

INTRODUCED: May 23, 2022

AN ORDINANCE No. 2022-167

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to accept a donation of services in the form of labor and materials valued at approximately \$3,728,327.00 from the Friends of the Richmond Mounted Squad and, in connection therewith, to execute a Gift and Right-of-Entry Agreement between the City and the Friends of the Richmond Mounted Squad, for the purpose of constructing a new equine facility and related amenities located at 601 North 39th Street in the city of Richmond.

Patrons – Mayor Stoney, Vice President Robertson, Ms. Lambert
and President Newbille

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JUN 27 2022 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 services in the form of labor and materials valued at approximately \$3,728,327.00 from the Friends of the Richmond Mounted Squad for the purpose of constructing a new equine facility and related amenities located at 601 North 39th Street in the city of Richmond.

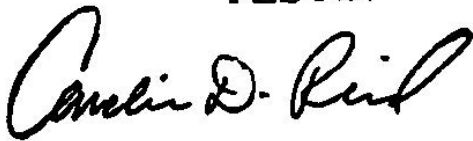
AYES: 8 NOES: 0 ABSTAIN: _____

ADOPTED: JUN 27 2022 REJECTED: _____ STRICKEN: _____

§ 2. That the Chief Administrative Officer, for and on behalf of the City of Richmond, is hereby authorized to execute a Gift and Right-of-Entry Agreement between the City and the Friends of the Richmond Mounted Squad in connection with the acceptance of the gift authorized by section 1 of this ordinance; provided that such Gift and Right-of-Entry Agreement must first be approved as to form by the City Attorney and must be substantially in the form of the document attached to this ordinance.

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

**A TRUE COPY:
TESTE:**

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

City Clerk



City of Richmond

Intracity Correspondence

O&R REQUEST

DATE: April 21, 2022

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

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

THROUGH: Sabrina Joy-Hogg, Deputy Chief Administrative Officer

THROUGH: Sheila D. White, Director of Finance

THROUGH: Jason P. May, MPA, Director Budget and Strategic Planning

FROM: Chief Gerald M. Smith, Chief of Police

RE: To Accept a Gift and Right-Of-Entry Agreement for Construction Services from The Friends of the Richmond Mounted Squad to the City for a New Police Equestrian Facility for the Richmond Police Department and Right-Of-Entry to City-owned Real Property Located at 3910 Crestview Road.

ORD. OR RES. No. _____

PURPOSE: To authorize the Chief Administrative Officer (CAO) to accept a Gift from The Friends of the Richmond Mounted Squad and Right-Of-Entry Agreement for construction services to the City in the form of labor and materials needed to make improvements valued at up to approximately \$3,728,327 to construct a new equestrian facility and related amenities for the Richmond Police Department's Mounted Unit upon City-owned real property located at 3910 Crestview Road, a/k/a 601 North 39th Street, Richmond, Virginia 23223, Tax Map Parcel No. E000-1658/001.

REASON: The Friends of the Richmond Mounted Squad, desires to construct a new Equestrian Facility for the Richmond Police Department's Mounted Unit on City-owned real property located at 3910 Crestview Road. This new construction will necessitate the City to accept the improvements and incorporate them into the City's inventory.

RECOMMENDATION: The Administration recommends that the CAO be authorized to receive and accept this gift on behalf of the Richmond Police Department and for the Residents of Richmond.

BACKGROUND: The current Police Equestrian Facility has been located at 801 Brook Rd. since 1972. The facility has deteriorated over the years and due to its location in a basin the area has flooded on numerous occasions to the detriment of the officers and horses. The department has requested planning and replacement funding thru the Capital Improvement Budget for several years however, due to other City facility priorities the project was delayed. In recent years the department identified an ideal city owned property to house the facility and the Friends of the Richmond Mounted Squad has agreed to construct a new facility on the City's behalf. The proposed facility is planned to have twelve stalls, training pens and paddocks, staff administrative facilities, and parking. The proposed improvements will provide space to expand and host other mounted units, provide educational space for Richmond Public Schools and community tours, and additional training space for the staff and horses.

FISCAL IMPACT / COST: It is estimated that the approximate value of this donation is up to \$3,728,327.

FISCAL IMPLICATIONS: Upon completion of these improvements the City of Richmond will maintain the facility.

BUDGET AMENDMENT NECESSARY: None

REVENUE TO CITY: None

DESIRED EFFECTIVE DATE: Upon adoption.

REQUESTED INTRODUCTION DATE: May 23, 2022

CITY COUNCIL PUBLIC HEARING DATE: June 13, 2022

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing, & Transportation

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None

AFFECTED AGENCIES: Chief Administrative Officers, Richmond Police Department, Department of Public Works

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Gift and Right-Of-Entry Agreement

STAFF: Gerald M. Smith, Chief of Police; Victoria N. Pearson, Esq., Richmond Police Department, Matthew E. Peanort, III, Richmond Police Department, and Louis Goode, Department of Public Works

GIFT AND RIGHT-OF-ENTRY AGREEMENT

THIS GIFT AND RIGHT-OF-ENTRY AGREEMENT ("Agreement") is made this ____ day of _____, 2022, between the City of Richmond, a municipal corporation and political subdivision of the Commonwealth of Virginia (the "City"), and Friends of the Richmond Mounted Squad, a Virginia non-stock corporation ("Donor").

STATEMENT OF PURPOSE

- A. In furtherance of its charitable purposes, the Donor intends to donate certain Services, as defined in this Agreement, to the City in the form of labor and materials needed to make improvements valued at up to approximately \$3,728,327.00 to construct a new equestrian center and related amenities as depicted in the Plans, as defined herein, for the Richmond Police Department's mounted unit upon the Site, as defined herein.
- B. The City is willing to accept the donation upon and subject to the terms and conditions contained in this Agreement.
- C. The performance of the Services requires the Donor and its agents, contractors, employees, invitees, licensees, officers, and volunteers to enter onto and perform construction activities on the Site, and the City is willing to grant such a right of entry and temporary construction upon and subject to the terms and conditions contained in this Agreement.

NOW THEREFORE, because of the above Statement of Purpose, which is incorporated herein and in consideration of the mutual covenants, terms and conditions set forth herein, receipt and sufficiency of which are acknowledge, the City and the Donor, intending to be legally bound, agree as follows:

- 1.0 **Gift.** Subject to the terms and conditions contained in this Agreement, Donor hereby gifts to the City the Services, as defined herein, and the City hereby accepts the gift of Services from Donor. Any enhancements, additions, and improvements to the Site made under this Agreement shall become the property of the City unless, upon inspection, the City declines to accept such enhancements, additions, or improvements to the extent such do not comply with the Plans and pursuant to notice to the Donor within thirty (30) days of the City's inspection of the Services.
- 2.0 **Right of Entry.**
- 2.1 **Scope.**
- 2.1.1 **Meaning of "Site"** For purposes of this Agreement, Site means all City-owned real property located at 3910 Crestview Road, a/k/a 601 North 39th Street, Richmond, Virginia 23223, Tax Map Parcel No. E000-1658/001.

- 2.1.2 Meaning of “Services”** For purposes of this Agreement, “Services” means completion of the construction of a new equestrian facility for the Richmond Police Department in accordance with those plans approved by the City of Richmond Planning Commission (“CPC”) on June 8, 2018 and in accordance with any other plans for the Site approved by the CPC prior to the issuance of the Notice to Proceed, together with the plans and specifications identified as follows, which plans and specifications are incorporated herein by reference: Specifications, Bidding Documents Volumes 1 and 2, prepared by MoseleyArchitects, identified as City of Richmond Project No. 0-28779 and Architect’s Project No.563102 and Richmond Police Equestrian Center Revised Permit Documents – Addendum 2 dated April 1, 2020 and submitted by MoseleyArchitects. All the above-referenced plans and specifications are hereafter referred to as “Plans.”
- 2.1.2.1** The Services shall be performed in accordance with the Plans. Any modification to the Services or Plans after issuance of the Notice to Proceed, shall be agreed to in writing by the City, Donor and Construction Contractor, as defined herein. The City, upon reasonable notice to Donor and Construction Contractor, may inspect the Services being performed on the Site to confirm such Services are being constructed in accordance with the Plans. The City shall notify Donor and Construction Contractor within five (5) days of an inspection of any nonconformance of the Services with the Plans in the form of a written punch list. Donor shall cause any such punch list items to be remedied within thirty (30) days of such notice from the City unless such remediation requires more than thirty (30) days to correct, whereupon Donor shall cause the commencement of such remediation within thirty (30) from the date of such notice and shall diligently pursue such remediation to completion.
- 2.1.3 Contract for Performance of Services.** The City understands that Donor intends to enter into a construction contract with Hourigan Construction Corp. (“Construction Contractor”) to perform the Services. Donor shall not enter into any such contract (the “Construction Contract”) for performance of the Services on the Site without the prior written consent of the City, which shall not be unreasonably conditioned, withheld or delayed but which shall be given only after submission of the complete Construction Contract by Donor to the City for the City’s review and consent. Donor will forward a complete and executed copy of the Construction Contract thereof to the City immediately upon execution. The Construction Contract shall incorporate the conditions of this Agreement so that such conditions will be binding on the Construction Contractor to the same extent that such conditions are binding on Donor.
- 2.1.4 Acknowledgement.** Donor acknowledges that it has received and reviewed the Plans and is capable of performing the Services.
- 2.1.5 Meaning of “Notice to Proceed”** After acquiring insurance, bonds, and permits, as such insurance and bonding requirements are set forth in sections 4.3 and 5.1, and any other requirements contained herein, and sufficient funding or funding commitments to complete the Services, the Donor shall request from the City a written notice to proceed for performance of the Services (“Notice to Proceed”). The City may withhold the Notice to

Proceed in its reasonable discretion for any reason, including, but not limited to, Donor's failure to provide documentation evidencing its compliance with the insurance and surety requirements contained in this Agreement. Donor shall not commence performance until the City issues a written Notice to Proceed.

- 2.1.6 Grant of Right of Entry and Temporary Construction.** For the duration of Right of Entry, as set out in section 2.2 of the Agreement, the City hereby grants to Donor, and its agents, contractors, employees, invitees, licensees, officers, and volunteers the non-exclusive right to enter upon the Site and to perform construction activities on the Site to the extent required and for the purpose of enabling Donor to perform the Services thereon.
- 2.1.7 No Relationship between Parties.** The City and Donor agree that the Donor 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.
- 2.2 Duration of Right of Entry and Temporary Construction.** The right of entry and temporary construction granted by this Agreement shall commence upon the City's written Notice to Proceed. The Agreement, including the right of entry and temporary construction granted herein, shall terminate automatically upon the earlier of (i) the completion of the Services in accordance with the Plans as evidenced by the issuance of a Certificate of Occupancy and the completion of all punch list items or (ii) the termination by the City or Donor of this Agreement in accordance with its terms.
- 2.3 Termination.** Prior to the City providing Donor with Notice to Proceed, either the City or Donor may terminate this Agreement at will by giving written notice to the other party. After the City provides Donor with written Notice to Proceed, Donor shall not terminate this Agreement and shall complete the Services. Notwithstanding the fact that Donor is donating the Services and notwithstanding the value of the portion of Services actually provided, Donor acknowledges that if Donor commences the Services and does not complete the Services within 300 calendar days (such time period to be extended a day for each day any Force Majeure (as defined in the Construction Contract) event is ongoing or as otherwise agreed to in writing by the City and Donor), the City will be damaged and the non-completion of commenced Services may render the City in a worse position than had no portion of the Services been performed.
- 3.0 Standards and Requirements.**
- 3.1 Services.** After requesting and receiving the Notice to Proceed, Donor, at its cost, shall construct, in accordance with the Plans, the Services. To the extent the performance of Services will require the cutting down or removal of trees on the Site, Donor acknowledges that section 8-287 of the Code of the City of Richmond, as same may be amended from time to time, requires the express written permission of the Director of Public Works to so cut or remove trees on the Site.

3.2 Modification of Services.

- 3.2.1 Removal of portions of Services.** Prior to the issuance of the Notice to Proceed, the City may, in its reasonable discretion and if agreed to in writing by the parties, modify the Services in such a manner that removes certain portions of the Services. If the City removes certain portions of the Services, the City may perform such portions of the Services and Donor shall not hinder the City's performance in any way but rather shall coordinate the Donor's performance of any remaining Services with the City. Donor shall not be responsible or liable to the City for any portions of Services removed by the City.
- 3.2.2 Addition of services.** With the written permission of Donor, the City may, in writing, add additional services to the scope of Services; provided, however, that the location, character and extent of the changes to the Site resulting from any additional services must be approved by the CPC prior to being added to the Services. After issuance of the Notice to Proceed, any modification to the Services shall be in accordance with subsection 2.1.2.1 of the Agreement.
- 3.2.3 Meaning of "Services" if modified.** If the Services are modified as allowed herein, the term Services shall apply to the Services as modified.
- 3.3 Repairs.** Upon completion and before final acceptance of the Services, the Donor shall remove all rubbish, surplus or discarded materials, falsework, forms, temporary structures, sanitary facilities, field office, project signs, signs not a part of the project, equipment and machinery, and shall leave the Site in an orderly and clean condition reasonably satisfactory to the City. Buildings constructed as part of the Services shall be left "broom clean", and stains and other blemishes resulting from Donor's operations, that are noted in the punch list, such as drooped or splattered concrete or mortar and paint, shall be removed from floors, walls, ceilings, windows, pavements, walks and all other exposed surfaces.
- 3.4 Utility Protection.** When performing the Services under the Agreement, Donor shall protect all private and publicly owned utilities identified by the City in the Plans and located within the Site or otherwise affected by Donor's performance of the Services and Donor shall cause the Contractor to employ commercially reasonable efforts to minimize any disruption to any utilities during the provision of the Services.
- 3.5 Access, Inspection, and Coordination.** The City and the City's employees, contractors, agents and designees shall have the right to enter upon the Site or any part thereof with prior notice to Donor, at any time without unreasonably interfering with the Services thereon to inspect and examine the same and to enforce any of the City's rights set out herein. Without limiting the generality of the foregoing, the City may utilize third party inspections to review the Services to ensure compliance with the Plans. Donor shall ensure that Donor's Construction Contractor participates in bi-monthly progress meetings throughout the duration of this Agreement.

- 3.6 **Compliance with Laws.** Donor shall not use the Site or permit anything to be done in or about the Site, which will in any way conflict with any law, statute, ordinance or governmental rule or regulation and shall, at its own cost and expense, comply with all laws, statutes, ordinances and governmental rules, regulations or requirements relating to or affecting the condition, use or occupancy of the Site for the duration of this Agreement.
- 4.0 **Liability.**
- 4.1 **Release.** To the fullest extent permitted by law, the City shall not be liable for any personal injury or property damage to Donor or its agents, contractors, employees, invitees, licensees, officers, or volunteers, excepting injury or damage resulting from the willful or gross negligence of the City; and Donor hereby releases the City from any liability, real or alleged, for any personal injury or property damage to Donor or its agents, contractors, employees, invitees, licensees, officers, or volunteers, excepting injury or damage resulting from the willful or gross negligence of the City. 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 4.1 will survive the termination of this Agreement.
- 4.2 **Indemnity.** Donor 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 Donor's agents, contractors, employees, invitees, licensees, officers, or volunteers, that is based on or related to (i) Donor's breach of this Agreement, (ii) the use of the Site by the Donor or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (iii) the performance of any Services on or outside of the Site by the Donor or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (iv) the presence on or about the Site of the Donor or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (v) the conduct or actions of Donor 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 Donor or its agents, contractors, employees, invitees, licensees, officers, or volunteers. This section 4.2 will survive the termination of this Agreement.
- 4.3 **Insurance.** Prior to performing the Services permitted by this Agreement, the Donor shall 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:
- (i) To the extent required by the Code of Virginia and other applicable Virginia laws and regulations, Workers' Compensation and Employers' Liability Insurance in an amount no less than One Million and 00/100 Dollars

(\$1,000,000.00), or in amounts not less than the minimum required by the Code of Virginia and other applicable law, rules and regulations;

- (ii) Commercial General Liability occurrence-based (not claims-made) in an amount not less than Five Million and 00/100 Dollars (\$5,000,000.00) per occurrence and in the aggregate;
- (iii) Business Automobile Liability insurance, to include Auto Physical Damage coverage, in the amount of One Million and 00/100 Dollars (\$1,000,000.00) combined single limit covering all owned, non-owned borrowed, leased, or rented motor vehicles operated by Donor or its contractors. In addition, all motorized equipment, both licensed and not licensed for road use, operated or used by Donor or its agents or contractors in or on the Site will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The foregoing provisions relating to automobile insurance shall not apply to privately-owned or leased motor vehicles of Donor's employees or business invitees; and
- (iv) During performance of the Services, a Builder's Risk Insurance policy written on Form CP 10 30 or an equivalent form that covers all risk of loss on a completed value form with no coinsurance penalty provisions and in an amount equal to 100 percent (100%) of the contract price, subject to subsequent modification of the contract price, as set forth in the Construction Contract. The insurance shall apply on a replacement cost basis.

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.

No change, cancellation, or non-renewal shall be made in any insurance coverage without prior written notice to the City. Cancellation and nonrenewal notice shall be made by both the insurer and the Donor.

The following terms shall be applicable to the policies of insurance:

- (i) The insurance shall be issued by companies admitted within the Commonwealth of Virginia, with Best's Key Rating of at least A: VI. Foreign markets, including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis, are exempt from this requirement provided that Donor provides financial data to establish that a market is equal to or exceeds the financial strengths associated with Best's Key Rating of A or better.

- (ii) Before Donor or its employees, agents, contractors or invitees enter upon the Site, Donor shall deliver to the City one or more valid Certificates of Insurance which show the foregoing insurance coverage to be in force and effect at the time the Construction Contract is agreed upon. Individual insurance policy declarations sheets or pages shall be provided upon request.
- (iii) Donor shall name and shall cause its agents and contractors to name the City and its employees and officers an additional insured in the Commercial General Liability, Business Automobile Liability, and Builder's Risk policies, which shall be reflected on the Certificate of Insurance therefor delivered to the City or in copies of endorsements therefor delivered to the City.
- (iv) Donor shall provide evidence that its Commercial General Liability, Business Automobile Liability, and Builder's Risk Insurance policies and those of its agents and contractors cannot be canceled, non-renewed, or materially modified without thirty (30) days' prior written notice to the Donor and its agents and contractors. Donor shall immediately notify City of any such notice of cancelation, non-renewal, or material modification.

5.0 Performance and Payment.

5.1 Performance Bond. Prior to commencing performance of the Services, Donor shall deliver to the City a Performance Bond ("Bond") for the completion of the Services in a form approved by the Office of the City Attorney, fully executed by Donor and one or more surety companies legally licensed to do business in Virginia and listed on the United States Department of the Treasury's Listing of Approved Sureties under Department Circular 570, and in a penal amount of \$3,728,327.00 or alternate amount approved by the City in writing. If more than one Surety executes a Bond, each shall be jointly and severally liable to the City for the entire penal amount of the Bond. In order to facilitate the review of the Bonds by the Office of the City Attorney, Donor shall attach to the Bonds the properly executed power of attorney from the surety to its agent who executes the Bonds.

5.2 Mechanic's Liens. If, because of any act or omission of Donor or any of its agents, contractors, employees, invitees, licensees, officers or volunteers performing Services on behalf of the Donor, assert any mechanic's lien or other lien, charge or order for the payment of money shall be filed against the Site, Donor shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice of the filing of such lien, charge or order; and Donor shall indemnify, defend with counsel satisfactory to the City and hold harmless the City against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom.

6.0 Environmental Conditions, Liability, Indemnity.

- 6.1 Donor is accessing the Site "AS IS" without warranty or guaranty, including without limitation any warranty or guarantee regarding the environmental condition of the Site and any Hazardous Material which may be present thereon. As used herein, the term "Hazardous Material" means those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or classified by the Environmental Protection Agency as hazardous substances (40 CFR Part 302), or such substances, materials and wastes which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (1) petroleum, (2) asbestos, (3) polychlorinated biphenyls, (4) designated as a hazardous substance pursuant to the federal "Clean Water Act", the federal "Resource Conservation and Recovery Act", or the federal "Comprehensive Environmental Response, Compensation and Liability Act", (5) excreta or other animal waste, or (6) lead.
- 6.2 Any Hazardous Material to be brought upon or used in or about the Site by Donor or its employees, contractors, subcontractors, agents, invitees or licensees shall be used, kept, stored and disposed of in a manner that complies with all federal, state and local laws, rules, regulations, directives, decrees, ordinances, codes, orders, approvals of governmental authorities, licenses or standards, including, without limitation, the federal "Comprehensive Environmental Response, Compensation and Liability Act", the federal "Resource Conservation and Recovery Act" and any state and local law, regulation, or ordinance relating to pollution or protection of human safety, health or the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), including, without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of any Hazardous Material, or otherwise relating to the manufacture, processing, refining, distribution, use, management, treatment, storage, disposal, transport, recycling, reporting or handling of any Hazardous Material (collectively, "Environmental Laws"). In addition, to the extent any environmental permits are required to be obtained by Donor or its employees, contractors, subcontractors, agents, invitees or licensees in connection with the Services, Donor shall be responsible, at its sole cost and expense, for obtaining such permits and for immediately providing copies of all applications for such permits and copies of all issued permits to the City.
- 6.3 Neither Donor nor its employees, contractors, subcontractors, agents, invitees or licensees shall knowingly discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by the City or any government authority) does or may, pollute or contaminate the same, or may adversely affect (a) the health, welfare or safety or persons, whether located on the Site or elsewhere, or (b) the condition, use or enjoyment of any other real or personal property.
- 6.4 Donor shall maintain and shall require all contractors and subcontractors to maintain good spill prevention practices as recommended by governmental agencies having jurisdiction over the Site and comply with all applicable regulations and containment practices. Any

and all known releases, spills, discharges, emissions, etc. occurring on the Site shall be documented by Donor and reported to the City and the appropriate authority under applicable law within twenty-four (24) hours of the occurrence thereof, to the extent reasonably feasible. Donor shall use its best efforts to take immediate steps in the event of an uncontained release to minimize the duration, amount and extent of any discharge to the environment. Donor shall require all contractors and subcontractors operating on the Site to maintain, at the Site and available to interested parties on request, any and all material safety data sheets required by law and pertaining to materials or substances discovered, encountered, brought upon, stored, used or consumed in any construction at the Site, regardless of their source.

6.5 If any Hazardous Materials are released into the environment as a result of the actions (or inactions) of Donor or its employees, contractors, subcontractors, agents, invitees or licensees, Donor shall be responsible, at its sole cost and expense, for completing any and all remediation activities that may be required to be undertaken in compliance with any applicable laws or any directive from any governmental entity having jurisdiction over the Site. Any required remediation activities shall be completed by Donor in accordance with all applicable laws. Donor's obligations under this subsection 6.5 shall survive the expiration or earlier termination of this Agreement.

6.6 Donor hereby agrees to defend, indemnify and hold harmless the City (including its officers, directors, employees and agents) from and against all liabilities (including third party liabilities), losses, claims, damages, property damage, demands, judgments, fines or penalties insofar as not prohibited by law, costs and expenses (including, without limitation, clean-up costs and reasonable attorneys' and consultants' fees and disbursements) which arise, or are alleged to arise, from or in connection with (i) Donor's violation of any Environmental Laws, or the violation of any such laws by Donor's employees, contractors, subcontractors, agents, invitees or licensees, (ii) the generation, manufacture, refining, transportation, treatment, storage, handling, disposal, discharge or spill of any Hazardous Materials on the Site by Donor or its employees, contractors, subcontractors, agents, invitees or licensees, or (iii) any disturbance, migration, leaching or release of any Hazardous Materials on, onto, near, under or otherwise affecting the Site. Donor shall defend any action, suit or proceeding brought against the City in connection with the foregoing, and in doing so it shall use independent counsel selected by Donor and approved by the City. The provisions of this subsection 6.6 shall be in addition to any other obligations and liabilities Donor may have to the City at law or equity and shall survive the expiration or earlier termination of this Agreement. Donor's contracts shall require any contractors, subcontractors, agents, invitees or licensees to defend, indemnify and hold harmless the City from and against any of the above matters included in this section 6.0 of the Agreement.

7.0 **Miscellaneous.**

7.1 **Assignment.** Neither party shall transfer or assign its rights or obligations under this Agreement unless otherwise agreed to in writing by the parties.

7.2 Dispute Resolution.

7.2.1 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.

7.2.2 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.

7.2.3 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 Donor 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.

7.3 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.

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

7.5 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 Donor:

Will Massey
NCI
8747 Whitepine Road
Richmond, Virginia 23237

With a copy to:

Tonia Peake
Peake Law Group
14241 Midlothian Turnpike, Suite 216
Midlothian, Virginia 23113

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.

- 7.6 Signature Authority.** The Chief Administrative Officer for the City of Richmond or her designee shall have the authority to provide any notices or authorizations contemplated in this Agreement on behalf of the City.

[Signatures on the following page]

