

ORDINANCE NO. 2020-120

AN ORDINANCE ACCEPTING AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE AN AGREEMENT OBTAINING A PERMANENT EASEMENT FROM KLABEN PROPERTY MANAGEMENT L.L.C., 1085 WEST MAIN STREET FOR \$52,160 FOR THE PURPOSE OF A SIDEWALK TO IMPROVE THE WALKABILITY FOR THE HIKE/BIKE TRAIL, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent Council desires to obtain a permanent easement from Klaben Property Management, LLC, 1085 West Main Street, Kent, Portage County, Ohio; and

WHEREAS, Klaben Property Management, LLC is willing to grant a permanent easement for said property for \$52,160.00; and

WHEREAS, the City needs the property for right-of-way purposes for the construction of a side path/sidewalk to improve the walkability in the area and provide an important connection between the bike facility on Stonewater Drive and the bike lanes on East Main Street.

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

SECTION 1. That Council does hereby accepts and authorizes the City Manager or his designee to execute the agreement for the City of Kent to obtain a permanent easement from Klaben Property Management, LLC, 1085 West Main Street for \$52,160.00 for right-of-way purposes for the construction of a side path/sidewalk in substantial conformity with the terms of the Agreement marked as 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: December 16, 2020
Date

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

EFFECTIVE: December 16, 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 *RESOLUTION No.* _____, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON _____, 20_____.

(SEAL)

AMY WILKENS
CLERK OF COUNCIL

WEST MAIN STREET
SIDE PATH/SIDEWALK AGREEMENT

KLABEN PROPERTY MANAGEMENT L.L.C.
AND
THE CITY OF KENT

This Side Path/Sidewalk Agreement, dated December 17, 2020, is an agreement made and entered into between the CITY OF KENT, OHIO, a municipal corporation duly organized and existing under and by the virtue of the constitution and laws of the State of Ohio and a duly adopted Charter (herein after referred to as the "City") and KLABEN PROPERTY MANAGEMENT L.L.C. an Ohio limited liability company (herein after referred to as "Klaben")

WITNESSETH:

WHEREAS, Klaben is performing improvements to its property and in the adjacent right-of-way at 1085 West Main Street (herein after referred to as the "Project"); and

WHEREAS, the City has identified the Project area as a key connection in the City's overall bikeway network, shown in Exhibit A; and

WHEREAS, the existing right-of-way in the Project area is not adequate to install a reasonable pedestrian facility; and

WHEREAS, the City and Klaben desire to improve the safety and usability for pedestrians, bicyclists and other non-motorists in the right-of-way along West Main Street at the Project location; and

WHEREAS, the City and Klaben have determined that the most cost effective method to improve the safety and usability for pedestrians, bicyclists and other non-motorists would be to construct a side path/sidewalk with the proposed improvements being performed by Klaben;

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

Klaben will have the following responsibilities in association with the construction of side path:

- As set forth in Attachment B, incorporate into Klaben's existing project the construction of an eight (8) foot wide concrete side path/sidewalk that has a minimum buffer from the existing curb of approximately five (5) feet.
- Manage the design and construction of the project, including holding all contracts with outside entities required to complete the Project.
- In conjunction with the design of the path, prepare a legal description and drawing depicting a Highway Easement to contain only the land necessary for the proposed side path/sidewalk. The legal description and drawing shall be suitable for filing with Portage County and provided to the City.
- Execute the highway easement in the name of the City of Kent to contain the side path/sidewalk as described in the bullet above.
- Submit plans to the City for review and to obtain all applicable permits for the Project.
- Invoice the City (\$25,000) once all permits have been obtained and the easement for the side path/sidewalk has been recorded with Portage County.
- Invoice the City (\$25,000) upon completion of the project including acceptance by the City.

City Responsibilities:

- Review all plans and submittals as required by current ordinances in a timely manner.
- Prepare a highway easement that is mutually agreeable to both parties and provide to Klaben to execute. Upon execution of the easement, the City will file the easement with Portage County.
- Pay Klaben \$25,000 for the design and right-of-way for the project within 30 days of receipt of the invoice after all permits have been obtained and the easement for the side path/sidewalk has been recorded with Portage County
- Pay Klaben \$25,000 for the construction of the improvements within 30 days of receipt of the invoice upon completion of the project including acceptance by the City.
- Reimburse Klaben for the costs of the preparation of the legal description for the area, in an amount not to exceed \$2,160. The City will pay the reimbursement within 30 days of receipt of the approved legal description, drawing and documentation supporting the requested amount.

Klaben and City Responsibilities:

- The side path/sidewalk shall be maintained per the Codified Ordinances of the City of Kent in effect at the date of execution of this agreement.

Schedule:

The City and Klaben will diligently pursue the completion of the Project. Construction shall be completed by October 31, 2021 unless otherwise modified by both parties.

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.

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, except that Klaben may assign the agreement to its related and affiliated entities and any successor thereto.

Termination

Except for the repair/maintenance and payment terms set forth above, the terms of this agreement expire on December 31, 2021 unless mutually extended in writing by both parties. Nothing in this agreement shall require Klaben to install a sidepath/sidewalk if Klaben does not move forward with the proposed property improvements at 1085 West Main Street.

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.

Integrated Agreement:

This Agreement, including attachments, 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.

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 City: City of Kent
301 South Depeyster Street
Kent, Ohio 44240
Attn: City Manager

To Klaben: Klaben Property Management
1250 W. Main Street
Kent, Ohio 44240

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.

Governing Law:

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

In witness whereof, the Parties hereto have offered their hands and seals:

KLABEN PROPERTY MANAGEMENT L.L.C.

Approved and Accepted by:



Richard Klaben

Date: 12/17/20

Witness: 

Witness: 

CITY OF KENT

Approved and Accepted by:

David Ruller

Dave Ruller
City of Kent, City Manager

Date: December 17, 2020

Witness: Catherine A. Wilson

Witness: _____

Approved as to Form:

Hope L. Jones

Hope Jones
City of Kent, Law Director

Date: 1-13-2021

Certificate of Director of Budget and Finance

It is hereby certified that the amount FIFTY TWO THOUSAND ONE HUNDRED AND SIXTY Dollars (\$52,160) required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the City Treasury or in the process of collection to the credit of the Capital Fund free from any obligation or certificates now outstanding.

Rhonda Hall

Rhonda Hall,
Director of Budget and Finance

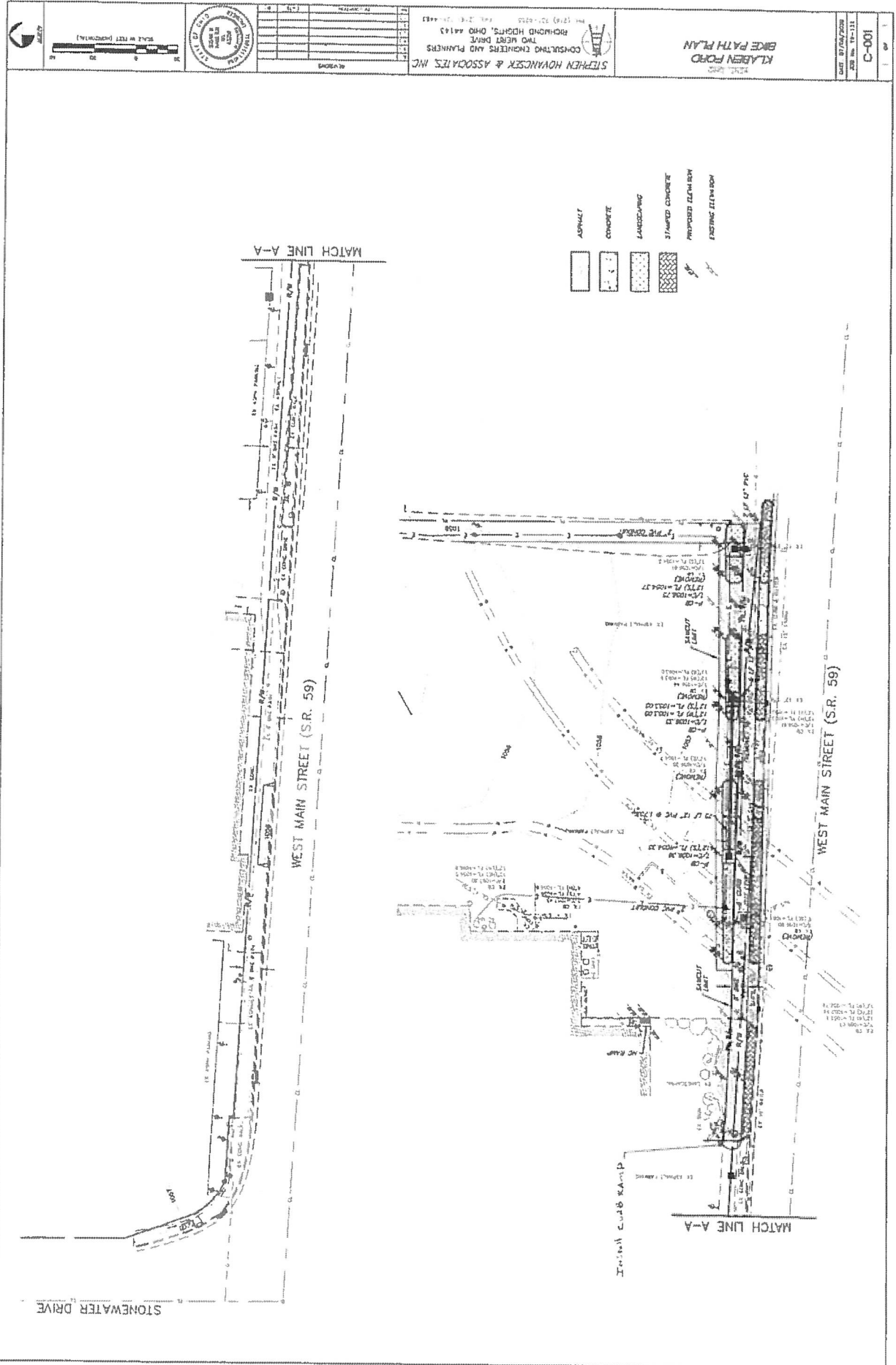
January 13, 2021

Date

Attachment B
Preliminary Side Path/Sidewalk Plan

2020-120 Exhibit A

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2020-120 Exhibit A