

RESOLUTION NO. 6-2016

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE TO EXECUTE A REIMBURSEMENT AGREEMENT WITH DOMINION EAST OHIO GAS FOR THE RELOCATION OF UTILITIES ON THE SOUTH SIDE OF WHEATLEY ROAD, AND DECLARING AN EMERGENCY

WHEREAS, the Village has requested that Dominion East Ohio Gas ("DEO") abandon certain existing facilities and rights, south of Wheatley Road and immediately west of Interstate 77, which would prevent development of certain property currently owned by the Village; and

WHEREAS, DEO has agreed to abandon the existing facilities and rights and to undertake the review, plan, design and execution of such relocation or protection of DEO's facilities, in response to the Village's request, upon certain terms and conditions; and

WHEREAS, this Council, after reviewing all pertinent information, has determined that it is necessary and in the best interests of the Village of Richfield to authorize the Mayor and Finance Director to execute a Reimbursement Agreement with DEO for the abandonment and relocation of utilities on the south side of Wheatley.

NOW THEREFORE, BE IT RESOLVED, by the Council of the Village of Richfield, County of Summit, State of Ohio, that:

SECTION 1. The Mayor and Finance Director are hereby authorized to execute a Reimbursement Agreement with Dominion East Ohio Gas for the abandonment and relocation of utilities on the south side of Wheatley Road, a copy of which is attached hereto as Exhibit "A", and incorporated as if fully rewritten herein, on behalf of the Village of Richfield, County of Summit, State of Ohio in an amount not to exceed Eighty Thousand Dollars (\$80,000.00).

SECTION 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with legal requirements, including section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary to authorize this agreement in order that the relocation can be placed on the construction schedule at the earliest possible time; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect and be

in force immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 1-19-16



President of Council



Mayor

Dated: 1/19/16

ATTEST:



Clerk of Council

REIMBURSEMENT AGREEMENT

PROJECT #: P400139725
MASTER WORK ORDER #: 63308902
OPERATION # : 30
DESIGNER: MICHAEL NORTH
PROJECT MANAGER: DANIEL EVANS

THIS REIMBURSEMENT AGREEMENT (“**Agreement**”) is made and entered into (“**Effective Date**”) this ____ day of January, 2016, by and between The East Ohio Gas Company d/b/a Dominion East Ohio, an Ohio corporation (“**DEO**”), having a mailing address at 320 Springside Drive, Suite 320 Akron, OH 44333, and the Village of Richfield, (“**Reimbursor**”), having a mailing address at 4410 West Streetsboro Road, Richfield OH 44286. DEO and Reimbursor are sometimes collectively referred to as the “**Parties**” and each individually as a “**Party**”.

RECITALS:

WHEREAS, Reimbursor is requesting that Dominion East Ohio Gas abandon existing facilities and rights south of Wheatley Road and immediately west of Interstate 77 as part of the Nexen Tire development located in Richfield, Ohio, and said project is conflicting with DEO facilities;

WHEREAS, as a result of Reimbursor's development and/or construction activities, Reimbursor has requested DEO to relocate or protect a portion of DEO's facilities without cost or risk to DEO; and

WHEREAS, DEO, under the terms and conditions set forth in this Agreement, is willing to undertake its review, plan, design and execution of such relocation or protection of DEO's facilities (“**Relocation Project**”) solely in order to accommodate Reimbursor, provided Reimbursor reimburses DEO for any and all of its costs associated with the Relocation Project (“**Actual Costs**”); and

WHEREAS, the Parties acknowledge that this Agreement confers unique obligations and responsibilities upon them and DEO therefore desires to proceed with the Relocation Project in good faith reliance upon the Reimbursor's promise to reimburse DEO for the Actual Costs; and

WHEREAS, Reimbursor desires for DEO to proceed with the Relocation Project in good faith reliance upon Reimbursor's promise to reimburse DEO for the Actual Costs.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, DEO hereby agrees to undertake the Relocation Project subject to the following terms and conditions:

1. The Parties agree that Exhibit A, (“**Relocation Plans**”) attached hereto, represents the scope of work for the Relocation Project. Said scope of work is based upon DEO's reliance upon final designs dated 9/3/2015 provided to DEO by the Village of Richfield used in developing Exhibit A.

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Reimbursor and DEO agree that the total cost of the Relocation Project is estimated to be **[\$67,583]** as detailed in Exhibit B ("**Estimated Costs**") attached hereto. Reimbursor acknowledges and agrees that this amount is an estimate only and shall not be construed as limiting the amount DEO is to be reimbursed by Reimbursor under this Agreement. Reimbursor agrees to reimburse DEO for the Actual Costs of the Relocation Project. Reimbursor acknowledges and agrees that as the Relocation Project progresses; the Relocation Plans may change, whether due to written request by Reimbursor or unforeseeable occurrences and/or geologic conditions, both of which may result in a change in the Estimated Costs. When DEO is made aware of a change in scope, DEO will complete a change order including cost and duration information for Reimbursor to authorize. Construction may stop until DEO is in possession of written change order authorization. Subsequent downtime and remobilization, if applicable, will be included in Actual Costs. Reimbursor and DEO agree that the total for the Relocation Project shall not exceed \$80,000 without further authorization from Reimbursor by way of an amendment to this Agreement.

2. In the event that Reimbursor does not execute and return this Agreement to DEO within ninety (90) days of the Effective Date, Reimbursor shall promptly notify DEO of its decision not to execute the Agreement. Upon receipt of said notification from Reimbursor, DEO shall make an accounting of all Actual Costs incurred related to the proposed Relocation Project. When final Actual Costs are known, DEO will invoice the Reimbursor for all Actual Costs. Reimbursor shall pay the full invoice within thirty (30) days after receipt. All payments shall be remitted to:

Dominion East Ohio
P.O. Box 27463
Richmond, VA 23261

3. The Relocation Plans and Estimated Costs will remain effective for One hundred eighty (180) days from the Effective Date, or such later period as mutually agreed upon in writing by both Parties. DEO's construction needs to be completed within this established time period for the Estimated Costs to remain valid. This Agreement must be signed and returned within ninety (90) days of the Effective Date, allowing DEO to schedule and complete construction of the Relocation Project within the remaining ninety (90) days. Reimbursor shall have the Relocation Project site ready for DEO, including, but not limited to, acquisition of any new or additional interests in real property, easements and/or rights-of-way, their assignment to DEO and their recording, final grading, removal of obstructions and staking of any necessary easements or right-of-way, by a mutually agreed upon construction start date. DEO reserves the right to terminate this Agreement and Reimbursor agrees to reimburse DEO for all Actual Costs incurred by DEO on the Relocation Project, if the Reimbursor is not ready for DEO to complete all relocation work within the required time period. Should the Relocation Project be terminated for said reason, DEO shall make an accounting of all Actual Costs incurred related to the proposed Relocation Project. When final Actual Costs are known, DEO will invoice the Reimbursor for all Actual Costs. Reimbursor shall pay the full invoice within thirty (30) days after receipt. All payments shall be remitted to:

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P.O. Box 27463
Richmond, VA 23261

4. If DEO determines, in its sole discretion, that new or additional interests in real property, including easements and/or rights-of-way are required then the Reimbursor shall obtain and record the required new or additional interests in real property, including easements and/or rights-of-way at Reimbursor's

cost. Said interests in real property must be reviewed and approved by DEO's land department. Should the Reimbursor, for any reason, be unable to obtain the approved new or additional interests in real property, including easements and/or rights-of-way, or the Relocation Project is terminated or does not go forward, DEO has the right to withdraw from the site and to receive payment for all Actual Costs incurred for the Relocation Project, including, but not limited to all costs associated with the removal of any work done to that date, if necessary. Upon said determination, DEO shall make an accounting of all Actual Costs incurred related to the proposed Relocation Project. When final Actual Costs are known, DEO will invoice the Reimbursor for all Actual Costs. Reimbursor shall pay the full invoice within thirty (30) days after receipt. All payments shall be remitted to:

Dominion East Ohio
P.O. Box 27463
Richmond, VA 23261

5. Except as provided in paragraph 3, 4 or 5, Reimbursor agrees to bear all direct and indirect Actual Costs incurred by DEO and relating to the Relocation Plans set forth by Exhibit A, including, but not limited to, any preconstruction, administrative, and/or field work performed under the terms herein, labor, planning, designing, materials, construction, damages, permits, taxes, travel expense, direct and indirect overhead, and other reasonable out of pocket expenses.
6. Reimbursor waives any and all damage claims, except if caused solely by the gross negligence or willful misconduct of DEO.
7. Reimbursor may, at its own expense, inspect DEO's performance in connection with the Relocation Project.
8. Reimbursor agrees that no contractor, subcontractor or laborer, other than those who are expressly authorized by DEO, may perform any work on or within one (1) foot of DEO's facilities located in the public road right-of-way, and that no work shall be performed within DEO's private easements/rights-of-way without the prior written consent of DEO. Once the Relocation Project is completed, Reimbursor shall not alter the grade, final or temporary, over DEO's new facilities. Any notice to DEO does not relieve Reimbursor, contractor, subcontractor or laborer of their obligation to notify other parties per the Ohio Underground Protective Services ("OUPS") statute. In the event of an emergency and upon Reimbursor's notice of such emergency, Reimbursor shall provide telephonic notice to DEO by calling 877-542-2630.
9. Following the completion of the Relocation Project, DEO shall make a full accounting of the final Actual Costs for the Relocation Project, including authorized change orders. When all Actual Costs are known, DEO will submit an invoice to Reimbursor. Reimbursor shall pay said invoice within thirty (30) days after receipt. All payments shall be remitted to:

Dominion East Ohio
P.O. Box 27463
Richmond, VA 23261

- 10. The obligations of DEO are subject to its Tariff and to force majeure. As such, DEO shall not be in default of this Agreement if any failure or delay in performance is caused by strike or other labor problems; accidents; acts of God; terrorist activity; fire; flood; adverse weather conditions; material or facility shortages or unavailability; lack of transportation; the imposition of any governmental codes, ordinances, laws, rules, regulations or restrictions, including, without limitation, the necessity of obtaining permits or environmental assessments or environmental approvals; condemnation or the exercise of rights of eminent domain; war or civil disorder; or any other cause beyond the reasonable control of DEO, including but not limited to unforeseeable geologic conditions.
- 11. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement, except as otherwise stated herein, shall be deemed to have been properly given when hand-delivered, emailed, or sent by U.S. registered or certified mail, return receipt requested, postage prepaid, addressed to with respect to:

Reimbursor

Name: Bobbie Beshara
Title: Mayor
Address: 4410 West Streetsboro Road
Richfield, Ohio 44286
Email: mayor@richfieldvillageohio.org
Telephone: 330-659-9201 ext. 234

DEO

Name: Daniel Evans
Title: Manager/PM:
Address: 320 Springside Drive, Suite 320,
Akron, Ohio 44333
Email: Daniel.a.evans@dom.com
Telephone: 330-571-5796

- 12. Each party warrants that it has the full right and authority to enter into this Agreement. All necessary approvals and authority to enter into this Agreement have been obtained and the person executing this Agreement on behalf of each party has the express authority to do so and in so doing, to bind such party hereto.

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- 13. Reimbursor may not assign any rights or delegate any duties under this Agreement without the prior written consent of DEO. Any attempted assignment or delegation in violation of this provision shall be void and have no binding effect.
- 14. The invalidity or unenforceability of any covenant, agreement, term or condition of this Agreement or the application thereof to any person or circumstances shall not affect the validity, enforceability or applicability of any other provision in this Agreement.
- 15. This Agreement constitutes the entire agreement of the Parties hereto and supersedes all prior agreements, understandings, negotiations, discussions and representations, whether oral or written, with respect to the subject matter hereof.
- 16. No amendment, change or modification to this Agreement will be binding unless executed in writing by both of the Parties hereto.
- 17. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

REIMBURSOR

By: _____
(Authorized Representative)

Name: _____

Title: _____

Date: _____

**The East Ohio Gas Company d/b/a
Dominion East Ohio**

By: _____ (Authorized Representative)

Name: _____

Title: _____

Date: _____