

REQUESTED BY:
STEINBECK

LAW DEPARTMENT
DRAFT NO. 0462

TITLE

AN ORDINANCE FOR THE PURPOSE OF AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE AND SAFETY, ON BEHALF OF THE CITY OF WARREN, TO ENTER INTO AN AGREEMENT FOR A FIFTEEN-YEAR EASEMENT WITH THE STATE OF OHIO FOR THE WATER POLLUTION CONTROL SOUTH LEAVITT PUMP STATION, PURSUANT TO THE DRAFT EASEMENT ATTACHED AS EXHIBIT "A," AND DECLARING AN EMERGENCY.

ORDINANCE NO. 13305/2024

WHEREAS, the City of Warren, Ohio, Water Pollution Control Department owns and continues to maintain a pump station located on real property owned by the State of Ohio; and

WHEREAS, the prior fifteen-year easement has lapsed, and the State of Ohio agrees to grant the City another fifteen-year easement to the City of Warren; NOW THEREFORE

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

Section 1: That the Director of Public Service and Safety be, and is hereby, authorized to execute the attached Agreement which would grant an easement to the City of Warren, Ohio, further described in Exhibit "A" attached hereto and made a part hereof.

Section 2: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare, and safety. The further reason for this emergency measure is that the current easement with the State of Ohio is no longer in effect. WHEREFORE, this Ordinance shall go into immediate effect.

Passed in Council this 14TH day of FEBRUARY, 2024.

SIGNED: [Signature] ATTEST: [Signature]
PRESIDENT OF COUNCIL CLERK

FILED WITH THE MAYOR: 2-14-2024

DATE APPROVED: 2-14-2024

[Signature]
MAYOR, CITY OF WARREN, OHIO

Exhibit "A" to Draft No. 0462

STATE OF OHIO EASEMENT

This Agreement (hereinafter referred to as "Agreement"), dated as of _____, is made and entered into by and between the State of Ohio, acting by and through the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1395, the Grantor (hereinafter referred to as "State"), for and on behalf of the Ohio Department of Rehabilitation and Correction (hereinafter referred to as "Agency"), and the City of Warren, a municipal corporation, duly formed and existing under the laws of the State of Ohio (hereinafter referred to as "Grantee"), having its principal place of business located at City Hall 391 Mahoning Avenue, N.W., Warren, Ohio 44483, pursuant to the provisions of Section 123.01(A)(5) of the Ohio Revised Code.

RECITALS

WHEREAS, State is the owner, in fee simple, of the land described in Exhibit "A" attached hereto and made a part hereof and more particularly depicted in Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as "Easement Area"). Further reference is made to DAS File No. 4813-B on file with the State; and

WHEREAS, Grantee desires to obtain from State an easement in order to permit the installation, construction, reconstruction, use, operation, maintenance, repair, replacement, removal, servicing and improvement of a certain permanent pump station upon the Easement Area; and

WHEREAS, Agency requested the State prepare this Agreement; and

NOW, THEREFORE, in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. USE OF PREMISES.

State does hereby grant a non-exclusive easement unto Grantee to be used solely to install, construct, reconstruct, use, operate, maintain, repair, replace, remove, service and improve in, on, over, under, across, through and upon the Easement Area a permanent pump station (hereinafter referred to as "Improvement"). On or before the Expiration Date (as defined below) or earlier if this Agreement is terminated pursuant to the provisions hereof, Grantee shall remove, or cause the removal of, all component parts of the Improvement and restore the ground to its original condition at its own cost and expense, unless the parties agree otherwise in writing.

II. TERM.

The term of this Agreement shall be for fifteen (15) years, commencing on April 1, 2024 (hereinafter referred to as "Commencement Date"), and expiring on March 31, 2039 (hereinafter referred to as "Expiration Date"), unless earlier terminated pursuant to a subsequent agreement between the parties or in accordance with the provisions of Paragraph X hereof.

III. CONSIDERATION.

Grantee shall pay to Agency the total sum of Six Hundred and 00/100 Dollars (\$600.00) in consideration of State's granting an easement. Grantee shall tender such payment payable to the "Treasurer, State of Ohio" to Agency upon delivery to Grantee of a fully executed counterpart of this Agreement.

IV. CONSTRUCTION/MAINTENANCE.

- (A) Grantee agrees that the Improvement shall be installed, constructed, reconstructed, used, operated, maintained, repaired, replaced, removed, serviced and improved at all times in accordance with all local, state or federal laws, rules and regulations and applicable industry guidelines, including compliance with all applicable Equal Employment Opportunity laws. If no such laws, rules, regulations or industry guidelines are applicable to the Improvement, then responsible engineering practices shall be the control.
- (B) If the surface of the ground in the Easement Area is disturbed at any time, Grantee shall provide necessary fill, re-sod or re-seed any grassed areas, and make such repairs and replacements for a period of not less than one (1) year after the date of such disturbance as may be needed to restore the ground to its former condition or pay State for all damages caused thereto.
- (C) Grantee shall notify State immediately when any installation belonging to a party other than Grantee, or any unusual condition, is encountered in the Easement Area.
- (D) Grantee shall prior to the commencement of any work permitted hereunder obtain and thereafter maintain, at its sole cost and expense, all licenses, permits, etc. required by law with respect to said work or the Improvement.
- (E) State or Agency may locate, relocate, install, construct, reconstruct, maintain, operate, repair, remove, use and place property improvements in, on, over, under, across, through and upon the Easement Area, so long as State's or Agency's improvements do not unreasonably impair the strength of or unreasonably interfere with Grantee's ability to use the Easement Area and maintain its Improvement.
- (F) Grantee shall comply with the provisions of Chapter 4115 of the Ohio Revised Code, Prevailing Wage Requirements, as applicable.
- (G) Grantee shall maintain and repair its Improvement at its own cost and expense on a continuous and ongoing basis for the term of this Agreement. Any maintenance and repairs shall be performed in a good and workmanlike manner.

V. **LIABILITY.**

Grantee shall indemnify and hold State harmless from and against any and all claims, demands, causes, actions and damages, together with any and all losses, costs and expenses, including without limitation, any attorney's fees, for the death of or injury to any person or persons, or damage to property, of every kind and nature, which may arise out of or in any connection with Grantee's occupation and use of the Easement Area and operation or maintenance of the Improvement or that of its successors, assigns, agents, servants, employees, contractors, subcontractors, invitees and any other person acting under and by virtue of, by, or through Grantee, except for any act, omission, or neglect caused by State or any of its agents, servants, employees, contractors, subcontractors and other persons' acting at the direction of the State.

The provisions of this Paragraph V shall survive the expiration or termination of the term of this Agreement.

VI. **INSURANCE.**

At all times during the term of this Agreement, Grantee shall maintain adequate reserves and funding to compensate for bodily injury, personal injury, wrongful death and property damage or other claims including defense costs and other loss adjustment expenses arising out of or related to the Easement Area. At State's request, Grantee shall provide written proof to assure that the appropriate levels of financial responsibility are being retained. Failure to comply with this clause shall constitute a default of this Agreement.

VII. **MECHANIC'S LIENS.**

(A) Nothing contained in this Agreement shall be construed as constituting State's consent, express or implied, to or for the performance of any labor or services or furnishing of any materials for the installation, construction, reconstruction, usage, operation, maintenance, repair, replacement or improvement of the Easement Area or any portion thereof or the Improvement or any portion thereof.

(B) Grantee shall not allow any liens or encumbrances to be filed against the Easement Area, or any portion thereof, other than (i) liens created by or resulting from any act or status of State or failure by State to perform any obligation not required to be performed by Grantee hereunder, or (ii) liens created by or resulting from any act or status or failure to act by Grantee to which State shall have expressly consented in writing. If such a lien or encumbrance is placed of record against the Easement Area, or any portion thereof, Grantee shall, within thirty (30) days after receiving notice thereof, remove or discharge same or bond off such lien or encumbrance.

VIII. **TAXES/ASSESSMENTS.**

If as a result of this Agreement any taxes and/or assessments, whether general or special, ordinary or extraordinary, unforeseen or foreseen, of any kind or nature whatsoever, shall be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on the Easement Area and/or the Improvement, Grantee shall be fully responsible

for and shall pay same before any fine, penalty, interest or costs may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof.

IX. ASSIGNMENT.

Grantee may not assign or transfer this Agreement, in whole or in part, without the prior written consent of the State, whose consent may be withheld for any reason. Should consent to any such assignment be approved, Grantee shall notify the Agency. Any approved assignment or transfer shall not relieve Grantee of its obligations and duties under the terms, covenants and conditions of this Agreement. Grantee shall cause any assignee or transferee to expressly assume, and by reason of such assignment or transfer shall be deemed as having assumed, all of the obligations and duties of Grantee hereunder.

X. TERMINATION.

This Agreement may be terminated by State upon ninety (90) days' notice given to Grantee if the Easement Area, or any portion thereof, is needed by State for any public or quasi-public use or purpose. On or before the date stated in such notice of termination, Grantee shall remove, or cause the removal of all component parts of the Improvement and restore the Easement Area to its original condition, at its own cost and expense, if State so requests. Grantee shall have no claim against State for the value of any unexpired portion of the original term of this Agreement or for the Improvement. Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.

This Agreement may be terminated at any time by Grantee by delivering written notice to State and Agency setting forth the date Grantee intends to terminate. Upon either the voluntary termination of this Agreement, or the end of the term hereof, Grantee shall remove all of the Improvement prior to termination, at its own cost and expense, if State so requests, and shall restore the Easement Area to its original condition, unless otherwise agreed to in writing by State and Agency. Grantee's obligations hereunder shall continue until such time as the Improvement is fully removed and the Easement Area fully restored as required herein, notwithstanding the stated date of termination in the notice provided by Grantee, or in the Agreement. Failure to remove the Improvement shall not be considered an extension of the term of the Agreement. No portion of any consideration paid pursuant to the terms of the Agreement will be refunded to Grantee.

XI. DEFAULT.

- (A) State may find Grantee in default of this Agreement when any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: (i) Grantee's failure to make any payment required to be paid by Grantee when the same shall become due and payable or (ii) Grantee's failure to perform or observe any other covenant, term, or condition herein contained on Grantee's part to be performed or observed.
- (B) If the State finds Grantee to be in default under Paragraph XI(A), Grantee must cure such default within fifteen (15) days after the giving of notice to Grantee by State of such failure. If Grantee proceeds to promptly and continuously cure the same default with due diligence, then upon receipt by State of notice from Grantee stating the reason that such default cannot be cured within fifteen (15) days and stating that Grantee is proceeding with due diligence

to cure such default, the State may extend such time within which such default may be cured for such period as may be necessary to complete the curing of same with due diligence.

- (C) If Grantee fails to cure such default, then State may give to Grantee, at State's option, a notice of election to terminate this Agreement upon the date specified in such notice, which date shall not be less than ten (10) days after the date of such notice, and upon the date specified in such notice the term of this Agreement shall expire and terminate as fully and completely and with the same effect as if such date were the Expiration Date, and all rights of Grantee shall thereupon expire and terminate, and Grantee shall remove or cause the removal of the Improvements and restore the Easement Area to its original condition at its own cost and expense, if State so requests.
- (D) Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.
- (E) Upon the termination of this Agreement by reason of the happening of any event of default specified in this Paragraph XI, or in any other manner or circumstances whatsoever pursuant to legal process, by reason of or based upon or arising out of the occurrence of any such event of default under this Agreement, Grantee shall pay to Agency all sums required to be paid by Grantee up to the time of such termination.

XII. RECORDATION.

At its expense and within thirty (30) days of its receipt, Grantee shall present for recording a fully executed Agreement in accordance with Chapter 5301 of the Ohio Revised Code in the office of the County where the Easement Area is located. Grantee shall do likewise with respect to any addendum to this Agreement which may be entered into hereafter by the parties. As proof of recording, Grantee shall promptly return a copy of the recorded Agreement to the State.

XIII. RIGHTS CUMULATIVE.

All rights and remedies of State enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised or enforced concurrently and all obligations, rights or remedies shall survive formal termination of this Agreement.

XIV. WAIVER.

The waiver by State of, or the failure of State to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition herein contained. The subsequent acceptance of any payment hereunder by State shall not be deemed to be a waiver of any preceding breach by Grantee of any term, covenant or condition of this Agreement.

XV. NOTICES, DEMANDS OR INSTRUMENTS.

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid,

- (a) with respect to State, addressed to:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning
4200 Surface Road
Columbus, Ohio 43228-1395
Attention: Administrator

- (b) with respect to Agency, addressed to:
Ohio Department of Rehabilitation and Correction
4545 Fisher Road, Suite D
Columbus, Ohio 43228
Attention: Real Estate Administrator

and,

- (c) with respect to Grantee, addressed to:
City of Warren Water
Pollution Control Center
2323 Main Avenue S.W.
Warren, Ohio 44481
Attention: Director - Water Pollution Control

Each party shall have the right from time-to-time to specify as its address for purposes of this Agreement any other address in the United States of America upon giving not less than fifteen (15) days' notice thereof, similarly given, as provided for in this paragraph.

XVI. MODIFICATIONS.

This Agreement may not be changed, modified or discharged except by a writing signed by duly authorized representatives of both State and Grantee.

XVII. GOVERNING LAW.

This Agreement shall be governed by and interpreted under the laws of the State of Ohio. Any action or proceeding arising out of the terms of this Agreement shall be brought only in a court of competent jurisdiction located in Franklin County, Ohio.

XVIII. HEADINGS.

The headings to the various paragraphs and exhibits to this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

XIX. CAMPAIGN CONTRIBUTIONS & ETHICS COMPLIANCE.

Grantee hereby certifies that neither Grantee nor any of Grantee's partners, officers, directors, shareholders, nor the spouse of any such person have made contributions in excess of the limitations specified in Section 3517.13 of the Ohio Revised Code.

Grantee, by signature on this document, certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws, is currently in compliance and will continue to adhere to the requirements of such laws and will take no action inconsistent with those laws.

XX. INDEPENDENT CONTRACTOR STATUS.

It is fully understood and agreed that Grantee is an independent contractor and neither Grantee nor its personnel shall at any time, or for any purpose, be considered agents, servants, or employees of the Agency, or the State of Ohio, or public employees for the purpose of Ohio Public Employees Retirement Systems benefits.

Intentionally Left Blank

The terms of the within State of Ohio Easement are accepted and agreed to by the Ohio Department of Rehabilitation and Correction.

By: _____
Annette Chambers-Smith, Director

Date: _____

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed and delivered this Agreement as of the date first set forth above.

GRANTOR
The STATE OF OHIO

By: _____
Director of Administrative Services or
Signatory Designee
Statutory Agent, RC 123.01(A)(5)

ACKNOWLEDGMENT

State of Ohio, Franklin County, ss:

On this _____ day of _____, 2024, before me personally appeared _____ who acknowledged that the foregoing document is being executed for and on behalf of the Department of Administrative Services, acting on behalf of the State of Ohio, that the same is his/her own and the Department of Administrative Services' free and voluntary act and deed and that he/she is duly authorized to enter into said document for and on behalf of the Department of Administrative Services.

Notary Public, State of Ohio
My Commission Expires: _____

APPROVED AS TO FORM:

By: _____
Atty. Enzo Cantalamessa
Director of Law

GRANTEE
City of Warren

By: _____
Eddie Colbert

Title: Director of Public Service and Safety

ACKNOWLEDGMENT

State of Ohio, Trumbell County, ss:

On this _____ day of _____, 2024, before me personally appeared _____, Director of Public Service and Safety, of the City of Warren, a municipal corporation, who acknowledged that he executed the foregoing State of Ohio Easement for and on behalf of the City of Warren and that the same is his and the Grantee's free and voluntary act and deed, and that he is duly authorized to execute the same on behalf of the City of Warren.

Notary Public, State of Ohio
My Commission Expires _____

This State of Ohio Easement prepared by:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning
4200 Surface Road
Columbus, Ohio 43228-1395
Phone No. (614) 387-6049

Exhibit "A"

DESCRIPTION:

Situated in the City of Warren, Trumbull County, Ohio, and being part of original Warren Township Lot No. 24 and being more fully described as follows:

Beginning at a point in the center line of South Leavitt Road, said point also being the southeast corner of lands of the Grantor;

Thence S. 87 degrees 5 minutes 27 seconds W. along the south line of the Grantor a distance of 30.12 feet to a point on the south line of Grantor; said point also being in the west R/W of South Leavitt Road:

Thence N. 7 degrees 53 minutes 23 seconds W. along the west R/W of South Leavitt Road a distance of 5.96 feet to a point on west R/W of South Leavitt Road and the TRUE PLACE OF BEGINNING for the Pump Station Easement described herein;

Thence S. 86 degrees 52 minutes 26 seconds W. a distance of 140.63 feet to a point;

Thence N. 40 degrees 15 minutes 05 seconds W. a distance of 166.58 feet to a point;

Thence N. 49 degrees 44 minutes 55 seconds E. a distance of 25.00 feet to a point;

Thence S. 40 degrees 15 minutes 05 seconds E. a distance of 39.48 feet to point;

Thence N. 87 degrees 11 minutes 16 seconds E. along the north line of Grantor a distance of 187.80 feet to a point on the north line of Grantor; said point also being in the west R/W of South

Thence S. 07 degrees 53 minutes 23 seconds E. along west R/W of South Leavitt Road a distance of 115.80 feet to the TRUE PLACE OF BEGINNING."

The aforescribed easement contains 21,593.5 square feet or 0.496 acres, more or less.

The foregoing is recited from a description prepared by Thomas Fok and Associates and submitted by the City of Warren, Ohio, to the Ohio Department of Administrative Services,

Exhibit "B"

