

EXHIBIT Y
SIB LOAN AGREEMENT

This **SIB LOAN AGREEMENT** (this "Agreement") is made and entered into as of [•], by and among the **COMMONWEALTH TRANSPORTATION BOARD** (the "CTB"), a state board of the Commonwealth of Virginia with oversight authority of the Virginia Department of Transportation (VDOT or the "Department"), whose address is 1401 East Broad Street, Richmond, Virginia 23219, and [•] ("SIB Borrower").

Explanatory Statement

- A. On March 25, 1995 the Governor of the State signed into law, effective July 1, 1995, the Public-Private Transportation Act (as amended, the "PPTA"). In enacting the PPTA, the State General Assembly found and declared, among other things, that (i) there is a public need for timely acquisition or construction of and improvements to qualifying transportation facilities within the State that address the needs identified by the appropriate state, regional or local transportation plans, (ii) such public need may not be wholly satisfied by existing ways in which transportation facilities are acquired, constructed or improved; and (iii) authorizing private entities to develop and/or operate one or more transportation facilities may result in the availability of such transportation facilities to the public in a more timely or less costly fashion, thereby serving the public safety and welfare.
- B. The PPTA grants the Department the authority to allow private entities to develop and/or operate qualifying transportation facilities if the Department determines there is a need for the facilities and private involvement would provide the facilities to the public in a timely and cost-effective fashion, thereby serving the public safety and welfare.
- C. The CTB is authorized by §33.2-1529 of the Code of Virginia to make allocations from funds in the Toll Facilities Revolving Account of the Transportation Trust Fund to make a loan to a private operator to pay any cost of a qualifying transportation facility pursuant to the terms of a comprehensive or interim agreement entered into under the PPTA between a responsible public entity and a private operator.
- D. On September 27, 1996, the CTB, the Department, the Federal Highway Administration and the Federal Transit Administration entered into a Cooperative Agreement providing for the establishment of the Toll Facilities Revolving Account as a State Infrastructure Bank (the "SIB") pursuant to section 350 of the National Highway System Designation Act of 1995 (the "NHS Act"), Public Law 104-59, 23 U.S.C. § 101 note, dedicated solely to providing loans and other forms of financial assistance consistent with the NHS Act and as permitted under State law.

- E. Pursuant to a Request for Proposal dated [•] (the "RFP"), the Department selected the Developer as the Preferred Proposer (as defined in the RFP).
- F. Pursuant to the PPTA, the Department and the SIB Borrower have entered into a Comprehensive Agreement to develop, design, finance, build, operate and maintain the Transform 66 P3 Project in Virginia, dated as of [•] (the "Comprehensive Agreement"), in connection with the high occupancy/toll lanes ("Express Lanes") and associated facilities and services along the I-66 corridor between U.S. Route 15 in Prince William County and Interstate 495 in Fairfax County (as more particularly described in the Comprehensive Agreement as the "Project").
- G. Pursuant to Article 7 of the Comprehensive Agreement, SIB Borrower is solely responsible for obtaining and repaying each and every financing, at its own cost and risk without recourse to any State Party, necessary to develop, build, construct, maintain and operate the Project.
- H. To assist in financing certain costs of the Project, the CTB has authorized a loan (the "loan" or the "SIB Loan") to be made from the Federal Subaccount of the Toll Facilities Revolving Account in the maximum principal amount of \$25,000,000, subject to the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable considerations and the mutual covenants hereinafter contained, the receipt and sufficiency or which are acknowledged by the parties, the parties agree as follows:

ARTICLE I

PURPOSE

Section 1.1 Purpose of Agreement. The purpose of the Agreement is to provide for the terms and conditions for making the Loan, the disbursement and application or use of the Loan proceeds and other matters related thereto.

Section 1.2 Rules of interpretation.

- a) The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they or any of them to be treated or construed as part of this instrument.
- b) References in this instrument to this Agreement mean, refer to and include this instrument as well as any riders, exhibits, addenda and attachments hereto (which are hereby incorporated herein by reference) or other documents expressly incorporated by reference in this instrument. Any references to any covenant, condition, obligation and/or undertaking "herein," "hereunder" or "pursuant hereto" (or language of like import) mean,

refer to and include the covenants, conditions, obligations and undertakings existing pursuant to this instrument and any riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument. All terms defined in this instrument shall be deemed to have the same meanings in all riders, exhibits, addenda, attachments or other documents affixed to or expressly incorporated by reference in this instrument unless the context thereof clearly requires the contrary. All references to Articles and Sections refer to the Articles and Sections set forth in this Agreement. Unless otherwise stated in this Agreement or the Comprehensive Agreement, words which have well-known technical or construction industry meanings are used in this Agreement or the Comprehensive Agreement in accordance with such recognized meaning. All references to a subsection "above" or "below" refer to the denoted subsection within the Section in which the reference appears.

- c) Unless otherwise stated in this Agreement, all terms in this Agreement have the meaning set forth in the Comprehensive Agreement.
- d) As used in this Agreement and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the SIB Borrower

SIB Borrower represent and warrant to the CTB as follows:

- (a) Each has full right, power and authority to execute and deliver this Agreement, to perform its obligations under the Agreement and to carry out the tasks associated with the Work and the Project.
- (b) There are no pending or, to their knowledge, threatened suits or actions of any nature that may have a material adverse effect on their condition (financial or otherwise) or their ability to perform its obligations under this Agreement and there has been no material adverse change in their respective financial conditions as indicated in the SOQs, Conceptual Financial Proposals and in the SIB Borrower's RFP response

ARTICLE III

SIB LOAN

Section 3.1 SIB Loan. The CTB hereby agrees, upon the terms and conditions contained in this Agreement, to authorize the SIB Loan to be made to the SIB Borrower from funds deposited in the Federal Subaccount of the Toll Facilities Revolving Account in the Transportation Trust Fund in the maximum principal amount of \$25,000,000, for purposes of paying certain costs of the Project described in Section 3.4. The SIB Borrower's obligation to repay the SIB Loan shall be further evidenced by a Note in the form attached as Attachment 1. No interest shall accrue on the SIB Loan.

Section 3.2 Security.

(a) Grant of Security Interests. The SIB Borrower pledges and assigns to the CTB a first lien and security interest in and to the following (the "Collateral"): (i) the proceeds of the initial debt and equity issuances obtained at the first Financial Close Date (as defined by the Comprehensive Agreement) as security for the SIB Loan; (ii) all subcontracts entered into by the SIB Borrower in connection with the Early Work, all of which shall be assignable to the Department, without the necessity of the consent of the other parties to such contracts; and (iii) the balance in the Loan Account (as defined by Section 3.5 of this Agreement). The SIB Borrower agrees to execute and deliver to the CTB such further agreements and instruments necessary to perfect the security interests created by this Agreement as may be requested by the CTB. The SIB Borrower further agrees that it shall not otherwise encumber or permit any liens or claims upon the Collateral.

Section 3.3 Repayment. The entire principal of the SIB Loan shall be due and payable on the earliest to occur of the following: (i) the Financial Close Date (as defined by the Comprehensive Agreement), (ii) the occurrence of a default under this Agreement or the Comprehensive Agreement or (iii) on or before the terms outlined in Section 350(e)(7) of the National Highway Designation Act of 1995.

Section 3.4 Use of Proceeds. Proceeds of the SIB Loan shall be used only for payment of costs for Early Work, as described in and in accordance with Exhibit B-3 to the Comprehensive Agreement (the "Scope of Early Work") and Exhibit B-2 to the Comprehensive Agreement (the "Initial Baseline Schedule"), as these exhibits may be updated or amended by mutual agreement of the parties.

Section 3.5 Conditions Precedent to Disbursement of Loan Proceeds.

(a) Requisition. The CTB shall have no obligation to authorize any disbursement of proceeds of the SIB Loan unless and until the SIB Borrower shall have satisfied all the conditions precedent and requirements for draws and set forth as follows:

- (i) the SIB Borrower is in compliance with all provisions of the Comprehensive Agreement related to the SIB Loan and funding for Early Work, including but not limited to Section 8.02 thereof; and
- (ii) At a frequency not to exceed once a month, the SIB Borrower shall submit to the Department a completed requisition for disbursement of an amount of SIB Loan proceeds corresponding to costs incurred for the portion of Early Work for which payment is sought. The requisition must be signed by an authorized representative of the SIB Borrower. The requisition will contain all information called for by, and otherwise be substantially in the form of Exhibit Z (the "Early Work Payment Terms") to the Comprehensive Agreement; and

(b) Disbursement.

- (i) Disbursement of SIB Loan proceeds shall not occur until the Department determines that the SIB Borrower has complied with all requisite conditions set out in Section 3.5(a).

- (ii) If the Department determines that any portion of the Disbursement Request is not eligible for funding pursuant hereto, the Department may disapprove the requested funds corresponding to such portion of the Disbursement Request. The Department will notify the Developer for the reasons of such disapproval; with the remaining approved and undisputed amount to be paid to the Developer within 30 Days after such approval. Any disapproved amounts will be available for payment in a subsequent Disbursement Request if the reasons for disapproval are remedied.

- (iii) In no event will disbursements of SIB Loan proceeds exceed an aggregated total of \$25,000,000.

Section 3.6 Not a Debt of the United States or the Commonwealth. In no event shall this Agreement or the SIB Loan be deemed to constitute a commitment, guarantee or obligation of the United States. In no event shall this Agreement or the SIB Loan be deemed a debt of the State, the CTB, the Department or any other agency, instrumentality or political subdivision of the State. Neither this Agreement nor the SIB Loan shall constitute or be deemed or interpreted to be a public debt within the meaning of Article X of the Virginia Constitution.

ARTICLE IV COVENANTS

Section 4.1. Compliance with Federal Requirements. The SIB Borrower hereby covenants and agrees that so long as the SIB Loan is outstanding, the design and construction of the Project will comply with all Federal requirements that generally apply to projects under Title 23 to the extent applicable to the loan of federal funds under this Agreement for the purposes set forth in Section 3.4.

Section 4.2 Agreement to Repay. The SIB Loan will be limited recourse in nature and will be due and payable as required by Section 3.3. The SIB Borrower covenants and agrees to repay the SIB Loan from funds available for the Project as identified in this Agreement, the Comprehensive Agreement and the Project Financing Agreements.

Section 4.3 Initial Baseline Schedule.

(a) Completion Pursuant to Initial Baseline Schedule. The SIB Borrower shall make every good faith effort to cause the completion of components of the Early Work in accordance with the Initial Baseline Schedule. The SIB Borrower further agrees to fund, as needed, that portion of the

funding necessary to accomplish the Early Work, in accordance with Section 8.02(e) of the Comprehensive Agreement.

(b) Monthly Progress Reports. The SIB Borrower shall submit to the Department, Monthly Progress Reports as required pursuant to the Comprehensive Agreement

4.4 Ownership of Early Work Product and Third Party Claims

(a) The provisions of the Comprehensive Agreement as applicable to Work Product shall apply to ownership of the Early Work Product and Third Party Claims.

ARTICLE V

DEFAULTS AND REMEDIES; TERMINATION

Section 5.1. Defaults and Remedies.

(a) Event of Default. An Event of Default shall be deemed to have occurred under this Agreement in the event of the occurrence of any of the conditions or events enumerated below:

(i) The SIB Borrower fails to perform any of its obligations under this Agreement, which failure continues for more than ten (10) business days following delivery of notice by the Department to the SIB Borrower of such failure; or

(ii) Any occurrence of a default or other means of termination as defined under Article 19 of the Comprehensive Agreement.

(b) Default Remedies. Upon the occurrence of an Event of Default that has not been fully cured within the specified timeframe, the CTB may elect, by delivery of notice to the SIB Borrower, to terminate this Agreement and to require immediate repayment of the SIB Loan in full subject to the provisions of Section 4.2 and/or to resort to any other available remedies, including those liabilities outlined in Section 20.04 of the Comprehensive Agreement.

Section 5.2 Consequences of Termination

In the event the CTB terminates this Agreement pursuant to Section 5.1, the SIB Borrower shall cease all further Early Work and, within ten (10) business days following delivery of notice of termination, the SIB Borrower: (i) shall wire to an account designated by the Department a sum equal to the outstanding amount of the SIB Loan.

ARTICLE VI
MISCELLANEOUS

Section 6.1. Term of the Agreement. This Agreement shall remain in full force and effect from the date hereof, until the first to occur of (i) such time as the SIB Loan shall have been fully paid and all other obligations due to the CTB and the Department hereunder have been paid or satisfied, or (ii) the end date of the effectiveness of this Agreement..

Section 6.2. Notices. Whenever under the provisions of this Agreement it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the provisions of Section 25.05 of the Comprehensive Agreement shall apply.

Section 6.3. Assignment. The SIB Borrower may not assign, convey, transfer, pledge, mortgage or otherwise encumber all or part or its rights or interests in or to this Agreement.

Section 6.4 Binding Effect. Subject to Section 6.3, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 6.5 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 6.6 No Third Party Beneficiaries. Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligation of any of the parties to, any person that is not a party to this Agreement other than the Department.

Section 6.7 Governing Law and Venue. This Agreement shall be governed and construed in accordance with the provisions of the Comprehensive Agreement.

Section 6.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 6.9 Incorporation of Comprehensive Agreement Provisions. The parties agree that the provisions of the Comprehensive Agreement shall be deemed to apply to the Early Work and this Agreement and shall be deemed incorporated in this Agreement

Section 6.10 Amendments. This Agreement shall not be modified, amended, canceled or revoked without the prior written consent of the SIB Borrower and the CTB.

Section 6.11 Liability and Approvals of [•]

(b) Approvals, Consents, Notices. Notices, reports, demands, approvals, consents or other communications given by either [•] to the Department or the CTB shall be deemed to have been given by both.

Section 6.12 Entire Agreement. This Agreement and other Project Agreements, as amended by this Agreement, constitute the entire and exclusive agreement between the parties relating to the specific matters covered herein and therein. All prior or contemporaneous verbal or written agreements, understandings, representations and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement on the date first written above.

COMMONWEALTH TRANSPORTATION BOARD

By:

Name:

Title:

[•]

By:

Name:

Title:

[•]

By:

Virginia Department of Transportation
Transform 66 P3 Project
Final RFP Addendum #2 September 12, 2016

Name:

Title:

ATTACHMENT 1
SIB LOAN NOTE
[•] & [•]
TRANSFORM 66 P3 PROJECT

[•]

, 2016

FOR VALUE RECEIVED, the undersigned, [•] (the "Obligor") unconditionally, promises to pay to the order of the Commonwealth Transportation Board ("CTB"), at the offices of CTB at 1401 East Broad Street, Richmond, Virginia 23219 solely from the sources and as herein provided the sum of [•] in immediately available funds.

This SIB Loan Note is made by Obligor pursuant to Section 3.1 of the SIB Loan Agreement dated as of [•] (the "SIB Loan Agreement") by and among the CTB and Obligor and evidences the obligation of Obligor to repay the SIB Loan which has been made to it pursuant to the SIB Loan Agreement and to pay interest on the unpaid principal amount thereof as provided in the SIB Loan Agreement. All capitalized terms used herein which are defined in the SIB Loan Agreement shall have the same meanings herein as therein.

Obligor agrees that this Note shall be due and payable in the principal amount of [•], as provided in Section 3.3 of the SIB Loan Agreement.

IN WITNESS WHEREOF, [•] and [•] have each caused this Note to be signed in its name by its President or such other officer authorized to do so by resolution of their respective Board by his/her manual signature and its corporate seal to be impressed thereon and attested to by the manual signature of its Secretary or Assistant Secretary, and this Note to be dated the date set forth above.

[•]

By:

(SEAL)

ATTACHMENT 1

Schedule A

Date	Principal Advanced	Principal Balance	Date of Exchange or Satisfaction	Signature of authorized Department Representative