*Note: This VAMWA template is a draft starting point that may save VAMWA Members time in devising individual fiscal agent agreements. DHCD’s COVID-19 Municipal Utility Relief Program requires that any CARES funding award to a Town or Authority be disbursed through a partnering City or County serving as the Fiscal Agent with the Virginia Department of Accounts for receipt and pass-through of funds. The template is drafted for an Authority; if used by a Town instead, replace Authority references accordingly. Although this template has been reviewed by DHCD, VAMWA Members who use it are encouraged to have your individual agreement prepared by or with the advice and counsel of your legal counsel.*

**MEMORANDUM OF UNDERSTANDING**

**FOR COVID-19 MUNICIPAL UTILITY RELIEF PROGRAM IMPLEMENTATION**

**THIS MEMORANDUM OF UNDERSTANDING FOR COVID-19 MUNICIPAL UTILITY RELIEF PROGRAM IMPLEMENTATION** (“Memorandum”) is made and entered into the \_\_\_\_ day of December, 2020, by and between the **[LOCALITY NAME]** (“Locality”), and the **[AUTHORITY NAME]** (“Authority”) (each a “Party” and jointly the “Parties”).

**BACKGROUND**

A. Federal CARES Act Funds. In response to the COVID-19 pandemic disaster, the United States federal government enacted the Coronavirus Aid, Relief, and Economic Securities Act of 2020 (“CARES Act”) to provide funding for numerous programs to address the COVID-19 pandemic disaster, including $150 billion in assistance to states, local, territorial, and tribal governments for direct impacts of the COVID-19 pandemic disaster through the establishment of the Coronavirus Relief Fund (“CRF”). The Commonwealth of Virginia received approximately $3.1 billion as its share.

B. Federally Authorized Uses. Section 5001 of the CARES Act provides that the CRF may be used by state and local governments to cover costs that: (i) are necessary expenditures incurred due the public health emergency with respect to COVID-19; (ii) were not accounted for in the budget most recently approved as of March 27, 2020 for the Locality (except as may be permitted by the CRF guidelines established by the United States Department of the Treasury); and (iii) were incurred during the period that begins March 1, 2020, and ends on December 30, 2020.

C. Virginia’s Utility Relief Program. Consistent with the CARES Act, in November 2020 the General Assembly passed and Governor Northam signed into law the 2020 Special Session I Amendments to the 2020 Appropriation Act. Item 479.10 of this legislation appropriates $100 million from the Commonwealth’s CARES Act CRF allocation to establish a COVID-19 Utility Relief Program (“Program”) and help provide direct assistance to utility customers with accounts over 30 days in arrears.

D. Authority’s CRF Award. As a water and/or wastewater service provider and eligible “municipal utility” within the meaning of the Program, the Authority has applied to the State Corporation Commission (“SCC”) for a suballocation of the appropriated funds for the purpose of providing direct assistance to its customers in accordance with applicable federal and state laws, regulations and guidance (“CRF Rules”). The SCC and/or the Virginia Department of Housing and Community Development (“DHCD”) has issued an award letter to Authority (Exhibit A hereto) committing to funding assistance for eligible customers of the Authority in a specified amount (“Authority CRF Funds”).

E. Local Implementation. The Locality and the Authority desire to collaborate for the timely, effective and efficient implementation of the Program and provision of assistance to their eligible utility customers in accordance with the CRF Rules. The DHCD is responsible for assisting the SCC in the implementation of the Program and passing along awarded CRF funding to municipal utilities. On November 24, 2020, DHCD issued a guidance memorandum providing additional information on the COVID-19 Municipal Utility Relief Program (“DHCD Guidance”), which requires that the award to the Authority be disbursed through a partnering city or county serving as the fiscal agent with the Virginia Department of Accounts (“DOA”). The Locality is willing to serve as the required fiscal agent to facilitate assistance to eligible customers experiencing economic hardship due to the COVID-19 pandemic.

**AGREEMENT**

Now, Therefore, in consideration of the mutual promises and obligations set forth in this Memorandum, including the recitals set forth above which are a material part of this Memorandum, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Fiscal Agent. The Locality agrees to act as the Authority’s fiscal agent as required by DHCD for the limited purpose of this Program.

2. Joint Certification. The Locality, in its capacity as fiscal agent, agrees to make the certification required by DHCD substantially in the form as shown in Exhibit B hereto (or any modification thereto made by DHCD and found to be agreeable by the Locality).

3. Funds Pass-Through. The Locality agrees to transfer the Authority CRF Funds to the Authority promptly upon the Locality’s receipt of such funds from DOA.

4. Compliance and Recordkeeping by Authority. The Authority agrees to comply with all applicable CRF Rules and maintain records of its expenditures of the Authority CRF Funds for a period of five years and provide the Locality with copies of such records at no expense upon its request.

5. Repayment and Indemnification by Authority. If the United States or the Commonwealth lawfully requires repayment of some or all of the Authority CRF Funds, the Authority agrees to repay such amount to the Locality (or directly to the United States or the Commonwealth as applicable) for such purpose within twenty (20) days of any such requirement. In addition, Authority agrees to indemnify and hold the Locality harmless from any liability to the United States or the Commonwealth resulting from any act or omission of the Authority in its administration of the Authority CRF Funds, including as a result of any violation by the Authority of the CRF Rules. In the event that any suit or proceeding is brought against the Locality by the United States or the Commonwealth, the Authority, upon notice given to it by the Locality, will pay all costs of defending the Locality in any such action or other proceeding, including attorney’s fees. In the event of any settlement or any final judgment being awarded against the Locality, either independently or jointly with the Authority, the Authority will pay such settlement or judgment in full, pay all costs and expenses thereof, and hold the Locality harmless therefrom. The Authority shall bear no responsibility for the acts or omissions of the Locality or its officers or employees.

6. Return of Unexpended Authority CRF Funds. If all of the Authority CRF Funds are not expended to assist utility customers by any applicable deadline under the Program such that Authority is obligated to return unexpended funds to the Commonwealth, the Authority and the Locality shall coordinate to accomplish the return of such funds in a timely manner in accordance with the CRF Rules.

7. Acknowledgment of Required Information. In accordance with the DHCD Guidance and related federal requirements for pass-through entities (2 C.F.R. §200.332), Authority hereby acknowledges receipt of Exhibit C hereto and the additional information set forth therein.

8. Further Cooperation. The Parties shall continue to cooperate with each other as reasonably necessary to confirm or bring about the transfers contemplated by this Agreement.

9. Term. This Memorandum shall be in effect from the date on which it is executed by the Parties through June 30, 2021.

10. Governing Law; Severability. This Agreement shall be construed in accordance with and governed for all purposes by the laws of the Commonwealth of Virginia. If any word or provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court to be invalid or unenforceable, the same shall in no way affect any other circumstance or the validity or enforceability of any other word or provision.

11. Entire Agreement; Amendments. This Agreement contains the entire integrated agreement between the Parties as to the subject matter hereof and supersedes all previous written and oral negotiations, commitments, proposals and writings. No amendments may be made to this Agreement except by a writing signed by both Parties.

12. Counterparts; Signatures; Copies. This Agreement may be executed in counterparts, both of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or scanned signature may substitute for and have the same legal effect as an original signature. Any copy of this executed Agreement made by photocopy, facsimile or scanner shall be considered the original for all purposes.

13. Authorization. Each Party represents that its execution, delivery and performance under this Agreement have been duly authorized by all necessary action on its behalf, and do not and will not violate any provision of its charter or enabling legislation or result in a material breach of or constitute a material default under any agreement, indenture, or instrument of which it is a party or by which it or its properties may be bound or affected.

IN WITNESS WHEREOF, the Parties hereto have caused the execution of this Memorandum of Understanding as of the date first written above.

**[AUTHORITY NAME]**

By:

 [NAME]

[TITLE]

**[LOCALITY NAME]**

By:

 [NAME]

[TITLE]

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Director of Finance Date

[END OF SIGNATURES]

**MEMORANDUM OF UNDERSTANDING**

**FOR MUNICIPAL UTILITY RELIEF PROGRAM IMPLEMENTATION**

**EXHIBIT A**

**CRF Award Letter**

**MEMORANDUM OF UNDERSTANDING**

**FOR MUNICIPAL UTILITY RELIEF PROGRAM IMPLEMENTATION**

**EXHIBIT B**

**DHCD Joint Certification Form**

**MEMORANDUM OF UNDERSTANDING**

**FOR MUNICIPAL UTILITY RELIEF PROGRAM IMPLEMENTATION BETWEEN**

**EXHIBIT C**

**Pass-Through Information Requirements**

The following pass-through information requirements pertaining the subaward to Authority (i.e., the Locality’s transfer of the Authority CRF Funds) are set forth below in satisfaction of 2 C.F.R. §200.332 and as directed by the DHCD Guidance. The Federal Award Identification for funds (subaward) addressed by this Memorandum is the Federal Coronavirus Aid, Relief and Economic Security Act (CARES Act) / Coronavirus Relief Fund.

1. Subrecipient’s Name: [AUTHORITY NAME]
2. Subrecipient’s Unique Entity Identifier: [AUTHORITY’S DUNS NUMBER]
3. Federal Award Identification Number: [FROM FINAL AWARD LETTER]
4. Federal Award Date: [FROM FINAL AWARD LETTER]
5. Subaward Period of Performance Start and End Date:

Start Date is Date of this Memorandum; End Date is January 29, 2021

1. Subaward Budget Period Start and End Date:

Start Date is Date of this Memorandum; End Date is January 29, 2021

1. Amount of Federal Funds Obligated by this Action by the Pass-Through Entity to the Subrecipient: [INSERT AMOUNT FROM AWARD LETTER]
2. Total Amount of Federal Funds Obligated to the Subrecipient by the Pass-Through Entity Including the Current Financial Obligation: [INSERT AMOUNT FROM AWARD LETTER ASSUMING LOCALITY HAS NOT PROVIDED OTHER FEDERAL FUNDS TO AUTHORITY]
3. Total Amount of the Federal Award Committed to the Subrecipient by the Pass-Through Entity: [INSERT AMOUNT FROM AWARD LETTER ASSUMING LOCALITY HAS NOT PROVIDED OTHER FEDERAL FUNDS TO AUTHORITY]
4. Federal Award Project Description, as Required to be Responsive to the Federal Funding Accountability and Transparency Act (FFATA): Coronavirus Relief Fund: Municipal Utility Relief Program to Assist Customers
5. (A) Name of Federal Awarding Agency: U.S. Treasury Department

(B) Name of Pass-Through Entity: [INSERT LOCALITY NAME]

1. Contact Information for Awarding Official of the Pass-Through Entity:

[INSERT]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[INSERT]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[INSERT]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Assistance Listings Number and Title (the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement):

CFDA Number and Title: 21.09, Coronavirus Relief Funds

1. Identification of Whether the Award is R&D

Not R&D Award

1. Indirect Cost rate for the Federal Award (including if the de minimis rate is charged) per §200.414:

N/A (no indirect costs can be charged by county/city or municipal utility)