

INTRODUCED: April 9, 2018

AN ORDINANCE No. 2018-117

To declare a public necessity for and to authorize the acquisition from the Commonwealth of Virginia, Department of General Services, of a perpetual, non-exclusive easement located in the southwest quadrant of the intersection of East Franklin Street and North 15th Street for the public purpose of providing for the location of a traffic signal and all equipment, accessories, and appurtenances necessary in connection therewith.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: APR 23 2018 AT 6 P.M.

WHEREAS, in the opinion of the Council of the City of Richmond, a public necessity exists for the acquisition from the Commonwealth of Virginia, Department of General Services, of a perpetual, non-exclusive easement located in the southwest quadrant of the intersection of East Franklin Street and North 15th Street, as shown on a drawing entitled “Plat Showing a 303 Sq. Ft. Prop. Permanent Traffic Signal Easement to Be Conveyed to the City of Richmond,” prepared by the Virginia Department of Transportation, and dated March 9, 2018, a copy of which is attached to an incorporated into this ordinance, for the public purpose of providing for the

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: APR 23 2018 REJECTED: _____ STRICKEN: _____

location of a traffic signal and all equipment, accessories, and appurtenances necessary in connection therewith;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That a public necessity exists for the acquisition from the Commonwealth of Virginia, Department of General Services, of a perpetual, non-exclusive easement located in the southwest quadrant of the intersection of East Franklin Street and North 15th Street, as shown on a drawing entitled “Plat Showing a 303 Sq. Ft. Prop. Permanent Traffic Signal Easement to Be Conveyed to the City of Richmond,” prepared by the Virginia Department of Transportation, and dated March 9, 2018, a copy of which is attached to and incorporated into this ordinance, for the public purpose of providing for the location of a traffic signal and all equipment, accessories, and appurtenances necessary in connection therewith.

§ 2. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to acquire from the Commonwealth of Virginia, Department of General Services, the property interest described in section 1 of this ordinance and to execute and accept a Deed of Easement, provided that such deed must be substantially in the form of the document attached to this ordinance and must first be approved as to form by the City Attorney or the designee thereof.

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



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

MAR 14 2018
4-7605
Office of the
Chief Administrative Officer

O&R REQUEST

DATE: March 12, 2018 EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor (By Request) JS 4/14/18

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer SLO

THROUGH: Robert Steidel, Deputy Chief Administrative Officer [Signature]

THROUGH: Bobby Vincent, Director
Department of Public Works [Signature]

THROUGH: M.S. Khara, P.E., City Engineer
Department of Public Works [Signature]

THROUGH: Mike Sawyer, City Transportation Engineer
Department of Public Works MBS

FROM: Doug Mawby
Department of Public Works [Signature]

RE: EASEMENT AGREEMENT BETWEEN THE CITY AND THE STATE
DEPARTMENT OF GENERAL SERVICES TO ALLOW A CITY TRAFFIC
SIGNAL TO BE LOCATED ON STATE OWNED PROPERTY.

RECEIVED
APR 05 2018
OFFICE OF CITY ATTORNEY

ORD. OR RES No. _____

PURPOSE: To authorize the Chief Administrative Officer to enter the City into an easement agreement between the City and the State Department of General Services to allow a City owned traffic signal to be located on State owned property located in the southwest quadrant of the intersection of Franklin Street and N 15th Street as depicted on a drawing prepared by VDOT dated May 25, 2017 and titled "Plat Showing a 303 SQ FT Prop. Permanent Traffic Signal Easement" at the request of the Virginia Department of Transportation (VDOT).

REASON: The traffic signal pole in the noted location must be relocated to allow a VDOT intersection improvement project to proceed. The appropriate location for the pole is now on State owned land, therefore an easement is needed to both legally relocate the City owned signal equipment onto State owned property and to allow for future maintenance.

RECOMMENDATIONS: The Department of Public Works recommends allowing the signing of the easement agreement to proceed.

BACKGROUND: VDOT is set to undertake a project to upgrade the intersection of E Franklin St. and 15th St. where the exit from I-95 ends (VDOT project designation: UPC 107795). Work is slated to start in the Fall of 2018. The project is part of VDOT's Smart Scale program and is funded and administered by the State. The improvements will add an additional travel lane at the intersection to allow vehicles to move into the City safely and more efficiently. One of the goals of this project is to eliminate the backups on I-95. In order to perform this work, the intersection is being reconfigured and modernized.

The existing traffic signal must be upgraded to accommodate the new intersection configuration. The current signal location is within the sidewalk. This presents an impediment to pedestrian travel; the existing signal pole will conflict with the proposed design. Moving the pole out of the pedestrian pathway is the best practice at this location. Since the pole would then be located on State property, an easement is required to both have the signal pole located on State property and to allow for future maintenance of the traffic signal pole and associated equipment. The attached agreement has been reviewed, amended and deemed acceptable by Bonnie Ashley of the Office of the City Attorney.

FISCAL IMPACT/COST: No additional costs or fiscal impacts anticipated.

FISCAL IMPLICATIONS: None.

BUDGET AMENDMENT NECESSARY: No amendment necessary at this time.

REVENUE TO CITY: None.

DESIRED EFFECTIVE DATE: Upon Adoption.

REQUESTED INTRODUCTION DATE: April 09, 2018

CITY COUNCIL PUBLIC HEARING DATE: May 14, 2018

REQUESTED AGENDA: Consent Agenda.

RECOMMENDED COUNCIL COMMITTEE: None

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: City Planning Commission

AFFECTED AGENCIES: Public Works; Law Department.

RELATIONSHIP TO EXISTING ORD. OR RES.: None.

REQUIRED CHANGES TO WORK PROGRAM(S): None.

ATTACHMENTS: Easement drawing, Dead of Easement

STAFF:

Prepared for Bobby Vincent
Prepared by Doug Mawby
Department of Public Works
646-0110

This deed is exempt from the Grantor's tax pursuant to § 58.1-811(C)(4) of the Code of Virginia (1950), as amended.

Tax Parcel No. E0000104007

Consideration: \$10.00

Prepared by: Office of the Attorney General

DEED OF EASEMENT

This DEED OF EASEMENT ("Deed of Easement") is made and entered into this _____ day of _____ 2018, by and between the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF GENERAL SERVICES ("Grantor") and the CITY OF RICHMOND, a municipal corporation of the Commonwealth of Virginia ("Grantee").

WITNESSETH

For the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in accordance with § 2.2-1150 of the Code of Virginia (1950), as amended (the "Code of Virginia"), Grantor grants unto Grantee, its successors and permitted assigns, a perpetual, non-exclusive right and easement (the "Easement") to lay, erect, construct, install, operate, maintain and repair a traffic signal and all equipment, accessories, and appurtenances necessary in connection therewith (the "Facilities"), for the purpose of traffic control, under, over, upon and across the lands of Grantor situated in the City of Richmond, Virginia, with the area subject to the Easement (the "Easement Area") shown on that plat entitled "PLAT SHOWING A 303 SQ. FT. PROP. PERMANENT TRAFFIC SIGNAL EASEMENT," dated October 18, 2016, last revised May 22, 2017, prepared by Carrol R. Roberts, LS, with the Virginia Department of Transportation, and attached hereto as Exhibit A. The Easement Area is part of the same real estate acquired by Grantor by deed dated November 22, 1965, recorded in the Clerk's Office of the Circuit Court of Richmond, Virginia, in Deed Book 636-B, Page 326. Acquisition of the Easement Area by the Grantee is authorized by the Richmond City Council in accordance with the Ordinance attached hereto as Exhibit B.

The Easement is subject to all existing easements, rights-of-way, covenants, encumbrances and restrictions of record, and is further subject to the following conditions:

- A. Grantor hereby grants to Grantee the right to lay, erect, construct, install, use, operate, inspect, maintain, repair, replace, rebuild, remove, improve, and make such other changes, alterations, additions to or extensions of the Facilities within the Easement Area as are consistent with the purposes expressed herein. All Facilities and activity occurring within the Easement Area shall comply with all applicable laws, ordinances, codes and regulations. The Facilities constructed or placed within the Easement Area shall remain the property of Grantee.

- B. Grantee shall use reasonable efforts to restrict its ingress to and egress from the Easement Area to the Easement Area, including avoidance of the areas identified on Exhibit A containing a light pole and tree belonging to the Grantor and shall be responsible to Grantor for any damage to Grantor's property resulting from failure to do so. Following Grantee's exercise of such right of ingress and egress and upon completion of any activity by Grantee upon the Easement Area, Grantee shall restore the Easement Area as nearly to its original condition as practicable, including, but not limited to, backfilling of trenches, repaving, reseeding or resodding of lands, replacement of Grantor's property, removal of trash and debris, and removal of any of Grantee's equipment, accessories or appurtenances not consistent with the construction, maintenance or operation of the Facilities or the exercise of any right expressed herein. Grantee shall maintain the Facilities in such repair as not to endanger or otherwise limit the enjoyment or use of Grantor's lands and adjacent lands.
- C. Grantor hereby grants to Grantee the right to trim trees, shrubbery or other natural obstructions on, under or over the Easement Area which interfere with or threaten the efficient and safe operation, construction or maintenance of the Facilities. All brush, branches, and other debris resulting from any trimming or clearing of the Easement Area must be removed from the lands of Grantor and disposed of by Grantee. Grantee shall not cut or remove any tree located outside of the Easement Area and shall reasonably avoid damage to the root system of any such tree.
- D. Grantee shall exercise any right expressed herein in such manner as shall not occasion injury, damage or inconvenience to Grantor and as otherwise shall minimize any adverse impact or disturbance to Grantor's lands and property. Grantee shall notify Grantor promptly of any injury, damage, or adverse impact or disturbance to Grantor's land. Subject to appropriation of funds for such purpose and the availability of insurance proceeds for such purpose, any portions of Grantor's land and property within the Easement Area damaged or destroyed by Grantee, its employees or contractors incident to the construction, maintenance, operation or use of the Easement shall be promptly repaired, replaced, or relocated by Grantee at Grantee's expense; provided, however, that if, in the reasonable judgment of the Grantor, such injury, damage or adverse impact or disturbance results in an on-going hazardous condition or a material loss of use of Grantor's lands or property (such as, by way of illustration and not by limitation, a disruption of any utilities or loss of access to Grantor's lands or property) then, upon notice from Grantor, Grantee shall use diligent efforts to immediately remedy the hazardous condition or material loss of use.
- E. Grantor may use the Easement Area for any purpose not inconsistent with the rights hereby granted in this Deed of Easement, provided such use does not interfere with the safe and efficient construction, operation, and maintenance of the Facilities, and further provided that such use is not inconsistent with any laws, ordinances, codes or regulations pertaining to the construction, operation and maintenance of the Facilities and to which Grantor is subject.

- F. To the extent permitted by law, Grantee covenants and agrees to hold Grantor harmless from and against any claims of injury to any persons or property and from and against any other liability of any nature whatsoever caused by Grantee's exercise of any rights herein granted.
- G. Prior to entering upon the Easement Area, and while upon the Easement Area, Grantee shall carry and maintain, or shall cause its contractors to carry and maintain, the following insurance, in a form reasonably acceptable to Grantor, which insurance shall be primary to all other insurance coverage the Commonwealth 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 the minimum amount required by the Virginia Code and other applicable law, rules and regulations; and
 - (ii) Commercial General Liability occurrence-based (not claims-made) insurance to include broad form Personal Injury and Property Damage Liability coverage and coverages for explosion, collapse and underground hazards. The amounts of such Commercial General Liability insurance shall be not less than Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate; and
 - (iii) Business Automobile Liability insurance, to include Auto Physical Damage coverage, in the amount of One Million Dollars (\$1,000,000.00) combined single limit covering all owned, non-owned borrowed, leased, or rented motor vehicles operated by Grantee or its contractors. In addition, all motorized equipment, both licensed and not licensed for road use, operated or used by Grantee or its contractors within the Easement Area will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy. Grantee will not bring, and will not permit its contractor to bring, any vehicle or motorized equipment that is not covered pursuant to this provision within the Easement Area. The foregoing provisions relating to automobile insurance shall not apply to privately-owned or leased motor vehicles of Grantee's employees or business invitees.

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 a forty-five (45) day prior written notice to Grantor. The policies shall

provide for notification to Grantor in the event of cancellation. Cancellation and nonrenewal notice shall be made by both the insurer and Grantee.

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

- (iv) 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 Grantee 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.
 - (v) Before Grantee or its employees, agents, contractors or invitees enter upon the Easement Area, Grantee shall deliver to Grantor one or more valid Certificates of Insurance which show the foregoing insurance coverage to be in force and effect at the time the contract is agreed upon. Grantee shall furnish a new certificate annually and prior to any change in coverage or insurer, or any cancellation date. Individual insurance policy declarations sheets or pages, or a specimen copy of individual policies shall be provided upon request.
 - (vi) Grantee shall cause its contractors to name the Commonwealth, Grantor, and their employees and officers an additional insured in the Commercial General Liability and Business Automobile Liability policies, which shall be reflected on the Certificate of Insurance therefor delivered to Grantee or in copies of endorsements therefor delivered to Grantee.
 - (vii) Grantee shall require of its contractors that, if an "ACORD" Certificate of Insurance form is provided to Grantee's contractor in order to evidence compliance with the requirements of this Deed of Easement, the words, "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of such certificate shall be deleted or crossed out by the insurance broker providing such certificate.
- H. No covenant, condition, or agreement contained in this Deed of Easement shall be deemed, in any manner, to be a waiver of the sovereign immunity of Grantor, or the Commonwealth of Virginia, or Grantee, from tort or other liability. Further, notwithstanding any shared use of the Easement Area, nothing in this Deed of Easement shall create or be deemed to create any partnership, joint venture, or agency relationship between Grantor and Grantee.
- I. In lieu of the insurance requirements set forth in paragraph G above, Grantee may provide evidence and credentials to Grantor of self-insurance sufficient to meet the terms and conditions of paragraph G.

- J. If Grantee at any time abandons use of the Easement for a period of one (1) year, upon request of Grantor following such termination, and subject to approval of the City Council of the City of Richmond as required by law the City shall vacate the Easement and quitclaim and release the Easement Area to Grantor. Thereafter, subject to appropriation of funds therefor, the City shall remove any improvements constructed in the Easement Area and restore the Grantor's property as nearly to its original condition as practicable. If the City shall fail to vacate the Easement and quitclaim and release the Easement Area to Grantor within six months after receipt of Grantor's request, then Grantor may institute eminent domain proceedings to acquire the Easement from the City.
- K. Grantee may not itself, nor by sublease, license, or other grant of permission to any third party, utilize the Easement Area for the installation of any equipment or property for purposes other than set forth herein, or delegate, transfer, or assign its rights hereunder, without the prior written consent of Grantor. Such consent shall not be unreasonably withheld, conditioned, or delayed by Grantor provided such delegation, transfer or assignment is to a contractor performing work on Grantee's behalf or to a successor entity to Grantee with respect to the operation, maintenance and repair of the Facilities.
- L. This Deed of Easement shall be construed in accordance with, and governed by, the laws of the Commonwealth of Virginia without regard to its principles of conflicts of laws. Any and all disputes, claims and causes of action arising out of or in connection with this Deed, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court for the City of Richmond, Virginia.

WITNESS the following signatures and seals.

Grantor:

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF GENERAL SERVICES

By: _____

Name: _____

Title: Director

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

The foregoing Deed of Easement was acknowledged before me this ____ day of _____ 2018, by _____, as _____ of the Commonwealth of Virginia, Department of General Services, on behalf of the agency.

My commission expires: _____

Notary registration no.: _____

Notary Public

Accepted on behalf of Grantee:

CITY OF RICHMOND

By: _____

Name: _____

Title: _____

Approved as to form:

Bonnie M. Osg
Deputy City Attorney

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

The foregoing Deed of Easement was acknowledged before me this ____ day of _____ 2018, by _____, as _____ of the City of Richmond, on behalf of the city.

My commission expires: _____

Notary registration no.: _____

Notary Public

OFFICE OF THE ATTORNEY GENERAL
Approved as to Form:

By: _____
Senior Assistant Attorney General

RECOMMEND APPROVAL:
DEPARTMENT OF GENERAL SERVICES

By: _____
Director

APPROVED BY THE GOVERNOR:

Pursuant to § 2.2-1150 of the Code of Virginia (1950), as amended, and by the authority vested in me to act for and on behalf of the Governor of Virginia under Executive Order 88 (01) dated December 21, 2001, I hereby approve this Easement and the execution of this instrument.

Secretary of Administration

Date

EXHIBIT A

[Label plat Exhibit A and attach it in lieu of this page]

EXHIBIT B

[Label City Ordinance Exhibit B and attach it in lieu of this page]

VDOT MON.	PROJECT COORDINATES
127-0159	N-439,210.607 E-3,591,955.898
127-0160	N-439,499.092 E-3,591,281.240
127-0161	N-439,733.606 E-3,591,005.831

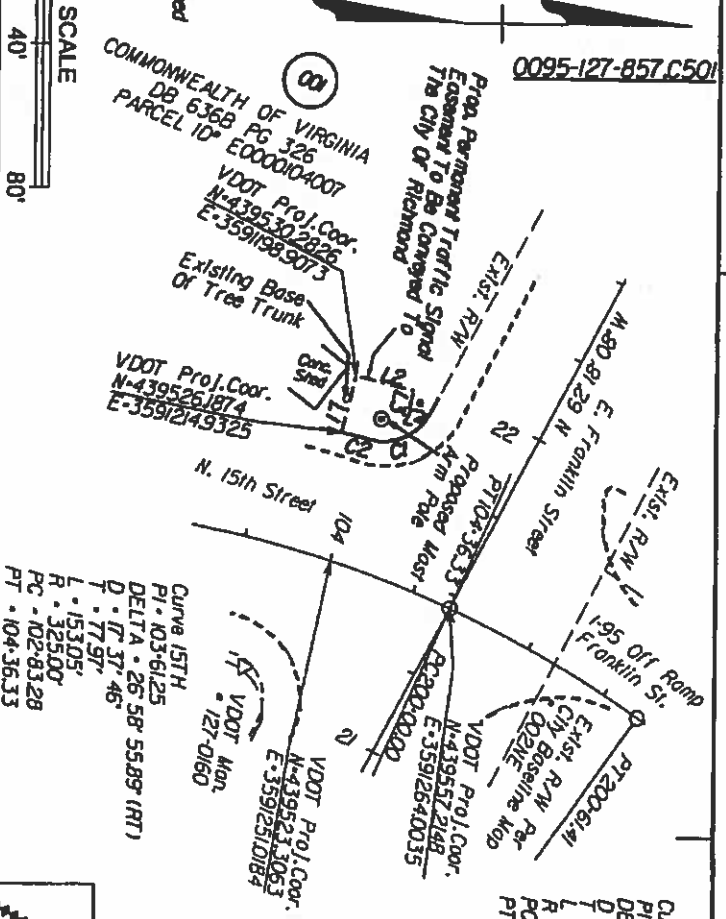
NOTES:

1. Carrol R. Roberts L.S. Certify That This Plat Meets The Minimum Plat Standards Of The VA DPOR APELSCIDLA Regulations.
2. TNS Compiled Plat Does Not Constitute A Boundary Survey Of The Property Hereon.
3. The Property's Physical Improvements Are Not Shown Hereon.
4. This Compiled Plat Was Performed Without The Benefit Of A Title Report And May Not Show All Easements Which May Affect The Property Shown Hereon.
5. No Designation Or Location Of Subsurface Utilities Was Performed During Preparation Of TNS Plat.
6. The Datum On TNS Compiled Plat Is Based On VDOT Project 0095-127-857, UPC #107795, Plan Sheet #3, Parcel # 001 Surveyed By H&B Surveying And Mapping, LLC.

PLAT SHOWING A 303 SQ. FT. PROP. PERMANENT TRAFFIC SIGNAL EASEMENT TO BE CONVEYED TO THE CITY OF RICHMOND



Carrol R. Roberts, L.S.
Richmond District
2430 Pine Forest Dr.
Colonial Heights, VA 23034
(804) 863-4019



PROPERTY OF COMMONWEALTH OF VIRGINIA
DB 6388 PG 326
CITY OF RICHMOND
RICHMOND, VA

Curve 15TH
PI • 103.6125
DELTA • 26.58° 55.89' (RT)
D • 17' 37.46"
L • 77.97'
R • 153.05'
PC • 102.8328
PT • 104.3633

Curve 95RAMP
PI • 200.3080
DELTA • 10.49° 32.76' (RT)
D • 17' 37.46"
L • 30.80'
R • 61.41'
PC • 200.0000
PT • 200.6141

LINE DATA
L1 N 75.3954° W 16.54'
L2 N 142° 35' E 6.80'
L3 S 75.3926° E 5.07'
L4 N 142° 35' E 6.04'
CURVE DATA
C1 15.00' 2016
CHORD
S 23° 09' 49" E 18.68'
CURVE RAD LENGTH
C2 363.00' 8.03'
CHORD
S 13° 36' 45" W 8.03'

UPC: 107795
PROJECT: 0095-127-857, R201, C-501
SCALE: 1" = 40'
DRAWN BY: CR
CHECKED BY: GA
DATE: March 9, 2018

PARCEL: 001
SHEET 1 OF 1

COMMONWEALTH OF VIRGINIA
CARROL R. ROBERTS
Lic. No. 002765
3-9-18
LAND SURVEYOR

VDOT Location and Design
Colonial Heights, Virginia
LAND SURVEYOR