

AN ORDINANCE No. 87-26-34

ADOPTED FEB 23 1987

To authorize the City Manager, for and on behalf of the City of Richmond, to enter into a supplemental contract with the Richmond Metropolitan Authority, concerning financial aid to the Authority as authorized by sections 33-255.44:22 and 33-255.44:23 of the Code of Virginia continued in effect and carried by reference in section 33.1-320 of the Code of Virginia, supplementing a contract between the City and the Authority as authorized by Ordinance No. 66-200-196, adopted September 12, 1966, and supplementing and amending a contract between the City and the Authority as authorized by Ordinance No. 70-148-133, adopted May 11, 1970.

Patron - City Manager

Approved as to form and legality
by City Attorney

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the City Manager, for and on behalf of the City of Richmond, be and is hereby authorized to enter into a contract with Richmond Metropolitan Authority substantially in the form attached hereto.

SUPPLEMENTAL CONTRACT

THIS SUPPLEMENTAL CONTRACT, made this _____ day of _____, 1987, by and between the CITY OF RICHMOND (hereinafter referred to as the "City"), a municipal corporation of the Commonwealth of Virginia, and the RICHMOND METROPOLITAN AUTHORITY (hereinafter referred to as the "Authority"), a political subdivision and public body corporate and politic of the Commonwealth of Virginia, created by Article 11.2 of Chapter 3 of Title 33 of the Code of Virginia continued in effect and carried by reference in Section 33.1-320 of the Code of Virginia.

WITNESSETH:

WHEREAS, under and by virtue of Article 11.2 of Chapter 3 of Title 33 of the Code of Virginia continued in effect and carried by reference in Section 33.1-320 of the Code of Virginia (hereinafter referred to as the "Act"), to alleviate highway congestion, promote highway safety, expand highway construction, increase the utility and benefits and extend the services of public highways, including bridges, tunnels and other highway facilities, both free and toll, and otherwise contribute to the economy, industrial and agricultural development and welfare of the Commonwealth of Virginia and the City and the Counties of Henrico and Chesterfield, the Authority is authorized and empowered to purchase, construct or otherwise acquire, maintain,

repair and operate, or cause to be repaired, maintained and operated, controlled access express highways or superhighways within the corporate limits of the City and the Counties of Chesterfield and Henrico, including all bridges, tunnels, overpasses, underpasses, grade separations, interchanges, entrance plazas, approaches, approach roads, tollhouses and administration, storage and other buildings and facilities which the Authority may deem necessary or convenient for the operation of such controlled access express highways or superhighways; to borrow money and issue bonds, notes or other evidences of indebtedness for any of its corporate purposes as provided in the Act, and provide by resolution for the issuance from time to time of revenue bonds of the Authority for the purpose of paying all or any part of the cost of Authority facilities (as defined in the Act) or any project or portion of such facilities; to fix, charge and collect fees, tolls, rents, rates and other charges for the use of such facilities of the Authority and the several parts or sections thereof; and to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under the Act, including certain contracts or agreements authorized by the Act with the City; and

WHEREAS, the City is authorized and empowered by the Act to enter into and perform contracts or agreements with the Authority by which the City will provide funds in lump sums or installments to assist in paying the cost of any Authority facility or any

Authority undertaking authorized by the Act or the operation and maintenance thereof and to aid the Authority in paying the principal of and interest on revenue bonds or revenue refunding bonds issued by the Authority if, when, and as the revenues of the Authority may not be sufficient to pay such principal or interest when due; and

WHEREAS, the parties hereto have heretofore entered into a contract (hereinafter referred to as the "1966 Contract") dated November 11, 1966 and authorized to be entered into by the City by Ordinance No. 66-200-196 adopted by the Council of the City on September 12, 1966 and by the Authority by a resolution of its Board of Directors adopted on August 22, 1966, pursuant to which the City provided the Authority with certain financial assistance in connection with payment of obligations incurred to fund the construction costs of the initial phases of the Project; and

WHEREAS, the parties have heretofore entered into a contract (hereinafter referred to as the "1970 Contract") dated May 27, 1970 and authorized to be entered into by the City by Ordinance No. 70-148-133 adopted by the Council of the City on May 11, 1970 and by the Authority by a resolution of its Board of Directors adopted on May 27, 1970, pursuant to which, among other things, the City agreed to (i) provide funds to cause the balance in the Reserve Fund created by Section 5.6 of the Authority's 1970 Bond Resolution (as hereinafter defined) to equal the "maximum annual

debt service requirements" (as described and defined in Section 3 of the 1970 Contract), but not in excess of \$9,500,000, for the then current or any future year on all the Authority's "Revenue Bonds" and "refunding Revenue Bonds" (both terms being as defined in the 1970 Contract) (such amount being hereinafter referred to as the "Required Balance"), and (ii) consider annual requests by the Authority for appropriations to restore the balance in the Reserve Fund to the Required Balance in instances when there exists a deficit in the Required Balance because of monies having been withdrawn from the Reserve Fund for the purpose of paying principal or interest or premium (if any) on "Revenue Bonds" or "refunding Revenue Bonds"; and

WHEREAS, the Authority by its Board of Directors adopted on December 30, 1970, a resolution entitled "A Resolution Creating and Establishing an Issue of Revenue Bonds of the Richmond Metropolitan Authority for the Purpose of Financing the Cost of the Acquisition and Construction of a System of Controlled Access Express Highways and Providing for the Issuance of Revenue Bonds for said Purposes" (the "1970 Bond Resolution"); and

WHEREAS, pursuant to the 1970 Bond Resolution and two subsequent series resolutions adopted February 15, 1973 and October 3, 1973, the Authority has issued its revenue bonds (hereinafter sometimes referred to as the "Expressway Revenue Bonds"), the proceeds of which have been used to pay the costs of

acquisition and construction of a system of controlled access express highways consisting of a north-south segment running from a connection with Interstate 195 on the north to Chippenham Parkway on the south, and an east-west segment running from Cary Street on the west to the intersection with the Richmond-Petersburg Turnpike on the east, together with all properties and facilities necessary and pertaining thereto, and the acquisition of a toll bridge across the James River connecting Westover Hills Boulevard on the south bank of said river with Pump House Drive on the north bank of said river, commonly known as the "Boulevard Bridge", together with the approaches thereto and all appurtenances thereof (collectively, the "Project"); and

WHEREAS, the final phase of the Project was completed in 1977 and all "Revenue Bonds" and "refunding Revenue Bonds" within the meaning of the 1970 Contract for the payment of the total costs of the Project have been issued; and

WHEREAS, Section 8.4 of the 1970 Bond Resolution requires the Authority to "make, or cause to be made all necessary and proper repairs, renewals, replacements, additions, extensions and betterments..." to the Project; and

WHEREAS, the Commonwealth of Virginia is undertaking to construct an extension of the Powhite Parkway, which is a part of the Project, from its southern terminus at Chippenham Parkway to the soon-to-be completed State Route 288 (such extension being hereinafter referred to as the "State Project"); and

WHEREAS, the Authority commissioned its Traffic and Revenue Consultants (as defined in the 1970 Bond Resolution) to study the needs for improvements to the Project during the next 10 years and the Authority has now received the report of such Traffic and Revenue Consultants, which report contains recommendations for a program of capital improvements to the Project; and

WHEREAS, the Authority has determined that, based on the findings and recommendations of said report of the Traffic and Revenue Consultants, in order to alleviate traffic congestion that may otherwise occur at various sections of the Project upon the opening of the State Project, it is necessary to undertake a construction program of widening certain sections of the Project and adding lanes to certain ramps thereof (as collectively hereinafter more specifically defined, the "Improvement Project"); and

WHEREAS, the last paragraph of Section 8.2 of the 1970 Bond Resolution permits the Authority to issue revenue bonds and other evidences of indebtedness which are payable from Revenues (as

defined in the 1970 Bond Resolution) of the Project but which are junior and inferior as a charge upon such Revenues to the Authority's previously issued Expressway Revenue Bonds; and

WHEREAS, pursuant to Section 5.6 of the 1970 Bond Resolution and Section 3 of the 1970 Contract the City has the right, as of July 1 of each Fiscal Year (as defined in the 1970 Bond Resolution), to request the bank serving as Bond Fund Trustee under the 1970 Bond Resolution to disburse to the City all amounts then contained in the Reserve Fund created by said Section 5.6 which are in excess of the Required Balance, such disbursements to be applied by the City against payments due on the Subordinate Notes (as hereinafter defined) issued to the City by the Authority; and

WHEREAS, in order to provide moneys to pay the costs of construction of the Improvement Project, the Authority has determined that it is in its best interest and in the best interest of the City to sell its Richmond Metropolitan Authority Subordinated Expressway Revenue Bonds, Series of 1987 (the "1987 Bonds") in an amount currently estimated not to exceed \$17,000,000; and

WHEREAS, the Revenues of the Authority to be derived from the Project during the period the 1987 Bonds are to be outstanding are anticipated to be insufficient to make all payments of principal and interest on the 1987 Bonds as and when due and to provide for necessary reserves therefor; and

WHEREAS, the Improvement Project and certain maintenance programs which must be undertaken in the current and future years in order to maintain the Project in good condition (the "Maintenance Program") can be accomplished by the Authority in an affordable and timely manner only with certain financial assistance from the City; and

WHEREAS, the City desires to alleviate the congestion that may result on parts of the Project from the opening of the State Project and to promote highway and street safety and increase the utility and benefits of the Project in order to contribute to the orderly development and welfare of the City and therefore is desirous of assisting the Authority (i) in paying a portion of the costs of construction of the Improvement Project and a portion of the costs of the Maintenance Program, and (ii) in paying a portion of the principal, interest and premium (if any) on the 1987 Bonds and in providing a portion of the reserves therefor, but only to the extent and under the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the City and the Authority do hereby covenant and agree with each other as follows:

1. Certain Definitions. In addition to terms defined in the preambles to this Contract and terms defined in the 1970 Contract (which definitions are incorporated herein by reference), the following terms shall have the following meanings:

(a) "Bond Fund Trustee" shall mean the Bond Fund Trustee appointed pursuant to Section 9.1 of the 1970 Bond Resolution, or its successor trustee holding the Reserve Fund as provided for in said Section 9.1.

(b) "Improvement Project" shall mean the program of improvements to the Project to be funded from, among other sources, a portion of the proceeds of the sale of the 1987 Bonds, which program includes the following major elements, together with such additional elements as the Authority may determine to fund with available moneys:

(i) widening of the Powhite Parkway to six (6) lanes from the Powhite Parkway Barrier Toll Plaza to the James River;

- (ii) addition of two (2) lanes at the Powhite Parkway Barrier Toll Plaza;
- (iii) widening of the Beltline Connector to six (6) lanes;
- (iv) widening of the James River Bridge to eight (8) lanes;
- (v) widening of the Powhite Parkway to eight (8) lanes from Forest Hill Avenue to the James River;
- (vi) widening of the northbound approaches to the James River Bridge;
- (vii) addition of a northbound on-ramp at Forest Hill Avenue;
- (viii) addition of two (2) lanes to the Downtown Expressway Barrier Toll Plaza; and
- (ix) addition of one (1) lane to the southbound off-ramp at Forest Hill Avenue.

(c) "Improvement Project Purposes" shall mean a use of the Reserve Fund Excess as appropriated by the City to the Authority from time to time pursuant to this Contract for any one or more of the following purposes: (i) funding of a portion of the costs of construction of the Improvement Project, (ii) funding of a portion of the Maintenance Program, (iii) paying a portion of the principal, premium (if any) and interest on the 1987 Bonds, and (iv) providing a portion of required reserves for the 1987 Bonds.

(d) "Letter of Credit" shall mean the irrevocable letter of credit issued by the Letter of Credit Bank to secure payment of the principal, interest and premium (if any) on the 1987 Bonds.

(e) "Letter of Credit Bank" shall mean the issuer of the Letter of Credit.

(f) "Prior Series Resolutions" shall mean the series resolutions of the Authority adopted in accordance with Section 2.4 of the 1970 Bond Resolution on February 15, 1973 and October 3, 1973 pursuant to which the Authority issued its \$52,220,000 Richmond Metropolitan Authority Expressway Revenue Refunding Bonds, Series of 1973, and its \$73,300,000 Richmond Metropolitan Authority Expressway Revenue Bonds, Series of 1973, respectively.

(g) "Reserve Fund Excess" shall mean the balance (if any) in the Reserve Fund as of July 1 of each Fiscal Year which is in excess of the sum of (i) the Required Balance, plus (ii) the amount of any excess over the Required Balance which is required by the Authority to make payments of principal, interest or premium (if any) on "Revenue Bonds" or "refunding Revenue Bonds" due on the immediately succeeding July 15, as evidenced by a certificate of the Comptroller of the Authority.

(h) "Reimbursement Agreement" shall mean the Reimbursement Agreement (bearing the date set forth in the Series Resolution), including any amendments or supplements thereto, between the Authority and the Letter of Credit Bank with respect to the Letter of Credit.

(i) "Revenue Bonds" and "refunding Revenue Bonds" shall have the meanings ascribed to such terms in the 1970 Contract. The 1987 Bonds are not "Revenue Bonds" within the meaning of such definition.

(j) "Series Resolution" shall mean the Series Resolution of the Authority adopted pursuant to Section 2.4 of the 1970 Bond Resolution and pursuant to which the 1987 Bonds are to be issued.

(k) "Subordinate Notes" shall mean all subordinate notes previously or hereafter issued by the Authority to the City pursuant to the provisions of Sections 2, 3, 4 and 5 of the 1970 Contract and pursuant to the provisions of Section 4 of this Supplemental Contract.

2. Authority Request for Appropriation from the City's Budget for Fiscal Year 1987/1988. The Authority hereby requests that the City include, both as a revenue and an equal matching appropriation, within its Budget for the Fiscal Year beginning July 1, 1987 and ending June 30, 1988, the amount of the Reserve Fund Excess that is estimated will exist as of July 1, 1987 (such estimate for any Fiscal Year being hereinafter referred to as the "Reserve Fund Excess Estimate"), as evidenced by the Authority's written notice of such Reserve Fund Excess Estimate delivered to the City Manager on or before March 1, 1987. The City hereby agrees that the City Manager or other appropriate city official shall take all steps necessary (including giving the Bond Fund Trustee advance written notice of the City's intention, upon favorable action by the Council of the City, to withdraw or cause the withdrawal of the actual amount of the Reserve Fund Excess in existence at July 1, 1987 for transfer to or upon the written instruction of the Authority as hereafter described) to assure that the Authority's request as aforesaid is considered by Council in connection with its adoption of a City Budget for the Fiscal Year beginning July 1, 1987 and ending June 30, 1988. Provided an

appropriation of the amount of such Reserve Fund Excess Estimate is made in said Budget, the City Manager shall, not earlier than July 1, 1987 and not later than July 10, 1987, give a written instruction to the Bond Fund Trustee to transfer immediately the actual amount of the Reserve Fund Excess (but not more than the amount of the Reserve Fund Excess Estimate) as it existed on July 1, 1987 (such actual amount being as certified to the City Manager in writing in accordance with the Series Resolution prior to the giving of such written instruction by the City Manager) to the Authority for deposit by or upon the written instruction of the Authority into such fund, account or sub-account created by the Series Resolution as the Authority in its discretion may determine, to be used for one or more of the Improvement Project Purposes.

3. Authority Requests for Appropriations in Subsequent Fiscal Years. So long as any of the 1987 Bonds remain outstanding or any amounts are owed by the Authority under the Reimbursement Agreement, the Authority shall, on or before December 1 of each Fiscal Year, make a written request of the City that it include, both as a revenue and an equal matching appropriation, within its Budget for the next succeeding Fiscal Year the amount of the Reserve Fund Excess Estimate with respect to July 1 of such next succeeding Fiscal Year as is set forth in such written request of the Authority. The City hereby agrees that the City Manager or other appropriate official shall take all steps necessary

(including giving the Bond Fund Trustee advance written notice of the City's intention, upon favorable action of the Council of the City, to withdraw or cause the withdrawal of the actual amount of the Reserve Fund Excess in existence on the next succeeding July 1 for transfer to or upon the written instruction of the Authority as hereinafter described) to assure that the Authority's request as aforesaid is considered by Council in connection with its adoption of a City Budget during each Fiscal Year that any of the 1987 Bonds remain outstanding or any amounts are due to the Letter of Credit Bank pursuant to the Reimbursement Agreement. Provided an appropriation of the amount of such Reserve Fund Excess Estimate is made in said City Budget, the City Manager shall, not earlier than July 1 of the Fiscal Year to which such Budget relates and not later than July 10 of such Fiscal Year, give a written instruction to the Bond Fund Trustee to transfer immediately the actual amount of the Reserve Fund Excess (but not more than the amount of the Reserve Fund Excess Estimate) as it existed on July 1 of such Fiscal Year (such actual amount being as certified to the City Manager in writing in accordance with the Series Resolution prior to the giving of such written instruction by the City Manager) to the Authority for deposit by or upon the written instruction of the Authority into such funds, accounts and sub-accounts created by the Series Resolution as the Authority in its discretion may determine, to be used for one or more of the Improvement Project Purposes.

4. Issuance of Subordinate Notes. Upon each transfer to the Authority of the actual amount of Reserve Fund Excess as of July 1 of any Fiscal Year, as provided in Sections 2 and 3 of this Supplemental Contract, the Authority shall issue and deliver to the City Subordinate Notes of the Authority, dated the respective dates of such transfers, in amounts equal to the amounts of such transfers. All Subordinate Notes issued pursuant to the terms of this Section 4 shall bear interest at the rates, shall mature, shall be subject to prepayment, and shall be payable on the same terms as are set forth in Section 5 of the 1970 Contract, except that so long as any of the 1987 Bonds remain outstanding and any amounts are owing to the Letter of Credit Bank under the Reimbursement Agreement (a) no such Subordinate Note shall mature and be due and payable, and (b) the City shall make no withdrawal of any moneys from the Reserve Fund to pay principal or interest on any such Subordinate Note.

5. Certain Agreements of the Authority and the City with Respect to the 1987 Bonds. The City and the Authority hereby acknowledge and agree to the following:

(a) Neither the 1987 Bonds, the holders thereof, the Bond Fund Trustee as the representative of the holders of the 1987 Bonds, nor the Letter of Credit Bank shall have any rights to, claim on, or liens upon any moneys in the Reserve Fund, except for that portion or all of the moneys constituting actual Reserve Fund

Excess as of any July 1 that do not exceed the amount of the Reserve Fund Excess Estimate appropriated by the City in the City Budget to the Authority and transferred by the City to or upon the direction of the Authority pursuant to the provisions of Sections 2 and 3 of this Supplemental Contract;

(b) In the event of the existence of a deficiency in any fund or account established by the 1970 Bond Resolution or any Prior Series Resolution for the payment of principal, interest or premium (if any) on or with respect to "Revenue Bonds" or "revenue Refunding Bonds" on the date any payment is to be made thereon from such funds or accounts, then moneys shall be drawn first from the Reserve Fund until the same is depleted or the deficiency is eliminated before any moneys are transferred to make up any such deficiency from any funds, accounts or sub-accounts established by the Series Resolution;

(c) From and after the date of adoption of the ordinance of the City Council approving this Supplemental Contract and authorizing the City Manager to execute and deliver the same on behalf of the City and until all amounts due and payable with respect to the 1987 Bonds and all amounts due to the Letter of Credit Bank under the Reimbursement Agreement shall have been paid in full, the City agrees that it will not make, or cause to be made, any withdrawals of moneys from the Reserve Fund except for

directing transfers to the Authority of the actual amount of Reserve Fund Excess in existence on each July 1 as provided herein;

(d) All Subordinate Notes are and shall be subordinate and inferior, in priority of security and in right of payment, to the payment in full of all principal, interest and premium (if any) due on the 1987 Bonds and all amounts due the Letter of Credit Bank under the Reimbursement Agreement, and, so long as any of the 1987 Bonds remain outstanding or any amounts are due the Letter of Credit Bank under the Reimbursement Agreement, the Authority shall not make, nor shall the City accept, any payment on or with respect to any of the Subordinate Notes; provided, however, the foregoing shall not prohibit the application of one-half (1/2) of any moneys deposited in the Surplus Fund created by Section 5.5 of the 1970 Bond Resolution at the end of any Fiscal Year to the payment of interest and principal on Subordinate Notes in accordance with and as prescribed in the paragraph numbered 1 of said Section 5.5 of the 1970 Bond Resolution and in Sections 3 and 5 of the 1970 Contract; and

(e) The City consents to the use of the Authority's Revenues in the manner provided in the Series Resolution.

6. Pledge of Rights. The Authority may pledge and assign its rights under this Supplemental Contract to and for the benefit of the holders of the 1987 Bonds, the Bond Fund Trustee as representative of the holders of the 1987 Bonds, and the Letter of Credit Bank.

7. 1966 Contract and 1970 Contract. This Supplemental Contract shall be supplemental to the 1966 Contract, which remains in full force and effect without modification or amendment. This Supplemental Contract shall be supplemental and amendatory to the 1970 Contract, which remains in full force and effect without modification or amendment except as, and only to the extent, set forth herein.

IN WITNESS WHEREOF, the City of Richmond has caused this Supplemental Contract to be executed in its name and on its behalf by its City Manager and its corporate seal to be hereto affixed and attested by its City Clerk pursuant to an ordinance adopted by the Council of the City on the ____ day of _____, 1987 numbered _____, and the Richmond Metropolitan Authority has caused this Supplemental Contract to be executed in its name and on its behalf by the Chairman of its Board of Directors and its corporate seal to be hereto affixed and attested by its Secretary, pursuant to a resolution adopted by its Board of Directors on the ____ day of _____, 1987.

CITY OF RICHMOND

ATTEST:

By: _____
City Manager

City Clerk

RICHMOND METROPOLITAN AUTHORITY

ATTEST:

By: _____
Chairman, Board of Directors

Secretary