

First Reading: October 30, 2012
Second Reading: dispensed

RESOLUTION NO. 2012 - 98

**A RESOLUTION AUTHORIZING A CONTRACT FOR THE SALE OF AN EASEMENT
FOR SEWER PURPOSES TO THE METROPOLITAN SEWER DISTRICT OF
GREATER CINCINNATI, DISPENSING WITH THE SECOND READING, AND
DECLARING AN EMERGENCY**

WHEREAS, in order to provide for the extension of sewer services in the northern area of Sycamore Township, it is necessary for the Metropolitan Sewer District of Greater Cincinnati (MSD) to acquire an easement from Sycamore Township on property known as the Robert L. Schuler Memorial Park; and

WHEREAS, such an easement will not hinder the use of the real property for park purposes; and

WHEREAS, it is in the best interest of Sycamore Township to sell the easement to MSD;

NOW THEREFORE, BE IT RESOLVED, by the Board of Township Trustees of Sycamore Township, State of Ohio:

SECTION 1. The sale of an easement for sewer purposes on the property set forth on the attached Exhibit A is hereby approved and the Township Administrator is hereby authorized and directed to sign the contract for the sale of such easement as set forth on the attached Exhibit B and any other documents necessary in order to carry out the conveyance of such easement and the purposes of this Resolution.

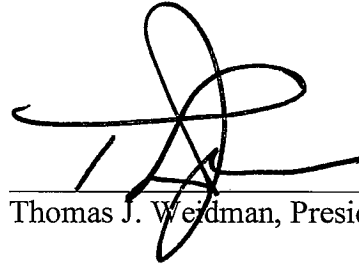
SECTION 2. The Trustees of Sycamore Township upon at least a majority vote do hereby dispense with the requirement that this resolution be read on two separate days, and hereby authorize the adoption of this resolution upon its first reading.

SECTION 3. Upon the unanimous vote of the Sycamore Township Trustees, this Resolution is hereby declared to be an emergency measure necessary for immediate preservation of the public peace, health, safety and welfare of Sycamore Township. The reason for the emergency is to provide for the installation of the sewer for the benefit of the northern area of the Township as quickly as possible.

VOTE RECORD:

Mr. Bishop AYE Mr. Connor AYE Mr. Weidman AYE

Passed at a meeting of the Board of Township Trustees of Sycamore Township this 30th day of October, 2012.



Thomas J. Weidman, President



Cliff W. Bishop, Vice President



Dennis W. Connor, Trustee

AUTHENTICATION

This is to certify that this resolution was duly passed and filed with the Township Fiscal Officer of Sycamore Township this 30th day of October, 2012.



Robert C. Porter III, Fiscal Officer
Sycamore Township, Ohio

APPROVED AS TO FORM:

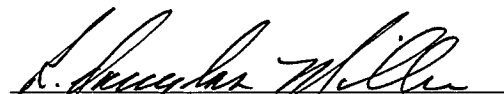

R. Douglas Miller, Law Director

EXHIBIT B

MSD CONTRACT FOR PURCHASE AND SALE
OF EASEMENTS

PROJECT: Deerfield Road Local Sewer Project
PROJECT NUMBER: 1.03.50020
PARCEL NO: 6

CONTRACT NO. _____

OWNER Board of Township Trustees of Sycamore Township, Ohio, whose address is 11551 Deerfield Road; Cincinnati, OH 45242

PROPERTY: [Easement/Easements] over property located at 11580 Deerfield Road; Cincinnati, OH 45242, Hamilton County Auditor's Parcel No(s): 600-130-9 (the "Property"), as shown on the plat labeled "Accession No. 61642 which is on file with MSD

THIS CONTRACT FOR PURCHASE AND SALE OF EASEMENTS ("Agreement") is made by and between the Owner and the City of Cincinnati ("MSD"), as agent for the Board of County Commissioners of Hamilton County, Ohio ("County") for the management of the Metropolitan Sewer District of Greater Cincinnati, 1600 Gest Street, Cincinnati, Ohio 45204.

1. **Agreement to Sell Easements.** In consideration of the purchase price and the covenants contained herein, Owner hereby agrees to grant to the County the following easement, the location of which is shown on the above-referenced plat: {(i) **1 permanent easement** over part of the Property for the construction, maintenance, repair, replacement, and operation of a public sewer; and (ii) **1 temporary construction easement** over a part of the Property to facilitate the construction}. The duration of the temporary easement shall be for 6 months immediately following the date on which the construction work described above is first commenced on the Property by MSD, or its duly authorized employees, agents or contractors. The easement rights shall also include the right to bring onto and temporarily store within the easement construction vehicles and all other equipment and materials needed for construction of the Project. Between the date of Owner's execution of this Agreement and the Closing (as herein defined), Owner shall not make any physical changes within the easement that would make MSD's installation of the improvements more expensive or difficult.

2. **Purchase Price.** The purchase price for the easements shall be \$ 300.00 (the "**Purchase Price**"), due and payable by MSD at Closing.

3. **MSD's Right to Enter.** Owner acknowledges that, between the date of Owner's execution hereof and the Closing, the City's agents, employees and contractors shall have the right to enter upon the easements, upon 24 hours prior verbal notice to Owner, for purposes of inspection and any and all other reasonable purposes.

4. **Title.** Owner represents and warrants to MSD that it is the sole owner of the fee simple interest in the Property and that the Property is free and clear from all liens and encumbrances whatsoever, except: (i) mortgage liens of record; (ii) easements, restrictions, conditions and covenants of record; (iii) all legal highways; (iv) zoning and building laws, ordinances, rules and regulations; and (v) any and all taxes and assessments not yet due and payable. Owner shall assist, in whatever manner reasonably possible under the circumstances as requested by MSD, to procure and deliver to MSD any releases, consents or subordinations of other interests that are necessary to convey said easements, including, but not limited to, those of any mortgagees, tenants, lessees, or others now in possession or in any manner occupying the Property. If MSD or Owner becomes aware of any title problems affecting the easements, Owner, at Owner's expense, shall promptly take such action as is necessary to clear the title. Between the date of Owner's execution of this Agreement and the Closing, Owner shall not convey any

interest in the easements to any third party without MSD's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding anything in this Agreement to the contrary, MSD's obligation to close on the acquisition of the easements is conditioned upon MSD's satisfaction with Owner's title to the Property. If such condition is not satisfied, MSD may terminate this Agreement by giving written notice thereof to Owner, whereupon neither party shall thereafter have any rights or obligations hereunder.

5. **Closing.** Owner shall convey the easements to the County (the "**Closing**"), by executing an easement plat, on the date that is **sixty (60) days** after the date of MSD's execution of this Agreement or on such earlier or later date as the parties may agree upon. At Closing, the parties may execute a closing statement and such other documents as may be necessary or appropriate in connection with the conveyance.

6. **Closing Costs.** Any and all closing costs associated with the conveyance of the easements shall be paid by MSD, except that Owner shall pay outside of Closing its own attorney or other professional service fees incurred in connection with this Agreement, if any.

7. **Environmental Representations.** Owner represents and warrants to MSD that Owner is not aware of the existence of any environmental contamination, environmental hazards or other adverse environmental conditions previously or currently affecting the Property.

8. **Damage to Property.** In the event of damage to the easements resulting from any cause prior to Closing, MSD shall have the right to terminate this Agreement. If MSD does not exercise such right, at Closing MSD shall accept the easements in their then current condition.

9. **Survival.** Owner's execution of the easement plat shall not be deemed to extinguish or waive any of the obligations of Owner or MSD under this Agreement, nor shall such conveyance in any way prejudice or bar Owner or MSD in asserting any of their respective rights hereunder, all of which shall survive Owner's conveyance of the easements.

10. **Appropriation for Public Use.** Following Owner's execution of this Agreement, Owner agrees that it will not contest any action which the County has or may institute to appropriate the easements to public use, and in such proceedings Owner agrees to appear and consent that the jury in its verdict and the Court in its judgment entry may make the amount of the Purchase Price stated above the amount of the compensation awarded for the appropriation of the easements to public use. Owner also consents to the filing and use of this Agreement in such proceedings as evidence of the agreed value of the easements.

11. **Notice.** Any notice or other communication required or desired to be given to either party under this Agreement shall be in writing and (i) delivered personally, (ii) deposited in the United States mail, first class, postage prepaid, or (iii) delivered by a nationally recognized overnight courier service, to the parties at their respective addresses set forth above or such other addresses as either party may specify from time to time. Notices shall be deemed given upon receipt.

12. **General Provisions.** This Agreement shall be governed by the laws of the City of Cincinnati and State of Ohio. This Agreement constitutes the entire agreement between MSD and Owner as to the subject matter hereof. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. Any amendment to this Agreement must be in writing and signed by both parties. Time is of the essence in complying with the terms of this Agreement.

13. **Offer to Sell.** If Owner executes this Agreement prior to MSD, then this Agreement shall constitute an offer by Owner to sell the easements to the County, on the terms and conditions herein, for a period of **sixty (60) days** from the date of Owner's execution and may not be revoked by Owner during that time. Owner's offer shall automatically expire if MSD does not execute this Agreement within such 60-day period. Upon MSD's execution of this Agreement within such 60-day period, this Agreement shall constitute a valid and legally binding contract between the parties.

14. **Restoration of Owner's Property.** Upon completion of the construction work, the property of the Owners shall be restored as nearly as practicable to the condition it was prior to the construction.

15. **Special Provisions.** n/a

This Offer for Purchase and Sale of Easements is executed by the parties on the dates set forth below.

Board of Township Trustees of Sycamore Township, Ohio:

City of Cincinnati:

By: Bruce A. Reese

Assistant City Manager on behalf of Milton Dohoney, Jr. City Manager of the City of Cincinnati, agent for the Board of County Commissioners of Hamilton County, Ohio, in the management of the Metropolitan Sewer District of Greater Cincinnati

Its: ADMINISTRATOR

Date: OCTOBER 30, 2012

Date: _____, 2012

NEGOTIATED BY:

APPROVED BY:

Rodney C. Gray
Rodney C. Gray, Senior Real Property Specialist
Metropolitan Sewer District of Greater Cincinnati

Jeannie Bechtold, Real Property Manager
Metropolitan Sewer District of Greater Cincinnati

APPROVED AS TO FORM:

CERTIFICATION OF FUNDS:

Assistant City Solicitor

Date: _____

Coding: _____

APPROVED:

Amount: _____

Department Head/Designee

Reginald Zeno, Finance Director