

INTRODUCED: April 8, 2024

AN ORDINANCE No. 2024-106

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to accept a donation of construction services valued at approximately \$600,000.00 from Capital Trees and, in connection therewith, to execute a Right-of-Entry Agreement between the City of Richmond and Capital Trees, all for the purpose of facilitating the construction of erosion and sediment control, park trails and fixture installation, planting, and landscaping for Hotchkiss Field Community Center located at 701 East Brookland Park Boulevard in the city of Richmond.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: APR 22 2024 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for an on behalf of the City of Richmond, is hereby authorized to accept a donation of construction services valued at approximately \$600,000.00 from Capital Trees for the purpose of facilitating the construction of erosion and sediment control, park trails and fixture installation, planting, and landscaping for Hotchkiss Field Community Center located at 701 East Brookland Park Boulevard in the city of Richmond.

AYES: 8 NOES: 0 ABSTAIN:

ADOPTED: APR 22 2024 REJECTED: STRICKEN:

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

CITY ATTORNEY'S OFFICE

Carlin D. Reed

City Clerk



City of Richmond

900 East Broad Street
2nd Floor of City Hall
Richmond, VA 23219
www.rva.gov

Master

File Number: Admin-2024-0234

File ID: Admin-2024-0234

Type: Request for Ordinance or Resolution

Status: Regular Agenda

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Reference:

In Control: City Clerk Waiting Room

Department:

Cost:

File Created: 03/19/2024

Subject:

Final Action:

Title:

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Agenda Date: 04/08/2024

Indexes:

Agenda Number:

Patron(s):

Enactment Date:

Attachments: Admin-2024-0225_WD - Hotchkiss \$600K ROE AATF, Admin-2024-0225 Final Capital Trees Hotchkiss ROE Spring 2024

Enactment Number:

Contact:

Introduction Date:

Drafter: Wanda.Marable@richmondgov.com

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	3/19/2024	Chris Frelke	Approve	3/21/2024
1	2	3/19/2024	Traci DeShazor - FYI	Notified - FYI	
1	3	3/27/2024	Jeff Gray	Approve	3/21/2024
1	4	3/28/2024	Lincoln Saunders	Approve	3/29/2024
1	5	3/28/2024	Mayor Stoney	Approve	4/1/2024

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File Admin-2024-0234

City of Richmond

Intracity Correspondence

O&R Transmittal

DATE: March 18, 2024

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: Lincoln Saunders, Chief Administrative Officer

THROUGH: Traci J. DeShazor, DCAO for Human Services

FROM: Christopher E. Frelke, Director of Parks, Recreation & Community Facilities

RE: TO ACCEPT A GIFT AND EXECUTE A RIGHT OF ENTRY FOR
CONSTRUCTION SERVICES FOR GREENSPACE IMPROVEMENTS AT
HOTCHKISS COMMUNITY CENTER, LOCATED AT 701 EAST
BROOKLAND PARK BOULEVARD

ORD. OR RES. No.

PURPOSE: To authorize the Chief Administrative Officer (CAO) to accept a Gift from Capital Trees and execute a Right-Of-Entry Agreement for planning, construction, and ongoing maintenance services to the City in the form of labor and materials valued up to approximately \$600,000 to provide greenspace improvements and amenities to Hotchkiss Community Center.

BACKGROUND: The Department of Parks, Recreation and Community Facilities (PRCF) is excited to be partnering with the Capital Trees to make significant greenspace improvements at Hotchkiss Community Center. Improvements based on the master plan include, but are not limited to, landscaping, shade structures and other amenities, and installation of walking trails.

PRCF and Capital Trees will work together for the ongoing maintenance of the improved greenspaces.

COMMUNITY ENGAGEMENT: Community engagement activities were coordinated with PRCF, Timmons and Capital Trees. There were three in-person info sessions and design charrettes at Hotchkiss Community Center, an online survey, tabling at the Northside Farmers' Market, and three

in-person and virtual meetings with Northside area community groups. Capital Trees advertised the events and survey through flier distribution to adjacent neighbors and at community spaces, and via posts to community group listservs and social media.

STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL: RVAgreen 2050

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None.

FISCAL IMPACT / COST: The total value of the Gift is approximately \$600,000.

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: April 8, 2024

CITY COUNCIL PUBLIC HEARING DATE: April 22, 2024

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing and Transportation Committee

AFFECTED AGENCIES: PRCF

RELATIONSHIP TO EXISTING ORD. OR RES.: None.

ATTACHMENTS: Attachment 1: Right-of-Entry

STAFF: Christopher Frelke, Director, PRCF
Nissa Dean, Deputy Director, PRCF
Daniel Hazlett, Senior Management Analyst, PRCF

**RIGHT-OF-ENTRY AGREEMENT
CITY OF RICHMOND AND CAPITAL TREES
HOTCHKISS PARK**

THIS RIGHT-OF-ENTRY AGREEMENT effective as of the date of last signature below, is between the City of Richmond, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “City”), acting for purpose of this Agreement through its Department of Parks, Recreation, and Community Facilities (“DPRCF”), and Capital Trees, a Virginia non-stock corporation. (the “Grantee”). Capital Trees builds and manages public landscapes and educates the public about their value in the City of Richmond. Collectively, the City and Capital Trees are referred to herein as the “Parties”.

STATEMENT OF PURPOSE

- A. The City is renovating the community center at Hotchkiss Field Community Center, located at 701 East Brookland Park Boulevard Richmond, Virginia 23222, Parcel ID Number N0000908019 referred to as the “Property.” The Grantee desires to provide Services to the City in the form of park improvement planning, erosion and sediment control, park trails and fixture installation, planting, and landscaping.
- B. The performance of the Services described herein requires the Grantee and its agents, contractors, employees, invitees, licensees, officers, and volunteers to enter onto the Property, and the City is willing to grant such a right of entry and other accommodations to the Grantee on the terms and subject to the conditions set forth herein.

The City and the Grantee, intending to be legally bound, agree as follows:

1. Right of Entry.

1.1. Scope.

1.1.1. **Meaning of “Property.”** For purposes of this Agreement, “Property” means all City-owned real property located within the area of Hotchkiss Field Community Center, located at 701 East Brookland Park Boulevard Richmond, Virginia 23222, Parcel ID Number N0000908019.

1.1.2. **Meaning of “Services.”** For purposes of this Agreement, “Services” means performing the following tasks on the Property:

1.1.2.1. **Capital Trees Tasks.** Capital Trees agrees to perform the following tasks:

Providing planning in the form of community engagement, concept plans, initial budget
Securing proper permits, selecting contractors, finalizing construction plans
Mobilization
Erosion and sediment control
Construction Fencing
Demolition
Stormwater management
Installation of permeable asphalt trail and providing surfacing materials
Completing rough grading
Laying topsoil and completing fine grading
Installing athletic field fencing
Installing park furnishings for community use
Installing interpretative signage
Landscaping
Design and installation using reclaimed timber

The Capital Trees Services and their location are shown generally in Attachment 1.1.2. The exact locations of the Services are subject to change from as-designed to as-built.

1.1.2.2. City Tasks. The City further agrees to perform the following tasks:

Utility service, including water and electricity, at existing connections for the completion of the Capital Trees Services.
Perpetual maintenance with training and oversight assistance from Capital Trees for three years
Installation of a three board wooden fence around the perimeter of Hotchkiss Park to protect the Services from vehicular traffic
Completion of the removal of the chain link fence on the perimeter of project area and vegetation growing on it

1.1.3. Grant of Right of Entry. For the duration of this Agreement, the City hereby grants to the Grantee and its agents, contractors, employees, invitees, licensees, officers, and volunteers the non-exclusive right to enter upon the Property for the purpose of enabling the Grantee to perform its Services.

1.1.4. No Relationship between Parties. The City and the Grantee agree that the Grantee is an independent contractor and in no way to be considered an employee, partner, agent, or associate, whether by joint venture or otherwise, of the City in the conduct of its business and the performance of its Services.

1.1.5. **Compliance with Permits.** Grantee agrees to comply with the permit application processes and obtain any and all pertinent permits, if applicable, prior to commencing any Services.

1.1.1. **Value of Services.** The approximate value of the Services is \$600,000.00 and the acceptance of such Services is authorized pursuant to City Ordinance No. _____.

1.2. **Duration.** This Agreement shall span from the date of its signing through December 31, 2028.

1.3. **Termination.** Either party may terminate this Agreement at will by giving written notice to the other party. Should this Agreement be terminated pursuant to this section 1.3, the City will not be liable for reimbursement of any funds expended by the Grantee in carrying out the terms of this Agreement.

2. **Standards and Requirements.**

2.1. **Repairs.** The Grantee shall repair any damage caused directly or indirectly to the Properties as a result of any error, omission, negligent act or intentional act of the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers to the satisfaction of the City and shall repair damage so caused to the Properties in a condition satisfactory to the City as determined by the City in its reasonable discretion. If the Grantee has not done so by the termination of this Agreement, the City may make any necessary repairs at the Grantee's cost. This duty to repair extends beyond termination of this Agreement for damage caused by Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers during the term of this Agreement.

2.2. **Utility Protection.** The Grantee shall protect all private and publicly owned utilities located within the Properties against any damage by the Grantee, its agents, contractors, employees, invitees, licensees, officers, or volunteers, and shall not cause any utilities interruption except when necessary for the completion of the project. The City shall provide assistance as needed related to confirming and marking any utilities lines so that the Services can be performed.

2.3. **Installation of Fencing and Fixtures.** All installation of non-perimeter fencing, signage, benches, or other fixtures related to the Services shall be under the direction of DPRCF and shall not be completed until the final location has been approved, in writing, by the designated DPRCF staff person.

3. **Liability.**

- 3.1. **Release.** The City shall not be liable for any personal injury or property damage to the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers in the course of providing Services, irrespective of how the injury or damage is caused, and the Grantee hereby releases the City from any liability, real or alleged, for any personal injury or property damage to the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers irrespective of how the injury or damage is caused. Nothing herein shall be construed as a waiver of the sovereign immunity granted to the City by the Commonwealth of Virginia statutes and case law to the extent that it applies. This section 3.1 will survive the termination of this Agreement.
- 3.2. **Indemnity.** The Grantee shall indemnify and defend the City and its agents, contractors, employees, officers, and volunteers from and against any and all losses, liabilities, claims, damages and expenses, including court costs and reasonable attorneys' fees, caused by, resulting from, or arising out of any claim, action, or other proceeding including any claim, action, or other proceeding initiated or maintained by any of the Grantee's agents, contractors, employees, invitees, licensees, officers, or volunteers, that is based on or related to this Agreement or the Services, and is also based on or related to any of the following: (i) the Grantee's breach of this Agreement, (ii) the use of the Properties by the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (iii) the performance of any Services by the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (iv) the presence on or about the Properties of the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (v) the conduct or actions of the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers within or outside the scope of this Agreement, or (vi) any error, omission, negligent act or intentional act of the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers. This section 3.2 will survive the termination of this Agreement.
- 3.3. **Insurance.** The Grantee shall ensure that commercial general liability insurance with a combined limit of not less than \$1,000,000 per occurrence, insuring the Grantee and any of its agents, contractors, employees, invitees, licensees, officers, or volunteers performing Services on behalf of the Grantee against liability for injury to persons and damage to property occurring on or about the Property or arising out of the maintenance or use thereof or the Services performed thereon, with an insurer licensed to transact insurance business in the Commonwealth of Virginia is maintained throughout the duration of this Agreement. The insurance policy or policies under which the required insurance is provided shall include the City as an additional insured and shall be effective before the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers enter the Property. The Grantee shall furnish the City with copies of the required additional insured endorsements and such certificates of insurance evidencing the existence of the required insurance coverage as the City may request, which documentation will be

reviewed promptly, and neither the Grantee nor its agents, contractors, employees, invitees, licensees, officers, or volunteers shall enter the Properties until the City's Chief of Risk Management has approved the required insurance.

4. **Miscellaneous.**

4.1. **Assignment.** The Grantee shall not transfer or assign its rights or obligations under this Agreement.

4.2. **Dispute Resolution.**

4.2.1. **Construction and Interpretation.** Each party has had the opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or question of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the Parties. Neither the form of this Agreement, nor any language herein, shall be construed or interpreted in favor of or against either party hereto as the sole drafter thereof.

4.2.2. **Forum and Venue.** 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.

4.2.3. **Governing Law.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City and the Grantee 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 laws 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.

4.3. **Modification.** This Agreement contains the complete understanding and agreement of the Parties with respect to the matters covered herein and may not be modified except in a written instrument signed by the duly authorized representative of each party hereto.

4.4. **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Agreement the City and the Grantee 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 Grantee; (iii) no individual or entity shall obtain any right to make any claim against the City or the Grantee 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 that individual or entity is named in this Agreement.

4.5. **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:

A. To the Grantee:

Shelly Barrick Parsons
Executive Director

200 South Third Street
Suite 101
Richmond, VA 23219

804-788-6450
shelly@capitaltrees.org

B. To the City:

Christopher Frelke
Director of Parks, Recreation and Community Facilities

City of Richmond
1209 Admiral Street
Richmond, Virginia 23220

(804) 646-1128
Christopher.Frelke@richmondgov.com

Either Party may change any of its address information given above by giving notice in writing stating its new address to the other party.

Effective as of the date of last signature below.

GRANTEE:

CITY:

By: _____
Shelly Barrick Parsons Date
Executive Director

By: _____
J. E. Lincoln Saunders Date
Chief Administrative Officer

APPROVED AS TO FORM:

APPROVED AS TO TERMS:

 _____
Alexandra M. Griffin 3/27/2024
Assistant City Attorney Date

Christopher Frelke, Director Date
Parks, Recreation and Community
Facilities, City of Richmond