

INTRODUCED: March 25, 2019

AN ORDINANCE No. 2019-101

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Low Line Green Right-of-Entry Agreement between the City of Richmond and Capital Trees for the purpose of allowing Capital Trees access to certain City-owned real estate along Dock Street to make and maintain landscaping improvements thereto.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: APR 22 2019 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 execute a Low Line Green Right-of-Entry Agreement between the City of Richmond and Capital Trees for the purpose of allowing Capital Trees access to certain City-owned real estate along Dock Street to make and maintain landscaping improvements thereto. The Low Line Green Right-of-Entry Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

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

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: APR 22 2019 REJECTED: _____ STRICKEN: _____



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST
4-8630
FEB 27 2019
Office of the Chief Administrative Officer

O&R REQUEST

RECEIVED

MAR 12 2019

OFFICE OF CITY ATTORNEY
3/8/19

DATE: February 27, 2019

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor (Patron: Mayor, by Request)
(This does not reflect a recommendation on behalf of the Mayor.)

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

THROUGH: Lenora G. Reid, Deputy Chief Administrative Officer for Finance & Administration

THROUGH: Jay A. Brown, Director of Budget & Strategic Planning

THROUGH: Robert C. Steidel, Deputy Chief Administrative Officer for Operations

THROUGH: Calvin D. Farr, Director, Department of Public Utilities

THROUGH: Reginald E. Gordon, Deputy Chief Administrative Officer for Human Services

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

THROUGH: Douglas C. Dunlap, Interim Deputy Chief Administrative Officer, Economic Development & Planning

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

SUBJECT: This O&R request is to authorize the Chief Administrative Officer, or Designee, to execute any and all requirements related to the following three ordinances in connection with the second phase of the Low Line, "Low Line Green":

- 1. To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a First Amendment Agreement to an existing Land License Agreement between the City and CSX Transportation, Inc.

2. To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Low Line Green Right-of-Entry Agreement between the City and Capital Trees.
3. To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to accept a donation of services and materials in the form of landscaping improvements and future maintenance thereof on City-owned real estate on the Low Line valued at approximately \$740,000 from Capital Trees.

ORD. OR RES. No:

PURPOSE: This O&R request is for the following three ordinances in connection with the second phase of the Low Line, "Low Line Green":

1. To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a First Amendment Agreement to an existing Land License Agreement between the City and CSX Transportation, Inc.
2. To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a New Right-of-Entry Agreement between the City and Capital Trees.
3. To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to accept a donation of services and materials in the form of landscaping improvements and future maintenance thereof on City-owned real estate on the Low Line valued at approximately \$740,000 from Capital Trees.

REASON: In 2014 and 2015, the City worked with Capital Trees on making a variety of landscaping improvements to the "Low Line" from Great Shiplock Park to 21st Street. Capital Trees has continued to raise funding for improvements to an area in the vicinity of the floodwall between 16th St. and 18th St. as depicted in red and identified as "Additional Site Area" on the map attached hereto as Attachment A-1 dated April 11, 2018.

In order to install and maintain these improvements, and to enter on, over, or across property owned or controlled by CSX for future maintenance or repair of the improvements, the City needs to enter into three agreements, as follows:

1. To execute a First Amendment Agreement to an existing Land License Agreement CSX, Transportation, Inc.
2. To execute a New Right-of-Entry Agreement between the City and Capital Trees.
3. To accept a donation of services and materials in the form of landscaping improvements and future maintenance thereof on City-owned real estate on the Low Line valued at approximately \$740,000 from Capital Trees.

RECOMMENDATION: The Administration recommends approval.

BACKGROUND: On December 8, 2014, the Council adopted two ordinances related to the development of the “Low Line Park” along Dock Street in the City. Ordinance 2014-248-224, provided \$200,000 in City funds to help support the development of Phase 1 of “Low Line Park” by the Three Chopt Garden Club (as fiscal agent) and Capital Trees. Ordinance 2014-247-223 authorized the acceptance of a donation of services and materials in the form of improvements and future maintenance along the “Low Line Park.” The donated value of the improvements would be approximately \$1,275,000, \$75,000 of which would be a dedicated maintenance fund to maintain the improvements of Phase 1 “Low Line Park” until such time as the funds were exhausted. The improvements would then be accepted by, and incorporated into, the Department of Parks, Recreation, and Community Facilities inventory, as per Ordinance 2014-247-223.

On July 27, 2015, as part of a number of papers related to Phase 1 of Low Line improvements along Dock Street as part of a partnership among Capital Trees, CSX Transportation, Inc., and the City, Ordinance 2015-150-160 was adopted by Council granting a Land License for the City access to railroad property and right-of-way from Great Shiplock Park to 21st Street in order to maintain the portion of Dock Street located over CSX Transportation, Inc.’s, railroad tracks and right-of-way.

In 2018 Capital Trees came forward with plans to improve the area near in the vicinity of the floodwall (1700 block of Dock Street) which would cover property as shown on the plans entitled “Low Line Green,” prepared by Water Street Studio, dated August 1, 2018, and approved as to location, character and extent by the Planning Commission on November 19, 2018, a copy of which is attached. For purposes of entering onto CSX property for maintenance or other activities related to the “Low Line Green” a First Amendment Agreement between the City and CSZ Transportation, Inc., for the affected .82 acres of site area of CSX property is needed, as shown on the attached Exhibit A-1.

Adoption of these three (3) ordinances will permit the project to go forward.

FISCAL IMPACT: None

COST TO CITY: Maintenance cost of the improvements once the funding for the maintenance cost established by Capital Trees is exhausted.

REVENUE TO CITY: None

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: March 25, 2019

CITY COUNCIL PUBLIC HEARING DATE: April 22, 2019

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Land Use Housing & Transportation, April 16, 2019

CONSIDERATION BY OTHER GOVERNMENTAL AGENCIES: None

AFFECTED AGENCIES: Public Utilities; Parks, Recreation & Community Facilities; Planning & Development Review

RELATIONSHIP TO EXISTING ORDINANCES: Ordinance 2015-150-160 (adopted July 27, 2015), Ordinance 2014-248-224 (adopted 12/8/2014), and Ordinance 2014-247-223 (adopted 12/8/2014)

REQUIRED CHANGES TO WORK PROGRAMS: None

ATTACHMENTS: 1st Amendment Agreement to Land License Agreement
Low Line Green Right-of Entry Agreement
Exhibit A-1
Final Location, Character, and Extent plans for landscape improvements at 1701 Dock Street (approved by City Planning Commission November 18, 2018)

STAFF: Mark A. Olinger, Director 646-6305
Department of Planning & Development Review

**LOW LINE GREEN
RIGHT-OF-ENTRY AGREEMENT**

THIS RIGHT-OF-ENTRY AGREEMENT is made this 21st day of June, 2019, between the City of Richmond, a municipal corporation and political subdivision of the Commonwealth of Virginia (the "City"), and Capital Trees, a Virginia nonstock corporation (the "Grantee").

STATEMENT OF PURPOSE

- A. The Grantee will donate certain services to the City in the form of labor and materials needed to make and maintain landscaping improvements to certain City-owned real property along Dock Street, identified as the "Low Line Green," valued at approximately \$740,000 (the "Project").
- B. The City has authorized the acceptance of this donation by means of Ordinance No. 2019-101, adopted April 22, 2019.
- C. The performance of the services described above requires the Grantee and its agents, contractors, employees, invitees, licensees, officers, and volunteers to enter onto certain City-owned real property, and the City is willing to grant such a right of entry to the Grantee on the terms and subject to the conditions set forth herein.
- D. The Project represents the ongoing efforts and continuing cooperation of the City, the Grantee, and CSX Transportation, Inc. to improve the Low Line by an additional 1.0 acre, along the Kanawha Canal from 17th Street and Great Shiplock Park at Pear Street, providing a public benefit.

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

1.0 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 as depicted on the attached set of drawings entitled "Low Line Green," prepared by Water Street Studio, dated August 1, 2018, and approved as to location, character and extent by the Planning Commission on November 19, 2018.

1.1.2 Meaning of "Services." For purposes of Agreement, "Services" means the activities conducted by the Grantee on the Property that are described in section 2.1 and section 2.2 of this Agreement.

1.1.3 Grant of Right of Entry. For the duration of this Agreement as set forth in section 1.2, 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 thereon.

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 the Services.

1.2 **Duration.** The right of entry granted by this Agreement, and all terms and conditions contained herein, will terminate automatically upon the earlier of (i) the completion of Grantee's Services as determined by the City in its reasonable discretion or (ii) the termination by the City or the Grantee of this Agreement.

1.3 **Termination.** Either party may terminate this Agreement at will by giving notice to the other party. Should this Agreement be terminated pursuant to this section 1.3, the parties will confer and negotiate in good faith in order to determine what commercially reasonable actions, if any, either party may take in order to ameliorate any adverse impact on the parties or the Project. Such discussion will include, if applicable, outstanding or future financial obligations of either party and the remaining scope of work.

2.0 **Standards and Requirements.**

2.1 **Improvements.** The Grantee, at its cost, may make landscaping improvements to the Property. It is anticipated that the landscaping improvements will be substantially as depicted on the set of drawings entitled "Low Line Green," prepared by Water Street Studio, dated August 1, 2018, and approved as to location, character and extent by the Planning Commission on November 19, 2018. To the extent the landscaping improvements will require the cutting down or removal of a tree on the Property and prior to the cutting down or removal of any tree on the Property pursuant to this Agreement or otherwise, the Grantee shall submit a written request for approval to the Director of Public Works and obtain the express written permission of the Director of Public Works as required by section 26-404 of the Code of the City of Richmond, as it may hereafter be amended. The Grantee shall ensure that all landscaping improvements and the work required to make the landscaping improvements are provided and performed in a workmanlike manner, in accordance with all applicable federal, state, and local laws, and in accordance with all policies, regulations, and standards of the City that are applicable to the landscaping improvements. The Grantee shall obtain all approvals and rights from CSX Transportation, Inc., and any other property owners necessary to make any landscaping improvements that affect other properties. The Grantee shall coordinate the Grantee's applications for all governmental approvals necessary to complete the proposed landscaping improvements with the City's Director of Planning and Development Review. At the time the City's Director of Planning and Development Review determines in writing to the Grantee that the landscaping improvements described by this section are complete, the Services described in this section will be deemed complete.

2.2 Maintenance.

- A. The Grantee is authorized to undertake the maintenance of City-owned trees and other landscaping improvements located on the Property. Such maintenance may include the pruning and trimming of City-owned trees, and the planting and watering of new trees on the Property as well as the irrigation, seeding, or fertilization of the soil or grass on the Property and the hauling away of any debris generated from maintenance operations. Such maintenance shall not include the removal of City-owned trees, except as provided in section 2.2(B) below. All such maintenance shall be performed in a workmanlike manner, in accordance with all applicable federal, state, and local laws, and in accordance with all policies, regulations, and standards of the City that are applicable to the maintenance of the landscaping improvements. The Grantee shall obtain all approvals and rights from CSX Transportation, Inc., and any other property owners necessary to perform any maintenance that affects other properties.
- B. For each instance in which the Grantee desires to undertake the removal of trees on the Property, and prior to the performance of any such removal pursuant to this Agreement or otherwise, the Grantee shall submit a written request for approval to the Director of Public Works and obtain the express written permission of the Director of Public Works as required by section 26-404 of the Code of the City of Richmond, as it may hereafter be amended.
- C. All such maintenance and removal shall be at the sole expense of the Grantee and funded through a maintenance fund that the Grantee establishes for this purpose. At the time all funds in the maintenance fund are exhausted, the Services described in this section will be deemed complete.

2.3 Repairs. The Grantee shall repair any damage to the Property to the satisfaction of the City and shall return the Property 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 section 2.3 will survive the termination of this Agreement.

2.4 Utility Protection. The Grantee shall protect all private and publicly-owned utilities located within the Property and shall not permit any utilities interruption.

3.0 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 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 (i) the Grantee's breach of this Agreement, (ii) the use of the Property by the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (iii) the performance of any Services on or outside of the Property by the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (iv) the presence on or about the Property 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 \$5,000,000 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 Property until the City's Chief of Risk Management has approved the required insurance.

4.0 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 of the parties 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.
- 4.5 **Modifications.** 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 representatives of each of the parties 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:

Frazier Armstrong, Executive Director
Capital Trees
200 South Third Street
Suite 101
Richmond, VA 23219
frazier@capitaltrees.org

B. To the City:

Chief Administrative Officer
900 East Broad Street, Suite 201
Richmond, Virginia 23219

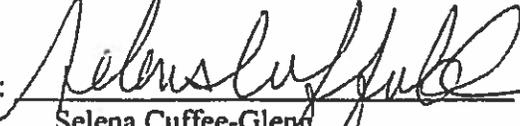
Either party may change any of its address information given above by giving notice in writing stating its new address to the other party.

Effective as of the date first written above.

GRANTEE:

By: 
Susan Robertson
Chair, Capital Trees

CITY:

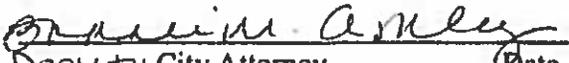
By: 
Selena Cuffee-Glenn
Chief Administrative Officer

Authorized by Ord. No. 2019-101
Adopted APRIL 22, 2019

APPROVED AS TO TERMS:

 6.13.19
Mark A. Olinger Date
Director of Planning and
Development Review

APPROVED AS TO FORM:


Devin Amley Date
Deputy City Attorney