

INTRODUCED: September 11, 2023

AN ORDINANCE No. 2023-254

To provide for the granting by the City of Richmond to the person, firm or corporation to be ascertained in the manner prescribed by law of an easement upon, over, under, and across certain property located in Joseph Bryan Park at 4308 Hermitage Road for the construction, maintenance, and operation of improvements and associated appurtenances for the generation, distribution and transmission of electricity in accordance with a certain Right of Way Agreement.

Patron – Mayor Stoney and Ms. Lambert

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: OCT 10 2023 AT 6 P.M.

WHEREAS, following the introduction of this ordinance, the City Clerk has caused to be advertised, once a week for two successive weeks in a newspaper of general circulation published in the city of Richmond, a descriptive notice of the Right of Way Agreement attached to this ordinance, which notice:

1. included a statement that a copy of the full text of the ordinance is on file in the office of the City Clerk;
2. invited bids for the easements offered to be granted in and by this ordinance, which bids were to be:

AYES: 9 NOES: 0 ABSTAIN:

ADOPTED: OCT 10 2023 REJECTED: STRICKEN:

- a. delivered in writing to the presiding officer of the Council of the City of Richmond at its regular meeting to be held on October 10, 2023, at 6:00 p.m., in open session;
 - b. presented by the presiding officer to the Council; and
 - c. then dealt with and acted upon in the mode prescribed by law;
3. required that all bids for the easement hereby offered to be granted shall be submitted in writing as required by law; and
 4. reserved the Council's right to reject any and all bids; and

WHEREAS, the deadline for the receipt of bids has passed, all bids have been received, and the Council is prepared to act in accordance with sections 15.2-2102 or 15.2103, or both, of the Code of Virginia (1950), as amended;

NOW, THEREFORE,

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That there shall be granted in the manner prescribed Article VII, Section 9 of the Constitution of Virginia and Title 15.2, Chapter 21, Article 1, §§ 15.2-2100—15.2-2108.1:1 of the Code of Virginia (1950), as amended, an easement upon, over, under, and across certain property located in Joseph Bryan Park at 4308 Hermitage Road for the construction, maintenance, and operation of improvements and associated appurtenances for the generation, distribution and transmission of electricity on that property as described and under the conditions set forth in the Right of Way Agreement, a copy of which is attached to and incorporated into this ordinance, to the following grantee:

Dominion Energy Virginia.

§ 2. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute the Right of Way Agreement between the City of

Richmond as grantor and the grantee identified in section 1 of this ordinance to grant an easement upon, over, under, and across certain real property located in Joseph Bryan Park at 4308 Hermitage Road and identified as Tax Parcel No. N017-0250/001 in the 2023 records of the City Assessor for the construction, maintenance, and operation of improvements and associated appurtenances for the generation, distribution and transmission of electricity by such grantee, provided that:

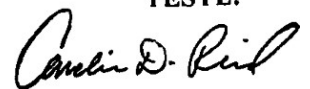
(a) The Right of Way Agreement has first been approved as to form by the City Attorney and is substantially in the form of the document attached to this ordinance;

(b) The grantee identified in section 1 of this ordinance has first executed a bond, with good and sufficient security, in favor of the City of Richmond, Virginia, in the amount of \$50.00 and conditioned upon the construction, maintenance, and operation of improvements and associated appurtenances for the generation, distribution and transmission of electricity as provided for in the granted easements, with such bond in a form acceptable to the Chief Administrative Officer and approved as to form by the City Attorney; and

(c) The grantee identified in section 1 of this ordinance has first paid all costs incurred in connection with the advertisement of this ordinance, as required by section 15.2-2101 of the Code of Virginia (1950), as amended.

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

**A TRUE COPY:
TESTE:**



City Clerk



City of Richmond

900 East Broad Street
2nd Floor of City Hall
Richmond, VA 23219
www.rva.gov

Master

File Number: Admin-2023-1280

File ID: Admin-2023-1280

Type: Request for Ordinance or Resolution

Status: Regular Agenda

Version: 1

Reference:

In Control: City Clerk Waiting Room

Department:

Cost:

File Created: 08/15/2023

Subject:

Final Action:

Title:

Internal Notes:

Code Sections:

Agenda Date: 09/11/2023

Indexes:

Agenda Number:

Patron(s):

Enactment Date:

Attachments: Exhibit A Right of Way Agreement.pdf, Exhibit B Plat Map.pdf

Enactment Number:

Contact:

Introduction Date:

Drafter: Wanda.Marable@richmondgov.com

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	8/15/2023	Chris Frelke	Approve	8/17/2023
1	2	8/16/2023	Traci DeShazor	Approve	8/17/2023
1	3	8/25/2023	Lincoln Saunders	Approve	8/18/2023
1	4	9/7/2023	Mayor Stoney	Approve	8/29/2023

History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File Admin-2023-1280

O&R REQUEST

DATE: August 15, 2023 **EDITION:** 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

THROUGH: J.E. Lincoln Saunders, Chief Administrative Officer

THROUGH: Traci J. DeShazor, Deputy Chief Administrative Officer - Human Services

FROM: Christopher Frelke, Director of Parks, Recreation, and Community Facilities

RE: Proposed electrical easement for Bryan Park- 4308 Hermitage Road, Richmond, VA
23227

ORD. OR RES. No.

PURPOSE: To authorize the Chief Administrative Officer to grant to the person, firm, or corporation to be ascertained in the manner prescribed by law an easement with a term of 40 years for the purpose of constructing electrical lines beneath the property located as shown on the attached drawing entitled “Exhibit B”, Tax Map Parcel N01703900200 for the purpose of transmitting and distributing electrical power.

REASON: This O&R will allow the person, firm, or corporation to make improvements in order to supply electrical service to a city site.

RECOMMENDATION: The Administration recommends approval of the easement as outlined in the attachment.

BACKGROUND: Bryan Park has one or more lines of underground conduits, cables and other wires and fixtures that need to be constructed to supply said site with electrical service. This construction will allow power to be installed at the Bryan Park Azalea Pond so that re-circulating pumps and bubblers can be installed in the pond to improve water quality and appearance. An easement must be granted in order to accomplish this task.

FISCAL IMPACT / COST: None Anticipated

FISCAL IMPLICATIONS: None Anticipated

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: None Anticipated

DESIRED EFFECTIVE DATE: Upon Adoption

REQUESTED INTRODUCTION DATE: September 11, 2023

CITY COUNCIL PUBLIC HEARING DATE: September 25, 2023

REQUESTED AGENDA: Consent Agenda

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing and Transportation

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: None

AFFECTED AGENCIES: Department of Parks, Recreation and Community Facilities

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAM(S): None

ATTACHMENTS: Exhibit A - Right of Way Agreement
Exhibit B - Plat Map

STAFF: Deborah Morton, Deputy Director, PRCF (804-646-5714)

Right of Way Agreement

THIS RIGHT OF WAY AGREEMENT, is made and entered into as of this _____ day of _____, by and between the CITY OF RICHMOND ("GRANTOR") and _____ ("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 perpetual right, privilege and exclusive easement over, under, through, upon, above 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; for fiber optic cables, wires, attachments, and other transmission facilities, and all equipment, accessories and appurtenances desirable in connection therewith, for the purpose of transmitting voice, text, data, internet services, and other communications services, including the wires and attachments of third parties; and for lighting purposes; including but not limited to the right:

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 exclusive easement shall extend FIFTEEN (15) feet in width across the lands of GRANTOR; and

1.2 to apportion, lease, or license the voice, text, data, internet service, and other communication rights herein in whole or in part to third parties as may be useful or practical, including the rights to transmit third party data and the right to apportion, tease, or license surplus communications capacity to third parties for the exercise of such rights.

2. The easement granted herein shall extend across the lands of the GRANTOR situated in the CITY OF RICHMOND, Virginia as more fully described on Plat(s) Numbered 01-23-0127, dated 7/18/2023, attached to and made 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 the GRANTEE. GRANTEE shall have the right to inspect, reconstruct, remove, repair, improve, relocate on and within the easement area, including but not limited to the airspace above the property controlled by GRANTOR, and make such changes, alterations, substitutions, additions to or extensions of its facilities as GRANTEE may from time to time deem advisable.

Right of Way Agreement

4. Subject to the limitations of the City of Richmond Ordinance No. 93-340-281 (the "Ordinance"), 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. All trees and limbs cut by GRANTEE shall remain the property of the GRANTOR.

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 or egress; provided GRANTOR gives written notice thereof to GRANTEE within sixty (60) days after such damage occurs.

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 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 do not interfere with GRANTEE's exercise of any of its rights granted hereunder, GRANTEE may, in its reasonable discretion, relocate such facilities as may be practicable to a new site designated by GRANTOR and acceptable by GRANTEE. In the event any such facilities are so relocated, GRANTOR subject to all necessary approvals, the appropriation of funds by Richmond City Council (the "Council"), and the Ordinance and other applicable law, shall reimburse GRANTEE for the cost thereof and convey to GRANTEE an equivalent easement at the new site.

Right of Way Agreement

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 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.

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

11. GRANTOR hereby represents to GRANTEE that, to the best of GRANTOR's knowledge, (a) GRANTOR is seized of and has the right to convey this easement and the rights and privileges granted hereunder; and (b) GRANTEE shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement, rights and privileges.

12. The individual executing this Right of Way Agreement on behalf of GRANTOR warrants that they have been duly authorized to execute this easement on behalf of said GRANTOR.

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 these rights through the 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.

Right of Way Agreement

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

GRANTOR
CITY OF RICHMOND:

J. E. Lincoln Saunders
Chief Administrative Officer

Approved as to Form:

8/24/23

Alexandra M. Griffin
Assistant City Attorney

Commonwealth of Virginia,

City of Richmond.

The forgoing was executed and acknowledged before me this _____ day of _____, 2023,
by _____, on behalf of the City of Richmond.

Notary Public

My Commission Expires: _____

Registration No.: _____

Right of Way Agreement

EXHIBIT A

This Right of Way Agreement _____ dated by and between the City of Richmond _____ (GRANTOR) and _____ (GRANTEE) is hereby amended as follows:

1. This Right of Way Agreement shall be limited in duration and shall remain in force for a term of forty (40) years, except for any air rights together with easements for columns for support granted hereunder, in which case such air rights together with easements for columns for support shall exist for a term of sixty (60) years. At the end of any such term, this Right of Way Agreement shall expire unless GRANTOR agrees to renew this Right of Way Agreement for an additional term of years.
2. In the event that GRANTOR terminates this Agreement, or if the removal of GRANTEE's facilities is otherwise desired by GRANTOR, then GRANTOR agrees that it will pay the cost of removing GRANTEE's wires and facilities, and, if appropriate, the cost of replacing GRANTEE's wires and facilities. Upon such termination of this Right of Way Agreement, GRANTOR agrees to provide GRANTEE, if needed by GRANTEE, a suitable substitute easement subject to the same terms provided for herein for GRANTEE's wires and facilities. 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 that in the event GRANTOR transfers the real property on which GRANTEE's wires and facilities are located by this Right of Way Agreement before the expiration of this Right of Way Agreement, a condition of such transfer shall be conveyance of a reasonably suitable permanent easement to GRANTEE where permitted by law. If such permanent easement is not in the same location as the easement granted by this Right of Way Agreement an additional condition of such transfer shall be payment to GRANTEE for the reasonable cost of relocating GRANTEE's wires and facilities to the permanent easement.
4. All payments and other performances by GRANTOR under this Right of Way Agreement are subject to annual appropriations by the Richmond City Council, all necessary approvals, and applicable law. It is understood and agreed between GRANTEE and GRANTOR that GRANTOR will be bound under this Right of Way Agreement only to the extent of the funds available or which may hereafter become available for the purpose of this Right of Way Agreement. Under no circumstances shall GRANTOR's total liability under this Right of Way Agreement exceed the total amount of funds appropriated by the City Council for the payments under this Right of Way Agreement for the performance of GRANTOR.

GRANTOR:

J. E. Lincoln Saunders
Chief Administrative Officer

Approved as to Form:

8/24/23

Alexandra M. Griffin
Assistant City Attorney

CITY OF RICHMOND PARKS &
 RECREATION DEPARTMENT
 4308 HERMITAGE RD.
 RICHMOND, VA 23227
 TAX MAP # NO170250001

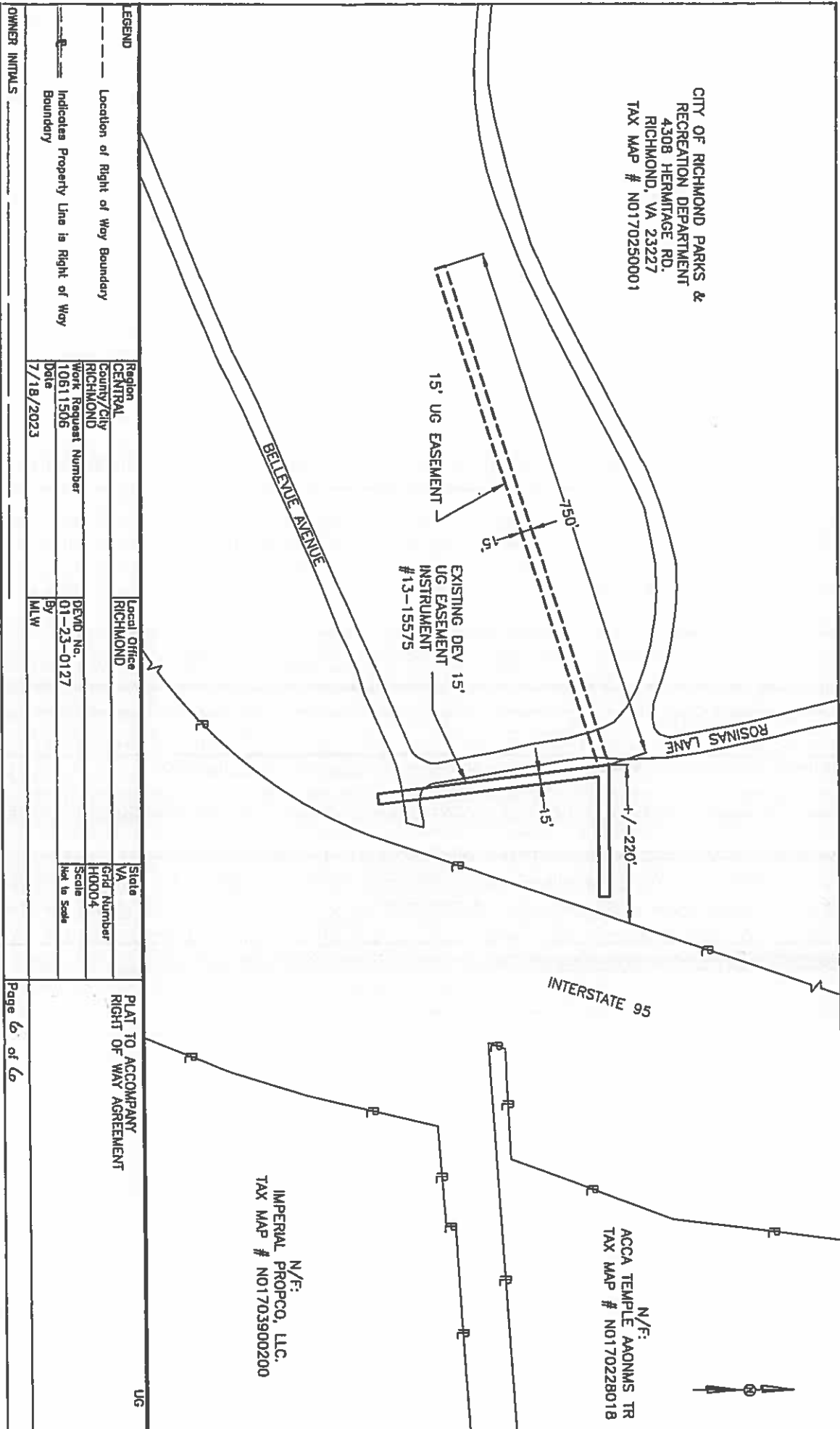


EXHIBIT D

N/F:
 ACCA TEMPLE AADNNS TR
 TAX MAP # NO170228018

N/F:
 IMPERIAL PROPCO, LLC.
 TAX MAP # NO1703900200

UG

PLAT TO ACCOMPANY
 RIGHT OF WAY AGREEMENT

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Legend	Location of Right of Way Boundary
-----	Indicates Property Line is Right of Way Boundary
-----	Boundary

Region	CENTRAL	Local Office	RICHMOND	State	VA
County/City	RICHMOND	DEVD No.	01-23-0127	Grid Number	H0004
Work Request Number	10611506	Scale	As Shown	Met to Scale	Met to Scale
Date	7/18/2023	By	MLW		

OWNER INITIALS