

INTRODUCED: June 10, 2019

AN ORDINANCE No. 2019-150

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Standard Project Administration Agreement between the City of Richmond and the Virginia Department of Transportation to provide funding for the installation of pedestrian access and safety improvements including crosswalks, refuge areas, continuous routes, and traffic channelization on the streets surrounding the park at Kanawha Plaza, to modify the terms of the Standard Project Administration Agreement; and to repeal Ord. No. 2018-332, adopted Jan. 28, 2019.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JUN 10 2019 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 Standard Project Administration Agreement between the City of Richmond and the Virginia Department of Transportation to provide funding for the installation of pedestrian access and safety improvements including crosswalks, refuge areas, continuous routes, and traffic channelization on the streets surrounding the park at Kanawha

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: JUN 24 2019 REJECTED: _____ STRICKEN: _____

Plaza. The Standard Project Administration 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. That Ordinance No. 2018-332, adopted Jan. 28, 2019, is hereby repealed.

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



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O & R REQUEST

4-8807
MAY 09 2019

Office of the
Chief Administrative Officer

O&R REQUEST

DATE: May 3, 2019

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

THROUGH: Robert Steidel, Deputy Chief Administrative Officer

THROUGH: Bobby Vincent Jr., Director of Public Works

THROUGH: M.S. Khara, P.E., City Engineer

THROUGH: Michael B. Sawyer, P.E., City Transportation Engineer

FROM: Jian Xu, P.E., City Transportation Operation Engineer

RE: TO AMEND AND REORDAIN ORDINANCE NO. 2018-332 AND AUTHORIZE THE CHIEF ADMINISTRATIVE OFFICER OR DESIGNEE TO EXECUTE A REVISED STANDARD CITY/STATE AGREEMENT FOR US60/DOWNTOWN EXPRESSWAY GATEWAY PEDESTRIAN IMPROVEMENTS PROJECT (UPC 111702)

5/28/19

RECEIVED

JUN 03 2019

OFFICE OF THE CITY ATTORNEY

ORD. or RES. No. _____

PURPOSE: To amend and re-ordain Ord. No. 2018-332, adopted January 28, 2019, and to authorize the Chief Administrative Officer or designee, for and on behalf of the City of Richmond, to execute a revised standard City/State agreement for US60/Downtown Expressway Gateway Pedestrian Improvements Project (UPC 111702).

REASON: After Ord. No. 2018-332 was adopted on January 28, 2019, the Virginia Department of Transportation (VDOT) made a revision to the City/State agreement causing the need of a new ordinance to authorize the Chief Administrative Officer or designee, to execute a revised agreement for the development and administration of this Smart Scale funding project.

RECOMMENDATIONS: The Department of Public Works recommends approval of this ordinance.

BACKGROUND: The City Council adopted the Ord. No. 2018-332 on January 28, 2019, for the US60/Downtown Expressway Gateway Pedestrian Improvements Project (UPC 111702). However, after City Council action, and before the agreement execution, VDOT modified the City\State Agreement. The mentioned modification occurred on Page 3 Item (m):

Current Language as adopted in Ord. 2018-332

“Ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964, regulations of the United States Department of Transportation (USDOT), Presidential Executive Orders and the Code of Virginia relative to nondiscrimination.”

Modified Language (to be included in the new ordinance)

“Ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964, regulations of the United States Department of Transportation (USDOT), Presidential Executive Orders and the Code of Virginia relative to nondiscrimination; and as a sub-recipient of federal funds, adopt and operate under the DEPARTMENT’s FHWA-approved Disadvantaged Business Enterprise (DBE) Program Plan in accordance with 49 CFR Part 26.”

FISCAL IMPACT/COST TO CITY: None. Federal funds are 100% reimbursable.

FISCAL IMPLICATION: Not executing the City\State agreement will result in a loss of potential revenue.

BUDGET AMENDMENT NECESSARY: No.

REVENUE TO CITY: \$3,183,613 in reimbursable funds.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: June 10, 2019.

CITY COUNCIL PUBLIC HEARING DATE: June 24, 2019.

REQUESTED AGENDA: Consent Agenda.

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing and Transportation Standing Committee (LUHT), June 18, 2019.

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None.

AFFECTED AGENCIES: Department of Public Works; Law Department; Planning and Development; Economic and Community Development; Department of Public Utilities; Finance Department; Budget and Strategic Planning; Copies also sent to: City Mayor (Levar M. Stoney); Chief Administrative Officer (Selena Cuffee-Glenn); Deputy Chief Administrative Officer of Operation (Robert C. Steidel); and City Attorney (2).

RELATIONSHIP TO EXISTING ORD. OR RES.: Ord. No. 2018-332

REQUIRED CHANGES TO WORK PROGRAM(S): Routine maintenance costs are expected in the future years after construction is completed.

ATTACHMENTS: Revised Standard Project Administration Agreement and Appendix A

STAFF: Michael B. Sawyer, City Transportation Engineer, (646-3435)
Jian Xu, Transportation Operations Engineer, (646-5402)

STANDARD PROJECT ADMINISTRATION AGREEMENT
Federal-aid Projects

| Project Number | UPC | Local Government |
|----------------|--------|------------------|
| 0060-127-002 | 111702 | City of Richmond |

THIS AGREEMENT, made and executed in triplicate this ____ day of _____, 2019, by and between the City of Richmond, Virginia, hereinafter referred to as the LOCALITY and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT.

WHEREAS, the LOCALITY has expressed its desire to administer the work described in Appendix A, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds shown in Appendix A have been allocated to finance each Project; and

WHEREAS, the LOCALITY is committed to the development and delivery of each Project described in Appendix A in an expeditious manner; and;

WHEREAS, both parties have concurred in the LOCALITY's administration of the phase(s) of work for the respective Project(s) listed in Appendix A in accordance with applicable federal, state, and local law and regulations.

NOW THEREFORE, in consideration of the mutual premises contained herein, the parties hereto agree as follows:

1. The LOCALITY shall:
 - a. Be responsible for all activities necessary to complete the noted phase(s) of each Project shown in Appendix A, except for activities, decisions, and approvals which are the responsibility of the DEPARTMENT, as required by federal or state laws and regulations or as otherwise agreed to, in writing, between the parties. Each Project will be designed and constructed to meet or exceed current American Association of State Highway and Transportation Officials standards or supplementary standards approved by the DEPARTMENT
 - b. Meet all funding obligation and expenditure timeline requirements in accordance with all applicable federal and state laws and regulations, and Commonwealth Transportation Board and DEPARTMENT policies and as identified in Appendix A to this Agreement. Noncompliance with this requirement can result in deallocation of the funding, rescinding of state funding match, termination of this Agreement, or DEPARTMENT denial of future requests to administer projects by the LOCALITY.

- c. Receive prior written authorization from the DEPARTMENT to proceed with preliminary engineering, right-of-way acquisition and utility relocation, and construction phases of each Project.
- d. Administer the project(s) in accordance with guidelines applicable to Locally Administered Projects as published by the DEPARTMENT.
- e. Maintain accurate and complete records of each Project's development and documentation of all expenditures and make such information available for inspection or auditing by the DEPARTMENT. Records and documentation for items for which reimbursement will be requested shall be maintained for no less than three (3) years following acceptance of the final voucher on each Project.
- f. No more frequently than monthly, submit invoices with supporting documentation to the DEPARTMENT in the form prescribed by the DEPARTMENT. The supporting documentation shall include copies of related vendor invoices paid by the LOCALITY and an up-to-date project summary and schedule tracking payment requests and adjustments. A request for reimbursement shall be made within 90 days after any eligible project expenses are incurred by the LOCALITY. For federally funded projects and pursuant to 2 CFR 200.338, Remedies for Noncompliance, violations of the provision may result in the imposition of sanctions including but not limited to possible denial or delay of payment of all or a part of the costs associated with the activity or action not in compliance.
- g. Reimburse the DEPARTMENT all Project expenses incurred by the DEPARTMENT if, due to action or inaction solely by the LOCALITY, federally funded Project expenditures incurred are not reimbursed by the Federal Highway Administration (FHWA), or reimbursements are required to be returned to the FHWA, or in the event the reimbursement provisions of Section 33.2-214 or Section 33.2-331 of the Code of Virginia, 1950, as amended, or other applicable provisions of federal, state, or local law or regulations require such reimbursement.
- h. On Projects that the LOCALITY is providing the required match to state or federal funds, pay the DEPARTMENT the LOCALITY's match for eligible Project expenses incurred by the DEPARTMENT in the performance of activities set forth in paragraph 2.a.
- i. Administer the Project in accordance with all applicable federal, state, or local laws and regulations. Failure to fulfill legal obligations associated with the project may result in forfeiture of federal or state-aid reimbursements
- j. Provide certification by a LOCALITY official that all LOCALITY administered Project activities have been performed in accordance with all federal, state, and local laws and regulations. If the LOCALITY expends over \$750,000 annually in federal funding, such certification shall include a copy

of the LOCALITY's single program audit in accordance with 2 CFR 200.501, Audit Requirements.

- k. If legal services other than that provided by staff counsel are required in connection with condemnation proceedings associated with the acquisition of Right-of-Way, the LOCALITY will consult the DEPARTMENT to obtain an attorney from the list of outside counsel approved by the Office of the Attorney General. Costs associated with outside counsel services shall be reimbursable expenses of the project.
 - l. For Projects on facilities not maintained by the DEPARTMENT, provide, or have others provide, maintenance of the Project upon completion, unless otherwise agreed to by the DEPARTMENT.
 - m. Ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964, regulations of the United States Department of Transportation (USDOT), Presidential Executive Orders and the Code of Virginia relative to nondiscrimination; and as a sub-recipient of federal funds, adopt and operate under the DEPARTMENT's FHWA-approved Disadvantaged Business Enterprise (DBE) Program Plan in accordance with 49 CFR Part 26.
2. The DEPARTMENT shall:
- a. Perform any actions and provide any decisions and approvals which are the responsibility of the DEPARTMENT, as required by federal and state laws and regulations or as otherwise agreed to, in writing, between the parties and provide necessary coordination with the FHWA as determined to be necessary by the DEPARTMENT.
 - b. Upon receipt of the LOCALITY's invoices pursuant to paragraph 1.f., reimburse the LOCALITY the cost of eligible Project expenses, as described in Appendix A. Such reimbursements shall be payable by the DEPARTMENT within 30 days of an acceptable submission by the LOCALITY.
 - c. If appropriate, submit invoices to the LOCALITY for the LOCALITY's share of eligible project expenses incurred by the DEPARTMENT in the performance of activities pursuant to paragraph 2.a.
 - d. Audit the LOCALITY's Project records and documentation as may be required to verify LOCALITY compliance with federal and state laws and regulations.
 - e. Make available to the LOCALITY guidelines to assist the parties in carrying out responsibilities under this Agreement.

3. Appendix A identifies the funding sources for the project, phases of work to be administered by the LOCALITY, and additional project-specific requirements agreed to by the parties. There may be additional elements that, once identified, shall be addressed by the parties hereto in writing, which may require an amendment to this Agreement.
4. If designated by the DEPARTMENT, the LOCALITY is authorized to act as the DEPARTMENT's agent for the purpose of conducting survey work pursuant to Section 33.2-1011 of the Code of Virginia, 1950, as amended.
5. Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been included in an annual or other lawful appropriation. In the event the cost of a Project is anticipated to exceed the allocation shown for such respective Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its costs exceed the allocated amount, however the DEPARTMENT and the LOCALITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation.
6. Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.
7. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
8. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the LOCALITY or the DEPARTMENT shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing, received a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

9. This Agreement may be terminated by either party upon 30 days advance written notice. Eligible Project expenses incurred through the date of termination shall be reimbursed in accordance with paragraphs 1.f, 1.g., and 2.b, subject to the limitations established in this Agreement and Appendix A. Upon termination, the DEPARTMENT shall retain ownership of plans, specifications, and right of way, unless all state and federal funds provided for the Project have been reimbursed to the DEPARTMENT by the LOCALITY, in which case the LOCALITY will have ownership of the plans, specifications, and right of way, unless otherwise mutually agreed upon in writing.
10. Prior to any action pursuant to paragraphs 1.b or 1.g of this Agreement, the DEPARTMENT shall provide notice to the LOCALITY with a specific description of the breach of agreement provisions. Upon receipt of a notice of breach, the LOCALITY will be provided the opportunity to cure such breach or to provide a plan to cure to the satisfaction to the DEPARTMENT. If, within sixty (60) days after receipt of the written notice of breach, the LOCALITY has neither cured the breach, nor is diligently pursuing a cure of the breach to the satisfaction of the DEPARTMENT, then upon receipt by the LOCALITY of a written notice from the DEPARTMENT stating that the breach has neither been cured, nor is the LOCALITY diligently pursuing a cure, the DEPARTMENT may exercise any remedies it may have under this Agreement.

THE LOCALITY and DEPARTMENT acknowledge and agree that this Agreement has been prepared jointly by the parties and shall be construed simply and in accordance with its fair meaning and not strictly for or against any party.

THIS AGREEMENT, when properly executed, shall be binding upon both parties, their successors, and assigns.

THIS AGREEMENT may be modified in writing by mutual agreement of both parties.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written.

CITY OF RICHMOND, VIRGINIA:

APPROVED AS TO FORM



Assistant City Attorney

Typed or printed name of signatory

Date

Title

Signature of Witness

Date

NOTE: The official signing for the LOCALITY must attach a certified copy of his or her authority to execute this Agreement.

**COMMONWEALTH OF VIRGINIA, DEPARTMENT OF
TRANSPORTATION:**

Chief of Policy
Commonwealth of Virginia
Department of Transportation

Date

Signature of Witness

Date

Attachments

Appendix A (UPC 111702)

Appendix A

Date: 3/14/2019

Project Number: 0060-127-002 UPC: 111702 CFDA # 20 205 Locality: City of Richmond

| | | |
|------------------------------------|--------------------------|--|
| Project Location ZIP+4: 23219-4017 | Locality DUNS# 003133840 | Locality Address (incl ZIP+4): 900 East Broad Street Richmond, VA 23219-1907 |
|------------------------------------|--------------------------|--|

Project Narrative

| | |
|--|--|
| Scope: | #SMART18 - US60 / Downtown Expy Gateway Ped Improvements |
| From: | Various |
| To: | Various |
| Locality Project Manager Contact Info: | Travis Bridewell (804) 646-5745 travis.bridewell@richmondgov.com |
| Department Project Coordinator Contact Info: | Michael Campbell 804-524-6526 michael.campbell@vdot.virginia.gov |

Project Estimates

| | Preliminary Engineering | Right of Way and Utilities | Construction | Total Estimated Cost |
|-------------------------------------|-------------------------|----------------------------|--------------|----------------------|
| Estimated Locality Project Expenses | \$422,784 | \$0 | \$2,760,829 | \$3,183,613 |
| Estimated VDOT Project Expenses | \$40,000 | \$0 | \$85,000 | \$125,000 |
| Estimated Total Project Costs | \$462,784 | \$0 | \$2,845,829 | \$3,308,613 |

Project Cost and Reimbursement

| Phase | Estimated Project Costs | Funds type (Choose from drop down box) | Local % Participation for Funds Type | Local Share Amount | Maximum Reimbursement (Estimated Cost - Local Share) | Estimated Reimbursement to Locality (Max. Reimbursement - Est. VDOT Expenses) |
|-----------------------------|-------------------------|---|---|--------------------|--|--|
| Preliminary Engineering | \$462,784 | Smart Scale (HB2) | 0% | \$0 | \$462,784 | |
| Total PE | \$462,784 | | | \$0 | \$462,784 | |
| Construction | \$2,845,829 | Smart Scale (HB2) | 0% | \$0 | \$2,845,829 | \$2,760,829 |
| Total CN | \$2,845,829 | | | \$0 | \$2,845,829 | \$2,760,829 |
| Total Estimated Cost | \$3,308,613 | | | \$0 | \$3,308,613 | \$3,183,613 |

| | |
|---|-------------|
| Total Maximum Reimbursement by VDOT to Locality (Less Local Share) | \$3,308,613 |
| Estimated Total Reimbursement by VDOT to Locality (Less Local Share and VDOT Expenses) | \$3,183,613 |

Project Financing

| Smart Scale (HB2) | Smart Scale (HB2) Match | | | | Aggregate Allocations |
|-------------------|----------------------------|--|--|--|--------------------------|
| \$2,646,891 | \$661,722 | | | | \$3,308,613 |

Program and Project Specific Funding Requirements

- This project shall be administered in accordance with VDOT's Locally Administered Projects Manual and Urban Manual.
- In accordance with Chapter 12.1.3 (Scoping Process Requirements) of the LAP Manual, the locality shall complete project scoping on or before 04/09/2020.
- This is a limited funds project. The Locality shall be responsible for any additional funding in excess of \$3,308,613.
- Reimbursement for eligible expenditures shall not exceed funds allocated each year by the Commonwealth Transportation Board in the Six Year Improvement Program.
- Project estimate, schedule and commitment to funding are subject to the requirements established in the Commonwealth Transportation Board Policy and Guidelines for Implementation of a Project Prioritization Process, Code of Virginia, and VDOT's Instructional and Informational Memorandums.
- This project shall be initiated and at least a portion of the programmed funds expended within one year of the budgeted year of allocation or funding may be subject to reprogramming to other projects selected through the prioritization process. In the event the Project is not advanced to the next phase of construction when requested by the Commonwealth Transportation Board, the LOCALITY or Metropolitan Planning Organization may be required, pursuant to § 33.2-214 of the Code of Virginia, to reimburse the DEPARTMENT for all state and federal funds expended on the project.
- This project has been selected through the Smart Scale (HB2) application and selection process and will remain in the SYIP as a funding priority unless certain conditions set forth in the Commonwealth Transportation Board Policy and Guidelines for Implementation of a Project Prioritization Process arise. Pursuant to the Commonwealth Transportation Board Policy and Guidelines for Implementation of a Project Prioritization Process and HB2 Implementation Policy Guide, Section 5.3 this project will be re-scored and/or the funding decision re-evaluated if any of the following conditions apply: a change in the scope, an estimate increase prior to contract advertisement or award, or a significant reduction in the locally/regionally leveraged funds. Applications may not be submitted in a subsequent annual HB2 prioritization cycle to account for a cost increase on a previously prioritized project.

This attachment is certified and made an official attachment to this document by the parties to this agreement.

Authorized Locality Official and Date

Authorized VDOT Official and Date

Typed or printed name of person signing

Typed or printed name of person signing