



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of November 17, 2012**

DATE: October 22, 2012

SUBJECT: Approval of a Right of Way (Easement) Agreement among the County Board, Acting as the Arlington Health Center Commission, the Medical Facilities of America XI (II), Limited Partnership ("MFA"), and Virginia Electric Power Company ("DVP") for the Installation and Maintenance of Electric Distribution Facilities, and Authorization to Execute and Accept Documents(s) by which DVP will Vacate, Quitclaim or Extinguish an Existing Easement, on Arlington Health Center Commission-owned Property, known as Cherrydale Nursing Home, 3710 Lee Highway, Arlington, Virginia (RPC No. 06-027-051).

C. M. RECOMMENDATION:

1. Approve the attached Right of Way (Easement) Agreement ("Agreement") among the Arlington Health Center Commission, MFA and Virginia Electric Power Company ("DVP") for the installation and maintenance of electric distribution facilities on Arlington Health Center Commission-owned property at 3710 Lee Highway, Virginia (RPC No. 06-027-051)("Cherrydale Nursing Home").
2. Authorize the Real Estate Bureau Chief, Department of Environmental Services, or his designee, to execute the Agreement and any related documents, and to execute and accept, on behalf of the Arlington Health Center Commission, document(s) by which DVP will vacate, quitclaim or extinguish an existing DVP easement on the Cherrydale Nursing Home property, subject to approval as to form of the Agreement and all such related documents by the County Attorney.

ISSUES: Approval by the County Board, acting as the Arlington Health Center Commission and execution of the Agreement (Attachment 1) is necessary to allow DVP, to use a portion of the Cherrydale Nursing Home property, to install and maintain certain existing and proposed underground electric distribution lines. No issues have been identified in relation to this request.

SUMMARY: The Department of Environmental Services is relocating underground, certain electrical facilities, along a portion of Lee Highway, in the Cherrydale neighborhood. Construction of some of the planned Project improvements will require the undergrounding of

County Manager:

BMD/mjs

County Attorney:

[Signature] *[Signature]*

13.

Staff: Kevin Connolly, DES, Real Estate Bureau

electrical facilities, across a portion of the Cherrydale Nursing Home property, located at 3710 Lee Highway (“Cherrydale Nursing Home”). The Cherrydale Nursing Home is a health and rehabilitation facility located on Arlington Health Center Commission land, which land is owned by the Arlington Health Center Commission and previously ground leased to MFA, under an Indenture of Lease, dated August 13, 1976 as amended, for the operation of the facility.

The Arlington Health Center Commission was created in 1973 by the County Board to, among other things, oversee all land-related and property management functions that have and will come under the purview of the AHCC, including the lease agreement with MFA at the Cherrydale Nursing Home. In 2005, the County Board members were appointed as the Arlington Health Center Commission. Thus, acting as the Arlington Health Center Commission, the County Board is being requested to approve the Agreement to allow DVP to use a portion of the Cherrydale Nursing Home property, to install and maintain certain existing and proposed underground electric distribution lines.

The Project undergrounding work began in 2012, and the undergrounding work at the Cherrydale Nursing Home, is expected to begin early in 2013. DVP already has underground electric facilities located beneath portions of the Cherrydale Nursing Home property. Some of DVP’s underground electric facilities, located under the Cherrydale Nursing Home property, are located within an area of an existing easement. Some of DVP’s existing underground electric facilities are located outside of their existing easement. The existing easement area is spatially inadequate for all of the existing and planned underground electric facilities that are proposed to be located on the Cherrydale Nursing Home property. To complete the undergrounding work, DVP requires that the County Board, acting as the governing body of the Arlington Health Center Commission, and MFA, convey the Easement to DVP, granting DVP the right to install and maintain its electric distribution line and appurtenant facilities beneath a portion of the Cherrydale Nursing Home property.

BACKGROUND: The Department of Environmental Services has designed, and is constructing, a project for the undergrounding of certain electrical facilities in Cherrydale, along a portion of Lee Highway. The project plans call for the construction of underground electrical duct bank and subsequent removal of the existing overhead cables and utility poles along Lee Highway between North Oakland Street and North Quincy Street (“Project”). The new underground electrical cables will tie-in to the existing overhead system on North Quebec Street and on Lee Highway west of North Quebec Street. The Project is currently under construction, and it is estimated that the project will be completed by Dominion Virginia Power in November 2013. As part of the Project improvements, certain electrical facilities and related equipment have been planned for the Cherrydale Nursing Home, within the area of the proposed Easement, shown on the vicinity maps attached hereto as Attachment 2. DVP has an existing easement across a portion of the Cherrydale Nursing Home property, within the vicinity of the proposed work. The area of the existing easement is shown on the plat attached hereto as Attachment 3.

The area of the existing easement is spatially insufficient for the electrical improvements that are to be located on the Cherrydale Nursing Home property, as part of the Project. To facilitate the construction of the project as designed DVP requires a new easement with a larger spatial area. The new easement Agreement has been approved by MFA and needs to be approved by the

Arlington Health Center Commission to be effective. Approval of the attached Agreement, will grant DVP the right to install and maintain one or more electric distribution lines and appurtenance facilities beneath a One Thousand Nine Hundred Sixty (1,960) square foot portion of the Cherrydale Nursing Home property. The physical area of the Easement, to be granted to DVP at the Cherrydale Nursing Home, is depicted on the plat that is attached to the Agreement, which plat is entitled "Plat Showing Dominion Virginia Power Easement on Lot 1, H.D. Donaldson Subdivision, D.B. 117, PG. 166, Arlington County, Virginia", dated June 18, and prepared by the County Surveyor.

DISCUSSION: The terms of the Agreement were negotiated between County staff, and DVP, and has been approved by MFA. The Agreement provides the conditions for the proposed installation, maintenance and operation of DVP's underground facilities. DVP has also agreed to provide document(s) that, upon recordation in land records, will vacate, quitclaim or extinguish the existing easement on the Cherrydale Nursing Home property that were granted to DVP for the existing underground electric distribution line, which easement will no longer be needed after the installation of DVP's new distribution lines. Because the undergrounding work is required by the County for the construction of the Project, the County will pay the cost of such work.

Once the Agreement is approved by, and executed on behalf of, the County Board, acting as the Arlington Health Center Commission, and MFA, DVP will begin to relocate, operate and maintain DVP's underground facilities at the Cherrydale Nursing Home property, consistent with the terms of the Agreement.

FISCAL IMPACT: There will be no fiscal impact to the Arlington Health Center Commission for the conveyance of the Easement. The Easement is being granted to DVP for the nominal consideration of One Dollar (\$1.00).

CONCLUSION: Staff recommends that the County Board, acting as the Arlington Health Center Commission accept the County Manager's recommendation to approve the attached Agreement, and authorize the Real Estate Bureau Chief, department of Environmental Services, or his designee, to execute the Agreement and any related documents, and to execute and accept, on behalf of the Arlington Health Center Commission, document(s) by which DVP will vacate, quitclaim or extinguish an existing DVP easement on the Cherrydale Nursing Home property, subject to approval as to form of the Agreement and all such related documents by the County Attorney.



Right of Way Agreement

THIS RIGHT OF WAY AGREEMENT, is made and entered into as of this 19th day of October, 2012, by and between

ARLINGTON HEALTH CENTER COMMISSION (also known of record as Arlington Hospital and Health Center Commission), a body corporate and politic, MEDICAL FACILITIES OF AMERICA XI, (II) LIMITED PARTNERSHIP, a Virginia limited partnership, formerly known as Medical Facilities of America, XI trading as Cherrydale Health and Rehabilitation Center under a certain Indenture of Lease (Ground Lease) with the Arlington Health Center Commission collectively

("GRANTOR") and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation, doing business in Virginia as Dominion Virginia Power, with its principal office in Richmond, Virginia ("GRANTEE").

WITNESSETH:

1. That for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid 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 non-exclusive easement over, under, through, upon 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, including the wires and facilities of any other public service company in aid of or to effectuate such internal telephone or other internal communication purposes; 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 non-exclusive easement shall extend as shown on the attached plat 40-12-0133 (variable) feet in width across the lands of GRANTOR; and

Initials: MM _____

This Document Prepared by Virginia Electric and Power Company and should be returned to:
Dominion Virginia Power, 3072 Centreville Road Herndon VA 20171.

(Page 1 of 4 Pages)
DVPIDNo(s). 40-12-0133
Tax Map No. RPC #06027017

Right of Way Agreement

2. The easement granted herein shall extend across the lands of **GRANTOR** situated in Arlington, Virginia, as more fully described on Plat(s) Numbered 40-12-0133, attached to and made a 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 **GRANTEE**. **GRANTEE** shall have the right to inspect, reconstruct, remove, repair, improve, relocate on the easement, and make such changes, alterations, substitutions, additions to or extensions of its facilities as **GRANTEE** may from time to time deem advisable.

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

Initials:

(Page 2 of 4 Pages)
DVPIDNo(s). 40-12-0133

Right of Way Agreement

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 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, and below ground obstructions do not interfere with **GRANTEE'S** exercise of any of its rights granted hereunder. In the event such use does interfere with **GRANTEE'S** exercise of any of its rights granted hereunder, **GRANTEE** may, in its reasonable discretion, relocate such of its facilities as may be practicable to a new site designated by **GRANTOR** and acceptable to **GRANTEE**. In the event any such facilities are so relocated, **GRANTOR** shall reimburse **GRANTEE** for the cost thereof and convey to **GRANTEE** an equivalent easement at the new site.

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

Initials: NM _____

(Page 3 of 4 Pages)

DVPIDNo(s). 40-12-0133

DOMINION

RIGHT OF WAY AGREEMENT

11. GRANTOR covenants that it is seised of and has the right to convey this easement and the rights and privileges granted hereunder, that GRANTEE shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement, rights and privileges; and that GRANTOR shall execute such further assurances thereof as may be reasonably required,

NOTICE TO LANDOWNER: You are conveying right to a public service corporation. A public service corporation may have the right to obtain some or all of these rights through 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 negotiate compensation for any rights that you are voluntarily conveying.

WITNESS the following signatures and seals:

ARLINGTON HEALTH CENTER COMMISSION

By: _____

Its: _____

State of _____

City/County of _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2012

by _____

of ARLINGTON HEALTH CENTER COMMISSION.

Notary Public

Virginia Notary Reg. No. _____ My commission expires: _____

MEDICAL FACILITIES OF AMERICA XI, (II) LIMITED PARTNERSHIP,
a Virginia limited partnership

By: [Signature]

Its: CFO & Treasurer

State of VA

City/County of Roanoke

The foregoing instrument was acknowledged before me this 19th day of Oct., 2012

by Novel Martin of MEDICAL FACILITIES OF AMERICA XI, (II) LIMITED PARTNERSHIP, a Virginia limited partnership.

Arlene Bosco Usery
Notary Public

Virginia Notary Reg. No. 7033814 My commission expires: May 31, 2014



(Page 4 of 4 Pages)
NOVA-40-12-0133

DOMINION

RIGHT OF WAY AGREEMENT

Amendment to Right of Way Agreement

EXHIBIT "A"

This Right-of Way Agreement dated October 19, 2012, by THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, a body corporate and politic, (**GRANTOR**), and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation, doing business in Virginia as Dominion Virginia Power (**GRANTEE**), to which this Exhibit "A" is attached, is hereby as follows:

1. Paragraph 4 is hereby deleted in its entirety and the following inserted in lieu thereof:

Except as otherwise provided herein, **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 **GRANTOR**. **GRANTEE's** 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, shall specifically exclude: (i) the existing 15" storm sewer line, as well as any existing appurtenances and accessories related thereto; and (ii) an existing brick enclosure, located within the southern portion of the easement.

2. The last line of Paragraph 6 is hereby amended to change "...sixty (60) days... "to" ...one hundred eighty (180) days..."

3. Paragraph 7 is hereby deleted in its entirety and the following inserted in lieu thereof:

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 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, and below ground obstructions so not interfere with **GRANTEE's** exercise of any of its rights granted hereunder. In the event such use does interfere with **GRANTEE's** exercise of any of its rights granted hereunder, **GRANTEE** may, in its reasonable discretion, relocate such of its facilities as may be practicable to a new site designated by **GRANTOR** and acceptable to **GRANTEE**. **GRANTOR** shall reimburse **GRANTEE** for the cost of relocation of the facilities and **GRANTOR** shall convey to **GRANTEE** an equivalent easement at a location determined by the **GRANTOR**.

4. Paragraph 8 is hereby deleted in its entirety and the following inserted in lieu thereof:

GRANTEE shall have the right to assign or transfer to any public service company for the express purpose of providing electric service to the public, all or any part of the perpetual right, privilege and easement granted herein.

5. Paragraph 11 is hereby deleted in its entirety and the following inserted in lieu thereof:

GRANTOR covenants that it is the owner fee simple of the property on which this easement is granted.

6. The following language is added as Paragraph 13 to the Right of Way Agreement:

GRANTEE, agrees to indemnify, protect, defend, and hold **GRANTOR**, its employees and agents, harmless from and against all claims, actions, losses, damages, costs, expenses and liabilities arising out of injury to or death of any person or loss of or damage to any property in or upon the easement of **GRANTOR's** contiguous area, including the person or property of **GRANTOR**, its employees, agents, licensees, or others, to the extent such injury, death, loss, or damage is caused by the acts or omissions of **GRANTEE**, its agents, or employees. The foregoing indemnity shall not apply to any claims, actions, losses, damages, costs, expenses, and liabilities arising solely from any act or omission of **GRANTOR**, its agents, employees, licensees, or independent contractors.

7. The following language is added as Paragraph 14 to the Right of Way Agreement:

In the event that **GRANTEE** removes all of its wires and facilities from the easement and ceases to utilize the easement, then upon the request of **GRANTOR** (or the then-current owner of the underlying property, if different for **GRANTOR**), **GRANTEE** shall quitclaim its interest in this

Right of Way Agreement to **GRANTOR** (or the then-current owner of the underlying property, if different from **GRANTOR**).

Witness the following signatures and seals:

GRANTORS:

ARLINGTON HEALTH COMMISSION

By: _____

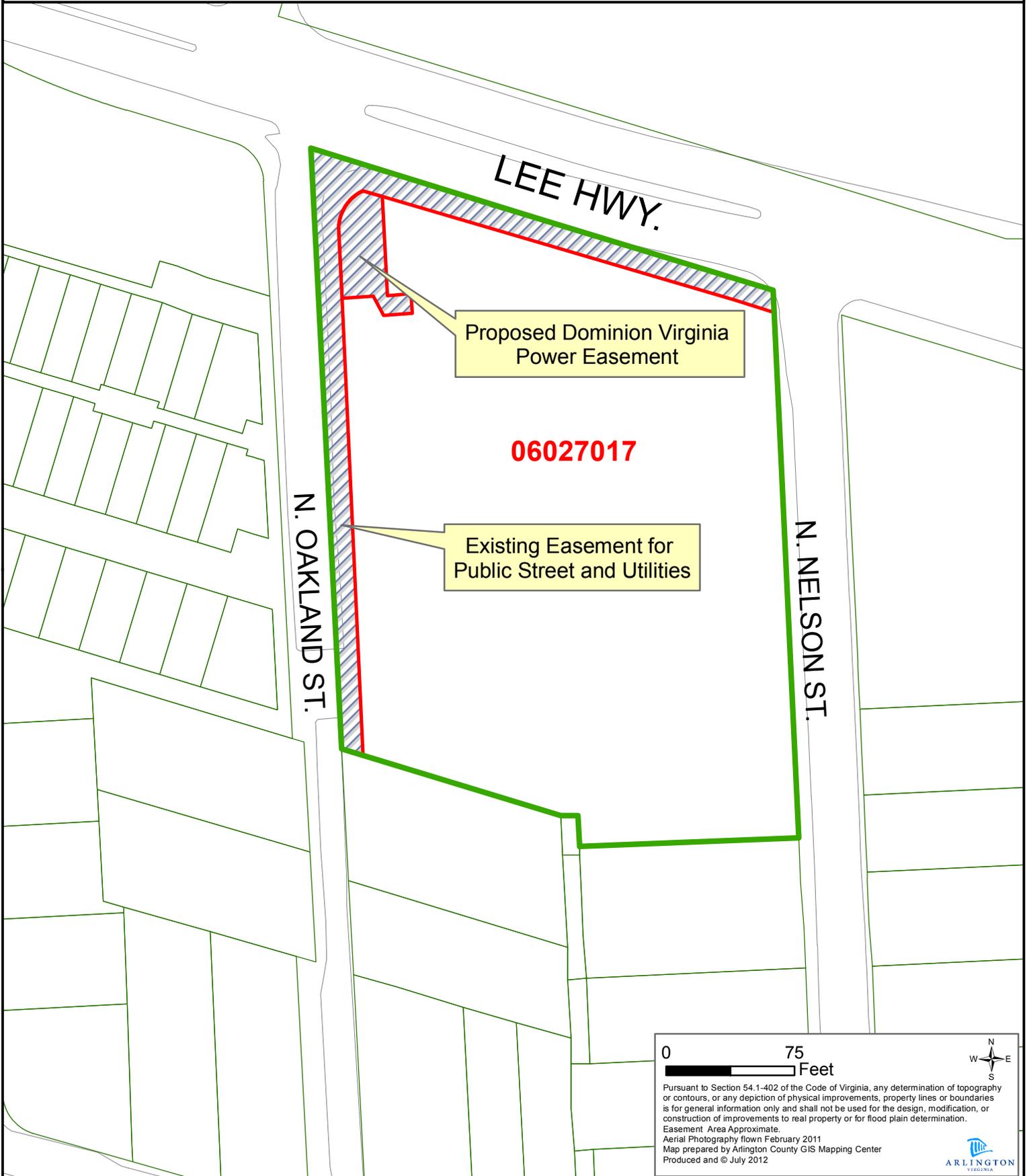
Title: _____

**MEDICAL FACILITIES OF AMERICA XI, (II) LIMITED PARTNERSHIP,
a Virginia limited partnership**

By:  _____

Title: CFO & Treasurer

Vicinity Map
3710 Lee Highway
RPC # 06027017



0 75 Feet

Pursuant to Section 54.1-402 of the Code of Virginia, any determination of topography or contours, or any depiction of physical improvements, property lines or boundaries is for general information only and shall not be used for the design, modification, or construction of improvements to real property or for flood plain determination.
Easement Area Approximate.
Aerial Photography flown February 2011
Map prepared by Arlington County GIS Mapping Center
Produced and © July 2012

Vicinity Map
3710 Lee Highway
RPC # 06027017



Vicinity Map

3710 Lee Highway

RPC # 06027017

