

INTRODUCED: September 26, 2016

AN ORDINANCE No. 2016-253

As Amended

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Programmatic Project Administration Agreement [~~Extension Addendum~~] between the City of Richmond and the Virginia Department of Transportation for the purpose of [~~extending until Jun. 30, 2019, a Programmatic Project Administration Agreement for~~] the development and administration of [~~certain~~] previously authorized and future Revenue Sharing Program projects [~~authorized by Ord. No. 2013-191-175, adopted Sept. 23, 2013~~].

Patron – Mayor Jones

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: OCT 10, 2016 AT 6 P.M.

WHEREAS, the City commits to its share of the total cost for preliminary engineering, right-of-way and construction of the project or projects in accordance with the applicable project financial documents;

NOW, THEREFORE,

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 Programmatic Project Administration Agreement

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: NOV 14 2016 REJECTED: _____ STRICKEN: _____

~~[Extension Addendum]~~ between the City of Richmond and the Virginia Department of Transportation for the purpose of ~~[extending until Jun. 30, 2019, a Programmatic Project Administration Agreement for]~~ the development and administration of ~~[certain]~~ previously authorized and future Revenue Sharing Program projects ~~[authorized by Ordinance No. 2013-191-175, adopted September 23, 2013]~~. The Programmatic Project Administration Agreement ~~[Extension Addendum]~~ 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

O & R REQUEST

AUG 18 2016

Chief Administration Office
City of Richmond

4-5586

O&R REQUEST

DATE: August 10, 2016

EDITION: 1

TO: The Honorable Members of City Council

RECEIVED

THROUGH: The Honorable Dwight C. Jones, Mayor

SEP 06 2016

THROUGH: Selena Cuffee-Glenn; Chief Administrative Officer

OFFICE OF CITY ATTORNEY

THROUGH: John Buturla; Interim Deputy Chief Administrative Officer Operations

THROUGH: Dr. Emmanuel Adediran; Director of Public Works

THROUGH: M. S. Khara, PE; City Engineer

FROM: Lamont L. Benjamin, PE; Capital Projects Administrator

RE: TO REQUEST A RESOLUTION APPROVING AN ADDENDUM TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION PROGRAMMATIC PROJECT ADMINISTRATION AGREEMENT (PPAA) TO EXTEND THE TERMS AND CONDITIONS OF THE PPAA THROUGH FISCAL YEAR 2019; AND PROVIDE THE CITY'S COMMITMENT TO FUND LOCAL SHARE OF REVENUE SHARING PROJECTS RELATED TO THE VIRGINIA DEPARTMENT OF TRANSPORTATION FY14-16 REVENUE SHARING PROGRAM; AND TO AUTHORIZE THE CHIEF ADMINISTRATIVE OFFICER OR DESIGNEE TO EXECUTE ALL NECESSARY CITY/STATE AGREEMENTS AND/OR ADDENDUMS RELATING TO REVENUE SHARING PROGRAM PROJECTS.

ORD. OR RES. NO: _____

PURPOSE: To request a resolution approving an addendum to the Virginia Department of Transportation Programmatic Project Administration Agreement (PPAA) to extend the terms and conditions of the PPAA through fiscal year 2019; and provide the City's commitment to fund its local share of Revenue Sharing Projects related to the Virginia Department of Transportation (VDOT) FY14-16 Revenue Sharing Program; and to authorize the Chief Administrative Officer or designee to execute all necessary City/State agreements and/or addendums relating to Revenue Sharing Program projects.

REASON: The FY14-16 Programmatic Project Administration Agreement (PPAA) for Revenue Sharing projects that were funded solely with revenue sharing funds expired on June 30, 2016 (FY2016). VDOT requires that the expiring PPAA to be renewed by an addendum, thereby extending the terms and conditions of the PPAA for an additional three fiscal years, with a new expiration date of June 30, 2019.

RECOMMENDATIONS: Department of Public Works recommends approval.

BACKGROUND: In FY 2014 the Virginia Department of Transportation began using the state-wide Programmatic Project Administration Agreement (PPAA) for Revenue Sharing projects that were funded solely with State revenue sharing funds. This agreement was valid for three fiscal years (FY2014, FY2015, FY2016), with an option to extend this agreement for an additional three fiscal years (FY2017, FY2018, FY2019).

The PPAA expired on June 30, 2016 (FY2016). In order to continue with all of the ongoing projects as part of the PPAA, each locality is asked to sign an extension addendum. In doing so, the PPAA will remain in effect until June 30, 2019 (FY 2019). At that time a new PPAA will be required for any remaining on-going projects that will be a part of the PPAA extension.

Previously City Council approved a resolution for the FY14-16 Revenue Sharing Program (RSP) committing City matching funds for various projects under the program. Several projects have been completed while some projects are still underway therefore VDOT requires that the City certify funding commitments for the remaining on-going projects from the FY14-16 RSP is available to complete the projects. The matching City funds for the remaining on-going projects are available in the City's Capital Improvement Budget.

FISCAL IMPACT/COST: Loss of matching State RSP funds if the PPAA is not extended

FISCAL IMPLICATIONS: Not extending the PPAA will eliminate the possibility of receiving State matching funds for the remaining on-going Capital Improvement Projects.

BUDGET AMENDMENT NECESSARY: None.

REVENUE TO CITY: None. This resolution will allow the City to retain State revenue from FY14-16 Revenue Sharing Program Funds.

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: September 12, 2016

CITY COUNCIL PUBLIC HEARING DATE: September 26, 2016

REQUESTED AGENDA: Consent.

SUGGESTED COUNCIL COMMITTEE: Land Use, Housing, and Transportation Standing Committee meeting (September 20, 2016).

CONSIDERATION BY OTHER ENTITIES: None

AFFECTED AGENCIES: Public Works, Law Department, Planning & Community Development, Economic Development, Public Utilities, Finance Department, Budget and Strategic Planning. Copies also sent to: City Mayor (Honorable Dwight C. Jones); Chief Administrative Officer (Selena Cuffee-Glenn) and City Attorney (2)

RELATIONSHIP TO EXISTING ORD. OR RES: Application for Revenue Sharing Funds FY05-06(2005-R154-165 adopted 7/25/05), City-State Administrative Agreement (2006-50-76 adopted 3/27/06), Application for Revenue Sharing Funds FY06-07(2006-R187-183 adopted 12/11/06), Application for Revenue Sharing Funds FY07-08 (2007-R99-103 adopted 6/25/07), City-State Administrative Agreement FY06-07(2007-225-228 adopted 10/8/2007), Application for Revenue Sharing Funds FY08-09 (2008-R38-64 adopted 3/24/08), Application for Revenue Sharing Funds FY09-10 (2009-R113-123 adopted 7/27/09), Authorize CAO to Execute City/State Agreements FY10 (2010-39, adopted 2/22/10), To Participate in FY11 Program (2010-87 adopted 6/14/10), Authorize CAO to Execute City/State Agreements (2011-16 adopted 2/28/11), To Participate in FY12 Program (2011-R35-42 adopted 4/11/11), Budget Amendment to appropriate FY12 funds (2011-56-34), To Participate in FY13 Program (2011-R138), Application allocation of Revenue Sharing Funds FY14 Program (2013-R206-197), adopted 10/28/2013, Authorize CAO to accept monies and to appropriate matching funds for said monies thru an increase in the Fiscal Year 2014-2015 Capital Budget for the Virginia Department of Transportation Fiscal Year 2015 Revenue Sharing Program for various projects (2014-138-133), adopted 7/14/2014. FY17 to Participate City Council Resolution 2015-R54-58 adopted 9/28/15.

REQUIRED CHANGES TO WORK PROGRAMS: No work changes will be required as the projects eligible under this program are already slated for construction.

ATTACHMENTS:

1. Sample VDOT Resolution
2. Programmatic Project Administration Agreement (PPAA)

STAFF: M. S. Khara, P.E., City Engineer, 646-5413
Lamont L. Benjamin, P.E., Capital Project Administrator, 646-6339

PROGRAMMATIC PROJECT ADMINISTRATION AGREEMENT
Revenue Sharing Projects

THIS AGREEMENT, made and executed in triplicate this ____ day of _____, 20__ , by and between the City of Richmond, Virginia, hereinafter referred to as the LOCALITY and the Commonwealth of Virginia, Department of Transportation, hereinafter referred to as the DEPARTMENT.

WHEREAS, the LOCALITY may, in accordance with §33.2-357 of the *Code of Virginia* (1950), as amended (the *Code*), and Commonwealth Transportation Board (CTB) policy, submit application(s) for Revenue Sharing funding and may also administer projects approved for Revenue Sharing funding by the CTB; and

WHEREAS, Appendix A documents the funding allocated to each Project and shall be developed and included as an attachment to this agreement. Such attachment may be amended, revised or removed or an additional Appendix A may be added as additional projects or funding is approved by the CTB and allocated to the LOCALITY to finance the Project(s) within the term of this Agreement without the need to execute an additional project administration agreement; and

WHEREAS, current and future projects approved for Revenue Sharing funding by the CTB within the term of this agreement and subject to the terms and conditions specified herein shall be identified on a list which will be included as an attachment to this Agreement as Appendix B. Such attachment may be amended as additional projects are approved by the CTB and shall be signed by an authorized LOCALITY and VDOT official, without the need to execute an additional project administration agreement. If any active project with an existing agreement is incorporated herein, the original project agreement shall automatically terminate upon inclusion in this programmatic agreement of an updated Appendix A and an amended Appendix B to reflect that project; and

WHEREAS, both parties have concurred in the LOCALITY's administration of the phase(s) of work for the respective Project(s) listed in the attachments in accordance with applicable federal, state and local laws and regulations and that the locality will certify compliance with those laws and regulations as prescribed by the Department.

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

1. This agreement shall be effective for an initial period of THREE fiscal years (each year beginning July 1st - June 30th) and may be extended by an addendum signed by each party for one additional term of THREE fiscal years unless a change in policy or the *Code* necessitates a change in terms and conditions before the term of this agreement shall have passed. This Agreement shall NOT extend beyond SIX fiscal years. In the event that a new agreement becomes necessary during the life of this Agreement, Appendix A and Appendix B may be incorporated within the new approved agreement upon mutual agreement by both parties.

2. The LOCALITY shall:

- a. Be responsible for all activities necessary to complete the noted phase(s) of each Project shown on the Appendix B and on the respective Project's Appendix A, except for activities, decisions, and approvals which are the responsibility of the DEPARTMENT, as required by federal or state laws and regulations or as otherwise agreed to, in writing, between the parties.
- b. Receive individual prior written authorization from the DEPARTMENT to proceed with each project.
- c. Administer the Project(s) in accordance with guidelines applicable to state funded Locally Administered Projects as published by the DEPARTMENT.
- d. Provide certification by a LOCALITY official of compliance with applicable laws and regulations on the State Certification Form for State aid projects or in another manner as prescribed by the DEPARTMENT for each project included in Appendix B.
- e. Maintain accurate and complete records of each Project's development of all expenditures and make such information available for inspection or auditing by the DEPARTMENT. Records and documentation for items for which reimbursement will be requested shall be maintained for not less than three (3) years following acceptance of the final voucher on each Project.
- f. No more frequently than monthly, submit invoices with supporting documentation to the DEPARTMENT in the form prescribed by the DEPARTMENT. The supporting documentation shall include copies of related vendor invoices paid by the LOCALITY and also include an up-to-date Project summary and schedule tracking payment requests and adjustments.
- g. Reimburse the DEPARTMENT all Project expenses incurred by the DEPARTMENT if, due to action or inaction solely by the LOCALITY, the project becomes ineligible for state reimbursement, or in the event the reimbursement provisions of Section 33.2-348 or Section 33.2-331 of the *Code*, or other applicable provisions of state law or regulations require such reimbursement.
- h. Pay the DEPARTMENT the LOCALITY's matching funds for eligible Project expenses incurred by the DEPARTMENT in the performance of activities set forth in paragraph 3.a.
- i. Administer the Project in accordance with all applicable federal, state, and local laws and regulations. Failure to fulfill these obligations may result in the forfeiture of state-aid reimbursements. DEPARTMENT and LOCALITY staffs will work together to cooperatively resolve any issues that are identified so as to avoid any forfeiture of state-aid funds.

- j. If legal services other than those provided by staff counsel are required in connection with condemnation proceedings associated with the acquisition of Right-of-Way, the LOCALITY will consult the DEPARTMENT to obtain an attorney from the list of outside counsel approved by the Office of the Attorney General. Costs associated with outside counsel services shall be reimbursable expenses of the project.
 - k. For projects on facilities not maintained by the DEPARTMENT, provide, or have others provide, maintenance of the Project upon completion, unless otherwise agreed to by the DEPARTMENT.
3. The DEPARTMENT shall:
- a. Perform any actions and provide any decisions and approvals which are the responsibility of the DEPARTMENT, as required by federal or state laws and regulations or as otherwise agreed to, in writing, between the parties.
 - b. Upon receipt of the LOCALITY's invoices pursuant to paragraph 2.f, reimburse the LOCALITY the cost of eligible Project expenses, as described in Appendix A. Such reimbursements shall be payable by the DEPARTMENT within 30 days of an acceptable submission by the LOCALITY.
 - c. If appropriate, submit invoices to the LOCALITY for the LOCALITY's share of eligible Project expenses incurred by the DEPARTMENT in the performance of activities pursuant to paragraph 2.a.
 - d. Audit the LOCALITY's Project records and documentation as may be required to verify LOCALITY compliance with applicable laws and regulations.
 - e. Make available to the LOCALITY guidelines to assist the parties in carrying out responsibilities under this Agreement.
4. Appendix A identifies the specific funding sources for each Project under this Agreement, phases of work to be administered by the LOCALITY, and additional project-specific requirements agreed to by the parties. There may be additional elements that, once identified, shall be addressed by the parties hereto in writing, which may require an amendment to this Agreement.
5. If designated by the DEPARTMENT, the LOCALITY is authorized to act as the DEPARTMENT's agent for the purpose of conducting survey work pursuant to Section 33.2-1011 of the *Code*.
6. Nothing in this Agreement shall obligate the parties hereto to expend or provide any funds in excess of funds agreed upon in this Agreement or as shall have been included in an annual or other lawful appropriation. In the event the cost of a Project under this agreement is anticipated to exceed the allocation shown for such Project on the respective Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its cost exceeds the allocated amount, however the

DEPARTMENT and the LOCALITY shall not be obligated to provide additional funds beyond those appropriated pursuant to an annual or other lawful appropriation.

7. Nothing in this agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.
8. The Parties mutually agree and acknowledge, in entering this Agreement, that the individuals acting on behalf of the Parties are acting within the scope of their official authority and the Parties agree that neither Party will bring a suit or assert a claim against any official, officer, or employee of either party, in their individual or personal capacity for a breach or violation of the terms of this Agreement or to otherwise enforce the terms and conditions of this Agreement. The foregoing notwithstanding, nothing in this subparagraph shall prevent the enforcement of the terms and conditions of this Agreement by or against either Party in a competent court of law.
9. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than parties, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for, without limitation, personal injury, property damage, breach of contract, or return of money, or property, deposit(s), cancellation or forfeiture of bonds, financial instruments, pursuant to the terms of this of this Agreement or otherwise. Notwithstanding any other provision of this Agreement to the contrary, unless otherwise provided, the Parties agree that the LOCALITY or the DEPARTMENT shall not be bound by any agreements between either party and other persons or entities concerning any matter which is the subject of this Agreement, unless and until the LOCALITY or the DEPARTMENT has, in writing, received a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.
10. This agreement may be terminated by either party upon 30 days advance written notice. Eligible Project expenses incurred through the date of termination shall be reimbursed in accordance with paragraphs 2.f, 2.g, and 3.b, subject to the limitations established in this Agreement and Appendix A. Should the LOCALITY unilaterally cancel a project agreement, the LOCALITY shall reimburse the DEPARTMENT all state funds reimbursed and expended in support of the project, unless otherwise mutually agreed-upon prior to termination.

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

THE LOCALITY and the DEPARTMENT further agree that should Federal-aid Highway funds be added to any project, this agreement is no longer applicable to that project and the applicable Appendix A shall be removed from this agreement and the Standard Project Administration Agreement for Federal-aid Projects executed for that project.

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

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

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

CITY OF RICHMOND, VIRGINIA:

Typed or printed name of signatory

APPROVED AS TO FORM


Assistant City Attorney

Title

Date

Signature of Witness

Date

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

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF TRANSPORTATION:

Chief of Policy
Commonwealth of Virginia
Department of Transportation

Date

Signature of Witness

Date

Attachments

Appendix A (for each project covered under this Agreement)

Appendix B (listing each project covered under this Agreement)