

The following items were handed out at the December 5, 2019 NVTC Meeting.

**SECOND AMENDED AND RESTATED
MEMORANDUM OF AGREEMENT
TRANSFORM66: INSIDE THE BELTWAY PROJECT**

This Amended and Restated Memorandum of Agreement (“MOA”) is entered into on _____, 201~~689~~, between the Commonwealth Transportation Board (“CTB”), ~~and~~ the Virginia Department of Transportation (“VDOT”), both acting by and through the Commissioner of Highways, and the Virginia Department of Rail and Public Transportation (“DRPT”), and the Northern Virginia Transportation Commission (“NVTC”) (collectively, the “Parties”).

RECITALS

WHEREAS, the CTB, VDOT, and the Virginia Department of Rail and Public Transportation (“DRPT”) have embarked upon a multimodal transportation program, Transform66, which seeks to fund and implement solutions to move more people in the Interstate 66 (“I-66”) corridor between Haymarket, Virginia and Route 29 in the Rosslyn area of Arlington County, Virginia; and

WHEREAS, the Transform66 program is composed of two distinct projects: (1) the Transform66: Inside the Beltway Project, which involves multimodal transportation improvements in the I-66 corridor beginning at the intersection of I-66 and I-495 (the “Beltway”) and ending at U.S. Route 29 in the Rosslyn area of Arlington County, Virginia (the “Transform66: Inside the Beltway Project” or the “Project” the foregoing geographical limits of which are hereafter referred to as the “Project Corridor” or the “Corridor” which, for avoidance of doubt includes adjacent and nearby routes), and (2) the Transform66: Outside the Beltway Project, which involves multimodal transportation improvements in the I-66 corridor beginning at Haymarket, Virginia, and ending at the Beltway; and

WHEREAS, the goals of the Transform66: Inside the Beltway Project are to (1) move more people; (2) enhance transportation connectivity; (3) improve transit service; (4) reduce roadway congestion; and (5) increase travel options (collectively, the “Improvement Goals”), all of which will benefit the users of the portion of I-66 beginning at the Beltway and ending at U.S. Route 29 in the Rosslyn area of Arlington County, Virginia (the “Facility”); and

WHEREAS, the Project will facilitate implementation of recommendations from VDOT’s June 2012 Final Report of the I-66 Multimodal Study Inside the Beltway, and the further

refinements found in the August 2013 Supplemental Report, as well as recommendations from DRPT's 2009 Transportation Demand Management/Transit Report (collectively, the "Commonwealth Reports"), and projects in the region's constrained long range plan, as such plan may be updated from time to time, including but not limited to multimodal transportation improvements to the roadways and associated transportation and transit facilities in the vicinity of the Facility ("Components") as described in the aforesaid VDOT and DRPT reports and depicted in the diagram attached hereto and incorporated herein as Exhibit 1 (such area together with the Facility, the "Corridor"); and

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

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

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

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

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

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

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

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

WHEREAS, the Parties initially memorialized their agreement regarding the allocation and expenditure of certain toll revenue arising from travel on the Facility, the criteria for use of toll revenue to implement Components and the relationship between the Parties in a Memorandum of Agreement dated January 5, 2016, and ~~now wish to amend and restate that agreement thereafter~~ entered into an Amended and Restated Memorandum of Agreement dated January 5, 2017, to reflect the time frame in which the eastbound widening of the Facility will occur and the funding to be used therefor, as well as other amendments related to use of toll revenue, duration of tolling and debt financing by NVTC to fund Components, and now wish to further amend and restate that agreement to include provisions for the potential use of toll revenues to fund one or both of the Rail Components.

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

I. Nature of the Parties' Interest ~~u~~Under This MOA

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

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

II. Basic Agreement; Roles and Responsibilities

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

1. Design and Construction of Dynamic Tolling Operation on I-66 Inside the Beltway. VDOT shall be responsible for the design and construction of all improvements and facilities to convert the existing Facility to a dynamic tolled operation (the "Conversion"). Funding to accomplish this Conversion will be advanced from the Toll Facilities Revolving Account pursuant to Virginia Code § 33.2-1529 and repaid out of toll revenues collected from the Facility.

2. Toll Collection and Establishment. Subject to the necessary approvals of the CTB and FHWA, and in accordance with law, VDOT and the CTB, as applicable, shall establish, charge, modify and collect tolls throughout the term of this MOA for vehicles using the Facility during peak hours in the peak direction, which shall include dynamic pricing to ensure travel speeds in accordance with 23 U.S.C. §

166. The CTB reserves the right to make any changes to the tolling of the Facility that increase the hours or directions of tolling and any toll revenue generated from any change shall be governed by this MOA.

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

4. Use of Toll Revenues. VDOT shall include in the annual budget presented to the CTB for approval in June of each year, an estimate of the toll revenues anticipated to be collected in the upcoming year and the proposed allocation of all such toll revenues, including to pay the NVTC Payment (as defined below) and any NVTC or Rail Component Debt Service (as defined below) in the upcoming year. Allocation of these toll revenues shall be provided as follows with the intent that, after the allocations provided for in (a), (b), (c), ~~and (d), (e), and (f), and (g)~~ all remaining toll revenues shall be made available for additional Components selected by NVTC in accordance with (c):

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

(b) Debt Service on Rail Component Debt (as defined below) for one or both of the Rail Components not to exceed the minimum NVTC Payment (as defined below);

(c) the NVTC Payment (as defined below) for Components selected by NVTC and approved by the CTB under the terms of this MOA, and any implementation costs related to Components as well as operating costs related to Components;

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

(e) repayments to the Toll Facilities Revolving Account (i) for any allocation advanced from the Toll Facilities Revolving Account for the

Conversion and (ii) the initial allocation to NVTC of \$10 million for the Project described in II.C., with a repayment schedule for the Conversion allocation and the initial allocation to NVTC (x) of not less than 25 years from the first date of disbursement, (y) reflecting a 0% interest rate, and (z) annually committing not more than six percent of anticipated toll revenues to such repayment; provided, however, if toll revenues remaining after the allocation described above in II.A.4(a), (b), and (c) and (d) is below two times the amount budgeted for allocation described ~~below~~above in II.A.4(~~ed~~), then the repayment to the Toll Facilities Revolving Account shall not exceed an amount that would result in the toll revenues remaining after the allocations described in II.A.4(a) ~~and II.A.4, (b), and (c)~~ of less than one and a half times the amount budgeted for allocation in II.A.4(~~ed~~); ~~(fe)~~ Debt Service on NVTC Debt (as defined below) incurred to finance Components selected by NVTC and approved by the CTB under the terms of this MOA: provided that the annual amount of the Debt Service payments does not exceed 60 percent of toll revenues remaining after the allocations described above in II.A.4(a) ~~and, (b), (c), and (d)~~; provided further that no NVTC Debt may be incurred unless the toll revenues remaining after the allocation described above in II.A.4(a), (b), and (c) in the fiscal year prior to the fiscal year the NVTC Debt will be incurred must be at least two times the maximum annual scheduled Debt Service on all outstanding NVTC Debt and the proposed NVTC Debt in the then-current or any future fiscal year;

~~(fg)~~ repayment to the Toll Facilities Revolving Account not paid in any prior and current year in accordance with II.A.4(~~bed~~) as a result of not meeting the coverage requirements specified in II.A.4(~~be~~); ~~(eg) for Components selected by NVTC and approved by the CTB under the terms of this MOA, and any implementation costs related to Components as well as operating costs related to Components, provided that in any fiscal year not more than 50 percent of the average amount of toll revenues remaining after the allocation described above in II.A.4(a), (b), (c)~~

~~and (d) over the preceding five (5) fiscal year period may be used for Component operating costs, however: Operating costs may not be provided for any Component for more than eight (8) years subject to the following maximum amounts: (i) up to 100% for the first five (5) years; (ii) up to 75% for year six (6); (iii) up to 50% for year seven (7); and (iv) up to 25% for year eight (8).~~

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

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

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

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

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

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

65. Approval of Components of the Project. Provided NVTC complies with the criteria established herein for selection of Components, and subject to II.A.4. above, the CTB shall consider, approve, and allocate toll revenue funding for such Components. Each year, NVTC shall submit to DRPT a list of proposed Funded Projects for presentation by DRPT and NVTC at a regularly-scheduled CTB workshop. Such proposed Funded Projects shall be selected by NVTC in accordance with a process established by NVTC consistent with the terms of this MOA. In addition, NVTC must provide to DRPT for DRPT's review and input any draft written materials, presentations, or recommendations that NVTC intends to provide to the CTB for any workshop relating to proposed Funded projects at least fifteen working days before NVTC finalize any such written materials, presentations, or recommendations. Each proposed Funded Project presented to the CTB for approval shall be identified separately with supporting documentation, including a description of the benefits that were the basis for evaluation and selection of each such proposed Funded Project. If the proposed Funded Projects are selected in accordance with NVTC's selection process and the proposed ATI-Funded Projects meet the Project Criteria (defined below), then the CTB will consider and approve the proposed Funded Projects by an affirmative vote and, subject to appropriation by the General Assembly, allocate ATI funds for such Funded Projects. VDOT and DRPT may provide technical assistance to NVTC in its preparation of recommendations to the CTB for funding of Components, as well as in the implementation of Components approved by the CTB for funding. DRPT

will provides the CTB with an analysis of whether Components proposed by NVTC meet the requirements of this MOA and DRPT will provide a copy of the analysis to NVTC for review and input at least fifteen working days prior to it being sent to the CTB.

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

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

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

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

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

The CTB agrees to do the following:

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

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

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

(d) The CTB shall notify the NVTC promptly upon becoming aware of any failure by the General Assembly to appropriate for the next succeeding fiscal year or biennial period, as applicable, amounts sufficient to pay the budgeted amounts due NVTC.

110. Quarterly Payments. VDOT shall provide quarterly payments of actual toll revenues to NVTC of those toll revenues allocated pursuant to II.A.4(c) of this MOA by the 15th day of each quarter. The quarterly payment shall be equal to the lesser of 25 percent of the amount appropriated and allocated under II.A.4(c) and, or the toll revenues available to make such payment. To the extent VDOT is unable in any quarter to provide the full 25 percent of the amount appropriated and allocated, the VDOT shall make up the deficiency in subsequent quarters to the extent toll revenues are available to do so after the allocations are made pursuant to II.A.4(a), (b), (c), (d), (e), and (d). Neither VDOT nor DRPT shall deduct from such quarterly payments any administrative fee or other charges. At NVTC's

request, VDOT may elect to provide monthly payments of the actual toll revenues to NVTC. If VDOT so elects, the payments shall be made on a monthly basis with the necessary changes to the foregoing in points of detail.

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

B. NVTC shall have the following roles and responsibilities:

1. Coordination and Development of Transportation Plan; Use of Toll Revenues; Compliance with Laws Limiting Use. As part of the Six Year Improvement Program presented to the CTB for approval in June of each year, NVTC shall submit to the CTB, a list of Components proposed to be funded in whole or in part with toll revenues from the Facility. Such Components shall be selected by NVTC in accordance with a process established by NVTC pursuant to this MOA. Such Components shall be separately identified with supporting documentation as set forth in Exhibit 23. The CTB shall consider and approve the Components selected by NVTC, and allocate toll revenues for them, pursuant to II.A.4, provided the Components meet the criteria below and are selected in accordance with NVTC's selection process described in II.B.2. Each proposed Component must meet each of the following five criteria:

- (a) Must reasonably relate to or benefit the toll-paying users of the Facility;
- (b) Must have the capacity to attain one or more of the Improvement Goals;
- (c) Must be one of the following multimodal transportation improvements serving the Corridor (which term, for the avoidance of doubt, includes adjacent and nearby routes):

- i. New or enhanced local and commuter bus service, including capital and operating expenses (e.g., fuel, tires, maintenance, labor and insurance), subject to the limitations in II.A.54.(eg), and transit priority improvements;

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

iii. Capital improvements for Washington Metropolitan Area Transit Authority rail and bus service, including capital and operating expenses, subject to the limitations in II.A.54(eg), and improved access to Metrorail stations and Metrobus stops;

iv. New or enhanced Park-park and ride lot(s) and access or improved access thereto;

v. New or enhanced VRE improvements or services, including capital and operating expenses, subject to the limitations in II.A.54 (g).

vi. Roadway improvements to address impacts from the dynamic tolling of the Facility on roadways in the Corridor (including but not limited to Routes 7, 29, 50, and 309, and Washington Boulevard, Wilson Boulevard, and Westmoreland Street);

~~vii. Roadway operational improvements in the Corridor;~~

~~viii~~vii. Transportation Systems Management and Operations as defined in 23 U.S.C. § 101(a)(30) on December 1, 2015; and

ix. Projects identified in the Commonwealth Reports or projects in the region's constrained ~~long-range~~long-range plan or regional transportation plans approved by the Northern Virginia Transportation Authority, as any such plan may be updated from time to time.

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

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

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

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

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

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

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

(a) A request to submit proposed Components issued by NVTC to all jurisdictions and other public transportation providers in Planning District 8;

(b) The evaluation, prioritization, and selection of proposed Components by NVTC, the development of a funding strategy for each proposed

Component, and the submission of selected Components by NVTC to the CTB; and

(c) A public hearing held by NVTC prior to NVTC's selection of Components for submission to the CTB.

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

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

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

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

any damages or other amounts from the Commonwealth of Virginia, CTB, or VDOT due to any breach of this MOA.

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

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

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

(a) A description of the Components selected for funding in the past fiscal year and the benefits that were the basis for evaluation and selection of each such Component;

(b) Starting five years after the effective date of this MOA, a review of the Components funded in past fiscal years describing the degree to which the expected benefits were realized or are being realized; and,

(c) In the event that a funded Component is not providing substantially similar benefits to those that were the basis for evaluation and selection of

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

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

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

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

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

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

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

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

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

507 **10. Insurance and Indemnity by Contractors.** NVTC shall include the
508 Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees
509 and agents, as additional insureds on NVTC's insurance policies so that they are
510 protected from and against any losses actually suffered or incurred, except for
511 losses to the extent caused by the negligence or willful misconduct of such entity
512 or person, from third party claims that are directly related to or arise out of: (a) any
513 failure by NVTC to comply with, to observe or to perform in any material respect
514 any of the covenants, obligations, agreements, terms or conditions in this MOA, or
515 any breach by NVTC of its representations or warranties in this MOA; (b) any
516 actual or willful misconduct or negligence of NVTC, its employees or agents in
517 direct connection with the Project or any related Components; (c) any actual or
518 alleged patent or copyright infringement or other actual or alleged improper
519 appropriation or use of trade secrets, patents, proprietary information, know-how,
520 trademarked or service-marked materials, equipment devices or processes,

copyright rights or inventions by NVTC in direct connection with the Project or;
(d) inverse condemnation, trespass, nuisance or similar taking of or harm to real
property committed or caused by NVTC, its employees or agents in direct
connection with the Project; or (e) any assumed liabilities. NVTC shall
contractually require its contractors, subcontractors, vendors, and others working
~~or performing~~ or performing services related to any Component it has funded to
indemnify the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their
officers, employees and agents from the same losses.

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

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

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

C. Initial Multimodal Transportation Improvements. NVTC shall undertake a
Component selection process upon execution of this MOA, and submit to the CTB a list of
Components for an advanced allocation of funding in the amount of \$10 million (which
shall be provided upon commencement of construction of the dynamic tolling of the
Facility as provided in II.A.1, and shall be repaid as specified in II.A.4). Components shall
be multimodal transportation improvements that meet the criteria set forth in II.B.1 and are
capable of being obligated not later than at the time tolling begins on the Facility. In the
event litigation is filed challenging the implementation of the Project, or a Component of
the Project, prior to the initiation of tolling, or in the event any other action prohibits or
restricts the ability to toll the Facility, then the CTB may withhold this funding until such
time that the litigation or other event or action is resolved in a manner that allows the

Project to be implemented. NVTC may choose to expend other funds after the execution of this MOA for Components identified through the selection process described in this MOA prior to the commencement of construction. Any such expenditures are at NVTC's risk but shall be reimbursable from the advanced allocation identified in this paragraph provided the expenditures otherwise comply with the provisions of the MOA.

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

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

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

III. Term. Unless this MOA is otherwise terminated in accordance with VII, the term of this MOA shall commence on the date last signed by the Parties ("the Effective Date") and shall expire on the 40th anniversary of the Effective Date subject to the provisions of IV.

IV. Debt Financing: NVTC shall not incur any NVTC Debt that is dependent on toll revenue from the Project and which matures or extends beyond the 40th anniversary of the Effective Date. If this MOA is terminated in accordance with VII prior to the 40th Anniversary of the Effective Date, and there is outstanding NVTC Debt for which toll revenues has been pledged to pay Debt Service or there are pay-go Components which are yet to be completed, and further provided the use of toll revenues to pay Debt Service or the costs of the pay-go Components is not a misuse of

toll revenues under this MOA and the cause or basis of the termination, then, subject to CTB approval, tolls shall continue to be imposed on the Facility and toll revenues shall continue to be allocated in accordance with II.A.4(a), (b), (c), (d), (e), and (f), ~~and (eg)~~ to pay Debt Service or to complete the pay-go Components. The CTB will not approve funding for pay-go Components for more than two fiscal years past the termination of the MOA in accordance with VII prior to the 40th Anniversary of the effective Date.

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

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

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

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

If to NVTC:

Executive Director

Northern Virginia Transportation Commission

2300 Wilson Boulevard, Suite ~~620~~230

Arlington, VA 22201

Fax:

If to VDOT:

Virginia Department of Transportation

1401 East Broad Street

Richmond, Virginia 23219

Attn: Commissioner of Highways

Fax: (804) 786-2940

If to DRPT:

Virginia Department of Rail and Public Transportation

600 East Main Street, Suite 2102

Richmond, VA 23219

Attn: Director of Rail and Public Transportation

Fax: (804) 225-3752

With a copy to:

Office of the Attorney General

Chief, Transportation Section

202 North Ninth Street

Richmond, Virginia 23219

Fax: (804) 692-1647

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

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

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

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

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

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

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

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

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

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

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

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

COMMONWEALTH TRANSPORTATION BOARD

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Secretary of Transportation

Date: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION

Commissioner of Highways

Date: _____

VIRGINIA DEPARTMENT OF RAIL AND PUBLIC
TRANSPORTATION

Director of Rail and Public Transportation

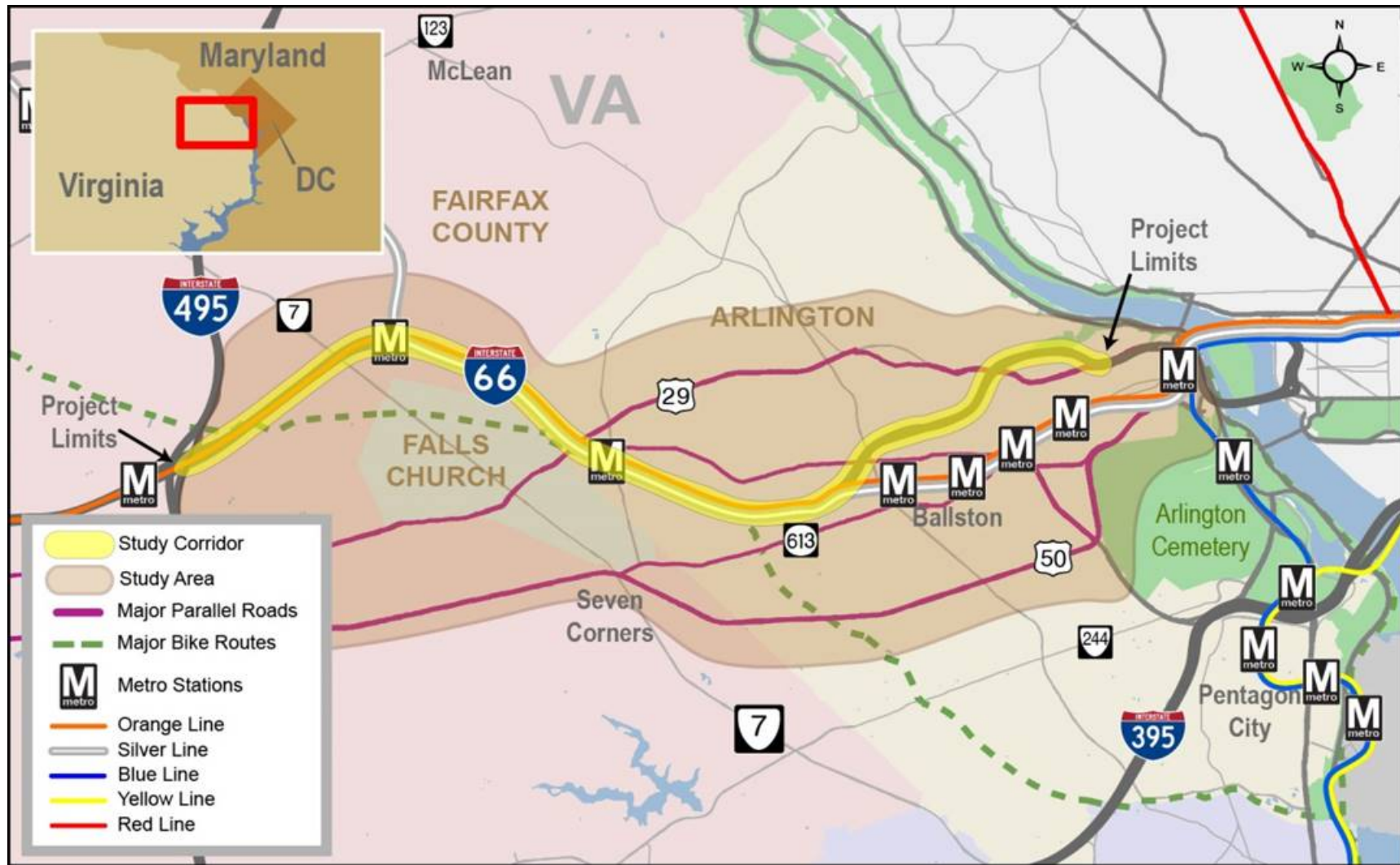
Date: _____

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

Katherine A. Mattice
Executive Director

Date: _____

Exhibit 1



<u>Exhibit 2</u>			
<u>MINIMUM ANNUAL TRANSIT INVESTMENT</u>			
<u>Payment Due Date</u>	<u>Minimum Annual Transit Investment (\$ Nominal)</u>	<u>Payment Due Date</u>	<u>Minimum Transit Investment (\$ Nominal)</u>
<u>FY 2021</u>	<u>\$10,000,000</u>	<u>FY 2042</u>	<u>\$16,795,819</u>
<u>FY 2022</u>	<u>\$10,250,000</u>	<u>FY 2043</u>	<u>\$17,215,714</u>
<u>FY 2023</u>	<u>\$10,506,250</u>	<u>FY 2044</u>	<u>\$17,646,107</u>
<u>FY 2024</u>	<u>\$10,768,906</u>	<u>FY 2045</u>	<u>\$18,087,259</u>
<u>FY 2025</u>	<u>\$11,038,129</u>	<u>FY 2046</u>	<u>\$18,539,441</u>
<u>FY 2026</u>	<u>\$11,314,082</u>	<u>FY 2047</u>	<u>\$19,002,927</u>
<u>FY 2027</u>	<u>\$11,596,934</u>	<u>FY 2048</u>	<u>\$19,478,000</u>
<u>FY 2028</u>	<u>\$11,886,858</u>	<u>FY 2049</u>	<u>\$19,964,950</u>
<u>FY 2029</u>	<u>\$12,184,029</u>	<u>FY 2050</u>	<u>\$20,464,074</u>
<u>FY 2030</u>	<u>\$12,488,630</u>	<u>FY 2051</u>	<u>\$20,975,676</u>
<u>FY 2031</u>	<u>\$12,800,845</u>	<u>FY 2052</u>	<u>\$21,500,068</u>
<u>FY 2032</u>	<u>\$13,120,867</u>	<u>FY 2053</u>	<u>\$22,037,569</u>
<u>FY 2033</u>	<u>\$13,448,888</u>	<u>FY 2054</u>	<u>\$22,588,509</u>
<u>FY 2034</u>	<u>\$13,785,110</u>	<u>FY 2055</u>	<u>\$23,153,221</u>
<u>FY 2035</u>	<u>\$14,129,738</u>	<u>FY 2056</u>	<u>\$23,732,052</u>
<u>FY 2036</u>	<u>\$14,482,982</u>	<u>FY 2057</u>	<u>\$24,325,353</u>
<u>FY 2037</u>	<u>\$14,845,056</u>	<u>FY 2058</u>	<u>\$24,933,487</u>
<u>FY 2038</u>	<u>\$15,216,183</u>	<u>FY 2059</u>	<u>\$25,556,824</u>
<u>FY 2039</u>	<u>\$15,596,587</u>	<u>FY 2060</u>	<u>\$26,195,745</u>
<u>FY 2040</u>	<u>\$15,986,502</u>	<u>FY 2061</u>	<u>\$26,850,638</u>
<u>FY 2041</u>	<u>\$16,386,164</u>	<u>Total</u>	<u>\$700,876,174</u>

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

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WMATA Blue and Yellow Line Shutdown Lessons Learned

Review of Coordination Timeline and Mitigation Strategies

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

DECEMBER 5, 2019

Platform Improvement Project



Platform
Improvement
Project

- Summer 2019 Platform Improvement Project

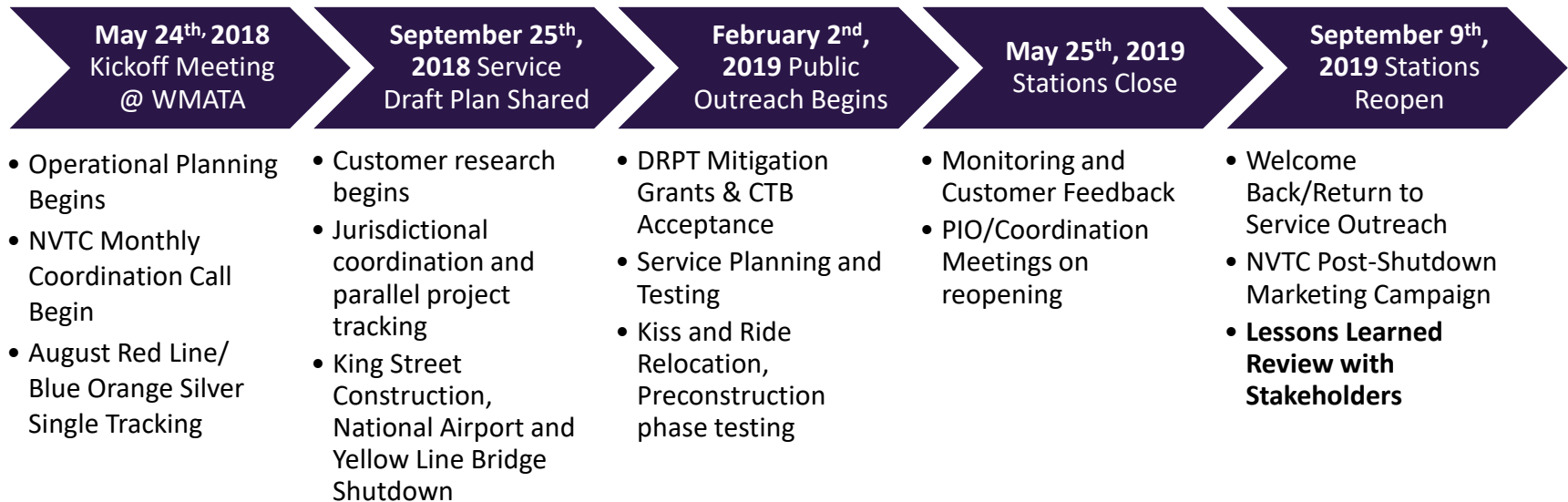
- Shutdown of Blue/Yellow Line Metrorail Stations South of National Airport
- May 25th-September 9th 2019
 - 24/7 Rail System Closure
 - Braddock Road, King St-Old Town, Eisenhower Ave, Van Dorn, Huntington, Franconia Springfield
- Platform Reconstruction
- Update Station Amenities
- Infrastructure Maintenance



NVTC's Role: Support Regional Coordination



Review of Coordination Timeline



Review and Lessons Learned

- Conducted on October 3rd 2019
- Focus on three major areas:
 - Planning and Coordination
 - Service and Mitigation
 - Communication and Outreach
- WMATA staff feedback and review
- Jurisdictional staff feedback and recommendations
- Outcomes and Findings
 - Positive Performances
 - Opportunities for Improvement
 - Applications for next shutdown

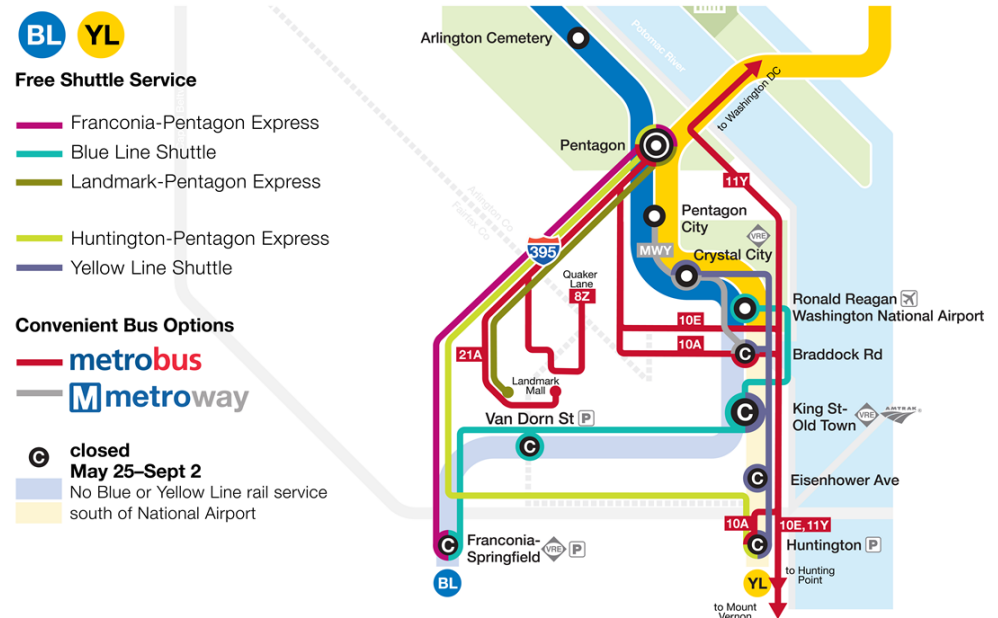
Service and Mitigation

Positives

- Shuttle Bus Operation Improvement
- New transit operation technologies introduced
- Elimination of parking fees, improved fare incentives
- Supplemental service and extra Metrobus service
- Coordination with local jurisdictional staff

Opportunity for Improvement

- Initial shuttle bus operations and training, more testing, address capacity constraints
- Consider more incentives/promotions for existing and supplemental transit
- Opportunity for dedicated lanes, traffic management



Communication and Outreach

Positives

- Street Teams, Pop Ups Events, In-person outreach
- WMATA Communication Campaign
 - Project Progress reporting
 - Community Outreach
- Collaborative Communication Effort

Opportunity for Improvement

- Improve Station Signage, Wayfinding, customer directions
- Enhanced TDM and Telework Policies



Source: WMATA PIP

Next Steps

- Continue to monitor station and route ridership from affected area
- NVTC Post Shutdown Marketing Campaign
- Integrate lessons learned into Summer 2020 Orange Line shutdown coordination effort
 - Plan early, and often with contingencies
 - Prioritize direct customer outreach and awareness
 - Utilize opportunities for testing and training, be prepared to make operational changes
 - Leverage regional partners, collaborate on mitigation services