

INTRODUCED: April 12, 2021

AN ORDINANCE No. 2021-094

To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Deed of Easement between the City of Richmond and the Commonwealth of Virginia, Department of Motor Vehicles, for the purpose of accepting from the Commonwealth of Virginia, Department of Motor Vehicles, a gas utility easement on, over, under, and across a right-of-way located along 2300 West Broad Street to lay, erect, construct, install, operate, maintain, and repair one or more lines of underground pipes, conduits, and equipment, accessories, and appurtenances necessary for the transportation or distribution of natural gas over the said right-of-way.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

PUBLIC HEARING: APR 26 2021 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Deed of Easement between the City of Richmond and the Commonwealth of Virginia, Department of Motor Vehicles, for the purpose of accepting from the Commonwealth of Virginia, Department of Motor Vehicles, a gas utility easement on, over, under, and across a right-of-way located along 2300 West Broad to lay, erect, construct, install, operate, maintain, and repair one or more lines of underground pipes, conduits, and equipment, accessories, and appurtenances necessary for the transportation or distribution of natural gas over the said right-

AYES: 8 NOES: 0 ABSTAIN: _____

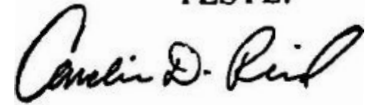
ADOPTED: APR 26 2021 REJECTED: _____ STRICKEN: _____

of-way. Such Deed of Easement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

A TRUE COPY:

TESTE:

A handwritten signature in black ink, appearing to read "Camille D. Reed". The signature is written in a cursive, flowing style.

City Clerk



CITY OF RICHMOND

INTRACITY CORRESPONDENCE

DATE: March 1, 2021 EDITION: 1

TO: The Honorable Members of City Council

THRU: Levar Stoney, Mayor *[Signature]*

THRU: Lincoln Saunders, Acting Chief Administrative Officer *LSLS*

THRU: Robert C. Steidel, Deputy Chief Administrative Officer *[Signature]*

THRU: Calvin D. Farr, Jr., Director, Public Utilities *CF*

FROM: Alfred Scott, Deputy Director, Department of Public Utilities *AS*

RE: **Approval for Chief Administrative Officer to Authorize Acceptance of a Deed of Easement between the Commonwealth of Virginia, Department of Motor Vehicles and the City of Richmond, Virginia**

ORD. OR RES. No. _____

PURPOSE: To authorize the Chief Administrative Officer to execute a deed of easement to accept a gas utility easement located on 2300 W Broad Street (the "Property") from Commonwealth of Virginia, Department of Motor Vehicles, as shown on Exhibit A of Attachment 1.

REASON: Sauer has constructed a new facility. The building footprint is in conflict with the City of Richmond four inch (4") gas main located between the Property and the adjacent Sauer property at 2200 W Broad Street. The easement will allow maintenance on the gas main and services. The gas main will potentially allow the City to provide gas to new customers if the Commonwealth grants an additional easement across the Property.

RECOMMENDATION: The City Administration recommends adoption of this Ordinance.

BACKGROUND: The existing gas main is a four inch (4") line generally lying between the two properties 2200 and 2300 W Broad. The City of Richmond installed the 4" gas main in 2009 and a one inch (1") gas service was installed to 2300 W Broad Street in 2020, and there is an existing one inch (1") gas service on 2200 W Broad Street. The City, through its Department of Public Utilities, owns and maintains the gas line within the easement. The easement is determinable and may revert to the Commonwealth if the City discontinues use of the easement or relocates the gas line within the easement.

O&R Request

Page 2 of 2

FISCAL IMPACT/COST: None

FISCAL IMPLICATIONS: None

BUDGET AMENDMENT NECESSARY: No

REVENUE TO CITY: None

DESIRED EFFECTIVE DATE: Upon Adoption

REQUESTED INTRODUCTION DATE: April 12, 2021

CITY COUNCIL PUBLIC HEARING DATE: April 26, 2021

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Land Use.

CONSIDERATION BY OTHER GOVERNMENT ENTITIES:

AFFECTED AGENCIES: Department of Public Utilities

RELATIONSHIP TO EXISTING ORD. OR RES.: None

REQUIRED CHANGES TO WORK PROGRAMS(S): None

ATTACHEMENTS: 1. Deed of Easement with plat

STAFF: DPU Daniel Rifenburgh, Engineer Manager

This deed is exempt from the Grantor's tax pursuant to § 58.1-811(C)(4) of the Code of Virginia (1950), as amended.

Tax Parcel No. N0001396019

Consideration: \$10.00

Actual Value: \$10.00

Prepared by: Office of the Attorney General

DEED OF EASEMENT

This DEED OF EASEMENT ("Deed of Easement") is made and entered into this ____ day of _____, by and between the COMMONWEALTH OF VIRGINIA, DEPARTMENT OF MOTOR VEHICLES (the "Grantor") and the CITY OF RICHMOND, VIRGINIA (the "Grantee").

WITNESSETH

For the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in accordance with § 2.2-1151 of the Code of Virginia (1950), as amended (the "Code of Virginia"), and Ordinance No. 202__ - _____, adopted _____, 202__ by the City Council of the City of Richmond, Grantor grants unto Grantee, its successors and permitted assigns, a perpetual, non-exclusive right and easement (the "Easement") to lay, erect, construct, install, operate, maintain, and repair one or more lines of underground pipes, conduits, and all equipment, accessories, and appurtenances necessary in connection therewith (the "Facilities") for the purpose of transporting or distributing natural gas or any other gases or substances which can be transported through a pipe or conduit under and across the lands of Grantor situated in the City of Richmond, Virginia, with the area subject to the Easement (the "Easement Area") shown and designated as "Proposed Gas Ease DMV" on that plat entitled "PLAT SHOWING PROPOSED GAS EASEMENT CROSSING THE PROPERTY OF THE COMMONWEALTH OF VIRGINIA DEPARTMENT OF MOTOR VEHICLES (DMV) PARCEL N0001396019 AND EXISTING GAS EASEMENT TO BE RELEASED CROSSING PARCEL N0001396014 IN THE CITY OF RICHMOND, VIRGINIA," dated December 12, 2019, prepared by E.D. Lewis & Associates P.C., and attached hereto as Exhibit A. The Easement Area is part of the same real estate acquired by Grantor by deed dated May 23, 2017, recorded in the Clerk's Office of the Circuit Court of City of Richmond, Virginia, as Instrument No. 17-11194 (the "Property").

1. The Easement shall be subject to all existing easements, rights-of-way, covenants, encumbrances, and restrictions of record, and shall be further subject to the following conditions:

A. Nothing contained herein shall be construed as dedicating for public use any portion of the Property. No easements except those expressly set forth herein shall be implied by this Deed of Easement.

B. Grantee shall lay, erect, construct, install, use, operate, inspect, maintain, repair, replace, rebuild, remove, improve, and make such other changes, alterations, additions to or extensions of the Facilities within the Easement Area as are consistent with the purposes expressed herein. All Facilities and activity occurring within the Easement Area shall comply with all applicable laws, ordinances, codes, and regulations. The Facilities constructed or placed within the Easement Area shall remain the property of the Grantee.

C. Grantee shall have the right of ingress to and egress from the Easement Area over the Property as may be necessary to exercise Grantee's rights herein; provided, however, Grantee shall, to the greatest extent possible, confine its ingress and egress to the Easement Area. Following Grantee's exercise of such right of ingress and egress over the Property and upon completion of any activity by Grantee upon the Easement Area, Grantee shall restore the Property and the Easement Area as nearly to their original condition as practicable, including, but not limited to, backfilling of trenches, repaving, reseeding or resodding of lands, replacement of Grantor's property, removal of trash and debris, and removal of any of Grantee's equipment, accessories, or appurtenances not consistent with the construction, maintenance, or operation of the Facilities or the exercise of any right expressed herein. Grantee shall maintain the Facilities in such repair as not to endanger or otherwise limit the enjoyment or use of the Property and adjacent lands.

D. Grantee shall have the right to trim, cut, and remove trees, shrubbery, or other natural obstructions on, under, or over the Easement Area which interfere with or threaten the efficient and safe operation, construction, or maintenance of the Facilities. All trees cut by Grantee shall remain the property of Grantor. All brush, branches, and other debris resulting from any cutting, trimming, or clearing of the Easement Area shall be removed from the Property and disposed of by Grantee, at its expense.

E. Grantee shall exercise any right expressed herein in such manner as shall not occasion injury, damage, or inconvenience to Grantor and as otherwise shall minimize any adverse impact or disturbance to Grantor's lands and property, including any conservation and natural heritage values thereof. Any activity or omission by Grantee, its employees, agents, or contractors that results in injury, damage, or adverse impact or disturbance, in Grantor's sole judgment, to Grantor's lands and property, including any conservation and natural heritage values thereof, shall be remedied under prescriptions prepared as directed by Grantor. To the extent permitted by Virginia law, Grantee shall at Grantor's election pay for or repair any injury, damage, or adverse impact or disturbance to any of Grantor's lands and property, including any conservation and natural heritage values thereof, caused by Grantee, its employees, agents, or contractors. Grantee shall notify Grantor immediately of any such injury, damage, or adverse impact or disturbance and shall make

said payment or repair within thirty (30) days after such election by Grantor; provided, however, that if such injury, damage, or adverse impact or disturbance results in an on-going hazardous condition or a material loss of use of Grantor's lands or property (such as, by way of illustration and not by limitation, a disruption of any utilities or loss of access to Grantor's lands or property) then Grantee shall immediately remedy the hazardous condition or material loss of use. If Grantee does not make such payment or repair within thirty (30) days (or in the case of an on-going hazardous condition, immediately), Grantor may take such action as necessary to remedy such injury, damage, or adverse impact or disturbance and enforce its rights hereunder. All costs and expenses incurred by Grantor in exercising or enforcing its rights hereunder shall be paid or, at Grantor's election, reimbursed by Grantee within thirty (30) days after the date of Grantor's invoice for such costs and expenses. If such costs and expenses are not paid within such thirty (30) day period, all such costs and expenses shall immediately commence bearing interest at the rate of twelve percent (12%) per annum.

F. Grantor may use the Easement Area for any purpose not inconsistent with the rights hereby granted in this Deed of Easement, provided such use does not interfere with the safe and efficient construction, operation, or maintenance of the Facilities, and further provided that such use is not inconsistent with any laws, ordinances, codes, or regulations pertaining to the construction, operation, or maintenance of the Facilities and to which Grantor is subject.

G. To the extent permitted by Virginia law, Grantee covenants and agrees to indemnify, defend, and hold Grantor, its employees and agents, harmless from and against any claims of injury to any persons or property and from and against any other liability of any nature whatsoever resulting from the laying, erecting, constructing, installing, using, operating, inspecting, maintaining, repairing, replacing, rebuilding, removing, improving, changing, altering, adding to or extending of the Facilities, or connecting to other utility facilities on or adjacent to the Easement Area, or in any way arising out of Grantee's, its employees', agents' or contractors' exercise of any rights herein granted. Grantee shall take all reasonable actions to fulfill its lawful indemnity obligations under this Deed of Easement.

H. No person or entity, whether the Grantee, its employees, agents, or contractors, including, but not limited to, any general contractor, subcontractor, or maintenance contractor, shall commence any activity upon the Property unless and until such person or entity has obtained such insurance coverage as may be required from time to time by the Commonwealth of Virginia, Department of General Services pursuant to its guidelines adopted in respect to Code of Virginia § 2.2-1151, as such section may be amended or its successor provisions.

I. Grantee shall provide as-built drawings to Grantor showing the location of the Facilities.

J. Notwithstanding any other provision of this Deed of Easement, Grantee may not itself, nor by sublease, license, or other grant of permission to any third party, utilize the Easement Area for the installation of any equipment or property for purposes other than set forth herein. Neither the Easement nor Grantee's rights hereunder are delegable, transferrable, or assignable, and any delegation, transfer, or assignment of the Easement or any portion thereof or Grantee's rights hereunder without the prior written consent of Grantor shall be null and void and of no effect; provided, however, Grantee's rights hereunder may be assigned without Grantor's approval in accordance with an order of the State Corporation Commission to any municipal utility, utility cooperative, or other utility authorized to provide utility service within the Commonwealth of Virginia (the "Commonwealth"). K. If Grantor at any time deems it necessary or advisable to relocate for Grantor's convenience any of the Facilities, Grantee shall relocate such Facilities to a place acceptable to Grantor, provided Grantor, for no additional consideration, shall grant unto Grantee such replacement easement as may be necessary to effect such relocation, subject to the same rights, privileges, and conditions, as herein set forth, and Grantor shall reimburse Grantee the reasonable, direct costs of such relocation.

L. Subject to the terms herein, the foregoing Easement shall be perpetual in nature, shall run with the land, and shall be binding upon the parties and their respective successors and permitted assignees.

M. This Easement is determinable. In the event that (i) the Grantee discontinues use of all or a portion of the Easement Area for the purposes herein conveyed for a period of one (1) year, or (ii) the Grantor relocates all or a portion of the Facilities as described in Section K, and upon the Grantor's written notice to the Grantee's Director of Public Utilities or functional equivalent of any such event, the Easement, or such portion thereof identified by Grantor, shall automatically terminate and all rights, title, and interest therein shall revert to Grantor six (6) months after such notice from Grantor to Grantee. Grantor's notice shall identify with specificity the scope of the Easement Area subject to reversion. At Grantee's option, Grantor shall accept ownership of the Facilities in that portion of the Easement Area that reverts to Grantor.

N. Grantee shall not (i) relocate or extend the Facilities to other users, customers, or third parties, or (ii) relocate or extend the Facilities outside of the Easement Area or across the Property without an additional deed of easement, duly approved by Grantor and Grantee. Grantor shall have no obligation to approve any such additional deed of easement with the exception of Grantor's obligation to grant any replacement easement pursuant to Section K herein.

2. The parties hereto acknowledge and agree that notwithstanding anything contained in this Deed of Easement to the contrary, so long as the Commonwealth is a party hereto, the following provisions shall control over any conflicting provisions hereof:

A. With respect to tort liability for acts or occurrences with respect to this Deed of Easement, including product liability, the Commonwealth is either constitutionally immune (or partially immune) from suit, judgment, or liability, insured, or covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices.

B. No equitable, quasi-contractual, or injunctive remedies, other than those specifically authorized by law, may be used or are effective against the Commonwealth.

C. No liens may be placed against, or shall attach to, any property owned by the Commonwealth.

D. This Deed of Easement shall be governed by, and construed according to, the laws of the Commonwealth, and any legal action against the Commonwealth shall be instituted and maintained only in the state courts of the Commonwealth.

E. No provision, covenant, or agreement contained in this Deed of Easement shall be deemed, in any manner, to be a waiver of the sovereign immunity of the Commonwealth, or any of its boards, agencies, or other political subdivisions, including Grantor, from tort or other liability.

3. For purposes of this Deed of Easement, the following terms shall have the following meanings:

(i) "Applicable Environmental Laws" means any and all federal, state, or local statutes, laws, ordinances, codes, rules, regulations, orders, or standards (whether voluntary or not) that govern the activities or operations upon the Property, or the persons carrying out those activities or operations, relating to the environment, natural resources, or human health and safety, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601, et seq.), the Superfund Amendments and Reauthorization of 1986 (Pub. L. No. 99-499), the Hazardous Materials Transportation Act (49 U.S.C. § 5101, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251, et seq.), the Clean Air Act (42 U.S.C. § 7401, et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.), the Occupational Safety and Health Act (29 U.S.C. § 651, et seq.), and 10 U.S.C. § 2692, as such laws have been amended or supplemented now or in the future, and other applicable federal, state, and local statutes, laws, ordinances, codes, rules, regulations, orders, or standards adopted pursuant thereto.

(ii) "Contamination" means a level of Toxic or Hazardous Materials in the air, soil, or water (surface water or groundwater), that exceeds levels allowed by Applicable Environmental Laws.

(iii) "Release" means any discharge, spill, emission, leaking, pumping, injection, excavation, deposit, disposal, leaching, or migration of Toxic or Hazardous Materials into the environment, accidental or otherwise, or introduction into the environment of Toxic or Hazardous Materials by any other means or method.

(iv) "Remedial Action" means investigating or monitoring of the environmental condition of the Easement Area and any clean-up, containment, remediation, removal, response (including emergency response), and restoration of the Property, as per Applicable Environmental Laws, due to the presence or suspected presence of Contamination or a Release or suspected Release of Toxic or Hazardous Materials.

(v) "Toxic or Hazardous Materials" is used in its very broadest sense and includes, without limitation, (i) any toxic or hazardous material, substance, pollutant, contaminant, or waste defined as such in Applicable Environmental Laws; (ii) petroleum and petroleum-based products; (iii) asbestos in any quantity or form; (iv) polychlorinated biphenyls; and (v) urea formaldehyde.

The Easement shall be subject to the following Environmental and Hazardous Materials conditions:

A. Grantee shall, and shall cause its officers, employees, agents, contractors, licensees, and the invitees of any of them, to comply with all Applicable Environmental Laws that are or may become applicable to Grantee's activities on the Easement Area. Except when operating machinery and equipment to lay, erect, construct, install, inspect, maintain, repair, replace, rebuild, remove, improve, and make such other changes, alterations, additions to or extensions of the Facilities, Grantee and its officers, employees, agents, contractors, licensees, and the invitees of any of them, shall not use, generate, manufacture, store, treat, or Release any Toxic or Hazardous Materials on, under, about, or from the Property.

B. Grantee shall be solely responsible for the Release into the Easement Area or the Property of any Toxic or Hazardous Materials as the result of any activity by Grantee or its officers, employees, agents, contractors, licensees, or the invitees of any of them, under this Easement, and any preceding easements, licenses, or rights-of-way Grantor has granted to Grantee with respect to the Easement Area. Any reporting or Remedial Action relating to such Release or threat of Release required by law or regulation shall also be the responsibility of Grantee.

C. To the extent permitted by Virginia law, Grantee shall indemnify and hold harmless Grantor from, and defend Grantor against, any and all claims, injuries, losses, damages, liabilities, judgments, fines, suits, actions, penalties, or costs and expenses (including, but not limited to, costs and expenses of attorneys, including, but not limited to, attorneys in the Office of the Attorney General of the Commonwealth of Virginia, experts, and consultants incurred in all tribunals and whether or not legal proceedings have been commenced by or against Grantor), resulting from any use, generation, manufacture, storage, treatment, Release or threatened Release, or other acts or omissions by Grantee, its officers, employees, agents, contractors, licensees, or the invitees of any of them, which Grantor may directly or indirectly sustain or suffer as a consequence thereof or resulting from a breach of this Section 3. This Paragraph shall survive the expiration or

termination of this Easement. Grantee shall take all reasonable actions to fulfill its lawful indemnity obligations under this Deed of Easement.

D. If Grantee becomes aware that a Release of Toxic or Hazardous Materials has occurred due to acts or omissions of Grantee, its officers, employees, agents, contractors, licensees, or the invitees of any of them, whether or not such Release results in Contamination of the Easement Area, Grantee will give verbal notice to Grantor within twenty four (24) hours of becoming aware of the Release, providing all relevant facts and circumstances. Upon request from Grantor, Grantee shall provide a more detailed written description of these facts and circumstances to Grantor within a reasonable period of time.

E. Grantee, at its sole expense, will promptly take all action necessary to comply with Applicable Environmental Laws pertaining to a Release described above, including, but not limited to: reporting the occurrence to appropriate federal, state, or local regulatory authorities, if so directed by Grantor; taking timely and effective steps to minimize the Release and its impact on human health and the environment; and taking Remedial Action. Grantee shall provide all information related to the Remedial Action requested by Grantor. Notwithstanding the foregoing, in response to the acts or omissions of Grantee, its officers, employees, agents, contractors, licensees, or the invitees of any of them, Grantor may, but will not be obligated to, take any Remedial Action as it deems necessary or advisable to address any Contamination of the Property or to ensure compliance with Applicable Environmental Laws. This Paragraph shall survive the expiration or termination of this Easement.

F. Grantee's obligations under this Section 3 shall extend to any and all Toxic or Hazardous Materials whether or not such material or substance was defined, recognized, known, or suspected of being hazardous, toxic, dangerous, or wasteful at the time of any act or omission giving rise to Grantee's obligations.

G. Grantee represents and warrants that it is duly authorized with all requisite power and all governmental authorizations to enter into this Deed of Easement and that the person executing this Deed of Easement on behalf of Grantee is authorized to do so.

4. The parties hereto acknowledge and agree that notwithstanding anything contained in this Deed of Easement to the contrary, so long as the City of Richmond is a party hereto, the following provisions shall control over any conflicting provisions hereof:

A. With respect to tort liability for acts or occurrences with respect to this Deed of Easement, including product liability, Grantee may be either constitutionally immune (or partially immune) from suit, judgment, or liability, insured, or covered by a financial plan of risk management that is in the nature of self-insurance, all as determined by applicable laws, government policies and practices.

B. No equitable, quasi-contractual, or injunctive remedies, other than those specifically authorized by law, may be used or are effective against the Grantee.

C. This Deed of Easement shall be governed by, and construed according to, the laws of the Commonwealth, and any legal action against the Grantee shall be instituted and maintained only in the state courts of the Commonwealth.

D. No provision, covenant, or agreement contained in this Deed of Easement shall be deemed, in any manner, to be a waiver of the sovereign immunity of Grantee from tort or other liability.

5. Any obligation of the parties hereto to indemnify or assume liability in this Deed of Easement may be prohibited and shall be subject to appropriations and be limited to an amount not greater than the maximum liability, all in accordance with Virginia law.

[Signature pages to follow]

WITNESS the following signatures and seals.

Grantor: COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF MOTOR VEHICLES

By: _____
Richard D. Holcomb, Commissioner

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

The foregoing Deed of Easement was acknowledged before me this ____ day of _____
202__, by Richard D. Holcomb, as Commissioner of Department of Motor Vehicles of the
Commonwealth of Virginia, on behalf of the agency.

My commission expires: _____

Notary registration no.: _____

Notary Public

OFFICE OF THE ATTORNEY GENERAL

Approved as to Form:

By: _____
Assistant Attorney General

RECOMMEND APPROVAL:

DEPARTMENT OF GENERAL SERVICES

By: _____
Director

APPROVED BY THE GOVERNOR:

Pursuant to § 2.2-1151 of the Code of Virginia (1950), as amended, and by the authority vested
in me to act for and on behalf of the Governor of Virginia under Executive Order 88 (01) dated
December 21, 2001, I hereby approve this Easement and the execution of this instrument.

Secretary of Administration

Date

Grantee: CITY OF RICHMOND, VIRGINIA,
a political subdivision of the
Commonwealth of Virginia

By: _____

Lincoln Saunders, Acting Chief Administrative Officer

COMMONWEALTH OF VIRGINIA
CITY OF RICHMOND, to-wit:

The foregoing Deed of Easement was acknowledged before me this ____ day of _____
202__, by _____, as _____ of the City of
Richmond, a Virginia municipality.

My commission expires: _____

Notary registration no.: _____

Notary Public

Approved as to Form:


By: 
A. Ross Phillips
Assistant City Attorney
City of Richmond, Virginia

Exhibit A

