

INTRODUCED: September 26, 2022

## AN ORDINANCE No. 2022-277

To amend Ord. No. 2014-28-35, adopted Mar. 24, 2014, which granted a conservation and open-space easement on the property generally known as Bandy Field Park to the Friends of Bandy Field, Inc., to amend the conservation and open-space easement on the property generally known as Bandy Field Park to the Friends of Bandy Field, Inc., for the purpose of adding the Capital Region Land Conservancy as a grantee to the Bandy Field conservation and open-space easement.

Patrons – All Members of Council

Approved as to form and legality  
by the City Attorney

PUBLIC HEARING: NOV 14 2022 AT 6 P.M.

I. That Ordinance No. 2014-28-35, adopted March 24, 2014, be and is hereby amended and reordained as follows

WHEREAS, the City, as owner of the property generally known as Bandy Field Park, desires to grant [a] an amended conservation and open-space easement in accordance with the Virginia Conservation Easement Act, Va. Code Ann. §§ 10.1-1009—10.1-1016 (Michie 2012 & Supp. 2013), and the Open-Space Land Act, Va. Code Ann. §§ 10.1-1700—10.1-1705 (Michie 2012 & Supp. 2013); and

AYES:	9	NOES:	0	ABSTAIN:	
-------	---	-------	---	----------	--

ADOPTED: NOV 14 2022 REJECTED: STRICKEN:

WHEREAS, the City, as owner of the property generally known as Bandy Field Park, granted, by Ordinance No. 2014-028-35, adopted March 24, 2014, a conservation and open-space easement in accordance with the Virginia Conservation Easement Act, Va. Code Ann. §§ 10.1-1009—10.1-1016 (Michie 2012 & Supp. 2013), and the Open-Space Land Act, Va. Code Ann. §§ 10.1-1700—10.1-1705 (Michie 2012 & Supp. 2013) and the City now desires to amend the conservation and open-space easement approved pursuant to Ordinance No. 2014-028-35, adopted March 24, 2014, for the purpose of adding the Capital Region Land Conservancy as a grantee to the Bandy Field conservation and open-space easement;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the City, as grantor, hereby grants [a] an amended conservation and open-space easement on the property generally known as Bandy Field Park to the Friends of Bandy Field, Inc., as grantees, for the purpose of adding the Capital Region Land Conservancy as a grantee to the Bandy Field conservation and open-space easement.

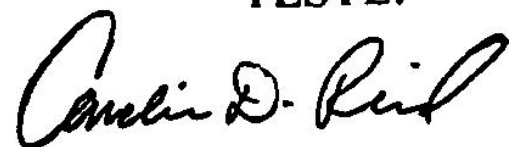
§ 2. That such amended conservation and open-space easement shall be substantially in the form of the Amended and Restated Deed of Gift of Conservation and Open-Space Easement attached to and incorporated into this ordinance and shall be approved as to form by the City Attorney.

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

II. This amendatory ordinance shall be in force and effect upon adoption.

**A TRUE COPY:**

**TESTE:**

A handwritten signature in black ink, appearing to read "Carolin D. Reed".

**City Clerk**



# Richmond City Council

The Voice of the People

Richmond, Virginia

## Office of the Council Chief of Staff

### Ordinance/Resolution Request

**TO** Haskell Brown, City Attorney

**THROUGH** Joyce Davis, Interim Council Chief of Staff

**FROM** Steven Taylor, Council Policy Analyst

**COPY** Andreas Addison, 1st District Council Member  
Whitney Brown, 1st District Liaison  
Tabrica Rentz, Deputy City Attorney

**DATE** September 14, 2022

**PAGE/s** 1 of 2

**TITLE** Amending Deed of Conservation and Open Space Easement for Bandy Field.

This is a request for the drafting of an **Ordinance** ☒ **Resolution** ☐

#### REQUESTING COUNCILMEMBER/PATRON

Andreas Addison

#### SUGGESTED STANDING COMMITTEE

Land Use Housing & Transportation

#### ORDINANCE/RESOLUTION SUMMARY

Patron request that legislation be introduced for Council's consideration amending the current conservation easement over Bandy Field with the Friends of Bandy Field to include the Capital Region Land Conservancy as a joint easement holder.

#### BACKGROUND

The City has sought to protect Bandy Field as open space in its Master Plan and by granting a conservation easement over the property to the Friends of Bandy Field with a Deed of Easement (See, 2014-028-35 and 201-R046-56). Friends of Bandy Field and the Capital Region Land Conservancy Board of Directors are in agreement with becoming co-holders of the Deed of Conservation and Open Space Easement.

A draft of Easement is attached.

#### FISCAL IMPACT STATEMENT

Fiscal Impact Yes ☐ No ☒

Budget Amendment Required Yes ☐ No ☒

Estimated Cost or Revenue Impact \$ N/A

Note: N/A

Attachment/s Yes ☒ No ☐

#### Draft Easement

**AMENDED AND RESTATED DEED OF  
GIFT OF CONSERVATION AND OPEN-SPACE EASEMENT**

**NOTE TO TITLE EXAMINERS:** This conservation and open space easement contains restrictions on permitted uses and activities on the property described below, which run with the land and are applicable to the property in perpetuity.

**Return to:**  
Capital Region Land Conservancy  
P.O. Box 17306  
Richmond, VA 23226

**RICHMOND TAX MAP IDENTIFICATION NO.:** W021-0172-001; W021-0172-002; and

**HENRICO COUNTY GPIN:** #763-738-0645; 763-738-0799

This deed is exempt from Grantor's Tax pursuant to Virginia Code § 58.1-811(C) (4), Recordation Taxes pursuant to Virginia Code § 58.1-811 (A) (#), and the Clerk's Fee pursuant to Virginia § 17.1-266.

**THIS AMENDED AND RESTATED DEED OF CONSERVATION AND OPEN-  
SPACE EASEMENT** ("Deed of Easement" or "Easement"), made and entered into this \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_ by and among the **CITY OF RICHMOND, VIRGINIA**, a  
municipal corporation, whose address is 900 E. Broad Street, Suite 300, Richmond, VA 23219  
(hereinafter referred to as "City" or "Grantor"); and the **FRIENDS OF BANDY FIELD, INC.**, a  
nonprofit corporation organized under the laws of the Commonwealth of Virginia, whose address is 6506  
Edgehill Road, Richmond, VA 23226, and **THE CAPITAL REGION LAND CONSERVANCY,  
INC.**, A Virginia non-stock corporation, whose mailing address is P.O. Box 17306, Richmond, Virginia,

23226 (hereinafter together referred to as "Grantees"). All references to Grantor and Grantees herein shall include their respective successors and assigns:

**WITNESSETH:**

**WHEREAS**, Grantor is the owner in fee simple of real property known as the "Bandy Field Nature Park" situated partially in the City of Richmond, Virginia, and partially in Henrico County, but owned in entirety by the City of Richmond containing in the approximately aggregated 18.294 acres; and

**WHEREAS**, by virtue of RESOLUTION No. 2020-R067 duly adopted by the City Council of the City of Richmond, Virginia, by a recorded unanimous vote on January 11, 2021, the Chief Administrative Officer was directed to consult with the Office of the City Attorney to cause the planned, but not constructed streets that were initially excluded from the conservation easement, to be extinguished and to incorporate these vacated rights-of-way into Bandy Field Park; and

**WHEREAS**, by virtue of ORDINANCE No. 2021-357 duly adopted by the City Council of the City of Richmond, Virginia, by a recorded unanimous vote on January 11, 2022, the unimproved portion of Hanover Avenue consisting of approximately 6,219 square feet was vacated and incorporated into Bandy Field Park; and

**WHEREAS**, by virtue of the vacation and extinguishment of the planned, but not constructed street that was initially excluded from the conservation easement by the City of Richmond, Virginia,

Bandy Field Park now contains in the aggregate approximately 18.437 acres further described in the plat “City Property at the Intersection of Bandy Road and Three Chopt Road (Bandy Field) Located in Henrico County and the City of Richmond” dated 10/28/2011 attached herein as Exhibit A, and in the plat “Proposed Closing to Public Use and Travel of Hanover Avenue Between Three Chopt Road and City’s Corporate Limits with Henrico County” dated 10/08/2021 attached herein as Exhibit B; and

**WHEREAS**, by virtue of a Deed of Easement recorded April 7, 2014 as Instrument Number 14-5667 among the land records of The City of Richmond, Virginia, Grantor conveyed unto the Friends of Bandy Field, Inc. a perpetual conservation easement (the “Original Easement”) providing for the protection of the Conservation Values of the Property in perpetuity by giving and conveying a perpetual conservation, historic preservation, and open space easement over the original 18.294-acre Property; and

**WHEREAS**, the Grantor is willing to further provide for the protection of the Property and the additional acres shown on Exhibit A by adding Capital Region Land Conservancy Inc. as a co-holder to this Amended and Restated Deed of Conservation and Open-Space easement; and

**WHEREAS**, The Friends of Bandy Field’s Board of Directors adopted a proposal at its meeting on September 9, 2020 to approve Capital Region Land Conservancy as a co-holder to this Amended and Restated Deed of Conservation and Open-Space easement; and

**WHEREAS**, Capital Region Land Conservancy, Inc. is a nonstock, not-for-profit corporation formed under the laws of the Commonwealth of Virginia, constituting a public charity not a private foundation, exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code, and is a “qualified organization” and an “eligible donee” under Section 170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provisions of any subsequent federal tax laws and regulations (the “IRC”) and Treasury Regulation 1.170A-14(c)(1)); CRLC is a qualified “holder” under Section 10.1-1009, et seq. of the Virginia Conservation Easement Act (defined below), and is willing to accept a perpetual conservation easement over the Property as herein set forth. CRLC is willing to accept a perpetual conservation and open-space easement on and over the Property as set forth herein (the “Easement”), has had a principal office in Virginia for more than five years, and has the resources to enforce the Restrictions of the Easement (as hereinafter defined) and a commitment to protect the conservation values of the Property and the conservation purposes of the Easement; and



**WHEREAS**, Capital Region Land Conservancy’s Board of Directors adopted a resolution at its meeting on October 22, 2020 accepting this Restated and Amended Easement; and

**WHEREAS**, this Easement is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below; and

**WHEREAS**, the Open-Space Land Act, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "Open-Space Land Act"), declares that the preservation of open-space land serves a public purpose by conserving land and other natural resources and providing or preserving necessary park, recreational, historic and scenic areas; and

**WHEREAS**, Chapter 720 of the Acts of 1988, codified in Chapter 10.1, Title 10.1, Sections 10.1-1009 through 10.1-1016 of the Code of Virginia of 1950, as amended (the “Virginia Conservation Easement Act”), provides for the conveyance of a conservation easement to a charitable corporation declared exempt from taxation pursuant to 26 U.S.C. § 501(c)(3), when the primary purposes or powers of such corporation include “retaining or protecting the natural or open-space values of real property, assuring the availability of real property for agricultural, forestal, recreational, or open-space use, protecting natural resources,

maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property; and

**WHEREAS,** the Richmond Master Plan 2000-2020 in effect as of the date of the execution of the “Original Easement” sought to protect the natural resources located within the City's jurisdiction and to preserve open-space as provided in Chapter 6 of the Master Plan, and recognized the Bandy Field Nature Park as worthy of protection and therefore appropriate for a conservation easement; and

**WHEREAS,** the Grantor and Grantees wish to provide for the perpetual conservation of the Property, with due recognition that the Grantor is a unit of local government, responsible to the public to provide clean drinking water and other utility services, stormwater management, roads, nature resource protection and recreational areas; and

**WHEREAS,** the conservation values of the Property (hereinafter "Conservation Values") include the following:

- 1) Substantial undeveloped land which contributes to water quality protection and the health of the watershed; and
- 2) Significant habitat for wildlife that includes nesting sites for birds; and
- 3) Historic resources (hereinafter "Historic Resources") further defined in Section II, Paragraph 5; and

- 4) Important open space and vistas affording views of woodlands and fields that contribute to the character of the surrounding landscape and are highly visible from Three Chopt Road and Bandy Road; and

**WHEREAS**, Grantor and Grantees have determined that the restrictions set forth in Section III (the "Restrictions") will preserve and protect in perpetuity the Conservation Values of the Property as described above;

**NOW, THEREFORE**, in recognition of the foregoing and in consideration of the sum of Ten and 00/100 dollars (\$10.00) and the mutual covenants herein and their acceptance by Grantees, Grantor does hereby give, grant and convey to Grantees a perpetual, non-exclusive conservation and open-space easement in gross on, and the right in perpetuity to restrict the use of, the Property as provided herein.

### **SECTION I: DEFINITIONS**

**For purposes of this Deed of Easement, the following definitions apply:**

*Bandy Field Nature Park or the Property* are those parcels reflected in the plat attached hereto as Exhibit A.

*Best Management Practices* means any of those that are determined by a state agency.

*Boundary Line Adjustment* means the vacation, relocation or other alteration of the lot line(s) of a properly recorded plat in conformance with local and state zoning and subdivision codes.

*Chief Administrative Officer* means that individual appointed and confirmed as provided by City Charter or any subsequent person assigned the responsibilities of the Chief Administrative Officer as provided in the City Charter.

*Conservation Purposes* means those purposes as listed herein.

*Conservation Values* means those values as listed in the recitals above that include the Property's open-space, scenic, natural, historic, scientific and recreational values.

*Department of Parks, Recreation and Community Facilities* means the City department responsible for operating, managing, and maintaining all of the land, improvements and activities of the Bandy Field Nature Park (the "Property") or any subsequent City department assigned these responsibilities.

*Department of Public Utilities* ("DPU") means the City department responsible for operating, managing, and maintaining the water utility, the wastewater utility, the gas utility, the electric streetlight utility and all accompanying infrastructure. DPU is also responsible for stormwater management in the City, including responsibilities for stormwater infrastructure. DPU shall include any subsequent City department assigned those responsibilities.

*Effective Date* means the date upon which this Amended and Restated Easement was first put to record in the Office of the Clerk of the Circuit Court in the City of Richmond, Virginia.

*Governmental Purpose* means the use of the Property in serving the public either by a governmental entity or by a private entity with a quasi-public purpose, evidenced by the entity's ability to exercise eminent domain.

*Intensely Developed Areas* means those areas designated by the City pursuant to 9VAC10-20-100 of the Chesapeake Bay Preservation Area Designation and Management Regulations.

*Non-Exclusive Conservation, Historic and Open-Space Easement* means an easement deeded to Grantees that does not give Grantees the exclusive ability to exercise the rights provided in the easement if the Grantor chooses to grant additional conservation, historic and open space easements after the Effective Date of this Amended and Restated Easement.

*Resource Management Area* means that component of the Chesapeake Bay Preservation Area that is not classified as part of the Resource Protection Area.

*Resource Protection Area* means a component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation to the quality of state waters.

*Service Roads* means those surface roads improved for servicing the Property.

*Stormwater Management* means the management of stormwater in the City with the goals of reducing the risk of flooding and positively impacting water quality in the James River and its tributary streams and wetlands.

*Structure* means anything constructed or erected which has a fixed location on the ground or which is attached to something having a fixed location on the ground.

*Viewshed* means those areas of the Property that have been specifically designated in this Easement where any man-made obstructions of the view of the Property are prohibited in order to allow the public unobstructed visual access through the Property to the natural environment of the Property.

## **SECTION II: PURPOSE**

The purpose of this Easement is to preserve and protect the Conservation Values of the Property in perpetuity by imposing the Restrictions on the use of the Property set forth in Section III and providing for their inspection and enforcement in Section V. The Conservation Values of the Property are described above, are documented in the Baseline Documentation Report described in Section V below and include the Property's scenic open space, natural habitat, watershed preservation and historic values, and its value as open space designated by federal, state or local government. It is the intent of the Grantor and Grantees (hereinafter, collectively referred to along with any successors and assigns as "the Parties"), to uphold the following Conservation Purposes as a means to preserve and to protect the Conservation Values:

- 1) to prevent commercial, residential, institutional and industrial development of the Property, except as allowed by the terms of this Easement;
- 2) to protect the natural environment and habitats of the Property;
- 3) to protect and maintain the existing Viewshed and scenic vistas of the Property, as observed from the land surrounding the Property, in a manner consistent with the goals and Conservation Values of this Easement;
- 4) to protect the water quality of the James River and of its tributaries within the Property, with recognition of Grantor's need to provide adequate public water supplies and other City services including utilities and stormwater management used by the City's citizens, businesses and visitors;
- 5) to protect the historic buildings, structures, amenities, features, and sites that exist on the Property as of the Effective Date (collectively, the "Existing Historic Resources") including (a) Remnants of the nearby Sons and Daughters of Ham Cemetery, (b) Earthworks site of a Civil War gun emplacement, and (c) Ruins of dwellings built by freed slaves that were constructed after the Civil War, all of which are shown in the Baseline Documentation Report while still allowing state or local entities or their agents specializing in historic sites and archeology to lawfully investigate, unearth and document these resources;

- 6) to preserve open space for future generations;
- 7) to control erosion;
- 8) to preserve the recreational use and enjoyment of the Property by the City and the general public in a manner consistent with the other Easement purposes; and

Grantor covenants that no acts or uses that are inconsistent with the Conservation Purposes of this Easement shall be conducted on the Property except as otherwise provided herein.

### **SECTION III: RESTRICTIONS**

#### **1. General Restrictions.**

The Parties acknowledge and agree that the following restrictions are hereby imposed on the use and development of the Property pursuant to the public policies set forth above (hereinafter "Restrictions").

A. The acts which the Grantees covenant to do and not do upon the Property and the Restrictions which the Grantor is hereby entitled to enforce are and shall be as follows:

- i. There shall be no on-site concessionaire service sales, and no commercial vending of any type, except for sales and vending associated with special events and activities held on occasion with the authorization of the Department of Parks, Recreation and Community Facilities;



- ii. There shall be no commercial, residential, institutional or industrial development of the Property;
- iii. Except as permitted by this Easement, there shall be no traditional sporting developments or associated structures, defined to include, without limitation, baseball, softball, soccer, football, basketball, tennis, or any type of athletic fields or courts, or sports lighting fixtures; and
- iv. There shall be no public parking areas placed upon the property other than those that may already exist and which are shown in the Baseline Documentation Report.

B. The acts which the Grantor covenants to do and not do upon the Property and the Restrictions which the Grantees are hereby entitled to enforce are and shall be as follows:

- i. Except as permitted by this Easement, there shall be no commercial, residential, institutional or industrial development of the Property; and
- ii. Except as permitted by this Easement, there shall be no traditional sporting developments or associated structures, defined to include, without limitation, baseball, softball, soccer, football, basketball, tennis, or any type of athletic fields or courts, or sports lighting fixtures; and

- iii. There shall be no public parking areas placed upon the property other than those that may already exist and which are shown in the Baseline Documentation Report; and
- iv. No motorized vehicles shall be permitted within the Park area except temporarily those related to safety, maintenance, emergency, law enforcement, or as otherwise expressly permitted by the Grantor.

C. Unless otherwise provided herein, the following facilities and structures shall be permitted within Bandy Field Nature Park area:

- i. Pedestrian hiking/walking trails, provided no hiking trail shall involve removal of any vegetation or other disturbance of land except as permitted by the Department of Parks, Recreation and Community Facilities;
- ii. Wetlands and stream restoration activities and related structures and restoration of wildlife habitat, including control or removal of invasive species to be performed only by, on behalf of, or with the approval of the City's Department of Parks, Recreation and Community Facilities;
- iii. Temporary structures, equipment, and facilities required for the maintenance, repair, widening, and reconstruction of the Property, provided that the areas disturbed by such are re-vegetated and the Property is restored upon completion of

the project, to the greatest extent practicable in accordance with the Virginia Erosion and Sediment Control Law (Va. Code §§ 10.1-560, *et seq.*) and the Virginia Stormwater Management Act (Va. Code §§ 10.1-603.2, *et seq.*);

- iv. Unobtrusive signs not greater than nine square feet in size to inform park patrons of rules or to identify the location and to interpret the historic resources on the Property; and
- v. Utility and stormwater management facilities as discussed hereinafter in Section IV.

## **2. Trash and Dumping.**

The accumulation, burial, burning, or dumping of trash, garbage, refuse, or junk shall not be permitted on the Property. This restriction shall not prevent the Grantor from providing for trash receptacles or other means of encouraging clean and safe use of the Property, nor prevent generally accepted wildlife management practices, such as creation of brush piles, composting, or prescriptive burning programs or the storage of maintenance equipment for the Property.

## **3. Grading, Blasting and Other Land-disturbing Activities.**

No grading, blasting, mining, or other land-disturbing activities shall be permitted on the Property, except as needed to carry out those activities permitted under the terms of this Easement,

including but not limited to: Restoration of wetlands and stream banks, prevention of erosion and sedimentation on the Property, and other activities necessary for the public benefit. Best Management Practices in accordance with the Virginia Erosion and Sediment Control Law (Va. Code §§ 10.1-560, *et seq.*) and the Virginia Stormwater Management Act (Va. Code §§ 10.1-603.2, *et seq.*) shall be used, when required, to control erosion and protect water quality in the construction of permitted buildings, structures, equipment, and facilities.

**4. Historic Resources and Archaeological Resources.**

No disturbance of Historic Resources or archeological resources shall be permitted except as otherwise provided herein or as authorized by the City Code.

**5. Communications Towers.**

No cellular telephone or other telecommunications structures or facilities shall be permitted on the Property.

**6. Removal of Trees.**

There shall be no removal, destruction, cutting, or clearing of trees except: (1) to prevent the imminent loss of life or to remove a significant threat to life or property; (2) to create emergency firebreaks; (3) to control disease; (4) to remove or control invasive or non-native species; (5) to maintain or improve any existing Viewshed; and (6) as necessary to perform any activity otherwise permitted by this Easement. Whenever vegetation is removed from the park area for reasons 1, 3, or 4 above, those

areas must be re-vegetated in a manner approved by and suitable to Richmond Department of Parks, Recreation and Community Facilities, or its successors but in no instance may the Grantor plant on the Property any plant species considered an invasive plant species by the Virginia Department of Conservation and Recreation Natural Heritage Program and listed as such on the Virginia Invasive Plants Species List.

**7. Transfer of the Property.**

A. To the extent permitted by law, the Property shall be perpetually held by the Grantor in fee simple ownership and shall not be voluntarily transferred or subdivided by the Grantor except as otherwise provided herein. Any additional easements granted on the Property may only be granted by the Grantor and only for a legitimate governmental purpose as determined by the Grantor in its sole discretion or for additional conservation purposes, but not in conflict with the terms of this Easement.

B. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyances of portions of the Property or divisions of the Property, provided that: (a) Grantees approve such adjustments and are made party to any deed creating a boundary line adjustment; (b) the entire adjacent parcel is subject to a recorded conservation or open-space easement that meets the requirements of the Virginia Open-Space Land Act (Chapter 17 or Title 10.1-1700 through 10.1-1705 of the Code of Virginia (1950) as amended) or the

Conservation Easement Act and Section 170(h) of the Internal Revenue Code; (c) such open-space or conservation easement is held by Grantees or a qualified transferee as described in Paragraph 15 of Section VI hereof; (d) any portion of the Property transferred and incorporated into the adjacent parcel remains expressly subject in perpetuity to the restrictions set forth in this easement; and (e) if applicable, the transfer complies with the requirements of Paragraph 15 of Section VI hereof as a partial assignment of this Easement.

#### **SECTION IV: GRANTOR RIGHTS**

##### **1. Public Utility and Stormwater Management Facilities**

Notwithstanding the provisions of any other Section of this document, construction, operation, maintenance, replacement, and relocation of existing and new buildings, structures, and other permanent facilities owned and operated by the Grantor or other governmental entity on the Property and related to the production, transmission, distribution, or treatment of water, to the transmission or treatment of wastewater or stormwater, or to the transmission or distribution of natural gas or electricity shall not be subject to the restrictions and limitations set forth in this Easement, except for those included in this Section IV: Grantor Rights. Permitted activities and structures on the property shall include, but not be limited to, BMP basins, water-level sensing devices, telemetry/controls equipment, underground pipelines, and their associated appurtenances or structural components, and facilities for access,

construction, repair, modification, protection, and maintenance associated with the operation and maintenance related to the production, transmission, distribution, or treatment of water, or the transmission or treatment of wastewater or stormwater, or the transmission or distribution of electricity or natural gas. Permitted activities and structures shall be read to include any other similarly situated facilities and activities. The use of the Property for public utility and stormwater management purposes or for other governmental purposes pursuant to the terms of this Easement shall not be considered the conversion or diversion of land from open-space land use. The Grantor agrees that it will, to the maximum extent practicable, locate any new utility and stormwater facilities underground, and will design the facilities to minimize their impacts upon the Conservation Values of the Property and to restore any surface disturbance associated with such facilities to its natural condition as soon as possible. To the extent that facilities must be located above ground, the Grantor will mitigate any impacts to the Property by restoring natural features and by incorporating the facilities into the recreational use of the Property as practicable.

## **2. Utility Easements**

The Grantor may modify or renew existing public or private agreements for replacement, alteration, upgrading, or relocation of existing utility facilities or co-location of new utility facilities within any existing easement existing as of the Effective Date of this Amended and Restated Easement.

## **3. Maintenance, Repair, and Alteration of Existing Buildings, Structures, Equipment, and Facilities; Construction of New Facilities.**

Except for Historic Resources, nothing contained in this Easement shall prevent the Grantor from repairing, replacing, maintaining, altering, improving, removing, or relocating any existing buildings, structures, equipment, improvements, or facilities located on the Property as of the Effective Date of this Amended and Restated Easement.

**4. The Department of Public Works' and the Department of Public Utilities' Use of the Property.**

The City's Department of Public Works and Department of Public Utilities retain all existing easements, permits, and agreements that may lawfully apply to the Property, and further retain a right to ingress and egress on existing access roads for purposes that include, but are not limited to, maintenance or replacement of any City, state or federal infrastructure, drainage ways, or travel ways.

**5. Use of the Property for Public Safety Purposes.**

The Grantor retains all rights, without reservation, to access and use the Property as necessary to protect public health and to preserve public safety. These rights include, but are not limited to, allowing the DPU to access the Property to build, maintain, repair, remove, or relocate utility infrastructure in order to safeguard the health of the Grantor's citizens and visitors. Public safety uses will also include access and use of the Property by the Richmond Departments of Police, Richmond Ambulance Authority and Fire for patrols, emergency calls, and investigative presence as necessary. The Grantor retains the full discretion to determine whether repairs, relocation, removal, maintenance,



or construction of facilities or its presence upon or its use of the Property are necessary for public health and safety reasons.

**6. Signage.**

The Grantor may post unobtrusive signage as needed, so long as each sign is no larger than nine square feet.

**7. Notice.**

The Grantor shall submit any plans for new buildings, structures, or other permanent facilities to the Planning Commission if required by City Charter. The Grantor agrees that it will provide prior notice to the Grantees of any work to be performed pursuant to Section IV above that will require Planning Commission review and approval. Written notice will be provided at the addresses listed below at least 30 days prior to a public hearing, or as soon as Grantor develops any plan of action that would require notice, in order to allow the Grantees the opportunity to provide comment prior to the public hearing process. The Grantor agrees to give due consideration to any comments received from the Grantees. Notice for these purposes and for any other purpose listed herein in this Easement will be provided via first class mail to the following addresses:

For Grantor:

City of Richmond, Virginia

Department of Parks, Recreation and Community Facilities

Attn: Director

1209 Admiral Street

Richmond, VA 23220

For Grantor:

City of Richmond, Virginia

Department of Public Utilities

Attn: Director

730 E. Broad Street, Room 115

Richmond, VA 23219

With a copy to:

City of Richmond, Virginia

City Attorney

900 E. Broad Street, Suite 300

Richmond, VA 23219

For Grantees:

Friends of Bandy Field, Inc.

Attn: President

6506 Edgehill Road

Richmond, VA 23226

For Grantees:

Capital Region Land Conservancy, Inc.

200 S. Third Street

Richmond, VA 23230

## **SECTION V: INSPECTION AND ENFORCEMENT**

### **1. Inspection.**

Representatives of the Grantees and any associated natural resource professionals working under their supervision or authority may enter the Property from time to time for purposes of inspection and enforcement of the terms of this Easement as provided herein after permission from Grantor or reasonable notice has been given to the City Chief Administrative Officer or his or her designee and any other affected possessor of property rights on the Property.

### **2. Enforcement.**

A. The Grantor and Grantees shall endeavor to resolve all disputes among themselves by negotiation. In the event the Grantor and Grantees are unable to resolve any dispute by negotiation after having attempted to do so for at least 90 days following written notice of the dispute from one party to all the others, the parties shall engage in nonbinding mediation in the City of Richmond (or in another location as agreed upon by the parties) with a mediator jointly selected and with fees split equally among all participating parties. Should the dispute remain unresolved more than 30 days after the conclusion of nonbinding mediation, or for more than 150 days after the written notice of the dispute, or if the parties are not able to select a mediator, then the Grantor or the Grantees, jointly or severally, may bring an action against any other party to this Easement to seek compliance with the terms of this Easement, including without limitation the restoration of the Property to its status prior to the violation. Nothing herein shall be construed as a waiver of any immunity granted to the Grantor by the Commonwealth of Virginia. The Grantees agree that the right to commence litigation to enforce the term of this Easement against the Grantor is governed by the Virginia Conservation Easement Act, Va. Code § 10.1-1013 and the Virginia Open-Space Land Act, Va. Code §10.1-1700, *et seq.*

B. Standing to bring any action at law or in equity regarding any aspect of this Easement shall be as provided by the Virginia Conservation Easement Act, Va. Code § 10.1-1013 (or any subsequent amendment to this section).

C. Grantees shall have the rights provided herein by this and as provided by state law (currently as provided in the Open-Space Land Act, Va. Code § 10.1-1700, *et seq.*, subject, however, to future revision). Notwithstanding these rights, Grantees agree that prior to pursuing any of the following actions relating to the Property it shall seek the written approval of the Grantor and will not act without Grantor's authorization: (1) applying for and using grants; (2) hiring contractors to perform work (including, but not limited to, construction, maintenance, operation or repair work); or (3) demolishing any existing structure or facility.

## **SECTION VI: GENERAL PROVISIONS**

### **1. Amendment.**

Grantees and Grantor may amend this Easement to enhance the Property's Conservation Values or add to the restricted property by an amended deed of easement, provided that no amendment may (i) affect this Easement's perpetual duration or remove this Easement from any portion of the Property, (ii) conflict with or be contrary to or inconsistent with the conservation purposes of this Easement, (iii) reduce the protection of the Conservation Values, (iv) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land", (v) affect the status of Grantees as a "qualified organization" or "eligible donee", or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment will be effective unless documented in a

notarized document approved and executed by Grantees and Grantor and recorded in the Clerk's Office of the Circuit Court of the City of Richmond, Virginia.

**2. Existing Rights.**

Nothing in this Easement shall restrict or infringe upon any existing lease, license, easement, or other legal right or privilege in the Property granted by the Grantor, either express or implied, to any third party. In addition, this Easement shall be subject to all covenants, easements, encumbrances, or other restrictions of record existing as of the Effective Date of the Original Easement recorded April 7, 2014 by Instrument No. 14-5667.

**3. Successors and Assigns.**

The covenants, terms, conditions and restrictions contained in this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective permitted successors and assigns and shall continue as a servitude running in perpetuity with the Property. Grantees may not transfer or convey this Easement unless Grantees condition such transfer or conveyance on the requirement that (i) all Restrictions set forth in this Easement are to be continued in perpetuity, (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) as amended and the applicable Treasury Regulations and meets the statutory requirements of The Virginia Conservation Easement Act Virginia Code§ 10.1-1009 et seq. (as amended) for a holder of a perpetual conservation easement or the

definition of a public body under the Open-Space Land Act Virginia Code § 10.1-1700 et seq. (as amended) and (iii) without the Grantor's prior written consent.

**4. Severability.**

If any provision of this Easement or the application thereof to any person, party or circumstance is found to be invalid, the remaining provisions of this Easement and the remaining parties shall not be affected thereby. If Friends of Bandy Field Inc. ceases to exist, its interest in this Amended and Restated Easement and right of enforcement shall vest solely in Capital Region Land Conservancy. If Capital Region Land Conservancy ceases to exist, its interest in this Amended and Restated Easement and right of enforcement shall vest solely in the Virginia Outdoors Foundation (pursuant to Section 10.1-1015 of the Virginia Conservation Easement Act) and Friends of Bandy Field Inc.'s status as a co-holder shall continue, unchanged. If the Grantee is found to be an invalid holder pursuant to applicable law, the Grantor's fee simple ownership of the Property will continue unchanged.

**5. No Right of Public Access.**

Although this Easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of, the Property that it does not already have. The Grantor hereby retains the exclusive right to control such access and use of the Property, subject to the terms hereof.

**6. Additional Protective Measures.**

Nothing in this Easement shall prohibit the Grantor from granting additional conservation easements on the Property not in conflict with the terms of this Easement.

**7. Disclosures.**

The Parties agree that they will provide access to documents relating to this Easement to the Grantor and Grantees in accordance with the Virginia Freedom of Information Act (§2.23700, *et seq.*) (VFOIA). The Parties also agree to provide access to documents relating to this Easement to the general public in the same manner and in the same method as is provided in the VFOIA, to the extent applicable. In addition, a copy of the non-Governmental Grantees' Annual Reports to the State Corporation Commission must be submitted to Grantor along with any amendments to the corporation by-laws or Articles of Incorporation. In the event of dissolution of either of the non-Governmental Grantees, the Grantees shall provide notice to the Grantor at least 90 days prior to the dissolution.

**8. Entire Agreement.**

This Amended and Restated Deed of Easement sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement. Notwithstanding the terms of this Easement, it does not replace, abrogate, or otherwise supersede any federal, state, or local laws applicable to the Property. The Grantor may be bound by applicable laws including, but not limited to, judicial orders, legislative requirements, and regulatory imperatives or settlements made in order to manage the Property. In situations where the



Grantor must act in conflict with the terms of this Deed of Easement because of an applicable order, law, regulation, or settlement with a regulatory agency, Grantees will not file suit to enforce the terms of this Deed of Easement.

**9. Authority.**

The “Original Easement” herein conveyed was granted pursuant to Ordinance No. 2014-28-35 duly adopted by the City Council of the City of Richmond, Virginia, by a recorded vote of at least three-fourths of its members on March 24, 2014, and which directed the City Administrative Officer to affix their signature hereto.

This Amended and Restated Deed of Easement is granted pursuant to Ordinance No. \_\_\_\_\_ duly adopted by the City Council of the City of Richmond, Virginia, by a recorded vote of at least three-fourths of its members on \_\_\_\_\_, 2022, and which directed the Chief Administrative Officer to affix their signature hereto.

Acceptance of this conveyance by The Friends of Bandy Field, Inc. is authorized by Virginia Code Title 10.1, Chapter 10.1, as evidenced by the signatures of the Grantee's President hereto who were duly authorized by resolution of the Grantee's Boards of Directors on to execute the “Original Easement” and who authorized by resolution of the same on September 9, 2020 to execute this Amended and Restated Deed of Easement.

Acceptance of this conveyance by the Capital Region Land Conservancy is authorized by Virginia Code Title 10.1, Chapters 10.1 as evidenced by the signature of the Grantee's President hereto who has been duly authorized by resolution of the Grantee's Board of Directors on October 22, 2020 to execute this Amended and Restated Deed of Easement.

Acceptance of this conveyance is authorized by Virginia Code Title 10.1, Chapters 1, 10.1 and 17.

**10. Title**

Grantor represents to the Grantees that to the best of its knowledge Grantor has legal title to the Property, that Grantor has all right and authority to grant and convey this Easement, and that the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record) including, but not limited to, any mortgages not subordinated to this Easement. Neither Grantor nor Grantee have undertaken any title examination or current boundary survey to ascertain the status of title or the exact boundaries of the Property and therefore Grantor cannot provide any warranties as to title under this Easement.

[SIGNATURES AND SEALS ON FOLLOWING PAGES]

**WITNESS** the following signatures and seals:

**GRANTOR:**

**CITY OF RICHMOND, VIRGINIA,**

A municipal corporation

BY: \_\_\_\_\_

Chief Administrative Office

As authorized by Ordinance No. \_\_\_\_\_

Adopted \_\_\_\_\_.

COMMONWEALTH OF VIRGINIA

CITY OF RICHMOND, to wit:

I, \_\_\_\_\_, Notary Public for the Commonwealth aforesaid,  
hereby certify that \_\_\_\_\_ Chief Administrative Officer, City of Richmond,  
Grantor, personally appeared before me this day and acknowledged the foregoing instrument.

WITNESS my hand and official this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

APPROVED AS TO FORM

  
\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
Notary Public

**FRIENDS OF BANDY FIELD, INC.**

COMMONWEALTH OF VIRGINIA

I, \_\_\_\_\_, Notary Public for the Commonwealth aforesaid,  
hereby certify that \_\_\_\_\_ President, Friends of Bandy Field, Inc., Grantee,  
personally appeared before me this day and acknowledged the foregoing instrument.

Notary Public

Notary registration number: \_\_\_\_\_

**CAPITAL REGION LAND CONSERVANCY,  
Inc.**

COMMONWEALTH OF VIRGINIA

I, \_\_\_\_\_, Notary Public for the Commonwealth aforesaid,  
hereby certify that \_\_\_\_\_ President, Friends of Bandy Field, Inc., Grantee,  
personally appeared before me this day and acknowledged the foregoing instrument.

Notary Public

Notary registration number:\_\_\_\_\_

## 34



## 35

