

INTRODUCED: June 8, 2020

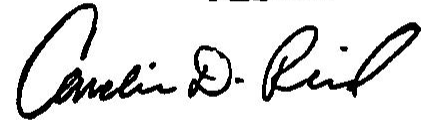
AN ORDINANCE No. 2020-197

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a City of Richmond Grant Contract between the City of Richmond and Friends of the James River Park for the purpose of restoring a section of riparian buffer and performing related environmental activities along the James River at Pony Pasture Rapids Park and the Wetlands Park in the city of Richmond.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

**A TRUE COPY:
TESTE:**



City Clerk

PUBLIC HEARING: SEP 28 2020 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a City of Richmond Grant Contract between the City of Richmond and Friends of the James River Park for the purpose of restoring a section of riparian buffer and performing related environmental activities along the James River at Pony Pasture Rapids Park and the Wetlands Park in the city of Richmond. The City of Richmond Grant Contract shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

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

AYES: 8 NOES: 0 ABSTAIN: _____

ADOPTED: SEP 28 2020 REJECTED: _____ STRICKEN: _____



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

O & R REQUEST

2020-120

AUG 18 2020

Office of the
Chief Administrative Officer

O&R REQUEST

DATE: August 19, 2020

EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

Handwritten signature of Levar M. Stoney.

THROUGH: Lenora Reid, Acting Chief Administrative Officer

Handwritten signature of Lenora Reid.

THROUGH: Robert C. Steidel, Deputy City Administrator, Operations

Handwritten signature of Robert C. Steidel.

THROUGH: Chris Frelke, Director, Department of Parks, Recreation and Community Facilities

Handwritten signature of Chris Frelke, circled.

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

Handwritten signature of Calvin D. Farr, Jr.

THROUGH: Rosemary Green, Deputy Director, Department of Public Utilities

Handwritten signature of Rosemary Green, with "RHG 08-13-20" written next to it.

FROM: Grace A. LeRose, Program Manager, Department of Public Utilities

Handwritten signature of Grace A. LeRose.

RE: Grant Contract in the amount of \$68,681 and Right-of-Entry Agreement for Friends of the James River Park to restore a section of riparian buffer, and perform related environmental activities, along the James River at Pony Pasture Rapids Park and the Wetlands Park

ORD. OR RES. No.:

PURPOSE: This O&R request is to authorize the Chief Administrative Officer to execute, for and on behalf of the City of Richmond, a \$68,681 grant contract and a right-of-entry agreement by and between the City of Richmond and Friends of the James River Park for the purposes of restoring a section of riparian buffer, and performing related environmental activities, along the James River at Pony Pasture Rapids Park and the Wetlands Park (the "Project"). Of the total grant contract amount to complete the Project, \$16,500 will be paid from the Water O&M Fund and \$52,181 will be paid from the Wastewater O&M Fund. The Project will satisfy, in part, a consent order between the City and the State Water Control Board.

REASON: The City entered a consent order with the State Water Control Board to resolve Virginia Department of Environmental Quality enforcement proceedings for unauthorized

discharges at Rockett's Landing and Byrd Park Pump House Road (the "Consent Order"). In pertinent part, the Consent Order allows the City to satisfy a portion of the City's \$91,575 civil charge by completing the Project. To complete the Project, the Friends of the James River Park will restore 100 feet of James River riparian buffer; plant 1,430 trees on, remove invasive species from, and restore an approximately 13 acres of Pony Pasture Rapids Park and Wetlands Park; and lead related public education and outreach efforts. The Project is consistent with the strategic goals of the James River Park System Master Plan.

RECOMMENDATION: The Administration recommends approval.

BACKGROUND: In July 2018, a citizen reported discharge from Rocketts Landing into the James River which was determined to be caused by a developer's improper sanitary sewer line connection to a combined sewer outfall in 2008. The Byrd Park Pump House Road discharge was discovered after a 30 inch water main failed on October 19, 2018. The finished drinking water from the failed main, namely the chlorine therein, caused the death of 129 fish in the Kanawha Canal. The Department of Public Utilities promptly corrected both discharges upon notice and has changed operational procedures as a result of the discharges.

FISCAL IMPACT / COST: \$68,681

FISCAL IMPLICATIONS: none

BUDGET AMENDMENT NECESSARY:

REVENUE TO CITY: none

DESIRED EFFECTIVE DATE: September 28, 2020

REQUESTED INTRODUCTION DATE: September 14, 2020

CITY COUNCIL PUBLIC HEARING DATE: September 28, 2020

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Land Use & Planning

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None

AFFECTED AGENCIES: Department of Public Utilities; Department of Parks, Recreation and Community Facilities

RELATIONSHIP TO EXISTING ORD. OR RES.: none

REQUIRED CHANGES TO WORK PROGRAM(S): none

O&R Request

Page 3 of 3

ATTACHMENTS: Friends of the James River Park Grant Contract
Pony Pasture Park and the Wetlands Park Right-of-Entry Agreement
(which is Exhibit B of the Friends of the James River Park Grant Contract)

STAFF: Grace A. LeRose, Program Manager, DPU, 646-0033

**CITY OF RICHMOND
GRANT CONTRACT**

THIS GRANT CONTRACT (the "Contract") is made and entered into on this ____ day of _____, 2020 by and between the City of Richmond, Virginia (the "City"), a municipal corporation and political subdivision of the Commonwealth of Virginia, and Friends of the James River Park, a Virginia non-stock corporation (the "the Recipient").

RECITALS

WHEREAS, Section 15.2-953(B)(vi) of the Code of Virginia authorizes the City to make gifts and donations to non-profit associations "furnishing services to beautify and maintain communities or to prevent neighborhood deterioration;"

WHEREAS, the City entered a consent order with the Virginia State Water Control Board, signed and made effective by the Virginia Department of Environmental Quality (DEQ) on July 8, 2020, which set forth, *inter alia*, that the City may satisfy a portion of its obligations under that consent order by completing a supplemental environmental project to restore a section of riparian buffer, and perform related environmental activities, along the James River at Pony Pasture Rapids Park and the Wetlands Park (the "Project");

WHEREAS, the City desires to donate \$68,681.00 (the "Grant Funds") to the Recipient to undertake the activities contained herein in furtherance of the Project.

NOW, THEREFORE, the City and Recipient, intending to be legally bound, agree as follows:

1. Contact Information.

A. The City's point of contact for purposes of the Contract is:

Grace LeRose
Program Manager Department of Public Utilities
1801 Commerce Rd.
Richmond, Virginia 23284
(804) 646-0033
Grace.LeRose@richmondgov.com

with a copy to:

Bryce Wilk
Superintendent of James River Park System
4001 Riverside Dr,
Richmond, VA 23225
(804)347-0066
Bryce.Wilk@richmondgov.com

This point of contact is responsible for the City's monitoring of the Recipient's compliance with the Contract.

- B. The Recipient's point of contact for purposes of the Contract is:

Mary Katherine Martin
Friends of James River Park, President
P.O. Box 4453
Richmond, VA 23220
Friends@jamesriverpark.org

- C. The Recipient represents and warrants that it has duly authorized its point of contact to act on its behalf for purposes of this Contract.

- D. Either party may change the contact information set forth in this section by submitting a written statement that the party is making such a change and setting forth the contact information of the party's new point of contact to the other party's point of contact.

2. Payment of Grant Funds.

- A. The City shall pay the Grant Funds to the Recipient as soon as is practicable following full execution of this Contract.
- B. The Recipient shall return to the City all of the Grant Funds received by the Recipient if the requirements set forth in section 3 below are not fulfilled. Upon return of the Grant Funds as provided in this section 2(B), all obligations of Recipient undertaken in this Contract will terminate.

- 3. Scope of Services.** In consideration of the City's grant of the Grant Funds to the Recipient, no later than December 31, 2022 and in conformance with the *Analysis of Proposed Supplemental Environmental Project*, approved by DEQ January 27, 2020, which is attached hereto and incorporated herein as Exhibit A, the Recipient shall:

- A. **Riparian Buffer.** Design and restore 100 feet of riparian buffer.
- B. **Invasive Plant Species Removal; Restoration.** Remove invasive plant species, e.g., fig buttercup, wisteria, Japanese knotweed, amur honeysuckle, and privet, within an approximately 13-acre portion of the James River Park System in the Pony Pasture Rapids Park and Wetlands Park (the "Property"); restore invasive-plant-species removal areas using Best Management Practices to regrade and stabilize such areas, as well as planting native trees and shrubs to create healthy riparian buffer.

- C. **Native Species Tree Planting; Maintenance.** Plant 1,430 native species trees throughout the Property; maintain preexisting and planted native species trees throughout the Property.
- D. **Public Education and Outreach Coordinator.** Staff a Public Education and Outreach Coordinator for eight (8) hours per week for a period of twelve (12) months to oversee and perform public education and outreach efforts related to the Project, riparian buffers, and natural greenspace.
- E. **Right of Entry.** Furnish the City with an original copy of a Right-of-Entry Agreement with the form and content of the document attached to this Contract as Exhibit B signed by its duly authorized representative.

4. **Performance Measures.** The City shall have sole discretion to determine performance under this Contract. By way of example, the City shall interpret terms such as “invasive species” and “native species” as those terms are used in this Contract. The City shall use the following performance measures, expressed in the form of questions to be answered in the affirmative, to evaluate whether the Recipient has performed the services required by this Contract in a manner that achieves the City's purpose in providing the Grant Funds to the Recipient:

- A. Has the Recipient furnished the City with an original copy of a Right-of-Entry Agreement with the form and content of the document attached to this Contract as Exhibit B?
- B. Has the Recipient performed all riparian buffer services, as detailed in section 3(A) of this Contract?
- C. Has the Recipient performed all invasive plant species removal and restoration, as detailed in section 3(B) of this Contract?
- D. Has the Recipient planted and maintained all native species trees, as detailed in section 3(C) of this Contract?
- E. Has the Recipient staffed a Public Education and Outreach Coordinator, as detailed in section 3(D) of this Contract?

5. **Reporting.** The Recipient shall furnish the City's point of contact with the following in a written form acceptable to the City's point of contact: A monthly report itemizing payments made by Recipient to its contractors, including copies of invoices from those contractors, and to the Public Education and Outreach Coordinator.

6. **Compliance Monitoring.** The City's point of contact shall monitor the Recipient's compliance with this Contract. In addition to the reports required by Section 5, the Recipient shall furnish the City's point of contact with any information reasonably requested by the City's point of contact in order to enable the City's point of contact to determine whether the Recipient is meeting the performance measures set forth in the Contract.

7. **Recipient's Representations and Warranties.** The Recipient represents and warrants as follows:

- A. The Recipient is and will be for the duration of this Contract a non-profit organization within the meaning of Section 15.2-953(B) of the Code of Virginia.
- B. The Recipient's signatory is duly authorized by the Recipient to enter into the Contract and thereby to bind the Recipient to the Contract's terms and conditions.

8. **Audit.** Pursuant to Section 2-187 of the Code of the City of Richmond, the Recipient shall, as a condition of receiving monies from the City, be subject to periodic audits of its finances and expenditures of such City monies by the City Auditor on demand and without notice.

9. **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Contract, the City and the Recipient hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Contract; (ii) the provisions of this Contract are not intended to be for the benefit of any individual or entity other than the City or the Recipient; (iii) no individual or entity shall obtain any right to make any claim against the City or the Recipient under the provisions of this Contract; and no provision of this Contract shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Contract.


10. **No Joint Venture.** The terms and conditions of this Contract shall not be construed or interpreted in any manner as creating or constituting the City as a partner or joint venture participant with the Recipient or as making the City liable for the debts, defaults, obligations or lawsuits of the Recipient or its contractors or subcontractors.

SIGNATURES ON THE FOLLOWING PAGE

Effective as of the date first written above.

RECIPIENT:

By



Mary Katherine Martin
President
Friends of the James River Park

CITY:

By:

Lenora G. Reid
Acting Chief Administrative Officer
Authorized by Ord. No. _____
Adopted _____

APPROVED AS TO TERMS:

 8/25/20

Calvin D. Farr, Jr.
Director of Public Utilities

Date

APPROVED AS TO FORM:



A. Ross Phillips
Assistant City Attorney

Exhibit A

Analysis of Proposed Supplemental Environmental Project
Va. Code § 10.1-1186.2
City of Richmond
Riparian Buffer Restoration at Pony Pasture Rapids & Wetlands Park

Erosion and exposure
at Pony Pasture
Rapids along the
James River



Erosion and
exposure at Pony
Pasture Rapids -
Half Moon Beach

Project Description: We propose to partner with Friends of James River Park to restore 100 feet of riparian buffer along the James River and Rockfall's Creek at the Wetlands and Pony Pasture Rapids sections of the James River Park. The project will also have invasive plant removal & native plant restoration and planting of 1,430 trees.

The project will use contractors to remove destructive invasive plant species such as fig buttercup, wisteria, Japanese knotweed, amur honeysuckle, and privet. The Public Outreach and natural resource coordinator will assist with community removal and clean up days, provide outreach to surrounding neighborhoods, and on-going caretaking of planted trees and stabilized areas.

Item	Cost	Unit(s)	Total Cost
Riparian buffer design and restoration (100 ft)	\$ 300 - \$ 350	Per linear foot	\$ 35,000
Tree planting	\$ 3.72 per tree	tree	\$ 5,320
Contractor Labor	\$1500 per day	8.5 days	\$ 12,700
Public Education & Outreach Coordinator	\$19.00 per hour	16 hrs per week for 6 mo	\$ 9,120 (inc. agency fee)
Tree Maintenance			\$ 6,260
		Totals:	\$ 68,400

1. Explain how the project is environmentally beneficial:

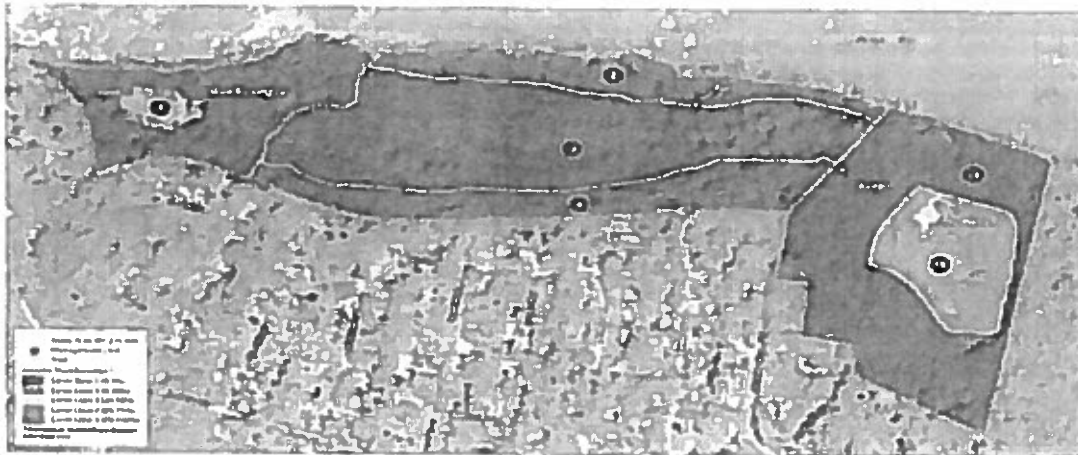
Funding is sought to protect and restore approximately 13 acres of the James River Park System in the Wetlands and Pony Pasture Rapids Park areas. This is just one part of a larger effort to reduce the destructive impact of invasive species and restoring native plants, tree canopy and the riparian buffer in the urban wilderness of Richmond through contracted professionals, volunteerism, and park staff.

The JRPS in this particular area is protected from development in perpetuity by a conservation easement. The Conservation Easement aims to protect and promote healthy and native green spaces, support erosion control, riparian buffer protection, and wildlife habitat conservation.

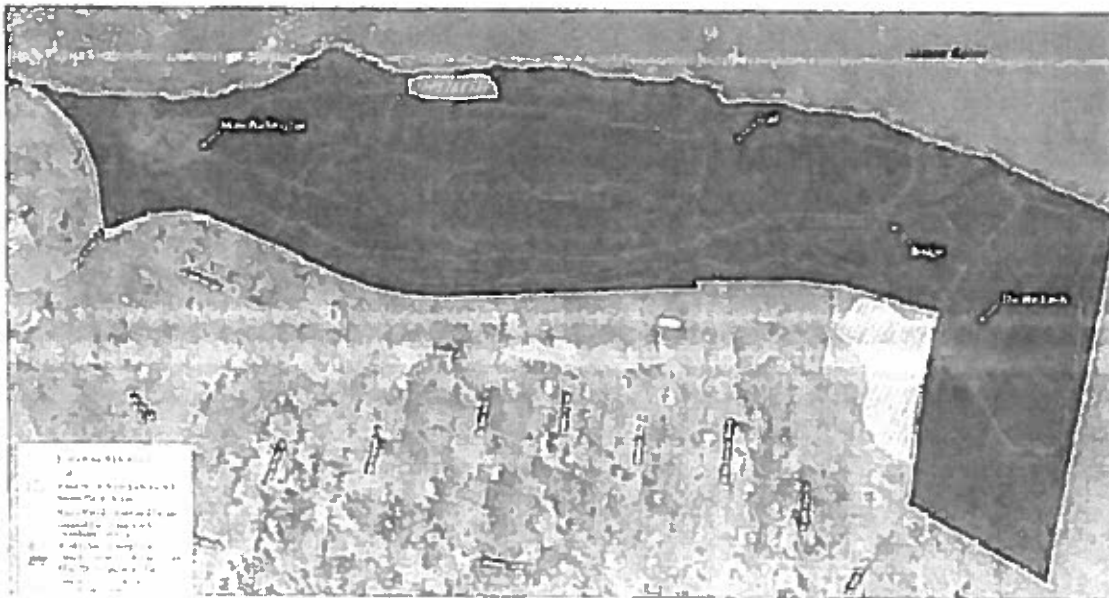
Funding will cover the removal of non-native plants in the area by contracting out to certified contractors to remove invasive and non-native plants. In coordination with the removal, Best Management Practices will be used to regrade and stabilize the area and plant native trees and shrubs to create a healthy riparian buffer.

Please refer to supplemental maps and photos provided on Maps:

Pony Pasture and The Wetlands Study Area



Invasive Plant Removal Sites

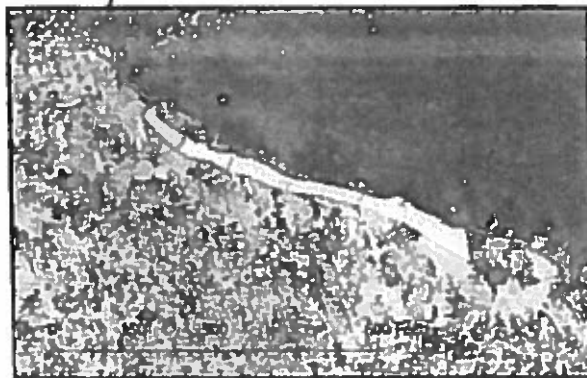


Pony Pasture & Wetlands Riparian Buffer Needs



Legend

- Priority Riparian Buffer Segments
- Riparian Buffer Needed



Riparian buffer sections range
in length from 100-150 ft
and width from 15 - 30 ft

Each section is an estimated
\$50,000 in cost to install



Riparian Buffer Restoration Sites

The benefits of a riparian buffer of native plants on the James River in the City of Richmond are numerous for the environment but include: erosion and sediment control; enhance and protect water quality; nutrient and pollution control; phosphorus and nitrogen capture and inertness; native wildlife and aquatic organism habitat; canopy cooling for water, people, and our planet.

2. A SEP may only be a partial settlement: typically only 75% of the civil charge can be mitigated by a SEP. Show the Projected Net Project Costs.

Civil Charge/Penalty without a SEP	\$ 91,575
Minimum Payment Amount with a SEP (see Section II(F))	\$ 22,894
Projected Net Project Costs (see No. 6, below)	\$ 68,400
SEP Mitigation Amount	\$ 68,400
Final Monetary Civil Charge/Penalty	\$ 23,175

3. Explain how the SEP is not otherwise required by law and is solely the result of the settlement of an alleged violation: The project is not required by law, or permit requirements and is solely the result of the settlement of the Rockett's Landing settlement.

4. Is there reasonable geographic nexus? If YES, explain:

Yes, there is reasonable geographic nexus. The proposed project site is within the James River watershed and is directly upstream.

If NO, then does the SEP advance one of the declared objectives of the law or regulation that is the basis of the enforcement action (always preferred)? Explain:

5. Check all the qualifying categories that may apply (at least one must be checked):

- | | |
|-----------------------------------------------|------------------------------------------------------------------------------|
| <input type="checkbox"/> Public Health | <input checked="" type="checkbox"/> Environmental Restoration and Protection |
| <input type="checkbox"/> Pollution Prevention | <input type="checkbox"/> Environmental Compliance Promotion |
| <input type="checkbox"/> Pollution Reduction | <input type="checkbox"/> Emergency Planning & Preparedness |

6. Does the SEP require a significant amount of DEQ management, resource investment or evaluation such that DEQ is unable to provide active oversight?

No, Richmond will provide updates and progress reports along with photographic documentation and a final report.

7. Does the proposed SEP require a significant amount of DEQ time and resources for negotiation, administration, SEP oversight or other management activities in comparison to the value of the SEP?

No, Richmond did not require significant resource time for negotiations.

8. Does the Responsible Party have the ability or reliability to complete the proposed SEP and demonstrated an ability or willingness to comply with existing requirements?

Yes, the City is willing and able to complete the SEP.

9. Each of the following factors MUST be considered. Respond to each:

Net Project Costs (zero out all State or Federal government loans, grants, tax credits for project) (net cash flow to party should not be positive). Explain:

Net project costs are \$68,681.00

Benefits to the Public or the Environment (should exceed VEERF value; include any Community Involvement). Explain:

The project will have many public benefits as described below:

JRPS boasts over 25 miles of trails throughout its system, promoting movement in the form of hiking, biking, running, and general exploration for all ages and socioeconomic classes. Every year nearly 2 million people visit the Park. Other activities include paddling sports, climbing and swimming. Many other health benefits are attributed to the outdoors, and our trees and plants acting as our natural air filters especially in a densely populated area such as the City Of Richmond provide further benefits to the city and its people.

Restoration of riparian buffer along the river will help to improve water quality, reduce stormwater runoff and restore a much needed urban tree canopy. Environmental challenges in this well-loved natural area are many, but the chief threat to environmental quality is the loss of mature canopy trees and other native vegetation due to encroachment of invasive plant species. Invasive species control and the restoration of native plant communities are essential to maximize the park's recreational and educational potential, to protect water quality, ecosystem health, and biodiversity in this unique urban environment.

Innovation. Explain:

This is not simply a replanting of a riparian buffer, this is the transformation of an ecologically sensitive area overrun by non-native and invasive plant species to a healthy native plant park in the middle of the capital city. The coordination will take place with public/private/nonprofit partnerships working together to ensure the native natural habitat is restored. There will be an educational and outreach component led by volunteers engaging the surrounding community and leading native plant hikes with information being posted on kiosks in the area. We will also rely on volunteers to help with plantings, removal of invasive plants, and spreading the good word, thus engaging more people.

Impact on Minority or Low-Income Populations. Explain:

The James River Park System serves the greater Richmond area as one of the most decorated and diverse park systems in a true urban environment. The Wetlands and Pony Pasture Rapids Park form 2 of 15 parks within the system that are completely free of fees and provide entry for families, school groups, individuals to experience nature, picnic, recreate and relax all within walking distance of many communities in the City of Richmond. 25% of the City of Richmond is below the poverty line according to US census data. A majority of the population within the city is comprised of minority population with just over 54% being African American or Hispanic origin. Introducing young people of color and providing a free park within a convenient area will set the stage of a new generation of young people who care about the natural environment around themselves. If the buffer continues to disappear, this will limit access of people to the park system within the city, thus decreasing the quality of life.

Emergency Planning and Preparedness – No measurable effect on emergency planning and preparedness.

Multimedia Impact. Explain:

The project's main impacts are to the water program and without measurable impacts to air and land protection programs, this project is not considered multimedia.

Pollution Prevention. Explain:

Pollution Prevention and Reduction - Within a healthy native ecosystem riparian buffers offer a filter from pollutants such as runoff from houses and streets. This area is particularly popular with dog walkers. About 25% of bacteria found in our waterways originates from pet waste and proliferates the amount of unhealthy levels of nitrogen and phosphorus. With a riparian buffer in place, the nutrients will be captured and absorbed by the plants and soil transforming the potential pollutants to less harmful forms. The area also lends itself to many support groups and volunteers who assist by doing river clean ups in a safe park setting, decreasing overall refuse into the water system. A healthy riparian buffer can reduce nitrogen and phosphorous loads to Chesapeake Bay.

☒ Division of Enforcement, Other RO, Program – Concurrence/Consultation
Kristen Sadtler 12/31/2019 Jeff Steers 01/24/2020

Jeff Steers

Recommended/Not Recommended

(DEQ Regional Staff)

SEP Approved/Disapproved
(Subject to Execution of the Order)

James J. Gilden

(DEQ Regional Director) 1/27/2020

EXHIBIT B

PONY PASTURE RAPIDS PARK AND THE WETLANDS PARK RIGHT-OF-ENTRY AGREEMENT

THIS RIGHT-OF-ENTRY AGREEMENT (the "Agreement") is made this ____ day of _____, 2020, between the City of Richmond, a municipal corporation and political subdivision of the Commonwealth of Virginia (the "City"), and Friends of the James River Park, a Virginia nonstock corporation (the "Grantee").

STATEMENT OF PURPOSE

- A. The Grantee will receive \$68,681.00 in funding from the City (the "Grant Funds"), for the purposes of restoring a section of riparian buffer and performing related environmental activities along the James River at Pony Pasture Rapids Park and the Wetlands Park (the "Project").
- B. The City has authorized the donation of the Grant Funds by means of Ordinance No. _____, adopted _____, 2020.
- C. The performance of the activities described above requires the Grantee and its agents, contractors, employees, invitees, licensees, officers, and volunteers to enter onto certain City-owned real property, and the City is willing to grant such a right of entry to the Grantee on the terms and subject to the conditions set forth herein.

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

1.0 Right of Entry.

1.1 Scope.

- 1.1.1 **Meaning of "Property."** For purposes of this Agreement, "Property" means all City-owned real property located within James River Park System, Pony Pasture Park and The Wetlands, City Tax Parcel No. C0040185002 as shown on the maps entitled, "Pony Pasture and The Wetlands Study Area," marked as Attachment A, attached hereto and incorporated herein.
- 1.1.2 **Meaning of "Services."** For purposes of this Agreement, "Services" means the activities conducted by the Grantee on the Property that are described in section 2.1 and section 2.2 of this Agreement.
- 1.1.3 **Grant of Right of Entry.** For the duration of this Agreement as set forth in section 1.1.5, the City hereby grants to the Grantee, and its agents, contractors, employees, invitees, licensees, officers, and volunteers the non-exclusive right to enter upon the Property for the purpose of enabling the Grantee to perform its Services thereon.
- 1.1.4 **No Relationship between Parties.** The City and the Grantee agree that the Grantee is an independent contractor and in no way to be considered an employee, partner, agent, or associate, whether by joint venture or otherwise, of the City in the conduct of its business and the performance of the Services.

- 1.2 **Duration.** The right of entry granted by this Agreement, and all terms and conditions contained herein, will terminate automatically upon the completion of the Project, as the Project may be modified or extended by agreement of the parties, as such completion is determined by the City in its reasonable discretion or the termination by the City or the Grantee of this Agreement.
- 1.3 **Termination.** Either party may terminate this Agreement at will by giving notice to the other party. Should this Agreement be terminated pursuant to this section 1.3., the parties will confer and negotiate in good faith in order to determine what commercially reasonable actions, if any, either party may take in order to ameliorate any adverse impact on the parties or the Project. Such discussion will include, if applicable, outstanding or future financial obligations of both parties and the remaining scope of work.
- 2.0 **Standards and Requirements.**
- 2.1 **Work.** The Grantee, at its cost, shall perform the following activities on the Property: Restore riparian buffer; remove invasive plant species and restore removal areas; plant and maintain native species trees; conduct public education and outreach (collectively, the "Work"). Prior to the cutting down or removal of any tree on the Property pursuant to this Agreement or otherwise, the Grantee shall submit a written request to the Director of Public Works and obtain the express written permission of the Director of Public Works as required by section 8-287 of the Code of the City of Richmond, as it may hereafter be amended. The Grantee shall ensure that all Work on the Property is performed in a workmanlike manner, in accordance with federal, state and local laws, and in accordance with all policies, regulations, and standards of the City that are applicable to the activities. The Grantee shall obtain all approvals and rights from the City and any other property owners necessary to undertake any Work.
- 2.2 **Repairs.** The Grantee, at its cost, shall repair any damage to the Property caused by the Grantee to the satisfaction of the City and shall return the Property in a condition satisfactory to the City as determined by the City in its reasonable discretion. If the Grantee has not done so by the termination of this Agreement, the City may make any necessary repairs at the Grantee's cost. This section 2.2 will survive the termination of this Agreement.
- 2.3 **Utility Protection.** The Grantee shall protect all private and publicly-owned utilities located within the property and shall not permit any utilities interruption.
- 3.0 **Liability.**
- 3.1 **Release.** The City shall not be liable for any personal injury or property damage to the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers irrespective of how the injury or damage is caused, and the Grantee hereby releases the City from any liability, real or alleged, for any personal injury or property damage to the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers irrespective of how the injury or damage is caused. No provision of this Agreement shall be construed as a waiver of the sovereign immunity granted to the City by the Commonwealth of Virginia statutes and case law to the extent that it applies. This section 3.1 will survive the termination of this Agreement.

- 3.2 Indemnity.** The Grantee shall indemnify and defend the City and its agents, contractors, employees, officers, and volunteers from and against any and all losses, liabilities, claims, damages and expenses, including court cost and reasonable attorneys' fees, caused by, resulting from, or arising out of any claim, action or other proceeding, including any claim, action or other proceeding initiated or maintained by any of the Grantee's agents, contractors, employees, invitees, licensees, officers, or volunteers, that is based on or related to (i) the Grantee's breach of this Agreement, (ii) the use of Property by the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (iii) the performance of any activities on or outside of the Property by the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (iv) the presence on or about the Property of the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers, (v) the conduct or actions of the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers within or outside the scope of this Agreement, or (vi) any error, omission, negligent act or intentional act of the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers. This section 3.2 will survive the termination of this Agreement.
- 3.3 Insurance.** The Grantee shall ensure that commercial general liability insurance with a combined limit of not less than \$1,000,000 per occurrence, insuring the Grantee and any of its agents, contractors, employees, invitees, licensees, officers, or volunteers performing activities on behalf of the Grantee against liability for injury to persons and damage to property occurring on or about the Property or arising out of the maintenance or use thereof or the Work performed thereon, with an insurer licensed to transact insurance business in the Commonwealth of Virginia is maintained throughout the duration of this Agreement. The insurance policy or policies under which the required insurance is provided shall include the City as an additional insured and shall be effective before the Grantee or its agents, contractors, employees, invitees, licensees, officers, or volunteers enter the Property. The Grantee shall furnish the City with copies of the required additional insured endorsements and such certificates of insurance evidencing the existence of the required insurance coverage as the City may request, which documentation will be reviewed promptly, and neither the Grantee nor its agents, contractors, employees, invitees, licensees, officers, or volunteers shall enter the Property until the City's Chief of Risk Management has approved the required insurance.
- 4.0 Miscellaneous.**
- 4.1 Assignment.** The Grantee shall not transfer or assign its rights or obligations under this Agreement.
- 4.2 Dispute Resolution.**
- 4.2.1 Construction and Interpretation.** Each of the parties has had the opportunity to have its legal counsel review this Agreement on its behalf. If an ambiguity or questions of intent arises with respect to any provision of this Agreement, this Agreement will be construed as if drafted jointly by the parties. Neither the form of this Agreement nor any language herein shall be construed or interpreted in favor of or against either party hereto as the sole drafter thereof.
- 4.2.2 Forum and Venue.** Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of

Richmond, Virginia.

- 4.2.3 **Governing Law.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City and the Grantee in connection with the Agreement, shall be governed by, and construed and interpreted in accordance with, the laws or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia.
- 4.3 **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.
- 4.4 **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Agreement, the City and the Grantee hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; (ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City or the Grantee; (iii) no individual or entity shall obtain any right to make any claim against the City or the Grantee under the provisions of this Agreement; (iv) no provisions of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether that individual or entity is named in this Agreement.
- 4.5 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the Grantee:

Mary Katherine Martin
Friends of the James River Park, President
P.O. Box 4453
Richmond, VA 23220
Friends@jamesriverpark.org

B. To the City:

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

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

Effective as of the date first written above.

GRANTEE:

By: Mary Katherine Martin
Mary Katherine Martin
Friends of the James River Park, President

CITY:

By: _____
Lenora G. Reid
Acting Chief Administrative Officer
Authorized by Ord. No. _____
Adopted _____

APPROVED AS TO TERMS:

Chris Frelke
Chris Frelke
Director
Dept. of Parks, Recreation, and Community Facilities

APPROVED AS TO FORM:

Alexandra M. Griffin 8/11/2020
Alexandra M. Griffin
Assistant City Attorney

Pony Pasture and The Wetlands Study Area

