

REQUESTED BY:
STEINBECK/MCBRIDE

LAW DEPARTMENT
DRAFT NO. 0412

TITLE

AN ORDINANCE FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND THE DIRECTOR OF PUBLIC SERVICE AND SAFETY FOR AND ON BEHALF OF THE CITY OF WARREN, OHIO TO ENTER INTO AN AGREEMENT FOR THE PURPOSE OF PURCHASING CERTAIN PARCELS OF REAL PROPERTY, AND AN AGREEMENT FOR THE PURPOSE OF LEASING CERTAIN PARCELS OF REAL PROPERTY FOR THE PURPOSE OF INSTALLING A PUMP STATION FOR THE CLEAN ENERGY FUTURE - TRUMBULL, LLC WATERLINE PROJECT AND DECLARING AN EMERGENCY.

ORDINANCE NO. 13266/2023

WHEREAS, the City of Warren has deemed it desirable and necessary to purchase certain real property and lease certain real property in order to install a pump station for the Clean Energy Future - Trumbull, LLC Waterline Project; and

WHEREAS, the Sellers are owners in fee simple of property situated in Warren Township, Trumbull County, Ohio, as more fully described in Exhibit "A"; and

WHEREAS, the Lessors are owners of real property situated in Warren Township, Trumbull County, Ohio, as more fully described in Exhibit "B"; and

WHEREAS, the Sellers are in agreement to sell said real property to the City of Warren, Ohio for the purchase price of \$35,000.00, for the completion of the Clean Energy Future - Trumbull, LLC Waterline Project without any further delay; and

WHEREAS, the Lessors are in agreement to lease said real property to the City of Warren, Ohio for the lease price of \$1,200.00 per month for a term of eighteen (18) months, for the completion of the Clean Energy Future - Trumbull, LLC Waterline Project; NOW THEREFORE

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

Section 1: That the Mayor and the Director of Public Service and Safety of the City of Warren, Ohio are hereby authorized to enter into an agreement for the Sellers of real property for the purpose of installing a pump station for the Clean Energy Future - Trumbull, LLC Waterline Project, which is more fully described in Exhibit "A" and attached hereto.

Section 2: That the agreements shall first be approved by the Law Director, and the City Auditor be, and hereby is, authorized to disburse said funds upon receipt of proper vouchers, signed by the proper persons, for the stated purpose and for no other purpose.

Section 3: That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of public peace, health, welfare and safety, and for the further reason that the completion of the Clean Energy Future - Trumbull, LLC Waterline Project may proceed at the earliest possible time and without undue delay. WHEREFORE, this Ordinance shall go into immediate effect.

Passed in Council this 11TH day of OCTOBER, 2023.

SIGNED: [Signature] ATTEST: [Signature]
President of Council Clerk

FILED WITH THE MAYOR: 10-11-2023

DATE APPROVED: 10-11-2023

[Signature]
MAYOR, CITY OF WARREN, OHIO

Exhibit A to Draft No. 0412

AGREEMENT OF SALE

This Agreement of Sale ("Agreement") entered into this ____ day of _____ 2023 ("the Effective Date") by David L Herron and Jessica L Herron (H & W) and Mark A. Herron and Glenda R. Herron (H & W) ("Sellers") and The City of Warren, Ohio a municipal corporation. ("Buyer")

RECITALS:

(A) Sellers are the owners, in fee simple, of certain parcels of real property consisting of Trumbull County Ohio Tax Parcel Numbers 43-026470, 43-026469, 43-026468 and 43-026467 all situated in the Township of Warren, County of Trumbull, State of Ohio, and as more fully described on Exhibit A attached hereto and made a part hereof (the "Property"); and

(B) Seller desires to sell to Buyer or its assignee, and Buyer or its assignee desires to purchase from Seller, the Property.

NOW THEREFORE, in consideration of the mutual covenants and agreements of each party to the other and other valuable consideration, the receipt, adequacy and sufficiency of which are acknowledged, the parties, intending to be bound by this Agreement, do mutually covenant and agree as follows:

SECTION 1 INCORPORATION BY REFERENCE

Section 1.1 Incorporation by Reference. The Preamble and the Recitals set forth above and the Exhibits referred to in this Agreement are incorporated into this Agreement as though the same were fully set forth in this Agreement.

SECTION 2 PURCHASE AND SALE

Section 2.1. Purchase and Sale. Seller agrees to sell, grant, convey, transfer and assign the Property to Buyer, and Buyer agrees to purchase and receive the Property from Seller, including the appurtenances thereto, subject to and pursuant to the provisions set forth in this Agreement.

Section 2.2 Limited Warranty Deed The Property shall be sold, granted, conveyed, transferred and assigned by Seller to Buyer by a warranty deed ("Deed"). The

Deed shall convey title to the Property, free and clear of all liens, adverse claims, encumbrances, reservations, restrictions, charges, equities, rights-of way and exceptions, except for any Permitted Encumbrances defined herein.

SECTION 3 PURCHASE PRICE

Section 3.1 Purchase Price The purchase price for the Property to be sold by Seller and purchased by the Buyer under this Agreement shall be \$35,000.00 payable at closing.

Section 3.2 Payment of Purchase Price The Purchase Price shall be payable by Buyer to Seller as follows:

(A) Within three (3) business days of the end of the due diligence period as defined herein, Buyer shall deliver to The Schubert Title Agency, Inc. (agent for First American Title Insurance Company), 138 E. Market St., Warren, Ohio 44481 ("Title Company"), a deposit in the amount of Thirty Five Thousand (\$35,000.00) Dollars ("Deposit"). The deposit shall be made by bank wire transfer check payable to the Title Company. In addition the buyer shall Deposit sufficient funds as required by the Title Company to cover all costs connected with the sale.

SECTION 4 DUE DILIGENCE

Section 4.1 Buyer will have 60 days after the effective date to conduct any testing or inspection of the property and the land referred to herein as the ("Lease property") to insure suitability of the property and land for its intended use for installation of a pump station as to the property being acquired and as to the lease property for use as staging and laydown during construction of the pump station on the Property.

Should Buyer determine the property and lease property are suitable for its intended use, it shall notify Sellers in writing, within 60 days of the effective date of this Agreement by Certified U S Mail at 2100 Brittany Oaks Tr, Warren, Oh. 44484 of its election to proceed to purchase the Property and execute a lease for the Lease Property which consists of parcels 43-026471, 43-026472, 43-139978, and 43-139976 also located in Warren Township, Trumbull County, Ohio. Otherwise, should Buyer fail to notify Seller of its intention or election to proceed to purchase the property this agreement shall be deemed void and both parties shall be released from any further liability connected herewith

**SECTION 5
THE LEASED PROPERTY**

Section 5.1 In addition to the Purchase Price being paid by Buyers, and as part of the consideration for the purchase by Buyer of the Property, Sellers agree to execute a lease for the Lease Property defined in Section 4 hereof in accordance with the written terms of said lease agreement a copy of which is attached hereto and incorporated herein.

**SECTION 6
TITLE INSURANCE**

Section 6.1 Buyer shall within 3 days of the effective date hereof, order a title commitment from Schubert Title Agency at Buyers Cost and as part of its due diligence. Should the sale take place, Buyer shall receive an owner's policy of title insurance from Schubert Title Agency also at Buyer's cost.

**SECTION 7
COSTS**

Section 7.1 Title Costs. Buyer shall be responsible for all of the costs and expenses related to the, deed preparation, transfer tax, real estate taxes past and current, escrow (closing fees), deed recording, and any other costs connected with the purchase and lease including the preparation of the Purchase Agreement and Lease Agreement. Lessee shall not be responsible for real estate taxes on the leased premises.

**SECTION 8
POSSESSION**

Section 8.1 Possession Seller shall deliver to Buyer possession of the Property on the Closing Date.

**SECTION 9
WARRANTIES AND COVENANTS**

Section 9.1 Sellers Representations and Warranties Seller hereby represents, warrants and covenants to buyer that, as of the date of this Agreement and as of the Closing Date:

(A) Sellers own the property free and clear of any mortgage, lien or other encumbrance excepting taxes which will be paid by Buyer at closing

(B) Seller shall not enter into any agreements to sell or lease the Property during the pendency of this Agreement nor employ any 3rd party to perform work upon the Property which could give rise to any lien for work or materials performed or delivered.

(C) Seller has not received written notice of any kind from any "Governmental Authority" alleging that seller has failed to comply with any applicable law, ordinance, regulation, statute, rule or restriction pertaining to or affecting the Property. As used herein, the term "Governmental Authority" shall mean and include every department, agency, commission, board, bureau or instrumentality of the United States, the State of Ohio or Trumbull County having jurisdiction over the Property. Seller will promptly notify Buyer if Seller receives notice, between the date of this agreement and the Closing Date, of any such noncompliance.

(E) Seller has not received any written notice of any condemnation proceeding or other proceeding in the nature of eminent domain in connection with the Property.

(F) Seller is not a "nonresident alien," "foreign corporation," "foreign partnership," "foreign trust" or "foreign estate" within the meaning of the Internal Revenue Code and income tax regulations.

(G) There are no pending sales or lease agreements covering the Property. There is one realtor involved who's commissions will be paid by Buyer. There is no Realtor representing Seller in this transaction.

Section 9.2 Buyer's Representations and Warranties Buyer hereby represents and warrants to Seller that, as of the date of this Agreement and as of the Closing Date:

(A) Buyer and assignee are duly formed, validly existing, and in good standing under the laws of the State of Ohio, and have all requisite power and authority to own the property and to carry on its business as they are now being conducted.

(B) The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized in the manner required by its organizational documents, and this Agreement is a valid and binding obligation of Buyer enforceable according to its terms.

(C) Buyer agrees that should the sale take place, it will install and maintain Security Cameras at the facility to be constructed and face one toward the church across the street.

**SECTION 10
CLOSING AND PRORATION**

Section 10.1. Closing. As used in this Agreement, the ("Closing Date") shall be within 10 days of receipt of Trumbull County Tax Map approval of the transfer. The closing ("Closing") of this Agreement shall take place at the offices of Schubert Title Agency as an escrow closing upon Title Company's receipt from both parties of authorization to close the transaction. Closing will be not later than 30 days from the end of due diligence period.

Section 10.2 Pro-ration Date There will be no pro-ration of real estate taxes and Buyer will assume all taxes that become due and payable on the purchased property after closing including any delinquent taxes.

Section 10.3 Closing Deliveries. All matters to be performed under this Agreement shall be performed concurrently on the Closing Date and shall consist of the following transactions, all of which shall be deemed as having taken place simultaneously and none of which shall be deemed to occur until all have been completed.

- (A) Seller will at Closing deliver or effect the following:
 - (i) Delivery of a properly executed Deed to the Property for recording;
 - (ii) Such other and further documents and/or deliveries as may reasonably be required by Buyer

- (B) Buyer will at Closing deliver or effect the following:
 - (i) Delivery to Seller of the Purchase Price together with the sums due under this Agreement;
 - (ii) Such other and further documents and/or deliveries as may reasonably be requested by Seller or Title Company to enable Buyer to perform its obligations under this Agreement.

**SECTION 11
CONDEMNATION AND DAMAGE BY CASUALTY**

Section 11.1 Condemnation. If all or less than all of the Property is or is proposed to be taken or condemned by any public authority between the Effective Date

and the Closing Date, Seller shall give Buyer written notice thereof, and Buyer may, subject to the remaining terms and conditions of this agreement, take title to the remaining portion, if any, without abatement of Purchase Price, in which event the proceeds of any condemnation award collected by Seller prior to the Closing Date will be paid or credited to Buyer at Closing and Seller shall assign to Buyer all of Seller's right, title and interest in and to such award resulting from such taking or condemnation. Buyer may elect to abandon the purchase and if so, both parties are released of any liability related in any way to this transaction

Section 11.2 Casualty If the Property suffers damage as a result of any casualty prior to Closing Date, then Seller shall give Buyer written notice thereof, and Buyer shall, subject to the remaining terms and conditions of this Agreement, take title to the remaining portion of the Property without abatement of Purchase Price, in which event the Buyer shall receive all insurance proceeds resulting from such casualty and Seller shall pay to Buyer the amount of any deductible. All risks of loss are borne by Seller prior to closing.

SECTION 12 MISCELLANEOUS

Section 12.1 Notices. All notices required or permitted hereunder shall be in writing and deemed given if sent by certified or registered mail, return receipt requested; by a nationally recognized overnight courier service if receipted; or by email, and confirmed by delivering a copy of email notice by another permitted means, provided that such notice shall be deemed effective upon transmittal (not upon dispatch or receipt of a copy). All notices required or permitted hereunder shall be addressed as follows:

To Seller: David and Mark Herron
2100 Brittany Oaks Tr.
Warren, Ohio 44484

Copy to Schubert Title Company
138 E. Market St.
Warren, Ohio 44481

To Buyer Attn: Daniel Crouse
Platz Realty
3768 Boardman Canfield Rd.
Canfield, Ohio 44406

and

City of Warren, Ohio
Law Department
391 Mahoning N W
Warren, Ohio 44481

138 E. Market St.
Warren, Ohio 44481

Section 12.2 Entire Agreement. This Agreement, including the attached Exhibit (The Lease Agreement), shall constitute the entire agreement between the parties with respect to the subject matter of this Agreement and shall supersede all previous negotiations, commitments, writings or agreements of sale.

Section 12.3 Amendment. This Agreement may not be amended, changed or modified in any manner except by an instrument in writing signed by each of the parties hereto or their duly appointed officers or representatives. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be a waiver of such provision or in any way affect the validity of this Agreement or any part of this Agreement or the right of any party thereafter to enforce each and any such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other breach of this Agreement.

Section 12.4 Headings The captions appearing in this Agreement are inserted only as a matter of convenience and as a reference and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.

Section 12.5 Counterparts This agreement may be executed in multiple counterparts, in original or by fax or email and, when taken together, shall be considered an original.

Section 12.6 Assignment This Agreement shall be binding upon the parties, and their respective successors and permitted assigns. Seller agrees that Buyer may assign this Agreement and its rights under this Agreement to another entity (provided, however, that Buyer shall not be released from liability as a result of such assignment) and Seller will simultaneously with the payment in full of the consideration, sell, convey, assign and transfer the Property, as provided in this Agreement, to such nominee, assignee or designee.

Section 12.7 Severability If any term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable the remainder of this Agreement, or the application of such term or provision to persons, properties and circumstances other than those as to which it is invalid or enforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 12.8 Governing Law This Agreement shall be construed in accordance with the internal laws of the State in which the Property is located (Ohio) and any litigation will be brought in the Trumbull County Ohio Common Please Court .

Section 12.9 Failure to Comply. In the event of a material breach or default by Seller of this Agreement, Buyer shall be entitled, as its sole remedies, to the return of the Escrow Funds. In the event of a material breach of default by Buyer of this Agreement, Seller shall be entitled to the Escrow Funds as liquidated damages and Buyer shall be responsible for any and all costs incurred by title agency.

Section 12.10 CONTINGENCY This purchase and sale and lease referenced herein, are subject to approval by the Council of the City of Warren, Ohio who's approval will be sought during the due diligence period defined in Section 4 above.

Section 12.11 Waiver of Conflict. The parties acknowledge that they have both been represented by Attorney Thomas E. Schubert in the past. That the terms and conditions of this Agreement have been provided to Attorney Schubert by the parties as set forth herein. The parties waive any conflict of interest on the part of Attorney Schubert in the preparation of this document or the closing of this transaction by Schubert Title Agency.

In witness whereof the parties have affixed the signature of their respective duly

authorized representative on this _____ day of _____ 2023.

SELLERS

BUYER

MARK A. HERRON

The City of Warren, Ohio
By : Eddie L. Colbert
Director of Public Safety and Services

GLENDA R. HERRON

DAVID L HERRON

JESSICA L. HERRON

Exhibit B to Draft No. 0412

LEASE AGREEMENT

THE PARTIES. This Lease Agreement ("Lease Agreement") is entered into this _____ day of _____ 2023 ("Effective Date") by and between David L Herron and Jessica L Herron, Husband and Wife, and Mark A. Herron and Glenda R. Herron, Husband and Wife, ("Lessor") and The City of Warren, Ohio, a municipal corporation ("Lessee") and assigns

DESCRIPTION OF LEASED PREMISES The Lessor agrees to lease to the Lessee the following described lots of vacant land located on Highland Ave. in the Township of Warren, Ohio being Trumbull County Tax Parcels 43-026471, 43-026472, 43-139976 and 43-139978 ("the Premises")

USE OF PREMISES The Lessor is leasing the Premises to the Lessee and the Lessee is hereby agreeing to lease the Premises for the purpose of storing of equipment and materials during the construction of a pump station on nearby lot parcel numbers 43-026470, 43-026469, 43-026468, and 43-026467 which Lessee is acquiring

EXCLUSIVE USE The Lessee shall hold exclusive rights to utilize the Premises during the term of the lease for its intended and related uses.

TERM OF LEASE This lease shall commence upon written notice to the Lessor after the completion of the due diligence period and purchase of the Property by Lessee identified in paragraph 3 above "Use of Premise" and for a term of eighteen (18) months ("Initial Term"). This lease may be extended for additional terms of 30 days up to a total extension of 180 days (6 months) upon written notice to Lessee at least 30 days prior to expiration of the initial term.

RENT AMOUNT Payment shall be made by Lessee to the Lessor in the amount of \$1200.00 per month. Payment shall be made by Lessee to the Lessor on the first day of each month throughout the term of the lease by mailing same to the Lessor at 2100 Brittany Oaks Tr, Warren, Ohio 44484 by check payable to David and Mark Herron.

LATE FEE The Lessor shall charge a late payment fee of 1.5% if Rent is paid by Lessee after the 10th of the month due.

ALTERATIONS Lessee may make alterations to the lands such as clearing of trees, brush and any other debris located thereon in order to make the Premises suitable for its intended use. Before any such alterations are made to the land, Lessee shall locate all underground facilities, (gas, water, elec.) as to be certain not to disturb any such facility located on or adjacent to the premises..

TAXES AND ASSESSMENTS During the term of the lease, Lessor shall be responsible for payment of any and all real estate taxes and assessments imposed by any governmental body and agree to keep such taxes and assessment payments current throughout the term of the lease.

RESTORATION The lessor shall upon completion of the lease term restore the leased land with a minimum of 3" of topsoil, reseed with lawn (hydro)grass seed, and plant 4 trees, 4ft. to 8 ft. in height, staked at installation.

LEASEHOLD IMPROVEMENTS The Lessee agrees that no leasehold improvements, alterations or changes of any nature, (except those described herein) shall be made to the leasehold Premises without the written consent of the Lessor. Any leasehold improvements shall be made only in accordance with applicable federal, state or local codes, ordinances or regulations. Lessee shall be responsible for all payments due for any improvements made. Leasehold improvements shall not include lot clearing, grading or placement of gravel or fencing thereon.

Nothing in the Lease Agreement shall be construed to authorize the Lessee or any other person acting for the Lessee to encumber the rents of the Premises or the interest of the Lessee in the Premises or any person under and through whom the Lessee has acquired its interest in the Premises with a mechanic's lien or any other type of encumbrance. Under no circumstance shall the Lessee be construed to be the agent, employee or representative of the Lessor. In the event a lien is placed against the Premises, through actions of the Lessee, Lessee will promptly pay the same or bond against the same and take steps immediately to have such lien removed.

LICENSES AND PERMITS A copy of any and all local, state, or federal permits acquired by the Lessee which are required for the use of the Premises shall be kept on-site at all times and shall be readily accessible and produced to the Lessor or any official upon demand.

GENERAL MAINTENANCE The Lessee shall be obligated to maintain the General area of the leased Premises including keeping the street adjacent to the Premises free of debris, dirt etc. and keeping the lots free of trash and debris. Lessee shall comply with all Hazardous Materials Laws while utilizing the Premises in any manner.

Hazardous Materials Laws Means any and all federal, state, or local laws, ordinances, rules, decrees, orders, regulations, or court decisions relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Hazardous Materials Transportation Act, and other law or legal requirement concerning hazardous or toxic substance, and any amendments to the foregoing.

SALE OF PROPERTY Lessee shall, in the event of the sale or assignment of Lessor's interest in the Premises, or in the event of any proceedings brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by the Lessor covering the Premises, attorn to the purchaser and recognize such purchaser as Lessor under this Lease Agreement.

INDEMNIFICATION The Lessee hereby covenants and agrees to indemnify, defend and hold harmless the Lessor from any and all claims or liabilities which may arise from any cause whatsoever as a result of Lessee's use and occupancy of the Premises, and further shall indemnify the Lessor for any losses which the Lessor may suffer in connection with the Lessee's use and occupancy or care, custody and control of the Premises. The Lessee also hereby covenants and agrees to indemnify and hold harmless the Lessor from any and all claims or liabilities which may arise from any latent defects in the subject Premises that the Lessor is not aware of at the signing of the Lease or at any time during the lease term.

HOLDOVER PERIOD Should the Lessee remain in possession of the Premises after the cancellation, expiration or sooner termination of the Lease Agreement, or any renewal thereof, without the execution of a new lease or addendum, such holding over in the absence of a written agreement to the contrary shall be deemed to have created and be construed to be a tenancy from month to month with the Rent to be due and payable in the same amount as the previous month, terminable upon 30 days notice by either party.

GOVERNING LAW This Lease Agreement shall be governed by the laws of the State of Ohio and Trumbull County shall be the venue for any disputes arising hereunder.

NOTICES Notices shall be addressed to the following:

Lessor: Mark and David Herron
2100 Brittany Oaks
Warren, Ohio 44484

Lessee: Clean Energy Future-Trumbull LLC
c/o Thomas E Schubert Esq.
138 E. Market St.
Warren, Ohio 44481

AMENDMENTS No amendment of this Lease Agreement shall be effective unless reduced to writing and subscribed by the parties with all the formality of the original

ASSIGNMENTS This Lease Agreement may be assigned by the Lessee with notice to the Lessor by ordinary U S Mail.

MEMORANDUM FOR RECORDING A memorandum of this Lease Agreement shall be signed by both the Lessor and Lessees for recording purposes.

SEVERABILITY If any term or provision of this Lease Agreement is illegal, invalid or unenforceable, such term shall be limited to the extent necessary to make it legal and enforceable, and, if necessary, severed from this Lease Agreement. All other terms and provisions of this Lease Agreement shall remain in full force and effect.

BINDING EFFECT This Lease Agreement and any amendments thereto shall be binding upon the Lessor and the Lessees and/or their respective successors, heirs, assigns, executors and administrators

CONTINGENCY This Lease is contingent upon approval from the Council of the City of Warren, Ohio

IN WITNESS WHEREOF, the parties have affixed or caused to be affixed their signatures as of the day and date first above written.

LESSORS.

Mark A. Herron

Glenda R. Herron

David L. Herron

Jessica L. Herron

LESSEE

The City of Warren, Ohio

By: _____
Eddie L. Colbert
Director of Safety and Public Services