

INTRODUCED: February 8, 2016

AN ORDINANCE No. 2016-029

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Joint Exercise of Powers Agreement for Employee and Retiree Health Benefits between the City of Richmond, Virginia, and the School Board of the City of Richmond, Virginia, for the purpose of exercising jointly the power granted separately to the City and the School Board to provide for health benefits for officers, employees, retirees, and their eligible dependents of the City and the School Board by means of a self-insured plan and the cooperative procurement of a third-party administrator for the self-insured plan and any consultants necessary to advise the City and the School Board with respect thereto.

Patron – Mayor Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: FEB 22 2016 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 Joint Exercise of Powers Agreement for Employee and Retiree Health Benefits between the City of Richmond, Virginia, and the School Board of the City of Richmond, Virginia, for the purpose of exercising jointly the power granted separately to the City and the School Board to provide for health benefits for officers, employees, retirees, and

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: FEB 22 2016 REJECTED: _____ STRICKEN: _____

their eligible dependents of the City and the School Board by means of a self-insured plan and the cooperative procurement of a third-party administrator for the self-insured plan and any consultants necessary to advise the City and the School Board with respect thereto. The Joint Exercise of Powers Agreement for Employee and Retiree Health Benefits 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.



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

FEB 8 2016
4-4769
Chief Administration Office
City of Richmond

O&R REQUEST

DATE: February 8, 2016

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: Dwight C. Jones, Mayor

FEB 08 2016

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

OFFICE CITY ATTORNE

THROUGH: Debra Gardner, Deputy Chief Administrative Officer

FROM: Johnny L. McLean, Director of Human Resources

RE: Joint Exercise of Powers between the City of Richmond and Richmond Public Schools Concerning Health Insurance and Employee Assistance Program Benefits for Employees, Retirees and Eligible Dependents.

ORD. OR RES. No. _____

PURPOSE: To authorize the Chief Administrative Officer for and on behalf of the City of Richmond, to enter into a Joint Exercise of Powers Agreement for Employee and Retiree Health Benefits between the City of Richmond, Virginia and the School Board of the City of Richmond, Virginia, pursuant to section 15.2-1300(B) of the Code of Virginia.

REASON: To formalize arrangements for the continuation of the joint purchase of health insurance and employee assistance benefits between the City of Richmond and Richmond Public Schools.

RECOMMENDATION: The City's Administration supports this ordinance.

BACKGROUND: Prior to 2010, the City of Richmond and Richmond Public Schools separately purchased medical, dental and employee assistance benefits. The decision was made by City and School officials in 2010 to jointly purchase medical and employee assistance benefits in order to maximize purchasing power and provide lower rates due to the increase participant pool. Since 2010, the City and Schools have jointly purchased health insurance and employee assistance benefits without a formal agreement. The previous contract has expired and in order to procure a new health insurance/employee assistance benefits contract a formal agreement must be in place that establishes roles and responsibilities.

The attached *Joint Exercise of Powers Agreement for Employee and Retiree Health Benefits* agreement will effectively formalize the arrangements.

FISCAL IMPACT: The total cost of providing medical benefits to City and Schools employees, retirees and their eligible dependents (employer and employee) is approximately \$84,000,000 annually. The agreement ensures efficiencies by reducing administrative costs and increasing purchasing power due to a larger pool of participants.

COST TO CITY:None

REVENUE TO CITY: None.

DESIRED EFFECTIVE DATE:Upon adoption.

REQUESTED INTRODUCTION DATE:February 8, 2016.

CITY COUNCIL PUBLIC HEARING DATE:February 22, 2016.

REQUESTED AGENDA: Consent.

RECOMMENDED COUNCIL COMMITTEE:Finance and Economic Development.

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: School Board of the City of Richmond.

AFFECTED AGENCIES:All indirectly; directly: Human Resources, Richmond Public Schools, Budget and Strategic Planning and Finance.

RELATIONSHIP TO EXISTING ORD. OR RES.:None.

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Joint Exercise of Powers Agreement for Employee and Retiree Health Benefits.

STAFF:Johnny L. McLean, Human Resources Director.

**JOINT EXERCISE OF POWERS AGREEMENT
FOR
EMPLOYEE AND RETIREE HEALTH BENEFITS**

This Joint Exercise of Powers Agreement for Employee and Retiree Health Benefits (the "Agreement") between the City of Richmond, Virginia (the "City") and the School Board of the City of Richmond, Virginia (the "School Board") is effective as of the date on which the last signatory signs this Agreement.

RECITALS

- A. The City is a municipal corporation and political subdivision of the Commonwealth of Virginia.
- B. The School Board is a body corporate under the laws of the Commonwealth of Virginia and is a political subdivision for purposes of section 15.2-1300 of the Code of Virginia.
- C. Section 15.2-1517 of the Code of Virginia authorizes the City to provide health insurance programs for its officers and employees.
- D. Section 22.1-85 of the Code of Virginia authorizes the School Board to "establish a fund for the payment of hospital, medical, surgical and related services provided any of its officers, employees and their dependents."
- E. Section 15.2-1300 of the Code of Virginia allows political subdivisions by agreement to exercise jointly the power to provide for health benefits for their officers and employees.

The City and the School Board, intending to be legally bound, agree as follows:

- 1.0 **Purpose.** The purpose of this Agreement is to exercise jointly the power granted separately to the City and the School Board to provide for (i) health benefits for officers, employees, retirees, and their eligible dependents of the City and the School Board by means of a self-insured plan (the "Plan") and (ii) the cooperative procurement of a third-party administrator for the Plan and any consultants necessary to advise the City and the School Board with respect to the Plan.
- 2.0 **Duration.** The term of this Agreement begins on the date on which the last signatory signs this Agreement, and will continue until terminated by the City or the School Board. The Agreement will be deemed terminated in the event that (i) either party furnishes the other with written notice of termination at least 270 calendar days prior to the desired date of the termination; or (ii) insufficient funds have been appropriated, as described in section 4.3 ("Contributions") or section 7.1 ("Availability of Funds"), to meet either the City's or the School Board's total liability under this Agreement.
- 3.0 **Governance and Administration of Agreement.**

3.1 Administration by Designated Officials.

- 3.1.1 **Initially.** The designated official of the City is the City's Director of Human Resources. The designated official of the School Board is the School Board's Assistant Superintendent of Financial Services.
- 3.1.2 **Changes.** The City's Chief Administrative Officer may change the City's designated official at any time by written notice to the School Board's Superintendent of Schools. The School Board's Superintendent of Schools may change the School Board's designated official at any time by written notice to the City's Chief Administrative Officer.
- 3.1.3 **Role.** The City and the School Board intend that this Agreement set forth the parameters within which the designated officials will administer the Plan and intend, by entering into this Agreement, to delegate all administrative functions necessary to administer the Plan, including determining the coverages, offerings, or structure of the Plan in accordance with applicable law, to those designated officials except as otherwise provided in this Agreement or applicable law.

3.2 Review Panel.

- 3.2.1 **Composition.** There will be a review panel that will consist of five members, all of whom must be employees of either the City or the School Board. The City's designated official will select two of the members, and the School Board's designated official will select two of the members. The City's designated official will select the fifth member for the remainder of the 2016 calendar year, the School Board's designated official will select the fifth member for the 2017 calendar year, and the selection of the fifth member will rotate annually each calendar year thereafter between the City's designated official and the School Board's designated official.
- 3.2.2 **Functions.** The review panel will perform the following functions:
- A. Develop a written set of governing principles for the administration of the Plan and the conduct of any other activities for which this Agreement provides, which governing principles must be submitted to the City Council of the City of Richmond, Virginia, and the School Board of the City of Richmond, Virginia, for approval by resolution within 60 calendar days after the date on which the last party signs this Agreement.
 - B. Monitor, in accordance with the governing principles approved pursuant to subsection (A) of this section, the administration of the Plan and review periodically as determined by the City's designated official and the School Board's designated official the rates and plan designs of the Plan.
 - C. Advise, in accordance with the governing principles approved pursuant to subsection (A) of this section, the City's designated official and the School

Board's designated official on actions to be taken with regard to the negotiation of rates or the development of or changes to the plan designs of the Plan.

- D. Resolve, in accordance with the provisions of this Agreement and the governing principles approved pursuant to subsection (A) of this section, disagreements between the City's designated official and the School Board's designated official with regard to activities undertaken pursuant to this Agreement, including, but not necessarily limited to, the resolution of contractual claims pursuant to section 5.3.5 ("Contractual Claims under Third-Party Administrator Contract").

4.0 Finance.

- 4.1 **Bank Account.** The City shall maintain a bank account (the "Bank Account") into which the City and the School Board shall deposit the contributions required by this Agreement on the schedule required by any contract between the City, the School Board, and a third-party administrator for the administration of the Plan. The City shall be the custodian of the Bank Account. The City's designated official will authorize the disbursement of monies from the Bank Account solely for the payment of claims, fees, and other costs as allowed under the contract between the City, the School Board, and the third-party administrator. The City shall make additional contributions to the Bank Account to cover penalties and fees incurred as a result of late payments or lack of compliance based on the City's management of the Bank Account. Both the City's designated official and the School Board's designated official will have access to all information of both the City and the School Board concerning claims and other fees as needed for the administration and reconciliation of the Bank Account. The City's Director of Finance will provide a monthly detailed accounting to the City's designated official and the School Board's designated official of all transactions relating to the Bank Account.
- 4.2 **Budgeting.** The City and the School Board agree that each of their contributions will be expressed as a percentage of the total amount necessary to fund the Bank Account in accordance with the requirements of any contract with a third-party administrator. The City and the School Board each agree that their contributions will be calculated in a manner that (i) takes into account the number of participants of each in the Plan and the value of the claims made against the Plan by the participants of each and (ii) is approved by the designated officials of both the City and the School Board. The City and the School Board jointly may contract with the third-party administrator or a consultant as provided in section 5.0 ("Joint Procurement") to provide for the calculation of contributions. The contributions will be recalculated at least annually and the results communicated to the designated officials of the City and the School Board no later than September 30 of each year, and adjusted by no later than February 15 of the following year, to allow each sufficient time to budget properly for any portion of the contributions to be made by the City or the School Board.
- 4.3 **Contributions.** To pay for the health benefits furnished to their participating employees by the Plan, the City and the School Board shall withhold certain amounts, as determined

by the City and the School Board each in its own discretion, from the payroll of each employee and retiree participating in the Plan and may contribute additional amounts. In combination, the withheld amounts and any additional amounts contributed by the City and the School Board are "contributions." The contributions required from the City and the contributions required from the School Board each will be calculated as provided in section 4.2 ("Budgeting"). At least once every month, the City and the School Board each shall transfer their contributions to the Bank Account by automated clearing house or another method approved by the City's Director of Finance. In the event that there are insufficient monies in the Bank Account to pay claims, fees, and other costs of the Plan, the City may transfer monies into the Bank Account sufficient to cover the shortfall and invoice the School Board for the School Board's proportionate share of the shortfall. The School Board shall pay any such invoice within ten days after the invoice date subject to the appropriation of funds. In the event that insufficient funds have been appropriated to cover the City or School Board's proportionate share of the shortfall, provision (ii) of section 2.0 ("Duration") will apply.

- 4.4 **Disposition of Liquidated Damages under Third-Party Administrator Contract.** The City and the School Board intend to include in the solicitation for a third-party administrator for the Plan and anticipate that the contract signed with the third party administrator will include provisions for the payment of liquidated damages by the third-party administrator in the event that the third-party administrator does not meet certain performance requirements under the contract. The City and the School Board agree that the contract will require the third-party administrator to pay any liquidated damages into the Bank Account. Any liquidated damages so paid into the Bank Account will reduce the amount of that portion of the contributions made by the City and the School Board from their funds, as opposed to the funds withheld from their participating employees' payroll and payments to participating retirees, by the amount of such liquidated damages. The reduction in contributions allowed to the City and the School Board will be based on the percentage attributed to each of them calculated pursuant to section 4.2 ("Budgeting").
- 4.5 **Settlement upon Termination.** Upon the termination of this Agreement, the School Board will be entitled to a proportionate share of the balance of the monies remaining in the Bank Account as of the date of termination based on the percentage attributed to the School Board calculated pursuant to section 4.2 ("Budgeting"), less a reserve in an amount sufficient to pay incurred but not reported claims and to pay any other outstanding liabilities or debts related to the applicable share of the School Board for health account related expenses. The City will be entitled to the remainder of the balance of the monies remaining in the Bank Account. The City and the School Board each will be responsible for the proper use of any portion of these monies attributable to monies withheld from their respective employees' payrolls. Within 30 days following the termination of this Agreement, the City's Director of Finance shall cause the portion of that balance to which the School Board is entitled to be paid to the School Board.
- 4.6 **Procedures.** The City's Director of Finance and the School Board's Assistant Superintendent of Financial Services shall agree upon and establish such procedures, in

accordance with generally accepted accounting principles, as may be necessary to provide for deposits into and disbursements from the Bank Account and for the proper accounting thereof.

5.0 **Joint Procurement.** For the purpose of increasing efficiency and reducing administrative expenses in the acquisition of the contractual services of a third-party administrator and any consultants necessary to administer the Plan on behalf of the City and the School Board, the City and the School Board agree to jointly procure and contract with both the third-party administrator and any consultant needed to advise the City or the School Board on issues relating to the subject matter of this Agreement in accordance with this section.

5.1 **Lead Agency.**

A. For any contract with a third-party administrator for the Plan, the City's Department of Procurement Services will conduct the procurement process and perform those functions commonly performed by government purchasing agents on behalf of the City and the School Board in accordance with the City's public procurement laws and related policies and procedures.

B. For any contract with a consultant needed to advise the City or the School Board with respect to the Plan, either the City's Department of Procurement Services or the School Board's Department of Purchasing and Property Management, as agreed by the designated officials of the City and the School Board, may conduct the procurement process and perform the contract administration functions commonly performed by government purchasing agents on behalf of the City and the School Board in accordance with the applicable public procurement laws and related policies and procedures.

5.2 **Evaluation Panel.** An evaluation panel with an odd number of at least five members will be responsible for approving the technical specifications for the solicitation for any contract pursuant to this Agreement, evaluating the proposals received, making a recommendation for the award of the contract, and other functions customarily performed by similar panels under the applicable policies and procedures for the conduct of public procurements. All members of the evaluation panel will be employees of the City or the School Board. The designated officials of the City and the School Board, in consultation with the City's Director of Procurement Services, shall determine the number of members of the evaluation panel. The designated officials of the City and the School Board will each select an equal number of members to serve on the evaluation panel and will agree mutually on the final member.

5.3 **Contracts.**

5.3.1 **Signatories.**

- A. The joint procurement for a third-party administrator is intended to result in a contract to be signed by the City, the School Board, and the awarded third-party administrator.
 - B. The procurement of consultants necessary for the proper administration of the Plan may result in a contract to be signed by the City, the School Board, and the awarded consultant.
 - C. In signing any contract, the City and the School Board will each follow their existing internal procedures and requirements for signing such a contract.
- 5.3.2 **Initial Term for Third-Party Administrator Contract.** The City and the School Board expect the contract with the third-party administrator to have an initial term of greater than one year but less than two years. The initial term will be designed to include both a transition period during which the third-party administrator prepares to take over the administration of the Plan and a one calendar year period during which the third-party administrator will administer the Plan. The one calendar year period will commence on January 1, 2017.
- 5.3.3 **Modifications to Third-Party Administrator Contract.** From time to time, the City and the School Board, jointly, may make modifications to the contract for a third-party administrator or issue orders to the contractor under the contract. The designated officials of both the City and the School Board must approve each modification to the contract before its execution by the City's Director of Procurement Services.
- 5.3.4 **Renewal and Re-procurement.** The City and the School Board expect the contract with a third-party administrator to have four one-year renewal options but may provide in any solicitation either for a third-party administrator or for a consultant for a different duration if the designated officials of the City and the School Board so agree. The City and the School Board must agree mutually to exercise a renewal option of the contract with a third-party administrator. The City and the School Board will procure jointly a new contract in accordance with the provisions of this Agreement (i) if the City and the School Board do not agree to exercise a renewal option or (ii) upon the expiration of all renewal options available under the contract.
- 5.3.5 **Contractual Claims under Third-Party Administrator Contract.** The City and the School Board acknowledge that the solicitation for a third-party administrator for the Plan will contain the City's standard procedure for the handling of contractual claims by the third-party administrator. Under that procedure, the City's Director of Procurement Services renders a decision after reviewing claim materials submitted by the third-party administrator. The City and the School Board may negotiate minor changes to the contractual claims procedure set out in the solicitation with the selected third-party administrator, but they expect the procedure in the executed contract to be substantially identical to the procedure set forth in the solicitation. The City's Director of Procurement Services (i) shall work with the School Board's designated official to evaluate and render a decision on any claim arising pursuant to the contractual claims procedure in the

contract with the third-party administrator for the Plan and (ii) shall not agree to any resolution of such a claim that affects the benefits or responsibilities of the School Board under the contract without the consent of the School Board's designated official, provided that, if the School Board's designated official disagrees with any determination by the Director or any other City official that the proposed resolution of a claim does not affect the benefits or responsibilities of the School Board, the review panel described in section 3.2 ("Review Panel") shall determine, by majority vote, whether the proposed resolution of the claim affects the benefits or responsibilities of the School Board. The School Board's designated official shall work with the City's Director of Procurement Services to evaluate and render a decision on any such claim within the time frames prescribed by the contract and applicable laws such that the School Board will be bound thereby.

6.0 **Records.** The City and the School Board each shall maintain such records as may be customary in the administration of a Plan of health benefits for employees and retirees and as may be required by any contract with a third-party administrator for such a Plan. The City and the School Board may make these records available to the third-party administrator or any consultant for purposes of administering the Plan or for purposes of analysis, research, or study intended primarily to benefit the Plan. However, no "protected health information," as defined in 45 C.F.R. § 160.103, shall be made available to any person or entity except in compliance with all applicable laws and regulations and any applicable business associate agreement.

7.0 **Miscellaneous.**

7.1 **Availability of Funds.** It is understood and agreed between the City and the School Board that the City and the School Board shall be bound hereunder only to the extent of the funds available or which may hereafter become available to each for the purposes of performing this Agreement. All payments and other performances by the City under this Agreement are subject to annual or periodic appropriations therefor by the City Council. Under no circumstances shall the City's or the School Board's total liability under this Agreement exceed the total amount of the funds appropriated by the City Council for the City's or the School Board's performance of this Agreement.

7.2 **Captions.** This Agreement includes the captions, headings and titles appearing herein for convenience only, and such captions, headings and titles shall not affect the construal, interpretation or meaning of this Agreement.

7.3 **Construction and Interpretation.** Each of the parties has had the opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties. Neither the form of this Agreement, nor any language herein, shall be construed or interpreted in favor of or against either party hereto as the sole drafter thereof.

- 7.4 **Entire Agreement.** This Agreement constitutes both a complete and exclusive statement and the final written expression of all the terms of this Agreement and of the entire understanding between the City and the School Board regarding those terms. No prior written agreements or contemporaneous or prior oral agreements between the City and the School Board regarding this Agreement's subject matter shall be of any effect.
- 7.5 **Governing Law.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City and the School Board in connection with this Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of laws or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.
- 7.6 **Forum and Venue.** Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia.
- 7.7 **Modification.** This Contract shall not be amended, modified, supplemented or otherwise changed except in the form of a writing signed by the authorized representatives of the City and the School Board observing all of the formalities observed for the signing of this Agreement.
- 7.8 **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Agreement, the City and the School Board hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City or the School Board; (iii) no individual or entity shall obtain any right to make any claim against the City or the School Board under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Agreement.
- 7.9 **Notice.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U. S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the City:

Chief Administrative Officer

900 East Broad Street, Suite 201
Richmond, Virginia 23219

B. To the School Board:

Superintendent
Richmond Public Schools
301 North Ninth Street, 17th Floor
Richmond, Virginia 23219

Either party may change any of its address information given above by giving notice in writing stating its new address to the other party.

Effective as of the date first written above.

CITY:

SCHOOL BOARD:

By: Selena Cuffee-Glenn

By: Dana T. Bedden

Title: Chief Administrative Officer

Title: Superintendent

Date: _____

Date: _____

Authorized by:
Ord. No. 2016-_____,
adopted _____, 2016

Authorized by:
School Board Resolution,
adopted _____, 2016