

**AGREEMENT BETWEEN NVTC AND PRTC
FOR DISTRIBUTION AND ALLOCATION OF
I-395 ANNUAL TRANSIT INVESTMENT FUNDS**

THIS AGREEMENT is entered into the 28th day of January, 2019, by and between the Northern Virginia Transportation Commission (“NVTC”) and the Potomac and Rappahannock Transportation Commission (“PRTC”), (together, the “Commissions”), for the distribution and allocation of the I-395 annual transit investment funds.

WITNESSETH:

WHEREAS, on July 31, 2012, VDOT and 95 Express Lanes, LLC (the “Concessionaire”) entered into a comprehensive agreement (the “Comprehensive Agreement”) under which the Concessionaire developed and, since December 2014, operates approximately 29 miles of high-occupancy toll lanes (“HOT Lanes”) in the median of Interstate 95 between the Route 610 interchange (Garrisonville Road) and Turkeycock Run (the “Original 95 HOT Lanes”); and

WHEREAS, on June 8, 2017, VDOT and the Concessionaire amended and restated the Comprehensive Agreement (the “ARCA”) to add in the median of Interstate 395 approximately eight miles of HOT Lanes between Turkeycock Run and the Washington D.C. Line (the “395 HOT Lanes”) so that, after the Concessionaire has designed and built the 395 HOT Lanes, the Original 95 HOT Lanes and the 395 HOT Lanes will be operated and maintained by the Concessionaire under the ARCA as a continuous and unified 37-mile HOT Lane facility (the “I-95/I-395 Project”);

WHEREAS, beginning upon service commencement of the 395 HOT Lanes, the ARCA requires the Concessionaire to pay to VDOT an annual transit investment (the “ATI”) from toll revenue attributable to the addition of the 395 HOT Lanes (the “395 Revenues”);

WHEREAS, the first-scheduled ATI payment is \$15,000,000 and each subsequent scheduled ATI payment escalates at 2.5%, as reflected in Exhibit A; and

WHEREAS, the parties entered into a Memorandum of Agreement with VDOT dated December 20, 2017, (the “DRPT-VDOT MOA”) regarding the distribution and use of the ATI funds; and

WHEREAS, in accordance with the DRPT-VDOT MOA, the parties intend to use the ATI funds for projects along the “Corridor” (herein defined as the stretch of Interstates 95 and 395 along which the Concessionaire operates and maintains HOT Lanes, including Route 1, Virginia Railway Express (“VRE”), and other adjacent and nearby routes) (the “ATI Funded Projects”) to achieve the following goals: (1) maximize person throughput in the Corridor; and (2) implement multimodal improvements to: (i) improve mobility along the Corridor, (ii) support new, diverse travel choices, and, (iii) enhance transportation safety and travel reliability ((1) and (2) collectively the “Improvement Goals”), each of which must benefit the users of the I-95/I-395 Project;

WHEREAS, to fund ATI Funded Projects designed to accomplish the Improvement Goals, VDOT desires to transfer periodically to DRPT, and DRPT desires to transfer periodically to NVTC and PRTC, the ATI funds received by VDOT under the ARCA; and

WHEREAS, such ATI Funded Projects would be funded in whole or in part from the ATI funds transferred from VDOT to DRPT, and, in accordance with the DRPT-VDOT MOA, the CTB has delegated to NVTC and PRTC the authority to select and administer the ATI Funded Projects; and

WHEREAS, PRTC and NVTC have reached agreement on the manner in which funds from the ATI funds are disbursed to them, and the process by which they will select for CTB

approval the specific projects funded with the ATI funds, all in accordance with the DRPT-VDOT MOA, and wish to set forth that agreement hereafter.

NOW, THEREFORE, based upon the foregoing, and other good and valuable consideration, NVTC and PRTC agree as follows:

1. Distribution of ATI Funds.

- a. As provided in the DRPT-VDOT MOA, the ATI funds shall be distributed annually to NVTC and PRTC in accordance with the population based allocation set forth in the DRPT-VDOT MOA and in such amounts as provided in Exhibit A. NVTC shall serve on behalf of the Commissions as the recipient of all ATI funds disbursed to them. NVTC shall notify the VDOT Commissioner and the DRPT Director, as well as the Secretary of Transportation, of NVTC’s role in this respect, and shall request that the ATI funds be disbursed as directed by NVTC for the benefit of the Commissions. PRTC shall also provide such direction to the foregoing representatives of the Commonwealth regarding how disbursement of the ATI funds to PRTC shall be made as may be necessary for NVTC to be the recipient as described herein.
- b. NVTC shall establish a depository for ATI funds disbursed to the Commissions, and shall receive and manage such funds on behalf of the Commissions. NVTC shall invest those funds in accordance with applicable provisions of law. NVTC shall create and maintain all funds and accounts containing the ATI funds separate and apart from all other funds and accounts of NVTC and PRTC. Said funds shall constitute a “special revenue fund” as defined by the Governmental Accounting

Standards Board. The revenues and expenses relating to the use of the ATI funds and the ATI Funded Projects undertaken shall not be commingled with any other funds, accounts, venues, or expenses of NVTC or PRTC. NVTC and PRTC shall each report for the ATI Funded Projects financed by ATI funds and shall be reported as an applicable special revenue fund within their financial statements. Expenditures will be recorded and reported for each ATI Funded Project. All ATI funds transferred to NVTC and PRTC shall be held 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 and PRTC, except as provided in the DRPT-VDOT MOA.

2. Project Selection Process.

- a. In the years after the year in which tolling begins, by January 31st of each year, the Commissions shall establish a process to be used for the selection of capital and operating projects to be funded, in whole or in part, with the ATI funds anticipated to be disbursed to the Commissions as set forth in Exhibit A. ATI funds attributable to NVTC and to PRTC may be expended for ATI Funded Projects selected as provided herein without regard for whether the ATI Funded Project is located within NVTC or PRTC, and the ATI funds shall not be required to be spent in each Commission's geographic territory based on the formula in which the ATI funds were distributed. The process shall include a time line such that the ATI Funded Projects selected by the Commissions can be sent to the CTB for review at its May workshop and approval at its June meeting, or such other

meetings as the CTB may prescribe from time to time. The process shall also include at least the following three elements:

(1) A request to the following entities to submit a list of their preferred proposed ATI Funded Projects to NVTC and PRTC:

- (i) all jurisdictions that are members of either NVTC or PRTC, and
- (ii) other public transportation providers providing services in those jurisdictions;

(2) The evaluation, prioritization, and selection of proposed ATI Funded Projects by NVTC and PRTC, the development of a funding strategy for each proposed ATI Funded Project, and the submission of proposed ATI Funded Projects (including a funding strategy for each) by NVTC and PRTC to the CTB, through DRPT; and

(3) A public hearing held by NVTC and PRTC, jointly or individually, prior to NVTC and PRTC's selection of proposed ATI Funded Projects for submission to the CTB.

b. Each ATI Funded Project selected by the Commissions shall meet each of the following four criteria (the "Project Criteria"):

(1) Must reasonably relate to or benefit the toll-paying users of the I-95/I-395 Project;

(2) Must have the capacity to attain one or more of the Improvement Goals;

(3) Must be one of the following types of multimodal transportation improvements serving the Corridor (which term, for the avoidance of doubt, includes adjacent and nearby routes):

i. New or enhanced local and commuter bus service, including capital and operating expenses (*e.g.*, fuel, tires, maintenance, labor, and insurance), and transit priority improvements,

ii. Expansion or enhancement of transportation demand management strategies, including without limitation, vanpool, and formal and informal carpooling programs and assistance,

iii. Capital improvements for expansion or enhancement of Washington Metropolitan Area Transit Authority rail and bus service, including capital and operating expenses, and improved access to Metrorail stations and Metrobus stops,

iv. New or enhanced park and ride lot(s) and access or improved access thereto,

v. New or enhanced VRE improvements or services, including capital and operating expenses,

vi. Roadway improvements in the Corridor (which term, for the avoidance of doubt, includes adjacent and nearby routes),

vii. Transportation Systems Management and Operations as defined in 23 U.S.C. § 101(a)(30) on September 30, 2017, or

viii. Projects identified in Commonwealth studies and plans or projects in the region's constrained long range plan (including without limitation the I-95/395 Transit and TDM Study) or regional transportation plans approved by the Northern Virginia Transportation Authority, as any such plan may be updated from time to time; and

- (4) Must demonstrate that the ATI Funded Projects will be in compliance with all applicable laws, rules, and regulations and have received or will receive all required regulatory approvals.
- c. Once an ATI Funded Project is approved, the authority to obligate and expend ATI funds for the ATI Funded Project shall be subject to execution of an agreement between the Commissions and the recipient of the ATI funds for the ATI Funded Project.
- d. The Commissions may agree to finance ATI Funded Projects with debt issued by one or both Commissions supported by the annual ATI funds and such other funds as the Commissions deem appropriate. Any such debt shall be subject to the provisions of the DRPT-VDOT MOA.
- e. In the year in which tolling begins, the Commissions shall establish a process for selection of ATI Funded Projects that meet the foregoing criteria with the objective of implementing the ATI Funded Projects on or before the day tolling begins.

3. Reports.

- a. Not less than semi-annually, and at such additional times as either PRTC or NVTC may request, the NVTC Executive Director and the PRTC Executive Director shall provide a joint report to the Commissions of the status of all ATI Funded Projects for which ATI funds have been allocated, which report shall include, on a project by project basis, the amount of ATI funds authorized for expenditure on the ATI Funded Project, the amount expended, and the status of the project.
- b. NVTC and PRTC shall provide a joint annual report to the CTB within 120 days of the end of NVTC's and PRTC's fiscal year. The report shall contain at a minimum the following four items:

- (1) A description of the ATI Funded Projects selected for funding in the past fiscal year and the benefits that were the basis for evaluation and selection of each such ATI Funded Projects;

- (2) Starting five years after the effective date of this Agreement, a review of the ATI Funded Projects funded in past fiscal years describing the degree to which the expected benefits were realized or are being realized;

- (3) In the event that an ATI Funded Project is not providing substantially similar benefits to those that were the basis for evaluation and selection of the ATI Funded Project, the report shall evaluate the viability of a plan to either (i) modify such ATI Funded Project, or (ii) redeploy assets in such ATI Funded Project to other eligible ATI Funded Projects that are expected to provide greater benefits; and

(4) The proposed uses of: (i) residual, unobligated balances of ATI funds carried over from prior years, and (ii) interest earned on such ATI funds.

4. **Insurance.** NVTC and PRTC shall each include the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees, and agents, (collectively “State Indemnitees”) as additional insureds on NVTC and PRTC’s insurance policies so the State Indemnitees are protected from and against any losses as defined in the DRPT-VDOT MOA. In addition, NVTC and PRTC shall contractually require their contractors, subcontractors, vendors, and others providing goods or performing services related to any ATI Funded Project to indemnify the State Indemnitees against any losses as defined in the DRPT-VDOT MOA.

5. **Disputes.** In the event of a dispute under this Agreement, the Commissions’ Executive Directors agree to meet and confer in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to the Commissions for formal confirmation and approval, as necessary. If no satisfactory resolution can be reached via the meet and confer method, either Commission may pursue all remedies it may have at law, including all judicial remedies.

6. **Amendments.** This Agreement may be modified, in writing, upon mutual agreement of both Commissions.

7. **Incorporation of Recitals.** The recitals to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The Commissions acknowledge and agree that such recitals are true and correct.

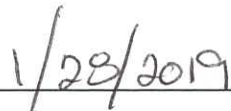
8. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Virginia.
10. **Term.** The term of this Agreement shall commence on the date last signed by one of the Commissions (“the Effective Date”) and shall expire concurrent with the expiration or termination of the DRPT-VDOT MOA, as may be amended and restated from time to time.

IN WITNESS WHEREOF, the Commissions have executed this Agreement by their duly authorized agent as of the date and year aforesaid.

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

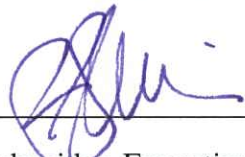


Katherine A. Mattice, Executive Director

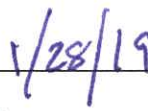


Date

POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION



Robert A. Schneider, Executive Director



Date

EXHIBIT A

PART A – ANNUAL TRANSIT INVESTMENT FORM			
Payment Due Date	Annual Transit Investment (\$ Nominal)	Payment Due Date	Annual Transit Investment (\$ Nominal)
395 Service Commencement Date	\$15,000,000	+ 35 year	\$35,598,078
+ 1 year	15,375,000	+ 36 year	36,488,030
+ 2 year	15,759,375	+ 37 year	37,400,230
+ 3 year	16,153,359	+ 38 year	38,335,236
+ 4 year	16,557,193	+ 39 year	39,293,617
+ 5 year	16,971,123	+ 40 year	40,275,958
+ 6 year	17,395,401	+ 41 year	41,282,857
+ 7 year	17,830,286	+ 42 year	42,314,928
+ 8 year	18,276,043	+ 43 year	43,372,801
+ 9 year	18,732,945	+ 44 year	44,457,121
+ 10 year	19,201,268	+ 45 year	45,568,549
+ 11 year	19,681,300	+ 46 year	46,707,763
+ 12 year	20,173,332	+ 47 year	47,875,457
+ 13 year	20,677,666	+ 48 year	49,072,343
+ 14 year	21,194,607	+ 49 year	50,299,152
+ 15 year	21,724,472	+ 50 year	51,556,631
+ 16 year	22,267,584	+ 51 year	52,845,547
+ 17 year	22,824,274	+ 52 year	54,166,685
+ 18 year	23,394,881	+ 53 year	55,520,852
+ 19 year	23,979,753	+ 54 year	56,908,874
+ 20 year	24,579,247	+ 55 year	58,331,596
+ 21 year	25,193,728	+ 56 year	59,789,885
+ 22 year	25,823,571	+ 57 year	61,284,633
+ 23 year	26,469,160	+ 58 year	62,816,748
+ 24 year	27,130,889	+ 59 year	64,387,167
+ 25 year	27,809,161	+ 60 year	65,996,846
+ 26 year	28,504,391	+ 61 year	67,646,767
+ 27 year	29,217,000	+ 62 year	69,337,937
+ 28 year	29,947,425	+ 63 year	71,071,385
+ 29 year	30,696,111	+ 64 year	72,848,170
+ 30 year	31,463,514	+ 65 year	74,669,374
+ 31 year	32,250,102	+ 66 year	76,536,108
+ 32 year	33,056,354	+ 67 year	78,449,511
+ 33 year	33,882,763	+ 68 year	80,410,749
+ 34 year	34,729,832		
		Term of ARCA	\$2,696,840,696