

NVTA Financial Working Group

Fairfax Department of Transportation

4050 Legato Road, Suite 400

Fairfax, Virginia 22033

Thursday, March 6, 2014

1:00 p.m.

- I. Introductions
- II. Approval of Summary of February 5, 2014, Meeting
- III. Status of Preparation for Sale of Bonds
 - A. Summary of On-going Activities
 - B. Schedule for Future Activities
 - C. Items Required from Jurisdictions/Implementing Agencies
 - TOT, Grantor's Tax and Sales Tax collections since 1993
- 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
 - ii. Status of Approvals of MOA between Counties and Towns
 - iii. Discussion of the Project Agreement between NVTA and Implementing Agencies
 - iv. Discussion of MOA between VDOT/DRPT and NVTA
 - B. Discussions on Revenue Estimates for FY 2014, FY 2015 and FY 2016
 - i. Report from Subcommittee and NVTA Staff
 - C. Status of Project Cash Flow Information
 - D. Status of Scheduling WMATA Subcommittee Meeting
 - E. Establishment of Subcommittee to Discuss "Long-Term Benefit" Definition
 - F. Identification of Additional Items for Discussion
- V. Update on Revenues Collected
- VI. Items to Refer to Other Working Groups
- VII. Responses to Requests Made to Other Working Groups
- VIII. Summarize Recommendations Made by Working Group for the March 13, 2014, NVTA Meetings; Additional Information Requirements; Persons Responsible for Securing Information; and Direction to Staff Coordinators
- IX. Next Meeting
- X. Adjourn

Northern Virginia Transportation Authority Financial Working Group
February 5, 2014

Minutes from January 6, 2014, meeting were approved unanimously.

Loudoun County requested to be part of the revenue estimate committee that was formed at the 1/6 meeting. The committee has not yet met, so the group will meet after this meeting to set up a date/time.

Bond Validation Suit - No new information.

Preparation for Sale of Bonds –

Joanne Carter briefed the FWG on the timeline. Powerpoint in the materials will be part of the bond sale presentation. Mike Longhi said that Potential underwriters are interested in the history of revenues, especially estimated vs. actual. Many jurisdictions maintain this information. He asked that jurisdictions to provide this information, is it is available to increase credibility to underwriters. Mr. Longhi anticipates selling bonds at the end of FY2014 or the beginning of FY2015.

Materials to NVTa -

- Alexandria has returned the MOA between NVTa and Jurisdictions. Other jurisdictions are in process of governing body approval and execution. Falls Church governing body approval is pushed out to 2/24. PWC has sent executed MOA to NVTa.
- All jurisdictions are outstanding on demonstration of C&I tax and/or equivalent, banking information, and contact information. Mike said that if there are any questions as to how to show the revenue, how to set up the accounts, or what information to provide please contact him.
- There was a misunderstanding among some that all jurisdictions have to execute and return the MOA's before any locality that had met all the conditions precedent to receive their share. Ellen Posner clarified that each jurisdiction should be viewed independently. For towns, however, the county must execute their MOA for the town to be in a position to receive their distribution. On the other hand, the county can still receive distribution if the towns have not executed their MOA.

Discussion of Agreement between NVTa and the Local Jurisdictions

The MOA subcommittee met on January 28. NVTa approved MOA between cities and counties. Tom Biesiadny asked each jurisdiction when they would take the MOA's to governing body for approval. Each would be soon. Some, the very next public meeting. After governing body action, will be appropriately executed.

Discussion of Standard Project Agreement -

Ms. Posner reviewed several aspects of the Standard Project Agreement for regionally funded projects. Topics discussed included:

- NVTA is in the process of hiring the program coordinators referred to in the agreement. These are the first point of contact for the recipient.
- If a recipient has a cost overrun, additional funds may be requested through the process; however, these funds are not guaranteed.
- The funds are on a reimbursement basis. A template will be used. Cash flow needs will be outlined in the appendices.
- Discussion on what is incurred vs. paid. Scott Kalkwarf from NVTC will provide some language.
- Some jurisdictions use retainage. If you are holding the retainage you haven't made final payment. Project closure = final payment.
- Section on NVTA resolution is nonnegotiable and is required language. (#10 on page 5).
- Regarding multiple phases, it is understood that some phases of a project may be substantially completed, while another project is ready to go. It is the intent that overlapping phases will be allowed. The recipient will need to work with NVTA on this and be clear in outlining project in the appendices. Recipients define the phases when they submit their projects. Will add language to refer to appendices. Ms. Posner will update the draft to reflect reimbursement basis instead of advances.
- NVTA termination for cause is covered in the agreement. Bond Counsel questioned why NVTA would terminate without cause. There was significant group discussion on this point. Bond Counsel will find language, and FWG members were also asked to provide any language of this nature that they have.

Matching funds. It has now been determined that both the 30 percent and the 70 percent are eligible to match VDOT and DRPT funds. On a conference call, VDOT staff emphasized that state revenue sharing fund for projects likely won't grow.

MOA Subcommittee will be meeting on Wed 2/12 10:30 am. FWG members were encouraged to provide comments in advance of the meeting.

Distributed current draft of VDOT-DRPT-NVTA MOA. Steve McIsaac prepared comments on the draft agreement. Mr. Biesiadny reviewed the proposed changes.

There is a reference to gas tax funds flowing through DMV. Perhaps it is a mistake in the draft as it was pulled from Hampton Roads agreement. It has been discussed that funds flow through VDOT.

There is a question about whether the money should flow through VDOT or directly to NVTA. The FWG would like to see engagement between NVTA and the Commonwealth in the development of the Six Year Improvement Program. It is important for NVTA to be at the table when VDOT develops six year plan.

Agreement will be discussed again at MOA subcommittee next Wednesday. Please provide any comments to Mr. Biesiadny to take to NVTA's March meeting.

The group was reminded to communicate with Mr. Longhi, if any jurisdiction is updating their revenue estimates or can offer any updated information on tracking estimates and actuals. Mr. Longhi mentioned the reporting matrix. So far he hasn't received any comments, and will circulate again.

Revenue estimate subcommittee will schedule a meeting after this meeting:

Jason Friess – Arlington
Carl Hampton - PWC
Marsha Wilds – Fairfax
Joe LaHait -Fairfax
Penny Newquist – Loudoun

Fairfax City Discussion – David Hodgkins would like the option of changing the annual certification mid-year regarding equivalent C&I tax as the real estate tax could change subsequent to certification. There was discussion about NVTA need to have certifications made at the beginning of the year, because the law requires redistribution of unclaimed funds. It was suggested that unclaimed funds could be held in escrow until reconciliation occurs. This might have an impact on NVTA's budget adoption, and seems to disagree with HB2313. The Council of Counsels will review. The issue was referred to the Council of Counsels for further review.

No change in status of Bond Validation suit.

Next Meeting of FWG - Thursday March 6, 1pm.

Revised- March 5, 2014

Standard Project ~~Funding and Administration Agreement~~ **for Funding and Administration**
Between
Northern Virginia Transportation Authority
Aand
_____ (Recipient Entity)

NVTA Project Number: (_____)

~~THIS~~ This Standard Project Agreement for Funding and Administration
AGREEMENT, (**"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, NVTA is a political subdivision of the Commonwealth of Virginia created by the Northern Virginia Transportation Authority Act ("the NVTA Act"), Chapter 48.2 of Title 15.2 of the Code of Virginia, as amended;

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 **to the area embraced by NVTA;** ~~within NVTA's geographical borders;~~

WHEREAS, Section 15.2-4838.01 of the ~~Virginia Code~~ **Code of Virginia** authorizes NVTA to ~~contribute~~ **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 15.2- 4838.1;

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

WHEREAS, Section 15.2-4838.1 of the **Code of Virginia** authorizes the use of funds from the NVTA Fund and the use of proceeds from NVTA ~~debt~~ **bond** 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 ~~Appendices A and B~~ **Appendix A** to this Project Agreement ("the Project") satisfies the requirements of **Virginia Code Sections 15.2-4838.04 and 15.2-4838.1; as may be amended;**

WHEREAS, the Project, ~~as described in Appendices A and B~~ **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, (_____) 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 (_____)'s** ~~administration and perform~~ **performance** of the Project's described scope of work; ~~and~~

WHEREAS, based on the information provided by (_____), NVTA has determined that the Project complies with all requirements of the ~~Northern Virginia Transportation Authority~~ **NVTA Act** related to the use of moneys identified in **Virginia Code Sections 15.2-4838.1.A,C.1 of the Virginia Code** and all other applicable legal requirements

WHEREAS, the funds to be provided by NVTA described in ~~Appendix A~~ **B** have been **duly authorized and directed** ~~approved~~ **allocated** by (_____) to finance the Project; ~~;~~ **and**

WHEREAS, NVTA ~~agrees~~ **has requested** that (_____) **will** design and/or construct the Project or perform **such** other specific work for the Project) and (_____) **agrees** ~~has agreed to~~ **that it will** 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 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; ~~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 made, and mutual covenants, and agreements contained herein, the parties hereto agree as follows:

A. Recipient Entity's Obligations

(_____) shall:

1. Complete or perform all said work as described in Appendix B, A 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 laws 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 eDescription Sheets as contained in Appendix B attached to the Appendices Appendix A and is authorized complies with by Va. Code Ann. Sections 15.2-4838.1 (A) and C (1).
3. Perform or have performed, and remit all payment requisitions and other requests for funding for, all preliminary design and 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. Not use the NVTA funds specified on Appendix A B to pay any Project cost if: (a) the NVTA Act does not permit such Project cost to be paid with NVTA funds and/or (b) to the extent applicable if NVTA Bond Proceeds are being used to finance the Project in whole or in part, if such Project cost is not considered a "capital

expenditure” within the meaning of the Internal Revenue Code of 1986, as amended. (See Appendix D).

5. Recognizes 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), (_____) will not NVTA may not provide funding to (_____) to advance the Project to the next phase until the current phase is completed. In any circumstance where (_____) seeks to advance a Project to the next phase using NVTA funds, (_____) shall submit a written request to NVTA’s Executive Director explaining the need for such advance phase 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 a (_____) from providing its own funds for a to advance a future phase of the Project and from thereafter seeking requesting reimbursement from NVTA for having advanced funded a future phase of the Project. However, (_____) further recognizes that NVTA’s reimbursement to (_____) for having advanced 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.. until such time it receives a notice authorization to proceed by NVTA NVTA’s Executive Director.
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. and therefore will timely Timely (_____) shall provide all information required by NVTA so as to ensure encourage and facilitate accurate cash flow estimates (and accurate updates to those cash flow estimates) for the Project throughout the life of the Project), as provided described in the Appendices 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 project requisition(s) containing which contains a detailed summary summaries of actual project costs expenditures incurred with supporting documentation as determined by NVTA and that show certify all such costs expenditures were incurred in the performance of work for the Project as authorized by this Project Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by NVTA, (_____) can expect to receive payment shall be made within twenty (20) thirty (30) days upon receipt by NVTA. Approved payments may be made by means of electronic transfer of funds from NVTA to (_____).
8. 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 and that NVTA will do so only in accordance with NVTA's approved Project Selection Process and upon formal action and approval by NVTA. (_____) 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. ~~(**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)~~
9. Release or return Return any unexpended funds to NVTA no later than 90 days after final payment has been made to the contractors. 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)).~~

10. Review and acknowledge the requirements of NVTA Resolution No. 1408 adopted January 23, 2014; to wit that, if applicable to (_____'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 (_____) be required to provide matching funds in order to proceed or to complete the funding necessary for the Project, (_____) shall certify ~~provide certification~~ to NVTA that all such matching funds have been either authorized and/or appropriated by (_____'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 that 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 (____); 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 (____); and provide to NVTA copies of all such drawings and plans free of charge, upon request. ~~if requested.~~

14. Reimburse NVTA for all NVTA funds (including all with interest earned at the rate earned by NVTA) ~~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.* of the Virginia Code, ("the NVTA Act") as amended, Chapter 766 of the 2013 Virginia Acts of Assembly, or any term or condition of this Project Agreement.
15. Name NVTA and its Bond Trustee or require that all its (_____'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 (_____) 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 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~~ so as to ensure that ~~that the parties can ensure that~~ no conflict of interest may arise from any such representation.
17. Provide certification to NVTA, that upon completion final payment to all contractors ~~(***** A definition of completion is also needed here; but that definition can be cross-referenced to the definition from Paragraph A8**)~~ of for the Project, (_____) will use the Project for its intended purposes for the duration of the Project's useful life. ~~operate and/or~~ maintain the Project or take such measures as may be reasonably necessary to ensure that the Project will be ~~operated and/or maintained~~ by a third party acting on (_____'s) behalf. 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 (_____).
19. If applicable, comply with the tax covenants attached as Appendix D.

20. If (_____) expects and/or intends that the Project is to be submitted for acceptance by the Commonwealth into its system that (_____) agrees to comply with the Virginia Department of Transportation's (" VDOT's") Standards, Requirements and Guidance."
21. Recognizes that (_____) 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. Recognizes that if (_____) 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 (_____) 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. Will provide a certification to NVTA no later than 90 days after final payment to the contractors that (_____) adhered to all applicable laws and regulations and all requirements of this Agreement.

B. NVTA's Obligations

NVTA shall:

- I. 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 **asset** acquisition(s) on a reimbursement (~~and/or advanced funding~~ ?) basis as set forth in this Project Agreement and as specified in the ~~payment schedule~~ **Project Budget and Cash Flow** contained in Appendix ~~B A~~ to this Project Agreement or the most updated amendment thereto, as approved by NVTA.

2. Assign a Project Management Program Coordinator ~~to~~ for the Project. ~~Said~~ The NVTA Program Project Management Coordinator will be tasked with the general oversight ~~responsible for the operational monitoring~~ of 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 (_____) 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 (_____'s_) payment requisitions, containing detailed summaries of actual Project costs incurred which are in substantially the same form as shown on Appendix C ~~requests for payment submitted by (_____) to NVTA for the Project. to the Project's assigned Program Project Management Coordinator.~~ After submission to NVTA, NVTA's Program Coordinator ~~who~~ will conduct an initial review of all ~~payment~~ payment requisitions ~~requisitions, and~~ and supporting documentation for the Project. NVTA's Program ~~Project~~ Management Coordinator will undertake a comprehensive review of each payment request ~~payment requisition as~~ submitted by (_____) in order to determine the submission's legal and documentary sufficiency; ~~and will thereafter~~ NVTA's Program Coordinator will then 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 requisition 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 requisition 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, or this Agreement.

4. Route all (_____'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** and ~~audits of~~ **for** the Project so as to determine whether the work being performed remains within the scope of this Project Agreement, the NVTA Act, and Chapter 766, and other applicable law. 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.
6. If, as a result of NVTA's review of any payment **requisition** request or of any **NVTA** periodic audit or **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 **the NVTA Act, Chapter 766 or applicable 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 ~~the~~ **this Agreement, the NVTA Act, Chapter 766, or other applicable law**, NVTA will cease further

funding for the Project and will seek reimbursement from (_____) of all funds ~~previously remitted by NVTA (with accrued interest earned at the rate earned by NVTA) NVTA's prevailing rate) that were~~ previously remitted by NVTA which were misapplied or misused by (_____). Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal ~~or other legal~~ remedies.

7. Make guidelines available to (_____) to assist the parties in carrying out the terms of this Project Agreement in accordance with applicable law.
8. Upon final payment to all contractors, ~~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 ~~as may be required by~~ in accordance with all other applicable records retention laws and regulations.
9. ~~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** and the amounts of any NVTA funds to be provided in excess of the amounts specified in Appendix B. A
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. (_____) may terminate pursue termination of 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 (_____) 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 the repeal of the legislation establishing the NVTA fund created pursuant to 2013 2403-Va. Acts Ch.766 shall not be considered material breaches of this Agreement by NVTA. Before initiating any proceedings to terminate under this paragraph provision, (_____) 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.~~

~~(*****READERS NOTE; We may need to further discuss and include here what happens if (_____) terminates under this provision, but the Project is half finished**)~~

3. NVTA may terminate this Agreement, for cause, resulting from (_____)'s material breach of this Agreement. If so terminated, (_____) shall refund to NVTA all funds NVTA provided to (_____) for the Project (including interest earned at the rate earned by NVTA). NVTA will provide (_____) **with** sixty (60) days written notice that ~~it~~ **NVTA** is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, (_____) may request that NVTA excuse (_____) from refunding all funds NVTA provided to (_____) for the Project based upon (_____)'s substantial completion of the Project or severable portions thereof; and NVTA may, in its sole discretion, excuse (_____) from refunding all or a portion of the funds NVTA provided to (_____) for the Project. No such request to be excused from refunding will be allowed where (_____) 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 C2.3 above, (_____) will release or return to NVTA all unexpended NVTA funds **with interest earned at the rate earned by NVTA** no later than ~~with forty-five (45)~~ **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 third party or judicial intervention. NVTA,'s Executive Director and (_____')s Chief Executive Office 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 (_____')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 Interest in Project Assets

(_____) 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 an interest in the value of the of the Project Assets throughout their respective useful lives proportionate to the amount of the cost of the Project Assets funded by NVTA under this Agreement. In the event (_____) fails to use the Project Assets funded under this Agreement for the transportation purposes as authorized by this Agreement or applicable law throughout their respective useful lives, (_____) shall refund to NVTA with interest at the rate earned by NVTA the amount attributable to NVTA's proportionate interest in the value of said Project Asset. If (_____) refuses or fails to refund said monies to NVTA, NVTA may recover its proportionate interest from (_____) 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 (_____).

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 2013 Va. Acts Ch.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, 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 ~~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: () to the attention of (_____) (address)

H. Assignment

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

I. Modification or Amendment

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

J. 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, 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

(_____) 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 ~~Project~~ 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.

COUNTY OF _____ VIRGINIA:

Northern Virginia Transportation Authority

By: _____

Date: _____

(Name of Recipient Entity)

By: _____

Date: _____

Appendix A –Narrative Description of Project

Attach- Approved NVTA Project Description Sheet

NVTA Project Title:

Recipient Entity:

Recipient Entity/Project Manager Contact Information:

NVTA Program Coordinator Contact information:

Project Scope
Only Complete if Different from the Approved NVTA Project Description Sheet

Detailed Scope of Services
Only Complete if Different from the Approved NVTA Project Description Sheet

APPENDIX B-PROJECT BUDGET & CASH FLOW

PROJECT IDENTIFICATION AND PROPOSED FUNDING

NVTA Project Title: _____
 Recipient Entity: _____
 Project Contact Information: _____

PROJECT COSTS & FUNDING SOURCE

Project Phase	Total Project Costs	NVTA PayGo Funds	NVTA Financed Funds	Description Other Sources of Funds	Amount Other Sources of Funds	Recipient Entity Funds
Design Work	\$ -	\$ -	\$ -		\$ -	\$ -
Engineering						
Environmental Work						
Right-of-Way Acquisition						
Construction						
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions						
Total Estimated Cost	\$ -	\$ -	\$ -		\$ -	\$ -

FISCAL YEAR ANNUAL PROJECT CASH FLOW

Project Phase	Total Fiscal Year 2014		Total Fiscal Year 2015		Total Fiscal Year 2016		Total Fiscal Year 2017		Total Fiscal Year 2018	
	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
Design Work										
Engineering										
Environmental Work										
Right-of-Way Acquisition										
Construction										
Contract Administration										
Testing Services										
Inspection Services										
Capital Asset Acquisitions										
Total Estimated Cost	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

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

FISCAL YEAR ESTIMATED PROJECT CASH FLOW

	FY 14 Mthly Cash Flow		FY 15 Mthly Cash Flow		FY 16 Qtrly Cash Flow		FY 17 Qtrly Cash Flow		FY 18 Qtrly Cash Flow	
	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
July										
August										
September										
October										
November										
December										
January										
February										
March										
April										
May										
June										
Total per Fiscal Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

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

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

Recipient Entity Official

 Signature

 Title

 Date

 Print name of person signing

Northern Virginia Transportation Authority

 Signature
 NVTA Executive Director

 Title

 Date

 Print name of person signing

APPENDIX C

FORM OF REQUISITION

NVTA Project Number: _____
NVTA Project Title: _____
Draw Request Number: _____

Date: _____, 20__

Northern Virginia Transportation Authority
3060 Williams Drive
Suite 510
Fairfax, Virginia 22031

Attention _____, Program Coordinator:

This requisition, including required Detailed PayGo and/or Detailed Financed Request Forms, is submitted in connection with the Standard Project Agreement for Funding and Administration dated _____, 20__ (the "Agreement") between the Northern Virginia Transportation Authority ("NVTA") and _____ (the "Recipient Entity"). The Recipient Entity hereby requests \$ _____ of NVTA funds, to pay the costs of the Project set forth in the Attached Detailed PayGo and/or Detailed Financed Request forms and in accordance with the Agreement. Also included are copies of each invoice relating to the items for which this requisition is requested.

The undersigned certifies (i) the amounts included within this requisition will be applied solely and exclusively for the payment or the reimbursement of the Recipient Entity's approved costs of the Project, (ii) if applicable, the Recipient Entity shall remit payment to contractors/vendors within TBD business days of receipt of reimbursement from NVTA, Recipient Entity is responsible for payment to vendors/contractors, (iii) the Recipient Entity is not in default with respect to any of its obligations under the Agreement, including without limitation (but only if applicable) the tax covenants set forth in Appendix D, (iv) the representations and warranties made by the Recipient Entity in the Agreement are true and correct as of the date of this Requisition and (iv) to the knowledge of the Recipient Entity, no condition exists under the Agreement that would allow NVTA to withhold the requested advance.

RECIPIENT ENTITY

By: _____
Name: _____
Title: _____

Recommended For Payment

By: _____
Name: _____
Title: NVTA Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____
 NVTA Project Number: _____

Request Date: _____
 Project Title: _____

Cost Category	NVTA Approved Project Costs	Total PayGo Requests Previously Received	PayGo Requisition Amount this Period	Remaining Project Balance (Calculation)
Project Starting Balance	\$ -			\$ -
Design Work	\$ -	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Acquisition	-	-	-	\$ -
Construction	-	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$ -	\$ -	\$ -	\$ -

LISTING OF ATTACHED INVOICES

Vendor/Contractor Name	Invoice Number	Cost Category	Amount
			\$ -
			-
			-
			-
			-
			-
			-
			-
			-
			-
			-
			-
			-
			-
			-
Requisition Amount			\$ -

Instructions

1. Column B-Please list approved PayGo Project Cost per category.
2. Column C-Please list Total PayGo Amounts per Category Previously Reimbursed by NVTA
3. Column D- Please list invoice amounts summarized by Category from the Listing of Attached Invoices
4. Column E - Is a calculation of the Remaining Balance per Category

Instructions-Listing of Attached Invoices: (please list each invoice separately)

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please list the invoice number as it appears on the Invoice
3. Column C- Please list the appropriate Cost Category based on the Project Category breakout above
4. Column D- Please enter the dollar amount listed on the invoice.
5. The calculated Requisition Amount should equal the Column D total in the Schedule above.

DETAILED FINANCED REQUEST

Draw Request Number: _____ Request Date: _____
 NVTA Project Number: _____ Project Title: _____

Cost Category	NVTA Approved Project Costs	Financed Project Requests Previously Received	Financed Project Requisition Amount this Period	Remaining Project Balance (Calculation)
Project Starting Balance	\$ -			\$ -
Design Work	\$ -	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Acquisition	-	-	-	\$ -
Construction	-	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$ -	\$ -	\$ -	\$ -

LISTING OF ATTACHED INVOICES

Vendor/Contractor Name	Invoice Number	Cost Category	Amount
			\$ -
			-
			-
			-
			-
			-
			-
			-
			-
			-
			-
			-
			-
			-
			-
Requisition Amount			\$ -

Instructions

1. Column B-Please list approved Financed Project Cost per category.
2. Column C-Please list Total Financed Project Amounts per Category Previously Reimbursed by NVTA
3. Column D- Please list invoice amounts summarized by Category from the Listing of Attached Invoices
4. Column E - Is a calculation of the Remaining Balance per Category

Instructions-Listing of Attached Invoices: (please list each invoice separately)

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please list the invoice number as it appears on the Invoice
3. Column C- Please list the appropriate Cost Category based on the Project Category breakout above
4. Column D- Please enter the dollar amount listed on the invoice.
5. The calculated Requisition Amount should equal the Column D total in the Schedule above.

NVTA Member Jurisdiction 30% Transfer Preparation Status

as of March 4, 2014

	MOA		MOA Questionnaire Complete	C&I Transfer/Match & Fund Documented	NVTA Operations		Date - NVTA
	Signed By Jurisdiction	Hard Copy Received By NVTA			Deduct From Transfer	Direct Payment, Received	Signed / Returned MOA to Jurisdiction
	City of Alexandria	Yes			Yes	Yes	Complete
Arlington County	Yes	No	Advised in process	Advised in process			
City of Fairfax	Yes	Yes	Yes	Advised in process	Yes		Feb. 20, 2014
Fairfax County	Yes	Yes	Yes	Complete	Yes		Feb. 20, 2014
City of Falls Church	Yes	No	Advised in process	Advised in process			
Loudoun County	Yes	No	Advised in process	Advised in process		Billed, Not Received	
City of Manassas		No	Advised in process	Advised in process			
City of Manassas Park	Yes	Yes	Yes		Yes		Feb. 20, 2014
Prince William County	Yes	Yes	Yes	Advised in process	Yes		

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY
REVENUES RECEIVED, BY TAX TYPE AND JURISDICTION, COMPARED TO ESTIMATES
JULY 1, 2013 THROUGH FEBRUARY 11, 2014
(CASH BASIS)

Grantors Tax		Received	FY 2014	Annualized - Actual	Projected	
Transaction Months	7	To Date	Annualized	Projection	To Projection	Variance
City of Alexandria		\$ 1,699,350	\$ 2,913,172	\$ 3,391,565	\$ (478,393)	
Arlington County		\$ 2,445,319	\$ 4,191,975	\$ 4,574,287	\$ (382,312)	
City of Fairfax		\$ 180,813	\$ 309,964	\$ 289,079	\$ 20,885	
Fairfax County		\$ 9,330,387	\$ 15,994,950	\$ 15,169,980	\$ 824,970	
City of Falls Church		\$ 169,592	\$ 290,728	\$ 261,761	\$ 28,967	
Loudoun County		\$ 5,132,787	\$ 8,799,063	\$ 6,093,105	\$ 2,705,958	
City of Manassas		\$ 209,159	\$ 358,558	\$ 271,303	\$ 87,255	
City of Manassas Park		\$ 160,788	\$ 275,637	\$ 148,806	\$ 126,831	
Prince William County		\$ 3,134,293	\$ 5,373,074	\$ 4,476,903	\$ 896,171	
Total Grantors Tax Revenue		\$ 22,462,487	\$ 38,507,121	\$ 34,676,789	\$ 3,830,332	11%
Regional Sales Tax*		Received	FY 2014	Annualized - Actual	Projected	
Transaction Months (Retail Sales)	6	To Date	Annualized	Projection	To Projection	Variance
City of Alexandria		\$ 7,443,299	\$ 14,886,597	\$ 15,806,507	\$ (919,910)	
Arlington County		\$ 11,540,514	\$ 23,081,028	\$ 24,473,867	\$ (1,392,839)	
City of Fairfax		\$ 3,690,554	\$ 7,381,108	\$ 6,462,525	\$ 918,583	
Fairfax County		\$ 50,862,153	\$ 101,724,305	\$ 104,977,104	\$ (3,252,799)	
City of Falls Church		\$ 1,047,653	\$ 2,095,306	\$ 2,470,340	\$ (375,034)	
Loudoun County		\$ 19,653,969	\$ 39,307,937	\$ 39,833,324	\$ (525,387)	
City of Manassas		\$ 2,288,064	\$ 4,576,129	\$ 4,568,248	\$ 7,881	
City of Manassas Park		\$ 547,364	\$ 1,094,729	\$ 920,350	\$ 174,379	
Prince William County		\$ 16,524,762	\$ 33,049,524	\$ 32,943,958	\$ 105,566	
Total Sales Tax Revenue*		\$ 113,598,332	\$ 227,196,663	\$ 232,456,223	\$ (5,259,560)	-2%
Transient Occupancy Tax (TOT)		Received	FY 2014	Annualized - Actual	Projected	
Transaction Months	**	To Date	Projection	To Projection	Variance	
City of Alexandria		\$ 1,330,637	\$ 3,570,388			
Arlington County		\$ 3,788,533	\$ 8,890,830			
City of Fairfax		\$ 78,088	\$ 345,984			
Fairfax County		\$ 3,362,868	\$ 9,984,936			
City of Falls Church		\$ 30,348	\$ 141,857			
Loudoun County		\$ 878,813	\$ 806,445			
City of Manassas		\$ 28,056	\$ 77,750			
City of Manassas Park		\$ -	\$ -			
Prince William County		\$ 537,760	\$ 530,452			
Total TOT Revenue		\$ 10,035,104	\$ 24,348,642			
Total Revenue Received		\$ 146,095,922	\$ 290,052,426	\$ 291,481,654	\$ (1,429,228)	0%
<i>Annualized Total Revenue Includes total projection for TOT.</i>						
*The Regional Sales Tax is reported net of the following fees:						
	October Receipt		\$ 210,894			
	November Receipt		\$ 160,884			
	December Receipt		\$ 133,857			
	January Receipt		\$ 113,412			
	February Receipt		\$ 36,110			
			\$ 655,157			
**TOT Revenues are not processed and distributed in a manner which currently permits monthly analysis. More actual transaction history is needed.						

DRAFT –FOR DISCUSSION PURPOSES ONLY

~~1-29-143-5-14~~

**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 § 58.1-614), 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 NVTA 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 NVTA 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 NVTA, 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 (“NVTA”) 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

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~~1-29-143-5-14~~

programming functions in order to ensure the most effective and efficient use of revenues deposited into the 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)~~ and fees imposed in Planning District 8 by Chapter 766 in §§ 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 § 58.1-2295 and neither VDOT nor DRPT bears any responsibility for the collection, deposit or expenditure of the aforementioned tax revenues ; and~~

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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~~ implementation of Chapter 766 by means of this Memorandum of Agreement (“Agreement”) and, accordingly, do hereby agree as follows:

1. USE AND AVAILABILITY OF FUNDS:

- a. Use of funds in the NVTAF shall be consistent with state and federal law. Further, availability of NVTAF funds is subject to appropriation by the General Assembly and NVTA for authorized purposes.
- b. ~~Nothing other than as expressly provided below, nothing~~ in this Agreement shall be construed as charging ~~either for granting~~ VDOT, ~~or~~ DRPT, or any other state ~~body~~ entity with authority over or responsibility for the NVATF not otherwise ~~provided~~ prescribed by state law.

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~~

~~e.g.~~ 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 NVTA’s standard project

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~~1-29-143-5-14~~

~~agreement or (VDOT's standard project agreement is used when the local government is doing a project with VDOT funds, not the other way around). Standard templates/exemplars of NVTA's standard project agreement is attached hereto as Exhibits ~~B~~A.~~

~~d.b.~~ VDOT and DRPT agree that, ~~subject to the requirements set forth in Section 3(a),~~ moneys from the NVTAF are eligible and may be used to satisfy the local match requirement for a project that otherwise qualifies under the Revenue 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.

~~e.c.~~ VDOT and DRPT agree to actively engage NVTA in the development of their recommendations to the CTB concerning Northern Virginia projects in the Six Year Improvement Program, and in NVTA's development of its own Six Year Plan and in other planning efforts undertaken by NVTA. This engagement will include discussions of ways to jointly fund projects to maximize resources and ensure that projects are implemented as efficiently as possible.

~~f.d.~~ VDOT agrees to work collaboratively with NVTA in the project rating process provided for in §33.1-13.03:1 by, among other things, developing a mutually agreed schedule for the process that allows sufficient time for meaningful review, comment, and approval by NVTA of the process and the projects to be rated.

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3. NVTA'S ROLES AND RESPONSIBILITIES:

a. NVTA will obtain from the Department of Taxation estimates of NVTA revenues that will result from the state taxes imposed in Planning District 8 pursuant to Chapter 766 at or before the time they are made available for public distribution.

b. NVTA will obtain from the Department of Taxation monthly financial reports relating to the NVTAF in a form similar to the exemplar attached hereto as Exhibit B, and which will include, but not necessarily be limited to, the following information:

- i. Income by revenue source as detailed by the collecting agency
- ii. Interest earnings
- iii. Administrative costs charged to the NVTAF, if any.

~~a.c.~~ 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.

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~~b.d.~~ NVTA will cooperate with VDOT, DRPT and other state entities in the review and reporting requirement set forth in the 17th enactment clause of Chapter 766.

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~~e.e.~~ NVTA will actively engage VDOT and DRPT in the development of their recommendations to the CTB concerning the Six Year Improvement Program, and in NVTA's development of its own Six Year Plan and in other planning efforts undertaken by NVTA. This engagement

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~~1-29-14~~ 3-5-14

will include discussions of ways to jointly fund projects to maximize resources and ensure that projects are implemented as efficiently as possible.

b.f. NVTA will work collaboratively with VDOT in the project rating process provided for in §33.1-13.03:1.

5.4. TERMINATION OF AGREEMENT

This Agreement may be terminated by either Party upon ninety (90) days written notice of the Party’s intent to terminate.

6.5. SETTLEMENT OF DISPUTES

Any disputes in connection with this Agreement not disposed of by mutual agreement between VDOT, DRPT and NVTA shall be transmitted in writing to the Executive Director of NVTA, the Commissioner of Highways, and the Director of the DRPT and a 60 day period provided for their review and attempted resolution. Exhaustion of the administrative procedure outlined herein above is a prerequisite to and not a substitute for the right of either party to seek judicial relief with respect to the dispute.

4.6. LIABILITY FOR PLANNING PROCESS AND ADMINISTRATION OF FUNDS

Nothing within this Agreement shall be deemed to waive NVTA’s, VDOT’s and DRPT’s defense of sovereign immunity applicable to any claims which might arise directly or indirectly from this Agreement.

5.7. 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 _____, 2014, which shall be the effective date of this Agreement.

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~~1-29-14~~ 3-5-14

Northern Virginia Transportation Authority

Virginia Department of Transportation

By: _____
[Printed Name]
Chairman

By: _____
Charles A. Kilpatrick
Commissioner

Department of Rail and Public Transportation

By: _____
Jennifer Mitchell
Director

