

REQUEST FOR LEGISLATION TO:

PARKS AND RECREATION COMMITTEE

REQUEST LEGISLATION FOR:

1/12/2015

DEPARTMENT REQUESTING LEGISLATION:

Parks and Recreation Department



Mayor

MAYOR'S APPROVAL:

Date:

1-7-15

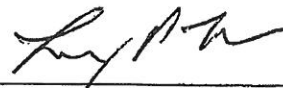
AVAILABILITY OF FINANCES:

Auditor

Date:

SUBJECT OF REQUESTED LEGISLATION:

City of Massillon is requesting legislation to authorize Mayor to enter into a Trailway Easement Agreement on behalf of the City of Massillon, as Grantor, with the Stark County Park District, an Ohio Political Subdivision, in Canton, Ohio as Grantee. This Trailway Easement Agreement is for an area referred to as the Wheeling and Lake Erie Railroad area south of Warmington Road to Wooster Road. The Trailway Easement Agreement covers numerous acres, parcels and lots across Massillon where the City of Massillon is owner and identified and detailed in the Trailway Easement Agreement and exhibits. The Grantor and Grantee declares their intent to establish a permanent easement on the location and maintenance of an existing hike and bike path and across the Grantor's Property. The Easement Agreement is in consideration of One Dollar.



Date Given to Auditor: 1-7-15

Date Given to Council Clerk:

MHAD 1-12-15

B. L. 1-12-15

Wheeling & Lake Erie
Railroad
Wilmington Road
- South to
Wooden Street
Easement

[Space Above This Line for Recording Data]

TRAILWAY EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, ("Agreement"), is entered into as of the _____ day of _____, 2014, by and between CITY OF MASSILLON, an Ohio Municipal Corporation, (the "Grantor"), and STARK COUNTY PARK DISTRICT, an Ohio Political Subdivision, (the "Grantee").

RECITALS

WHEREAS, the Grantor is the owner of a certain 4.58 acres of land known as and being Outlot 877 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 68, Page 110 of the Stark County Records, being Stark County Auditor's Parcel No. 580014, and claims title through instrument recorded at Stark County Official Records Imaging No.199906300050784; and

WHEREAS, the Grantor is the owner of a certain 1.26 acres of land known as and being Outlot 844 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 67, Pages 57-59 of the Stark County Records, being Stark County Auditor's Parcel No. 580018, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain 8.22 acres of land known as and being Outlots 845 and 846 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 67, Pages 57-59 of the Stark County Records, being Stark County Auditor's Parcel No. 580020, and claims title through instrument recorded at Stark County Official Records Imaging No.199906300050784; and

WHEREAS, the Grantor is the owner of a certain 2.95 acres of land known as and being Outlot 847 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 67, Pages 57-59 of the Stark County Records, being Stark County Auditor's Parcel No. 980001, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain 1.562 acre parcel of real estate situated in the Village of Navarre, Stark County, Ohio, being Stark County Auditor's Parcel No. 61280067, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor is the owner of a certain 1.38 acres of land known as and being Outlot 848 in the City of Massillon, Stark County, Ohio, as set forth in Plat Book 67, Pages 57-59 of the Stark County Records, being Stark County Auditor's Parcel No. 980002, and claims title through instrument recorded at Stark County Official Records Imaging No. 199906300050784; and

WHEREAS, the Grantor and Grantee have declared their intent to establish a permanent easement for the location and maintenance of a trail, over and across the Grantor's Property in the location set forth in "Exhibit A" attached hereto, (the "Easement Area") known formerly as a portion of the Wheeling & Lake Erie Railroad.

NOW THEREFORE, in consideration of the forgoing, and for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. Grant of Easement. Grantor hereby gives, grants, conveys, extends and confers unto the Grantee, its successors and assigns, the right, privilege and easement, for a permanent twenty-five foot (25') easement for the location and maintenance of a twelve foot (12') wide walking and biking trail over and across the Grantor's Property (being the former Wheeling & Lake Erie Railroad property) in the location of the Easement Area (as set forth in Exhibit "A" attached hereto).

2. Use Restrictions and Performance Covenants. Grantor hereby restricts the use of the Easement Area to be used only as open space; provided, however, that Grantee, or its respective nominee(s), shall maintain said trail with related landscaping and additional improvements appropriate thereto, including by way of example; benches, pedestrian roadway crossings & signals, and signage, all of which shall be maintained by Grantee in good condition. The Easement Area shall be used exclusively for the purpose

of the operation, repair, maintenance, re-building, replacing, and relocating, and appurtenances thereto, all of which shall be the Grantee's responsibility.

3. Adjacent Property. The rights of the Grantee and its agents, employees, invitees, successors and/or assigns are limited to the Easement Area. Grantee shall post signs (i.e. "No Trespassing") within the Easement Area to provide notice that the property adjacent to the Easement Area is private property and to limit use of the walking/biking trails and related park facilities to within the boundaries of the Easement Area.

4. Maintenance/Repair. Grantee shall be responsible for the overall maintenance of Easement Area and shall generally maintain the area for safe usage. If Grantee enters upon Grantor's Property to maintain and/or repair the Easement Area, Grantee shall promptly restore any area affected by such maintenance or repair work at its own expense to its condition immediately prior to such work to the extent compatible with the exercise by Grantee of its easement rights.

5. Indemnification by Grantee. Grantee shall indemnify, save, hold harmless, and defend the Grantor, its agents and employees, from and against any actual or alleged loss, damage, liability, or expense, including reasonable legal fees, because of any injury to person or property, including property owned by Grantor and Grantor's successors and assigns, caused by any act or omission of Grantee, its agents, lessees, employees, invitees, successors, assigns, contractors, or any other person in connection with Grantee's maintenance, repair and/or use of the Easement Area.

6. Agreement Runs with the Land. The provisions of this Agreement shall run with the land and shall inure to the benefit of and be binding upon the Grantee, the Grantor and their respective successors and assigns.

7. Matters of Record. The easement rights granted herein are subject to all existing matters of record.

8. Counterparts. The Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

9. Prevailing Party Legal Fees. In the event that any party hereto institutes legal action to enforce the provisions of this Agreement, the prevailing party therein shall be entitled to be awarded by the court reasonable attorney's fees (including the reasonable cost of in-house and/or staff counsel) incurred in such action.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

CITY OF MASSILLON,
an Ohio Municipal Corporation – Grantor

By: _____
Kathy Catazaro-Perry, Mayor

STARK COUNTY PARK DISTRICT,
an Ohio Political Subdivision - Grantee

By: _____
Robert A. Fonte, Director

STATE OF OHIO :
:SS:
COUNTY OF STARK :

BE IT REMEMBERED, that on this _____ day of _____, 2014, before me a Notary Public in and for said County, personally came the above named CITY OF MASSILLON, an Ohio Municipal Corporation, by Kathy Catazaro-Perry, its Mayor, who acknowledged that she did sign the foregoing instrument and the same is the free act and deed of the said CITY OF MASSILLON, and of her personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Massillon, Ohio, on this day and year aforesaid.

NOTARY PUBLIC

My commission expires: _____

STATE OF OHIO :
 :SS:
COUNTY OF STARK :

BE IT REMEMBERED, that on this _____ day of _____, 2014, before me a Notary Public in and for said County, personally came the above named STARK COUNTY PARK DISTRICT, an Ohio Political Subdivision, by Robert A. Fonte, its Director, who acknowledged that he did sign the foregoing instrument and the same is the free act and deed of the said STARK COUNTY PARK DISTRICT, and of him personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Canton, Ohio, on this day and year aforesaid.

NOTARY PUBLIC

My commission expires: _____

Approved as to legal form and sufficiency

WILLIAM F. MORRIS
Counsel for the Stark County Park District

This instrument prepared by:

WILLIAM F. MORRIS, ESQ.
520 East Main Street – Suite 200
Alliance, Ohio 44601
(330) 823-3575

Wilmington Road

Former Wheeling & Lake Erie Lands

Legend

Former W&LE Lands

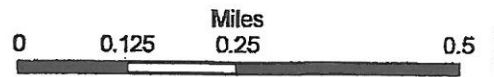
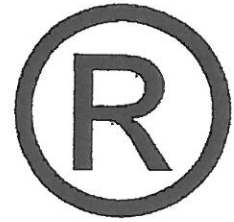


EXHIBIT A



330.477.3552
www.StarkParks.com

KG 12/10/13

Wooster Street