

AGENDA

CVTA TECHNICAL ADVISORY COMMITTEE – Special Meeting

Wednesday, December 2, 2020

11:00 a.m.

Zoom Meeting

Members of the public may observe the meeting via YouTube Live Streaming on the [PlanRVA YouTube Channel](#). Opportunities for sharing comments are described in the [Public Participation](#) guide.

Members

- Town of Ashland
- Charles City County
- Chesterfield County
- Goochland County
- Hanover County
- Henrico County
- New Kent County
- Powhatan County
- City of Richmond
- VA House of Delegates
- Senate of VA
- Commonwealth Transportation Board
- VDRPT
- VDOT
- GRTC
- RMTA

WELCOME AND INTRODUCTIONS

(Eure)

Statement Regarding Virtual Meetings

(Parsons) page 1

Roll Call & Certification of a Quorum

(Parsons)

1. Consideration of Amendments to the Action Meeting Agenda

(Eure)

2. Public Comment Period – Open

(Eure/5 minutes).....

3. CVTA TAC Chairman’s Report

(Eure/10 minutes)

4. Agreement for Revenue Transfers with the Virginia Department of Transportation - Standard Project Agreement for Funding and Administration Draft

(Parsons/15 minutes)..... page 2

- a. SPA – Redline Version
- b. SPA – Clean Version

5. CVTA TAC Member Comments

(Eure/5 minutes).....

6. Next Meeting: December 7, 2020

(Eure)

7. Adjournment

(Eure)

Opening Statement for Electronic Meetings

Due to the 2020 COVID-19 virus and current guidance regarding physical distancing to reduce the potential for spread, meetings of the Central Virginia Transportation Authority are accessible in a virtual format in accordance with provisions of Virginia Code § 2.2-3708.2 and related legislation approved by the General Assembly of Virginia during the period of the Governor's State of Emergency Declaration for COVID-19.

While we meet in a remote/virtual format, we remain committed to public accessibility and opportunity to participate. Staff provided notice of this meeting to members and the public on November 30, 2020 through electronic posting on the PlanRVA website and email distribution of notice to members, alternates, and known interested parties, including the media.

This meeting will be recorded. Audio and visual recordings of the meeting and materials will be posted on the PlanRVA website within 48 hours of this meeting.

Any member of the public participating as an observer during the meeting today may submit comments or questions at any time prior to or during the meeting via email at CVTA@PlanRVA.org. All comments and questions submitted at this time will be reviewed following the meeting and to the extent practical, responses will be provided or posted on the PlanRVA website.

We ask that members identify themselves first when speaking so we can more accurately record the activities of the meeting. All lines should be muted to minimize additional noise and feedback. You may unmute your line at any time to request acknowledgement from the Chair.

Please let us know if you have any questions regarding the process for assuring effective facilitation of this meeting or for how members of the public may participate.

By providing this statement, staff certifies that we have followed the approved procedures for appropriate notice of this meeting and the means by which we are convening.

Please indicate your presence by saying "HERE" when your name is called during a roll call. Anyone who wishes to identify themselves following the roll call of members will be invited to do so.

**Standard Project Agreement for Funding and Administration
between
Central Virginia Transportation Authority
and
Virginia Department of Transportation**

CVTA Project: _____

UPC Number (If Applicable):

This Standard Project Agreement for Funding and Administration (the "Agreement") is made and executed in duplicate on this [●] day of [●], as between the Central Virginia Transportation Authority ("CVTA") and the Virginia Department of Transportation ("VDOT").

WITNESSETH

WHEREAS, the 2020 Virginia General Assembly adopted and enacted into law House Bill 1541, 2020 Va. Acts Chapter 1235 ("Chapter 1235"); and

WHEREAS, Chapter 1235 establishes CVTA pursuant to Chapter 37 of Title 33.2 of the Code of Virginia (the "CVTA Act"); and

WHEREAS, Chapter 1235 provides for imposition of certain state taxes in localities comprising Planning District 15, and further provides that the revenues derived from such taxes be deposited in the Central Virginia Transportation Fund (the "Fund") and used solely for transportation purposes benefiting the localities comprising Planning District 15, and certain administrative and operating expenses pursuant to Va. Code § 33.2-3706(B); and

WHEREAS, Chapter 1235 establishes the Fund and specifies that all revenues dedicated to the Fund pursuant to Va. Code § 58.1-638 and Va. Code §§ 58.1-2291 *et seq.* shall be paid into the state treasury, credited to the Fund, and the amounts so dedicated deposited monthly by the Comptroller (such amounts, together with interest earned thereon, are the "CVTA Revenues"); and

WHEREAS, CVTA and VDOT have determined it is desirable to work cooperatively to ensure the most effective and efficient delivery and implementation of CVTA projects with CVTA Revenues and other state and federal transportation funding sources; and

WHEREAS, VDOT is the Virginia state agency responsible for building, maintaining and operating the interstate, primary, and secondary state highway systems ("VDOT Highways"); and

WHEREAS, in light of VDOT’s responsibilities with respect to VDOT Highways, and CVTA’s responsibilities with respect to CVTA Revenues, VDOT and CVTA entered into a Memorandum of Agreement dated [●] (the “MOA”); and

WHEREAS, the MOA contemplates that CVTA and VDOT may, using the form of this Agreement (referred to as the “CVTA Model SPA” within the MOA), agree to undertake specific projects developed and/or administered by VDOT, and funded (in whole or in part) by CVTA Revenues; and

WHEREAS, CVTA desires to proceed with the project set forth and described on Appendix A to this Agreement (the “Project”), and that such Project would benefit the cities and counties that are embraced by CVTA and it otherwise satisfies the requirements of the CVTA Act; and

WHEREAS, VDOT agrees to administer and/or develop the Project in accordance with the budget (the “Project Budget”) and cashflow and construction schedule (the “Project Schedule”) set forth and described on Appendices A & B to this Agreement; and

WHEREAS, CVTA desires to provide funding for the administration and/or development of the Project out of CVTA Revenues, subject to the terms, conditions, and limitations set forth herein; and

WHEREAS, the Commonwealth Transportation Board (“CTB”) has the authority, pursuant to Va. Code § 33.2-214, to cause VDOT to enter into this Agreement and has authorized the Commissioner of Highways (the “Commissioner”) to enter into agreements with CVTA for project administration and development purposes, and Va. Code § 33.2-3708 authorizes CVTA to enter into this Agreement; and

WHEREAS, CVTA’s governing body and the CTB have each authorized their respective designee(s) to execute this Agreement on their respective behalf(s) as evidenced by copies of each such entity’s clerk’s minutes or such other official authorizing documents, which are appended hereto as Appendix E.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VDOT and CVTA (each a “Party” and together, the “Parties”) agree as follows:

ARTICLE I – Affirmative Covenants and Responsibilities of VDOT

1. Diligent Work. VDOT shall complete or perform or cause to be completed or performed all work relating to the Project, as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with (i) any and all applicable federal, state, and local laws and regulations (“Applicable Law”), and (ii) all terms and conditions of this Agreement, including, without limitation, the Project Budget and Project Schedule reflected in Appendices A & B.

2. Intended Purposes. Subject to and consistent with the requirements of **Article VII** of this Agreement, upon final payment to all contractors for the Project, if the Project is or is part of a VDOT Highway, VDOT shall use the Project for its intended purposes for the duration of the Project's useful life. If the Project is or is part of a VDOT Highway, VDOT shall be responsible to operate and/or maintain the Project after its completion (including responsibility to correct any defects or to cause any defects to be corrected), and under no circumstances will CVTA have any responsibility or obligation to operate and/or maintain the Project (or correct defects with respect to the Project). The provisions in this **Section 1.2** will survive the completion of the Project under this Agreement and/or the expiration or termination of this Agreement.
3. Selection of Contractors. VDOT shall select contractors, contract with contractors, and administer and enforce contracts all in a manner that is consistent in all material respects with the policies, procedures, and practices that VDOT uses where the state or VDOT bears the cost of a project; for example, VDOT shall use its customary policies, procedures, and practices relating to requesting bids/proposals, negotiating/finalizing terms and conditions of contracts (using VDOT's standard terms/forms where applicable), and monitoring and enforcing performance of contracts.
4. Performance Standards. VDOT shall perform or have performed in accordance with VDOT's standards for highways, bridges, and tunnels all design and engineering, all environmental work, and all right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions, as is required by this Agreement or that may be necessary for completion of the Project pursuant to the terms of this Agreement. If VDOT determines that a delay will more likely than not prevent the completion of a material phase of the Project (e.g., preliminary engineering or right-of-way acquisition), or the entire Project, in accordance with the Project Schedule, VDOT shall notify CVTA in writing and provide CVTA with such information as CVTA may reasonably request, including information pertaining to potential corrective measures and remedies against the contractor.
5. Unsatisfactory Bids and Proposals. If bids or proposals received for any portion of the Project are not qualitatively consistent with VDOT's standards for that work or quantitatively within VDOT's projections for that work, each as determined by VDOT in its good faith judgment, VDOT shall seek ~~[CVTA's]~~ the⁴ advice and

⁴~~NOTE TO CVTA: It is in both parties' interest to identify an authorized representative to coordinate with VDOT, whether the Authority's chairperson, or other chief executive. It is not practical for VDOT to go to CVTA's full governing body for each administrative task. This comment applies throughout the SPA where references to the executive director has been deleted.~~

consent of the CVTA Authorized Representative to (i) undertake a new procurement, or (ii) recommend alternative measures to CVTA, and seek CVTA's advice and consent regarding pursuit of those alternative measures. If CVTA grants its written consent to a modification to the Project Budget and/or Project Schedule to permit VDOT to enter into a contract to perform the work, VDOT and CVTA will work reasonably and in good faith to amend Appendices A & B to reflect the modified Project Budget and Project Schedule.

6. Multiple Funding Phases. VDOT recognizes that, if the Project contains multiple funding phases (as reflected on Appendices A & B), for which CVTA will provide funding (as scheduled on Appendix B), CVTA may not have sufficient cash flows to accelerate scheduled Project funding. In any circumstance where VDOT seeks to accelerate funding for the Project to the next funding phase, VDOT shall submit a written request to the CVTA Authorized Representative explaining VDOT's reasons why CVTA should authorize acceleration to the next funding phase. The CVTA Authorized Representative will thereafter review the circumstances underlying the request in conjunction with Appendices A & B and CVTA's current and projected cash flow position and make a determination whether to authorize the requested accelerated funding. The foregoing shall not prohibit VDOT from providing its own funds to accelerate a future funding phase of the Project and from requesting reimbursement from CVTA for having advance funded the relevant funding phase of the Project. However, VDOT further recognizes that the timing of CVTA's reimbursement to VDOT for having advance funded a funding phase of the Project will be dependent upon CVTA's cash flow position at the time such a request for reimbursement is submitted and may be dependent upon the extent to which the reimbursement of any such advanced funding is otherwise consistent with the terms of this Agreement, including Appendix B.
7. Updating Cash Flow Estimates. VDOT and CVTA shall regularly update cash flow estimates for the Project with the objective of keeping those estimates accurate throughout the life of the Project. VDOT shall provide all available information reasonably required by CVTA so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the life of the Project as described in Appendix B.
8. Payment Requisitions; Reports. VDOT shall provide to the CVTA Authorized Representative:
 - a. No more frequently than monthly, payment requisitions consistent with Appendix C (and the most recently approved CVTA cash flow estimates) that include (i) CVTA's standard payment requisition(s), containing detailed summaries of actual Project costs incurred with supporting documentation as determined by CVTA, and (ii) certifications that all such costs were incurred in the performance of work for the Project as

authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement; VDOT will endeavor to submit payment requisitions within 90 days after the corresponding eligible project expenses are incurred by VDOT, however, CVTA will not be relieved of its duty to pay VDOT for payment ~~requisitions—requisitions~~ submitted more than 90 days after the corresponding expenses were incurred by VDOT.²

- b. All monthly reports described on Appendix D.
9. Use of Assets and CVTA's Interest in Same. VDOT shall use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by CVTA under this Agreement ("Assets") for the designated transportation purposes of the Project and in accordance with Applicable Law throughout the useful life of each such Asset. If VDOT intends to sell, convey, or dispose any Asset funded with CVTA funds or intends to use any Asset for a purpose inconsistent with this Agreement, VDOT shall notify the CVTA Authorized Representative in writing of any such intent before further action is taken by VDOT in furtherance thereof. The Parties shall, thereafter, meet and confer to discuss what measures need to be taken regarding VDOT's proposed sale, conveyance, disposition, or use of any such Asset(s) so as to ensure compliance with all applicable requirements of the CVTA Act. All recommendations and/or proposed remedial actions developed by the Parties' ~~designated representatives—~~Authorized Representatives during the meet and confer process shall be formally presented to CVTA and the Commissioner for their respective approvals.
10. Return of Unexpended Funds. VDOT shall release or return any unexpended funds to CVTA no later than ninety (90) days after final payment has been made in respect of the Project.
11. Accurate Financial Records. VDOT shall maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other Applicable Law.
12. Original Drawings. VDOT shall maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations. Throughout the project development process, VDOT will provide

² ~~NOTE TO CVTA: 90-day rule is fine as an aspiration. But it is not always possible to requisition costs within 90 days of incurrence; it would not be fair for VDOT to absorb these costs.~~

~~to CVTA the most recent plans and electronic design files (i) at key milestones or upon request (i.e., conceptual, design, final construction, and as-built/as-built) to CVTA.]³ and (ii) at any time upon CVTA's written request.~~

13. Reimbursements. VDOT shall not use any funds provided by CVTA, including the funds specified on Appendix B, to pay any Project cost if the CVTA Act does not permit such Project cost to be paid with CVTA funds. VDOT shall reimburse CVTA (or such other entity as may have provided funds) for all funds provided by CVTA (or on behalf of CVTA) and, to the extent applicable and permitted by Applicable Law, with interest earned at the rate earned by CVTA, that VDOT misapplied, used, or requisitioned in contravention of the CVTA Act or any other Applicable Law, or any term or condition of this Agreement.
14. ⁴Compliance with Applicable Law. VDOT shall comply with all Applicable Law.
15. Certification after Final Payment. VDOT shall provide a certification to CVTA no later than ninety (90) days after final payment for the Project that VDOT adhered to all Applicable Law and all requirements of this Agreement. ~~[Such certification shall include a copy of the VDOT single program audit in accordance with 2 CFR 200.501, Audit Requirements.]⁵~~

ARTICLE II – Negative Covenants of VDOT

1. Selection of Contracts; Use of Funds. VDOT shall not enter into any contract to perform the work related to the Project if (i) the cost of that contract would exceed the portion of the Project Budget reflected in Appendix B that is allocated to the work covered by that contract, (ii) the cost of that contract, when aggregated with the cost of all other contracts relating to the Project that have been, or are expected to be, entered into would exceed the Project Budget reflected in Appendix B, or (iii) the schedule in the contract for performing and paying for the work related to the Project would be materially different (whether accelerated or delayed) from the Project Schedule set forth in Appendix B.
2. Prohibition Against More Favorable Provisions. VDOT shall not include in any contract with a contractor working on the Project any term, condition or remedy in

³ ~~NOTE TO CVTA: VDOT is happy to provide whatever records CVTA wants. But we cannot tell exactly what duty is intended by the new language proposed by CVTA. Can CVTA clarify?~~

⁴ ~~NOTE TO CVTA: With respect to deleted paragraph 14, federal reimbursement risk is on VDOT since it will administer the project and seek reimbursement from federal sources. CVTA does not have any exposure for federal reimbursements.~~

⁵ ~~NOTE TO CVTA: Under review by VDOT financial. Also, CFR reference discusses "single audit" veruse "program-specific audit" but not "single program" audit. What is the correct reference in this instance?~~

respect of Additional Costs that is more favorable to the contractor than the terms, conditions, or remedies VDOT includes in standard contracts where the state or VDOT bears the cost of the project.

ARTICLE III – Representation and Warranties of VDOT

1. VDOT represents and warrants that each of the Project Budget and Project Schedule (Appendices A & B) have been prepared in good faith, in accordance with the practices and procedures that VDOT uses for projects where the state or VDOT bears the cost of the project (including, without limitation, the practices used to price and budget services that may be internally sourced, such as Construction Engineering Inspection).
2. VDOT represents that it is not acting as a partner or agent of CVTA; and nothing in this Agreement shall be construed as making any Party a partner or agent with any other Party.

ARTICLE IV – VDOT Acknowledgments

1. VDOT hereby acknowledges that VDOT is solely responsible for the administration and/or development of the Project and all engagements, commitments, and agreements with contractors. VDOT shall ensure that VDOT's contractors maintain surety bonds (or other project security) and insurance in amounts and with coverages that VDOT requires under its Road and Bridge Specifications for all work to be performed for the Project, and name CVTA and its members, officers, employees and, if applicable, any CVTA bond trustee as additional insureds on any such insurance policy, and present CVTA with satisfactory evidence thereof before any work on the Project commences.
2. VDOT hereby acknowledges and recognizes that VDOT or its contractors are solely responsible for obtaining, and shall obtain, all permits, permissions and approvals necessary to construct and/or operate the Project, including, but not limited to, obtaining all required VDOT and local land use permits, zoning approvals, environmental permits, and regulatory approvals.
3. VDOT hereby acknowledges and recognizes if the Project is being funded, in whole or in part, with federal and/or state funds (in addition to CVTA Revenues), that VDOT shall (a) take any and all necessary actions to satisfy any conditions to such additional federal and/or state funding (provided that such actions are within the control of VDOT) and to enforce any commitments made in connection therewith, (b) comply with all applicable federal and state funding requirements within the control or purview of VDOT, and (c) include in its contracts with contractors provisions that permit such contracts to be terminated, without penalty, if the funding is rescinded or otherwise becomes unavailable (for clarification, a

provision shall not be deemed to include a penalty solely as a result of terms that require payment of compensation due and owing at the time of cancellation and reasonable costs associated with cancellation provided that such costs are consistent with costs paid pursuant to VDOT's standard contract terms relating to contract cancellation and termination). VDOT acknowledges and agrees that if funding from such an additional federal or state source is rescinded or otherwise becomes unavailable CVTA (i) shall not be responsible for any amount in excess of its commitment set forth on Appendix B, and (ii) may (A) replace said reduced funding with CVTA Revenues or (B) may request VDOT to immediately suspend or discontinue all work relating to the Project, provided if CVTA requests suspension, CVTA shall be responsible for the costs reasonably incurred in connection with such suspension. Should CVTA neither replace the rescinded or unavailable funding, nor request VDOT to suspend or discontinue work, VDOT may reduce the Project scope or take any other actions needed to reduce the Project costs to fit within the Project Budget.⁶

ARTICLE V – Affirmative Covenants and Responsibilities of CVTA

1. Reimbursement Basis. Subject to the limitations as to amounts set forth in Appendix B (and subject to **Article VII** of this Agreement), CVTA shall provide to VDOT the funding authorized by CVTA for the Project, on a reimbursement basis as set forth in this Agreement and as specified in Appendix B to this Agreement or the most updated amendment thereto, as approved by CVTA.
2. Program Coordinator. CVTA shall assign a person to serve as a Program Coordinator for the Project, who will be responsible for review of the Project on behalf of CVTA for purposes of ensuring it is being completed in compliance with this Agreement and all CVTA requirements. CVTA's Program Coordinator will be responsible for overseeing, managing, reviewing, and processing, in consultation with the CVTA Authorized Representative, all payment requisitions submitted by VDOT for the Project. CVTA's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the scope, budget or schedule of the Project as set forth on Appendices A & B.
3. Payment Requisitions. The CVTA Authorized Representative or Program Coordinator shall review all payment requisitions and supporting documentation for the Project to determine the submission's legal and documentary ~~sufficiency~~sufficiency. If the payment requisition is sufficient as submitted, payment will be made within thirty (30) days from receipt. Approved payments may be made by means of electronic transfer of funds from CVTA to or for the

~~⁶-NOTE TO CVTA: Fault-based dichotomy proposed by CVTA would invite disputes if funds are ever rescinded. Arguably, it could almost always be VDOT's "fault" if funds are rescinded. The parties have the same incentive to accomplish projects in the region. VDOT is viewing this as a partnership and not an adversarial relationship.~~

account of VDOT. If the payment requisition is, in CVTA's reasonable judgment, deemed insufficient, within twenty (20) days from receipt, CVTA's Program Coordinator will notify VDOT in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed to authorize the payment request. Payment will be withheld until all deficiencies identified by CVTA have been corrected to CVTA's reasonable satisfaction. Under no circumstances will CVTA authorize payment for any work performed by or on behalf of VDOT that is not in conformity with the requirements of the CVTA Act or this Agreement.

4. Accelerated or Supplemental Requests for Funding. CVTA's Finance Committee shall review all of VDOT's accelerated or supplemental requests for funding from CVTA under **Section I.5** and **Section X.3**, respectively, of this Agreement. CVTA's Finance Committee will thereafter make a recommendation on any such request to CVTA for final determination by CVTA.
5. Periodic Compliance Reviews. CVTA shall conduct periodic compliance reviews scheduled in advance for the Project so as to assess whether the work being performed likely remains within the scope of this Agreement, the CVTA Act, and other Applicable Law. Such compliance reviews may entail review of VDOT's financial records for the Project and on-Project site inspections.
6. Records Retention. Upon making final payment to VDOT for the Project, CVTA shall retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans, if any, developed pursuant to or in association with the Project for the time periods required by the Virginia Public Records Act and as may be required by other Applicable Law.
7. CVTA Funds Determinations. CVTA shall be the sole determinant of the amount and source of CVTA funds to be provided and allocated to the Project and the amounts of any CVTA funds to be provided in excess of the amounts specified in Appendix B.

ARTICLE VI – CVTA Acknowledgments

1. CVTA hereby acknowledges that if, as a result of CVTA's review of any payment requisition or of any CVTA compliance review, CVTA determines that VDOT is required under **Section I.12** of this Agreement to reimburse funds to CVTA, CVTA will promptly advise VDOT's ~~designated representative~~ Authorized Representative in writing. VDOT will thereafter have thirty (30) days to respond in writing to CVTA's initial findings. CVTA's Finance Committee will review VDOT's response and make a recommendation to CVTA. If CVTA makes a final determination that VDOT is required under **Section I.12** of this Agreement to reimburse funds to

CVTA, the Parties should engage in dispute resolution as provided in **Article VIII** of this Agreement. Pending final resolution of the matter, CVTA will not withhold further funding on the Project. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either Party's legal rights or available legal remedies.

ARTICLE VII – Mutual Acknowledgments Regarding Appropriations

1. The Parties hereby acknowledge and agree that nothing herein shall require or obligate CVTA to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by its governing body for the Project.
2. The Parties hereby acknowledge and agree that all funding provided by CVTA pursuant to Chapter 1235 is subject to appropriation by the Virginia General Assembly. The Parties further acknowledge that: (i) the moneys allocated to the Fund pursuant to applicable provisions of the Code of Virginia and any other moneys that the General Assembly appropriates for deposit into the Fund are subject to appropriation by the General Assembly and (ii) CVTA's obligations under this Agreement are subject to such moneys being appropriated to the Fund by the General Assembly.
3. The Parties hereby acknowledge and agree that VDOT's obligations under this Agreement are subject to funds being appropriated by the General Assembly and allocated by the Commonwealth Transportation Board and otherwise legally available to VDOT for CVTA projects.
4. Should VDOT be required to provide additional funds in order to proceed or complete the funding necessary for the Project, VDOT shall certify to CVTA that such additional funds have been allocated and authorized by the CTB and/or appropriated by the Virginia General Assembly as may be applicable or have been obtained through another independent, lawful source.

ARTICLE VIII — Dispute Resolution

1. In the event of a dispute under this Agreement, the Parties agree to meet and confer promptly to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. ~~{First, CVTA's authorized representative}~~ Authorized Representative and the VDOT Program Manager are authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute ~~is-cannot be~~ reached via the aforesaid meet and confer dispute resolution method, ~~such resolution shall be presented to CVTA and to the~~

~~Commissioner for formal confirmation and approval.]⁷If no satisfactory resolution can be reached via the aforesaid meet and confer method, each the dispute will be elevated to the CVTA Chair and the Commissioner to conduct negotiations on behalf of their respective entities. Upon reaching any resolution to a dispute, if required by law, the Parties will seek the consent of their respective governing bodies with respect to the resolution reached. However, if, after discussions between the CVTA Chair and the Commissioner have concluded, the Parties are unable to reach a satisfactory resolution, either~~ Party is free to pursue any and all remedies it may have at law or in equity, including all judicial remedies. The foregoing dispute resolution method shall not bar either Party's right to seek equitable relief on an emergency basis.

ARTICLE IX – Modification or Amendment of the Agreement

1. This Agreement may not be modified or amended, except pursuant a written agreement that is duly authorized, executed, and delivered by both Parties.
2. If CVTA is able to obtain a source of funding for the Project that would reduce or replace the amount of CVTA Revenues expended on the Project, VDOT and CVTA will work in good faith to amend this Agreement so it takes into account that other funding.
3. If CVTA proposes to issue bonds, VDOT and CVTA will work in good faith to adopt such amendments to this Agreement as VDOT and CVTA may mutually agree are necessary and desirable in connection with the bond offering.
4. The Parties acknowledge that each of the Project Budget and Project Schedule may be amended pursuant to **Section X** of this Agreement, or as follows:
 - a. If VDOT determines, after receipt of proposals or bids for any work related to the Project, that the cost of the contract for said work will result in a significant reduction in costs associated with a portion of the Project Budget reflected in Appendix B that is allocated to work covered by the contract, then VDOT shall notify the CVTA Authorized Representative of the significant reduction in costs. For purposes of this **Section IX.4(a)**, CVTA and VDOT agree that a "significant reduction in costs" shall mean a reduction in costs that has the effect of reducing, in Appendix B, (x) the costs for the particular portion of the Project Budget allocated to work covered by the contract by more than 20 percent or (y) the entire Project Budget either by more than 10 percent or \$10,000,000, whichever applies.

~~⁷**NOTE TO CVTA:** Need some concrete intermediate steps to resolve disputes without going to court. Can CVTA recommend one or two intermediate levels of resolution as conditions precedent to court?~~

In the event there is a significant reduction in costs, VDOT and CVTA will work reasonably and in good faith to amend Appendix B fairly to reflect the effect of the reduction ~~(by way of example, if the Appendix B costs are to be paid initially from both CVTA Revenues and state or federal contributions, then the commitment of each funding source would be reduced by its proportionate share of the reduction in costs, which proportionate share will be based on the funding source's proportionate responsibility for the total budgeted costs before the reduction was realized) (for the avoidance of doubt, the amount by which a commitment is reduced shall be considered deobligated from the Project), with the goal of applying the savings to supplant state and CVTA funding commitments, and to maximize the use of federal funds on the project.~~⁸

- b. If any federal or state funding not previously available for the Project becomes available for any portion of the Project Budget reflected in Appendix B, then VDOT and CVTA will work reasonably and in good faith to amend Appendix B fairly to reflect the benefit of the additional funding ~~(by way of example, if the Appendix B costs are to be paid initially from both CVTA Revenues and state contributions, but federal funding subsequently becomes available, then the respective commitments of CVTA and the state would be reduced by each Party's proportionate share of the additional funds, which proportionate share will be based on the Party's proportionate responsibility for the total budgeted cost before the additional funding became available), with the goal of applying the additional funding to supplant state and CVTA funding commitments, and to maximize the use of federal funds on the project.~~⁹

ARTICLE X – Additional Costs

1. Notice of Additional Costs. VDOT shall promptly notify the CVTA Authorized Representative if VDOT determines that any additional, unbudgeted costs (*i.e.*, in excess of the Project's initial budget, inclusive of any contingency reserve) may be incurred to perform and complete the Project ("Additional Costs"), which notice shall include a description of the Additional Costs, an explanation of how they

⁸ ~~NOTE TO CVTA: Provision is about how savings will be applied. Language proposed by CVTA had to do with expenditures. Also, expected cash flow and use of sources for each project will need to be agreed at the time a funding plan is in place. Committing now to a fixed priority of uses of funds is not workable as VDOT may not be able to front load federal and/or state funds.~~

⁹ ~~NOTE TO CVTA: Provision is about how state and CVTA funds will be displaced if an unexpected source becomes available. Language proposed by CVTA had to do with expenditures. Also, expected cash flow and use of sources for each project will need to be agreed at the time a funding plan is in place. Committing now to a fixed priority of uses of funds is not workable as VDOT may not be able to front load federal and/or state funds.~~

arose and the assumptions in the initial budget regarding those costs, and a detailed estimate of the Additional Costs.

2. VDOT Recommendations on Additional Costs. VDOT shall make recommendations regarding any curative actions that may be available relating to any identified Additional Costs, including any potential modification or reduction that may be made to the Project scope or design, or any other action, to stay within the initial budget for the Project.
3. Absorbable Additional Costs. If the Additional Costs can be absorbed in the Project Budget by modifying or reducing the scope or design of the Project (or avoided by cancelling the Project or any portion thereof), CVTA may, in its sole discretion, elect to (i) authorize VDOT to proceed with such modifications or reductions, (ii) authorize the Additional Costs (or if a combination of (i) and (ii) is feasible, CVTA may elect such combination), or (iii) elect to cancel the Project or a portion thereof; provided, however, in any case, the respective obligations of VDOT and CVTA, as modified by the elected alternative, shall be set forth in an amendment to this Agreement (VDOT and CVTA shall work in good faith to finalize and execute such amendment).
4. Non-Absorbable Additional Costs. If the Additional Costs cannot be absorbed in the initial budget by modifying or reducing the scope or design of the Project then CVTA may, in its sole discretion, elect to (i) authorize the Additional Costs, or (ii) cancel the Project or a portion thereof. If CVTA elects to authorize the Additional Costs then, subject to **Article VII** of this Agreement, such Additional Costs shall be paid from federal, state, and/or CVTA Revenues, in proportions as agreed by the parties at the time.~~⁴⁰However, CVTA may not cancel a Project or portion thereof to the extent VDOT is able to source non-CVTA funds for the portion of the Additional Work that cannot be absorbed in the initial budget, with the goal of expending federal funds first before expending state and/or CVTA Revenues.~~
5. Termination for Additional Costs. If CVTA elects to cancel the Project (or any portion thereof) pursuant to **Section X.3 or X.4**, (A) all compensation due and owing to any and all contractors for work on the Project that has been completed at the time of cancellation, shall be paid in accord with Appendix B, and (B) subject to **Article VII** of this Agreement, all reasonable costs associated with the cancellation due and owing to said contractors pursuant to the terms of the contracts with the contractors, which terms shall be consistent with VDOT's standard contract terms relating to contract cancellation and termination, and any amounts of federal funds that must be repaid because of the cancellation (any

~~⁴⁰**NOTE TO CVTA:** This provision speaks specifically to costs that cannot be absorbed by the project budget, thus, would have to be funded uses sources above and beyond those identified in Appendix B.~~

such amounts, ~~together collectively~~, the “Breakage Compensation”), shall be paid (or repaid) with CVTA Revenues, unless VDOT and CVTA mutually determine that cancellation of the Project is necessary or warranted, in which case, the Breakage Compensation shall be paid from federal, state, and/or CVTA Revenues, ~~[respectively]~~¹⁴~~and as shown in Appendix B in proportions as agreed by the parties at the time, with the goal of expending federal funds first before expending state and/or CVTA Revenues.~~

6. Additional Costs from Right-of-Way Condemnation Resolution. Additional Costs may include costs incurred by VDOT as a result of eminent domain proceedings, including such costs incurred following construction completion. Until all such proceedings are resolved, VDOT shall provide the CVTA with quarterly reports of outstanding proceedings to include offer amounts at the time of right-of-way certificate filing and the anticipated schedule for resolution. Additional costs associated with right-of-way settlements or judgements shall be paid from available federal, state, and/or CVTA funds ~~in proportions as agreed by the parties at the time, [respectively]~~¹²~~and as shown in Appendix B with the goal of expending federal funds first before expending state and/or CVTA Revenues.~~¹³
7. Additional Costs from Contractor Claims. Notwithstanding the foregoing, Additional Costs may include costs incurred by VDOT as a result of contractor claims relating to the Project made pursuant to the *VDOT Roads and Bridge Specifications* and Va. Code §§ 33.2-1101 through 33.2-1105. VDOT shall promptly notify CVTA if any such claims are made or VDOT receives a notice of intent to file a claim or other written communication from a contractor relating to a claim or contractual dispute that could result in increased contract costs, and whether in each such case the claimed amount is expected to become, or result in, Additional Costs (and the estimate thereof) or is expected to have a material adverse effect on the contingency reserves established as part of the Project Budget (and the estimated effect thereon). VDOT shall be responsible to handle all such claims and notices of intent, but VDOT may not settle any claim or notice of intent to file a claim and thereafter submit it as an Additional Cost pursuant to this **Section X.6** unless the settlement has been approved by CVTA. Funding for the settlement will be ~~prorated based on the respective proportionate share of the CVTA Revenues and state and federal funds in the Project Budget paid from~~

¹⁴~~NOTE TO CVTA: Is “respectively” intended to mean “proportionally” here? No, “respectively” is intended to mean that payments are to be made first from federal, then state, and then from CVTA revenues.~~

¹²~~NOTE TO CVTA: Is “respectively” intended to mean “proportionally” here? No, this is intended to be “respectively.”~~

¹³~~NOTE TO CVTA: Final sentence appears redundant. All “additional costs” are beyond the project budget by definition. The penultimate sentence establishes the rule for how those costs will be allocated among the sources of funding.~~

available federal, state, and/or CVTA funds in proportions as agreed by the parties at the time, with the goal of expending federal funds first before expending state and/or CVTA Revenues. Should the claim not be settled, any final judgment from a court of competent jurisdiction shall be paid in accordance with the proration funding rule set forth in the preceding sentence. Notwithstanding anything to the contrary set forth herein, if any Additional Cost (including, without limitation, any Additional Cost relating to a contractor claim described in this **Section X.6**) arises out of or results from VDOT's negligence or breach of contract, CVTA shall not be responsible for such Additional Costs.

ARTICLE XI - Term and Termination

1. Term. This Agreement shall be effective upon adoption and execution by both Parties and shall expire when all claims relating to the Project have been resolved or are barred.
2. Termination for Cause.
 - a. Termination for Cause by VDOT. VDOT may terminate this Agreement, for cause, in the event of a material breach by CVTA of this Agreement. If so terminated, CVTA shall pay for all Project costs incurred in accordance with the terms of this Agreement through the date of termination and all reasonable costs incurred by VDOT to terminate all Project-related contracts. The Virginia General Assembly's failure to appropriate funds to CVTA as described in **Article VII** of this Agreement and/or repeal or amendment of the legislation establishing the Fund or CVTA's powers shall not be considered material breaches of this Agreement by CVTA if such failure to appropriate or such repeal or amendment eliminates funds in the Fund to be used for the Project or renders CVTA without legal authority to provide funding for the Project. Before initiating any proceedings to terminate under this **Section XI.2(a)**, VDOT shall give CVTA sixty (60) days' written notice of any claimed material breach of this Agreement and the reasons for termination, thereby allowing CVTA an opportunity to investigate and cure any such alleged breach.
 - b. Termination for Cause by CVTA. CVTA may terminate this Agreement, for cause, resulting from VDOT's material breach of this Agreement. CVTA will provide VDOT with sixty (60) days written notice that CVTA is exercising its rights to terminate this Agreement and the reasons for termination, thereby allowing VDOT an opportunity to investigate and cure any such alleged breach. Upon termination neither Party shall have any further obligations under this Agreement except that obligations accruing prior to the

termination of this Agreement, including VDOT’s duty to refund misapplied funds, shall survive termination of this Agreement.

- c. Return of CVTA Funds. Upon expiration or termination, and payment of all eligible expenses as set forth in **Section XI.2(b)** above, VDOT will release or return to CVTA all unexpended CVTA funds and, to the extent permitted by Applicable Law, with interest earned at the rate earned by CVTA, no later than sixty (60) days after the date of termination.

ARTICLE XII – Miscellaneous

- 1. Outside Counsel. If in connection with the work described herein, VDOT engages outside legal counsel approved by the Attorney General (as opposed to utilizing the services of the Office of the Attorney General), VDOT will give CVTA notice of the engagement so as to ensure that no conflict of interest may arise from any such representation.
- 2. Notices. Any notices required to be provided under this Agreement to either Party shall be in writing and forwarded to the other Party by United States Postal Service by certified mail, care of the following ~~authorized representatives~~ “Authorized Representatives”:

If to CVTA, ~~to the attention of its Chair;~~ [●];

[●] (the “CVTA Authorized Representative”)

with a copy to the CVTA Chair at:

[●]

If to VDOT:

_____ [●] (the “VDOT Authorized Representative”)

~~If to VDOT, to the attention of~~ with a copy to:
Commissioner, Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

- 3. Assignment. This Agreement shall not be assigned by either Party unless express written consent is given by the other Party.
- 4. Sovereign Immunity. This Agreement shall not be construed as a waiver of either Party's sovereign immunity rights.

5. No Personal Liability; No Creation of Third-Party Rights. This Agreement shall not be construed as creating any personal liability on the part of any officer, member, employee, or agent of the Parties. This Agreement shall not be construed as giving any rights or benefits to anyone other than the Parties hereto.
6. Governing Law. This Agreement is governed by the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the Commonwealth of Virginia. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS AGREEMENT.
7. Incorporation of Recitals and Appendices; Section Headings. The recitals and Appendices to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that the recitals are true and correct. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretations of this Agreement.
8. Mutual Preparation and Fair Meaning. The Parties acknowledge that this Agreement has been prepared on behalf of all Parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either Party.
9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Agreement as to the Parties hereto and may be used in lieu of the original, manually executed Agreement for all purposes. Signatures of the Parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.
10. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Applicable Law, then: (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom.

11. Entire Agreement. This Agreement, collectively with all Appendices hereto contains the entire agreement by and between the Parties with respect to the transactions contemplated hereby and supersede all prior agreements, understandings, promises, and representations, whether written or oral, between the Parties with respect to the subject matter hereof.

[Signature page follows]

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized ~~representatives~~ signatories.

Central Virginia Transportation Authority

By: _____

Name: _____

Title: _____

Date: _____

Virginia Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

PROJECT SCOPE, VDOT SCOPE OF SERVICES, & SCHEDULE

CVTA PROJECT: [•]

UPC NUMBER (IF APPLICABLE):

VDOT PROGRAM MANAGER: [•]

CVTA PROGRAM COORDINATOR: [•]

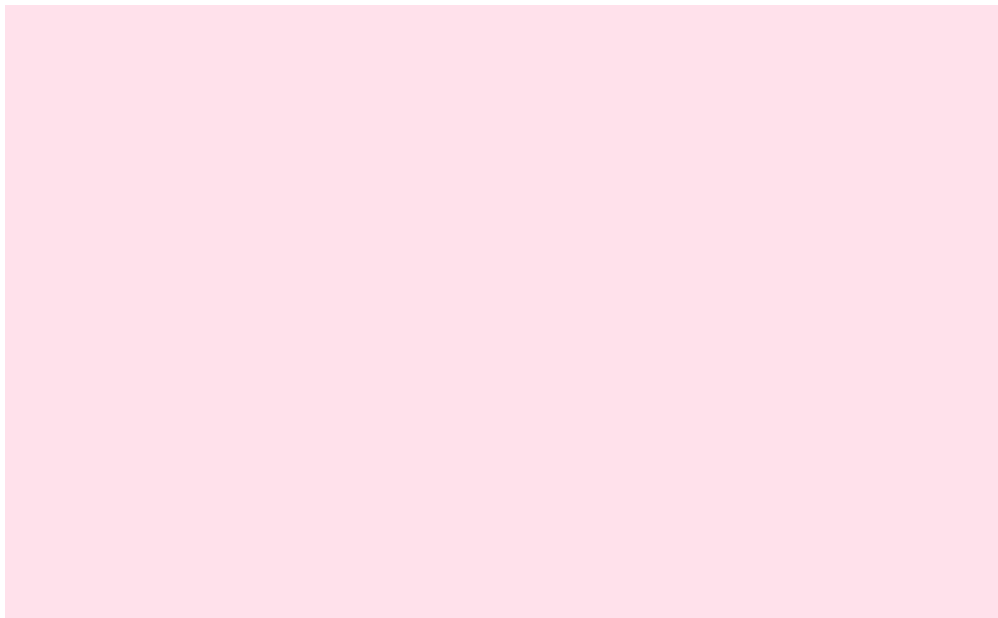
PROJECT SCOPE: [•]

VDOT SCOPE OF SERVICES: [•]

SCHEDULE:

<u>MILESTONE</u>	<u>ANTICIPATED DATE</u>
<u>PROJECT SCOPING MEETING</u>	<u>[MONTH DAY, YEAR]</u>
<u>SURVEY</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: UTILITY DESIGNATION]</u>	<u>[MONTH DAY, YEAR]</u>
<u>GEOTECHNICAL ENGINEERING REPORT</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: CONCEPTUAL DESIGN PHASE SUBMITTAL]</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: APPROVED NEPA DOCUMENT]</u>	<u>[MONTH DAY, YEAR]</u>
<u>PRELIMINARY DESIGN PHASE SUBMITTAL</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: CITIZEN INFORMATION MEETING]</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: POST WILLINGNESS]</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: PUBLIC HEARING]</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: UTILITY FIELD INSPECTION]</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: RIGHT OF WAY DESIGN PHASE SUBMITTAL]</u>	<u>[MONTH DAY, YEAR]</u>

<u>[IF APPLICABLE: ROW ACQUISITION]</u>	<u>[MONTH YEAR]</u>
<u>[IF APPLICABLE: RELOCATE UTILITIES]</u>	<u>[MONTH YEAR]</u>
<u>FINAL CONSTRUCTION DESIGN PHASE SUBMITTAL</u>	<u>[MONTH DAY, YEAR]</u>
<u>DRAFT INVITATION FOR BID SUBMITTAL</u>	<u>[MONTH DAY, YEAR]</u>
<u>INVITATION FOR BID ADVERTISEMENT</u>	<u>[MONTH YEAR]</u>
<u>[IF APPLICABLE: ENVIRONMENTAL PERMITS OBTAINED]</u>	<u>[MONTH YEAR]</u>
<u>BEGIN CONSTRUCTION</u>	<u>[MONTH YEAR]</u>
<u>END CONSTRUCTION</u>	<u>[MONTH YEAR]</u>



APPENDIX B

PROJECT BUDGET & CASH FLOW

CVTA PROJECT: [•]

UPC NUMBER (IF APPLICABLE):

VDOT PROGRAM MANAGER: [•]

<u>ESTIMATED PROJECT COST AND REIMBURSEMENT</u>
--

<u>PHASE</u>	<u>FYXX</u>	<u>FYXX</u>	<u>FYXX</u>	<u>FYXX</u>	<u>FYXX</u>	<u>FYXX</u>	<u>TOTAL</u>
<u>PRELIMINARY ENGINEERING (PE)</u>	-	-	-	-	-	-	-
- <u>FEDERAL</u>	-	-	-	-	-	-	-
- <u>STATE</u>	-	-	-	-	-	-	-
- <u>CVTA</u>	-	-	-	-	-	-	-
- <u>OTHER</u>	-	-	-	-	-	-	-
<u>RIGHT OF WAY & UTILITIES (RW)</u>	-	-	-	-	-	-	-
- <u>FEDERAL</u>	-	-	-	-	-	-	-
- <u>STATE</u>	-	-	-	-	-	-	-
- <u>CVTA</u>	-	-	-	-	-	-	-
- <u>OTHER</u>	-	-	-	-	-	-	-
<u>CONSTRUCTION (CN)</u>	-	-	-	-	-	-	-
- <u>FEDERAL</u>	-	-	-	-	-	-	-
- <u>STATE</u>	-	-	-	-	-	-	-
- <u>CVTA</u>	-	-	-	-	-	-	-
- <u>OTHER</u>	-	-	-	-	-	-	-
<u>TOTAL</u>	-	-	-	-	-	-	-

***IF ADDITIONAL YEARS ARE NEEDED, PLEASE SUBMIT A SEPARATE FORM WITH ADDITIONAL COLUMNS.**

THIS APPENDIX B IS CERTIFIED AND MADE AN OFFICIAL ATTACHMENT TO THE STANDARD PROJECT AGREEMENT DOCUMENTED BY THE PARTIES OF THIS AGREEMENT

Signature _____ Signature _____

Printed Name

Printed Name

Commissioner

CVTA Chair

Date

Date

APPENDIX C

FORM OF PAYMENT REQUISITION

CVTA Project: _____
UPC Number (If Applicable): _____
Project Scope/Services Description: [From Appendix B] _____
Draw Request Number: _____

Date: _____, 20__

Central Virginia Transportation Authority

[●]

Attention _____, Program Coordinator:

This requisition is submitted in connection with the Standard Project Agreement for Funding and Administration for the project services noted above and dated _____, 20__ (the "Agreement") between the Central Virginia Transportation Authority ("CVTA") and the Virginia Department of Transportation ("VDOT"). VDOT hereby requests \$_____ of CVTA funds, to pay the costs of the project services described and set forth in Appendices A and B of the Agreement ("Project Services") and in accordance with the Agreement. Also included are copies of each invoice relating to the items for which this requisition is requested.

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

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

Recommended For Payment

By: _____
Name: _____
Title: CVTA Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____ Request Date: _____
 CVTA Project: _____ Project Title: _____
 UPC Number (If Applicable): _____

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

LISTING OF ATTACHED INVOICES

Vendor/Contractor Name	Item Number	Invoice Number	Cost Category	Amount
	1			\$ -
	2			-
	3			-
	4			-
	5			-
	6			-
	7			-
	8			-
	9			-
	10			-
	11			-
	12			-
Requisition Amount				\$ -

Instructions

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

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

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please manually number the invoices attached with the corresponding Item number in this schedule.
3. Column C- Please list the invoice number as it appears on the Invoice

4. Column D- Please list the appropriate Cost Category based on the Project Category breakout above
5. Column E- Please enter the dollar amount listed on the invoice.
6. The calculated Requisition Amount should equal the total in Column D in the Schedule above.

APPENDIX D

REPORTS TO BE PROVIDED BY VDOT

1) Monthly Project Expenditure Report which lists, by category of expense (*e.g.*, engineering, ROW, utility relocations, construction), (a) information regarding expenditures to date against the budget, both monthly and for the life of the project, and a statement of the percent completed; and (b) such other information as VDOT customarily provides with monthly expenditure reports.

2) Monthly Project Report which provides (a) an overview of progress on major project tasks; (b) information regarding the budget (such as, the baseline planned forecast, any approved changes thereto, the monthly expenditures, the cumulative expenditures, and the cumulative forecasted expenditures); (c) future key tasks; and (d) significant issues.

3) Quarterly Right-of-Way Acquisition Report demonstrating then-outstanding proceedings to include offer amounts at the time of right-of-way certificate filing and the anticipated schedule for resolution for each parcel in question.

APPENDIX E

OFFICIAL AUTHORIZING DOCUMENTS

**Standard Project Agreement for Funding and Administration
between
Central Virginia Transportation Authority
and
Virginia Department of Transportation**

CVTA Project: _____

UPC Number (If Applicable):

This Standard Project Agreement for Funding and Administration (the "Agreement") is made and executed in duplicate on this [●] day of [●], as between the Central Virginia Transportation Authority ("CVTA") and the Virginia Department of Transportation ("VDOT").

WITNESSETH

WHEREAS, the 2020 Virginia General Assembly adopted and enacted into law House Bill 1541, 2020 Va. Acts Chapter 1235 ("Chapter 1235"); and

WHEREAS, Chapter 1235 establishes CVTA pursuant to Chapter 37 of Title 33.2 of the Code of Virginia (the "CVTA Act"); and

WHEREAS, Chapter 1235 provides for imposition of certain state taxes in localities comprising Planning District 15, and further provides that the revenues derived from such taxes be deposited in the Central Virginia Transportation Fund (the "Fund") and used solely for transportation purposes benefiting the localities comprising Planning District 15, and certain administrative and operating expenses pursuant to Va. Code § 33.2-3706(B); and

WHEREAS, Chapter 1235 establishes the Fund and specifies that all revenues dedicated to the Fund pursuant to Va. Code § 58.1-638 and Va. Code §§ 58.1-2291 *et seq.* shall be paid into the state treasury, credited to the Fund, and the amounts so dedicated deposited monthly by the Comptroller (such amounts, together with interest earned thereon, are the "CVTA Revenues"); and

WHEREAS, CVTA and VDOT have determined it is desirable to work cooperatively to ensure the most effective and efficient delivery and implementation of CVTA projects with CVTA Revenues and other state and federal transportation funding sources; and

WHEREAS, VDOT is the Virginia state agency responsible for building, maintaining and operating the interstate, primary, and secondary state highway systems ("VDOT Highways"); and

WHEREAS, in light of VDOT’s responsibilities with respect to VDOT Highways, and CVTA’s responsibilities with respect to CVTA Revenues, VDOT and CVTA entered into a Memorandum of Agreement dated [●] (the “MOA”); and

WHEREAS, the MOA contemplates that CVTA and VDOT may, using the form of this Agreement (referred to as the “CVTA Model SPA” within the MOA), agree to undertake specific projects developed and/or administered by VDOT, and funded (in whole or in part) by CVTA Revenues; and

WHEREAS, CVTA desires to proceed with the project set forth and described on Appendix A to this Agreement (the “Project”), and that such Project would benefit the cities and counties that are embraced by CVTA and it otherwise satisfies the requirements of the CVTA Act; and

WHEREAS, VDOT agrees to administer and/or develop the Project in accordance with the budget (the “Project Budget”) and cashflow and construction schedule (the “Project Schedule”) set forth and described on Appendices A & B to this Agreement; and

WHEREAS, CVTA desires to provide funding for the administration and/or development of the Project out of CVTA Revenues, subject to the terms, conditions, and limitations set forth herein; and

WHEREAS, the Commonwealth Transportation Board (“CTB”) has the authority, pursuant to Va. Code § 33.2-214, to cause VDOT to enter into this Agreement and has authorized the Commissioner of Highways (the “Commissioner”) to enter into agreements with CVTA for project administration and development purposes, and Va. Code § 33.2-3708 authorizes CVTA to enter into this Agreement; and

WHEREAS, CVTA’s governing body and the CTB have each authorized their respective designee(s) to execute this Agreement on their respective behalf(s) as evidenced by copies of each such entity’s clerk’s minutes or such other official authorizing documents, which are appended hereto as Appendix E.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VDOT and CVTA (each a “Party” and together, the “Parties”) agree as follows:

ARTICLE I – Affirmative Covenants and Responsibilities of VDOT

1. Diligent Work. VDOT shall complete or perform or cause to be completed or performed all work relating to the Project, as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with (i) any and all applicable federal, state, and local laws and regulations (“Applicable Law”), and (ii) all terms and conditions of this Agreement, including, without limitation, the Project Budget and Project Schedule reflected in Appendices A & B.

2. Intended Purposes. Subject to and consistent with the requirements of **Article VII** of this Agreement, upon final payment to all contractors for the Project, if the Project is or is part of a VDOT Highway, VDOT shall use the Project for its intended purposes for the duration of the Project's useful life. If the Project is or is part of a VDOT Highway, VDOT shall be responsible to operate and/or maintain the Project after its completion (including responsibility to correct any defects or to cause any defects to be corrected), and under no circumstances will CVTA have any responsibility or obligation to operate and/or maintain the Project (or correct defects with respect to the Project). The provisions in this **Section 1.2** will survive the completion of the Project under this Agreement and/or the expiration or termination of this Agreement.
3. Selection of Contractors. VDOT shall select contractors, contract with contractors, and administer and enforce contracts all in a manner that is consistent in all material respects with the policies, procedures, and practices that VDOT uses where the state or VDOT bears the cost of a project; for example, VDOT shall use its customary policies, procedures, and practices relating to requesting bids/proposals, negotiating/finalizing terms and conditions of contracts (using VDOT's standard terms/forms where applicable), and monitoring and enforcing performance of contracts.
4. Performance Standards. VDOT shall perform or have performed in accordance with VDOT's standards for highways, bridges, and tunnels all design and engineering, all environmental work, and all right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions, as is required by this Agreement or that may be necessary for completion of the Project pursuant to the terms of this Agreement. If VDOT determines that a delay will more likely than not prevent the completion of a material phase of the Project (e.g., preliminary engineering or right-of-way acquisition), or the entire Project, in accordance with the Project Schedule, VDOT shall notify CVTA in writing and provide CVTA with such information as CVTA may reasonably request, including information pertaining to potential corrective measures and remedies against the contractor.
5. Unsatisfactory Bids and Proposals. If bids or proposals received for any portion of the Project are not qualitatively consistent with VDOT's standards for that work or quantitatively within VDOT's projections for that work, each as determined by VDOT in its good faith judgment, VDOT shall seek the advice and consent of the CVTA Authorized Representative to (i) undertake a new procurement, or (ii) recommend alternative measures to CVTA, and seek CVTA's advice and consent regarding pursuit of those alternative measures. If CVTA grants its written consent to a modification to the Project Budget and/or Project Schedule to permit VDOT to enter into a contract to perform the work, VDOT and CVTA will work reasonably

and in good faith to amend Appendices A & B to reflect the modified Project Budget and Project Schedule.

6. Multiple Funding Phases. VDOT recognizes that, if the Project contains multiple funding phases (as reflected on Appendices A & B), for which CVTA will provide funding (as scheduled on Appendix B), CVTA may not have sufficient cash flows to accelerate scheduled Project funding. In any circumstance where VDOT seeks to accelerate funding for the Project to the next funding phase, VDOT shall submit a written request to the CVTA Authorized Representative explaining VDOT's reasons why CVTA should authorize acceleration to the next funding phase. The CVTA Authorized Representative will thereafter review the circumstances underlying the request in conjunction with Appendices A & B and CVTA's current and projected cash flow position and make a determination whether to authorize the requested accelerated funding. The foregoing shall not prohibit VDOT from providing its own funds to accelerate a future funding phase of the Project and from requesting reimbursement from CVTA for having advance funded the relevant funding phase of the Project. However, VDOT further recognizes that the timing of CVTA's reimbursement to VDOT for having advance funded a funding phase of the Project will be dependent upon CVTA's cash flow position at the time such a request for reimbursement is submitted and may be dependent upon the extent to which the reimbursement of any such advanced funding is otherwise consistent with the terms of this Agreement, including Appendix B.
7. Updating Cash Flow Estimates. VDOT and CVTA shall regularly update cash flow estimates for the Project with the objective of keeping those estimates accurate throughout the life of the Project. VDOT shall provide all available information reasonably required by CVTA so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the life of the Project as described in Appendix B.
8. Payment Requisitions; Reports. VDOT shall provide to the CVTA Authorized Representative:
 - a. No more frequently than monthly, payment requisitions consistent with Appendix C (and the most recently approved CVTA cash flow estimates) that include (i) CVTA's standard payment requisition(s), containing detailed summaries of actual Project costs incurred with supporting documentation as determined by CVTA, and (ii) certifications that all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement; VDOT will endeavor to submit payment requisitions within 90 days after the corresponding eligible project expenses are incurred by VDOT, however, CVTA will not be relieved of its duty to pay VDOT for payment

requisitions submitted more than 90 days after the corresponding expenses were incurred by VDOT.

- b. All monthly reports described on Appendix D.
9. Use of Assets and CVTA's Interest in Same. VDOT shall use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by CVTA under this Agreement ("Assets") for the designated transportation purposes of the Project and in accordance with Applicable Law throughout the useful life of each such Asset. If VDOT intends to sell, convey, or dispose any Asset funded with CVTA funds or intends to use any Asset for a purpose inconsistent with this Agreement, VDOT shall notify the CVTA Authorized Representative in writing of any such intent before further action is taken by VDOT in furtherance thereof. The Parties shall, thereafter, meet and confer to discuss what measures need to be taken regarding VDOT's proposed sale, conveyance, disposition, or use of any such Asset(s) so as to ensure compliance with all applicable requirements of the CVTA Act. All recommendations and/or proposed remedial actions developed by the Parties' Authorized Representatives during the meet and confer process shall be formally presented to CVTA and the Commissioner for their respective approvals.
10. Return of Unexpended Funds. VDOT shall release or return any unexpended funds to CVTA no later than ninety (90) days after final payment has been made in respect of the Project.
11. Accurate Financial Records. VDOT shall maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other Applicable Law.
12. Original Drawings. VDOT shall maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations. Throughout the project development process, VDOT will provide to CVTA the most recent plans and electronic design files (i) at key milestones (*i.e.*, conceptual design, final construction, and as-built) and (ii) at any time upon CVTA's written request.
13. Reimbursements. VDOT shall not use any funds provided by CVTA, including the funds specified on Appendix B, to pay any Project cost if the CVTA Act does not permit such Project cost to be paid with CVTA funds. VDOT shall reimburse CVTA (or such other entity as may have provided funds) for all funds provided by CVTA (or on behalf of CVTA) and, to the extent applicable and permitted by Applicable

Law, with interest earned at the rate earned by CVTA, that VDOT misapplied, used, or requisitioned in contravention of the CVTA Act or any other Applicable Law, or any term or condition of this Agreement.

14. Compliance with Applicable Law. VDOT shall comply with all Applicable Law.

15. Certification after Final Payment. VDOT shall provide a certification to CVTA no later than ninety (90) days after final payment for the Project that VDOT adhered to all Applicable Law and all requirements of this Agreement.

ARTICLE II – Negative Covenants of VDOT

1. Selection of Contracts; Use of Funds. VDOT shall not enter into any contract to perform the work related to the Project if (i) the cost of that contract would exceed the portion of the Project Budget reflected in Appendix B that is allocated to the work covered by that contract, (ii) the cost of that contract, when aggregated with the cost of all other contracts relating to the Project that have been, or are expected to be, entered into would exceed the Project Budget reflected in Appendix B, or (iii) the schedule in the contract for performing and paying for the work related to the Project would be materially different (whether accelerated or delayed) from the Project Schedule set forth in Appendix B.
2. Prohibition Against More Favorable Provisions. VDOT shall not include in any contract with a contractor working on the Project any term, condition or remedy in respect of Additional Costs that is more favorable to the contractor than the terms, conditions, or remedies VDOT includes in standard contracts where the state or VDOT bears the cost of the project.

ARTICLE III – Representation and Warranties of VDOT

1. VDOT represents and warrants that each of the Project Budget and Project Schedule (Appendices A & B) have been prepared in good faith, in accordance with the practices and procedures that VDOT uses for projects where the state or VDOT bears the cost of the project (including, without limitation, the practices used to price and budget services that may be internally sourced, such as Construction Engineering Inspection).
2. VDOT represents that it is not acting as a partner or agent of CVTA; and nothing in this Agreement shall be construed as making any Party a partner or agent with any other Party.

ARTICLE IV – VDOT Acknowledgments

1. VDOT hereby acknowledges that VDOT is solely responsible for the administration and/or development of the Project and all engagements, commitments, and agreements with contractors. VDOT shall ensure that VDOT's contractors maintain surety bonds (or other project security) and insurance in amounts and with coverages that VDOT requires under its Road and Bridge Specifications for all work to be performed for the Project, and name CVTA and its members, officers, employees and, if applicable, any CVTA bond trustee as additional insureds on any such insurance policy, and present CVTA with satisfactory evidence thereof before any work on the Project commences.
2. VDOT hereby acknowledges and recognizes that VDOT or its contractors are solely responsible for obtaining, and shall obtain, all permits, permissions and approvals necessary to construct and/or operate the Project, including, but not limited to, obtaining all required VDOT and local land use permits, zoning approvals, environmental permits, and regulatory approvals.
3. VDOT hereby acknowledges and recognizes if the Project is being funded, in whole or in part, with federal and/or state funds (in addition to CVTA Revenues), that VDOT shall (a) take any and all necessary actions to satisfy any conditions to such additional federal and/or state funding (provided that such actions are within the control of VDOT) and to enforce any commitments made in connection therewith, (b) comply with all applicable federal and state funding requirements within the control or purview of VDOT, and (c) include in its contracts with contractors provisions that permit such contracts to be terminated, without penalty, if the funding is rescinded or otherwise becomes unavailable (for clarification, a provision shall not be deemed to include a penalty solely as a result of terms that require payment of compensation due and owing at the time of cancellation and reasonable costs associated with cancellation provided that such costs are consistent with costs paid pursuant to VDOT's standard contract terms relating to contract cancellation and termination). VDOT acknowledges and agrees that if funding from such an additional federal or state source is rescinded or otherwise becomes unavailable CVTA (i) shall not be responsible for any amount in excess of its commitment set forth on Appendix B, and (ii) may (A) replace said reduced funding with CVTA Revenues or (B) may request VDOT to immediately suspend or discontinue all work relating to the Project, provided if CVTA requests suspension, CVTA shall be responsible for the costs reasonably incurred in connection with such suspension. Should CVTA neither replace the rescinded or unavailable funding, nor request VDOT to suspend or discontinue work, VDOT may reduce the Project scope or take any other actions needed to reduce the Project costs to fit within the Project Budget.

ARTICLE V – Affirmative Covenants and Responsibilities of CVTA

1. Reimbursement Basis. Subject to the limitations as to amounts set forth in Appendix B (and subject to **Article VII** of this Agreement), CVTA shall provide to VDOT the funding authorized by CVTA for the Project, on a reimbursement basis as set forth in this Agreement and as specified in Appendix B to this Agreement or the most updated amendment thereto, as approved by CVTA.
2. Program Coordinator. CVTA shall assign a person to serve as a Program Coordinator for the Project, who will be responsible for review of the Project on behalf of CVTA for purposes of ensuring it is being completed in compliance with this Agreement and all CVTA requirements. CVTA's Program Coordinator will be responsible for overseeing, managing, reviewing, and processing, in consultation with the CVTA Authorized Representative, all payment requisitions submitted by VDOT for the Project. CVTA's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the scope, budget or schedule of the Project as set forth on Appendices A & B.
3. Payment Requisitions. The CVTA Authorized Representative or Program Coordinator shall review all payment requisitions and supporting documentation for the Project to determine the submission's legal and documentary sufficiency. If the payment requisition is sufficient as submitted, payment will be made within thirty (30) days from receipt. Approved payments may be made by means of electronic transfer of funds from CVTA to or for the account of VDOT. If the payment requisition is, in CVTA's reasonable judgment, deemed insufficient, within twenty (20) days from receipt, CVTA's Program Coordinator will notify VDOT in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed to authorize the payment request. Payment will be withheld until all deficiencies identified by CVTA have been corrected to CVTA's reasonable satisfaction. Under no circumstances will CVTA authorize payment for any work performed by or on behalf of VDOT that is not in conformity with the requirements of the CVTA Act or this Agreement.
4. Accelerated or Supplemental Requests for Funding. CVTA's Finance Committee shall review all of VDOT's accelerated or supplemental requests for funding from CVTA under **Section I.5** and **Section X.3**, respectively, of this Agreement. CVTA's Finance Committee will thereafter make a recommendation on any such request to CVTA for final determination by CVTA.
5. Periodic Compliance Reviews. CVTA shall conduct periodic compliance reviews scheduled in advance for the Project so as to assess whether the work being performed likely remains within the scope of this Agreement, the CVTA Act, and other Applicable Law. Such compliance reviews may entail review of VDOT's financial records for the Project and on-Project site inspections.

6. Records Retention. Upon making final payment to VDOT for the Project, CVTA shall retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans, if any, developed pursuant to or in association with the Project for the time periods required by the Virginia Public Records Act and as may be required by other Applicable Law.
7. CVTA Funds Determinations. CVTA shall be the sole determinant of the amount and source of CVTA funds to be provided and allocated to the Project and the amounts of any CVTA funds to be provided in excess of the amounts specified in Appendix B.

ARTICLE VI – CVTA Acknowledgments

1. CVTA hereby acknowledges that if, as a result of CVTA's review of any payment requisition or of any CVTA compliance review, CVTA determines that VDOT is required under **Section I.12** of this Agreement to reimburse funds to CVTA, CVTA will promptly advise VDOT's Authorized Representative in writing. VDOT will thereafter have thirty (30) days to respond in writing to CVTA's initial findings. CVTA's Finance Committee will review VDOT's response and make a recommendation to CVTA. If CVTA makes a final determination that VDOT is required under **Section I.12** of this Agreement to reimburse funds to CVTA, the Parties should engage in dispute resolution as provided in **Article VIII** of this Agreement. Pending final resolution of the matter, CVTA will not withhold further funding on the Project. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either Party's legal rights or available legal remedies.

ARTICLE VII – Mutual Acknowledgments Regarding Appropriations

1. The Parties hereby acknowledge and agree that nothing herein shall require or obligate CVTA to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by its governing body for the Project.
2. The Parties hereby acknowledge and agree that all funding provided by CVTA pursuant to Chapter 1235 is subject to appropriation by the Virginia General Assembly. The Parties further acknowledge that: (i) the moneys allocated to the Fund pursuant to applicable provisions of the Code of Virginia and any other moneys that the General Assembly appropriates for deposit into the Fund are subject to appropriation by the General Assembly and (ii) CVTA's obligations under this Agreement are subject to such moneys being appropriated to the Fund by the General Assembly.

3. The Parties hereby acknowledge and agree that VDOT's obligations under this Agreement are subject to funds being appropriated by the General Assembly and allocated by the Commonwealth Transportation Board and otherwise legally available to VDOT for CVTA projects.
4. Should VDOT be required to provide additional funds in order to proceed or complete the funding necessary for the Project, VDOT shall certify to CVTA that such additional funds have been allocated and authorized by the CTB and/or appropriated by the Virginia General Assembly as may be applicable or have been obtained through another independent, lawful source.

ARTICLE VIII — Dispute Resolution

1. In the event of a dispute under this Agreement, the Parties agree to meet and confer promptly to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. First, CVTA's Authorized Representative and the VDOT Program Manager are authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute cannot be reached via the aforesaid meet and confer dispute resolution method, the dispute will be elevated to the CVTA Chair and the Commissioner to conduct negotiations on behalf of their respective entities. Upon reaching any resolution to a dispute, if required by law, the Parties will seek the consent of their respective governing bodies with respect to the resolution reached. However, if, after discussions between the CVTA Chair and the Commissioner have concluded, the Parties are unable to reach a satisfactory resolution, either Party is free to pursue any and all remedies it may have at law or in equity, including all judicial remedies. The foregoing dispute resolution method shall not bar either Party's right to seek equitable relief on an emergency basis.

ARTICLE IX – Modification or Amendment of the Agreement

1. This Agreement may not be modified or amended, except pursuant a written agreement that is duly authorized, executed, and delivered by both Parties.
2. If CVTA is able to obtain a source of funding for the Project that would reduce or replace the amount of CVTA Revenues expended on the Project, VDOT and CVTA will work in good faith to amend this Agreement so it takes into account that other funding.
3. If CVTA proposes to issue bonds, VDOT and CVTA will work in good faith to adopt such amendments to this Agreement as VDOT and CVTA may mutually agree are necessary and desirable in connection with the bond offering.

4. The Parties acknowledge that each of the Project Budget and Project Schedule may be amended pursuant to **Section X** of this Agreement, or as follows:
 - a. If VDOT determines, after receipt of proposals or bids for any work related to the Project, that the cost of the contract for said work will result in a significant reduction in costs associated with a portion of the Project Budget reflected in Appendix B that is allocated to work covered by the contract, then VDOT shall notify the CVTA Authorized Representative of the significant reduction in costs. For purposes of this **Section IX.4(a)**, CVTA and VDOT agree that a “significant reduction in costs” shall mean a reduction in costs that has the effect of reducing, in Appendix B, (x) the costs for the particular portion of the Project Budget allocated to work covered by the contract by more than 20 percent or (y) the entire Project Budget either by more than 10 percent or \$10,000,000, whichever applies. In the event there is a significant reduction in costs, VDOT and CVTA will work reasonably and in good faith to amend Appendix B fairly to reflect the effect of the reduction, with the goal of applying the savings to supplant state and CVTA funding commitments, and to maximize the use of federal funds on the project.
 - b. If any federal or state funding not previously available for the Project becomes available for any portion of the Project Budget reflected in Appendix B, then VDOT and CVTA will work reasonably and in good faith to amend Appendix B fairly to reflect the benefit of the additional funding, with the goal of applying the additional funding to supplant state and CVTA funding commitments, and to maximize the use of federal funds on the project.

ARTICLE X – Additional Costs

1. Notice of Additional Costs. VDOT shall promptly notify the CVTA Authorized Representative if VDOT determines that any additional, unbudgeted costs (*i.e.*, in excess of the Project’s initial budget, inclusive of any contingency reserve) may be incurred to perform and complete the Project (“Additional Costs”), which notice shall include a description of the Additional Costs, an explanation of how they arose and the assumptions in the initial budget regarding those costs, and a detailed estimate of the Additional Costs.
2. VDOT Recommendations on Additional Costs. VDOT shall make recommendations regarding any curative actions that may be available relating to any identified Additional Costs, including any potential modification or reduction that may be made to the Project scope or design, or any other action, to stay within the initial budget for the Project.

3. Absorbable Additional Costs. If the Additional Costs can be absorbed in the Project Budget by modifying or reducing the scope or design of the Project (or avoided by cancelling the Project or any portion thereof), CVTA may, in its sole discretion, elect to (i) authorize VDOT to proceed with such modifications or reductions, (ii) authorize the Additional Costs (or if a combination of (i) and (ii) is feasible, CVTA may elect such combination), or (iii) elect to cancel the Project or a portion thereof; provided, however, in any case, the respective obligations of VDOT and CVTA, as modified by the elected alternative, shall be set forth in an amendment to this Agreement (VDOT and CVTA shall work in good faith to finalize and execute such amendment).
4. Non-Absorbable Additional Costs. If the Additional Costs cannot be absorbed in the initial budget by modifying or reducing the scope or design of the Project then CVTA may, in its sole discretion, elect to (i) authorize the Additional Costs, or (ii) cancel the Project or a portion thereof. If CVTA elects to authorize the Additional Costs then, subject to **Article VII** of this Agreement, such Additional Costs shall be paid from federal, state, and/or CVTA Revenues, in proportions as agreed by the parties at the time, with the goal of expending federal funds first before expending state and/or CVTA Revenues.
5. Termination for Additional Costs. If CVTA elects to cancel the Project (or any portion thereof) pursuant to **Section X.3 or X.4**, (A) all compensation due and owing to any and all contractors for work on the Project that has been completed at the time of cancellation, shall be paid in accord with Appendix B, and (B) subject to **Article VII** of this Agreement, all reasonable costs associated with the cancellation due and owing to said contractors pursuant to the terms of the contracts with the contractors, which terms shall be consistent with VDOT's standard contract terms relating to contract cancellation and termination, and any amounts of federal funds that must be repaid because of the cancellation (any such amounts, collectively, the "Breakage Compensation"), shall be paid (or repaid) with CVTA Revenues, unless VDOT and CVTA mutually determine that cancellation of the Project is necessary or warranted, in which case, the Breakage Compensation shall be paid from federal, state, and/or CVTA Revenues, in proportions as agreed by the parties at the time, with the goal of expending federal funds first before expending state and/or CVTA Revenues.
6. Additional Costs from Right-of-Way Condemnation Resolution. Additional Costs may include costs incurred by VDOT as a result of eminent domain proceedings, including such costs incurred following construction completion. Until all such proceedings are resolved, VDOT shall provide the CVTA with quarterly reports of outstanding proceedings to include offer amounts at the time of right-of-way certificate filing and the anticipated schedule for resolution. Additional costs

associated with right-of-way settlements or judgements shall be paid from available federal, state, and/or CVTA funds in proportions as agreed by the parties at the time, with the goal of expending federal funds first before expending state and/or CVTA Revenues.

7. Additional Costs from Contractor Claims. Notwithstanding the foregoing, Additional Costs may include costs incurred by VDOT as a result of contractor claims relating to the Project made pursuant to the *VDOT Roads and Bridge Specifications* and Va. Code §§ 33.2-1101 through 33.2-1105. VDOT shall promptly notify CVTA if any such claims are made or VDOT receives a notice of intent to file a claim or other written communication from a contractor relating to a claim or contractual dispute that could result in increased contract costs, and whether in each such case the claimed amount is expected to become, or result in, Additional Costs (and the estimate thereof) or is expected to have a material adverse effect on the contingency reserves established as part of the Project Budget (and the estimated effect thereon). VDOT shall be responsible to handle all such claims and notices of intent, but VDOT may not settle any claim or notice of intent to file a claim and thereafter submit it as an Additional Cost pursuant to this **Section X.6** unless the settlement has been approved by CVTA. Funding for the settlement will be paid from available federal, state, and/or CVTA funds in proportions as agreed by the parties at the time, with the goal of expending federal funds first before expending state and/or CVTA Revenues. Should the claim not be settled, any final judgment from a court of competent jurisdiction shall be paid in accordance with the funding rule set forth in the preceding sentence. Notwithstanding anything to the contrary set forth herein, if any Additional Cost (including, without limitation, any Additional Cost relating to a contractor claim described in this **Section X.6**) arises out of or results from VDOT's negligence or breach of contract, CVTA shall not be responsible for such Additional Costs.

ARTICLE XI - Term and Termination

1. Term. This Agreement shall be effective upon adoption and execution by both Parties and shall expire when all claims relating to the Project have been resolved or are barred.
2. Termination for Cause.
 - a. Termination for Cause by VDOT. VDOT may terminate this Agreement, for cause, in the event of a material breach by CVTA of this Agreement. If so terminated, CVTA shall pay for all Project costs incurred in accordance with the terms of this Agreement through the date of termination and all reasonable costs incurred by VDOT to terminate all Project-related contracts. The Virginia General Assembly's failure to appropriate funds to

CVTA as described in **Article VII** of this Agreement and/or repeal or amendment of the legislation establishing the Fund or CVTA's powers shall not be considered material breaches of this Agreement by CVTA if such failure to appropriate or such repeal or amendment eliminates funds in the Fund to be used for the Project or renders CVTA without legal authority to provide funding for the Project. Before initiating any proceedings to terminate under this **Section XI.2(a)**, VDOT shall give CVTA sixty (60) days' written notice of any claimed material breach of this Agreement and the reasons for termination, thereby allowing CVTA an opportunity to investigate and cure any such alleged breach.

- b. Termination for Cause by CVTA. CVTA may terminate this Agreement, for cause, resulting from VDOT's material breach of this Agreement. CVTA will provide VDOT with sixty (60) days written notice that CVTA is exercising its rights to terminate this Agreement and the reasons for termination, thereby allowing VDOT an opportunity to investigate and cure any such alleged breach. Upon termination neither Party shall have any further obligations under this Agreement except that obligations accruing prior to the termination of this Agreement, including VDOT's duty to refund misapplied funds, shall survive termination of this Agreement.
- c. Return of CVTA Funds. Upon expiration or termination, and payment of all eligible expenses as set forth in **Section XI.2(b)** above, VDOT will release or return to CVTA all unexpended CVTA funds and, to the extent permitted by Applicable Law, with interest earned at the rate earned by CVTA, no later than sixty (60) days after the date of termination.

ARTICLE XII – Miscellaneous

1. Outside Counsel. If in connection with the work described herein, VDOT engages outside legal counsel approved by the Attorney General (as opposed to utilizing the services of the Office of the Attorney General), VDOT will give CVTA notice of the engagement so as to ensure that no conflict of interest may arise from any such representation.
2. Notices. Any notices required to be provided under this Agreement to either Party shall be in writing and forwarded to the other Party by United States Postal Service by certified mail, care of the following "Authorized Representatives":

If to CVTA:

[●] (the "CVTA Authorized Representative")

with a copy to the CVTA Chair at:

[•]

If to VDOT:

[•] (the “VDOT Authorized Representative”)

with a copy to:

Commissioner, Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

3. Assignment. This Agreement shall not be assigned by either Party unless express written consent is given by the other Party.
4. Sovereign Immunity. This Agreement shall not be construed as a waiver of either Party's sovereign immunity rights.
5. No Personal Liability; No Creation of Third-Party Rights. This Agreement shall not be construed as creating any personal liability on the part of any officer, member, employee, or agent of the Parties. This Agreement shall not be construed as giving any rights or benefits to anyone other than the Parties hereto.
6. Governing Law. This Agreement is governed by the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the Commonwealth of Virginia. THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM, OR DEFENSE BASED ON THIS AGREEMENT.
7. Incorporation of Recitals and Appendices; Section Headings. The recitals and Appendices to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that the recitals are true and correct. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretations of this Agreement.
8. Mutual Preparation and Fair Meaning. The Parties acknowledge that this Agreement has been prepared on behalf of all Parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either Party.

9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Agreement as to the Parties hereto and may be used in lieu of the original, manually executed Agreement for all purposes. Signatures of the Parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.
10. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Applicable Law, then: (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom.
11. Entire Agreement. This Agreement, collectively with all Appendices hereto contains the entire agreement by and between the Parties with respect to the transactions contemplated hereby and supersede all prior agreements, understandings, promises, and representations, whether written or oral, between the Parties with respect to the subject matter hereof.

[Signature page follows]

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized signatories.

Central Virginia Transportation Authority

By: _____

Name: _____

Title: _____

Date: _____

Virginia Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

PROJECT SCOPE, VDOT SCOPE OF SERVICES, & SCHEDULE

CVTA PROJECT: [•]

UPC NUMBER (IF APPLICABLE):

VDOT PROGRAM MANAGER: [•]

CVTA PROGRAM COORDINATOR: [•]

PROJECT SCOPE: [•]

VDOT SCOPE OF SERVICES: [•]

SCHEDULE:

<u>MILESTONE</u>	<u>ANTICIPATED DATE</u>
<u>PROJECT SCOPING MEETING</u>	<u>[MONTH DAY, YEAR]</u>
<u>SURVEY</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: UTILITY DESIGNATION]</u>	<u>[MONTH DAY, YEAR]</u>
<u>GEOTECHNICAL ENGINEERING REPORT</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: CONCEPTUAL DESIGN PHASE SUBMITTAL]</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: APPROVED NEPA DOCUMENT]</u>	<u>[MONTH DAY, YEAR]</u>
<u>PRELIMINARY DESIGN PHASE SUBMITTAL</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: CITIZEN INFORMATION MEETING]</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: POST WILLINGNESS]</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: PUBLIC HEARING]</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: UTILITY FIELD INSPECTION]</u>	<u>[MONTH DAY, YEAR]</u>
<u>[IF APPLICABLE: RIGHT OF WAY DESIGN PHASE SUBMITTAL]</u>	<u>[MONTH DAY, YEAR]</u>

<u>[IF APPLICABLE: ROW ACQUISITION]</u>	<u>[MONTH YEAR]</u>
<u>[IF APPLICABLE: RELOCATE UTILITIES]</u>	<u>[MONTH YEAR]</u>
<u>FINAL CONSTRUCTION DESIGN PHASE SUBMITTAL</u>	<u>[MONTH DAY, YEAR]</u>
<u>DRAFT INVITATION FOR BID SUBMITTAL</u>	<u>[MONTH DAY, YEAR]</u>
<u>INVITATION FOR BID ADVERTISEMENT</u>	<u>[MONTH YEAR]</u>
<u>[IF APPLICABLE: ENVIRONMENTAL PERMITS OBTAINED]</u>	<u>[MONTH YEAR]</u>
<u>BEGIN CONSTRUCTION</u>	<u>[MONTH YEAR]</u>
<u>END CONSTRUCTION</u>	<u>[MONTH YEAR]</u>

APPENDIX B

PROJECT BUDGET & CASH FLOW

CVTA PROJECT: [•]

UPC NUMBER (IF APPLICABLE):

VDOT PROGRAM MANAGER: [•]

<u>ESTIMATED PROJECT COST AND REIMBURSEMENT</u>							
<u>PHASE</u>	<u>FYXX</u>	<u>FYXX</u>	<u>FYXX</u>	<u>FYXX</u>	<u>FYXX</u>	<u>FYXX</u>	<u>TOTAL</u>
<u>PRELIMINARY ENGINEERING (PE)</u>	-	-	-	-	-	-	-
- <u>FEDERAL</u>	-	-	-	-	-	-	-
- <u>STATE</u>	-	-	-	-	-	-	-
- <u>CVTA</u>	-	-	-	-	-	-	-
- <u>OTHER</u>	-	-	-	-	-	-	-

<u>RIGHT OF WAY & UTILITIES (RW)</u>		-	-	-	-	-	-	-
-	<u>FEDERAL</u>	-	-	-	-	-	-	-
-	<u>STATE</u>	-	-	-	-	-	-	-
-	<u>CVTA</u>	-	-	-	-	-	-	-
-	<u>OTHER</u>	-	-	-	-	-	-	-
<u>CONSTRUCTION (CN)</u>		-	-	-	-	-	-	-
-	<u>FEDERAL</u>	-	-	-	-	-	-	-
-	<u>STATE</u>	-	-	-	-	-	-	-
-	<u>CVTA</u>	-	-	-	-	-	-	-
-	<u>OTHER</u>	-	-	-	-	-	-	-
<u>TOTAL</u>		-	-	-	-	-	-	-

***IF ADDITIONAL YEARS ARE NEEDED, PLEASE SUBMIT A SEPARATE FORM WITH ADDITIONAL COLUMNS.**

THIS APPENDIX B IS CERTIFIED AND MADE AN OFFICIAL ATTACHMENT TO THE STANDARD PROJECT AGREEMENT DOCUMENTED BY THE PARTIES OF THIS AGREEMENT

Signature

Signature

Printed Name

Printed Name

Commissioner

CVTA Chair

Date

Date

APPENDIX C

FORM OF PAYMENT REQUISITION

CVTA Project: _____
UPC Number (If Applicable): _____
Project Scope/Services Description: [From Appendix B] _____
Draw Request Number: _____

Date: _____, 20__

Central Virginia Transportation Authority

[●]

Attention _____, Program Coordinator:

This requisition is submitted in connection with the Standard Project Agreement for Funding and Administration for the project services noted above and dated _____, 20__ (the "Agreement") between the Central Virginia Transportation Authority ("CVTA") and the Virginia Department of Transportation ("VDOT"). VDOT hereby requests \$_____ of CVTA funds, to pay the costs of the project services described and set forth in Appendices A and B of the Agreement ("Project Services") and in accordance with the Agreement. Also included are copies of each invoice relating to the items for which this requisition is requested.

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

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

Recommended For Payment

By: _____
Name: _____
Title: CVTA Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____ Request Date: _____
 CVTA Project: _____ Project Title: _____
 UPC Number (If Applicable): _____

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

LISTING OF ATTACHED INVOICES

Vendor/Contractor Name	Item Number	Invoice Number	Cost Category	Amount
	1			\$ -
	2			-
	3			-
	4			-
	5			-
	6			-
	7			-
	8			-
	9			-
	10			-
	11			-
	12			-
Requisition Amount				\$ -

Instructions

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

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

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please manually number the invoices attached with the corresponding Item number in this schedule.
3. Column C- Please list the invoice number as it appears on the Invoice

4. Column D- Please list the appropriate Cost Category based on the Project Category breakout above
5. Column E- Please enter the dollar amount listed on the invoice.
6. The calculated Requisition Amount should equal the total in Column D in the Schedule above.

APPENDIX D

REPORTS TO BE PROVIDED BY VDOT

1) Monthly Project Expenditure Report which lists, by category of expense (*e.g.*, engineering, ROW, utility relocations, construction), (a) information regarding expenditures to date against the budget, both monthly and for the life of the project, and a statement of the percent completed; and (b) such other information as VDOT customarily provides with monthly expenditure reports.

2) Monthly Project Report which provides (a) an overview of progress on major project tasks; (b) information regarding the budget (such as, the baseline planned forecast, any approved changes thereto, the monthly expenditures, the cumulative expenditures, and the cumulative forecasted expenditures); (c) future key tasks; and (d) significant issues.

3) Quarterly Right-of-Way Acquisition Report demonstrating then-outstanding proceedings to include offer amounts at the time of right-of-way certificate filing and the anticipated schedule for resolution for each parcel in question.

APPENDIX E

OFFICIAL AUTHORIZING DOCUMENTS