

LEGISLATIVE SUMMARY
MAYOR'S OFFICE OF CAPITAL PROJECTS
Division of Engineering and Construction

Professional Services related to Dominion East Ohio Gas Pipeline Infrastructure Replacement (PIR) Program

Ordinance No. 554-2021

Purpose: This Department requests legislation be prepared to authorize the Director of the Mayor's Office of Capital Projects to: enter into one or more Professional Service and Construction Administration Requirements Contracts/Agreements in overseeing the Dominion East Ohio Gas Pipeline Infrastructure Replacement Program for one year with two one year renewable options and to enter into any agreements as are necessary to carry out the intent and purpose of this Program; to accept funds from Dominion East Ohio and any other public or private entity; to expend any and all funds as authorized by the Director of Finance necessary to carry out the intent and purpose of this Program or any other related work.

Description: Dominion East Ohio is currently in year 13 of a 20 year \$2 billion Pipeline Infrastructure Replacement Program. All aged pipes will be replaced with new pipes within the City Right-of-Way and restorations to the sidewalks, tree lawns, and pavement will be required. In order to properly manage this aggressive program and to ensure City requirements are adhered to, supplemental staff will be needed to provide various services. Positions which will be required include but are not limited to:

Construction Inspectors to perform construction inspections (Quality Control) and to ensure compliance to City Standards, specifications, and permit requirements.

Certified Arborists to ensure tree preservation requirements are met and to provide timely direction on tree related work.

Professional Engineers in the role of a Permit Coordinator to review submittals/designs, process permit applications, manage Inspectors/Arborists, coordinate construction and design issues, and to provide documentation and invoicing to Dominion East Ohio.

Cost Estimate: Construction Inspection & Professional Services \$550,000

Funding: Dominion East Ohio will fund all associated costs with this Program. An account will be created at the City in which Dominion will deposit an initial amount of \$250,000 and the City will draw upon that. Any amount drawn will be replenished on a monthly basis to maintain \$250,000 in the account.

Project Schedule: 20 Year DEO Capital Plan

Ward: Citywide

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CITY OF CLEVELAND AND DOMINION EAST OHIO GAS
FOR PIPELINE REPLACEMENT PROJECTS WITHIN THE CITY
RIGHT-OF-WAY

THIS MEMORANDUM is made as of this 3rd day of March 2015 by and between The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO"), an Ohio corporation and the City of Cleveland ("City"), a municipal corporation and political subdivision of the State of Ohio.

WHEREAS, Ohio Revised Code 4939.05[©] requires that public way fees levied by a municipal corporation shall be based only on costs that the municipal corporation both has actually incurred and can clearly demonstrate or can be properly allocated and assigned to the occupancy or use of a public way and such costs shall be reasonably and competitively neutrally allocated among all persons occupying or using the public ways; and

WHEREAS, Codified Ordinance 503 requires, among other things, all persons working in the City Right-of-Way to obtain a street opening permit when performing any excavations, removing any pavement and placing any pipes; and

WHEREAS, Codified Ordinance 503, to minimize pavement degradation on any public street that has been constructed, reconstructed or repaved under City or other governmental contract within a five (5) year moratorium requires, the pavement surface not be cut or opened except as otherwise permitted; and

WHEREAS, Codified Ordinance 505 provides requirements for sidewalk construction; and WHEREAS, Codified Ordinance 510 is to manage occupancy and use of the public right of way by service providers on a competitively neutral basis and to promote cooperation and efficiency among service providers and the City. Ordinance 510 requires initial registration with the City prior to beginning any work and, subsequently, an annual registration for the use of public right-of-way by service providers.

THEREFORE, the parties agree as follows:

- A. **DOMINION EAST OHIO RESPONSIBILITIES (DEO)**
- I. **Service Provider Registration**
- a. DEO shall register with the City on an annual basis. Registration shall be made by no later than December 31st for the following year.
- II. **Permitting**
- a. DEO shall provide the City, by no later than January 31st of each year, a list of Contractors that are pre-qualified to work on DEO gas facilities for that calendar year. The contractor list will remain the same unless modified in writing by Dominion. The contractor list may be supplemented or modified on a

semi-annual basis if desired by DEO. In addition, DEO Contractor shall be pre-qualified with the City of Cleveland and shall be required to go through pre-qualification training on a biennial basis or as needed. The City shall reserve the right to withdraw pre-qualification status for any contractor if work performed does not meet defined City requirements.

- b. Appropriate DEO personnel shall be available to meet on a monthly basis with appropriate City personnel to discuss and review current and proposed projects and the status and timing of permits.
- c. DEO agrees to pay for all reasonable documented fees associated with its PIR replacement program, including direct costs and fees for engineering design reviews, permit application review, processing and approval, construction inspection, punch list generation, project closeout and any other services reasonably required by the City for the administration and management of the program directly related to and necessary for the permit and application process described above including all indirect costs incurred associated with this PIR Program.
- d. DEO shall have the right to request and obtain and audit all time and expense records for any and all fees paid to the City pursuant to this Memorandum of Understanding.

III. Trenchless Technology

Horizontal Directional Drilling shall only be performed with the written approval of the City and shall be based upon agreed construction practices with the City as contained in this MOU. HDD, or other approved trenchless technology methods shall only be used under roadway paved areas primarily at intersections and crossovers or in other areas as approved by the City.

- a. Within the project trenchless technology/HDD limits, DEO shall perform subsurface investigation ("Quality Level A") to locate the horizontal and vertical depths of existing utilities. The definition of Quality Level A shall be locating underground utilities/features as to their precise location (horizontal and vertical) through the nondestructive exposure of underground utilities, and providing the type, size, condition, material and other characteristics of underground features. All located utilities shall be mapped on plan and profile.
- b. DEO shall create a pre and post construction video of all sewer lateral connections within the project trenchless technology/HDD limits and will provide videos to the City within thirty (30) days of project completion. If a sewer line failure is identified, DEO or its representative will contact the City within 24 hours of discovery.

- c. DEO shall provide a two (2) year warranty on water lines and a five (5) year warranty on any utility lateral damage, if the damage is determined to be caused by DEO construction. If there is a dispute as to the cause of the damage, the determination of cause will be made by an objective third party agreed upon by DEO and all costs incurred for the objective third party shall be paid by DEO.
- d. DEO shall provide a two (2) year warranty on any pavement and sidewalk collapses within project limits that are determined to be a direct and proximate cause of DEO construction. If there is a dispute as to the cause of the damage, the determination of the cause will be made by an objective third party agreed upon by DEO and all costs incurred by the objective third party shall be paid by DEO.
- e. DEO shall provide a two (2) year warranty on a healthy tree demonstrably negatively impacted by a line being bored underneath it, ultimately determined by the City of Cleveland Urban Forester in accordance with the City Specification and appropriate documentation. If there is a dispute as to the cause of the damage to the tree, the determination of the cause will be made by an objective third party agreed upon by DEO and all costs incurred for the objective third party shall be paid by DEO.

IV. Pipe Removals/Abandoned Gas Mains

- a. During DEO construction projects, DEO shall abandon gas mains at intersections, and crossovers unless directed otherwise by the City.
- b. DEO shall remove DEO abandoned gas mains at intersections and pavement crossovers and at any other locations only when directed by the City when the DEO abandoned mains are in conflict with the City's Capital Improvement Projects.
- c. During the construction of any City Projects, when a conflict with a DEO abandoned pipe occurs, resolution is needed as soon as possible to avoid project delays and claims. The City will provide DEO a minimum of three (3) days to mobilize to address conflict. In the event DEO cannot mobilize in three (3) days to remove abandoned gas main, DEO shall confirm the pipe is abandoned and the City Contractor will remove the abandoned pipe at the unit price bid for the project or agreed upon with the City Contractor. The City will forward all backup information with an invoice to DEO for reimbursement of such costs. If environmental remediation is required DEO will then use best efforts to mobilize a qualified contractor in a reasonable amount of time to resolve the conflict.

d. Responsibility for costs of removing. Lines will be consistent with current procedures regarding the relocations of live gas lines.

B. CITY OF CLEVELAND RESPONSIBILITIES

- I. The City will allow DEO to submit permit applications with final designs and without the identified contractor as not to delay the process for obtaining the permit within the City. DEO will identify each contractor for every project prior to the start of construction from a pre-qualified list.
- II. The City may allow at its discretion, horizontal directional drilling or other trenchless technology under paved roadways only at intersections and crossovers or in other areas as approved by the City provided the required submittals are complete. HDD or other trenchless technology operations shall be staged no more than 50 ft. either side of the curb return limits when crossing paved roadways unless prior approval is acquired.
- III. Upon reasonable notice, the City shall provide Street Restoration Training to all DEO Contractors as part of the Contractor pre-qualification process.
- IV. The City shall determine which trees, within the construction project, shall be removed prior to the start of construction.
- V. During HDD, DEO shall perform sewer and lateral cleaning within ten (10) days prior to the start of any pre-construction video. If a breach is encountered, DEO or its representative will contact the City within 24 hours.
- VI. City will host a monthly coordination meeting with DEO.
- VII. City shall provide the services of up to eight (8) construction inspectors (or more as needed) to perform construction inspections. (Quality Control) and to ensure compliance to City Standards, specifications, and permit requirements as well as one (1) (or more as needed) Certified Arborist to ensure tree preservation requirements are met and to provide timely direction on tree related work.
- VIII. The City shall provide the services of one (1) or more Professional Engineer(s) in the role of Permit Coordinator to review DEO submittals/designs, process permit applications, manage Inspectors/Arborists, coordinate construction and design issues, and to provide documentation and invoicing to DEO. The City will commit to a twenty-one (21) calendar day turnaround from the date of permit application submittal to the date of permit processing. Permit Issuance will be within five (5) calendar days of application approval and processing for a total of no more than twenty-six (26) calendar days to permit issuance.
- IX. The City shall immediately begin processing and issuing permits upon execution of this Memorandum of Understanding and ninety percent (90%) of all existing permits will be issued within 45 calendar days of same execution.
- X. City will submit planned Capital Improvement Projects including local resurfacing projects to DEO as soon as practical and one year in advance where possible of Construction activities. The City will send periodic stage review design drawings to DEO as the design evolves. From time to time, there may be Capital Improvement Projects that are not planned and have an aggressive schedule and the City will provide as much advanced

notices as possible.

- XI. City will process permits on all DEO service installation requests within fourteen (14) calendar days and within twenty-one (21) calendar days for all DEO main line capital requests.

C. PAYMENT

DEO agrees to pay for all reasonable documented fees associated with its PIR replacement program, including all agreed upon direct and indirect costs and fees for engineering design reviews, permit application review, processing and approval, construction inspection, punch list generation, project closeout and any other services reasonably required by the City for the administration and management of the program directly related to and necessary for the permit and application process described above.

DEO will deposit \$250,000 to be used solely by the City to pay for the fees and costs identified above, subject to audit. Any funds expended from this account shall be replenished on a monthly basis upon the receipt of DEO detailed information on the expenditures for the previous month and the processing and issuance of permits by the City as set forth above.

The City will provide a detailed Expenditure Summary to DEO for project costs as described above on a monthly basis. The Expenditure Summary will include detailed accounting information including personnel used (title), rate, hours, date, project name/number, and tasks completed.

The City will charge all agreed upon eligible costs to the established fund and provide all back up documentation to DEO within seven (7) days of the billing cycle closure.

Upon completion of DEO's PIR program, any remaining dollars from the initial deposit, less invoices, will be refunded in their entirety to DEO.

D. TERM

The term of this Memorandum of Understanding shall be for a period of two (2) years and shall automatically renew for additional periods of one (1) year each unless terminated in writing. This Memorandum of Understanding may be terminated at any time by either party.

E. NONBINDING AGREEMENT

The Parties recognize the terms proposed in this instrument serve solely as a framework and are not legally binding with respect to any transaction, and no commitment, estoppel, undertaking, or obligation of any nature is implied in fact, law, or equity from this Memorandum.

F. MISCELLANEOUS

This Memorandum may be executed in counterparts, each of which will be deemed an original. This Memorandum sets forth the current understanding of the parties with respect to the subject matter hereof.

This Memorandum may only be amended or supplemented by a written document signed by an authorized representative of both Parties. No representation or warranty is binding on either Party unless in writing in this Memorandum.

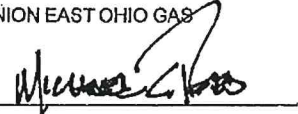
This Memorandum does not create any agency, partnership, co-partnership or joint venture relationship between the Parties. Nothing contained or implied in this Memorandum is intended to confer upon any person or entity, other than the named parties, any right or remedy under or by reason of this Memorandum.

The parties have executed this Agreement as of the date first written above.

CITY OF CLEVELAND

By: 
Matthew L. Spronz
Director of Capital Projects

DOMINION EAST OHIO GAS

By: 
Michael C. Reed
General Manager
Design, Engineering and Construction