

**MEMORANDUM OF AGREEMENT
BETWEEN THE NORTHERN VIRGINIA TRANSPORTATION AUTHORITY
AND THE CITY OF ALEXANDRIA
REGARDING DISTRIBUTION OF 30% FUNDS**

THIS MEMORANDUM OF AGREEMENT, effective the ____ day of _____, 2014 (this "Agreement"), by and between the Northern Virginia Transportation Authority ("NVTa") and the City of Alexandria, a member City/County of NVTa (the "CITY/COUNTY").

W I T N E S S E T H:

WHEREAS, NVTa was established by the Northern Virginia Transportation Authority 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 ("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 (the "Local 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 § 15.2-4838.1B.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, which administrative expenses may be paid from the 30% Funds in accordance with § 15.2-4838.1; 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 Locality deposit into its Local Fund, 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 Local Fund the amount equivalent to the revenue generated by 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 Local 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 has requested, and the City/County has agreed, to enter into this 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 Agreement, and the mutual undertakings of the parties, NVTa and the City of Alexandria 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 financial records. 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 of Alexandria. Beginning no later than the month following final approval and execution of this Agreement by the parties, NVTa shall begin to distribute to the City of Alexandria the 30% Funds to which the City of Alexandria 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 of Alexandria its 30% funds on a monthly basis, provided the City of Alexandria remains in compliance with the terms of this Memorandum of Agreement and all applicable provisions of law.

3. Payment of City of Alexandria's Share of NVTAs Administrative Expenses. Pursuant to § 15.2-4835, the City of Alexandria is responsible for paying its share of NVTAs total administrative expenses as set forth in NVTAs approved budget prior to the start of NVTAs fiscal year which begins July 1st each year. NVTAs shall invoice the City of Alexandria for its proportionate share of NVTAs administrative expenses by June 1st of the preceding fiscal year, and the City of Alexandria shall, at its election, have the option each year of paying in either of the following methods: (1) by having NVTAs reduce the first distribution of 30% Funds made to the City of Alexandria after July 1st by the amount of the City of Alexandrias share of NVTAs administrative expenses, or (2) by paying NVTAs directly for its share of NVTAs administrative expenses not later than July 15th. The failure by the City of Alexandria to elect one of the foregoing methods of payment shall result in NVTAs reducing the first distribution of 30% Funds made to the City of Alexandria after July 1st by the amount of the City of Alexandrias share of NVTAs administrative expenses. In the event the City of Alexandria fails to pay its share of NVTAs administrative expenses by July 15th, NVTAs shall make no distribution to the City of Alexandria of the City of Alexandrias 30% Funds or of any other monies from the NVTAs Fund.

4. Establishment of Local Fund by City of Alexandria.

A. The City of Alexandria shall deposit in a Local Fund all revenues distributed to it by NVTAs pursuant to Paragraph 2 above, and all revenues collected by the City of Alexandria from the tax imposed pursuant to § 58.1-3221.3. If the City of Alexandria has not imposed the aforesaid tax, or has not imposed it at the maximum permissible rate, then the City of Alexandria shall deposit into its Local Fund an amount, from sources other than moneys received from NVTAs, that is equivalent to the difference between the revenue the City of Alexandria received from the aforesaid tax and the revenue the City of Alexandria 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 of Alexandria shall certify to NVTAs, in a form prescribed by NVTAs, that it has satisfied each of the requirements set forth in subsection A.

C. If the City of Alexandria has not deposited into its Local Fund an amount equivalent to the revenue the City of Alexandria would have received if it imposed the maximum permissible rate under § 58.1-3221.3, then NVTAs shall reduce the 30% Funds distributed to the City of Alexandria by the difference between the amount the City of Alexandria would receive if it was imposing the aforesaid tax at the maximum rate and the amount of revenue deposited into its Local Fund. NVTAs shall retain the amount by which the distribution of City of Alexandrias 30% Funds have been reduced for use by NVTAs in accordance with § 15.2-4838.1C.1.

5. Maintenance of Transportation Funding by City of Alexandria.

A. The City of Alexandria 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 of Alexandria, 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 of Alexandria does not expend or disburse the aforesaid amount in any year, the City of Alexandria shall not be the direct beneficiary of any of the NVTAs Fund in the immediately succeeding year. In such event, NVTAs shall make no distribution to the City of Alexandria of the City of Alexandrias 30% Funds, or any other

monies from the NVTa Fund to the City of Alexandria, 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 of Alexandria 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 of Alexandria.

A. The City of Alexandria shall use the 30% Funds distributed to it by NVTa for the following purposes as the City of Alexandria 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 of Alexandria 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 of Alexandria appropriates or allocates any of the 30% Funds to a purpose other than those specified above, unless demonstrated by the City of Alexandria 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 of Alexandria in the fiscal year in which the misappropriation or misallocation occurs, and the City of Alexandria shall not be the direct beneficiary of any of the NVTa Fund in the fiscal year immediately succeeding the year in which any of the 30% Funds were misappropriated or misallocated and such funds shall be used in accordance § 15.2-4838.1C.1. Further, in that succeeding fiscal year, NVTa shall make no distribution to the City of Alexandria of any other monies from the NVTa Fund to the City of Alexandria.

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 could be treated under law as a failure of the County subject to all the consequences of such failure. The County shall also be 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, the selection of projects by the towns 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 providing its technical and legal resources or act as a non-binding mediator to assist and/or facilitate in the resolution of any questions or disputes upon joint written request by a county and a town; and (2) 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.

8. City of Alexandria's Annual Report to NVTA. Annually, the City of Alexandria 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, mutually agreed upon by NVTA and the Localities. The City of Alexandria shall provide the report to NVTA on or before August 1st of each year for the previous fiscal year. In the event the City of Alexandria's audited financials show a material variance, defined as five percent (5%) or more, from the initial report, the City of Alexandria shall provide NVTA a further report, with supporting documentation satisfactory to NVTA, detailing the City of Alexandria's use of the 30% Funds. NVTA may request from the City of Alexandria additional information and documentation related to the report and the documentation provided with the report. In the event the City of Alexandria 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 of Alexandria provides an acceptable report, NVTA shall distribute all withheld funds, inclusive of any interest earned by NVTA on such funds, to the City of Alexandria.

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 of Alexandria shall provide written notice to NVTA's Executive Director of such failure. NVTA shall dispute the failure or cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from the City of Alexandria. In the event NVTA disputes the failure or fails to cure or commence to cure the event of noncompliance and diligently pursue completion thereof, the City of Alexandria may pursue all remedies available at law to obtain compliance by NVTA.

B. In the event the City of Alexandria 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 of Alexandria in default for such noncompliance in which case NVTA shall provide written notice to the City of Alexandria of such failure. The City of Alexandria shall dispute the noncompliance determination or cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from NVTA. In the event the City of Alexandria fails to dispute the noncompliance or 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 of Alexandria until the dispute is resolved and City of Alexandria is in full compliance with its obligations under this Agreement. In addition, NVTA may pursue all available remedies at law to obtain compliance by the City of Alexandria.

C. A cure by the City of Alexandria of its failure to comply with the terms of this Agreement shall not change the consequences of mis-use of any of the 30% Funds set forth in Paragraph 6.B of this Agreement.

10. City of Alexandria's Obligation to Reimburse Misused Funds to NVTa.

A. In the event the City of Alexandria misuses or misallocates 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 misused or misallocated funds inclusive of any interest earned by the City of Alexandria on such funds. Until the full amount is reimbursed, NVTa shall withhold further distributions of the 30% Funds to the City of Alexandria.

B. The City of Alexandria's reimbursement of misused or misallocated funds shall not change the consequences of such misuse or misallocation set forth in Paragraph 6.B of this Agreement.

11. Maintenance of Records by City of Alexandria and NVTa. The City of Alexandria 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 of Alexandria 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 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
3060 Williams Drive, Suite 510
Fairfax, VA 22031

City of Alexandria:

City Manager
City of Alexandria
301 King Street, Room 3500
Alexandria, VA 22314

NVTa and the City of Alexandria may change the representative designated to receive notices for purposes of this Agreement by providing written notice of such change to the other party.

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

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

15. Severability. If any provision of this Agreement or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the remainder of this 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 Agreement must be made in writing and signed by NVTa and the City of Alexandria.

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

City of Alexandria

Attest:

Clerk

By: _____
Title: _____