent or (y) the entire Project Budget either by more than 10 percent or \$10,000,000, whichever applies. In the event there is a significant reduction in costs, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the effect of the reduction (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state or federal contributions, then the commitment of each funding source would be reduced by its proportionate share of the reduction in costs, which proportionate share will be based on the funding source's proportionate responsibility for the total budgeted costs before the reduction was realized) (for the avoidance of doubt, the amount by which a commitment is reduced shall be considered deobligated from the Project).
- (b) In the event that any federal or state funding not previously available for the Project becomes available for any portion of the Project Budget reflected in Appendix B, then VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the benefit of the additional funding (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state contributions, but federal funding subsequently becomes available, then the respective commitments of HRTAC and the state would be reduced by each party's proportionate share of the additional funds, which proportionate share will be based on the party's proportionate responsibility for

the total budgeted cost before the additional funding became available).

2. Without limiting the foregoing,
 - (a) VDOT shall select contractors, contract with contractors, and administer and enforce contracts all in a manner that is consistent in all material respects with the policies, procedures and practices that VDOT uses where the state or VDOT bears the cost of a project; for example, VDOT shall use its customary policies, procedures and practices relating to requesting bids/proposals, negotiating/finalizing terms and conditions of contracts (using, where applicable, standard terms/forms), and monitoring and enforcing performance of contracts;
 - (b) VDOT shall not enter into any contract to perform the work related to the Project if (i) the cost of that contract would exceed the portion of the Project Budget reflected in Appendix B that is allocated to the work covered by that contract, (ii) the cost of that contract, when aggregated with the cost of all other contracts relating to the Project that have been, or are expected to be, entered into would exceed the Project Budget reflected in Appendix B, or (iii) the schedule in the contract for performing and paying for the work related to the Project would be materially different (whether accelerated or delayed) from the Project Schedule set forth in Appendix B; in addition, if the bids or proposals received for any portion of the Project are not qualitatively consistent with VDOT's standards for that work or quantitatively within VDOT's projections for that work, each as determined by VDOT in its good faith judgment, VDOT shall (i) undertake a new procurement, or (ii) recommend alternative measures to HRTAC, and seek HRTAC's advice and consent regarding pursuit of those alternative measures. If HRTAC grants its written consent to a modification to the Project Budget and/or Project Schedule in order to permit VDOT to enter into a contract to perform the work, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to reflect the modified Project Budget and Project Schedule.
3. Perform or have performed in accordance with VDOT's standards for highways, bridges and tunnels all design and engineering, all environmental work, and all right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions, as is required by this Agreement or that may be necessary for completion of the Project pursuant to the terms of this Agreement. If VDOT determines that a delay will more likely than not prevent the completion of a material phase of the Project (e.g., PE or ROW acquisition), or the entire Project, in accordance with the Project Schedule,

VDOT shall notify HRTAC in writing and provide HRTAC with such information as HRTAC may reasonably request, including information pertaining to potential corrective measures and remedies against the contractor (if VDOT and HRTAC mutually develop a model notice for such purposes, VDOT's notice will follow the format of the model).

4. Not use any funds provided by HRTAC, including the funds specified on Appendix B, to pay any Project cost if the HRTAC Act does not permit such Project cost to be paid with HRTAC funds.
5. Recognize that, if the Project contains "multiple funding phases" (as such "multiple funding phases" are set out for the Project on Appendix A), for which HRTAC will provide funding for such multiple funding phases (as scheduled on Appendix B), HRTAC may not have sufficient cash flows to permit accelerated funding to VDOT and to advance the funding schedule for the Project. In any circumstance where VDOT seeks to advance the funding schedule for the Project, VDOT shall submit a written request to HRTAC's Executive Director explaining VDOT's reasons why HRTAC should authorize acceleration to the next funding phase. (As used in this Agreement, "Executive Director" shall mean HRTAC's Chairman if at any applicable time, HRTAC has not engaged a dedicated, full-time Executive Director.) HRTAC's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and HRTAC's current and projected cash flow position and make a recommendation to HRTAC whether to authorize VDOT's requested accelerated funding. The foregoing shall not prohibit VDOT from providing its own funds to advance a future funding phase of the Project and from requesting reimbursement from HRTAC for having advance funded a future phase of the Project; however, VDOT further recognizes that HRTAC's reimbursement to VDOT for having advance funded a phase of the Project will be dependent upon HRTAC's cash flow position at the time such a request for reimbursement is submitted and may be dependent upon the extent to which the reimbursement of any such advanced funding is otherwise consistent with the terms of this Agreement, including Appendix B.
6.
 - (a) Permit HRTAC's Executive Director to periodically update HRTAC's cash flow estimates for the Project with the objective toward keeping those estimates accurate throughout the performance of the Project. VDOT shall provide all available information reasonably required by HRTAC so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the performance of the Project as described in Appendix B.
 - (b) Provide HRTAC's Executive Director with the monthly reports described on Appendix D.

7. Provide to HRTAC's Executive Director requests for payment consistent with Appendix C (and the most recently approved HRTAC cash flow estimates) that include (a) HRTAC's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by HRTAC, and (b) certifications that all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by HRTAC, VDOT can expect to receive payment within twenty (20) days upon receipt by HRTAC. Approved payments may be made by means of electronic transfer of funds from HRTAC to or for the account of VDOT.

8. (a) Promptly notify HRTAC's Executive Director if VDOT determines that any additional, unbudgeted costs may be incurred to perform and complete the Project ("Additional Costs"), which notice shall include a description of the Additional Costs, an explanation of how they arose and the assumptions in the initial budget regarding those costs, and a detailed estimate of the Additional Costs. VDOT shall make recommendations regarding any curative actions that may be available relating to such Additional Costs, including any potential modification or reduction that may be made to the Project scope or design, or any other action, in order to stay within the initial budget for the Project. If the Additional Costs can be absorbed in the Project Budget by modifying or reducing the scope or design of the Project (or avoided by cancelling the Project or any portion thereof), HRTAC may, in its sole discretion, elect to (i) authorize VDOT to proceed with such modifications or reductions, (ii) authorize the Additional Costs (or if a combination of (i) and (ii) is feasible, HRTAC may elect such combination), or (iii) elect to cancel the Project or a portion thereof; provided, however, in any case, the respective obligations of VDOT and HRTAC, as modified by the elected alternative, shall be set forth in an amendment to this Agreement (VDOT and HRTAC shall work in good faith to finalize and execute such amendment). If the Additional Costs cannot be absorbed in the initial budget by modifying or reducing the scope or design of the Project (and HRTAC elects option (ii) above), then, subject to Section F below, such Additional Costs shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget. In the event that HRTAC elects to cancel the Project (or any portion thereof) pursuant to this Section A.8(a)(iii), (A) all compensation due and owing to any and all contractors for work on the Project that has been completed at the time of cancellation, shall be paid in accord with Appendix B, and (B) subject to Section F, all reasonable costs associated with the cancellation due and owing to

said contractors pursuant to the terms of the contracts with the contractors, which terms shall be consistent with VDOT's standard contract terms relating to contract cancellation and termination, (the "Breakage Compensation"), shall be paid with HRTAC-Controlled Moneys, unless VDOT and HRTAC mutually determine that cancellation of the Project is necessary or warranted, in which case, the Breakage Compensation shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget.

- (b) VDOT shall not include in any contract with a contractor working on the Project any term, condition or remedy in respect of Additional Costs that is more favorable to the contractor than the terms, conditions or remedies VDOT includes in standard contracts where the state or VDOT bears the cost of the project.
- (c) The Additional Costs may include costs incurred by VDOT as a result of contractor claims relating to the Project made pursuant to the VDOT Roads and Bridge Specifications and §§ 33.2-1101 through 33.2-1105 of the Code, as amended. VDOT shall promptly notify HRTAC if any such claims are made or VDOT receives a notice of intent to file a claim or other written communication from a contractor relating to a claim or contractual dispute that could result in increased contract costs, and whether in each such case the claimed amount is expected to become, or result in, Additional Costs (and the estimate thereof) or is expected to have a material adverse effect on the contingency reserves established as part of the Project Budget (and the estimated effect thereon). VDOT shall be responsible to handle all such claims and notices of intent, but VDOT may not settle any claim or notice of intent to file a claim and thereafter submit it as an Additional Cost pursuant to Section A.8(a) unless the settlement has been approved by HRTAC. Funding for the settlement will be prorated based on the respective proportionate share of the HRTAC-Controlled Moneys and state and federal funds in the Project Budget. Should the claim not be settled, any final judgment from a court of competent jurisdiction shall be paid in accordance with the proration rule set forth in the preceding sentence.
- (d) Notwithstanding anything to the contrary set forth herein, if any additional cost (including, without limitation, any additional cost relating to a contractor claim described in Section A.8(c) above) arises out of or results from VDOT's negligence or breach of contract, HRTAC shall not be responsible for such additional costs.

9. Release or return any unexpended funds to HRTAC no later than 90 days after final payment has been made in respect of the Project.
10. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations.
11. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations.
12. Reimburse HRTAC (or such other entity as may have provided funds) for all funds provided by HRTAC (or on behalf of HRTAC) and, to the extent applicable and permitted by law, with interest earned at the rate earned by HRTAC, that VDOT misapplied, used or requisitioned in contravention of the HRTAC Act or any other applicable law, or any term or condition of this Agreement.
13. Acknowledge that VDOT is solely responsible for the administration and/or development of the Project and all engagements, commitments and agreements with contractors. VDOT shall ensure that VDOT's contractors maintain surety bonds and insurance in amounts and with coverages that VDOT requires under its Road and Bridge Specifications for all work to be performed for the Project, and name HRTAC and its members, officers, employees and, if applicable, any HRTAC bond trustee as additional insureds on any such insurance policy, and present HRTAC with satisfactory evidence thereof before any work on the Project commences.
14. If in connection with the work VDOT engages outside legal counsel approved by the Attorney General (as opposed to utilizing the services of the Office of the Attorney General), VDOT will give HRTAC notice of the engagement so as to ensure that no conflict of interest may arise from any such representation.
15. Subject to and consistent with the requirements of Section F of this Agreement, upon final payment to all contractors for the Project, if the Project is or is part of a VDOT Highway, VDOT will use the Project for its intended purposes for the duration of the Project's useful life. If the Project is or is part of a VDOT Highway, VDOT shall be responsible to operate and/or maintain the Project after its completion (including responsibility to correct any defects or to cause any defects to be corrected), and under no circumstances will HRTAC have any responsibility or obligation to operate and/or maintain the Project (or correct defects with respect to the Project). The provisions in this Section

A.15 will survive the completion of the Project under this Agreement and/or the termination of this Agreement.

16. Comply with all applicable federal, state and local laws and regulations, including without limitation requirements of the Virginia Public Procurement Act.
17. Recognize that VDOT or its contractors are solely responsible for obtaining, and shall obtain, all permits, permissions and approvals necessary to construct and/or operate the Project, including, but not limited to, obtaining all required VDOT and local land use permits, zoning approvals, environmental permits, and regulatory approvals.
18. Recognize that if the Project is being funded, in whole or in part, with federal and/or state funds (in addition to HRTAC Controlled-Moneys), that VDOT shall (a) take any and all necessary actions to satisfy any conditions to such additional federal and/or state funding (provided that such actions are within the control of VDOT) and to enforce any commitments made in connection therewith, (b) comply with all applicable federal and Commonwealth funding requirements within the control or purview of VDOT, and (c) include in its contracts with contractors provisions that permit such contracts to be terminated, without penalty, if the funding is rescinded or otherwise becomes unavailable (for clarification, a provision shall not be deemed to include a penalty solely as a result of terms that require payment of compensation due and owing at the time of cancellation and reasonable costs associated with cancellation provided that such costs are consistent with costs paid pursuant to VDOT's standard contract terms relating to contract cancellation and termination). VDOT acknowledges and agrees that if funding from such an additional federal or state source is rescinded or otherwise becomes unavailable HRTAC (i) shall not be responsible for any amount in excess of its commitment set forth on Appendix B, and (ii) may (A) replace said reduced funding with HRTAC Controlled-Moneys or (B) may request VDOT to immediately suspend or discontinue all work relating to the Project, provided if HRTAC requests suspension HRTAC shall be responsible for the costs reasonably incurred in connection with such suspension. Should HRTAC not replace the reduced funding or request VDOT to suspend or discontinue work, VDOT may reduce the Project scope or take any other actions needed to reduce the Project costs to the Project Budget.
19. Provide a certification to HRTAC no later than 90 days after final payment for the Project that VDOT adhered to all applicable laws and regulations and all requirements of this Agreement.

B. HRTAC's Obligations

HRTAC shall:

1. Subject to the limitations as to amounts set forth in Appendix B (and subject to Section F of this Agreement), provide to VDOT the funding authorized by HRTAC for the Project, on a reimbursement basis as set forth in this Agreement and as specified in Appendix B to this Agreement or the most updated amendment thereto, as approved by HRTAC.
2. Assign a person to serve as a Program Coordinator for the Project, who will be responsible for review of the Project on behalf of HRTAC for purposes of ensuring it is being completed in compliance with this Agreement and all HRTAC requirements. HRTAC's Program Coordinator will be responsible for overseeing, managing, reviewing, and processing, in consultation with HRTAC's Executive Director and its Chief Financial Officer ("CFO"), all payment requisitions submitted by VDOT for the Project. HRTAC's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the scope of the Project as set forth on Appendix A or to the Project Budget and Project Schedule as set forth on Appendix B.
3. Route to HRTAC's assigned Program Coordinator all VDOT payment requisitions and the summaries of actual costs submitted to HRTAC for the Project. After submission to HRTAC, HRTAC's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. HRTAC's Program Coordinator will then make a recommendation to the HRTAC's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from VDOT. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is, in HRTAC's reasonable judgment, deemed insufficient, within twenty (20) days from receipt, HRTAC's Program Coordinator will notify VDOT in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed in order to authorize the payment request. Payment will be withheld until all deficiencies identified by HRTAC have been corrected to HRTAC's reasonable satisfaction. Under no circumstances will HRTAC authorize payment for any work performed by or on behalf of VDOT that is not in conformity with the requirements of the HRTAC Act or this Agreement.
4. Route all of VDOT's accelerated or supplemental requests for funding from HRTAC under Sections A.5 and A.8, respectively, of this Agreement to HRTAC's Executive Director. HRTAC's Executive Director will initially review those requests and all supporting documentation with HRTAC's

CFO. After such initial review, HRTAC's Executive Director will make a recommendation to HRTAC's Finance Committee for its independent consideration and review. HRTAC's Finance Committee will thereafter make a recommendation on any such request to HRTAC for final determination by HRTAC.

5. Conduct periodic compliance reviews scheduled in advance for the Project so as to assess whether the work being performed likely remains within the scope of this Agreement, the HRTAC Act and other applicable law. Such compliance reviews may entail review of VDOT's financial records for the Project and on-Project site inspections.
6. Acknowledge that if, as a result of HRTAC's review of any payment requisition or of any HRTAC compliance review, HRTAC staff determines that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, HRTAC staff will promptly advise HRTAC's Executive Director and will advise VDOT's designated representative in writing. VDOT will thereafter have thirty (30) days to respond in writing to HRTAC's initial findings. HRTAC's staff will review VDOT's response and make a recommendation to HRTAC's Finance Committee. HRTAC's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to HRTAC. If HRTAC makes a final determination that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, the parties should engage in dispute resolution as provided in Section D of this Agreement. Pending final resolution of the matter, HRTAC will withhold further funding on the Project. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.
7. Upon making final payment to VDOT for the Project, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans, if any, developed pursuant to or in association with the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.
8. Be the sole determinant of the amount and source of HRTAC funds to be provided and allocated to the Project and the amounts of any HRTAC funds to be provided in excess of the amounts specified in Appendix B.

C. Term

1. This Agreement shall be effective upon adoption and execution by both parties.

2. VDOT may terminate this Agreement, for cause, in the event of a material breach by HRTAC of this Agreement. If so terminated, HRTAC shall pay for all Project costs incurred in accordance with the terms of this Agreement through the date of termination and all reasonable costs incurred by VDOT to terminate all Project-related contracts. The Virginia General Assembly's failure to appropriate funds to HRTAC as described in Section F of this Agreement and/or repeal or amendment of the legislation establishing the HRTF or HRTAC's powers shall not be considered material breaches of this Agreement by HRTAC if such failure to appropriate or such repeal or amendment eliminates funds in the HRTF to be used for the Project or renders HRTAC without legal authority to provide funding for the Project. Before initiating any proceedings to terminate under this Section, VDOT shall give HRTAC sixty (60) days written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing HRTAC an opportunity to investigate and cure any such alleged breach.
3. HRTAC may terminate this Agreement, for cause, resulting from VDOT's material breach of this Agreement. If so terminated, VDOT shall refund to HRTAC all funds HRTAC provided to VDOT for the Project and, to the extent permitted by law, with interest earned at the rate earned by HRTAC. HRTAC will provide VDOT with sixty (60) days written notice that HRTAC is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, if VDOT has substantially completed the Project or a portion that is severable (meaning it is subject to independent use), VDOT may request that HRTAC excuse VDOT from refunding funds paid in respect of the substantially completed Project or portion, and HRTAC may, in its sole discretion, excuse VDOT from refunding all or a portion of the funds HRTAC provided to VDOT for the substantially completed Project or portion thereof. No such request to be excused from refunding will be allowed where VDOT has either misused or misapplied HRTAC funds in contravention of this Agreement or applicable law.
4. Upon termination and payment of all eligible expenses as set forth in Section C.3 above, VDOT will release or return to HRTAC all unexpended HRTAC funds and, to the extent permitted by law, with interest earned at the rate earned by HRTAC, no later than sixty (60) days after the date of termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer promptly in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. HRTAC's Executive Director and the Commissioner shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to HRTAC and

to the Commissioner for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law or in equity, including all judicial remedies. The foregoing dispute resolution method shall not bar either party's right to seek equitable relief on an emergency basis.

E. HRTAC's Interest in Project Assets

VDOT agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by HRTAC under this Agreement ("Assets") for the designated transportation purposes of the Project and in accordance with applicable law throughout the useful life of each such Asset. If VDOT intends to sell, convey, or dispose any Asset funded with HRTAC funds or intends to use any Asset for a purpose inconsistent with this Agreement, VDOT shall notify HRTAC's Executive Director in writing of any such intent before further action is taken by VDOT in furtherance thereof. Upon receiving notification from VDOT, HRTAC's Executive Director shall notify HRTAC of VDOT's intended action(s). The parties shall, thereafter, meet and confer to discuss what measures need to be taken regarding VDOT's proposed sale, conveyance, disposition, or use of any such Asset(s) so as to ensure compliance with all applicable requirements of the HRTAC Act (without limiting the foregoing, VDOT acknowledges that under the HRTAC Act and applicable law, HRTAC is vested with the right to impose and collect tolls on facilities constructed by the Commission). All recommendations and/or proposed remedial actions developed by the parties' designated representatives during the meet and confer process shall be formally presented to HRTAC and the Commissioner for their respective approval.

F. Appropriations Requirements

1. Nothing herein shall require or obligate HRTAC to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by its governing body for the Project.
2. The parties acknowledge that all funding provided by HRTAC pursuant to the HRTAC Act is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the HRTF pursuant to applicable provisions of the Code of Virginia and any other moneys that the General Assembly appropriates for deposit into the HRTF are subject to appropriation by the General Assembly and (ii) HRTAC's obligations under this Agreement are subject to such moneys being appropriated to the HRTF by the General Assembly.
3. The parties agree that VDOT's obligations under this Agreement are subject to funds being appropriated by the General Assembly and allocated by the Commonwealth Transportation Board and otherwise legally available to VDOT for HRTAC projects.

4. Should VDOT be required to provide additional funds in order to proceed or complete the funding necessary for the Project, VDOT shall certify to HRTAC that such additional funds have been allocated and authorized by the CTB and/or appropriated by the Virginia General Assembly as may be applicable or have been obtained through another independent, lawful source.

G. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

- 1) to: HRTAC, to the attention of its Executive Director and Chairman;
723 Woodlake Drive
Chesapeake, VA 23320
- 2) to: VDOT, to the attention of:
Commissioner, Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219

H. Assignment

This Agreement shall not be assigned by either party unless express written consent is given by the other party.

I. Modification or Amendment

- (a) This Agreement may not be modified or amended, except pursuant a written agreement that is duly authorized, executed and delivered by both parties.
- (b) If HRTAC is able to obtain a source of funding for the Project that would reduce or replace the amount of HRTAC-Controlled Moneys expended on the Project, VDOT and HRTAC will work in good faith to amend this Agreement so it takes into account that other funding.
- (c) If HRTAC proposes to issue bonds, VDOT and HRTAC will work in good faith to adopt such amendments to this Agreement as VDOT and HRTAC may mutually agree are necessary and desirable in connection with the bond offering, including, without limitation, tax covenants of the type made by VDOT under its Project Agreements with the Northern Virginia Transportation Authority.

J. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, member, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

K. No Agency

VDOT represents that it is not acting as a partner or agent of HRTAC; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

L. Sovereign Immunity

This Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

M. Incorporation of Recitals and Appendices

The recitals and Appendices to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that the recitals are true and correct.

N. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

O. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

[Signature page follows]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Hampton Roads Transportation Accountability Commission

By: _____

Name: _____

Title: _____

Date: _____

Virginia Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

Appendix A –Narrative Description of Standard Project Services

HRTAC Project Title: I-64/I-264 Interchange-Phase III (UPC 106693)

Recipient Entity: Virginia Department of Transportation

VDOT Program Manager Contact Information: Tony Gibson (757) 925-2274

HRTAC Executive Director: Kevin Page (757) 420-8300

Project Scope

The Standard Project Services are intended to provide preliminary engineering work for the overall project and are set forth in more detail below in the Detailed Scope of Services. The project entails improving the remaining I-64/I-264 movements to include I-64 Eastbound (EB) movements to I-264 and I-264 movements to I-64.

Detailed Scope of Services

The detailed scope of the Standard Project Services addressed by this Agreement (and to which the funding provided thereunder relates) consists of Preliminary Engineering (PE) for the Project with the purpose of initiating preliminary design and the NEPA process.

The cost estimate provided in Appendix B was developed using VDOT’s Project Cost Estimating System and was current as of the date the Appendix B was executed. Any additional costs for the PE Phase will be subject to and addressed in accord with the terms of this Standard Project Agreement.

**APPENDIX B
PROJECT BUDGET, PROJECT SCHEDULE, AND CASHFLOW**

APPENDIX B-PROJECT BUDGET & CASH FLOW

PROJECT IDENTIFICATION AND PROPOSED FUNDING

HRTAC Project Title: I-64/I-264 Interchange- Phase III (UPC 106693)
 Scope of Project Services: Standard Project Services to Support PE Phase for I-64/I-264 Interchange-Phase III (UPC 106693)
 Recipient Entity: Virginia Department of Transportation
 VDOT Project Contact: Tony Gibson (757) 556-7885

Baseline Schedule: PE (RW/CN will be added at a later date)	PE: Start December 2016, End December 2019
--	--

PROJECT COSTS & FUNDING SOURCE

Project Cost Category	Total Project Costs	HRTAC PayGo Funds	HRTAC Financed Funds	Description Other Sources of Funds	Amount Other Sources of Funds	Recipient Entity Funds
Design Work	\$ 10,000,000.00	\$ 10,000,000.00	\$ -		\$ -	\$ -
Engineering						
Environmental Work						
Right-of-Way Acquisition						
Construction						
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions						
Other						
Total Estimated Cost	\$ 10,000,000.00	\$ 10,000,000.00	\$ -	\$ -	\$ -	\$ -

FISCAL YEAR ANNUAL PROJECT CASH FLOW

Project Phase	Total Fiscal Year 2017		Total Fiscal Year 2018		Total Fiscal Year 2019		Total Fiscal Year 2020	
	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
Design Work	\$ 1,100,000.00		\$ 3,750,000.00		\$ 3,750,000.00		\$ 1,400,000.00	
Engineering								
Environmental Work								
Right-of-Way Acquisition								
Construction								
Contract Administration								
Testing Services								
Inspection Services								
Capital Asset Acquisitions								
Other								
Total Estimated Cost	\$ 1,100,000.00	\$ -	\$ 3,750,000.00	\$ -	\$ 3,750,000.00	\$ -	\$ 1,400,000.00	\$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

FISCAL YEAR ESTIMATED PROJECT CASH FLOW

	FY 17 Mthly Cash Flow		FY 18 Mthly Cash Flow		FY 19 Qtrly Cash Flow		FY 20 Qtrly Cash Flow	
	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
July			\$ 312,500.00		\$ 312,500.00		\$ 300,000.00	
August			\$ 312,500.00		\$ 312,500.00		\$ 300,000.00	
September			\$ 312,500.00		\$ 312,500.00		\$ 300,000.00	
October			\$ 312,500.00		\$ 312,500.00		\$ 300,000.00	
November			\$ 312,500.00		\$ 312,500.00		\$ 100,000.00	
December			\$ 312,500.00		\$ 312,500.00		\$ 100,000.00	
January			\$ 312,500.00		\$ 312,500.00			
February	\$ 200,000.00		\$ 312,500.00		\$ 312,500.00			
March	\$ 200,000.00		\$ 312,500.00		\$ 312,500.00			
April	\$ 200,000.00		\$ 312,500.00		\$ 312,500.00			
May	\$ 250,000.00		\$ 312,500.00		\$ 312,500.00			
June	\$ 250,000.00		\$ 312,500.00		\$ 312,500.00			
Total per Fiscal Year	\$ 1,100,000.00	\$ -	\$ 3,750,000.00	\$ -	\$ 3,750,000.00	\$ -	\$ 1,400,000.00	\$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

This attachment is certified and made an official attachment to the Standard Project Agreement document by the parties of this agreement.

Virginia Department of Transportation

Hampton Roads Transportation Accountability Commission

Signature
Commissioner
Title

Signature
HRTAC Chairman
Title

Date
Charles A. Kilpatrick, P.E.

Date
William D. Sessoms, Jr

APPENDIX C

FORM OF PAYMENT REQUISITION

HRTAC Project Title and Number: _____

Project Scope/Services Description: [From Appendix B] _____

Draw Request Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, VA 23320

Attention _____, Program Coordinator:

This requisition is submitted in connection with the Standard Project Agreement for Funding and Administration for the project services noted above and dated _____, 20__ (the "Agreement") between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT"). VDOT hereby requests \$_____ of HRTAC funds, to pay the costs of the project services described and set forth in Appendices A and B of the Agreement ("Project Services") and in accordance with the Agreement. Also included are copies of each invoice relating to the items for which this requisition is requested.

The undersigned certifies (i) the amounts included within this requisition will be applied solely and exclusively for the payment or the reimbursement of VDOT's costs of the Project Services, (ii) VDOT is responsible for payment to vendors/contractors, (iii) VDOT is not in breach or default with respect to any of its obligations under the Agreement, including without limitation (but only if applicable) the tax covenants set forth in another Appendix to the Agreement, (iv) the representations and warranties made by VDOT in the Agreement are true and correct as of the date of this Requisition and (v) to the knowledge of VDOT, no condition exists under the Agreement that would allow HRTAC to withhold the requested advance.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Recommended For Payment

By: _____

Name: _____

Title: HRTAC Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____ Request Date: _____
 HRTAC Project Number: _____ Project Title: _____

Cost Category	HRTAC Approved Project Costs	Total PayGo Requests Previously Received	PayGo Requisition Amount this Period	Remaining PAYGO Project Budget (Calculation)
Project Starting Balance	\$ -			\$ -
Design Work	\$ -	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Acquisition	-	-	-	\$ -
Construction	-	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$ -	\$ -	\$ -	\$ -

LISTING OF ATTACHED INVOICES

Vendor/Contractor Name	Item Number	Invoice Number	Cost Category	Amount
	1			\$ -
	2			-
	3			-
	4			-
	5			-
	6			-
	7			-
	8			-
	9			-
	10			-
	11			-
	12			-
Requisition Amount				\$ -

Instructions

1. Column B-Please list approved PayGo Project Cost per category.
2. Column C-Please list Total PayGo Amounts per Category Previously Reimbursed by HRTAC
3. Column D- Please list invoice amounts summarized by Category from the Listing of Attached Invoices
4. Column E - Is a calculation of the Remaining PAYGO Budget per Category

Instructions-Listing of Attached Invoices: (please list each invoice separately)

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please manually number the invoices attached with the corresponding Item number in this schedule.
3. Column C- Please list the invoice number as it appears on the Invoice
4. Column D- Please list the appropriate Cost Category based on the Project Category breakout above
5. Column E- Please enter the dollar amount listed on the invoice.
6. The calculated Requisition Amount should equal the total in Column D in the Schedule above.

APPENDIX D

REPORTS TO BE PROVIDED BY VDOT

1) Monthly Project Expenditure Report which lists, by category of expense (*e.g.*, engineering, ROW, utility relocations, construction), (a) information regarding expenditures to date against the budget, both monthly and for the life of the project, and a statement of the percent completed; and (b) such other information as VDOT customarily provides with monthly expenditure reports

2) Monthly Project Report which provides (a) an overview of progress on major project tasks; (b) information regarding the budget (such as, the baseline planned forecast, any approved changes thereto, the monthly expenditures, the cumulative expenditures, and the cumulative forecasted expenditures); (c) future key tasks; and (d) significant issues.

APPENDIX E

OFFICIAL AUTHORIZING DOCUMENTS



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 # 8

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: Seconded By:

Action:

Title: Limited Access Control Change (LACC)
Route 460 (Bluefield Bypass)
Town of Bluefield, Tazewell County

WHEREAS, Route 460 (Bluefield Bypass), State Highway Project 6019-092-107, PE-102, RW-202, C-502, in the Town of Bluefield, Tazewell County was designated as a Limited Access Highway by the State Highway Commission, predecessor to the Commonwealth Transportation Board (CTB), on November 20, 1969; and

WHEREAS, in connection with State Highway Project 6019-092-107, the Commonwealth acquired certain limited access control easements from The Leatherwood Company, by Instrument dated February 7, 1977, recorded in Deed Book 425, Page 306, concluded by Order dated November 21, 1977, recorded in Deed Book 437, Page 345, both recorded in the Office of the Clerk of Circuit Court of the County of Tazewell; and

WHEREAS, The Leatherwood Company has requested a break in limited access control along Route 460 (Bluefield Bypass) to construct the south extension of Commerce Drive at Route 460 to serve as access to and from a proposed 1,000 acre mixed-use commercial development, the Leatherwood Development, onto the existing limited access right of way of Route 460 (Limited Access Control Change or LACC); and

WHEREAS, the request is for a break of 107.02 feet, along the south proposed right of way and limited access line of Route 460, as shown on the final design plans for State Highway

Resolution of the Board
Limited Access Control Change
Route 460 (Bluefield Bypass)
Town of Bluefield, Tazewell County
December 7, 2016
Page Two

Project, 6019-092-107, RW-202, between Station 332+86.00 (Route 460 EBL Centerline) and Station 331+78.98 (Route 460 EBL Centerline) for a connection to Route 460, with both left and right turning movements at, and with a modification of, an existing signalized intersection, including the construction of two eastbound right turn lanes on Route 460 with 400 feet of storage, the conversion of the southbound right turn lane on Commerce Drive to a through lane with 325 feet of storage, the construction of a southbound right turn lane on Commerce Drive with 325 feet of storage, the construction of two westbound left turn lanes on Route 460 with 400 feet of storage, and the construction of the northbound approach up to Route 460 on the proposed south extension of Commerce Drive with a configuration of two ingress and five egress lanes; and

WHEREAS, the Town of Bluefield, by resolution adopted February 9, 2016, supports the LACC; and

WHEREAS, VDOT's Bristol District has determined, with the Chief Engineer concurring, that the proposed break in the limited access control of Route 460 will have no impact on the operation of the Route 460 right of way, and the proposed LACC is appropriate from a safety and traffic control standpoint based upon a Traffic Impact Analysis, dated December 23, 2015, prepared by Draper Aden and Associates; and

WHEREAS, VDOT's Bristol District has determined the location of the proposed LACC is not within an air quality maintenance or non-attainment area, and there will be no adverse environmental impacts; and

WHEREAS, public notices of willingness for hearings/comment were posted in the *Bluefield Daily Telegraph* newspaper on July 27, 2016 and August 3, 2016, with no requests for a public hearing received; and

WHEREAS, compensation shall be paid by the requestor in consideration of the LACC as determined by the Commissioner of Highways or his designee; and

WHEREAS, all right of way, engineering, construction, and necessary safety improvements shall meet all VDOT standards and requirements; and

WHEREAS, all costs of engineering and construction, including all necessary safety improvements, will be borne by the requestor; and

WHEREAS, the requestor will be required to obtain a Land Use Permit prior to any activity within the Route 460 limited access right of way.

NOW, THEREFORE, BE IT RESOLVED, in accordance with Section 33.2-401 of the *Code of Virginia* and 24 *Virginia Administrative Code* 30-401--10 et seq., the CTB hereby finds

Resolution of the Board
Limited Access Control Change
Route 460 (Bluefield Bypass)
Town of Bluefield, Tazewell County
December 7, 2016
Page Three

and concurs with the determinations of VDOT, and approves said LACC, as set forth herein, subject to the above referenced conditions.

BE IT FURTHER RESOLVED, the Commissioner of Highways is authorized to take all actions and execute any and all documents necessary to implement such changes.

####

CTB Decision Brief
Route 460 (Bluefield Bypass)
Town of Bluefield, County of Tazewell
Limited Access Control Change

Issues: The Leatherwood Company has requested a break in limited access control along Route 460 (Bluefield Bypass) to construct the south extension of Commerce Drive at Route 460 to serve as access to and from a proposed 1,000 acre mixed-use commercial development. This limited access control change requires approval of the Commonwealth Transportation Board (CTB) pursuant to § 33.2-401 of the *Code of Virginia* and 24 VAC 30-401 of the *Virginia Administrative Code*

Facts:

- Route 460 (Bluefield Bypass), State Highway Project 6019-092-107, PE-102, RW-202, C-502, in the Town of Bluefield, Tazewell County was designated as a Limited Access Highway by the State Highway Commission, predecessor to the Commonwealth Transportation Board (CTB), on November 20, 1969.
- In connection with the Route 460 project, the Commonwealth acquired certain limited access control easements from the Leatherwood Company, by Instrument dated February 7, 1977, recorded in Deed Book 425, Page 306, concluded by Order dated November 21, 1977, recorded in Deed Book 437, Page 345, both recorded in the Office of the Clerk of Circuit Court of the County of Tazewell.
- The Leatherwood Company has requested a break in limited access control along Route 460 (Bluefield Bypass) to construct the south extension of Commerce Drive at Route 460 to serve as access to and from a proposed 1,000 acre mixed-use commercial development, the Leatherwood Development, onto the existing limited access right of way of Route 460.
- The proposed break is 107.02 feet wide and along the south proposed right of way and limited access line of Route 460, as shown on the final design plans for State Highway Project, 6019-092-107, RW-202, between Station 332+86.00 (Route 460 EBL Centerline) and Station 331+78.98 (Route 460 EBL Centerline) for a connection to Route 460, with both left and right turning movements at, and with a modification to, an existing signalized intersection.
- The request includes the construction of two eastbound right turn lanes on Route 460 with 400 feet of storage, the conversion of the southbound right turn lane on Commerce Drive to a through lane with 325 feet of storage, the construction of a southbound right turn lane on Commerce Drive with 325 feet of storage, the construction of two westbound left turn lanes on Route 460 with 400 feet of storage, and the construction of the northbound approach up to Route 460 on the proposed south extension of Commerce Drive with a configuration of two ingress and five egress lanes.
- The Town of Bluefield, by resolution adopted February 9, 2016, supports the limited access control change.
- VDOT's Bristol District has determined, with the Chief Engineer concurring, that the proposed break in the limited access control of Route 460 will have no impact on the operation of the Route 460 right of way, and the proposed Limited Access Control Change (LACC) is appropriate from a safety and traffic control standpoint based upon a Traffic Impact Analysis, dated December 23, 2015, prepared by Draper Aden and Associates.
- VDOT's Bristol District has determined the location of the proposed LACC is not within an air quality maintenance or non-attainment area, and there will be no adverse environmental impacts.

CTB Decision Brief
Limited Access Control Change
Route 460 (Bluefield Bypass)
Town of Bluefield, County of Tazewell
December 7, 2016
Page Two

- Public notices of willingness for hearings/comment were posted in the *Bluefield Daily Telegraph* newspaper on July 27, 2016 and August 3, 2016, with no requests for a public hearing received.
- Compensation shall be paid by the requestor in consideration of the LACC as determined by the Commissioner of Highways or his designee.
- All right of way, engineering, construction, and necessary safety improvements shall meet all VDOT standards and requirements.
- All costs of any engineering, construction or safety improvements will be borne by the requestor.
- The requestor will be required to obtain a Land Use Permit prior to any activity within the Route 460 limited access right of way.

Recommendation: VDOT recommends the approval of the proposed LACC subject to the referenced conditions and facts. VDOT further recommends that the Commissioner be authorized to take all actions and execute all documentation necessary to implement the LACC.

Action Required by CTB: Virginia Code § 33.2-401 requires a majority vote of the CTB approving the recommended LACC. The CTB will be presented with a resolution for a formal vote.

Result, if Approved: The Commissioner of Highways will be authorized to take all actions necessary to comply with this resolution.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219 2000

Charles A. Kilpatrick, P.E.
Commissioner

December 1, 2016

The Honorable Aubrey L. Layne, Jr.
The Honorable Charles A. Kilpatrick, P. E.
The Honorable Jennifer Mitchell
The Honorable Henry "Hap" Connors, Jr.
The Honorable Jerry L. Stinson II
The Honorable Mary Hughes Hynes
The Honorable Alison DeTuncq
The Honorable Shannon Valentine
The Honorable F. Dixon Whitworth, Jr.
The Honorable Carlos M. Brown
The Honorable William H. Fralin, Jr.
The Honorable Greg Yates
The Honorable E. Scott Kasprovicz
The Honorable James W. Dyke, Jr.
The Honorable John Malbon
The Honorable Court G. Rosen
The Honorable Marty Williams

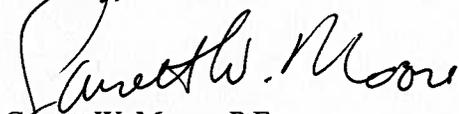
Subject: Approval of Limited Access Control Change (LACC) for Route 460 (Bluefield Bypass), Town of Bluefield, County of Tazewell

Dear Commonwealth Transportation Board Members:

The Department has received a request for your consideration from the Leatherwood Company for a break in the limited access control along Route 460 (Bluefield Bypass), for the construction of the south extension of Commerce Drive at Route 460 to serve as access to and from a proposed 1,000 acre mixed-use commercial development, the Leatherwood Development, onto the existing limited access right of way of Route 460. The Department's staff has determined there will be no operational changes to Route 460 and that the proposed LACC are appropriate from a design, safety and traffic control standpoint.

The request meets the engineering criteria and guidelines set forth in Title 24, Agency 30, Chapter 401 of the Virginia Administrative Code. I have reviewed the Staff's recommendations, and determined that approving this break in the limited access control will not adversely affect the safety or operation of the affected highway network. I have determined that this request should be considered by the Board.

Sincerely,


Garrett W. Moore, P.E.
Chief Engineer

VirginiaDOT.org
WE KEEP VIRGINIA MOVING



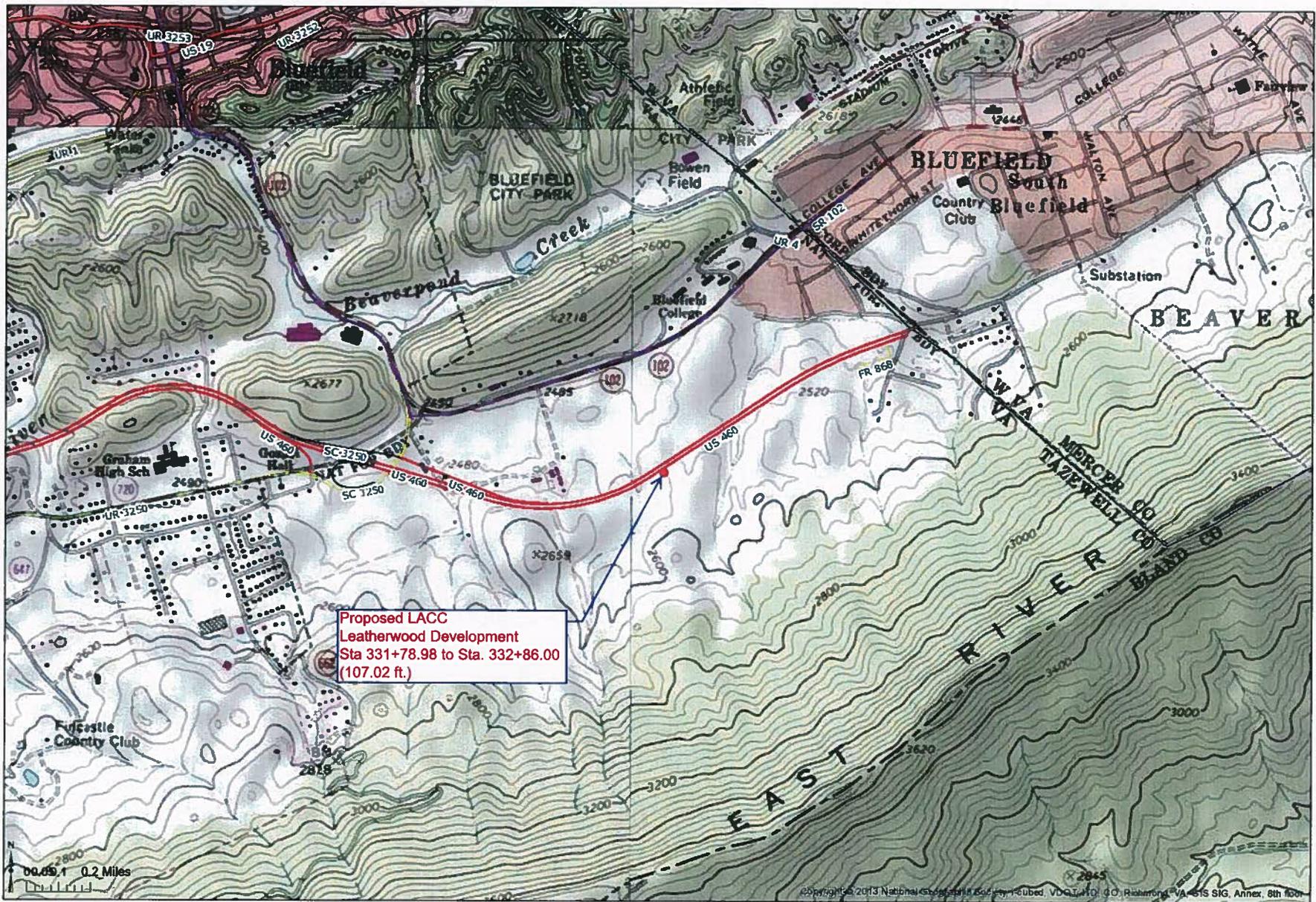
Image courtesy of USGS © 2016 Microsoft Corporation

DESIGNED BY	KJV
CHECKED BY	KJV
CONVERTED BY	CMH
SCALE	1" = 100'
DATE	AUGUST 1, 2016
PROJECT NUMBER	806209-11
REVISIONS	1

ROUTE 460 AT COMMERCE DRIVE
CHANGE IN LIMITED ACCESS CONTROL
GEOMETRIC PLAN
 LEATHERWOOD DEVELOPMENT - BLUEFIELD, VIRGINIA

Draper Aden Associates
Engineering • Surveying • Environmental Services

• Blacksburg, VA 2296 South Main Street Blacksburg, VA 26009 640-422-6644 Fax: 640-922-6291 www.daa.com	• Richmond, VA	• Greensboro, NC
• Charlottesville, VA	• Fayetteville, NC	
• Hanover, VA	• Northern Virginia	



Notes

[Empty box for notes]

Legend

- All Roads**
- Interstate
 - U.S. Highway Primary
 - State Highway Primary
 - Secondary Route
 - Other
 - VDOT Districts
 - USA Topo Maps

**MINUTES
OF
MEETING OF STATE HIGHWAY COMMISSION
RICHMOND, VIRGINIA
November 20, 1969**

The monthly meeting of the State Highway Commission was held at the Central Highway Office in Richmond on November 20, 1969, at 10 A. M. Mr. Douglas B. Fugate, Chairman, presided.

Present: Messrs. Fugate, Baughan, Chilton, Duckworth, Fitzpatrick, Glass, Hairston, Landrith and Weaver.

On motion of Mr. Duckworth, seconded by Mr. Fitzpatrick, Minutes of the meetings of September 25, 1969 and October 9, 1969 were approved.

Motion was made by Mr. Duckworth, seconded by Mr. Fitzpatrick, that permits issued from October 9, 1969 to November 19, 1969, inclusive, as shown by records of the Department, be approved. Motion carried.

On motion of Mr. Duckworth, seconded by Mr. Fitzpatrick, cancellation of permits from October 9, 1969 to November 19, 1969, inclusive, as shown by records of the Department was approved.

The Commission again considered bids received on October 22, 1969 for a section of the Shirley Highway, (Route 95, Project 6066-000-101, C502, B602, B603, B604, B605, B606, B607, B608, B610, B612), which had been approved by letter ballot for award to the low bidder. Mr. Fugate said he was reluctant to recommend acceptance of a bid which was 41% over the Department's estimate, but pointed out that the only bid received on first advertisement of the project had been rejected and though the low bid of three received on readvertisement was still 41% above the estimate, a third try would probably result in still higher bids, because of inflation and labor cost in the Washington area. The members of the Commission were of the opinion that their earlier approval by letter ballot should stand.

The chairman told the Commission he had been having informal meetings with members of the General Assembly in regard to the need for additional revenues, and that he hoped to meet with all members of the General Assembly before the 1970 session.

11-20-69

BE IT RESOLVED, that the location and major design features of this project be approved in accordance with the plans, following generally the existing location, as proposed and presented, with minor revisions to reduce property damage as a result of information received at said location and design public hearing, by the Department Engineers.

MOTION CARRIED.

Moved by Mr. Hairston, seconded by Mr. Chilton
that,

WHEREAS, in accordance with the provisions of Section 128 of Title 23 - Highways, United States Code, and Policy and Procedure Memorandum 20-5, a location public hearing was held in the Graham High School Auditorium, Bluefield, Virginia, on August 8, 1969, at 10:00 a. m., for the purpose of considering the proposed location of Route 19-460 from 1.60 miles west of the West Corporate Limits of Bluefield to the Virginia-West Virginia State Line, referred to as the Bluefield By-pass, in Tazewell County, State Project 6019-092-107-PE101, and

WHEREAS, proper notice was given in advance and all those present were given a full opportunity to express their opinions and recommendations for or against the proposed location as planned, and their statements being duly recorded, and

WHEREAS, the economic, social and environmental effects of the proposed location have been examined and given proper consideration, and this evidence, along with all other, has been carefully reviewed, now therefore

BE IT RESOLVED, that the location of this project be approved in accordance with the general plan as proposed and presented at said location public hearing by the Department Engineers. This proposed location of Route 19-460 (Bluefield By-pass) passes to the south of the Town of Bluefield.

BE IT FURTHER RESOLVED, that this project, here referred to as the Bluefield By-pass, be designated as a Limited Access Highway in accordance with Article 3, Chapter 1, Title 33 of the 1950 Code of Virginia, as amended, and in accordance with the Highway Commission Policy for by-passes of cities and towns.

BE IT FURTHER RESOLVED, that pursuant to Section 33-26 and Section 33-23.4 of the 1950 Code of Virginia, as amended, the proposed new location of U. S. Route 19-460, by-passing the Town of Bluefield, in Tazewell County, approximately 5.2 miles, be added to the Primary System of Highways.

MOTION CARRIED.



**TOWN OF BLUEFIELD
RESOLUTION**

"Approval of Limited Access Control Change on US 460, Opposite Commerce Drive"

WHEREAS, the Commonwealth Transportation Board has requested approval of a limited access control change on U.S. Route 460 opposite Commerce Drive; and

WHEREAS, approval of the limited access control change would permit construction of access into the 1,079 acres development, referred to as the Leatherwood Property; and

WHEREAS, the Leatherwood Property is owned by Leatherwood Development; and

WHEREAS, the areas of Leatherwood Property that have been developed in earlier years along U.S. Route 460, have created hundreds of jobs for area residents and helped energize the town's economy.

WHEREAS, the proposed development of Leatherwood Property could potentially lead to growth opportunities, similar to Leatherwood's last development, which would be very beneficial to the town's economy, as well as the regional economy; and

WHEREAS, limited access control change on U.S. 460, opposite Commerce Drive would help access a new development and allow the town to offer new businesses to the region, including a movie theater, several restaurants, a community / convention center, hotels and retail shopping.

NOW THEREFORE BE IT RESOLVED, THAT THE TOWN COUNCIL OF THE TOWN OF BLUEFIELD, VIRGINIA, hereby approves and supports the limited access control change on U.S. Route 460, opposite of Commerce Drive, by the Commonwealth Transportation Board.

Adopted this 9th day of February 2016.



Donald R. Harris, Mayor of Bluefield, VA
VA



Lesley L. Eston, Town Clerk of Bluefield,



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 # 9

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: Seconded By: Action:

**Title: Locality Land Conveyances, Various Streets,
County of Arlington**

WHEREAS, Section 33.2-907 of the Code of Virginia (1950) allows the Commonwealth Transportation Board to transfer (convey) to the locality, upon petition of the said locality's governing body, real estate acquired incidental to the construction, reconstruction, alteration, maintenance or repair of the State Highway System, which constitutes a section of public road, and upon such transfer, such section of road shall cease, if required, being a part of the State Highway System; and

WHEREAS, the County of Arlington has requested by resolution dated November 5, 2016 the conveyance of the real estate for a portion of South Fern Street, South Eads Street, 12th Street South, 15th Street, Clark/Bell Area, 18th Street, 20th Street, Clark Street, and 23rd Street, all as shown on the Crystal City VDOT Exhibit and listed on Exhibit A, which are in the County's street system and was acquired as a part of Route 1 Project 0001-000-105, RW-201, Route 95, Project 0095-000-101, RW-201, and Route 595/1, Project 595-000-101, RW-201/0001-000-101, RW-201.

NOW, THEREFORE, BE IT RESOLVED, that in accordance with the provisions of Sections 33.2-907 of the Code of Virginia (1950), as amended, said conveyance of the said real estate is approved as set forth and upon conveyance, the roads shall no longer be a part of the State Highway System.

BE IT FURTHER RESOLVED, the Commissioner of Highways is hereby authorized to execute, in the name of the Commonwealth, a deed or deeds conveying the real estate subject to such restrictions as may be deemed appropriate.

###

CTB Decision Brief

Locality Land Conveyance

Route 1, 95, and 595

Project 0001-000-105,RW-201, 0095-000-101,RW-201, and
0595-000-101,RW-201/0001-000-101,RW-201

County of Arlington

Issue: Sections 33.2-907 of the Code of Virginia (1950), as amended, allows the Commonwealth Transportation Board to transfer (convey) to the locality, upon petition of the said locality's governing body, real estate acquired incidental to the construction, reconstruction, alteration, maintenance or repair of the State Highway System, which constitutes a section of public road, and upon such transfer, such section of road shall cease, if required, being a part of the State Highway System.

Facts:

- The County of Arlington has petitioned by Resolution dated November 5, 2016, for the transfer and conveyance of the right of way for South Fern Street, South Eads Street, 12th Street South, 15th Street, Clark/Bell Area, 18th Street, 20th Street, Clark Street, and 23rd Street, all as shown on the Crystal City VDOT Exhibit and listed on Exhibit A, and acquired and constructed as a part of Route 1 Project 0001-000-105, RW-201, Route 95, Project 0095-000-101, RW-201, and Route 595/1, Project 595-000-101, RW-201/0001-000-101,RW-201.
- This proposed conveyance has been reviewed and approved by the Director of Right of Way and Utilities.

Recommendations: VDOT recommends that the lands be conveyed to the County of Arlington for public street purposes.

Action Required by CTB: The *Code of Virginia* requires a majority vote of the Commonwealth Transportation Board (CTB) authorizing the Commissioner of Highways to execute the deed. The CTB will be presented with a resolution for a formal vote.

Result, if Approved: The Commissioner of Highways will be authorized to execute a deed to convey the property.

Options: Approve, Deny, or Defer

Public Comments/Reactions: None



ARLINGTON
VIRGINIA

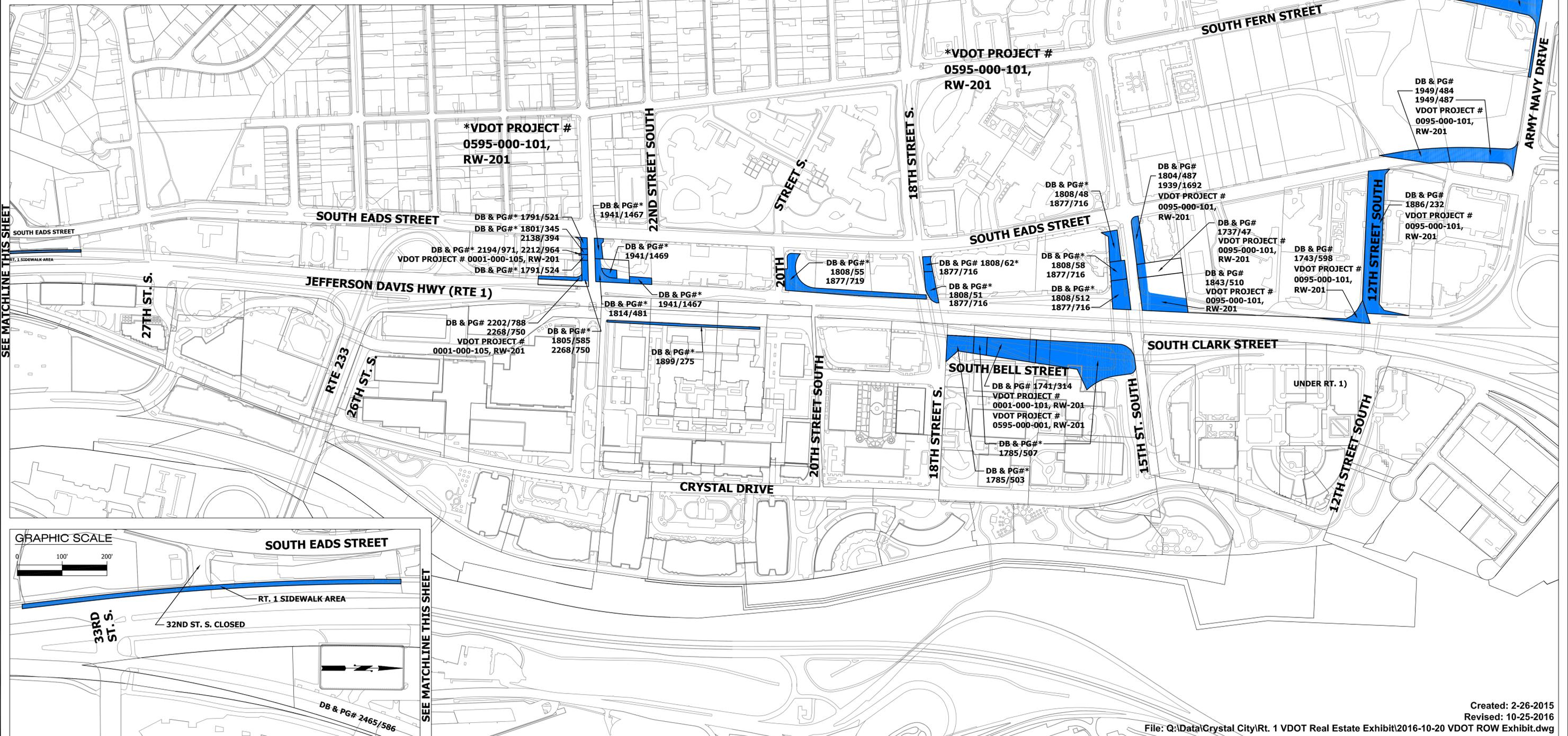
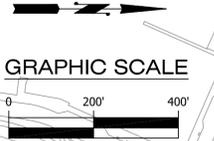
DEPARTMENT OF
ENVIRONMENTAL SERVICES

Engineering & Capital Projects Division
Engineering Bureau
2100 Clarendon Boulevard, Suite 813
Arlington, VA 22201
Phone: 703.228.3629
Fax: 703.228.3606

Crystal City VDOT Exhibit

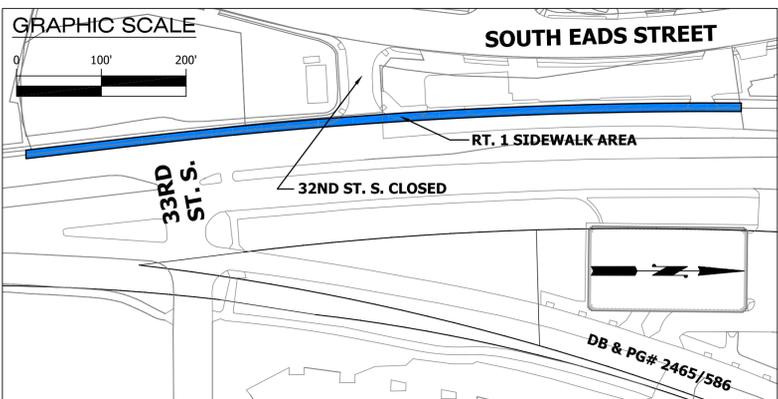
Legend

Right of Way Conveyance Area (from VDOT)



SEE MATCHLINE THIS SHEET

SEE MATCHLINE THIS SHEET



Created: 2-26-2015
Revised: 10-25-2016

File: Q:\Data\Crystal City\Rt. 1 VDOT Real Estate Exhibit\2016-10-20 VDOT ROW Exhibit.dwg

Exhibit A

1. South Fern Street between Army Navy Drive and 12th Street South
 - a. VDOT Project #0095-000-101, RW-201
 - i. Deed Book 1949/481 (Deed), SHP Book 9/622
2. South Eads Street between Army Navy Drive and 12th Street South
 - a. VDOT Project #0095-000-101, RW-201
 - i. Deed Book 1949/484 (Deed), SHP Book 9/623
 - ii. Deed Book 1949/487 (Deed), SHP Book 9/625
3. 12th Street South between Rte. 1 and South Eads Street
 - a. VDOT Project #0095-000-101, RW-201
 - i. Deed Book 1743/598 (Deed), SHP Book 9/153
 - ii. Deed Book 1886/232 (Deed), SHP Book 9/308
4. 15th Street between Rte. 1 and South Eads Street
 - a. VDOT Project #0095-000-101, RW-201
 - i. Deed Book 1737/47 (Deed), SHP Book 9/94
Limited to that portion of the parcel necessary for the right of way, and sidewalk and utilities easement:
 - ii. Deed Book 1804/487 (Certificate), SHP Book 9/414 (415)
Deed Book 1939/1692 (Order)
 - iii. Deed Book 1843/510 (Certificate), SHP Book 9/499
(Order)
Limited to that portion of the parcel necessary for the right of way, and sidewalk and utilities easement:
 - b. VDOT Project # 0595-000-101, RW-201
 - i. Deed Book 1808/48 (Certificate), SHP Book 9/457
Deed Book 1877/716 (Order)
 - ii. Deed Book 1808/58 (Certificate), SHP Book 9/464
Deed Book 1877/716 (Order)
 - iii. Deed Book 1808/512 (Certificate), SHP Book 9/474
Deed Book 1877/716 (Order)
5. Clark/Bell Area between 15th and 18th
 - a. VDOT Project #0595-000-101, RW-201
 - i. Deed Book 1785/503 (Deed), SHP Book 9/352
 - ii. Deed Book 1785/507 (Deed), SHP Book 9/353
 - b. VDOT Project #0001-000-101, RW-201 & #0595-000-101, RW-201
 - i. Deed Book 1741/314 (Certificate), SHP Book 9/141
Deed Book 1771/270 (Order)
6. 18th Street
 - a. VDOT Project #0595-000-101, RW-201
 - i. Deed Book 1808/62 (Certificate), SHP Book 9/467
Deed Book 1877/716 (Order)
 - ii. Deed Book 1808/51 (Certificate), SHP Book 9/458
Deed Book 1877/716 (Order)

7. 20th Street/Route 1
 - a. VDOT Project #0595-000-101, RW-201
 - i. Deed Book 1808/55 (Certificate), SHP Book 9/462
Deed Book 1877/719 (Order)
8. Clark Street between 20th and 23rd
 - a. VDOT Project #0595-000-101, RW-201
 - i. Deed Book 1899/275 (Deed)
9. 23rd Street
 - a. VDOT Project #0595-000-101, RW-201
 - i. Deed Book 1814/481 (Deed), SHP Book 9/482
 - ii. Deed Book 1941/1467 (Deed), SHP Book 9/615
 - iii. Deed Book 1941/1469 (Deed), SHP Book 9/616
 - iv. Deed Book 1805/585 (Certificate), SHP Book 9/433
Deed Book 2268/750 (Order)
 - v. Deed Book 1791/524 (Certificate), SHP Book 9/362
(Order)
 - vi. Deed Book 1791/521 (Certificate), SHP Book 9/361
(Order)
 - vii. Deed Book 1801/345 (Certificate), SHP Book 9/394
Deed Book 2318/394 (Order)
 - b. VDOT Project 0001-000-105, RW-201-
 - i. Deed Book 2202/788 (Certificate), SHP Book 10/362
Deed Book 2268/750 (Order)
 - ii. Deed Book 2194/971 (Certificate), SHP Book 10/328
Deed Book 2212/964 (Order)



HOPE HALLECK
CLERK TO THE
COUNTY BOARD

ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE COUNTY BOARD

2100 CLARENDON BOULEVARD, SUITE 300
ARLINGTON, VIRGINIA 22201-5406
(703) 228-3130 • FAX (703) 228-7430
E-MAIL: countyboard@arlingtonva.us



MEMBERS
LIBBY GARVEY
CHAIR
JAY FISETTE
VICE CHAIR

KATIE CRISTOL
CHRISTIAN DORSEY
JOHN VIHSTADT

CERTIFICATION

I hereby certify that at its November 5, 2016 Regular Meeting, on a consent motion by Mr. Fisetto, seconded by Ms. Cristol and carried by a vote of 5 to 0, the voting recorded as follows: Ms. Garvey - Aye, Mr. Fisetto - Aye, Ms. Cristol - Aye, Mr. Dorsey - Aye, and Mr. Vihstadt - Aye, the County Board of Arlington, Virginia, approved the C.M.

RECOMMENDATIONS in the attached County Manager's reports dated October 28, 2016 "SUBJECT: Resolution Petitioning the Commonwealth Transportation Board to Transfer Certain Sections of Public Roadway in Crystal City and Pentagon City to the County Board of Arlington County, Virginia"

Given under my hand this 7th day of November 2016.

Hope L. Halleck, Clerk
Arlington County Board

[SEAL]



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of November 5, 2016

DATE: October 28, 2016

SUBJECT: Resolution Petitioning the Commonwealth Transportation Board to Transfer Certain Sections of Public Roadway in Crystal City and Pentagon City to the County Board of Arlington County, Virginia

C. M. RECOMMENDATIONS:

1. Approve the attached Resolution petitioning the Commonwealth Transportation Board ("CTB") to Transfer Certain Sections of Public Roadway to the County Board of Arlington County, Virginia pursuant to Virginia Code Section 33.2-907 ("Resolution").
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to accept, on behalf of the County Board, quitclaim deeds and all associated documents for such transfer, subject to approval of the quitclaim deed, as to form, by the County Attorney.

ISSUES: There are no outstanding issues with this request.

SUMMARY: The attached Resolution, if approved, would petition the CTB to transfer from the Commonwealth to the County Board certain portions or sections of public roadway located within Crystal City and Pentagon City, pursuant to § 33.2-907 of the Code of Virginia, 1950, as amended. The requested portions or sections of public roadway to be transferred are described in Exhibit A and depicted in Exhibit B, both attached to the Resolution (the "Transfer Areas"). Completing the conveyance of the Transfer Areas from the Commonwealth to the County Board was agreed to by the Commissioner of Highways during discussions this past year with the County regarding a number of projects in the County. The Transfer Areas are, for the most part, currently maintained by the County. The petitioned transfers will permit the County to better control, operate, improve and maintain these areas of roadway as part of the County's current and future transportation system within the Crystal City and Pentagon City areas.

BACKGROUND: The Transfer Areas are set forth in Exhibit A and Exhibit B attached to this Board Report. The Certificates of Take and Deeds establishing the Transfer Areas are detailed in

County Manager:

mga/cqm

County Attorney:

APV

23.

Staff: Tim O'Hora, Linda Eichelbaum Collier, DES, REB

Exhibit A. Staff from the Virginia Department of Highways have reviewed these requests and are in concurrence with the requests for transfer pursuant to Virginia Code Section 33.2-907.

DISCUSSION: In furtherance of the commitment by the Commissioner of Highways to accomplish the conveyance of the Transfer Areas from the Commonwealth to the County Board, County staff recommends that the County Board approve the attached Resolution petitioning the CTB to transfer the Transfer Areas to the County. The transfer of the Transfer Areas will permit the County to better control, operate, maintain and improve the Transfer Areas and facilitate the County's transportation system within Crystal City and Pentagon City. Because the County currently is maintaining most of, if not all of, the Transfer Areas, there will be no impact upon the County's future maintenance obligations in the area.

If the Resolution is approved by the County Board, then it will be presented to the CTB for their consideration in December. If approved by the CTB, then County staff and VDOT staff will work together to prepare the necessary deeds. Such deeds will be reviewed and approved as to form by the County Attorney's Office, and once approved, accepted by the Real Estate Bureau Chief in accordance with authority granted by the County Board under this Resolution, if adopted.

FISCAL IMPACT: Because the conveyance of the Transfer Areas to the County Board is a statutory transfer for no monetary consideration, and the County already has been maintaining most of, if not all of, the Transfer Areas, there will be no significant fiscal impact related to the acceptance of the Transfer Areas by the County.

**RESOLUTION OF THE COUNTY BOARD OF
ARLINGTON, COUNTY, VIRGINIA**

November 5, 2016

**Resolution Petitioning the Commonwealth Transportation Board to Transfer
Certain Sections of Public Roadway to the County Board of Arlington County,
Virginia Pursuant to Virginia Code Section 33.2-907**

WHEREAS, in the normal course of right-of-way construction administered by the Virginia Department of Transportation ("VDOT"), the Commonwealth of Virginia (the "Commonwealth") transfers real property interests acquired for right-of-way projects to the localities upon completion of such projects;

WHEREAS, the Commonwealth acquired certain parcels of real estate and other real property interests for the construction, reconstruction, alteration, maintenance, or repair of certain rights of way located within the Crystal City and Pentagon City portions of Arlington County, VDOT Project Numbers 0095-00-101, RW-201; 0595-001-101, RW-201 and 001-000-105, RW-201 (the "Projects");

WHEREAS, all aspects of the construction, reconstruction, alteration, maintenance, and/or repair of the Projects are complete, and title to the parcels and other real property interests (the "Real Property Interests") acquired for the Projects remain vested in the Commonwealth;

WHEREAS, the Projects constitute sections of public roadway and related residual areas acquired, and the Arlington County, Virginia (the "County") maintains a portion of those sections of right of way (the "Rights-of-Way") included in the Projects and listed in Exhibit A and as depicted on Exhibit B, both attached to this Resolution;

WHEREAS, the County Board of Arlington County, Virginia, believing that it is in the best interests of the County for title to the Real Property Interests acquired for the Rights of Way in connection with the Projects be transferred to the County, petitions the Commonwealth to transfer the Real Property Interests acquired for the Rights of Way in connection with the Projects to the County pursuant to § 33.2-907 of the Code of Virginia, 1950, as amended.

**NOW, THEREFORE, BE IT RESOLVED, BY THE COUNTY BOARD OF
ARLINGTON COUNTY, VIRGINIA:**

1. That the County Board of Arlington County hereby petitions the Commonwealth, pursuant to Virginia Code Section 33.2-907 of the Code of Virginia, 1950, as amended, to transfer all of the Commonwealth's right, title and interest in and to the Real Property Interests acquired for the Rights of Way incidental to the construction,

reconstruction, alteration, maintenance or repair of the Projects, to the County Board of Arlington County, Virginia, and to take such other and further actions as may be necessary to complete the conveyance of title to such Real Property Interests and Rights of Way to the County Board of Arlington County, Virginia, and upon such transfer, such Real Property Interests and Rights of Way shall cease being a part of the State Highway System.

2. That the County Real Estate Bureau Chief, or his authorized designee, is hereby authorized to execute any and all documents necessary to complete the conveyance of title to the Real Property Interests and Rights of Way from the Commonwealth to the County Board, subject to approval as to form of such documents by the County Attorney.

Exhibit A

1. South Fern Street between Army Navy Drive and 12th Street South
 - a. VDOT Project #0095-000-101, RW-201
 - i. Deed Book 1778/492 (Certificate), State Highway Plat Book 9/301 (302)
Deed Book 1949/481 (Deed in lieu of condemnation), State Highway Plat Book 9/622
2. South Eads Street between Army Navy Drive and 12th Street South
 - a. VDOT Project #0095-000-101, RW-201
 - i. Deed Book 1949/484 (Deed in lieu of condemnation), State Highway Plat Book 9/623
 - ii. Deed Book 1949/487 (Deed in lieu of condemnation), State Highway Plat Book 9/625
3. 12th Street South between Rte. 1 and South Eads Street
 - a. VDOT Project #0095-000-101, RW-201
 - i. Deed Book 1743/598 (Deed), State Highway Plat Book 9/153
 - ii. Deed Book 1886/232 (Deed), State Highway Plat Book 9/308
4. 15th Street between Rte. 1 and South Eads Street
 - a. VDOT Project #0095-000-101, RW-201
 - i. Limited to that portion of the parcel necessary for the right of way, and sidewalk and utilities easement:
Deed Book 1737/47 (Deed), State Highway Plat Book 9/94
 - ii. Deed Book 1804/487 (Certificate), State Highway Plat Book 9/414 (415)
Deed Book 1939/1692 (Order)
 - iii. Limited to that portion of the parcel necessary for the right of way, and sidewalk and utilities easement:
Deed Book 1843/510 (Certificate), State Highway Plat Book 9/499 (Order)
 - b. VDOT Project # 0595-000-101, RW-201
 - i. Deed Book 1808/48 (Certificate), State Highway Plat Book 9/457
Deed Book 1877/716 (Order)
 - ii. Deed Book 1808/58 (Certificate), State Highway Plat Book 9/464 (465)
Deed Book 1877/716 (Order)
 - iii. Deed Book 1808/512 (Certificate), State Highway Plat Book 9/474 (475)
Deed Book 1877/716 (Order)

5. Clark/Bell Area between 15th and 18th
 - a. VDOT Project #0595-000-101, RW-201
 - i. Deed Book 1785/503 (Deed), State Highway Plat Book 9/352
VDOT Project #0595-000-101, RW-201
 - ii. Deed Book 1785/507 (Deed), State Highway Plat Book 9/353
VDOT Project #0595-000-101, RW-201
 - b. VDOT Project #0001-000-101, RW-201 & #0595-000-101, RW-201
 - i. Deed Book 1741/314 (Certificate), State Highway Plat Book 9/141
(Order)

6. 18th Street
 - a. VDOT Project #0595-000-101, RW-201
 - i. Deed Book 1808/62 (Certificate), State Highway Plat Book 9/467
Deed Book 1877/716 (Order)
 - ii. Deed Book 1808/51 (Certificate), State Highway Plat Book 9/458
(459)
Deed Book 1877/716 (Order)

7. 20th Street/Route 1
 - a. VDOT Project #0595-000-101, RW-201
 - i. Deed Book 1808/55 (Certificate), State Highway Plat Book 9/462
Deed Book 1877/719 (Order)

8. Route 1 between 20th and 23rd
 - a. VDOT Project #0595-000-101, RW-201
 - i. Deed Book 1899/275 (Deed), State Highway Plat Book _____

9. 23rd Street
 - a. VDOT Project #0595-000-101, RW-201
 - i. Deed Book 1814/481 (Deed), State Highway Plat Book 9/482
 - ii. Deed Book 1941/1467 (Deed), State Highway Plat Book 9/615
 - iii. Deed Book 1941/1469 (Deed), State Highway Plat Book 9/616
 - iv. Deed Book 1805/585 (Certificate), State Highway Plat Book 9/433
Deed Book 2258/1235; 2268/750 (Order)
 - v. Deed Book 1791/524 (Certificate), State Highway Plat Book 9/362
(Order)
 - vi. Deed Book 1791/521 (Certificate), State Highway Plat Book 9/361
(Order)
 - vii. Deed Book 1801/345 (Certificate), State Highway Plat Book 9/394
(395)
Deed Book 2318/394 (Order)
 - b. VDOT Project 0001-000-105, RW-201-

- i. Deed Book 2202/788 (Certificate), State Highway Plat Book 10/362
Deed Book 2258/1235; 2268/750 (Order)
- ii. Deed Book 2194/971 (Certificate), State Highway Plat Book 10/328
Deed Book 2212/964 (Order)

10. Route 1 Sidewalk Area around 32nd, 33rd



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 #10

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: Seconded By: Action:

Title: Change in Fiscal Year 2017 Allocation to Bay Aging, a Rural Transit Provider, in the Fiscal Year 2017-2022 Six-Year Improvement Program

WHEREAS, on June 13, 2016, the Commonwealth Transportation Board (Board) adopted a Fiscal Year 2017-2022 Six-Year Improvement Program (SYIP) pursuant to § 33.2-214(B) of the Code of Virginia (1950), as amended, that contained an allocation to Bay Aging, a Rural Transit Provider, in the amount of \$1,097,823 for Fiscal Year 2017 operating expenses; and

WHEREAS, a system miscalculation was subsequently discovered by the Department of Rail and Public Transportation (DRPT), in which the non-reimbursable expenses were deducted from total operating expenses twice, making the calculation of total operating expenses, which is the basis of the Board's allocation, incorrect; and

WHEREAS, the correct allocation for operating expenses for Bay Aging, a Rural Transit Provider, for Fiscal Year 2017 is \$1,443,223 instead of \$1,097,823; and

WHEREAS, it is necessary to correct the allocation to reflect the correct operating expenses calculation.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves the change in allocation to Bay Aging, a Rural Transit Provider, from \$1,097,823 to \$1,443,223, and amends the Fiscal Year 2017-2022 SYIP to reflect this change. This change in allocation is contingent upon the recording of the allocated funding by Bay Aging in accordance with generally accepted accounting practices, reflecting that the allocation is for the purpose of providing for the Bay Aging's transit service.

###

CTB Decision Brief

Change in Fiscal Year 2017 Allocation to Bay Aging, a Rural Transit Provider, in the Fiscal Year 2017-2022 Six-Year Improvement Program

Issue: The Department of Rail and Public Transportation (DRPT) requests that a correction be made in the allocation to Bay Aging in the Six-Year Improvement Program (SYIP) for Fiscal Years 2017-2022, from \$1,097,823 to \$1,443,223. Changes to the SYIP over \$200,000 must be approved by the Commonwealth Transportation Board (CTB) prior to allocation and award.

Facts: Fiscal Year 2017 operating expenses for Bay Aging understated in the SYIP due to a DRPT system glitch that deducted Non-Reimbursable Expenses from Total Operating Costs twice, thus calculating the operating subsidy incorrectly. As a result, Bay Aging is eligible to receive an additional \$345,400 of state operating funding for Fiscal Year 2017. This will bring their total award for the fiscal year to \$1,443,223. CTB action is required in order to amend the allocation because the amount sought is beyond the authority of the Director of DRPT.

Action Required by CTB: Recommendation: DRPT recommends the approval of this additional allocation to the SYIP for Fiscal Years 2017-2022.

Action Required by CTB: Change the allocation to Bay Aging in the Fiscal Year 2017-2022 SYIP from \$1,097,823 to \$1,443,223.

Options: Approve, Deny, or Defer.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

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Richmond, Virginia 23219

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Agenda item #11

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: _____ Seconded By: _____ Action: _____

Title: Economic Development Access Fund Policy (Revision)

WHEREAS, The General Assembly has, from time to time, amended Section 33.2-1509 of the *Code of Virginia* (1950) (the *Code*) relating to the fund for construction of economic development access roads; and

WHEREAS, this Board has also, from time to time, revised its policy for the administration of the Economic Development Access Program (CTB EDA Policy); and

WHEREAS, in October 2010, recognizing that the economic downturn of the early 2000's impacted the ability of localities to attract qualifying businesses, the Board established a moratorium on the requirement to provide repayment for bonded projects and since 2010, the moratorium has been extended or modified four times, in June 2012, February 2014, April 2016, and October 2016.

WHEREAS, in January 2017, the moratorium for eight projects in eight localities will expire and payback, in accordance with the current CTB EDA Policy will be required and the Board has determined that no further extensions of the Moratorium will be granted; and

WHEREAS, localities have expressed concern regarding the required payback and have requested relief and VDOT staff has prepared a proposed modification to the CTB EDA Policy to provide relief in the form of a payback option to address these concerns; and.

WHEREAS, it is the sense of this Board that its present policy should be revised and restated to be more compatible with present conditions and to incorporate a payback option to address concerns of localities subject to the payback requirement.

NOW, THEREFORE, BE IT RESOLVED that the Commonwealth Transportation Board (CTB) hereby adopts the policy attached hereto and entitled *2016 Commonwealth Transportation Board Economic Development Access Fund Policy*, dated December 7, 2016 to govern the use of economic development access funds pursuant to Section 33.2-1509, as amended, of the *Code*:

BE IT FURTHER RESOLVED that the *2016 Commonwealth Transportation Board Economic Development Access Fund Policy* shall become effective immediately, and shall supersede all policies heretofore adopted by this Board governing the use of economic development access funds.

#####

CTB Decision Brief

Commonwealth Transportation Board Economic Development Access Policy

Issue: Localities are relying more heavily on the bonded project provisions of the Economic Development Access Program. Due to slowing economic conditions, the time it has taken localities to attract qualifying investment for bonded projects has been longer than in the past. A bond moratorium has been in effect for six and a half years that will expire on January 1st. Many localities benefitted from the extra time provided through that moratorium. Many of the localities under the moratorium for a shorter period of time and some with approaching bond expirations are still having some difficulty attracting qualifying industries and may be required to pay substantial funds back to the Department. The Virginia Department of Transportation is proposing, and seeks CTB approval of, a revision to the Commonwealth Transportation Board (CTB) Economic Development Access Fund Policy adopted by the CTB in June 2012 that would provide an extended payback option to localities that are subject to the payback requirement.

Facts: Virginia Code 33.2-1509 provides funds to the Commonwealth Transportation Board (the Board) to be expended by the Board for “constructing, reconstructing, maintaining, or improving access within localities to economic development sites ...” Those funds may be provided to traditional projects where an eligible business is known to the locality and sufficient capital investment can be documented prior to the CTB allocation, or to bonded projects where an eligible business has not committed or a business is known but cannot document sufficient capital investment prior to CTB allocation. In the case of a bonded project, the locality may guarantee that sufficient capital investment will be documented within five years of CTB allocation through a bond or other acceptable device. At the end of the five year period, the amount of economic development access funds expended on the project and not justified by eligible capital outlay of one or more eligible establishments acceptable to the Board shall be reimbursed to the Department of Transportation voluntarily by the locality or by forfeiture of the surety. Localities which can document sufficient capital investment by a qualified industry within two years of the five year bonded period may request a refund of 50% of their repayment. Virginia Code 33.2-1509 provides that the Board will set the bond period however the Board cannot waive the requirement for repayment at the end of the established timeframe. The Code also provides that the time limits of the bond shall be based on a regular review and consideration by the Board. Changes have not been made to the bond period provisions since 2006.

Since 2006, 37 of 54 projects requesting funding through the Economic Development Access Program have sought their funding through the bonded provisions of the program. Total allocations for those bonded projects are over \$18 million.

In October 2010, recognizing that the economic downturn of the early 2000’s impacted the ability of localities to attract qualifying businesses, the Board established a moratorium on the requirement to provide repayment for bonded projects. Since 2010, that moratorium has been extended or modified to include additional bonded projects, four times (June 2012, February 2014, April 2016 and October 2016). The moratorium has benefitted 21 projects and many

localities were able to meet the investment requirements with the extra time afforded during that period.

In January 2017, the moratorium for eight projects in eight localities will expire and payback, in accordance with current CTB Policy will be required. Several of these localities have expressed concern regarding the required payback and have requested relief. VDOT staff has prepared a proposed modification to the CTB Economic Development Access Fund Policy to address these concerns.

Recommendations: The proposed revisions to the current Economic Development Access Policy recommended by staff include, pursuant to Section 33.2-1509 of the *Code of Virginia*, a modification to the Board's Policy so that a locality may after their initial five year bonded period and provided that they extend their current bond, reimburse the Department, on an annual basis, 20% of those funds expended on the project but not justified by eligible capital outlay, with the first annual payment to be made on or before the 1st day of the new bonded period, until such time that 100% of the required reimbursement is provided or until the locality can document sufficient capital investment by an eligible establishment. The locality's bond or other acceptable surety may be reduced annually by the amount repaid to the Department. Pursuant to the proposed revision, any payments submitted pursuant to the new payback provision could not be refunded by the Department under any circumstances.

Action Required by the CTB: Implementation of the recommended changes necessitates revision of the CTB's current policy for administering the funds. A resolution is provided for formal vote.

Result, if Approved: The CTB's policy for administering the funds set aside under Section 33.1-221 of the *Code of Virginia* will be revised to reflect the recommended changes.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None

2016 Commonwealth Transportation Board

Economic Development Access Fund Policy

1. The use of economic development access funds shall be limited to: (a) providing adequate access to economic development sites on which new or substantially expanding manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Business Assistance; (b) improving existing roads that may not be adequate to serve the establishments as described in (a); and (c) providing for costs associated directly with program administration and management of project requests prior to CTB approval with such costs not expected to exceed 1% of the allocation annually.
2. Economic development access funds shall not be used for the acquisition of rights of way or adjustment of utilities. These funds are to be used only for the actual construction and engineering of a road facility adequate to serve the traffic generated by the new or expanding eligible establishments.
3. Economic development access funds may not be used for the construction of access roads to schools, hospitals, libraries, airports, armories, speculative office buildings, shopping centers, apartment buildings, professional offices, residential developments, churches, hotels, motels, or similar facilities, whether public or private. (Access roads to licensed, public-use airports, while provided for in Section 33.2-1509, are funded and administered separately).
4. No cost incurred prior to this Board's approval of an allocation from the economic development access fund may be reimbursed by such funds. Economic development access funds shall be authorized only after certification that the economic development establishment as listed or meeting the criteria as described will be built under firm contract, or is already constructed, or upon presentation of acceptable surety in accordance with paragraph A. of Section 33.2-1509 of the *Code*.
5. When an eligible establishment is not yet constructed or under firm contract and a local governing body guarantees by bond or other acceptable surety that such will occur, the maximum time limit for such bond shall be five years, beginning on the date of the allocation of the economic development access funds by the Commonwealth Transportation Board. At the end of the five-year period, the amount of economic development access funds expended on the project and not justified by eligible capital outlay of one or more eligible establishments acceptable to the Board shall be reimbursed to the Department of Transportation voluntarily by the locality or by forfeiture of the surety unless the locality elects to utilize the payback provisions outlined in paragraph 6.
6. At the end of the five year time period specified in paragraph 5, rather than reimbursing the Department in full those funds expended on the project but not

justified by eligible capital outlay, the locality may elect to extend the bond or other acceptable surety for another 4 year period and ,on an annual basis, reimburse the Department 20% of those funds expended on the project but not justified by eligible capital outlay, with the first annual payment to be made on or before the 1st day of the new bonded period, until such time that 100% of the required reimbursement is provided or until the locality can document sufficient capital investment by an eligible establishment. The locality's bond or other acceptable surety may be reduced annually by the amount repaid to the Department. Any payments submitted pursuant to this paragraph shall not be refunded by the Department, under any circumstances.

7. Economic development access funds shall not be used to construct or improve roads on a privately owned economic development site. Nor shall the construction of a new access road to serve any economic development site on a parcel of land which abuts a road constituting a part of the systems of state highways or the road system of the locality in which it is located be eligible for economic development access funds, unless the existing road is a limited access highway and no other access exists. Further, where the existing road is part of the road system of the locality in which it is located, or the secondary system of state highways, economic development funds may be used to upgrade the existing road only to the extent required to meet the needs of traffic generated by new or expanding eligible establishment.

In the event an economic development site has access according to the foregoing provisions of this policy, but it can be determined that such access is not adequate in that it does not provide for safe and efficient movement of the traffic generated by the eligible establishment on the site or that the site's traffic conflicts with the surrounding road network to the extent that it poses a safety hazard to the general public, consideration will be given to funding additional improvements. Such projects shall be evaluated on a case-by-case basis upon request, by resolution, from the local governing body. Localities are encouraged to establish planning policies which will discourage incompatible mixes such as industrial and residential traffic.

8. Not more than \$500,000 of unmatched economic development access funds may be allocated in any fiscal year for use in any county, city or town which receives highway maintenance payments under Section 33.2-319, of the *Code*. A town whose streets are maintained under either Section 33.2-339 or 33.2-340, of the *Code*, shall be considered as part of the county in which it is located. The maximum eligibility of unmatched funds shall be limited to 20% of the capital outlay of the designated eligible establishments and certain investment by the locality in the land and/or the building on the site occupied by the designated eligible establishment. The unmatched eligibility may be supplemented with additional economic development access funds, in which case the supplemental access funds shall not be more than \$150,000, to be matched dollar-for-dollar from funds other than those administered by this Board. Such supplemental funds shall be considered only if the total estimated cost of eligible items for the economic development access improvement exceeds \$500,000.

If an eligible site is owned by a regional industrial facility authority, as defined in Section 15.2-6400 et seq., of the *Code*, funds may be allocated for construction of an

access road project to that site without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction, with the same funding limitations as prescribed for other individual projects.

9. Notwithstanding the provisions herein, for Major Employment and Investment (MEI) projects as defined in Section 2.2-2260, of the *Code* and administered by the Virginia Economic Development Partnership, the locality may receive up to the maximum unmatched allocation and matched allocation for a design-only project. The local governing body shall guarantee by bond or other acceptable surety that plans for a MEI project will be developed to standards acceptable to VDOT.

In addition, for projects utilizing economic development access funds to serve approved MEI projects, the locality may receive up to the maximum unmatched allocation and an additional \$500,000 matched allocation for a road construction project. Project allocations for a given MEI project may be cumulative for not more than two years.

10. Eligible items of construction and engineering shall be limited to those which are essential to providing an adequate facility to serve the anticipated traffic while meeting all appropriate CTB and state policies and standards. However, additional pavement width or other features may be eligible where necessary to qualify the road facility in a city or town for maintenance payments under Section 33.2-319, of the *Code*.
11. Except as provided for in paragraph 9. pertaining to MEI projects, it is the intent of the Board that economic development access funds not be anticipated from year to year. Unused eligibility cannot be allowed to accumulate and be carried forward from one fiscal year to another.
12. The Commonwealth Transportation Board will consult and work closely with the Virginia Economic Development Partnership (VEDP) and the Department of Business Assistance (DBA) in determining the use of economic development access funds and will rely on the recommendations of the VEDP and the DBA in making decisions as to the allocation of these funds. In making its recommendations to this Board, the VEDP and the DBA will take into consideration the impact of the proposed facility on the employment and tax base of both the area in which the facility is to be located and the Commonwealth of Virginia.
13. Prior to the formal request for the use of economic development access funds to provide access to new or expanding eligible establishments, the location of the access road shall be submitted for approval by the Virginia Department of Transportation. VDOT shall take into consideration the cost of the facility as it relates to the location and as it relates to the possibility of the future extension of the road to serve other possible eligible establishments, as well as the future development of the area traversed.
14. Prior to this Board's allocation of funds for such construction or road improvements to an eligible economic development establishment proposing to locate or expand in a

county, city or town, the governing body shall by resolution request the access funds and shall be responsible for the preliminary negotiations with the eligible establishment and others interested. Engineers of the Virginia Department of Transportation will be available for consultation with the governing bodies and others, and may prepare surveys, plans, engineering studies, and cost estimates.

15. The Commonwealth Transportation Commissioner is directed to establish administrative procedures to assure the provisions of this policy and legislative directives are adhered to and complied with.

2016 Commonwealth Transportation Board Economic Development Access Fund Policy

1. The use of economic development access funds shall be limited to: (a) providing adequate access to economic development sites on which new or substantially expanding manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Business Assistance; (b) improving existing roads that may not be adequate to serve the establishments as described in (a); and (c) providing for costs associated directly with program administration and management of project requests prior to CTB approval with such costs not expected to exceed 1% of the allocation annually.
2. Economic development access funds shall not be used for the acquisition of rights of way or adjustment of utilities. These funds are to be used only for the actual construction and engineering of a road facility adequate to serve the traffic generated by the new or expanding eligible establishments.
3. Economic development access funds may not be used for the construction of access roads to schools, hospitals, libraries, airports, armories, speculative office buildings, shopping centers, apartment buildings, professional offices, residential developments, churches, hotels, motels, or similar facilities, whether public or private. (Access roads to licensed, public-use airports, while provided for in Section 33.2-1509, are funded and administered separately).
4. No cost incurred prior to this Board's approval of an allocation from the economic development access fund may be reimbursed by such funds. Economic development access funds shall be authorized only after certification that the economic development establishment as listed or meeting the criteria as described will be built under firm contract, or is already constructed, or upon presentation of acceptable surety in accordance with paragraph A. of Section 33.2-1509 of the *Code*.
5. When an eligible establishment is not yet constructed or under firm contract and a local governing body guarantees by bond or other acceptable surety that such will occur, the maximum time limit for such bond shall be five years, beginning on the date of the allocation of the economic development access funds by the Commonwealth Transportation Board. At the end of the five-year period, the amount of economic development access funds expended on the project and not justified by eligible capital outlay of one or more eligible establishments acceptable to the Board shall be reimbursed to the Department of Transportation voluntarily by the locality or by forfeiture of the surety, ~~In the event that, after the Department of Transportation has been reimbursed, but still within 24 months immediately following the end of the five-year period, the access funds expended come to be justified by eligible capital outlay of one or more eligible establishments, the locality may request a refund of one-half of the sum reimbursed to the Department of Transportation, which request~~

may be granted if funds are available, on a first come, first served basis in competition with applications for access funds from other localities, unless the locality elects to utilize the payback provisions outlined in paragraph 6.

6. At the end of the five year time period specified in paragraph 5, rather than reimbursing the Department in full those funds expended on the project but not justified by eligible capital outlay, the locality may elect to extend the bond or other acceptable surety for another 4 year period and ,on an annual basis, reimburse the Department 20% of those funds expended on the project but not justified by eligible capital outlay, with the first annual payment to be made on or before the 1st day of the new bonded period, until such time that 100% of the required reimbursement is provided or until the locality can document sufficient capital investment by an eligible establishment. The locality's bond or other acceptable surety may be reduced annually by the amount repaid to the Department. Any payments submitted pursuant to this paragraph shall not be refunded by the Department, under any circumstances.

~~6.7.~~ Economic development access funds shall not be used to construct or improve roads on a privately owned economic development site. Nor shall the construction of a new access road to serve any economic development site on a parcel of land which abuts a road constituting a part of the systems of state highways or the road system of the locality in which it is located be eligible for economic development access funds, unless the existing road is a limited access highway and no other access exists. Further, where the existing road is part of the road system of the locality in which it is located, or the secondary system of state highways, economic development funds may be used to upgrade the existing road only to the extent required to meet the needs of traffic generated by new or expanding eligible establishment.

In the event an economic development site has access according to the foregoing provisions of this policy, but it can be determined that such access is not adequate in that it does not provide for safe and efficient movement of the traffic generated by the eligible establishment on the site or that the site's traffic conflicts with the surrounding road network to the extent that it poses a safety hazard to the general public, consideration will be given to funding additional improvements. Such projects shall be evaluated on a case-by-case basis upon request, by resolution, from the local governing body. Localities are encouraged to establish planning policies which will discourage incompatible mixes such as industrial and residential traffic.

~~7.8.~~ Not more than \$500,000 of unmatched economic development access funds may be allocated in any fiscal year for use in any county, city or town which receives highway maintenance payments under Section 33.2-319, of the *Code*. A town whose streets are maintained under either Section 33.2-339 or 33.2-340, of the *Code*, shall be considered as part of the county in which it is located. The maximum eligibility of unmatched funds shall be limited to 20% of the capital outlay of the designated eligible establishments and certain investment by the locality in the land and/or the

building on the site occupied by the designated eligible establishment. The unmatched eligibility may be supplemented with additional economic development access funds, in which case the supplemental access funds shall not be more than \$150,000, to be matched dollar-for-dollar from funds other than those administered by this Board. Such supplemental funds shall be considered only if the total estimated cost of eligible items for the economic development access improvement exceeds \$500,000.

If an eligible site is owned by a regional industrial facility authority, as defined in Section 15.2-6400 et seq., of the *Code*, funds may be allocated for construction of an access road project to that site without penalty to the jurisdiction in which the site is located. This provision may be applied to one regional project per fiscal year in any jurisdiction, with the same funding limitations as prescribed for other individual projects.

~~8.9.~~ Notwithstanding the provisions herein, for Major Employment and Investment (MEI) projects as defined in Section 2.2-2260, of the *Code* and administered by the Virginia Economic Development Partnership, the locality may receive up to the maximum unmatched allocation and matched allocation for a design-only project. The local governing body shall guarantee by bond or other acceptable surety that plans for a MEI project will be developed to standards acceptable to VDOT.

In addition, for projects utilizing economic development access funds to serve approved MEI projects, the locality may receive up to the maximum unmatched allocation and an additional \$500,000 matched allocation for a road construction project. Project allocations for a given MEI project may be cumulative for not more than two years.

~~9.10.~~ Eligible items of construction and engineering shall be limited to those which are essential to providing an adequate facility to serve the anticipated traffic while meeting all appropriate CTB and state policies and standards. However, additional pavement width or other features may be eligible where necessary to qualify the road facility in a city or town for maintenance payments under Section 33.2-319, of the *Code*.

~~10.11.~~ Except as provided for in paragraph ~~item 89.~~ pertaining to MEI projects, it is the intent of the Board that economic development access funds not be anticipated from year to year. Unused eligibility cannot be allowed to accumulate and be carried forward from one fiscal year to another.

~~11.12.~~ The Commonwealth Transportation Board will consult and work closely with the Virginia Economic Development Partnership (VEDP) and the Department of Business Assistance (DBA) in determining the use of economic development access funds and will rely on the recommendations of the VEDP and the DBA in making decisions as to the allocation of these funds. In making its recommendations to this Board, the VEDP and the DBA will take into consideration the impact of the proposed facility on the employment and tax base of both the area in which the facility is to be located and the Commonwealth of Virginia.

~~12.~~13. Prior to the formal request for the use of economic development access funds to provide access to new or expanding eligible establishments, the location of the access road shall be submitted for approval by the Virginia Department of Transportation. VDOT shall take into consideration the cost of the facility as it relates to the location and as it relates to the possibility of the future extension of the road to serve other possible eligible establishments, as well as the future development of the area traversed.

~~13.~~14. Prior to this Board's allocation of funds for such construction or road improvements to an eligible economic development establishment proposing to locate or expand in a county, city or town, the governing body shall by resolution request the access funds and shall be responsible for the preliminary negotiations with the eligible establishment and others interested. Engineers of the Virginia Department of Transportation will be available for consultation with the governing bodies and others, and may prepare surveys, plans, engineering studies, and cost estimates.

~~14.~~15. The Commonwealth Transportation Commissioner is directed to establish administrative procedures to assure the provisions of this policy and legislative directives are adhered to and complied with.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Chairman

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Agenda item # 12

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: _____ Seconded By: _____

Action: _____

Title: **Economic Development Access to
IT Federal, LLC
Project ECON-112-170, N501, Town of Front Royal**

WHEREAS, § 33.2-1509 of the *Code of Virginia* provides a fund to "...be expended by the Board for constructing, reconstructing, maintaining or improving access roads within localities to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed ..." or, "in the event there is no such establishment ..., a locality may guarantee to the Board by bond or other acceptable device that such will occur and, should no establishment or airport acceptable to the Board be constructed or under firm contract within the time limits of the bond, such bond shall be forfeited."; and

WHEREAS, the Front Royal Town Council has, by appropriate resolution, requested Economic Development Access Program funds to assist in providing adequate access to serve IT Federal, LLC to be located off Kendrick Lane, and said access is estimated to cost \$800,000; and

WHEREAS, IT Federal, LLC has been determined by the Virginia Economic Development Partnership to be a qualifying establishment meeting the basic employer criteria under the provisions of § 33.2-1509 of the *Code of Virginia*; and

WHEREAS, the proposed IT Federal facility is expected to result in approximately \$40 million in capital investment and employment of 600 persons; and

WHEREAS, it appears that this request falls within the intent of § 33.2-1509 of the *Code of Virginia* and complies with the provisions of the Commonwealth Transportation Board’s (CTB) policy on Economic Development Access.

NOW, THEREFORE, BE IT RESOLVED, that \$650,000 (\$500,000 unmatched, \$150,000 matched) of the Economic Development, Airport and Rail Access Fund be allocated to assist in providing adequate access to IT Federal in the Town of Front Royal, Project ECON-112-170, N501 contingent upon:

1. All right of way, environmental assessments and remediation, and utility adjustments being provided at no cost to the Commonwealth; and
2. Execution of an appropriate contractual agreement between the Town of Front Royal (LOCALITY) and the Virginia Department of Transportation (VDOT), to provide for the:
 - a. design, administration, construction and maintenance of this project; and
 - b. payment of all ineligible costs, and of any eligible costs in excess of this and any other approved allocation for this economic development project, from sources other than those administered by VDOT; and
 - c. provision by the LOCALITY of either i) documentation of at least \$3,250,000 of eligible capital outlay by IT Federal on the site served by this project, or, should documentation of capital outlay by IT Federal be insufficient, ii) an appropriate bond, or other acceptable surety device, by the LOCALITY to VDOT, not to expire before March 7, 2022, without written permission of VDOT. Such surety device shall provide for reimbursement to VDOT of any expenses incurred by the Economic Development, Airport and Rail Access Fund for this project’s construction not justified by the eligible capital outlay of establishments served by the project. If, by December 7, 2021, at least \$3,250,000 of eligible capital outlay on parcels served exclusively by this project has not been expended or committed by firm contract by a qualified establishment or establishments, then an amount equal to 20% of the eligible capital outlay of up to \$3,250,000 will be credited toward the allocation utilized in the project’s construction and the balance of the utilized allocation not justified by eligible capital outlay will be returned to VDOT and the Economic Development, Airport and Rail Access Fund. This surety may be released or reduced accordingly at an earlier date upon provision of documentation of eligible capital outlay by a qualified establishment, or establishments; and
3. Determination by VDOT of eligible capital outlay in accordance with current policy and procedures for administering the Economic Development Access Program.

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CTB Decision Brief

Economic Development Access – Town of Front Royal IT Federal, LLC

Issue: Pursuant to § 33.2-1509 of the *Code of Virginia* and the Economic Development Access Policy of the Commonwealth Transportation Board (CTB), the Front Royal Town Council has requested funds from the Economic Development Access Program to assist in providing road access to IT Federal

Facts: §33.2-1509 of the *Code of Virginia* provides for the CTB to expend funds set aside for constructing access roads to economic development sites on which certain establishments as prescribed or other establishments that meet the basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed.

IT Federal will invest approximately \$40 million to construct a 67,000 square-foot facility for the purpose of developing and providing a range of information technology services and system integration solutions for the Department of Defense, other government agencies and departments, and commercial customers. The planned facility will be constructed on approximately 6 acres south of Kendrick Lane and is expected to create 600 jobs. The property does not currently have adequate public access. The Economic Development Partnership has determined that IT Federal is a qualifying establishment, warranting the use of Economic Development Access Program funds. The Town of Front Royal will administer design and construction of the proposed access road project.

Recommendations: The access project recommended by VDOT staff includes the construction of a new road approximately 535 feet in length with 24-foot wide asphalt pavement and curb and gutter within a 60-foot right of way from Kendrick Lane south to the IT Federal development site. Staunton District staff has estimated the cost of the project to be \$800,000. The Town of Front Royal will be responsible for financial arrangements to fully fund the estimated project costs exceeding the Economic Development Access Program allocation from sources other than those administered by VDOT. The Local Assistance Division recommends that the maximum allocation of \$650,000 (\$500,000 unmatched, \$150,000 matched) from the Economic Development, Airport and Rail Access Fund be approved for construction of this project subject to certain contingencies.

Action Required by the CTB: The *Code of Virginia* and the CTB's Economic Development Access Fund Policy specifies that the CTB shall approve of the allocation of funds for the construction of the access road project. A resolution is provided for formal vote.

Result, if Approved: VDOT and the Town of Front Royal will proceed with the Economic Development Access road project.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None



Town of Front Royal, Virginia



**RESOLUTION FOR APPLICATION
VDOT ECONOMIC DEVELOPMENT ACCESS
MAIN STREET EXTENSION**

WHEREAS, the Town of Front Royal desires to assist in the development of the Avtex/Royal Phoenix property for the purpose of economic development located of Kendrick Lane in the Town of Front Royal; and,

WHEREAS, IT Federal has purchased Lot 6 (30 acres) located in the Town of Front and will soon enter into a firm contract to construct its facilities on that property for the purpose of providing technology based services to the United States Government; and,

WHEREAS, the new facility is expected to involve new private capital investment in land, building, and equipment of approximately \$40 million and the IT Federal project is expected to bring 600 new jobs; and,

WHEREAS, operation are expected to begin at this new facility on or about January 1, 2017; and,

WHEREAS, the subject property has no access to a public street or highway and will require the construction of a new roadway to connect with Kendrick Lane; and,

WHEREAS, the Town of Front Royal hereby guarantees that the necessary environmental analysis, mitigation, and fee simple Right-of-Way and utility relocations, adjustment, and construction for this improvement will be provided at no cost to the Economic Development, Airport, and Rail Access Fund; and,

WHEREAS, the Town of Front Royal acknowledges that no land disturbance activities may occur within the limits of the proposed access project prior to any construction activity on the project as a condition of the use of the Economic Development Airport, and Rail Access Fund; and

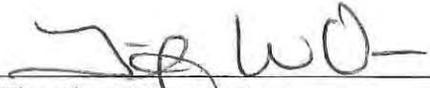
WHEREAS, the Town of Front Royal hereby guarantees that all ineligible project costs and all costs not justified by eligible capital outlay will be provided from sources other than those administered by the Virginia Department of Transportation.

NOW, THEREFORE BE IT RESOLVED by the Mayor and Council of the Town of Front Royal, Virginia hereby requests that the Commonwealth Transportation Board provide Economic Development Access Program funding to provide an adequate road to this property; and,

BE IT FURTHER RESOLVED that the Mayor and Council of the Town of Front Royal, Virginia hereby authorize the Town Manager and/or his designee to act on behalf of the Town Council to execute any and all documents necessary to secure the funding sought through the Economic Development Access Program up to, but not exceeding \$650,000.00 state funds.

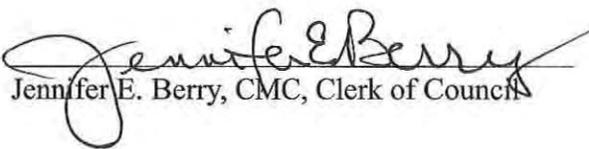
Adopted this 13th day of June, 2016

APPROVED:



Timothy W. Darr, Mayor

Attest:


Jennifer E. Berry, CMC, Clerk of Council

THIS RESOLUTION was approved at the Regular Meeting of the Town of Front Royal, Virginia Town Council on 6-13- 2016 upon the following recorded vote:

Hollis L. Tharpe Yes/No

Bret W. Hrbek Yes/No

Eugene R. Tewalt Yes/No

Bébhinn C. Egger Yes/No

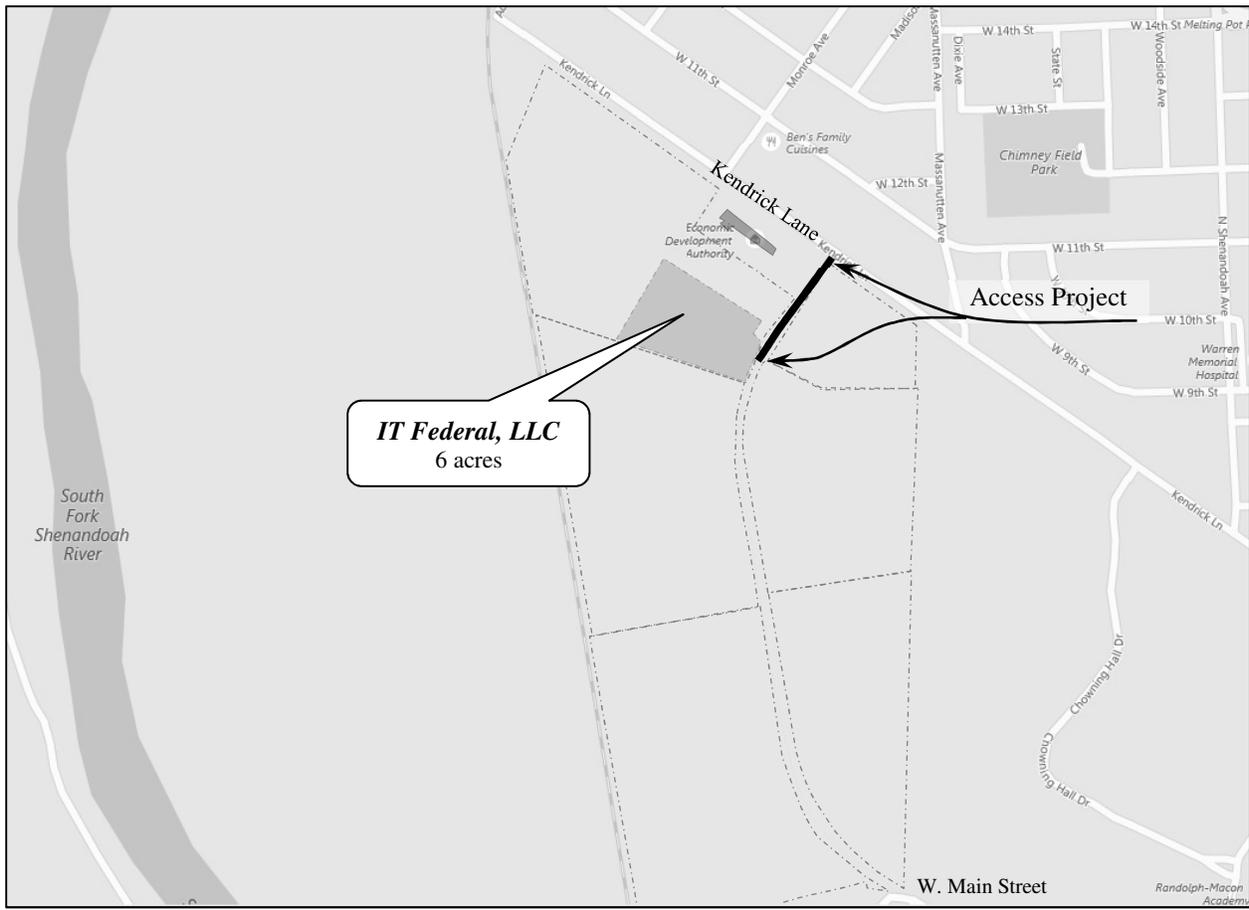
John P. Connolly Yes/No

Jacob L. Meza Yes/No

Approved as to Form and Legality:



Douglas W. Napier, Esq., Town Attorney
Date: 6-13-16



PROPOSED ECONOMIC DEVELOPMENT ACCESS PROJECT
IT Federal, LLC
Project ECON-112-170, N501
Town of Front Royal

Economic Development Facility / Site

Initial phase development on 6 acres to include construction of proposed 67,000 square-foot data management center

Anticipated Traffic: 2900 vpd

Capital Investment: \$40 million

Employment: 600

Access Project

Length: 535 feet

Pavement Width: 24 feet

R/W Width: 60 feet

Estimated Cost: \$800,000

Proposed Allocation: \$650,000
 (\$500,000 unmatched, \$150,000 matched)



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

1401 East Broad Street
Richmond, Virginia 23219

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Agenda item # 13

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: _____ Seconded By: _____

Action: _____

**Title: Recreational Access to Sherando Park
Project RECR-034-890, N501, Frederick County**

WHEREAS, § 33.2-1510 of the *Code of Virginia* sets forth that the General Assembly of Virginia has found and declared that it is "... in the public interest that access roads and bikeways to public recreational areas and historical sites be provided..." and sets aside highway funds for such purpose, "... [w]hen the Director of the Department of Conservation and Recreation has designated a public recreational area as such ... and recommends to the [Commonwealth Transportation] Board that an access road or bikeway be provided or maintained to that area"; and

WHEREAS, the Director of the Department of Conservation and Recreation (DCR) and the Commonwealth Transportation Board (CTB) have adopted a joint policy to govern the use of the Recreational Access Fund pursuant to § 33.2-1510 of the *Code of Virginia*; and

WHEREAS, the Frederick County Board of Supervisors has, by appropriate resolution, requested Recreational Access funds to provide road and bikeway access to adequately serve new facilities proposed to be located off of Warrior Drive (Route 719) within Sherando Park in Frederick County and said road and bikeway access is estimated to cost \$396,000; and

WHEREAS, this request is under consideration by the Director of DCR for full compliance with the provisions of § 33.2-1510 of the *Code of Virginia*; and

WHEREAS, the Director of DCR has previously designated Sherando Park as a public recreational area and it is anticipated that the Director of DCR will recommend the construction of the aforementioned access project.

NOW, THEREFORE, BE IT RESOLVED, that from the Recreational Access Fund \$306,000 (\$250,000 unmatched and \$56,000 matched) for road construction and \$34,000 (unmatched) for bikeway construction be allocated to provide adequate access to proposed new facilities within Sherando Park to be located off of Warrior Drive in Frederick County, Project RECR-034-890, N501, contingent upon:

1. The Director of DCR recommending the use of the Recreational Access Fund for the construction of the access roadway and bikeway to the proposed new facilities within Sherando Park; and
2. All right of way, environmental assessments and remediation, and utility adjustments being provided at no cost to the Commonwealth; and
3. Execution of an appropriate contractual agreement between the County of Frederick (LOCALITY) and the Virginia Department of Transportation (VDOT) to provide for the:
 - a. design, administration, construction and maintenance of this project; and
 - b. provision of up to \$56,000 in matching funds, as necessary, by the LOCALITY for construction of the access road; and
 - c. payment of all ineligible project costs, and of any eligible project costs in excess of the respective allocation amounts for the roadway access project from sources other than those administered by VDOT.

#####

CTB Decision Brief

Recreational Access – Frederick County Sherando Park

Issue: Pursuant to § 33.2-1510 of the *Code of Virginia*, the Frederick County Board of Supervisors has requested funds from the Recreational Access Program to provide adequate road and bikeway access to proposed new facilities within Sherando Park.

Facts: Section 33.2-1510 of the *Code of Virginia* provides that the Commonwealth Transportation Board (CTB) shall expend from funds set aside for the construction of access roads and bikeways to public recreational areas and historical sites under this section of the *Code of Virginia*. Further, this section of the *Code of Virginia* grants the CTB the authority to construct access roads and bikeways to public recreational areas and historical sites when the governing body of the county in which the access road is to be provided passes a resolution requesting the road and when the Director of the Department of Conservation and Recreation (DCR) has designated the public recreational area as such and recommends to the CTB that an access road be provided to that area.

Frederick County owns and operates Sherando Park and plans to develop new facilities within the park off of Warrior Drive (Route (719)). Proposed facilities proposed to be access by the requested project include adult fitness facilities, a bicycle pump track, a picnic shelter, restroom, and parking and overflow parking areas. Existing park facilities are currently accessed off of Route 277; however, the proposed new facilities at the northwest end of the park can more conveniently be accessed from Warrior Drive with the proposed project. Frederick County will administer the design and construction of the proposed road and bikeway access project.

Local Assistance Division has coordinated with DCR staff to confirm support for the project. Sherando Park has previously been designated as a public recreational area by the Director of DCR and it is anticipated that the Director will recommend utilization of Recreational Access funds to provide adequate access to the park.

Recommendations: The road and bikeway access project recommended by staff as adequate to serve proposed facilities within Sherando Park involves construction of a 20-foot wide asphalt roadway with 4-foot wide paved shoulders for bikeway access, within 40 feet of right of way, from Warrior Drive and continuing east, approximately 0.06 mile, to the proposed parking lot. Staunton District staff has estimated the cost of the road access project to be \$396,000 and the cost of the bikeway access project to be \$34,000. Frederick County will be responsible for financial arrangements to fully fund the estimated project costs exceeding the Recreational Access Program allocation from sources other than those administered by VDOT. VDOT recommends that Recreational Access Program funding in the maximum amount of \$306,000 (\$250,000 unmatched and \$56,000 matched) for the construction of road access and \$34,000 for bikeway access be approved, subject to certain contingencies.

Action Required by the CTB: Prior to expending funds set aside for access roads to public recreational areas and historical sites, the *Code of Virginia* specifies that the CTB shall declare by resolution that the access road project be provided. A resolution is provided for formal vote.

Result, if Approved: VDOT and Frederick County will proceed with the recreational access road project.

Options: Approve, Deny, or Defer.

Public Comments/Reaction: None

**BOARD OF SUPERVISORS
FREDERICK COUNTY, VIRGINIA**

May, 25, 2016

At a regularly scheduled meeting of the Frederick County Board of Supervisors held on May 25, 2016, on a motion by Supervisor Judith McCann-Slaughter, seconded by Supervisor Robert Wells, the following resolution was adopted by a vote of 7 to 0.

WHEREAS, the Sherando Park is owned and is to be developed by Frederick County as a recreational facility serving the residents of Frederick County and adjoining localities; and

WHEREAS, the property on which this facility is located has no access to a public street or roadway and will require the construction of a new roadway which will connect to Warrior Drive; and

WHEREAS, the procedure governing the allocation of recreational access funds as set forth in Section 33.2-1510 of the *Code of Virginia* requires joint action by the Director of the Department of Conservation and Recreation and the Commonwealth Transportation Board; and

WHEREAS, a statement of policy agreed upon between the said Director and Board approves the use of such funds for the construction of access roads to publicly-owned recreational or historic areas; and

WHEREAS, the Board has duly adopted a zoning ordinance pursuant to Article 7 (Section 15.2-2280 et seq), Chapter 22, Title 15.2 of the *Code of Virginia*; and

WHEREAS, it appears to this Board that all requirements of the law have been met to permit the Director of the Department of Conservation and Recreation to designate Sherando Park as a public recreational facility and further permit the Commonwealth Transportation Board to provide funds for access to this public recreation area in accordance with Section 33.2-1510 of the *Code of Virginia*; and

WHEREAS, the Board agrees, in keeping with the intent of Section 33.2-405 of the Code of Virginia, to use its good offices to reasonably protect the aesthetic or cultural value of this road leading to or within areas of historical, natural or recreational significance; and

WHEREAS, the County of Frederick hereby guarantees that the necessary environmental analysis, mitigation, and fee simple right of way for this improvement, and utility relocations or adjustments, if necessary, will be provided at no cost to the Virginia Department of Transportation; and

NOW, THEREFORE BE IT RESOLVED, the Board of Supervisors of Frederick County hereby requests the Director of the Department of Conservation and Recreation to designate Sherando Park as a public recreational area and to recommend to the Commonwealth Transportation Board that recreational access funds be allocated for an adequate access road to serve said Sherando park area; and

BE IT FURTHER RESOLVED, the Commonwealth Transportation Board is hereby requested to allocate the necessary recreational access funds to provide a suitable access road as hereinbefore described.

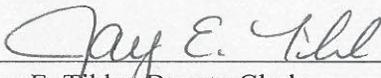
BE IT FURTHER RESOLVED, that the County Administrator and/or his designee(s) be authorized to act on behalf of the Board of Supervisors to execute any and all documents necessary to secure the funding sought through the Recreation Access Program up to, but not exceeding, \$322,500 state funds

BE IT FURTHER RESOLVED THAT: The Frederick County Board of Supervisors hereby agrees that the new roadway so constructed will be added to and become a part of the secondary system of highways.

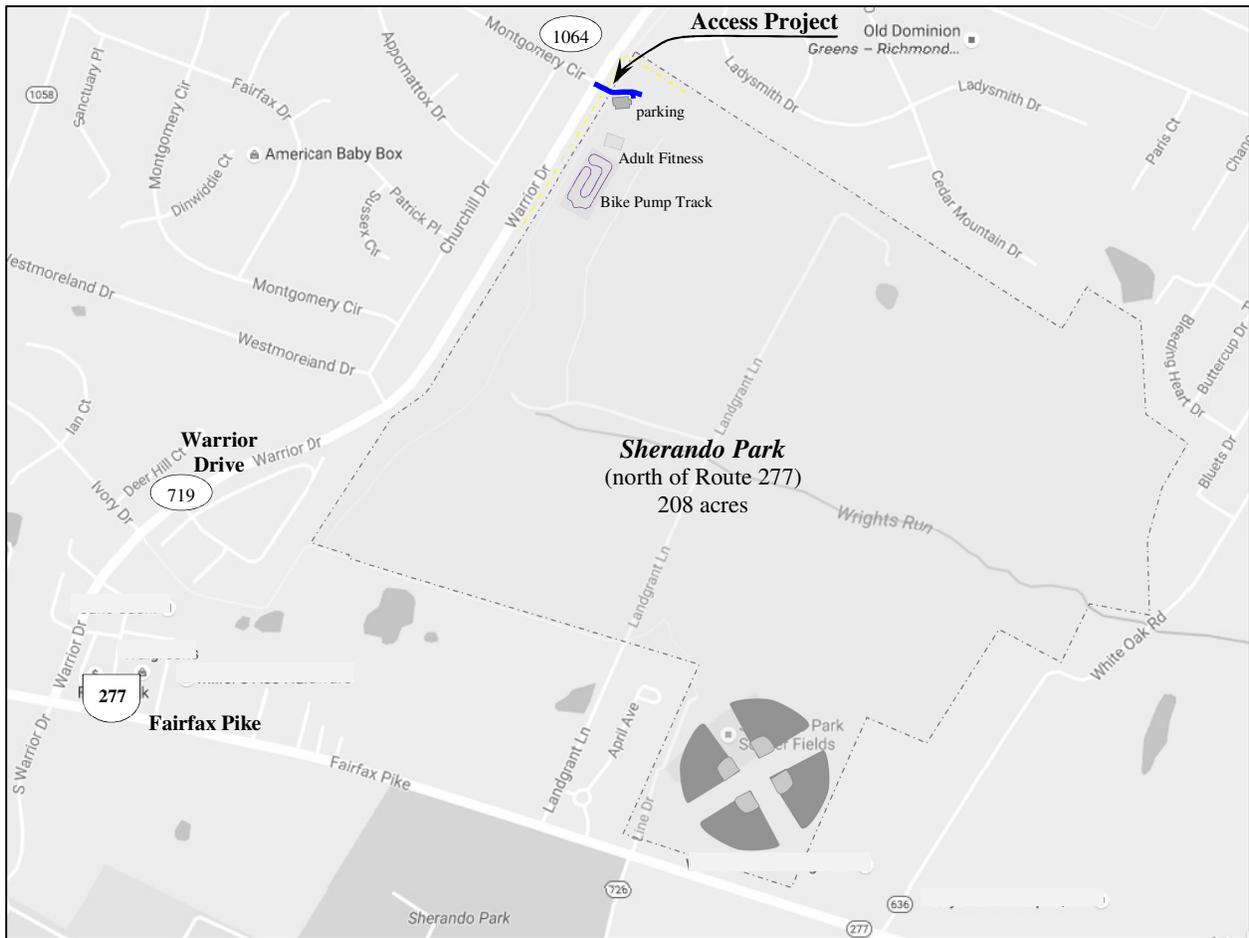


Brenda G. Garton, Clerk
Frederick County Board of Supervisors

ATTEST:



Jay E. Tibbs, Deputy Clerk
Frederick County Board of Supervisors



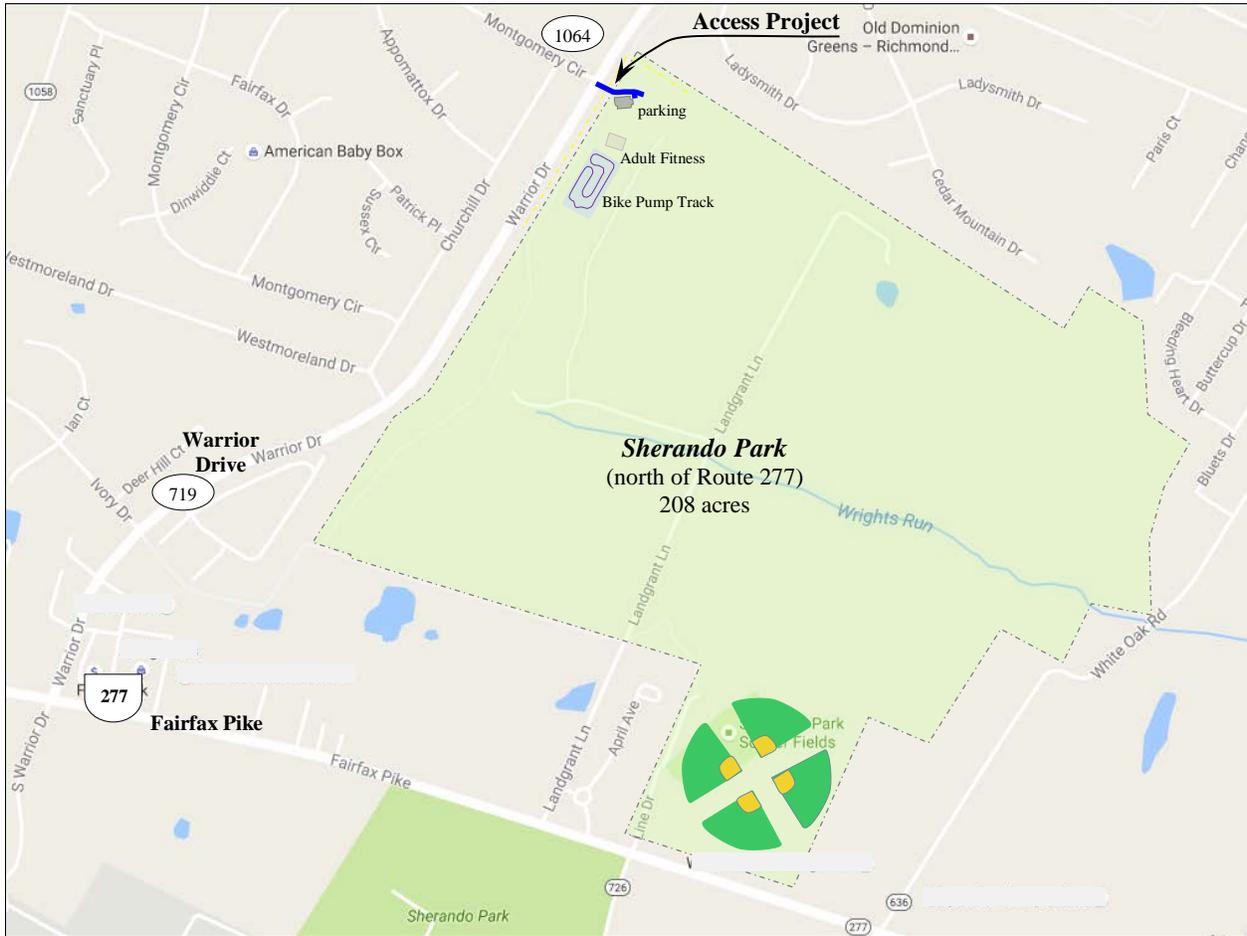
PROPOSED RECREATIONAL ACCESS PROJECT
Sherando Park
Project RECR-034-890, N501
Frederick County

Recreational Facility

Proposed facilities in northwestern area of park to include adult fitness area, bicycle ‘pump’ track, picnic shelter, restroom, and parking and overflow parking areas

Access Facility

Length: 0.06 mile
 Roadway Width: 20 feet
 Bikeway Width: 4-foot paved shoulders
 R/W Width: 40 Feet
 Estimated Cost (bikeway): \$34,000
 Estimated Cost (roadway): \$362,000
 Proposed Allocation (bikeway): \$34,000
 Proposed Allocation (roadway): \$306,000
 (\$250,000 unmatched, \$56,000 matched)
 Total Allocation: \$340,000



PROPOSED RECREATIONAL ACCESS PROJECT
Sherando Park
Project RECR-034-xxx, x501
Frederick County

Recreational Facility

Proposed facilities in northwestern area of park to include adult fitness area, bicycle ‘pump’ track, picnic shelter, restroom, and parking and overflow parking areas

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 (\$250,000 unmatched, \$56,000 matched)
 Total Allocation: \$340,000



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

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Richmond, Virginia 23219

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Agenda item # 14

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: _____ Seconded By: _____

Action: _____

**Title: Virginia Byway Designation – Routes 601, 681, 55, 646, 619 (Bristow Road),
619 (Joplin Road) – Prince William County**

WHEREAS, under the authority of §33.2-405 of the *Code of Virginia* (1950), as amended, the Commonwealth Transportation Board (CTB) is authorized to designate Virginia Byways in cooperation with the Virginia Department of Conservation and Recreation (DCR) after providing notice and the opportunity for a hearing; and

WHEREAS, at the request of the Prince William County Board of Supervisors, the staffs of DCR and the Virginia Department of Transportation (VDOT) have reviewed and determined that the following routes substantially meet the criteria as Virginia Byways; and

- Route 601 (Waterfall Road) – from the Fauquier County line east to the intersection of Route 681
- Route 681 (Antioch Road) – from the Route 601 intersection south to Route 55
- Route 55 (John Marshall Highway) – from Route 681 to the Fauquier County line
- Route 646 (Aden Road) – between Route 619 and Route 28
- Route 619 (Bristow Road) – between Joplin Road (Route 619) and Route 28
- Route 619 (Joplin Road) – between Bristow Road and I-95

WHEREAS, the DCR Director, on August 23, 2016, recommended to VDOT that the routes herein described be designated as Virginia Byways; and

Resolution of the Board
Route 601, 681, 55, 646, 619 (Bristow Road), 619 (Joplin Road)
Virginia Byway Designation
December 7, 2016
Page Two

WHEREAS, the procedures required by §33.2-405 have been followed and a public hearing was held on November 22, 2016, the views of the local governing body have been considered; and

WHEREAS, once designated as Virginia Byways, it is the sense of the CTB that such designation should not limit roadway improvements or maintenance by VDOT, or prevent the CTB from exercising its general power and duties to locate, construct, improve and maintain all highways in the Commonwealth.

NOW, THEREFORE BE IT RESOLVED that Routes 601, 681, 55, 646, 619 (Bristow Road) and 619 (Joplin Road) in Prince William County as herein described be designated as Virginia Byways.

BE IT FURTHER RESOLVED that VDOT is directed to make every effort to ensure that the scenic integrity of Virginia's Byways is maintained in order to preserve and protect the unique natural resources, and promote and protect Virginia's vital tourism industry and the thousands of jobs associated therewith.

#####

CTB DECISION BRIEF

Virginia Byway Designation
Routes 601, 681, 55, 646, 619 (Bristow Road), 619 (Joplin Road)
Prince William County

Issue: §33.2-405 of the *Code of Virginia* (1950), as amended, authorizes the Commonwealth Transportation Board (CTB), in cooperation with the Department of Conservation and Recreation (DCR) to designate Virginia Byways. Although the two agencies may take the initiative with respect to designation of a highway as a Virginia Byway, the usual procedure is to begin review actions after having received an expression of interest from the governing body of a locality.

Facts: The Prince William County Board of Supervisors, at its December 8, 2015 and January 19, 2016 meetings, voted to request Route 601 (Waterfall Road) from the Fauquier County line east to the intersection of Route 681; Route 681 (Antioch Road) from the Route 601 intersection south to Route 55; Route 55 (John Marshall Highway) from Route 681 to the Fauquier County line; Route 646 (Aden Road) between Route 619 and Route 28; Route 619 (Bristow Road) between Joplin Road (Route 619) and Route 28; Route 619 (Joplin Road) between Bristow Road and I-95 designated as Virginia Byways.

The staffs of DCR and the Virginia Department of Transportation (VDOT) have determined that the road corridors substantially meet the criteria as Virginia Byways: they include several state and nationally recognized historic sites such as Brentsville Historic District, Prince William Forest Park Historic District, Broad Run/Little Georgetown Rural Historic District, Chapman's Mill/Beverly Mill Historic District, proposed Village of Bristow Historic District and several battlefields. Additionally, nearby access to several parks and other recreational sites create attractive driving experiences and connections to Virginia Byways in adjacent Fauquier County. As provided for by §33.2-405 of the *Code of Virginia*, a public hearing was held November 22, 2016. If approved, this designation will add 39.4 miles to the Virginia Byway system, bringing the total inventory to approximately 3,500 miles.

Recommendations: VDOT recommends that the CTB approve the designation of these sections of Routes 601, 681, 55, 646 and 619 in Prince William County as Virginia Byways.

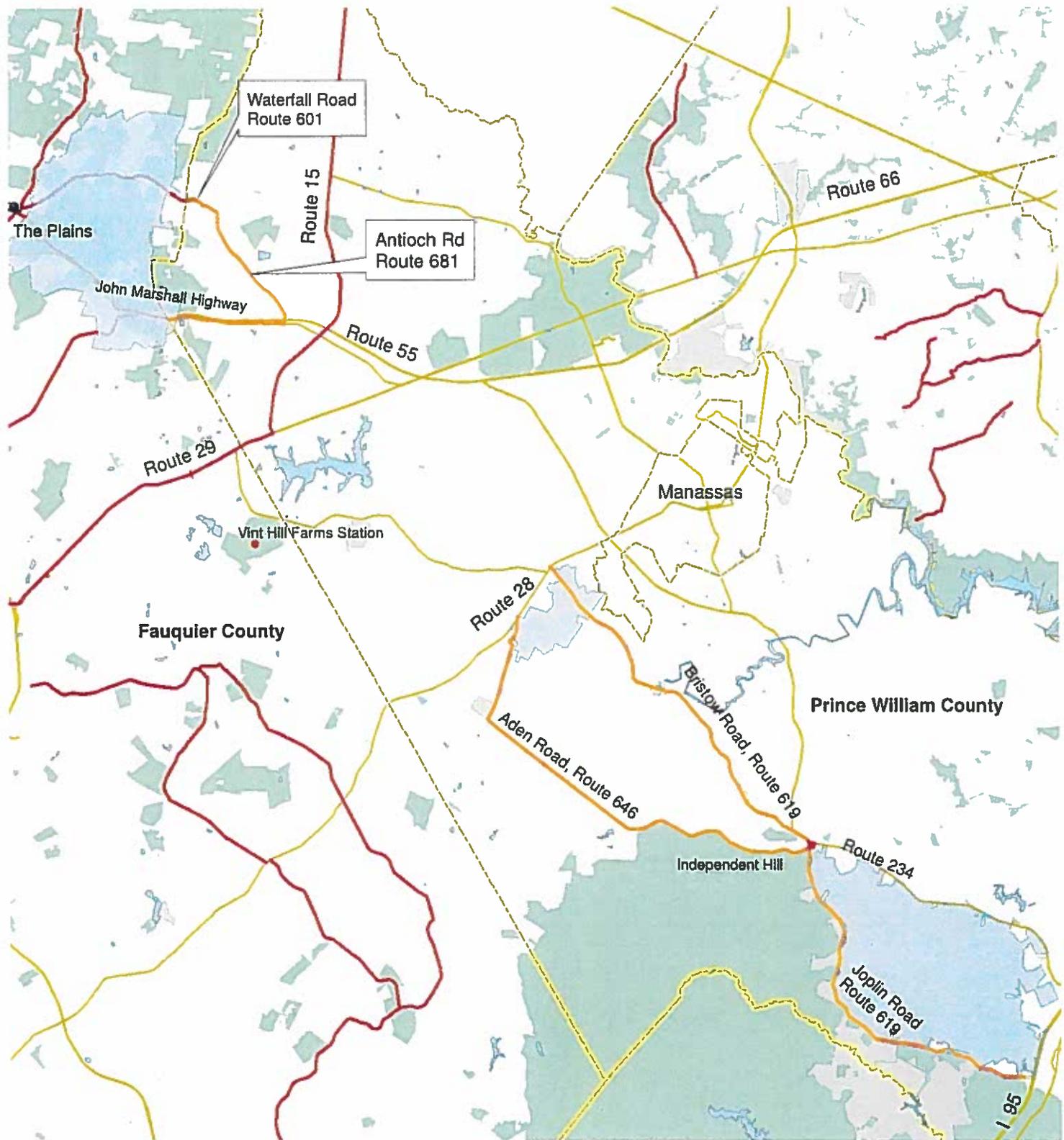
Action Required by the CTB: The *Code of Virginia* requires a majority vote of the CTB before the byway designation can be implemented. A resolution is provided for a formal vote.

Result, if Approved: Virginia Byway signs will be installed by VDOT, at each terminus and along Routes 601, 681, 55, 646 and 619, as appropriate.

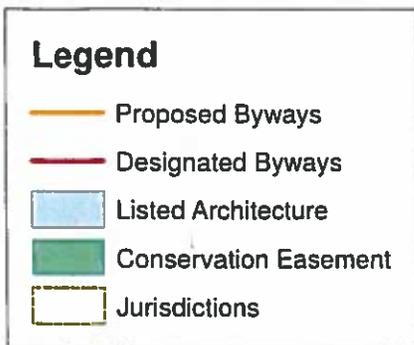
Options: Approve, deny, or defer.

Virginia Byway Designation - Routes 601, 681, 55, 646, 619 (Bristow Road), 619 (Joplin Road)
December 7, 2016
Page Two

Public Comments/Reactions:



2016 Prince William County proposed Byways





COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

1401 East Broad Street
Richmond, Virginia 23219

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Agenda item # 15

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: _____ Seconded By: _____

Action: _____

Title: Virginia Byway Designation – Routes 658, 624 and 639 – Warren County

WHEREAS, under the authority of §33.2-405 of the *Code of Virginia* (1950), as amended, the Commonwealth Transportation Board (CTB) is authorized to designate Virginia Byways in cooperation with the Virginia Department of Conservation and Recreation (DCR) after providing notice and the opportunity for a hearing; and

WHEREAS, at the request of the Warren County Boards of Supervisors, the staffs of DCR and the Virginia Department of Transportation (VDOT) have reviewed and determined that the following routes substantially meet the criteria as Virginia Byways; and

- Route 658 – from the Route 639 intersection north to the Clarke County Line
- Route 624 – from the Route 661 intersection north to the Clarke County Line
- Route 639 – from the Route 340/522 intersection east to Route 658

WHEREAS, the DCR Director, on July 25, 2016, recommended to VDOT that the routes herein described be designated as Virginia Byways; and

WHEREAS, the procedures required by §33.2-405 have been followed and given that no request for a hearing on the matter was received, the views of the local governing body have been considered; and

Resolution of the Board
Routes 658, 624 and 639 - Warren County - Virginia Byway Designation
December 7, 2016
Page Two

WHEREAS, once designated as a Virginia Byway, it is the sense of the CTB that such designation should not limit roadway improvements or maintenance by VDOT, or prevent the CTB from exercising its general power and duties to locate, construct, improve and maintain all highways in the Commonwealth.

NOW, THEREFORE BE IT RESOLVED that Routes 658, 624 and 639 in Warren County as herein described be designated as Virginia Byways.

BE IT FURTHER RESOLVED that VDOT is directed to make every effort to ensure that the scenic integrity of Virginia's Byways is maintained in order to preserve and protect the unique natural resources, and promote and protect Virginia's vital tourism industry and the thousands of jobs associated therewith.

#####

CTB DECISION BRIEF

Virginia Byway Designation Routes 658, 624 and 639 Warren County

Issue: §33.2-405 of the *Code of Virginia* (1950), as amended, authorizes the Commonwealth Transportation Board (CTB), in cooperation with the Department of Conservation and Recreation (DCR) to designate Virginia Byways. Although the two agencies may take the initiative with respect to designation of a highway as a Virginia Byway, the usual procedure is to begin review actions after having received an expression of interest from the governing body of a locality.

Facts: The Warren County Board of Supervisors, at its June 21, 2016 meeting, voted to request Route 658 from the Route 639 intersection north to the Clarke County Line; Route 624 from the Route 661 intersection north to the Clarke County Line; Route 639 from the Route 340/522 intersection east to Route 658 designated as Virginia Byways. The staffs of DCR and the Virginia Department of Transportation (VDOT) have determined that these road segments substantially meet the criteria as Virginia Byways: they have two nationally recognized historic sites, mountain vistas, limited development and absence of detracting properties, billboards and trash; and connections to previously designated Virginia Byways, which provide the basis for an attractive driving experience. If approved, this designation will add 6.42 miles to the Virginia Byway system, bringing the total inventory to approximately 3,500 miles.

The Director of DCR, by correspondence dated July 25, 2016, recommended to VDOT that the routes herein described be designated as Virginia Byways. Notice and an opportunity for a hearing were provided by VDOT in accordance with §33.2-405 of the *Code of Virginia*, but neither a request for a hearing nor any comments from the public regarding the proposed designation were received.

Recommendations: VDOT recommends that the CTB approve the designation of these sections of Routes 658, 624 and 639 Warren County as Virginia Byways.

Action Required by the CTB: The *Code of Virginia* requires a majority vote of the CTB before the byway designation can be implemented. A resolution is provided for a formal vote.

Result, if Approved: Virginia Byway signs will be installed by VDOT, at each terminus and along Routes 658, 624 and 639, as appropriate.

Options: Approve, deny, or defer.

Public Comments/Reactions: None.



Warren County Proposed Byways

Legend

- Proposed Byways
- Scenic Byways
- Roads
- Jurisdictions
- Conservation Easement



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

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Agenda item # 16

**RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD
December 7, 2016**

MOTION

Made By: _____ Seconded By: _____

Action: _____

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

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

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

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

Resolution of the Board

Loan from the State Infrastructure Bank to I-66 Express Mobility Partners LLC, for the Transform 66 P3 Project in Virginia

December 7, 2016

Page Two

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

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

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

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

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

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

#####

EXHIBIT Y
SIB LOAN AGREEMENT

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

Explanatory Statement

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

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

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

ARTICLE I
PURPOSE

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

Section 1.2 Rules of interpretation.

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

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

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the SIB Borrower

SIB Borrower represents and warrants to the CTB as follows:

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

ARTICLE III

SIB LOAN

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

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

Section 3.2 Security.

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

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

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

Section 3.5 Conditions Precedent to Disbursement of Loan Proceeds.

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

(b) Disbursement.

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

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

ARTICLE IV

COVENANTS

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

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

Section 4.3 Initial Baseline Schedule.

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

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

4.4 Ownership of Early Work Product and Third Party Claims

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

ARTICLE V

DEFAULTS AND REMEDIES; TERMINATION

Section 5.1. Defaults and Remedies.

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

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

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

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

Section 5.2 Consequences of Termination

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

ARTICLE VI

MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

COMMONWEALTH TRANSPORTATION BOARD

By: _____

Name: Charles Kilpatrick, PE

Title: Commissioner of Highways

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

I-66 EXPRESS MOBILITY PARTNERS LLC

By: _____

Name: _____

Title: Authorized Person

By: _____

Name: _____

Title: Authorized Person

ATTACHMENT 1

SIB LOAN NOTE

I-66 EXPRESS MOBILITY PARTNERS LLC

TRANSFORM 66 P3 PROJECT

[•], 2016

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

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

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

[Remainder of Page Intentionally Left Blank]

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

I-66 EXPRESS MOBILITY PARTNERS LLC

By: _____

Name: _____

Title: Authorized Person

By: _____

Name: _____

Title: Authorized Person

ATTACHMENT 1

Schedule A

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

1 **Exhibit A**
2 **AMENDED AND RESTATED**
3 **MEMORANDUM OF AGREEMENT**
4 **TRANSFORM66: INSIDE THE BELTWAY PROJECT**
5

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

11 **RECITALS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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).

"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 II.A.4. above, the CTB shall consider, approve, and allocate toll revenue funding for such 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 directions due to a significant incident or emergency, VDOT shall have the right to order the immediate suspension of tolling in the direction(s) of any diversion. Neither the Commonwealth of Virginia, the CTB, nor VDOT shall have any liability to NVTC for the loss of any toll revenues or any increase in costs and expenses attributable to the hours the toll suspension is in effect.

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

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

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

198 The CTB agrees to do the following:

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

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

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

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

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

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

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

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

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

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

248 (b) Must have the capacity to attain one or more of the Improvement
249 Goals;

250 (c) Must be one of the following multimodal transportation improvements
251 serving the Corridor:

252 i. New or enhanced local and commuter bus service, including
253 capital and operating expenses (e.g., fuel, tires, maintenance, labor
254 and insurance), subject to the limitations in IIA.4.(e), and transit
255 priority improvements;

256 ii. Vanpool, and formal and informal carpooling programs and
257 assistance;

258 iii. Capital improvements for Washington Metropolitan Area
259 Transit Authority rail and bus service, including capital and
260 operating expenses, subject to the limitations in II.A.4(e), and
261 improved access to Metrorail stations and Metrobus stops;

262 iv. Park and ride lot(s) and access or improved access thereto;

263 v. Roadway improvements to address impacts from the dynamic
264 tolling of the Facility on roadways in the Corridor (including but
265 not limited to Routes 7, 29, 50, and 309, and Washington
266 Boulevard, Wilson Boulevard, and Westmoreland Street);

267 vii. Roadway operational improvements in the Corridor;

268 viii. Transportation Systems Management and Operations as
269 defined in 23 U.S.C. § 101(a)(30) on December 1, 2015; and

270 ix. Projects identified in the Commonwealth Reports or projects in
271 the region's constrained long range plan, as such plan may be
272 updated from time to time.

273 (d) For non-debt financed Components, must demonstrate the ability to
274 obligate the toll revenues to the cost of the Component within two fiscal
275 years and to expend the toll revenues within five fiscal years of the fiscal
276 year in which the funds are allocated by the CTB except to the extent to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

520 **If to NVTC:**

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

525 Fax:

526 **If to VDOT:**

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

530 Attn: Commissioner of Highways

531 Fax: (804) 786-2940

532 *With a copy to:*

533 Office of the Attorney General

534 Chief, Transportation Section

535 202 North Ninth Street

536 Richmond, Virginia 23219

537 Fax: (804) 692-1647

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

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

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

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

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

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

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

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

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

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

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

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

571

572 *This space intentionally left blank*

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574

575

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

578

579 COMMONWEALTH TRANSPORTATION BOARD

580

581

582 _____

583 The Honorable Aubrey L. Layne, Jr

584 Secretary of Transportation

585

586 Date: _____

587

588 VIRGINIA DEPARTMENT OF TRANSPORTATION

589

590 _____

591 Charles A. Kilpatrick, P.E.

592 Commissioner of Highways

593

594 Date: _____

595

596 NORTHERN VIRGINIA TRANSPORTATION COMMISSION

597

598 _____

599 Katherine A. Mattice

600 Acting Executive Director

601

602 Date: _____

603

604

605

606



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219 2000

Charles A. Kilpatrick, P.E.
Commissioner

November 3, 2016

The Honorable Terry McAuliffe
Governor
P.O. Box 1475
Richmond, VA 23218

The Honorable Stephen D. Newman
President Pro Tempore of the Senate
P. O. Box 480
Forest, VA 24551

The Honorable William J. Howell
Speaker of the House
Virginia House of Delegates
P.O. Box 8296
Fredericksburg, VA 22404

The Honorable Aubrey L. Layne, Jr.
Secretary of Transportation
P.O. Box 1475
Richmond, VA 23218

Dear Gentlemen:

Based on available information in August of 2015, I made a finding that it was in the public interest to advance the procurement, development and operation of the Transform 66 – Outside the Beltway Project (Project) pursuant to the Public-Private Transportation Act of 1995 (PPTA), as amended (§ 33.2-1800). In addition, the Public Private Partnership Advisory Committee (August 17, 2015) and Secretary of Transportation Aubrey Layne (September 16, 2015) concurred with the finding of public interest (FOPI) and approved proceeding with development of the Project.

The Honorable Terry McAuliffe
The Honorable Stephen D. Newman
The Honorable William J. Howell
The Honorable Aubrey L. Layne, Jr.
November 3, 2016
Page Two

After an assessment of the value to the Commonwealth under three public-private partnership alternatives, the Project procurement advanced as a toll revenue concession in December 2015. The Project procurement documents, including the Comprehensive Agreement (CA) and Technical Requirements have been drafted consistent with the benefits discussed in the FOPI and the risk allocation identified in the Term Sheet.

In October 2016, the Department received two competing proposals submitted in response to a Request for Proposal. After a comprehensive review by my staff, I have concluded that both proposals are compliant with procurement requirements. The risk allocation in the CA is consistent with the Term Sheet and competition has generated significant value for the Commonwealth of Virginia. Therefore, I affirm my original finding that development and operation of the Project pursuant to the PPTA is still in the public interest of the Commonwealth of Virginia. Moreover, I hereby certify that the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities or the mitigation of revenue risk by the private sector enumerated in the FOPI have not materially changed since the FOPI was issued and the finding of public interest is still valid.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Kilpatrick', written in a cursive style.

Charles A. Kilpatrick, P.E.
Commissioner



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 # 17

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

ENDORSEMENT OF THE COMMISSIONER'S FINAL FINDING OF PUBLIC INTEREST FOR THE TRANSFORM66 OUTSIDE-THE-BELTWAY PROJECT UNDER THE PUBLIC- PRIVATE TRANSPORTATION ACT ("PPTA")

WHEREAS, on January 13, 2015, the Virginia Department of Transportation, Virginia Department of Rail and Public Transportation ("DRPT") and Virginia Office of Public Private Partnerships ("VAP3"), ("Transform66 Team") provided a briefing of information concerning a potential project to address improvements to I-66 outside the Beltway ("Transform66 Outside the Beltway Project" or "Project") to the Commonwealth Transportation Board ("CTB"); and

WHEREAS, on August 15, 2015, the Commissioner of Highways ("Commissioner") provided a Finding of Public Interest ("FOPI") for the proposed Project pursuant to § 33.2-1803.1, and sought affirmation of the FOPI from the Public Private Partnership Advisory Committee ("Committee"), and

WHEREAS, on August 17, 2015, the Commissioner presented the FOPI to the Committee, who after receiving public comment took action through an affirmative vote of a majority of Committee members, concurring with the Commissioner's findings that the proposed development and operation of the Project as a qualifying transportation facility under the PPTA serves the public interest; and

WHEREAS, on January 19, 2016 the Commissioner briefed the CTB on the major business terms, including: key policy decisions related to transit funding requirements, risk allocation, concession term, tolling policy, financing and permit requirements, and owner/developer rights as assessed from indicative financial proposals received from the Short-Listed Qualified Proposers ; and

Resolution of the Board
December 7, 2016
Endorsement of the Commissioner's Final Finding of Public
Interest
Page 2 of 2

WHEREAS, on October 11, 2016 VDOT received two competing and compliant proposals submitted in response to the final RFP issued in July 2016; and

WHEREAS, on November 3, 2016 the Secretary and the Commissioner presented an update of the PPTA procurement process and an update of the Project procurement to the Committee and the Commissioner affirmed his previous determination that the development of the Project pursuant to the PPTA as a toll revenue concession Project is in the public interest and that a Comprehensive Agreement should be entered into between VDOT and Express Mobility Partners; and

WHEREAS, on December 6, 2016, the Secretary and the Commissioner briefed the Board on the updated PPTA process and the Commissioner's final determination of public interest.

NOW, THEREFORE, BE IT RESOLVED, the CTB endorses the Commissioner's final Finding of Public Interest and hereby supports the Commissioner's execution of a Comprehensive Agreement with Express Mobility Partners.

###

CTB Decision Brief

ENDORSEMENT OF THE COMMISSIONER'S FINAL FINDING OF PUBLIC INTEREST FOR THE TRANSFORM66 OUTSIDE-THE-BELTWAY PROJECT UNDER THE PUBLIC-PRIVATE TRANSPORTATION ACT ("PPTA")

Issue The 2014PPTA Implementation Manual and Guidelines requires the Commissioner to brief the CTB on key project documents and information including the Final Finding Of Public Interest (FOPI). As part of the briefing, the Commissioner will seek the CTB's endorsement of the Final FOPI indicating support of the Agency Administrator's execution of a Comprehensive Agreement.

Facts: On January 13, 2015, the CTB was briefed on a potential project to address improvements to I-66 outside the Beltway. On August 15, 2015, the Commissioner of Highways ("Commissioner") provided a FOPI for the proposed Project pursuant to § 33.2-1803.1, and sought affirmation of the FOPI from the Public Private Partnership Advisory Committee ("Committee"). The Committee concurred with the Commissioner's finding on August 17, 2015.

On January 19, 2016 the Commissioner briefed the CTB on the major business terms, including: key policy decisions related to transit funding requirements, risk allocation, concession term, tolling policy, financing and permit requirements, and owner/developer rights as assessed from indicative financial proposals received from the Short-Listed Qualified Proposers ; and

The final RFP was issued in July 2016 and on October 11, 2016, VDOT received two competing and compliant proposals. Following the evaluation of the proposals, the Secretary and the Commissioner presented on November 3, 2016 an update of the PPTA procurement process and an update of the Project procurement to the Committee and the Commissioner affirmed his previous determination that the development of the Project pursuant to the PPTA as a toll revenue concession is in the public interest and that a Comprehensive Agreement should be entered into between VDOT and Express Mobility Partners.

Recommendations: Based on the results of the proposals and the identified Preferred Proposer, VDOT recommends that the CTB endorse the Commissioner's final Finding of Public Interest and support the Commissioner's execution of a Comprehensive Agreement with Express Mobility Partners.

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to endorse the Commissioner's final Finding of Public Interest and thereby supporting the Commissioner's execution of a Comprehensive Agreement with Express Mobility Partners..

Result, if Approved: The Commissioner will complete the procurement of this project by executing the Comprehensive Agreement with Express Mobility Partners.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219 2000

Charles A. Kilpatrick, P.E.
Commissioner

November 3, 2016

The Honorable Terry McAuliffe
Governor
P.O. Box 1475
Richmond, VA 23218

The Honorable Stephen D. Newman
President Pro Tempore of the Senate
P. O. Box 480
Forest, VA 24551

The Honorable William J. Howell
Speaker of the House
Virginia House of Delegates
P.O. Box 8296
Fredericksburg, VA 22404

The Honorable Aubrey L. Layne, Jr.
Secretary of Transportation
P.O. Box 1475
Richmond, VA 23218

Dear Gentlemen:

Based on available information in August of 2015, I made a finding that it was in the public interest to advance the procurement, development and operation of the Transform 66 – Outside the Beltway Project (Project) pursuant to the Public-Private Transportation Act of 1995 (PPTA), as amended (§ 33.2-1800). In addition, the Public Private Partnership Advisory Committee (August 17, 2015) and Secretary of Transportation Aubrey Layne (September 16, 2015) concurred with the finding of public interest (FOPI) and approved proceeding with development of the Project.

The Honorable Terry McAuliffe
The Honorable Stephen D. Newman
The Honorable William J. Howell
The Honorable Aubrey L. Layne, Jr.
November 3, 2016
Page Two

After an assessment of the value to the Commonwealth under three public-private partnership alternatives, the Project procurement advanced as a toll revenue concession in December 2015. The Project procurement documents, including the Comprehensive Agreement (CA) and Technical Requirements have been drafted consistent with the benefits discussed in the FOPI and the risk allocation identified in the Term Sheet.

In October 2016, the Department received two competing proposals submitted in response to a Request for Proposal. After a comprehensive review by my staff, I have concluded that both proposals are compliant with procurement requirements. The risk allocation in the CA is consistent with the Term Sheet and competition has generated significant value for the Commonwealth of Virginia. Therefore, I affirm my original finding that development and operation of the Project pursuant to the PPTA is still in the public interest of the Commonwealth of Virginia. Moreover, I hereby certify that the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities or the mitigation of revenue risk by the private sector enumerated in the FOPI have not materially changed since the FOPI was issued and the finding of public interest is still valid.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Kilpatrick', written in a cursive style.

Charles A. Kilpatrick, P.E.
Commissioner

Express Mobility Partners, the consortium led by Cintra and Meridiam that includes lead contractors Ferrovial Agroman US and Allan Myers VA, Inc., and lead engineers Janssen & Spaans Engineering, Inc., the Louis Berger Group, Inc. and American Structurepoint, Inc., has been selected as the preferred proposer to be the concessionaire for the express lanes on I-66 Outside the Beltway. They will finance, build, operate and maintain the I-66 Outside the Beltway Express Lanes without a public contribution. Express Mobility Partners proposed a compliant and innovative design that will enhance the quality and operations of the project.

Project Scope

- Two express lanes in each direction from I-495 (Capital Beltway) to Gainesville (University Boulevard)
- Three general purpose lanes in each direction
- Safety and operational improvements at key interchanges, including auxiliary lanes between interchanges where needed
- Expansion of transit, carpooling, vanpooling, telework and other alternatives, including:
 - New park-and-ride lots offering 4,000 spaces
 - New and enhanced commuter bus service from Fairfax and Prince William counties to regional employment centers
- New and upgraded bicycle/pedestrian paths in Fairfax and Prince William Counties
- Space included in the median to provide opportunities for future expansion of transit service, such as Metrorail

How the Lanes Will Work

Express lanes will be available to drivers who choose to pay a toll, and free to vehicles with three or more people

- Through variable tolling, the express lanes will move travelers with greater efficiency. Free-flowing traffic and predictable trips will provide the incentive to continue carpooling, even after peak commuting periods

I-66 Outside the beltway Project Area



Project Schedule

Milestone	Schedule
Begin Final Design	January 2017
Design Public Hearing	September 2017
Begin Construction	Fall 2017
Right of Way Acquisition	October 2017 – December 2018
Park and Ride Milestone (960 Parking Spaces near Gainesville)	March 5, 2019
Route 28 Signalization (Remove 4 Traffic Signals from Route 28)	February 18, 2020
Begin Tolling (Service Commencement)	July 2022
Project Completion	August 31, 2022

Visit Transform66.org



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 # 18

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 7, 2016

MOTION

Made By: Seconded By: Action:

**Title: Change in Fiscal Year 2017-2022 Six-Year Improvement Program Allocation for
Arkendale Third Track Project**

WHEREAS, § 33.2-214(B) of the *Code of Virginia* (1950), as amended, requires the Commonwealth Transportation Board (Board) to adopt by July 1 of each year a Six-Year Improvement Program (SYIP) of anticipated projects and programs and that the SYIP shall be based on the most recent official revenue forecasts and a debt management policy; and

WHEREAS, the Board adopted the Fiscal Year 2017-2022 SYIP on June 14, 2016; and

WHEREAS, the Director of the Department of Rail and Public Transportation, and after consultation with the Commonwealth Transportation Board member for the district, is authorized up to \$200,000 to reallocate funds among existing grants, to allocate additional funds to existing projects up to \$200,000 per grant, and to award additional federal and state funds for rail and public transportation projects up to \$200,000, and to deobligate funds from projects, as may be necessary to meet the goals of the Board, and that if such allocation exceeds \$200,000, the Director shall bring such request to the Board on a monthly basis for their approval prior to taking any action to record or award such action; further, the Director is authorized to make changes to the scope of a Board approved grant as needed in order to accomplish the intended project and/or outcome; and

WHEREAS, on September 13, 2012, the Department of Rail and Public Transportation (DRPT) received \$74,840,119 in federal American Recovery and Reinvestment Act stimulus funds to construct a third main line on CSX's Right of Way in Stafford and Prince William Counties. The project will improve the ability of freight and passenger trains to overtake and pass one another in a heavily congested freight corridor, thereby improving overall network capacity for intercity passenger rail service.

WHEREAS, in 2014, the Board allocated an additional \$31,000,000 in Intercity Passenger Rail Operating and Capital funds to accommodate track construction and island platform station improvements at Quantico Station, which allows better utilization of all three tracks for passenger rail service and added to the original project scope.

WHEREAS, as project construction commenced, the design-build team began reporting differing site conditions and poor soil conditions which resulted in significant cost increases to the original project scope. Despite redesign efforts, using budgeted contingency, and plans to reduce the original project scope, the project will require up to an additional \$9,159,881 to complete; and

WHEREAS, DRPT recommends this request for approval.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves the change in allocation to the Arkendale Third Track Project from \$31,000,000 to \$40,159,881, and amends the Fiscal Year 2017-2022 SYIP to reflect this change.

#

CTB Decision Brief

Change in Fiscal Year 2017-2022 Six-Year Improvement Program Allocation for Arkendale Third Track Project

Issue:

The Department of Rail and Public Transportation (DRPT) requests an increase in the allocation in the Fiscal Year 2017-2022 Six-Year Improvement Program (SYIP) for the Arkendale Third Track Project from \$31,000,000 to \$40,159,881. Changes to the Six-Year Improvement Program over \$200,000 must be approved by Commonwealth Transportation Board (CTB) prior to allocation and award.

Facts:

On September 13, 2012, DRPT received \$74,840,119 in federal American Recovery and Reinvestment Act stimulus funds to construct a third main line on CSX's Right of Way in Stafford and Prince William Counties. The project will improve the ability of freight and passenger trains to overtake and pass one another in a heavily congested freight corridor, thereby improving overall network capacity for intercity passenger rail service.

In 2014, the CTB allocated an additional \$31,000,000 in Intercity Passenger Rail Operating and Capital funds to accommodate track construction and island platform station improvements at Quantico Station, which allows better utilization of all three tracks for passenger rail service and added to the original project scope.

As project construction commenced, the design-build team began reporting differing site conditions and poor soil conditions which resulted in significant cost increases to the original project scope. Despite redesign efforts, using budgeted contingency, and plans to reduce the original project scope, the project will require up to an additional \$9,159,881 to complete.

Recommendations: DRPT recommends the approval of this additional allocation to the SYIP for Fiscal Years 2017 – 2022.

Action Required by CTB: Change the allocation for the Arkendale Third Track Project in the Fiscal Year 2017-2022 SYIP from \$31,000,000 to \$40,159,881.

Options: Approve, Deny, or Defer.

BID RESULTS FOR THE CTB

AWARD/EXECUTED

PRIMARY

Order No.	UPC No. Project No.	Location and Work Type	Vendor Name	No Of Bidders	Bid Amount	Estimated Construction Cost.
603	108830, 108831, 108832	LOCATION: VARIOUS	SUPERIOR PAVING CORPORATION	4	\$8,084,510.74	\$8,672,146.67
	(NFO)PM6B-966-F17, P401		GAINESVILLE			
	STP-PM06(386)	STAFFORD	VA			
	Maintenance Funds	FREDERICKSBURG DISTRICT				
		2017 PLANT MIX (VOLUME 1 OF 2)				

1 Recommended for AWARD \$8,084,510.74

AWARD/EXECUTED

SECONDARY

Order No.	UPC No. Project No.	Location and Work Type	Vendor Name	No Of Bidders	Bid Amount	Estimated Construction Cost.
901	109144	LOCATION: VARIOUS	SLURRY PAVERS, INC.	2	\$5,573,774.38	\$5,163,211.81
	SS9A-96A-F17, P401		RICHMOND			
	NONE	LOUDOUN	VA			
	Maintenance Funds	NORTHERN VIRGINIA DISTRICT				
		2017 SLURRY SEAL (VOLUME 1 OF 2)				

1 Recommended for AWARD \$5,573,774.38

BID RESULTS FOR THE CH6

Letting Date: 11/30/2016

Order No.	UPC No. Project No.	Location and Work Type	Vendor Name	No Of Bidders	Bid Amount	Estimated Construction Cost.
K19	103907	FROM: JONES BRANCH DRIVE	ARCHER WESTERN	5	\$39,693,825.36	\$38,884,700.51
	(NFO)8102-029-065, C501, B627-29	TO: RTE. 123 DOLLEY MADISON BOULEVARD	CONSTRUCTION, LLC			
	STP-5A01 (717)	FAIRFAX	ATLANTA, GA			
	Construction Funds	NORTHERN VIRGINIA DISTRICT				
		CONSTRUCT JONES BRANCH CONNECTOR				

1 Recommended for AWARD \$39,693,825.36

BID RESULTS FOR THE CTB

September 28, 2016

DESIGN BUILD PROJECT

UPC No. & Project No.	Location and Work Type	RECOMMENDATION	Contractor	Number of Bids	Bid Amount	Estimated Construction Cost
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MISCELLANEOUS

105463, 0606-088-653, C501 100829, 0606-088-622, C501, B634	Route 606 Bridge Replacement over I-95 with Route 606 Widening and Associated Improvements	AWARD	Shirley Contracting Company, Lorton, Virginia	2	\$16,469,882.70	\$12,857,164.00
Contract #C00105463DB89 Design, ROW, Construction & QA/QC	Project has two components to include: demolition and replacement of existing Route 606 bridge over I-95 and related improvements; and widening of Route 606 adjacent to the interchange to four lane typical section					

1 Recommended for Award: \$16,469,882.70

December 2016 CTB Meeting

(NFO) 8102-029-065,C501,B627,B628,B629

Fairfax County

The Jones Branch Connector Project (JBC) is a key planned component of the future transportation network within the Tysons area. It will serve as an important element of a larger set of transportation improvements planned for the Tysons area. This project will provide connectivity between the Tysons East and Tyson Central areas; enhancing access to the I-495 Express Lanes, to on-going development, and to the Metro Rail system.

The Jones Branch Connector (JBC) is being configured to meet the primary goals of Fairfax County in its redevelopment of Tysons. These goals include the development of a grid of streets that are:

1. Pedestrian friendly
2. Support multi-modal forms of transportation (such as bicycles and buses)
3. Contribute to a more urban, "downtown" feel than currently exists.

Late in the plan development process, the proposed Jones Branch Connector (JBC) adopted the name of Scotts Crossing Road which is the name of the existing roadway to be widened east of I-495.

The JBC Project will provide an alternative corridor for crossing the Capital Beltway (I-495) from Jones Branch Drive to Dolley Madison Boulevard (Route 123) and the new McLean Metro Rail Station. The new roadway will link the Metro Rail Station to major portions of Tysons located west of I-495; bus service will be increased, and walking and biking distances to the station will be shortened. As a result, fewer automobile trips should be generated.

Currently, the partially completed Jones Branch Connector carries traffic between Jones Branch Drive west of the Capital Beltway to/from the I-495 Express Lanes. There is no existing direct access to the I-495 Express Lanes from areas east of I-495. The extended JBC will allow traffic in the Tysons East area to access the I-495 Express Lanes more directly. Pedestrian traffic and bicycle traffic are expected to form a significant portion of the trips using this urban Avenue.

The proposed project will extend JBC to the east and provide a low-speed, multi-modal urban avenue as a direct link between Jones Branch Drive (Rte. 5062) and Dolly Madison Blvd. (Rte. 123). The completed roadway link is expected to carry over 21,000 vehicles per day in the design year of 2020; generated in part by on-going development in the Tysons area. The completed project will improve vehicular, bicycle, and pedestrian circulation between segments of Tysons that are currently divided by I-495. By providing an optional route across the Beltway, the JBC project will provide needed traffic relief along Route 123, at the Route 123 / I-495 interchange, and for other intersections near the Tysons shopping and business areas.

The project involves widening JBC west of I-495, widening two existing bridges, plus constructing a new bridge over the northbound I-495 Express Lanes and northbound I-495 General Purpose Lanes. The JBC Project will modify the existing interchange of the JBC and the I-495 Express Lane Ramps. East of I-495, the project will widen the cross section of existing Scotts Crossing Road up to its intersection with Route 123 (Dolley Madison Blvd.) to match the proposed ultimate cross section of the JBC Project.

The proposed JBC Project will provide for 2 travel lanes and on-street bike lanes in each direction; 8 to 12-foot wide lighted sidewalks, and streetscape amenities as defined in the Tysons Corner Design Guidelines. The urban avenue includes curbs separating the sidewalks and travel ways and incorporates a wide, raised concrete median. The 24-foot to 36-foot raised median will help accommodate the future Tysons Circulator as either a bus or rail trolley transit system. The total project length is approximately 0.55 miles.

The JBC Project has been designed in coordination with on-going adjacent development including:

- a major project by Capital One Bank in the southeast quadrant to construct a new high-rise headquarters building that will be the tallest in northern Virginia;
- new facilities by MRP Tysons, LLC in the northwest quadrant including a building for Navy Federal Credit Union;
- modifications to the parking and access to the Gates of McLean townhome/condominium complex including a service road connection;
- modifications to the garage and retaining walls at Tysons Park Place II in the southwest quadrant which contains the headquarters for Hilton;
- modifications to the entrance to Cleveland 1820, Dolley Madison, LLC and their future garage;
- and coordination for access and signs with the massive City Line development proposed for east of Route 123.

When completed, VDOT and the County will gain an important local circulation route to ease access around Tysons, provide options to bypass heavily used regional transportation systems, add better links to the new Silver Line Metrorail Facility and the I-495 Capital Beltway Express lanes, and improve access to planned major developments in the Tysons area.

Fixed completion **NOVEMBER 19, 2019**

DESIGN BUILD PROJECT AWARD

**0606-088-653, C501
0606-088-622, C501, B634**

Spotsylvania County

This project replaces the existing Route 606 bridge over I-95 and makes roadway improvements to Route 606. Replacement of the Route 606 bridge will include required tie-ins to Route 606 and the interstate ramps. The new bridge will be constructed for the ultimate design of Route 606 which is a four lane divided highway, and will include turn lanes. A sidewalk will be installed on the proposed bridge. Improvements to Interstate 95 ramps for interchange improvements and in coordination with the bridge replacement are included.

Route 606 and Mallard Road and the entrance to Dominion Raceway Avenue to the east of Interstate 95 will be improved. Improvements include widening and realignment, drainage improvements and sidewalk.

The Project is being procured using a two phase design-build selection process.

The Project shall include, but not be limited to, work required to support the design and construction of the following project elements:

- (a) Roadway widening
- (b) Demolition of existing bridge
- (c) Construction of a new bridge
- (d) Survey
- (e) Environmental requirements
- (f) Geotechnical
- (g) Hydraulics
- (h) Right of Way and Utilities
- (i) Traffic Control Devices
- (j) Transportation Management Plan
- (k) Quality Assurance and Quality Control
- (l) Construction Engineering and Inspection
- (m) Project Management
- (n) Public Involvement and Relations

Final Completion September 18, 2019

BALLOT THRESHOLD REPORT

Letting Date: 11/16/2016

MISCELLANEOUS

Order No.	UPC No. Project No.	Location and Work Type	Vendor Name	No Of Bidders	Bid Amount	Estimated Construction Cost.
K75	108584	LOCATION: VARIOUS	PHILLIP C. CLARKE ELECTRICAL CONTRACTOR, INC.	5	\$3,243,957.25	\$3,492,985.54
	(NFO)TS09-96A-420, N501		DUMFRIES			
	STP-5A01(733)	NORTHERN VA	VA			
	Maintenance Funds	NORTHERN VIRGINIA DISTRICT				
		REGIONAL ON-CALL TRAFFIC SIGNAL / ITS INSTALL, REBUILD,MODIFY				

BALLOT THRESHOLD REPORT

Letting Date: 11/16/2016

PRIMARY

Order No.	UPC No. Project No.	Location and Work Type	Vendor Name	No Of Bidders	Bid Amount	Estimated Construction Cost.
605	108834, 108835, 108836	LOCATION: VARIOUS	LEE HY PAVING CORPORATION	3	\$3,243,294.54	\$3,966,748.00
	(NFO)PM6D-966-F17, P401		GLEN ALLEN			
	STP-PM06(389)	STAFFORD	VA			
	Maintenance Funds	FREDERICKSBURG DISTRICT				
		2017 PLANT MIX (VOLUME 1 OF 2)				

BALLOT THRESHOLD REPORT

Letting Date: 11/16/2016

SECONDARY

Order No.	UPC No. Project No.	Location and Work Type	Vendor Name	No Of Bidders	Bid Amount	Estimated Construction Cost.
301	109152, 109153	LOCATION: VARIOUS	WHITEHURST PAVING COMPANY, INCORPORATED	1	\$2,472,680.75	\$2,385,628.32
	(NFO) ST3A-963-F17, N501		RICHMOND			
	STP-PM0-3(340)	CAMPBELL	VA			
	Maintenance Funds	LYNCHBURG DISTRICT				
		2017 SURFACE TREATMENT (VOLUME 1 OF 2)				
302	109147, 109151	LOCATION: VARIOUS	WHITEHURST PAVING COMPANY, INCORPORATED	1	\$2,067,911.85	\$2,001,755.62
	(NFO) ST3B-963-F17, N501		RICHMOND			
	STP-PM0-3(341)	PRINCE EDWARD	VA			
	Maintenance Funds	LYNCHBURG DISTRICT				
		2017 SURFACE TREATMENT (VOLUME 1 OF 2)				
303	109148, 109150	LOCATION: VARIOUS	WHITEHURST PAVING COMPANY, INCORPORATED	1	\$2,954,304.58	\$2,965,610.83
	(NFO) ST3C-963-F17, N501		RICHMOND			
	STP-PM0-3(342)	PITTSYLVANIA	VA			
	Maintenance Funds	LYNCHBURG DISTRICT				
		2017 SURFACE TREATMENT (VOLUME 1 OF 2)				

Letting Date: 11/16/2016

SECONDARY

Order No.	UPC No. Project No.	Location and Work Type	Vendor Name	No Of Bidders	Bid Amount	Estimated Construction Cost.
402	109033	LOCATION: VARIOUS	PAYNE PAVING COMPANY, LLC	1	\$3,170,037.65	\$3,271,008.36
	ST4B-058-F17, P401		RICHMOND			
	NONE	MECKLENBURG	VA			
	Maintenance Funds	RICHMOND DISTRICT				
		2017 SURFACE TREATMENT (VOLUME 1 OF 2)				
405	109051	LOCATION: VARIOUS	SLURRY PAVERS, INC.	2	\$2,103,856.87	\$2,151,352.08
	SS4A-964-F17, P401		RICHMOND			
	NONE	HANOVER	VA			
	Maintenance Funds	RICHMOND DISTRICT				
		2017 SLURRY SEAL (VOLUME 1 OF 2)				
601	108828	LOCATION: VARIOUS	PAVING CONTRACTORS, INC.	1	\$3,702,350.83	\$3,884,332.40
	ST6A-966-F17, P401		VILLAGE			
	NONE	RICHMOND	VA			
	Maintenance Funds	FREDERICKSBURG DISTRICT				
		2017 SURFACE TREATMENT (VOLUME 1 OF 2)				

BALLOT THRESHOLD REPORT

Letting Date: 11/16/2016

SECONDARY

Order No.	UPC No. Project No.	Location and Work Type	Vendor Name	No Of Bidders	Bid Amount	Estimated Construction Cost.
701	109028	LOCATION: VARIOUS	PAYNE PAVING COMPANY, LLC	2	\$2,839,963.44	\$2,915,736.28
	ST7A-967-F17, P401		RICHMOND			
	NONE	LOUISA	VA			
	Maintenance Funds	CULPEPER DISTRICT				
		2017 SURFACE TREATMENT (VOLUME 1 OF 2)				
903	109206	LOCATION: VARIOUS	SLURRY PAVERS, INC.	2	\$2,723,870.60	\$3,089,801.46
	LM9C-96A-F17, N501		RICHMOND			
	NONE	FAIRFAX	VA			
	Maintenance Funds	NORTHERN VIRGINIA DISTRICT				
		2017 LATEX MICROSURFACING (VOLUME 1 OF 2)				