



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

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Agenda item # 4

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

January 10, 2018

MOTION

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

Title: Approval and Authorization for the Commissioner of Highways to Execute a Memorandum of Understanding between the NVTa and the CTB related to Selection and Proposal of Projects to be Funded With Transform 66 Outside the Beltway Concession Payment

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

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

WHEREAS, upon financial close of the Project on November 9, 2017, in accord with the terms of the Comprehensive Agreement, the Concessionaire paid the Virginia Department of Transportation (VDOT), a Concession Fee/Payment of \$578,919,450 (Concession Payment); and

WHEREAS, pursuant to §33.2-1528 of the *Code of Virginia*, Concession Payments to the Commonwealth from qualifying transportation facilities developed and/or operated pursuant to the PPTA must be held in a separate subaccount to be designated the Concession Payments Account, together with all interest, dividends, and appreciation that accrue to the Account, and said sums may only be used for the purposes specified; and

WHEREAS, §33.2-1528 specifies that allocations from the Concession Payments Account may be used to pay or finance all or part of the costs of programs or projects, but that (i) the allocations must be limited to programs and projects that are reasonably related to or benefit the users of the qualifying transportation facility that was the subject of a concession pursuant to the PPTA; and (ii) the priorities of metropolitan planning organizations, planning district commissions, local governments, and transportation corridors shall be considered by the Board in making project allocations from moneys in the Account; and

WHEREAS, VDOT has been advised by the Federal Highway Administration that projects funded with the Concession Payment must be “federal-aid eligible” pursuant to Title 23 of the U.S. Code and if federal funds are used on any such project, federal-aid requirements must be met; and

WHEREAS, on December 6, 2017, the Board endorsed a list of Projects, attached hereto as Appendix A, comprised of (i) NVTA-selected Projects and (ii) Route 29 Projects consisting of improvements that extend from Shirley Gate Road to the vicinity of Pickwick Road in Fairfax County, and specified that the Board will consider allocating funds from the Concession Payment Account to said projects and adding the NVTA-selected projects to the Six Year Program at its January 2018 meeting or thereafter, provided that VDOT has documentation evidencing that each project satisfies all applicable requirements set forth in federal and state law, including but not limited to those set forth in §33.2-1528; and

WHEREAS, pursuant to the Board’s direction on December 6, 2017, VDOT has worked with NVTA to develop a memorandum of agreement, attached hereto as Exhibit B (MOA), that establishes the roles and responsibilities of VDOT, the Board and the NVTA with regard to the selection, funding and delivery of any NVTA-selected Projects, as well as Route 29 Projects, to which the Board allocates funds from the Concession Payment Account and now seeks the Board’s approval of, and authority for the Commissioner of Highways to execute, said MOA.

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves and authorizes the Commissioner of Highways to execute the MOA establishing the roles and responsibilities of VDOT, the Board and the NVTA with regard to the selection, funding and delivery of any NVTA-selected Projects, as well as Route 29 Projects, to which the Board allocates funds from the Concession Payment Account, attached hereto as Appendix B, with such changes as the Commissioner deems appropriate.

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CTB Decision Brief

Approval and Authorization for the Commissioner of Highways to Execute a Memorandum of Understanding between the NVTA and the CTB Relating to Selection and Proposal of Projects to be Funded with the Transform 66 Outside the Beltway Concession Payment

Issue: The Commonwealth Transportation Board (Board) is asked to approve a resolution authorizing the Commissioner to execute a Memorandum of Understanding (MOU) between NVTA and the CTB establishing the roles and responsibilities of VDOT, NVTA and the Board with regard to the selection, funding and delivery of projects to be funded with funds from the Transform 66 Outside the Beltway Concession Payment Account.

Facts: I-66 Outside the Beltway will be financed, designed, built, maintained and operated by I-66 Mobility Partners LLC (the Concessionaire) pursuant to a Comprehensive Agreement developed under the Public Private Transportation Act of 1995 (PPTA) and entered into on December 8, 2017. In accord with the Comprehensive Agreement, the Concessionaire paid VDOT a concession fee of \$578,919,450..

Pursuant to §33.2-1528 of the *Code of Virginia*, Concession Payments to the Commonwealth from qualifying transportation facilities developed and/or operated pursuant to the PPTA must be held in a separate subaccount to be designated the Concession Payments Account, together with all interest, dividends, and appreciation that accrue to the Account, and said sums may only be used for the purposes specified. Section 33.2-1528 further specifies that allocations from the Concession Payments Account may be used to pay or finance all or part of the costs of programs or projects, but that (i) the allocations must be limited to programs and projects that are reasonably related to or benefit the users of the qualifying transportation facility that was the subject of a concession pursuant to the PPTA; and (ii) the priorities of metropolitan planning organizations, planning district commissions, local governments, and transportation corridors shall be considered by the Board in making project allocations from moneys in the Account; and

VDOT has been advised by the Federal Highway Administration that projects funded with the Concession Payment must be “federal-aid eligible” pursuant to Title 23 of the U.S. Code and if federal funds are used on any such project, federal-aid requirements must be met; and

On December 6, 2017, the Board endorsed a list of Projects, attached hereto as Appendix A, comprised of (i) NVTA-selected Projects and (ii) Route 29 Projects consisting of improvements that extend from Shirley Gate Road to the vicinity of Pickwick Road in Fairfax County, and specified that the Board will consider allocating funds from the Concession Payment Account to said projects and adding the NVTA-selected projects to the Six Year Program at its January 2018 meeting or thereafter, provided that VDOT has documentation evidencing that each project satisfies all applicable requirements set forth in federal and state

law, including but not limited to those set forth in §33.2-1528. On December 6, 2017, the Board also directed VDOT to work with NVTA to develop a memorandum of agreement (MOA) that establishes the roles and responsibilities of VDOT, the Board and the NVTA with regard to the selection, funding and delivery of any NVTA-selected Projects, as well as Route 29 Projects, to which the Board allocates funds from the Concession Payment Account. VDOT has developed said MOA with NVTA (attached hereto as Exhibit B) and now seeks the Board's approval of, and authority for the Commissioner of Highways to execute the MOA.

Recommendations: Approve the Resolution approving, and authorizing the Commissioner of Highways to execute, the MOA between the CTB and NVTA which establishes the roles and responsibilities of VDOT, the Board and the NVTA with regard to the selection, funding and delivery of any NVTA-selected Projects, as well as Route 29 Projects, to which the Board allocates funds from the Concession Payment Account, and which is attached hereto as Appendix B, with such changes as the Commissioner deems appropriate.

Action Required by CTB: Approval of the Resolution by a majority vote of the Board

Results if Approved: If the Resolution is approved, the Commissioner of Highways will be authorized to execute the MOA between the CTB and NVTA which establishes the roles and responsibilities of VDOT, the Board and the NVTA with regard to the selection, funding and delivery of any NVTA-selected Projects, as well as Route 29 Projects, to which the Board allocates funds from the Concession Payment Account, with such changes as the Commissioner deems appropriate. The Commissioner will bear responsibility for determining that VDOT has the appropriate documentation providing evidence that each project satisfies all applicable requirements set forth in federal and state law, including but not limited to those set forth in §33.2-1528.

Options: Approve, Deny, or Defer

Public Comments/Reactions: N/A

Appendix A
Transform 66 Outside the Beltway
Concession Fee Projects

Jurisdiction	Project	Request - Millions
Arlington County	East Falls Church Metrorail Station Bus Bay Expansion	\$4.8
Fairfax County	Jermantown Road Bridge over I-66: Widen to four lanes	\$11.0
	Route 50 and Waples Mill Road intersection improvements	\$2.0
	Monument Drive bridge pedestrian facility improvement	\$3.8
	Commuter parking structure at Government Center/Fairfax Corner	\$38.5
	Lee Highway pedestrian improvements: Completion of missing segments of pedestrian walkway on the south side of Lee Highway from Nutley Street to Vaden Drive	\$1.3
	Poplar Tree Road bridge construction to four lanes	\$6.0
	I-66 median widening (Lee Highway (Route 29) to Route 28) for WMATA Orange Line accommodation	\$40.0
Prince William County	Route 234 at Balls Ford Road interchange including Balls Ford Road improvements*	\$145.0
	Balls Ford Road widening: Groveton Road to Route 234 Business (Sudley Road)	\$67.4
City of Fairfax	George Snyder Trail: From Chain Bridge Road (Route 123) to Fairfax Boulevard (Route 50) at Draper Drive	\$13.6
Town of Vienna	Nutley Street SW mixed-use trail: From Marshall Road SW to Tapawingo Road SW	\$0.3
PRTC	Western bus maintenance & storage facility	\$11.1
VRE	VRE Manassas Line capacity expansion and real-time multimodal traveler information project (rolling stock, Broad Run station/parking/expansion, South Manassas 3rd track, Manassas Station platform extension, Manassas Park parking/bridge, real-time traveler info)	\$128.5
Fairfax County	Route 29 Improvements: From Pickwick Road to Shirley Gate Road, various phases	\$26.7
	Total	\$500.0

MEMORANDUM OF AGREEMENT
TRANSFORM66: OUTSIDE THE BELTWAY PROJECT

This Memorandum of Agreement (“MOA”) is entered into on _____, 2017, between the Commonwealth Transportation Board (“CTB”), and the Northern Virginia Transportation Authority (“NVTA”) (collectively, the “Parties”).

RECITALS

WHEREAS, the CTB, the Virginia Department of Transportation (“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 Gainesville, Virginia and Route 29 in the Rosslyn area of Arlington County, Virginia; and

WHEREAS, the Transform66 program is composed of two distinct components: (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 “Inside the Beltway Component”), 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 (the “Outside the Beltway Component”); and

WHEREAS, the goals of the Outside the Beltway Component are to (1) move more people; (2) enhance transportation connectivity; (3) improve transit service; (4) reduce roadway congestion; and (5) increase travel options (collectively, the “Improvement Goals”), all of which will benefit the users of the portion of I-66 beginning at the Beltway and ending at Route 29 in Gainesville, Virginia (the “Facility”); and

WHEREAS, VDOT entered into a Comprehensive Agreement with I-66 Express Mobility Partners, LLC relating to the Outside the Beltway Component, which provided for a concession payment to the Commonwealth to facilitate implementation of projects that are reasonably related to or benefit the users of the Outside the Beltway Component, including but not limited to multimodal transportation improvements to the roadways and associated transportation and transit facilities in the vicinity of the Facility (“OTB Projects”); and

32 WHEREAS, in accordance with § 33.2-1528 of the *Code of Virginia* (1950), the
33 Commonwealth has established a separate subaccount (“Concession Payments Account”) of the
34 Transportation Trust Fund in which to hold the concession payment, from which the CTB may
35 make allocations for the purposes set forth in the statute; and

36 WHEREAS, in accordance with § 33.2-2500(4) and § 33.2-2512(10) of the *Code of*
37 *Virginia* (1950), NVTA may enter into agreements with any federal, state, local or private entity
38 to provide, or cause to be provided, transportation facilities and services to the area embraced by
39 NVTA; and

40 WHEREAS, subject to the requirements set forth in this MOA the CTB has indicated by
41 resolution dated December 6, 2017 its preliminary endorsement of the use of funds from the
42 Concession Payments Account for certain projects selected by NVTA designed specifically to
43 attain the Improvement Goals (NVTA-selected Projects) and certain Route 29 Improvement
44 Projects, set forth in Exhibit 1 and amounting to \$500,000,000 collectively; and

45 WHEREAS, by resolution dated January 10, 2018, the CTB has indicated its intent to
46 allocate up to \$500,000,000 from the Concession Payments Account to be used to fund the
47 NVTA-selected Projects) and the Route 29 Improvement Projects (NVTA/CTB Project Portion),
48 subject to certain conditions, including but not limited to lawful appropriations; and

49 WHEREAS, such project selection by NVTA shall not constitute approval by NVTA of
50 the Commonwealth’s actions to impose tolling along the Facility; and

51 WHEREAS, the NVTA may continue to select and submit additional Projects for
52 approval and allocation by the CTB in accordance with this MOA (“Additional NVTA-selected
53 Projects”) until the NVTA/CTB Project Portion from the Concession Payments Account has
54 been exhausted.

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

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

59 This MOA provides NVTA with the authority to submit for CTB approval the NVTA-
60 selected Projects and any additional NVTA-selected Projects to be financed in whole or in part
61 from the NVTA/CTB Project Portion from the Concession Payments Account, subject to the
62 conditions and requirements of this MOA. This MOA and the rights and obligations hereunder,

63 are specifically subject to, and governed by applicable state and federal laws concerning the
64 allowable use of concession payments, including but not limited to § 33.2-1528, § 33.2-2500(4)
65 and § 33.2-2512(10) of the *Code of Virginia* (1950), as amended (“Virginia Code”), 23 U.S.C.
66 §§ 129 and 166 and the terms of any agreement by and between the Federal Highway
67 Administration (“FHWA”) and VDOT that may be required in order to toll the Facility.

68 This MOA does not grant NVTA any authority over I-66, the tolling of I-66, or any other
69 roadways in the I-66 corridor. It also does not obligate VDOT or the CTB to provide any
70 specified amount of revenues beyond the NVTA/CTB Project Portion of the Concession
71 Payment allocated by the CTB in compliance with Virginia Code § 33.2-1528 as provided in this
72 MOA.

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

74 A. The CTB shall have the following roles and responsibilities:

75 **1. Establishment of Concession Payments Account.** Subject to any applicable
76 and necessary approvals of FHWA, and in accordance with law, the CTB has
77 established and shall maintain the Concession Payments Account as a separate
78 subaccount of the Transportation Trust Fund in which to hold the concession
79 payment. In addition, the Concession Payments Account shall hold all interest,
80 dividends, unexpended or excess funds allocated to NVTA-selected projects and
81 appreciation that accrue to the Concession Payments Account and that are not
82 otherwise specifically directed by law or reserved by the CTB for other purposes
83 allowed by law. The CTB shall cause VDOT to provide annual reports to the
84 NVTA on the balance of the NVTA/CTB Project Portion of and the overall
85 Concession Payments Account.

86 a. Nothing in this MOA shall obligate the CTB to allocate any funds in
87 excess of funds agreed upon in this MOA generally and as to each project
88 set forth in Exhibit 1 and any such obligation under this MOA is subject to
89 Section VIII.

90 b. For any project allocated funds from the NVTA/CTB Project Portion of
91 the Concession Payments Account, in the event it is determined by the
92 entity administering the project (“Project Sponsor”), either before
93 commencement or during delivery of the project, that the cost of a NVTA-

94 selected Project will or may exceed the allocation shown for such Project
95 in Exhibit 1, both parties agree to cooperate, in consultation with the
96 Project Sponsor when necessary, (i) in determining whether additional
97 funding or sources of funding for the project can be made available, (ii) in
98 reducing the scope of the project, if feasible, or (iii) to terminate the
99 project, or if the project has commenced, to terminate the project before its
100 costs exceed the allocated amount. Notwithstanding the foregoing, the
101 Parties agree, that to the extent there are sufficient funds in the Concession
102 Payments Account to fund the additional Project costs, said funds will not
103 be available unless and until the CTB has taken action to allocate such
104 additional funds.

105 **2. Approval of Projects of the Outside the Beltway Component.** Provided
106 NVTA complies with the criteria established herein for selection of Projects, all
107 other requirements of this MOA are satisfied, and there are sufficient funds in the
108 NVTA/CTB Project Portion of the Concession Payments Account to fund said
109 project(s), the CTB shall consider, approve, and allocate funds to, the NVTA-
110 selected projects and any Additional NVTA-selected Projects.

111 **3. Ensure Appropriate Administration of NVTA-selected Projects.** NVTA-
112 selected Projects approved by the CTB may be administered by entities such as
113 VDOT, DRPT, localities or transit entities/agencies, and the CTB shall cause
114 VDOT to ensure that standard procedures, protocols and project administration
115 agreements are used/established for such projects.

116

117 B. NVTA shall have the following roles and responsibilities:

118 **1. Use of Concession Payment; Compliance with Laws Limiting Use.** NVTA
119 shall work with VDOT to determine, and develop documentation evidencing, that
120 all NVTA-selected Projects meet the criteria below and have been selected in
121 accordance with NVTA’s selection process described in Section II.B.2. Until all
122 funds remaining in the NVTA/CTB Project Portion of the Concession Payments
123 Account have been exhausted, NVTA may, when advised by VDOT that sums
124 from the NVTA/CTB Project Portion of the Concession Payments Account

125 remain unexpended and are available for additional projects, submit to the CTB
126 Additional NVTA-selected Projects proposed to be funded in whole or in part by
127 the NVTA/CTB Project Portion of the Concession Payments Account. Such
128 Projects shall be separately identified with supporting documentation. The CTB
129 shall consider and may approve the Projects selected by NVTA, pursuant to
130 Section II.A.2, provided the Projects meet the criteria below and are selected in
131 accordance with NVTA’s selection process described in Section II.B.2 and
132 provided further that there are sufficient sums in the NVTA/CTB Project Portion
133 of the Concession Payments Account. NVTA must work with VDOT to
134 determine and provide documentation evidencing that each proposed Project
135 meets/satisfies each of the following criteria:

- 136 (a) Must be reasonably related to or benefit the users of the Outside the
137 Beltway Component;
- 138 (b) Must have the capacity to attain one or more of the Improvement Goals;
- 139 (c) Must be a project that is eligible/qualifies for federal-aid pursuant to
140 Title 23 of the U.S. Code;
- 141 (d) Must be one of the following types of multimodal transportation
142 improvements or projects serving the Facility,
 - 143 i. Capital Projects for new or enhanced local and commuter bus
144 service, and transit priority improvements,
 - 145 ii. Expansion or enhancement of transportation demand
146 management strategies, including without limitation, vanpool, and
147 carpooling programs and assistance,
 - 148 iii. Capital improvements for expansion or enhancement of
149 Washington Metropolitan Area Transit Authority rail and bus
150 service, and for improved access to Metrorail stations and
151 Metrobus stops,
 - 152 iv. New or enhanced park and ride lot(s) and access or improved
153 access thereto,
 - 154 v. Capital Improvement projects for new or enhanced Virginia
155 Railway Express facilities or services,
 - 156 vi. Roadway improvements,
 - 157 vii. Transportation Systems Management and Operations as
158 defined in 23 U.S.C. § 101(a)(30), or
 - 159 viii. Projects identified in Commonwealth studies and plans or
160 projects in the region’s constrained long range plan or regional
161 transportation plans approved by the Northern Virginia

162 Transportation Authority, as any such plan may be updated from
163 time to time; and

164
165 (e) Must demonstrate that the Projects will be in compliance with all
166 applicable laws, rules and regulations and have received or will receive all
167 required regulatory approvals.

168
169 Under no circumstances shall the NVTA/CTB Project Portion of the
170 Concession Payments Account be used to pay any debt, obligation or
171 liability unrelated to the Outside the Beltway Component, or for any
172 purposes other than those specified in this MOA.

173 NVTA understands and agrees that in the selection of Projects to be
174 funded with the NVTA/CTB Project Portion of the Concession Payments
175 Account, the provisions of Virginia Code § 33.2-1528 as well as all other
176 state and federal laws and regulations that limit the use of concession
177 payments, and concession payments from interstate highways specifically
178 shall apply.

179 **2. Project Selection Process:** NVTA warrants that any NVTA-selected Project
180 that has been or will be proposed for CTB approval has been or shall be selected
181 by NVTA through a process established by NVTA that includes the following
182 elements:

183 (a) A public notice requesting submission of proposed Projects issued by
184 NVTA (Such notice shall be substantially in the form of the Project
185 Submittal Form attached hereto as **Exhibit 2**);

186 (b) The evaluation, prioritization, and selection of proposed Projects by
187 NVTA, and the submission of selected Projects by NVTA to the CTB.

188 The CTB shall consider and may approve Additional NVTA-selected Projects,
189 provided they have been selected in accord with and satisfy the requirements set
190 forth in Section II.A.2, and provided the Components meet the criteria in Section
191 II.B.1.

192 **III. Term.** Unless this MOA is otherwise terminated in accordance with Section VI, the term of
193 this MOA shall commence on the date last signed by the Parties (“the Effective Date”) and shall
194 expire upon the exhaustion of all funds within the NVTA/CTB Project Portion of the Concession
195 Payments Account.

196 **IV. Entire Agreement.** This MOA constitutes the entire and exclusive agreement between the
197 Parties relating to the specific matters addressed herein. All prior written, and prior or
198 contemporaneous verbal agreements, understandings, and representations are superseded,
199 revoked, and rendered ineffective for any purpose.

200 **V. Amendment.** This MOA and/or any of the rights and obligations herein may be altered,
201 amended, terminated or revoked only by an instrument in writing signed by all Parties or their
202 permitted successor(s) or assignee(s).

203 **VI. Termination.** This MOA may be terminated (a) by a Party for material non-compliance
204 with this MOA which has not either been remedied, or a remedy commenced and diligently
205 pursued thereafter, within 120 days after written notice from the other Party, or (b) by written
206 agreement of the Parties.

207 **VII. Resolution of Disputes.** Prior to any termination of this Agreement pursuant to Section VI
208 (a) or in the case of any dispute relating to whether one or more NVTA-selected Projects does
209 not satisfy the criteria set forth in Section II B.1. or has not been selected in accord with the
210 process set forth in Section II B.2., the Parties shall meet and confer to make a good faith attempt
211 to resolve any issues or disputes as follows. Within 30 days of a written notice seeking
212 termination or alleging dispute, the Commissioner of Highways and the NVTA Executive
213 Director shall meet to discuss resolution of the issues or dispute. If a resolution cannot be
214 reached within 30 days, the Secretary of Transportation and the Chairman of NVTA shall meet
215 within 30 days to discuss resolution of the issues or dispute. If a resolution cannot be agreed
216 upon within 30 days, (i) the termination shall be effective as set forth in the written notice and in
217 accordance with this MOA or (ii) in the case of a dispute relating to an NVTA-selected Project,
218 the NVTA-selected Project shall not be funded using funds from the NVTA/CTB Project Portion
219 of the Concession Payments Account.

220 **VIII. Notices.** Notices shall be made in writing and shall not be effective for any purpose unless
221 and until actually received by the addressee or unless served personally, by independent

222 reputable overnight commercial courier, by facsimile transmission followed by a timely service
223 of the original, or by deposit in the United States mail, postage and fees fully prepaid, registered
224 or certified mail, with return receipt requested, addressed as follows:

225 **If to NVTA:**

226 Executive Director
227 Northern Virginia Transportation Authority
228 3040 Williams Drive, Suite 200
229 Fairfax, VA 22031

230 Fax:

231 **If to CTB:**

232 c/o Secretary of Transportation

233 _____
234 _____
235 _____

236 Fax:

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

239 **IX. Relationship of the Parties.** The relationship of NVTA to CTB shall be one of an
240 independent contractor, not an agent, partner, lessee, joint venture, or employee.

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

244 **XI. Governing Law.** This MOA shall be governed and construed in accordance with the laws of
245 the Commonwealth of Virginia.

246 **XII. Assignment.** This MOA may be assigned only with the written approval of the other
247 Parties. In the event of an agreed assignment, there will be an amendment to this MOA to reflect
248 the change in Parties.

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

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

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

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

266 **XVII. No Waiver of Sovereign Immunity.** Nothing in this MOA shall be deemed a waiver of
267 sovereign immunity by any Party.

268 **XVIII. Availability of Funding.** The obligations of the CTB and VDOT herein are subject to
269 appropriations and the legal availability of funds necessary to carry out said obligations.

270
271 *This space intentionally left blank*

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

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COMMONWEALTH TRANSPORTATION BOARD

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281

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The Honorable Aubrey L. Layne, Jr.

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Secretary of Transportation

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Date: _____

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NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

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Monica Backmon

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Executive Director

293

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Date: _____

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