

DATE: MAY 5, 2008

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL
CITY OF MASSILLON, OHIO
GLENN E. GAMBER, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 71 - 2008

BY: STREETS, 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 easement renewal agreement with the State of Ohio, for sanitary sewer lines, located on property owned by the State of Ohio, 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 easement renewal agreement with the State of Ohio, for sanitary sewer lines, located on property owned by the State of Ohio.

(SEE ATTACHED EXHIBIT "A" HERETO)

Section 2:

The Director of Public Service and Safety of the City of Massillon, Ohio, is hereby authorized to enter into an easement renewal agreement with the State of Ohio, for sanitary sewer lines, located on property owned by the State of Ohio.

Section 3:

That this Ordinance is hereby declared to be an emergency measure for the reason that the easement renewal agreement with the State of Ohio for sanitary sewer lines located on property owned by the State of Ohio. 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 5th DAY OF May 2008

APPROVED:

MARY BETH BAILEY, CLERK OF COUNCIL

GLENN E. GAMBER, PRESIDENT

APPROVED

May 6, 2008

FRANCIS H. CICCHINELLI, JR., MAYOR

I hereby certify that the foregoing ordinance is a true copy of the original, as passed by the Council of the City of Massillon, Ohio, and approved as noted thereon:

Clerk of Council

Date

5/5/08

STATE OF OHIO EASEMENT

THIS AGREEMENT ("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, Real Estate Services, 4200 Surface Road, Columbus, Ohio 43228-1395, (hereinafter referred to as "State"), for and on behalf of the Ohio Department of Mental Health (hereinafter referred to as "Agency"), and the City of Massillon, a body politic (the "Grantee"), having its principal place of business located at Massillon Municipal Government Center, One James Duncan Plaza, Massillon, Ohio 44646, pursuant to the provisions of O.R.C. §123.01(A)(9).

WHEREAS, the State is the owner, in fee simple absolute, of the land described below (the "Easement Area") and more particularly depicted in Exhibit "A" attached hereto and made a part hereof:

DESCRIPTION:

Known as and being Part of O.L. 560 in the City of Massillon, and Part of the Northeast Quarter Section 20, Perry Township, Stark County, Ohio, and more fully described as follows:

Beginning at an existing iron pin at the Northwest corner of the property presently owned by the State of Ohio; said iron pin being on the south line of O.L. 550; thence S1°43'23"W, a distance of 85.50' to a point; said point being the place of beginning of the easement herein described; thence along the centerline of said easement S87°40'36"E, a distance of 4.00' feet to a point;

Thence continuing along said centerline of said easement N52° 11'10"E, a distance of 132.63' to a point on the north line of the State of Ohio property being the south line of O.L. 550; said point being S87°40'36"E, a distance of 106.29' from the existing iron pin at the northwest corner of the State of Ohio property; said easement being 25' in width, 10' northwest of said described line and 15' southeast of said line;

Further reference is made to File No. 5182 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

WHEREAS, the Grantee desires to obtain from the State the within easement in order to permit the installation, construction, reconstruction, use, operation, maintenance, repair, replacement, removal, servicing and improvement of a certain sanitary line upon the Easement Area; and

WHEREAS, the Agency requested the Department of Administrative Services to prepare this Agreement; and

WHEREAS, the Department of Administrative Services has determined that little or no adverse impact will occur to adjoining State-owned lands from the granting of the within easement, provided that Grantee fully adheres to all of the provisions hereof;

NOW, THEREFORE, in exchange and in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged, the parties hereto agree as follows:

1. Use of Premises.

The 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 sanitary line (the "Improvement"). On or before the Expiration Date (as defined below) or earlier if this Agreement is terminated pursuant to the provisions hereof, Grantee shall at its own cost and expense, if State so requests, remove, or cause the removal of, all component parts of the Improvement and restore the ground to its original condition unless the parties agree otherwise in writing.

2. Term.

The term of this Agreement shall be for fifteen (15) years, commencing on September 22, 2008, (the "Commencement Date") and expiring on September 21, 2023, (the "Expiration Date"), unless earlier terminated pursuant to a subsequent agreement between the parties or in accordance with the provisions of paragraph 10 hereof.

3. Consideration.

Grantee shall pay to Agency the total sum of one dollar (\$1.00) in consideration of the State's granting the within 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.

4. Construction/Maintenance.

- (A) The Improvement shall at all times be installed, constructed, reconstructed, used, operated, maintained, repaired, replaced, removed, serviced and improved in accordance with all local, state or federal laws, rules and regulations and applicable industry guidelines, including compliance with 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 later than one (1) year after the date of such disturbance as may be needed to restore the ground to its former condition or pay the State for all damages caused thereto.
- (C) The State shall be immediately notified when any installation belonging to a party other than Grantee or any unusual condition is encountered in the field.
- (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) The State 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 the State's improvements do not unreasonably impair the strength of or unreasonably interfere with the Grantee's ability to use and maintain its Improvement.
- (F) Grantee shall comply with the provisions of O.R.C. §4115, Prevailing Wage Requirements, as applicable.
- (G) Grantee shall have the obligation, for the term of this easement, at its cost to maintain and repair the Improvement on a continuous and ongoing basis, which maintenance and repairs shall be performed in a good and workmanlike manner to protect the safety and aesthetics of the Improvement.

5. Liability.

Grantee shall protect, indemnify and hold the 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 Improvement or the Easement Area. Nothing contained herein shall be deemed to be a waiver by the State of any legal or factual defenses, which the State may enjoy.

The provision of this Paragraph 5 shall survive the expiration or termination of the term of this Agreement.

6. Insurance.

Grantee shall at all times during the term of this Agreement, 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. To protect the State's interest,

the Grantee shall provide written proof (which is acceptable to the State) to assure that the appropriate levels of financial responsibility are being retained. Failure to comply with this clause shall constitute a material breach of this Agreement.

7. Mechanic's Liens.

- (A) Nothing contained in this Agreement shall be construed as constituting the 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 the Property, or any portion thereof, other than (i) liens created by or resulting from any act or status of the State or failure by the State to perform any obligation not required to be performed by Grantee hereunder, or (ii) created by or resulting from any act or status or failure to act by Grantee to which the State shall have expressly consented in writing. If such a lien or encumbrance is placed of record against the Easement Area or the Property, or any portion thereof, the Grantee shall, within thirty (30) days after receiving notice thereof, remove or discharge same or to bond off such lien or encumbrance.

8. 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 at any time during the term of this Agreement 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 Property, 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.

9. Assignment.

This Agreement may not be assigned or transferred, in whole or in part, by Grantee without the prior consent of the Director of Administrative Services, which consent may be withheld for any reason. Should consent to any such assignment be granted, such assignment or transfer shall not relieve Grantee of its obligations and duties under the terms, covenants and conditions of this Agreement. Any assignee shall 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.

10. 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 the State for any public or quasi-public use or purpose. On or before the date stated in such notice of termination, Grantee shall, at its own cost and expense, if State so requests, remove, or cause the removal of all component parts of the Improvement and restore the ground to its former condition. Grantee shall have no claim against the State for the value of any unexpired portion of the original term of this Agreement or for the Improvement. Upon termination of this Agreement, the 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, and shall return 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 repaired as required herein, notwithstanding the stated date of termination in the notice provided by Grantee, or in the Agreement, but 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.

11. Default.

- (A) In the event 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 and the continuance of such failure for a period of fifteen (15) days after the giving of notice to Grantee by the State of such failure, (ii) the Grantee's failure to perform or observe any other covenant, condition or agreement herein contained on the Grantee's part to be performed or observed and the continuance of such failure without curing of same within thirty (30) days after the giving of notice to Grantee by State of such failure (provided that in the case of any default referred to in this clause (ii) which cannot with due diligence be cured within such thirty (30) day period, if Grantee shall proceed promptly and continuously to cure the same default with due diligence, then upon receipt by the State of a certificate from Grantee stating the reason that such default cannot be cured within thirty (30) days and stating that Grantee is proceeding with due diligence to cure such default, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of same with due diligence); then, the State may, at its option, give to Grantee 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 at its own cost and expense, if State so requests, remove or cause the removal of the Improvements.

- (B) Upon termination of this Agreement, the State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.
- (C) Upon the termination of this Agreement by reason of the happening of any event of default specified in this Paragraph 11, 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.

12. **Rights Cumulative.**

All rights and remedies of the 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.

13. **Waiver.**

The waiver by the State of, or the failure of the 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 the State shall not be deemed to be a waiver of any preceding breach by Grantee of any term, covenant or condition of this Agreement.

14. **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. registered or certified mail, return receipt requested, postage prepaid, (a) with respect to the State, addressed to:

Ohio Department of Administrative Services
General Services Division
Real Estate Services
4200 Surface Road
Columbus, Ohio 43228-1395
Attention: Real Estate Administrator

(b) with respect to Agency:

Ohio Department of Mental Health
30 East Broad Street, Suite 1160
Columbus, Ohio 43215
Attention: Chief, Office of Capital Development and Operations Management

and, (c) with respect to Grantee, addressed to:

City of Massillon
Municipal Government Center
One James Duncan Plaza
Massillon, Ohio 44646
Attention: Mayor

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.

15. **Modifications.**

This Agreement may not be changed, modified or discharged except by a writing signed by duly authorized representatives of both the State and Grantee.

16. **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.

17. **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.

18. **Campaign Contributions & Ethics Compliance**

Grantee hereby certifies that all applicable parties listed in Division (I) (3) or (J) (3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I) (1) and (J) (1) of O.R.C. Section 3517.13.

In accordance with Executive Order 2007-01S, Grantee, by signature on this document, certifies that it: (1) has reviewed and understands Executive Order 2007-01S, (2) has

reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The Grantee understands that failure to comply with Executive Order 2007-O1S is, in itself, grounds for termination of this Easement and may result in the loss of other contracts with the State of Ohio.

Grantee certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

INTENTIONALLY LEFT BLANK

The terms of the within State of Ohio Easement are accepted and agreed to by the Ohio Department of Mental Health

By: _____
Sandra Stephenson, Director

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: _____
TED STRICKLAND
Governor of Ohio

By: _____

Director of Administrative Services or
Signatory Designee
Statutory Agent, RC 123.01(A)(9)

ACKNOWLEDGMENT

State of Ohio, Franklin County, ss:

On this _____ day of _____, 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' 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 _____

APPROVED AS TO FORM:
MARC DANN
Attorney General

By: _____
Jessica A. Borgert
Assistant Attorney General

Approval as to Form

GRANTEE
City of Massillon

Pericles G. Stergios
City Law Director

By: _____
Francis H. Cicchinelli, Jr.
Mayor

Date: _____

ACKNOWLEDGMENT

State of Ohio, Stark County, ss:

On this _____ day of _____, before me personally appeared Francis H. Cicchinelli, Jr., Mayor of the City of Massillon, who acknowledged that he executed the foregoing State of Ohio Easement for and on behalf of the City of Massillon and that the same is he and the Grantee's free and voluntary act and deed, and that he is duly authorized to execute the same on behalf of the Grantee.

Notary Public, State of Ohio
My Commission Expires _____

This instrument was prepared by the Department of Administrative Services, General Services Division, Real Estate Services, 4200 Surface Road, Columbus, Ohio 43228-1395.

dgk:REL-132

Exhibit "A"

The image shows a document page with a grid-like structure, likely a ledger or form. The page is heavily degraded with noise and artifacts, making the text illegible. A large, dark, irregular shape is visible on the right side, possibly a stamp or a large mark.





January 31, 2008

Mr. Perry Stergios
City of Massillon
2 James Duncan Plaza
Massillon, Ohio 44646

Re: Easement with the State of Ohio
File No. 5182
Stark County

Dear Mr. Stergios:

Enclosed are three (3) originals of the proposed Easement Renewal prepared by the State of Ohio for sanitary sewer line purposes on state owned land under the jurisdiction of the Ohio Department of Mental Health. This instrument shall be for a period of fifteen (15) years, commencing September 22, 2008 and ending September 21, 2023.

Please review the attached, have signed where indicated and return all originals including an authorization for the signature to this office for further processing by the State of Ohio. Once the documents are fully executed, an original will be returned for your records.

If you should have any questions, please contact me at 614-466-6746.

Sincerely,

A handwritten signature in black ink that reads "Deb Kuehn". The signature is written in a cursive, flowing style.

Deb Kuehn
Real Estate Specialist

R-135
MW-

Enclosures