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DONALD J. ROTHGERY  
LORAIN COUNTY

IN THE COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO

CITY OF ELYRIA,	:	CASE NO. 98639-87
	:	CASE NO. 98674-87
Plaintiff	:	JUDGE JOSEPH E. CIRIGLIANO
	:	
vs.	:	<u>JUDGMENT ENTRY</u>
	:	
BOARD OF PARK COMMISSIONERS	:	
Lorain County Metropolitan	:	
Park District, et al.,	:	
	:	
Defendants	:	

The above captioned cases having been consolidated by Order of Court, this matter came on for hearing on the motion of the defendant, Board of Park Commissioners, for temporary restraining order against the City of Elyria; the Court having defined the issues and been advised that the parties were desirous of settlement of all issues raised in the pleadings, the matter was resolved as set forth herein.

The Court finds that the defendant, Board of Park Commissioners, Lorain County Metropolitan Park District, hereinafter Park District, or Defendant, has agreed to accept the sum of Twenty Thousand Seven Hundred Dollars (\$20,700.00) as partial compensation for the appropriation of certain easement rights by the City of Elyria, hereafter City or Plaintiff, and

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*4C/C To Auditor*

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BY B. Stephens DEPUTY

additional consideration as set forth herein;

In conformity with said agreement, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the City of Elyria shall deposit with the Clerk of Courts a sum sufficient, to-wit: Three Thousand Fifteen and No/100 Dollars (\$3,015.00) which, when added to the original deposit herein of Seventeen Thousand Six Hundred Eighty-Five and No/100 Dollars (\$17,685.00) shall equal the total amount of the agreed settlement of Twenty Thousand Seven Hundred and No/100 Dollars (\$20,700.00), which shall be paid to Defendant, Park District.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon deposit by the City of Elyria of the sum Three Thousand Fifteen and No/100 Dollars (\$3,015.00), Plaintiff shall be granted a permanent easement in and to the following premises, more particularly described as follows:

**EASEMENT PARCEL A**

Situated in the City of Elyria, County of Lorain, State of Ohio, and known as being a part of Original Lot No. 19, Brace Tract, West of Black River, Town 6-N, Range 17-W, said easement being a part of Permanent Parcel No. 06-23-019-000-011 and bounded and described as follows:

Beginning at the intersection of the centerline of Ford Road, so-called, and the southerly line of Original Lot 19, Brace Tract, said point being the southwest corner of the lands of the Grantor; thence N 86° 28' 05" E along the southerly line of Lot 19, said line also being the southerly line of lands of the Grantor, a distance of 30.75 feet to a point on easterly right of way line of Ford Road; thence N 09° 08' 05" E along the easterly right of way line of Ford Road a distance of 26.93 feet to a point, said point being the principal place of beginning for the easement herein described; thence N 09° 08' 05" E continuing along said right of way line a distance of 140.66 feet to a point;

thence S 86° 52' 55" E a distance of 398.08 feet to a point on the easterly line of lands of the Grantor, said line also being the centerline of Black River; thence S 16° 31' 55" E along the easterly line of lands of the Grantor, said line also being the centerline of Black River, a distance of 120.49 feet to a point on the southerly line of Lot 19, said line also being the southerly line of lands of the Grantor; thence S 86° 28' 05" W along said southerly line, a distance of 56.35 feet to a point; thence N 86° 52' 55" W a distance of 315.25 feet to a point; thence S 3° 07' 05" E a distance of 20.00 feet to a point; thence N 86° 52' 55" W a distance of 84.29 feet to a point on the easterly right of way line of Ford Road, said point being the place of beginning and containing 1.206 Acres, more or less.

EASEMENT PARCEL B

Situated in the City of Elyria, County of Lorain, State of Ohio, and known as being a part of Original Lot No. 20, Brace Tract, West of Black River, Town 6-N, Range 17-W, said easement being a part of Permanent Parcel No. 06-23-020-000-005 and bounded and described as follows:

Beginning at the intersection of the centerline of Ford Road, so-called, and the northerly line of Original Lot 20, said point being the northeast corner of the lands of the Grantor; thence S 86° 28' 05" W along the northerly line of Lot 20, said line also being the northerly line of lands of the Grantor, a distance of 30.75 feet to an iron pin in the westerly right of way line of Ford Road, said point being the principal place of beginning for the easement herein described; thence S 09° 08' 05" W along said right of way line, a distance of 71.75 feet to a point; thence S 86° 28' 05" W a distance of 916.33 to a point; thence on a curve to the left having a radius of 180.00 feet, a chord bearing S 52° 32' 18" W, and a chord length of 200.94 feet, an arc distance of 213.19 feet to a point; thence S 18° 36' 32" W a distance of 710.27 feet to a point; thence on a curve to the right having a radius of 220.00 feet, a chord bearing S 23° 47' 26" W, and chord length of 39.74 feet, an arc distance of 39.79 feet to a point on the southerly line of lands of the Grantor, said line also being the southerly line of Lot 20; thence S 86° 43' 28" W along said southerly line a distance of 49.34 feet to a point; thence N 34° 38' 58" E a distance of 8.56 feet to a point; thence on a curve to the left having a radius of 180.00 feet, a chord bearing N 26° 37' 45" E, and chord length of 50.23 feet, an arc distance of 50.39 feet to a point; thence N 18° 36' 32" E a distance of 710.27 feet to a point; thence on a curve to the right

having a radius of 220.00 feet, a chord bearing N 52° 32' 18" E, and chord length of 245.60 feet, an arc distance of 260.56 feet to a point; thence N 86° 28' 05" E a distance of 812.27 feet to a point; thence N 61° 55' 10" E a distance of 72.21 feet to a point on the northerly line of lands of the Grantor, said line also being the northerly line of Lot 20; thence N 86° 28' 05" E along said northerly line a distance of 54.11 feet to the place of beginning and containing 1.818 Acres, more or less.

EASEMENT PARCEL C

Situated in the City of Elyria, County of Lorain, State of Ohio, and known as being a part of Original Lot 21, Brace Tract, West of Black River, Town 6-N, Range 17-W, said easement being a part of Permanent Parcel No. 06-23-021-000-020 and bounded and described as follows:

Beginning at the intersection of the centerline of Ford Road, so-called, and the southerly line of Lot 21, thence S 86° 59' 57" W along said southerly line a distance of 614.45 feet to a point on the southerly line of lands of the Grantor, said point being a southeast corner of lands of the Grantor; thence S 86° 59' 57" W continuing along said southerly line a distance of 631.89 feet to a point in the southerly line of lands of the Grantor, said point being located N 86° 59' 57" E a distance of 169.46 feet from an iron pin, said pin being the southwest corner of lands of the Grantor; said point being the principal place of beginning for the easement herein described; thence N 07° 32' 58" E a distance of 38.89 feet to a point; thence N 22° 33' 58" E a distance of 469.47 feet to a point; thence on a curve to the right having a radius of 220.00 feet, a chord bearing N 28° 36' 28" E, and chord length of 46.31 feet, an arc distance of 46.40 feet to a point; thence N 34° 38' 58" E a distance of 520.09 feet to a point on the northerly line of Lot 21, said line also being the northerly line of lands of the Grantor; thence N 86° 43' 28" E along said northerly line a distance of 49.34 feet to a point; thence on a curve to the right having a radius of 220.00 feet, a chord bearing S 31° 48' 40" W, and chord length of 21.79 feet, an arc distance of 21.80 feet to a point; thence S 34° 38' 58" W a distance of 528.65 feet to a point; thence on a curve to the left having a radius of 180.00 feet, a chord bearing S 28° 36' 28" W, and chord length of 37.89 feet, an arc distance of 37.96 feet to a point; thence S 22° 33' 58" W a distance of 464.20 feet to a point; thence S 07° 32' 58" W a distance of 26.17 feet to a point on the southerly line of Lot 21, said line also being the southerly line of lands of the

Grantor; thence S 86° 59' 57" W along said southerly line a distance of 40.69 feet to the place of beginning and containing 0.989 Acres more or less.

IT IS FURTHER ORDERED that the City of Elyria be granted a temporary easement in the following described real estate, from the breaking of ground for construction purposes and terminating when the completed work has been fully accepted by the City of Elyria, but in no event not longer than eighteen (18) months from the time of the filing of this Entry, to store earth and materials and to perform all necessary items of work during the construction of said sewer in and upon the premises of the Grantor on two additional strips of land being temporary easements for construction purposes only, and described as follows:

- (a) One 50-foot-wide strip south and east of Easement Parcel B, parallel to and adjoining the same, and conterminous with the boundaries of lands of the Grantor; and containing 2.105 Acres, more or less.
- (b) One 50-foot-wide strip south and east of Easement Parcel C, parallel to and adjoining the same, and conterminous with the boundaries of lands of the Grantor; and containing 1.240 Acres, more or less.

IT IS FURTHER ORDERED that the Plaintiff shall construct at no cost to Defendant, Park District, and concurrent with the construction of this project, risers at three (3) specific manhole details at station 74+16, station 68+48 and station 55+04. The riser detail shall include the addition of drop-type structures on the outside of the existing manholes and a stub-out with a plug for connection of a sanitary sewer, set approximately

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eight (8) feet below the existing groundline. Connection to the stub-outs would be subject to normal City permit requirements.

IT IS FURTHER ORDERED that Plaintiff, City, require the contractor on this particular phase of the Westside Interceptor Sewer Project to:

(a) Leave all twig size and brush piles along the easement areas of Defendant, Park District, for its exclusive use and control;

(b) Leave log sized lumber in lengths of not less than eight (8) feet and firewood logs less than that stacked and left along the easement area, all for Defendant, Park District's, exclusive use and removal.

IT IS FURTHER ORDERED that Plaintiff, City, will instruct its general contractor of his option to deposit all excess fill dirt accumulated at the easement areas at a location to be specified by Park District Director in accordance with the grading permit to be issued to the Park District as provided herein.

IT IS FURTHER ORDERED that Plaintiff, City, will instruct the general contractor, its employees, agents and subcontractors:

(a) Not to park any vehicle, including personal vehicle, within the confines of the Lorain County Metropolitan Park District except within the designated easement areas.

(b) Not to use any non-easement park property, including roadways, for access or ingress or egress to or from

Grantor; thence S 86° 59' 57" W along said southerly line a distance of 40.69 feet to the place of beginning and containing 0.989 Acres more or less.

IT IS FURTHER ORDERED that the City of Elyria be granted a temporary easement in the following described real estate, from the breaking of ground for construction purposes and terminating when the completed work has been fully accepted by the City of Elyria, but in no event not longer than eighteen (18) months from the time of the filing of this Entry, to store earth and materials and to perform all necessary items of work during the construction of said sewer in and upon the premises of the Grantor on two additional strips of land being temporary easements for construction purposes only, and described as follows:

- (a) One 50-foot-wide strip south and east of Easement Parcel B, parallel to and adjoining the same, and conterminous with the boundaries of lands of the Grantor; and containing 2.105 Acres, more or less.
- (b) One 50-foot-wide strip south and east of Easement Parcel C, parallel to and adjoining the same, and conterminous with the boundaries of lands of the Grantor; and containing 1.240 Acres, more or less.

IT IS FURTHER ORDERED that the Plaintiff shall construct at no cost to Defendant, Park District, and concurrent with the construction of this project, risers at three (3) specific manhole details at station 74+16, station 68+48 and station 55+04. The riser detail shall include the addition of drop-type structures on the outside of the existing manholes and a stub-out with a plug for connection of a sanitary sewer, set approximately

the easement areas.

(c) Not to disturb, move or relocate existing playground equipment at, near, on or adjacent to the easement area.

IT IS FURTHER ORDERED that Plaintiff, City, upon proper application of Defendant, Park District, for a grading permit authorizing the hauling, dumping or grading of excess fill dirt at Park District's designated location during the entire project, shall issue said grading permit, provided that said issuance is herewith to be qualified by a disclaimer of any responsibility for the compacting of dirt and fill and possible slide of the access dirt into the Black River.

IT IS FURTHER ORDERED that Defendant, Park District, in the event it becomes aware of any erosion along the easement area, leakage or other apparent problems along the easement area relating to the sewer line or emergency overflow pipe, will notify Plaintiff of such event; provided however, this provision shall not be construed as creating an affirmative duty on the part of the Park District to the City but only as may be open and apparent to the Park District in the normal course of their performance of duties and operations.

IT IS FURTHER ORDERED that Plaintiff, City, for itself, its successors and assigns shall hold harmless and indemnify Defendant, Park District, from any and all claims for damages to person or property, directly or indirectly caused by, connected



with, or rising out of the design by City, installation by City, repair by City, maintenance by City, use or operation of the referenced project by City, all as required by federal, state and city laws, rules, regulations, statutes, ordinances and resolutions.

IT IS FURTHER ORDERED and the parties herewith stipulate and agree that Defendant, Park District, has not taken and will not take any role in the design, installation, use, operation, maintenance or repair, of the interceptor sewer system and project, and the responsibility for the design, installation, use, operation, maintenance and repair is herewith ordered assumed by the City of Elyria, its agents, contractors, representatives and assigns.

IT IS FURTHER ORDERED that nothing contained in this judgment entry shall prevent either party from exercising their respective legal rights and remedies, including the right to maintain, in the case of the Park District, an action against the City, its agents or contractors, based on nuisance for the discharge of sewage, waste or effluent onto Park District property or the Black River from the 54" emergency overflow pipe; and, in the case of the City, in the event the Park District negligently breaks or destroys the sewer line or discharge pipe causing spillage of sewage, waste or effluent, the City may maintain an action based on nuisance against the Park District.

IT IS FURTHER ORDERED that a certified copy of this Entry be

transmitted to the County Auditor, that the County Auditor transmit same to the County Recorder for recording in the Deed Records of this County.

IT IS FURTHER ORDERED that all remaining funds presently held on deposit by the Clerk of Courts be distributed to Defendant, Park District.

IT IS FURTHER ORDERED that the City of Elyria pay all costs incurred herein.

APPROVED:

Joseph E. Coughlin  
JUDGE

David A. Basinski  
DAVID A. BASINSKI  
Special counsel for Plaintiff

Dennis M. O'Toole  
DENNIS M. O'TOOLE  
Attorney for Defendant,  
Board of Park Commissioners

Alan W. Anderson  
Lorain County Prosecutor,  
Attorney for J. Grant Keys  
and Julian A. Pijor

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City of Elyria  
Plaintiff

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BY \_\_\_\_\_ DEPUTY