

TEMPORARY ORDINANCE NO. 5-17

PERMANENT ORDINANCE NO. 5-17

AN ORDINANCE TO GRANT AN EASEMENT NECESSARY FOR THE PROVISION OF ELECTRIC SERVICES

WHEREAS, there exists a real and present need to grant said easement for the installation of electric services by Ohio Power Company, a unit of American Electric Power;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LANCASTER, STATE OF OHIO:

SECTION 1. The following easement be granted under terms and conditions substantially similar to Exhibit A attached hereto:

PROPERTY OWNER PERMANENT EASEMENT EXHIBIT

City of Lancaster _____ Acre A

SECTION 2. As a condition, Ohio Power Company/AEP shall pay all costs associated with the acceptance of this property. This shall include, but shall not be limited to, costs for preparing a deed of conveyance, costs for preparing all documents such as a sale contract, costs of closing, and all property transfer fees.

SECTION 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: 2/13/17 after 2nd reading. Vote: Yeas 9 Nays 0

Approved: 2/13/17

Clerk: Teresa Lee Sandy

Offered by: [Signature]

Second by: [Signature]

[Signature]

President of Council

[Signature]

Mayor

Requested by Water/Water Pollution Control Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on _____, 2017 in the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council



EASEMENT AND RIGHT-OF-WAY
FROM
THE CITY OF LANCASTER, OHIO,
AN OHIO MUNICIPAL CORPORATION
TO
OHIO POWER COMPANY, AN OHIO CORPORATION
AND UNIT OF AMERICAN ELECTRIC POWER

It is hereby agreed that THE CITY OF LANCASTER, OHIO, AN OHIO MUNICIPAL CORPORATION, 104 East Main Street, Lancaster, Ohio, 43130, hereinafter called "Grantor" for One Dollar (\$1.00) and other valuable consideration paid by OHIO POWER COMPANY, AN OHIO CORPORATION AND UNIT OF AMERICAN ELECTRIC POWER, 850 Tech Center Drive, Gahanna, Ohio, 43230-6605, hereinafter called "Grantee" grants to Grantee:

a permanent Easement and Right-of-Way (hereinafter "Easement Premises) over, under, upon and across the following described 2.175 acre tract of Real Property of Grantor (Parcel No. 0531885200) as further described by the metes and bounds survey (Exhibit A) which is attached hereto and incorporated herein,

The Easement Premises shall be permanent and shall be Thirty (30) feet wide, lying Fifteen (15) feet on each side of the Electric Facilities as constructed. The exact location of the permanent Easement Premises is attached hereto as Exhibit A in the metes and bounds survey.

By acceptance of the Easement Premises, the parties mutually agree that it is in their best interest for the Grantor to grant and the Grantee to accept the following conditions and covenants to do the following:

1. Grantor hereby grants and conveys to Grantee the permanent Easement Premises to construct, operate, maintain, inspect, protect, repair, replace, remove, and control Electric Utility Facilities, subject to the terms and conditions hereinafter set forth, in, under, along, over, across, and upon the Easement Premises together with all reasonable rights of ingress and egress across the Real Property owned by Grantor as further set forth herein.
2. Grantor hereby warrants that Grantor has full power and authority to grant this easement and has a good and indefeasible fee simple title to the above described Real Property inclusive of the Easement Premises, free and clear of all liens and encumbrances, except those of record which do not unreasonably interfere with the uses herein described, and has the authority to convey said rights and interests to Grantee.
3. This easement shall be binding on, and shall inure to the benefit of, the successors and assigns of the parties hereto. Where the term Grantor or Grantee is used herein, the term shall be deemed to include the successors and assigns of that party.
4. Grantor retains, reserves, and shall continue to enjoy the use of the Real Property for any and all purposes including, but not limited to, the construction, operation, maintenance, inspection, protection, repair, replacement, removal, relocation, and control of its own

Wastewater Utility Facilities and future Wastewater Utility Facilities on the Real Property.

5. Nothing in this Agreement shall, in any way, hamper, impede, limit or prevent Grantor's use of this Real Property as a Wastewater Utility Facility now or in the future. Grantee will not construct anything in the Easement Premises that will adversely affect Grantor's Wastewater Utility Facilities, and any interference by Grantee to Grantor's use of the Real Property will be ceased immediately by Grantee upon notice by Grantor and remedied at the sole cost and expense of Grantee.
6. The parties shall have the right to inspect the Easement Premises for violations of the covenants and restrictions set forth herein. If either party or its successors and assigns violate any of these covenants and restrictions, the violating party shall cure the violation(s) within sixty (60) days of receipt of notice thereof from the other party. If the violating party fails to adequately cure or eliminate the violation(s) within the sixty (60) day time period, the other party may cause the cure of the violation(s), and the violating party shall immediately reimburse the other party for all costs and expenses incurred in curing the violation(s), in addition, the other party shall also have the right to obtain injunctive relief for the enforcement of the covenants and restrictions from a court of competent jurisdiction.
7. In addition to the perpetual Right-of-Way granted hereunder, during the original construction of the Electric Facilities (including, without limitation, Grantee's reclamation, mitigation and/or restoration activities), Grantee shall be entitled to use the areas that may be defined as "Temporary Construction Easement" and "Additional Temporary Work Space" (together, the "**Temporary Work Spaces**") as shown on Exhibit B for the surveying, laying, and constructing of the Electric Facilities installed pursuant to the terms herein and all activities incident thereto. Upon the completion of the construction, installation, repair, maintenance, rebuilding, replacing, relocating, or removing of said Electric Facilities, Grantee shall replace and restore the Real Property to the condition, as near as possible, to what it was in prior to said construction, maintenance, rebuilding, replacing, relocating, and/or removing of said electrical facilities.
8. Due to the current Wastewater Utility Facilities operation of Grantor on the Real Property, Grantee acknowledges that the exact location of the Easement Premises and/or Temporary Work Spaces need to be specifically defined in the metes and bounds survey attached hereto as Exhibit A and Exhibit B, respectively, and shall not be altered by Grantee.
9. Grantor may fully use and enjoy the Easement Premises to the extent that such use and enjoyment does not interfere with Grantee's rights under this Agreement or create an actual hazard to the Electric Facilities or Grantee's exercise of its rights hereunder; provided, however, that Grantee's Electric Facilities do not hamper, interfere, impede, or adversely affect Grantor's use of the Real Property for its own Wastewater Utility Facilities operations.

10. Grantor shall permit Grantee's employees, agents, and contractors, to enter upon the Real Property for the purposes of constructing, maintaining, operating, and replacing the Electric Facilities over and across the Easement Premises, and shall not interfere with Grantee's use, access, ingress and egress to the Easement Premises. If Grantee requires ingress/egress into or through Grantor's Wastewater Utility Facilities on the Real Property, Grantee shall make a timely request for such access to Grantor, and such access will not be unreasonably withheld. Grantee's access to Grantor's Wastewater Utility Facilities on the Real Property will not be used in a manner that would hamper, interfere, impede, or adversely affect Grantor's use of the Real Property for its own Wastewater Utility Facilities operations.
11. Grantee shall be permitted to construct roadways, signage, barriers, fencing, and landscaping as Grantee determines is necessary. The right to use the Easement Premises shall belong to the Grantee and its agents, employees, designees, contractors, guests, invitees, successors and assigns, and all those acting by or on behalf of it for the purposes of establishing, laying construction, reconstruction, installing, realigning, modifying, replacing, improving, adding, altering, substituting, operating, maintaining, accessing, inspecting, patrolling, protecting, repairing, changing the size of, and relocating the Electric Utility Facilities within the Easement Premises, as may be necessary or desirable for the operation of the Electric Utility Facilities, over, across, under and upon the Easement Premises.
12. Grantee shall promptly remove and not abandon in place Electric Utility Facilities, together with above-and below-ground appurtenances that are no longer being used.
13. All improvements on the Easement Premises shall be at the sole cost of the Grantee, and Grantee shall indemnify and hold harmless Grantor from any and all liens or causes of action arising out of construction, repair, maintenance or replacement of the Electric Utility Facilities undertaken by the Grantee.
14. Grantee agrees to comply in all material respects, at its sole cost, with all applicable federal, state and local laws, rules, and regulations which are applicable to Grantee's activities hereunder, including without limitation, the construction, use, operation, maintenance, repair and service of the Electric Utility Facilities, associated equipment and appurtenances thereto.
15. Grantor owes no duty to keep the premises safe for entry, Grantor extends no assurance, through the act of conveying the Easement Premises, that the premises are safe for entry or use, and Grantor assumes no responsibility nor does Grantor incur liability for any injury to person or property caused by any act undertaken by Grantee in furtherance of the use of the Easement Premises.
16. Grantee shall be responsible for maintaining the Easement Premises in a clean and safe condition. Grantee will, insofar as reasonably practicable, level, re-grade, and reseed the ground disturbed by Grantee's use of the Easement Premises and will maintain the Easement Premises clean of all litter and trash during periods of construction, operation, maintenance, repair or removal. All construction debris shall be cleaned up and removed

from Grantor's lands upon completion of installation and construction of the Electric Utility Facilities.

17. Grantee shall have the right to prohibit public access to the Easement Premises, but will not restrict Grantor access to the Easement Premises.
18. Grantor may erect new or additional power and transmission lines, water, wastewater, stormwater, or other utility lines, or wells within the Easement Premises, and Grantor may grant any additional easement(s) within the Easement Premises for such or any other purposes. The Grantor reserves the right to utilize the Easement Premises for the maintenance, operation, and expansion of its Wastewater Utility Facilities on the Real Property, and to maintain and repair existing telephone, electric, wastewater, wells, or other utility lines or mains already serving the Real Property.
19. Grantee shall maintain the Easement Premises and may trim or cut down or eliminate trees or shrubbery as may be necessary to prevent possible interference with the operation of the Electric Utility Facilities and to remove possible hazards thereto, as long as these acts do not hamper, interfere, impede, or adversely affect Grantor's use of the Real Property for its own Water Utility Facilities operations. All trees, brush and other debris caused by construction shall be removed from the Easement Premises.
20. Grantor hereby reserves the right to use the Easement Premises in any manner necessary for the operation of its Wastewater Utility Facilities, and will try not to interfere with the exercise by the Grantee of the rights granted hereunder.
21. Grantee shall have the right to post or clearly mark the boundaries of the Easement Premises.
22. This Easement, its terms and conditions contained herein and all rights, title and privileges herein granted, including all benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors, assigns and legal representatives.
23. Grantor agrees that Grantee may assign the rights granted to it hereunder to any assignee that demonstrates sufficient competence and gives adequate assurances that any work to be performed pursuant to such assignment shall be conducted in a skillful manner, and that Grantor's interest in the Real Property and Easement Premises shall be protected to the same extent as hereunder.
24. Said Easement may not be sold or transferred without Grantor's specific written authority.
25. Grantee, by its acceptance of the Easement Premises shall indemnify and hold harmless Grantor from, against and in respect of any and all liability, claims, damages, costs, and losses of whatever character (collectively, "**Claims**") arising from personal injury or death or damage to property of Grantor and any and all Claims of whatever character

claimed by third parties, to the extent such Claims result from the action, negligence or willful misconduct of Grantee, its employees, agents, contractors and subcontractors in connection with the exercise of Grantee's rights under this Agreement.

26. If any damage to Grantor's Real Property is caused by Grantee's exercise of its rights hereunder, Grantee, at its expense, shall promptly restore any disturbed areas, including fences, trails, and field tiles, as nearly as possible to the condition existing prior to the occurrence of the damage.
27. Any and all notices to which the parties shall be entitled hereunder or under any law, statute, rule, regulation, order, ordinance or policy of any governmental agency or entity having jurisdiction of the subject matter for which this Agreement is granted, shall be envelope or other appropriate mail container, addressed to the addressee shown below, bearing the adequate amount of postage to result in deliver of same to the address shown thereon, and sent by certified mail, retain receipt requested, to the party to whom such notice is given. In the alternative, either party may give such notice by United Parcel Service (UPS), Federal Express or other similar national expedited mail service guaranteeing not later than two (2) day delivery of any such letter or notice to the addresses provided for herein. Grantor and Grantee designate the following persons, addresses, telephone and facsimile numbers for all notices and information to be delivered hereunder:

GRANTOR

City of Lancaster, Ohio, a Municipal Corporation
c/o Service-Safety Director
104 E. Main Street
Lancaster, Ohio 43130
Telephone No.: (740) 687-6600
Fax No.: (740) 687-6698

GRANTEE

Ohio Power Company
An Ohio Corporation and Unit of American Electric Power
850 Tech Center Drive
Gahanna, Ohio, 43230-6605

Such persons, addresses, telephone and facsimile numbers may be changed by the respective party by delivering written notice of such change to the other party.

28. This Agreement shall be interpreted, enforcement and governed under the laws of the State of Ohio.
29. This Agreement embodies the entire agreement between the parties hereto with respect to the Easements and supersedes any and all agreements representations, warranties, or statements which may have been made between the parties prior to the date hereof, whether express, implied, written, or verbal, concerning the subject matter hereof and this Agreement shall not be modified or amended except by written instrument executed by each party hereto.

30. In the event any provision or any portion of any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable by reason of any law or public policy, such provision or portion thereof shall be considered to be deleted, and the remainder of this Agreement shall constitute the agreement between Grantor and Grantee covering the subject matter hereof.

GRANTOR:
City of Lancaster, Ohio
An Ohio Municipal Corporation

GRANTEE:
Ohio Power Company
An Ohio Corporation and Unit of AEP

PAUL D. MARTIN
SERVICE-SAFETY DIRECTOR

By: _____
Title: _____

State of Ohio:
County of Fairfield:

BEFORE ME, a Notary Public in and for said county and state, personally appeared the above-named Paul D. Martin, Service-Safety Director of the City of Lancaster, Ohio, an Ohio Municipal Corporation, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed on behalf of said Municipal Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Lancaster, Ohio, this ____ day of _____, 2017.

Notary Public, State of Ohio

State of Ohio:
County of Fairfield:

BEFORE ME, a Notary Public in and for said county and state, personally appeared _____, of Ohio Power Company, An Ohio Corporation and Unit of American Electric Power, who represented that he/she is duly authorized in the premises, and who acknowledges that he/she did sign the foregoing instrument and that the same is his/her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Lancaster, Ohio, this ____ day of _____, 2017.

Notary Public, State of Ohio

Prepared by:
Randall T. Ullom
Law Director & City Prosecutor
136 West Main Street
Lancaster, Ohio 43130