

Ohio Line Extension Customer Work Approval and Payment Designation – Form X-3847
Terms and Conditions

Ohio Edison Company, Illuminating Company, or Toledo Edison Company ("Operating Company") and Owner agree the terms and conditions herein shall constitute the complete and final agreement between the parties, superseding all other agreements, written or oral. These terms and conditions may not be modified hereafter except by written agreement of Operating Company.

BILLING AND PAYMENT

In the event that Operating Company performs the agreed to work prior to payment, Operating Company will invoice Owner for the work performed pursuant to this Agreement. Payment shall be made to Operating Company upon Owner's receipt of invoice. All invoices past due thirty (30) days or more shall be charged the lesser of one and one-half percent (1 ½%) per month or the maximum rate of interest allowable by law. Owner agrees to reimburse Operating Company in full for all costs of collection, including attorney fees, incurred or paid by Operating Company in connection with collecting, or attempting to collect, any amounts due under this Agreement.

INDEMNIFICATION

Each party hereto agrees to be responsible for any willful misconduct, or negligent acts or negligent omissions committed or omitted by or through itself or its agents, employees and contracted servants to the extent of such party's culpability and further agrees to defend itself and pay any judgments and costs arising out of such willful misconduct, negligent acts or negligent omissions, and nothing in this Agreement shall impute or transfer any such responsibility from one party to the other party beyond the extent of such party's culpability.

LIMITATION OF LIABILITY

Neither Operating Company, its affiliated companies, its subcontractors, nor its employees shall be liable for loss of anticipated profits, loss by reason of plant or other facility shutdown, non-operation or increased expense of operation, service interruption, claims of Owner's customers, subcontractors, vendors or suppliers, cost of money, loss of use of capital or revenue arising out of Operating Company's work or out of or in connection with Owner's use, or inability to use, the facilities, or for any special, incidental or consequential damages of any nature, arising at any time or from any cause whatsoever.

FORCE MAJEURE

Neither party shall be liable to the other for any expenses, loss or damage resulting from delays or prevention of performance arising from causes beyond its reasonable control caused by fire, flood, accident, strike, civil commotion, governmental or military authority, insurrection, riots, embargoes, unavoidable delays in transportation, acts of God, or public enemy.

ASSIGNMENT

This Agreement shall be binding upon and insure to the benefit of the parties hereof, their successors and assigns. Owner, however, shall not assign to any other person or association not affiliated with Owner any rights or privileges hereby granted, or authorize any person or association not affiliated with Owner the exercise of any rights or privileges herein provided for, without the written consent of Operating Company.

ARBITRATION

Any question in dispute between the parties arising out of the Agreement (except any claim for damages because of bodily injuries, including death at any time resulting there from, except for any claim for damages because of injuries to or destruction of property and, except for major breach or repudiation with respect to this Agreement) which is not amicably settled shall be submitted to final and binding arbitration. Such arbitration shall be conducted in Akron, Ohio, before an arbitrator mutually acceptable to the parties; provided, however, that should the parties be unable to agree, the arbitrator shall be selected by the presiding Judge of the Court of Common Pleas of Summit County, Ohio. The request for arbitration shall be in writing setting forth the claim or claims to be arbitrated and the remedy sought. It shall be delivered to the other party within 90 days of the occurrence giving rise to the dispute. Any failure to request arbitration within such 90-day period shall be deemed a waiver of the right to arbitrate the claim upon which the dispute is based.

NON-WAIVER

The failure of either party to insist or enforce in any instance strict performance of any of the terms hereof or to exercise any of its rights herein shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms on any future occasion.

APPLICABLE LAW

This Agreement shall be governed in all respects by the laws of the State of Ohio and only the Courts of Ohio, or Federal Courts in Ohio shall have jurisdiction.

Customer Initials _____ **Date** _____

ADDENDUM TO AGREEMENT

This Addendum to the Ohio Line Extension Customer Work Approval and Payment Designation – Form X-3847 Terms and Conditions (“Agreement”) is made by and between the City of Willowick (“Owner”), a Municipality, with its office located at 30435 Lakeshore Boulevard, Willowick, Ohio 44095, on behalf of the City of Willowick (“Customer”), executed by Michael J. Vanni, Mayor, and The Cleveland Electric Illuminating Company (“Operating Company”), with its place of business located at 341 White Pond Dr, Akron, Ohio 44320.

WHEREAS, Owner wants Operating Company to relocate an electrical pole located at 30435 Lakeshore Blvd.

WHEREAS, Owner will be providing free access to the pole that is to be relocated.

WHEREAS, Operating Company will be providing the remainder of the applicable scope of work;

WHEREAS, Operating Company and Owner desire to amend the Agreement prior to execution;

NOW THEREFORE, the following amended terms and conditions shall apply to the Agreement:

1. Paragraph 3 of the Agreement, entitled “INDEMNIFICATION”, shall be deleted in its entirety and replaced with the following:

Each party hereto agrees to be responsible for any willful misconduct, or negligent acts or negligent omissions committed or omitted by or through itself or its agents, employees and contracted servants to the extent of such party’s culpability and further agrees to defend itself and pay any judgments and costs arising out of such willful misconduct, negligent acts or negligent omissions, and nothing in this Agreement shall impute or transfer any such responsibility from one party to the other party beyond the extent of such party’s culpability.

The following provisions shall be added to the original Agreement:

1. Conflict. In the event of a conflict between the Agreement and this Addendum, this Addendum shall prevail and apply.

All other terms and conditions of the original Agreement remain in full force and effect.

(End of Text. Signatures to follow on the next page.)

Intending to be legally bound, the parties have signed this Addendum effective as of the date signed by the Mayor, Michael Vanni.

The Cleveland Electric Illuminating Company

The City of Willowick

By: _____

By: _____

Date: _____

Date: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____