

1st reading 5-1-19
2nd reading 5-8-19
3rd reading 5-8-19
Voted On
Ayes 5
Nays 0
PASSED X DEFEATED

ORDINANCE NO. 2019-13

AN ORDINANCE

AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO ("DEO"), ESTABLISHING A RESTORATION BOND DEPOSIT FOR DEO AND DECLARING AN EMERGENCY.

WHEREAS, the Village Administration has negotiated a Memorandum of Understanding ("Memorandum") between Orange Village ("Village") and The East Ohio Gas Company d/b/a Dominion Energy Ohio ("DEO"); and

WHEREAS, DEO installs, owns, operates and maintains various gas lines throughout the Village, necessitating regular work in the Village's rights-of-way by independent contractors who perform work on DEO's gas lines; and

WHEREAS, current bonding requirements have created accounting difficulties for DEO and the Village causing the parties to seek a mutually agreeable solution that will secure the restoration of the Village's infrastructure without unduly burdening DEO and/or its contractors; and

WHEREAS, Council finds and determines that it is appropriate and mutually beneficial to enter into said Memorandum and desires to authorize the Mayor to enter the Memorandum; and

WHEREAS, this Council finds and determines a blanket bond to secure the restoration of the Village's infrastructure is an appropriate exception to the requirements of Section 1327.07 of the Orange Village Codified Ordinances, which requires a restoration bond for every project requiring work in the Village's rights of way.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF ORANGE VILLAGE, CUYAHOGA COUNTY, STATE OF OHIO:

SECTION 1. That the Mayor is hereby authorized and directed to enter into a Memorandum of Understanding with The East Ohio Gas Company on behalf of DEO, in a form substantially similar to the document attached to this Ordinance and labeled "Exhibit A".

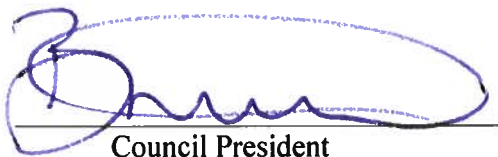
SECTION 2. That notwithstanding the provisions of Section 1327.07 of the Orange Village Codified Ordinances, DEO shall make a cash restoration blanket deposit in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00) in accordance with the Memorandum and to be used in accordance with the terms and conditions of the Memorandum.

SECTION 3. In the event there is main line extension, main line replacement or main line relocation project within Orange Village the contractor for such job shall file an additional restoration bond to secure the restoration of Village facilities in an amount to be reasonably determined by the Village Engineer to sufficiently secure such restoration costs.

SECTION 4. That actions of this Council relating to the passage of this legislation were taken 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 occurred in meetings held in compliance with all legal requirements including Chapter 105 of the Codified Ordinances of Orange Village.

SECTION 5. That this Ordinance constitutes an emergency measure in that the same provides for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of Orange Village and, further, provides the usual daily operation of a municipal department and allows for the immediate cessation of numerous bond deposits which do not efficiently secure the restoration of Village facilities; wherefore, this Ordinance shall be in full force and effect from and after its adoption and approval by the Mayor.

PASSED: JUNE 5, 2019


Council President

Submitted to the Mayor for
approval on this 5th day of JUNE, 2019

Approved by the Mayor this
5th day of JUNE, 2019

ATTEST:

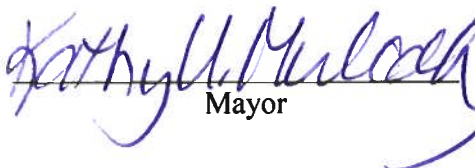

Clerk of Council
Mayor

EXHIBIT A
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") made and entered into by and between Orange Village, 4600 Lander Road, Orange Village, Ohio, 44022 ("Village") and The East Ohio Gas Company d/b/a Dominion Energy Ohio, having a principal place of business at 1201 E. 55th Street, Cleveland, Ohio 44103 ("DEO") this 5th day of June, 2019.

WITNESSETH;

WHEREAS, the Village requires contractors who are performing work in the Village's rights of way to make a cash deposit with the Village to secure the restoration of Village infrastructure to the condition it was in before the contractor performed work in the Village; and

WHEREAS, DEO installs, owns, operates and maintains various gas lines throughout the Village, necessitating regular work in the Village's rights of ways by independent contractors who perform work on DEO's gas lines; and

WHEREAS, the Village's bonding requirement has created difficulties for DEO and the Village in accounting for cash deposits, which has caused the parties to seek a mutually agreeable solution that will secure the restoration of the Village's infrastructure without unduly burdening DEO and/or its contractors performing mainline extension, mainline replacement, mainline relocation, sectional repairs, connection repairs, routine maintenance work, and new service line installations in the Village (the foregoing types of work shall be referred to hereinafter as the "Work"); and

WHEREAS, the parties agree that all contractors must annually register with the Village prior to performing Work in the Village; and

WHEREAS, DEO has agreed to pay for plan review and observation fees on behalf of the contractor within 60 days of being invoiced; and

NOW, THEREFORE, it is mutually agreed between the parties:

1. DEO will deposit ten thousand dollars (\$10,000) (the "Deposit") with the Orange Village Building Department.
2. The Deposit will serve as a blanket cash restoration deposit, as required by the Village, for all contractors who are performing Work in the Orange Village rights-of-way on behalf of DEO, except as provided in paragraph 3, below.
3. In addition to the standing Deposit, a DEO contractor retained to perform a main line extension, replacement or relocation job in the Village, shall, prior to the Village's issuance of a permit for such job, deliver to the Village a performance

bond applicable to the contactor's performance of the job. The bond shall be in a form and amount satisfactory to the Village in its reasonable discretion.

4. The Deposit will roll-over, year to year, with no further action required by the parties, subject to the replenishment and termination provisions below.
5. All contractors for DEO will also register with the Village.
6. DEO will provide plans for review by the Village, and submit an expected timeline for Work before a permit will be issued by the Village.
7. DEO will, separately, pay for plan review and construction observation within 60 days of being electronically invoiced with backup/time sheets. If DEO fails to pay for such items, the Village may apply the Deposit to such expenses.
8. In the event that the Village becomes aware of deficient Work in the restoration of Village infrastructure, or if trees are damaged or debris, dirt or other nuisance conditions are left on Village streets, the Village shall give notice to the contractor. If the condition remains after 24 hours, the Village shall give a second notice to the contractor and give notice to DEO's designated External Affairs Manager. In the event the condition remains unabated 24 hours after the second notice to the contractor and to DEO, the Village may abate the condition and use the Deposit to pay the cost of such abatement. DEO will pay to the Village any amount in excess of the Deposit when restoring the Deposit, as provided before.
9. In the event the Village is required to expend the Deposit because of the failure of DEO's contractor to properly perform restoration work, clean the road or otherwise abate the nuisance, or DEO fails to pay for plan review and construction observation within 60 days of being invoiced, the Village shall invoice DEO for the amount of the expenditure and DEO shall pay such invoice within 60 days.
10. If the Deposit is not restored within 60 days of being invoiced, the Village may stop all DEO projects within the Village until such Deposit is restored.
11. The parties intend this agreement and the Deposit to apply to all of DEO's projects initiated after the effective date of this agreement and the Deposit shall also secure the repairs that were performed by Wartko Construction at 28199 Harvard Road. Other cash deposits which have been made to the Village pursuant to the Orange Village Codified Ordinances shall be refunded to the contractors in accordance with the Village's ordinary practices.
12. Because this MOU contains terms which modify Village Building Department processes which are established by the Orange Village Codified Ordinances, it shall not become effective until it is approved by an ordinance passed by the Orange

Village Council.

13. Either party may terminate this agreement upon 10 days-notice to the other party. In the event this agreement is terminated, the Deposit shall be returned to DEO and contractors performing work on behalf of DEO will again be required to file cash bonds pursuant to the Orange Village Codified Ordinances.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands:

The East Ohio Gas Company

By: 

Print Name: Timothy C. McNitt

Date: 7/1/19

Orange Village

By: 

Mayor Kathy U. Mulcahy

Date: 6/5/2019