

# City of Cincinnati

CHM

EESW

## An Ordinance No. \_\_\_\_\_

- 2022

**AUTHORIZING** the City Manager to execute a *Grant of Easement* in favor of Duke Energy Ohio, Inc., granting a utility easement across a portion of City-owned property generally located at 1600 Gest Street in the Lower Price Hill neighborhood of Cincinnati.

WHEREAS, the City of Cincinnati owns certain real property located at 1600 Gest Street in Lower Price Hill, containing the Mill Creek Wastewater Treatment Plant (the "Property"); and

WHEREAS, Duke Energy Ohio, Inc., an Ohio corporation ("Grantee"), has requested an easement across the Property for underground electrical lines and associated structures, equipment, and appurtenances to serve the Mill Creek Wastewater Treatment Plant, as more particularly depicted and described in the *Grant of Easement* attached to this ordinance as Attachment A and incorporated herein by reference ("Easement"); and

WHEREAS, the City Manager, in consultation with the Metropolitan Sewer District of Greater Cincinnati ("MSD"), has determined that granting 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 \$38,000, however, the City is agreeable to granting the Easement to Grantee for less than fair market value, namely, \$1.00, because granting the Easement is for the benefit of the City to increase electrical capacity at the Mill Creek Wastewater Treatment Plant, which will provide the City with equivalent economic and noneconomic benefits to the fair market value of the Easement; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the Easement at its meeting on October 7, 2022; 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 substantially the form attached to this ordinance as Attachment A and incorporated herein by

reference, in favor of Duke Energy Ohio, Inc., an Ohio corporation (“Grantee”), pursuant to which the City will grant to Grantee a utility easement for underground electrical lines and associated structures, equipment, and appurtenances (the “Easement”) to serve the Mill Creek Wastewater Treatment Plant located at 1600 Gest Street in Lower Price Hill (the “Property”), as more particularly described and depicted on Attachment A.

Section 2. That granting the Easement to Grantee is not adverse to the City’s retained interest in the Property.

Section 3. That it is in the best interest of the City to grant the Easement without competitive bidding because granting the Easement is in the best interest of the City because it is necessary to increase electrical capacity at the Mill Creek Wastewater Treatment Plant, and, 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 \$38,000, however, the City is agreeable to grant the Easement to Grantee for less than fair market value, namely, \$1.00, to increase electrical capacity at the Mill Creek Wastewater Treatment Plant in promotion of the public health, safety, and general welfare, which will provide the City with an equivalent economic and noneconomic benefit to the fair market value of the Easement.

Section 5. That the proceeds from the *Grant of 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 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 provisions of this ordinance and to fulfill the terms of the *Grant of Easement* including, without limitation, executing any and all ancillary agreements, plats, and other 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: \_\_\_\_\_, 2022

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk

ATTACHMENT A



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

### **GRANT OF EASEMENT**

Pt. Parcel #148-0010-0001-90

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, surface equipment (including but not limited to transformers and switchgears), 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 30, Town 4, Fractional Range 1, City of Cincinnati, Storre Township, Hamilton County, State of Ohio; being a parcel of land of 9.19 acres, as conveyed to the **CITY OF CINCINNATI** from The Cincinnati Union Terminal Company by Warranty Deed dated December 15, 1941, and as recorded in **Deed Book 1945, Page 130**, in the Office of the Recorder of Hamilton County, Ohio.

The portion of the Property encumbered by the easement and within which the Facilities are or may hereafter be located being that area indicated, relative to landmarks and property lines, on the drawing attached hereto as "Exhibit A" (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 slightly 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 slightly 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 EY100, 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 by the CITY of CINCINNATI by the City Manager on this \_\_\_\_ day of \_\_\_\_\_, 2022, as duly authorized by Ordinance \_\_\_\_\_-2022 passed on \_\_\_\_\_, 2022.

CITY OF CINCINNATI

By: \_\_\_\_\_  
City Manager

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, 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: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF OHIO            )  
  ) ss:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022,  
by \_\_\_\_\_, of Duke Energy Ohio, Inc., an Ohio corporation, on behalf of the  
corporation.

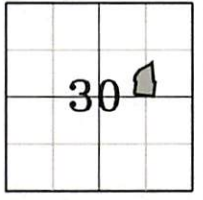
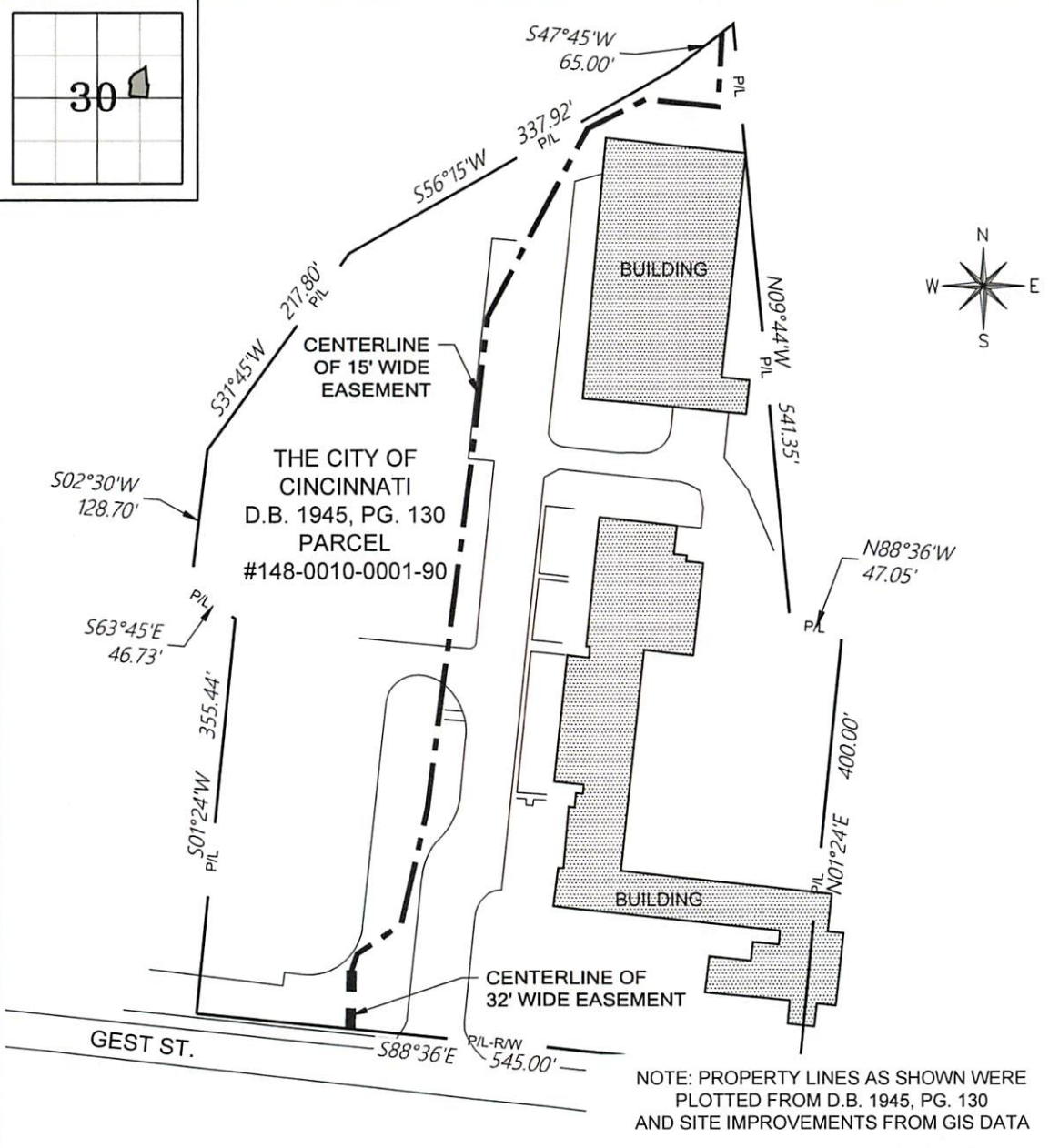
\_\_\_\_\_  
Notary Public

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:*  
*Emax No: 42085766*  
*Prepared by: NRH*  
*Prepared date: May 26, 2022*  
*Pad No. HMO-30955*

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



NOTE: PROPERTY LINES AS SHOWN WERE PLOTTED FROM D.B. 1945, PG. 130 AND SITE IMPROVEMENTS FROM GIS DATA

# HAMILTON COUNTY, OHIO

SITE NAME: STORRE TOWNSHIP SECTION 30 T-4, F.R.-1

	DR. AM	EXHIBIT MAP OF: EASEMENT
	CK. MT	EXHIBIT MAP FOR: THE CITY OF CINCINNATI
	DATE 10/01/2021	LOCATION 1600 GEST ST, CINCINNATI, OH
EXHIBIT 'A'		EMAX #42085766