

City of Cincinnati
An Ordinance No. _____

CHM

- 2020

AWB

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 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 Cincinnati, containing the Mill Creek Wastewater Treatment Plant (the “Property”); and

WHEREAS, Duke Energy Ohio, Inc. (“Grantee”) has requested an easement over the Property, as more particularly depicted in the *Grant of Easement* as attachment “A” hereto, for the installation of overhead electrical facilities and associated appurtenances and structures to serve a dewatering chamber on the Property; and

WHEREAS, the City Manager, in consultation with the Metropolitan Sewer District of Greater Cincinnati (“MSD”), 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 Section 331-5, Cincinnati Municipal Code, 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 \$5,000, 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, 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 grant of the easement at its meeting on August 7, 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 1600 Gest Street in Cincinnati

(the "Property"), in substantially the form attached hereto as Attachment A, for the installation, operation, maintenance, and repair of overhead electrical facilities and associated appurtenances and structures.

Section 2. That the grant of the easements 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 easements without competitive bidding because granting the easement is in the best interest of the City because the easement is necessary to enable Grantee to install and furnish electricity to a dewatering chamber to facilitate waste water treatment services, and, as a practical matter, no one else would have any need for such easement rights.

Section 4. That the fair market value of the easements, as determined by appraisal by the City's Real Estate Services Division, is \$5,000, however, the City is agreeable to granting the easement to Grantee for less than fair market value; namely, \$1.00, to facilitate the installation and use of the overhead electrical facilities and associated appurtenances and structures to facilitate the continued operation of waste water treatment services 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 the easements 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 No. 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 underground ducts, conduits, wires, cables, manholes, pullboxes, 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), for underground, 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**"):

Situated in Section 30, Town 4, Fractional Range 1, City of Cincinnati, Storrs Township, Hamilton County, State of Ohio; being part of 9.19 acres of land, as conveyed to the **CITY OF CINCINNATI** from The Cincinnati Union Terminal Company by Warranty Deed dated December 15, 1941 and recorded in **Deed Book 1945, Page 130**, 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 underground electric easement being a strip of land fifteen feet (15') in uniform width, lying seven and one-half feet (7.5') 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 EM02, 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 _____-2020 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 _____, 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 _____, 2020,
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.

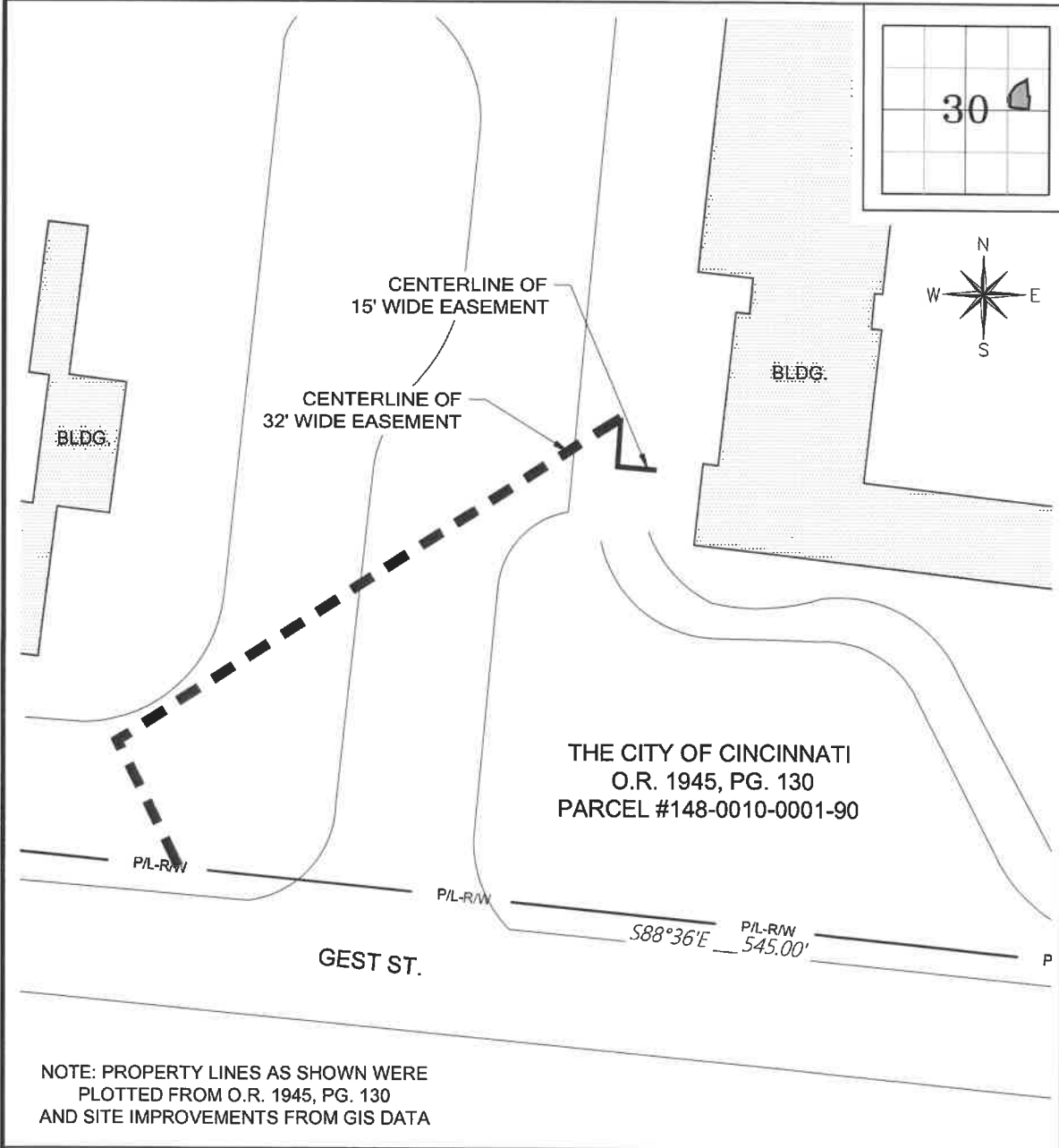
For Grantee's Internal Use:
Emax No: 35754513
Prepared by: DP
Prepared date: March 9, 2020
Reviewed by:
Pad No. HMO-30955

EXHIBIT "B"

A parcel of land in Storrs Township, Section 30, Town 4, F.R. 1, located on the north side of Gest Street, lying west of Mill Creek, Cincinnati, Hamilton County, Ohio, bounded and described as follows:

Beginning at a point in the north line of Gest Street, which point is 150 feet east of the West line of Block "H" of the Stephen Wilder Subdivision, recorded in Plat Book 1, Page 282, Hamilton County Records, said point being also 375 feet east of the east line of Evans Street; thence South 88°36' East in the north line of Gest Street a distance of 545 feet to a point, which point is 195 feet east of the west line of Block "D" of the said Stephen Wilder Subdivision, said point also being 4.6 feet east of the center line of the existing Mill Creek, intercepting sewer, thence North 1°24' East at right angles to Gest Street, in a line parallel to the west line of said Block "D" a distance of 400 feet to a point; thence North 88° 36' West in a line parallel with Gest Street a distance of 47.05 feet to a point, which point is 5-1/2 feet east of the center line of the existing Mill Creek Interceptor; thence North 9°44' West in a line parallel to and 5-1/2 feet east of the center line of said Mill Creek Interceptor, a distance of 541.35 feet to an easterly line of property known as Block "L" of said Stephen Wilder Subdivision, conveyed to the City of Cincinnati in deed from Harry B. Banning, November 4, 1932, and recorded in Book 1633, Page 448; thence in said easterly line South 47°45' West, a distance of 69 feet to a point; thence South 56°15' West, a distance of 337.92 feet to a point; thence South 31°45' West, a distance of 217.8 feet to a point, thence still in the easterly line of land owned by the City of Cincinnati and described in said deed from H.B. Banning, which is part of Block "H" of the said Stephen Wilder Subdivision, South 2°30' West, 128.7 feet to a point, which point is 25 feet south of a line 400 feet north of the north line of Gest Street, as described in a parcel conveyed to the Cincinnati Union Terminal Company from the Central Trust Company by deed dated May 23, 1935, recorded in Book 1683, Page 591; thence South 63°45' East a distance of 46.73 feet to a point in a line which is 150 feet east of the west line of Block "H" of the said Stephen Wilder Subdivision; thence South 1°24' West in a line parallel to the west line of said Block "H" a distance of 305.44 feet to the place of beginning. Containing 9.19 acres.

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: STORRS TOWNSHIP SECTION 30 T-4, F.R-1

	DR. MM	EXHIBIT MAP OF: EASEMENT
	CK. MT	EXHIBIT MAP FOR: THE CITY OF CINCINNATI
	DATE 03/12/2020	LOCATION 1660 GEST ST., CINCINNATI, OH
EXHIBIT 'A'		EMAX #35754513