



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of November 17, 2012

DATE: October 19, 2012

SUBJECT: Approval of a Standard Project Administration Agreement between the County Board of Arlington County, and the Commonwealth of Virginia, Department of Transportation (VDOT), for design and engineering of the Potomac Yard - Four Mile Run Trail Connection.

C. M. RECOMMENDATIONS:

1. Approve the attached Standard Project Administration Agreement between the County Board of Arlington County, Virginia and the Commonwealth of Virginia, Department of Transportation (VDOT) for design and engineering of the Potomac Yard – Four Mile Run Trail Connection.
2. Authorize the County Manager, on behalf of the County Board, to execute the Agreement, and all related documents necessary to implement the Agreement, subject to approval of the Agreement and documents as to form by the County Attorney.

ISSUES: Approval of this Standard Project Administration Agreement will allow Arlington County to be reimbursed for funds expended in the design and engineering of the Potomac Yard – Four Mile Run Trail Connection. There are no issues related to this Board report.

SUMMARY: This is a request for approval of a Standard Project Administration Agreement between the County Board of Arlington County, and the Commonwealth of Virginia, Department of Transportation (VDOT), for design and engineering of the Potomac Yard – Four Mile Run Trail Connection using federal Transportation Enhancement (TE) Program funds. The total estimated cost to complete design and engineering for this project is \$250,000.

BACKGROUND: The Transportation Enhancement (TE) Program is a federal funding program managed by the Commonwealth of Virginia, Department of Transportation (VDOT). In October 2011, Arlington County submitted an application to the Commonwealth Transportation Board requesting federal TE Program funds in the amount of \$190,000 for the design and engineering of the Potomac Yard – Four Mile Run Trail Connection. On June 20, 2012 the Commonwealth Transportation Board awarded Arlington County \$190,000 in federal TE

County Manager:

County Attorney:

Staff: Kelly Cornell, DES

Program funds, with a 20% local match of \$47,500 and over-match of \$12,500, to be used on design and engineering of the Potomac Yard – Four Mile Run Trail Connection.

DISCUSSION: Approval of the attached Standard Project Administration Agreement is needed to allow Arlington County to be reimbursed for funds expended on design and engineering of the Potomac Yard – Four Mile Run Trail Connection.

FISCAL IMPACT: The total estimated cost of design and engineering of the Potomac Yard – Four Mile Run Trail Connection is \$250,000. The Commonwealth of Virginia, Department of Transportation (VDOT) has awarded Arlington County \$190,000 in FY 2013 Transportation Enhancement (TE) Program funds for design and engineering of the Potomac Yard – Four Mile Run Trail Connection. Because the federal TE Program is a reimbursement program with a 20% match, the County will be responsible for a local match of \$47,500. The County has also agreed to pay an over-match of \$12,500. Local match and over-match for this project will come from developer contributions related to the Potomac Yard Phased Development Site Plan (PDSP).

STANDARD PROJECT ADMINISTRATION AGREEMENT
Federal-aid Projects

Project Number	UPC	Local Government
EN12-000-764, P101	103595	Arlington County Four Mile Run Trail Connection

THIS AGREEMENT, made and executed in triplicate this ____ day of _____, 20__, by and between the County of Arlington, 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 the Code of Federal Regulations, Title 49, Section 18.43, 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 33.1-44 or Section 33.1-70.01 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 \$500,000 annually in federal funding, such certification shall include a copy of the LOCALITY's single program audit in accordance with Office of Management and Budget Circular A-133.

- 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 paragraph 1.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 33.1-94 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.

COUNTY OF ARLINGTON, VIRGINIA:

Typed or printed name of signatory

Date

Title

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:

Commissioner of Highways
Commonwealth of Virginia
Department of Transportation

Date

Signature of Witness

Date

Attachment

Appendix A

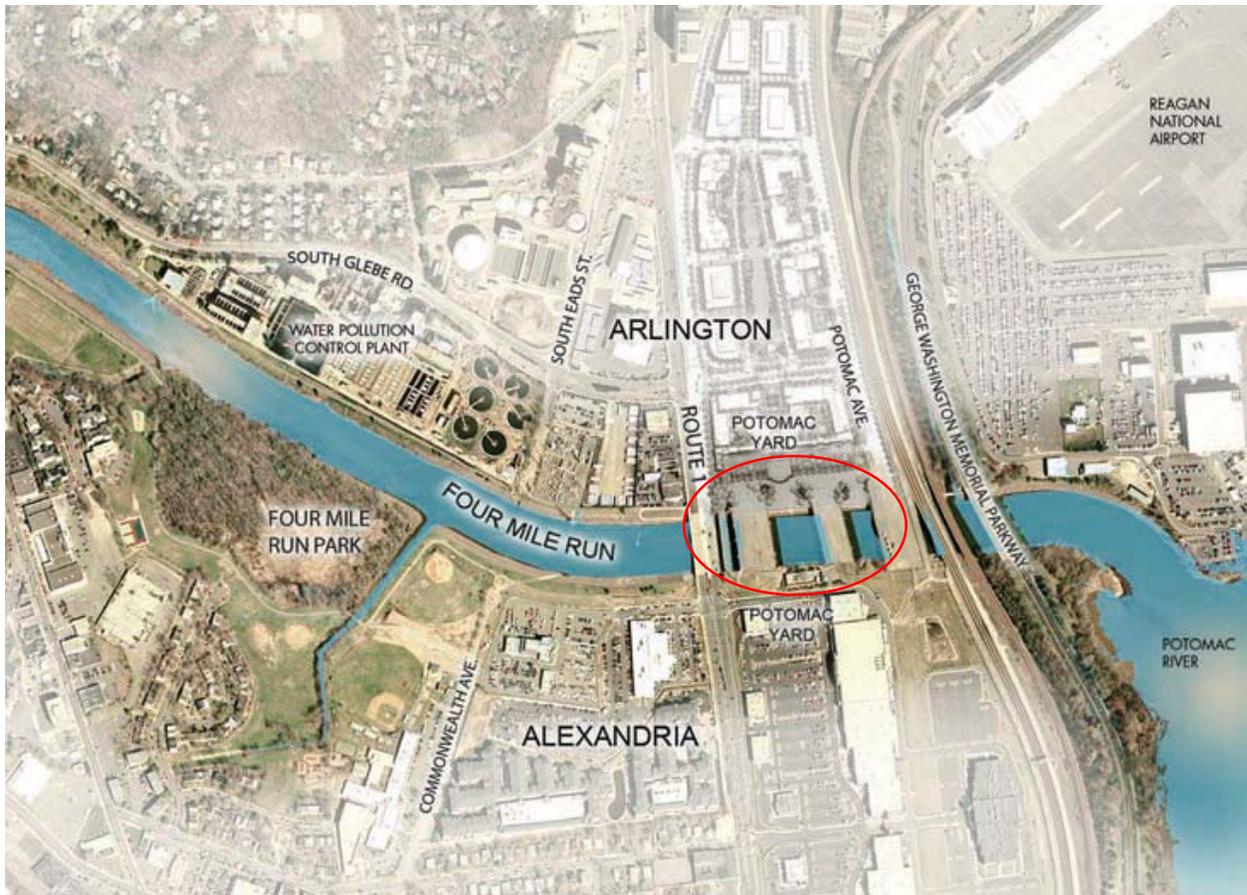
Appendix A

Project Number: EN12-000-764, P101		UPC: 103595		Locality: Arlington County	
Project Name: Potomac Yard – Four Mile Run Trail Connection					
Locality DUNS Number: 56285042			Locality Zip Code +4: 22201-5404		
Project Narrative					
Scope: Design a paved trail connection between the Four Mile Run Trail at stream level and the street level network of bicycle and pedestrian accommodations in Potomac Yard.					
Locality Project Manager Contact Info: David Patton, Bicycle and Pedestrian Planner, Arlington DOT, 2100 Clarendon Blvd. Suite 900, Arlington VA 22201 (703)228-3633 Dpatton@arlingtonva.us					
Department Project Coordinator Contact Info: Doug Miller, VDOT Northern Virginia District, 4975 Alliance Drive, Fairfax VA 22030 (703) 259-1793 Douglas.Miller@VDOT.virginia.org					
Project Costs and Reimbursement					
Phase	Estimated Project Costs	Estimated Eligible Project Costs	Estimated Eligible VDOT Project Expenses	Estimated Reimbursement to Locality	
Preliminary Engineering	\$220,000				
Right-of-Way & Utilities	\$30,000				
Construction					
Total Estimated Cost	\$250,000	\$237,500	\$15,000	\$175,000	
Total Maximum Reimbursement by Locality to VDOT				N/A	
Total Maximum Reimbursement by VDOT to Locality (may be reduced by eligible VDOT project expenses)				\$190,000	
Project Financing					
A	B	C	D	E	
Transportation Enhancement (80%)	Local Match (20%)	Local Funds (100%)		Aggregate Allocations (A+B+C)	
\$190,000	\$47,500	\$12,500		\$250,000	
Program and Project Specific Funding Requirements					
<p>This project will be administered in accordance with the “Enhancement Program Procedure Manual” and the “Locally Administered Projects (LAP) Manual”.</p> <p>Any expenses above the combined federal (80%) and local (minimum 20% match) will be at 100% project sponsor cost.</p> <p>100% of eligible VDOT project expenses will be recovered as follows:</p> <ul style="list-style-type: none"> • 20% will be deducted from reimbursement requests. • 80% will be deducted from the Federal Enhancement allocation amount. <p>Any ineligible items identified throughout project development will not be reimbursable.</p> <p>For Transportation Enhancement projects, the LOCALITY shall maintain the Project, or have it maintained, in a manner satisfactory to the Department or its authorized representatives, and make ample provision each year for such maintenance unless otherwise agreed to by the DEPARTMENT.</p> <p>The Department will conduct all environmental studies necessary to complete an environmental document in compliance with the National Environmental Policy Act. The applicant is responsible for implementing any environmental commitments from the environmental document. In addition, the applicant is responsible for obtaining any water quality permits and conducting any required hazardous materials due diligence efforts. VDOT’s estimated cost for the environmental document and studies will be provided to the applicant and deducted from the project funds.</p> <p>In accordance with CTB policy, the project must be completed and the \$190,000 Enhancement allocation expended by October 1, 2016 or the project may be subject to de-allocation.</p>					

This attachment is certified and made an official attachment to this document by the parties of this agreement

Authorized Locality Official _____ date _____

Enhancement Program Manager _____ date _____



Location Map: Potomac Yard – Four Mile Run Trail Connection

Source: *Four Mile Run Design Guidelines*, 2009