sdm15070

RESOLUTION NO. 12990-16

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN PROJECT ADMINISTRATION AGREEMENT BETWEEN THE CITY AND THE VIRGINIA DEPARTMENT OF TRANSPORTATION FOR NEWPORT NEWS SIGNAL TIMING IMPROVEMENTS PROJECT DESIGNATED BY VDOT AS UPC NO. 103016.

WHEREAS, as part of the Virginia Department of Transportation (VDOT) Congestion Mitigation and Air Quality Improvement (CMAQ) Project, VDOT has established a CMAQ grant to be used to improve the City's traffic signal timings ("the Project"); and

WHEREAS, in order to obtain funds from VDOT for this project, it is necessary that the City execute a Project Administration Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Project Administration Agreement by and between the City of Newport News, Virginia, and the Commonwealth of Virginia, Department of Transportation.

2. That a copy of the Project Administration Agreement is attached hereto and made a part hereof.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON DECEMBER 13, 2016

Mabel Washington Jenkins, MMC
City Clerk

McKinley L. Price, DDS
Mayor

A true copy, teste:

City Clerk

STANDARD PROJECT ADMINISTRATION AGREEMENT
Federal-aid Projects

Project Number	UPC	Local Government
0000-121-228	103016	City of Newport News

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

WHEREAS, the LOCALITY has expressed its desire to administer the work described in Appendix A, and such work for each improvement shown is hereinafter referred to as the Project; and

WHEREAS, the funds shown in Appendix A have been allocated to finance each Project; and

WHEREAS, the LOCALITY is committed to the development and delivery of each Project described in Appendix A in an expeditious manner; and;

WHEREAS, both parties have concurred in the LOCALITY's administration of the phase(s) of work for the respective Project(s) listed in Appendix A in accordance with applicable federal, state, and local law and regulations.

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

1. The LOCALITY shall:

   a. Be responsible for all activities necessary to complete the noted phase(s) of each Project shown in 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. Each Project will be designed and constructed to meet or exceed current American Association of State Highway and Transportation Officials standards or supplementary standards approved by the DEPARTMENT

   b. Meet all funding obligation and expenditure timeline requirements in accordance with all applicable federal and state laws and regulations, and Commonwealth Transportation Board and DEPARTMENT policies and as identified in Appendix A to this Agreement. Noncompliance with this requirement can result in deallocation of the funding, rescinding of state funding match, termination of this Agreement, or DEPARTMENT denial of future requests to administer projects by the LOCALITY.

c. Receive prior written authorization from the DEPARTMENT to proceed with preliminary engineering, right-of-way acquisition and utility relocation, and construction phases of each Project.

d. Administer the project(s) in accordance with guidelines applicable to Locally Administered Projects as published by the DEPARTMENT.

e. Maintain accurate and complete records of each Project's development and documentation 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 no 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 an up-to-date project summary and schedule tracking payment requests and adjustments. A request for reimbursement shall be made within 90 days after any eligible project expenses are incurred by the Locality. For federally funded projects and pursuant to 2 CFR 200.338, Remedies for Noncompliance, violations of the provision may result in the imposition of sanctions including but not limited to possible denial or delay of payment of all or a part of the costs associated with the activity or action not in compliance.

g. Reimburse the DEPARTMENT all Project expenses incurred by the DEPARTMENT if, due to action or inaction solely by the LOCALITY, federally funded Project expenditures incurred are not reimbursed by the Federal Highway Administration (FHWA), or reimbursements are required to be returned to the FHWA, or in the event the reimbursement provisions of Section 33.2-348 or Section 33.2-331 of the Code of Virginia, 1950, as amended, or other applicable provisions of federal, state, or local law or regulations require such reimbursement.

h. On Projects that the LOCALITY is providing the required match to state or federal funds, pay the DEPARTMENT the LOCALITY's match for eligible Project expenses incurred by the DEPARTMENT in the performance of activities set forth in paragraph 2.a.

i. Administer the Project in accordance with all applicable federal, state, or local laws and regulations. Failure to fulfill legal obligations associated with the project may result in forfeiture of federal or state-aid reimbursements

j. Provide certification by a LOCALITY official that all LOCALITY administered Project activities have been performed in accordance with all federal, state, and local laws and regulations. If the locality expends over

$750,000 annually in federal funding, such certification shall include a copy of the LOCALITY's single program audit in accordance with 2 CFR 200.501, Audit Requirements.

k. If legal services other than that 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.

l. 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.

m. Ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964, regulations of the United States Department of Transportation (USDOT), Presidential Executive Orders and the Code of Virginia relative to nondiscrimination.

2. The DEPARTMENT shall:

a. Perform any actions and provide any decisions and approvals which are the responsibility of the DEPARTMENT, as required by federal and state laws and regulations or as otherwise agreed to, in writing, between the parties and provide necessary coordination with the FHWA as determined to be necessary by the DEPARTMENT.

b. Upon receipt of the LOCALITY's invoices pursuant to paragraph1.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 federal and state laws and regulations.

e. Make available to the LOCALITY guidelines to assist the parties in carrying out responsibilities under this Agreement.

3. Appendix A identifies the funding sources for the project, 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.

4. 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 of Virginia, 1950, as amended.

5. 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 is anticipated to exceed the allocation shown for such respective Project on Appendix A, both parties agree to cooperate in providing additional funding for the Project or to terminate the Project before its costs exceed 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.

6. Nothing in this Agreement shall be construed as a waiver of the LOCALITY's or the Commonwealth of Virginia's sovereign immunity.

7. 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.

8. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person or entity other than the 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 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 the 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, receive a true copy of such agreement(s) and has affirmatively agreed, in writing, to be bound by such Agreement.

9 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 1.f, 1.g., and 2.b, subject to the limitations established in this Agreement and Appendix A. Upon termination, the DEPARTMENT shall retain ownership of plans, specifications, and right of way, unless all state and federal funds provided for the Project have been reimbursed to the DEPARTMENT by the LOCALITY, in which case the LOCALITY will have ownership of the plans, specifications, and right of way, unless otherwise mutually agreed upon in writing.

10. Prior to any action pursuant to paragraphs 1.b or 1.g of this Agreement, the DEPARTMENT shall provide notice to the LOCALITY with a specific description of the breach of agreement provisions. Upon receipt of a notice of breach, the LOCALITY will be provided the opportunity to cure such breach or to provide a plan to cure to the satisfaction to the DEPARTMENT. If, within sixty (60) days after receipt of the written notice of breach, the LOCALITY has neither cured the breach, nor is diligently pursuing a cure of the breach to the satisfaction of the DEPARTMENT, then upon receipt by the LOCALITY of a written notice from the DEPARTMENT stating that the breach has neither been cured, nor is the LOCALITY diligently pursuing a cure, the DEPARTMENT may exercise any remedies it may have under this Agreement.

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.

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 NEWPORT NEWS, VIRGINIA:

_____

James M. Bourey
Typed or printed name of signatory

City Manager — Date
Title

ATTEST:

_____

City Clerk — 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 — Date
Commonwealth of Virginia
Department of Transportation

_____

Signature of Witness — Date

Attachments

Appendix A (UPC 103016)

APPROVED AS TO FORM:

_____

City Attorney

Appendix A **Date:** 11/14/2016

Project Number: 0000-121-228 UPC: 103016 CFDA # 20.205 Locality: City of Newport News

Project Location ZIP+4: Various	Locality DUNS# 809755085	Locality Address (incl ZIP+4): 2400 Washington Avenue Newport News, VA 23607

Project Narrative

Scope:	Newport News Signal Timing Improvements
From:	Various
To:	Citywide

Locality Project Manager Contact info: Bryan Stilley 757-926-8699 bstilley@nnva.gov

Department Project Coordinator Contact Info: Chessica Villaflores 757-925-2227 Cvillaflores@VDOT.Virginia.gov

Project Estimates

	Preliminary Engineering	Right of Way and Utilities	Construction	Total Estimated Cost
Estimated Locality Project Expenses	$890,000	$0	$0	$890,000
Estimated VDOT Project Expenses	$10,000			$10,000
Estimated Total Project Costs	$900,000	$0	$0	$900,000

Project Cost and Reimbursement

Phase	Estimated Project Costs	Funds type *(Choose from drop down box)*	Local % Participation for Funds Type	Local Share Amount	Maximum Reimbursement (Estimated Cost - Local Share)	Estimated Reimbursement to Locality (Max. Reimbursement - Est. VDOT Expenses)
Preliminary Engineering	$900,000	CMAQ	0%	$0	$900,000	
				$0	$0	
				$0	$0	
				$0	$0	
Total PE	$900,000			$0	$900,000	$890,000
Right of Way & Utilities			0%	$0	$0	
				$0	$0	
				$0	$0	
				$0	$0	
				$0	$0	
Total RW	$0			$0	$0	$0
Construction			0%	$0	$0	
			0%	$0	$0	
				$0	$0	
				$0	$0	
				$0	$0	
Total CN	$0			$0	$0	$0
Total Estimated Cost	$900,000			$0	$900,000	$890,000

Total Maximum Reimbursement by VDOT to Locality (Less Local Share)	$900,000
Estimated Total Reimbursement by VDOT to Locality (Less Local Share and VDOT Expenses)	$890,000

Project Financing

CMAQ	State Match					Aggregate Allocations
$720,000	$180,000					$900,000

Program and Project Specific Funding Requirements

- The project will be constructed and maintained in accordance with VDOT's Urban Manual and Urban Construction Initiative Program Administration Guide
- In accordance with Chapter 12.1.3 (Scoping Process Requirements) of the LAP Manual, the locality shall complete project scoping on or before 7/1/2017.
- This is a limited funds project. The Locality shall be responsible for any additional funding in excess of $900,000 (if applicable)
- This project is funded with federal-aid Congestion Mitigation and Air Quality Program (CMAQ) funds. These funds must be obligated within 12 months of allocation and expended within 36 months of the obligation.
- FY17 $300,000
- FY18 $160,000
- FY19 $440,000

Authorized Locality Official and Date

Authorized VDOT Official and Date

Typed or printed name of person signing

Typed or printed name of person signing