



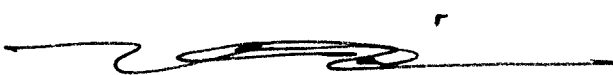
City of Richmond

Report to Committee

To: Public Works and Transportation Committee **Date:** October 24, 2006
From: Victor Wei, P. Eng.
Director, Transportation **File:** 10-6360-01/2006-Vol 01
Re: **PROPOSED AGREEMENT ON NELSON ROAD IMPROVEMENTS BETWEEN
WESTMINSTER HIGHWAY AND BLUNDELL ROAD**

Staff Recommendation

That the General Manager of Law and Community Safety or her designate be authorized to execute the proposed agreement, as outlined in the attached report, with the Fraser River Port Authority on the road and traffic signal improvements along Nelson Road between Westminster Highway and Blundell Road.


Victor Wei, P. Eng.
Director, Transportation
(4131)

Att. 1

FOR ORIGINATING DEPARTMENT USE ONLY					
ROUTED TO:		CONCURRENCE		CONCURRENCE OF GENERAL MANAGER	
Budgets		Y	<input checked="" type="checkbox"/>	N	<input type="checkbox"/>
Engineering		Y	<input checked="" type="checkbox"/>	N	<input type="checkbox"/>
Law		Y	<input checked="" type="checkbox"/>	N	<input type="checkbox"/>
Development Applications.....		Y	<input checked="" type="checkbox"/>	N	<input type="checkbox"/>
REVIEWED BY TAG		YES		NO	
		<input checked="" type="checkbox"/>	<i>Yes</i>	<input type="checkbox"/>	
REVIEWED BY CAO		YES		NO	
		<i>(ACTING)</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Staff Report

Origin

A staff report entitled “*Proposed Term Sheet on Nelson Road Improvements between Westminster Highway and Blundell Road*” was presented to Council on June 26, 2006. The report summarized the transportation improvements required to support the developments in and around the Fraser River Port Authority’s (FRPA) lands and provided details on the implementation strategy. In addition, the report sought Council’s endorsement on the term sheet between the FRPA and the City on the road and traffic signal improvements proposed along Nelson Road, between Westminster Highway and Blundell Road. Specifically, the following report recommendation was endorsed:

“That based on the above proposed term sheet, staff draft an agreement between the Fraser River Port Authority and the City on the details of commitment from both parties to the Nelson Road improvements, and report back to Council for approval prior to its execution.”

The purpose of this report is to seek Council’s endorsement on the proposed agreement (Attachment 1) that was drafted based on the term sheet noted above. In addition, this report also seeks Council’s authorization for staff to execute the proposed agreement with the FRPA on the road and traffic signal improvements along Nelson Road, between Westminster Highway and Blundell Road.

Analysis

The Fraser River Port Authority is proposing its Phase III development on the FRPA’s lands in the vicinity of No. 7 Road and No. 8 Road, south of Westminster Highway (see Schedule A in Attachment 1 for the map of the FRPA’s developments). The development, consisting a total of 1.9 million square feet and 27 acres of industrial/warehousing land uses, is slated to commence later this year and continue until its full build-out in five years.

As part of the City’s review of the above proposed expansion of development, it was agreed in principle between the FRPA and the City that the following three transportation improvements would be included in the proposed agreement in order to facilitate the on-going expansion of industrial activities:

- a) Widening of Nelson Road to four lanes, between Blundell Road and Westminster Highway;
- b) Signalization of the Blundell Road/Nelson Road intersection; and
- c) Modification/upgrade of the existing traffic signal at the Westminster Highway/Nelson Road intersection.

These improvements would be implemented in accordance with the proposed agreement, which intends to provide clarity and certainty for the City on the implementation strategy and funding arrangement with the FRPA. In essence, it is proposed in the agreement that if the City elects to implement the three transportation improvements noted above, FRPA’s contribution towards the total cost (estimated 2005 cost to be \$2,840,000, plus other costs related to overheads, environmental compensation and land acquisition) would be based on the proportion of the total

area traffic generated, which has been agreed to be 52%. The remaining 48% of the project cost would be funded by the City through the Development Cost Charges Program, subject to funding availability and Council approval as part of the annual Major Capital Works Program process. At the time of implementation, the project cost will be reviewed and any additional cost over and above the current estimates will be shared between the two parties based upon the agreed split.

Based on the pace of the developments and the amount of traffic anticipated, the earliest time that these improvements would be required is after the full build-out of the FRPA Phase III development, i.e., after 2011. These improvements would tie in with the timing of the Westminster Highway widening project (Phase 2), between Nelson Road and McMillan Way. The implementation of these projects would enhance the access and goods movement for the entire southeast industrial area, with the provision of four traffic travel lanes to/from Highway 91 via the Hamilton Interchange. In the subsequent FRPA development phases, further transportation road improvements will be identified as part of the development requirements that would be beyond the improvements as identified in the proposed Nelson Road Agreement.

The proposed Nelson Road Agreement would not be impacted by the forthcoming merge of the three ports (i.e., Fraser River Port, North Fraser Port, and Vancouver Port) and the agreement is expected to remain effective with the new merged port agency.

Financial Impact

There is no financial impact to the City at this time. However, when the City elects to widen Nelson Road (between Westminster Highway and Blundell Road) and install/upgrade traffic signals on Nelson Road (at Westminster Highway and Blundell Road), Council would be fully informed of the financial impacts through the annual Major Capital Works Program as part of the capital budget approval process.

Conclusion

The proposed agreement would provide certainty and clarity for the City on the strategy to implement and fund the Nelson Road improvements as the FRPA, a federal mandated authority, is exempted from the City Development Cost Charges Program. The agreement would provide the basis for committing the FRPA (or the future merged port agency) to 52% of the total cost required to widen Nelson Road to four lanes (between Westminster Highway and Blundell Road) and install/upgrade traffic signals at the Westminster Highway and Blundell Road intersections on Nelson Road, when the City elects to proceed with these projects. It is recommended that Council endorse the agreement and authorize staff to execute the proposed agreement with the Fraser River Port Authority.



Fred Lin, P. Eng., P.T.O.E.
Transportation Engineer
(4627)

FL:lce

NELSON ROAD CONTRIBUTION AGREEMENT

THIS AGREEMENT dated for reference the ___ day of _____, 2006

BETWEEN:

CITY OF RICHMOND, a municipality incorporated under the *Municipal Act* of the Province of British Columbia, and having its municipal offices at 6911 No. 3 Road, Richmond, BC V6Y 2C1

(the “City”)

OF THE FIRST PART

AND:

FRASER RIVER PORT AUTHORITY, a corporation continued pursuant to the *Canada Marine Act*, and having its offices at 500-713 Columbia Street, New Westminster, BC V3M 1B2

(the “FRPA”)

OF THE SECOND PART

WHEREAS:

- A. FRPA manages and operates certain federal real property and works within Fraser River Port including the Richmond Properties site located in the vicinity of No. 7 and No. 8 Roads and shown and described on the reduced copy of a drawing contained in Schedule “A” of this Agreement;
- B. The City is responsible for the approval of transportation and municipal services infrastructure placed within its road rights of way;
- C. FRPA is developing its Richmond Properties site into a logistics hub for cargo handling and distribution activities and intends to proceed with its Phase III Development;
- D. In consultation with the City, FRPA caused a traffic impact study to be carried out which concluded that the Phase III Development will generate a significant increase in vehicular traffic on nearby City streets;
- E. The traffic impact study identified a number of transportation improvements required to support the Phase III Development and to accommodate the amount of traffic generated by the development, including those improvements which comprise the Project;
- F. FRPA and the City have agreed to share the costs of the Project on the basis of the proportion of the total area traffic generated by each party, and the parties wish to enter

into this Agreement to establish the respective financial and other contributions of each party to the Project;

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants and agreements made by each of the parties to the other as set out in this Agreement, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the FRPA covenant and agree, as follows:

1.0 INTERPRETATION

1.1 Words or phrases defined in the British Columbia *Interpretation Act*, the *Community Charter* or *Local Government Act* or any successor legislation, shall have the same meaning when used in this Agreement unless otherwise defined in this Agreement.

1.2 In this Agreement

“Approved Drawings” means those detailed engineering design drawings for the Project which have been approved by both parties and are, by reference, incorporated into this Agreement as if attached hereto;

“FRPA Contribution” means FRPA’s financial contribution to the cost of the Project as established in Section 2.1(a) and Section 2.7;

“Intermunicipal - FRPA Accord” means that agreement entitled “Accord between Fraser River Port Authority and Municipalities” which became effective by September 1, 2002.

“Phase III Development” means the proposed development by FRPA of its Richmond Properties site, consisting of 1.9 million square feet and 27 acres of industrial/warehousing land uses which is scheduled for completion in five years;

“Project” means the widening of Nelson Road to four lanes from Westminster Highway to the north edge of the Kingswood Industrial Park, and includes the construction of a traffic signal at the intersection of Blundell Road and Nelson Road and the modification of the existing traffic signal at the intersection of Westminster Highway and Nelson Road, all as shown and specified in the Approved Drawings;

“Project Costs” means the 2005 estimated total cost of the Project, exclusive of taxes, which is \$2,840,000, and includes, without limitation, construction costs of \$2,400,000, engineering and design costs of \$240,000, traffic signalization costs of \$200,000, and other costs related to overheads, environmental compensation and land acquisition.

“Revised Project Costs” means the Project Costs as revised by a Third Party prior to the commencement of the Project using a Class “A” estimate standard and based on the Approved Drawings;

“Third Party” means a party other than the City or the FRPA appointed with the approval of both the City and FRPA;

2.0 PROJECT

FRPA Contribution to the Project

- 2.1 Based on the proportion of traffic to be generated by FRPA’s proposed Phase III Development and by adjacent non-FRPA developments:
- (a) FRPA will pay to the City as its contribution to the cost of the Project, 52% of the Revised Project Costs plus a proportionate share of all taxes assessed against the Project; and
 - (b) the City will be responsible for providing the remaining 48% of the Revised Project Costs plus a proportionate share of taxes assessed against the Project.

Commencement of the Project

- 2.2 Subject to Section 2.3, the City may at any time elect to proceed with an award of tender and construction of the Project.

Condition Precedent for Commencement of the Project

- 2.3 The parties’ obligations to contribute to the costs of the Project under this Agreement shall apply provided that the works proposed for the Project are compatible with the Ministry of Transportation’s and TransLink’s plan for regional transportation improvements in the area and such plan does not incorporate the expansion of No. 8 Road from the FRPA Richmond Property site to Westminster Highway and beyond to Highway 91A.

Timing of FRPA Contribution

- 2.4 If the City elects to award a tender and commence construction of the Project *prior to* January 1, 2011, FRPA agrees to make reasonable commercial efforts to pay the FRPA Contribution by means of partial payments equal to the FRPA’s proportionate share of each amount invoiced by contractors to the City, being 52% plus applicable taxes, but, in any event, FRPA must pay the total amount of the FRPA Contribution to the City no later than January 1, 2011.
- 2.5 If the City elects to award a tender and commence construction of the Project *after* January 1, 2011, FRPA will pay the FRPA Contribution to the City by means of partial payments equal to the FRPA’s proportionate share of each amount invoiced by contractors to the City, being 52% plus applicable taxes.
- 2.6 If FRPA pays the FRPA Contribution by partial payments in accordance with either Section 2.4 or 2.5, the City will, in respect of each invoice received from contractors for the Project, deliver a corresponding invoice to FRPA setting out FRPA’s proportionate

share of the contractor's invoice, and FRPA must pay the City's invoice within 30 days of its receipt.

Excess Costs

- 2.7 Despite Section 2.1, FRPA and the City agree that if the actual costs of the Project exceed the Revised Project Costs, the excess costs will be shared in accordance with the respective proportional contributions of the parties established in Section 2.1.

Responsibilities of the City

- 2.8 The City will be responsible for:
- (a) ensuring that the Project is constructed and completed at least to the municipal standards used for the 2003 Nelson Road upgrade and in substantial accordance with the Approved Drawings; and
 - (b) acquiring all real property interests necessary to complete the Project, PROVIDED THAT, all costs incurred by the City, including but not limited to acquisition costs, survey costs, land title registration costs and legal costs, will form part of the Project Costs and the Revised Project Costs.

Rights of Way over FRPA Lands

- 2.9 Where Project improvements pass over, under, along, across or through FRPA lands, FRPA will grant the City all necessary rights of way over FRPA lands for such improvements at no cost to the City and, for certainty, the value of such rights of way shall not form part of the Project Costs or the Revised Project Costs.

Dispute Resolution

- 2.10 The parties agree that should any dispute arise between them, including but not limited to a dispute regarding the construction or interpretation of any provision of this Agreement, the appointment of the Third Party, the approval of the Revised Project Costs or the compatibility of the Project with the Ministry of Transportation's and TransLink's transportation plan, the dispute resolution process established in the Intermunicipal - FRPA Accord shall apply and be used to resolve such dispute.

3.0 General Provisions

- 3.1 Neither this Agreement nor any alteration, amendment, change or addition to this Agreement is binding upon the parties unless it is in writing and signed by each of the parties.
- 3.2 This Agreement will ensure to the benefit of the successors and assigns of the parties hereto.
- 3.3 The failure of a party to:

- (a) insist upon strict performance of any obligation hereunder on the part of the other party be kept, observed, or performed; or
- (b) to exercise any right or option under this Agreement,

will not be construed or operate as a waiver or relinquishment for the future of its right so to do and no waiver shall be inferred from or implied by anything done or omitted by the party.

- 3.4 Time is of the essence of this Agreement.
- 3.5 The captions, article numbers and paragraph numbers appearing in this Agreement are inserted for convenience only and do not affect the interpretation of it.
- 3.6 Wherever the singular or the masculine is used in this Agreement it will be construed to mean the plural, or feminine, or the body politic or corporate, where the circumstances require.
- 3.7 If any of the provisions in this Agreement are for any reason held to be invalid, illegal or unenforceable in any respect, it is to be considered severed from this Agreement, and the remaining provisions of this Agreement will remain in full force and be binding upon the parties.
- 3.8 This Agreement is to be governed by and in accordance with the laws of the Province of British Columbia.
- 3.9 The entire agreement between the parties is contained in this Agreement, and there are no representations, warranties, covenants, agreements, conditions, terms, collateral agreements by either of the parties to the other, or between the parties, in respect of the subject matter hereof other than those expressed in this Agreement.
- 3.10 Any notice, demand or request which may be, or is required, to be given under this Agreement will be sufficiently given or made if delivered by facsimile to the party to whom it is given or made, or if delivered, to the addresses set forth on the first page of this Agreement or at such other address as the parties may from time to time give notice in writing and any notice, demand or request so mailed will be deemed to have been given or made on the date of facsimile transmission or delivery if such transmission takes place prior to 4 p.m. on a business day, and otherwise on the next business day following the transmission or delivery.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the year and date first above written.

FOR THE CITY
OF RICHMOND

SIGNED, SEALED AND DELIVERED)

The corporate seal of the City of Richmond)
was hereunto affixed in the presence of)

Mayor _____)

Clerk _____)

SEAL

FOR THE FRASER
RIVER PORT
AUTHORITY

SIGNED, SEALED AND DELIVERED)

The corporate seal of the Fraser River Port)
Authority was hereunto affixed in the presence)
of)

Signature _____)

Name _____)

Title _____)

SEAL

FOR THE FRASER
RIVER PORT
AUTHORITY

SIGNED, SEALED AND DELIVERED)

The corporate seal of the Fraser River Port)
Authority was hereunto affixed in the presence)
of)

Signature _____)

Name _____)

Title _____)

SEAL

SCHEDULE "A"

