

1 **AMENDED AND RESTATED**
2 **MEMORANDUM OF AGREEMENT REGARDING THE**
3 **ANNUAL TRANSIT INVESTMENT FROM THE 395 HOT LANES**
4

5 This Amended and Restated Memorandum of Agreement (“MOA”) is dated January 18,
6 2022 and is among: (i) the Commonwealth Transportation Board (“CTB”), (ii) the Virginia
7 Department of Transportation (“VDOT”), (iii) the Northern Virginia Transportation
8 Commission (“NVTC”), (iv) the Potomac and Rappahannock Transportation Commission
9 (“PRTC”), and (v) the Virginia Department of Rail and Public Transportation (“DRPT”) ((i),
10 (ii), (iii), (iv), and (v) collectively, the “Parties”).

11 **RECITALS**

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

17 WHEREAS, the Original 95 HOT Lanes have been in operation since December 2014;

18 WHEREAS, on June 8, 2017, VDOT and the Concessionaire amended and restated the
19 Comprehensive Agreement (the “ARCA”) to add in the median of Interstate 395 approximately
20 eight miles of HOT Lanes between Turkeycock Run and the Washington D.C. Line (the “395
21 HOT Lanes”);

22 WHEREAS, after the Concessionaire has designed and built the 395 HOT Lanes, the
23 Original 95 HOT Lanes and the 395 HOT Lanes will be operated and maintained by the
24 Concessionaire under the ARCA as a continuous and unified 37-mile HOT Lane facility (the
25 “I-95/I-395 Project”);

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

29 WHEREAS, the parties desire to use the ATI funds for improvements along the
30 “Corridor” (herein defined as the stretch of Interstates 95 and 395 along which the
31 Concessionaire operates and maintains HOT Lanes, including Route 1, Virginia Railway
32 Express (“VRE”), and other adjacent and nearby routes);

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

35 WHEREAS, the goals of the ATI-Funded Projects (defined below) are to: (1) maximize
36 person throughput in the Corridor; and (2) implement multimodal improvements to: (i) improve
37 mobility along the Corridor, (ii) support new, diverse travel choices, and, (iii) enhance
38 transportation safety and travel reliability ((1) and (2) collectively the “Improvement Goals”),
39 each of which will benefit the users of the I-95/I-395 Project;

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

43 WHEREAS, such projects (“ATI-Funded Projects”) would be funded in whole or in
44 part from the ATI funds transferred from VDOT to DRPT, and the CTB desires to delegate to
45 NVTC and PRTC the authority to select and administer the ATI-Funded Projects; and

46 WHEREAS, the Parties entered into a Memorandum of Agreement Regarding the
47 Annual Transit Investment from the 395 HOT Lanes, dated December 20, 2017, and now wish

48 to amend and restate that agreement for the purpose of amending provisions relating to payment
49 of operating expenses as an ATI-Funded Project.

50 **AGREEMENT**

51 NOW THEREFORE, the Parties agree as follows:

52 **I. Purpose of this MOA**

53 This MOA provides for the transfer of the ATI funds received by VDOT under the
54 ARCA to DRPT. It also provides for the transfer of the ATI funds received by DRPT under
55 this MOA to NVTC and PRTC. NVTC and PRTC will select and administer ATI-Funded
56 Projects, which must be approved by the CTB.

57 This MOA does not grant DRPT, NVTC, or PRTC any authority over: (i) Interstate 95
58 or Interstate 395, (ii) the tolling of Interstate 95 or Interstate 395, or (iii) any other roadways.
59 It also does not obligate VDOT or the CTB to transfer any funds to DRPT other than the ATI
60 funds. It obligates VDOT to transfer the ATI funds to DRPT only to the extent VDOT actually
61 receives such ATI funds from the Concessionaire (or its successor) under the ARCA.

62 **II. Basic Agreement**

63 **A. VDOT and the CTB shall have the following rights and duties:**

64 **1. Annual Transfers by VDOT.** VDOT shall transfer the ATI funds it receives, if
65 any, to DRPT once per year, within 30 days of VDOT's receipt of the ATI funds from
66 the Concessionaire under the ARCA. A schedule of the expected ATI funds for each
67 year of this MOA is attached hereto as **EXHIBIT A**. VDOT will not deduct any
68 administrative fee or other charges from the ATI funds it receives.

69 **2. Duration of Tolling:** Nothing in this MOA shall obligate or be construed as
70 obligating VDOT to continue or cease tolls after this MOA terminates, except as
71 provided in Section IV.

72 **3. CTB Annual Budget Process.** In preparation for the CTB's annual budget process,
73 VDOT will ensure the Six-Year Financial Plan reflects ATI funds due to VDOT from
74 the Concessionaire under the ARCA.

75 The CTB, working through VDOT and DRPT, agrees to do the following:

76 (a) Each year and in accordance with the schedule of the Department of
77 Planning and Budget of the Commonwealth, the CTB, working through
78 VDOT and DRPT, or the CTB's designee shall request the Governor to
79 include in the budget to be delivered to the General Assembly during its
80 next session a provision that the anticipated ATI funds be appropriated
81 to fund the ATI-Funded Projects during the next succeeding fiscal year
82 or biennial period, as applicable.

83 (b) The CTB, working through VDOT and DRPT, shall use its best
84 efforts to have (i) the Governor include, in each biennial or any
85 supplemental budget that is presented to the General Assembly, the
86 amounts described in (a) above and (ii) the General Assembly deposit,
87 appropriate, and re-appropriate, as applicable, such amounts.

88 (c) The CTB, working through VDOT and DRPT, shall take all actions
89 necessary to have payments which are made pursuant to (b) above
90 charged against the proper appropriation made by the General Assembly.

91 (d) The CTB, working through VDOT and DRPT, shall notify NVTC
92 and PRTC promptly upon becoming aware of any failure by the General
93 Assembly to appropriate for the next succeeding fiscal year or biennial
94 period, as applicable, amounts described in (a).

95 B. DRPT shall have the following rights and duties:

96 **1. DRPT Annual Budget.** DRPT shall include in its annual budget presented
97 to the CTB for approval in June of each year the ATI funds expected to be
98 transferred to it from VDOT in the upcoming year, and the proposed allocation
99 of all such ATI funds, including to pay any NVTC ATI-Related Debt Service
100 and/or PRTC ATI-Related Debt Service (each as defined below) in the
101 upcoming year.

102 **2. Proportion of ATI Funds Available; Annual Transfers by DRPT.** Each
103 year DRPT shall transfer the ATI funds it receives from VDOT to NVTC and
104 PRTC within 30 days of its receipt of the ATI funds from VDOT. DRPT will
105 divide and transfer the ATI funds between NVTC and PRTC *pro rata*, based on
106 each commission's population as determined by the most recent population
107 figures of the Weldon Cooper Center. The populations of all member
108 jurisdictions of each commission will be included in determining the availability
109 of ATI funds as between NVTC and PRTC under this MOA except the
110 populations of the following jurisdictions will not be counted: (i) the County of
111 Loudoun, (ii) the City of Falls Church, (iii) the City of Fairfax, (iv) the City of
112 Manassas, and (v) the City of Manassas Park. For any year during the life of
113 this MOA, during the project approval process established in II.D.1. and II.D.2.,
114 NVTC and PRTC may agree on an alternate mechanism of designating the
115 proportion of ATI funds available to either NVTC or PRTC under this MOA
116 and use this mechanism in the selecting the projects they recommend for CTB
117 approval. DRPT will not deduct any administrative fee or other charges from
118 the ATI funds it receives. Subject to the other requirements of this MOA, no

119 geographic restrictions apply to either NVTC's or PRTC's use of the ATI funds;
120 each of NVTC and PRTC is free to spend its share of the ATI funds on ATI-
121 Funded Projects that are beyond the geographic bounds (in whole or in part) of
122 its respective member jurisdictions.

123 **3. DRPT Assistance; Presentation to CTB.** DRPT may provide technical
124 assistance to NVTC and PRTC during the selection and implementation of ATI-
125 Funded Projects. DRPT will provide the CTB with an analysis of whether the
126 proposed ATI-Funded Projects meet the requirements of this MOA, and will
127 provide a copy of the analysis to NVTC and PRTC for review and input at least
128 fifteen working days prior to DRPT sending it to the CTB.

129 **C. Limits on the Use of ATI Funds:**

130 **1. Limits on Use of Toll Revenues.** Because the ATI funds are paid out of 395
131 Revenues, this MOA is governed by applicable state and federal laws restricting
132 the use of toll revenues, including (without limitation) Va. Code § 33.2-309, 23
133 U.S.C. §§ 129 and 166, and the terms of any agreement between the Federal
134 Highway Administration ("FHWA") and VDOT required to toll the I-95/I-395
135 Project. The Parties agree that the ATI funds may be used for programs and
136 projects reasonably related to or benefiting the toll paying users of the entire I-
137 95/I-395 Project since the 395 Revenues, as defined under the ARCA, are
138 inclusive of the incremental increase in toll revenue generated on the Original
139 95 HOT Lanes, which incremental increase is attributable to the addition of the
140 395 HOT Lanes.

141 **2. Priority of Use of ATI Funds.** ATI funds transferred to NVTC must first
142 be used to pay any NVTC ATI-Related Debt Service and thereafter may be used

143 to fund ATI-Funded Projects. ATI funds transferred to PRTC must first be used
144 to pay any PRTC ATI-Related Debt Service and thereafter may be used to fund
145 ATI-Funded Projects.

146 **"NVTC ATI-Related Debt"** means (i) any bonds, promissory notes,
147 loan, financing or credit agreements under which NVTC is obligated to repay
148 money borrowed and secured primarily by ATI Funds to finance an ATI-Funded
149 Project, and (ii) all installment sales, conditional sales, and capital lease
150 obligations incurred or assumed by NVTC and secured primarily by ATI Funds
151 to finance an ATI-Funded Project. The term "incurred" as used in the MOA
152 with respect to NVTC ATI-Related Debt shall also mean issued or assumed.

153 **"NVTC ATI-Related Debt Service"** means for a fiscal year or other
154 measurement period the aggregate of the payments to be made in respect of the
155 principal of and interest on NVTC ATI-Related Debt and the associated
156 financing or trustee's fees or charges and required deposits to any reserve funds.

157 **"PRTC ATI-Related Debt"** means (i) any bonds, promissory notes,
158 loan, financing or credit agreements under which PRTC is obligated to repay
159 money borrowed and secured primarily by ATI Funds to finance an ATI-Funded
160 Project, and (ii) all installment sales, conditional sales, and capital lease
161 obligations incurred or assumed by PRTC and secured primarily by ATI Funds
162 to finance an ATI-Funded Project. The term "incurred" as used in the MOA
163 with respect to PRTC ATI-Related Debt shall also mean issued or assumed.

164 **"PRTC ATI-Related Debt Service"** means for a fiscal year or other
165 measurement period the aggregate of the payments to be made in respect of the

166 principal of and interest on PRTC ATI-Related Debt and the associated
167 financing or trustee's fees or charges and required deposits to any reserve funds.

168 **3. NVTC ATI-Related Debt Limits.** No NVTC ATI-Related Debt may be
169 incurred unless the annual amount of NVTC ATI-Related Debt Service
170 payments will be less than 60% of the ATI funds expected to be transferred from
171 DRPT to NVTC in each year such debt service payments will be paid. In
172 addition, no NVTC ATI-Related Debt may be incurred unless the ATI funds
173 expected to be transferred from DRPT to NVTC in the fiscal year prior to the
174 fiscal year the NVTC ATI-Related Debt would be incurred is at least two times
175 the maximum annual scheduled NVTC ATI-Related Debt Service (in the then-
176 current or any future fiscal year) on: (i) all outstanding NVTC ATI-Related
177 Debt, plus (ii) the proposed new NVTC ATI-Related Debt.

178 **4. PRTC ATI-Related Debt Limits.** No PRTC ATI-Related Debt may be
179 incurred unless the annual amount of PRTC ATI-Related Debt Service payments
180 will be less than 60% of the ATI funds expected to be transferred from DRPT to
181 PRTC in each year such debt service payments will be paid. In addition, no
182 PRTC ATI-Related Debt may be incurred unless the ATI funds expected to be
183 transferred from DRPT to PRTC in the fiscal year prior to the fiscal year the
184 PRTC ATI-Related Debt would be incurred is at least two times the maximum
185 annual scheduled Debt Service (in the then-current or any future fiscal year) on:
186 (i) all outstanding PRTC ATI-Related Debt, plus (ii) the proposed new PRTC
187 ATI-Related Debt.

188 **5. Use of ATI Funds Limited to ATI-Funded Projects.** The Commonwealth,
189 NVTC, and PRTC shall have no right to use the ATI funds to pay any debt,

190 obligation, or liability unrelated to a CTB-approved ATI-Funded Project, or for
191 any purposes other than those specified in this MOA. Interest earned on ATI
192 funds held by NVTC and PRTC shall be considered ATI funds and may only be
193 used for the purposes specified in this MOA.

194 **6. Limit on Operating Costs.** Neither NVTC nor PRTC may expend more
195 than 50% of the ATI funds (as a percentage of the overall ATI funds transferred
196 to either NVTC or PRTC, as applicable, during the preceding nine-fiscal-year
197 period) for operating costs. In addition, with respect to operating costs, NVTC
198 and PRTC may only use the ATI funds:

199 (a) to pay operating costs for individual ATI-Funded Projects that are
200 transit operations and are regional in nature because: (i) the service crosses
201 jurisdictional boundaries and/or (ii) the service provides a direct connection to
202 Metrorail or VRE commuter rail stations; and

203 (b) to pay operating costs for all other individual ATI-Funded Projects
204 only in the following maximum amounts: (i) up to 100% of operating costs for
205 the first five years, (ii) up to 75% of operating costs for year six, (iii) up to 50%
206 of operating costs for year seven, (iv) up to 25% of operating costs for year eight,
207 and (v) 0% of operating costs after year eight.

208 D. NVTC and PRTC shall have the following rights and duties:

209 **1. Project Criteria and CTB Approval of ATI-Funded Projects.** Each year,
210 NVTC and PRTC shall submit to DRPT a list of proposed ATI-Funded Projects
211 for presentation by DRPT, NVTC and PRTC at a regularly-scheduled CTB
212 workshop. Such proposed ATI-Funded Projects shall be selected by NVTC and
213 PRTC in accordance with a process established by written agreement between

214 NVTC and PRTC consistent with the terms of this MOA. In addition, NVTC
215 and PRTC must provide to DRPT for DRPT’s review and input any draft written
216 materials, presentations, or recommendations that NVTC and PRTC intend to
217 provide to the CTB for any workshop relating to proposed ATI-Funded projects
218 at least fifteen working days before NVTC and PRTC finalize any such written
219 materials, presentations, or recommendations. Each proposed ATI-Funded
220 Project presented to the CTB for approval shall be identified separately with
221 supporting documentation, including a description of the benefits that were the
222 basis for evaluation and selection of each such proposed ATI-Funded Project.
223 If the proposed ATI-Funded Projects are selected in accordance with NVTC and
224 PRTC’s selection process described in II.D.2, and the proposed ATI-Funded
225 Projects meet the Project Criteria (defined below), then the CTB will consider
226 and approve the proposed ATI-Funded Projects by an affirmative vote and,
227 subject to appropriation by the General Assembly, allocate ATI funds for such
228 ATI-Funded Projects. To be approved by the CTB, each proposed ATI-Funded
229 Project must meet each of the following four criteria (the “Project Criteria”):

- 230 (a) Must reasonably relate to or benefit the toll-paying users of the
231 I-95/I-395 Project;
- 232 (b) Must have the capacity to attain one or more of the Improvement
233 Goals;
- 234 (c) Must be one of the following types of multimodal transportation
235 improvements serving the Corridor (which term, for the avoidance of
236 doubt, includes adjacent and nearby routes):

- 237 i. New or enhanced local and commuter bus service, including
238 capital and operating expenses (*e.g.*, fuel, tires, maintenance,
239 labor, and insurance), and transit priority improvements,
- 240 ii. Expansion or enhancement of transportation demand
241 management strategies, including without limitation, vanpool,
242 and formal and informal carpooling programs and assistance,
- 243 iii. Capital improvements for expansion or enhancement of
244 Washington Metropolitan Area Transit Authority rail and bus
245 service, including capital and operating expenses, and improved
246 access to Metrorail stations and Metrobus stops,
- 247 iv. New or enhanced park and ride lot(s) and access or improved
248 access thereto,
- 249 v. New or enhanced VRE improvements or services, including
250 capital and operating expenses,
- 251 vi. Roadway improvements in the Corridor (which term, for the
252 avoidance of doubt, includes adjacent and nearby routes),
- 253 vii. Transportation Systems Management and Operations as
254 defined in 23 U.S.C. § 101(a)(30) on September 30, 2017, or
- 255 viii. Projects identified in Commonwealth studies and plans or
256 projects in the region's constrained long range plan (including
257 without limitation the I-95/395 Transit and TDM Study) or
258 regional transportation plans approved by the Northern Virginia

259 Transportation Authority, as any such plan may be updated from
260 time to time; and,

261 (d) Must demonstrate that the ATI-Funded Projects will be in
262 compliance with all applicable laws, rules, and regulations and have
263 received or will receive all required regulatory approvals.

264 Under no circumstances shall the Project Criteria be modified except by
265 written amendment to this MOA.

266 **2. Proposed ATI-Funded Project Selection Process.** Any ATI-Funded Project
267 to be proposed for CTB approval shall be selected by NVTC and PRTC through
268 a process established by written agreement between NVTC and PRTC. Such
269 process shall include at least the following three elements:

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

272 (i) all jurisdictions that are members of either NVTC or PRTC,
273 and

274 (ii) other public transportation providers providing services in
275 those jurisdictions;

276 (b) The evaluation, prioritization, and selection of proposed ATI-Funded
277 Projects by NVTC and PRTC, the development of a funding strategy for
278 each proposed ATI-Funded Project, and the submission of proposed
279 ATI-Funded Projects (including a funding strategy for each) by NVTC
280 and PRTC to the CTB, through DRPT; and,

281 (c) A public hearing held by NVTC and PRTC prior to NVTC and
282 PRTC's selection of proposed ATI-Funded Projects for submission to
283 the CTB.

284 **3. Financing of ATI-Funded Projects; No Recourse against**
285 **Commonwealth.** NVTC and PRTC may use ATI funds appropriated by the
286 General Assembly and allocated by the CTB to NVTC and PRTC to support the
287 financing of approved ATI-Funded Projects.

288 NVTC and PRTC, respectively, are solely responsible for obtaining and
289 repaying all NVTC ATI-Related Debt and PRTC ATI-Related Debt at their own
290 respective cost and risk, and without recourse to the Commonwealth of Virginia,
291 the CTB, VDOT, and/or DRPT, for any ATI-Funded Project.

292 The Commonwealth of Virginia, the CTB, VDOT, and DRPT shall have
293 no liability for any (i) NVTC ATI-Related Debt or NVTC ATI-Related Debt
294 Service, (ii) PRTC ATI-Related Debt or PRTC ATI-Related Debt Service, or
295 (iii) any other sum secured by or accruing under any financing document entered
296 into by NVTC or PRTC as a result of this MOA. No document evidencing or
297 associated with any NVTC ATI-Related Debt or PRTC ATI-Related Debt shall
298 contain any provisions whereby a trustee would be entitled to seek any damages
299 or other amounts from the Commonwealth of Virginia, CTB, VDOT, or DRPT
300 due to any breach of this MOA.

301 Each bond, promissory note, or other document evidencing NVTC ATI-
302 Related Debt or PRTC ATI-Related Debt must include a conspicuous recital on
303 its face stating: (a) payment of the principal and interest does not constitute a
304 claim against VDOT's interest in I-95, I-395, or any part thereof; (b) payment is

305 not an obligation of the Commonwealth of Virginia, VDOT, DRPT, the CTB,
306 or any other agency, instrumentality, or political subdivision of the
307 Commonwealth of Virginia (including NVTC's or PRTC's member
308 jurisdictions, as applicable), moral or otherwise; and (c) neither the full faith and
309 credit nor the taxing power of the Commonwealth of Virginia, VDOT, DRPT,
310 the CTB, or any other agency, instrumentality, or political subdivision of the
311 Commonwealth of Virginia, (including NVTC's or PRTC's member
312 jurisdictions, as applicable) is pledged to the payment of the principal and
313 interest on such NVTC ATI-Related Debt or PRTC ATI-Related Debt.

314 NVTC and PRTC shall not enter into agreements with holders of any
315 NVTC ATI-Related Debt or PRTC ATI-Related Debt incurred by NVTC,
316 PRTC, or their member jurisdictions that contain a pledge or claim on the ATI
317 funds or NVTC or PRTC's interest in the ATI funds under this MOA except
318 such debt issued for ATI-Funded Projects. If, despite such efforts, ATI funds
319 are applied to satisfy any debt of NVTC or PRTC that is not properly payable
320 out of ATI funds in accordance with this MOA and state and federal law, NVTC
321 or PRTC as applicable shall reimburse DRPT (which in turn shall reimburse
322 VDOT an equal amount) in full any such ATI funds or accounts from any other
323 available revenues other than the ATI funds.

324 **4. Monitoring.** NVTC and PRTC shall provide jointly an annual report to the
325 CTB within 120 days of the end of NVTC's and PRTC's fiscal year. The report
326 shall contain at a minimum the following four items:

- 327 (a) A description of the ATI-Funded Projects selected for funding in the
328 past fiscal year and the benefits that were the basis for evaluation and
329 selection of each such ATI-Funded Projects;
- 330 (b) Starting five years after the effective date of this MOA, a review of
331 the ATI-Funded Projects funded in past fiscal years describing the
332 degree to which the expected benefits were realized or are being realized;
- 333 (c) In the event that an ATI-Funded Project is not providing substantially
334 similar benefits to those that were the basis for evaluation and selection
335 of the ATI-Funded Project, the report shall evaluate the viability of a
336 plan to either (i) modify such ATI-Funded Project, or (ii) redeploy assets
337 in such ATI-Funded Project to other eligible ATI-Funded Projects that
338 are expected to provide greater benefits; and,
- 339 (d) The proposed uses of: (i) residual, unobligated balances of ATI funds
340 carried over from prior years, and (ii) interest earned on such ATI funds.

341 **5. Accounting.** NVTC and PRTC shall each receive and manage, as a fiduciary,
342 the ATI funds appropriated by the General Assembly, allocated by the CTB, and
343 transferred to them by DRPT. NVTC and PRTC shall each create and maintain
344 all funds and accounts containing the ATI funds separate and apart from all other
345 funds and accounts of NVTC and PRTC. Said funds shall constitute a “special
346 revenue fund” as defined by the Governmental Accounting Standards Board.
347 The revenues and expenses relating to the use of the ATI funds and the ATI-
348 Funded Projects undertaken shall not be commingled with any other funds,
349 accounts, venues, or expenses of NVTC or PRTC. NVTC and PRTC shall each
350 report for the ATI-Funded Projects financed by ATI funds provided by this

351 MOA and reported as an applicable special revenue fund within their financial
352 statements. Expenditures will be recorded and reported for each ATI-Funded
353 Project.

354 All ATI funds transferred to NVTC and PRTC pursuant to the terms of
355 this MOA shall be held by NVTC and PRTC in accounts with a financial
356 institution under an arrangement that, to the extent reasonably practicable,
357 preclude such funds from being an asset subject to the claims of creditors of
358 NVTC and PRTC, other than (i) a holder of NVTC ATI-Related Debt or PRTC
359 ATI-Related Debt, or (ii) other claims related to the ATI-Funded Projects
360 undertaken in accordance with this MOA.

361 **6. Quality Management.** NVTC and PRTC shall be responsible for all quality
362 assurance and quality control activities necessary to properly manage the
363 funding of the development, design, construction, purchases, acquisition,
364 operation, and maintenance of any ATI-Funded Project they have undertaken
365 pursuant to this MOA, and will develop and provide to VDOT and DRPT for
366 information purposes NVTC's and PRTC's manuals, policies, and procedures.

367 **7. Public Information.** During the term of this MOA, NVTC and PRTC shall
368 provide information to the public concerning the ATI-Funded Projects they have
369 undertaken, including any public meetings and public hearing that may be
370 required by law or regulation.

371 **8. Regulatory Approvals.** NVTC and PRTC shall obtain, keep in effect,
372 maintain, and comply with all regulatory approvals necessary to fund the
373 development, design, construction, purchases, acquisition, operation, and
374 maintenance of any ATI-Funded Projects.

375 **9. Contracting Practices.** During the term of this MOA, NVTC and PRTC
376 covenant and agree that, with respect to the ATI-Funded Projects they have
377 undertaken, they will comply with all requirements of state and federal laws
378 relating to anti-discrimination, including (without limitation) Titles VI and VII
379 of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities
380 Act, and shall contractually require the same of all contractors, subcontractors,
381 vendors, and recipients of any ATI funds. NVTC and PRTC recognize the
382 importance of the participation of minority, women-owned and small businesses
383 through the federal and local Disadvantaged Business Enterprise programs and
384 will abide by such programs in implementing ATI-Funded Projects.

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

388 **10. Losses.** "Losses" are losses actually suffered or incurred arising from: (a)
389 any failure by NVTC or PRTC to comply with, to observe or to perform in any
390 material respect any of the covenants, obligations, agreements, terms or
391 conditions in this MOA, or any breach by NVTC or PRTC of its representations
392 or warranties in this MOA; (b) any actual or willful misconduct or negligence
393 of NVTC or PRTC, their employees or agents in direct connection with the I-
394 95/I-395 Project or any related ATI-Funded Projects; (c) any actual or alleged
395 patent or copyright infringement or other actual or alleged improper
396 appropriation or use of trade secrets, patents, proprietary information, know-
397 how, trademarked, or service-marked materials, equipment devices or processes,
398 copyright rights or inventions by NVTC or PRTC in direct connection with the

399 I-95/I-395 Project or any related ATI-Funded Projects; (d) any inverse
400 condemnation, trespass, nuisance, or similar taking of or harm to real property
401 committed or caused by NVTC or PRTC, their employees, or agents in direct
402 connection with the I-95/I-395 Project; or (e) any assumed liabilities.

403 NVTC and PRTC shall each include the Commonwealth of Virginia, the
404 CTB, VDOT, DRPT, and their officers, employees, and agents, (collectively
405 “State Indemnitees”) as additional insureds on NVTC and PRTC’s insurance
406 policies so the State Indemnitees are protected from and against any Losses.

407 In addition, NVTC and PRTC shall contractually require their
408 contractors, subcontractors, vendors, and others providing goods or performing
409 services related to any ATI-Funded Project to indemnify the State Indemnitees
410 against any Losses.

411 All insurance purchased by NVTC and PRTC or their contractors
412 pursuant to this section shall name each of the State Indemnitees as additional
413 insureds. This provision shall survive the expiration or earlier termination of
414 this MOA.

415 In the event any third-party claim to which this section II.D.10 applies is
416 asserted in writing against a State Indemnitee, VDOT and/or DRPT will as
417 promptly as practicable notify NVTC and PRTC in writing of such claim, which
418 shall include a copy and any related correspondence or documentation from the
419 third party asserting the claim. However, any failure to give such prompt notice
420 shall not constitute a waiver of any rights of any State Indemnitee unless such
421 failure limits or precludes the availability of those rights.

422 **11. Records.** NVTC and PRTC agree to provide DRPT and VDOT
423 access to all records relating to ATI-Funded Projects. Further, NVTC and PRTC
424 will provide all such records for inspection and audit by VDOT, DRPT, and
425 federal agencies including (without limitation) the United States Department of
426 Transportation, the FHWA, and the Federal Transit Administration, or their
427 designees, upon reasonable notice at all times during the term of this MOA.
428 NVTC and PRTC agree promptly to furnish to VDOT and DRPT copies of all
429 reports and notices they deliver to bondholders or other credit providers or any
430 trustee relating to the use of the ATI funds.

431 **III. Term.** Unless this MOA is otherwise terminated in accordance with Section VII below,
432 the term of this MOA shall commence on the date last signed by the Parties (“the Effective
433 Date”) and shall expire concurrent with the expiration or termination of the ARCA (as may be
434 amended and restated from time to time).

435 **IV. Temporal Limit on Debt and Pay-As-You_Go Financing.** NVTC and PRTC shall not
436 incur any NVTC ATI-Related Debt or PRTC ATI-Related Debt that is dependent on ATI funds
437 and which matures or extends beyond the term of this MOA. If this MOA is terminated in
438 accordance with Section VII, or expires due to the termination of the ARCA, and there is
439 outstanding NVTC ATI-Related Debt or PRTC ATI-Related Debt for which ATI funds have
440 been pledged to pay NVTC ATI-Related Debt Service or PRTC ATI-Related Debt Service, or
441 there are pay-as-you-go ATI-Funded Projects that are not complete (and provided the use of
442 ATI funds to pay NVTC ATI-Related Debt Service or PRTC ATI-Related Debt Service or the
443 costs of the pay-as-you-go ATI-Funded Projects is not a misuse of ATI funds under this MOA
444 and the cause or basis of the termination), then tolls shall continue to be imposed on the I-95/I-
445 395 Project (in the case of expiration of this MOA due to the termination of the ARCA, the

446 continuation of such tolls being subject to CTB approval) and the CTB will allocate 395
447 Revenues in an amount sufficient, if available, to pay NVTC ATI-Related Debt Service or
448 PRTC ATI-Related Debt Service, as applicable, or to complete the pay-as-you-go ATI-Funded
449 Projects. However, for pay-as-you-go ATI-Funded Projects the CTB will not approve funding
450 for more a two-year period after termination of the MOA. For pay-as-you-go ATI-Funded
451 Projects that are capital improvement projects with completion dates more than two years past
452 the termination of the MOA, NVTC and/or PRTC, as applicable, shall use best efforts to obtain
453 additional funding necessary to complete the project. If NVTC and/or PRTC knows it will not
454 be able to obtain additional funding to complete such a project, it shall terminate the project as
455 soon as practicable after gaining such knowledge. No new projects may be funded with the ATI
456 funds after any delivery of a written notice of termination under Section VII.

457 **V. Entire Agreement.** This MOA constitutes the entire and exclusive agreement among the
458 Parties relating to the specific matters covered. All prior written, and prior or contemporaneous
459 verbal agreements, understandings, and representations are superseded, revoked, and rendered
460 ineffective for any purpose.

461 **VI. Amendment.** This MOA may be modified only in writing signed by all Parties or their
462 permitted successor(s) or assignee(s).

463 **VII. Termination.** This MOA may be terminated (a) by a non-breaching Party for material
464 non-compliance with this MOA that has not either been remedied, or a remedy commenced and
465 diligently pursued thereafter, within 120 days after written notice to the breaching Party from a
466 non-breaching Party, or (b) by written agreement of the Parties. However, prior to any
467 termination, the Parties shall meet and confer to make a good faith attempt to resolve any non-
468 compliance issues as follows. Within 30 days of the notice, the Commissioner of Highways,

469 the Director of DRPT, the NVTC Executive Director, and the PRTC Executive Director shall
470 meet to discuss resolution of the non-compliance issues. If a resolution cannot be reached
471 within 30 days, the Secretary of Transportation and the Chairman of NVTC and the Chairman
472 of PRTC shall meet within 30 days to discuss resolution of the non-compliance issues. If a
473 resolution cannot be agreed within 30 days, the termination shall be effective as set forth in the
474 written notice and in accordance with this MOA.

475 **VIII. Notices.** Notices shall be in writing and addressed as follows:

476 **If to NVTC:**

477 Executive Director
478 Northern Virginia Transportation Commission
479 2300 Wilson Boulevard, Suite 230
480 Arlington, VA 22201
481 Fax: (703) 524-1756
482

483 **If to PRTC:**

484 Executive Director
485 Potomac and Rappahannock Transportation Commission
486 14700 Potomac Mills Road
487 Woodbridge, VA 22192
488 Fax: (703) 583-1377
489

490 **If to VDOT:**

491 Virginia Department of Transportation
492 1401 East Broad Street
493 Richmond, Virginia 23219
494 Attn: Commissioner of Highways
495 Fax: (804) 786-2940
496

497 *With a copy to:*

498 Office of the Attorney General
499 Chief, Transportation Section
500 202 North Ninth Street
501 Richmond, Virginia 23219
502 Fax: (804) 692-1647
503

504 **If to DRPT:**

505

506 Department of Rail & Public Transportation
507 600 East Main Street
508 Richmond, VA 23219
509 Attn: Director
510 Fax: 804 225 3752
511

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

514 **IX. Relationship of the Parties.** The relationship of each Party to each other Party shall be
515 one of an independent contractor, not an agent, partner, lessee, joint venturer, or employee.

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

519 **XI. Governing Law.** This MOA shall be governed and construed in accordance with the laws
520 of the Commonwealth of Virginia, without regard for conflict of laws principles.

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

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

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

531 **XV. Construction of Agreement.** This MOA is intended by the Parties to be construed as a
532 whole, and indivisible, and its meaning is to be ascertained from the entire instrument. All parts

533 of the MOA are to be given effect with equal dignity, including but not limited to the recitals at
534 the beginning of this MOA, and all such parts, including the recitals, are to be given full force
535 and effect in construing this MOA. No provision of any recital shall be construed as being
536 controlled by, or having less force and effect, than any other part of this MOA because the
537 provision is set forth in a recital.

538 **XVI. No Personal Liability.** This MOA shall not be construed as creating any personal
539 liability on the part of any officer, employee, or agent of the Parties.

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

542 **XVIII. Appropriations.** All obligations of the CTB to allocate ATI funds are subject to
543 appropriation by the Virginia General Assembly.

544 *[SIGNATURE PAGES TO FOLLOW]*

COMMONWEALTH TRANSPORTATION BOARD



The Honorable Shannon Valentine
Secretary of Transportation

Date: 1-12-22

[MEMORANDUM OF AGREEMENT REGARDING THE ANNUAL TRANSIT INVESTMENT FROM THE 395 HOT LANES
SIGNATURE PAGE]

VIRGINIA DEPARTMENT OF TRANSPORTATION

A handwritten signature in black ink, appearing to read "Stephen C. Brich", written over a horizontal line.

Stephen C. Brich, P.E.
Commissioner of Highways

Date: 1/12/2022

[MEMORANDUM OF AGREEMENT REGARDING THE ANNUAL TRANSIT INVESTMENT FROM THE 395 HOT LANES
SIGNATURE PAGE]

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

Katherine A. Mattice

Katherine A. Mattice
Executive Director

Date: January 12, 2022

[AMENDED AND RESTATED MEMORANDUM OF AGREEMENT REGARDING THE ANNUAL TRANSIT INVESTMENT FROM THE 395 HOT LANES SIGNATURE PAGE]

POTOMAC AND RAPPAHANNOCK TRANSPORTATION
COMMISSION



Robert Schneider
Executive Director

Date: 18 January 2022

[MEMORANDUM OF AGREEMENT REGARDING THE ANNUAL TRANSIT INVESTMENT FROM THE 395 HOT
LANES SIGNATURE PAGE]

VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

Jennifer Mitchell

Jennifer Mitchell

Director

Date: Jan. 12, 2022

[MEMORANDUM OF AGREEMENT REGARDING THE ANNUAL TRANSIT INVESTMENT FROM THE 395 HOT LANES SIGNATURE PAGE]

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