



**LAND USE PERMIT
APPENDIX 12**

Subordination of Rights Agreement

Brookhill Blocks 9-11

(For new public roads intended for maintenance by the Virginia Department of Transportation)

THIS AGREEMENT, made and entered by and between the City of Charlottesville, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (hereinafter “GRANTOR”), and the Commonwealth of Virginia, Department of Transportation (hereinafter “GRANTEE”);

WITNESSETH:

WHEREAS, the GRANTOR has permitted a motor vehicle road and road right of way, inclusive of other ancillary public use facilities (sidewalks, etc.), all hereinafter called “roadway,” to cross and coexist with a right of way easement GRANTOR holds for constructing, maintaining, operating, altering, repairing, inspecting, protecting, removing, and replacing certain natural gas or petrochemical transmission line(s) or distribution line(s), or both, that it operates; and

WHEREAS, the GRANTOR and GRANTEE mutually recognize the needs of the other, their respective roles, and find it desirable to cooperate in the shared use of the land in a manner that ensures the rights of the GRANTOR and the travelling public are adequately protected and public safety is assured;

NOW THEREFORE, for and in consideration of the sum of one dollar (\$1.00), cash in hand paid, receipt of which is hereby acknowledged, and subject to the terms, conditions and reservations set forth hereinafter, the GRANTOR, hereby agrees that it’s rights shall be subordinate to the surface transportation rights of the citizens of the Commonwealth to use the roadway, represented by the GRANTEE or such other public road officials as may have jurisdictional authority over the public roadway to the extent the public roadway co-exists with the GRANTOR’s easement, defined as that part of its easement crossing or encroaching within the rights of way of Flora Lane, Flora Court and Koch Court, located approximately three-quarters (3/4) of a mile from the intersection of the existing State Route 643 – and US-29, and situated in the Brookhill Subdivision Blocks 9-11 in Albemarle County, Virginia.

Subject to the terms and conditions hereof, the GRANTOR reserves unto itself, its successors, and assigns all of the rights and privileges established under its easement, granted the 21st day of January, 2022, and filed in the clerk’s office of the Circuit Court of Albemarle County, Virginia; indexed as instrument number 202200000894 (the “Easement”).

The subordination herein granted shall become effective at such time as the GRANTEE accepts this document and the Virginia Department of Transportation has issued a remain In Place Land Use Permit to the GRANTOR for its facilities, it being mutually agreed that the issuance thereof shall be subject to the following provisions and conditions which shall be deemed incorporated therein and which shall be covenants running with the land under the terms of this instrument:

The GRANTOR'S facilities within the area defined above may continue to occupy the roadway in their existing condition and location, free of charge.

1. The GRANTOR hereby agrees:
 - a. To notify the Department or entity having jurisdiction over the roadway of its work events prior to their initiation, except as may be required under emergency situations, and to obtain appropriate prior authorization addressing the work to be performed within the public transportation right of way authorized by a VDOT issued Land Use Permit or such other permission or document required by an entity other than the Department having jurisdiction over said roadway and, in the event of emergency situations, to obtain said authorization as soon as possible.
 - b. That GRANTOR shall be responsible for any damage or liability whatsoever arising from GRANTOR'S maintenance and construction of its facilities within the roadway.
2. In the event that the GRANTEE requests relocation, alteration or modification of GRANTOR's facilities within the roadway, the GRANTEE shall bear the total nonbetterment cost of such relocation, alteration or modification; and the GRANTEE specifically waives any right or provision to the contrary contained in the standard form utility permit or otherwise. For purposes of this agreement, "total nonbetterment costs" is defined as the total cost of relocating, altering or modifying facilities with capacity and maximum pressure design characteristics comparable to those design characteristics of the facilities existing at the time of this agreement. In the event the GRANTEE requires such relocation, alteration and/or modification and GRANTOR wishes to replace the facilities at that time with upgraded facilities of greater design characteristics, GRANTOR shall pay such incremental costs as are attributable to the upgrade of facilities.
3. The GRANTEE, or a subsequent governmental entity having jurisdiction over the roadway, is to have and hold the roadway property described herein with the benefit of the subordination herein granted for so long as said property is maintained and used as a public street or highway open to the travelling public, but upon abandonment of said roadway, all rights, privileges, interests and easements of GRANTOR in and to the roadway property established under the aforesaid Easement filed in the Clerk's office of the Circuit Court shall revert and restore to the GRANTOR, its successors and assigns, free from such subordination of GRANTOR's rights and the subordination herein granted shall automatically terminate and become null and void without the necessity of any further action or writing; and, in such event, the GRANTEE shall, upon being requested in writing to do so by GRANTOR, its successors and assigns, promptly execute and deliver to GRANTOR, free of charge, an appropriate document, in suitable form for recording in the aforesaid Clerk's office, which confirms the termination, surrender and release of the subordination herein granted.
4. In the event of a conflict or inconsistency between the terms and conditions of this instrument and those contained in any permit, authorization or other document issued or executed by the parties hereto, their successors and assigns, with respect to GRANTOR's facilities located in the roadway or work thereon, the terms and conditions of this instrument shall govern.
5. This instrument shall be binding upon and accrue to the benefit of the GRANTOR and the GRANTEE, and each of their respective successors and assigns.

IN WITNESS WHEREOF, the GRANTOR causes its name to be assigned hereto by its appropriate office, all after due authorization, to become effective as of the date accepted and signed by duly authorized officers of the local government and the Department.

GRANTOR: _____

By: _____
(Name and Title) Date

COMMONWEALTH OF VIRGINIA, CITY/COUNTY OF _____, to wit:

(Name) _____, acknowledged the foregoing instrument before me this _____ day of _____, _____

NOTARY PUBLIC Notary registration number

My commission expires: _____

GRANTEE: _____
ACCEPTED _____ Date _____
(VDOT Commissioner, Maintenance Division Administrator,
or Authorized Official)

COMMONWEALTH OF VIRGINIA, CITY/COUNTY OF _____, to wit:

(Name) _____, acknowledged the foregoing instrument before me this _____ day of _____, _____

NOTARY PUBLIC Notary registration number

My commission expires: _____