



**SOCIALVILLE-FOSTERS ROAD IMPROVEMENTS
ELECTRIC UTILITY RELOCATION AGREEMENT**

This Electric Utility Relocation Agreement (“Agreement”) is made and entered into by and between the Warren County Board of County Commissioners (hereinafter referred to as “Warren County”), The Cincinnati Gas and Electric Company (hereinafter referred to as “CG&E,”) and The City of Mason (hereinafter referred to as “Mason”).

WITNESSETH:

WHEREAS, Warren County and Mason desire to relocate electric utility poles and power lines owned by CG&E and located within the public road rights-of-way by virtue of private easements on Socialville-Fosters Road in order to clear public road rights-of-way for highway improvements on Socialville-Fosters Road beginning at Mason-Montgomery Road, running eastwardly and ending at Interstate 71 that will include, but is not limited to, the following items hereinafter referred to as the “Socialville-Fosters Road Improvement Project”.

1. Permanent relocation of electric utility poles and power lines on north side of Socialville-Fosters Rd.
2. Permanent relocation of electric utility poles and power lines on south side of Socialville-Fosters Rd.
3. Temporary relocation of electric utility poles and power lines in order to safely set drainage structures being replaced as part of the roadway improvement project
4. Temporary rerouting of power service in order to serve customers that would have normally lost service as a result of temporary relocation of poles and lines; and

WHEREAS, attached hereto and incorporated herein by reference herein are the roadway construction plans that identify the geographic area in which the electric utility poles and power lines are currently situated that will and/or may be relocated pursuant to this Agreement; and

WHEREAS, CG&E has filed suit in Warren County Common Pleas Court captioned as *The Cincinnati Gas and Electric Company v. Board of County Commissioners, Warren County, Ohio* (Case No. 03CV61479), hereinafter referred as THE COURT CASE, in part, to require Warren County to compensate CG&E to relocate electric utility poles and power lines at the intersection of Socialville-Fosters Road at Snider Road that are currently within Warren County road rights-of-way and, in part, for the Court to enter a declaratory judgment that CG&E’s easements, obtained from private property owners, are valid property rights that cannot be taken by Warren County without compensation or the institution of appropriation proceedings; and

WHEREAS, electric utility poles and power lines on Socialville-Fosters Road in the vicinity of the Socialville-Fosters Road Improvement Project are in public road rights-of-way and within easements conveyed to CG&E by private property owners.

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NOW, THEREFORE, in consideration of, but without jeopardizing the positions of the litigants in THE COURT CASE, and in consideration of the need for timely relocation of electric utility poles and power lines to clear the Socialville-Fosters Road Improvement project, the parties agree to equally divide the disputed costs of relocating said utilities for CG&E to proceed expeditiously with the Socialville-Fosters Road Improvement Project and to pay the appropriate balance upon the rendering of a final judgment in THE COURT CASE as more fully described below; and

NOW, FURTHER THEREFORE, Warren County, Mason and CG&E have agreed to divide the work involved in permanent relocation in connection with the Socialville-Fosters Road Improvement Project as follows:

Warren County agrees to pay fifty percent (50%) of the estimated cost of relocation of the disputed electric poles and power lines outside of the city corporation limits but within the limits of the Socialville-Fosters Road Improvement Project not to exceed \$83,899.50, Mason agrees to pay fifty percent (50%) of the estimated cost of relocation of the disputed electric poles and power lines within the Mason city corporation limits and within the limits of the Socialville-Fosters Road Improvement Project not to exceed \$223,181.50, and CG&E agrees to pay the remaining fifty percent (50%) of the total estimated cost of the said relocation. Warren County and Mason will be invoiced for the estimated cost at the beginning of CG&E's construction and Warren County and Mason agree to remit the invoiced amount within thirty (30) days of receipt of said invoice. Furthermore, Warren County and Mason agree to pay CG&E the balance of the actual cost of same in the event final judgment in the COURT CASE has been rendered in favor of CG&E, and CG&E agrees to return the fifty percent (50%) of the estimated costs paid by Warren County and Mason in the event the final judgment in the COURT CASE has been rendered in favor of Warren County. The obligation to pay the balance of the aforementioned costs shall become due and owing within ten (10) business days of the docketing in the COURT CASE of a final judgment, entry, or other court order wherein the parties have exhausted all rights of appeal or the time to file an appeal in the COURT CASE has expired and no appeal or further appeal has been taken.

NOW, FURTHER THEREFORE, Warren County, Mason and CG&E have agreed to the following:

1. The parties further recognize that: (a) the parties are autonomous organizations; (b) the parties have independent and separate boards of appointed or elected officials and officers responsible to manage their operations and affairs; (c) the parties have their own separate assets; (d) the parties are not affiliated and do not have any interest therein; (e) the parties have the right to hire, supervise and fire their own employees and contractors; (f) the parties have the function of carrying

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out and supervising their services under this Agreement; (g) the parties do not control the day-to-day operations and affairs of the other party.

2. This Agreement may only be terminated by either party in the event of a material breach of this Agreement, when the material breach remains uncured sixty (60) days after written notice is given to the breaching party specifying the breach. A “material breach” is any failure of either party to fully comply with and perform any and all terms and conditions of the Agreement.
3. All notices required to be given hereunder shall be in writing and shall be sent to the following addresses:

If to Warren County
Neil F. Tunison, P.E., P.S.
Warren County Engineer
105 Markey Road
Lebanon, Ohio 45036
(513) 695-3301 (Phone)
(513) 695-2967 (Fax)

If to Mason
Richard Fair, P.E.
Mason City Engineer
6000 Mason-Montgomery Road
Mason, Ohio 45040
(513) 229-8520 (Phone)
(513) 229-8521 (Fax)

If to CG&E
Richard Hoff
The Cincinnati Gas & Electric Company
139 E. Fourth St, Rm. EX467, P.O. Box 960
Cincinnati, Ohio 45202
(513) 287-3855 (Phone)
(513) 287-1743 (Fax)

Notices shall be sent by first class, registered or certified mail and mail shall be considered delivered 48 hours after mailing. Notice may also be sent via electronic and or facsimile transmission and considered delivered when electronically sent or upon receipt of facsimile transmission complete documentation.

4. Whenever the terms “Warren County,” “Mason” and “CG&E” are used herein, these terms shall include, without exception, the employees, agents, successors, assigns, and/or authorized representatives of Warren County, Mason and CG&E.
5. Neither party shall assign any of its rights or delegate any of its duties under this Agreement without written consent of the other. Subject to the above provision, this Agreement shall be binding on the successors and assigns of the parties.
6. This Agreement contains the entire Agreement between Warren County, Mason and CG&E with respect to the subject matter hereof and supersedes all prior

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written or oral contracts between the parties. No representations, promises, understandings, contracts or otherwise, not herein contained shall be of any force or effect.

7. No modification or amendment of any provisions of the Agreement shall be effective unless made by a written instrument duly executed by the party to be bound thereby, which refers specifically to this Agreement and the amendment of modification being made.
8. No waiver by either party by any breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of any breach of any other provision of this Agreement. The failure of either party at any time or times to require performance of any provision of this Agreement shall in no manner affect such party's right to enforce the same at a later time.
9. This Agreement shall be construed in accordance with, and the legal relations between the parties shall be governed by, the laws of the State of Ohio as applicable to contracts executed and fully performed in the State of Ohio.
10. If any provision of this Agreement shall be invalid or unenforceable with respect to either party, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
11. All parties have had the opportunity to have this Agreement reviewed by counsel, therefore, neither party shall be construed as the drafter hereof.
12. The signatures of the parties to this Agreement is certification that the funds required for this Agreement will be available as required herein, for each appropriation period through the end of the term of this Agreement.
13. This Agreement shall be effective on the latter of the two dates executed below by the parties hereto and shall be effective until the completion of the relocation work and the payment to CG&E as set forth herein or terminated by either party hereto.
14. This Agreement does not relieve CG&E of the requirement to file utility Right-of-Way permits with the governing agency that has jurisdiction of the area where the relocation work is being performed.

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IN EXECUTION WHEREOF, The Cincinnati Gas and Electric Company has caused this Agreement to be executed on the date stated below by _____, its authorized representative, pursuant to a corporate resolution authorizing such act.

Recommended by:

The Cincinnati Gas & Electric Company

Executed by:

The Cincinnati Gas & Electric Company

SIGNATURE: _____

SIGNATURE: _____

PRINTED NAME: _____

PRINTED NAME: _____

OFFICIAL CAPACITY: _____

OFFICIAL CAPACITY: _____

DATE: _____

DATE: _____

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IN EXECUTION WHEREOF, The City Council of The City of Mason, Ohio has caused this Agreement to be executed on the date stated below by Scott Lahrmer, it's City Manager, pursuant to Resolution No. _____, dated _____, 2005.

Recommended by:

Mason City Engineer

Executed by:

Mason City Manager

SIGNATURE: _____

PRINTED NAME: Richard Fair

OFFICIAL CAPACITY: City Engineer

DATE: _____

SIGNATURE: _____

PRINTED NAME: Scott Lahrmer

OFFICIAL CAPACITY: City Manager

DATE: _____

Approved as to Form:

By: _____

Kenneth J. Schneider, Law Director

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IN EXECUTION WHEREOF, The Board of Commissioners of Warren County,
Ohio has caused this Agreement to be executed on the date stated below by
Pat Arnold South, it's President, pursuant to Resolution No. _____,
dated _____, 2005.

Recommended by:
Warren County Engineer

Executed by:
**Board of Commissioners
of Warren County, Ohio**

SIGNATURE: _____

SIGNATURE: _____

PRINTED NAME: Neil F. Tunison

PRINTED NAME: Pat Arnold South

OFFICIAL CAPACITY: County Engineer

OFFICIAL CAPACITY: President

DATE: _____

DATE: _____

Approved as to Form:

RACHEL HUTZEL, WARREN COUNTY
PROSECUTING ATTORNEY

By: _____
Bruce McGary, Assistant Prosecutor

