

The following item was handed out at
the January 3, 2019 NVTC Meeting.

This page intentionally left blank.



RESOLUTION #2372

SUBJECT: Selection of NVTC Representatives to Various Boards

WHEREAS: NVTC is empowered to make appointments to the Board of Directors of the Washington Metropolitan Area Transit Authority (WMATA), the Virginia Railway Express (VRE) and the Virginia Transit Association (VTA);

WHEREAS: Some of NVTC's jurisdictions may not formally appoint their NVTC members prior to NVTC's January meeting and some may not be ready with recommendations for appointment to various boards; and

WHEREAS: Secretary Shannon Valentine has designated Paul C. Smedberg to be the Secretary's designee on NVTC and the WMATA Board to fill the unexpired term of Jim Corcoran, and Mr. Smedberg's appointment became effective January 1, 2019, with the term expiring January 4, 2022.

NOW, THEREFORE, BE IT RESOLVED that the Northern Virginia Transportation Commission hereby appoints and confirms the following persons to serve as principals and alternates to the WMATA Board of Directors, subject to possible subsequent action by NVTC's jurisdictions that alters their NVTC members for 2019 and their recommendations for members of the various boards:

WMATA Board of Directors:

Principals

Paul C. Smedberg
(Commonwealth Appointee)
Term expires 01-04-2022

Christian Dorsey
(NVTC Appointee)
Term expires 01-05-2021

Alternates

Catherine Hudgins
Term expires 01-09-2020

Matthew F. Letourneau
Term expires 01-03-2023

BE IT FURTHER RESOLVED that NVTC hereby appoints the following persons to serve on the VRE Operations Board, subject to possible subsequent action by NVTC's jurisdictions that alters their NVTC members for 2019 and their recommendations for members of the various boards:

VRE Operations Board:

Principals

Sharon Bulova
John C. Cook
Katie Cristol
Elizabeth Bennett-Parker

Alternates

Jeffrey C. McKay

Libby Garvey
Canek Aguirre

BE IT FURTHER RESOLVED that NVTC hereby appoints the following persons to serve on the Virginia Transit Association Board, subject to possible subsequent action by NVTC's jurisdictions that alters their NVTC members for 2019 and their recommendations for members of the various boards:

Virginia Transit Association Board:

Principals

David F. Snyder

Katherine A. Mattice

Alternates

Katie Cristol

(vacant)

Approved this 3rd day of January 2019.

Matthew F. Letourneau
Chairman

Sharon Bulova
Secretary-Treasurer

Agenda Item #8: I-395 Annual Transit Investment Funds Memorandum of Agreement

TO: Chairman Smedberg and NVTC Commissioners

FROM: Kate Mattice and Allan Fye

DATE: December 20, 2018

SUBJECT: I-395 Annual Transit Investment Funds Memorandum of Agreement

ACTION ITEM: Approve the Memorandum of Agreement (MOA) between NVTC and PRTC for the Distribution and Allocation of I-395 Annual Transit Investment Funds and authorize execution of it by the Chair once the December 20, 2017, Memorandum of Agreement between and among the Commissions, the CTB, DRPT, and VDOT has been fully executed by all parties.

At the January meeting the Commission will be asked to approve the Memorandum of Agreement between NVTC and PRTC for the Distribution and Allocation of I-395 Annual Transit Investment Funds, which outlines the distribution and allocation of the annual transit payment under the I-395 Express Lanes project. This agreement would allow for the annual transit investment (ATI) funds to be administered under a joint arrangement, reducing program administration costs and facilitating greater regional cooperation in the selection of projects. The attached MOA **reflects technical edits done in consultation with jurisdictional attorneys.**

This MOA would establish a new Commuter Choice program that serves commuters along the I-395/95 corridor. It is anticipated that the first annual transit payment of \$15 million would be available to the Commissions at the commencement of tolling on the I-395 Express Lanes in late 2019. Upon enactment, NVTC and PRTC will jointly establish a program timeline and project selection process for the initial call for projects, anticipating selected projects would commence service on Toll Day One (as early as October 2019).

Background

In June 2017 the Virginia Department of Transportation (VDOT) entered into an agreement with 95 Express Lanes, LLC, for the extension of approximately eight miles of HOT lanes between Turkeycock Run (near Edsall Road) and the vicinity of Eads Street in Arlington. Under this project, the two existing High Occupancy Vehicle (HOV) lanes are being converted to express lanes and a third lane is being added, providing three reversible



Source: Virginia Department of Transportation

express lanes. As a part of the agreement, 95 Express Lanes LLC agreed to provide the Commonwealth with an annual payment for transit services of \$15 million per year, escalating by 2.5 percent per year, beginning on the commencement of tolling through the life of the 70-year agreement. Once the project is completed, vehicles with three or more people will be able to use the express lanes for free while vehicles with fewer than three people have the choice to pay a variable toll and use the express lanes. Construction began in August 2017, with the new extended lanes opening in October 2019 and the entire project set for completion in summer 2020.

Through a separate [Memorandum of Agreement between the Commonwealth \(CTB, VDOT, DRPT\) and NVTC and PRTC](#), (approved by NVTC and PRTC in November 2017 and approved by CTB in December 2017) the Commonwealth agreed to provide \$15 million/year plus escalation to NVTC and PRTC to administer a program that funds multimodal projects along the I-395/95 Express Lanes corridor. The agreement includes the opportunity for NVTC and PRTC to mutually agree on a joint approach for selecting projects and would allow the Commissions to collectively select projects, subject to the approval of the Commonwealth Transportation Board. **While the MOA between the Commonwealth and NVTC and PRTC was approved by the CTB in December 2017, the Commonwealth has not completed the execution of that document. NVTC and PRTC are awaiting a final executed document from the Secretary of Transportation expected in early January.**

The agreement proposes an allocation approach that would proportion annual funding based upon the populations of jurisdictions along the corridor. For NVTC, the population calculation is proposed to include the counties of Fairfax and Arlington and the City of Alexandria. For PRTC, the population calculation is proposed to include the counties of Prince William, Stafford, and Spotsylvania and the City of Fredericksburg. The agreement does permit NVTC and PRTC to develop an alternate funding approach, subject to approval by the Commonwealth.

Eligible applicants include all NVTC and PRTC jurisdictions and any public transit providers that serve those jurisdictions. Similar to the [Transform I-66 agreement](#) between NVTC and the Commonwealth, eligible projects would include transit capital and operations, park and ride lots, Transportation Demand Management (i.e., carpool/vanpool, transit incentives), and roadway operational improvements. Metrorail, Metrobus, and the Virginia Railway Express operations and capital are specifically called out as eligible projects in the proposed agreement.

As with the I-66 Commuter Choice Program, all projects would be required to benefit the toll payers of the corridor. Under the agreement with the Commonwealth, the corridor is inclusive of the entire I-395/95 37-mile Express Lanes corridor.

Selected projects would need to support the goals of the agreement, as follows:

1. Move more people;
2. Enhance transportation connectivity;
3. Improve transit service;
4. Reduce roadway congestion; and
5. Increase travel options.

Elements of the Proposed MOA

The proposed Memorandum of Agreement will establish the implementation of this joint program, including how the annual transit funds are disbursed to the Commissions, and the process by which the Commissions will select projects for funding. Key elements of the proposed agreement are as follows:

1. Distribution of ATI Funds

The proposed MOA designates NVTC as the recipient and manager of the annual transit investment (ATI) funds for purposes of jointly administering the program with PRTC.

2. Project Selection Process

Each year, NVTC and PRTC would jointly agree upon a process for project selection in accordance with the MOA with the Commonwealth. The process shall include a time line such that the projects selected by the Commissions can be sent to the CTB for review at its May workshop and approval at its June meeting.

3. Reports

- a) The NVTC Executive Director and the PRTC Executive Director shall provide joint reports to the Commissions quarterly, and at such additional times as either PRTC or NVTC may request, about the status of project funds.
- b) Annually, and in advance of the required annual report to the CTB, the NVTC Executive Director and the PRTC Executive Director shall provide a joint report to the Commissions of the status of all funded projects.

This page intentionally left blank.

**AGREEMENT BETWEEN NVTC AND PRTC
FOR DISTRIBUTION AND ALLOCATION OF
I-395 ANNUAL TRANSIT INVESTMENT FUNDS**

THIS AGREEMENT is entered into the ___ day of _____, 2019, by and between the Northern Virginia Transportation Commission (“NVTC”) and the Potomac and Rappahannock Transportation Commission (“PRTC”), (together, the “Commissions”), for the distribution and allocation of the I-395 annual transit investment funds.

WITNESSETH:

WHEREAS, on July 31, 2012, VDOT and 95 Express Lanes, LLC (the “Concessionaire”) entered into a comprehensive agreement (the “Comprehensive Agreement”) under which the Concessionaire developed and, since December 2014, operates approximately 29 miles of high-occupancy toll lanes (“HOT Lanes”) in the median of Interstate 95 between the Route 610 interchange (Garrisonville Road) and Turkeycock Run (the “Original 95 HOT Lanes”); and

WHEREAS, on June 8, 2017, VDOT and the Concessionaire amended and restated the Comprehensive Agreement (the “ARCA”) to add in the median of Interstate 395 approximately eight miles of HOT Lanes between Turkeycock Run and the Washington D.C. Line (the “395 HOT Lanes”) so that, after the Concessionaire has designed and built the 395 HOT Lanes, the Original 95 HOT Lanes and the 395 HOT Lanes will be operated and maintained by the Concessionaire under the ARCA as a continuous and unified 37-mile HOT Lane facility (the “I-95/I-395 Project”);

WHEREAS, beginning upon service commencement of the 395 HOT Lanes, the ARCA requires the Concessionaire to pay to VDOT an annual transit investment (the “ATI”) from toll revenue attributable to the addition of the 395 HOT Lanes (the “395 Revenues”);

WHEREAS, the first-scheduled ATI payment is \$15,000,000 and each subsequent scheduled ATI payment escalates at 2.5%, as reflected in Exhibit A; and

WHEREAS, the parties entered into a Memorandum of Agreement with VDOT dated December 20, 2017, (the “DRPT-VDOT MOA”) regarding the distribution and use of the ATI funds; and

WHEREAS, in accordance with the DRPT-VDOT MOA, the parties intend to use the ATI funds for projects along the “Corridor” (herein defined as the stretch of Interstates 95 and 395 along which the Concessionaire operates and maintains HOT Lanes, including Route 1, Virginia Railway Express (“VRE”), and other adjacent and nearby routes) (the “ATI Funded Projects”) to achieve the following goals: (1) maximize person throughput in the Corridor; and (2) implement multimodal improvements to: (i) improve mobility along the Corridor, (ii) support new, diverse travel choices, and, (iii) enhance transportation safety and travel reliability ((1) and (2) collectively the “Improvement Goals”), each of which will must benefit the users of the I-95/I-395 Project;

WHEREAS, to fund ATI Funded Projects designed to accomplish the Improvement Goals, VDOT desires to transfer periodically to DRPT, and DRPT desires to transfer periodically to NVTC and PRTC, the ATI funds received by VDOT under the ARCA; and

WHEREAS, such ATI Funded Projects would be funded in whole or in part from the ATI funds transferred from VDOT to DRPT, and, in accordance with the DRPT-VDOT MOA, the CTB has delegated to NVTC and PRTC the authority to select and administer the ATI Funded Projects; and

WHEREAS, PRTC and NVTC have reached agreement on the manner in which funds from the ATI funds are disbursed to them, and the process by which they will select for CTB

approval the specific projects funded with the ATI funds, all in accordance with the DRPT-VDOT MOA, and wish to set forth that agreement hereafter.

NOW, THEREFORE, based upon the foregoing, and other good and valuable consideration, NVTC and PRTC agree as follows:

1. Distribution of ATI Funds.

- a. As provided in the DRPT-VDOT MOA, the ATI funds shall be distributed annually to NVTC and PRTC in accordance with the population based allocation set forth in the DRPT-VDOT MOA and in such amounts as provided in Exhibit A. NVTC shall serve on behalf of the Commissions as the recipient of all ATI funds disbursed to them. NVTC shall notify the VDOT Commissioner and the DRPT Director, as well as the Secretary of Transportation, of NVTC's role in this respect, and shall request that the ATI funds be disbursed as directed by NVTC for the benefit of the Commissions. PRTC shall also provide such direction to the foregoing representatives of the Commonwealth regarding how disbursement of the ATI funds to PRTC shall be made as may be necessary for NVTC to be the recipient as described herein.
- b. NVTC shall establish a depository for ATI funds disbursed to the Commissions, and shall receive and manage such funds on behalf of the Commissions;
~~separately accounting for those funds attributable to NVTC and those attributable to PRTC based on the population based allocation set forth in the DRPT MOA.~~
NVTC shall invest those funds in accordance with applicable provisions of law.
NVTC shall create and maintain all funds and accounts containing the ATI funds

separate and apart from all other funds and accounts of NVTC and PRTC. Said funds shall constitute a “special revenue fund” as defined by the Governmental Accounting Standards Board. The revenues and expenses relating to the use of the ATI funds and the ATI Funded Projects undertaken shall not be commingled with any other funds, accounts, venues, or expenses of NVTC or PRTC. NVTC and PRTC shall each report for the ATI Funded Projects financed by ATI funds and shall be reported as an applicable special revenue fund within their financial statements. Expenditures will be recorded and reported for each ATI Funded Project ~~and, for accounting purposes, shall be attributed to NVTC and PRTC based on allocation formula set forth in the DRPT MOA.~~ All ATI funds transferred to NVTC and PRTC shall be held in accounts with a financial institution under an arrangement that, to the extent reasonably practicable, preclude such funds from being an asset subject to the claims of creditors of NVTC and PRTC, except as provided in the DRPT-VDOT MOA.

2. Project Selection Process.

- a. In the years after the year in which tolling begins, by January 31st of each year, the Commissions shall establish a process to be used for the selection of capital and operating projects to be funded, in whole or in part, with the ATI funds anticipated to be disbursed to the Commissions as set forth in Exhibit A. ATI funds attributable to NVTC and to PRTC may be expended for ATI Funded Projects selected as provided herein without regard for whether the ATI Funded Project is located within NVTC or PRTC, and the ATI funds shall not be required to be spent in each Commission’s geographic territory based on the formula in

which the ATI funds were distributed. The process shall include a time line such that the ATI Funded Projects selected by the Commissions can be sent to the CTB for review at its May workshop and approval at its June meeting, or such other meetings as the CTB may prescribe from time to time. The process shall also include at least the following three elements:

(1) A request to the following entities to submit a list of their preferred proposed ATI Funded Projects to NVTC and PRTC:

- (i) all jurisdictions that are members of either NVTC or PRTC, and
- (ii) other public transportation providers providing services in those jurisdictions;

(2) The evaluation, prioritization, and selection of proposed ATI Funded Projects by NVTC and PRTC, the development of a funding strategy for each proposed ATI Funded Project, and the submission of proposed ATI Funded Projects (including a funding strategy for each) by NVTC and PRTC to the CTB, through DRPT; and

(3) A public hearing held by NVTC and PRTC, jointly or individually, prior to NVTC and PRTC's selection of proposed ATI Funded Projects for submission to the CTB.

b. Each ATI Funded Project selected by the Commissions shall meet each of the following four criteria (the "Project Criteria"):

- (1) Must reasonably relate to or benefit the toll-paying users of the I-95/I-395 Project;

(2) Must have the capacity to attain one or more of the Improvement Goals;

(3) Must be one of the following types of multimodal transportation improvements serving the Corridor (which term, for the avoidance of doubt, includes adjacent and nearby routes):

i. New or enhanced local and commuter bus service, including capital and operating expenses (*e.g.*, fuel, tires, maintenance, labor, and insurance), and transit priority improvements,

ii. Expansion or enhancement of transportation demand management strategies, including without limitation, vanpool, and formal and informal carpooling programs and assistance,

iii. Capital improvements for expansion or enhancement of Washington Metropolitan Area Transit Authority rail and bus service, including capital and operating expenses, and improved access to Metrorail stations and Metrobus stops,

iv. New or enhanced park and ride lot(s) and access or improved access thereto,

v. New or enhanced VRE improvements or services, including capital and operating expenses,

vi. Roadway improvements in the Corridor (which term, for the avoidance of doubt, includes adjacent and nearby routes),

vii. Transportation Systems Management and Operations as defined in 23 U.S.C. § 101(a)(30) on September 30, 2017, or

viii. Projects identified in Commonwealth studies and plans or projects in the region's constrained long range plan (including without limitation the I-95/395 Transit and TDM Study) or regional transportation plans approved by the Northern Virginia Transportation Authority, as any such plan may be updated from time to time; and

(4) Must demonstrate that the ATI Funded Projects will be in compliance with all applicable laws, rules, and regulations and have received or will receive all required regulatory approvals.

- c. Once an ATI Funded Project is approved, the authority to obligate and expend ATI funds for the ATI Funded Project shall be subject to execution of an agreement between the Commissions and the recipient of the ATI funds for the ATI Funded Project.
- d. The Commissions may agree to finance ATI Funded Projects with debt issued by one or both Commissions supported by the annual ATI funds and such other funds as the Commissions deem appropriate. Any such debt shall be subject to the provisions of the ~~DRPT MOA~~[DRPT-VDOT MOA](#).
- e. In the year in which tolling begins, the Commissions shall establish a process for selection of ATI Funded Projects that meet the foregoing criteria with the objective of implementing the ATI Funded Projects on or before the day tolling begins.

3. Reports.

- a. Not less than semi-annually, and at such additional times as either PRTC or NVTC may request, the NVTC Executive Director and the PRTC Executive Director shall provide a joint report to the Commissions of the status of all ATI Funded Projects for which ATI funds have been allocated, which report shall include, on a project by project basis, the amount of ATI funds authorized for expenditure on the ATI Funded Project, the amount expended, and the status of the project. ~~Once presented to the Commissions, the annual report shall be provided to the Secretary of Transportation.~~
- b. NVTC and PRTC shall provide a joint annual report to the CTB within 120 days of the end of NVTC's and PRTC's fiscal year. The report shall contain at a minimum the following four items:
 - (1) A description of the ATI Funded Projects selected for funding in the past fiscal year and the benefits that were the basis for evaluation and selection of each such ATI Funded Projects;
 - (2) Starting five years after the effective date of this Agreement, a review of the ATI Funded Projects funded in past fiscal years describing the degree to which the expected benefits were realized or are being realized;
 - (3) In the event that an ATI Funded Project is not providing substantially similar benefits to those that were the basis for evaluation and selection of the ATI Funded Project, the report shall evaluate the viability of a plan to either (i) modify such ATI Funded Project, or (ii) redeploy assets in such

ATI Funded Project to other eligible ATI Funded Projects that are expected to provide greater benefits; and

(4) The proposed uses of: (i) residual, unobligated balances of ATI funds carried over from prior years, and (ii) interest earned on such ATI funds.

4. **Insurance.** NVTC and PRTC shall each include the Commonwealth of Virginia, the CTB, VDOT, DRPT, and their officers, employees, and agents, (collectively “State Indemnitees”) as additional insureds on NVTC and PRTC’s insurance policies so the State Indemnitees are protected from and against any losses as defined in the ~~DRPT MOA~~DRPT-VDOT MOA. In addition, NVTC and PRTC shall contractually require their contractors, subcontractors, vendors, and others providing goods or performing services related to any ATI Funded Project to indemnify the State Indemnitees against any losses as defined in the ~~DRPT MOA~~DRPT-VDOT MOA.

5. **Disputes.** In the event of a dispute under this Agreement, the Commissions’ Executive Directors agree to meet and confer in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to the Commissions for formal confirmation and approval, as necessary. If no satisfactory resolution can be reached via the meet and confer method, either Commission may pursue all remedies it may have at law, including all judicial remedies.

6. **Amendments.** This Agreement may be modified, in writing, upon mutual agreement of both Commissions.

7. **Incorporation of Recitals.** The recitals to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The Commissions acknowledge and agree that such recitals are true and correct.
8. **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Virginia.
10. Term. The term of this Agreement shall commence on the date last signed by one of the Commissions (“the Effective Date”) and shall expire concurrent with the expiration or termination of the DRPT-VDOT MOA, as may be amended and restated from time to time.

IN WITNESS WHEREOF, the Commissions have executed this Agreement by their duly authorized agent as of the date and year aforesaid.

NORTHERN VIRGINIA TRANSPORTATION COMMISSION

Katherine A. Mattice, Executive Director

POTOMAC AND RAPPAHANNOCK TRANSPORTATION COMMISSION

Robert A. Schneider, Executive Director

EXHIBIT A

| PART A – ANNUAL TRANSIT INVESTMENT FORM | | | |
|---|--|------------------|--|
| Payment Due Date | Annual Transit Investment (\$ Nominal) | Payment Due Date | Annual Transit Investment (\$ Nominal) |
| 395 Service Commencement Date | \$15,000,000 | + 35 year | \$35,598,078 |
| + 1 year | 15,375,000 | + 36 year | 36,488,030 |
| + 2 year | 15,759,375 | + 37 year | 37,400,230 |
| + 3 year | 16,153,359 | + 38 year | 38,335,236 |
| + 4 year | 16,557,193 | + 39 year | 39,293,617 |
| + 5 year | 16,971,123 | + 40 year | 40,275,958 |
| + 6 year | 17,395,401 | + 41 year | 41,282,857 |
| + 7 year | 17,830,286 | + 42 year | 42,314,928 |
| + 8 year | 18,276,043 | + 43 year | 43,372,801 |
| + 9 year | 18,732,945 | + 44 year | 44,457,121 |
| + 10 year | 19,201,268 | + 45 year | 45,568,549 |
| + 11 year | 19,681,300 | + 46 year | 46,707,763 |
| + 12 year | 20,173,332 | + 47 year | 47,875,457 |
| + 13 year | 20,677,666 | + 48 year | 49,072,343 |
| + 14 year | 21,194,607 | + 49 year | 50,299,152 |
| + 15 year | 21,724,472 | + 50 year | 51,556,631 |
| + 16 year | 22,267,584 | + 51 year | 52,845,547 |
| + 17 year | 22,824,274 | + 52 year | 54,166,685 |
| + 18 year | 23,394,881 | + 53 year | 55,520,852 |
| + 19 year | 23,979,753 | + 54 year | 56,908,874 |
| + 20 year | 24,579,247 | + 55 year | 58,331,596 |
| + 21 year | 25,193,728 | + 56 year | 59,789,885 |
| + 22 year | 25,823,571 | + 57 year | 61,284,633 |
| + 23 year | 26,469,160 | + 58 year | 62,816,748 |
| + 24 year | 27,130,889 | + 59 year | 64,387,167 |
| + 25 year | 27,809,161 | + 60 year | 65,996,846 |
| + 26 year | 28,504,391 | + 61 year | 67,646,767 |
| + 27 year | 29,217,000 | + 62 year | 69,337,937 |
| + 28 year | 29,947,425 | + 63 year | 71,071,385 |
| + 29 year | 30,696,111 | + 64 year | 72,848,170 |
| + 30 year | 31,463,514 | + 65 year | 74,669,374 |
| + 31 year | 32,250,102 | + 66 year | 76,536,108 |
| + 32 year | 33,056,354 | + 67 year | 78,449,511 |
| + 33 year | 33,882,763 | + 68 year | 80,410,749 |
| + 34 year | 34,729,832 | | |
| | | Term of ARCA | \$2,696,840,696 |