

ORDINANCE NO. 2023 - 72

**AN ORDINANCE TO ACCEPT AN EASEMENT ON PARMA PROPERTY IN PARMA, OHIO ON STUMPH ROAD FOR THE INSTALLATION, OPERATION, AND MAINTENANCE OF A CITY OF PARMA HEIGHTS TRAFFIC DEVICE IN THE CITY OF PARMA, AND DECLARING AN EMERGENCY**

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Parma Heights, County of Cuyahoga, and State of Ohio:

Section 1: That the proposed easement granted to the City of Parma Heights, Ohio by the City of Parma, Ohio, with the legal description included in the easement agreement identified in Exhibit "1", attached hereto, and made a part hereof as though fully rewritten, is hereby approved, and the Administration is hereby authorized and directed to accept the same on behalf of the City of Parma Heights, Ohio.

Section 2: That the Administration is hereby directed to cause said proposed easement to be filed for record.

Section 3: This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 4: This Council declares this Ordinance to be an emergency measure for the immediate preservation of the public health, peace, and safety of the Municipality, and for the further reason that it is necessary in order to avoid a disruption in safety services; wherefore, it shall be in full force and effect immediately after its passage by Council and approval of the Mayor.

PASSED: November 13, 2023 Thomas Rounds  
PRESIDENT OF COUNCIL

ATTEST: Barbara Allen November 13, 2023  
CLERK OF COUNCIL APPROVED

FILED WITH THE MAYOR: November 13, 23 Marie Gallo  
MAYOR MARIE GALLO

# **EXHIBIT 1**

## **TRAFFIC CONTROL DEVICE EASEMENT AGREEMENT**

**THIS EASEMENT AGREEMENT** (this "Agreement") is made and entered into this day of \_\_\_\_\_, 2023, (the "Effective Date") by and between the **CITY OF PARMA**, Ohio, an Ohio municipal corporation ("Grantor") and the **CITY OF PARMA HEIGHTS**, Ohio, an Ohio municipal corporation ("Grantee"). Grantor and Grantee may be referred to hereafter collectively as the "Parties".

### **WITNESSETH THAT:**

WHEREAS, Grantor herein is the fee title owner of certain real property located in Parma, Cuyahoga County, Ohio; and

WHEREAS, Grantee has requested of Grantor a permanent, non-exclusive easement in, on, over, across, under, and through a certain portion of the above-described property as shown on Exhibit A attached hereto and made a part hereof for the purpose of constructing, reconstructing, modifying, supplementing, maintaining, operating, and/or removing traffic control devices and supports including, but not limited to, above-ground cables and wires, splicing pedestals, power pedestals, electronic equipment cabinets, cross-connect terminal boxes, concrete pads, protective ballards, marker posts and signs, and other related or useful equipment, including below-ground foundations, cables, wires, conduits, ducts, manholes and handholes, and other related of useful equipment, fixtures, appurtenances, and above-ground and below-ground facilities, together with right to have electrical services extended to the Easement Area (as hereinafter described) to provide service to such facilities and the right to ingress and egress across the Easement Area for the purpose of access to and use of the Easement (as hereinafter described) granted upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as follows:

**1. Grant of Easement.** Upon the terms and conditions hereinafter set forth, Grantor hereby grants to Grantee a permanent, non-exclusive easement (the "Easement"), in, on, over, across, under, and through certain property more particularly described in Exhibit B, attached hereto and made a part hereof (the "Easement Area") for the purpose, at Parma Heights sole cost and expense, of constructing, reconstructing, modifying, supplementing, maintaining, operating, and/or removing traffic control devices and supports including, but not limited to, above-ground cables and wires, splicing pedestals, power pedestals, electronic equipment cabinets, cross-connect terminal boxes, concrete pads, protective bollards, marker posts and signs, and other related or useful equipment, including below-ground foundations, cables, wires, conduits, ducts, manholes and handholes, and other related or useful equipment, fixtures, appurtenances, and above-ground and below-ground facilities (collectively, the "Improvements"), together with right to have electrical services extended to the Easement Area to provide service to such facilities and the right to ingress and egress across the Easement Area for the purpose of access to and use of the easement granted herein.

**2. Ownership and Maintenance.**

- (a) The Improvements shall be and shall remain the property of Parma Heights, and Parma Heights shall be and remain solely responsible for the Improvements; provided, however, that it is expressly agreed that the within grant of the Easement is a grant of an easement only and that fee simple title to the Easement Area shall and does remain in Grantor.
- (b) Parma Heights shall construct and at all times shall keep and maintain the improvements in a safe and sound condition and in compliance with all applicable laws, ordinances, rules, and regulations, and Parma Heights has the sole and exclusive responsibility for informing itself thereof.

**3. Conditions of Work.**

- (a) Prior to commencing any work on the Improvements in any instance, Parma Heights shall submit to the Grantor plans and specifications therefor. No work shall begin on the Improvements unless and until Grantor has given to Parma Heights its written approval of the plans and specifications. Parma Heights shall construct the Improvements in accordance with the plans and specifications approved by Grantor unless a modification thereof is approved in writing by Grantor; provided, however, that Grantor in no event shall assume responsibility for any aspect of such plans and specifications.
- (b) Prior to commencing any work on the Improvements, Parma Heights shall have obtained any and all necessary permits, authorizations, and other consents from any and all governmental authorities with jurisdiction.

**4. Use of Easement Area.**

- (a) Grantee shall not store any materials or equipment on the Easement Area without the prior written approval of Grantor.
- (b) Grantee shall not remove any trees, shrubbery, or other landscaping features from the Easement Area unless such removal is part of the plans and specifications that have been approved in writing by Grantor or unless Grantee has obtained prior written approval for such removal from Grantor. Grantee shall be held liable to Grantor for any loss or damage to trees, shrubbery, or other landscaping features not scheduled for removal under the approved plans and specifications or not otherwise approved in writing by Grantor.
- (c) At the sole cost and expense of the Grantee, Grantee shall restore the Easement Area not encumbered by the Improvements to the condition existing in each instance prior to any construction, maintenance, repair, or replacement, including without limitation, replacement of trees, shrubbery, lawn grass, and other landscaping features as well as all purpose trails, driveways, sidewalks, pavement, and fences. Without limiting the generality of the foregoing, the Grantee (i) shall seed all disturbed lawn grass with a mixture of twenty percent (20%) Kentucky 31 Fescue, twenty-five percent (25%) Common Kentucky Bluegrass, twenty percent (20%) Manhattan Rye Grass, and thirty-five percent

(35%) Creeping Red Fescue at the rate of eight (8) pounds per one thousand (1,000) square feet and (ii) shall add lime of fertilizer to the lawn grass at the required rate, if Grantor so directs.

(d) Grantee will not impede the growth or development of any naturally occurring vegetative cover on the Easement Area unless it has obtained the prior written approval of Grantor.

**5. Insurance.** Grantee shall maintain and pay for, or cause to be maintained and paid for, (i) commercial general liability insurance, including without limitation contractual liability coverage, products and completed operations coverage, and coverage for collapse, underground exposure, and explosion hazards; and (ii) commercial automobile liability insurance for owned, hired, and non-owned automobiles. Such insurance (A) shall insure against claims for bodily injury (including death) and property damage, with each policy having a combined single limit of not less than \$1,000,000 per occurrence, (B) shall be primary to any insurance maintained by Grantor, and (C) shall name the Grantor as an additional insured. Certificates of insurance evidencing the aforementioned coverage(s) shall be provided to Grantor prior to commencement of the work. Grantor reserves the right to request a full and complete copy of all insurance policies. Grantee's coverage may not be cancelled or materially changed until at least ten (10) days after written notice to Grantor.

**6. Reversion to Grantor.** If at any time the Easement ceases to be used by Grantee for the purpose specified herein, the rights hereby granted automatically shall terminate and the Easement shall revert to Grantor, provided that Grantor shall be entitled to retain all rights and remedies that previously may have accrued against Grantee with respect to the Easement.

**7. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, written or oral, with respect thereto.

**8. Modification.** No modification of this Agreement shall be binding upon Grantor or Grantee unless set forth in writing and executed by Grantor and Grantee.

**9. Severability.** If any provision of this Agreement shall be or become invalid or unenforceable, then this Agreement shall be divisible as to such provision, and the remainder of this Agreement shall be and remain valid and binding as though such provision were not included herein.

**10. Third-Party Rights.** Nothing herein expressed or implied is intended or shall be construed to confer upon any other entity, other than as herein set forth, any rights or remedies under, or by reason of, this Agreement.

**11. Successors and Assigns.** The rights and obligations of the parties set forth herein shall be binding upon, and inure to the benefit of, each of them, and their respective successors and assigns.

**12. Notices.** Whenever one party is required or permitted to give notice to the other pursuant to this Agreement, such notice shall be deemed given when delivered by hand or via regular U.S. mail and addressed as follows:

If to Grantor:

ATTN: Law Director	and	ATTN: Safety Director
City of Parma		City of Parma
7335 Ridge Road		6611 Ridge Road
Parma, Ohio 44129		Parma, OH 44129

If to Grantee:

ATTN: Law Director  
City of Parma Heights  
6281 Pearl Road  
Parma Heights, Ohio 44130

Any party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which such new recipient or address will become effective.

**13. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the parties had signed the same signature page.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement as of the day and year first written above.

[signatures on next page]

**CITY OF PARMA, OHIO**

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

Approved as to form by the City Law Director  
of City of Parma, Ohio

Print Name: Timothy G. Dobeck

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

**CITY OF PARMA HEIGHTS, OHIO**

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

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

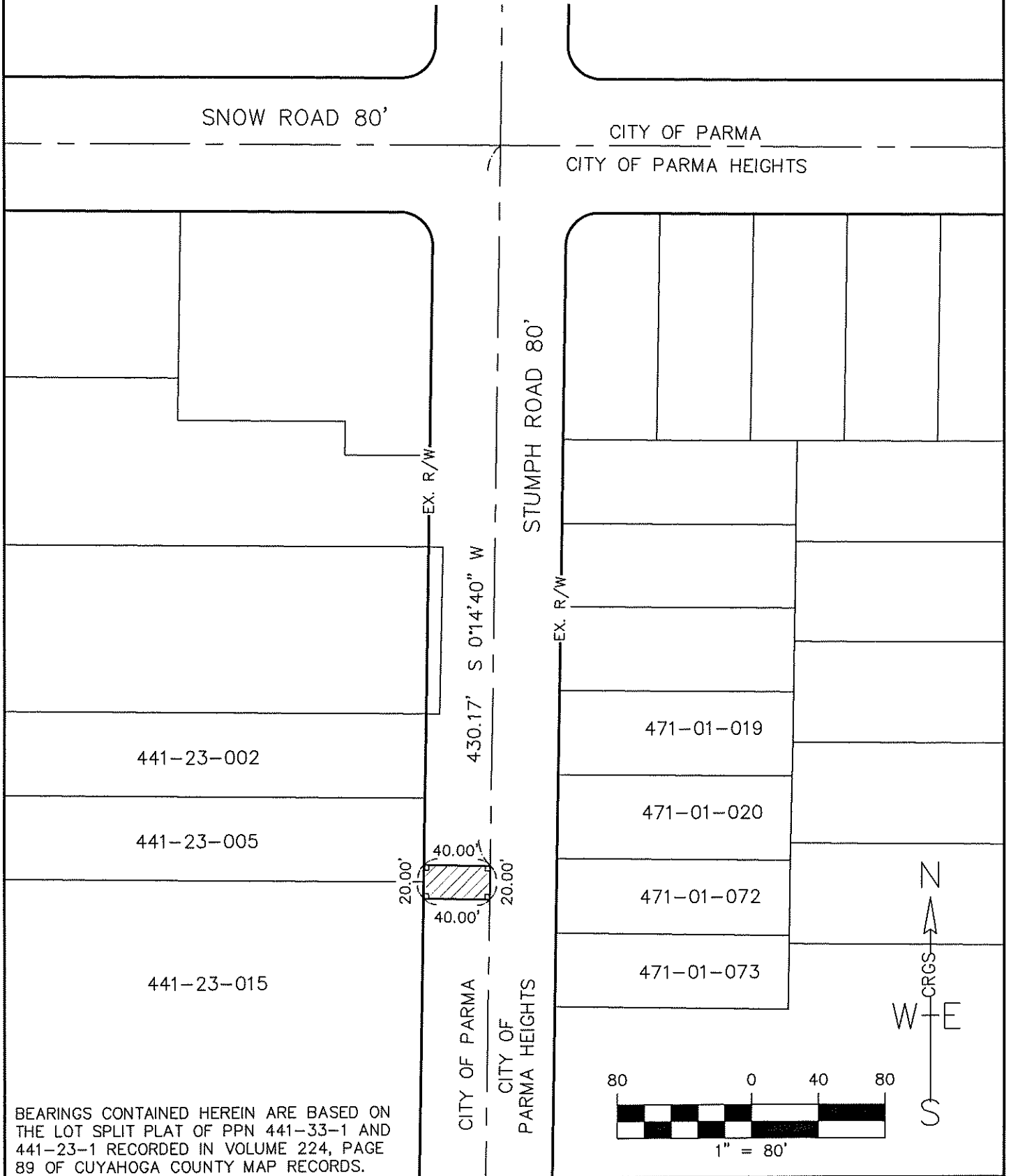
Approved as to form by the City Law Director  
of City of Parma Heights, Ohio

Print Name: Mark A. Schneider

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

# TRAFFIC CONTROL EASEMENT

STATE OF OHIO, COUNTY OF CUYAHOGA, CITY OF PARMA HEIGHTS  
SEPTEMBER 2023



BEARINGS CONTAINED HEREIN ARE BASED ON THE LOT SPLIT PLAT OF PPN 441-33-1 AND 441-23-1 RECORDED IN VOLUME 224, PAGE 89 OF CUYAHOGA COUNTY MAP RECORDS.



EXHIBIT B

TRAFFIC CONTROL EASEMENT OVER AND THROUGH  
LAND OF THE CITY OF PARMA

Situated in the City of Parma, County of Cuyahoga, and State of Ohio, and known as being part of Original Parma Township Lot No. 27, Tuckerman Tract and bounded and described as follows:

Beginning in the centerline of Stumph Road, 80' wide, at its intersection with the centerline of Snow Road, 80' wide;

Thence South 00 degrees, 14 minutes, 40 seconds West 430.17 feet along the centerline of Stumph Road to the principal place of beginning;

Thence North 89 degrees, 45 minutes, 20 seconds West 40.00 feet to a point in the westerly right-of-way line of Stumph Road;

Thence South 00 degrees, 14 minutes, 40 seconds West 20.00 feet along said easterly right-of-way line of Stumph Road to a point;

Thence South 89 degrees, 45 minutes, 20 seconds East 40.00 feet to a point in the centerline of Stumph Road;

Thence North 00 degrees, 14 minutes, 40 seconds East 20.00 feet along the centerline of Stumph Road to the principal place of beginning and containing 800 square feet of land;

Bearings contained herein are based on the Lot Split Plat of PPN 441-33-1 and 441-23-1 recorded in Volume 224, Page 89 of Cuyahoga County Map Records.