

City of Philadelphia



(Bill No. 071007)

AN ORDINANCE

Authorizing the Water Commissioner, on behalf of the City, to enter into an agreement with the owners of 4641 East Roosevelt Boulevard for the grant of a right-of-way to the City for drainage and sewer purposes through the property along the Tacony Creek from approximately 550 feet east of Whitaker Avenue to approximately 750 feet west of former "I" Street, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

Section 1. The Water Commissioner, on behalf of the City, is hereby authorized to enter into an agreement, substantially in the form set forth in Exhibit A, with the owners and their successors of 4641 East Roosevelt Boulevard for the grant of a right-of-way to the City for drainage and sewer purposes through the property along the Tacony Creek from approximately 550 feet east of Whitaker Avenue to approximately 750 feet west of former "I" Street, under certain terms and conditions.

Section 2. The City Solicitor shall include in said agreement such terms and conditions as he may deem necessary to protect the interest of the City.

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Exhibit A

“RIGHT OF WAY AND EASEMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____ 200____, by and between, **THOMAS SCATTERGOOD BEHAVIORAL HEALTH FOUNDATION**, the record owner of a certain Property at **4641 EAST ROOSEVELT BOULEVARD** in the 35th and 42nd Wards, Philadelphia, Pennsylvania, hereinafter called “Grantor”, and THE CITY OF PHILADELPHIA, hereinafter called “City”;

WITNESSETH:

WHEREAS, the Tacony Creek transverses the rear of the Thomas Scattergood Behavioral Health Foundation’s property (also known as Friend’s Hospital) at 4641 East Roosevelt Boulevard; and

WHEREAS, the City is the curator of the estuaries within the limits of the City; and

WHEREAS, the banks of the creek have eroded and caused the endangerment of the City’s existing interceptor sewer which transverses the creek and such erosion has caused the sewer to pollute the creek from time to time; and

WHEREAS, the City plans to restore the banks of the creek to protect the sewer line: and

WHEREAS, in order to reconstruct and maintain the said sewer and the banks of the creek, the Grantor must grant unto the City a certain right-of-way for drainage and sewer purposes along the Tacony Creek from approximately 550 feet east of Whitaker Avenue to approximately 750 feet west of former “I” Street, under certain terms and conditions; and

WHEREAS, the parties desire to enter into an agreement for the for the grant of said right-of-way; and

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

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1. For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor, the owner of the property at 4641 East Roosevelt Boulevard, Philadelphia, Pennsylvania 19124, hereby gives, grants, conveys unto the City its successors and assigns, all their rights, title and interest which they presently have or will acquire in the full, free and uninterrupted use, liberty and privilege of a drainage and sewer right-of-way and easement over, under, along and in the Easement described in Section 2 of this Agreement as lies within the land owned by the Grantor.

2. Grantor has granted unto the City, its successors and assigns, the full, free and uninterrupted use, liberty and privilege of a right-of-way and easement for drainage and sewer purposes (hereinafter referred to as the "Easement") over, under, along and in the following premises as lies within the land owned by the Grantor, such portion of the following described property, to wit :

ALL THAT CERTAIN LOT OR PIECE OF GROUND SITUATED IN THE 35th and 42nd WARD OF THE CITY OF PHILADELPHIA, DESCRIBED AS FOLLOWS:

PROPOSED RIGHT-OF-WAY FOR THE RESTORATION OF TACONY CREEK ON THE REAR OF FRIENDS HOSPITAL

BEGINNING AT A POINT Southwest of the intersection of Romona Ave. and I Street, S79 °53'58' W, 148.99 feet to a point, S83 °32'37' W, 177.380 feet to a point, S86 °44'07' W, 128.892 feet to a point, S86 °44'07' W, 50.296 feet to a point, S86 °44'07' W, 81.056 feet to a point, N89 °18'53' W, 136.250` feet to a point, N79 °37'23' W, 183.635 feet to a point, S66 °59'52' W, 135.729 feet to a point, S19 °17'07' E, 33.567 feet to a point, S19 °17'07' E, 11.567 feet to a point, N32 °12'52' E, 77.499 feet to a point, N72 °49'52' E, 70.812 feet to a point, N21 °05'52' E, 93.500` feet to a point, N07 °21'08' W, 162.500 feet to a point, N19 °41'08' W, 117.833 feet to a point, N46 °52'23' W, 359.552 feet to a point, N87 °58'24' W, 19.995 feet to a point and the true POINT OF BEGINNING, N87 °58'58' W, 551.667 feet to a point, S70 °17'56' W, 139.250 feet to a point, S59 °32'56' W, 194.250 feet to a point, S67 °09'56' W, 92.167 feet to a point, S62 °27'56' W, 62.583 feet to a point, S67 °12'56' W, 212.000 feet to a

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point, N58 °54'04' W, 89.000 feet to a point, S60 °29'11' W, 65.406 feet to a point, S75 °29'11' W, 92.615 feet to a point, N39 °10'13' E, 356.250 feet to a point, N79 °46'13' E, 90.948 feet to a point, S36°13'47' E, 145.166 feet to a point, N37 °10'13' E, 750.083 feet to a point, N36 °10'13' E, 90.374 feet to a point, S53 °49'47' E, 50.000 feet to a point, S36 °10'13' W, 100.000 feet to a point, S24 °40'13' W, 92.371 feet to a point, S38 °51'44' W, 240.917 feet to a point, N88 °01'55' E, 66.856 feet to a point, N40 °27'14' E, 202.391 feet to a point, S56 °19'47' E, 233.599 feet to a point, N86 °10'13' E, 250.000 feet to a point, N35 °10'13' E, 168.000 feet point, S82 °49'47' E, 120.000 feet to a point, S61 °49'47' E, 232.000 feet to a point, S10 °49'47' E, 136.997 feet to a point, S68 °01'02' W, 187.480 feet to a point, N18 °28'58' W, 168.975 feet to a point, S76°31'02' W, 65.000 feet to a point, S26 °03'21'W, 198.811 feet to a point, and POINT OF BEGINNING.

Containing 9.18 acres

The right-of-way and easement for drainage and sewer purposes, described herein, is according with a plan for a "Proposed Right-of-way for the Restoration of Tacony Creek on the Rear of Friends Hospital, dated October 19, 2007, File Number 40523 ROW, prepared by the City of, Philadelphia Water Department's Survey Unit, 3585 Fox Street, Philadelphia, PA 19129.

3. Grantor hereby grants the City, its officers, agents, employees and contractors the right of access, ingress, egress to and from the Premises along with the necessary equipment and materials, for the construction, reconstruction, maintenance, alteration, repair and inspection of any and all present and future creek embankment, drainage and sewer structures now situated in the said Easement or which the City may hereafter at any time desire to locate therein.

4. It is expressly understood and agreed that the rights and privileges herein granted to the City shall not terminate, cease or diminish unless and until the City may surrender the same in writing, duly executed by it's proper officers. Grantor hereby grants the City the right to place said Easement on the City Plan. Grantor covenants and agrees to release the City, all its officers, employees, agents, departments and

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commissions, from all damages or claims for damages which can, may or might arise by reason of such City Plan changes.

5. Grantor covenants and agrees that no change in grades or other alterations within the lines of the Easement shall be made and that no buildings and/or other structures either overhead, underground or upon the surface, shall be constructed within the lines of the Easement or abutting thereon unless the plans for such changes of grades, alterations or structures shall be first be submitted to and approved by the Water Department.

6. Grantor warrants that Grantor is the owner in fee of the Easement free and clear of liens, encumbrances, restrictions and other matters of record, has the power and is duly authorized to execute this Right of Way and Easement Agreement, and the City may peacefully and quietly exercise the rights granted hereunder free and clear of rights or consent of third parties.

7. Grantor agrees that this Agreement may be filed of record in the office of the Department of Records of the City of Philadelphia, the same to be public notice of waiver and release of any and all damages which may be sustained by reason of future City Plan changes and the grant of the right-of-way and easement described herein.

8. All notices given under this Easement shall be in writing and shall be deemed to have been duly given if sent by United States certified registered mail, postage prepaid, enclosed in an envelope addressed to the party to be notified, at the following addresses:

If to Grantor at: Thomas Scattergood Behavioral
Health Foundation
4641 East Roosevelt Boulevard
Philadelphia, PA 19124

If to Grantee at: City of Philadelphia
Water Department
Projects Control Unit
ARA Tower, Second Floor
1101 Market Street
Philadelphia, PA 19107

or to such other address as either party may give by notice to the other party.

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9. The terms and conditions hereof shall be binding upon and shall enure to the benefit of the parties hereto, their successors and assign and be covenants running with the land affected by the Easement.

10. This is not a conveyance of the real estate included within the Easement nor of any interest in the oil, gas and other minerals in, on or under the real estate covered hereby, but is a grant solely of rights-of-way and easement as described above.

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IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused these presents to be duly executed the day and year first above written.

APPROVED AS TO FORM

**CITY OF PHILADELPHIA
WATER DEPARTMENT**

By: _____

Assistant City Solicitor

Water Commissioner

GRANTOR

By: _____

By: _____”

WITNESS

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 13, 2007. The Bill was Signed by the Mayor on December 21, 2007.



Patricia Rafferty
Chief Clerk of the City Council