

# Section J 33

## Utilities Privatization Model Easement

DISTRIBUTION DATE: \_\_\_\_\_; CENAO-RE-A \_\_\_\_\_ TRADOC \_\_\_\_\_; FT. \_\_\_\_\_  
GRANTEE \_\_\_\_\_

NOTICE TO OFFERORS: The purpose of this model easement is to give to prospective offerors a preview of the approximate content of the easement that will be issued to the new owner of the utility system to which the easement applies. The final easement document may differ from this model easement depending on the installation, the system to which it applies, the conditions at the time of transfer, and other factors as appropriate.

EASEMENT NO. DACA \_\_\_\_\_  
DEPARTMENT OF THE ARMY  
EASEMENT FOR \_\_\_\_\_

LOCATED ON  
FORT \_\_\_\_\_, VIRGINIA

THE SECRETARY OF THE ARMY, under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2688 and Title 10, United States Code, Section \_\_\_\_\_, **(use Title 10, United States Code, Section 2668, for substations for electric power transmission lines, pump stations for gas, water and sewer, poles and lines for electric power and communications transmission and distribution; use Title 10, United States Code, Section 2669, for gas, water and sewer pipelines)**, having found that the granting of this easement is not incompatible with the public interest, hereby grants to:

\_\_\_\_\_, hereinafter referred to as the Grantee, an easement for construction, operation, maintenance, repair and replacement of \_\_\_\_\_, including all right, title and interest in and to all appurtenances located thereon, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibit(s) \_\_\_\_\_, hereinafter referred to as the premises, and which are attached hereto and made a part hereof. This easement is issued in conjunction with Utility Distribution Contract No. DACA \_\_\_\_\_, hereinafter referred to as the contract, between the Government and the Grantee.

THIS EASEMENT is granted subject to the following conditions.

### 1. TERM

This easement is hereby granted for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_, \_\_\_\_\_.

### 2. CONTRACT-EASEMENT RELATIONSHIP

This easement and the contract shall not merge, but the terms and conditions of each shall survive the execution and delivery of this easement and any subsequent recordation thereof. In the event the terms and conditions of this easement conflict with the terms and conditions of the

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contract, the terms and conditions of the contract shall prevail. A default under the contract shall constitute a default under this easement. Unless otherwise specified in this easement, any and all Government rights and remedies as set forth in the contract and in this easement will be available to the Government on a cumulative basis to enforce the provision of this easement.

**3. TRANSFER OF OWNERSHIP**

- a. The Fort \_\_\_\_\_ system consists of, but is not limited to:

PLACE DESCRIPTION HERE

b. The ownership of the Fort \_\_\_\_\_ Military Installation's \_\_\_\_\_ system is hereby transferred by the Government and accepted by the Grantee.

**4. CONSIDERATION**

The consideration for this easement shall be the transfer of the facilities and the operation and maintenance of these facilities for the benefit of the United States and the general public in accordance with the terms herein set forth.

**5. NOTICES**

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the Grantee, to \_\_\_\_\_, and, if to the United States, to the District Engineer, \_\_\_\_\_; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

**6. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include assignees, transferees, and their duly authorized representatives.

**7. SUPERVISION BY THE INSTALLATION COMMANDER**

a. The construction, operation, maintenance, repair, or replacement of said facilities, including culverts and other drainage facilities, shall be subject to the approval of the Installation Commander, Fort \_\_\_\_\_, hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

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b. The Grantee shall not conduct or permit its subgrantees to conduct any subsurface excavation, digging, drilling, or other disturbance of the surface without the prior written approval of the Government.

c. The Grantee shall not construct or make or permit its subgrantee or assigns to construct or make any alterations, additions, or improvements to, or installations upon, or otherwise modify or alter the premises in any way which may adversely affect the (*INSTALLATION'S NAME*) military installation's historic register or historic register-eligible properties, cultural resources, environmental programs, environmental cleanup, human health, or the environment, without the prior written consent of the Government. Such consent may include a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. For construction or alterations, additions, modifications, improvements, or installations (collectively "work"), in the proximity of operable units or solid waste management units (SWMUs) that are part of any Federal or State RCRA Corrective Action Program, State Remediation Consent Orders, or the Army IRP, such consent may include a requirement for written approval by the Government's Remedial Project Manager. Except as such written approval shall expressly provide otherwise, all such approved alterations, additions, modifications, improvements, and installations shall become Government property when annexed to the premises.

## 8. APPLICABLE LAWS AND REGULATIONS

The Grantee shall comply with all applicable Federal, state, county, and municipal laws, ordinances and regulations wherein the premises are located, including, but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCBs). In accordance with the terms and conditions of the contract, Grantee shall be responsible for compliance with the current versions and when state, federal or local laws/regulations are changed or new ones are put into effect.

## 9. CONDITION OF PREMISES

The Grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

## 10. INSPECTION AND REPAIRS

The Grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

## 11. PROTECTION OF GOVERNMENT PROPERTY

The Grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the Grantee under this easement and shall exercise due

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diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

**12. RIGHT TO ENTER**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Grantee, and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**13. TRANSFERS AND ASSIGNMENTS**

Without prior written approval by said District Engineer, the Grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege, or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon the representatives, successors and assigns of the Grantee and shall inure to the benefit of the representatives, successors and assigns of the Government.

**14. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**15. SUBJECT TO EASEMENTS**

a. This easement is subject to all other existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the Grantee.

b. This easement is not exclusive. Utility poles and duct banks, currently existing or subsequently erected, may be used jointly by the Government and its suppliers/contractors without charge. This easement is subject to existing structures and improvements and the

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government will not be required to relocate existing facilities, improvements, or encroachments on the easement premises.

c. In accordance with the terms and conditions of said contract, Grantee shall be responsible for obtaining any needed easements, licenses and/or right-of-ways that are not herein provided. Grantee shall be solely responsible for obtaining said rights, if needed for the \_\_\_\_\_ system, for crossings either above or below ground, in connection with non-government railroad right-of-ways an/or non-government owned road right-of-ways.

d. The Grantee shall have the right to negotiate with other providers for any attachments to existing and new poles owned by the Grantee. However, such agreements must have the approval of said officer. Joint use of Grantee's utility poles by the Government and its suppliers/contractors shall be in accordance with the provision of Contract No. DACA \_\_\_\_\_ at paragraph \_\_\_\_\_.

#### 16. RELOCATION OF FACILITIES

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the Grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within thirty (30) days after such notice, the United States may cause such relocation. Depending on the size and urgency associated with any such relocation, in the sole discretion of the United States, additional time for said relocation may be granted by the government.

#### 17. TERMINATION

This easement may be terminated by the Secretary in whole or in part upon ninety (90) days written notice to the Grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by Secretary for failure of the Grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment, or upon termination of the utility distribution contract between the Government and the Grantee.

#### 18. SOIL AND WATER CONSERVATION

The Grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Grantee during the term of this easement, and the Grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the Grantee shall be corrected by the Grantee as directed by said officer.

#### 19. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties hereto shall protect the

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premises against pollution of its air, ground, and water. The Grantee shall promptly comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate, or local governmental agency are hereby made a condition of this easement. The Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance. The Grantee shall promptly report to said officer any incident for which the Grantee is required to notify a federal, state or local regulatory agency of an issue of non-compliance with any applicable law or regulation. Grantee shall promptly provide said officer with copies of any follow-on written notices or reports required by a regulatory agency as a result of any such incident. The Grantee will also be solely responsible for compliance with any enforcement actions initiated by federal, state, or local authorities. To the extent that the federal government retains any sovereign immunity, the Grantee is not entitled to claim any such immunity.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state, and local laws and regulations, including the installation's Integrated Pest Management Plan. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises. The Grantee shall submit written documentation to include the date any pesticides were applied, the name of certified pesticide applicator who performed the work, the location of the application, the amount and type of pesticide used, and any other relevant documentation as required. If the said officer determines that additional environmental analysis is necessary as a result of an initiative of the Grantee, then the Grantee will be responsible for all costs incurred to prepare the necessary document(s).

c. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Grantee's activities, the Grantee shall be liable to restore the damaged resources. If the Grantee fails to conduct any necessary remediation in a satisfactory manner, as determined by said officer and regulatory authorities, then the Army may correct the deficiency and address reimbursement for costs in accordance with rights established under the service contract, rights established by applicable laws or regulations, or may pursue the matter as an affirmative claim or through litigation that would be managed by the U.S. Army Claims Service.

d. For hazardous chemical or POL spills caused by or under the control of the Grantee, the Grantee will contain the spill with Grantee-furnished materials in accordance with the Integrated Contingency Plan (ICP). While the spill is being contained, the (*INSTALLATION'S NAME*) Fire and Emergency Services Division and environmental management office shall be notified immediately. Containment and notification should occur simultaneously. Cleanup and restoration shall be the responsibility of the Grantee.

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e. The Emergency Planning and Community Right-to-Know Act (EPCRA) requires that site-specific information concerning hazardous chemicals use and releases be provided. The Grantee is required to maintain an inventory of hazardous materials under its control on the installation. The grantee is not allowed to store hazardous materials on the installation, and may bring onto the installation only those materials needed to fulfill the grantee's purpose in regards to management of the utility. An inventory report will be provided to the chief of the environmental management office on a quarterly basis. Inventories of hazardous substances shall include quantities received, amount used, quantities turned in for disposal, and copies of material safety data sheets (MSDSs). The amount not accounted for will be considered as quantities that were released to the environment. Questions in reference to the EPCRA can be directed to the chief of the environmental management office.

**20. HISTORIC PRESERVATION**

a. The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify said officer and the chief of the environmental management office and protect the site and material from further disturbance until said officer gives clearance to proceed.

b. The easement premises contain Building No(s). (***GIVE SPECIFIC BUILDING NUMBERS***) which is (are) eligible for listing, or in the National Register of Historic Places. Such properties will be maintained by the Grantee in accordance with the recommended approaches in the Secretary of the Interior's Standards for Rehabilitation and Illustrated Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service 1992) (Secretary's Standards). The Grantee will notify the Department of the Army of any proposed rehabilitation and structural or landscape alterations to these buildings or properties prior to undertaking said rehabilitation or alteration. Any approved rehabilitation or structural or landscape alteration to these buildings or properties must adhere to the Secretary's Standards. If the Grantee does not receive a written objection from the Department of the Army within 45 days, the Grantee may proceed with the proposed rehabilitation or alterations. The Grantee is still responsible for securing approval of the installation commander in accordance with paragraph 5 (above).

**21. NON-DISCRIMINATION**

The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the premises.

**22. RESTORATION**

On or before the termination or expiration without renewal of this easement, the Grantee shall, without expense to the United States, and within such time as said officer may indicate, remove all properties and materials except said facilities and restore the premises to the

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satisfaction of said officer. In the event the Grantee shall fail to remove said properties and materials and restore the premises, the United States shall have the option to take over said properties, materials and facilities without compensation, or to remove same and perform the restoration at the expense of the Grantee, and the Grantee shall have no claim for damages against the United States or its officers or agents for such action.

**23. DISCLAIMER**

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

**24. NON-TRANSFERRABLE RIGHTS**

Conditions \_\_, \_\_, \_\_, and \_\_ are non-transferable rights of the United States. In the event of disposal of the United States' underlying fee, these rights and conditions will not transfer with the land.

**25. RESPONSIBILITY TO OBTAIN REQUIRED ENVIRONMENTAL PERMITS**

The Grantee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under this Easement, independent of any existing permits.

**26. ACCESS TO INSTALLATION**

a. The Grantee shall have the right to enter the installation to exercise its rights under this easement, subject to certain restrictions and/or special conditions required by the installation. Access will be restricted in secure areas, live training areas, and during times when the installation is secured due to threat and alert. The Grantee's personnel will be required to provide positive identification (personal and corporate). Such personnel will be required to observe installation safety, security, and environmental regulations. It is expressly understood that the Government may limit or restrict the right of access granted in any manner considered, in the Government's sole discretion, necessary (e.g., national security, public safety).

b. Access for major construction projects shall be coordinated with said official at least ten (10) working days prior to performance of work.

c. Personnel operating a privately owned vehicle on the installation must comply with the installation's requirements.

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d. Grantee-owned vehicles operated on the installation shall have proper state registration, proof of insurance and a valid operator's license, and meet local, state, and Federal safety requirements.

**27. DISTRIBUTION SYSTEM MAPPING AND RECORDS**

a. The maps attached as Exhibit \_\_\_\_ reflect the most current information available regarding the existing components of facilities.

b. The Grantee shall maintain accurate maps and records for the facilities during the easement term and as part of the Grantee's pre-transfer surveys, the Grantee shall identify changes to and update the facilities maps to insure delineation of all easements. The Grantee shall provide the installation and the District Engineer updates within six (6) months following system transfer and annually thereafter in both hard copy (full size) and electronic media formats. This easement will be amended by supplemental-agreement to incorporate updated maps as exhibits.

c. All mapping data shall conform to National Map Accuracy Standards and the Department of Defense CADD/GIS Technology Center Spatial Data Standards (SDS). Horizontal control shall be based on the Virginia State Plane Coordinate System (South Zone) North American Datum of 1983 (NAD 83) and Vertical Control shall be based on the National Geodetic Vertical Datum of 1929, 1972 adjustment (NGVD 1929, 1972 adjustment). The image area shall be 40" x 25" on a map sheet of 42" x 30".

**28. LIMITED USE OF DISTRIBUTION FACILITIES**

The Grantee shall not use the distribution facilities of the installation between the connection points to the upstream utility service providers and the downstream service drop delivery points within the installation to serve or benefit areas or customers outside the serviced premises without the prior permission of the Government.

**29. ENVIRONMENTAL SCREENING DOCUMENT**

An Environmental Screening Document (ESD) documenting the known history of the premises with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation, or termination of this easement or any portion of this easement, another ESD shall be prepared by the Grantor which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Grantee in accordance with the condition on RESTORATION.

**30. ENVIRONMENTAL CONDITIONS**

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The Grantee shall be solely responsible for compliance with any enforcement actions initiated by federal, state, or local authorities. Additional environmental analysis may be required to stay in compliance with NEPA and/or the Endangered Species Act. The Grantee shall be responsible for preparing any necessary documents that are driven, in whole or in part, by Grantee initiatives. Draft documents should be submitted to said officer and the chief of the environmental management office for review and approval before they are submitted to regulatory agencies. Grantee shall also be responsible for costs incurred to meet public participation obligations of NEPA, including but not limited to printing, publication of notices and conduct public meetings.

**31. IMPOSITION OF ADDITIONAL ARMY ENVIRONMENTAL REQUIREMENTS**

The Department of the Army may impose additional environmental protection conditions and restrictions during the terms of this easement that it deems necessary by providing written notice of such conditions or restrictions to the Grantee. The cost of additional environmental requirements may be pursued under the provisions of the appropriate contract clause(s).

**32. PROHIBITION OF COMMINGLING ARMY AND NON-ARMY HAZARDOUS WASTES.**

*(INSTALLATION'S NAME)*'s accumulation points for hazardous and other wastes will not be used by the Grantee or any subgrantee. Neither will the Grantee or subgrantee permit its hazardous wastes to be commingled with hazardous waste of the Department of the Army.

**33. REQUIREMENT FOR HAZMAT SPILL PLAN.**

The Grantee shall prepare and maintain a Government-approved plan for responding to hazardous waste, fuel, and hazardous material spills prior to commencement of operations on the premises. Such a plan shall be independent of the *(INSTALLATION'S NAME)* plan and, except for initial fire response and/or spill containment, shall not rely on installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of any Government officer conducting timely cleanup actions, the Grantee agrees to reimburse the Government for its costs.

***THE FOLLOWING CONDITIONS WILL BE INCLUDED IN THE EASEMENT AS APPLICABLE***

**34. LEAD-BASED PAINT WARNING AND COVENANT:**

a. The premises do not contain residential dwellings and are not being outgranted for residential purposes. The Grantee is notified that the easement premises contains buildings, structures, material, and equipment, built prior to 1978 that may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to use of easement premises.

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b. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Screening Document (ESD), which has been provided to the Grantee. Additionally, the following reports pertaining to lead-based paint and/or lead-based paint hazards have been provided to the Grantee: \_\_\_\_\_. The grantee hereby acknowledges receipt of all of the information described in this subparagraph.

c. The Grantee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Easement.

d. The Grantee shall not permit use of any buildings or structures on the easement premises for residential habitation without first obtaining the written consent of the Army. The Grantee agrees to be responsible for any future remediation of lead-based paint found to be necessary on the easement premises.

e. The Army assumes no liability for remediation or damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, subgrantee, or to any other person, including members of the general public, arising from or incident to possession and/or use of any portion of the easement premises containing lead-based paint as residential housing. The Grantee further agrees to indemnify and hold harmless the Army, its officers, agents, and employees, from and against all suits, claims, demands, actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of any portion of the easement premises containing lead-based paint as residential housing. This section and the obligations of the Grantee hereunder shall survive the expiration or termination of this Easement and any conveyance of the easement premises to the Grantee. The Grantee's obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section.

**35. NOTICE OF THE PRESENCE OF ASBESTOS COVENANT:**

a. The Grantee is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials ("ACM") have been found on the easement premises, as described in the Environmental Screening Document (ESD). The ACM on the easement premises does not currently pose a threat to human health or the environment. All friable asbestos that posed a risk to human health has been removed, repaired, encapsulated, or enclosed.

b. The Grantee covenants and agrees that its use and occupancy of the easement premises will be in compliance with all applicable laws relating to asbestos, and that the Grantor assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death, to the Grantee, its successors, or assigns, subgrantees, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal,

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handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the easement premises described in this Easement, whether the Grantee, its successors, or assigns have properly warned or failed to properly to warn the individual(s) injured. The Grantee agrees to be responsible for any future remediation of asbestos found to be necessary on the easement premises.

**36. NOTICE OF POLYCHLORINATED BIPHENYL (PCB) EQUIPMENT AND COVENANT:**

a. The grantee is hereby informed and does acknowledge that equipment containing polychlorinated biphenyls (PCBs) exists on the property, as described in the final base-wide Environmental Screening Document (ESD). Any PCB contamination or spills related to such equipment has been properly remediated prior to execution of the Easement. The PCB equipment does not currently pose a threat to human health or the environment.

b. Upon request, the Army agrees to furnish to the Grantee any and all records in its possession related to such PCB equipment necessary for the continued compliance by the Grantee with applicable laws and regulations related to the use and storage of PCBs or PCB containing equipment.

c. The Grantee covenants and agrees that its continued possession, use, and management of any PCB containing equipment will be in compliance with all applicable laws relating to PCBs and PCB containing equipment, and that the Army assumes no liability for the remediation of PCB contamination or damages for personal injury, illness, disability, or death to the Grantee, its successors or assigns, subgrantees, or to any other person, including members of the general public, arising from or incident to use, handling, management, disposition, or other activity causing or leading to contact of any kind whatsoever with PCBs or PCB containing equipment, whether the Grantee, its successors, or assigns have property warned or failed to properly warn the individual(s) insured. The Grantee agrees to be responsible for any remediation of PCBs or PCB containing equipment found to be necessary from its use or possession during the term of the Easement. This section and the obligations of the Grantee hereunder shall survive the expiration or termination of this easement and any conveyance of the easement premises to the Grantee.

**37. REQUIREMENTS FOR APPROVAL FOR STORAGE OF NON-DOD HAZARDOUS WASTES.**

The Grantee shall not use the easement premises for the storage or disposal of non-Department of Defense owned hazardous or toxic materials, as defined in 10 U.S.C. 2692, unless authorized under 10 U.S.C. 2692 and properly approved by the Government.

**38. REQUIREMENTS FOR ENDANGERED OR OTHER PROTECTED SPECIES.**

a. The Grantee shall in no way interfere with the management of or modify habitat designated for the management of federally listed endangered or threatened species or other

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protected species without coordinating with installation's environmental management office. Any actions with the potential to disturb vegetation, animals, soils, or initiate soil erosion will be coordinated through the installation's environmental management office. Recurring maintenance of easements will be established through a Memorandum of Agreement with the installation DPW to establish acceptable standard methods including the use of herbicides, removal of vegetation by mechanical means, transport of equipment for same purposes, placement of utilities underground, or other actions with the potential to disturb soils, or modify the environment.

b. The installation has an Integrated Natural Resources Management Plan (INRMP), which will be made available for review.

**39. UNEXPLODED ORDNANCE**

The Grantee will be aware that since the premises are on a military installation with a history of ordnance and explosives (OE) use, there is a potential for OE to be present on the property. In the event the Grantee or its successors and assigns should discover any OE on the property, they shall not attempt to remove or destroy it, but they shall immediately notify the military police. Competent U.S. Army Explosive Ordnance personnel will be dispatched promptly to dispose of such OE properly at no expense to the government.

**40. RIGHT-OF-WAY WIDTH FOR DISTRIBUTION SYSTEM**

The right-of-way for above ground lines/pipes shall be a total of 30 feet in width. The right-of-way for lines/pipes shall be a total of 15 feet in width (7.5 feet on each side of the underground line/pipe). **(Easement widths may be tailored to the specific system to which the easement applies.)** The easement premises identified on attached Map Exhibit contains those line/pipes for which current mapping exists. The Grantee will locate and identify all facilities that are not shown on the attached maps. The Grantee will provide updated mapping of previously unmapped facilities to the installation's DPW in electronic media formats. When all facilities have been identified by the Grantee, the Grantee shall furnish updated map in electronic-media format to the installation's DPW.

**41. DESCRIPTION OF RIGHT-OF-WAY FOR \_\_\_\_\_**

The right-of-way for \_\_\_\_\_ **(related facilities such as substations/switch stations, gas valve yards, pump stations, etc.)** containing operational components of the Grantee owned system shall include the entire area inside the fence line that encloses the area and an area of 4 feet outside of the perimeter of the fence line.

**42. MAINTENANCE OF RIGHT-OF-WAYS**

All right-of-ways shall be maintained by the Grantee. All herbicide applications shall be subject to approval by the Government. This includes but is not limited to type of herbicide and method of application. The trimming of trees in the right-of-ways, around buildings, and in

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cantonment areas of the installation, shall be subject to approval by the Government. Trees that fall from outside of the easement premises and land inside the right-of-way shall be the responsibility of the easement holder to clear and dispose of all debris. Tree limbs may be chipped and disposed of on selected portions of the right-of-way as approved by the Government.

**43. DIGGING PERMITS AND NOTIFICATIONS**

The Grantee will subscribe to “No Cuts”, “Miss Utility”, or similar notification service in Virginia. For routine excavations, the Grantee shall provide five (5) working days notice of intention to dig to both the said official and the notification services entity and notice to others, if any, that hold easement, license, or permit rights over the premises. Notification shall include name, address, and phone number of person making request, exact location, extent, nature, and duration of the excavation location, no more than 24 hours prior to providing notification, and shall meet with marking services personnel by appointment at the site (if requested) to discuss details. No routine, non-emergency digging is allowed without prior approval. Digging without notification and approval will be at the risk of the party performing work, and such party will be liable for damages and repairs.

THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

The terms and conditions found herein are hereby accepted

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_