

ORDINANCE NO. 99-83

AUTHORIZING THE CITY MANAGER TO ENTER INTO A WATER LINE AGREEMENT WITH EVERYBODY'S FARM, INC. AND TO ACQUIRE AN EASEMENT WHICH IS NECESSARY FOR THE CINCINNATI WATER WORKS CONNECTION

WHEREAS, the City has determined that it is necessary to enter into a water line agreement with Everybody's Farm, Inc. and to acquire an easement which is necessary for the Cincinnati Water Works Connection; and

WHEREAS, the City Engineering Department has negotiated with Everybody's Farm for the acquisition of said easement.

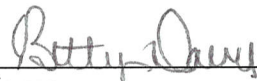
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, **six (6)** members thereto concurring:

Section 1. That the easement set out in Exhibit "A", attached hereto and incorporated herein by reference, is hereby declared to be needed for the municipal purpose of the Cincinnati Water Works Connection.

Section 2. That the City Manager is hereby authorized and director to execute any and all documents necessary to acquire said easement.

Section 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed this 14th day of June, 1999.



Mayor

Attest:



Clerk of Council



April, 21 1999

Mr. Richard Fair
City Engineer
City of Mason
202 East Main St.
Mason, OH 45040

Subject: Everybody's Farm – Waterline Easement

Dear Richard:

Enclosed please find the Agreement for Installation of Water Main which has been executed by Everybody's Farm. Please return a copy after it has been signed by the City.

We are pleased to be working with you on this project.

Sincerely,

A handwritten signature in cursive script that reads "Chris Canarie".

Christopher J. Canarie
Vice President, Sales & Marketing

Enclosure

APR 23 1999

AGREEMENT FOR INSTALLATION OF WATER MAIN

This Agreement is entered into this ____ day of _____, 1999, by and between the CITY OF MASON, 202 West Main Street, Mason, Ohio 45040 (hereinafter the "City") and EVERYBODY'S FARM, INC., 3000G Henkle Drive, Lebanon, Ohio 45036, its successors and assigns (hereinafter, collectively, "Everybody's Farm").

WHEREAS, Everybody's Farm is developing certain real property along Snider Road in the City of Mason (hereinafter the "Development"); and

WHEREAS, in order to develop the property Everybody's Farm must have access to a waterline to provide water services to the Development; and

WHEREAS, the City has agreed to install a waterline to the Development to provide such water services; and

WHEREAS, Everybody's Farm has agreed to provide certain easements and to pay a sum of money to the City in exchange for the construction and installation of the waterline; and

WHEREAS, the City and Everybody's Farm desire to enter into this Agreement to specify and clarify the terms and conditions under which the City will install and maintain the waterline.

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. The City hereby agrees to install a 16 inch waterline within the Development in the area which is more particularly described in Exhibit "A" which is attached hereto and made a part hereof. The waterline shall serve as the water main to the Development (hereinafter the "Water Main"). The Water Main shall be installed pursuant to such specifications as may be determined to be necessary by the City.

2. Upon completion of the Water Main, the Water Main shall be owned by the City and the City shall assume all responsibility related to the maintenance, operation, repair, and/or removal thereof. Notwithstanding the foregoing, the City shall not assume any responsibility or liability associated with any damage to the Water Main and/or claims of third parties which are the result of the negligent actions of Everybody's Farm, its agents, employees, or contractors.

3. Everybody's Farm or future property owners, at their sole cost and expense, shall install any and all necessary service connections to any lots within the Development. Everybody's Farm and/or any future property owner which may purchase the lots within the Development shall be responsible for any and all costs incurred or associated with the installation, repair, maintenance, and/or removal of any of the service lines, including, but not limited to any tap-in fees associated with connecting the service lines to the Water Main if and when such service connections are desired by any said owners.

4. Everybody's Farm shall pay the City One Hundred Thousand Dollars (\$100,000) for the construction and installation of the Water Main. Everybody's Farm shall pay the full amount owed upon the City's execution of a contract with a contractor who will perform the work associated with the installation of the Water Main and receipt of written notice thereof by Everybody's Farm from the City (hereinafter the "Demand"). The City shall use commercially reasonable efforts to ensure that construction and installation of the Water Main is performed in a reasonably expeditious fashion. If Everybody's Farm fails to pay the City within five (5) days of the Demand, interest in the amount of ten percent (10%) per annum shall begin to accrue upon the unpaid balance as of the day of the Demand. Additionally, the City will not issue any requested building permits within the Development until the City is paid in full as required hereunder. The

City shall bear any additional costs associated with the installation of the Water Main which may exceed One Hundred Thousand Dollars (\$100,000) unless otherwise agreed to in writing by Everybody's Farm and the City.

5. Everybody's Farm hereby grants the City a permanent easement for the construction, maintenance, operation and/or removal of the Water Main which easement shall be located in a portion of the Development as more particularly described in the legal description attached hereto as Exhibit "B." Everybody's Farm further grants the City an additional temporary construction easement from the date of the execution of this Agreement until the completion of the construction of the Water Main. The parameters of the temporary construction easement shall be as set forth in the legal description attached hereto as Exhibit "C." (The permanent easement and temporary construction easement shall hereinafter be referred to as the "Easements.") Everybody's Farm hereby agrees that the construction of the Water Main by the City is sufficient consideration for the granting of the Easements and that Everybody's Farm is not entitled to any additional compensation for the Easements.

6. Everybody's Farm and/or any future property owners of the lots connecting to the Water Main shall bear all costs related to the water services provided through the Water Main. All payments for water services shall be paid to the City upon receipt of any invoice or bill.

7. The provisions of this Agreement may be modified or amended, in whole or in part, only with the consent of the parties hereto by an instrument in writing, executed and acknowledged by all of the parties.

8. Notices shall be delivered personally or sent by certified mail to:

If to the City: City of Mason
202 West Main Street
Mason, Ohio 45040

If to Everybody's Farm: Everybody's Farm, Inc.
3000-G Henkle Drive
Lebanon, Ohio 45036

9. This Agreement shall be construed in accordance with the laws of the State of Ohio.

10. No waiver of any default by any party to this Agreement shall be implied from any omission by any other party to take any action with respect to such default if such default continues or is repeated.

11. All exhibits referred to herein and attached hereto are hereby incorporated into the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

Joan Bernard
Verona Schmitt

CITY OF MASON

By: Scot F. Lahrmer
Scot F. Lahrmer, City Manager

Christopher J. Canavie
[Signature]

EVERYBODY'S FARM, INC.

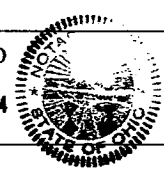
By: Michael T. Schueler
MICHAEL T. SCHUELER
V. P.

James J. Longue
[Signature]

By: Theodore A. Gilbert
Theodore A. Gilbert
V.P.

STATE OF OHIO)
)
) WARREN) SS.
COUNTY OF ~~HAMILTON~~)

The foregoing instrument was acknowledged before me this 15th day of April, 1999, by MICHAEL T. SCHUELER, the TREASURER of Everybody's Farm, Inc. and THEODORE A. GILBERT, the V.P. of Everybody's Farm, Inc., on behalf of the corporation.

Janet L. Long
Notary JANET L. LONG Ohio
Notary Public, State of Ohio
My Commission Expires March 27, 2004
My Commission Expires: _____


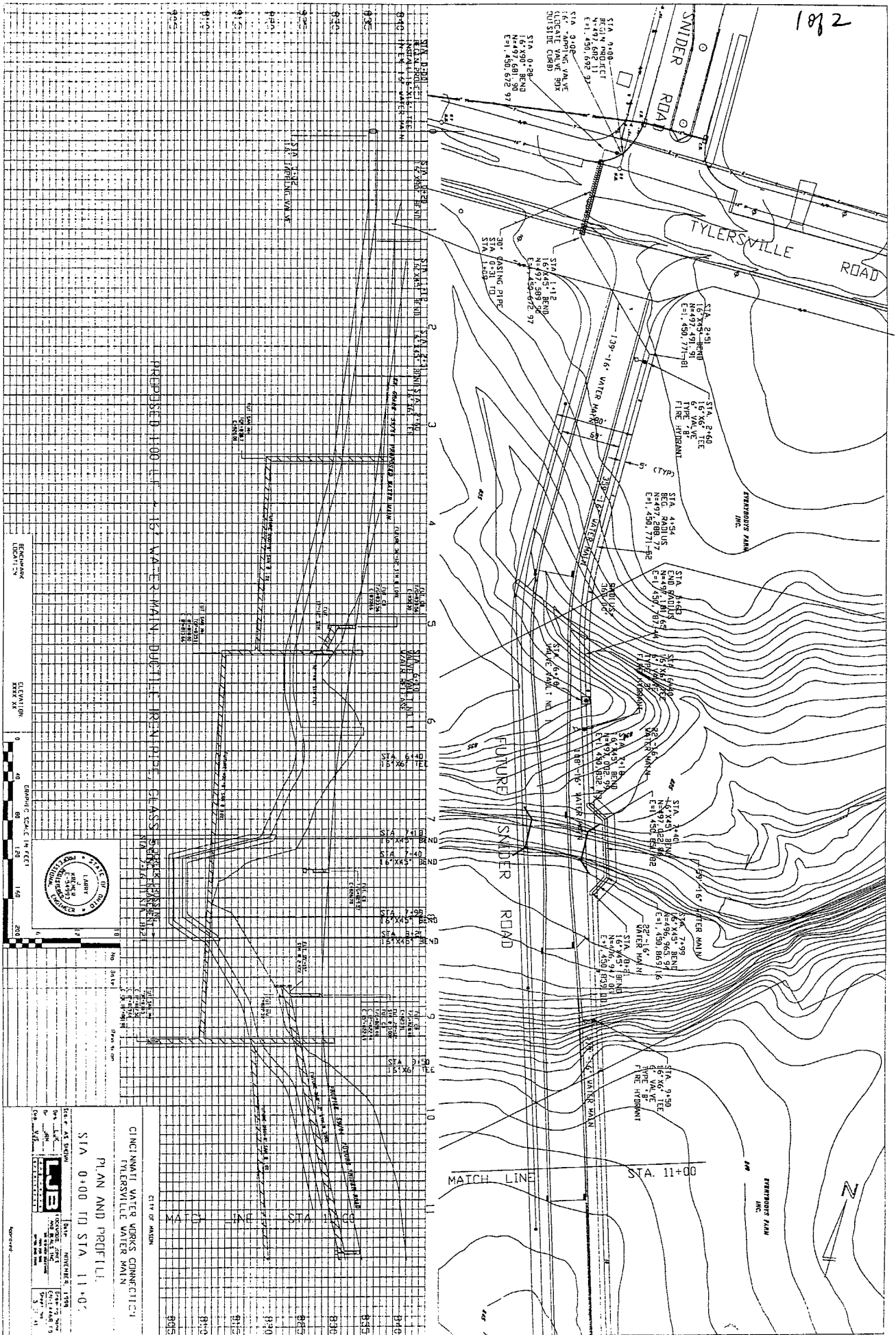
STATE OF OHIO)
)
) SS.
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 5th day of May, 1999, by Scot Lahrmer, City Manager of the City of Mason, on behalf of the City.

Sharon K West
Notary Public, State of Ohio
My Commission Expires: 3/6/04

SHARON K. WEST
Notary Public, State of Ohio
My Commission Expires **March 6, 2004**

1092



ELEVATION
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 GRAVEL CONC. IN TRENCH
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CITY OF MAHON
 CINCINNATI WATER WORKS CONNECTION
 TYLERSVILLE WATER MAIN
 PLAN AND PROFILE
 STA 0+00 TO STA 11+00

DATE: 11/15/24
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 SCALE: AS SHOWN
 SHEET NO. 3 OF 4

2012

