

MEMORANDUM OF AGREEMENT
TRANSFORM66: INSIDE THE BELTWAY PROJECT

This Memorandum of Agreement (“MOA”) is entered into on _____, 2015, 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 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

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

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

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

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

WHEREAS, subject to the conditions contained in this MOA, the CTB intends to finance the widening of the Facility between Exits 67 and 71 from toll revenues of the Facility; and

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

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

WHEREAS, the Parties wish to memorialize their agreement regarding the allocation and expenditure of certain toll revenue arising from travel on the Facility, the criteria for use of toll revenue to implement Components and the relationship between the Parties.

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

I. Nature of the Parties' Interest under This MOA

This MOA provides for the transfer to and use by NVTC of specified funds collected from the CTB's tolling of the Facility, as allowed by law and according to the terms of this MOA, for the selection and administration of Components to attain the Improvement Goals. This MOA is

specifically subject to, and is governed by applicable state and federal laws concerning the allowable use of tolls, including but not limited to § 33.2-309 of the *Code of Virginia* (1950), as amended (“Virginia Code”), 23 U.S.C. §§ 129 and 166 and the terms of any agreement by and between the Federal Highway Administration (“FHWA”) and VDOT that may be required in order to toll the Facility.

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

II. Basic Agreement; Roles and Responsibilities

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 tolled Facility. Funding to accomplish this 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 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. 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 the later of 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. 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), all remaining toll revenues shall be made available for Components selected by NVTC in accordance with (d):

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

(b) repayments to the Toll Facilities Revolving Account for any allocations advanced from the Toll Facilities Revolving Account to design and construct the dynamic tolling operation of the Facility and the initial allocation of \$5 million for the Project under the terms of the CTB

resolution providing said allocations, which resolution shall provide for a repayment schedule of not less than 25 years, and that annually commits not more than four percent of anticipated toll revenues to such repayment;

(c) NVTC financing payments and any cost of financing for Components selected by NVTC and approved by the CTB under the terms of this MOA; provided that annual financing payments, to include debt service reserves, and debt service does not exceed 40 percent of toll revenues remaining after the allocations described above in subparagraphs II.A.4(a) and (b);

(d) 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 not more than 20 percent of the toll revenues after the allocations described above in subparagraphs II.A.4(a) and (b) may be used for completed Component operating costs;

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

5. Approval of Components of the Project. Provided NVTC complies with the criteria established herein for selection of Components, and subject to paragraph 4 above, the CTB shall 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.

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

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

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

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

11. Quarterly Payments. VDOT shall provide quarterly payments of actual toll revenues to NVTC of those toll revenues allocated pursuant to subparagraphs II.A.4(c) and (d) of this MOA by the 15th day after the end of each quarter. The quarterly payment shall be equal to the lesser of 25 percent of the amount appropriated and allocated under II.A.4(c) and (d), or the toll revenues available to

make such payment. Neither VDOT nor DRPT shall deduct from such quarterly payments any administrative fee or other charges.

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

B. NVTC shall have the following roles and responsibilities:

1. **Coordination and Development of Transportation Plan; Use of Toll Revenues; Compliance with Laws Limiting Use.** As part of the Six Year Improvement Program presented to the CTB for approval in June of each year, NVTC shall submit to the CTB, Components to be funded in whole or in part with 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 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) Must benefit the toll-paying users of the Facility;
- (b) Must have the capacity to attain one or more of the Improvement Goals;
- (c) Must be one of the following multimodal transportation improvements serving

the Corridor:

- (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), and transit priority improvements;

- (ii) Vanpool, and formal and informal carpooling programs and assistance;
 - (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, and improved access to Metrorail stations and Metrobus stops;
 - (iv) Park and ride lot(s) and access or improved access thereto;
 - (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);
 - (vi) Roadway operational improvements in the Corridor;
 - (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;
 - (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 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; and

(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.

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

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

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

2. Project Component Selection Process: Any such Component shall be selected by NVTC in accordance a process established by NVTC. Such process shall include the following three elements:

- (a) a request to submit proposed Components issued by NVTC to all jurisdictions and other public transportation providers in Planning District 8;
- (b) the evaluation, prioritization, and selection of proposed Components by NVTC, and the submission of selected Components by NVTC to the CTB; and
- (c) a public hearing held by NVTC prior to NVTC's selection of Components for submission to the CTB.

The CTB shall approve the Components selected by NVTC and allocate toll revenues for them, pursuant to paragraph II.A.4, provided the Components meet the criteria in paragraph II.B.1. As part of the list of Components submitted to the CTB for approval and allocation of toll revenues, NVTC may submit for CTB approval additional Components that exceed the annual estimated toll revenues for that year. Provided those Components meet the criteria in paragraph II.B.1, the CTB shall approve such additional Components and, pursuant to paragraph II.A.4 and subject to any other approvals that may be necessary, approve the allocation of toll revenues for such Components up to the amount of actual toll revenues for that year that are sufficient to fund one or more of those additional Components.

3. Financing of Components of the Project. NVTC may use toll revenues appropriated by the General Assembly and allocated by the CTB to NVTC to support the financing of approved Components, however, the amount of annual debt service payments using toll revenues shall be limited as set forth in paragraph II.A.4(c).

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

The Commonwealth of Virginia, the CTB, VDOT, and DRPT have no liability whatsoever for payment of the principal of or interest on any bonds or any other obligations issued or incurred by NVTC in connection with this MOA, or any interest accrued or any other sum secured by or accruing under any financing document entered into by NVTC as a result of this MOA. No financing document for the NVTC financing of any Component shall contain any provisions whereby a trustee would be entitled to seek any damages or other amounts from the Commonwealth of Virginia, CTB, or VDOT due to any breach of this MOA.

Each bond or promissory note evidencing Revenue bonds must include a conspicuous recital on its face stating: (a) payment of the principal and interest does not constitute a claim against VDOT's interest in I-66 or any part thereof; (b) payment is not an obligation of the Commonwealth of Virginia, VDOT, DRPT, the CTB, or any other agency, instrumentality or political subdivision of the Commonwealth of Virginia moral or otherwise; and (c) neither the full faith and

credit nor the taxing power of the Commonwealth of Virginia, VDOT, DRPT, the CTB, or any other agency, instrumentality, or political subdivision of the Commonwealth of Virginia and/or its member jurisdictions, is pledged to the payment of the principal and interest.

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

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

- (a) A description of the Components selected for funding in the past fiscal year and the benefits that were the basis for evaluation and selection of each such Component;
- (b) Starting five years after the effective date of this MOA, a review of the Components funded in past fiscal years describing the degree to which the expected benefits were realized or are being realized; and,
- (c) In the event that a funded Component is not providing substantially similar benefits to those that were the basis for evaluation and selection of the Component,

the report shall evaluate the viability of a plan to either (i) modify such Component or (ii) redeploy assets in such Component to other eligible Components that are expected to provide greater benefits.

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

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

6. Quality Management. NVTC shall be responsible for all quality assurance and quality control activities necessary to properly manage the funding of the

development, design, construction, purchases, acquisition, operation and maintenance of any Component it has undertaken pursuant to this MOA, and will develop and provide to VDOT and DRPT for information purposes its manuals, policies, and procedures to accomplish the same.

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

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

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

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

10. **Insurance and Indemnity by Contractors.** NVTC shall include the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees

and agents, as additional insureds on NVTC's insurance policies so that they are protected from and against any losses actually suffered or incurred, except for losses to the extent caused by the negligence or willful misconduct of such entity or person, from third party claims that are directly related to or arise out of: (a) any failure by NVTC to comply with, to observe or to perform in any material respect any of the covenants, obligations, agreements, terms or conditions in this MOA, or any breach by NVTC of its representations or warranties in this MOA; (b) any actual or willful misconduct or negligence of NVTC, its employees or agents in direct connection with the Project or any related Components; (c) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use of trade secrets, patents propriety information, know-how, trademarked or service-marked materials, equipment devices or processes, copyright rights or inventions by NVTC in direct connection with the Project or; (d) inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by NVTC, its employees or agents in direct connection with the Project; or (e) any assumed liabilities. NVTC shall contractually require its contractors, subcontractors, vendors, and others working or performing services related to any Component it has funded to indemnify the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees and agents from the same losses.

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

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

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

C. Initial Multimodal Transportation Improvements. NVTC shall undertake a project selection process upon execution of this MOA, and submit to the CTB a list of Components for an advanced allocation of funding in the amount of \$5 million (which shall be provided upon commencement of construction of the dynamic tolling of the Facility as provided in paragraph II.A.1, and shall be repaid as specified in paragraph II.A.4). Components shall be multimodal transportation improvements that meet the criteria set forth in paragraph II.B.1 and are capable of being obligated not later than at the time tolling begins on the Facility. In the event litigation is filed challenging the implementation of the Project, or a Component of the Project, prior to the initiation of tolling, or in the event any other action prohibits or restricts the ability to toll the Facility, then the CTB may withhold this funding until such time that the litigation or other event or action is resolved in a manner that allows the Project to be implemented. NVTC may choose to expend other funds after the execution of this MOA for Components identified through the selection process described in this MOA prior to the commencement of construction. Any such expenditures are at NVTC's risk but shall be reimbursable from the advanced allocation identified

in this paragraph provided the expenditures otherwise comply with the provisions of the MOA. NVTC may choose to expend up to an additional \$5 million for additional Components consistent with this subsection. Any such expenditures are at NVTC's risk but shall be reimbursable from toll revenues.

D. Widening and Related Improvements to I-66. At the later date of either (i) five years from the date of commencement of tolling of the Facility, or (ii) two years after the date of increase in occupancy requirements for high-occupancy vehicles from two people to three people (which increase shall occur the later of 2020 or the increase of occupancy requirements of HOV lanes of I-66 outside the Beltway), an evaluation of the need to widen the eastbound lanes of the Facility from two lanes to three lanes between the Dulles Connector Road and Exit 71 will be undertaken.

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

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

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

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

- Route 50 from I-495 to Route 120 (Glebe Road);
- Route 29 from I-495 to Route 120 (Glebe Road);
- Route 237 (Washington Boulevard) from Route 29 to Route 120 (Glebe Road); and
- Route 7 from I-66 to Route 50.

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

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

- Minimize or eliminate impacts to the parks, stream corridors, and vegetation along the corridor and within the right-of-way;

- Minimize or eliminate impacts to the W&OD Trail and the Custis Trail;
- Reduce the cost of this component of the Project; and
- Minimize or eliminate 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 VI, 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.

In event that this MOA is terminated in accordance with Section VI prior to the 40th Anniversary of the effective Date, and there are outstanding NVTC financing agreements for which toll revenues have been pledged for debt service payments or there are pay-go Components which are yet to be completed, and further provided the use of toll revenues for the financing agreement or pay-go Component is not a misuse of toll revenues under this MOA and the cause or basis of the termination, then, subject to CTB approval, toll revenues shall continue to be allocated in accordance with paragraph II.A.4(c) to pay debt service or to complete the Component. The CTB will not approve funding for pay-go Components for more than two fiscal years past the termination of the MOA in accordance with Section VI prior to the 40th Anniversary of the effective Date.

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

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

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

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

If to NVTC:

Executive Director
Northern Virginia Transportation Commission

2300 Wilson Boulevard, Suite 620
Arlington, VA 22201
Fax:

If to VDOT:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Commissioner of Highways
Fax: (804) 786-2940

With a copy to:

Office of the Attorney General
Chief, Transportation Section
900 East Main Street
Richmond, Virginia 23219
Fax: (804) 692-1647

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

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

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

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

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

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

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

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

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

XV. No Waiver of Sovereign Immunity. Nothing in this MOA shall be deemed a waiver of sovereign immunity.

XVI. Appropriations. All obligations of the CTB to allocate toll revenues are subject to appropriations by the Virginia General Assembly.

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

COMMONWEALTH TRANSPORTATION BOARD

The Honorable Aubrey L. Layne, Jr
Secretary of Transportation

Date: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION

Charles A. Kilpatrick
Commissioner of Highways

Date: _____

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

Kelley Coyner
Executive Director

Date: _____

Exhibit 1
Facility Map

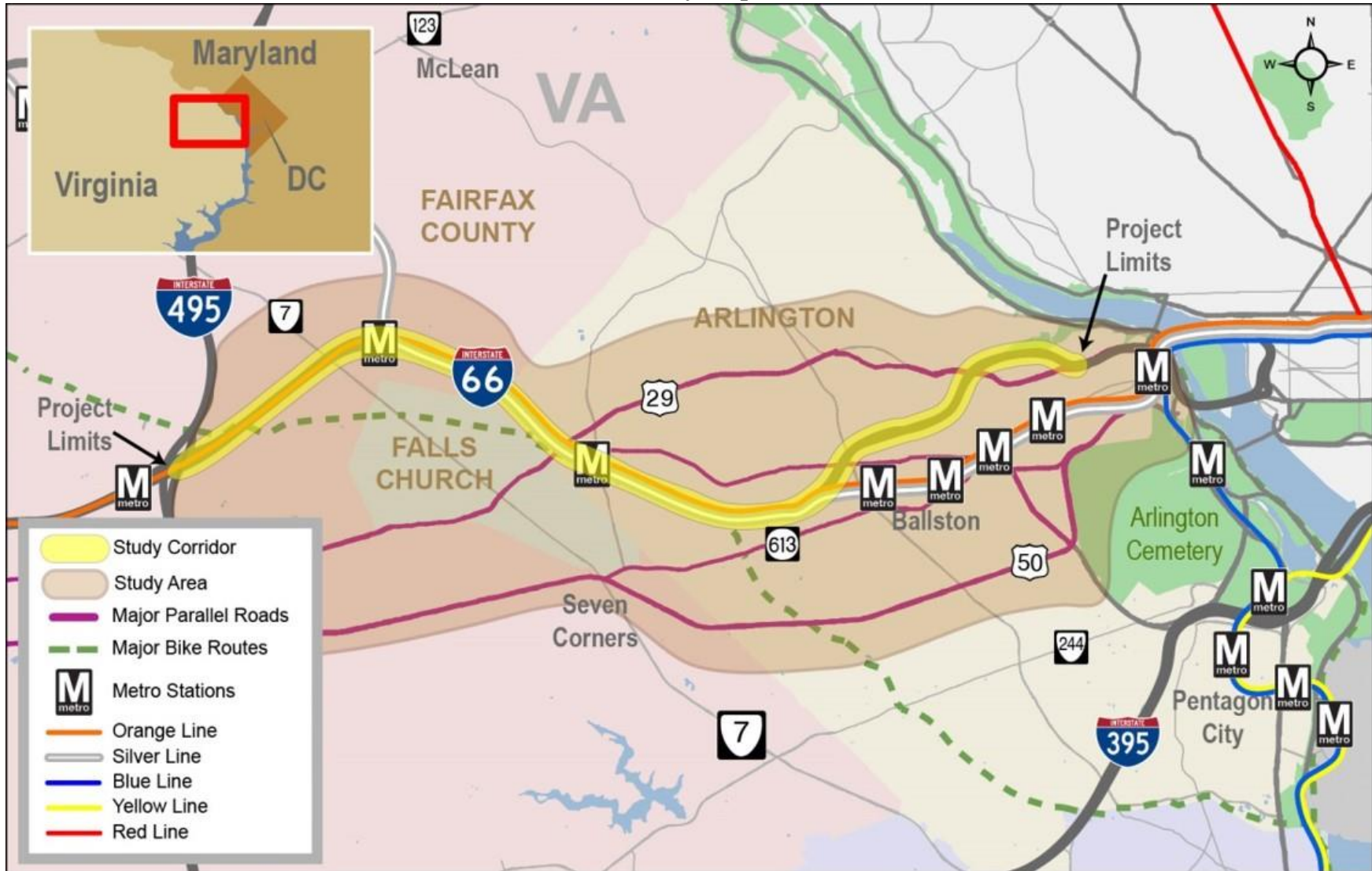


Exhibit 2

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

Sample Documentation

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