

INTRODUCED: November 12, 2019

AN ORDINANCE No. 2019-309

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Memorandum of Agreement between the Federal Communications Commission, the Virginia Department of Historic Resources, and the City of Richmond for the purpose of setting forth conditions pursuant to Section 106 of the National Historic Preservation Act that the City must fulfill in order to construct an E911 self-support communications tower at 1201 North 38th Street.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: DEC 12 2019 AT 6 P.M.

§ 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 Federal Communications Commission, the Virginia Department of Historic Resources, and the City of Richmond for the purpose of setting forth conditions pursuant to Section 106 of the National Historic Preservation Act that the City must fulfill in order to construct an E911 self-support communications tower at 1201 North 38th Street. The 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.

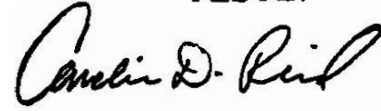
AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: DEC 09 2019 REJECTED: _____ STRICKEN: _____

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

A TRUE COPY:

TESTE:

A handwritten signature in black ink, appearing to read "Amelia D. Reil". The signature is written in a cursive style with a large initial 'A'.

City Clerk



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O & R REQUEST

4-9187
OCT 11 2019

Office of the
Chief Administrative Officer

O&R REQUEST

DATE: September 12, 2019

EDITION: 3

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

JS 11/6/19
OFFICE OF THE CITY ATTORNEY

THROUGH: Lenora G. Reid, Acting Chief Administrative Officer

THROUGH: Stephen Willoughby, Director, Department of Emergency Communications

FROM: Christopher Armstrong, Operations Manager, Department of Emergency Communications

RE: To enter into a Memorandum of Agreement to construct a 289-foot tall E911 communications tower (the "East End Tower")

ORD. OR RES. No. _____

PURPOSE: To memorialize the approval by the State Historic Preservation Office for the construction the City's "East End E911 Communications Tower" a Memorandum of Agreement must be executed amongst the Federal Communications Commission (FCC), The Virginia Department of Historic Resources (SHPO), and The City of Richmond (City). The East End E911 Communications Tower will be located at 1201 N 38th Street in Richmond, Virginia.

REASON: The City of Richmond plans to build a 289-foot self-support communications tower at the approximant vicinity of 1201 N 38th Street, Richmond, Virginia 23223. This site is required as part of the City of Richmond's Next Generation Public Safety Radio System. The East End Site provides mission critical Public Safety radio coverage in the eastern portion of the City of Richmond. The site provides enhanced coverage inside of buildings in both the area immediately surrounding the site and in the downtown area.

RECOMMENDATION: Approval of the Memorandum of Agreement (MOA)

BACKGROUND: The State Historic Preservation Office has agreed to approve the East End Communications Tower location with the condition that a historical study be conducted on the site of the Old East End Junior High School that is now the Franklin Military Academy. The City's contractor (Motorola) has conducted and completed this study and provided the subsequent preliminary information for (PIF) to the State Historic Preservation Office on August 7, 2018. To memorialize these approvals, the associated Memorandum of Agreement between the City, State Historic Preservation Office, and the Federal Communications Commission needs to be executed.

City Council approved a similar Memorandum of Agreement (ORD.2018-293) on December 10, 2018, for this same site. Since that time the height of the tower has reduced from the original 308 feet to 289 feet. This change dictated that a new Memorandum of Agreement had to be executed by the parties to reflect this height change.

FISCAL IMPACT / COST: N/A

FISCAL IMPLICATIONS: N/A

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: N/A

DESIRED EFFECTIVE DATE:

REQUESTED INTRODUCTION DATE: October 14, 2019

CITY COUNCIL PUBLIC HEARING DATE: November 12, 2019

REQUESTED AGENDA:

RECOMMENDED COUNCIL COMMITTEE: Government Operations October 24, 2019

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None

AFFECTED AGENCIES: Department of Emergency Communications

RELATIONSHIP TO EXISTING ORD. OR RES.: 2018-131

REQUIRED CHANGES TO WORK PROGRAM(S): No

ATTACHMENTS: Memorandum of Agreement (MOA)

ATTACHMENTS: This project is a part of the contract with Motorola Solutions Inc. through the 800 MHZ Radio System update and Equipment Replacement Capital Improvement Project.

ical to the overarching coverage architecture of the new radio system. The PIF was completed on August 7, 2018

FISCAL IMPACT / COST: N/A

FISCAL IMPLICATIONS: N/A

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: N/A

DESIRED EFFECTIVE DATE:

REQUESTED INTRODUCTION DATE: October 14, 2019

CITY COUNCIL PUBLIC HEARING DATE: November 12, 2019

REQUESTED AGENDA:

RECOMMENDED COUNCIL COMMITTEE: Government Operations October 24, 2019

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None

AFFECTED AGENCIES: Department of Emergency Communications

RELATIONSHIP TO EXISTING ORD. OR RES.: 2018-131

REQUIRED CHANGES TO WORK PROGRAM(S): No

ATTACHMENTS: Memorandum of Agreement (MOA)

ATTACHMENTS: This project is a part of the contract with Motorola Solutions Inc. through the 800 MHZ Radio System update and Equipment Replacement Capital Improvement Project.

**MEMORANDUM OF AGREEMENT (MOA)
AMONG
THE FEDERAL COMMUNICATIONS
COMMISSION (FCC),
THE VIRGINIA STATE HISTORIC PRESERVATION OFFICE (SHPO), and
THE CITY OF RICHMOND (CITY) REGARDING THE EAST END E911
COMMUNICATIONS TOWER at 1201 N 38TH STREET IN THE CITY OF
RICHMOND, VIRGINIA**

WHEREAS, the City proposes to construct a 289-foot tall E911 self-support communications tower (the "East End Tower") at 1201 N 38th Street, Richmond, Virginia, at coordinates N 37° 31' 43.40" and E 77° 24' 02.05" (the "Site") for its use of FCC licensed antennas (the "Undertaking") and for its use by other FCC licensees; and

WHEREAS, the City is a licensee of the FCC and intends to use antennas on the East End Tower in connection with the provision of its licensed service; and

WHEREAS, the proposed tower requires antenna structure registration with the FCC pursuant to 47 CFR 17.4(a); and

WHEREAS, the FCC has determined that the East End Tower is a federal undertaking subject to review under the National Historic Preservation Act (NHPA), as amended by Pub. L. No. 96-515 (54 U.S.C. § 306108); and

WHEREAS, the City, pursuant to delegation from the FCC, initiated review for the Undertaking pursuant to 36 CFR Part 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108), as required by the FCC rules at 47 CFR §§ 1.1307(a)(4), 1.1320; and

WHEREAS, the City has consulted with the SHPO, pursuant to 36 CFR Part 800, as well as pursuant to the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (NPA), 47 CFR Part 1, App. C, and is a signatory to this MOA; and

WHEREAS, the FCC, in consultation with the SHPO, established the Area of Potential Effects ("APE"), consistent with Stipulation VI of the NPA, to include the area of potential ground disturbance and any property that will be physically altered or destroyed by the Undertaking, as well as the geographic area in which the project introduces new visual elements within $\frac{3}{4}$ of a mile of the East End Tower; and

WHEREAS, the City, in consultation with the SHPO, has determined that the proposed East End Tower may have an adverse effect on the Oakwood-Chimborazo National Register Historic District (DHR ID#127-0821) which is listed in the National Register of Historic Places based on its significance under Criteria A and C, as defined by the National Park Service in the National Register Criteria for Evaluation; and

WHEREAS, the City, consistent with the FCC's requirements for environmental review, has considered and evaluated a number of alternatives for the East End Tower and concluded that these options are either unavailable to the City or do not meet the technical requirements necessary to satisfy the coverage needs of the telecommunications systems to be supported by the antennas; and

WHEREAS, members of the public were afforded a 30-day period to participate in and comment on this proceeding pursuant to a notice published in the *Richmond-Times Dispatch* on November 25, 2016, and no objections pertaining to effects on historic properties were received; and

WHEREAS, local government officials were notified and afforded an opportunity to participate in and provide comments on the planning process for the Undertaking pursuant to Section V of the NPA; and

WHEREAS, the City has made a reasonable and good faith effort to identify and notify Federally-recognized Tribal Nations that might attach religious and cultural significance to historic properties within the APE, including Bad River Band of Lake Superior Tribe of Chippewa Indians, Catawba Indian Nation, Cherokee Nation, Delaware Nation, Eastern Shawnee Tribe of Oklahoma, Shawnee Tribe, and Tuscarora Nation, and none of the notified Tribal Nations have objected to this project; and

WHEREAS, in accordance with Stipulation VII.D.2 of the NPA, the City has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with the specified and required documentation and the ACHP has declined to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii).

NOW, THEREFORE, the FCC, the SHPO, and the City agree that the Undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effects of the Undertaking on the Historic Property, and further agree that the following measures shall constitute full, complete and adequate mitigation under Section 106 of the NHPA, as amended, the implementing regulations thereto, and all associated FCC rules.

STIPULATIONS

The FCC, through coordination with the City, its assignees, and consultants working on its behalf, shall ensure that the following stipulated conditions ("Stipulations") are carried out following the

Effective Date of this MOA, as that date is defined in Stipulation X of this MOA:

I. MITIGATION OF ADVERSE EFFECT

- A. Within 24 months following the effective date of this MOA, the City shall complete or have completed a draft Preliminary Information Form (PIF) documenting the Franklin Military Academy (the "Mitigation"). Located at 701 N 38th Street, Richmond, Virginia, the Franklin Military Academy (formerly East End Junior High School, DHR ID #127-0821-0652) is a contributing resource to the Oakwood-Chimborazo Historic District. The PIF shall substantially follow the form of "Attachment A", attached hereto, and upon completion will be submitted to the SHPO for review and comment.
- B. The SHPO shall provide written comments to the City within thirty (30) days following receipt of the draft PIF.
- C. The City shall reasonably address all comments received on the draft PIF, prepare a final PIF, and submit the final PIF to the SHPO for evaluation within thirty (30) days following receipt of comments.
- D. The PIF shall be completed by or under the direct supervision of an individual who meets the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738-44739) for architectural history and in accordance with the SHPO's *Guidelines for Conducting Historic Resources Survey in Virginia* (rev 2017).

II. REPORTING

From the Effective Date of this MOA until the MOA expires or is terminated, the City shall provide all parties to this MOA a semi-annual summary report, to be first due one hundred eighty (180) days after the Effective Date, with subsequent reports due on each anniversary of such date and on each anniversary of the Effective Date, as well as a final report, which the City shall provide within sixty (60) days after completing the Mitigation. Such reports shall detail work undertaken pursuant to the terms of this MOA, as well as any scheduling changes proposed, any problems encountered, and any disputes and objections received in carrying out the terms of this MOA.

III. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the FCC shall consult with the parties to resolve the objection. If the FCC determines that such objection cannot be resolved, the FCC will:

- A. Forward all documentation relevant to the dispute, including the FCC's proposed resolution, to the ACHP. The ACHP's policy is to provide the FCC with its advice on the resolution of any objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the FCC shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The FCC shall then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30)-day time period, the FCC may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the FCC shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA and provide them and the ACHP with a copy of such written response.
- C. The FCC's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

IV. REMOVAL

In the event that the City abandons the facilities at the Site, the City, within three hundred sixty-five (365) days of such abandonment, shall remove all of its antennas and equipment and restore the Site to the same condition as existed prior to commencement of the Undertaking.

V. DURATION

This MOA will be null and void if the Stipulations are not carried out within a period of three years from the date of its execution. Prior to termination of the MOA, the FCC may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII below.

VI. POST-REVIEW DISCOVERIES

In the event the City discovers a previously unidentified site within the APE that may be a historic property that would be affected by the Undertaking, the City shall promptly stop work and notify the FCC, the SHPO, any applicable Tribal Historic Preservation Officer ("THPO"), and any potentially affected Indian tribe.

If the City, SHPO and any applicable THPO concur that the discovered resource is eligible for listing in the National Register, the City will consult with the SHPO, any applicable THPO, and Indian tribes as appropriate, to evaluate measures that will avoid, minimize, or mitigate adverse

effects. Upon agreement regarding such measures, the City shall implement them and notify the FCC of its action.

If the City, the SHPO and any applicable THPO cannot reach agreement regarding the National Register eligibility of a post-review discovery, the matter will be referred to the FCC for review. If the City, SHPO and any applicable THPO cannot reach agreement on measures to avoid, minimize, or mitigate adverse effects, the matter shall be referred to the FCC for appropriate action.

If the City discovers any human or burial remains during implementation of the Undertaking, the City shall cease work immediately, notify the SHPO, and applicable THPO and the FCC, and adhere to applicable State and Federal laws regarding the treatment of human or burial remains

VII. AMENDMENTS

This MOA may be amended prior to its expiration when such an amendment is agreed to in writing by all signatories. The amendment shall be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VIII. OTHER REQUIREMENTS

The City will file with the FCC an application and Environmental Assessment (EA) within thirty (30) days of the date this MOA is executed.

IX. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation VII above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the Undertaking, the FCC must either (a) execute a new MOA pursuant to 36 CFR Section 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR Section 800.7. The FCC shall notify the signatories as to the course of action it will pursue.

X. GENERAL PROVISIONS

All payments and other performance by the City under this MOA are subject to annual

appropriations by the Richmond City Council, such that this MOA shall bind the City only to the extent that the Richmond City Council appropriates sufficient funds for the City to perform its obligations hereunder.

This MOA may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Execution of this MOA and implementation of its terms evidence that the FCC has taken into account the effects of this Undertaking on historic properties and afforded the ACHP an opportunity to comment. The applicability of this MOA is contingent upon the filing of an EA by the City of Richmond and, following review of the EA, a Finding of No Significant Impact (FONSI) by the FCC. If the FCC issues a FONSI, this MOA will become effective on the date the FONSI is issued by the FCC (the "Effective Date"), and the parties to this MOA will be notified within 15 days of its release.

IN WITNESS WHEREOF, the parties hereto have caused this MOA to be executed in their names as their official acts by their respective representatives, each of whom is duly authorized to execute the same.

SIGNATORIES:

Federal Communications Commission

Paul D'Ari Date
Senior Legal Counsel, Competition and Infrastructure Policy Division
Wireless Telecommunications Bureau

Virginia State Historic Preservation Officer

Julie V. Langan, Director
Department of Historic Resources

Date

The City of Richmond

This foregoing MOA is hereby accepted the _____ day of _____, 2019, pursuant to authority granted by Richmond City Council Ordinance No. _____.

Lenora G. Reid
Acting Chief Administrative Officer

Date

APPROVED AS TO FORM



Assistant City Attorney

Consulting Parties (if any)

(name, title, entity)

Attachment A



DHR | Virginia Department of Historic Resources

2801 Kensington Avenue, Richmond, Virginia 23221; Telephone: (804) 367-2323; Fax: (804) 367-2391

PRELIMINARY INFORMATION FORM (PIF) for INDIVIDUAL PROPERTIES

The Preliminary Information Form (PIF) constitutes an application for preliminary consideration of a property for eligibility for the Virginia Landmarks Register and the National Register of Historic Places. The PIF is **not** the same as a nomination to the Registers, but is a means for evaluating the **eligibility** of a property for listing. The PIF is evaluated by Department of Historic Resources (DHR) staff and the State Review Board and their recommendations regarding the property's eligibility will be provided to the property owner in writing.

Before Preparing a PIF

Contact DHR's Archivist for assistance in obtaining any information DHR may have on file about your property, such as a previous architectural survey record or eligibility evaluation. You are welcome to use this information in preparing your PIF. Contact DHR's Archivist by phone at (804) 482-6102, or by email at Quatro.Hubbard@dhr.virginia.gov.

Staff at one of DHR's three Regional offices are available to answer questions you may have as you begin preparing your PIF. Locations and contact information for each office is at http://dhr.virginia.gov/regional_offices/regional_offices.htm. (You also are welcome to ask DHR's Archivist for the contact information.)

Preparing a PIF

A PIF consists of three equally important parts:

1. **Form:** Complete the attached form to the best of your ability, using your own research about the property to be evaluated as well as any information that DHR has provided. Remember that DHR's Regional staff also are available to assist you. The form may be completed using Microsoft Word software, typed, or hand-written. If using MS Word, the PIF can be submitted via CD, email, ftp, or other file sharing means.

Your PIF will not be evaluated if it is missing any of the following information:

- Property owner's signature

- Contact information for the person submitting the form (if different from the property owner)
 - Contact information for the City Manager or County Administrator where the property is located
2. **Photos:** Provide color photographs of your property's exterior and major interior spaces, with emphasis on architectural features instead of furnishings. Photos typically include views of the main building from all sides, as well as important ornamental and/or functional details; any outbuildings or secondary resources; and the property's general setting. Submit photo prints on 4" x 6" glossy photo paper and digital images on CD or other file sharing means approved by DHR's Regional staff.
3. **Maps:** A minimum of two maps must accompany your PIF:
- **Location map:** This map shows the exact location of your property. The map can be created using Google Maps, Google Earth, Bing, or other mapping websites. A copy of a road map also may be used as long as the property's exact location and physical address are shown on the map. DHR's Archivist can assist in providing an acceptable location map with boundaries.
 - **Sketch map:** This map shows the locations of all resources on your property, such as the main building; any secondary resources (often referred to as outbuildings); major landscape features such as a stream, formal gardens, driveways, and parking areas, and the road on which the property fronts. The sketch map can be drawn by hand, or an annotated aerial view, tax parcel map or survey map may be used.

Submitting a PIF

Once you have completed the PIF, submit it to the appropriate Regional office. The Regional staff member will inform you when DHR staff will review your PIF and answer any questions you may have about the evaluation process.

Note: All submitted materials become the property of DHR and will be retained in our permanent Archive. In addition, the materials will be posted on DHR's public website for a period of time during the evaluation process.

Thank you for taking the time to submit this Preliminary Information Form.

Your interest in Virginia's historic resources is helping to provide better stewardship of our cultural past.



PRELIMINARY INFORMATION FORM (PIF) for INDIVIDUAL PROPERTIES

DHR No. (to be completed by DHR staff) _____

Purpose of Evaluation

Please use the following space to explain briefly why you are seeking an evaluation of this property.

Are you interested in applying for State and/or Federal Rehabilitation Tax Credits? Yes _____ No _____

Are you interested in receiving more information about DHR's easement program? Yes _____ No _____

1. General Property Information

Property name: _____

Property address: _____

City or Town: _____

Zip code: _____

Name of the Independent City or County where the property is located: _____

Category of Property (choose only one of the following):

Building _____ Site _____ Structure _____ Object _____

2. Physical Aspects

Acreage: _____

Setting (choose only one of the following):

Urban _____ Suburban _____ Town _____ Village _____ Hamlet _____ Rural _____

Briefly describe the property's overall setting, including any notable landscape features:

3. Architectural Description

Architectural Style(s): _____

If the property was designed by an architect, landscape architect, engineer, or other professional, please list here: _____

If the builder is known, please list here: _____

Date of construction (can be approximate): _____

Narrative Description:

In the space below, briefly describe the general characteristics of the entire property, such as its current use (and historic use if different), as well as the primary building or structure on the property (such as a house, store, mill, factory, depot, bridge, etc.). Include the architectural style, materials and method(s) of construction, physical appearance and condition (exterior and interior), and any additions, remodelings, or other alterations.

Briefly describe any outbuildings or secondary resources (such as barns, sheds, dam and mill pond, storage tanks, scales, railroad spurs, etc.), including their condition and their estimated construction dates.

4. Property's History and Significance

In the space below, briefly describe the history of the property, such as significant events, persons, and/or families associated with the property. Please list all sources of information used to research the history of the property. (It is not necessary to attach lengthy articles or family genealogies to this form.)

If the property is important for its architecture, engineering, landscape architecture, or other aspects of design, please include a brief explanation of this aspect.

5. Property Ownership (Check as many categories as apply):

Private: _____ Public\Local _____ Public\State _____ Public\Federal _____

Current Legal Owner(s) of the Property (If the property has more than one owner, please list each below or on an additional sheet.)

name/title: _____

organization: _____

street & number: _____

city or town: _____ state: _____ zip code: _____

_____ e-

mail: _____ telephone: _____

Legal Owner's Signature: _____ Date: _____

••Signature required for processing all applications. ••

In the event of corporate ownership you must provide the name and title of the appropriate contact person.

Contact person: _____

_____ Daytime Telephone: _____

Applicant Information (Individual completing form if other than legal owner of property) name/title: _____

organization: _____

street & number: _____

city or town: _____ state: _____

zip code: _____

e-mail: _____ telephone: _____

6. Notification

In some circumstances, it may be necessary for DHR to confer with or notify local officials of proposed listings of properties within their jurisdiction. In the following space, please provide the contact information for the local County Administrator or City Manager.

name/title: _____

locality: _____ street
& number: _____ city

or town: _____ state: _____

zip code: _____

telephone: _____