

RESOLUTION NO. 04-22  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER JoAnne Rau ON  
THE 24<sup>th</sup> DAY OF January, 2022.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN ENCROACHMENT AGREEMENT WITH VECTREN ENERGY DELIVERY OF OHIO, INC., DBA CENTERPOINT ENERGY OHIO ALLOWING THE CITY TO ENCROACH OVER UTILITY LINES BY ADDING TO THE PARKING LOT AT THE POLICE DEPARTMENT (PROJECT BI-5).

WHEREAS, the City of Centerville awarded the contract for the Police Department Parking Lot & Yankee Trace Maintenance Lot Resurfacing 2021 to Neyra Paving in May 2021, and

WHEREAS, the proposed construction encroaches over utilities owned by Vectren Energy Delivery of Ohio, Inc., dba Centerpoint Energy Ohio; and

WHEREAS, it is in the City's best interests to complete the Project even though it requires an Encroachment Agreement due to the location of the construction.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:


Section 1. The City Council of the City of Centerville hereby authorizes the City Manager to execute the Encroachment Agreement with Vectren Energy Delivery of Ohio, Inc., dba Centerpoint Energy Ohio. A copy of the Agreement is attached and incorporated herein as "Exhibit A".

Section 2. This resolution shall become effective at the earliest date allowed by law.

PASSED this 24<sup>th</sup> day of January, 2022.

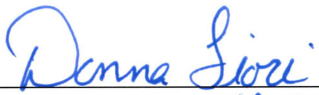
  
Mayor, City of Centerville, Ohio

ATTEST:

  
Clerk of Council, City of Centerville, Ohio  
(Acting)

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio hereby certifies that the foregoing is a true and correct copy of Resolution Number 04-22 passed by the Council of the City of Centerville, Ohio on the 24<sup>th</sup> day of January, 2021.

  
Clerk of Council (Acting)

Approved as to form, consistency  
with the Charter and Constitutional Provisions.

Department of Law  
Scott A. Liberman  
Municipal Attorney

## Encroachment Agreement

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by **VECTREN ENERGY DELIVERY OF OHIO, Inc., d/b/a CenterPoint Energy Ohio** hereinafter referred to as "UTILITY", and the **City of Centerville**, their successors and assigns hereinafter referred to as "Grantee".

### WITNESSETH:

That in consideration of compliance with the following terms and conditions and for other valuable consideration, UTILITY has consented to the Grantee's constructing, installing and maintaining **parking lot extension** hereinafter referred to as "**Encroachment**", within UTILITY's natural gas pipeline easement and near its pipeline. This Agreement pertains to a blanket easement, Book 268, Page 531 as recorded in Montgomery County Recorder's office and located in Section 30, Township 3, Range 5 M.R.S., in Washington Township, having the common address of 155 West Spring Valley Road, Centerville, OH 45458 and owned in fee by Grantees.

This Agreement shall become binding and enforceable upon Grantee's acceptance and performance of the following terms, conditions, and responsibilities:

1. This consent by UTILITY is not intended as a waiver of rights nor as a release of Grantee from any obligation, restriction or encumbrance to which Grantee's interest in the real estate is subject by virtue of any document including a deed, easement, lease, or plat, or by virtue of any governmental action including a statute, regulation, ordinance, permit, code or the statute of limitations with respect to adverse possession of the Encroachment, which shall not begin until after this Agreement is terminated.
2. The Encroachment shall not restrict or impair UTILITY's access to its facilities, weaken the integrity of UTILITY's facilities nor otherwise interfere with UTILITY's use of the easement.
3. This Agreement shall be binding upon, enforceable by and inure to the benefit of the Grantee, UTILITY, and their respective heirs, personal representatives, successors and assigns.
4. Both parties shall comply with the provisions of Ohio Revised Code 3781.25 to 3781.32 et seq. relating to damage to underground facilities.
5. Grantee understands and agrees that should the Encroachment fail to conform with the approved Encroachment, UTILITY has the right to require Grantee to modify or remove all or a portion of the Encroachment at Grantee's sole expense.

6. UTILITY hereby consents to the Encroachment, as depicted on Exhibit "A" attached hereto and made a part hereof.
7. In the event of the necessary removal of the Encroachment and/or appurtenances by UTILITY due to the operational need to conduct maintenance or repair work on said pipelines, restoration of the Encroachment and/or appurtenances shall be at the expense of the Grantee and shall be subject to this Agreement.
8. Grantee agrees that any future changes to the Encroachment and/or its appurtenances, including additions, expansions, replacement and/or rebuilding will not be done within UTILITY's easement.
9. UTILITY reserves the right to deny any modification or continuation of the Encroachment that will hamper its ability to safely and effectively maintain and operate its facilities.
10. UTILITY shall not be responsible for damages to property that cannot reasonably be removed or relocated, should UTILITY need to perform maintenance or fulfill other operational needs on its facilities located within the easement.
11. Grantee agrees to submit heaviest tracked and wheeled equipment planned to cross UTILITY's facilities, so that UTILITY can provide a safe crossing requirement. Grantee shall adhere to UTILITY's safe crossing requirement.
12. This agreement in no way is intended to establish a specific width for any undefined easement referenced in this document."
- 13. This Agreement in no way grants consent for future encroachments.**
14. Grantee further agrees to coordinate any work within the easement by calling the local UTILITY Area Supervisor at 937-267-3136 at least 48 hours prior to commencing any work.

**GRANTEE SHALL REQUIRE ITS CONTRACTORS PERFORMING WORK RELATING TO THE CONSTRUCTION, MAINTENANCE, REPAIR, OPERATION, AND REMOVAL OF GRANTEE'S STRUCTURE TO INDEMNIFY AND HOLD HARMLESS UTILITY FROM AND AGAINST ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, LIABILITIES, COSTS, LOSSES, EXPENSES AND DAMAGES, IN CONTRACT, STRICT LIABILITY OR IN TORT, INJURY TO ANY PERSON (INCLUDING DEATH) OR DAMAGE TO ANY PROPERTY ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE CONSTRUCTION, USE AND EXISTENCE OF SAID STRUCTURE ON SAID PORTION OF SAID EASEMENT AREA, WHERE SUCH INJURY OR DAMAGE IS CAUSED BY THE SOLE, JOINT, CONCURRENT, CONTRIBUTING OR COMPARATIVE NEGLIGENCE OR FAULT OF GRANTEE, ITS AGENTS, OR EMPLOYEES, AND EVEN WHEN CAUSED BY THE JOINT, CONCURRENT, CONTRIBUTING OR COMPARATIVE NEGLIGENCE OR FAULT OF UTILITY, ITS AGENTS OR EMPLOYEES, AND EVEN WHEN THE INJURY OR DAMAGE IS CAUSED BY THE SOLE NEGLIGENCE OF UTILITY, ITS AGENTS, OR EMPLOYEES.**

**GRANTEE SHALL REQUIRE ITS CONTRACTORS TO ASSUME ALL LIABILITY FOR ANY DAMAGE TO UTILITY'S FACILITIES CAUSED BY OR ANY WAY CONNECTED WITH THE MAINTENANCE OF SAID STRUCTURE AND FURTHER AGREES TO REIMBURSE UTILITY FOR ALL COST, INCLUDING BUT NOT LIMITED TO, LOSS OF RELATED INCOME, PROPERTY DAMAGES, REIMBURSEMENTS, LEGAL FEES AND PERSONAL DAMAGES.**

The parties hereby indicate their understanding and acknowledgment of the terms and conditions contained herein by executing this Agreement where indicated below. UTILITY hereby expressly states that its approval of the Encroachment as described in this document is conditioned upon Grantee's acceptance of the terms of this agreement and UTILITY further expressly states that the preparation of this document by UTILITY does not imply any acceptance or approval of the Encroachment until this document is signed by both parties. In the event this document is not executed by 2/6/2022 UTILITY withdraws its preliminary approval of the Encroachment and will consider the Encroachment to be constructed within its easement adverse to UTILITY's interests and consent and subject to removal by all means available to UTILITY. The undersigned persons executing this instrument on behalf of UTILITY represent and certify that they are duly elected officers of UTILITY and have been fully empowered to execute and deliver this instrument and that all necessary corporate action for the granting of such agreement has been taken and done. This Agreement may be executed by the parties in any number of counterparts and may be executed by way of facsimile or electronic transmission, each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same instrument and all signatures so obtained will shall be deemed to be an original signature.

**City of Centerville**

Signed by: \_\_\_\_\_, Grantee  
**Wayne S. Davis, City Manager**

STATE OF \_\_\_\_\_ )  
                                      )      ss: \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ )

Before me, a notary public, in and for said County and State, personally appeared **Wayne S. Davis, City Manager of the City of Centerville** who acknowledged the execution of the foregoing Agreement to be their voluntary act and deed and did say they are the owners of the aforesaid property.

Witness my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022

My Commission expires \_\_\_\_\_  
\_\_\_\_\_  
(Signed) Notary Public

My County of Residence is \_\_\_\_\_  
\_\_\_\_\_  
(Printed) Notary Public

**Approved As To Form:**  
  
\_\_\_\_\_  
**Scott A. Liberman, Municipal Attorney**

**VECTREN ENERGY DELIVERY OF OHIO, Inc. d/b/a CenterPoint Energy Ohio**

Signed by: \_\_\_\_\_,

**Matthew R. Dowell**  
**Manager, Land Management Division Agent**

STATE OF **TEXAS** )

)

COUNTY OF **HARRIS** )

This instrument was acknowledged before me on \_\_\_\_\_, 2022 by Matthew R. Dowell, Manager of the Land Management Division of CenterPoint Energy Houston Electric, LLC, as Agent for VECTREN ENERGY DELIVERY OF OHIO, Inc., d/b/a CenterPoint Energy Ohio on behalf of said corporation.

Witness my hand and notary seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

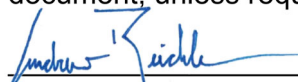
My Commission expires \_\_\_\_\_

\_\_\_\_\_  
*(Signed) Notary Public*

My County of Residence is \_\_\_\_\_

\_\_\_\_\_  
*(Printed) Notary Public*

This instrument prepared by UTILITY by **Andrew Reichle**. I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

  
\_\_\_\_\_  
**Andrew Reichle**