



32 desire to restate the aforesaid improvement goals as follows: (1) maximize person throughput in  
33 the Corridor; and (2) implement multimodal improvements to: (i) improve mobility along the  
34 Corridor, (ii) support new, diverse travel choices, and (iii) enhance transportation safety and travel  
35 reliability (collectively, the “Improvement Goals”) each of which will benefit the users of the  
36 Facility; and

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

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

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

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

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

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

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

70           **WHEREAS**, the Parties desire that, in addition to funding Components selected by NVTC  
71 and approved by the CTB, toll revenues may be used to fund one or both of the following two  
72 Components, including through issuance of debt, direct funding, a public private partnership, or  
73 other means: (1) a new bridge structure that crosses the Potomac River between Arlington County  
74 and the District of Columbia in the vicinity of the 14<sup>th</sup> Street Bridge complex and the Metro  
75 Fenwick Bridge to expand the capacity for commuter and intercity rail passenger service as defined  
76 by 49 U.S.C. §§ 24102(3) and (4) on July 1, 2019, and which may include, in addition to the river  
77 crossing, reasonably related new track approaches to the new bridge, as well as property  
78 acquisition and upgrades to the existing tracks on the Virginia and the District of Columbia sides  
79 of the new bridge (the "Potomac River Passenger Rail Bridge Component"); and (2) new Metrorail  
80 related improvements to, and serving, the Rosslyn Metrorail station in Arlington County that  
81 would facilitate the movement of passengers and relieve train congestion on the Blue, Orange, and  
82 Silver Metrorail lines, and which may include, but not be limited to, a new platform and station,  
83 pedestrian connections to the existing Rosslyn Metrorail station, and a future new extension of  
84 Metrorail under the Potomac River (the "Rosslyn Metrorail Station Component") (collectively, the  
85 "Passenger Rail and Metrorail Components" or "Rail Components"); and

86           **WHEREAS**, the Rail Components will achieve the Improvement Goals, and will benefit  
87 the users of the Facility, and satisfy the criteria hereafter set forth; and

88           **WHEREAS**, the Parties initially memorialized their agreement regarding the allocation  
89 and expenditure of certain toll revenue arising from travel on the Facility, the criteria for use of  
90 toll revenue to implement Components and the relationship between the Parties in a Memorandum  
91 of Agreement dated January 5, 2016, and thereafter entered into an Amended and Restated  
92 Memorandum of Agreement dated January 5, 2017 ("the 2017 Amended and Restated MOA"), to

93 reflect the time frame in which the eastbound widening of the Facility will occur and the funding  
94 to be used therefor, as well as other amendments related to use of toll revenue, duration of tolling  
95 and debt financing by NVTC to fund Components, and thereafter entered into an Amended and  
96 Restated Memorandum of Agreement dated January 16, 2020 to include provisions for the  
97 potential use of toll revenues to fund one or both of the Rail Components, and now wish to further  
98 amend and restate that agreement to include a technical amendment to the provisions for the  
99 potential use of toll revenues to fund one or both of the Rail Components.

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

103 **I. Nature of the Parties' Interest Under This MOA**

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

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

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

119 A. VDOT, DRPT, and the CTB shall have the following roles and responsibilities:

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

124 advanced from the Toll Facilities Revolving Account pursuant to Virginia Code §  
125 33.2-1529 and repaid out of toll revenues collected from the Facility.

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

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

139 **4. Use of Toll Revenues.** VDOT shall include in the annual budget presented to  
140 the CTB for approval in June of each year, an estimate of the toll revenues  
141 anticipated to be collected in the upcoming year and the proposed allocation of all  
142 such toll revenues, including to pay the NVTC Payment (as defined below) and any  
143 NVTC or Rail Component Debt Service (as defined below) in the upcoming year.  
144 Allocation of these toll revenues shall be provided in the following order with the  
145 intent that, after the allocations provided for in (a), (b), (c), (d), (e), (f), and (g), all  
146 remaining toll revenues, including those carried forward in accordance with  
147 II.A.4(c), shall be made available for additional Components selected by NVTC in  
148 accordance with (c):

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

152 (b) Debt Service on Rail Component Debt (as defined below) for one or  
153 both of the Rail Components. At the time of debt issuance, it shall be

154 demonstrated that the anticipated revenues are sufficient to allow for the  
155 required debt service and the annual NVTC Payment (as defined below);  
156 (c) the NVTC Payment (as defined below) for Components selected by  
157 NVTC and approved by the CTB under the terms of this MOA, and any  
158 implementation costs related to Components, as well as operating costs  
159 related to Components;

160 (d) Pay go for Rail Components between the estimated start of the Long  
161 Bridge construction in 2022 and 2034;

162 (e) repayments to the Toll Facilities Revolving Account (i) for any  
163 allocation advanced from the Toll Facilities Revolving Account for the  
164 Conversion and (ii) the initial allocation to NVTC of \$10 million for the  
165 Project described in II.C., with a repayment schedule for the Conversion  
166 allocation and the initial allocation to NVTC (x) of not less than 25 years  
167 from the first date of disbursement, (y) reflecting a 0% interest rate, and (z)  
168 annually committing not more than six percent of anticipated toll revenues  
169 to such repayment; provided, however, if toll revenues remaining after the  
170 allocation described above in II.A.4(a), (b), (c) and (d) is below two times  
171 the amount budgeted for allocation described below in II.A.4(f), then the  
172 repayment to the Toll Facilities Revolving Account shall not exceed an  
173 amount that would result in the toll revenues remaining after the allocations  
174 described in II.A.4(a), (b), (c), and (d) of less than one and a half times the  
175 amount budgeted for allocation in II.A.4(f);

176 (f) Debt Service on NVTC Debt (as defined below) incurred to finance  
177 Components selected by NVTC and approved by the CTB under the terms  
178 of this MOA: provided that the annual amount of the Debt Service payments  
179 does not exceed 60 percent of toll revenues remaining after the allocations  
180 described above in II.A.4(a), (b), (c), and (d); provided further that no  
181 NVTC Debt may be incurred unless the toll revenues remaining after the  
182 allocation described above in II.A.4(a), (b), (c), and (d) in the fiscal year  
183 prior to the fiscal year the NVTC Debt will be incurred must be at least two  
184 times the maximum annual scheduled Debt Service on all outstanding

185 NVTC Debt and the proposed NVTC Debt in the then-current or any future  
186 fiscal year;

187 (g) repayment to the Toll Facilities Revolving Account not paid in any prior  
188 and current year in accordance with II.A.4(e) as a result of not meeting the  
189 coverage requirements specified in II.A.4(f);

190 (h) any remaining revenues for Components selected by NVTC and  
191 approved by the CTB under the terms of this MOA, and any implementation  
192 costs related to Components, as well as operating costs related to  
193 Components. To the extent Components have not yet been selected by  
194 NVTC and approved by the CTB for funding with any remaining revenues,  
195 the remaining revenues shall be carried forward to the next fiscal year and  
196 made available to NVTC for Components approved in accordance with the  
197 provisions of this MOA.

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

207 "Rail Component Debt" means (i) any bonds, promissory notes, loan,  
208 financing or credit agreements under which the issuer is obligated to repay money  
209 borrowed to finance a Rail Component, (ii) all installment sales, conditional sales  
210 and capital lease obligations incurred or assumed by the issuer to finance a Rail  
211 Component. The term "incurred" as used in the MOA with respect to Rail  
212 Component Debt shall also mean issued or assumed.

213 "Debt Service on Rail Component Debt" means for a fiscal year or other  
214 measurement period the aggregate of the payments to be made in respect of the

215 principal of and interest on Rail Component Debt and the associated financing or  
216 trustee's fees or charges and required deposits to any reserve funds.

217 "NVTC Payment" means an annual payment calculated as follows: \$10  
218 million increased by 2.5% each year starting in fiscal year 2021 as set forth in the  
219 attached Exhibit 2.

220 **5. Limit on Operating Costs.** NVTC may not expend more than 50% of the  
221 allocation described above in II.A.4(c) during the preceding nine fiscal-year period  
222 for operating costs. In addition, with respect to operating costs, NVTC may only  
223 use the toll revenues:

224 (a) to pay operating costs for toll revenue funded Components that are transit  
225 operations and are regional in nature because: (i) the service crosses  
226 jurisdictional boundaries and/or (ii) the service provides a direct connection  
227 to Metrorail or VRE stations; and

228 (b) to pay operating costs for all other individual toll revenue-funded  
229 Components only in the following maximum amounts: (i) up to 100% of  
230 operating costs for the first five years, (ii) up to 75% of operating costs for  
231 year six, (iii) up to 50% of operating costs for year seven, (iv) up to 25% of  
232 operating costs for year eight, and (v) 0% of operating costs after year eight.

233 **6. Approval of Components of the Project.** Provided NVTC complies with the  
234 criteria established herein for selection of Components, and subject to II.A.4.  
235 above, the CTB shall consider, approve, and allocate toll revenue funding for such  
236 Components. Each year, NVTC shall submit to DRPT a list of proposed  
237 Components for funding ("Funded Components") for presentation by DRPT and  
238 NVTC at a regularly-scheduled CTB workshop. Such proposed Funded  
239 Components shall be selected by NVTC in accordance with a process established  
240 by NVTC consistent with the terms of this MOA. In addition, NVTC must provide  
241 to DRPT for DRPT's review and input any draft written materials, presentations, or  
242 recommendations that NVTC intends to provide to the CTB for any workshop  
243 relating to proposed Funded Components at least fifteen working days before  
244 NVTC finalize any such written materials, presentations, or recommendations.  
245 Each proposed Funded Component presented to the CTB for approval shall be



246 identified separately with supporting documentation, including a description of the  
247 benefits that were the basis for evaluation and selection of each such proposed  
248 Funded Component. If the proposed Funded Components are selected in  
249 accordance with NVTC's selection process and the proposed Components whether  
250 funded with the NVTC Payment of the Concessionaire Payment (as defined below)  
251 meet the Project Criteria (defined below), then the CTB will consider and approve  
252 the proposed Funded Components by an affirmative vote and, subject to  
253 appropriation by the General Assembly, allocate NVTC Payment and NVTC  
254 Concessionaire funds for such Funded Components.

255 VDOT and DRPT may provide technical assistance to NVTC in its preparation of  
256 recommendations to the CTB for funding of Components, as well as in the  
257 implementation of Components approved by the CTB for funding. DRPT will  
258 provide the CTB with an analysis of whether Components proposed by NVTC meet  
259 the requirements of this MOA and DRPT will provide a copy of the analysis to  
260 NVTC for review and input at least fifteen working days prior to it being sent to  
261 the CTB.

262 **7. Suspension of Tolling.** VDOT shall, in its sole discretion, and in accordance  
263 with Virginia Code § 33.2-613(B) as amended, have the right to order immediate  
264 suspension of Facility tolling in the event I-66 is required for use as an emergency  
265 mass evacuation route. VDOT shall lift any such emergency toll suspension as  
266 soon as the need for emergency mass evacuation ceases. Neither the  
267 Commonwealth of Virginia, the CTB, nor VDOT shall have any liability to NVTC  
268 for any loss of toll revenues or any increase in costs and expenses attributable to  
269 any such toll suspension to facilitate emergency mass evacuation.

270 If I-66 is designated for immediate use as any alternate route for diversion of traffic  
271 from another highway or is temporarily closed to all lanes in one or both directions  
272 due to a significant incident or emergency, VDOT shall have the right to order the  
273 immediate suspension of tolling in the direction(s) of any diversion. Neither the  
274 Commonwealth of Virginia, the CTB, nor VDOT shall have any liability to NVTC  
275 for the loss of any toll revenues or any increase in costs and expenses attributable  
276 to the hours the toll suspension is in effect.

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

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

284 **10. Annual Budget Process.** In preparation for the CTB's annual budget process,  
285 VDOT shall estimate toll revenues and anticipated allocation of the estimated toll  
286 revenues for the upcoming six-year period presented in the Six Year Financial Plan  
287 and Six Year Improvement Program and provide said estimates to NVTC not later  
288 than January 30<sup>th</sup> of each year.

289 The CTB agrees to do the following:

290 (a) Each year and in accordance with the schedule of the Department of  
291 Planning and Budget of the Commonwealth, the CTB or the CTB's designee  
292 shall request that the Governor include in the budget to be delivered to the  
293 General Assembly during their next session a provision that there be  
294 appropriated from the revenues expected from the Facility amounts  
295 sufficient to pay the budgeted amount of funds expected to be provided to  
296 NVTC during the next succeeding fiscal year or biennial period, as  
297 applicable.

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

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

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

308 fiscal year or biennial period, as applicable, amounts sufficient to pay the  
309 budgeted amounts due NVTC.

310 **11. Quarterly Payments.** VDOT shall provide quarterly payments of actual toll  
311 revenues to NVTC of those toll revenues allocated pursuant to II.A.4(c) of this  
312 MOA by the 15<sup>th</sup> day of each quarter. The quarterly payment shall be equal to the  
313 lesser of 25 percent of the amount appropriated and allocated under II.A.4(c), or  
314 the toll revenues available to make such payment. To the extent VDOT is unable  
315 in any quarter to provide the full 25 percent of the amount appropriated and  
316 allocated, the VDOT shall make up the deficiency in subsequent quarters and fiscal  
317 years to the extent toll revenues are available to do so after the allocations are made  
318 pursuant to II.A.4(a), (b), (c), (d), (e), (f), and (g). Neither VDOT nor DRPT shall  
319 deduct from such quarterly payments any administrative fee or other charges. At  
320 NVTC's request, VDOT may elect to provide monthly payments of the actual toll  
321 revenues to NVTC. If VDOT so elects, the payments shall be made on a monthly  
322 basis with the necessary changes to the foregoing in points of detail.

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

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

326 **1. Coordination and Development of Transportation Plan; Use of Toll**  
327 **Revenues; Compliance with Laws Limiting Use.** As part of the Six Year  
328 Improvement Program presented to the CTB for approval in June of each year,  
329 NVTC shall submit to the CTB, a list of Components proposed to be funded in  
330 whole or in part with toll revenues from the Facility. Such Components shall be  
331 selected by NVTC in accordance with a process established by NVTC pursuant to  
332 this MOA. Such Components shall be separately identified with supporting  
333 documentation as set forth in Exhibit 3. The CTB shall consider and approve the  
334 Components selected by NVTC, and allocate toll revenues for them, pursuant to  
335 II.A.4, provided the Components meet the criteria below and are selected in  
336 accordance with NVTC's selection process described in II.B.2. Each proposed  
337 Component must meet each of the following five criteria:

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

- 339 (b) Must have the capacity to attain one or more of the Improvement Goals;  
340 (c) Must be one of the following multimodal transportation improvements  
341 serving the Corridor:
- 342 i. New or enhanced local and commuter bus service, including  
343 capital and operating expenses (e.g., fuel, tires, maintenance, labor  
344 and insurance), subject to the limitations in II.A.5, and transit  
345 priority improvements;
  - 346 ii. Expansion or enhancement of transportation demand  
347 management strategies, including without limitation vanpool, and  
348 formal and informal carpooling programs and assistance;
  - 349 iii. Capital improvements for Washington Metropolitan Area  
350 Transit Authority rail and bus service, including capital and  
351 operating expenses, subject to the limitations in II.A.5, and  
352 improved access to Metrorail stations and Metrobus stops;
  - 353 iv. New or enhanced park and ride lot(s) and access or improved  
354 access thereto;
  - 355 v. New or enhanced VRE improvements or services, including  
356 capital and operating expenses, subject to the limitations in II.A.5.
  - 357 vi. Roadway improvements to address impacts from the dynamic  
358 tolling of the Facility on roadways in the Corridor (including but not  
359 limited to Routes 7, 29, 50, and 309, and Washington Boulevard,  
360 Wilson Boulevard, and Westmoreland Street);
  - 361 vii. Transportation Systems Management and Operations as defined  
362 in 23 U.S.C. § 101(a)(30) on December 1, 2015; and
  - 363 viii. Projects identified in the Commonwealth Reports or projects in  
364 the region's constrained long-range plan or regional transportation  
365 plans approved by the Northern Virginia Transportation Authority,  
366 as any such plan may be updated from time to time.

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

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

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

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

381 NVTC understands and agrees that in the selection and implementation of  
382 Components using the toll revenues, it is bound by the provisions of Virginia Code  
383 § 33.2-309 as well as all other state and federal laws and regulations that limit the  
384 use of toll revenues, and toll revenues from interstate highways specifically.  
385 Accordingly, NVTC agrees to provide VDOT access to all records relating to  
386 Components and the use of the toll revenues. Further, NVTC will provide all such  
387 records for inspection and audit by VDOT, DRPT, and federal agencies, including  
388 but not limited to the United States Department of Transportation, the Federal  
389 Highway Administration, and the Federal Transit Administration, or their  
390 designees, upon reasonable notice at all times during the term of this MOA.

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

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

- 397 (a) A request to submit proposed Components issued by NVTC to all  
398 jurisdictions and other public transportation providers in Planning District  
399 8;
- 400 (b) The evaluation, prioritization, and selection of proposed Components by  
401 NVTC, the development of a funding strategy for each proposed  
402 Component, and the submission of selected Components by NVTC to the  
403 CTB; and
- 404 (c) A public hearing held by NVTC prior to NVTC's selection of  
405 Components for submission to the CTB.

406 The CTB shall consider and approve the Components selected by NVTC  
407 and, subject to appropriation by the General Assembly, shall allocate toll  
408 revenues for such Components, pursuant to II.A.4, provided the  
409 Components meet the criteria in II.B.1. As part of the list of Components  
410 submitted to the CTB for consideration and approval and allocation of toll  
411 revenues, NVTC may submit for CTB consideration and approval  
412 additional Components that exceed the annual estimated toll revenues for  
413 that year. Provided those Components meet the criteria in II.B.1, the CTB  
414 shall consider and approve such additional Components and, pursuant to  
415 II.A.4 and subject to any other approvals that may be necessary, approve  
416 the allocation of toll revenues for such Components up to the amount of  
417 actual toll revenues for that year that are sufficient to fund one or more of  
418 those additional Components.

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

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

427           The Commonwealth of Virginia, the CTB, VDOT, and DRPT have no  
428 liability whatsoever for payment of any Debt Service on any NVTC Debt incurred  
429 by NVTC in connection with this MOA, or any other sum secured by or accruing  
430 under any financing document entered into by NVTC as a result of this MOA. No  
431 document evidencing or associated with any NVTC Debt for the financing of any  
432 Component shall contain any provisions whereby a trustee would be entitled to seek  
433 any damages or other amounts from the Commonwealth of Virginia, CTB, or  
434 VDOT due to any breach of this MOA.

435           Each bond, promissory note or other document evidencing NVTC Debt  
436 must include a conspicuous recital on its face stating: (a) payment of the principal  
437 and interest does not constitute a claim against VDOT's interest in I-66 or any part  
438 thereof; (b) payment is not an obligation of the Commonwealth of Virginia, VDOT,  
439 DRPT, the CTB, or any other agency, instrumentality or political subdivision of the  
440 Commonwealth of Virginia moral or otherwise; and (c) neither the full faith and  
441 credit nor the taxing power of the Commonwealth of Virginia, VDOT, DRPT, the  
442 CTB, or any other agency, instrumentality, or political subdivision of the  
443 Commonwealth of Virginia and/or its member jurisdictions, is pledged to the  
444 payment of the principal and interest on such NVTC Debt.

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

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

- 456 (a) A description of the Components selected for funding in the past fiscal  
457 year and the benefits that were the basis for evaluation and selection of each  
458 such Component;
- 459 (b) Starting in 2020, a review of the Components funded in past fiscal years  
460 describing the degree to which the expected benefits were realized or are  
461 being realized; and,
- 462 (c) In the event that a funded Component is not providing substantially  
463 similar benefits to those that were the basis for evaluation and selection of  
464 the Component, the report shall evaluate the viability of a plan to either, (i)  
465 modify such Component; or (ii) redeploy assets in such Component to other  
466 eligible Components that are expected to provide greater benefits.
- 467 (d) The proposed uses of: (i) residual, unobligated balances of toll revenue  
468 funds carried over from prior years, and (ii) interest earned on such toll  
469 revenue funds.

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

483 All toll revenues provided to NVTC pursuant to the terms of this MOA shall  
484 be held by NVTC in accounts with a financial institution under an arrangement that,  
485 to the extent reasonably practicable, preclude such funds from being an asset



486 subject to the claims of creditors of NVTC, other than a holder of NVTC Debt, or  
487 other claims related to the Components undertaken in accordance with this MOA.

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

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

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

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

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

511 **10. Insurance and Indemnity by Contractors.** NVTC shall include the  
512 Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees  
513 and agents, as additional insureds on NVTC's insurance policies so that they are  
514 protected from and against any losses actually suffered or incurred, except for  
515 losses to the extent caused by the negligence or willful misconduct of such entity  
516 or person, from third party claims that are directly related to or arise out of: (a) any

517 failure by NVTC to comply with, to observe or to perform in any material respect  
518 any of the covenants, obligations, agreements, terms or conditions in this MOA, or  
519 any breach by NVTC of its representations or warranties in this MOA; (b) any  
520 actual or willful misconduct or negligence of NVTC, its employees or agents in  
521 direct connection with the Project or any related Components; (c) any actual or  
522 alleged patent or copyright infringement or other actual or alleged improper  
523 appropriation or use of trade secrets, patents, proprietary information, know-how,  
524 trademarked or service-marked materials, equipment devices or processes,  
525 copyright rights or inventions by NVTC in direct connection with the Project or;  
526 (d) inverse condemnation, trespass, nuisance or similar taking of or harm to real  
527 property committed or caused by NVTC, its employees or agents in direct  
528 connection with the Project; or (e) any assumed liabilities. NVTC shall  
529 contractually require its contractors, subcontractors, vendors, and others working  
530 or performing services related to any Component it has funded to indemnify the  
531 Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees  
532 and agents from the same losses.

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

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

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

545 **C. Initial Multimodal Transportation Improvements.** NVTC shall undertake a  
546 Component selection process upon execution of this MOA, and submit to the CTB a list of  
547 Components for an advanced allocation of funding in the amount of \$10 million (which

548 shall be provided upon commencement of construction of the dynamic tolling of the  
549 Facility as provided in II.A.1, and shall be repaid as specified in II.A.4). Components shall  
550 be multimodal transportation improvements that meet the criteria set forth in II.B.1 and are  
551 capable of being obligated not later than at the time tolling begins on the Facility. In the  
552 event litigation is filed challenging the implementation of the Project, or a Component of  
553 the Project, prior to the initiation of tolling, or in the event any other action prohibits or  
554 restricts the ability to toll the Facility, then the CTB may withhold this funding until such  
555 time that the litigation or other event or action is resolved in a manner that allows the  
556 Project to be implemented. NVTC may choose to expend other funds after the execution  
557 of this MOA for Components identified through the selection process described in this  
558 MOA prior to the commencement of construction. Any such expenditures are at NVTC's  
559 risk but shall be reimbursable from the advanced allocation identified in this paragraph  
560 provided the expenditures otherwise comply with the provisions of the MOA.

561 **D. Annual Concessionaire Payment to NVTC.** In addition to the toll revenues paid  
562 to NVTC as provided in II.A.4, DRPT shall transfer to NVTC in any year toll revenues are  
563 being used pursuant to II.A.4.(b) or II.A.4.(d) the sum of \$5 million, escalated each year  
564 by 2.5% (the "Concessionaire Payment"), as set forth in Exhibit 4, subject to the following:

- 565 1. The Concessionaire Payment shall be subject to appropriation by the General  
566 Assembly to the CTB, and shall be made available to NVTC each year in  
567 accordance with the annual budget process set forth in Section II.A.10.,  
568 specifically including the request each year by the CTB to the Governor, with  
569 the assistance of VDOT and DRPT, to include the Concessionaire Payment in  
570 the budget for the upcoming fiscal year.
- 571 2. Upon appropriation, the Concessionaire Payment shall be transferred by DRPT  
572 to NVTC within 30 days of DRPT's receipt of the funds.
- 573 3. The Concessionaire Payment shall be used for Components in accordance with  
574 the requirements of Section II.B.

575 **E. Widening and Related Improvements to I-66.** VDOT will proceed with plans to  
576 widen the eastbound lanes of the Facility from two lanes to three lanes between the Dulles  
577 Connector Road and Exit 71.

578           The design for the widening shall be limited to increasing the number of eastbound  
579           lanes of the Facility from two lanes to three lanes consistent with an approved  
580           environmental assessment conducted pursuant to the National Environmental Policy Act,  
581           and other laws and regulations applicable to the widening, and shall apply the principals of  
582           Context Sensitive Solutions as described in FHWA’s Publication FHWA-HEP-07-014 as  
583           follows:

- 584           • Avoid, minimize or mitigate impacts to the parks, stream corridors, and  
585           vegetation along the corridor and within the right-of-way;
- 586           • Avoid, minimize or mitigate impacts to the W&OD Trail and the Custis  
587           Trail;
- 588           • Reduce the cost of this component of the Project; and
- 589           • Avoid, minimize or mitigate the need for acquisition of additional right-of-  
590           way.

591   **III. Term.** Unless this MOA is otherwise terminated in accordance with VII, the term of this  
592   MOA shall expire on January 11, 2057 (the “Expiration Date”) subject to the provisions of IV.

593   **IV. Debt Financing:** NVTC shall not incur any NVTC Debt that is dependent on toll revenue  
594   from the Project and which matures or extends beyond Expiration Date. If this MOA is terminated  
595   in accordance with VII prior to the Expiration Date, and there is outstanding NVTC Debt for which  
596   toll revenues has been pledged to pay Debt Service or there are pay-go Components which are yet  
597   to be completed, and further provided the use of toll revenues to pay Debt Service or the costs of  
598   the pay-go Components is not a misuse of toll revenues under this MOA and the cause or basis of  
599   the termination, then, subject to CTB approval, tolls shall continue to be imposed on the Facility  
600   and toll revenues shall continue to be allocated in accordance with II.A.4(a), (b), (c), (d), (e), (f)g  
601   to pay Debt Service or to complete the pay-go Components. The CTB will not approve funding  
602   for pay-go Components for more than two fiscal years past the termination of the MOA in  
603   accordance with VII prior to the Expiration Date.

604   **V. Amended and Restated Agreement.** This Second Amended and Restated MOA is intended  
605   to represent a continuation of the 2017 Amended and Restated MOA, as amended and restated  
606   upon the terms and conditions set out herein, and from and after the date hereof supersedes and

607 replaces the 2017 Amended and Restated MOA and supersedes all other prior agreements,  
608 understandings, representations, or communications, whether written or oral.

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

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

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

627 **If to NVTC:**  
628 Executive Director  
629 Northern Virginia Transportation Commission  
630 2300 Wilson Boulevard, Suite 230  
631 Arlington, VA 22201  
632 Fax: 703-524-1756

633 **If to VDOT:**  
634 Virginia Department of Transportation  
635 1401 East Broad Street  
636 Richmond, Virginia 23219

637 Attn: Commissioner of Highways

638 Fax: 804-786-2940

639 **If to DRPT:**

640 Virginia Department of Rail and Public Transportation

641 600 East Main Street, Suite 2102

642 Richmond, VA 23219

643 Attn: Director of Rail and Public Transportation

644 Fax: 804-225-3752

645 *With a copy to:*

646 Office of the Attorney General

647 Chief, Transportation Section

648 202 North Ninth Street

649 Richmond, Virginia 23219

650 Fax: 804-692-1647

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

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

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

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

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

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

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

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

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

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

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

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697 In Witness Whereof, the Parties hereby cause this MOA to be executed, each by its duly  
698 authorized officers, as of the date below.

699 COMMONWEALTH TRANSPORTATION BOARD

700   
701 \_\_\_\_\_

702 Secretary of Transportation

703 Date: 6/23/21  
704 \_\_\_\_\_

705 VIRGINIA DEPARTMENT OF TRANSPORTATION

706   
707 \_\_\_\_\_

708 Commissioner of Highways

709 Date: 6/23/2021  
710 \_\_\_\_\_

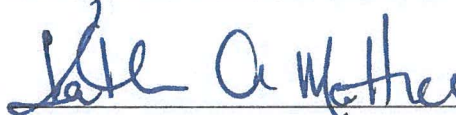
711 VIRGINIA DEPARTMENT OF RAIL AND PUBLIC  
712 TRANSPORTATION

713   
714 \_\_\_\_\_

715 Director of Rail and Public Transportation

716 Date: June 2, 2021  
717 \_\_\_\_\_

718 NORTHERN VIRGINIA TRANSPORTATION COMMISSION

719   
720 \_\_\_\_\_

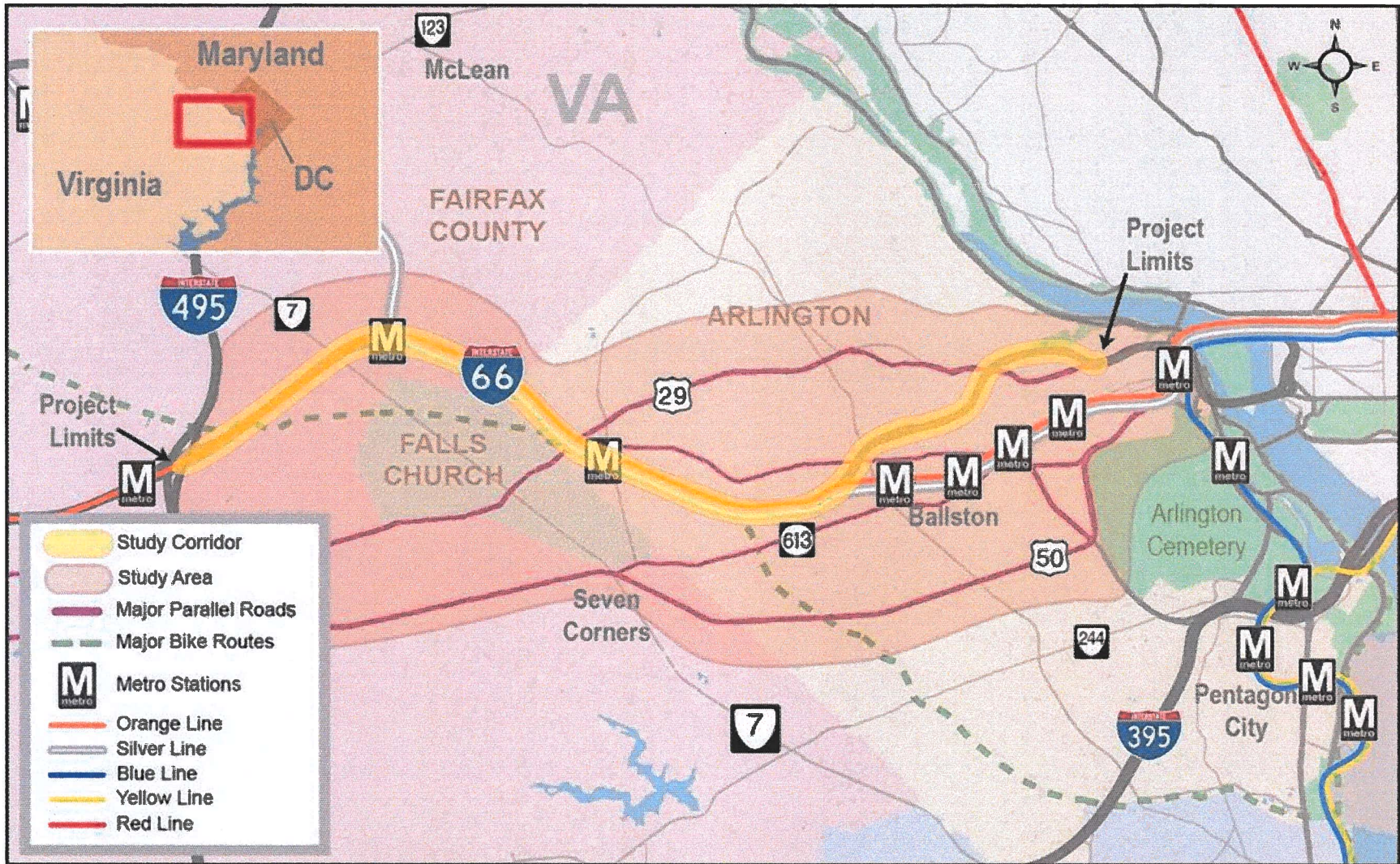
721 Katherine A. Mattice

722 Executive Director

723 Date: May 27, 2021  
\_\_\_\_\_



Exhibit 1





<b>Exhibit 2</b>			
<b>MINIMUM ANNUAL TRANSIT INVESTMENT</b>			
<b>Payment Due Date</b>	<b>Minimum Annual Transit Investment (\$ Nominal)</b>	<b>Payment Due Date</b>	<b>Minimum Transit Investment (\$ Nominal)</b>
FY 2021	\$10,000,000	FY 2042	\$16,795,819
FY 2022	\$10,250,000	FY 2043	\$17,215,714
FY 2023	\$10,506,250	FY 2044	\$17,646,107
FY 2024	\$10,768,906	FY 2045	\$18,087,259
FY 2025	\$11,038,129	FY 2046	\$18,539,441
FY 2026	\$11,314,082	FY 2047	\$19,002,927
FY 2027	\$11,596,934	FY 2048	\$19,478,000
FY 2028	\$11,886,858	FY 2049	\$19,964,950
FY 2029	\$12,184,029	FY 2050	\$20,464,074
FY 2030	\$12,488,630	FY 2051	\$20,975,676
FY 2031	\$12,800,845	FY 2052	\$21,500,068
FY 2032	\$13,120,867	FY 2053	\$22,037,569
FY 2033	\$13,448,888	FY 2054	\$22,588,509
FY 2034	\$13,785,110	FY 2055	\$23,153,221
FY 2035	\$14,129,738	FY 2056	\$23,732,052
FY 2036	\$14,482,982	FY 2057	\$24,325,353
FY 2037	\$14,845,056		
FY 2038	\$15,216,183		
FY 2039	\$15,596,587		
FY 2040	\$15,986,502		
FY 2041	\$16,386,164	<b>Total</b>	<b>\$597,339,480</b>

**Exhibit 3**

**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.						<p><i>This component has been approved by NVTC pursuant to the Project Component Selection Process. Documentation is included to support this compliance.</i></p>



<b>Exhibit 4</b>			
<b>Concessionaire Payment to NVTC</b>			
<b>Payment Due Date</b>	<b>Concessionaire Payment (\$ Nominal)</b>	<b>Payment Due Date</b>	<b>Concessionaire Payment (\$ Nominal)</b>
		FY 2042	\$8,193,082
FY 2022	\$5,000,000	FY 2043	\$8,397,909
FY 2023	\$5,125,000	FY 2044	\$8,607,857
FY 2024	\$5,253,125	FY 2045	\$8,823,053
FY 2025	\$5,384,453	FY 2046	\$9,043,630
FY 2026	\$5,519,064	FY 2047	\$9,269,720
FY 2027	\$5,657,041	FY 2048	\$9,501,464
FY 2028	\$5,798,467	FY 2049	\$9,739,000
FY 2029	\$5,943,429	FY 2050	\$9,982,475
FY 2030	\$6,092,014	FY 2051	\$10,232,037
FY 2031	\$6,244,315	FY 2052	\$10,487,838
FY 2032	\$6,400,423	FY 2053	\$10,750,034
FY 2033	\$6,560,433	FY 2054	\$11,018,785
FY 2034	\$6,724,444	FY 2055	\$11,294,254
FY 2035	\$6,892,555	FY 2056	\$11,576,611
FY 2036	\$6,064,869	FY 2057	\$11,866,026
FY 2037	\$7,241,491		
FY 2038	\$7,422,528		
FY 2039	\$7,608,091		
FY 2040	\$7,798,294		
FY 2041	\$7,993,251	<b>Total</b>	<b>\$298,669,741</b>