

City of Cincinnati

CHM

AWB

An Ordinance No. _____

- 2020

AUTHORIZING the City Manager to execute a *Grant of Easement* in favor of Duke Energy Ohio, Inc., granting a utility easement over a portion of City-owned property generally located at 7215 Bridgetown Road in Miami Township, Hamilton County, Ohio.

WHEREAS, the City of Cincinnati owns certain real property commonly known as Neumann Golf Course and generally located at 7215 Bridgetown Road in Miami Township, Hamilton County, Ohio (the "Property"), which property is under the management of the Cincinnati Recreation Commission ("CRC"); and

WHEREAS, Duke Energy Ohio, Inc. ("Grantee") has requested an easement over the Property, as more particularly depicted in the *Grant of Easement* incorporated herein as Attachment A, to construct, reconstruct, operate, maintain, repair, replace, add to, modify, and remove electric lines and all necessary and convenient supporting structures such as poles, wires, cables, guy wires with anchors, grounding systems, counterpoises, and all other appurtenances, fixtures, and equipment for the transmission and distribution of electrical energy, and for technological purposes, including, but not limited to, telecommunication services to serve an adjacent property; and

WHEREAS, the City Manager, in consultation with CRC, has determined that the grant of the easement to Grantee is not adverse to the City's retained interest in the Property; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the encumbrance of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the fair market value of the easement, as determined by appraisal by the City's Real Estate Services Division, is \$255, which Grantee has deposited with the City Treasurer; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the grant of the easement at its meeting on October 23, 2020; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City Manager is hereby authorized to execute a *Grant of Easement* in favor of Duke Energy Ohio, Inc. ("Grantee"), pursuant to which the City will grant to Grantee a

utility easement over a portion of City-owned property located at 7215 Bridgetown Road in Miami Township, Hamilton County, Ohio (the "Property"), in substantially the form attached hereto as Attachment A and incorporated herein by reference, to construct, reconstruct, operate, maintain, repair, replace, add to, modify, and remove electric lines and all necessary and convenient supporting structures such as poles, wires, cables, guy wires with anchors, grounding systems, counterpoises, and all other appurtenances, fixtures, and equipment for the transmission and distribution of electrical energy, and for technological purposes, including, but not limited to, telecommunication services.

Section 2. That the grant of the easement to Grantee is not adverse to the City's retained interests in the Property.

Section 3. That it is in the best interest of the City to grant the easement without competitive bidding because, as a practical matter, no one other than Grantee would have any use for the easement.

Section 4. That the fair market value of the easement, as determined by appraisal by the City's Real Estate Services Division, is \$255, which Grantee has deposited with the City Treasurer.

Section 5. That the proceeds from the grant of the easement shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the grant of the easement, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof, if any, into Miscellaneous Permanent Improvement Fund 757.

Section 6. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the terms of this ordinance, including execution of all necessary real estate documents.

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2020

John Cranley, Mayor

Attest: _____
Clerk

ATTACHMENT A

----- space above for County Recorder -----

GRANT OF EASEMENT

Pt. Parcel #570-0040-0023-90
Neumann Golf Course

In consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the **CITY OF CINCINNATI**, an Ohio municipal corporation, having an address of 801 Plum Street, Cincinnati, OH 45202 ("Grantor"), hereby grants unto **DUKE ENERGY OHIO, INC.**, an Ohio corporation, having an address of 139 East Fourth Street, Cincinnati, OH 45202 ("Grantee"), a perpetual, non-exclusive easement to construct, reconstruct, operate, maintain, repair, replace, add to, modify and remove electric lines and all necessary and convenient supporting structures (such as poles), wires, cables, guy wires with anchors, grounding systems, counterpoises, and all other appurtenances, fixtures and equipment (hereinafter referred to as the "Facilities"), for the transmission and distribution of electrical energy, and for technological purposes (including but not limited to telecommunications), across a portion of the following described real estate (the land and any and all improvements now or hereafter located thereon being referred to herein as the "Property"):

Situate in Section 3, Town 1, Fractional Range 2, Miami Purchase, Miami Township, Hamilton County, State of Ohio; said Property being part of a larger tract of land, as conveyed to the **CITY OF CINCINNATI** from Gerhardt Development Company, Fred J. Morr, Auditor of Hamilton County, Ohio, and Paul A. O'Brien, Treasurer of Hamilton County, Ohio by Judgment Entry in Case Nos. A-189332 and A-191807, consolidated, filed with the Court of Common Pleas of Hamilton County, Ohio dated March 18, 1963 and recorded in Deed Book 3303, Page 191 in the Office of the Recorder of Hamilton County, Ohio (hereinafter referred to as "Grantor's Property"), and further described in Exhibit "B", attached hereto and hereby made a part hereof:

Said overhead electric easement being a strip of land twenty feet (20') in uniform width, lying ten feet (10') wide on both sides of a centerline, which centerline shall be established by the center of the Facilities as constructed and as generally shown on Exhibit "A", attached hereto and becoming a part hereof (hereinafter referred to as the "Easement Area").

The respective rights and duties of Grantor and Grantee hereunder are as follows:

1. Access. Grantee shall have the right of ingress and egress over the Easement Area and Property using existing lanes, driveways and adjoining public roads where practical as determined by Grantee.

2. Clearing of Vegetation. Grantee shall have the right to cut down, clear, trim, remove, and otherwise control any trees, shrubs, overhanging branches and other vegetation (collectively, "Vegetation") within the Easement Area. Grantee shall also have the right to cut down, clear, trim, remove and otherwise control any Vegetation that is adjacent to the Easement Area but only to the extent such Vegetation may endanger the safe or reliable operation of the Facilities as reasonably determined by Grantee. Following Grantee's removal of Vegetation, Grantee shall restore the surface of the Easement Area and Property, as the case may be, to a safe and sightly condition. By way of example and not limitation, if Grantee cuts down trees, Grantee shall either completely remove the tree stumps or cut them off level to the ground, and if Grantee damages grassy areas, Grantee shall either re-sod or re-seed the damaged area.

3. Environmental Condition. To the best of Grantor's actual knowledge without having performed any independent inquiry, investigation or environmental assessment, the Easement Area does not contain any hazardous or toxic materials or other environmental contamination.

4. No Obstructions or Excavation. Grantor shall not, without Grantee's prior written consent, (a) place, or permit the placement of, any structures or other permanent obstructions within or adjacent to the Easement Area that may interfere with Grantee's exercise of its rights hereunder; (b) excavate or place, or permit the excavation or placement of, any dirt or other similar material within the Easement Area; or (c) install, or permit the installation of, a pond, lake or similar containment vehicle within or adjacent to the Easement Area that would result in the retention of water within the Easement Area. Grantee shall have the right to remove any and all such unauthorized obstructions and, notwithstanding the provisions of paragraph 6 (Repair of Damage) below, Grantee shall not be required to repair any damage to the surface of the Easement Area or Property resulting therefrom.

5. Storing of Dirt. Grantee shall have the right to temporarily pile dirt and other material and to operate equipment upon the surface of the Easement Area, and also on the land immediately adjacent to the Easement Area not to exceed fifteen (15) feet in width on either side of the Easement Area, but only during those times when Grantee is constructing, reconstructing, maintaining, repairing, replacing, adding to, modifying, or removing the Facilities.

6. Repair of Damage. Grantee, at its expense, shall promptly repair any and all physical damage to the surface area of the Easement Area and any and all damage to the Property resulting from Grantee's exercise of its rights hereunder, including without limitation damage caused by Grantee's employees, agents, contractors and subcontractors. In making such repairs, Grantee shall restore the affected area to a safe and sightly condition and otherwise to a condition that is reasonably close to the condition that the affected area was in immediately prior to the damage. If Grantee does not, in the opinion of Grantor, satisfactorily repair any such damage, Grantor may, within ninety (90) days of discovering such damage, file a claim for such damage with Grantee (a) at 139 East Fourth Street, Cincinnati, OH 45202, Attn: Right of Way Services EF320, or (b) by contacting an authorized Right of Way Services representative of Grantee. Grantee shall not be expected to respond to claims filed thereafter.

7. Grantor's Reserved Rights. Grantor shall have the right to use the Easement Area in any manner that is not inconsistent with the rights granted herein to Grantee. Grantor's and Grantee's use of the Easement Area shall comply with all applicable laws and codes.

8. Authority to Grant Easement. Grantor represents that it has the necessary authority and title to the Property to grant this easement to Grantee.

9. Easement to Run with the Land. The provisions hereof shall be deemed to "run with the land" and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Upon any transfer of the fee simple interest in the Property, the transferor of such interest shall be relieved of all liability and obligations hereunder thereafter accruing, and the transferee shall be deemed to have assumed all such liability and obligations.

The rights herein granted to Grantee are subject to any and all existing easements, restrictions and other matters of record affecting the Property.

Executed for the CITY of CINCINNATI by the City Manager on this ____ day of _____, 2020, as duly authorized by Ordinance _____-20 passed on _____, 2020.

CITY OF CINCINNATI

By: _____
City Manager

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Harry Black, City Manager of the City of Cincinnati, an Ohio municipal corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

Approved as to Form:

Assistant City Solicitor

**ACKNOWLEDGED AND ACCEPTED BY:
DUKE ENERGY OHIO, INC.**

By: _____

Its: **Manager of Land Services, Midwest Region**

Date: _____, 20__

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by KEVIN M. JENNINGS of Duke Energy Ohio, Inc., an Ohio corporation, on behalf of the corporation.

Notary Public
My commission expires: _____

This Instrument Prepared by Janice L. Walker, Attorney-at-Law, 139 E. Fourth St., Cincinnati, OH 45202.

*For Grantee's Internal Use:
Maximo No. 34099960
Prepared by: DP
Prepared date: 12/12/2019
Reviewed by:
Pole No. HMO-30257*

EXHIBIT "B"

Situate, lying and being in Section 3, Town 1, Fractional Range 2 of the Miami Purchase, in Miami Township, Hamilton County, Ohio, more particularly described as follows:

Commencing at a stone on the south east corner of Section 3, measure N 89°35'14" W, three thousand and eighty five, and ninety five hundredths (3085.95) feet along the south line of said Section 3 to a point, thence N 0°33'40" W, six hundred and sixty (660.00) feet to a point in the east line of a lot conveyed to Michael Herschel by deed recorded in Deed Book 2539, page 475 in the Recorder's Office, Hamilton County, Ohio, thence S 89°55'10" E six hundred and three and seventy three hundredths (603.73) feet to the place of beginning, thence N 0°24'00" W, twenty six hundred and forty eight and forty one hundredths (2648.41) feet to a point thence N 89°36'20" E one hundred and twenty seven and seventy four hundredths (127.74) feet to a point, thence S 0°24'00" E twenty six hundred and forty nine and forty one hundredths (2649.41) feet to a point, N 89°55'10" W one hundred and twenty seven and seventy four hundredths (127.74) feet to the place of beginning. Containing 7.768 acres of land. Being part of the same premises conveyed to Gerhardt Development Co., Inc. by Deed, recorded in Deed Book 3021, Page 474 in the Recorder's Office of Hamilton County, Ohio.

Subject to the right of way and easement over part of the premises herein above described, granted by John Getz, Jr. and Catherine Getz to the Union Gas and Electric Company by Deed recorded in Deed Book 1306, Page 594 of the Deed Records of Hamilton County, Ohio, and Deed Book 1881, Page 16.

ALSO:

Situate lying and being in Section 3, Town 1, Fractional Range 2 of the Miami Purchase, in Miami Township, Hamilton County, Ohio, more particularly described as follows:

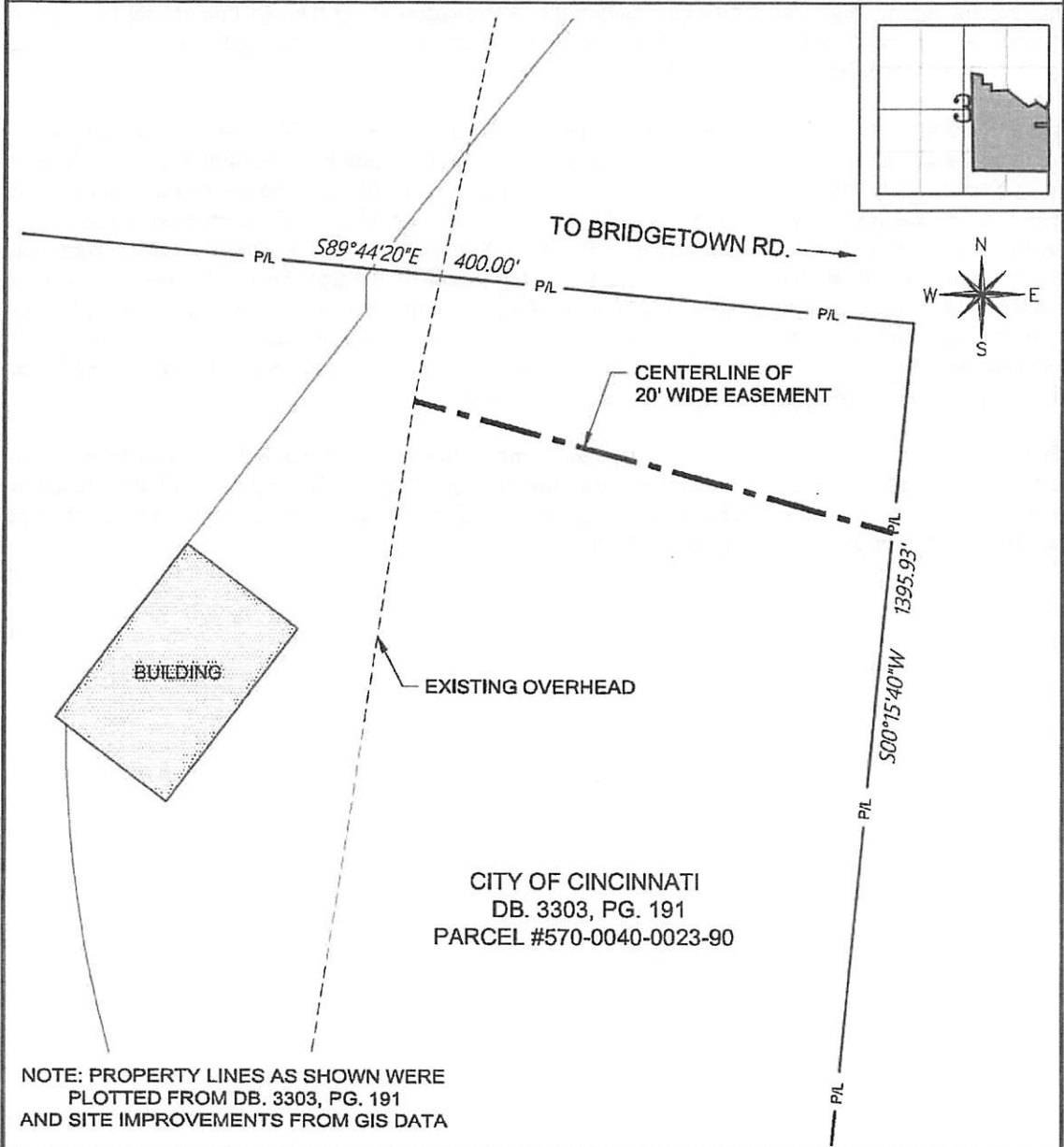
Commencing at a stone on the southeast corner of Section 3, measure N 89°35'14" W, three thousand and eighty five, and ninety five hundredths (3085.95) feet along the south line of said Section 3 to a point, thence N 0°33'40" W, six hundred and sixty (660.00) feet to a point in the east line of a lot conveyed to Michael Herschel by deed recorded in Deed Book 2539, page 475 in the Recorder's Office, Hamilton County, Ohio, thence S 89°55'10" E seven hundred and thirty one and forty seven hundredths (731.47) feet to the place of beginning, thence N 0°24'00" W, three thousand and forty nine and forty one hundredths (3049.41) feet to a point, which is to the southwest corner of lot number one (1) in Gerhardt's 3rd Subdivision Block "A" as recorded in Plat Book 75, pages 15 and 16 in the Recorder's Office of Hamilton County, Ohio; thence S 79°39'50" E three hundred and forty two and thirty four hundredths (342.34) feet to a point, which is the southeast corner of lot number four (4) of the aforementioned Gerhardt's 3rd Subdivision Block "A", thence S 0°28'30" W two hundred and sixty five (265.00) feet to a point, thence S 89°48'30" E two hundred and seventy seven and ninety hundredths (277.90) feet to a point in the west line of William Miller as recorded in Deed Book 2479, page 61 of the Hamilton County Ohio Records, thence S 0°28'30" W two hundred and seven and seventy-nine hundredths (207.49) feet to a point, thence N 89°09'10" W five hundred and twenty five and seventy-nine hundredths (525.79) feet to a point in the west line of lot number six (6) of the aforementioned Gerhardt's 3rd Subdivision Block "A", S 0°33'50" E sixty (60) feet to the southwest corner of said lot number six (6); thence S 54°10'50" E seven hundred and seventy three and sixty eight hundredths (773.68) feet to a point, thence N 59°45'00" E two hundred and ninety five and eighty three hundredths (295.83) feet to an angle point in the westerly line of lot number twelve (12) of the aforementioned Gerhardt's 3rd Subdivision Block "A", thence S 54°21'10" E three hundred and fifty nine and fifty one hundredths (359.51) feet to the most southerly corner of lot number fourteen (14) of Gerhardt's 3rd Subdivision Block "A", thence N 39°28'50" E seventy three and

ninety hundreds (73.90) feet to a point in the west line of Bridgetown Road. Thence S 9°00'10" E forty eight and forty hundredths (48.40) feet along the west line of Bridgetown Road to a point, thence S 13°09'10" E fifty two and eighty two hundreds (52.82) feet to a point, thence S 19°45'10" E, fifteen and fifty hundredths (15.50) feet to a point in the east line of Section Three (3) thence S 0°15'40" W four hundred and seventy eight and fifty eight hundredths (478.58) feet along the east line of section three to the northeast corner of a lot conveyed to Norman W. Kline et al by deed, as recorded in Deed Book 2465, page 518 in the Recorder's Office Hamilton County, Ohio.

Thence N 89°44'20" W, four hundred (400.00) feet to a point; thence S 0°15'40" W, one hundred eight and ninety hundredths (108.90) feet to a point; thence S 89°44'20" E four hundred (400.00) feet to the east line of Section Three, thence S 0°15'40" W thirteen hundred and fifty-nine and ninety-three hundredths (1359.93) feet along the east line of Section Three to a field stone which is the northwest corner of the property conveyed by Deed recorded in Deed Book 1828, page 90, in the Recorder's Office Hamilton County, Ohio, said field stone also being the southeast corner of the tract herein described, thence N 88°43'30" W twenty three hundred and fifty and fifty-three hundredths (2350.53) feet to the place of beginning. Containing 131.627 acres of land. Being part of the same premises conveyed to Gerhardt Development Co., Inc. by Deed recorded in Deed Book 2795, page 472 (referred to as Parcel One (1) in said Deed) in the Recorder's Office of Hamilton County, Ohio.

Subject to all local highways, 40 feet from the center line of Bridgetown Road. Subject to an easement to the Cincinnati Gas & Electric Company as described in Deed Book 1890, page 234 of the Hamilton County, Ohio, Records; and subject to an easement to the Union Gas & Electric Company as described in Deed Book 1350, page 296 of the Hamilton County, Ohio records.

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.



HAMILTON COUNTY, OHIO

SITE NAME: MIAMI TOWNSHIP SECTION 3 T-1, F.R.-2, MIAMI PURCHASE

	DR.	AM	EXHIBIT MAP OF:	EASEMENT
	CK.	MT	EXHIBIT MAP FOR:	CITY OF CINCINNATI
	DATE	02/05/2020	LOCATION	7215 BRIDGETOWN RD. CINCINNATI, OH
EXHIBIT 'A'				EMAX #34099960