

AGENDA

DATE: MONDAY, JUNE 18, 2007

PLACE: COUNCIL CHAMBERS

TIME: 7:30 P.M. -

THERE ARE NO PUBLIC HEARINGS TONIGHT.

CATAZARO-PERRY EXCUSED

1. ROLL CALL
2. INVOCATION BY COUNCILMAN PAUL MANSON
3. PLEDGE OF ALLEGIANCE
4. READING OF THE JOURNAL
5. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS ON THE AGENDA
6. INTRODUCTION OF ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 71 - 2007

BY: ENVIRONMENTAL COMMITTEE

B-O PASS

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for and receive sealed bids and enter into contract, upon award and approval of the Board of Control, with the lowest and best bidder for the South Massillon Trunk Sewer Extension Project, and declaring an emergency.

ORDINANCE NO. 72 - 2007

BY: ENVIRONMENTAL COMMITTEE

B-O PASS

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into an agreement with the Wheeling and Lake Erie Railway Company for the South Massillon Trunk Sewer Extension Project, and declaring an emergency.

ORDINANCE NO. 73 - 2007

BY: ENVIRONMENTAL COMMITTEE

B-O PASS

AN ORDINANCE authorizing the Law Director of the City of Massillon, Ohio, to enter into an agreement with Bricker and Eckler LLP, to provide legal services in the form of representing the City of Massillon, Ohio, and declaring an emergency.

ORDINANCE NO. 74 - 2007

BY: POLICE AND FIRE COMMITTEE

1ST READING

AN ORDINANCE repealing Section 761.09 "Schedule of Rates" under CHAPTER 761 "TOWING COMPANIES" of the Codified Ordinances of the City of Massillon, Ohio, and enacting new Section 761.09 "Schedule of Rates" under CHAPTER 761 "TOWING COMPANIES" of the Codified Ordinances of the City of Massillon, and declaring an emergency.

ORDINANCE NO. 75 - 2007

BY: STREETS, HIGHWAYS, TRAFFIC & SAFETY

B-O PASS

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for, receive sealed bids and enter into a contract; upon award and approval of the Board of Control, with the lowest and best bidder for the Cherry Road NW Improvement Project in the City of Massillon, and declaring an emergency.

ORDINANCE NO. 76 – 2007

BY: STREETS, HIGHWAYS, TRAFFIC & SAFETY

B-O PASS

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into an agreement with the Stark County Board of Commissioners for the Hills and Dales Road Widening Project, and declaring an emergency.

ORDINANCE NO. 77 – 2007

BY: FINANCE COMMITTEE

B-O PASS

AN ORDINANCE making certain appropriations from the unappropriated balance of the 1406 Wastewater Treatment Capital Improvement Fund, 1423 South Massillon Trunk Sewer Fund, 1240 Veterans Park and Duncan Plaza Fund, Street Fund, 1206 Muni Motor Vehicle License Plate Fund and the Bond Retirement WWT Fund, for the year ending December 31, 2007, and declaring an emergency.

ORDINANCE NO. 78 – 2007

BY: FINANCE COMMITTEE

B-O PASS

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for, receive sealed bids and enter into contract upon award and approved of the Board of Control, with the lowest and best bidder for the purchase of fuel for city vehicles at an off-site location, and declaring an emergency.

7. UNFINISHED BUSINESS

8. PETITIONS AND GENERAL COMMUNICATIONS

LETTER FROM OHIO DIVISION OF LIQUOR CONTROL REGARDING A TRANSFER OF LIQUOR LICENSE FROM RICHARD S HASSELL DBA CAPT DICKS DRIVE THRU #2 1005 1ST ST NE MASSILLON OHIO 44646 TO SERVISHARP INC DBA CAPT DICKS DRIVE THRU #2 1005 1ST ST NE MASSILLON OHIO 44646.

9. BILLS, ACCOUNTS AND CLAIMS

10. REPORTS FROM CITY OFFICIALS

- A). POLICE CHIEF SUBMITS MONTHLY REPORT FOR MAY 2007
- B). TREASURER SUBMITS MONTHLY REPORT FOR MAY 2007
- C). FIRE CHIEF SUBMITS MONTHLY REPORT FOR MAY 2007.
- D). INCOME TAX DEPARTMENT SUBMITS MONTHLY REPORT FOR MAY 2007
- E). WASTE DEPARTMENT SUBMITS MONTHLY REPORT FOR MAY 2007
- F). MAYOR SUBMITS MONTHLY REPORT FOR MAY 2007

11. REPORTS OF COMMITTEES

12. RESOLUTIONS AND REQUESTS OF COUNCIL MEMBERS

13. CALL OF THE CALENDAR

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RECONSIDERATION OF ORDINANCE

^{B-0 TO AMMEND}
ORDINANCE NO. 64 – 2007

BY: COMMUNITY DEVELOPMENT COMMITTEE

^{8-0 PASS}
AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into the purchase agreement for the sale of a 0.220 acre parcel of land owned by the City and not needed for any municipal purpose in the City of Massillon, Stark County, Ohio, to Elum Music Co., and declaring an emergency.

14. THIRD READING ORDINANCES AND RESOLUTIONS

15. SECOND READING ORDINANCES AND RESOLUTIONS

ORDINANCE NO. 68 – 2007 BY: ENVIRONMENTAL COMMITTEE

^{TABLED INDEFINATELY 7-1 (BOYAN)}

AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into an agreement to arbitration an ongoing dispute with Kokosing Construction concerning issues with the sewer plant upgrade, and declaring an emergency.

ORDINANCE NO. 69 – 2007 BY: HEALTH, WELFARE & BLDG REGULATIONS

^{2ND READING}

AN ORDINANCE amending CHAPTER 351 "PARKING GENERALLY" of the Codified Ordinances of the City of Massillon, and enacting a new Subsection 351.21 "FRONT YARD PARKING" and 351.22 "OFF-STREET PARKING IN RESIDENTIAL DISTRICTS OR ANY PARCELS USED FOR DWELLING PURPOSES" of CHAPTER 351 "PARKING GENERALLY", and declaring an emergency.

16. NEW AND MISCELLANEOUS BUSINESS

17. REMARKS OF DELEGATIONS AND CITIZENS TO MATTERS NOT ON THE AGENDA

18. ADJOURNMENT

MARY BETH BAILEY - CLERK OF COUNCIL

DATE: JUNE 18, 2007

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

Passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 71 - 2007

BY: ENVIRONMENTAL COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for and receive sealed bids and enter into contract, upon award and approval of the Board of Control, with the lowest and best bidder for the South Massillon Trunk Sewer Extension Project, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby determines it to be necessary in the public health, safety and welfare to advertise for and receive sealed bids and enter into contract, upon award and approval of the Board of Control, with the lowest and best bidder for the South Massillon Sanitary Trunk Sewer Extension Project.

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized and directed to prepare plans and specifications and to advertise for and receive sealed bids according to law, and enter into contract upon award and approval by the Board of Control, with the lowest and best bidder for the South Massillon Sanitary Trunk Sewer Extension Project. The estimated cost of the project is One Hundred Thousand Four Hundred Thirty Dollars (\$100,430.00) which will be paid through the South Massillon Trunk Sewer and Wastewater Treatment Capital Improvement accounts.

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety, and welfare of the community, and for the additional reason that bids be received so that work may be completed on the South Massillon Trunk Sewer Extension Project. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

2nd Page is the signature page

DATE: JUNE 18, 2007

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

Passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 72 - 2007

BY: ENVIRONMENTAL COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into an agreement with the Wheeling and Lake Erie Railway Company for the South Massillon Trunk Sewer Extension Project, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby determines it to be necessary in the public health, safety and welfare to enter into an agreement with the Wheeling and Lake Erie Railway Company for the South Massillon Sanitary Trunk Sewer Extension Project.

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized to enter into an agreement with the Wheeling and Lake Erie Railway Company for the South Massillon Sanitary Trunk Sewer Extension Project.

(SEE ATTACHED)

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety, and welfare of the community, and for the additional reason that bids be received so that work may be completed on the South Massillon Trunk Sewer Extension Project. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

2nd Page is the signature page

**LICENSE AGREEMENT FOR WIRE, PIPE AND CABLE
TRANSVERSE CROSSING AND LONGITUDINAL OCCUPATIONS
No. 052496**

THIS AGREEMENT, made this 1st day of June, 2007, between the WHEELING & LAKE RAILWAY COMPANY, a Delaware corporation, (hereinafter called "RAILROAD" or "LICENSOR") and the CITY OF MASSILLON, having an address of 151 Lincoln Way East, Massillon, Oh 44646 (hereinafter called "LICENSEE"),

I. PREMISES

RAILROAD (which when used herein shall include any Lessor, successor or assignee of or operator over its railroad) insofar as it has the legal right and its present title permits, and in consideration of the covenants and conditions hereinafter stated on the part of the LICENSEE, to be kept and performed, hereby permits, the LICENSEE to construct, maintain, repair, alter, renew, relocate and ultimately remove:

One (18") eighteen inch, sanitary sewer line encased in a (36") thirty-six inch steel carrier pipe to be installed at a minimum of 5-1/2 feet below the base of rail, installation by boring method. With an overall length of 50' being within railroad ROW and crossing under the railroad tracks at M.P. 0.82 at SS station 3713+20, in the City of Massillon, Stark County, State of Ohio, as shown in red on the plan attached hereto and made a part hereof.

In accordance with the construction plans submitted by Hettler - Largent Engineering LLC, submitted by LICENSEE to and approved by the Vice President of Engineering of LICENSOR, incorporated herein by reference; also in accordance with current issues of LICENSOR'S Rental Schedule and Specifications for Utility Occupations; and shown on plans attached hereto and made a part of this Agreement, all and any part thereof being hereafter referred to as the "FACILITIES"; said LICENSEE, however, shall be under and subject to the following terms, covenants, and conditions as hereinafter recited, which are hereby accepted and agreed to, by the LICENSEE.

II. TERMS AND CONDITIONS

In consideration of the covenants and agreements herein contained and other good and valuable consideration, and intending to be legally bound, it is agreed as follows:

1. CONSIDERATION.

The LICENSEE shall pay to the LICENSOR upon the execution hereof, the sum of Sixteen Thousand and no/100's (\$16,000.00) Dollars as a one-time fee for the life span of the sanitary sewer pipe. The LICENSEE shall also pay the reimbursement fee of Three Hundred (\$300.00) and no/100's Dollars for the cost and expenses incident to the preparation of this License Agreement, which said sum's shall be payable in advance before installation of pipeline. The LICENSEE shall pay to the LICENSOR upon the execution hereof, the rate which is applicable on the attached Addendum 1, entitled Published Flagging Rates, as reimbursement for the cost of flag protection for a minimum of an eight (8) hour day. Any flag protection beyond eight (8) hours or any portion of a day will be at the next published rate as shown on the attached Addendum.

2. CONSTRUCTION.

2.1 The FACILITIES shall be located, constructed and maintained in exact accordance with said construction plans and for the purpose as outlined on Page 1. No departure shall be made at any time there from except upon permission in writing granted by the VICE PRESIDENT OF ENGINEERING of LICENSOR, or his designee, provided, however, that if any commission or other regulatory body duly constituted and appointed in compliance with the laws of the State in which the jurisdiction in the premises, has by ruling or other general order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then said ruling or general order shall prevail for the crossing or occupancy herein mentioned.

2.2 The work of constructing, maintaining, repairing, altering, renewing, or relocating or removing the said FACILITIES shall be done under such general conditions as will be satisfactory to and approved by the VICE PRESIDENT OF ENGINEERING of LICENSOR, or his designee, and will not interfere with the proper and safe use, operation and enjoyment of the property of the LICENSOR. LICENSEE, at its own cost and expense, shall, when performing any work in connection with the FACILITIES, furnish any necessary inspectors, flagmen or watchmen to see that men, equipments and materials are kept a safe distance away from the tracks of the LICENSOR.

2.3 In addition to, but not in limitation of any of the foregoing provisions, if at any time the LICENSOR should deem inspectors, flagmen or watchmen desirable or necessary to protect its operations or property, or its employees, patrons of LICENSEE during the work of construction, maintenance, repair, alteration, renewal, relocation or removal of said FACILITIES of LICENSEE, the LICENSOR shall have the right to place such inspectors, flagmen or watchmen at the sole risk, cost and expense of LICENSEE, which covenants and agrees to bear the full cost and expense thereof. The furnishing or failure to furnish inspectors, flagmen or watchmen by the LICENSOR, however, shall not release the LICENSEE from any and all other liabilities assumed by the LICENSEE under the terms of this License Agreement.

3. ADDITIONS.

If the LICENSEE desires or is required, as herein provided, to revise, renew, add to or alter in any manner whatsoever the aforementioned FACILITIES which results in a pole relocation, a change in vertical clearance or additional power lines, guys or wires, it shall submit plans to LICENSOR and obtain the written approval of the VICE PRESIDENT OF ENGINEERING of LICENSOR thereto before any work or alteration of the structure is performed and the terms and conditions of this License Agreement with respect to the original construction shall apply thereto. In that event, LICENSOR reserves the right to assess additional charges.

4. MAINTENANCE.

4.1 The LICENSEE shall at all times be obligated to promptly maintain, repair and renew said FACILITIES; and shall, upon notice in writing from LICENSOR and requiring it so to do, promptly make such repairs and renewals thereto as may be required by LICENSOR; or the LICENSOR, for the purpose of protecting and safeguarding its property, traffic, patrons or employees from damage or injury, may with or without notice to the LICENSEE at any time make such repairs and renewal thereto and furnish such materials therefore as it deems adequate and necessary, all at the sole cost and expense of LICENSEE.

4.2 In the event of an emergency, LICENSEE will take immediate steps to perform any necessary repairs, and in the event LICENSEE fails so to do, LICENSOR will perform said necessary repairs at the sole cost and expense of LICENSEE.

5. SUPERVISION.

5.1 The supervision over the location of the construction work and inspection of the FACILITIES and the approval of the material used in construction, maintenance, repair, alteration, renewal, relocation and removal of the aforesaid FACILITIES covered by this License Agreement shall be within the authority of and governed by the LICENSOR.

5.2 The right of supervision over the location of the construction work and inspection of the FACILITIES from time to time thereafter by the LICENSOR, shall extend for an appropriate distance on each side or along the property of the LICENSOR as the method of construction and material used may have an important bearing upon the strength and stability of the facilities over, under, upon, or in the property of the LICENSOR.

6. GOVERNMENT COMPLIANCE.

LICENSEE shall comply with all Federal, State and local laws, and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of the LICENSOR.

7. INDEMNIFICATION.

7.1 IT IS UNDERSTOOD BETWEEN THE PARTIES HERETO THAT THE OPERATION OF THE LICENSOR AT OR NEAR SAID FACILITIES INVOLVE SOME RISK, AND THE LICENSEE AS PART OF THE CONSIDERATION FOR THIS LICENSE AGREEMENT HEREBY RELEASES AND WAIVES ANY RIGHT TO ASK FOR OR DEMAND DAMAGES FOR OR ACCOUNT OF LOSS OF OR INJURY TO THE FACILITIES (AND CONTENTS THEREOF) OF THE LICENSEE THAT ARE OVER, UNDER, UPON OR IN THE PROPERTY AND FACILITIES OF THE LICENSOR'S INCLUDING THE LOSS OF OR INTERFERENCE WITH SERVICE OR USE THEREOF AND WHETHER ATTRIBUTABLE TO THE FAULT, FAILURE OR NEGLIGENCE OF THE LICENSOR OR OTHERWISE.

7.2 AND THE LICENSEE ALSO COVENANTS AND AGREES TO AND SHALL AT ALL TIMES INDEMNIFY, PROTECT AND SAVE HARMLESS THE LICENSOR FROM AND AGAINST ALL COST OR EXPENSE RESULTING FROM ANY AND ALL LOSSES, DAMAGES, DETRIMENTS, SUITS, CLAIMS, DEMANDS, COSTS AND CHARGES WHICH THE SAID LICENSOR MAY DIRECTLY OR INDIRECTLY SUFFER, SUSTAIN OR BE SUBJECTED TO BY REASON OF ON ACCOUNT OF THE CONSTRUCTION, PLACEMENT, ATTACHMENT, PRESENCE, USE, MAINTENANCE, REPAIR, ALTERATION, RENEWAL, RELOCATION OR REMOVAL OF SAID FACILITIES IN, ON, ABOUT OR FROM THE PREMISES OF LICENSOR WHETHER SUCH LOSSES AND DAMAGES BE SUFFERED OR SUSTAINED BY THE LICENSOR DIRECTLY OR BY ITS EMPLOYEES, PATRONS, OR LICENSEES, OR BE SUFFERED OR SUSTAINED BY OTHER PERSONS OR CORPORATIONS, INCLUDING THE LICENSEE, ITS EMPLOYEES AND AGENTS WHO MAY SEEK TO HOLD THE LICENSOR LIABLE THEREFORE, AND WHETHER ATTRIBUTABLE TO THE FAULT, FAILURE OR NEGLIGENCE OF THE LICENSOR OR OTHERWISE, EXCEPT WHEN PROVED BY LICENSEE TO BE DUE DIRECTLY TO THE SOLE NEGLIGENCE OF THE LICENSOR.

7.3 IF A CLAIM OR ACTION IS MADE OR BROUGHT AGAINST EITHER PARTY AND FOR WHICH THE OTHER PARTY MAY BE RESPONSIBLE HEREUNDER IN WHOLE OR IN PART, SUCH OTHER PARTY SHALL BE NOTIFIED AND PERMITTED TO PARTICIPATE IN THE HANDLING OR DEFENSE OF SUCH MATTER.

7.4 To protect, in whole or in part, its primary obligations under the indemnification provisions of this License Agreement, LICENSEE shall obtain and carry at its own cost contractual insurance in such form as shall be approved by the LICENSOR covering the liability assumed by the LICENSEE herein, in the following amounts: Bodily Injury \$5,000,000 for each person and \$5,000,000 for each accident; Property Damage \$5,000,000 for each accident. LICENSEE shall furnish

LICENSOR an appropriate certificate or certificates of insurance executed by an authorized representative of the insurer, evidencing the maintenance of the insurance coverage required herein and containing a provision to the effect that the insured will give the LICENSOR at least ten (10) days' prior written notice of any cancellation or modification of any such insurance policy. The aforesaid insurance requirement shall not be deemed to limit or relieve the primary liability of LICENSEE under the indemnification provisions hereof, but shall be deemed additional security therefor.

7.5 If LICENSEE contracts for new construction or structural alterations to the premises, LICENSEE shall provide or shall cause its contractor to provide, at no cost to LICENSOR, Protective Liability Insurance designating LICENSOR as named insured, with a limit of not less than Five Million (\$5,000,000.00) Dollars per occurrence subject to a Ten Million (\$10,000,000.00) Dollar aggregate limit for all bodily injury and property damage occurrences during each annual policy period. If the construction or alterations involve an exposure to train operations on tracks of LICENSOR, the protective liability insurance shall be on the AAR-AASHTO Form of Railroad Protective Insurance. The original protective liability policy shall be submitted to and approved by LICENSOR's Director Real Estate at 100 East First Street, Brewster, Ohio 44613, prior to commencement of the construction or alterations. Said address shall be the name insured's address for the purpose of all notices from the insurer.

8. LICENSEE'S COST.

All cost and expenses in connection with the construction, maintenance, repair, alteration, renewal, relocation and removal of said FACILITIES shall be borne by LICENSEE, and in the event of work being performed or material furnished by LICENSOR under the stipulated right to perform such work or construction, maintenance, repair, alteration, renewal, relocation or removal under any section hereof, LICENSEE agrees to pay to the LICENSOR the actual cost of material plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related material management expenses and the actual cost of labor plus the current applicable overhead percentages as developed and published by the accounting department of LICENSOR for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers liability insurance, public liability insurance, and other insurance, taxes and all other indirect expenses. It is to be understood that the aforementioned material and labor overhead charges are to be applied at the rates which are effective at the time of the performance of any work by employees of the LICENSOR on the said FACILITIES. LICENSEE agrees to pay such bills within thirty (30) days of the presentation thereof by LICENSOR.

9. CROSSING OR GRADE RELOCATION.

The LICENSEE shall at its sole cost and expense, upon request in writing of the LICENSOR, promptly change the location of said FACILITIES covered by this License Agreement, where located over, upon or in the property and facilities of the LICENSOR'S, to another location, to permit and accommodate changes of grade or alignment and improvements in or additions to the facilities of the LICENSOR upon land now or hereafter owned or used by the LICENSOR to the intent that said construction shall at all times comply with the terms and conditions of this Agreement with respect to the original construction; or in the event of the lease, sale or disposal of the premises or any part thereof encumbered by this license, then the said LICENSEE shall make such adjustments or relocations in its facilities as are over, upon or in the property and facilities of the LICENSOR as may be required by the said LICENSOR or its grantee; and if the LICENSEE shall fail or refuse to comply therewith, then the duly authorized agents of the LICENSOR may make such repairs or adjustments or changes in location and provide necessary material therefor.

10. TERMINATION REMOVAL.

Upon termination of this License Agreement or upon the removal or abandonment of the FACILITIES covered hereby, all the rights, titles and interest of the LICENSEE hereunder shall cease, and this instrument shall thereupon become and be null and void, without any liability on the part of either party to the other party except only as to any liability accrued prior thereto,

and the LICENSEE shall remove its said FACILITIES and appurtenances from LICENSOR'S property and right-of-way, and all property of the LICENSOR shall be restored in good condition and to the satisfaction of the LICENSOR. If the LICENSEE fails or refuses to remove its FACILITIES and appurtenances under this foregoing conditions, the LICENSOR shall be privileged to do so at the cost and expense of the LICENSEE, and the LICENSOR shall not be liable in any manner to the LICENSEE for said removal.

11. SUBSIDENCE.

In the event the FACILITIES consist of an underground occupation, LICENSEE will be responsible for any settlement caused to the roadbed, right of way and/or tracks, facilities, and appurtenances of the LICENSOR arising from or as a result of the installation of the said FACILITIES for the term of this License Agreement and LICENSEE agrees to pay to LICENSOR on demand the full cost and expense therefore.

12. ELECTRICAL INTERFERENCE.

In the event the said FACILITIES consist of electrical power or communication wires and/or appurtenances, the LICENSEE shall at all times be obligated promptly to remedy any inductive interference growing out of or resulting from the presence of its FACILITIES; and if the LICENSEE should fail to do so, then LICENSOR may do so, and the LICENSEE agrees to pay to LICENSOR on demand the full cost and expense therefor.

13. TAX ASSESSMENTS.

As part of the consideration of the within Agreement, LICENSEE covenants and agrees that no assessments, taxes or charges of any kind shall be made against LICENSOR or its property by reason of construction of said FACILITIES of LICENSEE, and LICENSEE further covenants and agrees to pay to LICENSOR promptly upon bills rendered therefor the full amount of any assessments, taxes or charges of any kind which may be levied, charged, assessed or imposed against the LICENSOR or its property by reason the construction and maintenance of said FACILITIES of LICENSEE.

14. EXCLUSIVE LICENSE.

The rights conferred hereby shall be the privilege of the LICENSEE only, and no assignment or transfer hereof shall be made, or other use be permitted than for the purpose stated on Page One without the consent and agreement in writing of the LICENSOR being first had and obtained.

15. TERMINATION.

This License Agreement may be terminated by either party at any time upon not less than thirty (30) days' notice in writing sent by registered or certified mail to the other party. However, in the event of a breach of any of the covenants, terms and conditions hereof by LICENSEE, RAILROAD shall have the right to terminate this License immediately.

16. EFFECTIVE DATE.

This Agreement shall take effect as of the 1st day of June, 2007, subject to the provisions of Paragraph 19.

17. ABANDONMENT.

Anything herein contained to the contrary notwithstanding, there shall be no obligation on the part of the LICENSOR to continue operation of the line of railroad in the LICENSEE's occupation rights at any crossing or occupation covered hereunder on account of an abandonment of line.

or service by the LICENSOR; nor shall there be any objection upon the LICENSOR to perfect its title in order to continue in existence the said occupation rights after such abandonment of line or service.

18. APPROVAL.

This Agreement will not become valid until the method of installation and all related matters have been approved by the VICE PRESIDENT OF ENGINEERING - Design and Construction of LICENSOR or his duly designated representative.

19. MILEAGE.

Automobile mileage charges incurred by aforementioned LICENSOR Inspectors, Flagmen or Watchmen in connection with the installation, maintenance, etc., of said FACILITIES will be based on allowances approved by the United States Government in effect at the time the expenses are incurred.

20. RIGHT OF WAY.

LICENSEE agrees that it will provide Railroad Protective Insurance or such other insurance coverage as is prescribed by LICENSOR.

21. SPECIFICATION.

In the design, construction, arrangement and maintenance of said FACILITIES, the Rules and Specifications of the Ohio Public Utility Commission covering the construction at crossings of underground or over-head line of public utilities, shall govern, if applicable; if not applicable, the decision of the VICE PRESIDENT OF ENGINEERING of the LICENSOR shall govern and control.

22. ENTRY NOTICE.

The LICENSEE agrees to advise the LICENSOR'S Vice President of Engineering or his designee, seventy-two (72) hours in advance and receive his approval and request flag protection before entering on Licensor's right of way by calling Heidi Kaiser at 330-767-7229.

23. CABLE LOCATION.

It is the responsibility of LICENSEE to have knowledge of, locate, and protect against damage to fiber optic cables along, across or under LICENSOR's right of way. Any damage to or disruption of any fiber optic cable will be the sole responsibility of LICENSEE which will indemnify and hold harmless the LICENSOR for any expense resulting there from. Before any construction may commence, the following number, where applicable, must be called: 1-800-362-2764. Calling such number or numbers shall not release or otherwise diminish the remaining obligations of the LICENSEE hereunder.

24. GENERAL PROVISIONS.

24.1 A determination that any part of this License Agreement is invalid shall not affect the validity or enforceability of any part of this Agreement.

24.2 This Agreement shall be governed by the laws of the State of Ohio.

24.3 As used in this Agreement, the words, "LICENSOR'S", "LICENSOR" and "LICENSEE", "LICENSEE's" shall include the respective subsidiaries, directors, officers, agents, and employees of LICENSOR and LICENSEE.

24.4 This Agreement is for the exclusive benefit of the parties and not for the benefit of any other party. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against LICENSOR and LICENSEE.

24.5 Section headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

24.6 This Agreement contains the entire agreement of the parties and supersedes any prior written or oral understanding, agreements or representations.

24.7 This Agreement may not be amended, waived or discharged except by an instrument in writing signed by the parties.

24.8 All words, terms, and phrases used in this Agreement shall be construed in accordance with their generally applicable meaning in the railroad industry.

24.9 Except as otherwise provided in this Agreement, all notices to be sent from one party to the other shall be in writing and mailed by United States certified mail, postage prepaid. Notices directed to LICENSOR shall be addressed to Wheeling & Lake Erie Railway Company, 100 East First Street, Brewster, OH 44613. Notices directed to Industry shall be sent to the address listed for Industry in the preamble of this Agreement.

III. EXECUTION

IN WITNESS WHEREOF, the said parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

WITNESS:

WHEELING & LAKE ERIE RAILWAY
COMPANY

By: _____
Chairman & CEO

Date: _____

WITNESS:

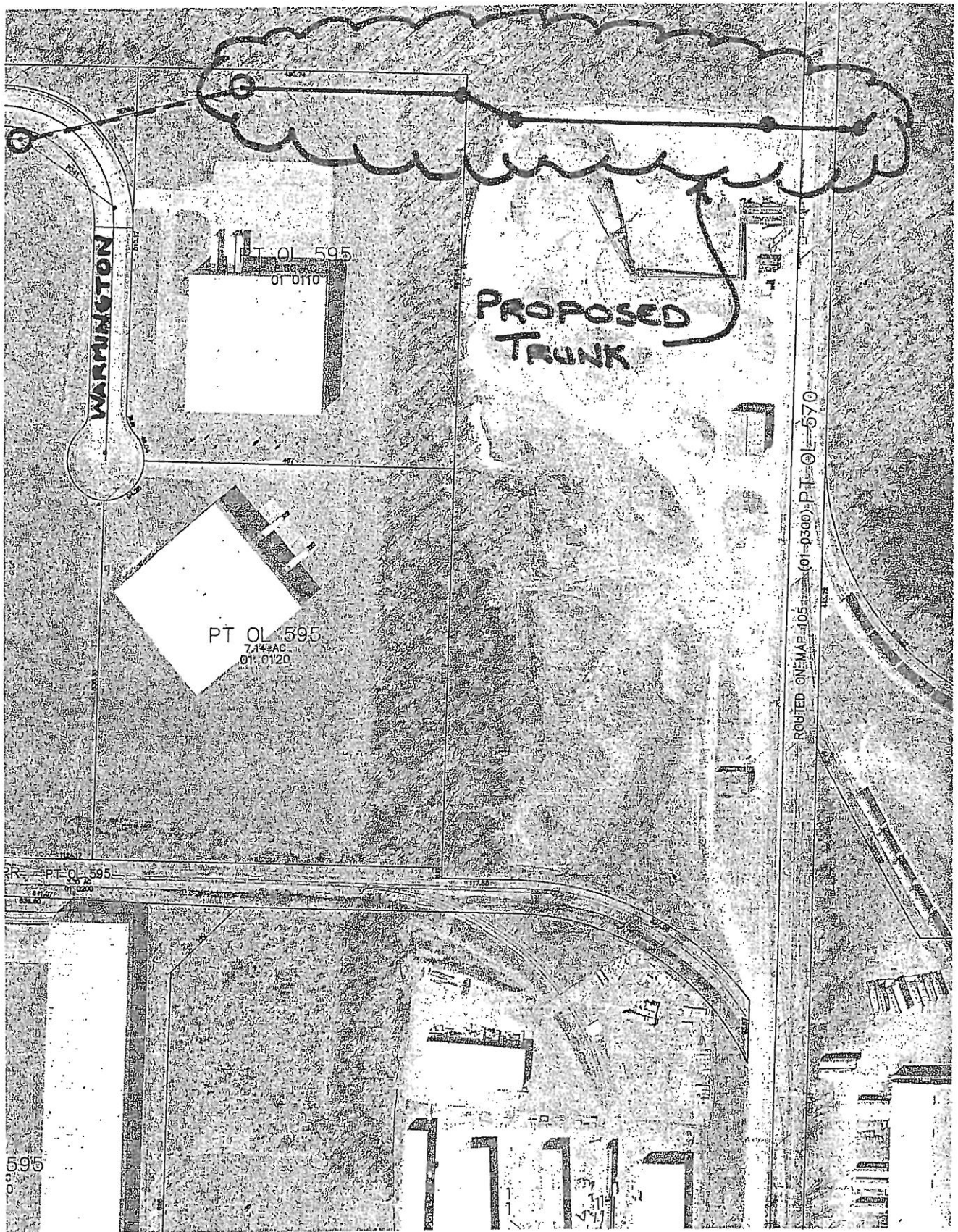
CITY OF MASSILLON

By: _____
Title

Date: _____

WHEELING & LAKE ERIE RAILWAY COMPANY
PUBLISHED FLAGGING RATES EFFECTIVE
JULY 1, 2005

<u>Classification Description</u>		<u>Daily Rate</u>
Rate 1	Monday-Friday (non-holiday) 8 hours or less actual time on job site	\$500.00
Rate 2	Monday-Friday (non-holiday) over 8 hour's actual time on Job site not exceeding 12 hours	\$650.00
Rate 3	Saturday or Sunday not exceeding 12 hours	\$800.00
Rate 4	Holiday not exceeding 12 hours	\$1,100.00



PT 01 569
103.00 AC
01 0200

NEO-COM

PT 01 569
13.00 AC
01 0400

01 19-4
14.07 AC
1302 0200

MILLENNIUM BLVD SE 80

DATE: JUNE 18, 2007 CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

Passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 73 - 2007

BY: ENVIRONMENTAL COMMITTEE

TITLE: AN ORDINANCE authorizing the Law Director of the City of Massillon, Ohio, to enter into an agreement with Bricker and Eckler LLP, to provide legal services in the form of representing the City of Massillon, Ohio, and declaring an emergency.

WHEREAS, the City of Massillon, Ohio, entered into a contract with Kokosing Construction for an upgrade of the Wastewater Treatment Plant and a dispute has arisen concerning completion of the upgrade, quality of the construction, and payment to Kokosing.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

That the Law Director of the City of Massillon, Ohio, be and is hereby authorized to enter into an agreement with Bricker and Eckler LLP to provide legal services in the negotiation, analysis, and related matters with regard to Kokosing Construction, the Wastewater Treatment Plant upgrade, and issues concerning the construction and completion of the upgrade.

Section 2:

The cost of the representation shall be paid from the Wastewater Treatment Plant accounts.

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety, and welfare of the community and for the further reason that this ordinance is vitally essential for the continued efficient operations of the Wastewater Treatment Plan and the City of Massillon, Ohio. Wherefore, this ordinance shall be in full force and effect immediately from and after its passage and upon approval by the Mayor.

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DATE: JUNE 18, 2007

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

ORDINANCE NO. 74 - 2007

1st reading
LEGISLATIVE DEPARTMENT

2nd reading 7/2
passed 7/16

BY: POLICE AND FIRE COMMITTEE

TITLE: AN ORDINANCE repealing Section 761.09 "Schedule of Rates" under CHAPTER 761 "TOWING COMPANIES" of the Codified Ordinances of the City of Massillon, Ohio, and enacting a new Section 761.09 "Schedule of Rates" under CHAPTER 761 "TOWING COMPANIES" of the Codified Ordinances of the City of Massillon, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

Section 761.09 "Schedule of Rates" under CHAPTER 761 "TOWING COMPANIES" of the Codified Ordinances of the City of Massillon, Ohio, be and is hereby repealed.

Section 2:

That there be and hereby is enacted a new Section 761.09 "Schedule of Rates" under CHAPTER 761 "TOWING COMPANIES" of the Codified Ordinances of the City of Massillon, Ohio. Said new section shall read as follow:

(SEE ATTACHED)

Section 3:

This ordinance is hereby declared to be an emergency measure, the reason for the emergency being that said amendment is necessary for the more efficient operation of towing and storage of vehicles within the City of Massillon and for the preservation of the public health, safety and welfare of the community. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

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761.09 SCHEDULE OF RATES

LIGHT DUTY TOWING

Passenger cars, vans, motorcycles and trucks up to an including
3/4 ton with up to 16" tires..... \$ 80.00

HEAVY DUTY TOWING

Vehicles with one (1) ton or greater capacity and or 16" tires or
larger..... \$155.00

Tractor and Trailers with 10.00x20 tires or larger..... \$205.00

STORAGE CHARGES

Light Duty Towing (Per Day).....\$ 12.00

Heavy Duty Towing - Straight Trucks (Per Day)..... \$ 22.00

Tractor & Trailers (Per Day Per Piece).....\$ 22.00

ADDITION CHARGES

The following are additional services which may be needed in conjunction with or in
additional to standard towing services, all services and charges listed hereafter shall be in
addition to the above standard towing charges.

Dollies - Flatbed service.....\$ 40.00 Extra

Winching (after 25 feet).....\$ 1.00 per foot

Disconnect transmission linkage.....\$ 20.00

Unlock doors for towing.....\$ 20.00

Extra labor and/or extra truck (to be charged only in
extraordinary circumstances).....\$ 50.00 per hr
light duty
\$ 150.00 per hr
heavy duty

Call out and no tow needed.....\$ 40.00 light duty
\$100.00 heavy duty

After Hours Gate fee for releasing vehicles.....\$ 20.00

DATE: JUNE 18, 2007

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

Passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 75 - 2007

BY: STREETS, HIGHWAYS, TRAFFIC & SAFETY COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for, receive sealed bids and enter into a contract, upon award and approval of the Board of Control, with the lowest and best bidder for the Cherry Road NW Improvement Project in the City of Massillon, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby determines it to be necessary in the public health, safety and welfare to advertise for, receive sealed bids and enter into a contract, upon award and approval of the Board of Control, with the lowest and best bidder for the Cherry Road NW Improvement Project in the City of Massillon.

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized and directed to prepare plans and specifications and to advertise for, receive sealed bids according to law, and to enter into contract upon award and approval by the Board of Control, with the lowest and best bidder for the Cherry Road NW Improvement Project in the City of Massillon.

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and welfare of the community and for the additional reason that it is necessary that bids be received so that work may be completed on the Cherry Road NW Improvement Project. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

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DATE: JUNE 18, 2007

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

Passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 76 - 2007

BY: STREET, HIGHWAYS, TRAFFIC & SAFETY COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to enter into an agreement with the Stark County Board of Commissioners for the Hills and Dales Road Widening Project, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby finds that it is necessary to enter into an agreement with the Stark County Board of Commissioners for the Hills and Dales Road Widening Project between Aaronwood Avenue and Brunnerdale Avenue.

Section 2:

The Mayor and the Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized and directed to enter into an agreement with the Stark County Board of Commissioners for the Hills and Dales Road Widening Project between Aaronwood Avenue and Brunnerdale Avenue.

(SEE ATTACHED)

Section 3:

This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety, and welfare of the community, and for the reason that it is necessary to enter into an agreement with the Stark County Board of Commissioners so the widening project can be completed for Hills and Dales Road between Aaronwood Avenue and Brunnerdale Avenue. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

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AGREEMENT.

HILLS & DALES ROAD WIDENING (Arronwood Avenue to Brunnerdale Avenue)

This Agreement is made and entered into this _____ day of _____, 2007, by and between the Board of Stark County Commissioners, hereinafter referred to as the *COUNTY*, duly authorized by a resolution adopted on the _____ day of _____, 2007, and the *CITY OF MASSILLON*, hereinafter referred as the *CITY*, duly authorized by Ordinance No. _____ on the _____ day of _____, 2007.

WHEREAS, there is currently a section of *HILLS & DALES ROAD* from *Arronwood Avenue* to *Brunnerdale Avenue* in Stark County and partially within the City of Massillon, Ohio, in need of widening; and

WHEREAS, the *COUNTY* and *CITY* wish to improve the section of roadway; and

WHEREAS, the project currently lies within the *CITY* and within the *COUNTY*, the *COUNTY* and the *CITY* will each have certain responsibilities towards the project which will need to be agreed upon; and

WHEREAS, the parties wish to resolve their respective liabilities or obligations with respect to the design and construction of this project at said location; and

WHEREAS, it is in the best interests of the *COUNTY* and *CITY* to cooperate in the improvement of the *Hills and Dales Road widening project from Arronwood Avenue to Brunnerdale Avenue*; and

WHEREAS, under ORC 307.15, the *CITY* has the authority to enter into an Agreement with the *COUNTY* for the above described improvement.

NOW, THEREFORE, in consideration of the covenants and agreement contained herein, it is mutually agreed by and between the parties as follows:

1. That the *COUNTY* will advertise and choose a Consulting Engineer to prepare an environmental document and design plans for the project.
2. The *COUNTY* will enter into an Agreement with the *CONSULTANT* and negotiate a fee agreeable to both parties. The *COUNTY* will pay all design costs for this project. The *COUNTY* will review the plans for compliance with ODOT and *COUNTY* specifications.
3. The *COUNTY* will provide the Construction Supervision for the project.
4. The *COUNTY* shall negotiate and purchase all necessary right-of-way within the corporation limits of the *CITY*.

5. The *COUNTY* by Board of Commissioners Resolution will appropriate any right-of-way necessary for the improvement within the limits of the *CITY* that cannot be acquired without appropriation proceedings. The *COUNTY* will take that right-of-way in the name of the *COUNTY*. The *COUNTY* will, at the completion of the construction of the improvement, via agreed upon legal instrument, transfer the right-of-way within the city limits to the *CITY*.
6. The *COUNTY* will obtain Federal Highway Administration Funds to pay for 80% of the construction costs of the project and also Ohio Public Works Funds for 20% of the construction costs, with the *CITY* as a joint sponsor.
7. Prior to the completion of the project the *COUNTY* shall resurface Hills & Dales Road within the *CITY* limits of Massillon (from S.R. 241 to Arronwood Avenue). This resurfacing will be funded 100% by the *COUNTY*.
8. Upon completion of the project, the *COUNTY* will continue to maintain the new roadway and any traffic signals. The *CITY* will continue to maintain that portion of the roadway within the limits of the *CITY*.
9. This Agreement contains the entire agreement by and between the parties and the terms contained herein are contractual and are not a mere recital.

IN WITNESS WHEREOF, we have hereunto set our hands to this instrument this _____ day of _____, 2007.

WITNESSES:

CITY OF MASSILLON

WITNESSES:

THE BOARD OF COMMISSIONERS
STARK COUNTY, OHIO

Approved as to legal
form and sufficiency:

By: _____
Assistant Prosecuting Attorney
Stark County, Ohio

DATE: JUNE 18, 2007

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

Passel
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 77 - 2007

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE making certain appropriations from the unappropriated balance of the 1406 Wastewater Treatment Capital Improvement Fund, 1423 South Massillon Trunk Sewer Fund, 1240 Veterans Park and Duncan Plaza Fund, Street Fund, 1206 Muni Motor Vehicle License Plate Fund and the Bond Retirement WWT Fund, for the year ending December 31, 2007, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

There be and hereby is appropriated from the unappropriated balance of the 1406 Wastewater Treatment Capital Improvement Fund, for the year ending December 31, 2007, the following:

\$60,472.00 to an account entitled "Championship Sewer Repair" 1406.610.2512

Section 2:

There be and hereby is appropriated from the unappropriated balance of the 1423 South Massillon Trunk Sewer Fund, for the year ending December 31, 2007, the following:

\$16,800.00 to an account entitled "South Massillon Trunk Project" 1423.905.2510

Section 3:

There be and hereby is appropriated from the unappropriated balance of the 1240 Veterans Park and Duncan Plaza Fund, for the year ending December 31, 2007, the following:

\$10,000.00 to an account entitled "Services/Contracts" 1240.125.2392

Section 4:

There be and hereby is appropriated from the unappropriated balance of the Street Fund, for the year ending December 31, 2007, the following:

\$3,700.00 to an account entitled "Services/Contracts" 1201.435.2392

Section 5:

There be and hereby is appropriated from the unappropriated balance of the 1206 Muni Motor Vehicle License Plate Fund, for the year ending December 31, 2007, the following:

\$3,500.00 to an account entitled "Services/Contracts" 1206.405.2392

\$ 700.00 to an account entitled "Storm Sewer Repairs" 1206.425.2510

Section 6:

There be and hereby is appropriated from the unappropriated balance of the Bond Retirement WWT Fund, for the year ending December 31, 2007, the following:

\$3,300.00 to an account entitled "Fees" 1305.940.2393

Section 7:

This Ordinance is hereby declared to be an emergency measure, for the efficient operation of the various departments of the City of Massillon and for the preservation of the public health, safety and welfare of the community. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED IN COUNCIL THIS _____ DAY OF _____ 2007

APPROVED: _____
MARY BETH BAILEY, CLERK OF COUNCIL

GLENN E. GAMBER, PRESIDENT

APPROVED: _____

FRANCIS H. CICCHINELLI, JR, MAYOR

DATE: JUNE 18, 2007

CLERK: MARY BETH BAILEY

CITY OF MASSILLON, OHIO

COUNCIL CHAMBERS

Passed
LEGISLATIVE DEPARTMENT

ORDINANCE NO. 78 - 2007

BY: FINANCE COMMITTEE

TITLE: AN ORDINANCE authorizing the Director of Public Service and Safety of the City of Massillon, Ohio, to advertise for, receive sealed bids and enter into contract upon award and approval of the Board of Control, with the lowest and best bidder for the purchase of fuel for city vehicles at an off-site location, and declaring an emergency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MASSILLON, STATE OF OHIO, THAT:

Section 1:

The Council of the City of Massillon, Ohio, hereby determines it to be necessary in the public health, safety and welfare to advertise for, receive sealed bids and enter into a contract, upon award and approval of the Board of Control, with the lowest and best bidder for the purchase of fuel for city vehicles at an off-site location.

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized to advertise for, receive sealed bids and enter into contract with the lowest and best bidder for the purchase of fuel for city vehicles at an off-site location.

Section 3:

This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the health, safety and welfare of the community, and for the additional reason with the continuing high cost of fuel for city vehicles to go out for bids for the purchase of fuel for the efficient operation of the various departments. Provided it receives the affirmative vote of two-thirds of the elected members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

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