

LORAIN COUNTY

Board of Commissioners
Ted Kalo Lori Kokoski Tom Williams



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Fee Amt: \$0.00 Page 1 of 21
Lorain County, Ohio
Judith M Nedwick County Recorder
File **2013-0481481**

- County Administrator
James R. Cordes
440-329-5760
- Clerk of Board of Commissioners
Theresa Upton
440-329-5103
- Animal Control Officer
J. A. Szlempa Sr.
440-326-5997
- Budget Director
Lisa Hobart
440-329-5201
- Charles Berry Bridge Supervisor
Stan Koziura
440-244-2137
- Children & Family Council
Melissa Stefano
440-284-4467
- Community Development
Don Romancak
440-328-2323
- E-9-1-1 Director
Robin Jones
440-329-5444
- Emergency Management &
Homeland Security Director
Thomas Kelley
440-329-5117
- Golden Acres Administrator
Jeri Dull
440-988-7210
- Human Resources Department
440-329-5150
- IT Director
Ernie Smith
440-329-5786
- Lorain County Transit
440-329-5525
- Maintenance Director
Dennis Shawver
440-329-5326
- Office on Aging Director
Patricia Littleton
440-329-4818
- Office of Sustainability Director
Michael Challenger
440-328-2361
- Purchasing
440-329-5225
- Records Center Supervisor
Lynn Wallace-Smith
440-326-4866
- Solid Waste Director
Keith Bailey
440-329-5442
- Special Projects Manager
Karen Davis
440-329-5102
- Workforce Development
440-284-1830

November 30, 2011

Deb Kuehn
Commercial Real Estate Specialist
Ohio DAS – General Services Divisions
4200 Surface Road
Columbus, Ohio 43228

Dear Ms. Kuehn:

Enclosed is Resolution No. 11-776 adopted by the Lorain County Board of Commissioners on November 30, 2011 approving & entering into an easement with the State of Ohio for storm sewer drainage purposes on property under the jurisdiction of the Department of Rehabilitation and Correction, effective December 1, 2011 – November 30, 2026, part of the Island Road resurfacing project, Eaton Township.

This is being forwarded for your information, along with the documents for your distribution. Once fully executed, please return a copy for my files.

Sincerely,

Theresa L. Upton
Clerk

tlu
Enclosure

Cc: Ken Carney, LC Engineer
Susan Lux, Purchasing
File
JUDY NEDWICK - LC RECORDER

NOV 30 2011

In the matter of approving & entering into an easement)
 with the State of Ohio for storm sewer drainage purposes)
 on property under the jurisdiction of the Department of)
 Rehabilitation and Correction, effective December 1, 2011)
 – November 30, 2026, part of the Island Road resurfacing)
 project, Eaton Township)

November 30, 2011

WHEREAS, Deb Kuehn, Commercial Real Estate Specialist, from Ohio DAS General Services Division by letter dated October 4, 2011 submitted the following:

“Enclosed are three original State of Ohio Easement documents granted to the Lorain County Commissioners for storm sewer drainage purposes on property under the jurisdiction of the Department of Rehabilitation and Correction. The term of the easement is fifteen (15) years, beginning December 1, 2011 and ending November 30, 2026.

Please review the documents, have executed 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 have any questions, do not hesitate the contact me at 614-466-6746.
 Sincerely, S/Deb Kuehn”; and

WHEREAS, Assistant Lorain County Prosecutor Gerald A. Innes submitted the following letter dated October 17, 2011;

“I have reviewed the above-captioned document. I have gone ahead and signed the same, as these are State forms and if the county wants the easement, it will have to accede to their terms. Nevertheless, I have a number of concerns regarding the same.

Par. 1:

This provides that at the end of the term, November 30, 2026, the improvement will be removed unless otherwise agreed. I cannot conceive of any reason now why the state would want a sewer line removed, but the possibility exists and it would be an expensive proposition.

Par. 6:

Jonette should check with CORSA to see how this fits with the County coverage.

Par 10:

Although the term of the agreement is 15 years, this gives the State the right to end it upon 90 day’s notice if the State needs the area. Again, I do not know what would cause the State to do that, but potentially 90 days after construction of the storm sewer line, the State could require its removal.

Very truly yours, S/Gerald A. Innes”; and

WHEREAS, Ken Carney, Lorain County Engineer by letter dated November 23, 2011 submitted the following:

“During the construction of the Island Road Resurfacing Project in Eaton Township the contractor encountered a nonfunctioning sewer that was the outlet to the roadside ditches along Island Road. The existing tile ran northwesterly across a parcel of land owned by the State of Ohio as part of the Grafton Prison Facility. The lack of a functioning outlet for the roadside ditches delayed the widening of Island Road due to the flooded condition. We were able to get permission from the State of Ohio to remove the failed tile to provide positive drainage from the ditches provided that we replace the tile. The State agreed to provide the County with an easement for the new tile.

Enclosed is the easement that was prepared jointly by the County Engineer and State of Ohio. We understand the concerns raised by the County Prosecutor in his letter dated October 17, 2011 in paragraphs 1 and 10 of the easement. They have required 15 year term of the easement with a terminal clause upon 90 days notice.

The State is not willing to change these terms however we believe it to be highly unlikely that they would terminate the easement or not agree to extend the easement. If the State did terminate and request the tile to be removed the County Engineer would be able to relocate the storm system to run along Island Road and Capel Road.

We desire to construct a new tile where the existing tile was located which is now an open ditch and we request the County to accept the enclosed easement. Please call if you have any question on this request.

Sincerely, S/Ken Carney"

NOW, THEREFORE BE IT RESOLVED, by the Lorain County Board of Commissioners that we hereby approve & enter into an easement with the State of Ohio for storm sewer drainage purposes on property under the jurisdiction of the Department of Rehabilitation and Correction, effective December 1, 2011 – November 30, 2026.

Said easement is considered a part hereof to this resolution and can be found on file in the Commissioners/Purchasing and Engineers Office as follows:

File No. 7086
DRC

STATE OF OHIO EASEMENT

THIS AGREEMENT ("Agreement"), dated as of November 30 is made and entered into by and between the STATE OF OHIO acting by and through the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1395, (hereinafter referred to as "State"), for and on behalf of the Ohio Department of Rehabilitation and Correction (hereinafter referred to as "Agency"), and Lorain County Commissioners, a body politic duly formed and existing under the laws of the State of Ohio, (the "Grantee"), having its principal place of business located at 226 Middle Avenue, Fourth Floor, Elyria, Ohio, 44035, pursuant to the provisions of O.R.C. §123.01(A)(9).

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

DESCRIPTION:

Situated in the Township of COLUMBIA, County of Lorain, State of Ohio, and being known as part of Original Lot No. 38, bounded and described as follows:

Commencing at an iron pin in a monument box at the intersection of the centerline Capel Road and Island Road, 60 feet in width; said point also being the northeasterly corner of Original Lot No. 38; Thence South 00°02'12" East along the centerline of Island Road, also being the easterly property line of lands owned by The State of Ohio as recorded in Instrument No. 2001-075274 at the Lorain County Records Office, 363.69', thence South 89°57'48" West west right of way line of Island Road, and said State of Ohio property, 30.00' and the principal place of beginning of a permanent drainage easement, thence North 38°33'25" West through said State of Ohio property, 427.57' to south right of way of Capel Road and the end of permanent drainage easement. Sideline of said easement is to be extended or shortened to terminate at right of way.

Further reference is made to File No. 7086 on file in the offices of the Ohio Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 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 storm sewer drainage line upon the Easement Area; and

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

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 storm sewer drainage 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 December 1, 2011, (the "Commencement Date") and expiring on November 30, 2026, (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 and 00/100 Dollars (\$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 the 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 Agreement, 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 agrees, provided it is not otherwise immune from liability, that it will accept responsibility for any personal injury and/or property damage liability to a third party to the extent that such liability is found to have been caused by the culpable negligent acts of Grantee's employees in the Grantee's use, operation, construction, reconstruction, installation, renewal, removal, repair or maintenance of the improvements/facilities located within the easement area granted to Grantee by State.

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

6. Insurance.

At all times during the term of this Agreement, the Grantee, at its sole cost and expense, shall carry and maintain a policy of commercial general liability insurance coverage for bodily injury, personal injury, wrongful death and property damage coverages together with all costs of defense. The defense cost shall be outside of the policy limits. Such policy of insurance shall designate as an additional insured by ISO form CG 20 10 (or its equivalent) the "State of Ohio, as its interest may appear" and shall bear an endorsement to the effect that the insurer agrees to notify the State in writing not less than 60 days in advance of cancellation, nonrenewal, or decrease in coverage. This insurance shall be primary and non-contributory over all other applicable insurance. The policy will also be endorsed to include a blanket waiver of subrogation. Such policy of insurance shall be issued by an insurance company licensed by the State of Ohio and be classified as an admitted carrier protected by the Ohio Insurance Guarantee Association and acceptable to the state. Upon the execution of this Agreement, the Grantee shall provide to the Department of Administrative Services a certificate of insurance to evidence such policy of insurance subject to approval of State. The insurance company issuing the policy must carry at least an A- rating or better from A.M. Best.

MINIMUM POLICY LIMITS:

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Occurrence Limit
\$1,000,000	Personal and Advertising Injury Limit
\$ 100,000	Fire Legal Liability
\$ 10,000	Medical Payments

The State reserves the right, but has no obligation, to periodically review the policy and limits of liability of such insurance and may thereafter require additional coverage to be maintained. If at any time the State reasonably determines that the existing limits are insufficient to adequately protect the State's interest, the State may require an adjustment to the policy and/or limits of liability. Grantee shall have sixty (60) days following notification by the State of the new policy requirements to obtain coverage meeting such new requirements and to file with the Department

of Administrative Services, a copy of the new policy verifying that conformity to the new requirements have been met. 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 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 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 written 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.

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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
Office of Real Estate and Planning
4200 Surface Road
Columbus, Ohio 43228-1395
Attention: Administrator

(b) with respect to the Agency, addressed to:

Ohio Department of Rehabilitation and Correction
770 West Broad Street
Columbus, Ohio 43222
Attention: Director

and,

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

Lorain County Commissioners
226 Middle Avenue, Fourth Floor
Elyria, Ohio 44035
Attention: President

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 neither Grantee nor any of Grantee's partners, officers, directors, shareholders, nor the spouse of any such person have made contributions in excess of the limitations specified in O.R.C. Section 3517.13.

Grantee, by signature on this document, certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws and will take no action inconsistent with those laws.

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

19. Declaration of Material Assistance.

In accordance with R.C. 2909.33(C), Grantee certifies that it meets one of the following conditions:

(a)(1) Grantee has not received, nor will it receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;

or

(a)(2) Grantee has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year.

and,

(b) Grantee has either precertified with the Office of Budget and Management, or has completed the provided Declaration of Material Assistance form as directed, certifying that

Grantee has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

The terms of the within State of Ohio Easement are accepted and agreed to by the Department of Rehabilitation and Correction.

By: Gary C. Mohr, 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: JOHN R. KASICH
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 _____, 2011 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:
Ohio Attorney General

By: Gary R. Taylor, Assistant Section Chief, Business Counsel Section Date: _____

Lorain County Commissioners
GRANTEE

By: Ted Kalo
Ted Kalo

APPROVED AS TO FORM
DATE 11-30-11
Dennis P. Will, Lorain County Prosecutor
By: [Signature]
Assistant County Prosecutor

By: Lori Kokoski

By: Tom Williams Tom Williams

Date: 11-30-11

ACKNOWLEDGMENT

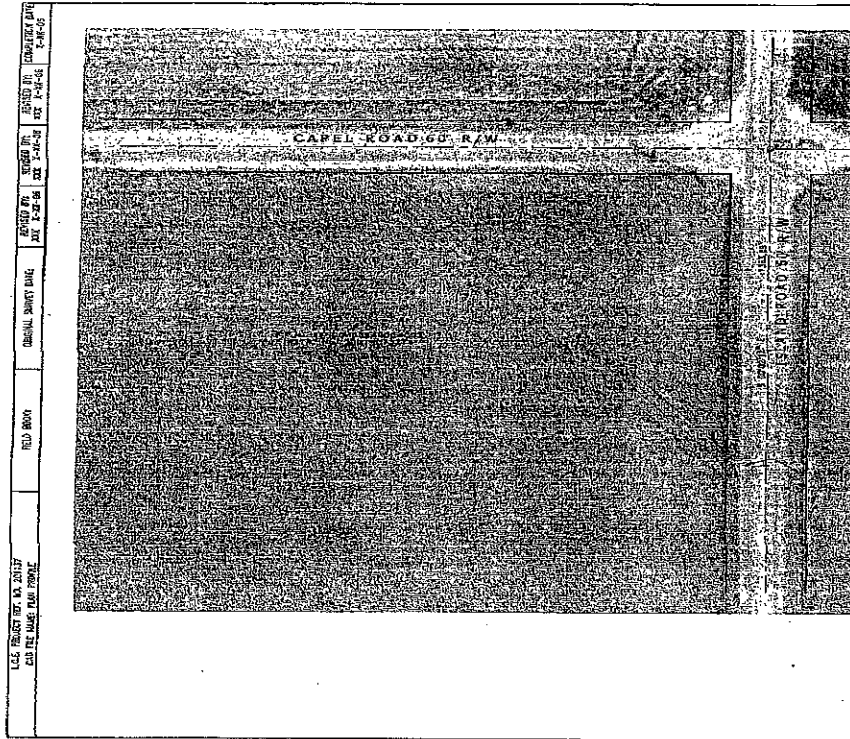
State of Ohio, Lorain County, ss:

On this 30th day of November, 2011 before me personally appeared Ted Kalo, Lori Kokoski and Tom Williams, County Commissioners, of Lorain County, Ohio, who acknowledged that they executed the foregoing State of Ohio Easement for and on behalf of Lorain County, Ohio and that the same is their free and voluntary act and deed, and that they are duly authorized to execute the same on behalf of the Grantee.

[Signature]
Notary Public, State of Ohio Thomas J. Cooper
My Commission Expires 11-6-16

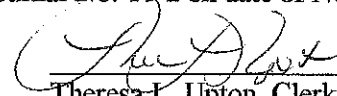
This instrument was prepared by the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1395.

Exhibit "A"



Motion by Kalo, seconded by Kokoski to adopt Resolution. Ayes: All.
Motion carried. _____ (discussion was held on the above)

I, Theresa L. Upton, Clerk to the Lorain County Board of Commissioners do hereby certify that the above Resolution No. 11-776 is a true copy as it appears in Journal No. 11-2 on date of November 30, 2011



Theresa L. Upton, Clerk

STATE OF OHIO EASEMENT

THIS AGREEMENT ("Agreement"), dated as of November 30 is made and entered into by and between the STATE OF OHIO acting by and through the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1395, (hereinafter referred to as "State"), for and on behalf of the Ohio Department of Rehabilitation and Correction (hereinafter referred to as "Agency"), and Lorain County Commissioners, a body politic duly formed and existing under the laws of the State of Ohio, (the "Grantee"), having its principal place of business located at 226 Middle Avenue, Fourth Floor, Elyria, Ohio, 44035, pursuant to the provisions of O.R.C. §123.01(A)(9).

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

DESCRIPTION:

EATON 1/30/11

Situated in the Township of Columbia, County of Lorain, State of Ohio, and being known as part of Original Lot No. 38, bounded and described as follows:

Commencing at an iron pin in a monument box at the intersection of the centerline Capel Road and Island Road, 60 feet in width; said point also being the northeasterly corner of Original Lot No. 38; Thence ~~South~~ ^{South} ~~00°02'12"~~ ^{00°02'12"} East along the centerline of Island Road, also being the easterly property line of lands owned by The State of Ohio as recorded in Instrument No. 2001-075274 at the Lorain County Records Office, 363.69', thence South 89°57'48" West west right of way line of Island Road, and said State of Ohio property, 30.00' and the principal place of beginning of a permanent drainage easement, thence North 38°33'25" West through said State of Ohio property, 427.57' to south right of way of Capel Road and the end of permanent drainage easement. Sideline of said easement is to be extended or shortened to terminate at right of way.

Further reference is made to File No. 7086 on file in the offices of the Ohio Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 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 storm sewer drainage line upon the Easement Area; and

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

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 storm sewer drainage 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 December 1, 2011, (the "Commencement Date") and expiring on November 30, 2026, (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 and 00/100 Dollars (\$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 the 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 Agreement, 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 agrees, provided it is not otherwise immune from liability, that it will accept responsibility for any personal injury and/or property damage liability to a third party to the extent that such liability is found to have been caused by the culpable negligent acts of Grantees employees in the Grantees use, operation, construction, reconstruction, installation, renewal, removal, repair or maintenance of the improvements/facilities located within the easement area granted to Grantee by State.

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

6. Insurance.

At all times during the term of this Agreement, the Grantee, at its sole cost and expense, shall carry and maintain a policy of commercial general liability insurance coverage for bodily injury, personal injury, wrongful death and property damage coverages together with all costs of defense. The defense cost shall be outside of the policy limits. Such policy of insurance shall designate as an additional insured by ISO form CG 20 10 (or its equivalent) the "State of Ohio, as its interest may appear" and shall bear an endorsement to the effect that the insurer agrees to notify the State in writing not less than 60 days in advance of cancellation, nonrenewal, or decrease in coverage. This insurance shall be primary and non-contributory over all other applicable insurance. The policy will also be endorsed to include a blanket waiver of subrogation. Such policy of insurance shall be issued by an insurance company licensed by the State of Ohio and be classified as an admitted carrier protected by the Ohio Insurance Guarantee Association and acceptable to the state. Upon the execution of this Agreement, the Grantee shall provide to the Department of Administrative Services a certificate of insurance to evidence such policy of insurance subject to approval of State. The insurance company issuing the policy must carry at least an A- rating or better from A.M. Best.

MINIMUM POLICY LIMITS:

\$2,000,000	General Aggregate
\$2,000,000	Products/Completed Operations Aggregate
\$1,000,000	Occurrence Limit
\$1,000,000	Personal and Advertising Injury Limit
\$ 100,000	Fire Legal Liability
\$ 10,000	Medical Payments

The State reserves the right, but has no obligation, to periodically review the policy and limits of liability of such insurance and may thereafter require additional coverage to be maintained. If at any time the State reasonably determines that the existing limits are insufficient to adequately protect the State's interest, the State may require an adjustment to the policy and/or limits of liability. Grantee shall have sixty (60) days following notification by the State of the new policy requirements to obtain coverage meeting such new requirements and to file with the Department

of Administrative Services, a copy of the new policy verifying that conformity to the new requirements have been met. 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 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 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 written 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
Office of Real Estate and Planning
4200 Surface Road
Columbus, Ohio 43228-1395
Attention: Administrator

(b) with respect to the Agency, addressed to:

Ohio Department of Rehabilitation and Correction
770 West Broad Street
Columbus, Ohio 43222
Attention: Director

and,

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

Lorain County Commissioners
226 Middle Avenue, Fourth Floor
Elyria, Ohio 44035
Attention: President

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 neither Grantee nor any of Grantee's partners, officers, directors, shareholders, nor the spouse of any such person have made contributions in excess of the limitations specified in O.R.C. Section 3517.13.

Grantee, by signature on this document, certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws and will take no action inconsistent with those laws.

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

19. **Declaration of Material Assistance.**

In accordance with R.C. 2909.33(C), Grantee certifies that it meets one of the following conditions:

(a)(1) Grantee has not received, nor will it receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;

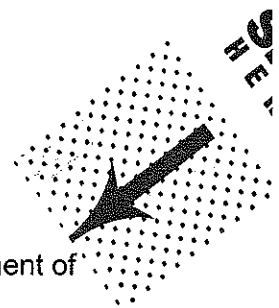
or

(a)(2) Grantee has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year.

and,

(b) Grantee has either precertified with the Office of Budget and Management, or has completed the provided Declaration of Material Assistance form as directed, certifying that

Grantee has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

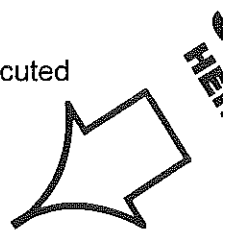


The terms of the within State of Ohio Easement are accepted and agreed to by the Department of Rehabilitation and Correction.

By: _____
Gary C. Mohr, 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: _____
JOHN R. KASICH
Governor of Ohio

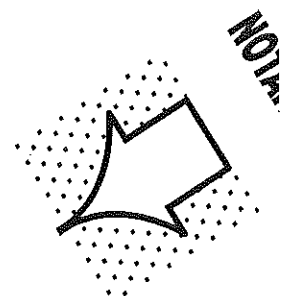
By: _____
Director of Administrative Services or
Signatory Designee
Statutory Agent, RC 123.01(A)(9)

ACKNOWLEDGMENT

State of Ohio, Franklin County, ss:

On this _____ day of _____, 2011 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 _____

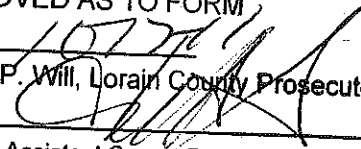


APPROVED AS TO FORM:
Ohio Attorney General


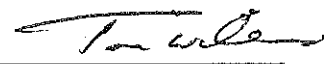
By: _____ Date: _____
Gary R. Taylor, Assistant Section Chief, Business Counsel Section

Lorain County Commissioners
GRANTEE

By: 
Ted Kalo

APPROVED AS TO FORM
DATE 10/27/11
Dennis P. Will, Lorain County Prosecutor
By: 
Assistant County Prosecutor

By: _____
Lori Kokoski


By:  
~~Tom Williams~~ Tom Williams

Date: 11-30-11

ACKNOWLEDGMENT

State of Ohio, Lorain County, ss:

On this 30th day of November, 2011 before me personally appeared Ted Kalo, Lori Kokoski and Tom Williams, County Commissioners, of Lorain County, Ohio, who acknowledged that they executed the foregoing State of Ohio Easement for and on behalf of Lorain County, Ohio and that the same is their free and voluntary act and deed, and that they are duly authorized to execute the same on behalf of the Grantee.


Notary Public, State of Ohio Theresa L. Upston
My Commission Expires 11-6-16

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

Exhibit "A"



LORAIN COUNTY COMMISSIONERS
2260 MIDDLE AVE 4TH FL
ELYRIA, OH 44035