

**MEMORANDUM OF AGREEMENT
BETWEEN THE CENTRAL VIRGINIA TRANSPORTATION AUTHORITY
("CVTA") AND THE COUNTY/CITY/TOWN OF ("XXXX")
REGARDING DISTRIBUTION AND USE OF FUNDS UNDER CHAPTER 1235
OF THE 2020 VIRGINIA ACTS OF ASSEMBLY**

THIS MEMORANDUM OF AGREEMENT, effective this ____ day of _____, 2021 (the "Agreement"), is by and between Central Virginia Transportation Authority ("CVTA"), a body politic and political subdivision of the Commonwealth of Virginia, and the County/City/Town of ("XXXX" or "Member Locality") (collectively, the "Parties"), under Chapter 1235 of the 2020 Virginia Acts of Assembly ("Chapter 1235") concerning the distribution of proceeds from the Central Virginia Transportation Fund, also established by Chapter 1235, and related administrative matters.

WITNESSETH:

WHEREAS, the CVTA was established by Chapter 1235, Va. Code Ann. § 33.2-3700, *et seq.*; and,

WHEREAS, the CVTA comprises the localities within Virginia Planning District 15, including the counties of Henrico, Chesterfield, Hanover, New Kent, Powhatan, Goochland, Charles City, the City of Richmond, and the Town of Ashland (individually, "Member Locality" or collectively, "Member Localities"); and,

WHEREAS, the CVTA consists of 17 members, including the chief elected officer, or his designee, of the governing bodies of each of the CVTA member counties and the chief elected officer, or his designee, of the City of Richmond and the Town of Ashland; and,

WHEREAS, in accordance with Va. Code Ann. § 33.2-3701, a special non-reverting fund for Planning District 15, known as the Central Virginia Transportation Fund, comprising taxes and fees levied in accordance with Va. Code §§ 58.1-638 58.1-2291, *et seq.*, and paid into the state treasury, interest earned on moneys in the fund and credited to it, and any other funds that may be received and credited to the aforesaid fund (the "Fund") was established on the books of the state Comptroller; and,

WHEREAS, proceeds of the Fund are to be distributed to CVTA for use in accordance with Va. Code § 33.2-3701; and,

WHEREAS, in accordance with, and subject to the requirements of Va. Code § 33.2-3701, fifty percent (50%) of the revenues received by CVTA are to be returned, proportionally, to each locality located in Planning District 15 to be used to improve local mobility, which may include construction, maintenance, or expansion of roads, sidewalks, trails, mobility services, or transit located in the respective locality (the "50% Funds"); and,

WHEREAS, in accordance with, and subject to the requirements of Va. Code § 33.2-3701, thirty-five percent (35%) of the revenues received by CVTA are to be retained by the CVTA, to be used for transportation-related purposes benefitting the Member Localities comprising Planning District 15 (the “35% Funds”); and,

WHEREAS, pursuant to Chapter 1235, each CVTA member locality will create a separate, special fund into which all revenues received from the Fund shall be deposited (the “Local CVTA Fund”); and,

WHEREAS, Va. Code § 33.2-3701 requires each CVTA member locality to provide annually to CVTA sufficient documentation as required by CVTA showing that the revenues received from the Fund were used for the purposes set forth therein; and,

WHEREAS, CVTA has a responsibility to see that Fund revenues are properly spent, and that each recipient of Fund proceeds adhere to the statutory and other legal obligations that it has with regard to the Fund; and,

WHEREAS, CVTA has requested that each Authority member locality receiving proceeds from the Fund enter into a separate Memorandum of Agreement in order to implement and comply with the provisions of Chapter 1235; and,

WHEREAS, each local government or agency member of the CVTA has agreed to be bound by all terms and conditions in a separate Memorandum of Agreement with CVTA, for the purpose of ensuring compliance with Chapter 1235, concerning the receipt, maintenance, management, oversight, distribution, and use of all funds from the Fund;

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

1. Use and Availability of Funds. The Parties acknowledge that, as more specifically provided under applicable law (and without any intent or agreement to affect or expand the interpretation of application of law), CVTA revenues that are deposited into the Fund and available for use from time to time are subject to an appropriation by the General Assembly. Use of funds deposited into the Fund will be consistent with applicable state and federal law.

2. CVTA’s Management of CVTA Funds.

A. The State Comptroller will distribute Fund proceeds to CVTA.

B. CVTA will accept and deposit Fund distributions into bank accounts established for this purpose.

C. CVTA will manage Fund distributions in compliance with Chapter 1235 and applicable law, including investments thereof, which will be made pursuant to CVTA’s investment policies and procedures, as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements.

D. CVTA will provide to its governing board periodic reports of deposits and funds on hand and all disbursements and expenditures thereof.

E. CVTA will provide for an annual audit of its accounts and financial records by the Auditor of Public Accounts or its duly authorized agent, pursuant to Va. Code § 33.2-3703.

F. CVTA and agencies receiving CVTA funds will use the funds solely for transportation purposes benefiting the communities within Planning District 15.

G. CVTA will segregate and distribute CVTA member funding according to the methodology described in the state code.

3. CVTA's Administrative Expenses. Pursuant to Va. Code §§ 33.2-3701(D) and 33.2-3706, CVTA will provide for the payment of its administrative and operating expenses from Fund proceeds prior to calculating distributions and issuing payments of Fund proceeds to the member jurisdictions and agencies.

4. Establishment and Maintenance of Separate Account by Member Locality. The Member Locality will create and administer a separate, special fund for the receipt of CVTA distributions and will deposit all funds from the CVTA in its respective separate Local CVTA Fund established for this purpose, pursuant to Va. Code § 33.2-3701(E).

5. CVTA Distributions of proportional shares of the 50% Funds to Member Locality.

A. CVTA will make regular distributions of the respective proportional share of the 50% Funds to the Member Locality to be used to improve mobility, in accordance with applicable law and this Agreement.

B. Distributions of respective proportional shares of the 50% Funds will be deposited into and administered within the separate Local CVTA Fund established for this purpose, pursuant to paragraph 4 above.

C. CVTA will continue such distributions on a monthly basis, subject to CVTA's continued receipt of funds from the Comptroller; provided that the Member Locality is in compliance with all applicable provisions of law and the terms of this Agreement.

D. The CVTA and the Member Locality will coordinate all fund transfers between the two entities. Prior to distributing funds, CVTA will notify the Member Locality of the amount of the intended distribution. The Member Locality will certify the transfer amounts before funds are disbursed to it, accept and confirm receipt of the funds, all in writing.

E. Fund distributions will be made via electronic transfer, unless the Parties otherwise agree.

6. CVTA Distributions of other Fund revenues to Member Locality.

A. The CVTA will retain the 35% Funds for transportation-related purposes benefiting the localities comprising Planning District 15.

B. Distributions of 35% Funds by the CVTA to Member Locality will be subject to the approval of the CVTA.

C. Such distributions will be project-based, coordinated on a case-by-case basis, and may be made on a reimbursement basis.

D. All requests for reimbursements must be submitted in a form and manner reasonably determined by CVTA for the purpose of fulfilling CVTA's obligation to

ensure that the costs to be reimbursed were incurred for the project and are permitted to be reimbursed under Chapter 1235.

E. Upon proper submission of a request for reimbursement, and after review and approval by CVTA, CVTA will transmit payment to Member Locality within thirty (30) days after approval of the request for reimbursement.

F. Member Locality may request pre-payment of project costs for specific projects on a case-by-case basis. For such projects, the Member Locality shall submit a request for pre-payment specifying the project, needs, justification, and pre-payment amounts. CVTA shall consider such requests on a case-by-case basis and is not obligated to approve such requests.

G. Prior to distributing funds, CVTA will notify the Member Locality of the amount of the distribution. The Member Locality will certify the transfer amounts before funds are disbursed to it, accept and confirm receipt of the funds, all in writing.

H. Fund distributions will be made via electronic transfer, unless the Parties otherwise agree.

7. Quarterly Reports and Annual Certification.

A. Member Locality will provide quarterly reports of expenditures of all funds received from the CVTA to the CVTA Finance Committee by November 15, February 15, May 15, and August 15 of each year, beginning upon the execution of this Agreement.

Commented [A1]: Please provide feedback on these dates/schedule.

B. Member Locality will submit an Annual Report and Certification, including all supporting documentation, on or before August 1st of each year to CVTA. The report shall demonstrate that the Member Locality used CVTA Fund distributions or revenues in compliance with applicable law and in accordance with CVTA requirements. Member Locality will submit a financial report as part of the Annual Certification or as a supplement.

C. The CVTA Finance Committee will review Member Locality quarterly expenditure reports and their Annual Report and Certification and provide a report to the CVTA.

D. In the event a Member Locality fails to provide quarterly expenditure reports or the Annual Report and Certification and CVTA does not grant an extension, the CVTA Board may authorize the CVTA Finance Committee to withhold further Fund distributions until the all reports, certifications, or supplemental information is provided, in compliance with this Agreement. When the Member Locality provides an acceptable certification and report with appropriate documentation, CVTA shall make available all withheld funds, inclusive of any interest accrued on such withheld funds, if any, for distribution to Member Locality as soon as practicable.

E. If the CVTA Finance Committee identifies deficiencies in any Member Locality quarterly expenditure report, Annual Report or Certification, the CVTA Finance Committee shall inform the Member Locality in writing of such deficiencies and the Member Locality will have 30 days to respond to or to cure such deficiency. In the event of a dispute over any alleged deficiency, and in an effort to avoid the expense and delay of litigation, the Parties agree to submit any such dispute to mediation prior to instituting litigation. Such mediation will be non-binding, that is, no Party will be obligated to enter into any settlement arising out of mediation unless the settlement is satisfactory to that Party. Any settlement the Parties enter into will be binding, but if the Parties are not able to reach agreement on a settlement, they may resort to litigation as if the mediation had

never taken place. The mediation will be provided by a mutually agreeable mediator or mediation service in the geographic area comprising Planning District 15. Judicial actions to provide provisional remedies, such as injunctions, are not violations of the obligation to mediate and do not waive the right to mediate. The parties hereby agree that the costs of mediation shall be borne equally by both Parties. Each Party shall be responsible for its own attorney's fees.

F. Upon review and acceptance of Member Locality's Annual Report and Certification, the CVTA will adopt a resolution memorializing its approval within 90 days of each report's submittal.

8. Failure to Comply with Memorandum of Agreement.

A. In the event either Party fails to perform any of its obligations under this Agreement, the other Party will provide written notice of such failure or non-compliance in accordance with Section 11.

B. The Party in alleged default will cure or commence to cure the event of noncompliance within thirty (30) days of receipt of notice from the other Party.

C. Upon its receipt and review of the notice of default, the Party in alleged default may dispute any matters set forth in such notice; and in such circumstances will advise the other Party that any such matter is in dispute.

D. In the event the Party in alleged default fails to cure or to commence to cure and diligently pursue completion of such cure within 30 days as provided in this Section 10, and in an effort to avoid the expense and delay of litigation, the Parties agree to submit any dispute regarding such alleged default to mediation prior to instituting litigation. Such mediation will be non-binding, that is, no Party will be obligated to enter into any settlement arising out of mediation unless the settlement is satisfactory to that Party. Any settlement the Parties enter into will be binding, but if the Parties are not able to reach agreement on a settlement, they may resort to litigation as if the mediation had never taken place. The mediation will be provided by a mutually agreeable mediator or mediation service in the geographic area comprising Planning District 15. Judicial actions to provide provisional remedies, such as injunctions, are not violations of the obligation to mediate and do not waive the right to mediate. The parties hereby agree that the costs of mediation shall be borne equally by both Parties. Each Party shall be responsible for its own attorney's fees.

9. Restitution. Upon a final determination in the form of a final, non-appealable order of a court of competent jurisdiction, that the Member Locality has misappropriated CVTA funds and in the event such court has not so ordered, the CVTA Board may require restitution of the misappropriated funds, together with interest at the then applicable judgment rate of interest as provided for in Virginia Code § 6.2-302 as may be amended, from the date of entry of the final, non-appealable order. Until such restitution is effected in full, the CVTA Board may withhold further distributions to Member Locality as permitted by applicable law.

10. Maintenance of Records by Member Locality and CVTA. Member Locality and CVTA will maintain all records relating to receipt and use of the 15% Funds and all other funds exchanged between the agencies and the use thereof for a minimum of five (5) years from the date the record was created or the period of time prescribed by the Virginia Public Records Act, whichever is longer. With regard to all other records

relating to this Agreement, Member Locality and CVTA will comply with the Virginia Public Records Act and all applicable state and federal laws with regard to the retention of public records.

11. Notice. Any notice required or permitted to be provided under this Agreement will be in writing and delivered in person, or sent by U.S. Mail to the representatives identified below:

CVTA:

CVTA Administrator
Central Virginia Transportation Authority
c/o PlanRVA
9211 Forest Hill Avenue, Suite 200
Richmond, Virginia 23235

Member Locality:

XXXXX
County/City/Town
Address
Locality, Virginia XXXXX

CVTA and Member Locality may change their designated representative to receive notices by providing written notice of such change to the other Party.

12. Entire Agreement. This Agreement constitutes the entire agreement between CVTA and the Member Locality and supersedes any prior understanding or agreement between them with regard to any CVTA Fund distributions to Member Locality. However, the Parties understand and acknowledge that the Memorandum of Agreement between the Virginia Department of Transportation and the CVTA is expressly incorporated herein, by reference.

13. No Third-Party Beneficiaries. The provisions of this Agreement will inure to the benefit of, and bind Member Locality and CVTA, but will not inure to the benefit of any other party or other persons.

14. Governing Law. All issues and questions concerning the construction, enforcement, interpretation and validity of this MOU, or the rights and obligations of Member Locality and CVTA in connection with this MOU, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.

15. Interpretation and Construction. This Agreement will be interpreted and construed to give meaning to all of its term and conditions, consistent with applicable law, and where necessary, to reconcile those terms and conditions with applicable law and to give effect to its plain meaning. The parties acknowledge that this Agreement has

been jointly developed, drafted, reviewed, and approved, that each has had the benefit of legal counsel during this process and, therefore, the Agreement will be interpreted and construed neutrally, without preference, and neither in favor of, nor to the detriment of either party.

16. Severability. If any provision of this Agreement or the application of the provision to any circumstance is invalid, illegal or unenforceable to any extent, the application of the remainder of the provision will not be affected, and will be enforceable to the fullest extent permitted by law, and the remainder of this Agreement will remain in full force and effect.

17. Amendments. Any amendment to this Agreement must be made in writing and signed by the authorized representatives of Member Locality and CVTA.

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

Central Virginia Transportation Authority

Attest:

By: _____

Clerk

Title: _____

County/City/Town of XXXXXXXXXX

Attest:

By: _____

Clerk

Title: _____