VI

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

M E M O R A N D U M

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

FROM: Monica Backmon, Executive Director

DATE: November 28, 2016

SUBJECT: Regional Funding Project 402-10801 (Route 7 East Market Street/Battlefield Parkway Interchange)

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1. **Recommendation.** Approval of attached Standard Project Agreement (SPA) 402-10801.

2. **Suggested motion.** *I move approval of the proposed Standard Project 402-10801 (Route 7 East Market Street/Battlefield Parkway Interchange), in accordance with NVTA's approved Project Description Sheets for each project to be funded as appended to the Standard Project Agreements; and that the Executive Director sign it on behalf of the Authority.*

3. **Background.**
   a. The Authority previously approved this project for funding using FY2017 70% regional revenues on July 14, 2016.
   b. The attached SPA presented by the City of Leesburg is consistent with the project previously approved by the Authority.
   c. The attached SPA has been reviewed by the Council of Counsels, noting that there were no legal issues.

Attachment: SPA for NVTA Project Number 402-10801

Coordination: Council of Counsels

Standard Project Agreement for Funding and Administration
between
Northern Virginia Transportation Authority
and
Town Of Leesburg
(Recipient Entity)

Project Name: RT 7 (E. Market Street)/Battlefield Pkwy Interchange

NVTA Project Number: 402 - 10801

This Standard Project Agreement for Funding and Administration ("this Agreement") is made and executed in duplicate on this_____ day of _____, 20__, as between the Northern Virginia Transportation Authority ("NVTA") and Town Of Leesburg ("Recipient Entity").

WITNESSETH

WHEREAS, NVTA is a political subdivision of the Commonwealth of Virginia created by the Northern Virginia Transportation Authority Act ("the NVTA Act"), Chapter 25 of Title 33.2 of the Code of Virginia, as amended;

WHEREAS, Section 33.2-2500(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 to the area embraced by NVTA;

WHEREAS, Section 33.2-2509 of the Code of Virginia authorizes NVTA to use 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 33.2-2510;

WHEREAS, the NVTA Fund provides for the deposit therein of certain dedicated revenues and other funds appropriated by the Virginia General Assembly;

WHEREAS, Section 33.2-2510 of the Code of Virginia authorizes the use of funds from the NVTA Fund and the use of proceeds from NVTA debt issuances ("NVTA Bond Proceeds") 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 Appendix A to this Agreement ('the Project") satisfies the requirements of Virginia Code Section 33.2-2510;

WHEREAS, the Project is to be financed, as described in Appendix B, 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, Town of Leesburg 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 reviewed Town of Leesburg's application for funding and has approved Town of Leesburg's administration and performance of the Project's described scope of work;

WHEREAS, based on the information provided by Town of Leesburg, NVTA has determined that the Project complies with all requirements of the NVTA Act related to the use of moneys identified in Virginia Code Sections 33.2-2510(A),(C)1 and all other applicable legal requirements;

WHEREAS, the funds to be provided by NVTA described in Appendix B have been duly authorized and directed by Town of Leesburg to finance the Project;

WHEREAS, NVTA agrees that Town of Leesburg will design and/or construct the Project or perform such other specific work for the Project and Town of Leesburg agrees that it will perform such work on the terms and conditions set forth in this Agreement and the Appendices appended thereto;

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

WHEREAS, NVTA's governing body and Town of Leesburg's governing body have each authorized that their respective designee(s) execute this agreement on their respective behalf(s) as evinced by copies of each such entity's clerk's minutes which are appended hereto as Appendix E;.

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

A. Recipient Entity's Obligations

Town of Leesburg shall:

1. Complete or perform all said work as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with all applicable federal, state, and local laws and regulations, and all terms and conditions of this Agreement.

2. Ensure that all work performed or to be performed under this Agreement is in accordance with the Project Description Sheets attached to Appendix A and complies with Va. Code Ann. Sections 33.2-2510(A), (C)1.

3. Perform or have performed, and remit all payment requisitions and other requests for funding for design and engineering, including all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions for the Project, as is required by this Agreement and that may be necessary for completion of the Project.

4. Not use the NVTA funds specified on Appendix B to pay any Project cost if the NVTA Act does not permit such Project cost to be paid with NVTA funds.

5. Recognize that, if the Project contains "multiple phases" (as such "multiple phases" are defined for the Project on Appendix A), for which NVTA will provide funding for such multiple phases (as set forth on Appendix B), NVTA may not provide funding to Town of Leesburg to advance the Project to the next phase until the current phase is completed. In any circumstance where Town of Leesburg seeks to advance a Project to the next phase using NVTA funds, Town of Leesburg shall submit a written request to NVTA's Executive Director explaining the need for NVTA's funding of an advanced phase. NVTA's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and NVTA's current and projected cash flow position and make a recommendation to NVTA whether to authorize the requested advance phase funding. Nothing herein, however, shall prohibit Town of Leesburg from providing its own funds to

advance a future phase of the Project and from requesting reimbursement from NVTA for having advance funded a future phase of the Project. However, Town of Leesburg further recognizes that NVTA's reimbursement to Town of Leesburg for having advance funded a Project phase will be dependent upon NVTA's cash flow position at the time such a request for reimbursement is submitted and to the extent that any such advanced funding is consistent with Appendix B.

6. Acknowledge that NVTA's Executive Director will periodically update NVTA's project cash flow estimates with the objective toward keeping those estimates accurate throughout the life of the Project. Town of Leesburg shall provide all information required by NVTA so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the life of the Project as described in Appendix B.

7. Provide to NVTA requests for payment consistent with Appendix B and the most recently approved NVTA cash flow estimates that include NVTA's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by NVTA and that certify all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by NVTA, Town of Leesburg can expect to receive payment within twenty (20) days upon receipt by NVTA. Approved payments may be made by means of electronic transfer of funds from NVTA to or for the account of Town of Leesburg.

8. Promptly notify NVTA's Executive Director of any additional project costs resulting from unanticipated circumstances and provide to NVTA detailed estimates of additional costs associated with those circumstances. Town of Leesburg understands that it will be within NVTA's sole discretion whether to provide any additional funding to the Project in such circumstances and that NVTA will do so only in accordance with NVTA's approved Project Selection Process and upon formal action and approval by NVTA. Town of Leesburg shall timely provide to NVTA a

complete and accurate update to Appendix B, if NVTA approves funding of any additional Project costs for the Project under this Paragraph.

9. Release or return any unexpended funds to NVTA no later than 90 days after final payment has been made to the contractors.

10. Review and acknowledge the requirements of NVTA Resolution No. 14-08 adopted January 23, 2014; to wit that, if applicable to Town of Leesburg 's Project: a) Prior to any NVTA funds being released for a project that may be part of a larger project, projects, or system undertaken with an extra-territorial funding partner, all such extra-territorial funding partners must commit to pay their appropriate, respective proportionate share or shares of the larger project or system cost commensurate with the benefits to each on a basis agreed upon by the NVTA member localities; b) any such funds released by NVTA for such project will be in addition to the funds that the NVTA member locality is to receive from or be credited with by the extra-territorial funding partner for the project or system; and c) there shall be no funding made available by NVTA until such time as all extra-territorial funding partners for such project or system pay or officially commit to fund their appropriate, respective proportionate shares of such large project or system commensurate with the benefits to each on a basis agreed upon with NVTA.

11. Should Town of Leesburg be required to provide matching funds in order to proceed or complete the funding necessary for the Project, Town of Leesburg shall certify to NVTA that all such matching funds have been either authorized and/or appropriated by Town of Leesburg s governing body or have been obtained through another, independent funding source;

12. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations, unless superseded by the laws that govern Town of Leesburg and provide copies of any such financial records to NVTA, free of charge, upon request.

13. 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, unless superseded by the laws that govern Town of Leesburg; and provide to NVTA copies of all such drawings and plans free of charge, upon request.

14. Reimburse NVTA for all NVTA funds (with interest earned at the rate earned by NVTA) that Town of Leesburg misapplied or used in contravention of Sections 33.2-2500 *et. seq.* of the Virginia Code ("the NVTA Act") Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766"), or any term or condition of this Agreement.

15. Name NVTA and its Bond Trustee or require that all Town of Leesburg's contractors name NVTA or its Bond Trustee as an additional insured on any insurance policy issued for the work to be performed by or on behalf of Town of Leesburg for the Project and present NVTA with satisfactory evidence thereof before any work on the Project commences or continues.

16. Give notice to NVTA that Town of Leesburg may use 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 Agreement Town of Leesburg so as to ensure that no conflict of interest may arise from any such representation.

17. Provide certification to NVTA, that upon final payment to all contractors for the Project, Town of Leesburg will use the Project for its intended purposes for the duration of the Project's useful life. Under no circumstances will NVTA be considered responsible or obligated to operate and/or maintain the Project after its completion.

18. Comply with all requirements of the Virginia Public Procurement Act and other applicable Virginia Code provisions, or local ordinances which govern the letting of public contracts, unless superseded by the laws that govern Town of Leesburg.

19. Acknowledge that if the Project is being funded in whole or in part by NVTA Bond Proceeds, comply with the tax covenants attached as Appendix D.

20. Acknowledge that if Town of Leesburg expects and/or intends that the Project is to be submitted for acceptance by the Commonwealth into its system that Town of Leesburg agrees to comply with the Virginia Department of Transportation's ("VDOT's") "Standards, Requirements and Guidance."

21. Recognize that Town of Leesburg is solely responsible for obtaining all permits and permissions necessary to construct and/or operate the Project, including but not limited to, obtaining all required VDOT and local land use permits, applications for zoning approvals, and regulatory approvals.

22. Recognize that if Town of Leesburg is funding the Project, in whole or in part, with federal and/or state funds, in addition to NVTA funds and/or NVTA Bond Proceeds that Town of Leesburg will need to comply with all federal and Commonwealth funding requirements, including but not limited to, the completion and execution of VDOT's Standard Project Administration Agreement and acknowledges that NVTA will not be a party or signatory to that Agreement; nor will NVTA have any obligation to comply with the requirements of that Agreement.

23. Provide a certification to NVTA no later than 90 days after final payment to the contractors that Town of Leesburg adhered to all applicable laws and regulations and all requirements of this Agreement.

B. NVTA's Obligations

NVTA shall:

I. Provide to Town of Leesburg the funding authorized by NVTA for design work, engineering, including all environmental work, all right-of-way acquisition, inspection services, testing services, construction, and/or capital asset acquisition(s) on a reimbursement basis as set forth in this Agreement and as specified in the Project Budget and Cash Flow contained in

Appendix B to this Agreement or the most updated amendment thereto, as approved by NVTA.

2. Assign a Program Coordinator for the Project. NVTA's Program Coordinator will be responsible for monitoring the Project on behalf of NVTA so as to ensure compliance with this Agreement and all NVTA's requirements and with overseeing, managing, reviewing, and processing, in consultation with NVTA's Executive Director and its Chief Financial Officer ("CFO") , all payment requisitions submitted by Town of Leesburg for the Project. NVTA's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the Project Scope of Work as set forth on Appendix A or to the Project Budget and Cash Flow as set forth on Appendix B.

3. Route to NVTA's assigned Program Coordinator all Town of Leesburg 's payment requisitions, containing detailed summaries of actual Project costs incurred which are in substantially the same form as shown on Appendix C submitted to NVTA for the Project. After submission to NVTA, NVTA's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. NVTA's Program Coordinator will then make a recommendation to the NVTA's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from Town of Leesburg. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is deemed insufficient, within twenty (20) days from receipt, NVTA's Program Coordinator will notify Town of Leesburg in writing and set forth the reasons why the payment requisition 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 payment for any work performed by or on behalf of Town of Leesburg that is not in conformity with the requirements of the NVTA Act, Chapter 766, or this Agreement.

4. Route all Town of Leesburg 's supplemental requests for funding from NVTA under Paragraphs A.5 and A.8 of this Agreement to NVTA's Executive Director. NVTA's Executive Director will initially review those requests and all supporting documentation with NVTA's CFO. After such initial review, NVTA's Executive Director will make a recommendation to NVTA's Finance Committee for its independent consideration and review. NVTA's Finance Committee will thereafter make a recommendation on any such request to NVTA for final determination by NVTA.

5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the NVTA Act, Chapter 766, and other applicable law. Such compliance reviews may entail review of Town of Leesburg 's financial records for the Project and on -site inspections.

6. Acknowledge that if, as a result of NVTA's review of any payment requisition or of any NVTA compliance review, NVTA staff determines that Town of Leesburg has misused or misapplied any NVTA funds in derogation of this Agreement or in contravention of the NVTA Act, Chapter 766 or applicable law, NVTA staff will promptly advise NVTA's Executive Director and will advise Town of Leesburg 's designated representative in writing. Town of Leesburg will thereafter have thirty (30) days to respond in writing to NVTA's initial findings. NVTA's staff will review Town of Leesburg '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 Town of Leesburg has misused or misapplied funds in contravention of this Agreement, the NVTA Act, Chapter 766, or other applicable law, NVTA will cease further funding for the Project and will seek reimbursement from Town of Leesburg of all funds previously remitted by NVTA (with interest earned at the rate earned by NVTA) which were misapplied or misused by Town of Leesburg . Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.

7. Make guidelines available to Town of Leesburg to assist the parties in carrying out the terms of this Agreement in accordance with applicable law.

8. Upon recipient's final payment to all contractors, 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 as may be required by other applicable records retention laws and regulations.

9. Be the sole determinant of the amount and source of NVTA funds to be provided and allocated to the Project and the amounts of any NVTA funds to be provided in excess of the amounts specified in Appendix B.

C. Term

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

2. Town of Leesburg may terminate this Agreement, for cause, in the event of a material breach by NVTA of this Agreement. If so terminated, NVTA shall pay for all Project costs incurred through the date of termination and all reasonable costs incurred by Town of Leesburg to terminate all Project related contracts. The Virginia General Assembly's failure to appropriate funds to NVTA as described in paragraph F of this Agreement or repeal of the legislation establishing the NVTA fund created pursuant to Chapter 766 shall not be considered material breaches of this Agreement by NVTA. Before initiating any proceedings to terminate under this Paragraph, Town of Leesburg shall give NVTA sixty (60) days written notice of any claimed material breach of this Agreement; thereby allowing NVTA an opportunity to investigate and cure any such alleged breach.

3. NVTA may terminate this Agreement, for cause, resulting from Town of Leesburg's material breach of this Agreement. If so terminated, Town of Leesburg shall refund to NVTA all funds NVTA provided to Town of Leesburg for the Project (including interest earned at the rate earned by NVTA). NVTA will provide Town of Leesburg with sixty (60) days written notice that NVTA is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, Town of Leesburg may

request that NVTA excuse Town of Leesburg from refunding all funds NVTA provided to Town of Leesburg for the Project based upon Town of Leesburg's substantial completion of the Project or severable portions thereof; and NVTA may, in its sole discretion, excuse Town of Leesburg from refunding all or a portion of the funds NVTA provided to Town of Leesburg for the Project. No such request to be excused from refunding will be allowed where Town of Leesburg has either misused or misapplied NVTA funds in contravention of applicable law.

4. Upon termination and payment of all eligible expenses as set forth in Paragraph C.3 above, Town of Leesburg will release or return to NVTA all unexpended NVTA funds with interest earned at the rate earned by NVTA no later than sixty (60) days after the date of termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. NVTA's Executive Director and Town of Leesburg's Chief Executive Officer or Chief Administrative Officer shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to NVTA and to Town of Leesburg's governing body for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law, including all judicial remedies.

E. NVTA's Financial Interest in Project Assets

Town of Leesburg agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by NVTA under this Agreement ("Project Assets") for the designated transportation purposes of the Project under this Agreement and in accordance with applicable law throughout the useful life of each Project Asset. NVTA shall retain a financial interest in the value of each of the of the Project Assets, whether any such Project Asset may have depreciated or appreciated, throughout its respective useful life proportionate to the amount of the cost of the Project Asset funded by NVTA under this

Agreement. In the event that Town of Leesburg fails to use any of the Project Assets funded under this Agreement for the transportation purposes as authorized by this Agreement or applicable law throughout its respective useful life, Town of Leesburg shall refund to NVTA with interest at the rate earned by NVTA the amount attributable to NVTA's proportionate financial interest in the value of said Project Asset. If Town of Leesburg refuses or fails to refund said monies to NVTA, NVTA may recover its proportionate financial interest from Town of Leesburg by pursuit of any remedies available to NVTA, including but not limited to NVTA's withholding of commensurate amounts from future distributions of NVTA funds to Town of Leesburg.

F. Appropriations Requirements

1. Nothing herein shall require or obligate any party to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by their respective governing bodies.

2. The parties acknowledge that all funding provided by NVTA pursuant to Chapter 766 is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the NVTA Fund pursuant to Va. Code Ann. Sections 58.1-638, 58.1-802.2, and 58.1-1742 and any other moneys that the General Assembly appropriates for deposit into the NVTA Fund are subject to appropriation by the General Assembly and (ii) NVTA's obligations under this Agreement are subject to such moneys being appropriated for deposit in the NVTA Fund by the General Assembly.

G. Notices

All notices under this 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;
3040 Williams Drive, Suite 200
Fairfax, VA 22031

2) to Town of Leesburg, to the attention of Town Manager
25 West Market Street
Leesburg, VA 20176 (address)

H. Assignment

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

I. Modification or Amendment

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

J. No Personal Liability or Creation of Third Party Rights

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

K. No Agency

Town of Leesburg represents that it is not acting as a partner or agent of NVTA; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

L. Sovereign Immunity

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

M. Incorporation of Recitals

The recitals to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that such recitals are true and correct.

N. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

O. 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 by their duly authorized representatives.

Northern Virginia Transportation Authority

By:_____

Date:_____

_____ Town Of Leesburg _____ (Name of Recipient Entity)

By: _____

Date: 10/04/16

Approved As To Form:
_____
Town Attorney

Appendix A –Narrative Description of Project (Attach Project Description Form)

NVTA Project Title: Route 7 (East Market Street Battlefield Parkway Interchange (include alpha-numeric project id)

Recipient Entity: Town of Leesburg

Project Manager Contact Information: Tom Brandon

Table A-1 Project Changes
Only Complete if Different from the Approved NVTA Project Description Form Attached Requested funds from NVTA: ▪ FY15 - $2,000,000 ▪ FY16 - $11,000,000 ▪ FY17 - $20,000,000 (original request was $37,000,000, which was used for rating; NVTA award is $20,000,000) ▪ FY18 - $25,000,000 (future request/SmartScale) (the gap as per original request was $8,000,000)

Table A-2 Project Milestone Changes
Only Complete if Different from the Approved NVTA Project Description Form Attached ▪ Project Milestone- Funding verification – 1st quarter 2018 ▪ Project Milestone- Issue RFP – 2nd quarter 2018 ▪ Project Milestone – Final Design: start of Final Design (Design/Build) – 2nd quarter 2019 ▪ Project Milestone – Right-of-way: ROW acquisition completed (Design/Build) – 2nd quarter 2020 ▪ Project Milestone – Construction 1. Award (Design/Build) Contract – 2nd quarter 2019 2. Start of Construction (Design/Build) – 4th quarter 2019

Signature: _____
Chief Executive Officer

Date: 10/31/16

Northern Virginia Transportation Authority
The Authority for Transportation in Northern Virginia

Project Description Form – 1U

Basic Project Information

Submitting Jurisdiction/Agency: Town of Leesburg/Loudoun County

Project Title: Route 7 (East Market Street)/Battlefield Parkway Interchange

Project Location: Route 7 (East Market Street)/Battlefield Parkway Interchange



Project Description: The purpose of the Route 7 (East Market Street)/Battlefield Parkway Interchange is to improve safety and pedestrian/vehicle flow by building a grade-separated interchange which will allow Route 7 to become a limited-access freeway through the Town of Leesburg Corporate Limits.

Project Milestones

Project Milestones by Project Phase:

- **Engineering:** October 2016 – December 2018
- **Environmental Work:** December 2016 – March 2017
- **Design:** October 2016 – December 2018
- **Right of Way Acquisition:** November 2017 – December 2018
- **Construction:** December 2018 – December 2019
- **Capital Asset Acquisitions:** N/A
- **Other**

Project Analysis Summary*

NVTA Quantitative Score	43.06		Rank	16
Congestion Reduction Relative to Cost Ratio (NVTA Share)	0.07	hours saved/$	Rank	18
Congestion Reduction Relative to Cost Ratio (Total Cost)	0.05	hours saved/$	Rank	18

*Detailed scoring information can be found at: http://www.thenovaauthority.org/planning-programming/fy2017-program/

Project Cost

Requested NVTA FY2017 Funds: $37,000,000

Total Cost to Complete Project: $58,000,000

Project Phases	Requested NVTA FY2017 Funds	Other Sources of Funding	Total Cost by Phase
Engineering		$1,500,000 (NVTA FY2015-16 Funds)	$1,500,000 (FY2016 -19)
Environmental Work		$500,000 (NVTA FY2015-16 Funds)	$500,000 (FY2017)
Design		$2,000,000 (NVTA FY2015-16 Funds)	$2,000,000 (FY2016-19)
Right of Way Acquisition		$9,000,000 (NVTA FY2015-16 Funds)	$9,000,000 (FY2018-19)
Construction	$37,000,000 (FY2018-20)	$3,000,000 (NVTA FY2018 Funds)	$40,000,000 (FY2018-19)
Capital Asset Acquisitions			
Other		$1,500,000 (Contract Administration NVTA FY2018 Funds) $1,500,000 (Test Services NVTA FY2018 Funds) $2,000,000 (Inspection Services NVTA FY2018 Funds)	$1,500,000 (Contract Administration FY2018-19) $1,500,000 (Test Services FY2018-19) $2,000,000 (Inspection Services FY2018-19)
TOTAL	**$37,000,000**	**$21,000,000**	**$58,000,000**

Project Impacts

What regional benefit(s) does this project offer? Route 7 (East Market Street)/Battlefield Parkway Interchange will eliminate the last two (2) traffic signals on Route 7 within the Town of Leesburg. The project will improve capacity and reduce congestion. It is in Corridor #1 of the TransAction 2040 Plan, and carries inter-state traffic and intra-state traffic coming from the West and the South to the employment corridors and activity centers in the Dulles area and the Metropolitan region.

How will the project reduce congestion? The Route 7 Corridor continues to be one of Northern Virginia's worst bottlenecks. This intersection is travelled by approximately 80,000 vehicles per day, is well over capacity and offers travelers an extremely poor Level of Service "F". Route 7 between Algonkian Parkway and East Market Street is planned to be limited access. All at-grade access points have either transitioned to grade-separated interchanges or are in the planning stages and are funding for grade separation. This is the last interchange in the corridor to make the entire corridor fully limited access.

How will the project increase capacity? The capacity of Route 7 will be increased by eliminating at least one signalized intersection along Route 7 at Battlefield Parkway which reduces the delays on Route 7. Route 7 westbound at a minimum will not have to stop at the signalized intersection with Cardinal Park Drive. The exact design of the Route 7 intersection with Cardinal Park Drive is not known and will be determined during the design of this project.

How will the project improve auto and pedestrian safety? The grade-separated project is clearly of significant regional importance which will help connect major employment population centers in Loudoun County and the region in Virginia's fastest growing and most economically vibrant communities. The interchange will help pedestrians and bicycles cross Route 7 safely by providing a bike trail connection to residential and commercial/retail area of Town.

How will the project improve regional connectivity? Route 7 (East Market Street)/Battlefield Parkway Interchange will eliminate the last two (2) traffic signals on Route 7 within the Town of Leesburg. The project will improve capacity and reduce congestion. It is in Corridor #1 of the TransAction 2040 Plan, and carries inter-state traffic and intra-state traffic coming from the West and the South to the employment corridors and activity centers in the Dulles area and the Metropolitan region.

How will the project improve bicycle and pedestrian travel options? (See "How will the project improve regional connectivity", above)

How will the project improve the management and operation of existing facilities through technology applications? N/A

Additional Information in Support of This Project

None.

APPENDIX B-PROJECT BUDGET & CASH FLOW
PROJECT IDENTIFICATION AND PROPOSED FUNDING

NVTA Project Title: Route 7 (East Market Street) Battlefield Parkway Interchange
Recipient Entity: Town of Leesburg
Project Contact Information: Tom Brandon

NVTA Use:	
Date Received:	
Funding Program:	
Project #:	
Ledger Account #:	
Revision Date:	
Recv'd Certificate of Ins:	

TABLE B-1 PROJECT COSTS & FUNDING SOURCE

Project Cost Category	Total Project Costs	Approved NVTA Project Funds	Amount of Other Sources of Funds	List of Other Sources of Funds *(For each cost category include all other funding sources; list each source of funds on a separate line for each cost category)*
Study	$ -	$ -	$ -	
Preliminary Engineering	$ 4,000,000			
Right-of-Way Acquisition	$ 9,000,000			
Construction	$ 45,000,000	$ 20,000,000	$ 25,000,000	Future NVTA request
Capital Asset Acquisitions				
Other				
Total Estimated Cost	$ 58,000,000	$ 20,000,000	$ 25,000,000	

TABLE B-2 PROJECT CASH FLOW PER FISCAL YEAR AND COST CATEGORY *FOR NVTA FUNDS ONLY*

Project Cost Category	Total FY2017 Project Funds	Total FY2018 Project Funds	Total FY2019 Project Funds	Total FY2020 Project Funds	Total FY2021 Project Funds	Total FY2022 Project Funds
Study						
Preliminary Engineering						
Right-of-Way Acquisition						
Construction			$ 5,000,000	$ 15,000,000		
Capital Asset Acquisitions						
Other						
Total Estimated Cost			$ 5,000,000	$ 15,000,000	$ -	$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

TABLE B-3 MONTHLY/QUARTERLY PROJECT CASH FLOW *FOR NVTA FUNDS ONLY*

Month	FY2017 Monthly Cash Flow	FY2018 Quarterly Cash Flow	FY2019 Quarterly Cash Flow	FY2020 Quarterly Cash Flow	FY2021 Quarterly Cash Flow	FY2022 Quarterly Cash Flow
July						
August						
September				$ 5,000,000		
October						
November						
December				$ 5,000,000		
January						
February						
March				$ 5,000,000		
April						
May						
June			$ 5,000,000			
Total per Fiscal Year	$ -	$ -	**$ 5,000,000**	**$ 15,000,000**	$ -	$ -

Please Note: If additional years are needed, please submit a separate form with additional columns
The Total Amounts in Table B-2 and Table B-3 must agree to the total NVTA Funds listed in Table B-1
The total of each Fiscal Year must match in Table B-2 and Table B-3

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

Recipient Entity

Signature

Town Manager
Title

10/31/16
Date

Kaj Dentler
Print name of person signing

Revised: 4/13/2016

Northern Virginia Transportation Authority

Signature

NVTA Executive Director
Title

Date

Northern Virginia Transportation Authority

Signature

NVTA Chief Financial Officer
Title

Date

Approved As To Form:
Town Attorney

APPENDIX D-Tax Covenants

TAX COVENANTS
(For Bond Funded Projects Only)

The Recipient Entity will not permit more than five percent of the total amount of NVTA Bond Proceeds or the Financed Property to be used directly or indirectly (i) for a Private Business Use or (ii) to make or finance loans to Nongovernmental Persons. Any transaction that is generally characterized as a loan for federal income tax purposes is a "loan" for purposes of this paragraph. In addition, a loan may arise from the direct lending of NVTA Bond Proceeds or may arise from transactions in which indirect benefits that are the economic equivalent of a loan are conveyed, including any contractual arrangement which in substance transfers tax ownership and/or significant burdens and benefits of ownership.

The Recipient Entity agrees not to requisition or spend NVTA Bond Proceeds for any Project Cost not constituting a Capital Expenditure.

Except as may be described in Appendix B, the Recipient Entity neither has on the date of this Agreement nor expects to have after this date any funds that are restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, for the purposes for which the Recipient Entity is receiving NVTA Bond Proceeds.

The Recipient Entity acknowledges that it may have to provide detailed information about the investment of the amount of any requisition unless (i) payments are remitted directly by NVTA to the contractors/vendors or (ii) the Recipient Entity remits payment to the contractors/vendors within five banking days after the date on which NVTA advances the amount of the requisition. NVTA may request the detailed information in order to compute the rebate liability to the U.S. Treasury on NVTA's bonds or other debt financing pursuant to Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

"Capital Expenditure" means any cost of a type that is properly chargeable to capital account (or would be so chargeable with (or but for) a proper election or the application of the definition of "placed in service" under Treas. Reg. § 1.150-2(c)) under general federal income tax principles, determined at the time the expenditure is paid.

"Federal Government" means the government of the United States and its agencies or instrumentalities.

"Financed Property" means the property financed by the NVTA Bond Proceeds.

"General Public Use" means use of Financed Property by a Nongovernmental Person as a member of the general public. Use of Financed Property by a Nongovernmental Person in a Trade or Business is treated as General Public Use only if the Financed Property is intended to be available and in fact is reasonably available for use on the same basis by natural persons not

engaged in a Trade or Business. Use under arrangements that convey priority rights or other preferential benefits is not use on the same basis as the general public.

"Governmental Person" means any Person that is a state or local governmental unit within the meaning of Section 141 of the Code (or any instrumentality thereof).

"NVTA Bond Proceeds" means, as used herein, the sale proceeds of any NVTA bonds or other debt instrument and the investment earnings on such proceeds, collectively.

"Nongovernmental Person" mean any Person other than a Governmental Person. For the purposes hereof, the Federal Government is a Nongovernmental Person.

"Person" means any natural person, firm, joint venture, association, partnership, business trust, corporation, limited liability company, corporation or partnership or any other entity (including the Federal Government and a Governmental Person).

"Private Business Use" means a use of the NVTA Bond Proceeds directly or indirectly in a Trade or Business carried on by a Nongovernmental Person other than General Public Use. For all purposes hereof, a Private Business Use of any Financed Property is treated as a Private Business Use of NVTA Bond Proceeds. Both actual and beneficial use by a Nongovernmental Person may be treated as Private Business Use under Section 141 of the Code. In most cases, however, Private Business Use results from a Nongovernmental Person having special legal entitlements to use the Financed Property under an arrangement with the Recipient Entity. Examples of the types of special legal entitlements resulting in Private Business Use of Proceeds include (i) ownership for federal tax purposes of Financed Property by a Nongovernmental Person and (ii) actual or beneficial use of Financed Property by a Nongovernmental Person pursuant to a lease, a Service Contract, an incentive payment contract or certain other arrangements such as a take-or-pay or other output-type contract. Private Business Use of the Financed Property may also be established on the basis of a special economic benefit to one or more Nongovernmental Persons even if such Nongovernmental Persons do not have a special legal entitlement to the use of the Financed Property. Any arrangement that is properly characterized as a lease for federal income tax purposes is treated as a lease for purposes of the Private Business Use analysis. An arrangement that is referred to as a management or Service Contract may nevertheless be treated as a lease, and in determining whether a management or service contract is properly characterized as a lease, it is necessary to consider all of the facts and circumstances, including (i) the degree of control over the property that is exercised by a Nongovernmental Person, and (ii) whether a Nongovernmental Person bears risk of loss of the Financed Property. Private Business Use of Financed Property that is not available for General Public Use may also be established on the basis of a special economic benefit to one or more Nongovernmental Persons even if such Nongovernmental Persons do not have a special legal entitlement to the use of the Financed Property. In determining whether special economic benefit gives rise to Private Business Use, it is necessary to consider all of the facts and circumstances, including one or more of the following factors: (i) whether the Financed Property is functionally related or physically proximate to property used in the Trade or Business of a Nongovernmental Person, (ii) whether only a small number of Nongovernmental Persons receive the economic benefit, and

(iii) whether the cost of the Financed Property is treated as depreciable by the Nongovernmental Person.

"Service Contract" means a contract under which a Nongovernmental Person will provide services involving all, a portion or any function of any Financed Property. For example, a Service Contract includes a contract for the provision of management services for all or any portion of Financed Property. Contracts for services that are solely incidental to the primary governmental function or functions of Financed Property (for example, contracts for janitorial, office equipment repair, billing, or similar services) are not included in this definition. Additional contracts not included in this definition are (i) a contract to provide for services by a Nongovernmental Person in compliance with Revenue Procedure 97-13, 1997-1 C.B. 632, as modified by Revenue Procedure 2001-39, I.R.B. 2001-28, (ii) a contract to provide for services by a Nongovernmental Person if the only compensation is the reimbursement of the Nongovernmental Person for actual and direct expenses paid by the Nongovernmental Person to unrelated parties and (iii) a contract to provide for the operations by a Nongovernmental Person of a facility or system of facilities that consists predominately of public utility property (within the meaning of Section 168(i)(10) of the Code), if the only compensation is the reimbursement of actual and direct expenses of the Nongovernmental Person and reasonable administrative overhead expenses of the Nongovernmental Person.

"Trade or Business" has the meaning set forth in Section 141(b)(6)(B) of the Code, and includes, with respect to any Nongovernmental Person other than a natural person, any activity carried on by such Nongovernmental Person. "Trade or Business" for a natural person means any activity carried on by such natural person that constitutes a "trade of business" within the meaning of Section 162 of the Code.

RECIPIENT ENTITY

By: _____
Name: Kaj Dentler
Title: Town Manager
Date: 10/04/16

Approved As To Form:
_____
Town Attorney

Appendix E -Authorization of designee(s)

Attach this page to the recipient governing body's authorization for their respective designee(s) to execute the Standard Project Agreement and Tax Covenant (if applicable) on their behalf(s) as evinced by entity's clerk's minutes.

Submission of the original signed or certified copy of the governing body's authorization is required

Revised: 2/17/2016

The Town of
Leesburg, Virginia

PRESENTED October 13, 2015

RESOLUTION NO. 2015-109 ADOPTED October 13, 2015

A RESOLUTION: APPROVING THE STANDARD AGREEMENT WITH THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY FOR FISCAL YEAR 2015 AND 2016 FUNDING OF THE ROUTE 7 EAST MARKET STREET AND BATTLEFIELD PARKWAY INTERCHANGE PROJECT

WHEREAS, the Town of Leesburg was awarded $2,000,000 from the Northern Virginia Regional Transportation Authority (NVTA) through 70 percent regional funds in Fiscal Year 2015 and $11,000,000 in Fiscal Year 2016 for the design of the Route 7 East Market Street and Battlefield Parkway Interchange Project; and

WHEREAS, an administrative agreement between NVTA and the Town is required to receive the $13,000,000.

THEREFORE RESOLVED, by the Council of the Town of Leesburg in Virginia that the Town Manager is authorized to execute the attached Standard Project Agreement (SPA) for the Route 7 East Market Street and Battlefield Parkway Interchange Project and any future SPAs related to the Route 7 East Market Street and Battlefield Parkway Interchange Project in a form acceptable to the Town Attorney.

PASSED this 13th day of October, 2015.

Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:
Clerk of Council

The undersigned certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Leesburg Town Council held on October 13, 2015.

Lee Ann Green, Clerk of Council
Town of Leesburg, Virginia

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