

ENTERPRISE ZONE AGREEMENT

BETWEEN

THE DAVEY TREE EXPERT COMPANY

AND

PORTAGE COUNTY, OHIO

AND

CITY OF KENT, OHIO



Portage County Commissioners' Resolution No.: _____, Approved: _____

Kent City Council Ordinance No.: 2021-002, Approved: January 20, 2021

Dated: January 21, 2021

OHIO ENTERPRISE ZONE AGREEMENT

REAL PROPERTY ONLY

THIS AGREEMENT made and entered into by and between the City of Kent, Portage County, Ohio, with its main offices located at 301 South Depeyster Street, Kent, Ohio 44240 (hereinafter referred to as the "City of Kent"), and Portage County, an Ohio County, with its main offices located at 449 S. Meridian Street, Ravenna, Ohio 44266 (hereinafter referred to as "Portage County"), and The Davey Tree Expert Company, with its main offices located at 1500 N. Mantua Street, Kent, Ohio 44240 (hereinafter referred to as "Davey Tree")

WITNESSETH;

WHEREAS, the City of Kent and Portage County have encouraged the development of real property and the acquisition of personal property located in the area designated as an Enterprise Zone; and

WHEREAS, Davey Tree is desirous of making improvements to its existing building and constructing a third wing addition onto its Corporate Headquarters building. The addition will consist of approximately 38,400 square feet, plus an approximately 14,000 square foot basement at 1500 N. Mantua Street, Kent, Ohio 44240. Davey Tree will have an investment amount of approximately \$14,000,000 (fourteen million dollars) for real property improvements. Davey Tree also plans to purchase new furniture and fixtures with an investment amount of approximately \$1,000,000 (one million dollars) to permit expansion of its services. The expansion project (hereinafter referred to as the "PROJECT") is within the boundaries of the aforementioned Enterprise Zone, provided that the appropriate development incentives are available to support the economic viability of said PROJECT; and

WHEREAS, the Council of the City of Kent, Ohio by Ordinance No. 1992-55 adopted August 19, 1992; as amended by Ordinance No. 1993-75 adopted October 6, 1993; as amended by Ordinance No. 1997-73, adopted November 5, 1997; as amended by Ordinance No. 1998-45, adopted June 10, 1998; and as amended by Ordinance No. 2011-36, adopted May 18, 2011. The

Board of Commissioners of Portage County by Resolution #92-471 adopted September 24, 1992 and amended by Resolution No. 93-507 adopted October 14, 1993, designated the area as an "Enterprise Zone" pursuant to Chapter 5709 of the Ohio Revised Code; and

WHEREAS, effective November 2, 1992 and amended October 25, 1993, the Director of Development of the State of Ohio determined that the aforementioned area designated in said Ordinance No. 1993-75 contains the characteristics set forth in Section 5709.61(A) of the Ohio Revised Code and certified said area as an Enterprise Zone under said Chapter 5709; and

WHEREAS, the City of Kent and Portage County having the appropriate authority for the stated type of project are desirous of providing **Davey Tree** with incentives available for the development of the PROJECT in said Enterprise Zone under Chapter 5709 of the Ohio Revised Code; and

WHEREAS, **Davey Tree** submitted a proposed agreement application (attached as Exhibit A) to the City of Kent, said application (hereinafter referred to as "Application"); and

WHEREAS, **Davey Tree** has remitted the required state application fee of \$750.00 made payable to the Ohio Development Services Agency with the application to be forwarded with the final agreement; and

WHEREAS, the City Manager of the City of Kent has investigated the application of **Davey Tree** and has recommended the same to the Council of the City of Kent and the Board of Commissioners of Portage County on the basis that **Davey Tree** is qualified by financial responsibility and business experience to create and preserve employment opportunities in said Enterprise Zone and improve the economic climate of the City of Kent and Portage County; and

WHEREAS, the project site as proposed by **Davey Tree** is located in the Kent City School District, and the Board of Education of the Kent City School District has been notified in accordance with Section 5709.83 and been given a copy of the Application; and

WHEREAS, pursuant to Section 5709.62(C), 5709.63(A) or 5709.632 of the Ohio Revised Code and in conformance with the format required under Section 5709.631 of the Ohio Revised Code, the parties hereto desire to set forth their agreement with respect to matters hereinafter contained;

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

SECTION 1. LOCATION OF FACILITY

Davey Tree plans to make improvements to the property located at 1500 N. Mantua St, Kent, Ohio 44240, and construct a third wing addition onto its Corporate Headquarters building. Said facility is located on Permanent Parcel Number 17-042-00-00-002-000 and 17-043-00-00-013-000 as the same is known and designated on the Auditor’s revised list of lots in the 1st ward of the City of Kent, Ohio. In addition, Davey Tree plans to purchase and install approximately \$1,000,000 (one million dollars) of new furniture and fixtures.

The PROJECT will involve a total real property investment by Davey Tree of approximately \$14,000,000 (fourteen million dollars) for the improvements and new construction on N. Mantua Street in the City of Kent.

The PROJECT will involve a total personal property investment by Davey Tree of approximately \$1,000,000 (one million dollars), for the purchase of new furniture and fixtures at 1500 N. Mantua Street, Kent, Ohio which is not eligible for tax exemption.

<u>Real Property Investment</u>	<u>Minimum Amount</u>	<u>Project Amount</u>	<u>Maximum Amount</u>
Additions/New Construction	\$12,000,000	\$13,000,000	\$14,000,000
<u>Improvements to existing facility</u>	<u>\$ 1,000,000</u>	<u>\$ 1,000,000</u>	<u>\$ 1,000,000</u>
Total Real Property Investment	<u>\$13,000,000</u>	<u>\$14,000,000</u>	<u>\$15,000,000</u>

<u>Personal Prop. Investment</u>	<u>Minimum Amount</u>	<u>Project Amount</u>	<u>Maximum Amount</u>
Furniture and Fixtures	<u>\$ 900,000</u>	<u>\$ 1,000,000</u>	<u>\$ 1,100,000</u>
Total Personal Property	<u>\$ 900,000</u>	<u>\$ 1,000,000</u>	<u>\$ 1,100,000</u>

The PROJECT will begin approximately March 2021 and all acquisition, construction and installation will be completed by approximately March 2023. Any changes to the beginning and completion dates must be agreed to by formal resolution and an amended agreement.

SECTION 2. EMPLOYMENT

Davey Tree shall create within a time period not exceeding 36 months after the construction of the aforesaid facility, the equivalent of 35 new full-time permanent job opportunities, 0 new part-time permanent job opportunities, 0 full-time temporary job opportunities and 0 part-time temporary job opportunities. Davey Tree shall retain its 410 existing full-time permanent jobs it currently has at its City of Kent sites.

Davey Tree’s schedule for hire is as follows:

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Total</u>
Full-Time Perm:	<u>11</u>	<u>12</u>	<u>12</u>	<u>35</u>

The job creation period begins approximately March 1, 2023 and all jobs will be in place by approximately February 28, 2026.

Davey Tree currently has 190 full-time permanent employees, 0 part-time permanent employees, 0 full-time temporary employees, and 0 part-time temporary employees at the PROJECT site location. Once the PROJECT is completed, Davey Tree will transfer 45 existing full-time employees from other sites in the City of Kent bringing the full-time employee total at the PROJECT site to 235. In total, Davey Tree has 1,030 full-time permanent employees, 29 part-time permanent employees, 44 full-time temporary employees and 0 part-time temporary employees in the State of Ohio.

The increase in the number of new employees will result in approximately \$1,786,000 (one million seven hundred eighty six thousand dollars) of additional annual payroll for Davey Tree by the end of the third year at the PROJECT site location. The retention of the existing and transferred in employees will maintain the current annual payroll for full-time permanent employees of \$20,000,000 (twenty million dollars) at the PROJECT site location.

Davey Tree agrees that all jobs attributed to this project will pay earnings tax to the City at the rate in effect throughout the life of this agreement beginning with the 2.25% rate in effect as of the date of this agreement.

The City of Kent has developed a policy to ensure recipients of Enterprise Zone tax benefits practice non-discriminating hiring in its operations. By executing this agreement, Davey Tree is committing to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, ancestry, familial status, military status, sexual orientation, or gender identity.

Davey Tree shall endeavor to give preference to the residents of the City of Kent and Portage County when hiring new employees under the agreement.

SECTION 3. COOPERATION AND COMPLIANCE BY DAVEY TREE

This agreement shall be monitored annually by the appropriate Tax Incentive Review Council. DAVEY TREE SHALL PROVIDE TO THE PROPER TAX INCENTIVE REVIEW COUNCIL ANY INFORMATION REASONABLY REQUIRED BY THE COUNCIL TO EVALUATE THE ENTERPRISE'S COMPLIANCE WITH THE AGREEMENT, INCLUDING RETURNS FILED PURSUANT TO SECTION 5711.02 AND 5727.08 OF THE OHIO REVISED CODE IF REQUESTED BY THE COUNCIL.

Specifically, Davey Tree shall provide the Portage County Auditor with copies of the tax forms related to the exemptions (the DTE 24) for real property that is filed upon execution of the agreement) to obtain the exemptions granted per this agreement, throughout the term this agreement is in effect. Davey Tree agrees to provide Portage County with copies of this form. Davey Tree, by executing this agreement, agrees to provide any necessary payroll information consolidated by each Davey Tree facility in the City of Kent to document employment to the City of Kent and to Portage County and hereby authorizes both entities to release payroll information to the proper school City authorities, if appropriate, to the extent required under Section 5709.68 of the Ohio Revised Code.

By signing this agreement, **Davey Tree** is indicating, to the best of its knowledge, its compliance with all applicable local, state, and federal environmental laws related to its industry, or the active pursuit of compliance with any pending violations, documentation of which is attached to this agreement, if applicable. DAVEY TREE agrees to remain substantially in compliance with these laws throughout the term of this agreement.

Davey Tree acknowledges that an enterprise zone application and agreement are public information and are, therefore, subject to review by any entity requesting information related to the enterprise zone program.

Davey Tree expressly authorizes the City of Kent and/or Portage County to contact the Ohio Environmental Protection Agency to confirm statements contained within this agreement and to review applicable confidential records. The business may also be required to directly request from the Ohio Department of Taxation or complete a waiver form allowing the Ohio Department of Taxation to release specific tax records to the local jurisdictions.

SECTION 4. TAX INCENTIVES

The City of Kent and Portage County hereby grant **Davey Tree** a tax exemption for eligible Real Property improvements made to the PROJECT site pursuant to Section 5709.6(C), 5709.63(A) or 5709.632 of the Ohio Revised Code and shall be in the following amounts:

<u>Property to be Exempted</u>	<u>Estimated Costs</u>
New Construction	\$13,000,000
Improvements to the Existing Building	\$ 1,000,000
<u>Year of Tax Exemption</u>	<u>Tax Exemption Amount</u>
YR 1	75%
YR 2	75%

YR 3	75%
YR 4	75%
YR 5	75%
YR 6	75%
YR 7	75%
YR 8	75%
YR 9	75%
YR 10	75%

Each identified project improvement will receive a **ten (10) year** exemption period. The exemption commences the first year for which the Real Property would first be taxable were that property not exempted from taxation. No exemption shall commence after **December 31, 2023** nor extend beyond **December 31, 2032**. Thereafter, these tax exemptions shall cease to exist.

Davey Tree shall, during the exemption period and thereafter, continue to pay the taxes due on the existing real estate tax billing for the Project site and all other applicable taxes.

SECTION 5. ANNUAL FEE

Davey Tree shall pay an annual fee of \$500.00 (five hundred dollars). The fee shall be made payable to the **Portage Development Board** once per year for each year the agreement remains in effect or is to be reviewed. The fee is to be paid by check and made payable to the **Portage Development Board**. This fee shall be deposited in a special fund created for such purpose and shall be used exclusively for the purpose of complying with section 5709.68 of the Revised Code and by the Tax Incentive Review Council created under section 5709.85 of the Revised Code exclusively for the purposes of performing the duties prescribed under that section.

SECTION 6. TAX REQUIREMENTS

Davey Tree shall pay such real property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by

law. If **Davey Tree** fails to pay such taxes or file such returns and reports, all incentives granted under this agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

Davey Tree hereby certifies, to the best of its knowledge, that at the time this agreement is executed, **Davey Tree** does not owe any delinquent real property taxes owed to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which **Davey Tree** is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Ohio Revised Code, or if such delinquent taxes are owed, **Davey Tree** currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against **Davey Tree**. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

Davey Tree affirmatively covenants, to the best of its knowledge, that they do not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

SECTION 7. MAINTENANCE OF TAX INCENTIVES

The City of Kent shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

SECTION 8. REVOCATION

If for any reason the Enterprise Zone designation expires, the Director of the Ohio Development Services Agency revokes certification of the zone, or the City of Kent or Portage County revokes the designation of the zone, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless **Davey Tree** materially fails to fulfill its obligations under this agreement and or the Compensation Agreement (if applicable), and the City of Kent or Portage County terminates or modifies the exemptions from taxation granted under this agreement.

If **Davey Tree** materially fails to fulfill its obligations under this Enterprise Zone Agreement or the Compensation Agreement (if applicable), other than with respect to the number of employee positions estimated to be created or retained under this agreement, or if the City of Kent or Portage County determines that the certification as to delinquent taxes required by this agreement is fraudulent, the City of Kent or Portage County may terminate or modify the exemptions from taxation granted under this agreement.

The City is hereby authorized to secure repayment of such taxes by a lien on the exempted property in the amount required to be repaid. Such a lien on the exempted property shall attach, and may be perfected, collected and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. Notwithstanding O.R.C. Section 5719.01, such a lien on exempted tangible personal property shall attach, and may be perfected, collected and enforced, in the same manner as a security interest in goods under O.R.C. Chapter 1309 and shall otherwise have the same force and effect as such a security interest.

In any three-year period during which this agreement is in effect, if the actual number of employee positions created or retained by **Davey Tree** is not equal to or greater than seventy-five percent of the number of employee positions estimated to be created or retained under this

agreement during that three-year period, **Davey Tree** shall repay the amount of taxes on property that would have been payable had the property not been exempted from taxation under this agreement during that three-year period. In addition, the City of Kent and/or Portage County may terminate or modify the exemptions from taxation granted under this agreement.

Exemptions from taxation granted under this agreement shall be revoked if it is determined that **Davey Tree**, any successor enterprise, or any related member (as those terms are defined in Section 5709.61 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under Division (E) of Section 3735.671 or Section 5709.62, 5709.63, or 5709.632 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections.

Additionally, and not to be construed as being in conjunction with the other provisions under this subparagraph, if for any year during the term of this agreement **Davey Tree** materially fails to fulfill the employment and investment requirements set forth herein, the City of Kent and/or Portage County shall have the right to modify the tax exemption set forth in Section #4. If **Davey Tree** ceases to operate at this location prior to the expiration of this agreement, the City of Kent and/or Portage County shall have the right to terminate this agreement and demand payment and repayment of all taxes exempted pursuant to this agreement.

SECTION 9. LOCAL LEGISLATIVE ACTION

Davey Tree, the City of Kent and Portage County acknowledge that this agreement must be approved by formal action of the legislative authority of Kent City Council and the Portage County Board of Commissioners as a condition for the agreement to take effect. This agreement takes effect upon such approval.

SECTION 10. CLAWBACK PROVISION

In the event that **Davey Tree** fails to meet and /or maintain the required number of employees and/or payroll during any tax year, **Davey Tree** will be required to provide the City a refund of the income tax revenue sharing required amount paid by the City of Kent to

Kent City School, in accordance with Ohio Revised Code Section 5709.82(C)(2), for that given tax year. City Council must approve any clawback initiated by this Section.

SECTION 11. NOTICES

Any notice or consent required to be given by or on behalf of any party to the other shall be deemed given when mailed by registered or certified mail, return receipt requested, addressed to the appropriate party at the address herein specified below, or at such other address as any party may specify, from time to time, by notice to the other in the manner herein set forth.

To Davey Tree:

Molly Senter
Property Director
Davey Tree Expert Co.
1500 N. Mantua Street
Kent, OH 44240

To the City of Kent:

Dave Ruller
City Manager
City of Kent
301 S. Depeyster Street
Kent, OH 44240

To Portage County:

County Commissioners
County of Portage
449 S. Meridian Street
Ravenna, OH 44266

And:

Hope L. Jones
Law Director
City of Kent
320 S. Depeyster Street
Kent, OH 44240

SECTION 12. ASSIGNMENT AND TRANSFER

This agreement is not transferable or assignable without the express written approval of the Kent City Council and the Portage County Board of Commissioners.

SECTION 13. FALSIFICATION

Davey Tree affirmatively covenants, to the best of its knowledge, that they have made no false statements to the State or local political subdivision in the process of obtaining approval for the Enterprise Zone incentives. If any representative of **Davey Tree** has knowingly made a false statement to the State or local political subdivision to obtain the Enterprise Zone incentives, **Davey Tree** shall be required to immediately return all benefits received under the

Enterprise Zone Agreement pursuant to ORC Section 9.66 (C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66 (C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC 2921.31(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

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IN WITNESS WHEREOF, the **City of Kent**, by its City Manager David Ruller and pursuant to Ordinance No. 2021-002, has caused this instrument to be executed this 20 day of January, 2021 and by the **Portage County Board of Commissioners**, and pursuant to Resolution No. 21-, has caused this instrument to be executed this ____ day of _____, 2020, and by **The Davey Tree Expert Company** by _____ its _____ has caused this instrument to be executed this ____ day of _____, 2021.

THE CITY OF KENT

By [Signature] 1/21/21
City Manager Date

PORTAGE COUNTY
BOARD OF COMMISSIONERS

By _____
Commissioner Date

DAVEY TREE EXPERT COMPANY

By Patrick M. Covey 1/21/21
Signature Date
Patrick M. Covey
Chairman, President and CEO
Printed name and title

By _____
Commissioner Date

By _____
Commissioner Date

Approved as to Form:

[Signature]
City of Kent Law Director

Approved as to Form:

Portage County Prosecutor's Office

Note: In a multiparty agreement, each party's obligation and benefits should be clearly stated. In addition, all parties to receive a tax benefit should be a signatory party to the agreement.

NOTE:

A copy of this agreement must be forwarded to the Ohio Departments of Taxation and the Ohio Development Services Agency within fifteen (15) days of approval to be finalized.

Revised June 2004 ODOD
Revised July 2004 PCOED