

Streets, Sidewalks & Utilities Committee (continued)

4. City of Kent & Portage County Street Maintenance Agreement

Gene Roberts has requested Committee time for Council to consider authorizing the staff to enter into a maintenance agreement with Portage County for the City and County to share winter maintenance responsibilities on Summit Street and Mogadore Road. The purpose of the Agreement is to provide for snow and ice maintenance where portions of the street are in the City and the County. (attachment)

Administrative Recommendation

For effectiveness of operations I recommend Council's authorization to enter into the agreement with the County.

Council Action

Authorize staff to proceed with the proposed City-County agreement.

Finance Committee

5. Acceptance of Grant for Parks and Recreation Skatepark

John Idone has requested Committee time to seek Council's approval to accept a grant in the amount of \$14,997 for use in constructing the new skatepark at Admore Drive. John reports that he has skatepark design concepts developed through a collaboration with Kent State University architecture students and area skateboarders. Over the last couple of years John has been engaged in raising funds to build the skatepark and this grant is a result of that effort. (attachment)

Administrative Recommendation

Skateboarding is a popular sports activity in Kent but skateboard athletes do not currently have a place to practice and play their sport in Kent. This grant provides another important piece of the project funding and I encourage Council's support.

Council Action

Authorize staff to accept the \$14,997 Natureworks Grant for the proposed skatepark.

6. 2010 Temporary Budget Appropriation

Dave Coffee and I, along with the Department Heads, are recommending Council approve a temporary budget appropriation for the first quarter of 2010 so that we have more time to develop the 2010 proposed budget. The City has to have a budget adopted by March 2010 and given the budget challenges we are facing we would like to take more time to work with Council and the community to come up with the budget cuts that will be necessary in next year's budget. By waiting we will also have the benefit of seeing year end revenues and expenses. (attachment)

Administrative Recommendation

Adopt a temporary budget appropriation for the first quarter of 2010.

Council Action

Adopt a temporary budget appropriation for the first quarter of 2010.

7. Stormwater Utility Budget Allocations Change

Gene Roberts and Dave Coffee have requested Committee time to seek Council's authorization to revise the current budget allocation related to the stormwater utility fee in the preparation of the 2010 proposed budget. Gene has reviewed crew work assignments and he has determined that the stormwater work activity is greater (on a percentage basis) than the current budget allocation. Gene is requesting Council's support to better align the budget allocation with work load. (attachment)

Administrative Recommendation

It is important to align the budget allocation with work activity as much as possible and I recommend Council's support for the budget allocation change.

Council Action

Authorize staff to proceed with the revised budget allocation for the 2010 budget.



Finance Committee (continued)

8. Energy Conservation Grant Application Authorization

Bridget Susel and Gene Roberts have requested Committee time to seek Council's authorization to submit a grant application for the recently announced Ohio Department of Development funding for county and city governments energy efficiency and conservation projects. We are looking to apply for these funds as part of our overall energy improvement efforts. (attachment)

Administrative Recommendation

I recommend Council's authorization to submit a grant application.

Council Action

Authorize staff to submit a grant application for energy conservation.

9. Phase 2, Regional Fire Services Project

Bill Lillich has requested Committee time to review the findings of Phase 1 of the Regional Fire Services study with City Council. Included in that presentation will be a recommendation to proceed with Phase 2 of the Regional Fire Services project. The City's share of the apportioned cost for Phase 2 of the study is \$16,029. The other communities committed to proceed with Phase 2 include the City of Ravenna, Ravenna Township, Brimfield Township and Charlestown Township.

Administrative Recommendation

Phase 1 of the Regional Fire Study produced a list of collaborations and improvements that identify areas for the partners to save money and improve fire services and Phase 2 is expected to further refine that work so I recommend Council's support using funds from the undesignated fund balance.

Council Action

Authorize staff to proceed as a partner to Phase 2 of the Regional Fire Services study at a cost of \$16,029.

Information Items

1. Traffic Engineering and Safety Meeting

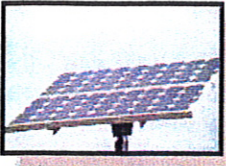
Bill Lillich has provided copies of the October 20, 2009 Traffic Engineering and Safety meeting. There were 7 items up for discussion including: disruptive activity on S. Willow Street; Riverbend signal warrant; reclassification of the traffic signal at Haymaker and Depeyster; East Main Street pedestrian safety; safety zone proposal; project updates; and radar trailer schedule. (attachment)

2. Income Tax Report

Dave Coffee has provided a summary of income tax collections thru the end of September 2009. Overall the City income tax collections are down \$37,596 (-.47%) through the same month last year with Kent State's collections up 4.91% (\$141,930). (attachment)

3. City Operations Pandemic Plan

John Ferlito, Bill Lillich and the senior staff have developed a security and emergency preparedness plan in the event that the H1N1 influenza virus reaches pandemic levels. The plan outlines the procedures we will use to respond to pandemic conditions and sustain City operations during the outbreak. I have included a draft copy of the plan for your information. This plan is an item that we can handle administratively but if you would like Committee time to have the benefit of greater detail and/or discussion we'd be happy to arrange Committee time at a future meeting. (attachment)



Information Items (continued)

4. Sidewalk Snow Removal Update

I have included a copy of the advertisement that will be listed in the local newspaper requesting contractors to submit their company name and contact information to be included on the City's snow removal list. Also, during the course of the discussions with the volunteer citizens committee, it was suggested that the City consider providing residents with a door hanger that they could use to apply some friendly peer pressure on neighbors that were not clearing their sidewalks of snow. I have included a copy of the draft door hanger that was developed. If the idea clears legal review, we would consider including it in the winter issue of the Tree City Bulletin. (attachment)

5. Health Department Phone Messaging Service

I wanted to let you know that John Ferlito has partnered with the Portage County Health Department to pay for a phone based information service to help advise residents of Swine Flu developments. John has programmed an informational message on the health department's phone line concerning the status of Swine Flu. Since Budget and Finance, City Clerk, City Manager's Office and the Legal Department all share the same phone line, if you call our numbers you will also hear the message if you happen to be put on hold.



CITY OF KENT, OHIO

DEPARTMENT OF ECONOMIC DEVELOPMENT

Date: October 26, 2009

To: David Ruller, City Manager

From: Dan Smith, Economic Development Director DS

Subject: Semi-annual EDA Revolving Loan Fund Certification

Earlier this year, the EDA enacted new guidelines for compliance in administering our revolving loan fund. Our RLF 2 (EDA funded) now requires semi-annual certification that the City is operating the program in accordance to our plan and program guidelines. Given staff guidance and committee review that loan activities are being administered in accordance with RLF/EDA guidelines, the RLF committee voted to approve certification at the October 6, 2009 committee meeting. As before, City Council needs to do the same for us to be in compliance (spring resolution 2009-47 listed below).

I am respectfully requesting time on the November Council agenda to seek approval for the semi-annual certification. I have attached the October 26, RLF committee minutes.

2009-47: A RESOLUTION CERTIFYING THAT THE CITY'S REVOLVING LOAN PLAN IS CONSISTENT WITH AND SUPPORTIVE OF THE AREA'S ECONOMIC DEVELOPMENT ADJUSTMENT STRATEGY AND IS BEING OPERATED IN ACCORDANCE WITH THE POLICIES AND PROCEDURES CONTAINED IN THE REVOLVING LOAN PLAN AND THAT THE LOAN PORTFOLIO MEETS THE STANDARDS CONTAINED WITHIN SAID PLAN AND DECLARING AN EMERGENCY.



Community Development Committee

1. Annual EDA Revolving Loan Fund Certification

Each year the City is required to submit an annual report of the activities performed with the revolving loan fund that were capitalized with EDA funds. The City's 2009 Annual Report was reviewed and approved by the City's Revolving Loan Fund Advisory Board and now City Council is being asked to pass a resolution in support of it as well. (attachment)

Administrative Recommendation

The City has effectively used EDA revolving loan funds to retain and attract new business investment in Kent. Council certification of the City's Loan Fund Plan is an annual procedure that is required by the Ohio EDA to maintain eligibility and I would urge Council's adoption.

Council Action

Approve and certify the EDA Revolving Loan Fund report for FY 2009.

2. Downtown Design Guidelines

Mary Gilbert has requested Committee time for Council's consideration of the final design guidelines for downtown Kent. Council approved the contents of the guidelines earlier this year and Mary reports that the guidelines have since been edited for semantic and grammatical improvements without any change in content. (attachment)

Administration Recommendation

I would encourage Council's approval of the design guidelines so we can begin to use them to guide downtown redevelopment. We can certainly continue to improve the guidelines through further editorial changes but I would recommend officially accepting them at this point.

Council Action

Accept and approve the voluntary downtown design guidelines.

Streets, Sidewalks & Utilities Committee

3. Environmental Covenant for ARRA Grant Funding (Plum Creek)

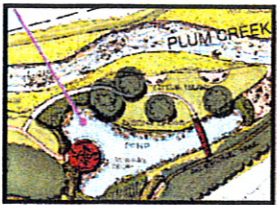
Jim Bowling has requested Committee time to obtain Council's approval of the environmental covenants required by the Ohio EPA to meet the conditions of the ARRA Grant funds approved for the Plum Creek Park improvement project. (attachment)

Administration Recommendation

With \$1 million in ARRA stimulus funds approved for the Plum Creek Park project, I would recommend Council's support of the environmental covenants required by the Ohio EPA.

Council Action

Approval of the environmental covenants for the Plum Creek Park project.



Kent Revolving Loan Fund Committee
Minutes- Tuesday October 6, 2009
Huntington Bank Conference Room

Present: Members- John Ryan, Scott Stiegemeier, Dennis Eberhart, and Benito Antognoli
City of Kent Staff: Dan Smith and Gary Locke

The meeting was called to order at 4:43 p.m.

I. Consideration of meeting minutes of March 4, 2009- Mr. Smith presented the meeting minutes of March 4, 2009. **Mr. Eberhart made a motion to accept the minutes as presented, Mr. Ryan, Second, Motion Carried.**

II. Semi-annual EDA Revolving Loan Fund Certification- Mr. Smith stated that the EDA revolving loan fund now requires semi-annual certification that the City is operating the program in accordance to our plan and program guidelines. Given staff guidance and committee review that loan activities are being administered in accordance with RLF/EDA guidelines, **Mr. Eberhart made a motion for semi-annual certification, Mr. Ryan, Second, Motion Carried.**

III. Discussion of RLF Application- Mr. Smith presented the Abison, Inc. RLF application. Abison has recently received a commitment from the State of Ohio for an IOF loan in the amount of \$840,000. Abison currently resides in Hartville but cannot make the necessary expansion at their current location. The application is for a \$50,000 two-year bridge loan that will work in conjunction with a State of Ohio IOF (Innovation Ohio Loan Fund) to expand their software company at the Martinel Incubator site (former home of Alpha Micron). The State sent an e-mail stating that Abison would need to remain at their current location until the loan process is complete, but then can expand and/or move operations to the City of Kent. After reviewing the financials and credit reports, conditional approval was proposed if they meet the following conditions: 1) finalize the State's IOF loan with the Controlling Board, 2) personally guarantee the loan with mortgages and 3) sign the lease with the KRBA to move into the Kent facility. The company will guarantee five full-time employees during the loan and will employ 2 full-time and one part-time after the expansion is complete.

Mr. Stiegemeier made a motion to approve the loan based on the previous criteria, Mr. Eberhart, Second. Mr. Eberhart, Mr. Antognoli and Mr. Stiegemeier voted to approve the Abison RFL 1 loan (UDAG loan) with Mr. Ryan Abstaining, the Motion Carried.

The meeting adjourned at 4:51 p.m.

MEMORANDUM
DIVISION OF ENGINEERING
City of Kent Department of Public Service

DATE: October 27, 2009
TO: Jim Bowling
FROM: Cori Finney
SUBJECT: Plum Creek Stream Restoration

The engineering division needs to request council time to discuss authorization for the City Manager, or his designee, to apply for, accept and execute an environmental covenant to receive ARRA money through the OEPA Water Pollution Control Fund. The loan documents have to be signed and returned to the OEPA no later than December 15, 2009. The OEPA will award the loan in January 2010.

The environmental covenant is an agreement the City enters into with the OEPA to ensure the stream restoration improvements completed as part of the Project are maintained as approved in the plans. The environmental covenant places some restrictions on the use of the land within the limits of the stream restoration. This is the same environmental covenant as the one council was given at the 9/02/09 workshop, with a few modifications to allow for the viewing deck, interpretive areas, trails, and continued mowing and trimming of the existing islands within the stream restoration boundary.

The engineering staff is seeking council's approval for the authorization of the City Manager, or his designee, to apply for, accept and execute an environmental covenant to receive ARRA money through the OEPA Water Pollution Control Fund.

C: file

ENVIRONMENTAL COVENANT
Ohio Water Pollution Control Loan Fund

American Recovery and Reinvestment Act of 2009
Water Resource Restoration Project
Great Lakes Watershed
WPCLF CS390486-0014
Plum Creek Stream Restoration Project

This Environmental Covenant ("Covenant") is entered into by the City of Kent, an Ohio body politic and corporate ("Owner"), and the State of Ohio Environmental Protection Agency, including its successor agencies ("Ohio EPA"), a non-holding party, pursuant to Ohio Revised Code ("R.C.") §5301.80 to §5301.92, for the purpose of restoring, maintaining and protecting, in perpetuity, the Conservation Values identified herein by subjecting the property described below to the activity and use limitations set forth herein. For the purposes of this Covenant, the Owner, the Holder, if any, and Ohio EPA shall be known collectively as the "Parties." This Covenant concerns the Property described in paragraph 2 below.

Ohio EPA, through its Water Pollution Control Loan Fund ("Fund") and funds made available through the Fund from the American Recovery and Reinvestment Act of 2009 (ARRA), offers financial assistance pursuant to R.C. §6111.036 for the restoration or protection, or both, and maintenance of Ohio's aquatic ecosystem resources. The Ohio EPA has awarded financial assistance to the City of Kent ("Loan Recipient") for the implementation of the environmental response project (referred to herein as the "Project") that is the basis for this Covenant as set forth in R.C. §5301.80(E)(3). As part of the Project, the Loan Recipient will cause the restoration or protection or both, and the maintenance, of the aquatic ecosystem resources associated with the Property.

As a condition of Ohio EPA's award of financial assistance from the Fund for the Project, Ohio EPA, the Loan Recipient, and the Owner have agreed to legally restrict the activities that will be conducted upon, and uses that will be made of, the Property in order to prevent direct and indirect adverse impacts to surface and ground waters, and to the Conservation Values associated with the Property.

All persons shall take notice that if the Loan Recipient or any party acting on behalf of or at the behest of the Loan Recipient violates this Covenant, the violation will be considered a default on the part of the Loan Recipient under the terms of the Fund's agreement for financial assistance for the implementation of the Project, entered into by Ohio EPA and the Loan Recipient.

Now therefore, the Owner and the Holder(s), if any, and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to R.C. §5301.80 to §5301.92.
2. Property. This Covenant concerns an approximately **XX.XX** acre tract of real property (the "Property"), owned by the City of Kent in Portage County, Ohio, and more particularly described in Exhibit A attached to this Covenant and incorporated by reference.
3. Owner. City of Kent in Portage County, Ohio is the Owner of the Property. All references to "Owner" in this Covenant shall include a reference to all owners of the Property executing this Covenant, jointly and severally, if there is more than one owner, and all assigns and successors in interest of the present owner(s), including any Transferee. The term "Transferee," as used in this Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.
4. Ohio EPA. References to "Ohio EPA" include the Ohio Environmental Protection Agency and any successor agency.
5. Holder. City of Kent in Potage County, Ohio is a Holder of this Covenant ("Holder"). All references to "Holder" in this Covenant shall include a reference to all present and future holders under this Covenant, jointly and severally, if there is more than one holder. Holders may be added in accordance with Section 19 of this Covenant.
6. Conservation Values. The Parties recognize the value of the Property as an aquatic ecosystem resource, as well as a scenic, natural, and aesthetic resource. The Property in its current state contributes to the physical, biological, and chemical integrity of water resources in the Great Lakes watershed. The restoration, preservation, and maintenance of the Property as an aquatic ecosystem resource is a part of the attainment and maintenance of the aquatic life uses of the waters of the State of Ohio pursuant to §303 of the Clean Water Act, 33 U.S.C. §1313 and §6111.041 of the Ohio Revised Code. The Parties hereby agree that effective perpetual protection and maintenance of the Property and of any environmental improvements to the Property made as part of the Project are necessary in order to preserve these Conservation Values of the Property. The Owner and Holder further agree to use their best efforts to prevent reasonably foreseeable actions from occurring that may be detrimental to the accomplishment of the purposes of this Covenant and the Plan.

7. Natural Condition. As used herein, “aquatic ecosystem resource,” and “scenic, natural, and aesthetic values” shall, without limiting the generality of the terms, mean a condition that is no less natural than the condition of the Property at the time of the execution of this Covenant, and no less natural than any improved environmental conditions that may be attained subsequently. For the purposes of this Covenant, “natural” means that native plants and animals are permitted to carry out their life cycles without adverse direct or indirect human interference or neglect of the purposes of this Covenant.

8. Restoration and Protection Plan. The above Conservation Values and other conservation values of the Property have been identified and included in the Property’s final Restoration and Protection Plan as approved by Ohio EPA (“Plan”). The Plan is hereby incorporated by reference into this Covenant, and without limitation is intended to serve as a supplement to the purposes of this Covenant, and further defines the commitments of the Owner for future management of the Property. The Owner represents that this Plan accurately describes the Property at the time of the execution of this Covenant.

No provision of the Plan shall supersede the purposes or terms of the Covenant. If there is a conflict between the language in the Plan and the language in the Covenant, the language of the Covenant shall govern.

Copies of the Plan may be viewed at the headquarters offices of the Ohio EPA’s Division of Environmental and Financial Assistance, currently at 50 West Town Street, Columbus, Franklin County, Ohio, or its successor division.

9. Activity and Use Limitations. The Owner covenants on behalf of the Owner and the Owner’s heirs, successors and assigns, with the Holder, its successors and assigns, and with the Ohio EPA, to refrain from, severally and collectively, any activity on, or use of, the Property which is inconsistent with the purposes of this Covenant or detrimental to the Conservation Values expressed herein. Such activity or use is expressly prohibited. By way of example and without limitation, the Owner hereby imposes upon the Property and agrees to comply with the following activity and use limitations:

- a. **Conservation**. Restoration, maintenance, and protection of the Conservation Values of the Property shall be carried out and maintained in accordance with the conservation activities as defined in the Plan and this Covenant.
- b. **Natural Area**. The Property shall be maintained in perpetuity as a natural area. The Property shall be managed to accomplish the purposes of this Covenant, and shall not be managed for the purpose of benefiting any other human activity, excluding the proposed deck, and the interpretive areas as shown on the Plum Creek Stream Restoration plans. In order to maintain the

ecological balance of the Property or to protect human health and safety, hunting and trapping may be permitted by the Owner in consultation with the Ohio Department of Natural Resources, Division of Wildlife.

- c. **Division.** The Property may not be divided, partitioned, subdivided, or conveyed except in its current configuration; i.e., the Property must be conveyed in its entirety.
- d. **Uses of Land.** There shall be no agricultural, industrial, commercial, or residential activity on the Property.
- e. **Structures.** No buildings, or other structures including, but not limited to, billboards or advertising of any kind, camping accommodations, and mobile homes shall be erected or placed on the Property.
- f. **Resource Extraction.** There shall be no mining, drilling, exploring for or removal of, water, minerals, oil, or gas, or other resources from the Property.
- g. **Earth Moving and Land Surface Alteration.** There shall be no ditching, draining, diking, filling, excavating, or removal or disturbance of topsoil, sand, gravel, rock, or other materials.
- h. **Drainage Alterations.** There shall be no manipulation or alteration of wetlands, creeks, streams, surface or subsurface springs or other bodies of water, or any activities on, or uses of, the Property that may be detrimental to the aquatic or terrestrial ecosystems of the Property. There shall be no activity that disturbs water bodies, riparian zones, or drainage ways without prior approval of Ohio EPA, consistent with the purposes of this Covenant.
- i. **Roads.** Except as may be necessary for environmental preservation, management, or restoration purposes or as otherwise provided in Section 17 of this Covenant, there shall be no building of roads or other rights of way. Existing roads may be maintained, but shall not be widened or improved. The Owner shall construct no road without submitting a plan for the proposed construction to Ohio EPA and receiving prior approval of Ohio EPA.
- j. **Trails.** Limited development of foot trails for hiking, photography, or nature observation may be permitted upon the condition that their construction and use will produce minimum levels of disturbance to the environment, and that they shall not be detrimental to the Conservation Values of this Covenant. The Owner shall construct no trail below the normal high water level without

submitting a plan for the proposed construction to Ohio EPA and receiving prior approval of Ohio EPA.

- k. **Vehicles.** There shall be no operation of automobiles, trucks, snowmobiles, dune buggies, motorcycles, all-terrain vehicles, or any recreational motorized vehicles on the Property, except (i) law enforcement vehicles, (ii) emergency vehicles, (iii) equipment of Owner used by Owner, or of an agent or contractor of Owner, used for the purpose of maintaining the Property or in connection with activities conforming to the terms of the Covenant that are permitted by the Plan, and (iv) as otherwise provided in Section 17 of this Covenant.
- l. **Dumping.** There shall be no dumping of trash, garbage, or hazardous or toxic substances on the Property. All trash or nonconforming material that is dumped or placed on the Property shall be removed by the Owner from the Property within thirty (30) days of its discovery.
- m. **Plants and Animals.** The Owner shall allow no purposeful introduction of domestic livestock or non-native plants or animals. There shall be no feedlots permitted on the Property. No plants or animals shall be removed from the Property except as permitted by the Owner, this Covenant, and State law.
- n. **Vegetation Controls.** Except as may be necessary for reasonable environmental preservation, management or restoration of park property, for the protection of human health and safety, or for the maintenance of a diversity of naturally occurring habitat types and control of exotic species of plants, there shall be no removal, destruction, cutting, trimming, or mowing of any trees or other vegetation.
- o. **Chemical Control of Invasive Species.** Except as may be necessary for environmental preservation, management, or restoration purposes, for the protection of human health and safety, or for the prevention of the spread of a nonnative species, there shall be no use of fertilizers, insecticides, fungicides, or rodenticides. Herbicides may be used for the control of state-designated noxious weeds and for the control of other invasive exotic plant species consistent with best ecosystem management practices.
- p. **Other Interests in Property.** No new power lines, transmission lines, utility lines, nor communications towers may be constructed on the Property, nor shall any easements or other interests in the Property be granted for this purpose.

10. Running with the Land. This Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to R.C. §5301.85(A).

11. Compliance Enforcement. Compliance with this Covenant may be enforced pursuant to R.C. §5301.91. Failure to timely enforce compliance with this Covenant or the use limitations contained herein by any person to whom relief for violation of the Covenant is available shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict the Director of Ohio EPA from exercising any other authority or remedy under applicable law.

All costs incurred by the Ohio EPA and/or any Holder other than the Owner in enforcing the terms of this Covenant against the Owner, including, without limitation, costs and expenses of suit and attorney's fees, and any costs of environmental restoration necessitated by the Owner's violation of the terms of this Covenant shall be borne by the Owner.

12. Rights of Access. Owner hereby grants to Ohio EPA, its agents, contractors, and employees, and any Holder other than the Owner, the right of access to the Property for implementation or enforcement of this Covenant, including inspection of the Property or the Project.

13. Right to Post Signs. Ohio EPA shall have the right to post one or more signs on the Property which indicate that the Property's restoration has been financed by Ohio EPA and the Program. Owner agrees to notify the Ohio EPA if a sign is damaged or removed.

14. Compliance Reporting. Beginning with a submittal one year and 30 days after execution of this Covenant, the Owner shall annually submit to Ohio EPA and any Holders other than the Owner, written documentation describing the status of the Conservation Values which are the subject of this Covenant or the Plan, and verifying the extent to which the activity and use limitations remain in place and are being complied with in accordance with this Covenant and the Plan. The first of these reports shall cover the time period beginning with the date the Owner acquires title to the property and ending with the first anniversary of the execution of this Covenant. The documentation shall include a complete enumeration and description of any alterations or disturbances made to the Property or the Project that have occurred within or beyond the terms of the Covenant and the Plan that have not been identified in a previous compliance report.

15. Conveyance of the Property and Notice upon Conveyance. Each instrument

hereafter conveying any interest in the Property shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recorded location of this Covenant. The notice shall be substantially in the following form:

“THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 200_, IN [DOCUMENT _____, or BOOK____, PAGE _____,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[At this point, the notice shall restate Section 9 of this Covenant.]”

The Owner shall notify Ohio EPA, and any Holder other than the Owner, of any intended conveyance not less than thirty (30) days in advance of conveyance of any interest in the Property. The notice shall include the name, address, and telephone number of the proposed transferee, a copy of the proposed deed or other documentation which will evidence the conveyance, and a survey map that shows the boundaries of the Property as it is being transferred.

16. Representations and Warranties. The Owner hereby represents and warrants to the other signatories hereto:

- a. that the Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
- b. that this Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which the Owner is a party of or by which the Owner may be bound or affected; and
- c. that the Owner is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered.

17. Termination of the Covenant. This Covenant may be terminated only (1) as a result of the exercise of the power of eminent domain, or (2) (a) when the Ohio EPA and all persons consent in accordance with the requirements of §5301.90(A) of the Revised Code and (b) when it becomes impossible to secure, to a substantial degree, the benefits sought through the Covenant.

Certain changes in the character of land use in and around the Property are inevitable, and are considered to be within the contemplation of the Parties. Only where the changes which have occurred are of such importance as to amount to a defeat of the

purposes of the Covenant may the Parties initiate termination. Changes which merely reduce the benefits derived from the enforcement of the Covenant are not sufficient grounds for the Parties to seek to terminate the Covenant.

Termination means the elimination of all activity and use limitations set forth herein and all other obligations under this Covenant.

18. Amendment of the Covenant or the Plan.

- a. This Covenant may be amended to accommodate an assignment of the Covenant to a new Holder pursuant to RC §5301.90(C).
- b. Otherwise, the Covenant or the Plan may be amended only upon agreement by all the persons identified in R.C. §5301.90(A) that a proposed amendment is consistent with the purposes of the restoration or preservation of the Property, and is without adverse direct or indirect impact to the Property's Conservation Values. Each person shall document in writing that they have reviewed the proposed amendment, found it to be consistent and without such adverse direct or indirect impact, and shall state the basis for those findings. The documentation shall be submitted to Ohio EPA.
- c. Any amendment shall be made only by a written instrument duly executed by the Director of Ohio EPA, the Owner, and Holder, if any, pursuant to R.C. §5301.90 and other applicable law.

The Owner shall file such instrument for recording with the Portage County Recorder's Office within thirty (30) days of signature by all requisite parties. Within ten (10) days of recordation, the Owner shall distribute a file- and date-stamped copy of the amended recorded Covenant to: Ohio EPA's Division of Environmental and Financial Assistance, the County of Portage the City of Kent, any Holder, any lessee, each person who signed the Covenant (unless the person waived in a signed record the right to consent or unless a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence), each person holding a recorded interest in the Property, and any other person designated by Ohio EPA.

- d. Amendment means any changes to this Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining.

19. Exercise of eminent domain. The Owner and Holder shall oppose, and defend against, any attempt to exercise the power of eminent domain or other involuntary attempt to extinguish, limit, or impair this Covenant.

20. Restitution. If as a result of the reduction of the burden of this Covenant to the Property, or of the termination of this Covenant or, additionally, the termination of the Covenant and transfer of all or part of the Property, proceeds are received by the Owner, the proceeds received shall be divided between the Owner and the Ohio EPA in proportion to their individual investments in the Property. That proportion shall be established by using the ratio of the (A) monetary contribution by the Ohio EPA for the restoration of the Property to (B) the monetary contributions of the Owner for the restoration of the Property, all as valued at the time the Project is completed. If proceeds are not in the form of money (e.g. proceeds in the form of a grant of another parcel of land), the fair market value of the proceeds shall be determined (by appraisal or other agreed method) and the Owner shall pay to the Ohio EPA a sum equivalent to that portion of the fair market value equal to the proportional share of the Ohio EPA's investment in the Property.

The Owner hereby covenants to apply its share of any such proceeds to a project at any location in Ohio that accomplishes the same water resource restoration purposes as this Covenant. Ohio EPA hereby covenants to apply its share of any such proceeds to a project of the Fund or, if the Fund no longer exists, to a project at any location in Ohio that accomplishes the same water resource restoration purposes as this Covenant. The Owner shall provide written notice to the Ohio EPA not less than sixty (60) days prior to the initiation of any judicial proceedings pursuant to this section.

21. Ohio EPA's Rights and Remedies. Notwithstanding other rights and remedies available to the Ohio EPA under this Covenant and pursuant to R.C. §5301.80 to §5301.92, in order to accomplish the purposes of this Covenant the following rights and remedies are conveyed to the Ohio EPA so that it may: (1) preserve and protect the Conservation Values of the Property, (2) prevent any activity on or use of the Property which is inconsistent with the purposes of this Covenant, and (3) require the restoration of any areas of the Property that may be damaged by any unauthorized activity or use.

- a. **Scope of Relief**. The Owner agrees that the Ohio EPA may be entitled to the injunctive relief described in this section in addition to such other relief to which the Ohio EPA may be entitled, including specific performance of the terms of this Covenant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Ohio EPA's remedies described in this Covenant shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- b. **Damages**. Where injunctive relief or specific performance does not sufficiently repair or restore Conservation Values damaged or diminished by a violation of this Covenant, the Ohio EPA shall be entitled to recover

damages for violation of the terms of this Covenant or for injury to any Conservation Values protected by this Covenant, including, without limitation, damages for adverse impacts to water quality or aquatic ecosystems. Without limiting the Owner's liability therefore, Ohio EPA, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

- c. **Cost of Enforcement.** All costs incurred by the Ohio EPA in enforcing the terms of this Covenant against the Owner, including, without limitations, costs and expenses of suit and attorney's fees, and any costs of restoration necessitated by the Owner's violation of the terms of this Covenant shall be borne by the Owner.
 - d. **Forbearance.** Forbearance by the Ohio EPA to exercise its rights under this Covenant in the event of any breach of any of its terms shall not be deemed or construed to be a waiver by the Ohio EPA of such term or of any subsequent breach of the same. No delay or omission by the Ohio EPA in the exercise of any right or remedy shall be construed as a waiver.
 - e. **Waiver of Certain Defenses.** The Owner or any Transferee hereby waives any defenses of laches, estoppel, adverse possession, or prescription.
22. Severability. If any provision of this Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
23. Governing Law. This Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.
24. Effective Date. The effective date of this Covenant shall be the later of: (a) the date upon which both the Owner and Holder, if any, and Ohio EPA have signed the Covenant, or (b) the date the Owner has acquired title to the Property, in which latter case representations made by the Owner in this Covenant as to the Property will take effect on the date of title acquisition.
25. Recordation. Not more than thirty (30) days after the Effective Date of this Covenant, the Owner shall file the Covenant for recording, in the same manner as a deed to the Property, with the Portage County Recorder's Office.
26. Distribution of Environmental Covenant. Within ten (10) days of recordation, the Owner shall distribute a file- and date-stamped copy of the recorded Covenant to: Ohio

Owner [if self, omit "a duly authorized representative of"] who acknowledged to me that he/she did execute the foregoing instrument on behalf of Name of Owner [if self, insert "himself"/"herself"].

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of _____, 20__.

Notary Public

HOLDER
NAME OF HOLDER

Name of Signatory and Title

Date

State of Ohio)
County of _____)

ss:

Before me, a notary public, in and for said county and state, personally appeared

Name of Signatory _____, a duly authorized representative of Name of Holder *[if self, omit "a duly authorized representative of"]* who acknowledged to me that he/she did execute the foregoing instrument on behalf of Name of Holder *[if self insert himself"/"herself]* .

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of _____, 20__.

The remainder of this page intentionally blank.

OHIO ENVIRONMENTAL PROTECTION AGENCY

Chris Korleski, Director

Date

State of Ohio)

ss:

County of Franklin)

Before me, a notary public, in and for said county and state, personally appeared Chris Korleski, the Director of the Ohio EPA, who acknowledged to me that he did

execute the foregoing instrument on behalf of the Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of _____, 20__.

Notary Public

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EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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CITY OF KENT
DEPARTMENT OF PUBLIC SERVICE

MEMO

October 20, 2009

To: Dave Ruller, City Manager

From: Gene Roberts, Service Director

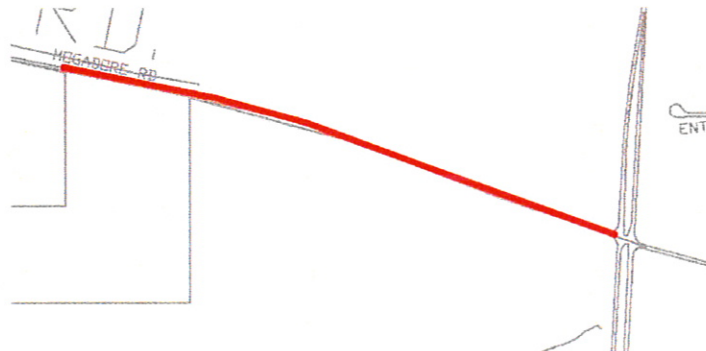
RE: Portage County Engineer's Maintenance Agreement

The attached letter is from Portage County Engineer Mickey Marozzi's requesting that the City and County enter into a Maintenance Agreement that will provide for the City and County to share maintenance responsibilities in each other's jurisdictions. The purpose of the Agreement is to provide for maintenance on those roadways where half of the pavement is City jurisdiction and half is County jurisdiction. The two roadway sections considered by the agreement are:

1. Summit Street from Burnett Road east to City limits on north side of Summit Street



2. Mogadore Road from SR 261 south to City southern most limit on east side of Mogadore Road



In general the City and County would agree to a maintenance swap as outlined in the County's provided documentation. The maintenance swap has been reviewed by Jack Hogue, Central Maintenance Manager and he supports the City entering into these Maintenance Agreements.

Cc: Jim Silver, Law Director
Jack Hogue, Central Maintenance Manager
file



MICHAEL A. MAROZZI, P.E., P.S.
 PORTAGE COUNTY ENGINEER
 5000 Newton Falls Road
 Ravenna, Ohio 44266
 Phone: (330) 296-6411
 Fax: (330) 296-2303



October 26, 2009

Dave Ruller, City Manager
 City of Kent
 215 E. Summit Street
 Kent, Ohio 44240

Re: Maintenance Agreement Information

Dear Mr. Ruller:

I am writing to confirm our agreement concerning road maintenance and snow and ice control. We are agreeing to an exchange of maintained roadways without associated payment. We will address the cost of services that exceed routine general maintenance on a case-by-case basis.

General maintenance includes, but is not limited to, the following: Pavement maintenance (e.g., patching, but not including full depth replacement or overlays), trimming or removal of vegetation, removal of obstructions or spills in the roadway, pavement markings, erection and repair of traffic control devices (except as otherwise indicated), signage, ditch cleaning, maintenance of driveway pipes, guardrail repair, and other routine maintenance efforts, within the full width of the road right of way. General maintenance also includes issuing oversize/overweight load permits and utility permits for the maintained roads and notifying the other agency of the issuance of any such permits. **Snow and ice control** includes plowing and application of deicing agents.

Enclosed please find the list of roads that Portage County and City of Kent will maintain for each other. Also enclosed are the highlighted maps of general maintenance and maps indicating the snow and ice control responsibility.

If you have any questions, please contact Bryan Ford of this office 330-296-6411. Otherwise, please indicate your agreement by signing on the line below and returning the original to Bryan Ford at your earliest convenience.

Thank you for your cooperation and patience.

Sincerely,

Accord:

Mickey Marozzi, P.E., P.S.
 Portage County Engineer

 Mickey Marozzi, P.E., P.S.
 Portage County Engineer
 Date: _____

Enclosures
 cc: Bryan Ford

 Dave Ruller, City Manager
 City of Kent
 Date: _____

**MAINTENANCE AGREEMENT LIST
PORTAGE COUNTY ENGINEER AND
CITY OF KENT**

Map Revised 10-26-09

PORTAGE COUNTY ENGINEER

General Maintenance

Summit Road – From S.R. 261 east through shared jurisdiction.

Mogadore Road – From the centerline of S.R. 261 south through shared jurisdictions.

Snow and Ice

Summit Road – From a S.R. 261 east through shared jurisdiction.

Mogadore Road – From point 0.6 miles south from centerline of S.R. 261 south through shared jurisdiction.

CITY OF KENT

General Maintenance

Summit Road – From S.R. 261 west through shared jurisdiction.

Snow and Ice

Summit Road – From S.R. 261 west to the centerline of Burnett Road.

Mogadore Road – From the centerline of S.R. 261 to a point 0.6 miles south of the centerline of S.R. 261.