~~October 1~~November 12, 2015

MAJOR BUSINESS TERMS FOR THE

TRANSFORM 66 P3 PROJECT

IN THE COMMONWEALTH OF VIRGINIA

DBFOM DELIVERY METHOD

Originally Issued October 1, 2015
Addendum #1 Issued November 12, 2015

This Term Sheet ("Term Sheet") provides a summary of major business terms to be provided to interested private parties or consortiums (each a "Developer") for the Transform 66 Project Outside the Beltway. The Commonwealth of Virginia (the "Commonwealth") is providing this Term Sheet relating to the possible use of the design, build, finance, operate and maintain delivery method ("DBFOM Delivery Method") for the Transform 66 Project (the "Transform 66 P3 Project" or the "P3 Project"). For detailed information on the scope of the P3 Project, reference is made to the Request for Qualifications ("RFQ") issued September 17, 2015, and the Procurement Reference Documents (see the Project Website (http://www.transform66.org/)).

It should be assumed that these major business terms will be mandatory requirements should the Commonwealth choose to procure this P3 Project pursuant to the DBFOM Delivery Method under the provisions of the Public-Private Transportation Act of 1995, as amended, and would be included in any Comprehensive Agreement ("CA") entered into for the Transform 66 P3 Project.

Term	Provision
Summary of P3 Project Components	The DBFOM Delivery Method includes the following improvements to the approximately 25 mile corridor on I-66 beginning near U.S. Route 15 in Prince William County and continuing to the Beltway in Fairfax County: - the design, construction, ROW acquisition, and utility relocation, including interchanges and bridges, that will result in two Express Lanes and three general purpose lanes in each direction; - the design and construction of access points and interchanges for the Express Lanes, including access ramps to P&R facilities; - relocation of certain elements of the Vienna and Dunn Loring Metro Stations including the design and construction of pedestrian bridges, certain electrical components, and other Metro infrastructure; - the design and construction of associated facilities, including P&R facilities, at strategic points along the corridor; - the operation and maintenance of the Express Lanes, except for snow/ice removal, which will be performed by the Department; and - the design, installation and operation of an open-road electronic toll collection system as necessary to allow for collection of tolls from users of the Express Lanes, with back office functions being performed by the Department. <u>Major Scope Requirements</u> Operation: As prescribed in Section 1.14 of the Draft Technical requirements, fullest operational use of both GP lanes and managed lanes is a requirement, not to be diminished by friction points or traffic weave in the Developer's design. Current plans have been designed to minimize these. Innovative designs by the successful Developer shall improve on these designs to further reduce friction points and weave. As prescribed in Section 1.14 of the Draft Technical requirements, minimization and preferably full elimination of entrance and exit from GP lanes back and forth to HOT lanes to eliminate friction that does not allow full operational capacity. Exit and Entrance to HOT lanes will be by separate ramp, interchange, or other means achieving this end. Addition of friction points and weaving by the Developer will be non-compliant.

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	Extended Life Cycle (100 year design minimum): Construction is to extend life cycle and minimize future maintenance. Cost reduction at the expense of marginal material and quality costs will be considered non-compliant as opposed to innovative. Pavement designs will be exceptionally robust, potentially including additional large aggregate free draining layers. Plan sheet designs should be looked as the minimum. Minimum pavement sections have been prescribed in the Draft Technical Requirements Attachment 3.8 and shall not be modified under Alternative Technical Concepts unless improved upon.
Concession Term	The CA will be for a concession term not to exceed 50 years (to include the construction period) and end on the earlier of (a) the end date of the term or (b) any earlier termination as provided in the CA.
Financing	The P3 Project will be financed by Developer at its own cost and risk. The Department expects that there will be a maximum public contribution to the P3 Project of up to $600 million. Payment will be made pro rata with Design-Build Contract draws. The repayment of any debt and/or equity arranged and entered into by Developer will be the responsibility of Developer, without recourse to the Department and/or the Commonwealth. The Department will apply for a Private Activity Bonds ("PABs") volume cap allocation. The Department has commenced the process for Transportation Infrastructure Finance and Innovation Act ("TIFIA") credit support. Use of PABs and/or TIFIA is at the discretion of Developer, who will be required to submit the final applications. Further detail regarding financing assumptions can be found in Attachment A. Developer will bear sole responsibility for reaching financial close by the financial close deadline set forth in the CA.
Transit Funding	Developer will be responsible for funding transit services according to a defined payment schedule as outlined in Attachment B. Developer will not be responsible for procuring, operating and maintaining the systems and programs.
O&M Scope	Developer will be responsible for operation and maintenance of the Express Lanes, except for snow and ice removal, which will be performed by the Department. The Department will be responsible for operation and maintenance of the general purpose lanes in the corridor in accordance with the Draft Technical Requirements.

Term	Provision
Park and Ride Scope	Developer will be responsible for the design, financing and construction of multiple park-and-ride ("P&R") facilities along the P3 Project alignment providing access to/from the Express Lanes via new ramps, multimodal access to/from local street network, commuter parking spaces and accommodations for bus transit, kiss-and-ride areas, carpooling, vanpooling, local shuttles, and private buses, parking and transit service traveler information, bicycle accommodations, and supporting infrastructure. • New P&R facilities at the following locations: – Haymarket (Antioch Road or similar location), minimum of 230 commuter spaces – Gainesville (University Boulevard), minimum of 1920 commuter spaces – Manassas (Balls Ford Road or similar location), minimum of 1300 commuter spaces • Reconfiguration of P&R facility at the following location: – Fair Lakes (Monument Drive/Fairfax County Government Center area), minimum of 630 commuter spaces (including the existing 170 commuter spaces) Developer's ROW acquisition obligations in respect of the P&R Facilities shall include ROW acquisition consistent with Developer's designs for future P&R expansion, as set forth in the Draft Technical Requirements. The Department will be responsible for the operations and maintenance of the P&R Facilities at final acceptance of the P3 Project.
Operating Speed Performance Standards	Developer will be required to maintain an Operating Speed and Performance Standard ("OSPS") of 55 miles per hour on the Express Lanes, as defined in the CA.
Right to Toll; Tolling Rates, Operations and Collection	Developer will be granted a permit to establish, charge, collect, use and enforce the payment of tolls and related charges on the Express Lanes. Developer will charge and collect tolls through an open-road toll ("ORT") configuration with an all-electronic toll ("AET") collection system as necessary to allow for collection of tolls from users of the Express Lanes. Developer shall install and use toll collection technology approved for revenue operations by the ~~**EZ-Pass**~~**E-ZPass** Interagency Group (or any successor network thereof) compatible with and working through VDOT's ~~**EZ-Pass**~~**E-ZPass** back office (or successor), which technology may be updated from time to time.

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	The Department anticipates setting the posted speed limit at 65 miles per hour. Toll rates will be set using a dynamic tolling system. Developer will be required to maintain the OSPS and the minimum average speed (as defined in SAFETEA-LU), as applicable, through the use of dynamic tolls. Developer's rights to impose, charge, collect and enforce payment of tolls and enforce the use of the P3 Project are limited by, and conditioned on, compliance with applicable law, including but not limited to Va. Code Ann. §33.2-611.B and §33.2-613, the Department and the Commonwealth Transportation Board ("CTB") designation of exempt vehicles, and all other provisions in the CA.
Support for Corridor Improvements	Developer shall be responsible for providing the Commonwealth with $350,000,000 on a present value basis computed at a 6.14% discount rate over the term of the CA. The base case financial model will demonstrate the payment of such amount, which may be provided in one or more payments, and which may be paid after O&M, Debt Service and Transit Funding in the cash flow waterfall. The requirement to make full payment of such amount is contingent upon gross revenues achieving the cumulative MWCOG Baseline Scenario (from the C&M Associates' Intermediate Traffic and Revenue Study dated September 2015) revenue forecast. More information on support for corridor improvements is set forth in Attachment A.
Toll Revenue Sharing	The CA shall specify a revenue sharing arrangement between the Department and Developer so that once Developer's Base Case IRR has been achieved, the Commonwealth and Developer will share in any excess revenues. The revenue sharing arrangement will be structured comparable to revenue sharing arrangements utilized on similar projects within the P3 market.
Refinancing Gain	The Department and Developer will share in the refinancing gains, with the methodology for allocating such gains set forth in the CA.
Toll Enforcement	The Department will facilitate Developer's coordination with the Virginia State Police. Developer may request the Department to provide toll violation services under the terms of a Violation Processing Services Agreement. Developer will be responsible for the cost of enforcement of tolls, including any and all additional cost of enforcement by the Virginia State Police within the P3 Project limits. Additional terms related to the Department's assistance will be detailed in the CA.
Traffic and	Developer will bear traffic and revenue risk related to the Express

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Revenue Risk	Lanes. For purposes of an initial affordability analysis, refer to the Traffic and Revenue Data on the Project Website.
Right of Way	Developer shall perform or cause to be performed and shall be responsible for all activities and services necessary for the acquisition, including the purchase, of all P3 Project right of way ("ROW") necessary for development and operation of the P3 Project consistent with applicable law. The ROW impacts shown in the Procurement Reference Documents shall be considered the maximum allowable impacts under the CA unless the Department determines that any deviation is in the public interest.
Utility Relocation	Developer shall perform or cause to be performed and shall be responsible for all activities and services, including the cost, necessary for utility relocations or adjustments. The Department will reasonably assist Developer in obtaining the benefit of all rights the Department has under any utility easement, permit, or other right in real property relating to utility relocations.
Noise Walls	The Department will set a baseline quantity for noise walls to be constructed for the P3 project, as set forth in the Draft Technical Requirements. The Department will pay Developer per square foot of constructed noise wall that exceeds the baseline quantity and Developer shall credit the Department that same amount per square foot for any quantity of constructed noise wall that is less than the baseline quantity. The price per square foot shall be specified in the Draft Technical Requirements.
Coordination with WMATA	The Department will be responsible for obtaining a Memorandum of Agreement ("MOA") with WMATA prior to issuance of the Final Request for Proposals regarding design, construction and interaction with WMATA on their existing facilities within the P3 Project limits and with required operation and maintenance protocols and requirements during the term of the CA. Developer will be responsible, at its sole cost and expense, for obtaining all required WMATA permits in accordance with the VDOT/WMATA MOA during the term of the CA, including but not limited to a construction permit.
Department Efforts	<u>WMATA</u> The Department will develop the design plans for the relocation of Traction Power Sub Station ("TPSS") and Tie Breaker Stations ("TBS") to a sufficient level to acquire approval from Fairfax County for the 2232/SE process or similar process and WMATA approvals for the

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	design (to the extent developed) and location of these facilities. The Developer shall be responsible for the final design and construction and shall obtain all WMATA approvals. <u>Northern Long Ear Bat</u> The Department will conduct a survey for threatened and endangered bat species between May 15, 2016 and August 15, 2016 in accordance with the latest protocols to determine their presence or absence within the project corridor. The results of this survey will be provided to the Developer.
Permits	The Department will obtain required NEPA approvals, CTB approvals, and approvals by the Federal Highway Administration ("FHWA") of the CA and Project Management Plan for the P3 Project, as necessary. Developer will be responsible for obtaining all other permits and government approvals, and will be responsible for obtaining any required reevaluation of the NEPA approvals as a result of Developer's ATCs, with the Department acting as an intermediary between Developer and FHWA.
Due Diligence and Geotechnical Reports	The Department will make available due diligence and geotechnical reports to Short-Listed RFQ Proposers. Developer will bear all cost and schedule risks related to geotechnical conditions.
Financial Close, Performance and Development Security	The Department will require security from Developer and/or its contractors related to Developer's responsibilities under the CA, likely in the forms of letters of credit, bonds and guarantees by affiliates.
Limited Notice to Proceed	The Department intends to issue limited notices to proceed so Developer may begin Early Works. The limited notices to proceed will remain in place until certain environmental permits are issued and Design Public Hearings are held. The Department expects to issue a limited notice to proceed concurrent with commercial close.
Developer Early Works	Early Works are expected to include, and may not exceed, the following: • the development of the P3 Project design to a sufficient level to meet the Department's Design Public Hearing requirements and to hold the Design Public Hearing in accordance with the VDOT Public Involvement Manual and in coordination with the Department; • activities related to obtaining permits, including necessary permits

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	and approvals from WMATA; and • development of the final design plans in coordination with WMATA for the relocation of TPSS and TBS (as described in the Technical Requirements). The Department expects to advance the initial amount of Early Works payment up to $~~[X]~~**100 million**. At Financial Close, the Developer will be responsible for reimbursing the Department for the portion of the amount the Department advanced that exceeds the Department's pro rata share of such costs, as specified in the CA.
Design-Build Contract	The CA will include a template Design-Build Contract which will be a fixed priced turnkey contract between Developer and a design-build contractor. The Design-Build Contract shall not impose obligations on the Department beyond those obligations assumed by the Department under the CA.
O&M Services Agreement	Developer may choose to self-perform or subcontract with an O&M contractor to perform all or some of the O&M services in accordance with the CA. Notwithstanding its use of an O&M contractor, Developer ultimately remains responsible for the O&M services of the P3 Project during the term, in accordance with the CA. The CA will include a template O&M Services Agreement.
Financial Model	The parties will agree on a process and schedule for preparing, reviewing and updating the financial model. The financial model will be updated according to the timeline and the procedures specified in the CA.
Warranties	The CA will contain representations and warranties for each party that are customary for similar transactions.
Insurance	Developer shall obtain and maintain insurance coverages as required and as set forth in the CA.
Civil Rights	Developer shall use good faith efforts to achieve the goals for DBE and SWaM participation relating to Design-Build Contracting and O&M Services set forth in the CA. Failure to do so may result in increased Department oversight, disbarment or disqualification from participating in other State procurements. Developer shall submit a Hiring Development Plan that includes, but is not limited to, the recruitment, hiring, training, and retention of veterans and local workers in accordance with a pilot program under a Special Experimental Project No. 14 under development by the Department and in accordance with the March 6, 2015 edition of the Federal Register by

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	the U.S. Department of Transportation and relating to the Design-Build Contracting and O&M services as set forth in the CA.
Indemnification	Developer shall indemnify, defend, protect and hold harmless the Department against any claims or losses resulting or accruing from Developer's responsibilities and liabilities under the CA.
Lender Step-In Rights	Lenders will be entitled to exercise step-in rights following Developer insolvency or other Developer defaults under the credit agreements as specified in the CA.
Delay Events	Delay Events will be listed in the CA and will be typical for projects of similar scope and purpose.
Force Majeure Events	Force majeure events will be listed in the CA and will be typical for projects of similar scope and purpose.
Compensation Events	Except as noted below, compensation events will be typical for projects of similar scope and purpose. The CA shall describe the procedural and claims submission process for administering compensation events and calculating damages. Compensation event for Alternative Facilities will be limited to the following: • Additional general-purpose lanes on I-66 within the project corridor encompassing the Express Lanes during the term of the Agreement. General purpose lanes do not include the use of shoulder lanes during peak periods and auxiliary lanes; and • The expansion of the Orange Line within the corridor encompassing the Express Lanes for the first 10 years of the Term. In no case will Developer be granted a Compensation Event for HOV usage on the P3 Project.
Governing Law	Laws of the Commonwealth of Virginia.
Federal and State Law	Developer shall comply and require its contractors to comply with all federal and state laws and regulations applicable to transportation projects that receive federal or state funds. Federal or state requirements shall prevail, take precedence and be in force over and against any conflicting provisions in the CA.

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Performance Measurement & Non-Compliance Points	The Department and Developer will use a performance measurement and non-compliance point system to monitor Developer's performance. The consequence for performance shortfalls may trigger increased oversight by the Department, the development and implementation of performance improvement plans by Developer, and a Developer default.
Completion Deadlines	The CA will specify a required completion date beyond which Developer will be expected to pay **$50,000 per day in** liquidated damages, and a long stop date beyond which the CA can be terminated if completion is not achieved. The Department expects such final acceptance of the P3 Project by November 15, 2020.
Milestones	The Department anticipates issuing notice to proceed once financial close has occurred and Section 401 and Section 404 NEPA permits are in hand. The Department expects that the first milestone will require, in accordance with the Draft Technical Requirements, Developer to make available a minimum of 960 spaces at or near Balls Ford or Gainesville (University Boulevard) P&R lots within eighteen (18) months of Notice to Proceed to support the Transportation Management Plan during construction. Any temporary facility will be designed and constructed to support the transit, carpool, and vanpool strategies of the TMP. Developer will be responsible for operations and maintenance of the P&R lot until final acceptance of the P3 Project. The Department will assess liquidated damages if Developer has not completed this milestone within eighteen (18) months of Notice to Proceed. The Department expects that the second milestone will require, in accordance with the Draft Technical Requirements, Developer to make available improvements on Route 28 that eliminate four signals (at the EC Lawrence Park entrance, at the Braddock Road/Walney Road intersection, and two signals at the I-66/route 28 interchange). The Department will assess liquidated damages if Developer has not completed this milestone within twenty-four (24) months of Notice to Proceed.
Termination	Termination Events will be listed in the CA, will be typical for projects of similar scope and purpose, and will include, among other things, termination for convenience of the Department.
Anticipated Exhibits	The Department anticipates that some or all of the following exhibits will be included in the CA: • Definitions

Term	Provision
	• Scope of Work and Schedules and Early Work • Technical Requirements • Form of Escrow Agreement • Form of Design-Build Contract • Form of Design-Build Work Guarantee • USDOT Reporting Requirements • TIFIA Requirements • Form of O&M Services Agreement • Permit Fee • Form of Electronic Toll Collection Agreement • Form of Violation Processing Services Agreement • Toll Agreement, If Applicable • Public Funds Amount Payment Terms • List of Initial Project Financing Agreements and Financing Assignments • Form of Direct Agreement • Known Geotechnical Conditions • Known Pre-Existing Hazardous Substances • Federal Requirements • Turnover Plan • Non-Compliance Points Table • Shared Facilities Agreement, If Applicable • Insurance Requirements • Labor, Employment and DBE/SWaM Related Matters • Financial Close Adjustment Protocol • Toll Sections

Attachment A

Financial Model Instructions

Short-Listed RFQ Proposers must utilize the below assumptions in the financial model used to support the Conceptual Financial Proposal:

Term	Assumptions*
TIFIA	• TIFIA loan is available • Loan size of 33% of eligible costs • $60 million of VDOT development costs, which are not to be reimbursed by the Developer but may be used to calculate TIFIA eligible costs • Interest rates as of market close on Monday, November 16, 2015
PABs	• PABs allocation is available • **Assume $250,000 of upfront transaction costs related to the use of a conduit issuer** • Interest rates as of market close on Monday, November 16, 2015
Payment Bond	• **Assume $500 million for the Payment Bond**
Performance Security	• **Assume $500 million for the Performance Security**
Public Contribution	• The Department expects that there will be a maximum Public Contribution to the P3 Project of up to $600 million • Payments are to be made pro rata to Design-Build Contract draws
Commercial Close Date	• **Assume a Commercial Close Date of October 31, 2016**
Financial Close Date	• **Assume a Financial Close Date of April 28, 2017**
Escalation Base Date	• **Assume the Financial Close Date (April 28, 2017) as the escalation base date for all operating inputs**
E-ZPass Transaction Fee	• **For Fiscal Year 2016, the operating costs component of the VDOT E-ZPass Fees will be $0.0613 per transaction**
E-ZPass Credit Card Fee	• **For Fiscal Year 2016, the processing fee component of the VDOT E-ZPass Fees will be 1.756 % of the revenue processed for each individual facility**
Cost of Virginia State Police Enforcement	• **Cost to be assumed by Developer**
Transit Funding	• See Attachment B for required transit funding schedule in nominal dollars • These payments must be included in the base case financial model • These payments rank below debt service in the cash flow waterfall, but shall be above Support for Corridor Improvements and equity distributions

	• For clarity, developer will be responsible for funding the fixed payment schedule, but not for procuring, operating and maintaining the systems and programs
Support for Corridor Improvements	• **Calculate present value of the Support for Corridor Improvements payments by discounting the stream of payments to the date of November 15, 2020** • The required payment must be included in the base case financial model • The required payment may rank below O&M, Debt Service and Transit Funding in the cash flow waterfall • Full payment contingent upon gross revenue meeting or exceeding the gross revenue projected in the MWCOG Baseline Scenario (from C&M Associates' Intermediate Traffic and Revenue Study dated September 2015).

(*) These assumptions are preliminary in nature and are subject to change if the Department selects the DBFOM delivery model.

If there is a conflict between the requirements in this attachment and the RFQ, the RFQ requirements will control.

Attachment B

Transit Funding[1]

2017 (Start of Construction)	**$0**
2018 (Construction)	**$0**
2019 (Construction)	**$0**
2020 (Construction)	**$42,500,000**
2021(Opening Year)	**$6,500,000**
2022	**$8,000,000**
2023	**$11,000,000**
2024	**$11,000,000**
2025	**$11,000,000**
2026	**$11,000,000**
2027	**$11,000,000**
2028	**$12,000,000**
2029	**$15,000,000**
2030	**$18,000,000**
2031	**$20,000,000**
2032	**$25,000,000**
2033	**$23,000,000**
2034	**$23,000,000**
2033	**$25,000,000**
2036	**$25,000,000**
2037	**$25,000,000**
2038	**$25,000,000**
2039	**$25,000,000**
2040	**$25,000,000**
2041	**$27,000,000**
2042	**$30,000,000**
2043	**$30,000,000**
2044	**$30,000,000**
2045	**$30,000,000**
2046	**$30,000,000**
2047	**$35,000,000**
2048	**$35,000,000**
2049	**$40,000,000**
2050	**$40,000,000**
2051	**$40,000,000**
2052	**$40,000,000**
2053	**$40,000,000**
2054	**$43,000,000**
2055	**$47,000,000**
2056	**$47,000,000**
2057	**$48,000,000**
2058	**$50,000,000**
2059	**$57,000,000**
2060	**$58,000,000**
2061	**$58,000,000**
2062	**$58,000,000**
2063	**$58,000,000**
2064	**$60,000,000**
2065	**$63,000,000**
2066	**$67,000,000**
Total	**$1,559,000,000**

[1] These assumptions are preliminary in nature and are subject to change.

Summary report: **Litéra® Change-Pro TDC 7.5.0.127 Document comparison done on 11/12/2015 2:30:05 PM**	
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