

INTRODUCED: January 10, 2022

A RESOLUTION No. 2022-R002

To determine and direct, pursuant to Va. Code § 15.2-1812 and Ord. No. 2020-154, adopted Aug. 3, 2020, the final disposition of certain war monuments and memorials removed by the City by donating such monuments and memorials to The Black History Museum and Cultural Center of Virginia, Inc., upon certain terms and conditions.

\_\_\_\_\_  
Patron – Mayor Stoney

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

PUBLIC HEARING: JAN 24 2022 AT 6 P.M.

WHEREAS, by Ordinance No. 2020-154, adopted August 3, 2020, and pursuant to section 15.2-1812 of the Code of Virginia (1950), as amended, the City Council authorized the removal of certain war monuments and memorials in the city; and

WHEREAS, by Ordinance No. 2022-001, adopted January 12, 2022, the City Council authorized the acceptance of a donation of personal property, including the Robert E. Lee statue, pedestal blocks, and associated artifacts, formerly located at the Lee Circle in the city; and

WHEREAS, The Black History Museum and Cultural Center of Virginia, Inc. has proposed to collaborate with The Valentine Museum and other organizations on a project to engage

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

ADOPTED:      JAN 24 2022      REJECTED: \_\_\_\_\_      STRICKEN: \_\_\_\_\_

other organizations and the public in a decision-making process that will determine the future use of certain monuments and memorials removed pursuant to Ordinance No. 2020-154, adopted August 3, 2020, and the personal property formerly located in the Lee Circle donated to the City; and

WHEREAS, upon information and belief, the City Council understands that the personal property formerly located in the Lee Circle donated to the City will be donated to The Black History Museum and Cultural Center of Virginia, Inc. pursuant to section 21-106(a) of the Code of the City of Richmond (2020), as amended, to facilitate this project; and

WHEREAS, to further facilitate this project, the City Council is of the opinion that it is in the best interests of the City of Richmond that all monuments and memorials, including both statues and platforms, removed pursuant to Ordinance No. 2020-154, adopted August 3, 2020, except for the General A. P. Hill monument located at the intersection of West Laburnum Avenue and Hermitage Road, be disposed of finally by donating such monuments and memorials to The Black History Museum and Cultural Center of Virginia, Inc.;

NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF RICHMOND:

That:

1. Pursuant to section 15.2-1812(B) of the Code of Virginia (1950), as amended, and section 1(E) of Ordinance No. 2020-154, adopted August 3, 2020, the City Council determines and directs that all monuments and memorials, including both statues and platforms, removed pursuant to Ordinance No. 2020-154, adopted August 3, 2020, except for the General A. P. Hill monument located at the intersection of West Laburnum Avenue and Hermitage Road, be disposed of finally by donating such monuments and memorials to The Black History Museum and Cultural Center of Virginia, Inc. in accordance with a Contract between the City of Richmond, Virginia,

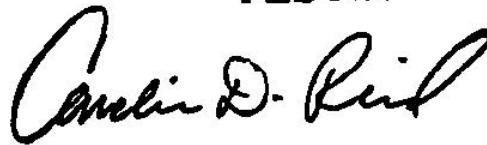
and The Black History Museum and Cultural Center of Virginia, Inc., a copy of which Contract is attached to this resolution.

2. The Chief Administrative Officer, for and on behalf of the City of Richmond, Virginia, be and is hereby authorized to execute the aforementioned Contract, provided that such Contract is substantially in the form of the document attached to this resolution and such Contract first has been approved as to form by the City Attorney.

3. This resolution shall be in force and effect upon adoption.

**A TRUE COPY:**

**TESTE:**

A handwritten signature in black ink, appearing to read "Camelia D. Reif". The signature is written in a cursive, flowing style.

**City Clerk**

## CONTRACT

THIS CONTRACT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia (the “City”), and The Black History Museum and Cultural Center of Virginia, Inc., a Virginia nonstock corporation (the “Museum”).

### RECITALS

- A. By Ordinance No. 2020-154, adopted August 3, 2020, the City Council of the City of Richmond authorized the removal of certain war monuments and memorials, consisting of statues and their platforms on City real property, pursuant to section 15.2-1812 of the Code of Virginia.
- B. By Ordinance No. 2022-\_\_\_\_, adopted \_\_\_\_\_, 2022, the City acquired by donation certain personal property including the Robert E. Lee statue, the pedestal blocks, and associated artifacts formerly located on property identified as 1700 Monument Avenue, with Tax Parcel No. W000-1252/001 in the 2022 records of the City Assessor, which the City’s Director of Procurement Services has found in writing, pursuant to section 21-106(a) of the Code of the City of Richmond, to be impractical to sell or exchange.
- C. The City desires to dispose of (i) all war monuments and memorials removed pursuant to Ordinance No. 2020-154, adopted August 3, 2020, except for the General A. P. Hill monument located at the intersection of West Laburnum Avenue and Hermitage Road and (ii) all personal property acquired pursuant to Ordinance No. 2022-\_\_\_\_, adopted \_\_\_\_\_, 2022, by donating such (the “Monuments”) to the Museum as provided in this Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

#### 1.0 **City Obligations.**

1.1 **Removal of Monuments.** The City, at its sole cost and expense, will contract for and effect the removal of all Monuments remaining in the City’s right-of-way in compliance with all applicable laws, rules, and regulations governing such work, including but not limited to any necessary involvement by the Virginia Department of Historic Resources.

1.2 **Delivery of Monuments to Museum.** After effecting the removal of the Monuments remaining in the City’s right-of-way, the City shall deliver all of the Monuments to the Museum at such location as determined by the City and the Museum, and the Museum promptly shall accept delivery of the Monuments (i) by written document confirming such acceptance and acknowledging the condition of the Monuments at the time of acceptance and (ii) in compliance with all applicable laws, rules, and regulations.

#### 2.0 **Museum Obligations.**

- 2.1 **Receipt of Monuments by Museum.** Upon delivery of the Monuments to the Museum, the Monuments will become the property of the Museum, all risk of loss related to the Monuments will transfer to the Museum, and the City will have no further rights or obligations with regard to the Monuments, subject only to the provisions of this Contract.
- 2.2 **Acceptance of Monuments.** Should the Museum fail to accept the Monuments as provided in this Contract, the Museum will obtain no property interest in them, the City will have no further obligation to the Museum, and the City will be free to dispose of the Monuments in a manner of the City's choosing in its sole discretion.
- 2.3 **Future Use Covenant.** The City and the Museum acknowledge and agree that it is the public policy of the City to renounce the perpetuation of what is commonly referred to as the "Lost Cause" ideology and the commemoration of a pre-Civil War historical perspective that included slavery as an accepted practice. In accordance with such agreement, the Museum shall not use or dispose of the Monuments in a way that such ideology and historical perspective is perpetuated or commemorated. The Museum agrees that the City will suffer irreparable harm if this covenant is violated and that the City therefore is entitled to injunctive relief in addition to any other remedies the City may have under this Contract. The Museum shall bind any and all successors in interest to all or any of the Monuments to the conditions regarding use and disposition of the Monument contained in this section 2.3. This section 2.3 will survive termination of this Contract.
- 2.4 **Processes for Determining Future Use of Monuments.**
- A. The Museum shall make arrangements with The Valentine Museum and other organizations ("Partners") that the Museum determines appropriate for assistance with the processes described in this section. The City will have no responsibility for any aspect of the arrangements that the Museum chooses to make.
  - B. The Museum shall coordinate, and shall cause its Partners to coordinate, with the City concerning all communications with the media regarding the subject matter of this Contract.
  - C. The Museum, with the assistance of its Partners, shall develop a decision-making process to determine the future use of the Monuments in a manner consistent with section 2.3. This decision-making process will provide substantial opportunity for public input in the decision-making. The City will have no responsibility for any aspect of the decision-making process that the Museum and its Partners develop or for the implementation of any decisions about the future use of the Monuments made through this process.
- 3.0 **Liability.**

- 3.1 **Release.** The City shall not be liable for any personal injury or property damage to the Museum or its agents, contractors, employees, officers, or volunteers related to the obligations specified in this Contract, irrespective of how the injury or damage is caused, and the Museum hereby releases the City from any liability, real or alleged, for any personal injury or property damage to the Museum or its agents, contractors, employees, 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 Contract.
- 3.2 **Indemnity.** The Museum shall indemnify, defend and hold harmless the City, its officers, employees, and agents from and against any and all losses, liabilities, claims, damages and expenses (including court costs and reasonable attorneys' fees) arising from any material default or breach by the Museum of its obligations specified in this Contract, as well as all claims arising from errors, omissions, negligent acts or intentional acts of the Museum or its agents, contractors, employees, officers, and volunteers. Further, the Museum shall assume the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of the Museum or its agents, contractors, employees, officers, or volunteers under or in connection with this Contract. The Museum shall, upon written demand by the City, assume and defend at the Museum's sole expense any and all such claims or legal actions. This section 3.2 will survive termination of this Contract.
- 3.3 **Insurance.**
- A. Within 30 days of the commencement of this Contract and thereafter throughout the term of this Contract, the Museum shall obtain, carry, and maintain, and shall cause its agents and contractors to carry and maintain, the following insurance, in a form reasonably acceptable to the City, which insurance shall be primary to all insurance coverage the City may possess:
1. Commercial General Liability occurrence-based (not claims-made) in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate, in a form reasonably acceptable to the City, which insurance shall be primary to all insurance coverage the City may possess.
  2. Automobile Liability insurance with a combined limit of not less than One Million Dollars (\$1,000,000.00) per occurrence covering all owned, non-owned borrowed, leased, or rented motor vehicles operated by the Museum or its agents, contractors, employees, officers, or volunteers.
- B. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

- C. No change, cancellation, or non-renewal shall be made in any insurance coverage without prior written notice to the City. The policies shall provide for notification to the City in the event of cancellation. Cancellation and nonrenewal notice shall be made by the insurer.
  
- D. The following terms shall be applicable to the policies of insurance:
  - 1. The insurance shall be issued by companies admitted within the Commonwealth of Virginia, with Best's Key Rating of at least A: VI.
  
  - 2. Before the Museum or its agents, contractors, employees, officers, or volunteers take possession of the Monuments, the Museum shall deliver to the City one or more valid Certificates of Insurance which show the foregoing insurance coverage to be in force and effect. Individual insurance policy declarations sheets or pages, or a specimen copy of individual policies, shall be provided upon request.
  
  - 3. The Museum shall list, and shall cause its agents and contractors to list, the City and its employees and officers as additional insured, which shall be reflected on the Certificate of Insurance therefor delivered to the City or in copies of endorsements therefor delivered to the City.
  
  - 4. The Museum shall cause its Commercial General Liability and Business Automobile Liability policies and those of its agents and contractors to be endorsed to provide that coverage will not be canceled, non-renewed, or materially modified in a way adverse to the City without 30 days' prior written notice to the City. The Museum shall cause a copy of each such endorsement to be delivered to the City prior to taking possession of the Monuments and the Certificate of Insurance to reflect the notice provisions set forth herein.

4.0 **Term and Termination.**

4.1 **Commencement.** This Contract shall commence upon execution by both the Museum and the City.

4.2 **Termination.** This Contract shall terminate automatically upon the earlier of (i) the Museum's completion of the decision-making process described in section 2.4 or (ii) the Museum's failure to receive the Monuments as provided in section 2.2.

5.0 **General Provisions.**

5.1 **Assignment.** The Museum acknowledges that the City is disposing of the Monuments to the Museum in reliance upon, among other things, the Museum's status as a museum and non-profit organization operating in the city of Richmond. Accordingly, the Museum shall not transfer or assign its rights or obligations under this Contract.

5.2 **Dispute Resolution.**

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

5.2.2 **Forum and Venue.** Any and all disputes, claims and causes of action arising out of or in connection with this Contract, 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.

5.2.3 **Governing Law.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Contract, or the rights and obligations of the City and the Museum in connection with this Contract, 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.

5.3 **Modifications.** This Contract 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.

5.4 **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Contract, the City and the Museum hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Contract; (ii) the provisions of this Contract are not intended to be for the benefit of any individual or entity other than the City or the Museum; (iii) no individual or entity shall obtain any right to make any claim against the City or the Museum under the provisions of this Contract; and (iv) no provision of this Contract 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 and sub-vendors, regardless of whether that individual or entity is named in this Contract.

5.5 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Contract 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 Museum:

Executive Director  
The Black History Museum and Cultural Center of Virginia  
122 West Leigh St



Richmond, VA 23220

With a copy to:

Cultural Heritage Partners, PLLC  
1811 East Grace Street  
Richmond, Virginia 23223

B. To the City:

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

With a copy to:

City Attorney  
900 East Broad Street, Suite 400  
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.

- 5.6 **Subject-to-Appropriations.** All payments and other performances by the City under this Contract are subject to City Council approval and annual appropriations by the City Council. It is understood and agreed between the parties that the City shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract. Under no circumstances shall the City's total liability under this Contract exceed the total amount of funds appropriated by the City Council for performance of this Contract.
- 5.7 **Authorization to Act.** The Chief Administrative Officer of the City of Richmond, Virginia or a designee thereof is authorized to act on behalf of the City under this Contract.
- 5.8 **No Partnership or Joint Venture.** It is mutually understood and agreed that nothing contained in this Contract is intended or shall be construed in any manner or under any circumstance whatsoever as creating and establishing the relationship of copartners or creating or establishing a joint venture between or among any of the parties or as designating any party to the Contract as the agent or representative of any other party to the Contract for any purpose.
- 5.9 **Severability.** If any provision of this Contract is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.
- 5.10 **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument. This Contract is signed when a party's signature is delivered by facsimile, email, or other electronic

medium. These signatures will be treated in all respects as having the same force and effect as original signatures.

Effective as of the date first written above.

**THE MUSEUM:**

By: \_\_\_\_\_  
Marland Buckner  
Interim Executive Director

**THE CITY:**


By: \_\_\_\_\_  
J. E. Lincoln Saunders  
Acting Chief Administrative Officer

Authorized by Res. No. 2022-R\_\_\_\_\_,  
adopted \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
Betty J. Burrell  
Director of Procurement Services

Authorized by section 21-106(a) of the Code of  
the City of Richmond.

APPROVED AS TO FORM:

  
Bonnie M. Ashley  
Deputy City Attorney



# CITY OF RICHMOND

## INTRACITY CORRESPONDENCE

O&R

### REQUEST

**DATE:** December 28, 2021 **EDITION:** 1

**TO:** The Honorable Members of City Council

**FROM:** The Honorable Levar M. Stoney, Mayor

**THROUGH:** J.E. Lincoln Saunders, Chief Administrative Officer

**THROUGH:** Robert Steidel, DCAO – Operations Portfolio

**RE:** Transfer of City-owned monuments and pedestals

**ORD. OR RES. No.** \_\_\_\_\_

**PURPOSE:** To direct the final disposition of certain war monuments or memorial removed pursuant to Ord. No. 2020-154, adopted Aug. 3, 2020, to The Black History Museum and Cultural Center of Virginia, Inc.

**REASON:** Pursuant to Ord. No. 2020-154, a resolution is necessary to authorize the disposition of these removed war monuments or memorials.

**RECOMMENDATION:** Approval is recommended by the City Administration.

**BACKGROUND:** In the summer of 2020, the City of Richmond removed certain war memorial monuments on city-owned property, pursuant to section 15.2-1812 of the Code of Virginia (1950), as amended. Per ORD. NO. 2020-154, disposition of the monuments listed in ORD. NO. 2020-154 (“monuments to be removed”), may be determined by adoption of a resolution. Furthermore, according to the Code of Virginia, the City Council “shall have sole authority to determine the final disposition of the monument or memorial.”

It is the desire of the City Administration to transfer said monuments and associated pedestals (once removed) to the Black History Museum – an organization with expertise on items related to history and culture – to engage the community to determine any future use of said monuments and pedestals. The Black History Museum will execute this work with additional assistance from the Valentine Museum.

In addition to the monuments listed in Ord. No. 2020-154, the City Administration also proposes to transfer, pursuant to applicable law, the Robert E. Lee monument, pedestal, and associated

artifacts to the Black History Museum, assuming Council approval of an ordinance accepting those items from the Commonwealth.

This O&R request does **not** include the General A.P. Hill monument located at the intersection of West Laburnum Avenue and Hermitage Road. Although the City Administration intends to propose that the statute and platform of that monument also be transferred to the Black History Museum, the City first must make additional arrangements concerning the remains of A. P. Hill interred at the site of that monument.

**FISCAL IMPACT / COST:** No (or nominal) direct costs related to transfer of said monuments and associated pedestals.

**FISCAL IMPLICATIONS:** Following transfer, the City may incur costs related to insurance, storage, and community engagement related to the listed monuments and pedestals.

**BUDGET AMENDMENT NECESSARY:** Not at this time.

**REVENUE TO CITY:** N/A

**DESIRED EFFECTIVE DATE:** Upon adoption

**REQUESTED INTRODUCTION DATE:** January 10, 2021

**CITY COUNCIL PUBLIC HEARING DATE:** January 24, 2021

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** Land Use, Housing, and Transportation

**CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES:** None.

**AFFECTED AGENCIES:** Department of Public Works

**RELATIONSHIP TO EXISTING ORD. OR RES.:** ORD. 2020-154

**REQUIRED CHANGES TO WORK PROGRAM(S):** N/A

**ATTACHMENTS:** Yes – agreement with the Black History Museum.

**STAFF:** Robert Steidel, DCAO – Operations Portfolio  
Maggie Anderson, Chief of Staff, Office of Mayor Levar Stoney