

Reference #: TE022041002

Consent Agreement for Right of Way Encroachment

VIRGINIA ELECTRIC AND POWER COMPANY (“**Company**”) and THE COUNTY BOARD OF ARLINGTON COUNTY (“**Requestor**”) enter into this Consent Agreement for Right of Way Encroachment (“**Agreement**”) prepared by Company this 1st day of June, 2022.

Company is willing to grant to Requestor, this Agreement to encroach on, over and/or under a part of Company’s easement(s) (“**Easement**” or “**Right of Way**”) identified as:

- **W&OD Trail-NVRPA Corridor, Parcel Number 8 [COR0525/8]**
- **Line/Structure(s) #:2115/16-19, 273/14-17**

The encroachment (“**Encroachment**”) is as shown on Exhibits “B” through “E”, and described as:

- **Grading**
- **Gravel Access Road**
- **Four (4) Foot by Eight (8) Foot Concrete Box Culvert with Twelve (12) Inch PVC for Storm Drain**
- **Landscaping**
- **Riser**
- **Gate**

The Encroachment as described above is located as follows:

S. Park Drive in Arlington County

Company, under its Easement(s) identified above, hereby grants Requestor permission to install the Encroachment, described above, subject to the following terms and conditions hereinafter set forth.

1. The minimum distance required by the Occupational Safety and Health Administration (“OSHA”) shall be maintained between electrical conductors and any part of the Encroachment or equipment used in the installation or maintenance of the Encroachment. Sag of conductors varies with changes in operating and ambient temperatures; therefore, required clearances will be based upon maximum sag. The minimum clearance shall be governed by the clearance required for the 230kV line. For current voltage information see Exhibits “A1” and “A2”. Voltage and conductor arrangement is subject to change. It is Requestor’s responsibility to confirm voltage and location of conductors prior to installation, maintenance or repair of the Encroachment.

06/01/22

2. Company access to its facilities shall not be hampered at any time by the installation, use, maintenance or presence of the Encroachment. Company shall not be liable for damage to the Encroachment resulting from exercise of its Easement rights.
3. Permission for the Encroachment described in Exhibits "B" through "E" does not include permission for storage on Company Easement of material or equipment related to the Encroachment, except for staging during actual construction of the Encroachment.
4. No portion of any building, house, garage, porch, deck, shed, trailer, barn, playhouse, above-ground or in-ground swimming pool, dumpster or any other type of structure, temporary or permanent, shall be permitted on the Easement. **This includes, but is not limited to, any building projection or attachment such as roof overhang, gutters, garage lighting or window appurtenances. Portions of buildings and other structures found within Company's Easement(s) are required to be removed when discovered.**
5. Requestor shall restore any erosion or settling, within the Easement, related to the installation or maintenance of the Encroachment. Requestor shall comply with all state and local erosion and sedimentation control laws and shall not adversely affect grade elevations and water drainage patterns.
6. It is the Requestors responsibility to notify Company of any damage to Company facilities by Requestor, its employees, contractors or agents. If any counterpoise (ground wire buried eighteen (18) to twenty-four (24) inches deep) is damaged, cut or severed, notify Brandon Patterson - Manager Field Transmission Lines, immediately so necessary repairs can be made.

Mobile: (804) 363-8636

E-Mail: Brandon.C.Patterson@dominionenergy.com

7. To the extent permitted by law, Requestor shall be responsible for all associated costs for the repairs of Company facilities (including but not limited to structures, guys, anchors or counterpoise) damaged by Requestor, his/her/their/its employees, contractors or agents. Nothing containing in the Paragraph 7 shall be construed as a waiver of Requestor's sovereign immunity; however, Requestor and Company acknowledge that (a) this Agreement is a contract between Requestor and Company, (b) Requestor's responsibility under this Paragraph 7 is an express contractual obligation of Requestor to Company, and (c) that Requestor's obligation is material to Company, and without such contractual obligation of Requestor, Company would not have entered into this Agreement.
8. Company has reviewed and approved the Encroachment as described on Exhibits "B" through "E" attached hereto. If the Encroachment is determined by the Company to be unsafe at a future date, the Company and Requestor will cooperate to determine a resolution to resolve the unsafe condition. In the event the unsafe condition must be corrected or removed, Requestor shall correct or remove the unsafe condition at Requestor's expense within ninety (90) days after written notification from the Company.

06/01/22

If not so corrected or removed by Requestor, the unsafe condition may be corrected or removed by the Company at Requestor's expense without liability by the Company for any resulting damage.

9. This Agreement in no way reduces the Company's rights under the Easement(s) identified above. The Company may at any time exercise its Easement rights in a way that conflicts or interferes with the Encroachment described above. Upon notice from the Company, the Requestor will promptly modify, rearrange or remove the Encroachment to enable the Company to exercise its Easement rights without conflict or interference with the Encroachment. Requestor will be responsible for the cost of any such modification, rearrangement or removal. If Requestor fails to so modify, rearrange or remove the Encroachment within ninety (90) days after notice from the Company to do so, the Company may modify, rearrange or remove the Encroachment without liability for damage resulting therefrom, and Requestor shall promptly reimburse the Company for the cost of such modification, rearrangement or removal.
10. Requestor shall begin physical installation of the Encroachment within one (1) year of the date of execution of this Agreement. If installation does not begin within that period, this Agreement shall become invalid. A new Encroachment application must be submitted before further consideration and will be subject to a processing fee. For the avoidance of doubt, Company's permission for this Encroachment in no way implies or assures that Company will reissue an Agreement for this Encroachment in the future should this Agreement become invalid.
11. Except in cases of routine maintenance and inspection of the Encroachments and Sparrow Pond, including, but not limited to, clean out of the forebay, Requestor shall give at least five (5) days advance notice, except in emergencies, of any activities being performed within the Easement to Gregory Boutchyard, Supervisor Transmission Lines so that the Company, at its discretion, may have an inspector present while the work is in progress. **Requestor pays the costs of the inspector.**

Mobile: (540) 621-0844

E-Mail: gregory.a.boutchyard@dominionenergy.com

12. This Agreement provides Requestor only with approval to encroach on Company's electric transmission Easement. For the avoidance of doubt, Company's approval of this Encroachment in no way implies or assures that Company will grant Requestor's future request (if any) that Company quitclaim or subordinate in favor of Requestor any portion of Company's electric transmission Easement.
13. **Indemnification.** Requestor may contract with a vendor (a "Contractor") to construct and maintain the Encroachment (the "Work"). To the extent Requestor is not the party performing the Work, so that Requestor is not the contractor for the performance of such Work, the Contractor shall indemnify, hold harmless and defend the Company from and against any and all claims, actions, damages, injury, whether to person or property, liabilities and expenses, including reasonable attorneys' fees, arising from or out of the

installation, construction, operation, maintenance, inspection, rebuilding, removal, repair, replacement, improvement or alteration of the Encroachment by the Contractor, its employees, agents or contractors or in any way arising out of the Contractor's exercise of the license granted herein, except to the extent caused by the gross negligence or willful misconduct of the Company, its employees, agents, contractors, or invitees. The parties to this Agreement intend that any entity or person other than Requestor acting as the Contractor in performance of the Work shall be obligated to provide the indemnity required by this Paragraph 13. Nothing contained in this Paragraph 13 shall be construed as a waiver of Requestor's sovereign immunity.

14. Company shall not be responsible or liable for injuries to persons, including death, or damage to property when such injuries or damages are caused by, result from, or are on account of or growing out of the Agreement hereby granted, and are not due solely to the negligence or willful misconduct of Company, its agents, employees, successors or assigns. Requestor shall require its contractor(s) to indemnify Company against any loss, damage or liability arising from work performed or permitted by Requestor or its contractor(s) on the right-of-way and to have insurance coverage for such indemnification.

15. Before Requestor or its contractors, subcontractors and assigns enter upon Company's Easement, each shall obtain or keep, in full force and effect, with respect to its/their work within the Company's Easement, with insurance companies authorized to do business in the Commonwealth of Virginia, the following insurance:

a) Workers compensation insurance as required by the statutory benefit laws of the Commonwealth of Virginia or approved self-insurance and employers' liability insurance with limits of at least \$1,000,000.00 bodily injury by accident and \$1,000,000.00 each employee for bodily injury by disease.

b) Commercial general liability insurance with coverage limits of at least \$2,000,000.00 each occurrence, \$2,000,000.00 aggregate. Such insurance shall include, but not be limited to, specific coverage for contractual liability encompassing the previously referenced indemnity and liability requirements.

c) Automobile liability insurance covering bodily injury and property damage with a total limit of at least \$2,000,000.00 per accident. Such insurance shall cover liability arising out of any automobile (including owned, hired and non-owned automobiles).

The insurance required in paragraph (b) above shall: (1) name Company, its officers, directors and employees as an additional insured; (2) be primary coverage with respect to any liability coverage carried by the Company; and (3) provide for claims by one insured against another such that, except for the limits of insurance, the insurance shall apply separately to each insured against whom a claim is made or suit is brought.

Requestor and Requestor's contractors, subcontractors and assigns waive, and will require their insurers to waive, all rights of recovery against Company for damages to the extent these damages are covered by the insurance required to be maintained pursuant to the insurance requirements.

06/01/22

Before Requestor, Requestor's contractors, subcontractors and assigns enter upon Company Easement, and thereafter upon the renewal of their insurance policies, Requestor, Requestor's contractors, subcontractors and assigns, shall provide certificates of insurance to Company evidencing the coverage and limits required by this Agreement and that Company, its officers, directors and employees are an additional insured.

Failure of Company to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Company to identify a deficiency from evidence that is provided shall not be construed as a waiver of the obligation of Requestor, Requestor's contractors, subcontractors and assigns to maintain such insurance.

Requestor, Requestor's contractors, subcontractors and assigns, or their respective agents, representatives or insurers shall provide thirty (30) days prior written notice of cancellation to Company, except for non-payment of premium to which ten (10) days' notice shall apply.

16. Drainage ditches of such depth as to obstruct travel along or access to Company Easement are not permitted unless such ditches are provided with culverts installed and maintained at no cost to the Company.
17. Culverts shall be designed to support traffic crossings by heavy construction and maintenance equipment and shall be capable of withstanding AASHTO designation HS20-44 wheel loadings (or AASHTO HL93 truck loading). Any culverts beneath access roads must be sized to accommodate water flows and prevent unintentional pooling on Company Easement.
18. Requestor shall notify MISS UTILITY (1-800-552-7001) in a timely manner in advance of construction to allow existing nearby underground utility conflicts to be identified.
19. A minimum of thirty-six (36) inches of cover measured from the top of the storm pipes to existing ground elevation is to be maintained. The storm pipes shall be designed to support traffic crossings by heavy construction and maintenance equipment and shall be capable of withstanding AASHTO designation HS20-44 wheel loadings (or AASHTO HL93 truck loading). See Exhibits "B" through "E".
20. The Culvert, Grading, Landscaping and Access Road crossing as proposed on Exhibits "B" through "E" is approved with no part of the Encroachment located within fifty (50) feet of any Company structure, foundation, guy, anchor or any other Company facilities.
21. Unless otherwise specified in this Agreement, the site plans/drawings prepared by Arlington County Department of Environmental Services, entitled "Sparrow Pond Restoration", sheet numbers 21, 45, 46 and 51, dated March 16, 2022, shall be strictly adhered to. See Exhibits "B" through "E".
22. Requestor may remove topsoil and gravel from portions of the Easement not occupied by Company facilities. In such cases Requestor must maintain a minimum island of

06/01/22

- undisturbed material with a twenty-five (25) foot radius on all sides of said facilities. The slope ratios, normally 3:1 or less, and transmission line access lanes must be maintained.
23. The proposed access road shall follow the existing ground line contours. No more than one (1) foot of fill may be placed on the Easement.
 24. Should it be necessary to verify the final grade of the proposed cut and/or fill, then it will be the responsibility of Requestor to reimburse Company for all actual costs. If the verification reveals that the cut/fill/grading was not done as approved, then Requestor is responsible for all costs involved with correcting the problem(s).
 25. There shall be no grading, excavation, filling or other construction activities within twenty-five (25) feet of any Company structure, foundation, guy, anchor or any other Company facilities.
 26. Clean fill material may be placed on right-of-way to within twenty-five (25) feet of any existing or proposed transmission structure. In all cases, no fill will be allowed until the proposal is reviewed by the Electric Transmission Right of Way Management to insure proper grade and operating clearances.
 27. In all cases, spoil material is prohibited and will not be permitted on Company Easement.
 28. Requestor acknowledges that the Company may engage in an ongoing program of periodic trimming and clearing to maintain the Easement and to keep trees, shrubs, and other vegetation away from its facilities. Company will not be responsible for trees, shrubs or other vegetation planted within the Easement damaged as a result of its construction or maintenance work, including chemical control of brush.
 29. Requestor will remove shrubs or trees exceeding the Company's limitations, or otherwise deemed necessary by Company within thirty (30) days after notice from the Company. If not removed by Requestor within thirty (30) days, Company may remove such vegetation at Requestor's expense without liability for any resulting damages.
 30. The planting of the trees, shrubs and other vegetation shall conform to the Company's Guidelines. Requestor shall maintain a twenty (20) foot wide vehicle access route on Company right-of-way and a clear area with a fifty (50) foot radius around each structure. See Exhibits "B" through "E".
 31. Requestor is responsible for acquiring, from the owners of the underlying fee simple or otherwise, any additional property rights necessary for the Encroachment location. For the avoidance of doubt, Company does not convey, or otherwise transfer to Requestor any Easement right that Company may hold, nor does Company make any representation or warranty as to the status or availability of any rights that may be required for Requestor to make use of the Encroachment or Easement.

06/01/22

32. It is the responsibility of the Requestor to ensure that all contractors or sub-contractors are aware, informed of and abide by these conditions.
33. The above conditions only apply as specific to and set forth in this Agreement and do not set a precedent for further Agreements.
34. All notices, requests, demands and other communications required to be given, (except as otherwise indicated) shall be deemed to have been duly given if in writing and mailed, as follows:

If to Requestor:	The County Board of Arlington County 2100 Clarendon Blvd, Suite 300 Arlington, Virginia 22201
With a Copy To:	Director, Dept of Environmental Services 2100 Clarendon Blvd, Suite 900 Arlington, Virginia 22201
If to Company:	Dominion Energy Virginia Highwoods One, Suite 400 10900 Nuckols Road Glen Allen Virginia 23060 Attention: Electric Transmission Rights-of-Way

06/01/22

This Agreement is granted only to Requestor. It is not an interest in real property; it does not run with the underlying land or benefit any successors in interest to the underlying land, and it may not be assigned or transferred to anyone else without the prior written approval of Company, which Company may withhold in its sole discretion. If Requestor is not the owner of the property on which the Encroachment is to be located; it is Requestor's responsibility to obtain any and all necessary permission(s) or easement(s) from the property owner(s) for the Encroachment prior to installation.

For this Agreement to become effective, Company must be in possession of **both** the executed Agreement **and the required processing fee**.

Requestor must return the executed Agreement to Company by July 30, 2022 to:

Dominion Energy Virginia
10900 Nuckols Road, Suite 400
Glen Allen, Virginia 23060
Attention: Nancy Gustavsson
(804) 771-3388 or nancy.l.gustavsson@dominionenergy.com

Additional contact: Dominion Energy Virginia at 1-800-215-8032 or e-mail at ETROW@dominionenergy.com.

[SIGNATURES TO FOLLOW]

06/01/22

Company, Authorized Representative, will execute and finalize Agreement upon return of Agreement executed by Requestor or its Authorized Representative. Requestor will be provided a fully executed copy of Agreement for their records.

In consideration of this Agreement granted by Company for the above-described Encroachment, Requestor hereby agree(s) to the terms and conditions stated in the foregoing Agreement.

Company and Requestor hereby cause this Agreement to be executed by their duly Authorized Representative.

VIRGINIA ELECTRIC AND POWER COMPANY

By:

Fallon Madrid

12/6/22

Fallon Madrid
Supervisor, Rights of Way Management
Electric Transmission
Authorized Representative

Date

THE COUNTY BOARD OF ARLINGTON COUNTY

By

Uri Arkin

Sept. 28, 2022

Signature

Date

Uri Arkin

Print Name Real Estate Bureau Chief

Print Title

Approved as to form

[Signature]
County Attorney