

NVTA Financial Working Group

Fairfax Department of Transportation

4050 Legato Road, Suite 400

Fairfax, Virginia 22033

Friday, December 6, 2013

2:30 p.m.

- I. Introductions
- II. Approval of Summary of November 19, 2013, Meeting
- III. Discussion of Bond Validation
 - A. Status of the NVTA Bond Validation Appeal
 - B. Status of Letter to Treasury Board
 - C. Preparation for Sale of Bonds
 - i. Debt Subcommittee Meeting
- IV. Other Topics for Discussion
 - A. Projects Agreements between NVTA and Jurisdictions/Implementing Agencies
 - i. Discussion of MOA for Transferring Funding to Local Governments and/or Implementing Agencies
 - ii. Discussion of MOA between Counties and Towns
 - iii. Status of the Project Agreement between NVTA and Implementing Agencies
 - iv. Status of MOA between VDOT/DRPT and NVTA
 - B. Status of Project Cash Flow Information
 - C. Discussion of Comments on Revised Debt Policy
 - D. Discussion of Change to Procurement Procedures
 - E. Identification of Additional Items for Discussion
- V. Update on Revenues Collected and Budget
- VI. Items to Refer to Other Working Groups
- VII. Summarize Recommendations Made by Working Group for the December 12, 2013, NVTA Meeting; Additional Information Requirements; Persons Responsible for Securing Information; and Direction to Staff Coordinators
- VIII. Next Meeting
- IX. Adjourn

NVTA Financial Working Group Meeting - November 19, 2013

Minutes from November 4, 2013, meeting were approved unanimously.

Discussion of Bond Validation -

Ellen Posner reviewed the status of the bond validation suit and process. The judge ruled in favor of NVTA. Notice of Appeal period passed without any appeals being filed. Delegate Marshall filed a late appeal. NVTA's bond counsel is working to resolve. There is no impediment to moving forward. T.W. Bruno from McGuire Woods stated the Treasury Board did not take up NVTA's request for an exemption from the Treasury Board's review of debt issuances. They indicated they would take it up when it was more in context with the actual bond issuance.

Legal Working Group Update-

Ellen Posner stated that the Group is discussing Memoranda of Agreements (MOAs) for the 30% funding - between NVTA and its constituent jurisdictions and the MOA between the jurisdictions and the Towns. Both MOA's should be taken to NVTA at the same time, with a recommendation from the Financial Working Group. December 12 is the target date to take the MOAs to NVTA.

Council of Counsels believes the MOA's will not be subject to further negotiation after adoption by NVTA. Questions and issues need to be raised between today and when the final packet is being prepared for the 12/12/2013 NVTA meeting.

MOA may be a misnomer for the agreements regarding the use of the 70% regional funds. These should actually be a version of a standard VDOT project agreement for the 70% funds between NVTA and the localities.

Preparation for the Sale of Bonds -

JoAnne Carter (PFM) stated the following has to happen prior to bond sale:

1. Agreements in place
 2. Input on project cash flows
 3. NVTA issuing from scratch - all new documents need to be created
 4. Letter from Treasury Board is important. Without letter, PFM needs to attend Treasury Board Meeting (likely 12/18/2013) for their consideration
 5. Debt policy needs to go to NVTA Board Meeting on 12/12/2013 before going out to the Bond Market
- There is no formal schedule yet for the bond issuance.

PFM has not heard from Credit Rating agencies regarding how the debt is being viewed.

Project Agreements between NVTA and Implementing Agencies –

Mr. Longhi sought clarification regarding:

1. Reporting periods
2. If any jurisdictions were going to ask to be billed for their administrative fees, rather than having them taking off the top of the 30% funding they will be receiving.
3. Audit process- can an outside firm be used for the annual audit?
4. Projects for 30% funds are selected by the Towns, but the funding is allocated by the County.
5. Timeframe needs to be set to force a resolution to failure to comply with MOA terms.
6. Misuse of 30% funds by a jurisdiction, the reimbursement of the misused funds then get applied to the 70% distribution of funds on regional projects.
7. If a jurisdiction has not set aside the equivalency of the C&I Tax, then the amount of money they receive is proportional to the amount of funding they set aside for transportation projects. Use the language in the Code stated in the MOA (15.2-4838.1)

Loudoun states that the MOA's will be going to the County Board of Supervisors at their 12/4/2013 Business Meeting for consideration. There may be additional edits based on the Board's input.

MOA between Counties and Towns -

Mirrors format of the MOA between NVTA and Counties/Cities.

NVTA will not be a signatory to these agreements, but will approve the overall format and content of the agreements.

NVTA has overall responsibility to administer this Fund.

Town of Herndon states August 1 deadline is very early. However, if that date needs to be set, they will provide the necessary information.

Reports from the Towns would be due to the Counties from the Towns on July 20.

Is cost accrual based or actual cost based as of June 30? Since payments are based on reimbursements to Towns, it should be based on actual expenditures.

Towns will report on a cash basis, Counties report on accrual basis to the best of their ability.

Annual revenue estimates for 30% funding, as agreeable by both Counties and Towns.

Town of Herndon is against having Fairfax County charge an administrative fee for the 30% funds.

Funding from NVTA needs to be accounted for separately from all other funding sources, whether by fund, accounts, etc.

There is a mechanism to go to NVTA for questions regarding the use of funds to ensure funds are not misused.

A page summary of acceptable uses is being developed to help guide jurisdictions regarding the types of projects that would qualify for the use of NVTA funding.

If changes are requested after 12/5 they will not be included in advanced NVTA Board Meeting packet.

However, a blue sheet may be developed for the NVTA Board meeting to highlight the additional changes or edits being requested by jurisdictions.

MOA between NVTA and Implementing Agencies –

No discussion.

MOA between VDOT/DRPT and NVTA -

Starting to work through details of language regarding use of NVTA funding as a local match to State Revenue Sharing funding.

Department of Taxation takes out administrative fees from sales tax revenues. Needs to be addressed with the State.

Status of Project Cash Flow Information –

Two jurisdictions have not submitted their project cash flows yet.

There was general agreement that updates will be provided on a quarterly basis.

Revised Debt Policy -

No changes since last meeting.

Changes to the policy requested by Loudoun County staff were not reflected in the item distributed at this meeting.

Will be presented at the 12/12 NVTA Board Meeting

Prince William County asked a question regarding the sequence in which money is set aside, specifically regarding Debt Service reserve being set aside before the payment of some of the debt service for projects. - JoAnne Carter stated that the Debt Service reserve fund is a security of senior lien, which needs to be secured first. This is a standard flow for revenue funds.

Changes to Procurement Procedures -

Summary of changes made since last meeting is provided in the packet.

Will treat Procurement Card transactions as a payment method. P-Card will be deleted from Procedures.

The procedures will be taken to the NVTA meeting on 12/12/13 for consideration.

Additional Items for Discussion -

Status of Revenues - \$70 million collected. VDOT has had issues with allocation of Grantor's Tax.

Number of months for each revenue source needs to be stated clearly on the report, as they vary by revenue source. This will help jurisdictions better understand and project collections.

Items to Refer to Other Working Groups –

None

Items to go to the 12/12/2013 NVTA Board Meeting:

1. MOA between Counties and Towns
2. MOA between NVTA and Jurisdictions
3. Bond Related documents
4. Debt Policy
5. Procurement Policy

Project Implementation Group Update -

Jennifer Fioretti stated that a call for projects for un-allocated FY 2014 funds, as well as FY 2015 and FY 2016 projects has been made.

Next Meeting: Friday, December 6, 2013, 2:30 PM

**MEMORANDUM OF AGREEMENT
BETWEEN NVTA AND COUNTY/CITY OF _____
REGARDING DISTRIBUTION OF 30% FUNDS**

THIS MEMORANDUM OF AGREEMENT, effective the ____ day of _____, 2013 (this "Memorandum of Agreement"), by and between the NORTHERN VIRGINIA TRANSPORTATION AUTHORITY ("NVTA") and the CITY/COUNTY OF _____, a member City/County of NVTA (the "CITY/COUNTY").

WITNESSETH:

WHEREAS, NVTA was established by the Northern Virginia Transportation District Act, VA. Code Ann. §§ 15.2- ~~4629~~4829 *et seq.*, the local jurisdiction members of which include the counties of Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park ("Localities," collectively and "City/County" individually); and

WHEREAS, in accordance with VA. Code Ann. § 15.2-4838.01, a special non-reverting fund for Planning District 8, known as the Northern Virginia Transportation Authority Fund was created in the Virginia state treasury, comprised of taxes and fees levied in accordance with the aforesaid Code section and any other funds that may be received for the credit of the aforesaid fund (the "Fund"), the proceeds of which fund are distributed to NVTA for use in accordance with VA. Code Ann. § 15.2-4838.1; and

WHEREAS, in accordance with, and subject to the requirements of, § 15.2-4838.1, thirty percent (30%) of the revenues received by NVTA shall be distributed on a pro rata basis to each City/County with each City/County's share being the total of the revenues received by NVTA that are generated or attributable to the City/County divided by the total of such revenue received by NVTA (the "30% Funds"); and

WHEREAS, among other requirements of VA. Code Ann. § 15.2-4838.1, each City/County shall deposit all Fund revenues received from NVTA in a separate, special fund to be used for additional urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in NVTA's most recent long range transportation plan, or for public transportation purposes; and

WHEREAS, § 15.2-4838.1 further requires each City/County to provide annually to NVTA sufficient documentation as required by NVTA showing that the 30% Funds received by the City/County were used as required by § 15.2-4838.1; and

WHEREAS, § 15.2-4835 provides that the administrative expenses of NVTA, as set forth in NVTA's annual budget, shall be allocated among the component counties and cities based on relative population, and in accordance with § 15.2-4838.1, such administrative expenses may be paid from the 30% Funds; and

WHEREAS, Chapter 766 of the 2013 Acts of Assembly, the legislation establishing the Fund, imposes, among others, the following requirements on each of the Localities: (1) that each of the Localities deposit into its separate special fund containing NVTA Funds disbursed to it, all revenues from the commercial and industrial tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or, in lieu of that amount, an amount from sources other than moneys received from NVTA equivalent to the amount that would have been received had the maximum tax rate been imposed; (2) that each of the Localities expend or disburse for transportation purposes each year an amount that is at least equal to the average amount expended or disbursed for transportation purposes by the county or city between July 1, 2010 and June 30, 2013, excluding bond proceeds or debt service payments and federal or state grants; and (3) that NVTA and the Localities work cooperatively with towns with

a population greater than 3,500 to ensure the towns receive their respective share of the 30% Funds; and

WHEREAS, § 15.2-4838.1B.2 provides that if any City/County fails to deposit into its separate special fund containing NVTA Funds disbursed to it the amount equivalent to the maximum tax rate allowed under § 58.1-3221.3, then NVTA shall reduce the amount of the 30% Funds disbursed to the City/County by the difference between the amount that was deposited in the City/County's separate special fund and the amount that should have been deposited; and Chapter 766 of the 2013 Acts of Assembly further provides that in the event any of the Localities appropriates or allocates any of the 30% Funds to a non-transportation purpose, the City/County shall not be the direct beneficiary of any of the revenues in the NVTA Fund in the year immediately succeeding the year in which the 30% Funds were appropriated or allocated to a non-transportation purpose; and

WHEREAS, NVTA has a continuing responsibility to ensure that the 30% Funds are properly spent, and that each City/County adheres to the statutory and other legal obligations it has with regard to the Fund; and

WHEREAS, NVTA and the City/County have agreed upon the terms and conditions set forth in this Memorandum of Agreement, for the purpose of ensuring the requirements applicable to NVTA and the City/County regarding the NVTA Fund are met;

NOW, THEREFORE, in consideration of the foregoing, which is hereby incorporated within this Memorandum of Agreement, and the mutual undertakings of the parties, NVTA and the City/County of _____ agree as follows:

1. NVTA Management of NVTA Fund. In accordance with § 15.2-4838.01, NVTA shall receive from the Commonwealth's Comptroller regular distributions of the

sums deposited in the special nonreverting fund created in the state treasury known as the Northern Virginia Transportation Authority Fund. NVTA shall accept each such distribution of funds and deposit them as it deems appropriate, and shall manage such deposits, including investments thereof which shall be made pursuant to NVTA's investment policy and procedures as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements. NVTA shall provide to its governing board periodic reports of deposits on hand and all disbursements and expenditures thereof, and shall obtain an annual audit of its books. NVTA shall use the funds solely for transportation purposes benefiting those counties and cities that are embraced by NVTA in accordance with § 15.2-4838.1.

2. Distribution of 30% Funds by NVTA to City/County. Beginning not sooner than the month following a final decision and entry of a final order by the highest court with jurisdiction in the bond validation case of *NVTA v. Statutory Defendants Pursuant to §§ 15.2-2650, et seq.*, NVTA shall begin to distribute to the City/County the 30% Funds to which the City/County is entitled pursuant to § 15.2-4838.1, with interest at the rate earned by NVTA, and, subject to NVTA's continued receipt of funds from the Comptroller, shall continue to distribute to the City/County its 30% funds on a monthly basis, provided the City/County remains in compliance with the terms of this Memorandum of Agreement and all applicable provisions of law.

3. Payment of City/County's Share of NVTA's Administrative Expenses. Except as otherwise provided by written amendment to this Memorandum of Agreement, NVTA shall reduce the initial distribution of 30% Funds to the City/County at the start of NVTA's fiscal year commencing on July 1 by the amount of the City/County's share of NVTA's total administrative expenses set forth in NVTA's approved budget for that fiscal year as such share is determined in accordance with § 15.2-4835. In any year the

City/County may notify NVTA by June 1st of that year, that it elects to pay its share of NVTA's Administrative Expenses through means other than the City/County's 30% Funds, and thereafter the City/County shall pay the full amount of the City/County's share of NVTA's administrative expenses before any distribution of the 30% Funds by NVTA to the City/County occurs. Payment by the City/County of its share of NVTA's administrative expenses through means other than the City/County's 30% Funds shall continue until the City/County notifies NVTA by June 1st of any year that it elects to use its 30% Funds for such purpose. A county's payment of administrative expenses shall include the portion of such expenses attributable to any town that may be located within the County.

4. Establishment of Separate Fund by City/County.

A. The City/County shall deposit in a separate, special fund all revenues distributed to it by NVTA pursuant to Paragraph 2 above, and all revenues collected by the City/County from the tax imposed pursuant to § 58.1-3221.3. If the City/County has not imposed the aforesaid tax, or has not imposed it at the maximum permissible rate, then the City/County shall deposit into its separate, special fund an amount, from sources other than moneys received from NVTA, that is equivalent to the difference between the revenue the City/County received from the aforesaid tax and the revenue the City/County would have received if it imposed the aforesaid tax at the maximum permissible rate.

B. By August 1st of each year, the chief administrative officer of the City/County shall certify to NVTA, in a form prescribed by NVTA, that it has satisfied each of the requirements set forth in subsection A.

C. If the City/County has not deposited into its separate, special fund either the revenues from the tax collected under § 58.1-3221.3 at the maximum permissible rate, or an amount derived from sources other than moneys received from

NVTA equivalent to the revenue the City/County would have received if it imposed the aforesaid tax at the maximum permissible rate, then NVTA shall reduce the 30% Funds distributed to the City/County by the difference between the amount the City/County would receive if it was imposing the aforesaid tax at the maximum rate and the amount of revenue deposited into its separate, special fund. NVTA shall retain the amount by which the distribution of City/County's 30% Funds have been reduced for use by NVTA in accordance with § 15.2-4838.1C.1.

5. Maintenance of Transportation Funding by City/County.

A. The City/County shall expend or disburse for transportation purposes each year an amount that is at least equal to the average annual amount expended or disbursed for transportation purposes by the City/County, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2010, and June 30, 2013. In the event that the City/County does not expend or disburse the aforesaid amount in any year, the City/County shall not be the direct beneficiary of any of the NVTA Fund in the immediately succeeding year. In such event, NVTA shall make no distribution to the City/County of the City/County's 30% Funds, or any other monies from the NVTA Fund to the City/County, and such funds shall be used in accordance § 15.2-4838.1C.1.

B. By August 1st of each year, the chief administrative officer of the City/County shall certify to NVTA, in a form prescribed by NVTA, that it has satisfied the requirements set forth in subsection A for the previous fiscal year.

6. Use of 30% Funds by City/County.

A. The City/County shall use the 30% Funds distributed to it by NVTA for the following purposes as the City/County solely determines: (1) for additional urban or secondary road construction; (2) for other capital improvements that reduce congestion; (3) for other transportation capital improvements which have been approved

by the most recent long range transportation plan adopted by NVTA; or (4) for public transportation purposes. The City/County shall not use any of the revenue distributed to it by NVTA to repay debt issued before July 1, 2013.

B. In the event the City/County appropriates or allocates any of the 30% Funds to a purpose other than those specified above, unless demonstrated by the City/County to the satisfaction of NVTA to be attributable to clerical or other unintentional, inadvertent error, then NVTA shall cease any further distributions of the 30% Funds to the City/County, and the City/County shall not be the direct beneficiary of any of the NVTA Fund in the year immediately succeeding the year in which any of the 30% Funds were appropriated or allocated to an impermissible purpose. In that succeeding year, NVTA shall make no distribution to the City/County of the City/County's 30% Funds, or any other monies from the NVTA Fund to the City/County, and such funds shall be used in accordance § 15.2-4838.1C.1.

7. Distribution to Towns of Proportionate Share.

A. To the extent that one or more towns with a population greater than 3,500 are located within the County, NVTA and the County agree to work cooperatively with the towns for the purpose of implementing the provisions of § 15.2-4838.1 and to ensure that the towns receive their respective share of the 30% Funds distributed to the County by NVTA. Such share shall be determined based on the population of school age children in the town for the purposes of calculating the portion of the 30% Funds attributable to sales tax, and the location of the taxpaying business for purposes of calculating the portion of the 30% Funds attributable to the transient occupancy tax and of the transferred property for purposes of calculating the portion of the 30% Funds attributable to the grantors tax. The County acknowledges its responsibility to ensure that the towns use the 30% Funds in compliance with this Memorandum of Agreement and

the law, and that a town's failure to do so shall be treated as a failure of the County subject to all the consequences of such failure. The County shall be ~~responsibility to ensure-responsible for ensuring~~ the town pays its proportionate share of NVTA's administrative expenses as provided for in Paragraph 3.

B. Prior to the time at which the County distributes any of the town's share of the 30% Funds to a town, the County shall enter into an agreement with each of the towns located within the County, in a form approved by NVTA, detailing how the 30% Funds may be used by the town including, but not limited to, ~~how projects within the selection of projects by the~~ towns ~~may be selected~~ for funding by the County, the circumstances and terms under which the County may distribute any of the 30% Funds to a town, specifically providing that such distributions to a town shall be on a reimbursement basis only, and the town's obligation to refund to the County with interest any funds used contrary to the agreement or the law. The agreement with the towns shall also provide for (1) NVTA making final determinations of the eligibility of a project for funding when a question or dispute with a county arises within ninety (90) day of a request by a town; and (2) for NVTA instructing a county that it shall make no pro rata distribution of 30% Funds or any other NVTA funds to a town that has appropriated or allocated any of its portion of a county's 30% Funds or any other NVTA funds for unauthorized purposes, or to any other town located in that county.

8. City/County's Annual Report to NVTA. Annually, the City/County shall provide to NVTA an unaudited financial report, with supporting documentation, showing that the 30% Funds were used as required by Paragraph 6. The report shall be in a form, and provide the information and documentation, required by NVTA. The City/County shall provide the report to NVTA on or before August 1st of each year for the previous fiscal year. In the event the City/County's audited financials show a material variance,

defined as five percent (5%) or more, from the initial report, the City/County shall provide NVTA a further report, with supporting documentation satisfactory to NVTA, detailing the City/County's use of the 30% Funds. NVTA may request from the City/County additional information and documentation related to the report and the documentation provided with the report. In the event the City/County fails to provide the report as required above, NVTA shall withhold further distributions of the 30% Funds until the report is provided in accordance with this Paragraph. Once the City/County provides an acceptable report, all withheld funds, inclusive of any interest earned by NVTA on such funds, shall be distributed to the City/County by NVTA.

9. Failure to Comply with Memorandum of Agreement.

A. In the event NVTA fails to perform any of its obligations under this Memorandum of Agreement, the City/County shall provide written notice to NVTA's Executive Director of such failure. NVTA shall cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from the City/County. In the event NVTA fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, the City/County may pursue all remedies available at law to obtain compliance by NVTA.

B. In the event the City/County fails to perform any of its obligations under this Memorandum of Agreement, NVTA's Executive Director shall notify NVTA's Finance Committee which shall review the matter and prepare recommendations for NVTA.

Thereafter, NVTA shall determine whether to declare the City/County in default for such noncompliance in which case NVTA shall provide written notice to the City/County of such failure. The City/County shall cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from NVTA. In the event the City/County fails to cure or commence to cure the event of noncompliance and diligently

pursue completion thereof, NVTA shall withhold further distributions of the 30% Funds to the City/County until the City/County fully complies with its obligations under this Memorandum of Agreement. In addition, NVTA may pursue all available remedies at law to obtain compliance by the City/County.

C. A cure by the City/County's of its failure to comply with the terms of this Memorandum of Agreement shall not change the consequences of such non-compliance set forth in Paragraph 6.B of this Memorandum of Agreement.

10. City/County's Obligation to Reimburse Mis-Used Funds to NVTA.

A. In the event the City/County fails to use any of the 30% Funds in the manner permitted by law, in addition to the consequences set forth in Paragraph 6B, it shall reimburse NVTA the full amount of such mis-used funds with interest. Until the full amount is reimbursed, NVTA shall withhold further distributions of the 30% Funds to the City/County.

B. The City/County's reimbursement of mis-used funds shall not change the consequences of such mis-use set forth in Paragraph 6.B of this Memorandum of Agreement.

11. Maintenance of Records by City/County and NVTA. The City/County and NVTA shall maintain all records relating to the 30% Funds and the use thereof for a minimum of five (5) years from the date the record was created. In addition to the foregoing, the City/County and NVTA shall comply with the Public Records Act and all applicable state and federal laws with regard to the retention of records.

12. Notice. Any notice required or permitted to be provided under this Memorandum of Agreement shall be in writing and delivered in person, or sent by U.S. Mail to the below named representatives at the below addresses:

NVTA:

Executive Director
Northern Virginia Transportation Authority

City/County:

City/County Chief Administrative Officer

City/County of

NVTA and the City/County may change the representative designated to receive notices for purposes of this Memorandum of Agreement by providing written notice of such change to the other party.

13. Entire Agreement. This Memorandum of Agreement constitutes the entire agreement between NVTA and the City/County and supersedes any prior understanding or agreement between them with regard to NVTA's distribution of the 30% Funds to the City/County.

14. No Third Party Beneficiaries. The provisions of this Agreement shall inure to the benefit of, and bind NVTA and the City/County but shall not inure to the benefit of any other party or other persons.

15. Severability. If any provision of this Memorandum of Agreement or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the remainder of this Memorandum of Agreement and the application of the provision will not be affected and will be enforceable to the fullest extent permitted by law.

16. Amendments. Any amendment to this Memorandum of Agreement must be made in writing and signed by NVTA and the City/County.

IN WITNESS WHEREFORE, the parties hereto, by their duly authorized representatives, have executed this Memorandum of Agreement as of the date and year aforesaid.

NORTHERN VIRGINIA TRANSPORTATION
AUTHORITY

Attest:

Clerk

By _____
Chairman

COUNTY/CITY OF _____

Attest:

Clerk

By: _____
Chairman/Mayor

**MEMORANDUM OF AGREEMENT
BETWEEN (COUNTY"X") AND ("QUALIFYING TOWN X")
REGARDING DISTRIBUTION AND USE OF 30% FUNDS UNDER CHAPTER
766 OF THE 2013 VIRGINIA ACTS OF ASSEMBLY**

THIS MEMORANDUM OF AGREEMENT, effective the ____ day of _____, 2013 (this "Memorandum of Agreement"), by and between the COUNTY OF _____ ("COUNTY NAME"), a member of the NORTHERN VIRGINIA TRANSPORTATION AUTHORITY ("NVTA") and the TOWN of _____, a QUALIFYING TOWN under the NVTA ACT and under Enactment Clause 8 of Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766").

WITNESSETH:

WHEREAS, NVTA was established by the Northern Virginia Transportation District Act, Va. Code Ann. §§ 15.2- 4829 et seq., the local jurisdiction members of which include the counties of Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park (collectively and individually "City/County"); and

WHEREAS, in accordance with Va. Code Ann. § 15.2-4838.01, a special non-reverting fund for Planning District 8, known as the Northern Virginia Transportation Authority Fund was created in the Virginia state treasury, comprised of taxes and fees levied in accordance with the aforesaid Code section and any other funds that may be received for the credit of the aforesaid fund (the "Fund"), the proceeds of which fund are distributed to NVTA for use in accordance with Va. Code Ann. § 15.2-4838.1; and

WHEREAS, in accordance with, and subject to the requirements of, § 15.2-4838.1, thirty percent (30%) of the revenues received by NVTA shall be distributed on a

pro rata basis to each City/County with each City/County's share being the total of the revenues received by NVTVA that are generated by or attributable to such City/County divided by the total of such revenue received by NVTVA (the "30% Funds"); and

WHEREAS, among the other requirements of Va. Code Ann. § 15.2-4838.1, each City/County shall deposit all Fund revenues received from NVTVA in a separate, special fund to be used for additional urban or secondary road construction, for other capital improvements that reduce congestion, for other transportation capital improvements in NVTVA's most recent long range transportation plan, or for public transportation purposes; and

WHEREAS, § 15.2-4838.1 further requires each City/County to provide annually to NVTVA sufficient documentation as required by NVTVA showing that the 30% Funds received by the City/County were used as required by § 15.2-4838.1; and

WHEREAS, § 15.2-4835 provides that the administrative expenses of NVTVA, as set forth in NVTVA's annual budget, shall be allocated among the component counties and cities based on relative population, and in accordance with § 15.2-4838.1, such administrative expenses may be paid from the 30% Funds; and

WHEREAS, pursuant to Chapter 766, the legislation establishing the Fund, imposes, among other requirements, the following requirements on each City/County ~~of the Localities~~: (1) that each ~~of the Localities~~ City/County deposit into its separate special fund containing NVTVA Funds disbursed to it, all revenues from the commercial and industrial tax collected under § 58.1-3221.3 pursuant to the maximum tax rate allowed under that section or, in lieu of that amount, an amount from sources other than moneys received from NVTVA equivalent to the amount that would have been received had the maximum tax rate been imposed; and (2) that each ~~of the Localities~~ City/County expend or disburse for transportation purposes each year an amount that is at least equal to the

average amount expended or disbursed for transportation purposes by the ~~county or city~~ City/County between July 1, 2010 and June 30, 2013, excluding bond proceeds or debt service payments and federal or state grants; and

WHEREAS, § 15.2-4838.1B.2 provides that if any City/County fails to deposit into its separate special fund containing NVTAs Funds disbursed to it the amount equivalent to the maximum tax rate allowed under § 58.1-3221.3, then NVTAs shall reduce the amount of the 30% Funds disbursed to the City/County by the difference between the amount that was deposited in the City/County's separate special fund and the amount that should have been deposited;

WHEREAS, Enactment Clause 8 of Chapter 766 provides that NVTAs and each City/County embraced by it shall work cooperatively with towns with a population greater than 3,500 located within NVTAs's member Counties ("Qualifying Towns") for purposes of implementing Chapter 766 and so as to ensure that all such "Qualifying Towns" receive their respective share(s) of the revenues pursuant to subdivision B 1 of Section 15.2-4838.1.

WHEREAS Chapter 766 further provides that in the event any City/County or Qualifying Town ~~of the Localities or any local government within any of the Localities~~ appropriates or allocates any of the 30% Funds to a non-transportation purpose, that City/County or Qualifying Town shall not be the direct beneficiary of any of the revenues from the NVTAs Fund in the year immediately succeeding the year in which the 30% Funds were appropriated or allocated to a non-transportation purpose; and

WHEREAS Chapter 766 further provides that, in the event that any County or Qualifying Town appropriates or allocates any of the 30% Funds to a non-transportation purpose, not only will such County or Qualifying Town not be a direct beneficiary of any of the revenues in the year immediately succeeding the year in which the 30% revenues

were appropriated or allocated to a non-transportation purpose, but all other Qualifying Towns within said County will not be direct beneficiaries of such revenues from NVTA in the next succeeding year.

WHEREAS, NVTA has a continuing responsibility to ensure that the 30% Funds are properly spent, and that each NVTA member City/County and each Qualifying Town adhere to the statutory and other legal obligations that it has with regard to the Fund;

~~WHEREAS, Enactment Clause 8 of Chapter 766 provides that NVTA and the Counties and Cities embraced by the Authority shall work cooperatively with towns with a population great than 3,500 located within such Counties (“Qualifying Towns”) for purposes of implementing the provisions of Chapter 766 and to ensure that any such Qualifying Towns receive their respective shares of the revenues pursuant to subdivisions B (1) of Section 15.2-4838.1; (REMOVED DUE TO REDUNDANCY WITH FOURTH WHEREAS CLAUSE)~~

WHEREAS, NVTA and each member City/County has entered into a separate Memorandum of Agreement in order to implement the provisions of Chapter 766 with regard to *inter alia* the distribution and use of funds in the manner prescribed by Va. Code Ann. Section 15.2-4838.1;

WHEREAS NVTA and each member City/County has agreed to be bound by the all terms and conditions ~~set forth~~ in that separate Memorandum of Agreement (“NVTA/City-County MOA”), for purposes of ensuring that NVTA, each member City/County, and each Qualifying Town are in full compliance with Chapter 766 and all applicable requirements of the NVTA ACT with regard to ~~regarding~~ the receipt, maintenance, management, oversight, distribution, and use of all funds from the NVTA Fund;

NOW, THEREFORE, in consideration of the foregoing which is hereby incorporated within this MOA and the mutual undertakings of the parties, the County of _____ and the Qualifying Town of _____ agree as follows:

1. NVTA's Management of NVTA Funds. ~~The parties understand and acknowledge that~~ NVTA will manage the NVTA Fund and all funds therein and shall receive from the Commonwealth's Comptroller regular distributions of the sums deposited in the special non-reverting fund created in the state treasury known as the Northern Virginia Transportation Authority Fund. NVTA shall accept each such distribution of funds and deposit them as it deems appropriate, and shall manage such deposits, including investments thereof which shall be made pursuant to NVTA's investment policy and procedures as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements. NVTA shall provide to its governing board periodic reports of deposits on hand and all disbursements and expenditures thereof, and shall obtain an annual audit of its ~~books~~ financial records. NVTA, each component City/County, and each Qualifying Towns shall use the funds solely for transportation purposes benefiting those Counties, Cities and Qualifying Towns that are embraced by NVTA in accordance with § 15.2-4838.1.

2. NVTA's Distributions of 30% Funds to Each NVTA Member City/County, including Qualifying Town Shares. NVTA will make regular distributions of the 30% Funds to each ~~its~~ member City/County in accordance with applicable law and in accordance with the processes established by the "NVTA/City-County MOA" ~~and that said MOA is hereby~~ incorporated by reference as Attachment 1.

A. Beginning not sooner than the month following a final decision and entry of a final order by the highest court with jurisdiction in the bond validation case of *NVTA v.*

Statutory Defendants Pursuant to §§ 15.2-2650, et seq., NVTA shall begin to distribute to ~~its~~ each component City/County the 30% Funds to which each component City/County ~~is are~~ entitled pursuant to § 15.2-4838.1, with interest at the rate earned by NVTA; and, subject to NVTA's continued receipt of funds from the Comptroller, shall continue to distribute to each component City/County its respective 30% funds on a monthly basis; provided that such City/County remains in compliance with the terms of NVTA/City-County MOA and all applicable provisions of law.

B. Upon receipt of its 30% funds as set forth in Paragraph 2A above, COUNTY X will calculate and transfer to the special, separate account on its ~~books~~ financial records that has been established in the name of QUALIFYING TOWN X in accordance with Paragraph 5 of this MOA, all amounts attributable to QUALIFYING TOWN X using the bases prescribed by Chapter 766 and in the manner set forth in Paragraph 5 of this MOA.

C. COUNTY X will advise QUALIFYING TOWN X on a quarterly basis or at such other intervals that are mutually agreeable to COUNTY X and QUALIFYING TOWN X as to the balance in QUALIFYING TOWN's X's special account.

D. For QUALIFYING TOWN's planning and budgeting purposes, prior to the beginning of each fiscal year, COUNTY X will ~~also~~ provide to QUALIFYING TOWN X a revenue estimate for the upcoming fiscal year based upon the previous twelve (12) months actual funds transfers from COUNTY X to QUALIFYING TOWN X.

3. COUNTY X AND QUALIFYING TOWN X's Obligation to Pay Shares of NVTA's Administrative Expenses and Payment of Other Administrative Expenses. ~~It is further understood and acknowledged by the parties that,~~ as Except as otherwise provided by written amendment to COUNTY X's NVTA/City-County MOA, ~~that~~ pursuant to the NVTA/County-City MOA, NVTA shall reduce the initial distribution of 30% Funds to COUNTY X at the start of NVTA's fiscal year commencing on July 1 by the amount of

the COUNTY X's share of NVTA's total administrative expenses set forth in NVTA's approved budget for that fiscal year as such share is determined in accordance with § 15.2-4835. In any year, COUNTY X may notify NVTA by June 1st of that year, that ~~it~~ COUNTY X elects to pay its share of NVTA's administrative expenses through means other than the COUNTY X's 30% Funds; and thereafter ~~the~~ COUNTY X shall pay the full amount of the COUNTY X's share of NVTA's administrative expenses before any distribution of the 30% Funds by NVTA to COUNTY X occurs. Payment by COUNTY X of its share of NVTA's administrative expenses through means other than the COUNTY X's 30% Funds shall continue until the COUNTY X notifies NVTA by June 1st of any year that it elects to use its 30% Funds for such purpose.

A. ~~The parties further understand and acknowledge that~~ a COUNTY X's payment of its full amount of NVTA's administrative expenses must include the portion of such administrative expenses that are attributable to QUALIFYING TOWN X, and ~~that~~ COUNTY X will seek reimbursement from QUALIFYING TOWN X regarding QUALIFYING TOWN X's *pro rata* share of all NVTA's administrative fees that were pre-paid by COUNTY X. ~~their constituent counties.~~ QUALIFYING TOWN X's share of NVTA's annual administrative expenses shall be calculated by the relative population method as prescribed by Va. Code Ann. Section 15.2-4835. Once COUNTY X pays the full amount of its NVTA administrative expenses in the time and manner required by the NVTA/City –County MOA, COUNTY X will thereafter send an invoice to QUALIFYING TOWN X seeking reimbursement for QUALIFYING TOWN X's portions of NVTA's administrative expenses pre-paid by COUNTY X. QUALIFYING TOWN X will pay said invoice within thirty (30) days upon receipt. If mutually agreed upon by COUNTY X and QUALIFYING TOWN X, QUALIFYING TOWN X's

reimbursement payments may be made via electronic transfer of funds or as a direct deduction from QUALIFYING TOWN X separate account with COUNTY X.

B. NVTA's Counties may separately seek reimbursement from ~~from~~ their respective Qualifying Towns for ~~of~~ administrative fees incurred by their constituent Counties in managing a town's pro rata portion of such counties 30%; not to exceed actual costs incurred. [**STILL UNDER DISCUSSION...INCLUDED AS A PLACE HOLDER ONLY**]

4. Establishment and Maintenance of Separate Accounts by COUNTY X and QUALIFYING TOWN X.

A. NVTA's City/County are required to deposit in a separate, special fund all revenues distributed to it by NVTA pursuant to Paragraph 2 above and all revenues collected by NVTA's City/County from the tax imposed pursuant to § 58.1-3221.3. If any ~~of NVTA's~~ City/ County has not imposed the aforesaid tax, or has not imposed it at the maximum permissible rate, then that City/County is required to deposit into its separate, special fund an amount, from sources other than moneys received from NVTA, that is equivalent to the difference between the revenue the City/County received from the aforesaid tax and the revenue the City/County would have received if it imposed the aforesaid tax at the maximum permissible rate.

B. COUNTY X agrees to establish, segregate, and maintain on its ~~books~~ financial records a separate account in the name of QUALIFYING TOWN X for the purpose of calculating and distributing those revenues that are generated by and attributable to QUALIFYING TOWN X under Chapter 766. Interest on this account shall accrue at the same rate accrued on all other COUNTY X's special transportation accounts.

C. QUALIFYING TOWN X agrees to establish, segregate, and maintain on its financial records ~~books~~ a separate account for all NVTA funds that it receives from COUNTY X.

D. ~~The parties hereto further acknowledge and agree that,~~ Because COUNTY X is required to certify to NVTA by August 1st of each year that COUNTY X has satisfied each of the requirements of 4A above, on or before July 15 of each year, the chief administrative officer of QUALIFYING TOWN X shall certify to COUNTY X, in a format prescribed by and acceptable to COUNTY X and NVTA, that QUALIFYING TOWN X has satisfied each of the requirements set forth in this Paragraph that may be applicable to QUALIFYING TOWN X.

E. ~~The parties further understand and acknowledge that~~ If COUNTY X has not deposited into its separate, special fund either the revenues from the tax collected under § 58.1-3221.3 at the maximum permissible rate, or an amount derived from sources other than moneys received from NVTA equivalent to the revenue COUNTY X would have received if it imposed the aforesaid tax at the maximum permissible rate, then, in any given year, NVTA shall reduce the 30% Funds distributed to COUNTY X by the difference between the amount the COUNTY X would receive if it was imposing the aforesaid tax at the maximum rate and the amount of revenue deposited into its separate, special fund and NVTA shall retain the amount by which the distribution of COUNTY X's 30% Funds will be reduced for use by NVTA in accordance with § 15.2-4838.1C.1. In such, QUALIFYING TOWN X's percentage of COUNTY X's share of its 30% NVTA revenues shall also be reduced *pro rata*.

5. Maintenance of Transportation Funding by COUNTY X.

A. ~~The parties further understand and acknowledge that~~ COUNTY X is required to expend or disburse for transportation purposes each year an amount that is at least

equal to the average annual amount expended or disbursed for transportation purposes by the COUNTY X, excluding bond proceeds or debt service payments and federal or state grants, between July 1, 2010, and June 30, 2013. In the event that COUNTY X does not expend or disburse the aforesaid amount in any year, COUNTY X shall not be the direct beneficiary of any of the NVTA Funds in the immediately succeeding year. In such event, ~~the parties understand and acknowledge~~ that NVTA shall make no distribution to COUNTY X of COUNTY X's 30% Funds, or any other monies from the NVTA Fund to COUNTY X or to any of COUNTY X's Qualifying Towns, including QUALIFYING TOWN X; and, ~~that~~ in such case, all such funds shall be used in accordance § 15.2-4838.1C.1.

B. Although COUNTY X and QUALIFYING TOWN X understand and acknowledge that QUALIFYING TOWN X's receipt of annual funding under Chapter 766 is expressly subject to and contingent upon COUNTY X's annual maintenance of transportation funding efforts and requirements as set forth in Paragraph 5A above, QUALIFYING TOWN X shall have no independent requirement under Chapter 766 to maintain its own levels of transportation funding from year to year in order to receive its respective share of the 30% funds.

6. Use of 30% Funds by QUALIFYING TOWN X

A. QUALIFYING TOWN X shall use its portion of COUNTY X's 30% Funds as distributed to it by COUNTY X solely for the following purposes in a manner determined by QUALIFYING TOWN X: (1) for additional urban or secondary road construction; (2) for other capital improvements that reduce congestion; (3) for other transportation capital improvements which have been approved by the most recent long range transportation plan adopted by NVTA; or (4) for public transportation purposes.

QUALIFYING TOWN X shall not use any of the revenues distributed to it by NVTA to repay debt issued before July 1, 2013.

B. In the event that QUALIFYING TOWN X appropriates or allocates any of its portion of COUNTY X's 30% Funds to a purpose other than those specified in paragraph 6A above; and unless QUALIFYING TOWN X demonstrates to the satisfaction of COUNTY X and NVTA that such acts were solely a result of and attributable to clerical or other unintentional, inadvertent error, then NVTA and COUNTY X shall cease any further distributions of the 30% Funds to QUALIFYING TOWN X for that year; and QUALIFYING TOWN X shall not be the direct beneficiary of any of the funds from the NVTA Fund in the year immediately succeeding the year in which any of its portion of COUNTY X's 30% Funds were appropriated or allocated to an impermissible purpose or use. In that succeeding year, NVTA will make no 30% distribution to COUNTY X; and NVTA shall instruct COUNTY X that there shall be no *pro rata* distribution of COUNTY X's 30% funds to QUALIFYING TOWN X or to any other Qualifying Town located in COUNTY X because QUALIFYING TOWN X's default will be deemed to be a default by COUNTY X and by all other Qualifying Towns located in COUNTY X. ~~or from any other monies from the NVTA Fund.~~

7. COUNTY X's Distributions of QUALIFYING TOWN X's Proportionate Share of 30% Funds to QUALIFYING TOWN X.

A. Pursuant to Chapter 766, COUNTY X and QUALIFYING TOWN X ~~agree to~~ will work cooperatively with NVTA for purposes of implementing the provisions of § 15.2-4838.1 and to ensure that the all Qualifying Towns in COUNTY X , including QUALIFYING TOWN X, receive their respective share of the 30% Funds distributed by NVTA to COUNTY X. Such share shall be determined ~~based~~ on the proportion of population of school age children in QUALIFYING TOWN X as compared to COUNTY

X for the purposes of calculating the portion of the 30% Funds attributable to sales tax, and the location of the tax receipts derived from the taxpaying business for purposes of calculating the portion of the 30% Funds attributable to the transient occupancy tax, and the location of the transferred property for purposes of calculating the portion of the 30% Funds attributable to the grantors tax.

B. ~~The parties further understand and acknowledge that~~ NVTA and COUNTY X have an ongoing statutory responsibility to ensure that all Qualifying Towns in COUNTY X use the 30% Funds in compliance with this MOA, COUNTY X's NVTA/City-County MOA, and in accordance with law; and therefore ~~that~~ QUALIFYING TOWN X's failure to comply with the terms and conditions of this MOA shall constitute a default and failure by QUALIFYING TOWN X and ~~may~~ could constitute a default by COUNTY X and all other Qualifying Towns located in COUNTY X; thereby subjecting ~~to~~ all such governmental entities to the consequences and penalties of such default and failure as set forth in this MOA and as required by law.

C. ~~COUNTY X shall bear the responsibility of ensuring that~~ QUALIFYING TOWN X ~~pays its proportionate share of NVTA's administrative expenses, as provided in Paragraph 3 above. QUALIFYING TOWN X will reimburse COUNTY X for the portion of NVTA's administrative expenses attributable to~~ QUALIFYING TOWN X and, if required by COUNTY X, ~~COUNTY X's actual administrative expenses incurred in managing QUALIFYING TOWN X's 30% share. Reimbursement by QUALIFYING TOWN X of its portion of NVTA's administrative expenses and, if applicable, COUNTY X's actual administrative expenses shall be made on a (monthly/quarterly?) basis via billed invoice transmitted by COUNTY X to QUALIFYING TOWN X payable within thirty (30) days upon receipt by QUALIFYING TOWN X. Upon agreement of the parties, reimbursement payments for QUALIFYING~~

~~TOWN X's portion of NVTA's administrative expenses and/or COUNTY X's actual administrative expenses may be made via electronic transfer of funds, if the parties so agree.~~ [**Note: Removed because it seemed to simply repeat paragraph 3 and would therefore be redundant**]

C. All distributions of NVTA funds by COUNTY X to QUALIFYING TOWN X under this MOA will be a project based and effected by the reimbursement method only. All requests for payment reimbursements by QUALIFYING TOWN X to COUNTY X will be submitted in a form and manner determined by and acceptable to NVTA and COUNTY X. Upon proper submission by QUALIFYING TOWN X to COUNTY X; and after review and approval by COUNTY X, COUNTY X shall transmit payment to QUALIFYING TOWN X within twenty (20) days from receipt and may be made via electronic transfer of funds, if the two parties so agree.

E. Without exception, all projects that QUALIFYING TOWN X selects and submits for funding reimbursement to COUNTY X must comply with all requirements and conditions for transportation funding as prescribed under Chapter 766. Question or disputes as to whether a specific QUALIFYING TOWN X transportation project may be eligible for funding under this MOA or under Chapter 766 should be submitted, in writing, to NVTA, c/o NVTA's ~~Interim~~ Executive Director. Upon receipt of any such request, NVTA's technical and legal staff will review the submission and make recommendations to the NVTA. NVTA will make the final determination of project funding eligibility within ninety (90) days following such submission.

F. If QUALIFYING TOWN X fails to comply with the project selection requirements as prescribed by Chapter 766 or fails to comply with the terms and conditions of this MOA, it will be obligated to refund with interest to COUNTY X all funds used contrary to this MOA or in derogation of the law.

8. COUNTY X's Obligation to File Annual Report to NVTA and TOWN X's Obligation to File Annual Report to COUNTY X. ~~The parties hereto understand and acknowledge that~~ COUNTY X must annually provide to NVTA an unaudited financial report, with supporting documentation, showing that the 30% Funds were used as required by Paragraph 6; which Annual Report must include sufficient documentation, showing QUALIFYING TOWN X's appropriate use of its portion of COUNTY X's 30% funds during the previous fiscal year. Because COUNTY X is required to provide its Report to NVTA on or before August 1st of each year, QUALIFYING TOWN X shall provide to COUNTY X on or before July 15th of each year an unaudited financial report, using the "cash basis method of accounting" with supporting documentation in a form required by NVTA and COUNTY X showing that all funds distributed by COUNTY X to QUALIFYING TOWN X during the previous fiscal year were used as required by Paragraph 6 and in full compliance with the law. In the event the QUALIFYING TOWN X's audited financials show a material variance, defined as five percent (5%) or more, from the initial report, QUALIFYING TOWN X shall provide COUNTY X with supplemental documentation satisfactory to COUNTY X, detailing QUALIFYING TOWN X's use of the 30% Funds. In the event the QUALIFYING TOWN X fails to provide the report or information as required above, COUNTY X shall withhold further distributions of QUALIFYING TOWN X's 30% Funds until the report or supplemental information is provided in accordance with this Paragraph. Once QUALIFYING TOWN X provides an acceptable report with appropriate documentation, all withheld funds, inclusive of any interest accrued on such withheld funds, shall be made available for distribution to QUALIFYING TOWN X as soon as practicable.

9. Failure to Comply with Memorandum of Agreement.

A. In the event COUNTY X fails to perform any of its obligations under this MOA, QUALIFYING TOWN X shall provide written notice to COUNTY X's County Executive/Manager/Administrator of such failure or non-compliance. COUNTY X shall cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from Qualifying TOWN X. In the event COUNTY X fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, QUALIFYING TOWN X may either request a 3rd party review by NVTA of the dispute matters or pursues all remedies available at law to obtain compliance by COUNTY X. If QUALIFYING TOWN X requests review of the matter by NVTA, it shall so notify NVTA's Executive Director in writing. The matter will thereafter be referred to NVTA's Finance Committee which will review the matter and prepare recommendations for NVTA's consideration and action within ninety (90) days following such referral. If NVTA determines that COUNTY X is not in compliance with this MOA, then COUNTY X has thirty (30) days from NVTA's decision to cure the event of non-compliance.

B. In the event QUALIFYING TOWN X fails to perform any of its obligations under this MOA, COUNTY X's Executive/ Manager/Administrator shall notify the ~~Mayor or~~ Town Manager of QUALIFYING TOWN X and notify NVTA's Executive Director. The matter will thereafter be referred to NVTA's Finance Committee which shall review and investigate the matter and prepare recommendations for NVTA consideration and action. Thereafter, NVTA shall determine whether to declare that QUALIFYING TOWN X is in default in which case NVTA shall provide written notice to COUNTY X and QUALIFYING TOWN X of such failure. QUALIFYING TOWN X shall cure or commence to cure the event of such declared noncompliance within thirty (30) days of receipt of notice from NVTA. In the event QUALIFYING TOWN X fails to cure or commence to cure the event of noncompliance and diligently pursue completion

thereof, NVTA shall direct that COUNTY X withhold further distributions of QUALIFYING TOWN X's portion of COUNTY X's 30% Funds until such time as QUALIFYING TOWN X complies with its obligations under this MOA. In addition, ~~the parties hereto understand and acknowledge that~~ COUNTY X and NVTA may pursue all available remedies at law to obtain compliance by QUALIFYING TOWN X.

C. A cure by QUALIFYING TOWN's failure to comply with the terms of this MOA shall not ~~change or~~ alter the consequences of and penalties associated with any non-compliance or default by QUALIFYING TOWN X as set forth in Paragraph 6B of this Memorandum of Agreement.

10. QUALIFYING TOWN'S Obligation to Reimburse Mis-Used Funds to COUNTY X

A. In the event QUALIFYING TOWN X fails to use any of the 30% Funds in the manner permitted by law, in addition to the consequences set forth in Paragraph 6B, it shall reimburse COUNTY X the full amount of such mis-used funds plus accrued interest. Until the full amount is reimbursed to COUNTY X, COUNTY X shall withhold further distributions of the 30% Funds to QUALIFYING TOWN X.

B. QUALIFYING TOWN X's reimbursement of mis-used funds shall not change the consequences of and penalties associated with such mis-use set forth in Paragraph 6B of this MOA.

11. Maintenance of Records by QUALIFYING TOWN X and COUNTY X.

QUALIFYING TOWN X and COUNTY X shall maintain all records relating to the 30% Funds and the use thereof for a minimum of five (5) years from the date the record was created. In addition to the foregoing, QUALIFYING TOWN X and COUNTY X shall comply with the Virginia Public Records Act and all applicable state and federal laws with regard to the retention of records.

12. Notice. Any notice required or permitted to be provided under this MOA shall be in writing and delivered in person, or sent by U.S. Mail to the below named representatives at the below addresses:

QUALIFYING TOWN X:

Town Manager

Town of _____

Address:

COUNTY X _____:

County Chief Administrative Officer

_____ County

Address:

QUALIFYING TOWN X and COUNTY X may change their respective representative designated to receive notices for purposes of this MOA by providing written notice of such change to the other party.

13. Entire Agreement. This MOA constitutes the entire agreement between QUALIFYING TOWN X and COUNTY X and supersedes any prior understanding or agreement between them with regard to any of COUNTY X's distribution to QUALIFYING TOWN X of its pro rata portion of COUNTY X's 30% Funds; except that the parties understand and acknowledge that the NVTA/City-County MOA as between NVTA and COUNTY X referenced above has been expressly incorporated **herein.**

14. No Third Party Beneficiaries. The provisions of this MOA shall inure to the benefit of, and bind QUALIFYING TOWN X and COUNTY X, but shall not inure to the benefit of any other party or other persons; except as to NVT A, as expressly provided in this MOA.

15. Severability. If any provision of this MOA or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the remainder of this MOA and the application of the provision will not be affected and will be enforceable to the fullest extent permitted by law.

16. Amendments. Any amendment to this MOA must be made in writing and signed by QUALIFYING TOWN and COUNTY X.

IN WITNESS WHEREFORE, the parties hereto, by their duly authorized representatives, have executed this Memorandum of Agreement as of the date and year aforesaid.

COUNTY of _____

Attest:

Clerk

By _____
Chairman

TOWN of _____

Attest:

Clerk

By: _____

Mayor

Approved:

Northern Virginia Transportation Authority

By: _____

Northern Virginia Transportation Authority Debt Management Policy

This debt management policy is adopted to implement the debt program of the Northern Virginia Transportation Authority (the "Authority" or "NVT A") as authorized by Section 15.2-4839 of the Code of Virginia. The purpose of the Authority's Debt Management Program will be to support the construction program of the Authority while achieving the lowest cost of capital. In order to accomplish this goal, it will be necessary to adopt policies and procedures that ensure the highest credit quality, assure access to capital markets and preserve financial flexibility.

The Authority's goal is to achieve a minimum rating in the double-A category on its senior lien debt obligations. Therefore, the Authority shall implement policies and procedures for managing debt including overarching financial policies for maintaining a high quality debt program and detailed guidelines for debt issuance. The policy will guide decisions on all debt issued by the Authority and also assist the Authority in realizing debt service savings and efficiencies. Specifically, the policies will support the following objectives:

- Achieve and maintain a double-A category rating from one or more of the nationally recognized municipal bond credit rating firms for all senior lien revenue debt;
- Guide the Authority and its managers in policy and debt issuance decisions;
- Maintain appropriate capital assets for present and future needs;
- Promote sound financial management;
- Ensure legal use of the Authority's debt issuance authority;
- Promote cooperation and coordination with other stakeholders in the financing and delivery of transportation services and infrastructure; and
- Evaluate debt issuance options

I. Application of Revenues

- A. NVT A Act** – Section 15.2-4838.1 of the NVT A Act authorizes the use of revenues of the Northern Virginia Transportation Authority (including regional tax and fee revenues transferred from the NVT A Fund established under Section 15.2-4838.01) as follows:
1. Solely for transportation purposes benefitting those counties and cities embraced by the Authority.
 2. Thirty percent (the "30 Percent Share") shall be distributed to the localities on a pro rata basis subject to reduction under the "maintenance of effort" provisions of Section 15.2-4838.1.B.2.
 3. The remaining seventy percent will be distributed as follows:
 - a. First to pay debt service on bonds issued by the Authority and secured by a pledge of such moneys;
 - b. For "pay-as-you-go" projects;
 - c. Each project financed by such moneys or bonds secured thereby must meet the following criteria:
 - i. Must be (x) in regional transportation plan in accordance with Section 15.2-483 ("TransAction 2040") and be rated in accordance with Section 33.1-13.01:1 or (y) a mass transit capital project that increases capacity;¹

¹ For "regional funds" received in FY 2014, the rating requirement does not apply.

- ii. Must reflect the Authority's priority for selecting projects that are expected to provide the greatest congestion reduction relative to the cost of the project;
- iii. Must be located (x) only in localities embraced by the Authority or (y) in adjacent localities but only to the extent that such extension is an insubstantial part of the project and is essential to the viability of the project within the localities embraced by the Authority ; and
- iv. Must result in each locality's total long-term benefit being approximately equal to the proportion of the total of the fees and taxes received by the Authority that are generated by or attributable to the locality.

B. Master Indenture of Trust – The Master Indenture of Trust approved on July 24, 2013, further specifies that all amounts transferred from the NVT A Fund are deposited to a Revenue Fund and are distributed as follows:

1. First, the 30 Percent Share is deposited in the Member Locality Distribution Fund;
 - a. And then from such Fund to the Operating Fund in an amount sufficient to fund the next 30 days of operations;
 - b. And then from such Fund to each locality its pro rata portion of the remaining 30 Percent Share (subject to reduction as described above);
2. Then the remaining amounts (the "Regional NVT A Funds") must be distributed in the following order of priority:
 - a. To fund all senior debt service requirements;
 - b. To fund all debt service reserve requirements (if due);
 - c. To fund subordinate debt service requirements (if due); and
 - d. To fund all rebate fund requirements (if due).
3. Once all debt service requirements are met, the remaining Regional NVT A Funds are deposited to the NVT A General Fund available for any other lawful purpose of the Authority, including the construction of "pay-as-you-go" projects.

II. Debt Management Planning

A. Debt Affordability Criteria (Debt Capacity)

1. Debt Capacity – For planning purposes, Debt Capacity for the issuance of new debt shall be calculated as a function of the projected Regional NVT A Funds, as defined in the Master Indenture of Trust.
 - a. It should be stressed that in accordance with the terms of the Master Indenture of Trust and the order of precedence defined in the Code of Virginia, debt service payments shall have precedence over all other obligations of the Authority.
 - b. Debt Capacity shall be projected forward a sufficient time to support the cash flow requirements of the Authority's adopted long range capital plan together with funds identified for pay-as-you-go construction.
2. Debt service coverage requirements:
 - a. NVT A strives to set policy targets for debt service coverage at the minimum levels necessary, in light of relevant criteria and methodologies of the credit rating agencies and recommendations of NVT A's Financial Advisor, to achieve a minimum of a AA category rating on senior lien debt.
 - b. For senior lien debt: The ratio of annual Regional NVT A Funds to annual senior lien debt service will be a minimum of 2.0 times. A proforma calculation for this ratio is included as Exhibit 1 to this policy.

- c. For subordinate lien debt: The ratio of annual Regional NVTAs Funds minus annual debt service on senior lien debt to annual subordinate lien debt service will be a minimum of 1.30 times. A proforma calculation for this ratio is included as Exhibit 1 to this policy.
3. Treatment of Local Revenues:
 - a. Required Transfers – Authority revenues earmarked for transfer to the member localities, the 30 percent share will not be included in the debt capacity calculation or calculation of coverage requirements.
4. “Pay go” and reserve set asides – Any portion of Regional NVTAs Funds not utilized for debt service due to coverage requirements will be set aside for pay-as-you-go capital financing and additional reserves as required by this policy over a reasonable period of time as determined by the Authority.
5. Reserve and liquidity levels
 - a. Debt Service Reserve Fund – Consistent with the provisions of the Master Indenture of Trust, each bond issue may include a Debt Service Reserve Fund (“DSRF”) funded from bond proceeds, Regional NVTAs Funds or the NVTAs General Fund as determined by the Authority at the time of issuance. In considering the need for this structural feature, NVTAs may consider whether it is economically advantageous to have a DSRF and the potential impact on the existing credit ratings on the Authority’s outstanding bonds, among other factors.
 - b. Working Capital Reserve – The Authority will maintain a Working Capital Reserve account in its General Fund equal to at least [six months] of the budgeted, annual Regional NVTAs Funds. Such funds may be used within a fiscal year to manage any mismatches in the actual receipt of revenue and the disbursement of funds for project construction to project implementing entities. If tapped, the Executive Director of the NVTAs will develop and submit to the Authority Board a plan to restore the Working Capital Reserve to its minimum level over a period not to exceed [18] months. The NVTAs will revisit the level of this reserve no later than June 30, 2015 to reflect its actual cash flow patterns and experience and periodically as needed.

B. Bond Structure

1. Term of Bonds. NVTAs shall strive to match the financing period with the economic life of the asset being developed in general conformance with the following guidelines:
 - a. Short term debt (less than ten years) normally should be used for projects with an economic life of 0 to 15 years, but may be used at any time to restructure the Authority’s outstanding debt portfolio to reduce the average life of the Authority’s bonds.
 - b. Terms of the bonds for major construction projects shall not exceed 30 years which is less than the 40 year maximum term of debt permitted under Section 15.2-4519.B.1.
 - c. The Authority will attempt to achieve an average bond life for all aggregate outstanding debt of less than 20 years in order to ensure that significant debt capacity is available to meet the future needs of the Authority.
2. Capitalized Interest. The Authority intends to pay interest on all debt obligations when due from current revenues unless the capitalization of interest shall be deemed necessary and prudent or the best interest of the Authority for any project specific

financing. If used, the capitalized interest period and amount shall not exceed that which is necessary to complete the construction period.

3. Debt Service Repayment Structure. It is the preference of the Authority to promote rapid repayment of debt principal in order to (i) achieve the objective of average bond life of less than 20 years, (ii) to maintain or improve the credit rating, and (iii) to execute the capital program in the most cost effective manner. The Authority may choose to structure debt repayment so as to wrap around existing obligations or to achieve other financial planning goals.
4. Call Provisions. Optional redemption provisions on NVTA debt, if any, shall be determined based upon the market conditions at the time of issuance with advice from the Financial Advisor. The Authority will select the call provision most likely to result in the lowest cost of funds while providing reasonable opportunity and flexibility for future refinancing to achieve future debt service savings.

C. Types of Debt

1. Revenue Bonds. NVTA expects to issue revenue bonds, either on a senior lien or subordinate basis, as its primary form of debt. The debt capacity of the Authority to issue revenue bonds shall be governed by this Debt Management Policy.
2. Lease Purchase Agreements. Lease purchase debt for which the asset is pledged, in addition to Authority revenues, as security for the debt payment may not be issued unless the Board adopts specific policies in this regard.
3. Variable Rate Debt (short or long term). The Authority may issue variable rate debt to achieve a lower cost of capital, improve cash flow efficiencies or manage interest rate risk and in no case shall variable rate debt exceed ten percent of the total debt of the NVTA. Any commercial paper program that is used as an interim financing tool shall not be included in the calculation of the ten percent (10%) maximum variable rate debt limit. The NVTA will revisit this threshold periodically to reflect market conditions, credit rating agency criteria, and NVTA's liquidity and cash flow experience. Any changes to the threshold must be approved by the Board.
4. Commercial Paper. The Authority may establish a commercial paper program if economically advantageous to manage the Authority's cash flow, improve efficiency or reduce negative arbitrage. The Authority may create its own program or use a pool legally available to it within the Commonwealth.
5. Federal or State or other Conduit Pool Loan Programs. The Authority may use pooled loan programs supported by available Regional NVTA Funds if cost effective (e.g., sales through the Virginia Resources Authority). Such debt may be senior or subordinate lien as negotiated with the issuing authority with such coverage and other requirements as determined by the issuing agency and consistent with the Master Indenture of Trust.
6. Unrated Debt. The Authority may issue unrated debt if deemed in its best interests.
7. Derivative Structures. The Authority shall not make use of derivative structures (swaps, hedges, etc.) for at least five years after adoption of this policy. Such structures shall not be used thereafter unless the Board shall adopt specific policies in this regard.

D. Refinancing Outstanding Debt

1. Minimum Savings Threshold. The Authority establishes a minimum present value savings threshold of three percent (3%) of the refunded bond principal amount. The present value savings will be net of all costs related to the refinancing.

2. Restructuring. The Authority may restructure debt when it is in the best financial interest of the Authority to do so. Such refundings will be limited to restructuring to meet anticipated revenue expectations, achieve costs savings, mitigate irregular debt service payments, release reserve funds, consolidate multiple series of outstanding debt, or remove unduly restrictive bond covenants.
3. Term of Refunding Issues. The Authority will normally refinance bonds within the original term of the existing debt. However, after careful evaluation, the Authority may consider maturity extension when necessary to achieve a desired outcome, provided that such extension is permissible under the Master Indenture of Trust.

E. Use of Credit Enhancement

1. Bond Insurance. Bond insurance may be obtained to achieve a higher credit rating than NVTA's uninsured debt when cost effective.
2. Letters of Credit. Letters of Credit may be obtained when cost effective.

F. Additional Bonds

1. NVTA anticipates new money bond sales in a frequency adequate to meet its cash flow needs.
2. Additional bond issuance shall not exceed any of the limits prescribed in the Debt Affordability section of these policies in any fiscal year.
3. Subsequent bond sales will be on parity with prior issuances of senior or subordinate lien bonds, as appropriate.
4. Additional bond issuances should be planned to remain within capacity/affordability limits based on careful forecasts of revenues reasonably anticipated to be received over the course of the following six years.

G. Capital Financial Plan

1. Beginning in FY 2015, NVTA shall adopt a multi-year capital plan. The capital plan will be developed in accordance with all applicable statutory requirements. The Authority shall make every effort to coordinate the timing of the adoption of its capital plan to benefit the capital planning processes of the Authority's member jurisdictions and of impacted state and regional authorities.
2. The Authority will review and update the long-term comprehensive transportation plan for the region at least every five years.

III. Debt Management Administration

A. Selection of Advisors and Other Providers

1. Financial Advisor. The Authority will use the services of a Financial Advisor to assist in the implementation and execution of bond policies, sales and other financial analyses as necessary. The Financial Advisor will be selected through a competitive process in accordance with the Code of Virginia and other procedures that the Authority may establish under such terms and compensation as the Authority may determine. A selection advisory committee shall include the Chief Financial Officer and other members appointed by the Executive Director, including at least three knowledgeable staff members from member jurisdictions, which will include the top three revenue contributing jurisdictions and a rotation of up to two of the remaining contributing jurisdictions. The Executive Director shall make every effort to ensure

that each member jurisdiction is given the opportunity to participate in the selection process.

2. Bond Counsel. The Authority will use the services of Bond Counsel to assist in the implementation and execution of bond policies, sales and other legal analyses as necessary. The Bond Counsel will be selected through a competitive process in accordance with the Code of Virginia and other procedures that the Authority may establish under such terms and compensation as the Authority may determine.
3. Other Services. The Authority may obtain the services of other advisors as necessary to implement its debt program under such terms and conditions as may be determined by the Authority. Such services may include, but are not limited to, trustee and fiscal agent services, specialized financial analytical services, special tax or disclosure counsel, rebate and arbitrage compliance services, audit services and other services that may be necessary.
4. Other Jurisdiction Contracts. The Authority may use any contract for consultant services issued by a member jurisdiction or agency of the Commonwealth provided that the terms and conditions of the contract permit its use by other jurisdictions or governmental entities of the Commonwealth and the contract was competitively bid or issued through a request for proposal.

B. Methods of Issuance

1. Competitive Sales. NVTA shall issue debt on a competitive basis whenever practical.
2. Negotiated Sales. NVTA may issue bonds via negotiated sale based on an evaluation of current market conditions and the economic advantages to NVTA, especially for the first few series of bond issues until the Authority has gained sufficient market acceptance and recognition as a regular issuer.
3. Private Placements. NVTA is permitted to use private placement financings based on an evaluation of current market conditions and the economic advantages to NVTA.

C. Underwriter Selection (if negotiated sale)

1. NVTA will always use a formal, competitive, open selection process to choose an underwriter.
2. NVTA's Financial Advisor may not participate in any sale as an underwriter (senior manager, co-manager, or part of a syndicate) while under contract to the Authority or as otherwise prohibited by applicable MSRB Rules.
3. NVTA will determine the selection process for appointing any co-managing underwriters.
4. NVTA may competitively select a pool of underwriters who may be used to underwrite bond sales over a multi-year period. The period in which an underwriter can be used may exceed more than one financing and more than one year; the period of use will be established at the time of the initial underwriter selection.
 - a. Underwriter selection shall be conducted in accordance with applicable procurement statutes and procedures established by the Authority. A selection advisory committee shall include the Chief Financial Officer and other members appointed by the Executive Director, including at least three knowledgeable staff members from member jurisdictions, which will include the top three revenue contributing jurisdictions and up to two of the remaining contributing jurisdictions. The Executive Director shall make every effort to ensure that each member jurisdiction is given the opportunity to participate in the selection process.

D. Public Notices and Hearings

1. Notices of public hearing shall be published and public hearings held prior to Board approval of any debt issuance if required by and in conformance with federal law, where applicable, and the Virginia Code.
2. NVTA shall post any such notices of public hearing to be published on its website and in a paper or papers of general circulation within the jurisdictions embraced by the NVTA. Regardless of whether such publication is required by federal or Virginia law; provided that the failure to effect any such local publication shall not invalidate any Board action unless the local publication is required by laws.

IV. Provisions Pertaining to the 30 Percent Share: NVTA Role as a Conduit Issuer

- A. NVTA may act as a conduit issuer for any member locality utilizing a separate Trust Indenture specifically for the member's issuance of debt secured by their 30 Percent Share. Member localities may agree to a Master Indenture with allowance for Supplemental Indentures specifically for the conduct of its initial and subsequent issues.
- B. Debt Service for any NVTA conduit debt issued for individual member localities may be paid directly to the member locality's trustee for an issue secured by the member locality's 30 Percent Share of NVTA revenues. Localities may pledge other revenues as needed. The aggregate of all revenues pledged must meet a minimum coverage ratio of 1.00 times.
- C. Localities may agree to a joint issue for projects that benefit more than one locality, however, such joint ventures shall at a minimum clearly establish jurisdictional shares and responsibility for debt service payments.
- D. Any debt issued by NVTA directly for the benefit of an individual member locality must not have any impact on the NVTA's credit rating, debt capacity/affordability or marketing of other NVTA debt.
- E. Conduit debt issued by NVTA on behalf of a locality shall not have any negative fiscal or operational impact on NVTA or on any of the other member localities. The NVTA and its other member localities shall be protected in the event of default or non-appropriation by the obligated member.
- F. All costs of issuance will be borne entirely by the member locality in a manner of their choosing, which may include capitalization of such costs. NVTA may charge a fee for its services in addition to normal costs of issuance.

V. Provision Pertaining to the 30 Percent Share: Operating Reserve

- A. Operating Reserve – The Authority will maintain an operating reserve account in the Member Locality Distribution Fund sufficient to fund to at least twenty percent (20%) of operating expenses. This operating reserve may be used, at the discretion of NVTA's Executive Director, to cover unanticipated increases in the Authority's operating budget. If used, the Executive Director will present a plan to the NVTA Board for refilling the reserve during the next ensuing fiscal year budget process. The Authority will invoice each member

locality for their proportionate contribution necessary to refill the reserve to three months of operating expenses.

VI. Investment Policies

- A. The Authority will establish separate, written investment policies consistent with applicable sections of Virginia Code and that provide for maintenance of sufficient cash on hand to meet daily operating, capital and debt service requirements in conformance with the expected schedule and actual receipt of revenues from all sources.

VII. Debt Management Monitoring & Responsible Parties

- A. Post Issuance Compliance Procedures. The Authority will establish appropriate accounting and reporting procedures to ensure the timely payment of debt service, the satisfaction of all debt service coverage requirements and financial covenants and compliance with applicable federal tax and securities laws. Prior to issuance of any tax-exempt debt, the NVT A will develop separate, written Post Issuance Compliance procedures.
- B. Arbitrage rebate compliance. The Authority will sell the minimum amount necessary to meet construction requirements consistent with Federal arbitrage restrictions and comply with all necessary reporting requirements. The Authority will attempt to size its sale amounts so as to qualify for the two year spend down exception test.
- C. Secondary market disclosure (Rule 15c2-12 compliance). Continuing Disclosure shall at a minimum include the year-end financial audit in addition to other documents designated by the Authority. The Authority shall ensure that any local jurisdiction constituting a “material obligor” with respect to any of the Authority’s debt within the meaning of Rule 15c2-12 agrees to provide the continuing disclosure required under the Rule.
- D. NVT A’s Executive Director or his designee will be responsible for the implementation of this Debt Management Policy with the advice and input from NVT A’s legal counsel and Financial Advisor.
- E. NVT A’s Executive Director will review and update this Debt Management Policy at least every five years.

Exhibit 1: Proforma Debt Service Coverage Calculation Methodology

- Annual Regional NVT A Funds = **(A)** = \$210,000,000
- Debt Service on Senior Lien Debt = **(B)** = \$30,000,000
- Debt Service on Subordinate Lien Debt = **(C)** = \$30,000,000
- Debt Service Coverage Requirement for Senior Lien Debt = **(A / B)** =
- $\$210,000,000 / \$30,000,000 = 7.0x$
- Debt Service Coverage Requirement for Subordinate Lien Debt = **(A-B) / C** =
- $(\$210,000,000 - \$30,000,000) / \$30,000,000 = 6.0x$

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

RESOLUTION XX-08

ESTABLISHING GUIDELINES FOR EXECUTIVE DIRECTOR'S ~~INITIAL~~ FINANCIAL AND PROCUREMENT AUTHORITY

WHEREAS, ~~upon hiring an executive director~~, the Northern Virginia Transportation Authority looks forward to transitioning financial and procurement responsibilities from the existing temporary support being provided by participating jurisdictions to ~~interim~~ permanent Authority staff; and

WHEREAS, it is recognized that transition measures are necessary until a formal staffing plan is approved and the Authority's permanent staff is acquired, and written financial and procurement procedures are adopted; and

WHEREAS, associated with the aforesaid transition, it is necessary to provide the executive director with authority to initiate the below prescribed financial and procurement functions; and

WHEREAS, it is understood that the purpose of this policy is to establish parameters to guide purchasing and provide delegated purchasing ~~initial~~ authority to the executive director, with the expectation ~~and~~ that a formal staffing plan and more detailed financial and procurement policies will subsequently be submitted to the Authority for its approval.

NOW, THEREFORE, BE IT RESOLVED BY THE NVTa THAT:

- ~~Upon being appointed,~~ the executive director ~~or the chief financial officer~~ shall assume lead responsibility for initiating financial and procurement actions for the Authority consistent with applicable authorization by the Authority, the availability of budgeted funds for the purpose, and the Virginia Public Procurement Act and all applicable laws.
- Small Purchases:** The small purchase threshold for the Northern Virginia Transportation Authority is ~~\$50,000~~ as term "small purchases" is defined by the Virginia Public Procurement Act (VPPA). Procurements made pursuant to the small purchase procedures do not require public bid openings or newspaper advertising of competitively negotiated procurements.

The following procedures apply to all goods, non-professional, and professional services, with distinctions based on the type of purchase to conform to the VPPA.

- ~~Procurement Card: Does this apply?~~
- Single Quotation:** Where the agency's cost of goods or services is \$5,000 or less, purchases may be made upon receipt of a minimum of one (1) written or telephone quotation. If more than one quote is received, the award shall be made to the lowest responsive and responsible bidder.
 - Unsealed Bidding:** Goods or services over \$5,000 and up to ~~\$50,000~~ the maximum allowable limit defined by the VPPA as a small purchase may be procured through unsealed bidding. The eVA Quick Quote process is the preferred method for securing competition; however, a solicitation for unsealed bidding may be used. The solicitation shall be open for at least three business days.

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c. **Unsealed Proposals:** Goods or services over \$5,000 and up to the maximum allowable limit defined by the VPPA as a small purchase \$50,000 may be procured through an unsealed proposal process. A written determination for the use of competitive negotiation is not required for unsealed proposals. The solicitation for unsealed proposals should include a cover sheet, a general description of what is being sought, the evaluation criteria and weights to be used in evaluation, contract terms and conditions, including unique capabilities or qualifications that will be required. All responses must be received at the designated location by the date and time stated in the solicitation. In lieu of an evaluation committee, the end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the offerors selected.

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3. Formal Procurements:

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a. All procurements anticipated to cost more than the maximum allowable limit defined by the VPPA as a small purchase \$50,000 shall be conducted in accordance with the competitive sealed bidding and competitive negotiation requirements of the VPPA, Virginia Public Procurement Act. Prior approval of the Authority is required.

4. **Sole Source Purchases:** Upon determination in writing that there is only one source practicable available for that which is to be procure, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation in accordance with the Code of Virginia, §2.2-4304.E.

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5. **Emergency Purchases:** In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances, in accordance with the Code of Virginia, §2.2-4303.F.

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6. **Cooperative Procurement:** The Northern Virginia Transportation Authority may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies, in accordance with the restrictions cited in the Code of Virginia §2.2-4304.

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Subject to, and as provided for by those requirements, the following shall apply to single and term contracts for goods and professional and non-professional services other than professional services not expected to exceed \$50,000:

Small purchases:

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Up to \$5,000 one written quote or documented verbal quote

\$5,000 \$15,000 solicitation of a minimum of three qualified sources (verbally and documented or in writing)

\$15,000 \$530,000 written solicitation of a minimum of four qualified sources.

7. Purchases consistent with above guidelines and within approved budget parameters may be approved by the executive director.

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Procurements anticipated to cost more than \$530,000 shall be conducted in accordance with applicable requirements of the Virginia Public Procurement Act, and prior approval of the Authority is required.

3.8 Until financial management policies have been adopted, the following procedures shall apply:

a. ~~The existing financial management procedures shall remain in place, with the exception of process for small purchases and the authorization to sign checks.~~

d.a. ~~The~~ Upon appointment of an executive director is, he shall be authorized to sign checks up to \$5,000; checks exceeding that amount must be counter-signed by the chairman or the vice chairman. Upon hiring of a chief financial officer (CFO), the

CFO is authorized to sign checks up to \$5,000. Checks over \$5,000 must be countersigned by the executive director. In all cases, expenditures shall be consistent with approved budget or a separate approval by Authority.

e-b. Specific prior approval of the Authority is needed for any expenditure that exceeds \$30,000.

f-c. In all cases, appropriate documentation will be established and maintained consistent with state records management requirements.

Adopted by the Northern Virginia Transportation Authority on this 10th day of January, 2008.

BY _____
Chairman

ATTEST: _____
Vice Chairman

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

MEMORANDUM

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

THROUGH: John Mason, Executive Director

FROM: Michael Longhi, Chief Financial Officer

SUBJECT: HB 2313 Funding Status

DATE: December 12, 2013

1. **Purpose:** To update the Authority on HB 2313 funding
2. **Background:** NVTA receives funding through sales tax, grantors tax and transient occupancy tax (TOT). Revenues are received monthly from the Commonwealth for transactions that occurred in proceeding months. The attached report reflects funding received through November 2013 on a cash basis.
3. **Comments:**
 - a. NVTA is receiving revenue streams for the first time, therefore no prior annual month-to-month transaction history is available for comparison and evaluation purposes.
 - b. Based on a straight line projection with the receipts received thus far:
 - i. Grantors Tax is running approximately 15% above projections
 - ii. Sales Tax is running approximately 9% below projection for the first three months of the year.
 - iii. TOT receipts have not developed a pattern to analyze at this point. The closure of the Federal Government will have a negative impact on TOT receipts for the second fiscal quarter and potentially the third quarter.
 - c. No changes in the revenue estimates are recommended at this time. Member jurisdictions are being consulted for any updates to their original revenue estimates for a January update to the Authority. Information on the impact of the Federal Government closures on TOT will be included.
 - d. Fees of \$372,000 have been deducted by the Virginia Department of Taxation from the sales tax receipts received from the Commonwealth, through November. The Department of Taxation points to the Appropriation Act (Chapter 806, Item 275, Paragraph B) as authorizing the department to recover costs in administering the tax. The above reference specifically refers to HB 2313. Once one-time costs have been recovered, the ongoing costs are estimated by the Department of Taxation at less than \$10,000/month.

Coordination:

T. Biesiadny (Financial Working Group)
S. Kalkwarf (NVTC)

Attachment: NVTA Statement of Revenues Received by Jurisdiction, November 30, 2013

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY
STATEMENT OF REVENUES RECEIVED, BY JURISDICTION IN WHICH REVENUE WAS GENERATED
JULY 1, 2013 THROUGH NOVEMBER 30, 2013
(CASH BASIS)

Grantors Tax		Received		FY 2014	Annualized Actual	Projected
Transaction Months	4	To Date	Annualized	Projection	To Projection	Variance
City of Alexandria		\$ 971,487	\$ 2,914,461	\$ 3,391,565	\$ (477,104)	
Arlington County		\$ 1,306,045	\$ 3,918,136	\$ 4,574,287	\$ (656,151)	
City of Fairfax		\$ 117,902	\$ 353,706	\$ 289,079	\$ 64,627	
Fairfax County		\$ 5,633,396	\$ 16,900,187	\$ 15,169,980	\$ 1,730,207	
Falls Church		\$ 113,155	\$ 339,466	\$ 261,761	\$ 77,705	
Loudoun County		\$ 3,054,474	\$ 9,163,421	\$ 6,093,105	\$ 3,070,316	
City of Manassas		\$ 107,530	\$ 322,590	\$ 271,303	\$ 51,287	
City of Manassas Park		\$ 127,290	\$ 381,870	\$ 148,806	\$ 233,064	
Prince William County		\$ 1,904,189	\$ 5,712,567	\$ 4,476,903	\$ 1,235,664	
Total Grantors Tax Revenue		\$ 13,335,468	\$ 40,006,405	\$ 34,676,789	\$ 5,329,616	15%

Regional Sales Tax*		Received		FY 2014	Actual to	
Transaction Months	3	To Date	Annualized	Projection	Projection	
City of Alexandria		\$ 3,568,817	\$ 14,275,269	\$ 15,806,507	\$ (1,531,238)	
Arlington County		\$ 5,277,688	\$ 21,110,751	\$ 24,473,867	\$ (3,363,116)	
City of Fairfax		\$ 1,883,425	\$ 7,533,698	\$ 6,462,525	\$ 1,071,173	
Fairfax County		\$ 23,243,704	\$ 92,974,816	\$ 104,977,104	\$ (12,002,288)	
Falls Church		\$ 506,423	\$ 2,025,692	\$ 2,470,340	\$ (444,648)	
Loudoun County		\$ 9,025,269	\$ 36,101,075	\$ 39,833,324	\$ (3,732,249)	
City of Manassas		\$ 1,100,967	\$ 4,403,868	\$ 4,568,248	\$ (164,380)	
City of Manassas Park		\$ 276,186	\$ 1,104,743	\$ 920,350	\$ 184,393	
Prince William County		\$ 7,797,324	\$ 31,189,296	\$ 32,943,958	\$ (1,754,662)	
Total Sales Tax Revenue*		\$ 52,679,802	\$ 210,719,208	\$ 232,456,223	\$ (21,737,015)	-9%

Transient Occupancy Tax (TOT)		Received		FY 2014	Actual to	
Transaction Months	**	To Date	Annualized	Projection	Projection	
City of Alexandria		\$ 660,519		\$ 3,570,388		
Arlington County		\$ 2,048,783		\$ 8,890,830		
City of Fairfax		\$ -		\$ 345,984		
Fairfax County		\$ 910,611		\$ 9,984,936		
Falls Church		\$ -		\$ 141,857		
Loudoun County		\$ 469,062		\$ 806,445		
City of Manassas		\$ 15,352		\$ 77,750		
City of Manassas Park		\$ -		\$ -		
Prince William County		\$ 255,569		\$ 530,452		
Total TOT Revenue		\$ 4,359,896		\$ 24,348,642		

Total Revenue Received	\$ 70,375,166	\$ 275,074,255	\$ 291,481,654	\$ (16,407,399)	-6%
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Annualized Total Revenue Includes total projection for TOT.

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

October Receipt	\$ 210,894
November Receipt	\$ 160,884
	\$ 371,778

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

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

MEMORANDUM

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

THROUGH: John Mason, Executive Director

FROM: Michael Longhi, Chief Financial Officer

SUBJECT: NVTA Operating Budget

DATE: December 12, 2013

1. **Purpose:** To update the Authority on the NVTA Operating Budget
2. **Background:** NVTA is funded through the participating jurisdictions and interest earnings. The Memorandum of Agreement (MOA) between NVTA and the member City or County permits the appropriate jurisdictional share of NVTA operational costs to be deducted directly from the 30% distribution or to be billed to jurisdictions.
3. **Comments:**
 - a. Pending the approval and execution of the MOAs, NVTA's operating resources are constrained to the cash on hand at the beginning of this fiscal year. Recognition of interest earnings on the 70% funding is also awaiting the MOA execution and disbursement of the 30% revenues to member jurisdictions.
 - b. Interest income is tied to the projected rate of regional (70%) project funding utilized by member jurisdiction as well as market rates. Interest earned on the 30% funding will be remitted to the member jurisdictions.
 - c. The majority of NVTA expenses to date are related to preparation for the first bond issuance (bond validation suit and development of debt policy). Those expenses are recognized as committed but are unpaid, pending receipt of cash related to the execution of the MOAs.
 - d. The rate of budgeted expenditures will increase as NVTA staff is hired, employee benefits are established and additional startup costs such as an accounting system are acquired.
 - e. Evaluation of prospective accounting systems is ongoing. Initial cost proposals for the system are in the \$30,000 range with web based or cloud hosting at approximately \$10,000/yr.
 - f. No changes to the operating budget are recommended at this time.

Coordination:

T. Biesiadny (Financial Working Group)
S. Kalkwarf (NVTC)

Attachment: NVTA Operating Budget for FY 2014, through November 30, 2013

