

VDOT DRAFT 9-10-20 – Revised, incorporating Chesterfield/Henrico comments
10-13-2020

**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

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[**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.]¹

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]², 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

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

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

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- 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 [15th business day of the following month.]³ 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”)]⁴ 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 31st 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.f.~~ 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.g.~~ 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

Commented [E1]: Chesterfield explains that CVTA projects do not need to be in VDOT’s SYIP. Local CIP projects are not. If CVTA funds were supplementing funds that flow through VDOT for projects in the SYIP, the funds will be noted as “CVTA” in the SYIP – just like local funds re now.

Commented [E2R1]: Depending on input from other local jurisdiction members, will request explanation from VDOT legal counsel and provide update.

Commented [TT3R1]: Henrico would like an explanation and update too.

³ **NOTE TO CVTA:** VDOT staff confirming this timing is workable.

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

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

i-h. 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-i. 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-j. 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 will be responsible to approve CVTA Projects and Purposes in accordance with Va. Code §§ 33.2-3700 *et seq.*, as amended, a current copy of which is attached herein in Exhibit C.

b. CVTA shall produce annual reports reflecting all CVTA Projects and Purposes during the reporting period that were funded in whole or in part with moneys from the Fund. Such annual reports shall identify, among other things, amounts from the Fund used for debt service on debt issued and supported by CVTA Revenues.

c. 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.

d. CVTA will maintain documentation relating to the use of CVTA Revenues and all other documentation as required by state and federal law.

e. 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.

4. TERMINATION OF MEMORANDUM OF AGREEMENT:

Commented [E4]: Chesterfield proposes striking provisions 3a, b, and d. Chesterfield: These are not relevant to this agreement between the CVTA and VDOT. VDOT is not the oversight agency for the CVTA.

Commented [TT5R4]: I agree with Chesterfield's comments. These do not appear to be relevant to an agreement between CVTA and VDOT.

Commented [E6R4]: VDOT explains that these provisions are to provide for mutual disclosure and transparency on projects. This MOA is modeled on the HRTAC/VDOT MOA, which is proven and tested on big projects.

Commented [E7]: Same comment as above – 3a, b, and d.

Commented [TT8]: See Chesterfield's comment as to Section 2(g). We need to be clear about what CVTA projects, if any, have to be included in the VDOT SYIP.

Commented [E9R8]: Getting feedback from VDOT.

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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]

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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]

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EXHIBIT A – FORM OF MONTHLY FINANCIAL REPORT

[TO COME]

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EXHIBIT B – CVTA MODEL SPA

[TO COME]

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

[TO COME]