

REQUESTED BY:
COLBERT - FORTE

LAW DEPARTMENT
DRAFT NO. 3873

TITLE

AN ORDINANCE FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND DIRECTOR OF PUBLIC SERVICE AND SAFETY UNDER ORC SECTION 721.26 TO ENTER INTO A FIVE (5) YEAR CONTRACT(S) WITH TWO (2) POSSIBLE LEASE RENEWAL(S) WITH INCREMENT INCREASED PER ANNUM RENTAL PAYMENTS TO LEASE PARKING SPACES TO UNITED STATES POSTAL SERVICE ON CITY OWNED PROPERTY LOCATED AT 183-191 HIGH STREET, AND DECLARING AN EMERGENCY.

ORDINANCE NO. 12876/19

WHEREAS, the City of Warren is committed to having a branch of the United States Postal Service in downtown Warren; and

WHEREAS, the City of Warren has, pursuant to Ordinance No. 9648/86, acquired certain property in the downtown area, consisting of City Lots 804/803 and portions of Warren City plotted out Lot No. 8, having a frontage on the north side of High Street, N.E. of 212' and frontage on the west side of Seneca Avenue, N.W. of 92' and containing thereon 1.855 acres of land more or less; and

WHEREAS, the City of Warren has, pursuant to Ordinance No. 12205/09, contracted for parking spaces to the United States Postal Service; 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 be, and they hereby are, authorized on behalf of the City of Warren, under authority of Ohio Revised Code Section 721.26, to lease available parking space at said premises, and to enter into contract(s) for the lease of same to the United States Postal Service. The lease(s) for said parking shall be for five (5) years with an annual rental of \$6,000.00 (Six Thousand and 00/100 Dollars) payable in equal installments at the end of each calendar month with two (2) possible lease renewal(s) with increment increased per annum rental payments and shall be in accordance with plans and specifications to be approved by the City.

Section 2: The receipts thereof shall be deposited into the Downtown Parking Fund.

Section 3: That any such contract(s) shall be approved by the Law Director on a form substantially the same as the Lease document attached hereto as "Exhibit A" and made a part hereof and the City Auditor be, and hereby is, authorized and directed to disburse said funds upon receipt of proper vouchers, signed by the proper persons.

Section 4: That any and all actions taken to date by any and all officials or employees of the City of Warren which in any manner relate to the offering of and obtaining of leases for said property are hereby deemed to have been for, and in the best interests of, the City of Warren. Any and all such actions be, and the same hereby are, ratified and affirmed by this Council on behalf of the City of Warren.

Section 5: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety, and for the further reason that the continued providing of adequate parking, revitalization and redevelopment of the City of Warren and its downtown area may be more greatly insured at the earliest possible time and without undue delay. WHEREFORE, this Ordinance shall go into immediate effect.

Passed in Council this 10TH day of JULY, 2019.

SIGNED:

John R. B.
PRESIDENT OF COUNCIL

ATTEST:

B. O. Smith
CLERK

FILED WITH THE MAYOR:

7-10-19

DATE APPROVED:

7-10-19

W. S.
MAYOR, CITY OF WARREN, OHIO

EXHIBIT "A" TO DRAFT NO. 3873



Ground Lease

WARREN - MAIN OFFICE PARKING (388638-010)
201 HIGH ST NE, WARREN, OH 44481-9998



Ground Lease

Facility Name/Location

WARREN - MAIN OFFICE PARKING (398638-010)
201 HIGH ST NE, WARREN, OH 44481-9998

County: Trumbull

Lease: QU0000543453

This Lease made and entered into by and between CITY OF WARREN hereinafter called the Landlord, and the United States Postal Service, hereinafter called the Postal Service:

In consideration of the mutual promises set forth and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. The Landlord hereby leases to the Postal Service and the Postal Service leases from the Landlord the following premises, hereinafter legally described in paragraph 7, in accordance with the terms and conditions described herein and contained in the 'General Conditions to USPS Ground Lease,' attached hereto and made a part hereof:

Upon which is a parking lot building and which property contains areas, spaces, improvements, and appurtenances as follows:

Total Site Area: 3,000.00 Sq. Ft.

2. RENTAL: The Postal Service will pay the Landlord an annual rental of \$6,000.00 (Six Thousand and 00/100 Dollars) payable in equal installments at the end of each calendar month. Rent for a part of a month will be prorated.

Rent checks shall be payable to:
CITY OF WARREN
391 MAHONING AVE NW

WARREN, OH 44481-4634

3. TO HAVE AND TO HOLD the said premises with their appurtenances for the following term:

FIXED TERM: The term becomes effective January 01, 2021 with an expiration date of December 31, 2025, for a total of 5 Years.



Ground Lease

4. RENEWAL OPTIONS: The Lease may be renewed at the option of the Postal Service, for the following separate and consecutive terms and at the following annual rentals:

EFFECTIVE DATE	EXPIRATION DATE	PER ANNUM RENTAL
01/01/2026	12/31/2030	\$6,300.00
01/01/2031	12/31/2035	\$6,615.00

provided that notice is sent, in writing, to the Landlord at least 30 days before the end of the original lease term and each renewal term. All other terms and conditions of this Lease will remain the same during any renewal term unless stated otherwise herein.

5. TERMINATION:

The Postal Service may terminate this Lease at any time by giving 30 days written notice to the Landlord.

6. OTHER PROVISIONS: The following additional provisions, modifications, riders, layouts, and/or forms were agreed upon prior to execution and made a part hereof:

Maintenance Rider UST - Landlord Responsibility
See Attached Addendum.

Maintenance - Landlord Responsibility
Services - USPS Responsibility

7. LEGAL DESCRIPTION:

See Attached Addendum



Addendum

Facility Name/Location

WARREN - MAIN OFFICE PARKING (388638-010)

201 HIGH ST NE, WARREN, OH 44481-9998

County: Trumbull

Lease: QU0000543463

7. LEGAL DESCRIPTION

A parcel of land, together with the building thereon, commonly known as the Warren, OH 44481 Main Office Parking, located in the City of Warren, Township of Warren, County of Trumbull and State of Ohio, described in Section 1 of Page 1 hereof and being more particularly described in Volume 5 Pages 27 & 28 recorded in the Trumbull County Registry of Deeds as follows:

Situated at 201 High Street NE in Warren, OH 44481-9998, having the Trumbull County Assessor's parcel number of 39-000001.

Beginning at the point where the North Street Line of High St. N.E. intersects the West Street Line of Seneca Ave. N.E.; Thence N. 0 degrees -26'E. a distance of 215' to the true place of beginning; Thence N. 89 degrees -55'W. a distance of 200' to a point; Thence N. 0 degrees -26'E. a distance of 15' to a point; Thence S. 0 degrees -26' W. a distance of 15' to the true place of beginning, and containing within said bounds .069 acres of land, more or less

8. MAINTENANCE

The Landlord shall be responsible for routine paving, sealing, and striping parking areas of the Premises. The responsibility of the Landlord as stated herein will be fulfilled at such time and in such manner as the Postal Service considers necessary to keep the Premises in proper condition during the Ground Lease term.

9. SERVICES

The Postal Service agrees to pay for all trash removal for the Premises during the continuance of the Ground Lease term.

The Postal Service agrees to furnish and pay for the timely removal of snow and ice from the sidewalks, driveway, parking and maneuvering areas, and any other areas providing access to the Postal facility for use by Postal employees, contractors, or the public (including, but not limited to, stairs, handicap access ramps, carrier ramps, etc.) during the continuance of the Ground Lease term.



Addendum

Facility Name/Location

WARREN - MAIN OFFICE PARKING (388638-010)

201 HIGH ST NE, WARREN, OH 44481-9998

County Trumbull

Lease QU0000543463

February 2004



Ground Lease

EXECUTED BY LANDLORD this _____ day of _____

GOVERNMENTAL ENTITY

By executing this Lease, Landlord certifies that Landlord is not a USPS employee or contract employee (or an immediate family member of either), or a business organization substantially owned or controlled by a USPS employee or contract employee (or an immediate family member of either)

Name of Governmental Entity CITY OF WARRENName & Title: WILLIAM D. FRANKLIN, MAYORName & Title: ENZO CANTALAMESSA, DIRECTOR OF SERVICE AND SAFETYLandlord's Address: 391 MAHONING AVE NW
WARREN, OH 44481-4634Landlord's Telephone Number(s): (330) 841 - 2585Federal Tax Identification No: XX-XXX2974

Witness _____

Witness _____

- a. Where the Landlord is a governmental entity or other municipal entity, the Lease must be accompanied by documentary evidence affirming the authority of the signatory(ies) to execute the Lease to bind the governmental entity or municipal entity for which he (or they) purports to act.
- b. Any notice to Landlord provided under this Lease or under any law or regulation must be in writing and submitted to Landlord at the address specified above, or at an address that Landlord has otherwise appropriately directed in writing. Any notice to the Postal Service provided under this Lease or under any law or regulation must be in writing and submitted to "Contracting Officer, U.S. Postal Service" at the address specified below, or at an address that the Postal Service has otherwise directed in writing.

ACCEPTANCE BY THE POSTAL SERVICE

Date: _____

Paul S Frye

Contracting Officer

Signature of Contracting Officer

Eastern FSO PO BOX 27497, GREENSBORO, NC 27498-1103

Address of Contracting Officer



General Conditions to USPS Ground Lease

1. CHOICE OF LAW

This Lease shall be governed by federal law.

2. RECORDING

Not Required

3. MORTGAGEE'S AGREEMENT

If there is now or will be a mortgage on the property which is or will be recorded prior to the recording of the Lease, the Landlord must notify the contracting officer of the facts concerning such mortgage and, unless in his sole discretion the contracting officer waives the requirement, the Landlord must furnish a Mortgagee's Agreement, which will consent to this Lease and shall provide that, in the event of foreclosure, mortgagee, successors and assigns shall cause such foreclosures to be subject to the Lease.

4. ASSIGNMENTS

a. The terms and provisions of this Lease and the conditions herein are binding on the Landlord and the Postal Service, and all heirs, executors, administrators, successors, and assigns.

b. If this contract provides for payments aggregating \$10,000 or more, claims for monies due or to become due from the Postal Service under it may be assigned to a bank, trust company, or other financing institution, including any federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any assignment or reassignment must cover all amounts payable and must not be made to more than one party, except that assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in financing this contract. No assignment or reassignment will be recognized as valid and binding upon the Postal Service unless a written notice of the assignment or reassignment, together with a true copy of the instrument of assignment, is filed with:

1. the contracting officer; and
2. the surety or sureties upon any bond.

c. Assignment of this contract or any interest in this contract other than in accordance with the provisions of this clause will be grounds for termination of the contract for default at the option of the Postal Service.

d. Nothing contained herein shall be construed so as to prohibit transfer of ownership of the demised premises, provided that:

1. such transfer is subject to this Lease agreement;
2. both the original Landlord and the successor Landlord execute the standard *Certificate of Transfer of Title to Leased Property and Lease Assignment and Assumption* form to be provided by the USPS Contracting Officer.

5. APPLICABLE CODES AND ORDINANCES

The Landlord, as part of the rental consideration, agrees to comply with all codes and ordinances applicable to the ownership and operation of the parcel on which the premises are situated and to obtain all necessary permits and related items at no cost to the Postal Service. When the Postal Service or one of its contractors (other than the Landlord) is performing work at the premises, the Postal Service will be responsible for obtaining all necessary and applicable permits, related items, and associated costs.

6. SUBLEASE

The Postal Service may sublet all or any part of the premises or assign this lease but shall not be relieved from any obligation under this lease by reason of any subletting or assignment.

7. ALTERATIONS

The Postal Service shall have the right to make alterations, attach fixtures and erect additions, structures or signs in or upon the premises hereby leased (provided such alterations, additions, structures, or signs shall not be detrimental to or inconsistent with the rights granted to other tenants on the property on which said premises are located); which fixtures, additions or structures so placed in, upon or attached to the said premises shall be and remain the property of the Postal Service and may be removed or otherwise disposed of by the Postal Service.

8. CLAIMS AND DISPUTES

a. This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) ("the Act").

b. Except as provided in the Act, all disputes arising under or relating to this contract must be resolved under this clause.

c. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Landlord seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph d below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a



General Conditions to USPS Ground Lease

claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

d. A claim by the Landlord must be made in writing and submitted to the contracting officer for a written decision. A claim by the Postal Service against the Landlord is subject to a written decision by the contracting officer. For Landlord claims exceeding \$100,000, the Landlord must submit with the claim the following certification:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the Landlord believes the Postal Service is liable, and that I am duly authorized to certify the claim on behalf of the Landlord."

The certification may be executed by any person duly authorized to bind the Landlord with respect to the claim.

e. For Landlord claims of \$100,000 or less, the contracting officer must, if requested in writing by the Landlord, render a decision within 60 days of the request. For Landlord-certified claims over \$100,000, the contracting officer must, within 60 days, decide the claim or notify the Landlord of the date by which the decision will be made.

f. The contracting officer's decision is final unless the Landlord appeals or files a suit as provided in the Act.

g. When a claim is submitted by or against a Landlord, the parties by mutual consent may agree to use an alternative dispute resolution (ADR) process to assist in resolving the claim. A certification as described in subparagraph d of this clause must be provided for any claim, regardless of dollar amount, before ADR is used.

h. The Postal Service will pay interest on the amount found due and unpaid from:

1. the date the contracting officer receives the claim (properly certified if required), or
2. the date payment otherwise would be due, if that date is later, until the date of payment.

i. Simple interest on claims will be paid at a rate determined in accordance with the Act.

j. The Landlord must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the contracting officer.

9. HAZARDOUS/TOXIC CONDITIONS CLAUSE

"Asbestos containing building material" (ACBM) means any material containing more than 1% asbestos as determined by using the method specified in 40 CFR Part 763, Subpart F, Appendix E. "Friable asbestos material" means any ACBM that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

The Landlord must identify and disclose the presence, location and quantity of all ACBM or presumed asbestos containing material (PACM) which includes all thermal system insulation, sprayed on and troweled on surfacing materials, and asphalt and vinyl flooring material unless such material has been tested and identified as non-ACBM. The Landlord agrees to disclose any information concerning the presence of lead-based paint, radon above 4 pCi/L, and lead piping or solder in drinking water systems in the building, to the Postal Service.

Sites cannot have any contaminated soil or water above applicable federal, state or local action levels or undisclosed underground storage tanks. Unless due to the act or negligence of the Postal Service, if contaminated soil, water, underground storage tanks or piping or friable asbestos material or any other hazardous/toxic materials or substances as defined by applicable Local, State or Federal law are subsequently identified on the premises, the Landlord agrees to remove such materials or substances upon notification by the U. S. Postal Service at Landlord's sole cost and expense in accordance with EPA and/or State guidelines. If ACBM is subsequently found which reasonably should have been determined, identified, or known to the Landlord, the Landlord agrees to conduct, at Landlord's sole expense, an asbestos survey pursuant to the standards of the Asbestos Hazard Emergency Response Act (AHERA), establish an Operations and Maintenance (O&M) plan for asbestos management, and provide the survey report and plan to the Postal Service. If the Landlord fails to remove any friable asbestos or hazardous/toxic materials or substances, or fails to complete an AHERA asbestos survey and O&M plan, the Postal Service has the right to accomplish the work and deduct the cost plus administrative costs, from future rent payments or recover these costs from Landlord by other means, or may, at its sole option, cancel this Lease. In addition, the Postal Service may proportionally abate the rent for any period the premises, or any part thereof, are determined by the Postal Service to have been rendered unavailable to it by reason of such condition.

The Landlord hereby indemnifies and holds harmless the Postal Service and its officers, agents, representatives, and employees from all claims, loss, damage, actions, causes of action, expense, fees and/or liability resulting from, brought for, or on account of any violation of this clause.

The remainder of this clause applies if this Lease is for premises not previously occupied by the Postal Service.

By execution of this Lease the Landlord certifies:

a. the property and improvements are free of all contamination from petroleum products or any hazardous/toxic or unhealthy materials or substances, including friable asbestos materials, as defined by applicable State or Federal law.



General Conditions to USPS Ground Lease

b. there are no undisclosed underground storage tanks or associated piping, ACM, radon, lead-based paint, or lead piping or solder in drinking water systems on the property, and

c. it has not received, nor is it aware of, any notification or other communication from any governmental or regulatory entity concerning any environmental condition, or violation or potential violation of any local, state, or federal environmental statute or regulation, existing at or adjacent to the property.

10. FACILITIES NONDISCRIMINATION

a. By executing this Lease, the Landlord certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform services at any location under its control where segregated facilities are maintained.

b. The Landlord will insert this clause in all contracts or purchase orders under this Lease unless exempted by Secretary of Labor rules, regulations, or orders issued under Executive Order 11246.

11. CLAUSES REQUIRED TO IMPLEMENT POLICIES, STATUTES, OR EXECUTIVE ORDERS

The following clauses are incorporated in this Lease by reference. The text of incorporated terms may be found in the Postal Service's Supplying Principles and Practices, accessible at www.usps.com/publications

Clause 1-1, *Privacy Protection* (July 2007)

Clause 1-5, *Gratuities or Gifts* (March 2006)

Clause 1-6, *Contingent Fees* (March 2006)

Clause 4-2, *Contract Terms and Conditions Required to Implement Policies, Statutes or Executive Orders* (July 2009)

Clause 9-3, *Davis-Bacon Act* (March 2006)¹

Clause 9-7, *Equal Opportunity* (March 2006)¹

Clause 9-13, *Affirmative Action for Handicapped Workers* (March 2006)³

Clause 9-14, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era* (March 2006)⁴

Clause B-25, *Advertising of Contract Awards* (March 2006)

Note: For purposes of applying the above standard clauses to this Lease, the terms "supplier," "contractor," and "lessor" are synonymous with "Landlord," and the term "contract" is synonymous with "Lease."

¹ For premises with net interior space in excess of 6,500 SF and involving construction work over \$2,000

² For leases aggregating payments of \$10,000 or more

³ For leases aggregating payments of \$10,000 or more

⁴ For leases aggregating payments of \$25,000 or more



Maintenance Rider Underground Storage Tanks Landlord Responsibility

Facility Name/Location

WARREN - MAIN OFFICE PARKING (388638-010)
201 HIGH ST NE, WARREN, OH 44481-9998

County Trumbull

Lease QU0000543463

a. The term "Underground Storage Tank" (UST) as used in this lease rider, is defined as a tank system, including ancillary equipment (pipings and flanges, valves, pumps) connected to it, with ten percent or more of the USTs volume below ground. USTs include underground heating oil tanks (where regulated by law) and all USTs associated with fleet vehicle operations

b. The landlord is responsible for

(1) UST system maintenance, initial tank registration, applicable fees, reporting, tank and pipeline tightness testing, testing for soil and groundwater contamination, removal, replacement, upgrades, and closure. If the Postal Service requests tests additional to those required by federal, state, and/or local law, these tests will be completed by the lessor, at Postal Service expense.

(2) Repairs or replacement resulting from any cause including, but not limited to, acts of God or a public enemy, or fires or other casualty, except where such damage or casualty was caused by the negligence of employees or agents of the Postal Service.

(3) Any UST upgrades resulting from changes in federal, state, and/or local law, whichever is more stringent, except where additional upgrades are required by the Postal Service which exceed those required by the applicable federal, state, and/or local law. Such additional upgrades, as required by the Postal Service, will be at Postal Service expense.

(4) Any investigative or remediation cost associated with a release of fuel from the UST system, unless the release was caused by the act or negligence of the Postal Service.

(5) Expenses incurred by the Postal Service which were made necessary due to the failure of any element for which the landlord is responsible.

(6) Providing the Postal Service with copies of all UST system documents (including, but not limited to, test results and permits) within thirty (30) days of landlord's receipt thereof.

c. The Postal Service shall be responsible for UST system daily operations, including product input/output monitoring.

d. If requested by the landlord, the Postal Service will provide the landlord with necessary documents (emergency action plan, etc.) which may be required by federal, state and/or local law for tank registration.

e. When the Postal Service becomes aware of the need for effecting repairs, maintenance, upgrades, replacement, removal, closure, and/or clean-up activities for which the landlord is responsible, the Postal Service will, except in emergencies, give the Landlord a written notice thereof, specifying a time for completion of the work which is reasonable and commensurate with the nature of the work required. A copy of any such notice shall be sent to the Landlord's mortgagee and any assignee of monies due or to become due under this Lease whose names and addresses have been furnished to the Postal Service by the Landlord. Failure to give such written notice to the Landlord or to the mortgagee or assignee shall not affect Postal Service's rights to recover expended costs under this provision, provided that the costs expended by Postal Service are reasonable in amount.

If the Landlord (or the mortgagee or the assignee, on behalf of the Landlord) fails to prosecute the work with such diligence as will ensure its completion within the time specified in the notice (or any extension thereof as may be granted at the sole discretion of the Postal Service) or fails to complete the work within said time, the Postal Service shall have the right to perform the work (by contract or otherwise) and withhold the cost plus any administrative cost and/or interest from rental payments due or to become due under this Lease. In addition, the Postal Service, acting through the Contracting Officer, may proportionally abate the rent for any period the premises, or any part thereof, are



**Maintenance Rider
Underground Storage Tanks
Landlord Responsibility**

determined by the Postal Service to have been rendered untenable by reason of such condition. Alternatively, the Contracting Officer may, if the demised premises are determined to be unfit for occupancy, with reasonable discretion, cancel this Lease, without liability.

The remedies provided in this section are non-exclusive and are in addition to any remedies available to Postal Service under applicable law.