

## **CVTA AGENDA 12/4/20; ITEM B.2.**

### **Agreement for Revenue Transfers with the Virginia Department of Transportation**

#### **Central Virginia Transportation Authority**

**REQUESTED ACTION:** Adoption of the full Agreement for Revenue Transfers with the Virginia Department of Transportation, including the Standard Project Agreement for Funding and Administration.

**BACKGROUND:** The Central Virginia Transportation Authority took action on October 30, 2020 to adopt the Agreement for Revenue Transfers but did not consider the Standard Project Agreement (SPA). At that time, the SPA was not in a form that was ready for action.

The SPA is an important component of the agreement and models the type of agreement that the CVTA will enter into for each project funded through the use of CVTA funds. Through considerable discussion and coordination with local legal counsel, VDOT legal counsel, and VDOT leadership, the SPA is now in a form that can be presented to the CVTA for approval.

Following action by the CVTA, the full Agreement for Revenue Transfers can move forward for consideration by the Commonwealth Transportation Board at its December meeting. This is a critical next step and if approved, will facilitate the transfer of revenues directly to CVTA for distribution according to Virginia Code.

**CVTA TAC RECOMMENDATION:** The CVTA Technical Advisory Committee recommends approval of the full Agreement for Revenue Transfers with the Virginia Department of Transportation including all exhibits.

**STAFF RECOMMENDATION:** Staff concurs with the CVTA Technical Advisory Committee recommendation.

**ACTION REQUESTED:** The following resolution is presented for CVTA approval:

**RESOLVED,** that the Central Virginia Transportation Authority (CVTA) approves the Agreement for Revenue Transfers with the Virginia Department of Transportation including all exhibits and recommends approval by the Commonwealth Transportation Board at its December meeting.

**MEMORANDUM OF AGREEMENT BETWEEN  
THE VIRGINIA DEPARTMENT OF TRANSPORTATION AND  
THE CENTRAL VIRGINIA TRANSPORTATION AUTHORITY**

**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 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 (“CVTA Projects and Purposes”), 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**, Chapter 1235 establishes the Central Virginia Transportation Authority (“CVTA”); and

**WHEREAS**, the CVTA and the Virginia Department of Transportation (“VDOT”) have determined that it is desirable to work cooperatively to ensure the most effective and efficient delivery and implementation of CVTA Projects and Purposes with CVTA Revenues and other state and federal transportation funding sources; and

**WHEREAS**, the Virginia Department of Taxation bears responsibility for collecting and depositing into the Fund all revenues associated with the additional sales and use taxes imposed within Planning District 15 under Va. Code §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, 58.1-614; and

**WHEREAS**, the Virginia Department of Motor Vehicles bears responsibility for collecting and depositing into the Fund all revenues associated with the additional motor fuels taxes imposed within Planning District 15 under Va. Code § 58.1-2295 and VDOT shall bear no responsibility for collecting or depositing the tax revenues into the Fund; and

**WHEREAS**, the Virginia Department of Treasury is responsible for the investment of the CVTA Revenues it holds (and the administration of banking and cash management services relating thereto) pending transfer of those funds to CVTA (and VDOT shall bear no responsibility for said banking and cash management services); and

[**WHEREAS**, the Commonwealth Transportation Board, pursuant to Va. Code § 33.2-214(C), has authorized the Commissioner of Highways to enter into this Memorandum of Agreement.]<sup>1</sup>

**NOW, THEREFORE**, in connection with the foregoing, VDOT and CVTA (each a “Party” and collectively, the “Parties”) have deemed it necessary and prudent to identify their respective roles and responsibilities with regard to the Fund, CVTA Revenues, and CVTA Projects and Purposes by means of an agreement and, accordingly, do hereby agree as follows:

**1. Use and Availability of Funds:**

- a. The Parties acknowledge that, as more specifically provided under applicable law (and without any intent or agreement to affect or expand the interpretation or application of law), the 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 shall be consistent with applicable state and federal law.
- b. Nothing in this Memorandum of Agreement will be construed as charging or granting VDOT or any other state entity with authority over or responsibility for the Fund not otherwise prescribed by state law.

**2. VDOT’s Role and Responsibilities:**

- a. VDOT will assist CVTA with such administrative and management assistance as the CVTA and the Commissioner of Highways may agree to from time to time (unless otherwise expressly agreed in writing, such arrangement shall be terminable at will by either Party upon written notice to the non-terminating Party).
- b. Until such time as they are provided directly to CVTA, VDOT will provide CVTA with the Department of Taxation’s estimates of CVTA Revenues that will result from the state taxes imposed in Planning District 15 pursuant to Chapter 1235, as such estimates are made available for public distribution.
- c. VDOT will provide CVTA with monthly financial reports relating to the Fund in a form similar to the example attached hereto as [Exhibit A]<sup>2</sup>, and which will include the following information:
  - i. income by revenue source as detailed by the collecting agency;
  - ii. interest earnings;
  - iii. administrative costs charged to the Fund pursuant to applicable law by the Department of Taxation and other departments and agencies of the Commonwealth, if any; and

---

<sup>1</sup> **NOTE TO CVTA:** VDOT will need a resolution from CTB authorizing the Agreement prior to execution.

<sup>2</sup> **NOTE TO CVTA:** VDOT to provide form of report for CVTA review in coming days.

- iv. the current cash position/balance in the Fund, as well as forecasted cash position/balance.
- d. For Commonwealth budgeting purposes (and solely those purposes), the CVTA Revenues are currently appropriated to VDOT; however (i) VDOT has a pass-through role with respect to the CVTA Revenues and shall effect monthly transfers to CVTA of all CVTA Revenues collected and deposited into the Fund by the agencies responsible for collecting the applicable taxes, and (ii) notwithstanding anything to the contrary set forth herein, VDOT hereby agrees that it (A) does not have any right, title, or interest in the CVTA Revenues, and (B) shall not withhold any sum for any administrative cost or any other purpose unless agreed to by CVTA in writing or otherwise condition or delay the transfer of the CVTA Revenues for any reason or in any manner. Moneys collected and deposited into the Fund during the month shall be transferred as promptly as practicable following the last day of such month, but no later than the [15<sup>th</sup> business day of the following month.]<sup>3</sup> If CVTA notifies VDOT that CVTA does not have an account prepared to accept monthly transfers, VDOT will work collaboratively with CVTA to implement a method by which CVTA may requisition payments from the Fund on behalf of CVTA, including payments to VDOT in respect to work on or for CVTA Projects and Purposes or permissible administrative costs.
- e. From time to time, CVTA may engage VDOT to administer and/or develop one or more CVTA Projects and Purposes. The Parties shall work in good faith to develop a model Standard Project Agreement for Funding and Administration of CVTA Projects and Purposes, which, upon mutual agreement of the Parties, will be attached hereto as [Exhibit B (the “CVTA Model SPA”)]<sup>4</sup> once developed. The CVTA Model SPA will be used as the template agreement for CVTA Projects and Purposes unless the Parties otherwise agree. VDOT and CVTA shall perform their respective obligations under each applicable agreement in accordance with the terms of that agreement.
- f. VDOT will provide to CVTA a schedule by January 31<sup>st</sup> of each year, establishing the deadlines by which project information shall be submitted for inclusion into the draft and final Six-Year Improvement Program (“SYIP”) each year.
- g. At CVTA’s request, VDOT will work with CVTA to have eligible CVTA Projects and Purposes considered for funding (without guarantying such funding) through the Commonwealth Transportation Board’s SYIP development process.
- h. VDOT acknowledges that CVTA is empowered to issue bonds and other evidences of debt to carry out its purposes and that the continued appropriation of the CVTA

---

<sup>3</sup> **NOTE TO CVTA:** VDOT staff confirming this timing is workable.

<sup>4</sup> **NOTE TO CVTA:** Should be developed before execution. OAG will take first crack at drafting.

Revenues is expected to be a source and security for the payment of the debt service on such bonds and other debt.

- i. Each year and in accordance with the schedule of the Virginia Department of Planning and Budget, VDOT shall request that the Governor include in the budget to be delivered to the General Assembly during the next session a provision that there be appropriated all of the CVTA Revenues to the Fund during the next succeeding fiscal year or biennial period, as applicable.
- j. VDOT shall use its best efforts to have (a) the Governor include, in each biennial or supplemental budget that is presented to the General Assembly, the appropriation of the CVTA Revenues to the Fund and (b) the General Assembly deposit, appropriate, and re-appropriate, as applicable, the CVTA Revenues to the Fund.
- k. VDOT shall notify CVTA promptly upon becoming aware of any failure by the General Assembly to appropriate for the next succeeding fiscal year or biennial period, as applicable, all of the CVTA Revenues to the Fund.

**3. CVTA's Roles and Responsibilities:**

- a. CVTA shall work with VDOT and the PlanRVA (also known as the Richmond Regional Planning District Commission and including the Richmond Regional Transportation Planning Organization) to incorporate the CVTA Projects and Purposes into the applicable long-range transportation planning and transportation improvement programming processes and documents, including as applicable the financial constraint process, as required by applicable law and regulation.
- b. The Parties agree that CVTA Projects will be submitted for inclusion in VDOT's SYIP if (i) VDOT is administering the CVTA Project, and/or (ii) the CVTA Project is funded by federal funds or other funds controlled by the Commonwealth Transportation Board. Accordingly, on or before the deadlines established by VDOT, CVTA will submit to VDOT the allocation information on CVTA Revenues for inclusion into the draft and final SYIP during the annual SYIP update process.
- c. Each year, CVTA shall cooperate in good faith with VDOT to provide VDOT information with respect to the Fund and/or CVTA Projects, which information is required for VDOT to comply with its mandatory reporting requirements to other governmental entities. This shall include, without limitation, VDOT's annual year-end reporting requirements to the Virginia Department of Accounts.

**4. TERMINATION OF MEMORANDUM OF AGREEMENT:**

This Memorandum of Agreement may be terminated by either Party, for any reason, upon ninety (90) days' prior written notice delivered to the non-terminating Party, indicating the terminating Party's intent to terminate this Memorandum of Agreement.

**5. SETTLEMENT OF DISPUTES:**

Any disputes in connection with this Memorandum of Agreement not disposed of by mutual agreement between VDOT and CVTA shall be submitted in writing to the Commissioner of Highways and the Chairman of CVTA and a sixty (60) day period provided for their review by VDOT and CVTA and attempted resolution by VDOT and CVTA. Exhaustion of this administrative procedure is a prerequisite to and not a substitute for the request of either Party to seek judicial relief, except that exhaustion of the foregoing procedure shall not be a prerequisite to seeking emergency injunctive relief.

**6. NO WAIVER OF SOVEREIGN IMMUNITY:**

Nothing in this Memorandum of Agreement shall be deemed a waiver of either Party's sovereign immunity.

**7. MODIFICATION OF MEMORANDUM OF AGREEMENT:**

This Memorandum of Agreement may be modified only by written agreement, duly executed by both Parties.

**IN WITNESS WHEREOF**, the Parties have caused this Memorandum of Agreement to be executed by their duly authorized representatives on the [●] day of October 2020, which shall be the effective date of this Memorandum of Agreement.

[SIGNATURE PAGE TO FOLLOW]

Central Virginia Transportation Authority

Virginia Department of Transportation

By: \_\_\_\_\_  
Chairman

By: \_\_\_\_\_  
Commissioner of Highways

[SIGNATURE PAGE TO *MEMORANDUM OF AGREEMENT BETWEEN THE VIRGINIA DEPARTMENT OF TRANSPORTATION AND THE CENTRAL VIRGINIA TRANSPORTATION AUTHORITY* DATED OCTOBER [●], 2020]

**EXHIBIT A – FORM OF MONTHLY FINANCIAL REPORT**



VIRGINIA DEPARTMENT OF TRANSPORTATION  
 CASH BASIS STATEMENT OF OPERATIONS  
 CENTRAL VIRGINIA TRANSPORTATION AUTHORITY  
 MONTHLY ACTIVITY AND YEAR TO DATE  
 SEPTEMBER 2020 FY 2021

	Program No.	<i>CURRENT MONTH</i>	<i>YEAR TO DATE</i>
		CENTRAL VIRGINIA FUND 0973	CENTRAL VIRGINIA FUND 0973
<b><i>BEGINNING CASH &amp; INVESTMENTS</i></b>			
<b><u>REVENUES</u></b>			
State Sales and Use Tax			-
Local Fuels Taxes			-
<i>Total Regional Revenues - net of revenue refunds</i>		-	-
Interest		-	-
<b><i>TOTAL REVENUES</i></b>		-	-
<b><u>EXPENDITURES (By Program)</u></b>			
Total Financial Assistance to Localities	607100		-
<b><i>TOTAL EXPENDITURES</i></b>		-	-
<b>OTHER DISBURSEMENTS (Inc'l GLA Adj - A/P.)</b>			
<b>TOTAL AMOUNT DISBURSED</b>		-	-
<b><i>ENDING CASH AND INVESTMENTS</i></b>		<b>\$ -</b>	<b>\$ -</b>

*Prepared by VDOT Fiscal Division - Financial Reporting Section*

**EXHIBIT B – CVTA MODEL SPA**

**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:**

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

<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:** [•]

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

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

**\*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)
<b>Project Starting Balance</b>	\$ -			\$ -
Design Work	\$ -	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Acquisition	-	-	-	\$ -
Construction	-	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
<b>Other (please explain)</b>	-	-	-	\$ -
<b>TOTALS</b>	\$ -	\$ -	\$ -	\$ -

**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			-
<b>Requisition Amount</b>				\$ -

**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**

**EXHIBIT C – VA. CODE §§ 33.2-3700, *et seq.***

Code of Virginia

Title 33.2. Highways and Other Surface Transportation Systems

Subtitle IV. Local and Regional Transportation

## Chapter 37. Central Virginia Transportation Authority

### § 33.2-3700. Definitions

As used in this chapter, unless the context requires a different meaning:

"Authority" means the Central Virginia Transportation Authority.

"Fund" means the Central Virginia Transportation Fund.

2020, c. 1235.

### § 33.2-3701. Central Virginia Transportation Fund

A. There is hereby created in the state treasury a special nonreverting fund for Planning District 15 to be known as the Central Virginia Transportation Fund. The Fund shall be established on the books of the Comptroller. All revenues dedicated to the Fund pursuant to § 58.1-638 and Chapter 22.1 (§ 58.1-2291 et seq.) of Title 58.1 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The moneys deposited in the Fund shall be used solely for (i) transportation purposes benefiting the localities comprising Planning District 15 and (ii) administrative and operating expenses as specified in subsection B of § 33.2-3706.

B. The amounts dedicated to the Fund shall be deposited monthly by the Comptroller into the Fund and thereafter distributed to the Authority as soon as practicable for use in accordance with this chapter. If the Authority determines that such moneys distributed to it exceed the amount required to meet the current needs and demands to fund transportation purposes pursuant to this chapter, the Authority may invest such excess moneys to the same extent and in the same manner as provided in subsection A of § 33.2-1525 for excess funds in the Transportation Trust Fund.

C. The amounts deposited into the Fund and the distribution and expenditure of such amounts shall not be used to calculate or reduce the share of federal, state, or local revenues otherwise available to participating localities. Further, such revenues and moneys shall not be included in any computation of, or formula for, a locality's ability to pay for public education, upon which appropriations of state revenues to local governments for public education are determined.

D. After provision for the payment of administrative and operating expenses as specified in subsection B of § 33.2-3706, the revenues in the Fund shall be allocated as follows:

1. Thirty-five percent shall be retained by the Authority to be used for transportation-related purposes benefiting the localities comprising Planning District 15;
2. Fifteen percent shall be distributed to the Greater Richmond Transit Company (GRTC), or its successor, to provide transit and mobility services in Planning District 15; and
3. Fifty percent shall 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 locality.

E. Each locality's share of the revenues returned pursuant to subdivision D 3 shall be the total of the taxes dedicated to the Fund that are generated or attributable to the locality divided by the total of such taxes dedicated to the Fund. Each locality shall create a separate, special fund in which all revenues received pursuant to subdivision D 3 shall be deposited. Each locality shall annually provide to the Authority sufficient documentation, as required by the Authority, showing that the revenues distributed under subdivision D 3 were used for the purposes set forth therein.

F. The projects and other transportation purposes supported by the revenues allocated under subdivisions D 1 and 2 shall be approved by the Authority.

G. The GRTC shall create a separate, special fund in which all revenues received pursuant to subdivision D 2 shall be deposited. The GRTC shall develop a plan for regional public transportation within Planning District 15 in collaboration with the Richmond Regional Transportation Planning Organization in conformance with the guidelines required by § 33.2-286 . The GRTC shall annually provide to the Authority sufficient documentation, as required by the Authority, showing that the revenues distributed under subdivision D 2 were applied in accordance with Authority approval and the guidelines required by § 33.2-286.

H. The Authority shall develop a prioritization process based on an objective and quantifiable analysis that considers the benefits of projects relative to their cost. Only projects evaluated using such process may be funded pursuant to subdivision D 1.

2020, c. 1235.

### **§ 33.2-3702. Central Virginia Transportation Authority created**

The Central Virginia Transportation Authority is hereby created as a body politic and as a political subdivision of the Commonwealth. The Authority shall embrace each county, city, and town located in Planning District 15, which is established pursuant to Chapter 42 (§ 15.2-4200 et seq.) of Title 15.2.

2020, c. 1235.

### **§ 33.2-3703. Composition of Authority**

The Authority shall consist of 16 members as follows:

1. The chief elected officer, or his designee, of the governing body of each of the counties embraced by the Authority;
2. The chief elected officer, or his designee, of the City of Richmond and the Town of Ashland;
3. One member of the House of Delegates who resides in a county or city embraced by the Authority, appointed by the Speaker of the House, and one member of the Senate who resides in a county or city embraced by the Authority, appointed by the Senate Committee on Rules;
4. A member of the Commonwealth Transportation Board who resides in a locality embraced by the Authority and is appointed by the Governor; and
5. The following four persons serving ex officio as nonvoting members of the Authority: the Director of the Department of Rail and Public Transportation, or his designee; the Commissioner

of Highways, or his designee; the Chief Executive Officer of the Greater Richmond Transit Company (GRTC); and the Chief Executive Officer of the Richmond Metropolitan Transportation Authority.

All members of the Authority shall serve terms coincident with their terms of office. Vacancies shall be filled in the same manner as the original appointment. If a member of the Authority who represents a locality as provided in subdivision 1 or 2 is unable to attend a meeting of the Authority, he may designate another current elected official of such governing body to attend such meeting of the Authority. Such designation shall be for the purposes of one meeting and shall be submitted in writing or electronically to the Chairman of the Authority at least 48 hours prior to the affected meeting.

The Authority shall elect a chairman and vice-chairman from among its voting membership.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Authority, and the cost of such audit shall be borne by the Authority.

2020, c. [1235](#).

#### **§ 33.2-3704. Staff**

The Authority may employ a chief executive officer and such staff as it shall determine to be necessary to carry out its duties and responsibilities under this chapter. No such person shall contemporaneously serve as a member of the Authority. The Department of Transportation and the Department of Rail and Public Transportation shall make their employees available to assist the Authority, upon request.

2020, c. [1235](#).

#### **§ 33.2-3705. Decisions of the Authority**

A majority of voting members of the Authority shall constitute a quorum. Vacancies shall not be considered in the establishment of a quorum. Votes of the chief elected officers of localities, or their designees, appointed to the Authority shall be weighted, based upon population of the locality, as follows: (i) the chief elected officers, or their designees, from the Counties of Chesterfield and Henrico and the City of Richmond shall each receive four votes; (ii) the chief elected officer, or his designee, from the County of Hanover shall receive three votes; (iii) the chief elected officers, or their designees, from the Counties of Goochland, New Kent, and Powhatan shall each receive two votes; and (iv) the chief elected officers, or their designees, from the Town of Ashland and the County of Charles City shall each receive one vote. The Delegate and Senator appointed to the Authority and the member of the Commonwealth Transportation Board appointed by the Governor shall each receive one vote. Decisions of the Authority shall require an affirmative vote of those present and voting whose votes represent at least four-fifths of the population embraced by the Authority; however, no motion to fund a specific facility or service shall fail because of this population criterion if such facility or service is not located or to be located or provided or to be provided within the county or city whose chief elected officer's or elected official's, or its respective designee's, sole negative vote caused the facility or service to fail to meet the population criterion. The population of counties and cities embraced by the Authority shall be the population as determined by the most recently preceding decennial census, except that on July 1 of the fifth year following such census, the population of each county and city shall be adjusted, based on population estimates made by the Weldon Cooper Center for Public Service of the University of Virginia.



2020, c. 1235.

**§ 33.2-3706. Annual budget and allocation of expenses**

A. The Authority shall adopt an annual budget and develop a funding plan to be supported by the revenues allocated under subdivision D 1 of § 33.2-3701 and shall provide for such development and adoption in its bylaws. The funding plan shall provide for the expenditure of funds for transportation purposes over a four-to-six-year period and shall align with the Statewide Transportation Plan established pursuant to § 33.2-353, the long-range transportation plan of Planning District 15, or the long-range transportation plans of participating localities as much as possible. The Authority shall solicit public comment on its budget and funding plan by posting a summary of such budget and funding plan on its website and holding a public hearing. Such public hearing shall be advertised on the Authority's website and in a newspaper of general circulation in Planning District 15.

B. The administrative and operating expenses of the Authority shall be provided in an annual budget adopted by the Authority and to the extent funds for such expenses are not provided from other sources shall be paid from the Fund. Such budget shall be limited solely to the administrative and operating expenses of the Authority and shall not include any funds for construction or acquisition of transportation facilities or the maintenance or performance of any transportation service.

C. Members may be reimbursed for all reasonable and necessary expenses provided in §§ 2.2-2813 and 2.2-2825, if approved by the Authority. Funding for the costs of compensation and expenses of the members shall be provided by the Authority.

2020, c. 1235.

**§ 33.2-3707. Authority to issue bonds**

The Authority may issue bonds and other evidences of debt as may be authorized by this section or other law. The provisions of Article 5 (§ 33.2-1920 et seq.) of Chapter 19 shall apply, mutatis mutandis, to the issuance of such bonds or other debt. The Authority may issue bonds or other debt in such amounts as it deems appropriate. The bonds may be supported by any funds available.

2020, c. 1235.

**§ 33.2-3708. Powers of the Authority**

A. The Authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
2. To adopt and use a corporate seal and to alter the same at its pleasure;
3. To procure insurance, participate in insurance plans, and provide self-insurance; however, the purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled;
4. To establish bylaws and make all rules and regulations, not inconsistent with the provisions of

this chapter, deemed expedient for the management of the Authority's affairs;

5. To apply for and accept money, materials, contributions, grants, or other financial assistance from the United States and agencies or instrumentalities thereof, the Commonwealth and any political subdivision, agency, or instrumentality of the Commonwealth, and any legitimate private source;

6. To acquire real and personal property or any interest therein by purchase, lease, gift, or otherwise for purposes consistent with this chapter and to hold, encumber, sell, or otherwise dispose of such land or interest for purposes consistent with this chapter;

7. To acquire by purchase, lease, contract, or otherwise, highways, bridges, or tunnels and to construct the same by purchase, lease, contract, or otherwise;

8. In consultation with the Commonwealth Transportation Board for projects that encompass a state highway, and with each city or county in which the facility or any part thereof is or is to be located, to repair, expand, enlarge, construct, reconstruct, or renovate any or all highways, bridges, and tunnels within Planning District 15 and to acquire any real or personal property needed for any such purpose;

9. To enter into agreements or leases with public or private entities for the operation and maintenance of bridges, transit and rail facilities, and highways;

10. To make and execute contracts, deeds, mortgages, leases, and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;

11. To the extent funds are made or become available to the Authority to do so, to employ employees, agents, advisors, and consultants, including without limitation attorneys, financial advisers, engineers, and other technical advisers and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation;

12. To exercise the powers of a locality pursuant to § 33.2-269; and

13. To the extent not inconsistent with the other provisions of this chapter, and without limiting or restricting the powers otherwise given the Authority, to exercise all of the powers given to transportation district commissions by § 33.2-1919.

B. The Authority shall comply with the provisions governing localities contained in § 15.2-2108.23.

2020, c. 1235.

### **§ 33.2-3709. Additional Powers of the Authority**

Notwithstanding any contrary provision of this title and in accordance with all applicable federal statutes and requirements, the Authority shall control and operate and may impose and collect tolls in amounts established by the Authority for the use of any new or improved highway, bridge, or tunnel, to increase capacity on such facility or to address congestion within Planning District 15, constructed by the Commission (i) with federal, state, or local funds, (ii) solely with revenues of the Authority, or (iii) with revenues under the control of the Authority. The amount of any such toll may be varied from facility to facility, by lane, by congestion levels, by day of the week, by time of day, by type or size of vehicle, by number of axles, or by any similar combination

thereof or any other factor the Authority may deem proper, and a reduced rate may be established for commuters as defined by the Authority. All such tolls shall be used for programs and projects that are reasonably related to or benefit the users of the new or improved highway, bridge, or tunnel, including, but not limited to, for the debt service and other costs of bonds whose proceeds are used for construction or improvement of such highway, bridge, or tunnel.

Any tolls imposed by the Authority shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the facility or prohibit a toll facility from retaining means of nonautomated toll collection in some lanes of the facility. For all facilities tolled by the Authority, there shall be signs erected prior to the point of toll collection that clearly state how the majority of the toll revenue is being spent by the Authority to benefit the users of the facility.

2020, c. [1235](#).

### **§ 33.2-3710. Authority a responsible public entity under Public-Private Transportation Act of 1995**

The Authority is a responsible public entity as defined in § [33.2-1800](#) and shall be regulated in accordance with the terms of the Public-Private Transportation Act of 1995 (§ [33.2-1800](#) et seq.) and regulations and guidelines adopted pursuant thereto.

2020, c. [1235](#).

### **§ 33.2-3711. Continuing responsibilities of the Commonwealth Transportation Board and the Department of Transportation**

Except as otherwise explicitly provided in this chapter, until such time as the Authority and the Department of Transportation, or the Authority and the Commonwealth Transportation Board, agree otherwise in writing, the Commonwealth Transportation Board shall allocate funding to and the Department of Transportation shall perform or cause to be performed all maintenance and operation of the bridges and roadways and shall perform such other required services and activities with respect to such bridges and roadways as were being performed on July 1, 2020.

2020, c. [1235](#).

### **§ 33.2-3712. Continued responsibilities for local transit funding**

No locality embraced by the Authority shall reduce its local funding for public transit by more than 50 percent of what it appropriated for public transit as of July 1, 2019. Starting in fiscal year 2023, the amount required to be provided by a locality pursuant to this section shall be adjusted annually based on the greater of (i) the change in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics for the U.S. Department of Labor for the previous year, or (ii) zero.

2020, c. [1235](#).

### **§ 33.2-3713. Use of revenues by the Authority**

Notwithstanding any other provision of this chapter, all moneys received by the Authority shall be used by the Authority solely for the benefit of those counties, cities, and towns that are embraced by the Authority, and such moneys shall be used by the Authority in a manner that is consistent with the purposes stated in this chapter.

2020, c. [1235](#).

