

NVTA Financial Working Group

Fairfax Department of Transportation

4050 Legato Road, Suite 400

Fairfax, Virginia 22033

Monday, January 6, 2014

2:00 p.m.

- I. Introductions
- II. Approval of Summary of December 6, 2013, Meeting
- III. Discussion of Bond Validation
 - A. Status of the NVTA Bond Validation Appeal
 - B. Status of Letter to Treasury Board
 - C. Status of Preparation for Sale of Bonds
 - i. Summary of On-going Activities
 - ii. Items Required from Jurisdictions/Implementing Agencies
 - iii. Debt Subcommittee Meeting
- IV. Other Topics for Discussion
 - A. Projects Agreements between NVTA and Jurisdictions/Implementing Agencies
 - i. Status of Approvals of MOA for Transferring Funding to Local Governments and/or Implementing Agencies
 1. Identification of Two Points of Contact for Each Jurisdiction
 - ii. Status of Approvals of MOA between Counties and Towns
 - iii. Status of the Project Agreement between NVTA and Implementing Agencies
 - iv. Status of MOA between VDOT/DRPT and NVTA
 - B. Status of Project Cash Flow Information
 - C. Status of Scheduling WMATA Subcommittee Meeting
 - D. Discussion of Revenue Estimates for FY 2014, FY 2015 and FY 2016
 - E. Initial Discussion of Reporting Matrix
 - F. Identification of Additional Items for Discussion
- V. Update on Revenues Collected
- VI. Items to Refer to Other Working Groups
- VII. Summarize Recommendations Made by Working Group for the January 23, 2013, NVTA Meeting; Additional Information Requirements; Persons Responsible for Securing Information; and Direction to Staff Coordinators
- VIII. Next Meeting
- IX. Adjourn

Northern Virginia Transportation Authority Financial Working Group
December 6, 2013

Minutes from November 19 meeting were approved unanimously.

Discussion of Bond Validation – Update by Ellen Posner

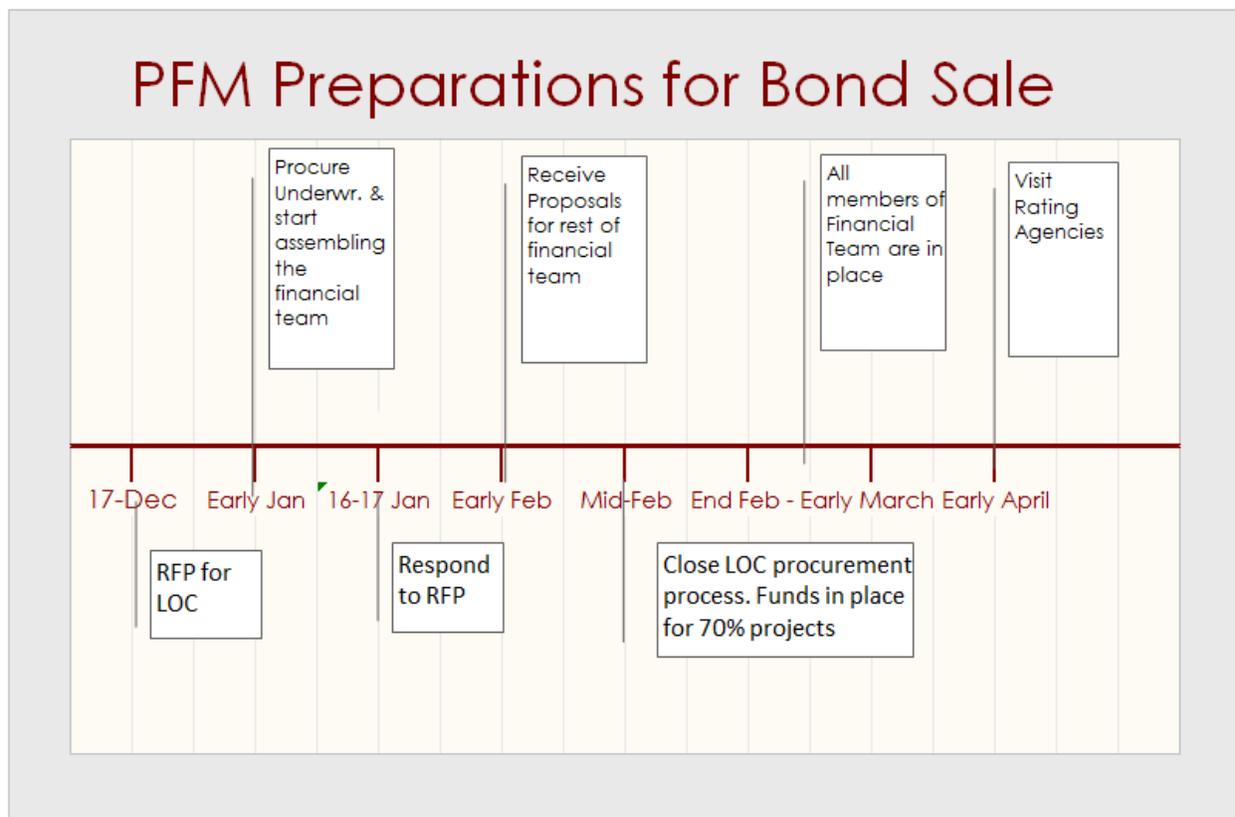
The case is over. There are final reconciliation and cleanup items.

No petition for appeal has been filed in the Virginia Supreme Court. Ellen explained therefore there is no valid appeal. On December 13, the judge will hear NVTA's motion to strike the appeal. The Treasury Board meets on December 18 and will take up the letter at that time.

Preparation for Sale of Bonds –

Mike Longhi emphasized this is the first bond sale of a premier organization made of up these types of issuers. A Letter of Credit (LOC) will be drawn up, concurrently with revenue bond sale. The LOC will be adjusted based on the revenue bond issuance.

PFM will prepare a Request for Proposals to receive bids for the LOC. JoAnne Carter (PFM) prepared the following draft schedule to this effort:



Ms. Carter will provide a timeline for the above information next FWG meeting.

There was a question as to whether this bond sale is a one-time event or repeated occurrence? Ms. Carter and Mr. Longhi said that per NVTA's debt policy, NVTA should keep options open. This is part of the rationale behind re-evaluating revenue bond sale.

Mr. Longhi expects to revenue stream will be steady, so jurisdictional project managers will have a reasonable expectation of receiving the funding needed for their projects as planned. The idea being that projects should not be delayed waiting for NVTA to address funding constraints. Tom Biesiadny (Fairfax County) concurred that it is important to move forward with the agreement for the 70% regional funding as there are projects are ready and they has significant public attention. A separate debt sub-committee meeting was schedule for January 7, 10am, 4050 Legato Road, Suite 400, Fairfax, Virginia 22033.

The group also discussed ways to select the underwriter for the debt issuance.

MOAs –

Agreement between NVTA and the Cities/Counties

The MOA subcommittee met on 12/5. The committee went through every comment to reach consensus. The most recent revised copies of MOAs were distributed.

Ellen Posner (Counsel of Councils) lead a revision by revision review of the MOA's, starting with the purple-lined NVTA/County/City MOA and then the red-lined NVTA County / Town MOA. The revised version based on the discussion at this meeting will be sent later today (12/6) and Monday, further changes or consensus of changes to NVTA.

There were some housekeeping changes.

There are some are significant such as

- Starting at the bottom of page 4 regarding administration. The language letting the jurisdiction decide on the how to pay administrative fees was stricken and replaced with two defined options that require election. Also stricken was the language directing that county payment of administrative expenses shall include the town share
- There was also considerable discussion about the trigger / timeline for NVTA to automatically deduct its administrative fees from the distribution of the 30 percent funding. The resulting language is to be included in the next draft (Monday morning).
- Language was strengthened to deal with the event in which the administrative fees are not paid and no election is made. The adjective defining the revenues from NVTA in fund was changed to "local"

There was discussion about denying the admin fee, or otherwise disagreeing with the fee and the process to do so and by what date, and therefore what date funds were withheld. Ms. Posner clarified that until the jurisdiction remitted the fee, NVTA does not have a way to be made whole, unless stronger measures are pursued. The revised draft to be distributed Monday morning will include the results of the discussion.

- Language regarding misappropriation or misuse of funds was added
- Emphasis that if a county/city with a town has distribution withheld, the town will also not have a distribution.
- Another major issue is NVTA's role in assisting to resolve disputes between counties and towns.

First distribution should be in January, assuming approval of the MOA by NVTA and the jurisdictions.

Agreement between Counties and Towns

If a county/city misuses a portion of the 30 percent funding allocated to it, its distribution of 30 percent funding in the subsequent fiscal year will be added to the 70% funding, and distributed to the remaining localities. If there is a town residing in the defaulting jurisdiction, the town would not receive its share either.

Page 14 of redlined: The group discussed whether the counties should reimburse the towns with 20 or 30 days from receipt of the reimbursement request. Language will be inserted saying that the counties will make every effort to reimburse the towns in 20 days.

If county / city does not make full Maintenance of Effort (MOE) requirement, the residing town will also have its share of the 30 % funding reduced.

Regarding accounting and reporting of MOE, and possible 5% variance, it is requested a reconciliation option be considered due to accruals and other required accounting adjustments. The discussion was the idea was that NVTA should not delay distribution due to accounting presentation of accruals. Language in the agreement will be adjusted. Mike Longhi noted NVTA does not wish the accounting presentation of cash basis versus accrual basis to trigger a non-distribution.

There will be generic signature blocks where localities can fill in the executors of the agreements.

Mary Touhy (Herndon) thanked the localities for their patience working through the MOA's.

Ms. Posner reminded the group that NVTA is not the project manager nor performs the role of project maintenance. Localities have to monitor their timeline and distributions and reports regarding their projects. NVTA's project coordinators will review projects to ensure that they don't exceed the scope approved by NVTA.

Status of Projected Cash Flow Information – Jason Friess (Arlington) updated the group on the status of the project cashflows. All but \$2M million is accounted for. Mr. Longhi noted that the NVTA staff will be updating the Board on December 12 as to the status of funding received as well as first snapshot of FY14 administrative expenditures. He is still working on the format of the presentation. It will be included in the NVTA meeting packet. Mr. Longhi also said that he will request two points of contact from each of the jurisdictions for distribution of revenue information.

Debt Policy – 12/3 draft moves the example of debt coverage to Exhibit 1 and changes the numbers used for the example. The formula and coverage requirements are the same. There was also a discussion about the removal of language regarding the selection of future financial advisor. Mr. Biesiadny noted that this language was an earlier commitment to Loudoun County and should be restored. There was also discussion about how quickly the debt service reserve should be funded.

Procurement Procedures – Mostly Done.

Other Items

- The group discussed the administrative costs that the Department of Taxation is withholding from the distribution of NVTAs funding.
- It was also noted that the FWG needs to prepare revenue estimates for FY 2015 and FY 2016 for the Project Implementation Working Group.

Next Meeting - was tentatively scheduled for December 18 at 9:30am, pending confirmation from Mayor Euille that this day works on his calendar.

January 2, 2014

Mr. Robert Sisson
City Manager
10455 Armstrong Street
Fairfax, VA 22030

Dear Mr. Sisson:

This letter transmits two items: (1) Memorandum of Agreement (MOA) between the City of Fairfax and the Northern Virginia Transportation Authority (NVTA) with respect to the 30% transportation funding for the City and (2) instructions with respect to payment of administrative fees for NVTA operations.

Memorandum of Agreement. The enclosed MOA between the City of Fairfax and the NVTA applies to the 30% Funds that the City will receive as its share (based on population) in accordance with VA Code §15.2-4838.1. The MOA has been carefully drafted so that the same phrasing is applicable to all nine cities and counties in Northern Virginia. It is the product of NVTA's Council of Counsels and detailed coordinated with jurisdictional staffs. It is important that NVTA have the exact same MOA with each member jurisdiction; therefore, no changes to the final wording of the MOA is permitted. Following your jurisdiction's approval, please return a signed copy of the completed MOA to my attention. Following the signature by the Chairman of the Authority, a final copy will be provided to you. In planning and expending 30% Funds, please note carefully the statutory guidance referenced in the MOA.

As this is the first 30% distribution being made, interest earned since the funds arrived from the Commonwealth through the date of distribution will be added to the first transfer. Subsequent monthly transfers will include interest earned on the 30% Funds since receipt by NVTA. When each transfer is made, emails will be sent to the two points of contact (your jurisdiction's staff lead for NVTA coordination and your financial point of contact) identified on response form. Also enclosed is a draft statement; final statement will reflect interest included in the transfer. Please be sure that ACH transfer information is provided. This will be the bank and account number NVTA transfers the 30% Funds into.

Administrative costs/30% Distribution Instructions. VA Code §15.2-4835 provides that administrative expenses of NVTA, as set forth in its annual budget, shall be allocated among the component cities and counties based on population. The administrative expenses may be paid from the 30% Funds allocated to each jurisdiction. NVTA's FY2014 Administrative Budget was approved on September 26, 2013. Jurisdictional shares are shown on enclosure. At this time, NVTA is requesting that each jurisdiction make one of the following selections on the attached response form:

- Payment by deduction – annual decision. If you elect to have payment deducted from your 30% Funds, please select that option on the attached form and mail with signed MOA. A new election will need to be made each year by July 1.

- Payment by ACH or check. If you elect to make payment directly to NVTa, please select that option on attached form and mail with signed MOA. Payment must be received in order for NVTa to release the transfer of 30% Funds. A new election will need to be made each year by July 1.
- Payment by deduction until rescinded in writing. If you elect to have the payment deducted from your 30% Funds annually until rescinded in writing, please select that option on attached form and mail with signed MOA. A jurisdiction may change this selection at any time. Changes must be received by July 1 for the upcoming fiscal year to be effective for that fiscal year. Several jurisdictions have already indicated that they intend to exercise this option.

If you or your staff have any questions, please do not hesitate to contact me at 703.642.4650 or at john.mason@thenoveauthority.org or Michael Longhi, Chief Financial Officer, at 703.642.5556 or michael.longhi@thenovaauthority.org.

Yours sincerely,

Interim Executive Director

Enclosures: as

Date: _____

Mr. John Mason
Interim Executive Director
Northern Virginia Transportation Authority
3060 Williams Drive, Suite 510
Fairfax, VA 22031

Dear Mr. Mason:

This letter confirms the City of Fairfax intention to pay its share of NVTA's Fiscal Year 2014 Annual Operating Budget by (select one):

- Payment by Deduction. (A new election must be made by July 1, 2014, for FY 2015.)
 Payment by Check/ACH. If payment is to be made to NVTA by check or ACH, funds must be received prior to NVTA disbursing the 30% share. (A new election must be made by July 1, 2014, for FY 2015.)

For ACH payments to NVTA please use the following NVTA bank information:

Bank Name: Wells Fargo
Routing: 051400549
Account: 2000034314715

- Payment by Deduction - until rescinded in writing

By providing the following bank account information, we request the 30% share be distributed via an ACH transaction:

Name of Bank: _____
Routing Number: _____
Account Number: _____

(If bank account information is not provided, the 30% distribution will be made by check.)

When payments on the 30% share are distributed, we request the notifications be sent to the following via e-mail.

Point of Contact	Name	Phone	E-Mail
Administration			
Financial			

By accepting the transferred funds, the City of Fairfax acknowledges and agrees to manage, account for and utilize the funds only as permitted in VA. Code Ann. § 15.2-4838.1

Sincerely,

Signature of Authorized Representative

Title

Title of Representative

Date

January 2, 2014

Mr. Tim Hemstreet
County Administrator
Office of the County Administrator
1 Harrison Street, SE (MSC #02)
Leesburg, VA 20175

Dear Mr. Hemstreet:

This letter transmits three items: (1) Memorandum of Agreement (MOA) between the County of Loudoun and the Northern Virginia Transportation Authority (NVTA) with the respect to the 30% transportation funding for the County, (2) MOA between the County of Loudoun and the Town of Purcellville, and (3) instructions with respect to payment of administrative fees for NVTA operations.

Memorandum of Agreement. The enclosed MOA between the County of Loudoun and the NVTA applies to the 30% Funds that the County (to include funds for Town of Purcellville) will receive as its share (based on population) in accordance with VA Code §15.2-4838.1. The MOAs have been carefully drafted so that the same phrasing is applicable to all nine cities and counties in Northern Virginia and between counties and towns. They are the product of NVTA's Council of Counsels and detailed coordinated with jurisdictional staffs. It is important that NVTA have the exact same MOA with each member jurisdiction and, similarly, counties with towns; therefore, no changes to the final wording of these MOAs are permitted. Following your jurisdiction's approval, please return a signed copy of the completed MOA to my attention. Following the signature by the Chairman of the Authority, a final copy will be provided to you. In planning and expending 30% Funds, please note carefully the statutory guidance referenced in the MOA. Please also provide a completed copy of MOA with Town of Pucellville. The 30% funds will be released as soon as practical after the MOA signature process is complete and the instructions referenced below received.

As this is the first 30% distribution being made, interest earned since the funds arrived from the Commonwealth through the date of distribution will be added to the first transfer. Subsequent monthly transfers will include interest earned on the 30% Funds since receipt by NVTA. When each transfer is made, emails will be sent to the two points of contact (your jurisdiction's staff lead for NVTA coordination and your financial point of contact) identified on response form. Also enclosed is a draft statement; final statement will reflect interest included in the transfer. Please be sure that ACH transfer information is provided. This will be the bank and account number NVTA transfers the 30% Funds into.

Administrative costs/30% Distribution Instructions. VA Code §15.2-4835 provides that administrative expenses of NVTA, as set forth in its annual budget, shall be allocated among the component cities and counties based on population. The administrative expenses may be paid from the 30% Funds allocated to each jurisdiction. NVTA's FY2014 Administrative Budget was approved on September 26, 2013. Jurisdictional shares are shown on enclosure. At this time, NVTA is requesting that each jurisdiction make one of the following selections on the attached response form:

- Payment by deduction – annual decision. If you elect to have payment deducted from your 30% Funds, please select that option on the attached form and mail with signed MOA. A new election will need to be made each year by July 1.
- Payment by ACH or check. If you elect to make payment directly to NVTA, please select that option on attached form and mail with signed MOA. Payment must be received in order for NVTA to release the transfer of 30% Funds. A new election will need to be made each year by July 1.
- Payment by deduction until rescinded in writing. If you elect to have the payment deducted from your 30% Funds annually until rescinded in writing, please select that option on attached form and mail with signed MOA. A jurisdiction may change this selection at any time. Changes must be received by July 1 for the upcoming fiscal year, to be effective for that fiscal year. Several jurisdictions have already indicated that they intend to exercise this option.

If you or your staff have any questions, please do not hesitate to contact me at 703.642.4650 or at john.mason@thenoveauthority.org or Michael Longhi, Chief Financial Officer, at 703.642.5556 or michael.longhi@thenovaauthority.org.

Yours sincerely,

Interim Executive Director

Enclosures: as

Table 1

Jurisdiction Share of NVT FY 2014 Approved Budget		
	2010	Billed
Jurisdiction	Population	Amounts
Alexandria	6.30%	\$ 37,270
Arlington	9.40%	\$ 55,610
City of Fairfax	1.00%	\$ 5,916
Fairfax County	48.00%	\$ 283,966
Falls Church	0.60%	\$ 3,550
Loudoun	14.20%	\$ 84,006
Manassas	1.70%	\$ 10,057
Manassas Park	0.60%	\$ 3,550
Prince William	18.20%	\$ 107,670
	100.00%	\$ 591,595
Approved By NVT Board on Sept. 26, 2013		

Table 2

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY						
STATEMENT OF REVENUES RECEIVED, BY JURISDICTION IN WHICH REVENUE WAS GENERATED						
JULY 1, 2013 THROUGH DECEMBER 24, 2013						
(CASH BASIS)						
<u>Jurisdiction</u>	<u>Grantor's Tax</u>	<u>Regional Sales Tax*</u>	<u>Transient Occupancy Tax**</u>	<u>Total</u>	<u>Pending 30% Distribution***</u>	
City of Alexandria	\$ 1,231,741.70	\$ 4,862,492.47	\$ 841,925.59	\$ 6,936,159.76	\$ 2,080,847.93	
Arlington County	\$ 1,935,543.20	\$ 7,515,358.04	\$ 2,816,124.75	\$ 12,267,025.99	\$ 3,680,107.80	
City of Fairfax	\$ 140,204.95	\$ 2,516,987.29	\$ 78,087.92	\$ 2,735,280.16	\$ 820,584.05	
Fairfax County	\$ 6,864,995.70	\$ 32,348,021.22	\$ 2,347,316.41	\$ 41,560,333.33	\$ 12,468,100.00	
Falls Church	\$ 125,308.85	\$ 691,067.70	\$ -	\$ 816,376.55	\$ 244,912.96	
Loudoun County	\$ 3,714,529.45	\$ 12,634,647.77	\$ 511,460.48	\$ 16,860,637.70	\$ 5,058,191.31	
City of Manassas	\$ 149,143.00	\$ 1,536,018.61	\$ 20,126.19	\$ 1,705,287.80	\$ 511,586.34	
City of Manassas Park	\$ 132,690.75	\$ 373,015.97	\$ -	\$ 505,706.72	\$ 151,712.02	
Prince William County	\$ 2,460,088.64	\$ 10,538,823.14	\$ 347,864.13	\$ 13,346,775.91	\$ 4,004,032.77	
Total Revenue	\$ 16,754,246.24	\$ 73,016,432.21	\$ 6,962,905.47	\$ 96,733,583.92	\$ 29,020,075.18	
* Net of Dept. of Taxation Fees						
** County TOT includes any Town collections						
***Interest accrued on the 30% Distribution from date of receipt by NVT through date of transfer will be added to first transfer.						

Standard Project Funding and Administration Agreement
Between
Northern Virginia Transportation Authority
And
_____ (Recipient Entity)

NVTA Project Number: (_____)

THIS AGREEMENT, **is** made and executed **in** duplicate on this ~~the~~ _____ day of _____, 20____, **as** between the Northern Virginia Transportation Authority (“NVTA”) and _____ (Recipient Entity)

WITNESSETH

WHEREAS, Section 15.2-4830(4) of the Code of Virginia authorizes NVTA to enter into project agreements with certain statutorily designated entities for the provision of transportation facilities and services within NVTA’s geographical borders;

WHEREAS, Section 15.2-4838.01 of the Virginia Code authorizes NVTA to contribute funds from a fund established pursuant to that Code section (the “NVTA Fund”) in order to assist in the financing, in whole or in part, of certain regional transportation projects in accordance with Code Section 15.2- 4838.1;

WHEREAS, Section 15.2-4838.1 authorizes the use of funds from the NVTA Fund and the use of proceeds from NVTA bond issuances to be used by NVTA solely for transportation purposes benefitting those counties and cities embraced by NVTA;

WHEREAS, the Project set forth and described on Appendices A and B to this Project Agreement (“the Project”) satisfies the requirements of Code Sections 15.2-4838.01 and 15.2-4838.1; **as may be amended**;

WHEREAS, the Project, as described in Appendices A and B **is** to be financed, in whole or in part, by funds from the NVTA Fund and/or from NVTA bond proceeds, is located within a locality embraced by NVTA’s geographical borders, or is located in an adjacent locality; but only to the extent that any such extension is an insubstantial part of the Project and is essential to the viability of the Project within the localities embraced by NVTA;

WHEREAS (_____) formally requested that NVTA provide funding to the Project by timely submitting an application for NVTA funding in response to NVTA’s call for projects;

WHEREAS, NVTA has ~~expressed a desire to have~~ reviewed (_____)'s application for funding and has approved that (_____) administer and perform the Project's described scope of work; and

WHEREAS, the funds to be provided by NVTA described in Appendix A have been allocated by (_____) to finance the Project, and

WHEREAS, NVTA has requested that (_____) design and/or construct the Project or perform such other specific work for the Project) and (_____) has agreed to perform such work on the terms and conditions set forth in this Project Agreement and the Appendices appended thereto; and

WHEREAS, both parties have concurred in the (_____)'s administration, performance, and completion of the Project on the terms and conditions set forth in this Project Agreement and its associated Appendices A and B and in accordance with all applicable federal, state, and local laws and regulations; and

WHEREAS, NVTA's governing body and (_____)'s governing body have, by resolutions, which are attached hereto as Appendix C, authorized their respective designees to execute this Project Agreement; on their behalf(s); and

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, the parties hereto agree as follows:

A. Recipient Entity's Obligations

(_____) shall:

- I. Complete or perform all said work as described in Appendix B, advancing such work diligently and ensuring that all work is completed in accordance with the schedule established by the parties, in accordance with all applicable federal, state, and local law and regulations, and the all terms and conditions of this Project Agreement.
2. Ensure that all work performed or to be performed under this Project Agreement is in accordance with the Project description as contained in Appendix B and is authorized by Va. Code Ann. Sections 15.2-4838.1 (A) and C (1).

3. Perform or have performed, and remit all payments for, all preliminary engineering, **including all necessary environmental work**, right-of-way acquisition, construction, contract administration, testing services, inspection services activities, or capital asset acquisitions for the Project, as is required by this Project Agreement and that may be necessary for completion of the Project.
4. Recognizes that if the Project contains multiple phases for which NVTA will provide funding for such multiple phases, () will not advance the Project to the next phase until such time it receives **a notice authorization** to proceed by ~~NVTA~~ **NVTA's Executive Director**.
5. Timely provide all information required by NVTA so as to ensure accurate cash flow estimates (and updates to those cash flow estimates) for the Project throughout the life of the Project, **as provided in the Appendices**.
6. Provide to NVTA requests for payment that include a detailed summary of actual project expenditures with supporting documentation as determined by NVTA that ~~show~~ **certify** all such expenditures were incurred in the performance of work for the Project as authorized by this Project Agreement. If approved by NVTA, payment shall be made within thirty (30) days upon receipt. Approved payments may be made by means of electronic transfer of funds from NVTA to (_____).
7. Promptly notify ~~NVTA~~ **NVTA's Executive Director** of any additional project costs resulting from any unanticipated circumstances and provide **to** NVTA detailed estimates of additional costs associated with those circumstances; (_____) understands that it will be within NVTA's sole and exclusive discretion as to whether to provide **any** additional funding **to the Project** in such circumstances. **(**Readers Note: JAAC and NVTA's PWG and FWG will need to discuss whether to recommend to the NVTA that NVTA permit switching of funds among approved projects and/or whether to recommend/develop a process for seeking/securing for additional funding for approved Projects as a result of unanticipated cost overruns)**

8. Return any unexpended funds to NVTA no later than 90 days after the Project has been completed (*****JAAC and Project Implementation need to provide a mutually acceptable and workable definition of COMPLETED to be inserted here**), final expenses have been paid in full, and there has been final reconciliation. (*****See also Readers Note to Paragraph A (7)**).
9. Should (_____) be required to provide matching funds in order to proceed or complete the Project, (_____) provide certification to NVTA that all such matching funds have been either authorized and appropriated by (_____)’s governing body or have been obtained through another, independent funding source;
10. Maintain complete and accurate financial records relative to the Project for all time periods ~~that~~ **as** may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations; and provide copies of any such financial records to NVTA, free of charge, upon request.
11. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations; and provide to NVTA copies of all such drawings and plans free of charge, **if requested**.
12. Reimburse NVTA for all **NVTA** funds (including all interest **at NVTA’s prevailing rate** that would have accrued) ~~which NVTA provided that~~ (_____) **that were** misapplied or used in contravention of Va. Code Sections 15.2-4829 *et. seq.*, (“the NVTA Act”) as amended, Chapter 766 of the 2013 Virginia Acts of Assembly, or any term or condition of this Project Agreement.
13. Name NVTA or require that all its (_____)’s contractors name NVTA as an additional insured on any insurance policy issued for the work to be performed by or on behalf of (_____) for the Project; and present NVTA with satisfactory evidence thereof before any work on the Project commences **or continues**.

14. Give notice to NVTA **that if** (_____) **may** ~~intends to~~ use any NVTA funds to pay outside legal counsel services (as opposed to utilizing the services of its own **in-house counsel** or NVTA's in-house legal counsel) in connection with the work performed under this Project Agreement (_____) such that the parties can ensure that no conflict of interest may arise from **any** such representation.
15. Provide certification to NVTA, that upon completion (***** A definition of completion is also needed here; but that definition can be cross-referenced to the definition from Paragraph A8**) of the Project, (_____) will maintain the Project or take such measures as may be reasonably necessary to ensure that the Project will be maintained by a third party acting on (_____) 's behalf. Under no circumstances will NVTA be considered responsible or obligated to maintain the Project after its completion.
16. Comply with all requirements of the Virginia Public Procurement Act and other applicable Virginia Code provisions which govern **the letting of** public contracts.

B. NVTA's Obligations

NVTA shall:

1. Provide to (_____) the funding authorized by NVTA for design work, preliminary engineering, **including all necessary environmental work**, all right-of-way acquisition, inspection services, testing services, construction, and/or mass transit capital acquisition on a reimbursement (~~and/or advanced funding ?~~) basis as set forth in this Project Agreement and as specified in the payment schedule contained in Appendix A to this Project Agreement.
2. Assign a Project Management Coordinator to the Project. Said Project Management Coordinator will be ~~tasked with the general oversight~~ **responsible for the operational monitoring** of the Project on behalf of NVTA and with overseeing, managing, reviewing, and

processing, in consultation with NVTA's Executive Director and its Chief Financial Officer ("CFO") ,all funding requests submitted by (_____) for the Project.

3. Route all requests for payment submitted by (_____) to NVTA to the Project's assigned ~~Program~~ **Project** Management Coordinator who will conduct an initial review of all payment requests, ~~and~~ requisitions and supporting documentation for the Project. NVTA's ~~Program~~ **Project** Management Coordinator will undertake a review of each payment request submitted by (_____) in order to determine the submission's legal and documentary sufficiency; and will thereafter make a recommendation to the NVTA's CFO and ~~Interim~~ **Executive** Director whether to authorize payment, refuse payment, or seek additional information from (_____). If the request for payment is sufficient as submitted, payment will be made within ~~thirty (30)~~ **twenty (20) days (** Readers Note: NVTA payment turn-around time is still under discussion)** from receipt. If the request for payment is deemed insufficient, NVTA's ~~Program~~ **Project** Management Coordinator will notify (_____) in writing and set forth the reasons why the request for payment was declined or why and what specific additional information is needed for processing the payment request. Payment will be withheld until all deficiencies identified by NVTA have been corrected. Under no circumstances will NVTA authorize payments for any work performed by or on behalf (_____) that is not in conformity with the requirements of the NVTA Act or Chapter 766
4. Conduct periodic **compliance** reviews ~~and audits of~~ **for** the Project so as to determine whether the work being performed remains within the scope of this Project Agreement and Chapter 766. NVTA will provide advance written notice to (_____) of NVTA's intent to conduct such **compliance** reviews. ~~and audits.~~ Any such **compliance** reviews ~~and audits~~ may entail review of (_____)'s financial records for the Project and on -site inspections.
5. If as a result of NVTA's review of any payment request or of any periodic ~~audit of~~ **compliance** review conducted by NVTA, NVTA staff determines that (_____) has misused or misapplied any NVTA funds in derogation of this Project Agreement or in

contravention of law, NVTA staff will promptly advise NVTA's ~~Interim~~ **Executive** Director and will advise (_____) 's) designated representative in writing. (_____) will thereafter have thirty (30) days to respond in writing to NVTA's initial findings. NVTA's staff will review (_____) 's) response and make a recommendation to NVTA's Finance Committee. NVTA's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to NVTA. Pending final resolution of the matter, NVTA will withhold further funding on the Project. If NVTA makes a final determination that (_____) has misused or misapplied funds in contravention of Chapter 766, NVTA will cease further funding for the Project and will seek reimbursement from (_____) of all funds **(with accrued interest at NVTA's prevailing rate) that were** previously remitted by NVTA **which were misapplied or misused by (_____)**. **Nothing herein shall, however, be construed as denying or limiting the pursuit of either party's rights or other legal remedies.**

6. Make guidelines available to (_____) to assist the parties in carrying out the terms of this Project Agreement in accordance with applicable law.
7. Upon completion of the Project, NVTA will retain copies of all contracts, financial records, design, construction and as-built project drawings and plans for the Project for the time periods required by the Virginia Public Records Act and in accordance with all other applicable records retention laws and regulations.
8. ~~Nothing in this Project Agreement shall be construed as requiring NVTA to provide funds any funding other than those amounts that have been duly authorized by a resolution NVTA's governing body or limit NVTA's exclusive authority to determine the source of the funds that commits for the Project.~~ **Shall be the sole determinant of the amount and source of NVTA funds to be provided and allocated to the Project.**
9. ~~NVTA will be the sole determinant as to the source of funds that it provides for the Project.~~

C. Term

1. This Project Agreement shall be deemed effective upon adoption and execution by both parties.

2. This Project Agreement may be terminated without cause by either party upon sixty (60) days advance written notice. Subject to the procedures and conditions set forth in this Project Agreement, NVTA will reimburse (_____) for all eligible expenses incurred through the date of termination.

3. Upon termination and payment of all eligible expenses as set forth in Paragraph C.2 above, (_____) will return to NVTA all unexpended NVTA funds with forty-five (45) days.

D. Notices

All notices under this Project Agreement to either party shall be in writing and forwarded to the other party by U.S. mail care of the following authorized representatives:

1) to: NVTA, to the attention of its Executive Director (address);

2) to: (_____) (address)

E. Assignment

This Project Agreement shall not be assigned by either party unless express written consent is given by the other party.

F. Modification or Amendment

This Project Agreement may be modified, in writing, upon mutual agreement of both parties.

G. No Personal Liability or Creation of Third Party Rights

This Project Agreement shall not be construed as creating any personal liability on the part of any officer, employee, agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

H. Sovereign Immunity

This Project Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

I. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

COUNTY OF _____ VIRGINIA:

Northern Virginia Transportation Authority

By: _____ Date _____

(_____)

By: _____ Date _____

Appendix A

NVTA PROJECT NUMBER:

Name of Recipient Entity

PROJECT IDENTIFICATION AND PROPOSED FUNDING	
Scope:	
From:	
To:	
Recipient Entity/Project Manager Contact Info:	
NVTA Project Coordinator Contact info:	

Project Costs

Phase	Estimated Project Costs	NVTA Funding	Other Funds To be Approved
Preliminary Engineering			
Right-of- Way Utilities			
Construction			
Capital Acquisitions			
Total Estimated Cost			

Project Funding

A	B	C	D	E
NVTA Funds	(Recipient Entity) Funds	3 rd Party Fund (Source)		

PROJECT CASH FLOW

Phase	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2014	FY 2015	TOTAL
PE								
RW & Utilities								
CN								
Capital Acquisitions								
TOTAL								

ESTIMATED PAYMENT SCHEDULE

FY 2014	FY 2015	FY 2016	FY 2017	FY 2018

This attachment is certified and made an official attachment to this document by the parties of this agreement.

Authorized Locality Official and Date

Residency administrator/PE Manager/
District Construction Engineer
Recommendation and Date

Type or print name of person signing

Type or print name of person signing

DRAFT –FOR DISCUSSION PURPOSES ONLY

**MEMORANDUM OF AGREEMENT BETWEEN
THE VIRGINIA DEPARTMENT OF TRANSPORTATION, THE VIRGINIA DEPARTMENT OF
RAIL AND PUBLIC TRANSPORTATION AND
THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY
RELATING TO
IMPLEMENTATION OF CHAPTER 766 OF THE 2013 ACTS OF ASSEMBLY AND
ADMINISTRATION OF THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY FUND**

WHEREAS, the 2013 Virginia General Assembly adopted and enacted into law House Bill 2313, 2013 Va. Acts of Assembly, Chapter 766 (“Chapter 766”); and

WHEREAS, Chapter 766 provides for imposition of certain state taxes in localities comprising planning districts that meet certain criteria as specified in the Act,

WHEREAS, Planning District 8 meets the criteria specified in §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, 58.1-614, 58.1-802.2, 58.1-1742 and 58.1-2295 of the Code of Virginia of 1950 (as amended) and the taxes and fee specified in those sections shall be imposed in the localities comprising Planning District 8; and

WHEREAS, Chapter 766, in § 15.2-4838.01, establishes the Northern Virginia Transportation Authority Fund (“NVTAF”) and specifies that all revenues dedicated to the NVTAF pursuant to § 58.1-638 (which includes revenues attributable to the taxes imposed pursuant to §§ 58.1-603.1, 58.1-604.01, 58.1-604.1), and §§ 58.1-802.2 and 58.1-1742, shall be paid into the state treasury, credited to the fund and the amounts so dedicated deposited monthly by the Comptroller; and

WHEREAS, Chapter 766, in § 15.2-4838.01, provides further that the amounts dedicated to the NVTAF shall be distributed to the NVTAF for use in accordance with § 15.2-4838.1; and

WHEREAS, Chapter 766, in §15.2-4838.1 provides, among other things, that all moneys received by the NVTAF shall be used by the Authority solely for transportation purposes benefitting those counties and cities that are embraced by the Authority; and

WHEREAS, Chapter 766, in §15.2-4838.1, also provides that 30 percent of the revenues received by the Authority shall be distributed on a pro rata basis to localities embraced by the NVTAF, with each locality’s share being the total of such fee and taxes received by the Authority that are generated or attributable to the locality divided by the total of such fee and taxes received by the Authority (“Locality Share”), to be used by the locality in funding certain transportation or congestion related projects or improvements; and

WHEREAS, Chapter 766, in §15.2-4838.1 provides further that the remaining 70 percent of the revenues received by the Authority (“Regional Funds”) shall be used by the Authority solely to fund mass transit capital projects that increase capacity; or transportation projects selected by the Authority that are contained in the regional transportation plan in accordance with §15.2-4830 and, with the exception of those Regional Funds received in fiscal year 2014, that have been rated in accordance with §33.1-13.03:1; and

WHEREAS, the Northern Virginia Transportation Authority (“NVTAF”) the Virginia Department of Transportation (“VDOT”) and the Virginia Department of Rail and Public Transportation (“DRPT”) have determined that it is necessary for the three entities to enhance coordination of transportation planning and programming functions in order to ensure the most effective and efficient use of revenues deposited into the

DRAFT –FOR DISCUSSION PURPOSES ONLY

NVTAF and received by the NVTA pursuant to Chapter 766, in conjunction with other state and federal transportation revenues.

WHEREAS, the Virginia Department of Taxation bears responsibility for collecting and depositing into the NVTAF all revenues associated with the additional sales tax(es) imposed in Planning District 8 by Chapter 766 in sections 58.1-638, 58.1-802.2 and 58.1-1742; and the Virginia Department of Motor Vehicles bears responsibility for collecting and depositing into the statutorily designated fund, all revenues associated with the additional motor fuels taxes imposed in Planning District 8 by Chapter 766 in section 58.1-2295 and neither VDOT nor DRPT bears any responsibility for the collection, deposit or expenditure of the aforementioned tax revenues; and

WHEREAS, the NVTA is responsible for determining whether moneys distributed to it pursuant to §15.2-4838.01 exceed the amount required to meet the current needs and demands to fund transportation projects pursuant to §15.2-4838.1, and upon making such a determination, the Authority may invest such excess moneys to the same extent as provided in §33.1-23.03:5 for excess funds in the Transportation Trust Fund.

NOW THEREFORE, in order to most effectively administer the expenditure of funds once deposited into the NVTAF, the Parties have deemed it necessary and prudent to identify their respective roles and responsibilities with regard to said Fund by means of an Agreement and, accordingly, do hereby agree as follows:

1. **Use and Availability of Funds**: Use of funds in the NVTAF shall be consistent with state and federal law. Further, use and availability of NVTAF funds are subject to appropriation.
2. **VDOT's and DRPT's Role and Responsibilities**:
 - a. VDOT will provide NVTA with the Department of Taxation's estimates of NVTA revenues that will result from the state taxes imposed in planning District 8 pursuant to Chapter 766, as they are made available for public distribution.
 - b. VDOT will provide NVTA with monthly financial reports relating to the NVTAF in a form similar to the exemplar attached hereto as Exhibit A, and which will include the following information:
 - i. Income by revenue source as detailed by the collecting agency
 - ii. Interest earnings
 - c. For all projects funded in whole or part with NVTAF funds that are requested to be administered by VDOT, said projects shall be administered using VDOT's existing project administration agreements and protocols. Standard templates/exemplars of VDOT project administration agreements are attached hereto as Exhibit B.
 - d. VDOT and DRPT agree that, subject to the requirements set forth in Section 3(a), moneys from the NVTAF that comprise the 30 percent Locality Share are eligible and may be used to satisfy the local match requirement for a project that otherwise qualifies under the Revenue

DRAFT –FOR DISCUSSION PURPOSES ONLY

Sharing Program, established and administered by the Commonwealth Transportation Board (“CTB”) pursuant to §33.1-23.05, or any other project that is funded by a program administered by VDOT or DRPT requiring matching funds from local sources, provided such use is not otherwise prohibited by state or federal law.

3. NVTA’s Roles and Responsibilities:

- a. NVTA will ensure that the NVTAF is administered in accord with the requirements set forth in §§ 15.2-4838.01 and 15.2-4838.1.
- b. NVTA shall ensure that only NVTAF moneys comprising the 30 percent Locality Share are used as local matches pursuant to subsection d of Section 2 of this Agreement and further, shall ensure that said moneys are only allocated as a local match to revenue sharing projects that have been approved by the CTB and, in the case of any other funding program requiring a local match, to projects that have been approved by all entities whose approval is required for such funding program.
- c. NVTA will cooperate with VDOT, DRPT and other state entities in the review and reporting requirement set forth in the 17th reenactment clause of Chapter 766.

5. TERMINATION OF AGREEMENT

This Agreement may be terminated by either Party upon 30 days written notice of the Party’s intent to terminate.

6. SETTLEMENT OF DISPUTES

Any factual disputes in connection with this Agreement not disposed of by mutual agreement between VDOT, DRPT and NVTA shall be transmitted in writing to the Commissioner of Highways, and the Director of the DRPT and a 60 day period provided for their review and decision. The Commissioner and/or Director, as appropriate, will rule on the question and their decision shall be final.

Any legal disputes in connection with this Agreement not disposed of by mutual agreement between VDOT, DRPT and NVTA shall be transmitted in writing to the Commissioner of Highways and the Director of DRPT and a 60-day period provided for their review and decision. The Commissioner and/or Director, as appropriate, will rule on the question and his decision shall be final unless the legal dispute is adjudicated in court. Exhaustion of the administrative procedure outlined herein above is a prerequisite of and not a substitute for the right of judicial review of the legal dispute.

4. LIABILITY FOR PLANNING PROCESS AND ADMINISTRATION OF FUNDS

Nothing within this Agreement shall be deemed to waive VDOT’s and DRPT’s defense of sovereign immunity applicable to any claims which might arise directly or indirectly from this Agreement, and further, the Parties agree that the NVTA and localities will be responsible for the proper

DRAFT –FOR DISCUSSION PURPOSES ONLY

administration, oversight and expenditure of NVTAF funds pursuant to and in accord with Chapter 766.

5. MODIFICATION OF AGREEMENT

This Agreement may be modified only by written agreement, duly executed by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Agreement to be executed by their duly authorized representatives on the _____ day of July, 2013, which shall be the effective date of this Agreement.

Northern Virginia Transportation Authority

Virginia Department of Transportation

By: _____
[Printed Name]
[Title]

By: _____
Gregory A. Whirley
Commissioner

Department of Rail and Public Transportation

By: _____
Thelma Drake
Director

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY
STATEMENT OF REVENUES RECEIVED, BY JURISDICTION IN WHICH REVENUE WAS GENERATED
JULY 1, 2013 THROUGH December 31, 2013
(CASH BASIS)

Grantors Tax		Received		FY 2014	Annualized Actual	Projected
Transaction Months	5	To Date	Annualized	Projection	To Projection	Variance
City of Alexandria		\$ 1,231,742	\$ 2,956,180	\$ 3,391,565	\$ (435,385)	
Arlington County		\$ 1,935,543	\$ 4,645,304	\$ 4,574,287	\$ 71,017	
City of Fairfax		\$ 140,205	\$ 336,492	\$ 289,079	\$ 47,413	
Fairfax County		\$ 6,864,996	\$ 16,475,990	\$ 15,169,980	\$ 1,306,010	
Falls Church		\$ 125,309	\$ 300,741	\$ 261,761	\$ 38,980	
Loudoun County		\$ 3,714,529	\$ 8,914,871	\$ 6,093,105	\$ 2,821,766	
City of Manassas		\$ 149,143	\$ 357,943	\$ 271,303	\$ 86,640	
City of Manassas Park		\$ 132,691	\$ 318,458	\$ 148,806	\$ 169,652	
Prince William County		\$ 2,460,089	\$ 5,904,213	\$ 4,476,903	\$ 1,427,310	
Total Grantors Tax Revenue		\$ 16,754,246	\$ 40,210,191	\$ 34,676,789	\$ 5,533,402	16%
Regional Sales Tax*		Received		FY 2014	Actual to	
Transaction Months	4	To Date	Annualized	Projection	Projection	
City of Alexandria		\$ 4,862,492	14,587,477	15,806,507	(1,219,030)	
Arlington County		\$ 7,515,358	22,546,074	24,473,867	(1,927,793)	
City of Fairfax		\$ 2,516,987	7,550,962	6,462,525	1,088,437	
Fairfax County		\$ 32,348,021	97,044,064	104,977,104	(7,933,040)	
Falls Church		\$ 691,068	2,073,203	2,470,340	(397,137)	
Loudoun County		\$ 12,634,648	37,903,943	39,833,324	(1,929,381)	
City of Manassas		\$ 1,536,019	4,608,056	4,568,248	39,808	
City of Manassas Park		\$ 373,016	1,119,048	920,350	198,698	
Prince William County		\$ 10,538,823	31,616,469	32,943,958	(1,327,489)	
Total Sales Tax Revenue*		\$ 73,016,432	219,049,297	232,456,223	(13,406,926)	-6%
Transient Occupancy Tax (TOT)		Received		FY 2014	Actual to	
Transaction Months	**	To Date	Annualized	Projection	Projection	
City of Alexandria		\$ 841,926		3,570,388		
Arlington County		\$ 2,816,125		8,890,830		
City of Fairfax		\$ 78,088		345,984		
Fairfax County		\$ 2,347,316		9,984,936		
Falls Church		\$ -		141,857		
Loudoun County		\$ 511,460		806,445		
City of Manassas		\$ 20,126		77,750		
City of Manassas Park		\$ -		-		
Prince William County		\$ 347,864		530,452		
Total TOT Revenue		\$ 6,962,905		24,348,642		
Total Revenue Received		\$ 96,733,584	283,608,130	291,481,654	(7,873,524)	-3%

Annualized Total Revenue Includes total projection for TOT.

*The Regional Sales Tax is reported net of the following fees:

October Receipt	\$ 210,894
November Receipt	160,884
December Report	133,857
	<u>\$ 505,635</u>

**TOT Revenues are not processed and distributed in a manner which currently permits monthly analysis. More actual transaction history is needed.

NVTA Reporting Requirements Initial Requirements Listing

18-Dec-13

30% Funds 30% County Verify C & I Maximum Rate Established	Reference NVTA/County/City MOA 4. A., B.,	Date Required Due August 1st	Receive Certified Copy of Approved Rate Schedule From Clerk to the Board
Verify Establishment and Maintenance of 'Local Fund' Deposit by Localities not applying the C&I maximum rate	4. A., B. 4. A., B.	Due August 1st Due August 1st	Receive Certification from Director of Finance/CFO of Fund Establishment and/or Current Active Status, Verify in CAFR Annually Receive Certification from Director of Finance/CFO of Deposit Documented in budget appropriation
Maintenance of Transportation Funding by City/County	5. A	Due August 1st	Year Receive Certification from Director of Finance/CFO of Deposit Documented in fund statement, with project information as backup to transactions
Annual Report on the Use of 30% Funds	6. A. / 8.	Due August 1st	Transactions
Report of 5% Variance	8	Only if required	Jurisdictions should also consider an annual presentation package that can be combined for an annual citizen orientated report Comparison of initial annual report to audited financial statement . Requirement occurs only if variance is not explained due to cash versus accrual accounting methodologies, or other common reporting variance. Jurisdiction will investigate and report variance reason. NVTA and Jurisdictional staff will resolve difference and only report to NVTA Finance Committee if funds are; not accounted for, documented correctly or potentially misapplied.
30% Towns	County/Town MOA		
Use of Funds by Town	4. D., 7.B., 8	Due August 1st (County)	Town is only receiving reimbursements so this is a compilation of the already County verified reimbursement requests. NVTA
Report of 5% Variance	8	Due July 20th (Town to County) Only if required	will review package of reimbursement submissions approved by County. Comparison of initial annual report to audited financial statement . Requirement occurs only if variance is not explained due to cash versus accrual accounting methodologies, or other common reporting variance. Jurisdiction will investigate and report variance reason. NVTA and Jurisdictional staff will resolve difference and only report to NVTA Finance Committee if funds are; not accounted for, documented correctly or potentially misapplied.
County Distribution to Towns	7. A.	Not Specified (Expect Aug. 1st?)	County provides copy of its Town distribution calculations for NVTA review. NVTA confirms receipt of funds with Town.
Regional Funds (70%)			
Standard Project Agreement (SPA)		Each Project Approved by NVTA	Project details are derived from the Project application approved by NVTA. Project funding method is determined by NVTA and cash flows and other
Request for payment form	SPA A.6., B.3., B.6.,	As needed	details are added as appendices to this agreement
Project close-out	SPA A.8.	When Project is finished	Request includes detailed summary of actual expenditures with supporting documentation
Certification of Matching Funding	SPA A.9.	As needed	Final accounting of funds received and balance settlement.
Insurance Certificate	SPA A.13.	Each Project	Becomes Appendix to SPA - Jurisdiction documentation and certification of third party funds or local appropriation
Maintenance Certificate	SPA A.15.	Each Project, on completion	Record receipt of certificate showing NVTA as additional insured Certification to NVTA of responsible party for on-going maintenance of completed project.
VDOT/VDRPT/NVTA MOA (DRAFT)			
Use of 30% Funds used as local match	3.a.		Verify use of any 30% funds for used as local matches per 2.d. of agreement. On projects approved by CTB and other required entities.

Reports/Forms to be developed, not listed elsewhere
Town Request for Reimbursement from County
Regional Benefit Over Time Report