

INTRODUCED: December 12, 2016

AN ORDINANCE No. 2016-308

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to enter into an Agreement between the City of Richmond and the Richmond Metropolitan Transportation Authority concerning the use of certain historic stones from the Kanawha Canal in connection with improvements at the T. Tyler Potterfield Memorial Bridge.

\_\_\_\_\_  
Patron – Mayor Jones

\_\_\_\_\_  
Approved as to form and legality  
by the City Attorney  
\_\_\_\_\_

PUBLIC HEARING: JAN 9 2017 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 enter into an Agreement between the City of Richmond and the Richmond Metropolitan Transportation Authority concerning the use of certain historic stones from the Kanawha Canal in connection with improvements at the T. Tyler Potterfield Memorial Bridge. Such Agreement shall be substantially in the form of the document attached to this ordinance and approved as to form by the City Attorney.

§ 2. This ordinance shall be in force and effect upon adoption.

AYES:            9            NOES:            0            ABSTAIN: \_\_\_\_\_

ADOPTED:    JAN 23 2017    REJECTED: \_\_\_\_\_    STRICKEN: \_\_\_\_\_

**Agreement  
Between  
City of Richmond  
And  
Richmond Metropolitan Transportation Authority  
Regarding the Kanawha Canal Stones**

THIS AGREEMENT (the "Agreement") is dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016, and entered into by and between the **CITY OF RICHMOND, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (the "City"), and the **RICHMOND METROPOLITAN TRANSPORTATION AUTHORITY**, a political subdivision and public body corporate and politic of the Commonwealth of Virginia (the "Authority" or "RMTA"), established pursuant to Virginia Code §§ 15.2-7000 *et seq.*, as amended (the RMTA and the City may be referred to herein as the "Parties" or individually as "Party").

**WHEREAS**, RMTA is the owner of certain historic Kanawha Canal stones (the "Canal Stones"); and

**WHEREAS**, the City desires to use the Canal Stones in connection with improvements to the T. Tyler Potterfield Memorial Bridge; and

**WHEREAS**, the City has requested that RMTA make available, and RMTA desires to make available, the Canal Stones to the City in connection with the T. Tyler Potterfield Memorial Bridge;

**NOW, THEREFORE**, the parties hereto agree as follows:

1. The City may remove approximately 20 of the Canal Stones from their present location near the Manchester Bridge. The City or its designated agent will survey and tag the desired stones on an agreed upon date. The City may move the selected Canal Stones once the RMTA approves the selection in writing. The quantity shall not exceed 20 without the written authorization of RMTA.
2. The City shall handle the Canal Stones with due care, using nylon straps or otherwise in a manner reasonably designed to prevent damage to the Canal Stones. The City shall handle and move the Canal Stones with the advice of RMTA.
3. The City agrees to minimize the disruption of stacked Canal Stones if such stacks exist. If Canal Stones are desired from the stacks, the City agrees to move the Canal Stones sequentially by stack and not to selectively choose from among various stacks. The RMTA may mark the Canal Stones in a manner reasonably calculated to allow the City to return them to their original location and order. While the RMTA will endeavor to provide Canal Stones to meet the City's planned uses, the RMTA makes no representation or warranty that the current inventory of Canal Stones is of any particular quality, color, dimension, size or shape or is suited for the City's planned use.

4. The City will relocate the Canal Stones to the T. Tyler Potterfield Memorial Bridge located at 511 W. 6<sup>th</sup> Street, Richmond, VA 23224 in the city of Richmond, Virginia and to no other location. The City will arrange the Canal Stones according to the plans prepared by Hargreave Associates, 118 Magazine St., Cambridge, MA 02139 for the T. Tyler Potterfield Memorial Bridge as shown on the Layout Plan, Sheet No. SKL-001, dated October 17, 2016, to be filed with the City of Richmond Department of Planning & Development Review, 900 E. Broad St., Richmond, Virginia and attached to this Agreement as Exhibit A.
5. The City shall make commercially reasonable efforts to ensure that the green space along the T. Tyler Potterfield Memorial Bridge, in which the Canal Stones are to be placed, shall be open to the public without charge during regular City of Richmond park hours.
6. The total cost of relocating the Canal Stones to and from the T. Tyler Potterfield Memorial Bridge shall be borne by the City of Richmond or its designated agents. The City shall be responsible for the actions (including failure to act in accordance with customary or sound practices) of its employees and agents, including contractors and subcontractors.
7. The Canal Stones shall remain at the T. Tyler Potterfield Memorial Bridge in the agreed upon configuration until either:
  - A. The T. Tyler Potterfield Memorial Bridge ceases to be operated as a publicly-accessible shared-use path; or
  - B. RMTA provides sixty (60) days written notice to the City of its decision to reclaim the Canal Stones, which decision may be made by RMTA in its sole discretion.
8. All reasonably necessary costs actually incurred by the City in the relocation of the Canal Stones, including upon termination of this Agreement under Paragraph 7 above, will be borne by the City of Richmond. The Canal Stones will be returned to their original storage site or to such other site as RMTA may direct. The Canal Stones will be relocated using the same methods noted in paragraph 2 above.
9. **Miscellaneous Provisions.**
  - A. **Entire Agreement.** This Agreement contains the entire understanding between the City and the RMTA and supersedes any prior understandings and written or oral agreements between them respecting this subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between the City and the RMTA relating to the subject matter of this Agreement that are not fully expressed in this Agreement.
  - B. **Governing Law and Forum Choice.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City and the RMTA 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 law 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. 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. Each party shall be responsible for its own attorneys' fees in the event this Agreement is subject to litigation.

C. **Modifications.** This Agreement may be amended, modified and supplemented only by the written consent of both the City and the RMTA preceded by all formalities required as prerequisites to the signature by each party of this Agreement.

D. **No Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give.

E. **No Individual Liability.** No director, officer, employee or agent of the City or the RMTA shall be personally liable to another party hereto or any successor in interest in the event of any default or breach under this Agreement or on any obligation incurred under the terms of this Agreement.

F. **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Agreement, the City and the RMTA 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 RMTA; (iii) no individual or entity shall obtain any right to make any claim against the City or the RMTA 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.

G. **Notices.** 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:

To RMTA:

Richmond Metropolitan Transportation Authority  
919 East Main Street  
Suite 600  
Richmond, Virginia 23219

To the City:

Chief Administrative Officer  
900 East Broad Street, Suite 201  
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.

H. **Public Records.** The City and the RMTA acknowledge and agree that this Agreement and any other records furnished, prepared by or in the possession of the City or the RMTA may be subject to the retention and disposition requirements of the Virginia Public Records Act and the public disclosure requirements of the Virginia Freedom of Information Act.

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

WITNESS the signatures of the undersigned this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

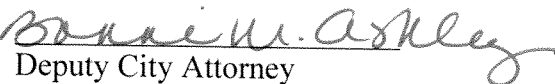
**Richmond Metropolitan Transportation Authority**

\_\_\_\_\_  
Angela Gray, CEO

**City of Richmond, Virginia**

\_\_\_\_\_  
Selena Cuffee-Glenn  
Chief Administrative Officer

**Approved as to form:**

  
Deputy City Attorney

Ordinance No: \_\_\_\_\_



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST

OCT 27 2016
4-5836
Chief Administration Office
City of Richmond

O&R REQUEST RECEIVED

NOV 15 2016

DATE: October 26, 2016

TO: The Honorable Members of City Council

OFFICE OF CITY ATTORNEY

THROUGH: Dwight C. Jones, Mayor (Patron: Mayor, by Request)

Handwritten signature/initials

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

THROUGH: Debra D. Gardner, Deputy Chief Administrative Officer for Human Services

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THROUGH: Peter L. Downey, Deputy Chief Administrative Officer for Economic Development and Planning

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THROUGH: Deborah E. Morton, Interim Director, Department of Parks, Recreation & Community Facilities

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FROM: Mark A. Olinger, Director
Department of Planning & Development Review

Handwritten signature/initials

SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND RMTA REGARDING KANAWHA CANAL STONES

ORD. OR RES. No:

PURPOSE: To allow the Chief Administrative Officer to enter into a Memorandum of Understanding with the Richmond Metropolitan Transportation Authority (RMTA) to use certain Kanawha Canal Stones for improvements at the T. Tyler Potterfield Memorial Bridge.

REASON: As part of the T. Tyler Potterfield Memorial Bridge (TTPMB) project, approximately twenty (20) former Kanawha Canal stones will be used as seating at various locations along the path of the TTPMB. The attached Memorandum of Understanding details the considerations by which the RMTA will permit the City to use the Kanawha Canal stones.

RECOMMENDATION: The City Administration recommends approving.

**BACKGROUND:** There are two locations along the TTPMB where the provision of seating areas would provide a welcome respite for those using the TTPMB. The former Kanawha Canal stones would provide a good seating surface and provide an interesting connection between the Canal history and the TTPMB. The Canal stones are in close proximity to where they would be used, making the placing of them along the pathways of the TTPMB a straightforward task.

**FISCAL IMPACT/COST TO CITY:** The cost of relocating the Kanawha Canal Stones is part of the existing TTPMB construction contract with Howard Shockey & Sons, Inc.

**DESIRED EFFECTIVE DATE:** Upon Adoption.

**REQUESTED INTRODUCTION DATE:** November 14, 2016

**CITY COUNCIL PUBLIC HEARING DATE:** December 12, 2016

**REQUESTED AGENDA:** Consent Agenda

**RECOMMENDED COUNCIL COMMITTEE:** Organizational Development–December 5, 2016

**CONSIDERATION BY OTHER GOVERNMENTAL AGENCIES:** None

**AFFECTED AGENCIES:** Office of Chief Administrative Officer, Department of Parks, Recreation & Community Facilities, Department of Planning & Development Review

**RELATIONSHIP TO EXISTING ORDINANCES:** N/A

**REQUIRED CHANGES TO WORK PROGRAMS:** None

**ATTACHMENTS:**

**STAFF:** Mark A. Olinger, Director, Department of Planning & Development Review – (804) 646-6305

*DCD O&R No.*