

INTRODUCED: June 28, 2021

AN ORDINANCE No. 2021-198

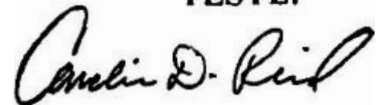
To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Memorandum of Agreement between the Central Virginia Transportation Authority ("CVTA") and the City of Richmond Regarding Distribution and Use of Funds Under Chapter 1235 of the 2020 Virginia Acts of Assembly for the purpose of establishing the terms and conditions for the distribution and use of funds from the Central Virginia Transportation Fund to improve local mobility.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

A TRUE COPY:

TESTE:



City Clerk

PUBLIC HEARING: JUL 26 2021 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Memorandum of Agreement between the Central Virginia Transportation Authority ("CVTA") and the City of Richmond Regarding Distribution and Use of Funds Under Chapter 1235 of the 2020 Virginia Acts of Assembly for the purpose of establishing the terms and conditions for the distribution and use of funds from the Central Virginia Transportation Fund to improve local mobility. Such Memorandum of Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JUL 26 2021 REJECTED: _____ STRICKEN: _____



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O&R REQUEST

DATE: June 1, 2021

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

Handwritten signature of Levar M. Stoney.

THROUGH: J.E. Lincoln Saunders, Acting Chief Administrative Officer

Handwritten signature of J.E. Lincoln Saunders.

THROUGH: Robert Steidel; Deputy Chief Administrative Officer

Handwritten signature of Robert Steidel.

FROM: Bobby Vincent, Director of Public Works

Handwritten signature of Bobby Vincent.

SUBJECT: TO AUTHORIZE THE CHIEF ADMINISTRATIVE OFFICER TO EXECUTE A MEMORANDUM OF AGREEMENT FROM THE CENTRAL VIRGINIA TRANSPORTATION AUTHORITY FOR THE PURPOSE OF DISTRIBUTION AND USE OF FUNDS.

ORD. OR RES. No. _____

PURPOSE: To authorize the chief administrative officer to execute a memorandum of agreement from the Central Virginia Transportation Authority regarding the distribution and use of funds.

REASON: The Central Virginia Transportation Authority (CVTA) under the guidance of Chapter 1235 of the 2020 Virginia Acts of Assembly, has developed a Memorandum of Agreement concerning the distribution of proceeds from the CVTA to each member locality.

RECOMMENDATION: Approval is recommended by the City Administration.

BACKGROUND: The CVTA is comprised of the localities within Virginia Planning District 15, including the City of Richmond and the counties of Henrico, Chesterfield, Hanover, New Kent, Powhatan, Goochland, Charles City, and the Town of Ashland. In accordance with Va. Code Ann. § 33.2-3701, the proceeds from a special non-reverting fund for Planning District 15 are to be distributed to each locality located in Planning District 15 and to be used to improve local mobility, which may include construction, maintenance, or expansion of roads, sidewalks, trails, mobility services, or transit located in the respective locality. Funds can also be used for regional transportation-related purposes benefitting the Member Localities comprising Planning District 15.

FISCAL IMPACT TO CITY/COST: N/A

FISCAL IMPLICATIONS: Not signing this Memorandum of Agreement will ineligibility of CVTA regional funds.

BUDGET AMENDMENT NECESSARY: N/A

REVENUE TO THE CITY: N/A

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: June 28, 2021

CITY COUNCIL PUBLIC HEARING: July 26, 2021

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing and Transportation Standing Committee (LUHT) July 20, 2021

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: N/A

AFFECTED AGENCIES: Department of Public Works

RELATIONSHIP TO EXISTING ORD. OR RES.:

REQUIRED CHANGES TO WORK PROGRAM(S):

ATTACHMENTS: Memorandum of Agreement between CVTA and the City of Richmond

STAFF: Dironna Moore Clarke, Office of Equitable Transit and Mobility (646-3074)

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

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

W I T N E S S E T H:

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

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

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

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

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

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

payment of compensation for employees in transportation-specific positions (the “50% Funds”); and,

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

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

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

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

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

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

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

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

2. CVTA’s Management of CVTA Funds.

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

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

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

accordance with generally accepted accounting principles and all applicable legal requirements.

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

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

F. CVTA and Member Locality will use Fund proceeds solely for transportation purposes benefiting the communities within Planning District 15.

G. CVTA will segregate and distribute CVTA member funding according to the methodology described in Chapter 1235.

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

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

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

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

B. Member Locality will deposit and administer distributions of respective proportional shares of the 50% Funds within the separate Local CVTA Fund established for this purpose, pursuant to paragraph 4 above.

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

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

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

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

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

B. CVTA distributions to Member Locality will be project-based, coordinated on a case-by-case basis, and may be made on a reimbursement basis. CVTA agrees to review and evaluate project information submitted by Member Locality against the

project scoring system approved by the CVTA and to provide a pre-approval of projects before they are constructed.

C. Member Locality will submit all requests for reimbursements and for pre-approval in a form and manner reasonably determined by CVTA for the purpose of fulfilling CVTA's obligation to ensure that the costs to be reimbursed were incurred for the project and are permitted to be reimbursed under Chapter 1235.

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

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

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

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

7. Quarterly Reports and Annual Certification.

A. Member Locality will provide quarterly reports of expenditures of all funds received from the CVTA using the cash basis method to the CVTA Finance Committee, beginning upon the execution of this Agreement, according to the following schedule:

Period Covered:	Submission Date:
July 1 through September 30	By November 1
October 1 through December 31	By February 1
January 1 through March 31	By May 1
April 1 through June 30	By August 1

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

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

D. In the event Member Locality fails to provide timely expenditure reports in accordance with the schedule set forth in paragraph 7.A or the Annual Report and Certification, as required by paragraph 7.B, and CVTA does not grant an extension, the CVTA Board may authorize the CVTA Finance Committee to withhold further Fund distributions until all reports, certifications, and supplemental information is provided in compliance with this Agreement. When the Member Locality provides the required certification and reports with appropriate documentation, CVTA shall make available all withheld funds, inclusive of any interest accrued on such withheld funds, for distribution to Member Locality as soon as practicable.

E. If the CVTA Finance Committee identifies deficiencies in any Member Locality quarterly expenditure report or its Annual Report or Certification, the CVTA

Finance Committee shall inform Member Locality in writing of such deficiencies and Member Locality will have 30 days to respond to or to cure such deficiency. If there is any dispute over an alleged deficiency, the Parties agree to submit any such dispute to non-binding mediation prior to instituting litigation. No Party will be obligated to enter into any settlement discussed in mediation, but any agreed upon settlement shall be binding. If the Parties are not able to reach agreement in mediation, they may resort to litigation as if the mediation had never taken place. The mediation will be conducted by a mutually agreeable mediator or mediation service in the geographic area comprising Planning District 15. Judicial actions to obtain provisional remedies, such as injunctions, are not violations of the obligation to mediate and do not waive the right to mediate. The parties hereby agree that the costs of mediation shall be borne equally by both Parties. Each Party shall be responsible for its own attorney's fees.

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

8. Failure to Comply with Memorandum of Agreement.

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

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

C. If the Party in alleged default disputes any matters in such notice, it shall advise the other Party in writing.

D. If the Party in alleged default fails to cure or diligently pursue completion of such cure within 30 days as provided in this Section 8, the Parties agree to submit any dispute regarding the alleged default to non-binding mediation prior to instituting litigation. No Party shall be obligated to enter into any settlement but any agreed to settlement will be binding. If the Parties are not able to reach agreement, they may resort to litigation as if the mediation had never taken place. The mediation will be conducted by a mutually agreeable mediator or mediation service in the geographic area comprising Planning District 15. Judicial actions to provide provisional remedies, such as injunctions, are not violations of the obligation to mediate and do not waive the right to mediate. The parties hereby agree that the costs of mediation shall be borne equally by both Parties. Each Party shall be responsible for its own attorney's fees.

9. Restitution. Upon a final determination by a court of competent jurisdiction that Member Locality has used CVTA funds improperly or not in compliance with applicable law, the CVTA Board shall require restitution of the misappropriated funds, together with interest at the then applicable judgment rate of interest as provided in Virginia Code § 6.2-302 from the date of entry of the final order. Until such restitution is effected in full, the CVTA Board may withhold further distributions to Member Locality as permitted herein.

10. Maintenance of Records by Member Locality and CVTA. Member Locality and CVTA will maintain all records relating to receipt and use of CVTA Funds for a minimum of five years from the date the record was created or the period of time prescribed by the Virginia Public Records Act, whichever is longer. With regard to all

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

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

CVTA:

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

Member Locality:

XXXXXX
County/City/Town
Address
Locality, Virginia XXXXXX

With a copy to:

County/City/Town Attorney
County/City Town
Address
Locality, Virginia XXXXXX

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

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

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

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

would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.

15. Interpretation and Construction. This Agreement will be interpreted and construed to give meaning to all of its term and conditions, consistent with applicable law, and where necessary, to reconcile those terms and conditions with applicable law and to give effect to its plain meaning. The parties acknowledge that this Agreement has been jointly developed, drafted, reviewed, and approved, that each has had the benefit of legal counsel during this process and, therefore, the Agreement will be interpreted and construed neutrally, without preference, and neither in favor of, nor to the detriment of either party.

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

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

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

[INTENTIONALLY BLANK – SIGNATURES ON FOLLOWING PAGE]

Central Virginia Transportation Authority

Attest:

Clerk

By: _____

Title: _____

Approved as to form:

Legal Counsel

City of Richmond, Virginia

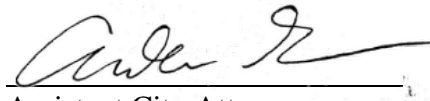
Attest:

Clerk

By: _____

Title: _____

Approved as to form:



Assistant City Attorney

**Central Virginia Transportation Authority
Annual Certification of Expenditures**

[Name of Locality or Agency]

Central Virginia Transportation Authority (CVTA) member jurisdictions and the Greater Richmond Transit Company (GRTC), which receive revenues from the Central Virginia Transportation Fund (Fund), must annually provide sufficient documentation as required by the CVTA showing that they used the revenues distributed to them under Chapter 37, Title 33.2 of the *Code of Virginia* (§ 33.2-3701) for the purposes set forth therein.

Fund revenues returned to member jurisdictions must 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.

Fund revenues distributed to GRTC must be used to provide transit and mobility services in Planning District 15.

[Name] County/City/Town/Agency has submitted documentation sufficient to meet the requirements of Chapter 37, Title 33.2 of the Code of Virginia (§ 33.2-3701), including its spending plans, quarterly reports to the CVTA, and this Annual Certification Report.

Pursuant to and in compliance with these requirements and in conjunction with the documentation submitted as part of this Annual Certification, I hereby certify, on behalf of [Name] County/City/Town/Agency that all revenues distributed to [Name] County/City/Town/Agency from the Fund were used in compliance with the applicable provisions of Chapter 37, Title 33.2 of the *Code of Virginia* (§ 33.2-3701) as shown by the submitted documentation.

Date: _____

Chief Elected Officer or Chief Administrative Officer