

TEMPORARY ORDINANCE NO. 15-22

PERMANENT ORDINANCE NO. 9-22

AN ORDINANCE AUTHORIZING THE LAW DIRECTOR TO ACQUIRE TWENTY-FIVE YEAR EASEMENTS FROM THE STATE OF OHIO AT OHIO UNIVERSITY LANCASTER AND TO DECLARE AN EMERGENCY

WHEREAS, the City of Lancaster currently has utility infrastructure running under the Ohio University Lancaster Branch owned by the State of Ohio; and

WHEREAS, the State of Ohio requires the City to renew these easements periodically, and the prior Fifteen (15) year term approved by Permanent Resolution 150-05 on November 28, 2005, has expired; and

WHEREAS, the State of Ohio is now willing to provide Twenty-Five (25) year easements to the City as described in Exhibit 1 attached hereto, which includes legal descriptions and plats for the 1.685 ± acreage and .164 ± acreage parcels (marked as Exhibits A and B), for Fifteen Hundred Thirty Dollars (\$1,530.00);

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

SECTION 1. That the City Law Director is hereby authorized to acquire and execute the Twenty-Five (25) Year easements described in Exhibit 1 in consideration for Fifteen Hundred Thirty Dollars (\$1,530.00) to the State of Ohio for the period commencing on April 1, 2022, and expiring March 31, 2046, on behalf of the City.

SECTION 2. The easements attached as Exhibit 1 are hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to the City. This Council further authorizes the City Law Director, for and in the name of the City, to execute any amendments or changes to the final documents, which amendments are not inconsistent with this Ordinance and not substantially adverse to the City.

SECTION 3. That in the interest of the health, safety, and welfare of the community and specifically to avoid an interruption of service, which would deprive the public of clean water for consumption and water necessary for fire suppression, City Council does hereby declare an emergency so that this ordinance shall take effect and be in full force immediately.

Passed: 3/28/22 after 1<sup>st</sup> reading. Vote: Yeas 8 Nays 0

Date Approved: 3/28/22

Clerk: Teresa Lee Sandy

David A. Ull  
President of Council

David Schuffe  
Mayor

Offered by: Cory Schumann

Second by: [Signature]

Requested by Public Works Committee

I, Teresa Lee Sandy, Clerk of Council do hereby certify that on \_\_\_\_\_, 2022 the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

\_\_\_\_\_  
Clerk of Council



## 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 Ohio University (hereinafter referred to as "Agency"), and the City of Lancaster, a body politic, 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 104 East Main Street, Lancaster, Ohio 43130, 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. OHU 4858 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 water line 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 water line (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 twenty-five (25) years, commencing on April 1, 2022 (hereinafter referred to as "Commencement Date"), and expiring on March 31, 2046 (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 One Thousand Five Hundred Thirty and 00/100 Dollars (\$1,530.00) 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, so far as permitted by Ohio law, from any claims, demands, causes, actions and damages arising out of any act, omission or neglect by Grantee or any of its successors, assigns, agents, servants, employees, contractors, subcontractors and invitees

ensuing from or in connection with Grantee's occupation and use of the Easement Area and operation or maintenance of the Improvement. Nothing contained herein shall be deemed to be a waiver by State of any legal or factual defenses, which State may enjoy.

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 University  
160 West Union Street, Suite 280  
Athens, Ohio 45701-2979  
Attention: Dominick Brook, Director of Real Estate

and,

- (c) with respect to Grantee, addressed to:  
City of Lancaster, Ohio, Water Department  
225 North Memorial Drive  
Lancaster, Ohio 43130  
Attention: City Law Department

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 University.

By: \_\_\_\_\_

Joseph Trubecz  
Interim Vice President of Finance and Administration

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 \_\_\_\_\_, 2022, 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: \_\_\_\_\_

GRANTEE  
City of Lancaster  
a Body Politic

By: Randall T. Ullom

Title: Law Director

ACKNOWLEDGMENT

State of Ohio, Fairfield County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared Randall T. Ullom, Law Director, of the City of Lancaster, a body politic, who acknowledged that he executed the foregoing State of Ohio Easement for and on behalf of the City of Lancaster 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 Lancaster.

\_\_\_\_\_  
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

Parcel No. 1 (Water Line Easement)

Situated in the State of Ohio, Fairfield County being part of Township 15, Range 18 Section 31, and being more particularly described as follows:

Commencing at an iron pipe at Grantor's southeast corner;

thence along Grantor's southeasterly line South 89 degrees 19 minutes West a distance of 186.70 feet to the POINT OF BEGINNING for the easement to be described;

thence continuing along Grantor's southeasterly line on a bearing of South 89 degrees 19 minutes West a distance of 590.06 feet to a point;

thence North 24 degrees 27 minutes West a distance of 795.20 feet to a point;

thence North 89 degrees 42 minutes West a distance of 230.68 feet to a point, said point being Grantor's corner;

thence along Grantor's southwesterly line North 89 degrees 42 minutes West a distance of 1324.05 feet to a point in the centerline of State Route 37;

thence along said centerline of State Route 37 North 15 degrees 00 minutes East a distance of 25.85 feet to a point;

thence along a line parallel and 25 feet North of Grantor's southwesterly property line South 89 degrees 42 minutes East a distance of 1564.07 feet to a point;

thence South 24 degrees 47 minutes East a distance of 794.90 feet to a point;

thence along a line parallel and 25 feet north of Grantor's southeasterly property line North 89 degrees 19 minutes East a distance of 574.30 feet to a point;

thence South 00 degrees 20 minutes 11 seconds West a distance of 25.00 feet to the point of beginning,

Containing 1.685 acres, more or less.

It is the intent of this instrument to describe an easement 25 feet in width, 2937 ± feet in length and lying immediately North of Grantor's southerly property line.

**Exhibit "A"**  
Description (continued)

Parcel No. 2 (Fire Hydrant Line Easement)

Situate in the State of Ohio, Fairfield County and being a part of Section 31, Township 15, Range 18, Congress Lands East of the Scioto, Ohio River Survey and being more particularly described as follows:

Beginning for reference at the southwesterly corner of lands now owned by the State of Ohio, Ohio University and in the center of State Route 37;

thence leaving the center of said State Route 37 and with the southerly property line of said State of Ohio, Ohio University Lands South 89 degrees 42 minutes East 903.0 feet, more or less to a point;

thence leaving the southerly property line of said State of Ohio, Ohio University and across the lands of said Ohio University North 00 degrees 18 minutes East 25.00 feet to the True Point of Beginning of the following described 10.00 foot wide water line easement;

thence continuing across the Ohio University lands Northerly 712.5 feet, more or less to the point of terminus of the aforescribed easement, said terminal point being 69 feet, more or less from the east face of Brasee Hall on said Ohio University Branch Campus and containing 7125 square feet or 0.164 acre, more or less.

Bearings and distances are based on the bearings and distances of Record in Deeds to Ohio University, Recorded in Deed Book 355, Page 512 and Page 514, Recorder's Office, Fairfield County, Ohio.

This description was based on information supplied by the City of Lancaster Water Department.

Further reference is made to File No. 4858 on file in the offices of the Ohio Department of Administrative Services, General Services Division, Real Estate Services, 4200 Surface Road, Columbus, Ohio 43228-1395; and

Exhibit "B"  
Drawing

