

Ordinance No. _____

Ordinance Accepting the Bid Submitted by _____ for a Non-Exclusive Easement Agreement to Use and Occupy City-owned Property Located within the City for the Purposes Transmitting and Distributing Electric Power to Provide Electric Services to Property Located 187 Hall Road, Hampton, Virginia

WHEREAS, on May 14, 2025, pursuant to the provisions of §15.2-2100 et. seq. of the Code of Virginia, 1950, as amended, the City offered an easement to qualified electric services providers to provide electric services to that certain property located at 187 Hall Road, Hampton, Virginia, by publicly inviting bids for a non-exclusive easement agreement, subject to the terms and conditions set forth in the Agreement attached hereto as “EXHIBIT 1” and made a part hereof to this Ordinance;

WHEREAS, _____ was one of the highest, qualified, responsible bidders;

WHEREAS, the requirements of §15.2-2101 and §15.2-2102 of the Code of Virginia, 1950, as amended, having been met and after careful consideration of the bids submitted, the bid of _____ should be accepted by City Council; and

WHEREAS, the City should grant the aforesaid electric services easement to _____ subject to the execution of that certain Agreement in substantially the same form as attached hereto as “EXHIBIT 1” by the parties.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Hampton, Virginia as follows:

1. That bid of _____ is hereby accepted; and
2. That the City Manager, or her authorized designee, is hereby authorized to execute the Agreement attached hereto as “EXHIBIT 1”, in substantially the same form as set forth in this Ordinance, and to take any and all actions necessary to carry out the purposes of this Ordinance, subject to approval by the City Attorney.

Right of Way Agreement

THIS RIGHT OF WAY AGREEMENT (the "Agreement"), is made and entered into as of this _____ day of _____, _____, by and between the **CITY OF HAMPTON, VIRGINIA** a municipal corporation of the Commonwealth of Virginia ("**GRANTOR**") and _____, a Virginia public service corporation, doing business in Virginia as _____, with its principal office in _____, Virginia ("**GRANTEE**").

WITNESSETH:

1. That for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, **GRANTOR** grants and conveys unto **GRANTEE**, its successors and assigns, the right, privilege and non-exclusive easement over, under, through, upon and across the property described herein, for the purpose of transmitting and distributing electric power by one or more circuits; for its own internal telephone and other internal communication purposes directly related to or incidental to the generation, distribution, and transmission of electricity; and all equipment, accessories and appurtenances desirable in connection there with, including but not limited to the rights:

1.1 to lay, construct, operate and maintain one or more lines of underground conduits and cables including, without limitation, one or more lighting supports and lighting fixtures as **GRANTEE** may from time to time determine, and all wires, conduits, cables, transformers, transformer enclosures, concrete pads, manholes, handholes, connection boxes, accessories and appurtenances desirable in connection therewith; the width of said non-exclusive easement shall extend **fifteen (15)** feet in width across the lands of **GRANTOR**.

2. The easement granted herein shall extend across the lands of **GRANTOR** situated in the **City of Hampton** Virginia, as more fully described on Plat(s) Numbered **22-25-0008**, attached to and made a part of this Right of Way Agreement; the location of the boundaries of said easement being shown in broken lines on said Plat(s), reference being made thereto for a more particular description thereof.

3. All facilities constructed hereunder shall remain the property of **GRANTEE**. **GRANTEE** shall have the right to inspect (including by aerial drone), reconstruct, remove, repair, improve, relocate on and within the easement area and make such changes, alterations, substitutions, additions to or extensions of its facilities as **GRANTEE** may from time to time deem advisable.

This Document Prepared by _____ and should be returned to:

Initials: _____

PIN: 13005027; 13000880

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4. **GRANTEE** shall have the right to keep the easement clear of all buildings, structures, trees, roots, undergrowth and other obstructions which would interfere with its exercise of the rights granted hereunder, including, without limitation, the right to trim, top, retrim, retop, cut and keep clear any trees or brush inside and outside the boundaries of the easement that may endanger the safe and proper operation of its facilities. **GRANTEE** will remove all such trees and limbs cut by **GRANTEE** from **GRANTOR'S** property at **GRANTOR'S** request.

5. For the purpose of exercising the right granted herein, **GRANTEE** shall have the right of ingress to and egress from this easement over such private roads as may now or hereafter exist on the property of **GRANTOR**. The right, however, is reserved to **GRANTOR** to shift, relocate, close or abandon such private roads at any time. If there are no public or private roads reasonably convenient to the easement, **GRANTEE** shall have such right of ingress and egress over the lands of **GRANTOR** adjacent to the easement. **GRANTEE** shall exercise such rights in such manner as shall occasion the least practicable damage and inconvenience to **GRANTOR**.

6. **GRANTEE** shall repair damage to roads, fences, or other improvements (a) inside the boundaries of the easement (subject, however, to **GRANTEE's** rights set forth in Paragraph 4 of this Right of Way Agreement) and (b) outside the boundaries of the easement and shall repair or pay **GRANTOR**, at **GRANTEE's** option, for other damage done to **GRANTOR'S** property inside the boundaries of the easement (subject, however, to **GRANTEE'S** rights set forth in Paragraph 4 of this Right of Way Agreement) and outside the boundaries of the easement caused by **GRANTEE** in the process of the construction, inspection, and maintenance of **GRANTEE's** facilities, or in the exercise of its right of ingress and egress; provided **GRANTOR** gives written notice thereof to **GRANTEE** within sixty (60) days after such damage is reported to the **GRANTOR** by the **GRANTEE** or is otherwise discovered by the **GRANTOR**.

7. **GRANTOR**, its successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights hereby granted, provided such use does not interfere with **GRANTEE's** exercise of any of its rights hereunder. **GRANTOR** shall not have the right to construct any building, structure, or other above ground obstruction on the easement; provided, however, **GRANTOR** may construct on the easement fences, landscaping (subject, however, to **GRANTEE's** rights in Paragraph 4 of this Right of Way Agreement), paving, sidewalks, curbing, gutters, street signs, and below ground obstructions as long as said fences, landscaping, paving, sidewalks, curbing, gutters, street signs, and below ground obstructions do not interfere with **GRANTEE's** exercise of any of its rights granted hereunder.

8. **GRANTEE's** right to assign or transfer its rights, privileges and easements, as granted herein, shall be strictly limited to the assignment or transfer of such rights, privileges and easements to any business which lawfully assumes any or all of **GRANTEE's** obligations as a public service company or such other obligations as may be related to or incidental to **GRANTEE's** stated business purpose as a public service company; and any such business to which such rights, privileges and easements may be assigned shall be bound by all of the terms, conditions and restrictions set forth herein.

9. If there is an Exhibit A attached hereto, then the easement granted hereby shall additionally be subject to all terms and conditions contained therein provided said Exhibit A is executed by **GRANTOR** contemporaneously herewith and is recorded with and as a part of this Right of Way Agreement. If the terms and conditions of said Exhibit A are in conflict with the terms and conditions of this Right of Way Agreement, then the terms and conditions of said Exhibit A shall control.

10. Whenever the context of this Right of Way Agreement so requires, the singular number shall mean the plural and the plural the singular.

Initials: _____

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11. **GRANTOR** represents that it is seised of and has the right to convey this easement and the rights and privileges granted hereunder; that **GRANTEE** shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement, rights and privileges; and that **GRANTOR** shall execute such further assurances thereof as may be reasonably required.

12. The individual executing this Right of Way Agreement on behalf of **GRANTOR** warrants that **GRANTOR** is a municipal corporation duly organized and existing under the laws of the state hereinabove mentioned and that he or she has been duly authorized to execute this easement on behalf of said municipal corporation.

NOTICE TO LANDOWNER: You are conveying rights to a public service corporation. A public service corporation may have the right to obtain some or all of these rights through exercise of eminent domain. To the extent that any of the rights being conveyed are not subject to eminent domain, you have the right to choose not to convey those rights and you could not be compelled to do so. You have the right to negotiate compensation for any rights that you are voluntarily conveying.

IN WITNESS WHEREOF, GRANTOR has caused its corporate name to be signed hereto by its authorized officer or agent, described below, on the date first above written.

Corporate Name: The City of Hampton, Virginia, a municipal corporation of the Commonwealth of Virginia

By (Signature): _____

Name (Print): Mary Bunting Its: City Manager

State of _____

City/County of _____

The foregoing instrument was acknowledged before me ☐ In Person or by ☐ Remote notarization

on this _____ day of _____, _____, by Mary Bunting, City Manager
(Name of Officer or agent) (Title of officer or agent)

on behalf of the City of Hampton, Virginia, a Virginia municipal corporation.

Notary Public (Print Name)

Notary Public (Signature)

Notary Registration Number: _____
My Commission Expires: _____

(Affix Notary Seal Above Line)

Approved as to Form:

Approved as to Content:

By: _____
City Attorney's Office

By: _____
Department of Public Works

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Right of Way Agreement

Exhibit A

THIS RIGHT OF WAY AGREEMENT (the "Agreement") is made and entered into as of this _____ day of _____, _____, by and between the **CITY OF HAMPTON, VIRGINIA**, a municipal corporation of the Commonwealth of Virginia ("GRANTOR"), and _____, a Virginia public service corporation doing business in Virginia as _____ ("GRANTEE") is hereby amended as follows:

1. This Right of Way Agreement is for a non-exclusive easement, and it shall be limited in duration and shall remain in force for a term of forty (40) years ("Term"). At the end of such Term, this Right of Way Agreement shall automatically terminate, at which time GRANTEE shall remove all of its facilities and property from GRANTOR'S property and GRANTEE shall peacefully and quietly surrender to the GRANTOR all rights granted herein by this Agreement. Prior to the termination of the Agreement, GRANTOR and GRANTEE may negotiate and enter into a new Right of Way Agreement or other easement agreement for an additional term of years.
2. In the event that the removal of GRANTEE's facilities is otherwise desired by GRANTOR from the easement location set forth in this Right of Way Agreement, then GRANTOR agrees that it will pay the reasonable costs of removing and placing GRANTEE's wires and facilities at another suitable location on property owned by the GRANTOR. In the event that this Right of Way Agreement is revoked or terminated, all facilities constructed hereunder shall remain the property of GRANTEE.
3. GRANTOR covenants and agrees that the grant of the easement set forth in this Agreement shall constitute a covenant running with the land for the benefit of the GRANTEE and GRANTEE's successors and assigns and that this easement shall be binding upon the successors and assigns of the GRANTOR.
4. GRANTEE'S successors and assigns shall only use the easement granted in this Agreement for the purposes of transmitting and distributing electric power as a public service corporation and for no other purposes.
5. Liability/Insurance:
 - 5.1 **GRANTEE** shall indemnify and hold **GRANTOR**, its officers, employees and agents harmless from any claims, liability and costs, including but not limited to reasonable attorney fees, arising from damage or injury, actual or claimed, to property or persons occurring or allegedly occurring from **GRANTEE's** use of the **GRANTOR's** property as set forth in this Agreement. Upon written notice from the **GRANTOR**, **GRANTEE** shall defend the **GRANTOR**, its officers, employees and/or agents against any action or proceeding brought thereon, provided **GRANTEE** will have no obligation to hold harmless **GRANTOR** to the extent any damage or injury is caused by **GRANTOR** as set forth in paragraph 5.2 below. Maintenance of the insurance referred to in paragraph 5.3 of this Agreement shall not affect **GRANTEE's** obligations under this paragraph, and the limits of such insurance shall not constitute a limit on the liability of **GRANTEE**.
 - 5.2 To the extent permitted by law, and without waiving its sovereign immunity or other governmental immunities, if any injuries or damages (including, without limitation, death) resulted from the sole willful misconduct or sole gross negligence of the **GRANTOR** or its agents, employees, and officials, then **GRANTOR** shall be responsible to defend such actions against it.
 - 5.3 **GRANTEE** agrees to maintain commercial general liability coverage in the amount of not less than \$1,000,000. per occurrence with a \$2,000,000 aggregate. In addition, **GRANTEE** shall maintain umbrella or excess coverage in a minimum amount of \$2,000,000 and Workers' Compensation per state statute. Business auto or commercial auto is required with coverage of at least \$1,000,000 per occurrence. **GRANTEE** may self-insure for all the insurance obligations contained herein.

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GRANTOR: The City of Hampton, Virginia
a municipal corporation of the Commonwealth of Virginia

Signature: _____

By: Mary Bunting
(Print Name)

Its: City Manager
(Print Title)

Approved as to Form:

By: _____
City Attorney's Office

Approved as to Content:

By: _____
Department of Public Works

This Right of Way Agreement and attached Exhibit A are agreed to and accepted by:

GRANTEE: _____, a Virginia public service corporation, doing
business in Virginia as _____

Signature: _____

By: _____
(Print Name)

Its: _____
(Print Title)

DEVID No(s). 22-25-0008

