

ORDINANCE NO. 2020-17

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT WITH CITY OF KENT, OHIO (CITY), MAIN STREET KENT (MSK), PAUL A. & SUSAN K. BRAYDEN (BRAYDEN) AND ARTHUR PROPERTY MANAGEMENT LLC (APM) TO ALLOW MSK TO INSTALL OVERHEAD STRING LIGHTING ON BURBICK WAY NEAR SOUTH WATER STREET, AND ALSO ENTER INTO A LICENSE AGREEMENT WITH MSK TO PERMIT THE USE OF THE RIGHT-OF-WAY FOR THE PURPOSE OF PROVIDING DECORATIVE OVERHEAD LIGHTING, AND DECLARING AN EMERGENCY.

WHEREAS, the City, MSK, Brayden and APM would like to enter into an agreement to allow MSK to install overhead string lighting on Burbick Way near South Water Street of Kent; and

WHEREAS, the City will enter into a license agreement to permit MSK's use of the right of way for the purpose of providing decorative overhead lighting; and

WHEREAS, the City will provide the power supply from existing electric outlets located on the light poles in the alley at no cost to MSK.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. That the City Manager, or his designee, is hereby authorized to enter into an agreement with the City, MSK, Brayden and APM to install overhead string lighting on Burbick Way; in substantial compliance with the terms of Exhibit "A", attached hereto.

SECTION 2. That the City Manager, or his designee, is hereby authorized to enter into a license agreement with MSK to permit the use of the right-of-way to install overhead string lighting on Burbick Way; in substantial compliance with the terms of Exhibit "B", attached hereto.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City, for which reason and other reasons manifest to this Council, this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: March 18, 2020
Date

Jerry T. Fiala
Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: March 18, 2020
Date

ATTEST: Amy Wilkens
Amy Wilkens
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF ORDINANCE No. _____, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON _____, 20_____.

AMY WILKENS
CLERK OF COUNCIL
(SEAL)

BURBICK WAY LIGHTING AGREEMENT

THIS AGREEMENT is made by and between the CITY OF KENT, OHIO (hereinafter referred to as "CITY"), MAIN STREET KENT (hereinafter referred to as "MSK"), Paul A. and Susan K Brayden (hereinafter referred to as "Brayden") and ARTHUR PROPERTY MANAGEMENT LLC (hereinafter referred to as "APM").

WHEREAS, the above parties have previously invested in improving Burbick Way and the properties along Burbick Way; and

WHEREAS, the above parties would like to continue to invest along Burbick Way by incorporating decorative overhead lighting along a portion of Burbick Way.

NOW, THEREFORE, for mutual consideration, it is agreed between the parties as follows:

- A) MSK shall install, operate and maintain overhead lighting along the western portion of Burbick Way as shown in Exhibit A.
- B) MSK shall enter into a license agreement, shown in Exhibit B, with the CITY to permit MSK's use of the right-of-way for the purpose of providing decorative overhead lighting.
- C) The CITY shall permit access to the existing power on the light poles along Burbick Way for use by MSK for the decorative overhead lighting. The CITY shall provide the access to power at no cost to MSK.
- D) The CITY is under no requirements to upgrade or make any modifications to the existing infrastructure, including power source, to facilitate the installation, operation or maintenance of the decorative overhead lighting.
- E) Brayden shall permit MSK to attach, anchor or in any other manner necessary install the decorative overhead lighting to their structure located adjacent to Burbick Way.
- F) APM shall permit MSK to attach, anchor or in any other manner necessary install the decorative overhead lighting to their structure located adjacent to Burbick Way.

IN WITNESS WHEREOF, the parties hereby acknowledge said agreement by their signatures below.

MAIN STREET KENT

By: _____

Its: _____

Date

Address: _____

THE CITY OF KENT, OHIO

By: _____

Its: _____

Date

Address: _____

Approved as to form by:

PAUL A. and SUSAN K BRAYDEN

By: _____

Its: _____

Date

Address: _____

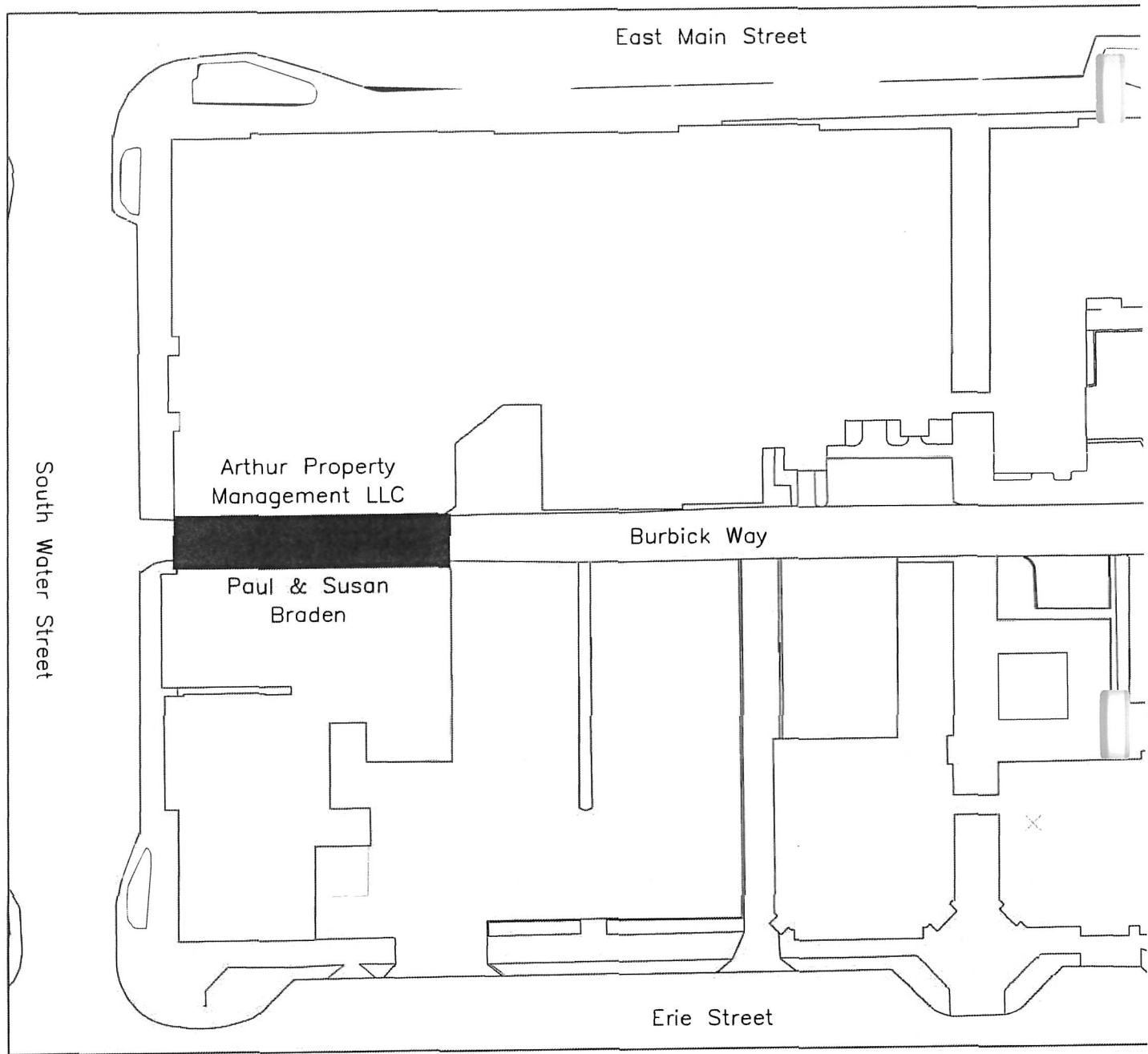
ARTHUR PROPERTY MANAGEMENT, LLC

By: _____

Its: _____

Date

Address: _____



Burbick Way Overhead Lighting ■

Exhibit B

**CITY OF KENT, OHIO
LICENSE AGREEMENT**

THIS AGREEMENT is made by and between the CITY OF KENT, OHIO, hereinafter called "City" and Main Street Kent, hereinafter called the "Licensee."

The City is the owner, in fee simple or by highway easement, of land, hereinafter known as the "Property." For and in consideration of the covenants, conditions, agreements and stipulations of the License expressed herein, the City does hereby agree the Property may be used by the Licensee for the purpose as outlined in Part 1 below, in accordance with the laws and Charter of the City of Kent. The Property is more particularly described in the attached exhibit listed below.

Exhibit "A" - Burbick Way Overhead Lighting Drawing

The parties hereto covenant and agree as follows:

1. NATURE OF INTEREST:

The Licensee understands that by issuing this license, the City has merely granted the Licensee the right to occupy the right-of-way and this license does not grant or convey to the Licensee any interest in the Property.

2. USE:

2.1 The Property shall be used for the purpose of: installing,
operating and maintaining overhead decorative lighting.

_____ and for no other purpose.

2.2 No structural alterations may be made to the City's property without the express written permission of the City of Kent, Director of Public Service.

3. TERM:

The City does hereby agree the Property may be used by the Licensee for a term of one (1) year commencing on _____, 2020, and ending on _____, 2021 unless terminated earlier by either party. This license will automatically renew yearly unless one (1) month before expiration either party notifies the other of its intention to terminate per Paragraph 14.

4. NECESSARY LICENSES AND PERMITS:

4.1 Licensee shall be licensed to do business in the State of Ohio and City of Kent, and upon request, Licensee shall demonstrate to the City that any and all such licenses are in good standing. Correspondence shall be addressed as follows:

All correspondence to the City shall be addressed:
Service Director
City of Kent
930 Overholt Road
Kent, Ohio 44240

All correspondence to the Licensee shall be addressed:

4.2 Licensee shall secure all necessary permits required in connection with the use of the Property and shall comply with all federal, state and local statutes, ordinances, rules, or regulations which may affect, in any respect, Licensee's use of the Property. Licensee shall, prior to the commencement of any work, obtain and thereafter maintain, at its sole cost and expense, all licenses, permits, etc., required by law with respect to its business use of the Property.

5. STORAGE AND VENDING:

No storage of materials or supplies of any nature will be permitted on the Property except as directly related to the agreed business use of the Property.

6. TAXES:

Licensee agrees to be responsible for and to timely pay all taxes and/or assessments that may be legally assessed on Licensee's interest, or on any improvements placed by Licensee on said Property, during the continuance of the license hereby created, including any real estate taxes. The Licensee must provide written notice to the City, at the address referenced in Paragraph 4.1, within thirty (30) days of payment of all taxes and/or assessments.

7. **DIRECTOR OF PUBLIC SERVICE TO ACT FOR CITY:**

The granting of this permit shall not be construed as an abridgment or waiver of any rights which the Director of Public Service has in exercising his jurisdictional powers over the City property, easements or right-of-ways. The City Director of Public Service shall act for and on behalf of the City of Kent in the issuance of and carrying out the provisions of this permit.

8. **CITY USE OF PROPERTY:**

If for any reason the Director of Public Service or his duly appointed representative deems it necessary to order the removal, reconstruction, relocation or repair of the Licensee's changes to the City's property, then said removal, reconstruction, relocation or repair shall be promptly undertaken at the sole expense of the Licensee's thereof. Failure on the part of the Licensee to conform to the provisions of this permit will be cause for suspension, revocation or annulment of this permit, as the Director of Public Service deems necessary.

9. **MAINTENANCE OF PROPERTY:**

Licensee shall, at its sole expense, keep and maintain the Property free of all weeds, debris, and flammable materials of every description, and at all times in an orderly, clean, safe, and sanitary condition consistent with neighborhood standards. A high standard of cleanliness, consistent with the location of the area as an adjunct of the City, will be required. Defoliant, noxious, or hazardous materials or chemicals shall not be used or stored on the Property.

10. **MAINTENANCE OF IMPROVEMENTS:**

10.1 Licensee, at Licensee's own cost and expense, shall maintain all of his/her improvements to the Property. Licensee shall take all steps necessary to effectively protect the Property from damage incident to the Licensee's use of such Property, all without expense to the City.

10.2 Licensee shall be liable to, and shall reimburse the City for, any damage to City owned property that in any way results from or is attributable to the use of said Property by the Licensee or any person entering upon the same with the consent of the Licensee, expressed or implied.

11. **HOLD HARMLESS:**

Licensee shall occupy and use Property at its own risk and expense and shall save the City, its officers, agents, and employees, harmless from any and all claims for damage to property, or injury to, or death of, any person, entering upon same with Licensee's consent, expressed or implied, caused by any acts or omissions of the Licensee.

12. **INSURANCE:**

12.1 At the time of the execution of this Agreement, Licensee shall, at its own expense, take out and keep in force during the terms of this Agreement:

(a) Liability insurance, in a company or companies to be approved by the City to protect against any liability to the public incident to the use of, or resulting from injury to, or death of, any person occurring in or about, the Property, in the amount of not less than *Five Hundred Thousand Dollars (\$500,000.00)*, to indemnify against the claim of one person, and in the amount of not less than *One Million Dollars (\$1,000,000.00)* against the claims of two (2) or more persons resulting from any one (1) accident.

(b) Property damage or other insurance in a company or companies to be approved by the City to protect Licensee, and the City against any and every liability incident to the use of or resulting from any and every cause occurring in, or about, the Property, including any and all liability of the Licensee, in the amount of not less than *One Hundred Thousand Dollars (\$100,000.00)*. Said policies shall inure to the contingent liabilities, if any, of the Licensee and the City, and shall obligate the insurance carriers to notify Licensee and the City, in writing, not less than thirty (30) days prior to cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the Licensee and the City.

12.2 A copy of the "Certificate of Insurance" will be submitted to the City at the time of execution of license and annually thereafter.

13. **MODIFICATION:**

The terms of this Agreement may be modified upon agreement of the parties.

14. **REVOCAION AND TERMINATION:**

14.1 The City may revoke this license at any time. The Licensee may terminate this Agreement at any time.

14.2 In the event this license is revoked or the Agreement is terminated the Licensee will peaceably and quietly leave, surrender, and yield up to the City the Property. The Property will be restored to its previous condition at the expense of the Licensee and no costs for removal will be reimbursed by the City.

14.3 Upon revocation of the license or upon termination or expiration of Agreement, any personal property, or other appurtenances, including all footings, foundations, and utilities, placed on the City property will be removed by Licensee. If any such appurtenances are not so removed after ninety (90) days written notice from the City to the Licensee, the City may proceed to remove the same and to restore the Property and the Licensee will pay the City, on demand, the reasonable cost and expense of such removal and restoration.

15. **RELOCATION:**

A Licensee who licenses property from the City shall not be eligible for relocation payments.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate by the parties hereto as of the date herein last written below. Licensee acknowledges receipt of a copy of this Agreement and agrees to comply with the provisions herein contained.

LICENSEE(S): _____

Signature

Signature

Mailing Address

Telephone

Date

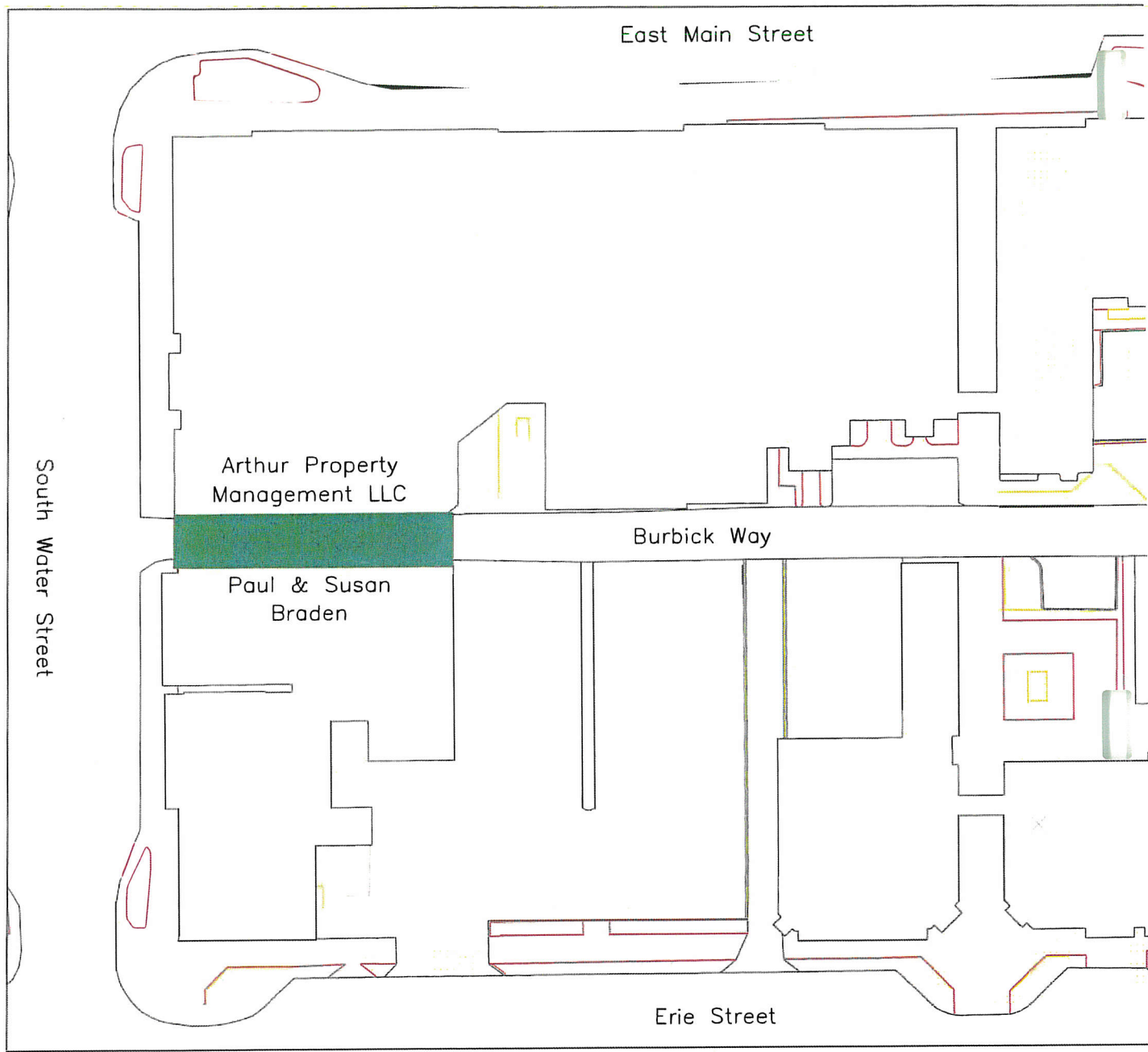
CITY OF KENT, OHIO

Director of Public Service

Date

APPROVED AS TO FORM:

Hope Jones, Law Director
City of Kent



2020-17 Exhibit B

Burbick Way Overhead Lighting