



**I-395/95 COMMUTER CHOICE
JOINT COMMISSION WORKING GROUP
THURSDAY FEBRUARY 21, 2019**

10:00 A.M.

Note Location: Franconia Governmental Center, 6121 Franconia Road, Alexandria, VA 22310

PRELIMINARY AGENDA

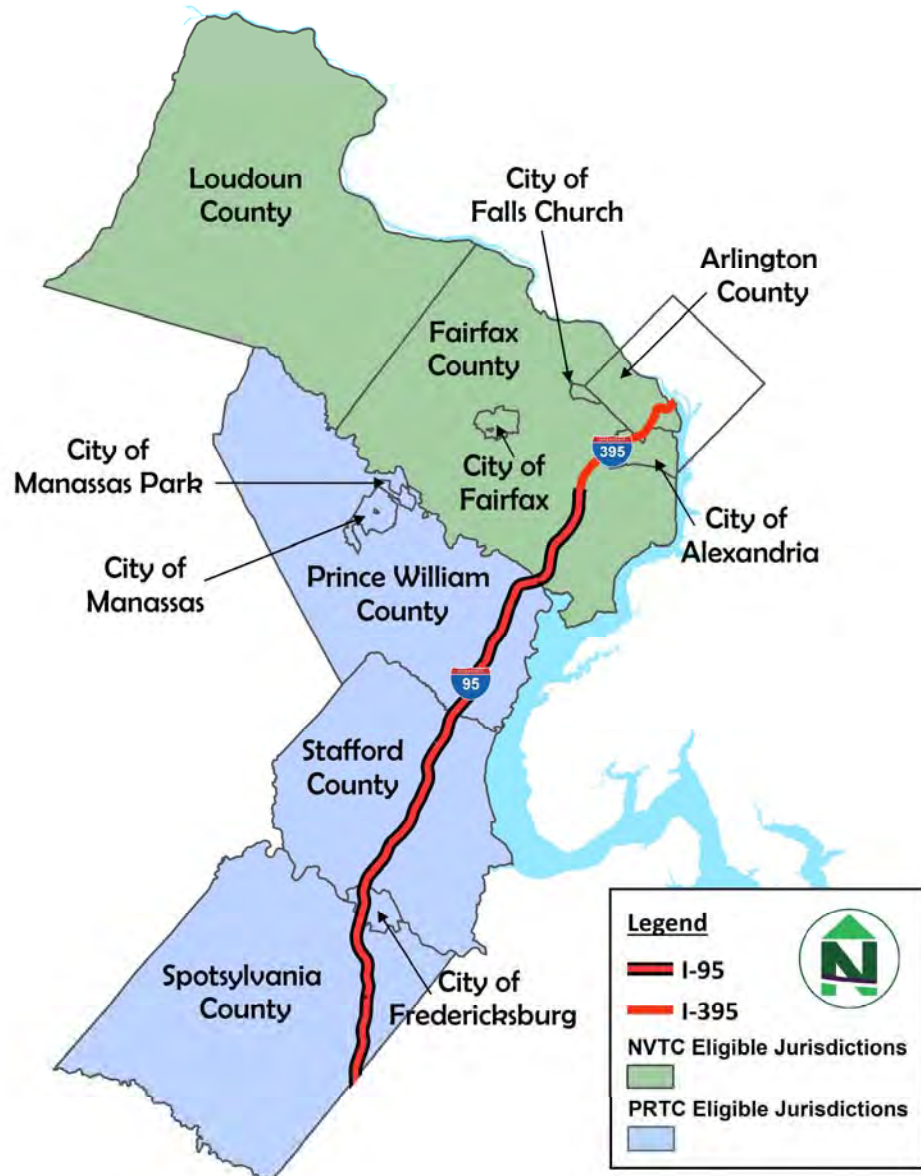
1. Welcome and Introductions
2. Overview of Committee Structure and Scope
3. Overview of I-395/95 Commuter Choice Program
4. Proposed Evaluation Process, Criteria, and Schedule
5. Next Steps

Members:

Jeff McKay, Working Group Chair, NVTC
Elizabeth Bennett-Parker, NVTC
Libby Garvey, NVTC
Ruth Anderson, PRTC
Frank Principi, PRTC
Gary Skinner, PRTC



I-395 Commuter Choice Program



- A new competitive program to fund transit and multimodal projects along I-395/95
- Projects must benefit the toll payers of I-395 Express Lanes
- All applications are scored for how well they move people through the corridor, help reduce congestion, and help address diversion
- Eligible applicants include the jurisdictions in NVTC and PRTC
 - As well as agencies providing public transportation within those jurisdictions (VRE, WMATA, PRTC/OmniRide)
- Funding will be \$15 million/year, escalated 2.5% starting in 2019.
- Initial program will developed this year with selections by September
 - Application period anticipated to be open in spring (Apr –June)
 - NVTC/PRTC/CTB approval by October

**MEMORANDUM OF AGREEMENT REGARDING THE
ANNUAL TRANSIT INVESTMENT FROM THE 395 HOT LANES**

This Memorandum of Agreement (“MOA”) is dated December 20, 2017 and is among:

(i) the Commonwealth Transportation Board (“CTB”), (ii) the Virginia Department of Transportation (“VDOT”), (iii) the Northern Virginia Transportation Commission (“NVTC”), (iv) the Potomac and Rappahannock Transportation Commission (“PRTC”), and (v) the Virginia Department of Rail and Public Transportation (“DRPT”) ((i), (ii), (iii), (iv), and (v) collectively, the “Parties”).

RECITALS

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

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

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

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

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

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

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

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

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

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

AGREEMENT

NOW THEREFORE, the Parties agree as follows:

I. Purpose of this MOA

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

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

II. Basic Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Limits on the Use of ATI Funds:

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

138 **2. Priority of Use of ATI Funds.** ATI funds transferred to NVTC must first be
139 used to pay any NVTC ATI-Related Debt Service and thereafter may be used to
140 fund ATI-Funded Projects. ATI funds transferred to PRTC must first be used to
141 pay any PRTC ATI-Related Debt Service and thereafter may be used to fund ATI-
142 Funded Projects.

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

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

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

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

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

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

(i) all outstanding PRTC ATI-Related Debt, plus (ii) the proposed new PRTC ATI-Related Debt.

5. Use of ATI Funds Limited to ATI-Funded Projects. The Commonwealth, NVTC, and PRTC shall have no right to use the ATI funds to pay any debt, obligation, or liability unrelated to a CTB-approved ATI-Funded Project, or for any purposes other than those specified in this MOA. Interest earned on ATI funds held by NVTC and PRTC shall be considered ATI funds and may only be used for the purposes specified in this MOA.

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

(a) to pay operating costs for individual ATI-Funded Projects 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 commuter rail stations; and

(b) to pay operating costs for all other individual ATI-Funded Projects 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.

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

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

- 227 (a) Must reasonably relate to or benefit the toll-paying users of the I-
228 95/I-395 Project;

- 229 (b) Must have the capacity to attain one or more of the Improvement
230 Goals;
- 231 (c) Must be one of the following types of multimodal transportation
232 improvements serving the Corridor (which term, for the avoidance of
233 doubt, includes adjacent and nearby routes):
- 234 i. New or enhanced local and commuter bus service, including
235 capital and operating expenses (*e.g.*, fuel, tires, maintenance, labor,
236 and insurance), and transit priority improvements,
 - 237 ii. Expansion or enhancement of transportation demand
238 management strategies, including without limitation, vanpool, and
239 formal and informal carpooling programs and assistance,
 - 240 iii. Capital improvements for expansion or enhancement of
241 Washington Metropolitan Area Transit Authority rail and bus
242 service, including capital and operating expenses, and improved
243 access to Metrorail stations and Metrobus stops,
 - 244 iv. New or enhanced park and ride lot(s) and access or improved
245 access thereto,
 - 246 v. New or enhanced VRE improvements or services, including
247 capital and operating expenses,
 - 248 vi. Roadway improvements in the Corridor (which term, for the
249 avoidance of doubt, includes adjacent and nearby routes),

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

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

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

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

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

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

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

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

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

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

3. Financing of ATI-Funded Projects; No Recourse against Commonwealth.

NVTC and PRTC may use ATI funds appropriated by the General Assembly and allocated by the CTB to NVTC and PRTC to support the financing of approved ATI-Funded Projects.

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

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

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

297 Each bond, promissory note, or other document evidencing NVTC ATI-
298 Related Debt or PRTC ATI-Related Debt must include a conspicuous recital on
299 its face stating: (a) payment of the principal and interest does not constitute a
300 claim against VDOT's interest in I-95, I-395, or any part thereof; (b) payment is
301 not an obligation of the Commonwealth of Virginia, VDOT, DRPT, the CTB, or
302 any other agency, instrumentality, or political subdivision of the Commonwealth
303 of Virginia (including NVTC's or PRTC's member jurisdictions, as applicable),
304 moral or otherwise; and (c) neither the full faith and credit nor the taxing power of
305 the Commonwealth of Virginia, VDOT, DRPT, the CTB, or any other agency,
306 instrumentality, or political subdivision of the Commonwealth of Virginia,
307 (including NVTC's or PRTC's member jurisdictions, as applicable) is pledged to
308 the payment of the principal and interest on such NVTC ATI-Related Debt or
309 PRTC ATI-Related Debt.

310 NVTC and PRTC shall not enter into agreements with holders of any
311 NVTC ATI-Related Debt or PRTC ATI-Related Debt incurred by NVTC, PRTC,
312 or their member jurisdictions that contain a pledge or claim on the ATI funds or
313 NVTC or PRTC's interest in the ATI funds under this MOA except such debt
314 issued for ATI-Funded Projects. If, despite such efforts, ATI funds are applied to
315 satisfy any debt of NVTC or PRTC that is not properly payable out of ATI funds
316 in accordance with this MOA and state and federal law, NVTC or PRTC as
317 applicable shall reimburse DRPT (which in turn shall reimburse VDOT an equal

amount) in full any such ATI funds or accounts from any other available revenues other than the ATI funds.

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

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

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

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

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

5. Accounting. NVTC and PRTC shall each receive and manage, as a fiduciary, the ATI funds appropriated by the General Assembly, allocated by the CTB, and transferred to them by DRPT. NVTC and PRTC shall each create and maintain all funds and accounts containing the ATI funds separate and apart from all other

341 funds and accounts of NVTC and PRTC. Said funds shall constitute a “special
342 revenue fund” as defined by the Governmental Accounting Standards Board.
343 The revenues and expenses relating to the use of the ATI funds and the ATI-
344 Funded Projects undertaken shall not be commingled with any other funds,
345 accounts, venues, or expenses of NVTC or PRTC. NVTC and PRTC shall each
346 report for the ATI-Funded Projects financed by ATI funds provided by this MOA
347 and reported as an applicable special revenue fund within their financial
348 statements. Expenditures will be recorded and reported for each ATI-Funded
349 Project.

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

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

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

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

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

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

384 **10. Losses.** “Losses” are losses actually suffered or incurred arising from: (a)
385 any failure by NVTC or PRTC to comply with, to observe or to perform in any

material respect any of the covenants, obligations, agreements, terms or conditions in this MOA, or any breach by NVTC or PRTC of its representations or warranties in this MOA; (b) any actual or willful misconduct or negligence of NVTC or PRTC, their employees or agents in direct connection with the I-95/I-395 Project or any related ATI-Funded Projects; (c) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use of trade secrets, patents, proprietary information, know-how, trademarked, or service-marked materials, equipment devices or processes, copyright rights or inventions by NVTC or PRTC in direct connection with the I-95/I-395 Project or any related ATI-Funded Projects; (d) any inverse condemnation, trespass, nuisance, or similar taking of or harm to real property committed or caused by NVTC or PRTC, their employees, or agents in direct connection with the I-95/I-395 Project; or (e) any assumed liabilities.

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

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

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

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

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

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

IV. Temporal Limit on Debt and Pay-As-You-Go Financing. NVTC and PRTC shall not incur any NVTC ATI-Related Debt or PRTC ATI-Related Debt that is dependent on ATI funds and which matures or extends beyond the term of this MOA. If this MOA is terminated in accordance with Section VII, or expires due to the termination of the ARCA, and there is outstanding NVTC ATI-Related Debt or PRTC ATI-Related Debt for which ATI funds have been pledged to pay NVTC ATI-Related Debt Service or PRTC ATI-Related Debt Service, or there are pay-as-you-go ATI-Funded Projects that are not complete (and provided the use of ATI funds to pay NVTC ATI-Related Debt Service or PRTC ATI-Related Debt Service or the costs of the pay-as-you-go ATI-Funded Projects is not a misuse of ATI funds under this MOA and the cause or basis of the termination), then tolls shall continue to be imposed on the I-95/I-395 Project (in the case of expiration of this MOA due to the termination of the ARCA, the continuation of such tolls being subject to CTB approval) and the CTB will allocate 395 Revenues in an amount sufficient, if available, to pay NVTC ATI-Related Debt Service or PRTC ATI-Related Debt Service, as applicable, or to complete the pay-as-you-go ATI-Funded Projects. However, for pay-as-you-go ATI-Funded Projects the CTB will not approve funding for more than a two-year period after termination of the MOA. For pay-as-you-go ATI-Funded Projects that are capital improvement projects with completion dates more than two years past the termination of the MOA, NVTC and/or PRTC, as applicable, shall use best efforts to obtain additional funding necessary to complete the project. If NVTC and/or PRTC knows it will not be able to obtain additional funding to complete such a project, it shall terminate the project as soon as practicable after gaining such knowledge. No new projects may be initiated to be funded with the ATI funds after any delivery of a written notice of termination under Section VII.

V. Entire Agreement. This MOA constitutes the entire and exclusive agreement among 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 modified only in writing signed by all Parties or their permitted successor(s) or assignee(s).

VII. Termination. This MOA may be terminated (a) by a non-breaching Party for material non-compliance with this MOA that has not either been remedied, or a remedy commenced and diligently pursued thereafter, within 120 days after written notice to the breaching Party from a non-breaching Party, or (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 DRPT, the NVTC Executive Director, and the PRTC 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 and the Chairman of PRTC shall meet within 30 days to discuss resolution of the non-compliance issues. If a resolution cannot be agreed 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 in writing and addressed as follows:

If to NVTC:

Executive Director
Northern Virginia Transportation Commission
2300 Wilson Boulevard, Suite 620
Arlington, VA 22201
Fax: (703) 524-1756

If to PRTC:

Executive Director
Potomac and Rappahannock Transportation Commission
14700 Potomac Mills Road

Woodbridge, VA 22192
Fax: (703) 583-1377

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

With a copy to:
Office of the Attorney General
Chief, Transportation Section
202 North Ninth Street
Richmond, Virginia 23219
Fax: (804) 692-1647

If to DRPT:
Department of Rail & Public Transportation
600 East Main Street
Richmond, VA 23219
Attn: Director
Fax: 804 225 3752

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.

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

X. 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.

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

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

XIII. 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, 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.

XIV. Notice of Legal Proceedings. The Parties agree promptly to 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.

XV. 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.

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

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

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

[SIGNATURE PAGES TO FOLLOW]

COMMONWEALTH TRANSPORTATION BOARD

A handwritten signature in black ink, appearing to be 'SM', is written over a horizontal line.

The Honorable Shannon Valentine
Secretary of Transportation

Date: 1-9-19

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

VIRGINIA DEPARTMENT OF TRANSPORTATION



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

Date: 1/8/2019

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

NORTHERN VIRGINIA TRANSPORTATION COMMISSION



Katherine A. Mattice
Executive Director

Date: 1/12/2018

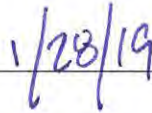
[MEMORANDUM OF AGREEMENT REGARDING THE ANNUAL TRANSIT INVESTMENT FROM THE 395
HOT LANES SIGNATURE PAGE]

POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION



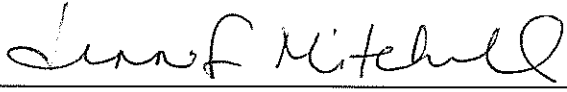
Robert Schneider
Executive Director

Date: _____



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

VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION



Jennifer Mitchell

Director

Date: 1/24/19

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

EXHIBIT A

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

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

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

1. Distribution of ATI Funds.

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

Standards Board. The revenues and expenses relating to the use of the ATI funds and the ATI Funded Projects undertaken shall not be commingled with any other funds, accounts, venues, or expenses of NVTC or PRTC. NVTC and PRTC shall each report for the ATI Funded Projects financed by ATI funds and shall be reported as an applicable special revenue fund within their financial statements. Expenditures will be recorded and reported for each ATI Funded Project. All ATI funds transferred to NVTC and PRTC shall be held in accounts with a financial institution under an arrangement that, to the extent reasonably practicable, preclude such funds from being an asset subject to the claims of creditors of NVTC and PRTC, except as provided in the DRPT-VDOT MOA.

2. Project Selection Process.

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

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

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

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

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

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

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

- (1) Must reasonably relate to or benefit the toll-paying users of the I-95/I-395 Project;
- (2) Must have the capacity to attain one or more of the Improvement Goals;

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

- i. New or enhanced local and commuter bus service, including capital and operating expenses (*e.g.*, fuel, tires, maintenance, labor, and insurance), and transit priority improvements,
- ii. Expansion or enhancement of transportation demand management strategies, including without limitation, vanpool, and formal and informal carpooling programs and assistance,
- iii. Capital improvements for expansion or enhancement of Washington Metropolitan Area Transit Authority rail and bus service, including capital and operating expenses, and improved access to Metrorail stations and Metrobus stops,
- iv. New or enhanced park and ride lot(s) and access or improved access thereto,
- v. New or enhanced VRE improvements or services, including capital and operating expenses,
- vi. Roadway improvements in the Corridor (which term, for the avoidance of doubt, includes adjacent and nearby routes),
- vii. Transportation Systems Management and Operations as defined in 23 U.S.C. § 101(a)(30) on September 30, 2017, or

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

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

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

3. Reports.

- a. Not less than semi-annually, and at such additional times as either PRTC or NVTC may request, the NVTC Executive Director and the PRTC Executive Director shall provide a joint report to the Commissions of the status of all ATI Funded Projects for which ATI funds have been allocated, which report shall include, on a project by project basis, the amount of ATI funds authorized for expenditure on the ATI Funded Project, the amount expended, and the status of the project.
- b. NVTC and PRTC shall provide a joint annual report to the CTB within 120 days of the end of NVTC's and PRTC's fiscal year. The report shall contain at a minimum the following four items:
 - (1) A description of the ATI Funded Projects selected for funding in the past fiscal year and the benefits that were the basis for evaluation and selection of each such ATI Funded Projects;
 - (2) Starting five years after the effective date of this Agreement, a review of the ATI Funded Projects funded in past fiscal years describing the degree to which the expected benefits were realized or are being realized;
 - (3) In the event that an ATI Funded Project is not providing substantially similar benefits to those that were the basis for evaluation and selection of the ATI Funded Project, the report shall evaluate the viability of a plan to either (i) modify such ATI Funded Project, or (ii) redeploy assets in such ATI Funded Project to other eligible ATI Funded Projects that are expected to provide greater benefits; and

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

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

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

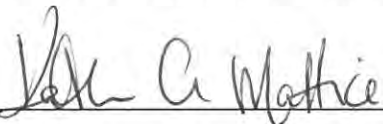
6. **Amendments.** This Agreement may be modified, in writing, upon mutual agreement of both Commissions.

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

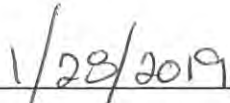
8. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Virginia.
10. **Term.** The term of this Agreement shall commence on the date last signed by one of the Commissions (“the Effective Date”) and shall expire concurrent with the expiration or termination of the DRPT-VDOT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

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

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

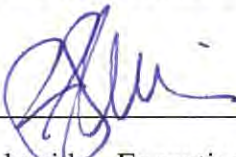


Katherine A. Mattice, Executive Director

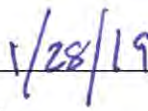


Date

POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION



Robert A. Schneider, Executive Director



Date

EXHIBIT A

PART A – ANNUAL TRANSIT INVESTMENT FORM			
Payment Due Date	Annual Transit Investment (\$ Nominal)	Payment Due Date	Annual Transit Investment (\$ Nominal)
395 Service Commencement Date	\$15,000,000	+ 35 year	\$35,598,078
+ 1 year	15,375,000	+ 36 year	36,488,030
+ 2 year	15,759,375	+ 37 year	37,400,230
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+ 4 year	16,557,193	+ 39 year	39,293,617
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+ 23 year	26,469,160	+ 58 year	62,816,748
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+ 25 year	27,809,161	+ 60 year	65,996,846
+ 26 year	28,504,391	+ 61 year	67,646,767
+ 27 year	29,217,000	+ 62 year	69,337,937
+ 28 year	29,947,425	+ 63 year	71,071,385
+ 29 year	30,696,111	+ 64 year	72,848,170
+ 30 year	31,463,514	+ 65 year	74,669,374
+ 31 year	32,250,102	+ 66 year	76,536,108
+ 32 year	33,056,354	+ 67 year	78,449,511
+ 33 year	33,882,763	+ 68 year	80,410,749
+ 34 year	34,729,832		
		Term of ARCA	\$2,696,840,696