

**MEMORANDUM OF AGREEMENT
BETWEEN THE CENTRAL VIRGINIA TRANSPORTATION AUTHORITY
("CVTA") AND THE GREATER RICHMOND TRANSIT COMPANY ("GRTC")
REGARDING DISTRIBUTION AND USE OF 15% 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") and Greater Richmond Transit Co., a Virginia public service company ("GRTC") (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 local jurisdiction members of the CVTA consist of the counties of Henrico, Chesterfield, Hanover, New Kent, Powhatan, Goochland, Charles City, the City of Richmond, and the Town of Ashland, which localities also comprise Planning District 15; and,

WHEREAS, the Chief Executive Officer of the GRTC serves as an *ex officio*, nonvoting member of the CVTA; 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 for the credit of 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, fifteen percent (15%) of the revenues received by CVTA are to be distributed to GRTC, or its successor, to provide transit and mobility services in Planning District 15 (the "15% Funds"); and,

WHEREAS, among the other requirements of Chapter 1235, the GRTC will deposit all Fund revenues received from CVTA in a separate, special fund ("the GRTC Fund"); and,

WHEREAS, Va. Code § 33.2-3701 further requires GRTC to provide annually to CVTA sufficient documentation as required by CVTA showing that the revenues received from the Fund by GRTC were applied in accordance with CVTA approval and the guidelines required by Va. Code § 33.2-286; 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 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 (“CVTA/Member MOA”), for the purpose of ensuring compliance with Chapter 1235 with regard to 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 GRTC 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 policy and procedures as such may be revised from time to time, all in accordance with generally accepted accounting principles and all applicable legal requirements.

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 GRTC. GRTC will create and administer a separate, special fund for the receipt of CVTA distributions and will deposit all funds from the CVTA in the separate, special fund, pursuant to Va. Code § 33.2-3701(G).

5. CVTA's Distributions of 15% Funds to GRTC.

A. CVTA will make regular distributions of the 15% Funds to GRTC in accordance with applicable law and this Agreement. Such distributions will be deposited into and administered within the separate, special fund established by GRTC for this purpose, as described in paragraph 4 above.

B. CVTA will distribute the 15% Funds to GRTC, with interest at the rate earned by CVTA, if any, and continue such distributions on a monthly basis, subject to CVTA's continued receipt of funds from the Comptroller; provided that GRTC remains in compliance with the terms of this Agreement and all applicable provisions of law.

C. Prior to distributing funds, CVTA will notify GRTC of the amount of the intended distribution. GRTC will certify and accept the transfer amounts before funds are disbursed to it and then confirm receipt of the funds.

6. CVTA Fund Distributions to GRTC.

A. All distributions of funds other than the 15% Funds by CVTA to GRTC will be project-based and made on a reimbursement basis.

B. 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.

C. Upon proper submission of a request for reimbursement, and after review and approval by CVTA, CVTA will transmit payment to GRTC within thirty (30) days after approval of the request for reimbursement. Payment may be made via electronic transfer of funds if the two parties so agree.

D. GRTC may request pre-payment of project costs for specific projects on a case-by-case basis. For such projects, GRTC 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.

E. Prior to distributing funds, CVTA will notify GRTC of the amount of the distribution. GRTC will certify and accept the transfer amounts before funds are disbursed to it and then confirm receipt of the funds.

7. GRTC's Use of 15% Funds. GRTC must apply 15% Funds to operating or capital needs as defined in GRTC's Regional Public Transportation Plan developed in conformance with the guidelines required by Va. Code §33.2-286 and as approved by the CVTA pursuant to the Chapter 1235.

8. GRTC Quarterly Reports and Annual Certification.

A. GRTC will provide a quarterly report of expenditures of 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.

B. GRTC will submit an Annual Certification, report, and all supporting documentation to CVTA on or before December 1st of each year. The report shall demonstrate that GRTC applied CVTA distributions in accordance with CVTA requirements and the Regional Public Transportation Plan. GRTC will submit a financial report as part of its Annual Certification or as a supplement.

C. The CVTA Finance Committee will review the GRTC quarterly expenditure reports and Annual Certification and formally adopt a resolution accepting the reports and acknowledging GRTC's appropriate funds utilization within 90 days of each report's submittal.

D. In the event GRTC fails to provide quarterly expenditure reports or the Annual Certification as required above and CVTA does not grant an extension, the CVTA Board may authorize the CVTA Finance Committee to withhold further distributions of the GRTC 15% Funds until the certification and supplemental information is provided in compliance with this Agreement. Once GRTC 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 GRTC as soon as practicable.

E. If the CVTA Finance Committee identifies deficiencies in any GRTC quarterly expenditure report, Annual Certification, either or both, the CVTA Finance Committee shall inform GRTC in writing of such deficiencies and GRTC 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.

9. Regional Public Transportation Plan.

A. GRTC is charged under Chapter 1235 with developing a plan for regional public transportation ("Regional Public Transportation Plan" or "Plan") within Planning District 15 in collaboration with the Richmond Regional Transportation Planning Organization (RRPTPO) in conformance with the guidelines required by Va. Code § 33.2-286.

B. In order to complete the Plan, GRTC will collaborate with the RRPTPO's Public Transportation Work Group and may procure appropriate assistance from consultants as deemed necessary by the GRTC.

C. All costs associated with the Plan will be paid by GRTC from the 15% Funds GRTC receives from CVTA.

D. GRTC will inform CVTA about the Plan's development on a regular basis or upon CVTA's request.

E. GRTC will complete and submit the Plan to the CVTA within sufficient time for CVTA's consideration and action prior to the end of the fiscal year.

10. 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 13.

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.

11. Restitution. Upon a final determination in the form of a final, non-appealable order of a court of competent jurisdiction, that GRTC 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 GRTC as permitted by applicable law.

12. Maintenance of Records by GRTC and CVTA. GRTC 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, GRTC 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.

13. 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

GRTC:

Chief Executive Officer
Greater Richmond Transit Company
301 East Belt Boulevard
Richmond, Virginia 23224

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

14. Entire Agreement. This Agreement constitutes the entire agreement between GRTC and CVTA and supersedes any prior understanding or agreement between them with regard to any of CVTA's distributions to GRTC of the 15% Funds. 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.

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

16. Governing Law. All issues and questions concerning the construction, enforcement, interpretation and validity of this MOU, or the rights and obligations of GRTC 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.

17. 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.

18. 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.

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

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[SIGNATURES ON FOLLOWING PAGE]

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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:

Clerk

By: _____

Title: _____

Greater Richmond Transit Company

Attest:

Clerk

By: _____

Title: _____

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