

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

MEMORANDUM

TO: Chairman Martin E. Nohe and Members
Northern Virginia Transportation Authority

FROM: Michael Longhi, Chief Financial Officer

DATE: November 3, 2017

SUBJECT: Memorandum of Agreement for the Transform 66 Outside the Beltway
Concessionaire Payment

1. **Purpose:** To seek Northern Virginia Transportation Authority (NVTa) approval of a Memorandum of Agreement (MOA) related to the Transform 66 Outside the Beltway (I-66 OTB) concession payment.
2. **Suggested Motion:** *I move Authority approval of the draft Transform I-66 Outside the Beltway Project MOA, subject to non-sustentative final revisions by NVTa's Council of Counsels and authorize the Executive Director to sign.*
3. **Background:**
 - a. The Commonwealth of Virginia's Transform I-66 OTB project is a multimodal public private partnership between the Virginia Department of Transportation (VDOT), the Department of Rail and Public Transportation (DRPT) and private partner, Express Mobility Partners, which when finalized, will bring a \$2.3 billion investment in the I-66 Corridor, to move more people while providing reliable trips and new multimodal travel options.
 - b. The Commonwealth anticipates financial close on the I-66 OTB concession agreement with Express Mobility Partners in November 2017.
 - c. The final agreement is anticipated to include up to a \$500 million concessionaire payment for multimodal projects within the I-66 OTB corridor.
 - d. The NVTa was requested by Secretary Layne, to solicit eligible projects and make project recommendations to the Commonwealth Transportation Board (CTB).
 - e. On July 13, 2017, the NVTa approved a list of 14 projects totaling \$496 million for CTB consideration and approval for the \$500M concessionaire payment. (Attachment 1)
 - f. The CTB is anticipated to take action on the projects submitted for the \$500 million concessionaire payment at their December 2017 meeting.
 - g. NVTa staff and Council of Counsels drafted an MOA documenting the roles and responsibilities between the CTB and the NVTa regarding the use and governance of the \$500M.

h. The CTB is anticipated to take action on the MOA at their December 2017 meeting.

4. Discussion:

- a. The attached draft Transform 66 Outside the Beltway Project MOA is under review by the Commonwealth. (Attachment 2)
- b. The MOA covers NVTAs current activity in a Call for Projects and the formulation of project recommendations to the CTB.
- c. The MOA includes provisions for the NVTAs to:
 - i. Receive the concession payment from the Commonwealth equal to the total projects and associated costs approved by the CTB;
 - ii. Make appropriate reimbursements on approved projects to the project sponsors;
 - iii. Transfer back to the Commonwealth, any unused project funding;
 - iv. Submit additional project funding requests for CTB approval for any unallocated portion of the \$500M concessionaire payment and earned interest.
- d. The MOA details the receipt, accounting, administration, project reimbursement and closeout of the concession payment funds. The structure detailed in the MOA will ensure the concession payment funds and the NVTAs HB2313 funds will be held and accounted for separately.
- e. NVTAs proposed accounting for the concession funds is transparent, utilizing many of the same practices and procedures already developed for HB2313 project reimbursements.
- f. NVTAs audit and accountability responsibilities are well detailed in the MOA and are based on a proprietary special revenue fund as defined by the Governmental Accounting Standards Board and will be included on the Authoritys Audited Financial Statements, until such time as the fund is closed out.

Coordination:

NVTA Council of Counsels

Attachments:

Attachment 1 – July 17 Letter to Secretary of Transportation Layne

Attachment 2 - Memorandum of Agreement, Transform 66: Outside the Beltway Project (Draft)



Attachment 1

Northern Virginia Transportation Authority *The Authority for Transportation in Northern Virginia*

July 17, 2017

The Honorable Aubrey L. Layne, Jr.
Secretary of Transportation
Patrick Henry Building
1111 East Broad Street, Third Floor
Richmond, Virginia 23218

Reference: Northern Virginia Transportation Authority Funding Recommendations to the Commonwealth Transportation Board for the Transform 66 Outside the Beltway Concessionaire Payment

Dear Secretary Layne;

Thank you for seeking the Northern Virginia Transportation Authority's (NVTA) recommendations to the Commonwealth Transportation Board (CTB) for projects to be funded through the Transform 66 Outside the Beltway Concessionaire Payment. The NVTA appreciates the Commonwealth's efforts to transform I-66, bringing multimodal solutions to this highly congested corridor. Providing the opportunity for the NVTA to submit recommendations, as the regional transportation planning authority, further demonstrates your commitment to ensuring the Northern Virginia's input is included in this important process.

To develop these recommendations for CTB consideration, the Authority issued a call for projects on June 8, 2017, with a deadline of June 28, 2017. Twenty-six project applications were received from seven jurisdictions/agencies with a total funding request of \$1,173,982,411. We understand up to \$500 million is anticipated by the Commonwealth through the concessionaire payment.

NVTA staff reviewed the project applications and followed up with jurisdiction and agency staff as needed, to clarify application and project details. NVTA applied an objective evaluation process that considered:

Eligibility Criteria

- a. Regional transportation plans that included the project;
- b. Supporting documentation for the project from the sponsor's governing body;
- c. Project location and nexus to the I-66 OTB corridor;
- d. Utilization of concessionaire funding by toll day-one (mid- 2022);
- e. Commitment of any required operation and/or maintenance funds; and

- f. Benefit to users within the corridor.

Prioritization (project accomplishes two or more of the following)

- a. Project has undergone a performance based evaluation process (i.e. TransAction 2040, SmartScale);
- b. Project can demonstrate the ability to reduce congestion;
- c. Project is a joint effort between two or more localities or agencies;
- d. Project is an extension/expansion of a project currently encompassed as part of the Transform 66 OTB project;
- e. Project was requested to be included in the Transform 66 OTB project (must be demonstrated via documentation); and
- f. Project can be constructed prior to toll day one (mid-2022).

Each jurisdiction/agency was required to rank each of its project applications to reflect its own priorities. After applying these eligibility and prioritization steps, and taking into account jurisdiction/agency priorities, NVTa recommends the following 14 projects be funded in a total amount of \$496,287,000.

| Jurisdiction/Agency | Project Name | Funding Request |
|------------------------------|---|-----------------|
| Arlington County | East Falls Church Metrorail Station Bus Bay Expansion | \$ 4,841,000 |
| Fairfax County | Jermantown Road Bridge over I-66: Widening to four lanes | \$ 11,000,000 |
| | Route 50 and Waples Mill Road Intersection Improvements | \$ 2,000,000 |
| | Monument Drive bridge pedestrian facility improvement | \$ 3,800,000 |
| | Commuter Parking Structure at Government Center/Fairfax Corner | \$ 38,500,000 |
| | Lee Highway Pedestrian Improvements: Completion of missing segments of the pedestrian walkway on the south side of Lee Highway from Nutley Street to Vaden Drive | \$ 1,325,000 |
| | Poplar Tree Road bridge construction to four lanes | \$ 6,000,000 |
| | I-66 Median Widening (Lee Highway (Route 29) to Route 28) for WMATA Orange Line Accommodation | \$ 40,000,000 |
| Prince William County | Route 234 at Balls Ford Road Interchange Including Balls Ford Road Improvements | \$ 167,950,000 |
| | Balls Ford Road Widening: Groveton Road to Route 234 Business (Sudley Road) | \$ 67,405,000 |
| City of Fairfax | George Snyder Trail: From Chain Bridge Road (Route 123) to Fairfax Boulevard (Route 50) at Draper Drive | \$ 13,605,000 |
| Town of Vienna | Nutley Street SW Mixed Use Trail: From Marshall Road SW to Tapawingo Road SW | \$ 295,000 |
| PRTC | Western Bus Maintenance & Storage Facility | \$ 11,070,000 |
| VRE | VRE Manassas Line Capacity Expansion and Real-time Multimodal Traveler Information Project (rolling stock, Broad Run station/parking/ expansion, South Manassas 3rd Track, Manassas Station Platform Extension, Manassas Park Parking/Bridge, Realtime Traveler Info) | \$ 128,496,000 |
| TOTAL | | \$ 496,287,000 |

We are pleased to note that each of the jurisdictions/agencies which submitted a project not only received a project recommendation, but received a recommendation for their highest prioritized project.

A certified copy of the Authority action taken on July 13, 2017 approving the submission of the project recommendations for CTB consideration is attached. This document also includes the project application summary form for each of the 26 projects submitted and a recap of all applications and the NVTa funding recommendation.

Please let me know if you have any questions or if I can provide any clarifications regarding these recommendations.

Sincerely,



Martin E. Nohe
Chairman

CC: Nick Donohue, Deputy Secretary of Transportation
Mary Hughes Hynes, CTB and NVTa Member
NVTa Members

Attachment 2

MEMORANDUM OF AGREEMENT TRANSFORM66: OUTSIDE THE BELTWAY PROJECT

This Memorandum of Agreement (“MOA”) is entered into on _____, 2017, between the Commonwealth Transportation Board (“CTB”), and the Northern Virginia Transportation Authority (“NVTA”) (collectively, the “Parties”).

RECITALS

WHEREAS, the CTB, the Virginia Department of Transportation (“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 components: (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 “Inside the Beltway Component”), 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 (the “Outside the Beltway Component”); and

WHEREAS, the goals of the Outside the Beltway Component 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 Route 15 in Haymarket, Virginia (the “Facility”); and

WHEREAS, the Outside the Beltway Component will facilitate implementation of projects that are reasonably related to or benefit the users of the Facility, including but not limited to multimodal transportation improvements to the roadways and associated transportation and transit facilities in the vicinity of the Facility (“Projects”); and

WHEREAS the developer of the Outside the Beltway Component (“Developer”) will provide the Commonwealth with a concession payment to support corridor improvements for the

Outside the Beltway Component in the amount of at least Five Hundred Million Dollars (\$500,000,000.00) ("Concession Payment") no later than _____, 2017; and

WHEREAS, in accordance with § 33.2-1528 of the *Code of Virginia* (1950), the Commonwealth will establish a separate subaccount ("Concession Payments Account") in which to hold the Concession Payment, from which the CTB may allocate funds to NVTa as provided for herein; and

WHEREAS, in accordance with § 33.2-2500(4) and § 33.2-2512(10) of the *Code of Virginia* (1950), NVTa may enter into agreements with any federal, state, local or private entity to provide, or cause to be provided, transportation facilities and services to the area embraced by NVTa; and

WHEREAS, NVTa, on behalf of the CTB, will fund Projects selected by NVTa and approved by the CTB for the Outside the Beltway Component, designed specifically to attain the Improvement Goals; and

WHEREAS, the CTB and NVTa agree that all such Projects shall be located within the geographical boundaries of Planning District 8, as those boundaries existed on the original signature date of this Agreement ("Planning District 8"); and

WHEREAS, the CTB desires to delegate to NVTa the authority to select and administer the implementation of Projects designed specifically to attain the Improvement Goals to be financed in whole or in part from the Concession Payment transferred to NVTa as provided in this MOA; and

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

WHEREAS, as set forth in **Exhibit 1** hereto, NVTa has submitted 14 projects ("Initial Projects") with associated funding recommendations totaling \$496,287,000.00 for CTB approval; and

WHEREAS, after approving any such Initial Projects, CTB will transfer a portion of the Concession Payment equal to the associated funding recommendation for such approved Initial Projects within 30 days; and

WHEREAS, if any portion of the Concession Payment is transferred to NVTa but not used for a particular CTB approved Project, NVTa will return such excess portion back to CTB within 30 days of NVTa's receipt of notice of cancellation and/or Project closeout for such Project; and

WHEREAS, subsequent to the submittal of the Initial Projects, NVTa may continue to select and submit additional Projects for approval by the CTB in accordance with this MOA (“Additional Projects”) until the entire Concession Payment has been used by NVTa for CTB approved Projects;

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 under This MOA

This MOA provides for the transfer to and use by NVTa of specified funds deposited into the Concession Payments Account, as allowed by law and according to the terms of this MOA, for the selection and administration of Projects 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 concession payments, including but not limited to § 33.2-1528, § 33.2-2500(4) and § 33.2-2512(10) 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 NVTa any authority over I-66, the tolling of I-66, or any other roadways in the I-66 corridor. It also does not obligate VDOT or the CTB to provide any specified amount of revenues from the Outside the Beltway Component beyond the Concession Payment and interest allocated by the CTB in compliance with Virginia Code § 33.2-1528 as provided in this MOA.

II. Basic Agreement; Roles and Responsibilities

A. CTB shall have the following roles and responsibilities:

1. Concession Payments Account Establishment. Subject to any applicable and necessary approvals of the CTB and FHWA, and in accordance with law, the CTB shall establish the Concession Payments Account in which to hold the Concession Payment in a separate subaccount of the Transportation Trust Fund. In addition, the Concession Payments Account shall hold all interest, dividends, returns from NVTa and appreciation that accrue to the Concession Payments Account and that are not otherwise specifically directed by law or reserved by the CTB for other purposes allowed by law.

93 **2. Approval of Projects of the Outside the Beltway Component and Payment**
94 **of Concession Payment.** Provided NVTa complies with the criteria established
95 herein for selection of Projects, the CTB shall consider and approve such Projects,
96 and transfer to NVTa a portion of the Concession Payment from the Concession
97 Payments Account equal to the funding recommendations approved by the CTB for
98 the Initial Projects set forth in **Exhibit 1**, and thereafter for approved Additional
99 Projects set forth in the applicable subsequent Project list(s), within 30 days of the
100 approval of such Projects by CTB. All transfers from the Concession Payments
101 Account contemplated after the initial fiscal year of this MOA will be subject to the
102 appropriation of funds by the General Assembly.

103
104 B. NVTa shall have the following roles and responsibilities:

105 **1. Use of Concession Payment; Compliance with Laws Limiting Use.** Until all
106 funds remaining in the Concession Payments Account have been used by NVTa
107 for CTB approved Projects, NVTa shall submit to the CTB, a list or lists of Projects
108 proposed to be funded in whole or in part by the Concession Payment. Such
109 Projects shall be selected by NVTa in accordance with a process established by
110 NVTa pursuant to this MOA. Such Projects shall be separately identified with
111 supporting documentation. The CTB shall consider and approve the Projects
112 selected by NVTa, and transfer to NVTa a portion of the Concession Payment
113 from the Concession Payments Account equal to the funding recommendations
114 approved by the CTB for the Initial Projects set forth in **Exhibit 1**, and thereafter
115 for approved Additional Projects set forth in the applicable subsequent Project
116 list(s), pursuant to II.A.2, provided the Projects meet the criteria below and are
117 selected in accordance with NVTa's selection process described in II.B.2. Upon
118 receipt from the Commonwealth, NVTa will hold any transfers from the
119 Concession Payments Account in a fund within its general ledger system of
120 accounting referred to as the I-66 Outside the Beltway Concession Payment Fund
121 ("I-66 OTB Fund"). Each proposed Project must meet each of the following five
122 criteria:

123 (a) Must benefit the 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 Planning District 8:

i. New or enhanced local and commuter bus service, including only capital , and transit priority improvements;

ii. Vanpool, and formal and informal carpooling programs and assistance;

iii. Capital improvements for Washington Metropolitan Area Transit Authority rail and bus service, including only capital expenses, and improved access to Metrorail stations and Metrobus stops;

iv. Park and ride lot(s) and access or improved access thereto;

v. Roadway improvements to address impacts from the dynamic tolling of the Facility on roadways in the vicinity of the Facility;

vii. Roadway operational improvements in the vicinity of the Facility;

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

(d) Must demonstrate the ability to obligate the Initial Project funds to the cost of such Projects by June 30, 2019 and to substantially expend such Initial Project funds by June 30, 2022;

(e) Must demonstrate the ability to obligate any Additional Project funds to the cost of such Projects within 12 months of their approval by the CTB and to substantially expend such Additional Project funds within 48 months of their approval by the CTB; and

(e) Must demonstrate that the 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 aforesaid criteria be modified except by written amendment to this MOA agreed to in writing by the Parties.

NVTA shall have no right to use the Concession Payment to pay any debt, obligation or liability unrelated to the Outside the Beltway Component, or for any purposes other than those specified in this MOA.

NVTA understands and agrees that in the selection and implementation of Projects using the Concession Payment, it is bound by the provisions of Virginia Code § 33.2-1528 as well as all other state and federal laws and regulations that limit the use of Concession Payment, and Concession Payment from interstate highways specifically. Accordingly, NVTA agrees to provide VDOT access to all records relating to Projects and the use of the Concession Payment. Further, NVTA 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.

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

(a) A request to submit proposed Projects issued by NVTA to all jurisdictions and other public transportation providers in Planning District 8 (The form of such request shall be substantially in the form of the Project Submittal Form attached hereto as **Exhibit 2**);

(b) The evaluation, prioritization, and selection of proposed Projects by NVTA, and the submission of selected Projects by NVTA to the CTB.

The CTB shall consider and approve the Projects selected by NVTA and pursuant to II.A.2, provided the Components meet the criteria in II.B.1.

181 **3. Monitoring:** NVTA shall provide an annual report to the CTB updating CTB on
182 the status of the Projects within 120 days of the end of NVTA's fiscal year.

183 **4. Accounting.** NVTA shall receive and manage, as a fiduciary, the Concession
184 Payment funds allocated by the CTB and held by NVTA in the I-66 OTB Fund.
185 All interest earned on the I-66 OTB Fund, net of the transaction costs directly
186 related to the interest earnings, shall accrue to and remain in the I-66 OTB Fund for
187 the benefit of approved projects. However, any remaining Project fund balances
188 at Project closeouts and any Project funds not used for a particular Project because
189 of the cancellation of that Project will be returned to the Concession Payments
190 Account by NVTA within 30 days of NVTA's receipt of such notice of such Project
191 closeout or cancellation for use by NVTA for Additional Projects selected by
192 NVTA in accordance with II.B.2 and approved by the CTB in accordance with
193 II.A.2. NVTA shall maintain all funds and accounts containing such funds from
194 this MOA separate and apart from all other funds and accounts of NVTA. The
195 revenues and expenses relating to the use of the Concession Payment, and the
196 Projects undertaken with the Concession Payment from this MOA, shall not be
197 commingled with any other funds, accounts, venues, or expenses of NVTA. NVTA
198 shall create and maintain for the term of this MOA segregated accounting and
199 financial reporting for the Projects financed by the Concession Payment provided
200 by this MOA and reported as a separate fund in NVTA's financial statements, and
201 such accounting shall constitute a proprietary "special revenue fund" as defined by
202 the Governmental Accounting Standards Board. Expenditures will be recorded and
203 reported for each Project. The I-66 OTB Fund will be included in the NVTA's
204 Annual Audited Financial Statements ("Audited Statements"). A copy of the
205 Audited Statements for any fiscal year in which payments are made for any Projects
206 from the I-66 OTB Fund will be provided to CTB. Upon exhaustion of the
207 Concession Payments Account and all I-66 OTB Fund revenues, interest earnings
208 and fund balance, an I-66 OTB Fund close out statement will be provided as part
209 of the NVTA's Audited Statements for that fiscal period, and the close out
210 statement will be included in the final Audited Statements provided to the CTB
211 under this Agreement.

212 The Concession Payment provided to NVTa pursuant to the terms of this
213 MOA shall be held by NVTa with a financial institution under an arrangement that,
214 to the extent reasonably practicable, preclude such funds from being an asset
215 subject to the claims of creditors of NVTa, or other claims related to the Projects
216 undertaken in accordance with this MOA.

217 **5. Quality Management.** NVTa shall through the tool of its Standard Project
218 Agreement, require the recipient entity under any Standard Project Agreement to
219 be responsible for all quality assurance and quality control activities necessary to
220 properly manage the funding of the development, design, construction, purchases,
221 acquisition, operation and maintenance of any Project undertaken pursuant to this
222 MOA.

223 **6. Public Information.** During the term of this MOA, NVTa shall provide
224 information to the public concerning the Projects it has undertaken, including any
225 public meetings and public hearing that may be required by law or regulation.

226 **7. Regulatory Approvals.** NVTa shall, through the tool of its Standard Project
227 Agreement, require the recipient entity under any Standard Project Agreement to
228 obtain, keep in effect, maintain, and comply with all regulatory approvals necessary
229 for funding the development, operation, and maintenance of any Projects funded
230 under this MOA.

231 **8. Contracting Practices.** During the term of this MOA, NVTa through the tool
232 of its Standard Project Agreement, shall require the recipient entity under any
233 Standard Project Agreement to covenant and agree, that with respect to the Projects
234 it has undertaken, it will comply with all requirements of state and federal laws
235 relating to anti-discrimination, including but not limited to Titles VI and VII of the
236 Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act, and
237 shall contractually require the same of all contractors, subcontractors, vendors, and
238 recipients of any funding. NVTa recognizes the importance of the participation of
239 minority, women-owned and small businesses through the federal and local
240 Disadvantaged Business Enterprise programs and will abide by such programs in
241 implementing Projects through the tool of its Standard Project Agreement.

NVTA shall through the tool of its Standard Project Agreement, require the recipient entity under any Standard Project Agreement to comply with all applicable federal requirements, including those applicable to highways that are part of the National Highway System.

9. Insurance and Indemnity by Contractors. NVTA shall, through the tool of its Standard Project Agreement, require the recipient entity under any Standard Project Agreement to include the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees and agents, as additional insureds on any insurance policy issued for the work to be performed by or on behalf of such recipient entity on the Project undertaken by such recipient entity.

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 upon the exhaustion of all funds within the Concession Paymnets Account and the I-66 OTB Fund.

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 and the NVTA 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 NVTA 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 NVTa:

Executive Director
Northern Virginia Transportation Authority
3040 Williams Drive, Suite 200
Fairfax, VA 22031
Fax:

If to CTB:

c/o Secretary of Transportation

Fax:

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 NVTa to CTB 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 Parties. 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.

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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

The Honorable Aubrey L. Layne, Jr
Secretary of Transportation

Date: _____

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

Monica Backmon
Executive Director

Date: _____