

**SECOND AMENDMENT TO THE COMPREHENSIVE AGREEMENT
RELATING TO THE TRANSFORM 66 P3 PROJECT**

This SECOND AMENDMENT TO THE COMPREHENSIVE AGREEMENT RELATING TO THE TRANSFORM 66 P3 PROJECT (this “Second Amendment”) is made and entered into as of September 9, 2022, by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION, an agency of the Commonwealth of Virginia (the “Department”), the address of which is 1401 East Broad Street, Richmond, Virginia 23219, and I-66 EXPRESS MOBILITY PARTNERS LLC, a Delaware limited liability company (the “Developer”), the address of which is 12600 Fair Lakes Circle, Suite LL11, Fairfax, Virginia 22033.

RECITALS

WHEREAS, the Department and the Developer entered into that certain Comprehensive Agreement Relating to the Transform 66 P3 Project, dated as of December 8, 2016, as amended pursuant to that certain First Amendment to the Comprehensive Agreement Relating to the Transform 66 Project dated as of October 6, 2017, and Change Order No. 16 dated as of February 19, 2020 (the “Comprehensive Agreement”), pursuant to which the Department has granted to the Developer the right to develop, design, finance, construct, operate, and maintain the Transform 66 P3 Project, as more specifically defined and described in the Comprehensive Agreement; and

WHEREAS, the Department and the Developer desire to amend and clarify their respective rights and obligations under the Comprehensive Agreement, on the terms set forth in this Second Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. Each capitalized term used and not otherwise defined herein shall have the respective meaning assigned to such term in the Comprehensive Agreement.

2. Amendments to Section 5.01(b)(ii). Section 5.01(b)(ii) of the Comprehensive Agreement is hereby deleted in its entirety and replaced as follows:

(ii) In the event the Developer desires to accommodate the use of the Express Lanes by Permitted Vehicles that consist of a truck-tractor/straight truck power unit and a single trailer, the Developer may do so (x) only following any required modification to design and environmental approvals and (y) otherwise subject to the terms set forth in this Section 5.01(b)(ii). Should the Developer determine that the NEPA Documents require modification to accommodate such Permitted Vehicle use, the Developer will be responsible for all necessary actions, and will bear all risk of delay (except to the extent resulting from Delay Events) and all risk of increased costs (except to the extent resulting from Compensation Events), resulting from or arising out of any such modification

including, without limitation, the Department's Allocable Costs it incurs in its review and participation in obtaining any such modification. Notwithstanding anything to the contrary set forth in this Agreement (including, but not limited to, Section 5.01(b)(iv)), in no event shall any Ineligible Vehicle be entitled to use the Express Lanes at a one hundred percent (100%) discount from otherwise applicable tolls, regardless of the number of Persons traveling in such Ineligible Vehicle.

3. Addition of Section 8.16. A new Section 8.16 (*Early Opening of Project Segment West*) is hereby added to Article 8 of the Comprehensive Agreement that reads as follows:

Section 8.16 Early Opening of Project Segment West

(a) Notwithstanding anything to the contrary set forth in this Agreement, following the Developer's achievement of each of the following conditions with respect to Project Segment West (or the Department's waiver of any such condition, in its sole discretion), the Developer will be entitled to: (x) open Project Segment West for normal and continuous operations and use by the traveling public and (y) establish, impose, charge, collect, use, and enforce the collection and payment of the Toll Revenues with respect to Project Segment West in accordance with the terms of this Agreement, including, for clarity, Section 8.16(b) (the "Project Segment West Opening"):

(i) the Department has issued a written certificate of the Project Segment West Opening and delivered to the Developer notice to that effect (the "Project Segment West Opening Notice");

(ii) the Department has approved the Operations and Maintenance Plan and the updated Performance Requirements Baseline Tables, required by the Technical Requirements to be submitted on or before the Service Commencement Date, with respect to Project Segment West;

(iii) the Developer has received and delivered to the Department copies of all Governmental Approvals necessary to operate Project Segment West and has satisfied all conditions and requirements thereof which must be satisfied before Project Segment West can be lawfully opened for regular public use, all such Governmental Approvals remain in full force and effect, and there exists no uncured material violation of the terms and conditions of any such Governmental Approval;

(iv) all insurance policies required under Section 17.01 for the Operating Period have been obtained with respect to Project Segment West and will be in full force and effect, and the Developer has delivered to the Department duplicate originals or copies thereof (or endorsements reasonably acceptable to the Department extending coverage to the Project), certified by the Developer's insurance broker to be true and correct copies of the originals;

(v) there exists no Developer Default for which the Developer has received notice from the Department and there exists no event or condition that, with notice or lapse of time, would constitute a Developer Default (with the exception of payment defaults that the Developer has disputed in writing);

(vi) all Operations and Maintenance Agreements, if applicable, for Project Segment West and agreements relating to toll collection and violation enforcement on Project Segment West (including the Electronic Toll Collection Agreement) are in full force and effect;

(vii) the Developer has implemented the Maintenance Management System for Project Segment West in accordance with the Technical Requirements;

(viii) all Project Agreements are in full force and effect;

(ix) the Developer has provided to the Department the training, required to have been provided prior to Service Commencement by the Technical Requirements, for Project Segment West;

(x) the Developer has submitted to the Department a budget setting forth the information called for in Section 9.07(a) for Project Segment West for the period between the Project Segment West Opening and the date on which the Developer reasonably expects to achieve Service Commencement; *provided* that the Developer will update such budget from time to time, as needed, should the Developer not achieve Service Commencement on or before the date shown in such budget (it being understood that the purpose of this Section 8.16(a)(x) is to ensure that the Department has a current budget setting forth the information called for in Section 9.07(a) for Project Segment West for the period between the Project Segment West Opening and the Service Commencement Date);

(xi) the Developer has certified to the Department in writing that the conditions set forth in this Section 8.16(a) have been satisfied as of the date of such certification or otherwise waived in writing;

(xii) all lanes of traffic on the GP Lanes and Express Lanes (including ramps, auxiliary lanes, and interchanges) for Project Segment West set forth in the Construction Documentation are in their final configuration (number of lanes) and available for normal and safe use and operation;

(xiii) all major safety features for Project Segment West are installed and functional in accordance with the Technical Requirements, including, as required, shoulders, guardrails, striping and delineations, concrete traffic barriers, bridge railings, cable safety systems, metal beam guard fences, safety end treatments, terminal anchor sections and crash attenuators;

(xiv) all required illumination for the normal and safe use and operation of Project Segment West is installed and functional in accordance with the Technical Requirements;

(xv) all required signs and signals for the normal and safe use and operation of Project Segment West are installed and functional in accordance with the Technical Requirements;

(xvi) after the opening of Project Segment West to traffic: (1) temporary nighttime single lane closures along Project Segment West will be permitted in accordance with the Technical Requirements; (2) temporary nighttime double general purpose lane closures along Project Segment West will be permitted in accordance with the Technical Requirements provided that the Developer keeps the Express Lanes open to traffic and suspends tolls in the Express Lanes; and (3) any other lane closures along Project Segment West must be approved by the Department and with the Parties' mutual agreement as to whether to suspend the tolls in the Express Lanes;

(xvii) the ETTM System for Project Segment West is completed, has passed all Demonstration and Performance Testing in accordance with the Construction Documentation and the Technical Requirements, including demonstration of interoperability with E-ZPass or any successor to E-ZPass then utilized on State Highways, and is ready for normal operation;

(xviii) the TMS (if any) for Project Segment West and safety features for such TMS components are installed and functional; and

(xix) the Developer has otherwise completed the Design-Build Work for Project Segment West in accordance with this Agreement, including the Technical Requirements, and with the Construction Documentation, such that the Project Assets for Project Segment West are in a physical condition that Project Segment West can be used for normal and safe vehicular travel in all lanes and at all points of entry and exit.

(b) Beginning on the Segment West Opening Date and continuing until the Developer achieves Service Commencement of the Project, all Permitted Vehicles traveling with two (2) or more Persons equipped with a transponder (in the absence of other available technologies as provided in Section 5.01(e)) will be entitled to use the Express Lanes in Project Segment West at a one hundred percent (100%) discount from otherwise applicable tolls; *provided* the foregoing shall not apply with respect to any Ineligible Vehicle traveling with two (2) or more Persons.

(c) The Department's issuance of the Project Segment West Opening Notice will be subject in all respects to compliance with the submittal and review procedures set forth in Section 10.05 in determining whether the Developer has satisfied the conditions precedent for achieving the Project Segment West Opening.

(d) The Department's issuance of the Project Segment West Opening Notice will not constitute a waiver by the Department of any then-existing breach of this Agreement by the Developer.

(e) The Developer shall provide the Department with written notice of the anticipated Project Segment West Opening at least [ten (10)] Days prior to the anticipated date of the Project Segment West Opening. The Parties will comply with the submittal and review procedures set forth in Section 10.05 in the determination of whether the Project Segment West Opening has been achieved; *provided* the twenty-one (21) Day review period described in Section 10.05 shall be reduced to [five (5)] days for purposes of this Section 8.16(f). During such [five (5)] Day period, the Developer and the Department will meet, confer and exchange information on a regular basis with the goal being the Department's orderly, timely inspection of the Project Assets in Project Segment West and review of the relevant final Construction Documentation and the Department's issuance of the Project Segment West Opening Notice. In addition, the Department will conduct an inspection of the Project Assets in Project Segment West and review of the relevant final Construction Documentation, and such other matters as may be necessary to determine whether the Project Segment West Opening is achieved and, not later than the expiration of such [five (5)] Day period, will deliver a written report of findings and recommendations to the Developer. The Department will provide the Developer with a determination of whether or not the Project Segment West Opening has been achieved (and if not, an explanation with reasonable specificity as to the reasons therefor) within such [five (5)] Day period.

(f) No Project Segment West Opening shall be relevant for purposes of determining whether the conditions required for the achievement of Service Commencement or Project Completion with respect to the Project have been satisfied.

(g) From and after the Project Segment West Opening Date, the terms set forth in Sections 5.01(a), 5.01(e), 9.01(a), 9.02(a), 11.02(a), and 19.01(a) of this Agreement that apply from and after the Service Commencement Date shall be deemed to apply to Project Segment West; *provided*, for clarity, that (i) the Developer's rights set forth therein shall only apply to Project Segment West and not the entire Project Assets and (ii) the Project Segment West Opening will not modify the Warranty Period with respect to the Project Assets in Project Segment West.

4. Definitions Added to Exhibit A. The following definitions are hereby added to Exhibit A (Definitions) to the Comprehensive Agreement:

Ineligible Vehicle means any Permitted Vehicle, other than any Exempt Vehicle, Mass Transit Vehicle and Commuter Bus, or school bus, that consists of any of the following:

(a) any multi-axle vehicle that consists of a truck-tractor/straight truck power unit and a single trailer;

(b) a vehicle with two axles or more that has a gross vehicle weight rating of 26,001 pounds or more; or

(c) a vehicle with two axles or more that has a height greater than seven feet and a length greater than 18 feet.

Project Segment West means the Project Assets situated along the approximately nine (9) mile-long segment of the I-66 Corridor between the US 29 and the Route 28 interchanges.

Project Segment West Opening is defined in Section 8.16(a).

Project Segment West Opening Date means the date on which the Project Segment West Opening is achieved, as indicated in the Project Segment West Opening Notice.

Project Segment West Opening Notice is defined in Section 8.16(a)(i).

5. Amendments to Exhibit A. The definitions of “Project Completion Date” and “Service Commencement” are hereby deleted in their entirety and replaced as follows:

Project Completion Date means the date which is no later than December 31, 2022, as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement, and as indicated on the Project Completion Certificate; *provided however*, that in no event will the Project Completion Date be later than six months after the Service Commencement Date. Notwithstanding the foregoing, if the Service Commencement Date occurs on or prior to December 31, 2022, then the Project Completion Date shall be the earlier of (i) the date that Project Completion is achieved, or (ii) August 1, 2023, as such date may be extended for Delay Events from time to time in accordance with the terms of the Agreement, and as indicated on the Project Completion Certificate.

Service Commencement means the opening of the Project for normal and continuous operations and use by the traveling public, after the occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 8.08(c); *provided* that the occurrence of the Project Segment West Opening pursuant to Section 8.16 shall not constitute the achievement of Service Commencement or the achievement of any of the conditions set forth in Section 8.08(c) for the entire Project Assts.

6. Amendments to Technical Requirements. The last sentence of Section 3.6.1(A) of the Technical Requirements is hereby deleted in its entirety and replaced as follows:

The posted speed for the I-66 Express Lanes shall be 70 mph.

7. No Modification. This Second Amendment is limited to the matters set forth herein and shall not constitute a modification or waiver of any other provision of the Comprehensive Agreement. Further, nothing herein shall be deemed to resurrect any claim or defense that has been waived or settled prior to the date hereof.

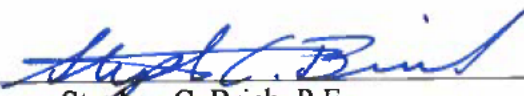
8. Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the Commonwealth. Venue for any legal action arising out of this Amendment shall lie in the Circuit Court in the City of Richmond, Virginia, Division I.

9. Counterparts. This Second Amendment may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Signature Page Immediately Follows]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Second Amendment to the Comprehensive Agreement Relating to the Transform 66 P3 Project as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION

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

I-66 EXPRESS MOBILITY PARTNERS LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Second Amendment to the Comprehensive Agreement Relating to the Transform 66 P3 Project as of the date first written above.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Stephen C. Brich, P.E.
Commissioner of Highways

L-66 EXPRESS MOBILITY PARTNERS LLC

