

INTRODUCED: January 8, 2024

AN ORDINANCE No. 2024-009

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 the franchise, right, and privilege, to use the streets, alleys, and public places of the City, and to acquire, erect, install, maintain, and use, and if now constructed, to maintain and use, poles, towers, wires, cables, conduits, ductways, manholes, handholes, meters, and appliances in, over, along, on, and under the streets, alleys, and public places of the City, for the purpose of distributing, transmitting, and selling electric current for light, heat, and power at any point within the corporate limits of the city of Richmond as the same now exist or may hereafter be extended or altered, in accordance with a certain Franchise Agreement.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: FEB 12 2024 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;

AYES: 7 NOES: 0 ABSTAIN: _____

ADOPTED: FEB 12 2024 REJECTED: _____ STRICKEN: _____

2. invited bids for the franchise offered to be granted in and by this ordinance, which bids were to be:
 - a. delivered in writing to the presiding officer of the Council of the City of Richmond at its regular meeting to be held on February 12, 2024, 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 franchise 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, a franchise right, and privilege, to use the streets, alleys, and public places of the City, and to acquire, erect, install, maintain, and use, and if now constructed, to maintain and use, poles, towers, wires, cables, conduits, ductways, manholes, handholes, meters, and appliances in, over, along, on, and under the streets, alleys, and public places of the City, for the purpose of distributing, transmitting, and selling electric current for light, heat, and power at any point within the corporate limits of the city of Richmond as the same now exist or may hereafter be extended or altered, in accordance with a certain Franchise

Agreement, a copy of which is attached to and incorporated into this ordinance, to the following grantee:

Virginia Electric and Power Company (Dominion Energy)

§ 2. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute the Franchise Agreement between the City of Richmond as grantor and the grantee identified in section 1 of this ordinance to grant right, and privilege, to use the streets, alleys, and public places of the City, and to acquire, erect, install, maintain, and use, and if now constructed, to maintain and use, poles, towers, wires, cables, conduits, ductways, manholes, handholes, meters, and appliances in, over, along, on, and under the streets, alleys, and public places of the City, for the purpose of distributing, transmitting, and selling electric current for light, heat, and power at any point within the corporate limits of the city of Richmond as the same now exist or may hereafter be extended or altered, by such grantee, provided that:

(a) The Franchise 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;

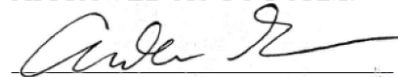
(b) The grantee identified in section 1 of this ordinance has first executed a bond, with good and sufficient security, in favor of the City of Richmond, Virginia, in the amount of \$25,000.00 and conditioned upon the use the streets, alleys, and public places of said City, and to acquire, erect, install, maintain, and use, and if now constructed, to maintain and use, poles, towers, wires, cables, conduits, ductways, manholes, handholes, meters, and appliances in, over, along, on, and under the streets, alleys, and public places of the City, for the purpose of distributing, transmitting, and selling electric current for light, heat, and power at any point within the corporate limits of the city of Richmond as the same now exist or may hereafter be extended or altered, as provided for in the granted franchise, 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.

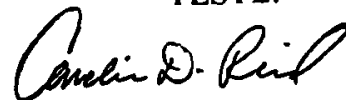
§ 3. This ordinance shall be in force and effect upon adoption.

APPROVED AS TO FORM:


City Attorney's Office

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-2023-2015

File ID: Admin-2023-2015

Type: Request for Ordinance or Resolution

Status: Regular Agenda

Version: 1

Reference:

In Control: City Clerk Waiting Room

Department:

Cost:

File Created: 12/07/2023

Subject:

Final Action:

Title:

Internal Notes:

Code Sections:

Agenda Date: 01/08/2024

Indexes:

Agenda Number:

Patron(s):

Enactment Date:

Attachments: ADMIN-2023-2015_Electric Utility Franchise Ord
AATF, ADMIN-2023-2015_Electric Utility Franchise
Agmt (FINAL FOR BIDDING) AATF

Enactment Number:

Contact:

Introduction Date:

Drafter: Joseph.DavenportJr@rva.gov

Effective Date:

Related Files:

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	12/7/2023	M.S. Khara	Approve	12/8/2023
1	2	12/7/2023	Joseph Davenport - FYI	Notified - FYI	
1	3	12/18/2023	Bobby Vincent	Approve	12/8/2023
1	4	12/18/2023	Joseph Davenport - FYI	Notified - FYI	
1	5	12/18/2023	Robert Steidel - FYI	Notified - FYI	
1	6	12/20/2023	Lincoln Saunders	Approve	12/27/2023
1	7	12/20/2023	Joseph Davenport - FYI	Notified - FYI	
1	8	1/3/2024	Mayor Stoney	Approve	1/9/2024
1	9	1/3/2024	Joseph Davenport - FYI	Notified - FYI	

History of Legislative File

Text of Legislative File Admin-2023-2015

City of Richmond

Intracity Correspondence

O&R Transmittal

DATE: December 7, 2023

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

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

THROUGH: Bobby Vincent Jr., Director, Department of Public Works

FROM: M.S. Khara, P.E., City Engineer, Department of Public Works

RE: **To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to GRANT AN Electric Utility Franchise Agreement for the purpose of installation and maintenance of electric distribution facilities and equipment within the streets, alleys and public places of the City of Richmond**

ORD. OR RES. No.

PURPOSE: To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to grant to the person, firm or corporation to be ascertained in the manner prescribed by law an Electric Utility Franchise Agreement for the purpose of installation and maintenance of electric distribution facilities and equipment within the streets, alleys and public places of the City of Richmond.

BACKGROUND: The City has previously entered into an Electric Utility Franchise Agreement effective November 22, 1993, authorized by City Council Ordinance No. 93-340-281. The previous Franchise Agreement has expired and the City desires to grant a successor franchise. The granting of the franchise by the City is authorized pursuant to Article VII, section 9 of the Constitution of the Commonwealth of Virginia (1971) and Va. Code § 15.2-2100, et seq.

The Franchise Agreement will grant the rights, subject to the terms and conditions of the Agreement, to use the streets, alleys and public places of the City to erect, install, maintain and use, poles, towers, wires, cables, conduits, manholes, etc., over, along, on and under the streets, alleys and public places of the City, for the purpose of distributing, transmitting and selling electric current for light, heat and power at any point within the corporate limits of the City as the same now exist or may hereafter be extended or altered.

The rights and privileges granted by the franchise are upon the express condition and understanding that the successful person, firm or corporation will render to the public in the City at all times during the term of this Agreement electric service and that it will maintain its facilities located within the City in good order throughout the term of this Agreement.

This Agreement shall continue for a term of twenty (20) years from the date of execution.

COMMUNITY ENGAGEMENT: After introduction, the proposed Ordinance will be referred to a future Land Use, Housing and Transportation (LUHT) Committee meeting for discussion, public encouraged to attend and provide comment; subsequent to LUHT recommendation to City Council, Council to hold a public hearing regarding the proposed Ordinance.

STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL: Richmond 300 Master Plan, Objective 17.6, Increase the resiliency of infrastructure and community assets.

FISCAL IMPACT: None

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: January 8, 2024

CITY COUNCIL PUBLIC HEARING DATE: February 12, 2024

REQUESTED AGENDA: Consent Agenda

RECOMMENDED COUNCIL COMMITTEE: Land Use, Housing & Transportation

AFFECTED AGENCIES: Public Works; Law Department; Planning & Development Review; Public Utilities; Assessor; Finance; Budget and Strategic Planning; Fire Department; Police Department, Mayor's Office, and CAO's Office

RELATIONSHIP TO EXIST ORD. OR RES.: Ord. No. 93-340-281 (adopted Nov. 22, 1993)

ATTACHMENTS: Franchise Agreement

STAFF: Prepared for Bobby Vincent, Jr., Director, DPW (646-6444)
Prepared by M.S. Khara, City Engineer, DPW (646-5413)

FRANCHISE AGREEMENT

THIS ELETRIC UTILITY FRANCHISE AGREEMENT (the "Agreement") is made and entered into as of _____, 202__, by and between the City of Richmond, Virginia (the "City"), a political subdivision of the Commonwealth of Virginia and _____ (the "Grantee").

Section 1. The right is hereby granted unto [to be determined], hereinafter referred to as the "Grantee", it successors and assigns, for the term and subject to the conditions and limitations hereinafter stated, to use the streets, alleys and public places of the City of Richmond, hereinafter referred to as the "City", and to acquire, erect, install, maintain and use, and if now constructed to maintain and use, poles, towers, wires, cables, conduits, ductways, manholes, handholes, meters, and appliances, hereinafter referred to as "facilities," in, over, along, on and under the streets, alleys and public places of the City, for the purpose of distributing, transmitting and selling electric current for light, heat and power at any point within the corporate limits of the city as the same now exist or may hereafter be extended or altered; provided that such right to sell electricity shall extend only to such areas of the City as now or may hereafter be allotted to the Grantee for service by authority of a certificate of public convenience and necessity issued by the State Corporation Commission of the Commonwealth of Virginia in accordance with law. The terms "public place" and "public places" as used in this Agreement unless otherwise indicated shall include, among other things, all real property owned by the City.

Section 2. (a) During the term of this Agreement, the facilities in, over, along, on and under the streets, alleys and public places of the City authorized by this Agreement to be located and constructed, shall be located at reasonably suitable and convenient points. To the extent practicable and reasonable and when specifically requested by the City, the Grantee shall locate any of its facilities to be placed within the City's corporate area within the public rights of ways of the City. Prior to locating or constructing additional facilities, the Grantee shall file with the City Department of Public Works (or other city Agency designated by the Chief Administrative Officer), and when required by law, the City Planning Commission, plans showing the location of the proposed additional facilities, and obtain any approval or permit, and pay all applicable fees, now or hereafter required by law therefor prior to their location or construction in, over, along, on and under the streets, alleys and public places of the city. Any such approval granted by the City shall be conditioned upon compliance with the terms, conditions, and provisions of this Agreement and with such other terms and conditions of the approval or permit as will preserve, protect and promote the safety of the public using the streets, alleys and other public places of the City and as will prevent interference with or obstruction of the use of streets, alleys and other public places by the City or by any other public utility or public service corporation for their respective purposes and functions.

(b) In the event the relocation, construction, reconstruction (including, but not limited to, widening), or maintenance or repair by the City of any street, alley or other public place (collectively "public place" for purposes of this section) or of any of its sanitary or storm sewers or gas or water mains or non-competitive electric (i.e., electric services for the City's street lighting and electric services to a public place or public facilities), fire alarm, police

communication or traffic control facilities, or any part thereof (collectively "public facilities" for purposes of this section), regardless the source of funding for such work or the means by which such work is carried out (City employees, City contractor, VDOT or other third party acting on behalf or for the benefit of the City), or in the event access to or from any public place is required, and it is necessary to move, alter or relocate (collectively "relocate" or "relocation" for purposes of this section) any of the Grantee's poles, towers, wires, appliances, conduits, subways, manholes or cables or their appurtenances, or any part thereof (collectively "the Grantee's facilities" for purposes of this section), in order for the City to relocate, construct, reconstruct, or perform maintenance or repairs upon any such public place or public facilities, or to obtain access to or from such public place or public facilities, the City shall provide written notice to the Grantee. Grantee shall with respect to its facilities located in, over, along, on, and under the public place bear all costs of relocation and removal and install any new or additional facilities on a Like-for-Like basis. As used in this Section 2 (b), "Like-for-Like" means the installation or relocation of facilities in a like or similar manner of construction when compared to previously installed facilities. If the City specifically requests that the Grantee install facilities that are more expensive than Like-for-Like facilities, the City shall bear the cost of installation or removal, but only, but only by the amount by which the cost of the more expensive facilities exceeds the cost of Like-for-Like facilities. The foregoing shall not be applicable to any/all facilities relocated in accordance with the terms of Section 8 (Undergrounding) of this Agreement,

The Grantee, within 90 days of receipt of the written notice, shall relocate the Grantee's facilities in the manner and with the costs apportioned as set forth in this Section. As used throughout this Agreement, the word "days" shall mean consecutive calendar days, unless expressly stated otherwise. The parties acknowledge that emergencies and other circumstances may occasionally dictate the need for a longer or shorter time frame within which to complete such relocations. The parties agree that consent to modify such relocation period in writing and on an individual case basis shall not be unreasonably withheld.

Grantee may, within thirty (30) days after receipt of written notice requesting a relocation of its facilities, submit to the City a written request to modify the schedule for or propose alternatives to such relocation, or both. Upon the City's request, Grantee shall submit at its sole cost and expense any additional information necessary for the City to evaluate any request for schedule modification or alternative proposed by Grantee. The City shall evaluate each such request or proposed alternative as to reasonableness and suitability for the proposed work and notify Grantee in writing of its acceptance or denial of each request. In the event that the City denies of Grantee's request, Grantee shall relocate its facilities as otherwise provided in this Section.

If the Grantee fails, refuses or neglects to comply with the City's written notice within 90 days or other period agreed to by the parties in writing, the City may relocate the Grantee's facilities in the manner and with the costs thereof apportioned as set forth in this section. Prior to the City's relocation of Grantee's facilities as contemplated herein, the Director of Public Works shall provide the Grantee's designated representative with at least 30 days written notice of the City's intent to act. The City's notice of its intent to act may be given to the Grantee at any time on or after the sixtieth day following the City's notice to the Grantee to relocate the Grantee's facilities.

In the event and only to the extent that the Grantee's delay or failure to relocate its facilities within 90 days or other period agreed to by the parties on a case-by-case basis is due to the Grantee's failure to use due diligence in performing its obligation to relocate its facilities contemplated herein, the Grantee shall reimburse the City for the reasonably and prudently incurred: (a) costs of relocating the Grantee's facilities, (b) increases in the direct costs of the City's project (s) that gave rise to the Grantee's relocation, and (c) application of the City's indirect cost rate, as determined within the most recent Indirect Cost Rate Report issued by the City Department of Finance, to the costs identified in (a) and (b) above; provided that in no event shall Grantee's liability for indirect costs associated with a failure or delay in relocating its facilities exceed \$100,000 per project.

Increases in the costs of relocating Grantee's facilities are defined as those additional normal and customary costs associated with the relocation of Grantee's facilities that would not be borne but for the Grantee's failure or delay in relocating its facilities within 90 days or other period agreed to by the parties, to the extent such costs are actually incurred by the City or its agents in performing or contracting for such relocation. Increases in the direct costs of the City's project(s) that gave rise to the Grantee's relocation (i.e., projects for which written notice is received from the City) are defined as those additional normal and customary costs that are directly incurred by the City or its agents in the completion of such project(s) that would not be borne by the City but for the Grantee's failure or delay in relocating its facilities within 90 days or other period agreed to by the parties. Increases in indirect costs incurred by the City are defined as those additional normal and customary costs that are incurred by the City associated with a City project(s) other than the project(s) that gave rise to the Grantee's relocation, which costs would not be borne by the City but for the Grantee's failure or delay in relocating its facilities within 90 days or other period agreed to by the parties.

(c) Temporary relocations of Grantee's facilities shall be undertaken upon the mutual agreement of the parties in writing and on an individual case basis; provided, however, that no temporary relocation shall be permitted to result in an unreasonable burden upon Grantee, given due consideration to the alternatives available to the City and the City's costs.

(d) Any permanent relocation of the Grantee's facilities shall use like construction and shall be undertaken as follows:

1. Transmission line facilities (facilities in excess of 50,000 volts) and transmission easements (easements held for construction of transmission facilities) shall not be subject to these relocation requirements. However, such transmission facilities and transmission easements may be relocated to or replaced with, respectively, alternative private property, or across public property, at the City's cost and expense, if mutually agreed to by the parties.
2. Distribution line facilities (facilities of 50,000 volts or less) which are located on private property shall be moved at the city's cost and expense to private property or, if impractical, to alternative public property.

3. Distribution line facilities within streets, alleys and/or public property shall be moved at the Grantee's sole cost and expense to alternative public property or, if impractical, to private rights-of-way. Any claim of "prior rights" by the Grantee shall obligate the Grantee to furnish the City with satisfactory written evidence of such "prior rights."

The "cost and expense" to be borne by the City for certain permanent relocations referenced in items 1 and 2 above shall be defined as:

1. The cost of removing such facilities; plus
2. The construction cost of new facilities, provided that the City will not be required to pay for portions of the project which are designed to improve other portions of the Grantee's system or to improve existing service; plus
3. The acquisition cost of necessary private rights-of-way, and reimbursement for fees for permits as may be required of the Grantee for its relocated facilities; plus
4. A gross-up for a tax effect recovery factor (TERF), if and only if the Grantee is required to pay such tax on the relocation.

The Grantee shall communicate with the City on a regular basis as to the progress and projected costs of relocation projects. In the event that any costs of relocation to be borne by the City pursuant to this subsection are to exceed by 25% or more of the initial estimate provided to the City, Grantee shall promptly notify the City of the additional cost(s), provide a detailed explanation of the increased cost and provide suggestions/alternatives for mitigating the cost increase(s). The Grantee shall submit to the City a revised cost estimate with supporting documentation for review and approval by the City.

It is not the intention of the parties that these relocation provisions result in the Grantee's subsidization of private economic development.

(e) Except when prohibited by safety or other reasonable technical considerations, the Grantee to the maximum extent lawfully allowed shall permit the City to place its utility mains and lines and other improvements within areas controlled by Grantee at no cost to the City. The City's placement and operation of such utility mains and lines and other improvements shall be evaluated on an individual case basis, shall be subject to reasonable terms and conditions and shall not significantly adversely affect the Grantee's use and maintenance of its own facilities. As between the parties, the City shall have sole responsibility for the City's facilities contemplated herein.

(f) To the extent Grantee's Transmission line facilities (facilities in excess of 50,000 volts) may be in conflict with City Electric Utility vertical assets ("Vertical Assets"), the City will consider requests from Grantee for the City to relocate its Vertical Assets as needed for safety considerations or other reasonable technical considerations. If the City agrees to any such relocation, such relocation shall be at Grantee's sole expense.

Section 3. In the location and erection of facilities, as herein authorized, the Grantee shall avoid all unnecessary damage to the trees in and along the streets, alleys and public places of the City and shall not cut or otherwise injure said trees to any greater extent than is reasonably necessary in the construction, maintenance and operation of said facilities of the Grantee as herein authorized and provided. In maintaining, trimming, cutting and removing said trees, the Grantee shall comply with the Code of the City of Richmond, as it may be amended (see Section 14), and provide prior notice, minimum thirty (30) days when practicable, to the City Division of Urban Forestry. Grantee shall follow accepted industry standards put forth by the American National Standards Institute (ANSI) and best management practices that are endorsed by the International Society of Arboriculture (ISA).

Section 4. In the event the Grantee shall, in the construction or repair of its facilities, injure any pavement, sidewalk, sewer, water, gas or other pipe or works belonging to the City, and if the Grantee is aware of such injury, the Grantee shall so inform the Director of Public Works. The City shall have the option to repair any damaged pavement, sidewalk, sewer, water, gas, other pipe, etc. and back charge the Grantee for the reasonable costs incurred by the City in performing the work (supporting documentation will be provided to support the repair costs); or, upon the City's request, the Grantee promptly shall repair the same at its own cost and expense using materials and methods that are consistent with the standards applied by the City to its own repairs, at the time of repair. Such standards shall include, but are not limited to, those contained in the City's Right-of-Way Excavation & Restoration Manual, as amended as of the time of the repair.

Section 5. (a) The Grantee shall, when so requested by the Director of Public Works, or his designee, permit its conduits, manholes, poles and other overhead structures to be used without compensation by the City for the purpose of placing thereon any traffic signals, lighting, fire or police alarm, telephone or other communication wires or cables, and other City data transmission cables which may be necessary for the exclusive use of the City, provided that such use by the City shall not interfere with the proper use of said conduits, manholes, poles and other overhead structures by the Grantee, as has been specifically planned (including contingency planning for emergencies, service restoration and future growth) by the Grantee at the time of the City's request, and that the location and character of said wires and fixtures of the City shall be subject to the approval of the Grantee. Use by the parties of each other's conduits, manholes, poles and other overhead structures to place electric wires and street lighting shall be addressed by separately negotiated agreement.

(b) Except as expressly permitted in Section 27, at no time shall the Grantee allow use of its installed facilities by other service providers, unless approved by the City. Should the City require the Grantee to relocate its facilities, the Grantee is responsible for relocating, or causing to be relocated, any equipment located on its facilities installed by other service providers, all at the Grantee's expense.

Section 6. (a) The Grantee agrees and binds itself, by the execution of this Agreement, to indemnify, keep and hold the City free and harmless from liability on account of injury or damage to persons or property growing out of the construction, improvement, maintenance,

repair and operation of its facilities and in the event that suit shall be brought against the City, either independently or jointly with the Grantee on account thereof, the Grantee, upon written notice to it by the City, will defend the City in any such suit at the cost of the Grantee, and, in the event of a final judgment being obtained against the City, either independently or jointly with the Grantee, the Grantee will pay such judgment, with all costs, and hold the City harmless therefrom; but nothing herein contained shall be construed to render the Grantee liable for the negligence or willful misconduct of the City, its agents or employees or of any other person or corporation.

(b) To the extent permitted by law, the City agrees and binds itself, by the execution of this Agreement, to indemnify, keep and hold the Grantee free and harmless from liability on account of injury or damage to persons or property growing out of the City's uses of the Grantee's facilities contemplated in Section 5, above, and in the event that suit shall be brought against the Grantee, either independently or jointly with the City on account thereof, the City, upon written notice to it by the Grantee, will defend the Grantee any such suit at the cost of the City, and, in the event of a final judgment being obtained against the Grantee, either independently or jointly with the City, the City will pay such judgment, with all costs, and hold the Grantee harmless therefrom; but nothing herein contained shall be construed to render the City liable for the negligence or willful misconduct of the Grantee, its agents or employees or of any other person or corporation. Provided, however, that the indemnity obligation under this paragraph shall be effective only if and to the extent that the City is permitted by law to indemnify the Grantee hereunder, and the nothing herein is to be construed as a waiver of the sovereign immunity granted the City by the Commonwealth of Virginia Constitution, statutes, and applicable case law.

Section 7. The rights and privileges herein set forth are granted and conferred upon the Grantee, upon the express condition and understanding on the part of the Grantee, that it will render to the public in the City within the territory served by the Grantee, at all times during the term of this ordinance, reasonably adequate electric service at reasonable rates, and that it will maintain its facilities located within the City in good order throughout the term of this Agreement. The Grantee shall provide electric service to City facilities without the use of easements in City owned property except when so requested by the City. Provided, however, that the City will not unreasonably withhold the granting of an easement in City owned property for access to City facilities when so requested by the Grantee. By accepting this ordinance the Grantee expressly agrees that the State Corporation Commission shall have jurisdiction, to the full extent and in the manner now or hereafter during the life of this ordinance provided by law, to require the Grantee to render reasonably adequate electric service at reasonable rates, and to maintain its facilities in good order throughout the term of this grant, and to otherwise enforce the provisions of this section to the full extent provided by law.

Section 8. The Grantee agrees to evaluate whether it may be appropriate to install new facilities underground based on technical feasibility, cost, adherence to safety and other industry standards, and any other criteria the Grantee deems relevant, based on the Grantee's sole discretion. Additionally, the Parties have made the following agreements with respect to the conversion of existing facilities to underground:

(a) The Grantee shall convert to underground any and all existing facilities that require relocation to the extent they are located within the City's Underground Districts (Section 28-861, Underground Districts, City of Richmond Code of Ordinances) in compliance with City Code Section 28-861.

(b) The Grantee shall, upon the request of the City, convert to underground any and all existing facilities that require relocation, as may be located within the City limits, conditioned upon the City's agreement to be responsible for the incremental cost difference between the Grantee's obligation to relocate the existing facilities above ground and the cost of having the existing facilities converted to underground.

(c) If the City requests that any of Grantee's existing facilities be converted to underground and at the City's expense constructs and installs to Grantee's specifications the conduits, ductways, manholes, handholes, and vaults, including cables, appliances, devices, switches, taps, transformers, etc. necessary to facilitate the conversion of the Grantee's existing overhead facilities to underground, the Grantee shall, at its sole expense, design, remove, and convert to underground such portions of its existing or proposed overhead facilities. The City will obtain or cause to be obtained, without charge to the Grantee, suitable public or private easements as may be required by Grantee for such underground facilities. The extent of undergrounding that shall be required of the Grantee pursuant to this section shall be one thousand (1,000) linear feet per year, with a maximum carryover to subsequent years in the amount of one thousand (1,000) linear feet and a maximum advance (i.e., unearned) usage (or "front-load") in the amount of one thousand (1,000) linear feet; provided, that three thousand (3,000) linear feet shall be the maximum amount of undergrounding that the Grantee may be obliged to undertake in any year (unless Grantee agrees to additional annual linear footage above the 3,000 linear feet authorized). If Grantee does agree to additional footage above the 3,000 linear feet obligated for any year, the total for the entire term of the agreement remains twenty thousand (20,000) linear feet. The City shall have given advance written notice to the Grantee, which the Grantee shall have received no later than June 30 of the previous calendar year, of the extent and general location of the undergrounding that it desires to undertake in any calendar year, and the Grantee's annual obligations under this section shall be contingent on such notice. The cost of undergrounding the Grantee's facilities in excess of such amounts shall be borne by the City. The Grantee shall not be responsible for any costs required for the relocation of any Facilities that have been placed underground pursuant to this Section 8 (c) during the term of this Franchise.

Section 9. The parties agree and acknowledge that the Amended and Restated Agreement for the Provision of Electric Service to the Municipalities and Counties of the Commonwealth of Virginia from Virginia Electric and Power Company, effective August 1, 2019 ("the VEPGA Agreement") governs the method and timing of the replacement of LED fixtures within the City's rights-of-way. The City further agrees and acknowledges that it shall follow established VEPGA LED conversion program processes in requesting that Grantee replace Grantee-owned street lights located within the City's rights-of-way with LED fixtures. Such replacement shall be at City's expense, in accordance with the applicable rates as set forth in the rate schedule attached to the VEPGA Agreement. LED lighting shall be installed

according to City electric utility standards, practices, and procedures in areas serviced by the Grantee pursuant to the VEPGA Agreement.

Section 10. The City and the Grantee mutually agree to assist each other in the prosecution of any person who has intentionally destroyed or damaged any of the City's or the Grantee's facilities; or who has tampered with any metering device incident to such facilities, intentionally prevented such metering device from properly registering, or illegally diverted electric service so that it does not pass through the metering device.

Section 11. All the rights and privileges hereby granted to the Grantee may be exercised by any successor or successors, assignee or assignees of the Grantee, but said successor or successors, assignee or assignees shall be subject to all the provisions, obligations, stipulations and penalties herein prescribed. Provided, however, the Grantee may not assign any of the rights or privileges herein without the express written approval of the City of Richmond, such approval not to be unreasonably withheld.

Section 12. The rights and privileges granted by this Agreement shall continue for a term of Twenty (20) years from the final passage of this ordinance, unless sooner voluntarily surrendered by the Grantee, with the consent of the City of Richmond, or unless the same be forfeited as provided by law. Upon the expiration of the term of this Agreement and upon the termination of the rights hereby granted, by surrender, forfeiture or otherwise, all of the facilities of the Grantee in the streets, alleys or public places of the City shall belong to the Grantee. The parties recognize the importance and difficulty associated with the disposition of the Grantee's facilities following the expiration or termination of the Grantee's rights and privileges herein. Therefore, in the event such expiration or termination occurs, the parties agree to establish a working committee to develop appropriate courses of conduct that will adequately recognize and address, in a reasonable and prudent manner, the costs and benefits to both parties in a manner that considers the effective use of existing facilities.

Section 13. This ordinance and the rights and privileges hereby granted and conferred shall not become effective unless and until the Grantee shall file with the Clerk of the City its written acceptance thereof, in form satisfactory to the City, and shall enter into a bond in the sum of Twenty-Five Thousand Dollars (\$25,000), with surety satisfactory to the City, conditioned to the effect that the Grantee will construct and maintain, or if constructed, will maintain the facilities provided for herein and reasonably necessary for the exercise of the rights and privileges granted in and by this Agreement, and will maintain the same in good order throughout the term of this grant, and will comply with the terms, provisions and conditions of this ordinance in all respects.

Section 14. The rights and privileges granted herein to use the public property are expressly subject to the conditions, limitations and provisions contained in the ordinances of the City of Richmond, in force, or that may be hereafter passed by the City, relative to the use of the streets, alleys and public places of the City so far as they may be applicable to the rights and privileges herein granted. The parties agree to undertake discussions toward achieving mutually acceptable solutions in the event that the City passes any such ordinance which Grantee believes unreasonably or impracticably burdens Grantee, and to issues identified by either party and related to this Agreement whenever such discussions are practicable.

Section 15. The City retains the right in its sole discretion to exercise rights and privileges identical or similar to the rights and privileges granted herein to the Grantee. The parties retain the right to appear before the State Corporation Commission and the courts to address service and certificate matters.

Section 16. Nothing contained in this Agreement shall be construed to exempt the Grantee from any tax, levy or assessment which is now or which may be hereafter authorized by law.

Section 17. Nothing contained in this Agreement shall be construed to exempt the Grantee from the payment of compensation or fees in the nature of permit fees, parking fees, rental charges, or any other such fees or charges set forth in the City Code for the City of Richmond, Virginia, or as otherwise required by law, for such use of the streets, alleys and public places of the City.

- (a) Annual WISP for Grantee maintenance (non-destructive) activities. The Grantee shall annually submit a Work-In-Street Permit (WISP) application for the performance of its routine, regular non-destructive maintenance activities. Such activities shall be of a short duration (less than one work day), not require complete road closures and only be performed between the hours of 9 AM to 4 PM. The Grantee will provide all necessary maintenance of traffic for the safety of motorists, bicyclists and pedestrians. The Grantee shall notify the Department's Right-of-Way Division assigned inspector when conducting activities under the annual WISP. The Grantee agrees to pay an annual WISP fee of \$19,500.00, due upon the submittal of the annual application. In the event the City Council shall adopt a new fee schedule which adjusts (increase or decrease) the WISP application fee, this annual WISP fee shall be adjusted proportionally. In the event these adjustments exceed \$10,000 over the term of the Agreement or \$1,000 in adjustments on an annual basis, Grantee reserves the right to discontinue using the blanket WISP upon thirty (30) days' written notice to the City.
- (b) The Grantee shall apply for a WISP, and pay all applicable fees, for all other activities within the streets, alleys and public places of the City of Richmond, not covered by the annual WISP.

Section 18. Grantee shall remove any damaged, non-functional or abandoned facilities from the streets, alleys and public places of the City of Richmond within a reasonable timeframe subsequent to the discontinuance of service utilizing such facility. In the event the Grantee fails to remove its facilities within such period, the City may cause the same to be done, without further notice, and to charge the Grantee the actual costs incurred by the City. The Grantee shall promptly reimburse the City for such costs.

Section 19. Nothing herein shall be deemed to create a joint venture or principal-agent

relationship between the parties and neither party shall be authorized to act toward third persons or the public in any manner which would indicate any such relationship with the other.

Section 20.

(a) This Agreement represents the entire franchise agreement between the parties and supersedes all prior franchise agreements including course of performance, course of dealing and usage of trade. This section should not be construed as precluding the development of other agreements between the parties on topics not addressed herein.

(b) Should any provision of this ordinance require interpretation or construction, it is agreed by the parties that the court interpreting or construing this Agreement shall not apply a presumption that the provision be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that the parties hereto and their respective attorneys and agents have fully participated in the preparation of provisions hereof.

Section 21. The City reserves all rights and alternatives for electric service the City otherwise would have absent this Agreement. The Grantee covenants that it will offer to provide to the City alternatives for electric service, including but not limited to those rights and alternatives which may accrue from the unbundling of utility services or partial requirements services, if such alternative services are available to other retail customers (or wholesale customers in the event and to the extent the City receives services as a wholesale customer).

Section 22. Nothing herein shall be construed to prohibit the City from enforcing the terms of this Agreement or seeking damages or any other appropriate relief for any breach of this Agreement directly in any court of competent jurisdiction.

Section 23. All payments and other performances by City under this Agreement are subject to annual appropriations by the City Council of the City of Richmond, Virginia. It is understood and agreed between the parties that the City will be bound hereunder only to the extent of the funds available, or which may hereafter become available for the purpose of this Agreement. Under no circumstances shall the City's total liability under this Agreement exceed the total amount of funds appropriated by the City Council for the payments hereunder for the performance of this Agreement.

Section 24. The franchise granted pursuant to this Agreement is authorized pursuant to Article VII, section 9 of the Constitution of the Commonwealth of Virginia (1971) and Va. Code § 15.2-2100, et seq. It is not intended by granting of this franchise to abridge the exercise of the police power or any other power heretofore or hereafter granted to the City by the General Assembly of Virginia.

Section 25. Except as specifically otherwise set forth in this Agreement, the City's Chief Administrative Officer or the designee thereof may provide any authorization, approvals, and notices contemplated herein on behalf of the City.

Section 26. No provision of this Agreement shall supersede any other applicable state or

federal laws or regulations.

Section 27. The franchise, rights, and privileges granted unto Grantee, its successors and assigns, to use the streets, alleys and public places of the City shall include the right of the Grantee to provide access points that are outside the Grantee's Energized Zone to allow connection between the Grantee's system and a third party internet service provider's system and the use of the Grantee's system (in accordance with all other terms of this Agreement) for the provision of broadband to areas that are unserved by broadband, within the corporate limits of said City (as the same now exist or may hereafter be extended or altered). The Grantee shall maintain ownership and retain all responsibilities as described in this Agreement for all portions of the Grantee's system utilized for the provision of broadband. As used herein, the term "Energized Zone" shall refer to the uppermost portion of an electric distribution pole that is used primarily to support electric cables and other electric equipment, such as transformers and capacitors, used for electric distribution.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective the day and year first above written.

[TO BE DETERMINED]

By: _____

Date: _____

Name: _____

Title: _____

NOTARY: _____

Commission Expires: _____

Seal:

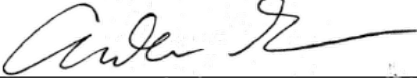
CITY OF RICHMOND, VIRGINIA, A MUNICIPAL CORPORATION

By: _____

Date: _____

J.E. Lincoln Saunders
Chief Administrative Officer

APPROVED AS TO FORM:



Assistant City Attorney