

RESOLUTION NO. 04-21
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Palcher ON
THE 11th DAY OF January, 2021.

**RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER
TO ENTER INTO A RIGHT OF ENTRY AGREEMENT WITH
WASHINGTON TOWNSHIP FOR THE PROPERTY NEXT TO TOWN
HALL.**

WHEREAS, the City of Centerville owns a tract of real estate located immediately north of Washington Township Town Hall, located at 27 North Main Street, Centerville, Ohio (the "Property"); and

WHEREAS, Washington Township is proceeding with a HVAC remodeling project at Washington Township Town Hall (the "Project") which the requires temporary access to and upon the Property; and

WHEREAS, the City is willing to grant such entry to the Property to assist the Township in completing the Project; and

WHEREAS, the City previously provided said entry, but the project is not completed and the City desires to continue to allow such access until completion of the project.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE
HEREBY RESOLVES:

- Section 1: That the City Manager is hereby authorized to execute the Right of Entry Agreement with Washington Township. A copy of the Agreement is attached and marked Exhibit "A" and incorporated herein.
- Section 2: That the City Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreement.
- Section 3: This Resolution shall take affect at the earliest date allowed by law.

PASSED THIS 11th day of January, 2021.


Mayor of the City of Centerville, Ohio

ATTEST:


Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 04-21, passed by the Council of the City of Centerville, Ohio on the 11th day of January, 2021.


Clerk of the Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.
Department of Law
Scott A. Liberman, Municipal Attorney
Municipal Attorney

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT is entered into by and among **Washington Township**, an Ohio township comprising both unincorporated and incorporated areas including the City of Centerville, whose principal office is located at 8200 McEwen Road, Washington Township, OH 45458 ("Township") and the **City of Centerville**, an Ohio municipal corporation, whose principal business office is located at 100 West Spring Valley Road, Centerville, Ohio (hereinafter referred to as "Centerville").

RECITALS:

A. Centerville owns a tract of real estate located immediately north of Washington Township Town Hall, located at 27 North Main Street, Centerville, Ohio and more particularly described in Exhibit A, which is attached hereto and made a part of this Agreement (hereinafter referred to as the "Property").

B. Washington Township is proceeding with a HVAC remodeling project at Washington Township Town Hall as shown on the attached Exhibit B (the "Project") which the requires temporary access to and upon the Property.

C. The parties have therefore agreed that Centerville shall grant to Washington Township a right of entry onto the Property for the purpose of facility improvements and other activities, as set forth below.

NOW, THEREFORE, in consideration of the mutual obligations and undertakings contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement do hereby agree as follows:

1. Consideration.

Centerville agrees that Washington Township will make no payments to Centerville pursuant to this Agreement. Centerville acknowledges and agrees that the grant of the right of entry by Centerville to Washington Township which will allow Washington Township to maintain the construction schedule as they, (i.e. Washington Township), have solely defined, is complete and sufficient consideration for the covenants and agreements of Centerville and Washington Township in this Agreement.

2. Right of Entry.

A. General Grant of Right. Centerville hereby grants to Washington Township and it's agents, the right to enter onto the Property for all purposes related generally to the construction and renovation project at Washington Township Hall to replace and update HVAC systems in the building.

All rights granted within this Agreement will be limited by, and subject to, those rights and claims of record as pre-established prior to the effective date of this Agreement, regarding all property described in Exhibit "A" of this Agreement. Said claims of record including, but not limited to, any existing easements, right-of-ways, and/or permits.

B. Specific Rights Granted to Washington Township. In addition to the general rights granted to Washington Township above, Centerville also specifically authorizes Washington Township to:

1. Have access to the Property's paved driveway entrance for the limited purpose of completing the Project which will include the coming and going of contractors' vehicles related to this construction project for the time period of January 12, 2021 through March 31, 2021. Washington Township will not park construction vehicles overnight in the Property or unreasonably interfere with Centerville operations on the Property or the access of its employees during the course of construction. Access to the Property will be for the duration of the Project or March 31, 2021, whichever date comes first.
2. Bring one or more contractors onto the Property for the limited purpose of completing the Project. Specifically, this will include access for a boom truck to set a condenser unit and DOAS unit on two separate occasions. Each access period is estimated to last approximately 4 hours, start to finish.
3. Secure all required permits and approvals for the Project, if any.

C. Condition of Property. Township shall return the Property back to the original condition and shall be responsible for any damages to the Property.

3. **Compliance with Laws.** Washington Township will adhere and will require by contract that all contractors and subcontractors on the Property adhere to all applicable federal, state and local laws and regulations at all times during the construction.
4. **Term.** The term of this Agreement shall commence upon the execution hereof by both parties hereto and will expire on the date of completion of the Project, which Washington Township will use commercially reasonable efforts to complete.
5. **Miscellaneous**

A. Construction of Agreement. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Ohio, without reference to conflict of laws principles.

B. Execution of Instruments. The parties to this Agreement shall execute (and, if necessary, acknowledge) and deliver any and all documents and papers and take all such further action as may be necessary or desirable to carry out and effectuate the full purpose and intent of this Agreement.

C. Cumulative Rights and Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right of such party to use any or all other rights and remedies. The rights and remedies provided by this Agreement are given in addition to any other rights and remedies the parties may have by law, statute, ordinance, in equity or otherwise.

D. Exhibits. All exhibits, schedules and any other documents attached to this Agreement are incorporated into this Agreement by this reference and shall be deemed a part of this Agreement as if set forth in full in this Agreement. References to “this Agreement” and words of similar import refer to this Agreement (including all Exhibits and schedules to this Agreement) as an entirety.

E. Waiver. The terms, covenants, representations, warranties and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of any party at any time to require performance of any of the provisions of this Agreement shall, in no manner, affect the right at a later date to enforce such provisions. No waiver by any party of any condition, or breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

F. Nontransferability of Agreement. The rights, obligations, benefits and burdens of this Agreement may not be transferred, assigned or conveyed in any manner by any party without the prior, written consent of all other parties to this Agreement.

G. Benefit. Subject to the restrictions contained in this Agreement with respect to transfer, assignment and conveyance, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement, and the heirs, legal representatives, successors and assigns of the parties to this Agreement.

H. Entire Agreement. This Agreement (including the exhibits attached to this Agreement), and the other documents referred to in this Agreement or delivered pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous written and oral agreements and understandings between the parties with respect to the subject matter of this Agreement.

I. Amendment. This Agreement may be amended at any time by the joint act of the parties to this Agreement; provided, however, that no amendment shall be valid unless the amendment is in writing and signed by all parties to this Agreement.

J. Headings. The headings used in this Agreement are for convenience only and this Agreement shall be interpreted as if such headings were omitted.

K. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement. No new counterparts shall be valid unless the counterpart has been approved in writing and signed by all parties to this Agreement.

{Signature Page Follows}

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of _____, 2020.

City of Centerville, Ohio, an Ohio municipal corporation

By: _____
Wayne Davis, City Manager

Approved as to Form:

Scott A. Liberman
Municipal Attorney

Washington Township, an Ohio township

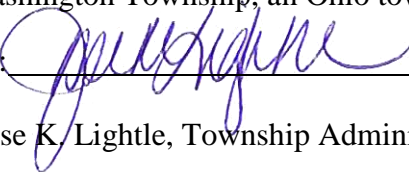
By:  _____
Jesse K. Lightle, Township Administrator

EXHIBIT A

Description of the Property

Figure 1 - Location of Washington Township Hall - 27 N Main Street

Washington Township is requesting access via highlighted paved driveway on lot immediately north of the building to provide access to Town Hall's north side.

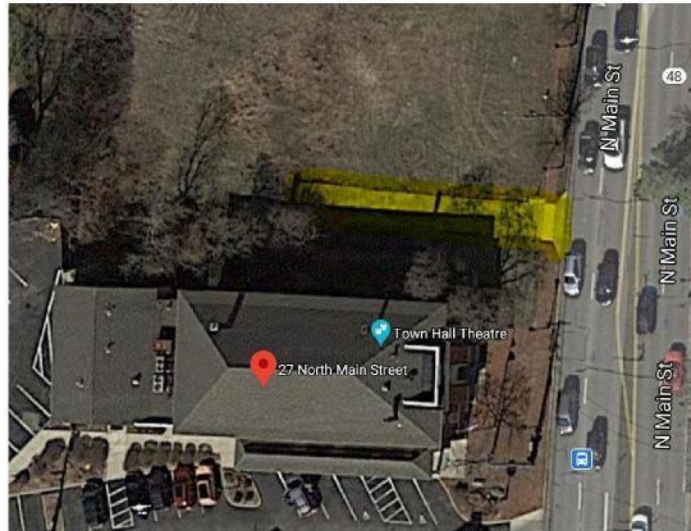


Figure 2 - Street View looking west from N. Main Street

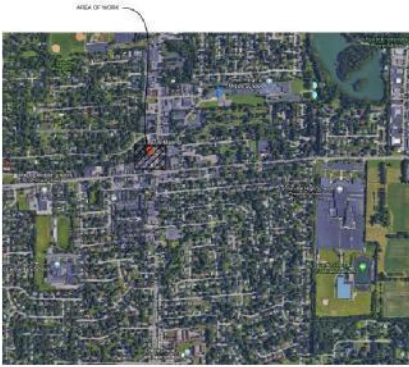


EXHIBIT B

Project Improvements

**WASHINGTON TOWNSHIP
TOWN HALL THEATER**

27 NORTH MAIN STREET
CENTERVILLE, OH 45459





EARNING YOUR TRUST SINCE 1892

September 30, 2020

Mr. Mark Metzger
Town Hall Theatre
27 N Main St.
Centerville, Ohio 45459

Subject: Washington Twp Town Hall Theater HVAC Renovation
27 North Main Street Centerville, Ohio 45459
Proposal: 32380

Dear Mark,

Per your request to receive quote on Washington Twp Town Hall Theatre HVAC systems due to age and poor efficiency, our quote is as follows:

BASIC SCOPE SUMMARY

1. Provide HVAC services per Tri-Tech drawings, submittal approvals and specifications dated 9/23/2020.
2. Demo and remove all old equipment per contract. Reclaim all refrigerant as required per acceptable way-
 - a) Abandon in place three Bryant vertical gravity Warm Air model 140 GS 57 gas heat furnaces. Disconnect natural gas and render inoperable. Rated at 140,000 BTU's each at 80% AFUE.
 - b) Three basement Trane DX split air handlers and matching condensers on the roof serving theater and meeting room
 - c) One DX split system 2nd Floor space and condensing unit on the ground
 - d) Two wall furnaces in restrooms
 - e) Ductwork removal per demolition work plans.
 - f) Outside Air ductwork for theater air handlers
3. Provide and install-
 - a) Two Greenheck I5-ton RTUs serving Theater RTU-1,2
 - b) One Mitsubishi DX Split heat pump HP-1 unit serving front 2nd floor
 - c) Mitsubishi VRF system with qty 4 ducted units (DHP-1,2,3,4) in basement meeting room and qty 1 ceiling cassette unit (CC-1) in kitchen and qty 2 restroom units.
 - d) Greenheck DOAS-I unit serving basement meeting room.

- e) Ductwork installation per new work plans.
 - f) Concrete Pads
 - g) RTU structural steel installation.
 - h) All air devices per schedule.
 - i) Combination PHI (for RTUs/DOAS) and UV Lights (for Ductless Splits)
4. Transfer, provide and install Schedule 40 metallic black steel screw natural gas piping per NFPA 54 2015 Table 6.3 and International Fuel Code 2009 specifications Table 402.4(1).
 5. Does not include any work in west end of facility for the three split system furnaces.
 6. Does not include any asbestos identification or abatement.
 7. Includes all rigging and material handling.
 8. Includes brick/concrete coring sidewall penetrations for ductwork and linesets.
 9. Includes all sidewall, roof flashing and sealing of penetrations as required.
 10. Includes structural steel installation. Design by Tri-Tech.
 - II. Obtain all State and Local required mechanical permits. Does not include electrical permits, demo or install.
 12. Includes startup, check and certified air balance.
 13. All work and equipment selection to meet efficiency, outside air requirements and installation requirements per ASHRAE Standard 90.1 - 2016.
 14. Work to be completed during normal business hours.