



# CITY OF KENT, OHIO

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## DEPARTMENT OF COMMUNITY DEVELOPMENT

**Date:** February 23, 2021

**To:** Dave Ruller, City Manager

**Cc:** Bridget Susel, Community Development Director; Amy Wilkens, Clerk of Council, Patti Long, Assistant to the City Manager, PY2021 CDBG Action Plan File

**From:** Kathy Petsko, Grants & Neighborhood Program Coordinator

**Re:** PY2021 CDBG Funding & Project Recommendations

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The City is preparing its funding request for the PY2021 Community Development Block Grant Program (CDBG). The funding request is submitted to the U.S. Department of Housing and Urban Development (HUD) on an annual basis and must include a list of proposed programs that will be implemented with CDBG funding during the year. The City's PY2021 CDBG allocation as determined by HUD, is estimated to be \$303,720. A total of six (6) project proposals were received this year seeking CDBG funding assistance and the total amount of funding requested was \$303,500. Based on a review of these proposals and in consideration of all applicable CDBG regulatory requirements, staff is recommending Council approval of the below projects and amounts at its May meeting. Formal approval in May allows time for a public comment period and a second public hearing to take place prior to authorization.

### **1. City of Kent, Engineering Department – Walnut Street Reconstruction**

This activity provides funding to assist with the design and full depth reconstruction of Walnut Street from Cherry Street to Dodge Street. The work involves new sidewalks, concrete curb and gutter, a waterline replacement and storm sewers to improve drainage along the roadway. This is a multi-year project and construction is scheduled for 2020 (Phase 1 – Cherry to Harris) and 2021 (Phase 2 – Harris to Dodge).

Funding Requested: \$170,000

**PY 2021 Funding Recommended: \$160,000**

PY2020 CDBG Funding: \$160,000

Phase I

**3. City of Kent, Police Department – Neighborhood Policing Program**

The Neighborhood Policing Program provides additional patrols and police visibility primarily in low-to-moderate income neighborhoods and in assisted housing complexes. The program has a goal of improving communication, trust and understanding between residents and the Police Department. Funding for this activity is counted toward the Public Service 15% funding limitation.

Funding Requested: \$18,000  
PY2020 CDBG Funding: \$18,000

**PY 2021 Funding Recommended: \$18,000**

**4. CAC of Portage County – Furnace Inspection/Targeted Replacement Program**

The applicant is requesting funding from the CDBG program to continue its “Kent Furnace Inspection/Targeted Replacement Program” that provides the services of furnace inspections, tune-ups, or the replacement of failing or inefficient furnaces and/or hot water tanks for low-to-moderate income Kent households.

Funding Requested: \$35,000  
PY2020 CDBG Funding: \$35,000

**PY 2021 Funding Recommended: \$35,000**

**5. Family & Community Services – Homeless Shelter Services**

The Homeless Shelter Services program provides services at Miller Community House an emergency homeless shelter. Funding helps pay for shelter nights spent by Kent residents including needed case management, counseling and housing placement. Funding for this activity is counted toward the Public Service 15% funding limitation.

Funding Requested: \$15,000  
PY2020 CDBG Funding: \$15,000

**PY 2021 Funding Recommended: \$15,000**

**6. Family & Community Services – HVAC Replacements at Safe Path & Currie Hall**

Family & Community Services is requesting CDBG funds to replace fourteen (14) aging heating and cooling units at two of their housing locations – Safe Path, a transitional housing facility for individuals and families experiencing domestic violence, and Currie Hall, a transitional housing facility for individuals experiencing homelessness. The project will benefit low- to moderate-income residents of the city of Kent.

Funding Requested: \$55,000.52  
PY2020 CDBG Funding: \$40,000  
Unprogrammed Prior Year Funds: \$10,000

**PY 2021 Funding Recommended: \$45,000**  
Unprogrammed Prior Year Funds: \$5,000

**7. Ohio Small Business Development Center – Small Business Counseling**

Funds will be used to provide one-to-one business counseling, as well as business workshops/training, to low- to moderate-income residents of the City of Kent.

Funding Requested: \$5,000  
PY2020 CDBG Funding: \$5,000

**PY 2021 Funding Recommended: \$5,000**

**8. City of Kent, Community Development – Administration**

These funds are used to cover grant administration costs such as the cost of staff, supplies, advertising, postage, copying, travel costs for trainings, and other related costs. Funding for this activity is counted toward the Planning and Administration 20% funding limitation.

Funding Requested: N/A  
PY2020 CDBG Funding: \$6.766

**PY 2021 Funding Recommended: \$6,500**

**9. Fair Housing Consultant– Fair Housing Services**

These funds will be used to cover the cost associated with the provision of fair housing service. The consultant will provide counseling in the areas of housing discrimination and landlord-tenant issues. They'll investigate fair housing complaints and provide a variety of public education and outreach services in the City. Funding for this activity is counted toward the Planning and Administration 20% funding limitation.

Funding Requested: \$19,000  
PY2020 CDBG Funding: \$19,000

**PY 2021 Funding Recommended: \$19,000**

A spreadsheet summarizing the requested and recommended funding amounts has been attached for review. Copies of all submitted PY2021 CDBG proposals also are available for review at the Community Development Department.



**PY2021 CDBG Allocation (8-1-21 to 7-31-22)**

Applicant	Project	CDBG Request	2021 Funding Recommended	Funds Awarded in PY2020
CAC	Targeted Furnace Replacement	\$ 35,000	\$ 35,000	\$ 35,000
Engineering Department	Walnut St. Phase I and II	\$170,000	\$ 160,000	\$160,000
F&CS	HVAC Replacement	\$ 50,000	\$ 45,000	\$ 10,000
F&CS	Homeless Shelter Services	\$ 15,000	\$ 15,000	\$ 15,000
Kent Police Department	Neighborhood Policing	\$ 24,000	\$ 18,000	\$ 18,000
Ohio Small Business Dev. Center	Small Business Counseling	\$ 5,000	\$ 5,000	\$ -
Administration	Administration		\$ 6,500	\$ 6,720
Fair Hsg Contact Serv.	Fair Housing		\$ 19,000	\$ 19,000
<b>TOTAL</b>		\$ 299,000	\$ 303,500	
<b>Anticipated 2021 Allocation:</b>	\$ 303,500			
<b>Public Service Cap (15%):</b>	\$ 45,525		\$ 38,000	33000
<b>Administration Cap (20%):</b>	\$ 60,700		\$ 25,500	30766



# CITY OF KENT, OHIO

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## DEPARTMENT OF COMMUNITY DEVELOPMENT

DATE: February 22, 2021  
TO: Dave Ruller, City Manager  
FROM: Bridget Susel, Community Development Director *B.S.*  
RE: Sublease Renewal: Haymaker Farmers' Market & Use of ROW

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The City of Kent leases the unimproved area on the west side of Franklin Avenue, just south of the former Treno Restaurant paved parking area, from the Akron Barberton Cluster (ABC) Railway Company, in order to provide space for additional long-term parking in the downtown business district. Since 2012, the City has allowed the Haymaker Farmers' Market to sublease this area for use on Saturday's, from 9:00 a.m. to 1:00 p.m.. This year's outdoor season will begin with the first Saturday in April and extend through the last Saturday in November. The Haymakers' Farmers Market is an incorporated nonprofit organization and it leases the space from the City for the nominal annual fee of \$1.00.

The Market Manager, Andrew Rome, is reporting the Market plans to, once again, use a portion of Franklin Avenue, beginning south of W. College Street and ending before the parking area for The Pub, as a means of promoting greater social distancing for patrons and vendors. The plan will not impede vehicular access to W. College Street and will not interfere with any other business operations in the area.

I am respectfully requesting time at the March 3, 2021 Council Committee session to discuss this item in greater detail and to request Council's authorization, with emergency, for the renewal of the sub-lease with the Haymaker Farmers' Market and to allow for the use of Franklin Avenue for the 2021 outdoor market season.

If you need any additional information in order to add this item to the agenda, please let me know.

Thank you.

Attachments

Cc: Hope Jones, Law Director  
Amy Wilkens, Clerk of Council

CITY OF KENT, OHIO



**SUB-LAND LEASE**

**THIS SUB-LEASE**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between **THE CITY OF KENT, OHIO**, whose address is 301 South Depeyster Street, Kent, Ohio 44240, hereinafter referred to as **SUB-LESSOR**, and **HAYMAKER FARMERS' MARKET**, which has its summer market operations at the intersection of Franklin Avenue and Summit Street, Kent, Ohio 44240, hereinafter referred to as **SUB-LESSEE**.

**I. PREMISES**

SUB-LESSOR does hereby lease unto SUB-LESSEE certain unimproved land, located in the City of Kent, Portage County, Ohio, hereinafter called "the premises," as shown on the map attached hereto and hereby made a part hereof, described as follows:

*Being a rectangular parcel of land located north of Summit Street, west of Franklin Avenue and east of LESSOR's main line track containing an area of 0.168 acres, more or less as shown in green, attached hereto as Exhibit "A."*

SUB-LESSOR currently leases the subject premises from Akron Barberton Cluster Railway Company (the ORIGINAL LESSOR) pursuant to a land lease agreement dated October 26, 2011, No. 35-04380, as amended July 16, 2014.

**II. TERMS AND CONDITIONS**

In consideration of the covenants and agreements herein contained and other good and valuable consideration, and intending to be legally bound, it is agreed as follows:

1. **Use.** SUB-LESSEE shall use and occupy the premises solely for the purpose of a farmers' market held on Saturday morning (9:00 a.m. to 1:00 p.m.).

2. **Term and Rent.** To hold the demised premises for and during the term of April 3, 2021 through November 27, 2021 (unless sooner terminated as hereinafter provided) for the rent or sum of one dollar (\$1.00) payable in advance.

3. **Expenses.** SUB-LESSOR shall be responsible for snow plowing costs, any utility costs or charges and shall maintain insurance on the premises pursuant to their lease with ORIGINAL LESSOR.

4. **Approval of Plans.** SUB-LESSEE, prior to erecting any structure on the premises, shall submit plans to, and secure approval in writing of, SUB-LESSOR and the ORIGINAL LESSOR. SUB-LESSEE shall not erect or place or allow to be erected or placed on the premises any buildings, structures, fixtures or obstructions of any kind, either temporary or permanent.

5. **Fire and Damage.** SUB-LESSEE shall cooperate with SUB-LESSOR and shall promptly comply with fire prevention measures requested by SUB-LESSOR. SUB-LESSEE shall make no electrical installation or alterations in and to the improvements or electrical circuits (whether for power, light, heat or other purposes) located on the premises except by a duly licensed electrician, and shall make no installation of natural gas, propane, kerosene or other combustion fuel heating or cooling units, except by licensed heating or cooling contractor; and no such alterations or installations shall be made without prior written approval of the ORIGINAL LESSOR.

6. **Ordinances and Regulations.**

6.1 SUB-LESSEE, at SUB-LESSEE's sole cost and expense, shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority having jurisdiction over the premises or SUB-LESSEE's intended use thereof, including but not limited to zoning, health, safety, building or environmental matters. SUB-LESSEE shall supply SUB-LESSOR and ORIGINAL LESSOR with copies of letters or certificates of approval of SUB-LESSEE's use.

7. **Maintenance and Repairs.**

7.1 SUB-LESSEE will not create or permit any nuisance in, on or about the premises, and SUB-LESSEE shall maintain the premises in a neat and clean condition. Any approved structures of SUB-LESSEE shall be erected and/or maintained on the premises by SUB-LESSEE to the satisfaction of the ORIGINAL LESSOR.

7.2 SUB-LESSEE will not utilize the City of Kent trash containers or the area near the trash containers, for the disposal of produce, perishable products, boxes, crates, storage containers, bags of trash or any other form of refuse generated by vendors operating on the premises.

7.3 SUB-LESSEE will not make, or permit to be made, any improvements or alterations to the premises without the written consent of the ORIGINAL LESSOR. Approval by the ORIGINAL LESSOR of any improvements or installations made by SUB-LESSEE, or failure of the ORIGINAL LESSOR to object to any work done or material used, or the method of construction or installation, shall not be construed as an admission of

responsibility by the ORIGINAL LESSOR or SUB-LESSOR or as a waiver of any of SUB-LESSEE's obligations under this Sub-Lease.

7.4 All work performed by SUB-LESSEE, or SUB-LESSEE contractor(s), pursuant to Section 7 shall be subject to the written approval of the ORIGINAL LESSOR's Chief Engineer or his duly authorized representative.

8. **Service and Utilities.** The ORIGINAL LESSOR will be under no obligation to furnish the premises with water, gas, sewage, electricity, heat or other services and supplies that may be necessary or desirable in connection with SUB-LESSEE use and occupancy of the premises. The SUB-LESSOR shall bear all costs of utilities used on the premises, including heat, electricity, hot water and sewer use charges. SUB-LESSEE shall reimburse SUB-LESSOR for any utilities SUB-LESSEE uses.

9. **Adjacent Areas.** Except as provided in Section 10 hereafter, SUB-LESSEE shall not use, for utility lines or otherwise, any property of the ORIGINAL LESSOR and SUB-LESSOR other than the premises herein leased without first obtaining ORIGINAL LESSOR's prior written consent and complying with all requirements of the ORIGINAL LESSOR applicable thereto.

10. **Ingress and Egress.** The ORIGINAL LESSOR, SUB-LESSOR and SUB-LESSEE shall have the right to use, in common with SUB-LESSOR and others authorized by SUB-LESSOR, existing driveway(s) or other property designated by SUB-LESSOR as means of Ingress to and Egress from the premises. SUB-LESSOR shall be under no obligation with respect to the condition or maintenance of said driveway(s) or other property, and SUB-LESSEE use of same shall be subject to all of the covenants, terms and conditions of this Sub-Lease.

11. **Pipe and Wire Lines.** The ORIGINAL LESSOR shall at all times have the right to maintain and/or construct, and to permit others to maintain and/or construct, overhead and/or underground pipe and/or wire lines now or hereafter installed upon or across the premises, and to use, repair, renew and remove the same.

12. **Claim of Title.**

12.1 SUB-LESSEE shall not at any time own or claim any right, title or interest in or to the premises, nor shall the exercise of this Sub-Lease for any length of time give rise to any right, title or interest in or to the premises, other than the Sub-Leasehold herein created.

12.2 SUB-LESSEE shall pay all debts incurred to, and shall satisfy all liens of contractors, subcontractors, mechanics, laborers and material suppliers in respect to any construction, alteration and/or repair in and to the demised premises, and any improvements thereof. Further, SUB-LESSEE shall have no authority to create any liens for labor or material on or against SUB-LESSOR or the ORIGINAL LESSOR's interest in the premises and shall specify in all contracts let by SUB-LESSEE for any construction, erection,



installation, alteration, maintenance or repair of any building or other improvement on the premises.

**13. Termination, Notices and Removal.**

13.1 This Sub-Lease may be terminated by either party at any time upon not less than thirty (30) days' notice in writing sent by registered or certified mail to the other party. However, in the event of a breach of any of the covenants, terms and conditions hereof by SUB-LESSEE, SUB-LESSOR shall have the right to terminate this Sub-Lease immediately.

13.2 Should original LESSOR terminate its lease with SUB-LESSOR, this Sub-lease between SUB-LESSOR and SUB-LESSEE shall also terminate.

13.3 Should SUB-LESSOR default on their lease terms to the ORIGINAL LESSOR, SUB-LESSEE may contact ORIGINAL LESSOR in efforts to step-in for SUB-LESSOR, correct the default of SUB-LESSOR, and take SUB-LESSOR'S role in the original land lease agreement dated October 26, 2011, No. 35-04380.

13.4 All notices and communications concerning this Sub-Lease shall be addressed to SUB-LESSOR or the SUB-LESSEE at their respective addresses hereinabove set forth or at such other, the ORIGINAL LESSOR, address as either party may designate in writing to the other party.

13.5 Upon termination of this Sub-Lease by expiration of term or any other reason, SUB-LESSEE shall remove all buildings or structures (except tracks, rail facilities and other designated property of the ORIGINAL LESSOR), within the time specified in any notice of termination or at the latest within fifteen (15) days after such termination. In effecting such removal, the premises shall be restored by SUB-LESSEE to a condition satisfactory to the ORIGINAL LESSOR, including the removal of all structures and facilities whether on the surface or underground) to ground level, and the filing of all excavations and holes, which shall be tamped, compacted and graded uniformly. If SUB-LESSEE shall fail to make the removal in the manner and time set forth herein, after notice to do so, SUB-LESSOR or the ORIGINAL LESSOR may remove said buildings, structures, and/or facilities and make said restoration, all at the sole risk, cost and expense of SUB-LESSEE, and may also dispose of any removed items without necessity to account for the same or to give further notice to SUB-LESSEE.

13.6 If SUB-LESSEE shall fail to make removal of any such property, SUB-LESSOR or the ORIGINAL LESSOR shall have the option to elect and notify SUB-LESSEE that all right, title and interest of SUB-LESSEE in certain building(s), structure(s) and/or facility(ies) shall be forfeit and may also dispose of any removed items without necessity to account for the same or to give further notice to SUB-LESSEE.

13.7 If SUB-LESSEE shall fail to make removal of any such property, the ORIGINAL LESSOR shall have the further option to elect and notify SUB-LESSEE that all

right, title and interest of SUB-LESSEE in certain building(s) and/or facility(ies) shall be forfeit and shall vest absolutely in the ORIGINAL LESSOR as of the date of notice of such election.

13.8 In the event that SUB-LESSEE prepays monthly or annual rentals in advance and this Sub-Lease is terminated by notice of either party (other than for breach or cause), SUB-LESSOR shall refund to SUB-LESSEE the proration of any prepaid base rental and taxes paid in advance, which SUB-LESSEE shall accept in full settlement, satisfaction and discharge of the remainder of the term or period.

14. **Lessor.** The term "the ORIGINAL LESSOR" as used in Section 14 hereof shall include any other company or companies whose property at the aforesaid location may be leased or operated by ORIGINAL LESSOR.

15. **Insurance.**

15.1 Prior to commencement of occupation or use of the premises/track for activities provided herein, SUB-LESSEE, at its sole cost and expense, shall procure and shall maintain during continuance of this Sub-Lease Public Liability Insurance covering liability assumed by SUB-LESSEE under this Sub-Lease with a combined single limit of not less than Two Million (\$2,000,000.00) Dollars for personal injury and property damage per occurrence. SUB-LESSEE shall furnish the ORIGINAL LESSOR's Director of Real Estate, 100 East First Street, Brewster, Ohio 44613 a certificate of insurance referring to this Sub-Lease by date, name of SUB-LESSOR, description of Sub-Lease and location covered. The certificate shall be endorsed to provide for thirty (30) days' notice to said Director of Real Estate prior to termination of or change in the coverage provided. If a higher limit of liability is required by the ORIGINAL LESSOR, the ORIGINAL LESSOR shall provide SUB-LESSEE written notice of the limit required and within thirty (30) days thereafter SUB-LESSEE shall provide revised certificate of insurance for the increased required limit. Furnishing of this insurance by SUB-LESSEE shall not limit SUB-LESSEE liability under this Sub-Lease but shall be additional security there for. SUB-LESSOR shall be named as an additional insured on said policy.

15.2 The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The ORIGINAL LESSOR in no way warrants that the minimum limits contained herein are sufficient to protect SUB-LESSOR from liabilities that may arise out of the performance of the services under this Agreement by SUB-LESSOR, its agents, representatives, employees or subcontractors and SUB-LESSOR is free to purchase additional insurance as may be determined necessary.

16. **Condemnation.** Should the premises or any part thereof be condemned, appropriated and/or acquired for public use, then this Sub-Lease, at the option of SUB-LESSOR or the ORIGINAL LESSOR, shall terminate upon the date when the premises or part thereof shall be taken. No part of any damages or award shall belong to SUB-LESSEE, except to the extent of any specific award from the governmental authority for improvements

and/or facilities of SUB-LESSEE. SUB-LESSOR's land shall be valued as of such date (or other legal date of valuation) as vacant land, without consideration of this Sub-Lease or SUB-LESSEE improvements on said land as an enhancement or detriment to said land value. Improvements and/or facilities of SUB-LESSEE not so condemned, appropriated and/or acquired shall be removed in accordance with Section 13 hereof.

**17. Successors and Assigns.**

17.1 The terms, covenants and provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of SUB-LESSOR and the ORIGINAL LESSOR and the successors and assigns of SUB-LESSEE.

17.2 However, SUB-LESSEE shall not transfer, assign, encumber or sublet this Sub-Lease or any part of the premises or any part of the premises or any rights and privileges herein granted except to a subsidiary, parent or common controlled affiliate as approved by SUB-LESSOR. This covenant shall also apply whether such sale or transfer is made voluntarily by SUB-LESSEE or involuntarily in any proceeding at law or in equity to which SUB-LESSEE may be a party whereby any of the rights, duties and obligations of SUB-LESSEE shall be sold, transferred, conveyed, encumbered, abrogated or in any manner altered, without the prior notice to and consent of the ORIGINAL LESSOR and SUB-LESSOR. In the event of any such unauthorized sale, transfer, assignment, sublease or encumbrance of this Sub-Lease, or any of the rights and privileges hereunder, the ORIGINAL LESSOR or SUB-LESSOR, at its option, may immediately terminate this Sub-Lease by giving SUB-LESSEE or any such assignee written notice of such termination and LESSOR or SUB-LESSOR may thereupon enter and retake possession of the premises.

**18. Severability.** It is understood and agreed that this Sub-Lease is executed by all parties under current interpretation of any and all applicable federal, state, county, municipal or other local statute, ordinance or law. Further, it is understood and agreed that each and every separate division (paragraph, clause, item, term, condition, covenant or agreement) herein contained shall have independent and severable status from each other separate division or combination thereof for the determination of legality so that if any separate division herein is determined to be unconstitutional, illegal, violative of trade or commerce, in contravention of public policy, void, voidable, invalid or unenforceable for any reason, that separate division shall be treated as a nullity but such holding or determination shall have no effect upon the validity or enforceability of each and every other separate division herein contained or any other combination thereof.

**19. Breach or Waiver.** If under the provisions hereof SUB-LESSOR shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a permanent or general waiver of any covenant herein contained nor of any of SUB-LESSOR's rights hereunder. No waiver by SUB-LESSOR of any breach of any covenant, condition or agreement herein contained shall operate as a permanent waiver of such covenant, condition or agreement itself or of any subsequent breach thereof. No payment by SUB-LESSEE or receipt by SUB-LESSOR of a lesser amount than the monthly installments

of rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent be deemed an accord and satisfaction and SUB-LESSOR may accept such check or payment without prejudice to SUB-LESSOR's right to recover the balance of such rent or to pursue any other remedy provided in this Sub-Lease. No re-entry by SUB-LESSOR after a breach shall be considered an acceptance of a surrender of the Sub-Lease.

**20. Train Protection.** In case of any construction work which may be performed by the SUB-LESSEE at or near the ORIGINAL LESSOR's tracks or facilities, the SUB-LESSEE agrees to notify SUB-LESSOR and the ORIGINAL LESSOR forty-eight (48) hours in advance and further agrees to pay the cost of such supervision or train protection as, in the sole discretion of the ORIGINAL LESSOR, may be necessary or proper for the safe operation of trains.

**21. Snow and Ice Removal.** It is hereby understood and agreed that the ORIGINAL LESSOR shall not at any time be responsible for the removal of snow and/or ice on or about the leased premises. Such snow and/or ice removal shall be at the sole risk and expense of the SUB-LESSOR and shall be performed in such a manner so as not to obstruct or interfere with any of the ORIGINAL LESSOR's operations on or about the leased premises, including the ORIGINAL LESSOR's own snow removal operations. In carrying out the foregoing, the SUB-LESSOR shall not plow, place, dump or deposit snow onto or upon the property of the ORIGINAL LESSOR, nor shall the SUB-LESSEE permit nor tolerate any of the foregoing.

**22. Fiber Optics.** It is the responsibility of the SUB-LESSEE to have knowledge of, locate, and protect against damage to fiber optic cables along, across or under the Railway's property and right-of-way. Any damage to or disruption of any fiber optic cable will be the sole responsibility of SUB-LESSEE, which will indemnify and hold harmless the Railway for any expenses resulting therefrom. Before any construction may commence, the following number, where applicable, must be called: **DIG SAFE 1-800-362-2764** provided that calling such number or numbers shall not release or otherwise diminish the remaining obligations of SUB-LESSEE hereunder.

**23. Environmental Compliance.**

23.1 SUB-LESSEE represents that it has conducted a complete inspection of the Premises and except as noted herein, finds the Premises to be reasonably free from pollution-induced conditions. It is understood between the parties that, at the time this Sub-Lease is entered into, the condition of the premises meets all federal, state, and local laws, rules, and regulations designed to prevent or control the discharge of substances into the land, water and air.

23.2 Without limiting any other provisions of this Sub-Lease, SUB-LESSEE will at all times maintain and keep the Premises and all improvements and property now or hereafter erected or placed thereon, at its expense, including but not limited to the structures,

equipment, and operations, in compliance with all federal, state, and local laws, rules and regulations designed to prevent the discharge of substances on the land, water, or air.

23.3 Without limiting any other provision this Sub-Lease, SUB-LESSOR and ORIGINAL LESSOR shall have the right to enter and inspect the Premises in order to determine whether SUB-LESSEE is complying with such laws, rules, or regulations, but no such inspection or absence of inspection by the SUB-LESSOR or the ORIGINAL LESSOR shall be construed to relieve SUB-LESSEE of its obligations to comply with all such laws, rules or regulations.

24. **Quiet Enjoyment.** Nothing herein contained shall imply or import a covenant on the part of SUB-LESSOR or ORIGINAL LESSOR of quiet enjoyment.

25. **Hold-Over Clause.** If SUB-LESSEE, with consent of SUB-LESSOR, holds over and remains in possession of demised premises after expiration of said term, this Sub-Lease shall be considered as renewed and shall continue in effect upon the same terms and conditions as are herein contained until terminated by either party giving the other written notice of intention to terminate same in the manner herein provided and with like effect.

26. **Notices.** Any notice or other communication required to be given to a party hereto shall be in writing and either hand-delivered or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below. For all purposes hereunder, "receipt" shall be deemed to occur on the date of actual receipt.

**As to SUB-LESSOR:**

CITY OF KENT, OHIO  
c/o City Manager  
301 South Depeyster Street  
Kent, Ohio 44240

**As to SUB-LESSEE:**

HAYMAKER FARMERS' MARKET

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(Print Mailing Address)  
Kent, Ohio 44240

**As to ORIGINAL LESSOR:**

AKRON BARBERTON CLUSTER RAILWAY COMPANY  
100 East First Street  
Brewster, OH 44613

**27. General Provisions.**

27.1 A determination that any part of this Agreement is invalid shall not affect the validity or enforceability of any other part of this Agreement.

27.2 This Agreement shall be governed by the laws of the State of Ohio.

27.3 Section headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

27.4 This Agreement contains the entire agreement of the parties and supersedes any prior written or oral understandings, agreements or representations.

27.5 This Agreement may not be amended, waived or discharged except by an instrument in writing signed by the parties.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

**III. EXECUTION**

**IN WITNESS THEREOF**, the parties hereto have caused this Sub-Lease to be executed, in duplicate as of the day and year first above written.

**HAYMAKER FARMERS' MARKET**

By \_\_\_\_\_

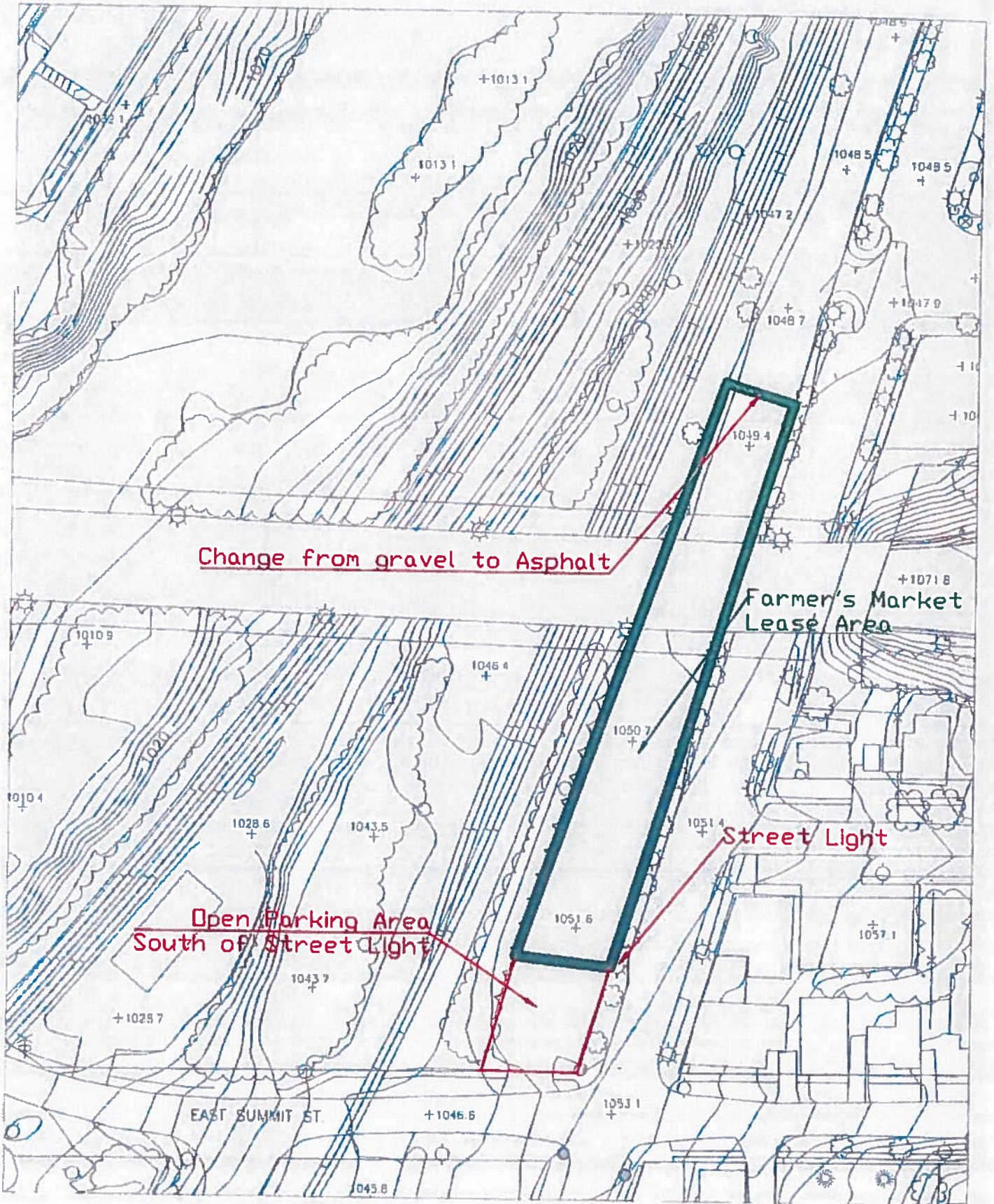
\_\_\_\_\_  
Print Name / Title

**CITY OF KENT, OHIO**

\_\_\_\_\_  
Dave Ruller, City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Hope L. Jones, Law Director  
City of Kent, Ohio



Farmers Market Exhibit "A"



# Haymaker Farmers' Market

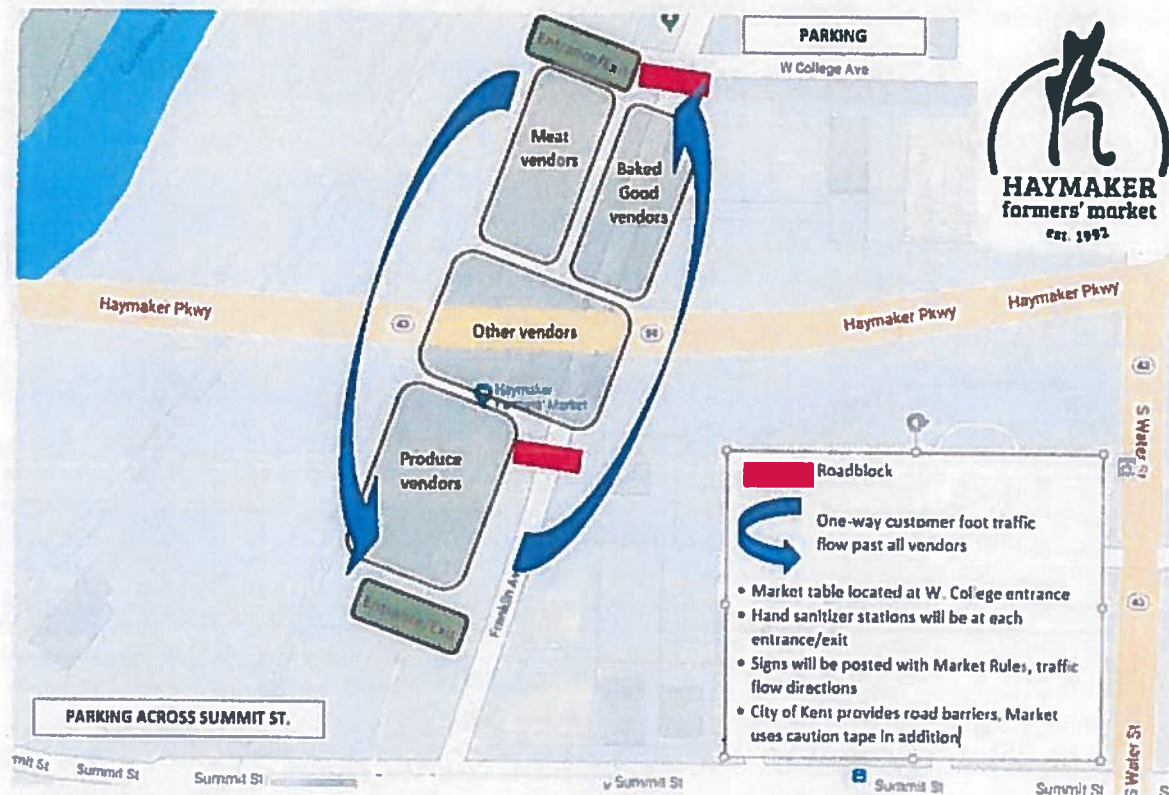
## Walk Up Market Plan

**Market Dates:** Saturday, April 3rd - Saturday, November 27th, 2021

9:00am-9:30am Open for vulnerable populations

9:30am-1:00pm Open for all customers

**Market Site:** Franklin Ave. parking lot (under Haymaker overpass) and on the street, with Franklin Ave. closed off from bike path to W. College St.



### Market Responsibilities:

- The Market will mark 30' spaces for vendors, which includes 6' spacing between vendors. Vendors may keep their vehicles in their space, limiting vendor contact walking through the Market. Vendors arranged as a double lane of vendors in parking lot and a double lane of vendors on Franklin Ave.
- The Market will create two entrance/exit locations, on the Summit St side and the W. College St. side, and will staff those locations with volunteers, controlling the number of people who are in the Market at a time. The maximum capacity will be limited to 150 customers in the Market area.
- The Market will make hand sanitizer stations available to customers and vendors at the Market, located at each entrance/exit location.

- The Market will limit customer foot traffic flow at the Market to continue in a single direction, passing every vendor. Vendor types will be grouped together so that customers do not need to circle to find vendors.
- The Market will continue token sales during the Market. All tokens will be sanitized weekly.
- All Market employees and volunteers will be required to wear a face mask while at the Market.
- Market programming will be cancelled. Music performances will be cancelled for the month of June (at this time) and non-profit and community groups will not be allowed to table at the Market.



**City of Kent Responsibilities:**

- The City of Kent will drop road barriers to close Franklin Ave, between W. College St. and the bike path, each Friday before the Market. The Market will move these into position on Saturday morning.
- The City will provide additional barriers to be used in managing traffic flow.
- The City's Development Office will post no parking signs for the section of Franklin Ave. to be closed for 12am-2pm each Saturday. City Maintenance will remove vehicles.
- The City of Kent Health Department will visit the Market to review safety procedures during the Market and will provide additional guidelines as needed.

**Vendor Responsibilities:**

- Vendors will not come to market if sick or anyone in their household is sick
- Vendors must have two employees working at their booth during every Market. One person will handle products, one person will handle money.
- Vendors will wash hands before & after each Market and sanitize hands frequently during the Market.
- Vendors are required to wear masks covering their mouth and nose while at the Market.

- Wearing gloves at the Market is optional, but recommended.
- Vendors will have hand sanitizer available for customers to use as well. The Market will provide a limited supply to each vendor.
- Vendors accepting pre-orders will have pre-orders bagged, labeled and ready to go.
- Vendors will maintain 6' social distancing whenever possible. Vendors will arrange their display to maintain distance between customers and products, (such as keeping an empty table between customers and display).
- No Sampling of any food will be allowed.
- All vendors must sanitize their stands regularly, primarily wiping down tables, terminals, cash boxes, etc.
- Vendors will discontinue use of tablecloths and other porous materials. Vendors will be permitted to use baskets and display equipment made from wood, provided the customer does not have access to these items.
- Vendors should bring large signs with clear pricing, so shoppers can make decisions quickly. Vendors should display a 'Do Not Touch' sign. The market will have extra 'Do Not Touch' signs available for use if needed.
- Use only new paper or plastic bags for the packaging and sale of products. Customers will be permitted to bring their own reusable bags, but vendors will not be permitted to handle reusable bags from shoppers
- All vendors should either refrain from using their phones or use appropriate washing/sanitizing methods when moving to and from another task and using their phone.
- No touching, shaking hands, hugging, or any other personal contact with your customers, even though we all miss each other!



#### **Customers Responsibilities:**

- Customers are limited to 150 in the Market at one time.
- Customers will wash hands or sanitize hands before entering the market. Stations will be provided at each entrance/exit.
- Customers should not come to the market if you or any member of your household is sick.

- Only one member of your household should come to the market to shop to help us maintain social distancing.
- Only one customer at a booth at a time - maintain 6' distance while waiting.
- Please do not touch products, the vendor will bag your items for you.
- If you touch a product, you bought it. DO NOT touch any products prior to purchasing! Rather allow the vendor to select and bag products you wish to purchase.
- Please cover your mouth and nose with a cloth mask to help protect everyone
- Vendors will not touch reusable bags. If you carry one, vendor will hand you products in plastic bag to put into your own bag
- Please use hand sanitizer at booth after transaction
- Consider pre-ordering from vendors, in order to minimize time spent shopping at the Market.
- Customers shall wash produce before consumption.
- Pets are prohibited from the Market. Note: service animals are still permitted.
- Enter and exit the market through designated points. Our market is trying to manage traffic in a certain direction to assist with appropriate social distancing.
- Accept only new plastic or paper bags from vendors. You can use your own bags, but vendors may not handle them.
- Be patient and considerate. These are trying times for all of us and regardless of our own situation, we can be sure someone around us is struggling.





## LAW DEPARTMENT MEMORANDUM KENT, OHIO

To: Dave Ruller, City Manager  
From: Hope L. Jones, Law Director  
Date: February 23, 2021  
Re: Amending Chapter 527

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Mr. Ruller,

I request that a discussion for proposed legislation to amend Chapter 527 of the Codified Ordinances to be placed on the March 3, 2021 Agenda. This is our Tobacco 21 legislation and the Health Department has requested a new section be enacted requiring all retailers of tobacco products to post a Quitline phone number on their premises.

**ORDINANCE NO. 2021-**

**AN ORDINANCE AMENDING CHAPTER 527 OF THE CODIFIED ORDINANCES OF THE CITY OF KENT BY ENACTING SECTION 527.04 REQUIRING ALL TOBACCO RETAILERS WITHIN THE CITY TO POST THE PHONE NUMBER FOR THE TOBACCO QUITLINE AT ALL POINT OF SALE LOCATIONS, AND DECLARING AN EMERGENCY.**

**WHEREAS**, tobacco use is still the nation's number one cause of preventable death and disease; and

**WHEREAS**, tobacco companies spend \$9.1 billion per year, \$1 million every hour, to market their products; and

**WHEREAS**, the State of Ohio spends just \$738.7 million on programs to prevent teens from starting tobacco and to help smokers quit; and

**WHEREAS**, children are being exposed daily to cigarette and e-cigarette advertising by an industry that needs to recruit the youth to maintain profit; and

**WHEREAS**, there are 26 tobacco retailers inside the Kent City limits, or one retailer for every 2,222 citizens, including those who attend Kent State University.

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

**SECTION 1.** That Council hereby enacts Section 527.04 of the Kent Codified Ordinances to read as follows:

**527.04 POSTING OF QUITLINE PHONE NUMBER**

- a. Every Tobacco Retailer within the City of Kent shall post the phone number of a tobacco Quitline at the point of purchase. Point of Purchase shall be where a customer pays for merchandise and Quitline information shall be reasonably placed to ensure that it is visible to customers.
- b. Kent City Health Department will provide all Quitline materials for tobacco retailers

**SECTION 2.** The City of Kent hereby approves the ordinance to require all tobacco retailers within the City of Kent to post the phone number for the Tobacco Quitline at all point of sale locations.

**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: \_\_\_\_\_  
Date

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

EFFECTIVE: \_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_  
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\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
AMY WILKENS  
CLERK OF COUNCIL

CITY OF KENT  
DEPARTMENT OF PUBLIC SERVICE  
DIVISION OF ENGINEERING

MEMO

TO: Dave Ruller  
Amy Wilkens

FROM: Jim Bowling

DATE: February 10, 2021

RE: Temporary Administrative Process – License Agreements for Outdoor Dining  
- EXTENSION REQUEST-

The administration is requesting council's time and consideration to allow the administration to enter into a license agreements with business/property owners for increased outdoor dining within the right-of-way. With the State of Ohio responsibly restarting Ohio's economy, the City wants to be agile in responding to the changing business environment. We believe that one way we can assist restaurant owners moving forward is to provide additional space for dining to accommodate proper social distancing. This can be accomplished by reprioritizing space in the right-of-way, including eliminating some on-street parking if necessary. We recommend using our standard license agreement to allow for use of the right-of-way (attached).

The license agreements provides an owner the ability to use the right-of-way, while defining the necessary responsibilities of the owner, which includes the following key items:

- Comply with all federal, state and local statutes, ordinances, rules or regulations (4.2)
- Maintenance of the property and improvements (9 &10)
- Hold Harmless the City (11)
- Insurance Requirements (12)

Previously, City Council approved the above request up through December 31, 2020. Last year several business owners considered the option, but none moved forward with it in 2020. Most due to the uncertainty around COVID-19 and the investment that would be required for temporary fencing or additional tables, etc. Since the New Year two business owners are inquiring on the ability to use the right-of-way to expand outdoor dining in 2021. Therefore, we are requesting City Council consider extending the authority up through December 31, 2021 or until the lifting of all restrictions related to COVID-19, whichever comes first.

This authority would be limited to entering into license agreements that would be effective for 2021. Any owner that wishes to extend the agreement into 2022 will require specific approval by City Council. We appreciate your time consideration of this request.

C: Melanie Baker  
Hope Jones  
Bridget Susel  
Tom Wilke



**CITY OF KENT, OHIO  
LICENSE AGREEMENT**

THIS AGREEMENT is made by and between the CITY OF KENT, OHIO, hereinafter called "City" and \_\_\_\_\_, 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" - \_\_\_\_\_  
Exhibit "B" - \_\_\_\_\_

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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ 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 \_\_\_\_\_, 2021, and *ending on December 31, 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:

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**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



# CITY OF KENT, OHIO

DIVISION OF ENGINEERING

February 3, 2021

emailed to: [jaktas@stonefieldeng.com](mailto:jaktas@stonefieldeng.com)  
[tponton@stonefieldeng.com](mailto:tponton@stonefieldeng.com)

Re: 1788 SR 59  
Mod Car Wash  
City of Kent Water Service Connection  
Agreement and fees

Dear Mr. Aktas:

In response to your request for information, on February 2, 2021, pertaining to obtaining water service for a parcel to be developed at 1788 S.R. 59 Street, I offer the following:

There is a waterline on the north side of SR. 59 which is only accessible via crossing the ODOT right of way. The Law Department will allow the City to apply for the ODOT 505 permit, so long as the property owner is in agreement with the terms and conditions of the attached Site Construction Agreement.

In addition to the agreement, there are additional code requirements for obtaining water. City of Kent Codified Ordinance: 913.09. WATER SERVICE OUTSIDE CITY outlines these requirements. Please refer to the City of Kent Codified Ordinance. (Excerpt below)

## 913.09. WATER SERVICE OUTSIDE CITY

(a) A person or other entity with property located outside the corporate boundaries of the City may obtain water service from the City providing that the following conditions are satisfied:

(1) The property owner shall apply to Council for approval of the proposed extension and/or tap-in.

*\*Application consists of a letter requesting service -received on 2/2/2021.  
Placed on Council agenda for March 3<sup>rd</sup> and 17<sup>th</sup>.*

(5) The property owner shall also pay permit fees, utilization fees, tap fees and all other fees applicable to a new water service connection in an amount of 115% of the rate for such charges applicable to residents of the City in effect at the time of the connection.

The above costs do not include the expense of your contractor to install the water service from the water main to the building. It does however include fees for some parts that may overlap with what the contractor proposes to provide. The City can supply the above parts based on your needs.

The Contractor is required to obtain all other necessary permits from the County for sanitary and building plumbing. The Contractor is also required to obtain all permits from O.D.O.T. for work within the right of way of S.R. 59. Note the waterline is on the opposite side of the street. Record plan information will be sent via a separate email.

Should you need any additional information please contact our office.

Sincerely,

Rhonda Boyd, P.E, P.S.

C: Hope Jones, Law Director  
Melanie Baker Director of Public Service  
Jim Bowling, P.E., City Engineer  
Jennifer Barone, P.E., Development Engineer  
file

**MEMORANDUM**  
**DIVISION OF ENGINEERING**  
**City of Kent Department of Public Service**

**DATE:** February 15, 2021  
**TO:** Dave Ruller, City Manager  
**FROM:** Rhonda Boyd, Senior Engineer *R. Boyd*  
**SUBJECT:** Water Service Request- Mod Car Wash  
1788 SR 59

The Engineering Division has received a request for water service for 1788 SR 59 in Franklin Township. The proposed use is a car wash facility, Mod Car Wash. The site is located in front of Gabriel Brothers on the south side of SR59. This is a new request and should not be confused with the one made last month for the north side of the street.

The property owner did not sign the JEDD agreement, therefore the site is subject to the City water rate plus a 50% surcharge. They have estimated the demand to be 5400 GPD. For this estimated demand, the utilization charge would be \$8,538.75. The fees for waterline assessment would be \$8,398.

Should you require any additional information, please contact the Division of Engineering.

C: Melanie Baker, Director of Public Service  
Jim Bowling, P.E., City Engineer  
Hope Jones, Law Director  
File



# STONEFIELD

February 2, 2021

City of Kent  
930 Overholt Drive  
Kent, OH 44240

**RE: Water Service Request  
Proposed Car Wash  
Parcel ID: 12-022-00-00-067-00  
1830 East Main Street (State Route 59)  
Franklin Township, Portage County, Ohio**

Stonefield Engineering & Design, LLC is requesting to be placed on the City of Kent Council Agenda to provide water service for a proposed car wash at the above referenced location.

Please do not hesitate to reach-out with any questions, and/or if you require any additional information regarding the proposed development.

Best regards,



Jake Modestow, PE  
Stonefield Engineering and Design, LLC

Z:\Michigan\DET\2020\DET-200255-Hurston Real Estate, Inc-1830 East Main Street, Kent, OH\Correspondence\Outgoing\Municipality\2021-02-02\_Water Service Request.docx



# CITY OF KENT, OHIO

DIVISION OF ENGINEERING

February 12, 2021

emailed to: [peggyellis@axiscompanies.com](mailto:peggyellis@axiscompanies.com)

Peggy Ellis  
Axis Infrastructure  
1111 Cambridge Square, Suite C  
Alpharetta, GA 30009  
678.395.4920 Office  
423-503-0756 Cell

Re: 1788 SR 59  
Mod Car Wash  
City of Kent Water Service Connection  
Agreement and fees

Dear Ms. Ellis:

In response to your request for information, on February 12, 2021, pertaining to obtaining water service for a parcel to be developed at 1788 S.R. 59 Street, I offer the following:

There is a waterline on the north side of SR. 59 which is only accessible via crossing the ODOT right of way. The Law Department will allow the City to apply for the ODOT 505 permit, however the property owner will need to enter into a Site Construction Agreement. We have the capacity to serve the property and you are within our water service area boundary.

In addition to the agreement, there are code requirements for obtaining water. City of Kent Codified Ordinance: 913.09. WATER SERVICE OUTSIDE CITY outlines these requirements. Please refer to the City of Kent Codified Ordinance. (Excerpt below)

## 913.09. WATER SERVICE OUTSIDE CITY

(a) A person or other entity with property located outside the corporate boundaries of the City may obtain water service from the City providing that the following conditions are satisfied:

(1) The property owner shall apply to Council for approval of the proposed extension and/or tap-in.

*\*Application consists of a letter requesting service -received on 2/2/2021.  
Placed on Council agenda for March 3<sup>rd</sup> and 17<sup>th</sup>.*

(5) The property owner shall also pay permit fees, utilization fees, tap fees and all other fees applicable to a new water service connection in an amount of 115% of the rate for such charges applicable to residents of the City in effect at the time of the connection.

The fees have been estimated as follows:

The waterline assessment cannot be placed on the owners taxes because it is outside the city limits. Based on 203.37 feet with a 50% surcharge for outside City limits, the frontage cost for waterline and restoration would be:

- Waterline Assessment =  $203.37\text{ft} * \$27.50 + 50\% = \underline{\$8389}$
- Utilization fees are based on the water demand placed on the system as compared to a single-family residential equivalent (400 gal per day). Utilization fees are surcharged 15% for customers outside the City limits.

The gallons per day estimate provided by Axis Infrastructure is 5400gdp.

The equivalent benefit unit is based on 400 gdp.  $\text{EBU} = 5400/400 = 13.5$  equivalent benefit units

Utilization fee =  $\$550 * 13.5 + 15\% = \underline{\$8,538.75}$

- Permit =  $25.00 + 15\% = \underline{\$28.75}$
- Meter and tap fees for a 2" service (Line size needs to be determined by a professional. With only one bay this is an excessive line size especially if there are efficient fixtures in the wash bay. I note this because it can affect the fees that are charged and the monthly bill)

Tap	175.00
Corporation Stop	285.00
Curb Stop	440.00
Box	765.00
Insulator	210.00
Meter & MIU	1,735.00 Owner must supply backflow device

subtotal =  $\$3,610.00 + 15\% = \underline{\$4,151.50}$

**The totals fees = \$21,108**

The above costs do not include the expense of your contractor to install the water service from the water main to the building. It does however include fees for some parts that may overlap with what the contractor proposes to provide. The City can supply the above parts based on your needs.

The Contractor is required to obtain all other necessary permits from the County for sanitary and building plumbing. The Contractor is also required to obtain all permits from O.D.O.T. for work within the right of way of S.R. 59. Note the waterline is on the opposite side of the street. Record plan information will be sent via a separate email.

Should you need any additional information please contact our office.

Sincerely,



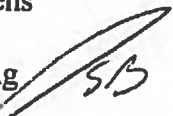
Rhonda Boyd, P.E, P.S.

C: Hope Jones, Law Director  
Melanie Baker Director of Public Service  
Jim Bowling, P.E., City Engineer  
Jennifer Barone, P.E., Development Engineer  
file

CITY OF KENT  
DEPARTMENT OF PUBLIC SERVICE  
DIVISION OF ENGINEERING

MEMO

TO: Dave Ruller  
Amy Wilkens

FROM: Jim Bowling 

DATE: February 15, 2021

RE: Southwest Sanitary Sewer Pump Station – OEPA Loan Request **UPDATE**

The Service Department is requesting council time and approval to enter into a loan agreement (attached) with the OhioEPA for the construction of the Southwest Sanitary Sewer Pump Station Project. Council previously approved entering into the loan agreement in December 2018. However, issues pertaining to acquiring right-of-way and COVID-19 have delayed the project. The delay has provided us the opportunity to increase the loan amount to cover additional project costs.

The project is recommended to be funded through a loan from the OhioEPA's Division of Environmental and Financial Assistance (DEFA), because the \$2.5 million budget is significantly greater than the current fund capacity can absorb. In addition, the life expectancy of the pump station and sewers is 50-years, which will be longer than the proposed term (20 years) for the loan. DEFA provides financing for these types of projects at below market rates (currently rate is 1.69%) and have a smaller administration fee (0.35%) than if the City were to go to a more traditional financing method. Based on the above, we are requesting approval from City Council to authorize the administration to enter into a loan agreement with the OhioEPA to complete the Southwest Sanitary Sewer Pump Station Project.

c: Rhonda Hall  
Brian Huff  
Melanie Baker  
Cori Finney  
Patti Long  
Cathy Wilson

# CITY COUNCIL AGENDA TIME REQUEST FORM

THIS FORM MUST ACCOMPANY ANY REQUEST TO THE CITY MANAGER AND/OR CLERK OF COUNCIL seeking either agenda time with one of the Committees of City Council or unauthorized action of the City Council at a regular (or special) Council meeting. ANY REQUESTS EMAILED TO THE CITY MANAGER MUST ALSO BE COPIED TO THE EXECUTIVE ASSISTANT. **DEADLINE FOR AGENDA REQUESTS IS 4 P.M. ON THURSDAY.**

Agenda title: OhioEPA Loan Agreement Southwest Sanitary Pump Station Loan Request UPDATE

Description (also attach a cover memorandum): Requesting council authorization to enter into a loan agreement with the OhioEPA to complete the Southwest Sanitary Pump Station Project. This request was approved by City Council in 2018, however the terms of the loan agreement have changed.

Name and title of Staff Person making request: Jim Bowling (Deputy Service Director/Superintendent of Engineering)

Has this request been verbally discussed with the City Manager?  Yes  No

Has this request been scheduled through the Clerk of Council?  Yes  No

If yes, give date(s) for meeting(s): March 3, 2021 Committee; March 17, 2021 Council

If no, please explain: \_\_\_\_\_  
\_\_\_\_\_

If contract or other similar exhibits are attached, have they been reviewed by the Law Director?  Yes  No  N/A

Does this action require an emergency declaration (needs to become effective immediately)?

Yes  No

If yes, give explanation of emergency: If we can sign the last 2 easements we will want to bid the Project as soon as possible.

Does this action require public hearing(s)?  Yes  No  
If yes, attach details and dates requested.

Staff person assigned to give presentation to City Council:

Name: Jim Bowling

Title: Deputy Service Director/Superintendent of Engineering

  
Signature of Person Making Request

2/15/2021  
Date

  
Department Head Acknowledgment

2/15/2021  
Date

Reviewed by Clerk of Council \_\_\_\_\_

\_\_\_\_\_ Date

Approved by City Manager \_\_\_\_\_

\_\_\_\_\_ Date

Water Pollution Control Loan Fund Agreement

**WATER POLLUTION CONTROL LOAN FUND AGREEMENT**

This Agreement made and entered into as of the "Effective Date," by and among the Director of Environmental Protection (the "Director"), as the Director of the Environmental Protection Agency of the State of Ohio, an agency duly created and existing under the laws of the State of Ohio, the Ohio Water Development Authority<sup>1</sup>, a body corporate and politic organized and existing under the provisions of Chapter 6121 of the Ohio Revised Code (the "OWDA," and together with the Director, the "State"), and the governmental body specified as the "Borrower" on Exhibit 1, a governmental body organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or resolution passed by the legislative authority of the Borrower on the date specified on Exhibit 1 as the "Resolution Date" (the capitalized terms not defined in the recitals being as defined in Article I herein);

**WITNESSETH:**

WHEREAS, the OWDA has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize, and manage the water resources of the State, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the State for the protection and preservation of the public health, safety, convenience, and welfare, and the improvement of the economic welfare or employment opportunities of and the creation of jobs for the people of the State, or to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Ohio Revised Code ("R.C."); and

WHEREAS, Title 33, Chapter 26, Subchapter VI of the Clean Water Act, as amended (the "CWA"), 33 U.S.C.A. § 1383 authorizes the Administrator of the United States Environmental Protection Agency to make capitalization grants to states which have established a state water pollution control revolving loan fund; and

WHEREAS, pursuant to the CWA, states can provide loans and other types of financial assistance from a water pollution control revolving loan fund to local communities, municipal or intermunicipal and interstate or state agencies for the construction of publicly-owned wastewater treatment facilities as defined in Section 212 of the CWA, 33 U.S.C.A. 1292, and for the implementation of nonpoint source pollution control management programs and development and implementation of plans under the estuary protection programs; and

WHEREAS, the Ohio General Assembly has created a water pollution control loan fund (the "WPCLF") pursuant to R.C. Section 6111.036 to provide loans and other types of financial assistance as set forth in said Section; and

WHEREAS, to assist the Director (whenever the term "Director" is used herein, such term shall also be deemed to include the Director's designated representative(s), if any) in providing loans and other types of financial assistance from the WPCLF, and to assist in the administration and operation of the WPCLF as authorized by the R.C. Section 6111.036, the Director has entered into an Interagency Agreement with the OWDA and has annually entered into a renewal of that Agreement; and

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<sup>1</sup> The approval and execution of this Agreement by the OWDA is required only if this Agreement provides for a loan and if the payments of the principal or interest on the loan are or are expected to be pledged to secure payment of bonds issued or expected to be issued by the OWDA.

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WHEREAS, the Borrower is desirous of obtaining financing for necessary Project Facilities, using funds from the WPCLF; and

WHEREAS, the State is willing to provide financing to the Borrower for such Project Facilities, and the Director has determined that the Borrower has complied with the requirements of R.C. Section 6111.036, and is therefore eligible for financial assistance for its Project Facilities under the CWA and said Section; and

WHEREAS, the Borrower has demonstrated to the satisfaction of the State that it has the capability to pay the Semi-Annual Payment over the Contract Period of Years; and

WHEREAS, the State and the Borrower have determined to enter into this Agreement to set forth their respective obligations with respect to the financing, construction, operation and ownership of the Project Facilities;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto do hereby agree as follows:

### ARTICLE I - DEFINITIONS

Section 1.1. Except where the context clearly indicates otherwise, the following terms as used in this Agreement shall have the meaning ascribed to them in this Article:

(a) "Application Fee" means a charge levied and paid by the Borrower at the time of the execution of this Agreement to partially offset administrative costs of the Agreement. This fee is not an Eligible Project Cost and is in addition to the Semi-Annual Payment. The fee is calculated at thirty-five hundredths of one percent (.35%) of the estimated Eligible Project Costs, or four hundred dollars (\$400.00), whichever is the greater.

(b) "Approved Application" means the application submitted to the Director on the date shown on Exhibit 1 as the "Application Date," together with all attachments, supporting documentation, amendments and supplements thereto as approved by the State, together with any amendments thereto approved by the Borrower and the State after the date of this Agreement.

(c) "Borrower" means the entity identified on Exhibit 1, which is an entity eligible to receive assistance under Section 603(C) of the CWA and R.C. Section 6111.036.

(d) "Capitalized Interest Rate" means the effective rate of interest at which interest accrues on Principal Amounts disbursed during the construction period from the date of such disbursement.

(e) "Contract Interest Rate" means the interest rate per annum shown on Exhibit 1 as "Interest Rate."

(f) "Contract Period" means the period beginning the Effective Date and ending on the date of the conclusion of the Contract Period of Years.

(g) "Contract Period of Years" means the period of calendar years shown on Exhibit 1 as "Term In Years," commencing on the Date of Initial Payment to the WPCLF as set forth on the project schedule on Exhibit 1, provided that it shall commence no later than twelve (12) months following the actual Initiation of Operation of the Project Facilities, as presently determined in the project schedule, but in no event shall the Contract Period of Years exceed 30 years.

(h) "Default Rate" means a rate equal to the Contract Interest Rate plus three percentage points.



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(i) "Effective Date" means the most recent date of signature of this Agreement by the authorized representative of each of the parties, as indicated herein.

(j) "Eligible Project Costs" shall include, whether incurred before or after the date of this Agreement (but if incurred prior to the date hereof, subject to the restrictions set forth in the proviso below), costs that may be disbursed out of funds from the WPCLF, a description and distribution of which, subject to paragraph 4.1. hereof, is shown on Exhibit 1, which is hereby incorporated into this Agreement, and revision to which Exhibit can occur only with the agreement of the State and Borrower; provided, however, that Eligible Project Costs shall include costs incurred prior to the date hereof only if and to the extent that, in the opinion of nationally recognized bond counsel satisfactory to the State, the payment of such costs by the State would not cause the interest on any debt obligations of the OWDA to cease to be excluded from gross income for purposes of federal income taxation.

(k) "Facilities Plan" means all materials developed by the Borrower and the Director, including the Director's approval and any applicable conditions, in satisfaction of R.C. 6111.036 (K)(7).

(l) "Finding of No Significant Impact" or "FNSI" means all materials developed by the Borrower and the Director in satisfaction of R.C. Sections 6111.036 (K)(5) and (L).

(m) "Initiation of Operation" means the date that all Project Facilities are in full and sustained operation as planned and designed.

(n) "Participation Rate" means the dollar amount per semi-annual period necessary to amortize a principal amount of one dollar over the Contract Period of Years at the Contract Interest Rate.

(o) "Performance Certification" means the certification by the Borrower that the Project Facilities are meeting the agreed upon performance criteria on the date one year after Initiation of Operation of the Project Facilities.

(p) "Performance Criteria" means the standards set forth by the Director and agreed to in writing by the Borrower which the Borrower shall meet for the design life of the Project Facilities.

(q) "Pledged Revenues" means the one or more dedicated sources of revenue for payment of the Semi-Annual Payment, all as described in Exhibit 1, which shall include, unless otherwise indicated on Exhibit 1, Wastewater Service Charges and other revenues derived by the Borrower from the ownership and operation of its wastewater system (including, without limitation, any Special Assessment Funds), net of the costs of operating and maintaining the system and paying all amounts required to be paid under any Mortgage, Indenture of Mortgage, Trust Agreement or other instrument heretofore or hereafter entered into by the Borrower to secure debt obligations heretofore or hereafter issued or incurred by the Borrower for the system. These Pledged Revenues shall constitute a Dedicated Repayment Source, as defined in the CWA.

(r) "Project Facilities" means the facilities to be constructed pursuant to this Agreement as described generally in Exhibit 1 attached hereto and made a part hereof and more particularly described in the approved plans and specifications on file with the Director, together with any changes therein made pursuant to Article III hereof, but does not include facilities which are a part of the WRRSP Project.

(s) "Project Participation Principal Amount" means those Eligible Project Costs that are paid with moneys disbursed out of funds from the WPCLF, which costs shall in no event exceed the amount specified on Exhibit 1 as the "Principal Amount."

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(t) "Project Site" means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the construction and operation of the Project Facilities, but it does not include the WRRSP Site.

(u) "Semi-Annual Payment" means the amount equal to the Project Participation Principal Amount multiplied by the Participation Rate. An estimate of the Semi-Annual Payment based on the Principal Amount and the Participation Rate is specified on Exhibit 1 beneath the Principal Amount. A portion of Semi-Annual Payment will be deposited into an account to offset Ohio EPA administrative expenses.

If the Contract Period of Years commences prior to the final determination of the Project Participation Principal Amount, the Semi-Annual Payment shall be based upon the best figures available at the time the computation of each semi-annual payment is required to be made. When such final costs are known, the Semi-Annual Payment shall be recomputed and the next following semi-annual payment shall be either increased or decreased by a factor sufficient to correct for any overpayment or underpayment through the date of such recomputation so that the total amount received by OWDA over the Contract Period of Years will be the same amount as would have been received had the final Project Participation Principal Amount been used in computing the Semi-Annual Payment at the commencement of the Contract Period of Years. The interest during construction computed at the Contract Interest Rate shall, however, be computed based on the then existing cost allocations at the time of such computation and shall not be recomputed.

(v) "Special Assessment Funds" means the proceeds from the special assessments to be hereafter levied, if any, by the Borrower to pay all or a portion of the cost of the Project Facilities including repayment of the loan provided for herein. In such cases where assessments are to be levied, Exhibit 1 sets out the Resolution of Necessity adopted by the appropriate legislative authority.

(w) "Wastewater Service Charge" means a charge against the user payable to the Borrower for the collection or collection and treatment of wastewater and for the provision of the facilities therefor.

(x) "WRRSP Project" means the actions and facilities, including the manner of their implementation and maintenance, which have been approved by the Director under the WPCLF's Water Resources Restoration Sponsor Program and identified by the approved WRRSP Restoration / Protection Plan.

(y) "WRRSP Restoration / Protection Plan" means all materials developed by the Borrower, including materials developed by the Implementer and submitted by the Borrower, in satisfaction of the requirements of the Director to approve a WRRSP Project for assistance, including the Director's approval and any applicable conditions.

(z) "WRRSP Site" means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the implementation, construction, and operation of the WRRSP Project.

### **ARTICLE II - PROPERTY INTEREST IN PROJECT SITE AND PROJECT FACILITIES AND RIGHTS OF ACCESS THERETO**

Section 2.1. All real estate and interests in real estate and all personal property constituting the Project Facilities and the Project Site shall be acquired by and shall be the property of the Borrower.

Section 2.2. The Borrower agrees that the State or its designated representatives shall have the right at all reasonable times to enter upon the Project Site, WRRSP Site, WRRSP Project location, and Project Facilities and to examine and inspect the same. The Borrower further agrees that the State or its designated

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representatives shall have such rights of access to the Project Site and Project Facilities as may be reasonably necessary to enable the OWDA to exercise its rights pursuant to Section 5.8 hereof.

### **ARTICLE III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITIES, AND PAYMENT OF COSTS THEREOF**

**Section 3.1.** Subject to the terms and conditions of this Agreement, the Borrower shall do all things necessary to construct the Project Facilities on the Project Site (which the Borrower hereby represents has been acquired by the Borrower) by means of the construction contract.

**Section 3.2.** In connection with the construction of the Project Facilities, the Borrower agrees that:

(a) It will proceed expeditiously with, and complete, the Project Facilities in accordance with the specific terms and conditions of each of the following: the approved facilities plan, the Finding of No Significant Impact, the approved project schedule, and the approved project detailed plans and specifications, or amendments thereto as approved by the Director. The Borrower accepts such performance as an essential element of this Agreement.

(b) The construction contract(s) will provide that the designated representatives of the State will have access to the work whenever it is in preparation or progress and that the contractor will provide for such access and inspection.

(c) The construction of the Project Facilities on the Project Site, including the letting of contracts in connection therewith, will conform to applicable requirements of Federal, State and local laws, ordinances, rules and regulations and will be performed in compliance with all applicable federal, state and local environmental laws and regulations in effect as of the date hereof.

(d) Following construction contract award and prior to the commencement of construction, the Borrower will arrange and conduct a pre-construction conference to include the Borrower, the consulting engineers of the Borrower, and all contractors, and designated representatives of the State as appropriate or necessary.

(e) All construction contracts and contractors' estimate forms will be prepared so that materials and equipment furnished to the Borrower may be readily itemized by the Borrower and identified, if necessary, as to Eligible Project Costs and non-Eligible Project Costs.

(f) The Borrower will not submit requests for disbursement of non-Eligible Project Costs. If, based on a payment request submitted by the Borrower, the State disburses funds from the WPCLF which are subsequently determined to be for non-Eligible Project Costs, the State will be under no obligation to provide WPCLF funding beyond the Eligible Project Costs as shown on Exhibit 1, as amended.

(g) Any change or changes in a construction contract regardless of costs which substantially modify the proposed Project Facilities or alter the direct or indirect impact of the Project Facilities upon the environment will be submitted to the Director for prior approval and then, upon approval, be forwarded to the OWDA. The Borrower shall be precluded from submitting to the OWDA payment requests for Eligible Project Costs associated with the change orders until such time as the Director's approval of the change orders has been obtained.

(h) Change orders not requiring prior approval of the State will be submitted to the Director within one (1) month of the time at which they are approved by the Borrower. The Borrower shall be precluded from

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submitting to the OWDA payment requests for Eligible Project Costs associated with the change orders until such time as the Director's approval of the change orders has been obtained.

(i) The Borrower will comply with all certifications and assurances as agreed to in the Application Compliance Certification, signed by the Authorized Representative of the Borrower.

(j) The Borrower shall be precluded from submitting to the OWDA payment requests for Eligible Project Costs unless the Borrower is in full compliance with the certifications and assurances made in the above referenced Application Compliance Certification.

(k) Except as otherwise provided in this Agreement, the Borrower shall have the sole and exclusive charge of all details of the construction of the Project Facilities.

(l) In any year in which disbursements to the Borrower under this Agreement exceed \$750,000 the Borrower shall comply with the Single Audit Act (SAA) Amendments of 1996, 31 U.S.C.A. § 7501 and have an audit of its use of Federal financial assistance (see 2 CFR Part 200). The Borrower agrees to keep a copy of the SAA audit available for review, if requested, by the State for the life of the loan period.

(m) In the event construction costs are to be paid from loan proceeds under this Agreement, the Borrower shall comply with 40 U.S.C.A. § 3141 (known as the Federal Davis-Bacon Act), unless waived in writing by the State.

(n) The Borrower acknowledges and agrees that its obligation under Section 3.2(c) to conform to applicable requirements of Federal laws, rules and regulations, includes, without limitation, the obligation to:

(i) comply with all applicable Federal requirements imposed by the then most recent version of the Consolidated Appropriations Act and related State Revolving Fund Policy Guidelines, including, among others, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (A) the Borrower has requested and obtained a waiver from the Director pertaining to the Project or (B) the Director has otherwise advised the Borrower in writing that the American Iron and Steel Requirement is not applicable to the Project.

(ii) comply with all record keeping and reporting requirements under the CWA, including any reports required by the Federal agency or the Director such as performance indicators of program deliverables, information on costs and project progress. The Borrower understands that (A) each contract and subcontract related to the Project is subject to audit by appropriate Federal and State entities and (B) failure to comply with the CWA and this Agreement may be a default hereunder that may result in the required immediate repayment from the Borrower of financial assistance provided under this Agreement and/or other remedial actions.

(o) The Borrower agrees to comply with the requirements of section 603(d)(1)(E)(i) of the CWA, 33 U.S.C.A. 1383, (incorporated into the CWA by the Water Resources Reform and Development Act (WRRDA)), for the development and implementation of a Fiscal Sustainability Plan (FSP). The Borrower agrees to certify, as part of the Performance Certification, a Fiscal Sustainability Plan has been developed and implemented in accordance with the provisions of this Agreement and applicable law.

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**Section 3.3.** The Borrower shall keep accurate records of the Eligible Project Costs. These records must be kept in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets, in accordance with generally accepted accounting principles as issued by the Governmental Accounting Standards Board. The Borrower shall permit the State, acting by or through its designated representatives, to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of said audit and examination, which examination may include examination for compliance with the CWA and R.C. Section 6111.036, and the Borrower shall submit to the State such documents and information as they may require in connection therewith.

**Section 3.4.** The Borrower shall require that each construction contractor shall furnish a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract.

**Section 3.5.** The Borrower shall require that each of its contractors and all subcontractors maintain during the life of its contract, Workers' Compensation Insurance, Public Liability, Property Damage, Vehicle Liability Insurance, and Flood Insurance if appropriate, in amounts and on terms satisfactory to the State. Until the Project Facilities are completed and accepted by the Borrower, the Borrower or (at the option of the Borrower) the contractor shall maintain Builders Risk Insurance (fire and extended coverage) on a 100 percent basis (completed value form) on the insurable portion of the Project Facilities for the benefit of the Director, the OWDA, the Borrower, the prime contractor, and all subcontractors, as their respective interests may appear.

**Section 3.6.** The Borrower shall provide and maintain competent and adequate engineering services; said services covering the supervision and inspection of the development and construction of the Project Facilities in accordance with the specific terms and conditions of each of the following: the approved project facilities plan, the Finding of No Significant Impact, and the approved project detailed plans and specifications, or State approved amendments thereto.

**Section 3.7.** Subject to the terms and conditions of this Agreement, the approval of the Director, and upon compliance by the Borrower with all the requirements of the WPCLF, the R.C. Section 6111.036, and the CWA, which must be met before receiving disbursement of Eligible Project Costs from the OWDA, the Eligible Project Costs shall be disbursed by the OWDA. In the event this Agreement is terminated by the State pursuant to, and not in breach of, the provisions of this Agreement, or by subsequent agreement of the parties, or in the event this Agreement is terminated by the Borrower, whether or not in breach of the Agreement, the Project Participation Principal Amount disbursed shall be due and payable in full no later than thirty (30) calendar days after said termination, or, at the State's option, upon terms mutually agreed to between the State and the Borrower.

**Section 3.8.** Upon being satisfied that the requirements of this Agreement have been met, the OWDA shall deliver to the Borrower a certificate, signed by the trustee for the WPCLF (hereinafter referred to as the "Trustee," which has entered into a Trust Agreement with the Director and the OWDA to provide for the administration of the WPCLF), certifying that monies in the amount necessary to pay all Eligible Project Costs are available or are within the present WPCLF Federal letter of credit ceiling and have been set aside by the Trustee to pay such Eligible Project Costs. When such Eligible Project Costs have been incurred and payment requested from the OWDA by the Borrower, subject to the terms and provisions of this Agreement and the Interagency Agreement, and in accordance with the requirements of paragraph (j) of Section 3.2. above, the OWDA shall cause the Trustee to disburse monies of the WPCLF in payment of the invoices,

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demands for payment, or other evidence of cost incurrence to be made to the persons or entities entitled to payment in conformity with the encumbrance of funds set forth in such certificate to pay such obligated Eligible Project Costs. The Borrower represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the State.

**Section 3.9.** Upon completion of the Project Facilities, the Borrower shall make a full and complete accounting to the State of the final Eligible Project Costs.

**Section 3.10.** The Borrower shall comply with the following requirements in accordance with the time schedule contained in Section 3.11. hereof:

(a) In addition to the legislation required by this Agreement in the preambles, the Borrower, through its legislative body, shall pass legislation, to implement the system of user charges (Operation, Maintenance, and Replacement expenses) and the sewer use ordinance that was contingently approved by the Director prior to the execution of this Agreement. In addition, as appropriate, the Borrower shall execute an approved intermunicipal service agreement, as described in the State of Ohio EPA Guidance for a User Charge System, as amended.

(b) The Borrower shall complete all activities and documents provided in the Operation and Maintenance (O&M) Program Plan as amended.

(c) If deemed necessary by the approved Facilities Plan, the Borrower shall be in compliance with any required sewer system evaluation and rehabilitation schedules, as described in the approved Facilities Plan, accepted in the Approved Application, and incorporated into this Agreement on Exhibit 1 as "Special Terms and Conditions," and made a part hereof.

(d) The Borrower shall comply with applicable "fair share" goals and reporting annually by October 15<sup>th</sup> of each year for utilization of Disadvantaged Business Enterprises.

(e) On the date one year after Initiation of Operation of the Project Facilities, the Borrower shall prepare and submit to the Director the Performance Certification report and Performance Certification. Should the Project Facilities not be in compliance with the Performance Criteria, on the date one year after Initiation of Operation of the Project Facilities, the Borrower will prepare and submit to the Director a corrective action report outlining what tasks are necessary to meet the Performance Criteria, and setting forth a schedule, acceptable to the State, which will allow the Borrower to meet said Performance Criteria.

**Section 3.11.** The Borrower shall be in conformance with the requirements of Section 3.10. above and in compliance with the following:

(a) By the time 50% of the Eligible Project Costs to be reimbursed by WPCLF moneys have been disbursed by OWDA, the Borrower must demonstrate, to the satisfaction of the State, that it has completed the requirements of paragraph (a) of Section 3.10. above.

(b) No later than one year after Initiation of Operation, the Borrower shall complete all activities and documents provided in the O&M Program Plan and participate in a final evaluation meeting.

(c) At any time during the effective period of this Agreement, the Borrower must demonstrate, to the satisfaction of the State, that it is in compliance with the requirements of paragraphs (c) and (d) of Section 3.10. above, as the compliance relates to construction of the Project Facilities.

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Except as related to paragraphs (c) and (d) of Section 3.10. above, upon the failure of the Borrower to comply with the provisions of Section 3.10. and 3.11. herein as determined by the Director, the OWDA shall employ consulting engineers or other qualified personnel to perform any services necessary for the implementation of such requirements. All costs incurred by the OWDA in the employment of said personnel will be included in the Eligible Project Costs of the Project Facilities. Additionally, during the period of non-compliance with any of the requirements, the Borrower shall be precluded from submitting payment requests as noted in paragraph (j) of Section 3.2. above and the State shall not be obligated to approve such requests during such period of non-compliance.

### ARTICLE IV - PAYMENTS BY BORROWER

Section 4.1. Subject to the further provisions hereinafter set forth, the Borrower agrees to and shall pay at the time of the execution of this Agreement the Application Fee and thereafter, semi-annually on January 1, and July 1 of each year of the Contract Period of Years to the WPCLF, the Semi-Annual Payment, solely from the Pledged Revenues.

The obligation of the Borrower to pay the charges set forth in this Section 4.1 shall not be assignable, and the Borrower shall not be discharged therefrom, without the prior written consent of the State. In the event that construction or operation of the Project Facilities shall cease or be suspended for any reason, unless otherwise agreed to in writing by the State, the Borrower shall continue to be obligated to pay such charges pursuant to this Section 4.1. In the event the Borrower defaults in the payment of the Semi-Annual Payment, the amount of such default shall bear interest at the Default Rate from the date of the default until the date of the payment thereof. All costs incurred by the State in curing such default including, but not limited to, court costs and attorney's fees shall be paid by the Borrower upon demand, and shall not be eligible for inclusion in a WPCLF Loan Agreement.

In the event that the Borrower fails to make a full Semi-Annual Payment as provided herein, the amount of any such partial payment first shall be applied as interest on the loan, with the remainder being applied toward the payment of the outstanding principal.

With respect to this Agreement, neither the general resources nor the general credit of the Borrower but only the Pledged Revenues, shall be required to be used, or pledged for the performance of any duty under this Agreement. This Agreement does not represent or constitute a debt or a pledge of the faith and credit of the Borrower. However, if otherwise lawful, nothing herein shall be deemed to prohibit the Borrower from using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this Agreement.

Section 4.2. It is agreed that, no later than the fifteenth day of June, and December, the OWDA shall invoice the Borrower for the sum owing by the Borrower pursuant to Section 4.1. and that payment of each such invoice shall be made by the Borrower to the OWDA not later than the first day of the following July or January. No failure by the OWDA to send any such invoice and no failure by the Borrower to receive any such invoice shall relieve the Borrower from its obligation to pay the amount due hereunder on the applicable due date.

Section 4.3. The Borrower hereby agrees:

(a) That it will at all times prescribe and charge such rates, after meeting: (1) operation and maintenance expenses therefore, and, (2) if required by the Director pursuant to R.C. Section 6111.036, a contribution to the Borrower's Capital Improvements Fund and, (3) the payment of all amounts required by

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any Mortgage, Indenture of Mortgage, Trust Indenture or other instrument heretofore or hereafter granted by the Borrower, or contractual obligations between the Borrower and the State, payable solely from Pledged Revenues, as shall result in revenues at least adequate, to provide for the payments required by Section 4.1. hereof minus the amount of such payment provided from other Dedicated Repayment Sources, if any, and

(b) That the Borrower will, for the Contract Period of Years, furnish annually to the State reports of the operation and income of the wastewater system and also an annual report of the accounts and operations of the wastewater system and such other documents as the State may reasonably request in order to respond to requests for documentation from rating agencies or providers or potential providers of credit enhancement for debt obligations of the OWDA, and the Borrower will permit the designated representative of the State to inspect all records, accounts and data of the Project Facilities at all reasonable times, and

(c) That the Borrower will segregate the revenues, funds and properties of the wastewater system from all other funds and properties of the Borrower.

All of the obligations under this Section are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the Borrower within the meaning of R.C. Section 2731.01.

Section 4.4. If the Borrower pays all or any portion of the Semi-Annual Payment from Special Assessment Funds, and if any payor of the Special Assessment Funds elects to pay the special assessments in a one-time, lump-sum payment in lieu of having the special assessments certified to the appropriate county auditor for periodic collection, then the Borrower may elect to apply the amount of such payment to the reduction of the Project Participation Principal Amount by including that amount with its next Semi-Annual Payment pursuant to Section 4.1. hereof, accompanied by a written notice to the State identifying the amount so included and directing the State so to apply that amount. Upon the receipt of such payment and notice, the OWDA shall recompute the remaining Semi-Annual Payments based on the reduced Project Participation Principal Amount, and the OWDA shall notify the Borrower in writing of the reduced amount of the remaining Semi-Annual Payments.

Section 4.5. The Borrower agrees to provide financing for all non-Eligible Project Costs. As a preliminary indication of that commitment, the Borrower has provided evidence that financing is readily available for all non-Eligible Project Costs which will be or may be incurred by the Borrower in connection with construction of the Project Facilities.

Section 4.6. The Borrower agrees that, in the event the Borrower or its contractors receives WPCLF moneys in excess of the Eligible Project Costs, the Borrower shall repay said excess moneys to the WPCLF at the time of the first Semi-Annual Payment, or as otherwise agreed to by the Borrower and the State.

Section 4.7. In order to enable the State to comply with the requirements of federal securities laws (including, without limitation, 17 C.F.R. § 240.10b-5 and 17 C.F.R. § 240.15c2-12 ("Rule 15c2-12") each promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended), the Borrower agrees to prepare and file with the State or, at the direction of the State, to file with the Municipal Securities Rulemaking Board ("MSRB") through the EMMA System (as defined below), any annual financial information or material events disclosures that the State may determine it requires to achieve such compliance. The Borrower consents to the State's incorporation by reference into State official statements or other State filings with the MSRB of any official statements or portions thereof, financial statements, or other documents that the Borrower may have filed or may file with the MSRB. In the event the



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Borrower fails to prepare any financial statement or other financial information that this Section requires the Borrower to prepare and file with or at the direction of the State, then the State shall have the right (in addition to any other rights it may have to enforce the obligations of the Borrower hereunder) to inspect all records, accounts and data of the System and cause the preparation of the required financial statement or information and to employ such professionals as it may reasonably require for that purpose, and to be reimbursed from any available Pledged Revenues for the costs of its doing so. This Section shall not be construed to limit the generality of Section 4.3 hereof. For purposes of this Section 4.7, "EMMA System" shall mean the Electronic Municipal Market Access system of the MSRB for use in the collection and dissemination of information, which system the SEC has stated to be consistent with its Rule 15c2-12. Currently, the following is the website address for EMMA: [emma.msrb.org](http://emma.msrb.org).

### ARTICLE V - MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION

Section 5.1. The Borrower agrees that during the Contract Period of Years it will:

- (a) Operate the Project Facilities in compliance with all applicable federal, state and local environmental laws and regulations in effect during such period, and
- (b) Keep the Project Facilities including all appurtenances thereto and the equipment and machinery therein in good repair and good operating condition at its own cost so that the completed Project Facilities will continue to operate with substantially the same efficiency as when first constructed.

The Borrower shall have the privilege of making additions, modifications and improvements to, making deletions from and discontinuing the use or operation of all or any part of, the Project Site and the Project Facilities from time to time; provided, that the cost of any additions, modifications and improvements shall be paid by the Borrower, and the same shall be the property of the Borrower and be included under the terms of this Agreement as part of the Project Site or the Project Facilities, as the case may be; and provided further that the Borrower shall make no modification to, make any deletion from or discontinue the use or operation of all or any part of, the Project Site or the Project Facilities, the result of which would be a material decrease in the Pledged Revenues without first obtaining the written consent of the State thereto.

Section 5.2. The Borrower agrees that it will initiate operation of the Project Facilities in accordance with the Project Schedule, as amended, and will not discontinue operation of the Project Facilities without the approval of the Director. The Borrower agrees that it will provide adequate operation and maintenance of the Project Facilities to comply with all applicable rules and regulations of the Director. The Borrower agrees that, in accordance with its NPDES permit and the Operation and Maintenance Program sufficient qualified operating personnel certified by the State of Ohio will be retained by the Borrower to operate the Project Facilities, and all operational tests and measurements necessary to determine compliance with the preceding sentence will be performed to insure proper and efficient operation and maintenance of the Project Facilities from the time of Initiation of Operation until the end of the Contract Period of Years or the approval of the discontinuance of the operation of the Project Facilities by the Director. The Project Facilities shall be operated and maintained in accordance with the sewer use ordinance or resolution governing the use of the Project Facilities and any administrative regulations adopted pursuant thereto acceptable to the Director as appropriate.

The Borrower will permit the State or its designated representatives to have access to the records of the Borrower pertaining to the operation and maintenance of the Project Facilities at any reasonable time following completion of construction of the Project Facilities.

## Water Pollution Control Loan Fund Agreement

**Section 5.3.** The Borrower agrees to insure, or cause to be insured, the Project Facilities in such amounts as similar properties are usually insured by political subdivisions similarly situated, against loss or damage of the kinds usually insured against by political subdivisions similarly situated, by means of policies issued by reputable insurance companies duly qualified to do such business in the State of Ohio.

**Section 5.4.** The Borrower agrees that it will provide through self-insurance or obtain public liability insurance with reference to the Project Facilities in minimum amounts of \$500,000 for the death of or personal injury to one person and \$1,000,000 for personal injury or death for each occurrence in connection with the Project Facilities and \$500,000 for property damage for any occurrence in connection with the Project Facilities. The Director and the OWDA, on behalf of the WPCLF shall be made an additional insured under such policies.

**Section 5.5.** Throughout the Contract Period of Years, the Borrower shall maintain Worker's Compensation Coverage or cause the same to be maintained.

**Section 5.6.** Any insurance policy issued pursuant to Sections 5.3 and 5.4. hereof shall be so written or endorsed as to make losses with respect to the Project Facilities, if any, payable to the State on behalf of the WPCLF, and the Borrower as their respective interests may appear. Each insurance policy provided for in Sections 5.3. and 5.4. hereof shall contain a provision to the effect that the insurance company shall not cancel the same without first giving written notice thereof to the State and the Borrower at least ten days in advance of such cancellation. The Borrower shall deliver certificates of insurance evidencing the coverage required herein to the State.

**Section 5.7.** The net proceeds of the insurance carried pursuant to the provisions of Sections 5.3. and 5.4. hereof shall be applied as follows:

(a) The net proceeds of the insurance required in Section 5.3. hereof shall be applied as provided in Section 5.9. hereof, and

(b) The net proceeds of the insurance required in Section 5.4. hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

**Section 5.8.** In the event the Borrower shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Project Facilities in good repair and operating condition, or shall fail to operate the Project Facilities in accordance with Section 5.2. hereof, the OWDA may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums of the same or may make such repairs or replacements as are necessary or may hire the necessary operating personnel to insure compliance with Section 5.2. and provide for payment thereof; and all amounts so advanced therefor by the OWDA shall become a separate obligation of the Borrower to the OWDA, which amounts, together with interest thereon at a rate equal to three percent (3%) above the Contract Interest Rate from the date thereof, the Borrower agrees to pay solely out of Pledged Revenues.

**Section 5.9.** If prior to the completion of the Contract Period of Years the Project Facilities shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, there shall be no abatement or reduction in the amounts payable by the Borrower pursuant to Section 4.1. hereof, and the Borrower will:

(a) Promptly repair, rebuild or restore the property damaged or destroyed, and

## Water Pollution Control Loan Fund Agreement

(b) Apply for such purpose so much as may be necessary of any net proceeds of insurance policies resulting from claims for such losses as well as any additional moneys of the Borrower necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the Borrower.

Section 5.10. In the event that title to or the temporary use of the Project Site or Project Facilities, or any part thereof, shall be taken by any person, firm, or corporation acting under governmental authority, there shall be no abatement or reduction on the amounts payable by the Borrower pursuant to Section 5.1. hereof, and any net proceeds received from any award made in such eminent domain proceedings shall be paid to and held by the Borrower in a separate condemnation award account and shall be applied by the Borrower in either or both of the following ways as shall be determined by the Borrower:

(a) The restoration of the improvements located on the Project Site to substantially the same condition as they existed prior to the exercise of said power of eminent domain; or

(b) The acquisition of additional real estate, if necessary, and facilities, by construction or otherwise, equivalent to the Project Facilities, which real estate and facilities shall be deemed a part of the Project Site and Project Facilities without the payment of any amounts other than herein provided, to the same extent as if such real estate and facilities were specifically described herein.

Any balance of the net proceeds of the award in such eminent domain proceedings shall be paid to the Borrower upon delivery to the OWDA of a certificate signed by an authorized officer of the Borrower that the Borrower has complied with either paragraph (a) or (b), or both, of this Section 5.10. The OWDA shall cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project Site or Project Facilities or any part thereof. In no event will the Borrower voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project Site or Project Facilities or any part thereof without the written consent of the State.

Section 5.11 This Section 5.11 shall apply if Exhibit 1 hereto indicates that the Contract Interest Rate includes a Water Resource Restoration Sponsor Program (WRRSP) discount.

(a) In accepting the WRRSP discount, the Borrower agrees that to the fullest extent permitted by law it shall assure implementation of the WRRSP Project in accordance with the specific terms and conditions of each of the following as applicable: approved Restoration / Protection Plans, the Finding of No Significant Impact, agreements or other mechanisms to restrict or maintain the identified uses associated with the WRRSP Project, and agreements between the Borrower and an entity responsible for implementing approved Restoration / Protection Plans (hereinafter the "Implementer") which are attached hereto as Exhibit 2 and made a part hereof. The Borrower accepts such performance as an essential element of this Agreement.

(b) Following the award of assistance, the Borrower may request disbursements for completion of a Restoration / Protection Plan and for implementation of an approved Restoration / Protection Plan. All such disbursements will be requested on the "Online Fund Payment Request Form" provided by the Ohio Water Development Authority website. The parties to this Agreement expect that costs directly associated with implementing the Restoration / Protection Plan will be disbursed by the OWDA either to the Borrower, the Implementer, an escrow agent jointly selected by the Borrower and the Implementer, or to contractors supplying materials or performing services in furtherance of this Agreement which have been designated by the Borrower as authorized recipients of such disbursements.

## Water Pollution Control Loan Fund Agreement

When WRRSP-eligible costs are incurred on behalf of the Implementer, invoices shall first be submitted to the Implementer which shall approve them to be requested for reimbursement by the Borrower and shall certify such invoices as eligible for assistance prior to forwarding them to the Borrower. The Borrower shall approve and certify all invoices (whether incurred by the Borrower directly or the Implementer) prior to submitting them to the Director with the accompanying disbursement request form. The Director shall review the disbursement request, including accompanying invoices, and if it is approved, shall transmit it to OWDA which then will be responsible for disbursing funds directly, either to the Borrower, escrow agent or to the contractor.

(c) Each interest in property acquired by either the Borrower or the Implementer as part of the WRRSP Project shall be subject to legally enforceable use restrictions which shall run with the property, perpetually limiting the use of the property to natural area uses consistent with the approved Restoration / Protection Plan. All conservation easements acquired either by the Borrower or the Implementer to implement or maintain the WRRSP Project shall be permanent easements and shall limit the uses of the land under easement to natural area uses consistent with the approved Restoration / Protection Plan. Borrower shall submit to the Director copies of documents containing such restrictions within ninety days of acquisition of the property interest.

(d) Borrower's failure to comply with any of the terms of this Section or the terms of any WRRSP-related requirements identified in any of the documents listed above during the time this Agreement is in effect shall be considered a default under this Agreement. If the State provides written notice of such default to the Borrower and the Borrower fails within sixty days of the date of such notice to satisfactorily demonstrate in writing to the Director that the Borrower is taking appropriate actions that will cure the default and will result in compliance with the WRRSP requirements, then from and after the date that is sixty days after the date of such notice the State will increase the Contract Interest Rate to a rate necessary to recover the amount of WRRSP funds disbursed and to eliminate any discount applied for the remainder of the Contract Period of Years, and all subsequent semi-annual payments for the remainder of the Contract Period of Years will be adjusted accordingly. Borrower agrees to submit in a timely manner the amounts required by the revised semi-annual payments for the remainder of the effective period of this Agreement.

The amount that the State recovers through the remedy provided for in this paragraph shall not exceed the total of the WRRSP Project cost financed by the WPCLF and any interest discount applied for the remainder of the Contract Period of Years, and any amount thus recovered by the State shall be credited toward the liquidation of any liability of the Borrower under this Section 5.11.

(e) To the extent that Borrower's failure to comply with WRRSP-related requirements involves a failure on the part of an Implementer to carry out a term or condition of an approved Restoration / Protection Plan for which a remedy exists via a separate enforceable agreement between the Director and the Implementer, the Director shall first attempt to address such non-compliance through the agreement between the Director and the Implementer prior to invoking any remedies under this agreement or otherwise available. If the Director, after exercising its obligation to attempt to address non-compliance through direct action between the Director and the Implementer, provides written notice to the Borrower that noncompliance continues to exist, the Director or the State may undertake any remedies under this agreement or otherwise available.

Water Pollution Control Loan Fund Agreement

**ARTICLE VI - GENERAL REPRESENTATIONS AND AGREEMENTS;  
EVENTS OF DEFAULT AND REMEDIES**

Section 6.1. The Borrower hereby represents and warrants that:

(a) It is and shall remain in compliance, and shall take whatever actions are necessary to assure compliance during the Contract Period of Years, with all applicable federal, state, and local laws, ordinances, rules, regulations, and provisions of this Agreement, including without limitation the CWA and R.C. Section 6111.036, subject to its rights to contest in good faith the issue of non-compliance, and

(b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the Borrower, wherein a result adverse to the Borrower could reasonably be expected to have a materially adverse effect on the ability of the Borrower to meet its obligations under this Agreement, and

(c) Except as heretofore disclosed in writing to the State, no judgment or consent order has been rendered against the Borrower, and the Borrower is not a party to any agreement, which imposes, will impose, or has imposed any fines or monetary penalties upon the Borrower for the violation of any federal, state, or local law, ordinance, or regulation, which fines or monetary penalties have not heretofore been paid in full.

Section 6.2. Each of the following shall be an event of default ("Event of Default") under this Agreement:

(a) The Borrower shall fail to make any payment to the OWDA required pursuant to this Agreement when the same is due and payable, including, without limitation, any amount due and payable pursuant to Article III hereof.

(b) The Borrower shall fail to observe and perform any other obligations, agreements, or provisions of this Agreement, which failure shall continue for thirty (30) days after receipt of written notice thereof from the Director or the OWDA; provided, however, that such failure shall not constitute an Event of Default hereunder if the Borrower demonstrates both of the following to the satisfaction of the Director and OWDA: i) cure of such failure cannot be effected within thirty (30) days; and ii) the Borrower is taking all reasonably necessary actions to cure such failure with all deliberate speed. Notwithstanding the contents of this paragraph, the notice and cure provisions of paragraph 5.11(d) shall apply to the WRRSP Project portions of the assistance in the event of a failure to comply with the terms of WRRSP-related requirements under this Agreement.

(c) Any representations made by the Borrower in Section 6.1 or 7.1 shall at any time during the Contract Period of Years prove to be false.

(d) The Borrower shall fail to observe any of the covenants contained in Article VII herein.

Section 6.3. The Director may terminate, suspend, or require immediate repayment of financial assistance from the Borrower in the event of a default due to failure to make any required payment, or due to any violation of the terms or conditions of this Agreement, or of the documents referred to in Section 3.2.(a), or of the Plan Approval for the Project Facilities under Section 6111.44 of the Ohio Revised Code. The Director may also prescribe corrective action, or direct that corrective action be undertaken, to remedy the event or violation, and the Borrower agrees to perform such corrective action.

## Water Pollution Control Loan Fund Agreement

Section 6.4. Whenever an Event of Default of payment shall have occurred and be continuing, in addition to any other rights or remedies provided herein, by law or otherwise, the State may:

(a) declare the full amount of the then unpaid Project Participation Principal Amount to be immediately due and payable;

(b) to the extent permitted under any judgment, consent order, or agreement affecting the Borrower, require the Borrower to agree to, and the Borrower hereby agrees to, effect the subordination of the payment of any fine or penalties imposed for the violation of any federal, state, or local environmental law or regulation to the payment of the Eligible Project Costs and the interest due thereon.

Section 6.5. No right or remedy conferred upon the OWDA or the Director under Sections 5.11, 6.3 or 6.4 hereof is intended to be exclusive of any other right or remedy given herein, by law, or otherwise. Each right or remedy shall be cumulative and shall be in addition to every other remedy given herein, by law, or otherwise.

Section 6.6. The Borrower releases the State from, agrees that the State shall not be liable for, and agrees, to the fullest extent permitted by law, to hold the State, its officers, employees and agents harmless against, any loss or damage to property, or any loss or injury to or death of any person, or any other loss or damage, that may be occasioned by any cause whatsoever pertaining to the Project Facilities, or the use thereof; provided that such indemnity under this Section 6.6 shall not be effective for damages that result from negligent or intentional acts of the State, its officers, employees and agents. The Borrower further agrees, to the fullest extent permitted by law, to indemnify and hold harmless the State, its officers, employees and agents against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of the Borrower in the performance of any covenant or agreement on the part of the Borrower to be performed pursuant to the terms of this Agreement, arising from the acquisition, construction, installation, or improvement of the Project Facilities or arising from any act or negligence of or failure to act by the Borrower, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm, or corporation resulting from the Project Facilities (other than any accident, injury, or damage that results from negligent or intentional acts of the State, its officers, employees and agents), and from and against all cost, liability and expenses incurred in or in connection with any such claim or action, arbitration or proceeding brought thereon.

In case any action or proceeding be brought against the State by reason of any claim described in this Section, the State agrees to cause written notice of such action or proceeding to be given to the Borrower, and the Borrower upon notice from the State covenants to resist or defend such action or proceedings at the Borrower's expense including all legal and other expenses (including reasonable attorneys' fees).

### **ARTICLE VII - MAINTENANCE OF TAX-EXEMPT STATUS OF BONDS / PRIVATE BUSINESS USE RESTRICTIONS**

Section 7.1. The Borrower acknowledges that the OWDA may issue tax-exempt bonds to provide the funds to meet the State's obligations with regard to funding the WPCLF and that the maintenance of the tax-exempt status of any such bonds will depend, in part, on the Borrower's compliance with the provisions of this Agreement. Accordingly, the Borrower agrees as follows:

(a) That it shall take no action that would cause bonds issued by the OWDA, the proceeds of which could fund the loan to the borrower (the "OWDA Bonds") to fail to qualify as tax-exempt bonds, nor omit to take any action necessary to maintain such status;

**Water Pollution Control Loan Fund Agreement**

(b) That it shall take any action that the OWDA reasonably may request it to take to maintain the status of the OWDA Bonds as tax-exempt bonds;

(c) That, to assure that the OWDA Bonds will not be or become "private activity bonds" within the meaning of 26 U.S.C.A. Section 141 of the Internal Revenue Code of 1986, as amended:

(i) The Borrower shall not permit, at any time ten percent (10%) or more (in the aggregate) of that portion of the Project Facilities to be financed with funds borrowed from the State hereunder (the "State Funds") to be used by any person or persons for any private business use (as hereinafter defined) while at the same time the payment of principal of, or the interest on, the State Funds is directly or indirectly (A) secured by any interest in (1) property used or to be used for a private business use or (2) payments made with respect to such property or (B) derived from (1) payments with respect to such property (whether or not made to the OWDA) or (2) borrowed money used or to be used for private business use.

(ii) No portion of the State Funds will be used to make or finance loans to persons other than other governmental units.

For purposes of this Agreement, "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit (as hereinafter defined). Use of any Project Facility or Project Site as a member of the general public will not be considered a private business use. Any activity carried on by a person other than a natural person shall be treated as a trade or business. Use by an organization which qualifies under 26 U.S.C.A. Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, shall be considered a private business use.

For purposes of this Agreement, "governmental unit" means a political subdivision within the United States, including any political subdivision within the State of Ohio, but does not mean the United States or any of its governmental branches, departments or agencies.

If there is any question about the application of the foregoing restrictions relating to private business uses or loans, the Borrower agrees to immediately write the OWDA requesting assistance prior to entering into any agreement which may be prohibited as provided herein.

(iii) The Borrower shall not re-loan, directly or indirectly, any portion of the amounts advanced to it under this Agreement to any person;

(d) That, to assure that the OWDA Bonds will not be or become "arbitrage bonds" within the meaning of 26 U.S.C.A. Section 148 of the Internal Revenue Code of 1986, as amended, the Borrower, except upon the prior written consent of the OWDA, shall not create or permit to exist any fund pledged to, or expressly reserved exclusively for, the payment of amounts payable by the Borrower hereunder.

Section 7.2. The OWDA shall not be required to, and shall not, consent to any action by the Borrower referred to in Section 7.1 unless it first shall have received an opinion of nationally recognized bond counsel to the effect that the consummation of the transaction or transactions contemplated by such action will not adversely affect the tax-exempt status of the OWDA bonds.

Section 7.3. If the Borrower shall have any question about the application of Section 7.1., in the particular circumstances faced by it at any time during the term of this Agreement, it shall immediately

**Water Pollution Control Loan Fund Agreement**

inform the OWDA of the circumstances and request the OWDA's assistance to resolve any such questions, to the end that the tax-exempt status of the OWDA Bonds and of the OWDA's bonds would be preserved.

**ARTICLE VIII - MISCELLANEOUS PROVISIONS**

**Section 8.1. Any invoice, accounting, demand, or other communication under this Agreement by any party to this Agreement to any other party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and**

**(a) in the case of the OWDA, is addressed to or delivered personally to the OWDA at:**

**Ohio Water Development Authority  
480 South High Street  
Columbus, Ohio 43215  
Attn: Executive Director**

and,

**(b) in the case of the Director, is addressed to or delivered personally to the Director at:**

**Ohio Environmental Protection Agency  
Lazarus Government Center  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Chief, Division of Environmental and Financial Assistance**

and,

**(c) in the case of the Borrower, is addressed to or delivered personally to the Borrower at the address listed on Exhibit 1, or at such other addresses with respect to any such party as that party may from time to time, designate in writing and forward to the other parties as provided in this Section.**

**Section 8.2. Any approval of the State required by this Agreement shall not be unreasonably withheld. Any provision of the Agreement requiring the approval of the State or the satisfaction or evidence of satisfaction of the State shall be interpreted as requiring a response by the Director and the OWDA granting, authorizing, or expressing such approval or satisfaction, as the case may be, unless such provision expressly provides otherwise.**

**Section 8.3. Upon request of the OWDA, the Borrower agrees to execute the information report required by 26 U.S.C.A. Section 149 of the Internal Revenue Code of 1986, as it may be amended from time to time, with respect to this Agreement, such form to be completed by the OWDA on the basis of information provided by the Borrower. The Borrower hereby agrees that the OWDA may file such information report for and on behalf of the Borrower with the Internal Revenue Service.**

**Section 8.4. This Agreement is made subject to, and conditional upon, the approval of this Agreement as to form by the General Counsel of the OWDA and Counsel to the Director and upon the certification of availability of funds as provided in Section 3.8. hereof.**

**Section 8.5. If any provision of this Agreement or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement**



**Water Pollution Control Loan Fund Agreement**

are severable. In lieu thereof the parties agree that there shall be added a provision as similar in terms to such illegal, invalid and unenforceable provision as may be possible and be legal, valid and enforceable.

**Section 8.6.** This Agreement shall become effective as of the "Effective Date" and shall continue in full force and effect until the final day of the Contract Period of Years, based on the Semi-Annual Payment being paid at the rate established in Section 4.1. hereof, or until the day the obligations of the Borrower under this Agreement have been fully satisfied, whichever is later.

**Section 8.7.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of any of the parties hereto. This Agreement shall not be assigned by the Borrower without the prior written consent of the State. The State, at its option, may assign this Agreement without the consent of the Borrower.

**Section 8.8.** As its record of this Agreement, the Borrower agrees to receive an electronic copy pursuant to R.C. 1306.06(C).

The remainder of this page is intentionally left blank.

Water Pollution Control Loan Fund Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the "Effective Date."

APPROVED AS TO FORM

By \_\_\_\_\_  
Ohio EPA Counsel

Print Name \_\_\_\_\_

OHIO ENVIRONMENTAL PROTECTION AGENCY

By \_\_\_\_\_  
Laurie A. Stevenson, Director

Date \_\_\_\_\_

APPROVED AS TO FORM

By \_\_\_\_\_  
General Counsel

Print Name \_\_\_\_\_

OHIO WATER DEVELOPMENT AUTHORITY<sup>2</sup>

By \_\_\_\_\_  
Ken J. Heigel, Executive Director

Date \_\_\_\_\_

APPROVED AS TO FORM

By \_\_\_\_\_  
Borrower's Counsel

Print Name \_\_\_\_\_

BORROWER

By \_\_\_\_\_  
Authorized Representative

Print Name \_\_\_\_\_

Title \_\_\_\_\_

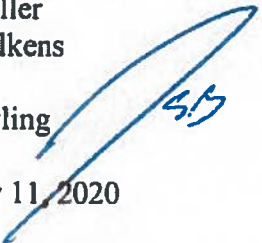
Date \_\_\_\_\_

<sup>2</sup> If the execution of this Agreement on behalf of the OWDA is not required for the reason stated in note 1 on page 1 hereof, then "N/A" shall be inserted on the signature lines for the OWDA and its General Counsel.

**CITY OF KENT  
DEPARTMENT OF PUBLIC SERVICE  
DIVISION OF ENGINEERING**

**MEMO**

**TO:** Dave Ruller  
Amy Wilkens

**FROM:** Jim Bowling 

**DATE:** February 11, 2020

**RE:** Portage Bike & Hike Trail – Brady’s Leap Section  
Kent P&R/City of Kent Memorandum of Understanding (MOU)

The Service Department and Parks and Recreation Department are requesting City Council approval of the attached MOU. The MOU details the terms with which the Parks & Recreation Department will return the funds to the City for the loan necessary to complete the Portage Bike & Hike Trail – Brady’s Leap Segment Project.

The Parks & Recreation (P&R) Budget was short \$460,000 for the project primarily because the P&R Department was planning on obtaining a \$400,000 grant from the ODNR Clean Ohio fund for the trail, but found out that the project did not qualify. The project did not qualify because it was a trail widening project, not a new trail. In addition, the construction inspection is unable to be completed using in house because is already committed to inspecting North Water Street (existing federally funded project), which was delayed due to COVID-19.

This project has been planned for the last 5-years with bids for construction received on December 9, 2020. The bids came in 15% under the engineer’s opinion of probable construction costs. We have entered into an agreement with the grant funding sources to have construction for the project started at this time. Therefore the project had to be proceed with assistance from the City, which appropriated the money needed at the December, 2020 City Council Meeting.

**C:** Melanie Baker  
Brian Huff  
Cathy Wilson  
Rhonda Boyd

**PORTAGE BIKE & HIKE TRAIL**  
**BRADY'S LEAP SEGMENT**

**MEMORANDUM OF UNDERSTANDING**

This memorandum of understanding, dated \_\_\_\_\_ 2021, is an agreement made and entered into between the City of Kent Parks and Recreation Department ("P&R") and the City of Kent, Ohio, duly formed under the laws of the State of Ohio (the "City").

**WITNESSETH:**

**WHEREAS**, the P&R and the City are committed to providing a safe, robust active transportation network to the residents, workers and visitors to Kent; and

**WHEREAS**, the P&R and the City are committed to providing a strong network of recreational trails in Kent that is an integral part of the active transportation network in the City of Kent ; and

**WHEREAS**, the P&R and the City have been working jointly since 2015 to complete the Brady's Leap Segment of the Portage Bike & Hike Trail ("Project"), which includes federal and state funding for the Project; and

**WHEREAS**, the City has entered into a contract for the construction of the Project; and

**WHEREAS**, the opinion of probable cost to complete the Project is \$1,460,000, inclusive of the grant funds received; and

**WHEREAS**, the P&R budget is short \$460,000 to cover the opinion of probable project costs, which consist of the cost of construction, construction inspection and provide for a contingency during construction of the Project; and

**WHEREAS**, the City is willing to assist the P&R in addressing the budgetary shortfall of \$460,000 in order to complete the Project.

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, the parties hereby agree to the following to address the budget shortfall for the timely completion of the Project:

**City:**

- The City will contribute \$120,000 from its Capital Fund (301) for the completion of the Project.
- The City will provide additional funds as necessary to complete the project from its Capital Funds (301). The opinion of probable costs for the additional funds is \$340,000. The additional funds will be provided as a no interest loan to the P&R.
- The City will provide a revised amortization schedule after the completion of the project once the final costs are determined.

**P&R:**

- Will refund the City's Capital Fund (301) the total cost of the project, less the \$120,000 contributed by the City.
- The money will be refunded within five years, beginning in 2022. The money will be refunded in 5 equal payments, paid annually to the City. An amortization schedule based on the current opinion of probable costs is included in Attachment "A" as a reference.

**City and P&R:**

- If the City is required to pay a matching Park Fee due to a private residential development during the amortization period, the funds required to be paid will be used to reduce the balance owed to the City from P&R. The funds will be credited to the final payment owed to the City. The City will provide a revised amortization schedule to reflect the City's matching Park Fee payment.
- Anytime during the amortization period, the City and P&R may agree to have the P&R provide in-kind services to the City as payment on the loan. The value and scope of the in-kind services shall be agreed to, in writing, prior to providing the services.

**Limitations:**

Nothing in this memorandum of understanding shall supersede any regulatory authorities' mandates to either parties or relieve either parties of their obligations to meet such regulatory mandates. If a conflict arises between an aspect of this memorandum of understanding and a regulatory mandate, the regulatory mandate shall prevail.

**Severability:**

In the event any one or more of the provisions contained in the memorandum of understanding 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.

**Contract Notices:**

Unless specified otherwise in this memorandum of understanding, all notices that would affect the terms of this memorandum of understanding shall be in writing, as follows:

To City: City of Kent  
930 Overholt Road  
Kent, Ohio 44240  
Attn: Budget and Finance Director

To P&R: Parks and Recreation Director  
497 Middlebury Road  
Kent, Ohio 44240

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

**PARKS AND RECREATION DEPARTMENT**

Approved and Accepted by:

\_\_\_\_\_  
Melanie Baker  
Interim Parks & Recreation Director

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

**CITY OF KENT**

Approved and Accepted by:

\_\_\_\_\_  
Dave Ruller  
City of Kent, City Manager

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Hope Jones  
City of Kent, Law Director

Date: \_\_\_\_\_

**Certificate of Director of Budget and Finance**

It is hereby certified that the amount **FOUR HUNDRED SIXTY THOUSAND Dollars (\$460,000)** 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, CPA, Director of Budget and  
Finance

\_\_\_\_\_  
Date

CITY OF KENT  
DEPARTMENT OF PUBLIC SERVICE  
DIVISION OF ENGINEERING

MEMO

To: Dave Ruller  
Amy Wilkens

From: Jim Bowling 

Date: February 16, 2021

RE: Southwest Sanitary Pump Station  
Temporary Work Agreements and Permanent Sanitary Easements

The Service Department is requesting City Council's approval to purchase a permanent and temporary easement (attached) for the construction of the Southwest Sanitary Pump Station Project. The project is anticipated to be bid for construction in March 2021.

Portions of the existing sanitary sewer upstream of the Middlebury Pump Station and Yacavona Pump Station are located on private property. The new sanitary sewer that will be constructed with the Southwest Sanitary Pump Station project will be either located in the City's right-of-way or in a new sanitary sewer easement. In addition, in order to tie the existing laterals into the new sanitary sewer, some temporary work agreements are required. In total, fifteen (15) owners were required to provide either a temporary or permanent easement to complete the project.

The following is the parcel and the respective value included in this request:

<u>Property Owner</u>	<u>Take Number</u>	<u>Take Description</u>	<u>Amount</u>
Stephen J. Smith	6-S,T	Permanent & Temporary	\$3,000

This request comprises one of the last two owners left to agree to terms for the easement acquisition for the project. The remaining owner is scheduled to sign the last easement on Friday February 19, 2021.

Cc: Melanie A. Baker, Service Director  
Cori Finney, P.E., Senior Engineer  
Patti Long, Executive Assistant  
Hope Jones, Law Director  
Sandy Lance  
file



**EASEMENT AND RIGHT-OF-WAY AGREEMENT**  
**GRANTING EASEMENT FOR UTILITY LINE CONSTRUCTION**

**1218 MIDDLEBURY ROAD**

FOR AND IN CONSIDERATION of the sum of \_\_\_\_\_, the receipt of which is acknowledged, and such other consideration as is herein below set forth, the undersigned Stephen J. Smith, hereinafter referred to as "Grantor(s)", who claim title to certain real estate by deed recorded in Plat Book 13, Page 24 of the Portage County Recorder's Records, does for their heirs, successors, and assigns, hereby give, devise, grant and convey to the City of Kent, Ohio, a municipal corporation, which is hereinafter referred to as "Grantee," its successors and assigns, the perpetual right to a permanent exclusive easement and right-of-way to lay, maintain, operate, repair, remove and replace sanitary and related necessary appurtenances over and through said real estate situated in the City of Kent, County of Portage, State of Ohio and known as being a part of Lot 9 and further known as being part of Sublot 24 of original Franklin Township, said easement being more fully described as follows:

Boundary Description for  
1218 Middlebury Road  
10 foot Sanitary Sewer Easement  
City of Kent, County of Portage, State of Ohio  
0.0229 Acre Easement

Situated in the City of Kent, County of Portage and State of Ohio and known as being part of the Original Franklin Township Lot No. 9 and further known as being part of Sublot 24 as shown on Portage Homesites, recorded in Plat Book 13, Page 24 of the Portage County Recorder's Records and is bounded and described as follows: Beginning at the northeasterly corner of Sublot 24 and is the PRINCIPAL PLACE OF BEGINNING of the easement herein to be described:

thence South 17°39'49" East, along the easterly line of Sublot 24, 10.00 feet to a point thereon;

thence South 72°23'11" West, 10 feet from and parallel with the northerly line of Sublot 24, 99.91 feet to a point on the westerly line of Sublot 24;

thence North 17°39'49" West, along the westerly line of Sublot 24, 10.00 feet to the northwesterly corner thereof;

thence North 72°23'11" East, along the northerly line of Sublot 24, 99.91 feet to the Principal Place of Beginning and containing 999 square feet or 0.0229 acres of land according to a survey by Guy P. Haney, P.S. No. S-7631, for TGC Engineering, LLC in July of 2020. Subject to all highways, easements and covenants of legal record.

Bearings are based on Ohio State Plane Coordinate System, North Zone, NAD 1983, ground.

For Drawings see attached Exhibit A

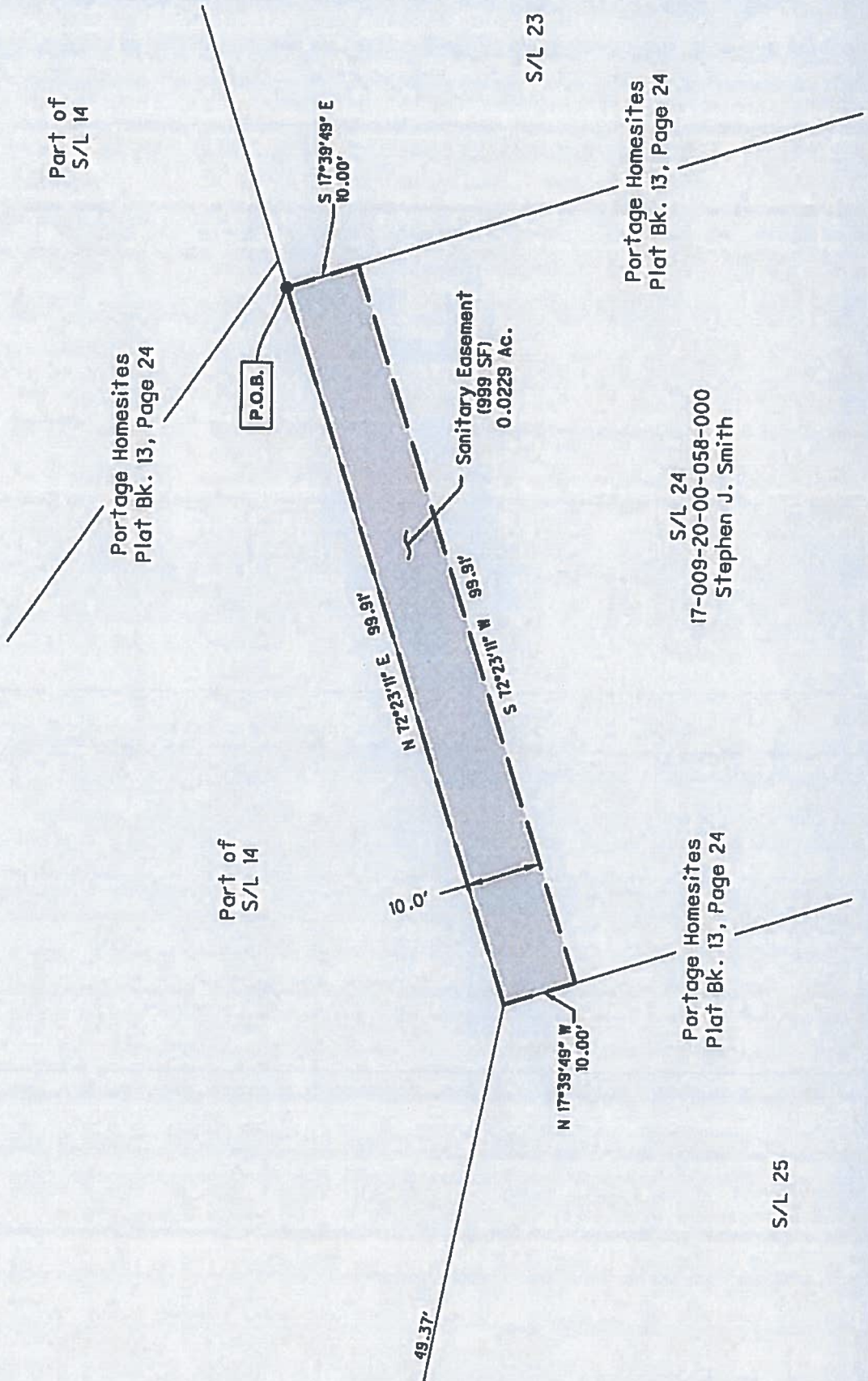
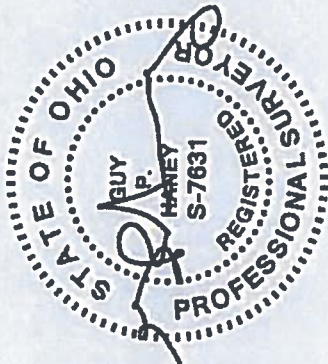
SKETCH FOR

# SANITARY EASEMENT

1218 Middlebury Road

Situated in the City of Kent, County of Portage and State of Ohio and known as being part of Original Franklin Township Lot No. 9

# EXHIBIT A



T&C Engineering, LLC  
1310 BROADWAY CENTER, OHIO 44274  
PHONE: 330.550.0000 FAX: 330.550.0000



1218 MIDDLEBURY

KENT SANITARY ESMTS.

PROJECT NUMBER

1654-D

DATE

2020-07-08



LPA RE 807  
Rev. 10/2017

TE  
LPA

### **TEMPORARY EASEMENT**

Stephen J. Smith, Divorced and Not Remarried, the Grantor(s), in consideration of the sum of \_\_\_\_\_ to be paid by City of Kent, the Grantee, does grant to Grantee the temporary easement(s) to exclusively occupy and use for the purposes mentioned in Exhibit A the following described real estate:

PARCEL(S): 17-009-20-00-058-000 T  
CITY OF KENT – SOUTHWEST SANITARY PUMP STATION  
SEE EXHIBIT A ATTACHED

Portage County Current Tax Parcel No. 17-009-20-00-058-000  
Prior Instrument Reference: Instrument No. 201717552, Portageage County Recorder's Office.

To have and to hold the temporary easement(s), for the aforesaid purposes and for the anticipated period of time described below, unto the Grantee, its successors and assigns.

The duration of the temporary easement(s) granted to the Grantee is 12 months immediately following the date on which the work described above is first commenced by the Grantee, or its duly authorized employees, agents, and contractors.

The temporary easement(s) interest granted is being acquired by Grantee for a public purpose, namely the construction and maintenance of a sewer and utilities in the name of and for the use of the City of Kent.

IN WITNESS WHEREOF Stephen J. Smith have hereunto set his hand on the \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
STEPHEN J. SMITH

STATE OF OHIO, COUNTY OF Portage ss:

BE IT REMEMBERED that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me  
the subscriber, a Notary Public in and for said state and county, personally came the above  
named Stephen J. Smith, who acknowledged the foregoing instrument to be his voluntary act and  
deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official  
seal on the day and year last aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

This document was prepared by: The City of Kent, Ohio on forms approved by the Ohio  
Attorney General



# KENT CITY HEALTH DEPARTMENT

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414 E. MAIN ST., P.O. BOX 5192, KENT, OHIO 44240 (330) 678-8109 FAX (330) 678-2082

## HEALTH DEPARTMENT MEMORANDUM

To: Dave Ruller, City Manager  
From: Joan Seidel, Health Commissioner  
Date: February 20, 2021  
RE: Health Department Building Lease Agreement Amendment

Mr. Ruller,

We request the Kent City Health Department lease agreement amendment for the offices at 201 East Erie Street to be placed on the March 3, 2021 agenda for discussion by the Council Committee. This would be the 1<sup>st</sup> amendment to the lease and would include the office at 201 East Erie Street, Suite E. The Health Department has the opportunity to lease space on the ground floor for clinical purposes. This space will initially be a short-term lease with the possibility of extending.

Currently, the Health Department pays \$1500.00 per month for the second-floor suite. This addendum will raise the rent to \$1,705.60/month which is a \$1.00 square foot increase. Utilities, cleaning and snow removal have been added at a rate of \$307.50/month for a total monthly fee of \$2,013.10. The base rent will increase another \$1.00 sq. ft for the term beginning April 1, 2022.

The ground floor suite will be at a base rate of \$1,650.00/month plus \$275.00 for utilities, cleaning and snow removal (total-\$1,925.00). We are very fortunate the space is available and adjacent to our current offices. We hope the Council Committee will accept the terms of the agreement. I plan to attend the meeting to provide any details and answer any questions the Council Committee may have.

Sincerely,

Joan Seidel MA, BSN, RN, FAPIC, CIC  
Health Commissioner

ADDENDUM TO LEASE AGREEMENT

This Addendum made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, is by and between the KENT CITY HEALTH DEPARTMENT (referred to as "Health Department" or "Tenant") and PORTAGE AREA REGIONAL TRANSPORTATION AUTHORITY (referred to "PARTA" or "Landlord").

WHEREAS, the Health Department and PARTA have entered into an Agreement dated August 1, 2020 ("Agreement") for the lease of space located at 201 S. Erie Street, Suite G, Kent, Ohio 44240; and

WHEREAS, the Health Department and PARTA want to amend the Agreement as set forth in this Addendum.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Health Department and PARTA hereby amend the Agreement as follows:

1. Rent: The Parties agree to amend the Agreement by adding the following:

Effective on April 1, 2021 and March 31, 2022, the annual base rent will increase by \$1.00 per square foot. The new monthly rent will be Two Thousand Thirteen Dollars and 10 Cents (\$2,013.10) including the fees described in Paragraph 2, below.

Effective on April 1, 2022 and March 31, 2023, the annual base rent will increase by \$1.00 per square foot. The new monthly rent will be Two Thousand Two Hundred Eighteen Dollars and 10 Cents (\$2,218.10) including the fees described in Paragraph 2, below.

2. Utilities/Cleaning/Snow Removal: The parties agree to amend the Agreement by adding the following language:

Effective for contract years beginning April 1, 2021 and April 1, 2022, Landlord will add a maintenance fee of \$1.50 per square foot to the base yearly rent at an amount of Three Hundred Seven Dollars and Fifty Cents per month. The maintenance fee represents operating expenses incurred by Landlord for the performance of enhanced, COVID-19 compliant janitorial services for the second floor Suite G spaces.

The maintenance fee includes janitorial labor for cleaning and sanitizing, plus purchasing and restocking the goods, materials, and supplies utilized for and consumed by Tenant. The maintenance fee does not include increased utility usage for which tracking is still incomplete. Landlord will continue tracking utility usage and janitorial

Hope L. Jones  
Director of Law

Dated: \_\_\_\_\_

*CERTIFICATE OF THE DIRECTOR OF BUDGET AND FINANCE*

To the City Manager/Director of Public Safety:

I hereby certify that the amount required to meet the City's obligation under this contract has been lawfully appropriated and is in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance.

\_\_\_\_\_  
Rhonda C. Hall  
Director of Budget and Finance

Dated: \_\_\_\_\_



# CITY OF KENT, OHIO

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## DEPARTMENT OF PUBLIC SERVICE

### MEMO

**TO:** Dave Ruller, City Manager  
Council

**FROM:** Melanie A. Baker, Service Director

**DATE:** 2/16/2021

**SUBJECT:** NOPEC Energized Community Grant - 2021

Please find attached the letter received from NOPEC on January 19, 2021, notifying the City of the receipt of \$49,978.00 in grant moneys from the 2021 Energized Community grant.

As our energy partner, NOPEC has made this grant available to the City for the last 4 years. The City has recently been able to use past years grant funding to replace and upgrade motors and boilers for greater energy efficiency at the water reclamation facility.

I request that Council approve the acceptance of this grant and allow us to place the dollars in escrow with NOPEC until such time a project meeting the criterial of the grant is found and the moneys can be used.



**RECEIVED**  
JAN 19 2021  
Dept. of Public Service



- RON MCVOY**  
*Chairman*
- CHUCK KEIPER**  
*Executive Director*
- BOARD OF DIRECTORS**
- RON MCVOY**  
*Ashtabula County*
- DAVID SCHEFFLER**  
*Central Ohio*
- JOHN ZEHENTBAUER**  
*Columbiana County*
- GEORGINE WELO**  
*Cuyahoga County*
- WILLIAM KOONS**  
*Geauga County*
- G. STUART O'HARA**  
*Huron County*
- HOLLIE BARTONE**  
*Lake County*
- DAVE LESHINSKI**  
*Lorain County*
- ROBERT MCCrackEN**  
*Mahoning County*
- PAUL BARNETT**  
*Medina County*
- MICKEY MAROZZI**  
*Portage County*
- ANDREW SMALLSTEY**  
*Richland County*
- AARON MONTZ**  
*Seneca County*
- STEVE PATTERSON**  
*Southeast Ohio*
- MARK BECKDAHL**  
*Southwest Ohio*
- JOE MAZZOLA**  
*Stark County*
- NICK MOLNAR**  
*Summit County*
- DOUG FRANKLIN**  
*Trumbull County*

January 14, 2021

The Honorable Jerry Fiala  
Mayor  
Kent  
320 S. Depeyster St. Main Fire Station  
Kent, OH 44240

Dear Mayor Fiala


Congratulations! Kent is receiving a NOPEC Energized Community (NEC) grant of \$49,978 for 2021. NOPEC\* and our supply partner NextEra value your community's membership and are awarding this grant to help your community achieve even greater savings. The NEC grants are offered to help you implement energy efficiency or energy infrastructure projects that will benefit your community for years to come. At the November 2020 General Assembly, I announced a change to the grant funding formula beginning with this year. This change is being implemented to ensure long-term viability of this important member benefit.

The NEC grant program features multiple options and tremendous flexibility for your community to get the greater benefit from your grant, while reducing the paperwork required. Funds can be used for community-owned facilities, for residents, for businesses, or escrowed for a future year's project. We're including examples of eligible activities, but this list is not all-inclusive. Take advantage of this year's grant – we'll work with you to find the right project!

We're excited to be able to offer the grant program again this year and we've designed it to make the whole process as streamlined as possible. All NEC grant program information and materials will be available online. There's no need for you to mail any documents with this grant program! Later this month, you'll receive an e-mail with detailed instructions on how to access this information and get started on completing the 2021 grant process.

Please note there is a profile submission deadline of June 30, 2021. Completing this step by the deadline will let us know you want to take advantage of the grant program this year.

Our staff is available to help at any point during the process. NOPEC's Loan and Grant Associate, Jessica Chiano, is managing the NEC grant program. Feel free to contact her by email at [grants@nopec.org](mailto:grants@nopec.org) or by phone at 440-249-7072 if you have questions. Your Relationship Manager, Jeffrey Heinrich, is also available to help you with any questions. We look forward to receiving your application!!

Sincerely,  


Chuck Keiper  
Executive Director

cc: David Coffee, Finance Director; Jeffrey Heinrich, Relationship Manager

\*The NEC grant program is funded and administered by NOPEC, Inc., an affiliate of the Northeast Ohio Public Energy Council (NOPEC).

# Energized Community (NEC) Grant



The **NOPEC Energized Community (NEC) Grant Program** provides grants to NOPEC member communities for energy-related projects.

Established by NOPEC Inc. and NextEra Energy, the primary goal of providing funds is to help implement energy savings or energy infrastructure measures.

## Steps to Securing your Grant Dollars

### 1. Submit Profile - Due by June 30th

- A. Accept funds by passing community legislation
- B. Sign grant agreement if you did not enter into one in 2020

### 2. Submit Application - Due by October 31st

Communities can submit multiple applications for projects and/or escrow funds. Please make sure your entire available balance is secured.

**Questions?** Contact Jessica Chiano at 440.249.7072 or [grants@nopec.org](mailto:grants@nopec.org).

## Ideas for 2021 Grant Projects

Grants can be used for government, residential and commercial properties. Here are some examples of what you can use for your grant dollars:

- LED signs
- Traffic signal upgrades
- Insulation
- Energy-efficient windows
- Solar-powered LED stop signs
- Energy-efficient air conditioner
- Electrical upgrades
- Generators
- Door replacement
- LED lighting upgrades
- Service garage insulation
- Energy-efficient metal roof system
- Installation of radius ceiling fans
- Energy efficient kitchen appliances



**KENT POLICE DEPARTMENT  
JANUARY 2021**

	JANUARY 2020	JANUARY 2021	TOTAL 2020	TOTAL 2021
CALLS FOR SERVICE	2292	1343	2292	1343
FIRE CALLS	351	366	351	366
ARRESTS, TOTAL	162	104	162	104
JUVENILE ARRESTS	12	3	12	3
O.V.I. ARRESTS	11	7	11	7
TRAFFIC CITATIONS	257	79	257	79
PARKING TICKETS	870	155	870	155
<b>ACCIDENT REPORTS</b>				
Property Damage	57	42	57	42
Injury	28	26	28	26
Private Property	7	5	7	5
Hit-Skip	11	4	11	4
OVI Related	6	4	6	4
Pedestrians	1	2	1	2
Fatals	4	1	4	1
	0	0	0	0
<b>U.C.R. STATISTICS</b>				
Homicide	0	0	0	0
Rape	0	0	0	0
Robbery	0	0	0	0
Assault Total	12	17	12	17
Serious	0	3	0	3
Simple	12	14	12	14
Burglary	4	4	4	4
Larceny	28	27	28	27
Auto Theft	1	2	1	2
Arson	0	0	0	0
Human Trafficking:Servitude	0	0	0	0
Human Trafficking:Sex Acts	0	0	0	0
<b>TOTAL</b>	<b>45</b>	<b>50</b>	<b>45</b>	<b>50</b>
<b>CRIME CLEARANCES</b>				
Homicide	0	0	0	0
Rape	0	0	0	0
Robbery	0	0	0	0
Assault Total	10	15	10	15
Serious	0	3	0	3
Simple	10	12	10	12
Burglary	2	4	2	4
Larceny	6	8	6	8
Auto Theft	0	0	0	0
Arson	0	0	0	0
Human Trafficking:Servitude	0	0	0	0
Human Trafficking:Sex Acts	0	0	0	0
<b>TOTAL</b>	<b>18</b>	<b>27</b>	<b>18</b>	<b>27</b>