

ORDINANCE 2024 – 021

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A CONSTRUCTION MAINTENANCE AND USE AGREEMENT BETWEEN THE CITY OF KENT AND THE CITY OF AKRON TO PERMIT THE CITY OF KENT TO CONSTRUCT A SHARED USE PATH (BIKE & HIKE TRAIL) TO IMPROVE ACTIVE TRANSPORTATION CONNECTIVITY, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent desires to enter into a Construction Maintenance and Use Agreement with the City of Akron; and

WHEREAS, it will permit the City of Kent to construct a shared use path (bike & hike trail) to improve active transportation connectivity in the region and also to build a facility to work and perform construction on the property.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio:

SECTION 1. That Council does hereby authorize the City Manager, or his designee, to enter into a Construction Maintenance and Use Agreement between the City of Kent and the City of Akron to permit the City of Kent to construct a shared use path (Bike & Hike Trail) and is more fully described in Exhibit "A" attached hereto and incorporated herein.

SECTION 2. 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 3. 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: 3-6-24
Date

JTF
Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: 3-6-2024
Date

ATTEST: Amy Wilkens
Amy Wilkens, CMC
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. 2024 021, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON March 6, 2024.

(SEAL)

Amy Wilkens
AMY WILKENS, CMC
CLERK OF COUNCIL

Construction, Maintenance and Use Agreement

This Construction and Maintenance Agreement (“Agreement”), made this ____ day of _____, 2024 by and between the City of Kent, Ohio, a municipal corporation organized under the laws of Ohio, having its principal address located at 930 Overholt Road, Kent, Ohio 44320 (hereinafter referred to as “Kent”) and the City of Akron, a municipal corporation organized under the laws of Ohio, having its principal address located at 166 South High Street, Akron, Ohio 44308 (hereinafter referred to as “Akron”).

Recitals:

WHEREAS, Akron maintains and operates transmission water mains through Kent in land owned fee simple interest or right-of-way deeded to Akron (hereinafter referred to as “Property”); and

WHEREAS, Akron desires to improve access to its transmission water mains for routine inspections and maintenance; and

WHEREAS, Kent owns, maintains and desires to improve an active transportation network of facilities that connect to regional facilities in Akron, Tallmadge, Stow and Portage County; and

WHEREAS, both parties desire to improve active transportation connectivity in the region; and

WHEREAS, Kent desires to construct an active transportation shared use facility (hereinafter referred to as the “Facility”), located generally on and along the Property owned by Akron in Kent; and

WHEREAS, in order to construct Facility, Kent needs access to work and perform construction on the Property; and

WHEREAS, Akron desires to provide Kent permission to work on the Property to construct the Facility, and desires to provide Kent future access to the property necessary to maintain the Facility; and

WHEREAS, Akron desires to be able to use the Facility to access the Property to inspect and maintain its transmission water mains; and

WHEREAS, Akron and Kent desire to enter into this Agreement to provide for the rights and responsibilities of each party.

NOW THEREFORE, in consideration of the mutual agreements contained herein, the parties do hereby agree as follows:

Article I
Location

The Facility construction and subsequent maintenance shall occur in the Property as depicted on **Exhibit A**, attached hereto and incorporated herein.

For purposes of constructing the Facility, Akron hereby grants Kent permission and authority to work on the Property shown on Exhibit A, where Akron has the right to grant such rights to Kent. Akron also hereby grants Kent permission and authority to access the Property in order to maintain the Facility throughout this Agreement.

Acron hereby grants the public access to use the Facility upon completion of any portions of the Facility. No part of this agreement shall limit Akron's use of its Property to provide clean, safe and reliable drinking water to its customers.

Article II
Construction

Acron hereby grants Kent access and use of the Property for construction of the Facility under the terms and conditions of this Agreement. Kent may access and use the Property for construction purposes upon execution of this Agreement. Kent shall be responsible for the cost of construction of the Facility and impacts to Akron's infrastructure caused by the construction of the Facility.

The Facility shall be designed and constructed to serve active transportation uses and to serve as an inspection route for Akron. This includes designing and constructing the Facility to support access vehicles no larger than a pick-up truck. Any subsurface investigations performed to support the design of the Facility, such as soil borings or subsurface utility investigations, shall be coordinated and approved by Akron before the investigations begins.

Kent shall obtain Akron's approval prior to construction of the Facility. Such approval shall not be unreasonably withheld and shall be given within a reasonable timeframe.

Acron agrees to allow a construction trailer and/or construction equipment to be staged within the Property, as described on Exhibit A and as approved by Akron, for both Kent and Akron inspectors and staff for the administration, management and inspection of the Project.

Kent will continue to improve, modify, and maintain areas adjacent, and within the boundaries of this Project, as outlined in Article III. Kent and Akron agree that both parties will work to coordinate on the Project and minimize conflicts.

Kent and Akron will work jointly to promote the partnership along the Facility with interpretive signage showing the water treatment process and the importance of water protection and conservation. Kent shall be responsible for the costs of this work within the City of Kent.

Article III Maintenance

Once the Facility is completed, Kent, at its sole expense, shall maintain the Facility on the Property that it is occupying. This includes maintenance of the following items on the Property: pavement, storm drainage, emergency vehicle access, lawns and landscaping, pavement markings and signing related to the Facility.

Upon completion of any portion of the Facility, Kent will be responsible to mow the Property where the Facility has been completed.

Prior to commencement of any work, Kent shall secure, and thereafter maintain, at its sole cost and expense, all necessary licenses and permits required in connection with the use of the Facility and shall comply with all federal, state and local statutes, ordinances, rules or regulations which may affect, in any respect, Kent's use of the Property.

Kent shall perform non-emergency repairs to the Project in such a manner as to minimize disturbance to the functioning of the Property for Akron. Kent shall use its best efforts to restore the Property as close to the quality of its prior existing state as possible with similar materials whenever Kent disturbs such while the course of repairing and/or maintaining the Facility.

No part of this agreement shall limit Akron's use of its Property to provide clean, safe and reliable drinking water to its customers. Upon the event that Akron is required to impact the Facility to maintain its transmission water mains, Akron shall be responsible to perform reasonable repairs to the Facility upon completion of Akron's work. The repairs to the Facility shall be performed within a reasonable time frame using good faith efforts to reopen the Facility.

The maintenance responsibilities shall remain in full force for the duration of the term of this agreement.

Article IV Costs

Kent shall be solely responsible for and pay all costs associated with the Facility, which includes all costs to complete the construction of the Facility, including, but not limited to, design, access, construction engineering, construction inspection services, testing services, utility fees, legal fees, and all other incidental items.

Article V Term & Renewal

The term of this Agreement shall be twenty -five (25) years from the execution date of this Agreement ("Original Term"). Kent shall have the option to renew for two (2) consecutive ten (10) year renewal periods, each upon the same terms and conditions as contained in this Agreement (each a "Renewal Term"). Additionally, if Kent does not provide written notice of termination

prior to expiration of the then-current term, the Agreement shall automatically renew for each subsequent Renewal Term.

At the end of the term, if this Agreement is not renewed, Kent has the option to either (1) remove the Facility; or (2) transfer ownership of the Project to Akron, if Akron agrees, and the Akron will own and maintain the Project.

Article VI Default

In the event Kent shall default in the performance of any obligation hereunder, including the obligation to perform each and every covenant, term and condition contained herein, Akron may, at any time, serve written notice of Kent's default under any provision of this Agreement, and if Kent's failure is not remedied within thirty (30) days of receiving notice of any such default or non-compliance, Akron may, without limiting any other remedy or rights available under law to Akron, terminate this Agreement. In the event the nature of the default prohibits Kent from completing the remedy within thirty (30) days, and Kent has promptly commenced and is diligently pursuing completion of the remedy, Akron shall, instead of terminating or utilizing any other remedy available to Akron, assist and permit Kent to complete such remedy, but in no case shall Kent's right to cure exceed ninety (90) days. Any violation of any federal, state or local law that has not been cured within the time periods set forth herein shall be considered a default. If during the term of this Agreement, Akron shall serve more than three (3) notices of default or non-compliance on Kent, and after the curing of said three (3) defaults, Akron shall, at Akron's option, notify Kent that it shall no longer be permitted to the cure period described herein. Thereafter, for the duration of the term of this Agreement, Akron shall have all rights and remedies available under law.

In the event Akron shall default in the performance of any obligation hereunder, including the obligation to perform each and every covenant, term and condition contained herein, Kent may, at any time, serve written notice of Akron's default under any provision of this Agreement, and if Akron's failure is not remedied within thirty (30) days of receiving notice of any such default or non-compliance, Kent may, without limiting any other remedy or rights available under law to Kent, terminate this Agreement or sue for specific performance of Akron's obligations. In the event the nature of the default prohibits Akron from completing the remedy within thirty (30) days, and Akron has promptly commenced and is diligently pursuing completion of the remedy, Kent shall, instead of terminating or utilizing any other remedy available to Kent, assist and permit Akron to complete such remedy, but in no case shall Akron's right to cure exceed ninety (90) days. Any violation of any federal, state or local law that has not been cured within the time periods set forth herein shall be considered a default. If during the term of this Agreement, Kent shall serve more than three (3) notices of default or non-compliance on Akron, and after the curing of said three (3) defaults, Kent shall, at Kent's option, notify Akron that it shall no longer be permitted to the cure period described herein. Thereafter, for the duration of the term of this Agreement, Kent shall have all rights and remedies available under law.

**Article VII
Liability**

Kent agrees to maintain insurance coverage in the event Kent causes damage to Akron property in the performance of its rights and obligations under this Agreement. Upon notification from the Akron of any such damage, Kent shall promptly remedy the same. Additionally, Kent shall maintain general liability insurance at commercially reasonable coverage limits insuring against bodily and property damage of anyone using the Project upon completion.

**Article VIII
Independent Contractor**

Kent is a separate political subdivision and none of its agents, officers, members, employees, or subcontractors are agents or employees of Akron and shall make no representations to the contrary. Nothing in this Agreement is intended to create a joint venture or anything other than an independent contractor relationship between Akron and Kent. Akron will not be liable for Worker's Compensation or Unemployment Compensation attributable to Kent. Kent, its agents, officers, members, employees, or subcontractors will not participate in the hospital, medical, and/or retirement plans available to employees of Akron. As a separate political subdivision, Kent's employees are not employees of Akron, Kent acknowledges that it is providing personal services to a public employer and that its officers, members, or employees are considered public employees and that Kent will cover contributions made to the Ohio Public Employees Retirement System (OPERS) where appropriate.

**Article IX
Equal Opportunity**

Kent agrees, in performing the Services, to abide by the applicable terms and provisions of Sections 38.01-38.06 of the Code of Ordinances of the City of Akron, Ohio, regarding public contracts as if the same be fully rewritten herein.

**Article X
Severability**

In the event any one or more of the provisions contained in the Agreement shall be determined to be invalid and the remaining provisions can be given effect, then in such event the remaining provisions shall remain in full force and effect.

**Article XI
Non-Assignment**

The rights, duties and responsibilities of parties under this agreement shall not be assignable by either party without written consent of the other party.

**Article XII
Non-Waiver of Breach**

The waiver of a breach of any one or more of the terms, provisions and conditions set forth and included in this Agreement shall not constitute, nor be construed to represent or constitute, the waiver in whole or in part of any subsequent breach of any term, provision or condition contained in this Agreement.

**Article XIII
Integrated Agreement**

This Agreement, including exhibits, represents the entire, complete and exclusive understanding and agreement of the parties hereto and reduces to writing all oral negotiations and agreements of the parties and shall not be changed, varied or otherwise amended except in writing, signed by each of the parties hereto.

**Article XIV
Notices**

Unless and until otherwise advised in writing in accordance herewith, all notices required to be given under this Agreement shall be in writing sent by certified mail, postage prepaid, as follows:

To Kent: City of Kent
 Attn: Jim Bowling, PE
 930 Overholt Road
 Kent, Ohio 44240
 jim.bowling@kentohio.gov

With a copy to: City of Kent
 Attn: Hope Jones, Esq.
 320 S Depeyster Street
 Kent, Ohio 44240
 Hope.jones@kentohio.gov

To City: City of Akron
 Attn: Jeff Bronowski, PE
 1460 Triplett Boulevard
 Akron, Ohio 44306
 JBronowski@akronohio.gov

With a copy to: _____

**Article XV
Article Headings**

The article headings contained herein are inserted only as a matter of convenience and for reference and in no way shall be construed to define, limit or describe the scope or intent of this Agreement, nor in any way to affect the interpretation of any provision of this Agreement.

**Article XVI
Governing Law**

This Agreement is being executed in the State of Ohio and the laws of Ohio shall govern its validity, effect, and performance.

[Remainder of this page intentionally left blank – signatures follow.]

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands on the day and year first written above.

CITY OF KENT

By: _____
Its: _____
Date: _____

Approved as to form:

By: _____
Its: _____

CITY OF AKRON

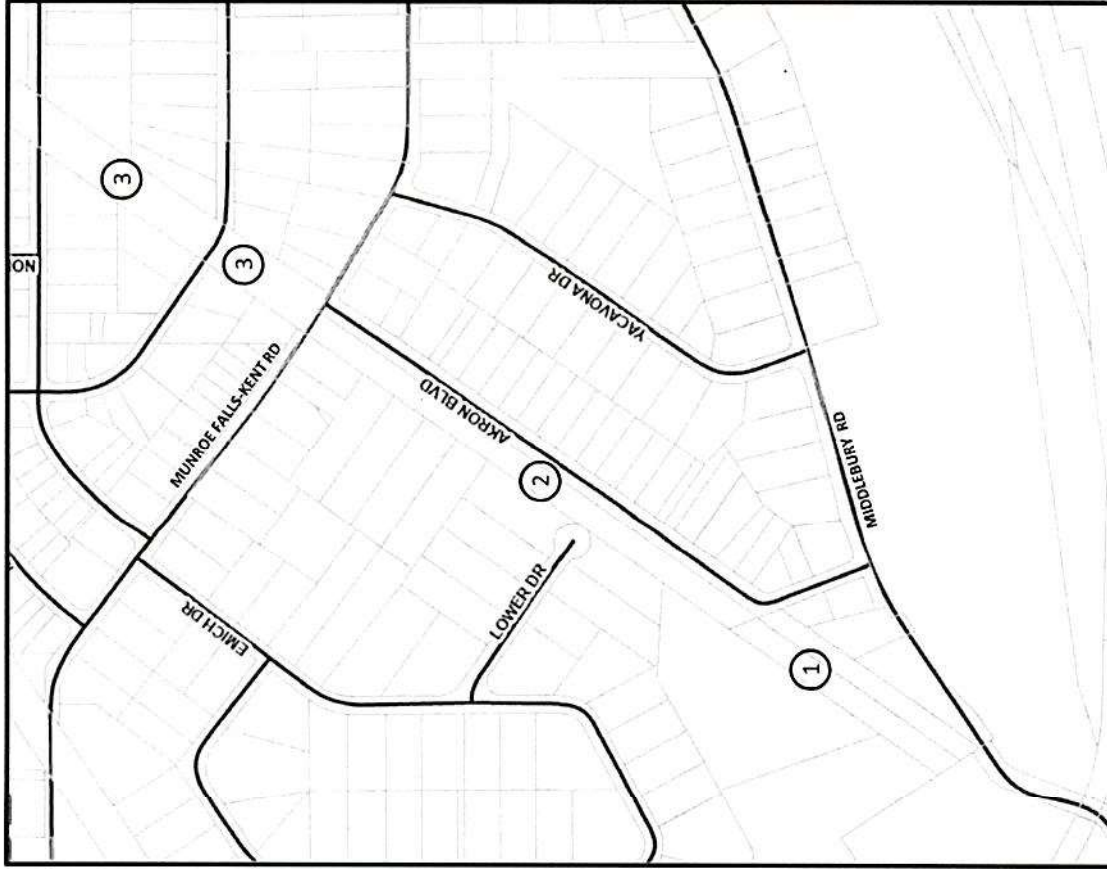
By: _____
Its: _____
Date: _____

Approved as to form:

By: _____
Its: _____

EXHIBIT A
Property Depiction

PROPERTY DEPICTION



Parcels

- ① City of Akron Right-of-Way
- ② 17-009-00-00-039-000
- ③ 17-010-00-00-021-000

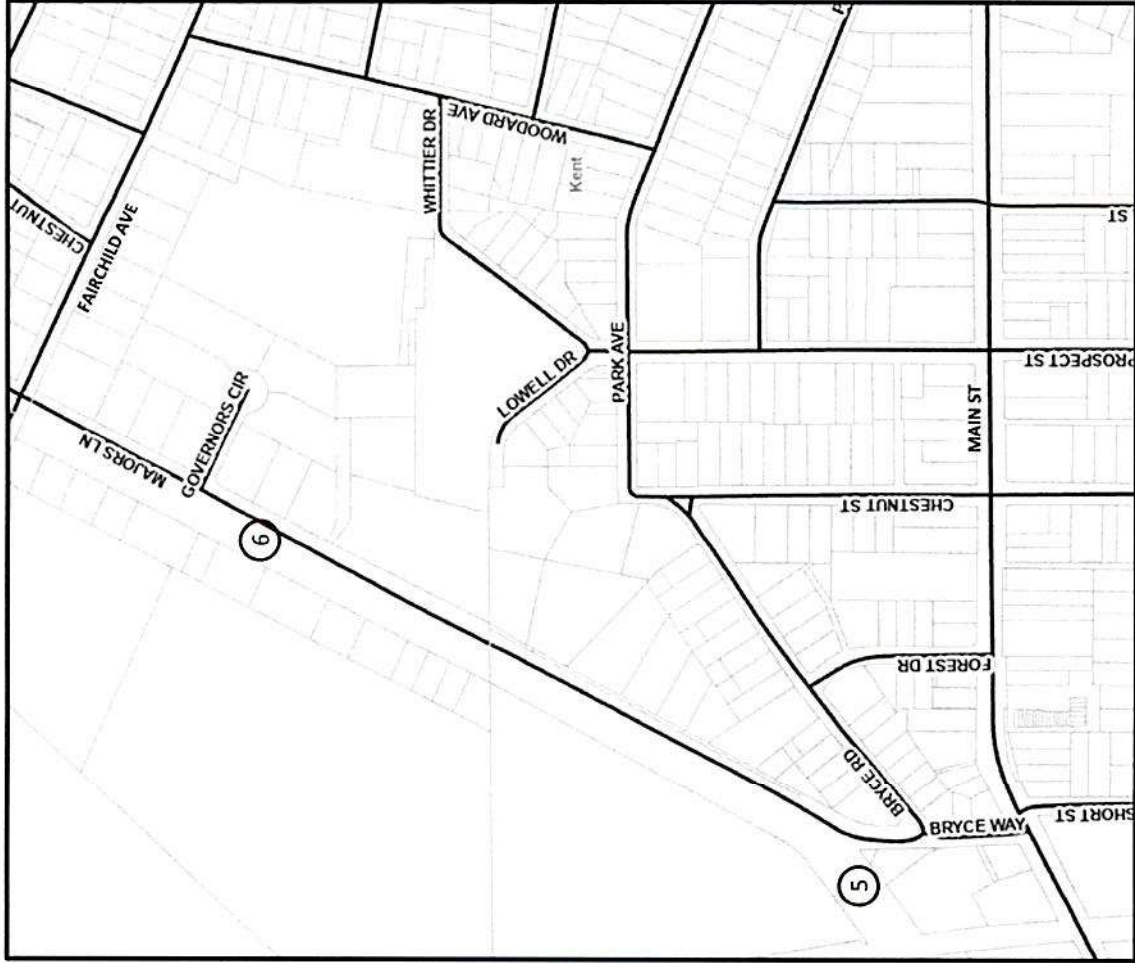
PROPERTY DEPICTION



Parcels

- ③ 17-010-00-00-021-000
- ④ 17-010-00-00-020-000

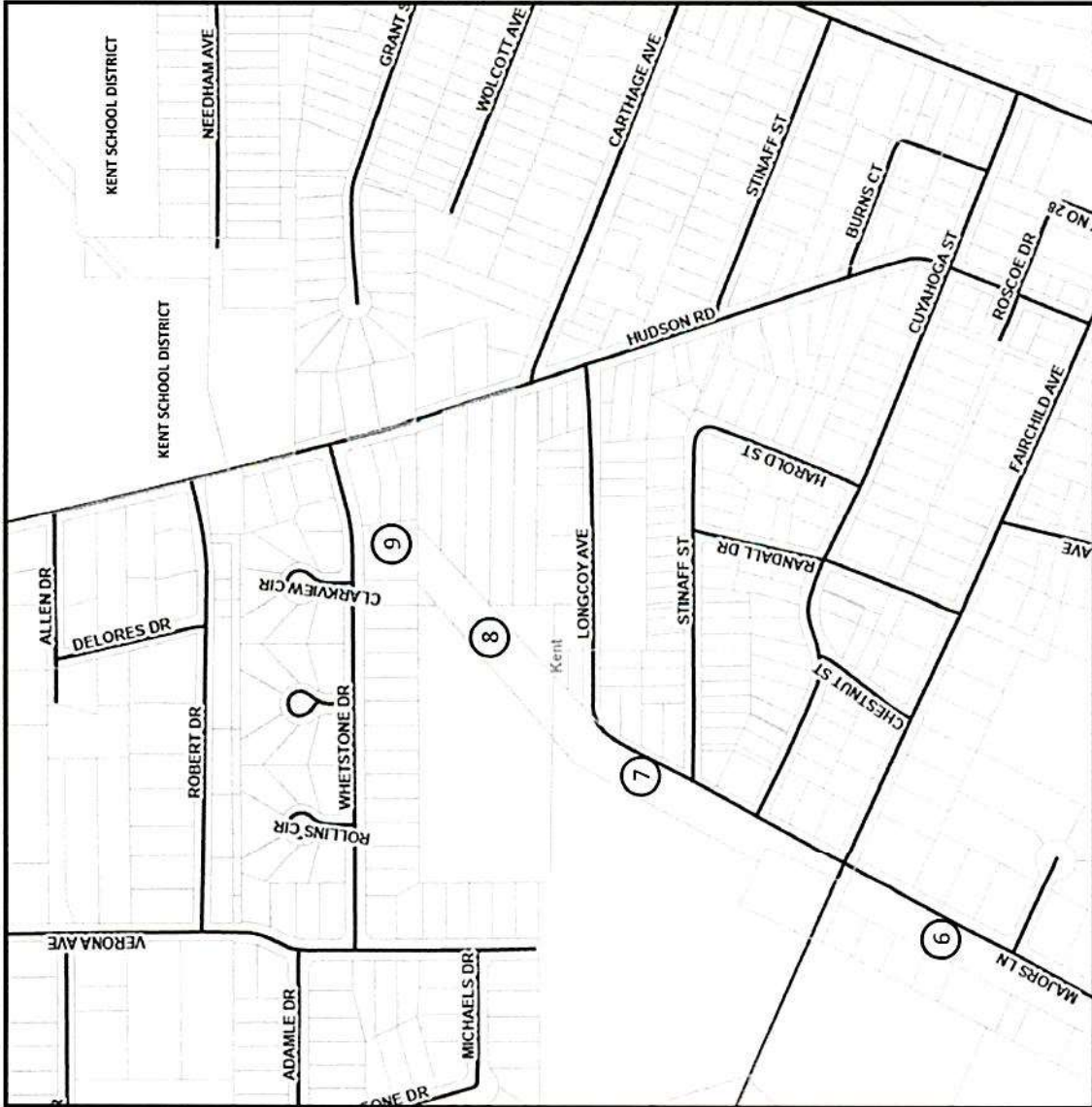
PROPERTY DEPICTION



Parcels

- ⑤ City of Akron Right-of-Way
- ⑥ 17-029-00-00-012-000

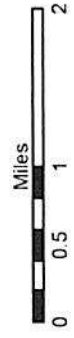
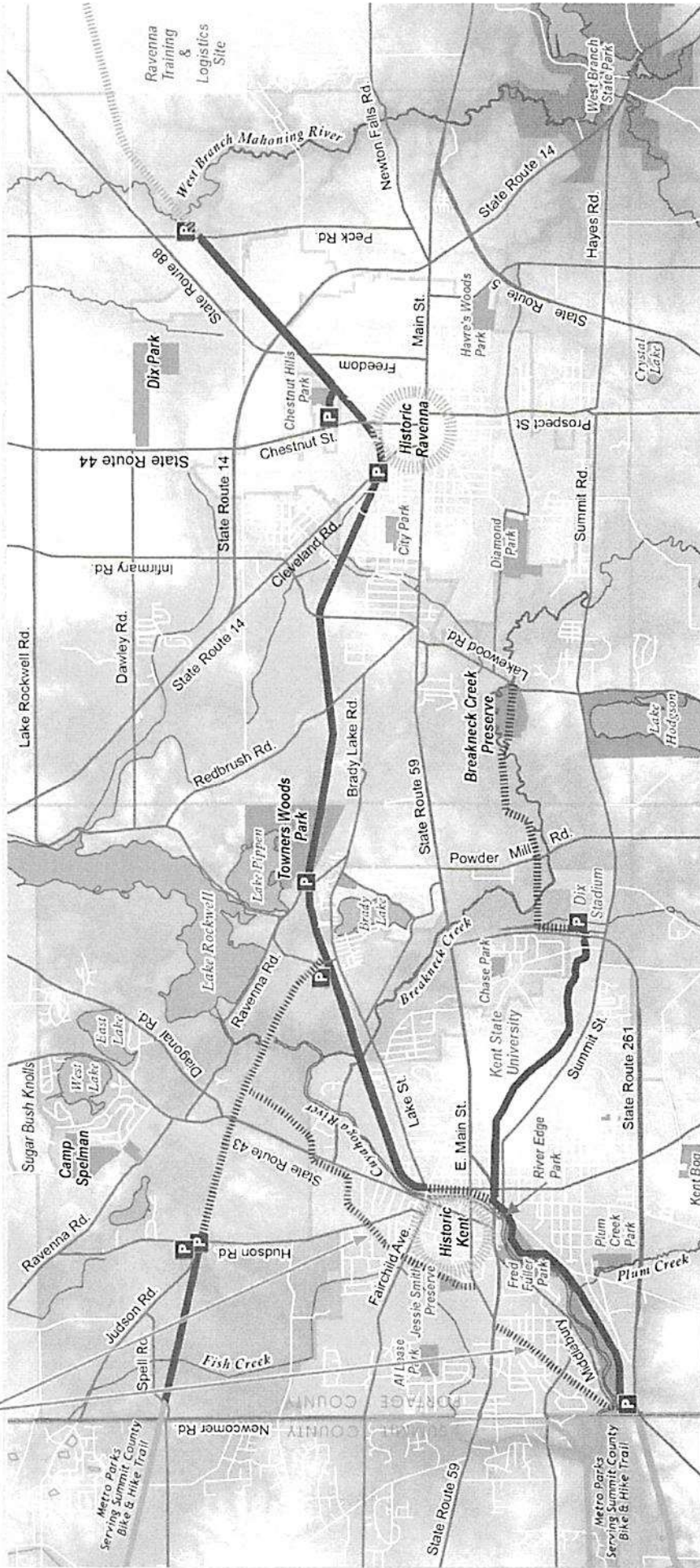
PROPERTY DEPICTION



Parcels

- ⑥ 17-029-00-00-012-000
- ⑦ City of Akron Right of Way
- ⑧ 17-030-10-00-123-000
- ⑨ City of Akron Easement

Proposed Lake Rockwell Trail



- Trailhead parking **P**
- Existing trail
- Future connections

