

INTRODUCED: March 6, 2020

AN ORDINANCE No. 2020-052

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to enter into a Memorandum of Understanding Between the City of Richmond, Virginia and the Public Defender for the City of Richmond, Virginia for the purpose of providing funds to supplement the salaries of employees in the Public Defender’s Office for the City of Richmond.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: APR 13 2020 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 enter into a Memorandum of Understanding Between the City of Richmond, Virginia and the Public Defender for the City of Richmond, Virginia for the purpose of providing funds to supplement the salaries of employees in the Public Defender’s Office for the City of Richmond. Such 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: 8 NOES: 0 ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: APR 20 2020

MEMORANDUM OF UNDERSTANDING

BETWEEN THE CITY OF RICHMOND, VIRGINIA

AND THE PUBLIC DEFENDER FOR THE CITY OF RICHMOND, VIRGINIA

THIS MEMORANDUM OF UNDERSTANDING is entered into this ____ day of _____, 2020, by and between the **CITY OF RICHMOND, VIRGINIA**, a municipal corporation (the “City”), and **TRACY E. PANER**, not personally but in her official capacity as Public Defender for the City of Richmond, Virginia (“Public Defender”).

WHEREAS, the Public Defender submitted a pay equity proposal to the City of Richmond for funding to supplement the salaries of employees in the Public Defender’s Office; and,

WHEREAS, Virginia Code section 19.2-163.01:1 authorizes the governing body of any city or county to supplement the compensation of public defenders or any of their deputies or employees, from the funds of the city or county; and,

WHEREAS, the Mayor has proposed that the Richmond City Council appropriate \$351,923.00 as part of its annual appropriations to supplement the salaries of the Public Defender and her employees in fiscal year 2021; and,

WHEREAS, the City and the Public Defender now wish to set forth in this Memorandum of Understanding (“MOU”) the procedures for providing the salary supplements directly to the recipient employees.

NOW, THEREFORE, in consideration of the mutual covenants contained herein the City and the Public Defender do hereby agree as follows:

1. **Term**: The term of this MOU shall be one year, beginning July 1, 2020, and ending June 30, 2021; provided, however, that unless terminated as provided herein it shall automatically renew for each subsequent fiscal year so long as supplemental salary funding is appropriated by the Richmond City Council. In the event such funds are not appropriated for the following fiscal year the Chief Administrative Officer of the City of Richmond or his or her designee (“CAO”) will provide prompt written notice of the Public Defender of the non-appropriation, and this MOU will automatically terminate as of June 30th of the then current fiscal year, and neither party will have any further obligation or responsibility pursuant to this MOU for the next fiscal year or subsequent fiscal years for which funds were not appropriated.

2. **Obligations of the Public Defender**:

A. On or before December 1st of each calendar year in which this MOU remains in effect, the Public Defender will (i) provide in writing to the CAO, (1) the names of the employees in the Public Defender’s Office who will receive salary supplements during the following fiscal year pursuant to this MOU; (2) the vendor registration number for each such employee; (3) the amount of the annual salary supplement for each such employee; and (3) such other information

requested by the City that is reasonably necessary for the City to comply with any applicable requirements of the Internal Revenue Service or the Commonwealth of Virginia; and (ii) ensure that the employees in the Public Defender's Office who will receive salary supplements during the following fiscal year pursuant to this MOU shall take such actions as is necessary to register with the City as a vendor in accordance with the City's policies and procedures, including providing information regarding employee's bank or financial institution and authorization as necessary to allow the City to make direct deposit of the salary supplements for each employee.

B. The total amount of salary supplements submitted by the Public Defender pursuant to section 2 (A), whether for existing employees or new employees hired during the fiscal year, shall not exceed the total amount of the funds appropriated by the Richmond City Council for the salary supplement.

C. Prior to the employees' receipt of the salary supplements, the Public Defender will inform all employees in his or her office who receive or will be receiving the salary supplement (i) of the amount of the annual supplement that will be provided by the City; (ii) that they are not employees of the City; (iii) that they are not entitled to any employee benefits, financial or otherwise, that are provided or are available to employees of the City; (iv) that they are not covered by any insurance policies, including liability, health, life, disability, automobile or worker's compensation, that are available or applicable to City employees; (v) that they are not entitled to participate in the City's pension or retirement system; (vi) that they are not covered by the City's personnel policies or grievance procedure; and (vii) that salary supplements paid by the City pursuant to this MOU will be made without withholding for tax purposes.

D. The Public Defender will give prompt written notice to the CAO whenever any employee of the Public Defender who is receiving a City salary supplement terminates his or her employment with the Public Defender, or who otherwise becomes ineligible for the salary supplement. The Public Defender shall ensure that in no event shall City salary supplements be paid for any period when the employee is no longer employed by the Public Defender, or is not receiving his or her regular salary as an employee of the Public Defender.

The Public Defender shall also give prompt written notice to the CAO of any new hire in the Public Defender's Office who will be eligible for the salary supplement, and the effective date of employment. Such notice shall also include all information required by section 2(A) of this MOU. If the new Public Defender employee replaces a former employee who was receiving the salary supplement, in no event shall the supplement paid to the new employee during the then current fiscal year exceed the amount of the supplement paid during the same year to the former employee.

F. To assist in the preparation of the City's proposed annual budget, each year the Public Defender will submit to the City Budget Office, on or before December 31st, the amount requested for funding for the next fiscal year with an explanation of how the amount was determined. The amount requested shall be based on principles of pay equity between employees of the Public Defender and employees of the Commonwealth's Attorney for the City, and the request shall include a comparison of the respective salaries and supplements for the comparable positions in the two offices.

3. Obligations of the City:

A. On December 15th of each calendar year in which this MOU remains in effect, the City will pay the amount submitted by the Public Defender directly to each employee. Payment shall be made by direct deposit in the account designated by the employee.

B. The City shall give prompt written notice to the Public Defender if any information necessary to make supplemental salary payments, or to make direct deposits, has not been provided to the City for any employee of the Public Defender.

C. The City shall provide each employee who receives a salary supplement with any statement or form required from payors by the Internal Revenue Service or the Commonwealth of Virginia, which reports the total amount of payments made by the City to such Public Defender employee during the preceding calendar year.

D. As required by Virginia Code section 19.2-163.01:1 the City shall provide notice to the Virginia Indigent Defense Commission of the amounts provided to each Public Defender employee pursuant to this MOU.

E. During consideration of the annual City budget the CAO will notify the Richmond City Council of the amount of funding requested by the Public Defender and the amount, if any, recommended by City staff. The City will give prompt written notice to the Public Defender of the amount of funding appropriated by the Richmond City Council for employees of the Public Defender, or alternatively if the City's annual appropriation does not contain such funding.

F. Nothing in this MOU shall be interpreted as obligating the Richmond City Council to appropriate funds, or to appropriate funds in any particular amount for salary supplements for employees of the Public Defender.

4. Suspension and Termination:

If either party fails to perform its obligations under this MOU, or otherwise violates the terms and conditions of this agreement, the other party may suspend its performance. If such noncompliance continues after notice and a reasonable opportunity to remedy the noncompliance, the non-breaching party may terminate this MOU without liability or further responsibility.

5. Erroneous Payments:

If any payment made by the City to an employee of the Public Defender is not in compliance with the terms or requirements of this MOU, regardless of whether it is an underpayment or an overpayment and regardless of cause or fault, the City and the Public Defender agree to work cooperatively and in mutual good faith to remedy the erroneous payment as soon as practicable.

6. Compliance with Applicable Law:

The payments contemplated by this MOU will be made pursuant to and in accordance with the provisions of Virginia Code section 19.2-163.01:1, or any successor statute that authorizes a locality to supplement the compensation of a public defender and his or her employees. Accordingly, nothing herein shall be construed as placing any condition or requirement upon a Public Defender employee's receipt of funds under this MOU, as prohibited by the aforementioned enabling legislation.

WITNESS the following authorized signatures:

CITY OF RICHMOND, VIRGINIA

By: _____

Name: Lenora G. Reid


Title: Acting Chief Administrative Officer

Date: _____

Funds are available:

Director of Finance

Approved as to form:

 3-5-2020

Assistant City Attorney

PUBLIC DEFENDER OF THE CITY OF RICHMOND, VIRGINIA

By: _____

Name: Tracy E. Paner

Title: Public Defender

Date: _____