

NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**

**EASEMENT FOR \_\_\_\_\_**

**UTILITY SYSTEM**

**LOCATED ON**

\_\_\_\_\_  
(Installation)

\_\_\_\_\_  
County, State

**THE SECRETARY OF THE ARMY**, under and by virtue of the authority vested in the Secretary by 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 communication transmission and distribution; use Title 10, United States Code, Section 2669, for gas, water and sewer pipelines, or use Title 10, United States Code, Section 2688 for utility systems for the generation and supply of electric power, for the treatment or supply of water, for the collection or treatment of wastewater, for the generation or supply of steam, hot water, and chilled water, for the supply of natural gas, or for the transmission of telecommunications], [for BRAC conveyances include the following A and by the Defense Authorization Amendments and Base Closure and Realignment Act, Public Law 100-526, as amended and the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended], 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 \_\_\_\_\_

\_\_\_\_\_,  
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.

DRAFT EASEMENT

SP0600-01-R-0000

**THIS EASEMENT** is granted subject to the following conditions.

**(TERM MAY BE PERPETUAL OR INDEFINITE - SHOULD BE NO LESS THAN THE TERM OF THE UTILITY CONTRACT, if any)**

**1. TERM**

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

**2. CONSIDERATION [USE WHEN VALUE IS NOT RESERVED]**

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.

**2. CONSIDERATION [USE WHEN VALUE IS RESERVED]**

As consideration for the facilities conveyed herein, the Grantee shall pay the United States the amount of \_\_\_\_\_ ( \_\_\_\_\_ ), the receipt and sufficiency of which is hereby acknowledged. Further, the Grantee shall operate and maintain said facilities located within the easement area for the benefit of the United States and the general public in accordance with the terms herein set forth.

**2. CONSIDERATION [USE WHEN ABUSINESS VALUE@ IS PART OF CONSIDERATION]**

As consideration for the facilities conveyed herein, the Grantee shall pay the United States the amount of \_\_\_\_\_ ( \_\_\_\_\_ ). Said amount shall be paid by the Grantee as a reduction in charges for utility services provided by the Grantee to the (Installation). The terms and conditions of such payment are set forth in Contract No. \_\_\_\_\_ between the Grantee and the (Installation). Further, the Grantee shall operate and maintain said facilities located within the easement area for the benefit of the United States and the general public in accordance with the terms herein set forth.

**3. 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, Attention: Chief, Real Estate Division, \_\_\_\_\_,

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.

#### **4. 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.

#### **5. SUPERVISION BY THE INSTALLATION COMMANDER**

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the Installation Commander, \_\_\_\_\_ (Installation), 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.

#### **6. 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 (PCB's).

#### **7. 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.

#### **8. 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.

#### **9. 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 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.

**10. 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.

**11. 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 and shall inure to the benefit of the representatives, successors and assigns of the Grantee.

**12. HOLD HARMLESS FOR EASEMENT ACTIVITIES**

The Grantee shall hold the United States harmless from any and all claims for damages to property or injuries to persons which may arise from or be incident to the exercise of this easement, 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, not including damages due to the fault or negligence of the United States or its contractors or for claims or damages not related to the easement activities.

**13. SUBJECT TO EASEMENTS**

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.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

**14. REQUIRED SERVICES**

The Grantee shall furnish through said facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the Grantee for similar service.

**15. 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 ninety (90) days after such notice, the United States may cause such relocation (**THE FOLLOWING CLAUSE MAY BE DELETED**) (at the sole expense of the Grantee).

## 16. TERMINATION

This easement may be terminated by the Secretary upon (**TERMINATION PERIOD MAY BE 30 DAYS TO 2 YEARS**) \_\_\_\_ days written notice to the Grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use (**THE FOLLOWING CLAUSE MAY BE DELETED**) (or disposal) of said land by the United States, or it may be revoked by the 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.

## 17. 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.

## 18. ENVIRONMENTAL PROTECTION

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

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. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

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.

## **19. HISTORIC PRESERVATION**

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 protect the site and material from further disturbance until said officer gives clearance to proceed.

## **20. 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.

## **21. RESTORATION**

On or before the expiration (**MAY ADD:** without renewal) or termination of this easement, the Grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the Grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities 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.

## **22. 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.

## **23. NON-TRANSFERRABLE RIGHTS**

Conditions 5, 8, 9, 10, 12, 14, 15 and 21 are non-transferrable rights of the Grantor. In the event of disposal of the United States' underlying fee, these rights and conditions will not transfer with the land.

**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 \_\_\_\_\_, \_\_\_\_\_.

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**THIS EASEMENT** is also executed by the Grantee this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

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(Add Acknowledgments)