

ORDINANCE 2017- 14

TO AUTHORIZE THE CLERK/TREASURER TO AMEND THE 2017 BUDGET AND APPROPRIATIONS FOR THE VILLAGE OF CENTERBURG TO THE KNOX COUNTY AUDITOR AND TO DECLARE AN EMERGENCY

WHEREAS, the Village previously extended the construction of the trunk sewer for the Water Reclamation Project (WRF) causing additional crop damage for the grantors of certain easements for the WRF;

WHEREAS, the Village has made offers to pay resolve all crop damage through the 2017 growing season and the property owner and farmer have sign a Contract for Crop Damage Within Area of Sanitary Sewer Easement and Temporary Construction Easement, a copy of which is attached hereto and incorporated herein;

NOW, THEREFORE, be it ordained by the Council of the Village of Centerburg, Ohio:

Section 1: The Clerk/Treasurer shall amend the 2017 Village Budget and Appropriations in the amount of \$10,500.00 to provide for the payment of crop damage in to Whistle Stop Properties, Inc., an Ohio corporation in the amount of \$3,500.00 and Gary White/White Farms Rd., in the amount of \$7,000:

Sanitary Sewer Fund \$10,500

Section 2: That the Village Administrator and Mayor are hereby authorized to execute the Contract for Crop Damage Within Area of Sanitary Sewer Easement and Temporary Construction Easement, a copy of which is attached hereto and incorporated herein.

Section 3: Council declares this to be an emergency measure immediately necessary for the purpose of amending the 2017 Budget and Appropriations, and therefore this ordinance shall take effect and be in force from and after its passage and approval by the Mayor.

DATE PASSED 08/07/2017

ATTEST signature on file CLERK OF COUNCIL

signature on file

PRESIDENT OF COUNCIL

signature on file

MAYOR

DATE APPROVED

APPROVED AS TO FORM:

signature on file

~~LEGAL COUNSEL~~

I hereby certify that the ordinance or a summary of the ordinance was published once a week for two consecutive weeks on August 10, 2017 and August 17, 2017 in the *Mount Vernon News* in conformance with the Ohio Revised Code.

signature on file

CLERK-TREASURER

**CONTRACT FOR CROP DAMAGE WITHIN AREA OF SANITARY SEWER EASEMENT  
AND TEMPORARY CONSTRUCTION EASEMENT**

THIS CONTRACT FOR CROP DAMAGE WITHIN AREA OF SANITARY SEWER EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT ("the Contract") is between, the VILLAGE OF CENTERBURG, OHIO, an Ohio municipal corporation with its mailing address at 49 ½ E. Main Street, Centerburg, Ohio 43011 ("the VILLAGE") and WHISTLE STOP PROPERTIES, INC., an Ohio corporation, whose mailing address is 4245 Gilbert Road, Centerburg, Ohio 43011 (herein called "GRANTOR"). GRANTOR and VILLAGE acknowledge the following:

- WHISTLE STOP PROPERTIES, INC. owns the Subject Property located in the State of Ohio, County of Knox, O.R. 500 Pg. 72, Knox County, Ohio Recorder's Office, also known as Parcel No: 17-00675.000 (the "Subject Property").
- GARY L. WHITE/WHITE FARMS provides services to WHISTLE STOP PROPERTIES, INC. to farm the Subject Property.
- The VILLAGE has acquired the right and easement to construct, install, operate, repair, replace, relocate, inspect and maintain all municipally-owned and all other necessary sanitary sewage sewer services and facilities, together with appurtenances incidental thereto ("Sanitary Service Facilities") on the Subject Property as part of a water reclamation facility construction project ("WRF Project") within an Easement Area for which Grantor has previously received compensation.
- The VILLAGE has caused crop damage within the Easement Area for an additional period of time that was not contemplated by previous payments from the VILLAGE to GRANTOR regarding the Easement Area.

**AGREEMENT**

NOW THEREFORE, the VILLAGE and GRANTOR covenant and agree as follows:

1. Acknowledgement of Payments Received: GRANTOR received previous payments from the Village for Crop Damage for years 2012, 2013 and for a reduced yield in the year following completion of construction.

Additional Monetary Consideration for Crop Damage: Since the construction is now completed, additional consideration is owed to GRANTOR for Crop Damage and the VILLAGE and GRANTOR agree to resolve all claims for Crop Damage and use of the Temporary Construction Easement and Sewer Easement Area in exchange for the Village making payments in the total amount of \$10,500, which WHISTLE STOP PROPERTIES, INC. has directed the VILLAGE to pay said amount as follows:

- \$3,500 to WHISTLE STOP PROPERTIES, INC.
- \$7,000 to GARY WHITE/WHITE FARMS

As of the execution of this Agreement, the Village has completed the Sanitary Service work in the Easement Area, and the payments herein represent payments in-full to Grantor for what would be a any and all reduced yield or crop damage claims because of construction up and through 2016 and thereafter.

PROVIDED HOWEVER, NOTHING HEREIN SHALL BE DEEMED TO BE IN CONSIDERATION OF THE ISSUES RELATED TO A 0.22 ACRE TRACT ON WHICH THE VILLAGE HAS LOCATED A PUMP STATION AND FOR WHICH THE GRANTOR AND VILLAGE ARE NEGOTIATING THE VILLAGE'S PURCHASE OF SAID 0.22 ACRE TRACT OF LAND.

2. No Amendment. Nothing herein shall be deemed an amendment to any prior Agreements or Easements between GRANTOR and VILLAGE other than as specifically set forth herein.

3. Miscellaneous.

a. Except as otherwise expressly provided herein, all provisions herein contained, including the benefits, burdens and covenants, are intended to run with the land and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

b. If any provision(s) of this Agreement is declared invalid or unenforceable, the other provisions shall remain in full force and effect and be construed in a fashion, which gives meaning to all the other terms of this Agreement.

c. This Contract may only be amended in a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date executed by GRANTOR below.

**THE VILLAGE OF CENTERBURG**

By: signature on file  
~~Philip Donaghy, Village Administrator~~  
M. Joseph Hardin

Date: 7-19-17

By: signature on file  
David Beck, Mayor

Date: 7/31/17

**GRANTOR**

By: signature on file  
For Whistle Stop Properties, Inc.

Date: July 19, 2017

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date executed by GRANTOR below.

**THE VILLAGE OF CENTERBURG**

By: \_\_\_\_\_  
~~Philip D. Doney~~, Village Administrator  
M. Joseph Hardin

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David Beck, Mayor

Date: \_\_\_\_\_

**GRANTOR**

By: signature on file  
For Whistle Stop Properties, Inc.

Date: July 19, 2017