



# CITY OF KENT, OHIO

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## DEPARTMENT OF COMMUNITY DEVELOPMENT

DATE: January 14, 2011  
TO: Dave Ruller, City Manager  
FROM: Bridget Susel, Grants & Neighborhood Programs Administrator *B.S.*  
RE: Revisions to Chapter 557 "Fair Housing Practice"

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In September 2010, two representatives from the U.S. Department of Housing and Urban Development (HUD) Columbus Fair Housing Center conducted an on-site monitoring review of the City of Kent's fair housing compliance activities which are conducted as part of the Community Development Block Grant program. Overall, the City was in compliance with fair housing regulatory requirements, but the HUD reviewers did identify two recommended actions, one of which was updating the City's Chapter 557 "Fair Housing Practice."

Chapter 557 has not been updated since its passage in 1979 and currently does not include two protected classes that are covered by federal and state fair housing laws. The Chapter also assigns duties to the Fair Housing Board that are quasi-judicial in nature and which are no longer under the purview of the Board. I met with members of the Fair Housing Board in November and December and at these sessions, the Board identified and approved various additions, deletions and modifications to Chapter 557 to correct for regulatory compliance deficiencies and to ensure the Chapter accurately specifies the actual responsibilities of the Fair Housing Board.

I have attached a draft copy of the revised Chapter 557, with needed additions/modifications identified in blue and deletions depicted in red. I would like to respectfully request Council Committee time on February 2, 2011 to discuss the attached draft and the rationale for the needed changes.

If you need any additional information in order to get this item added to the Council Committee agenda, please let me know.

Thank you for your assistance with this matter.

Cc: Linda Copley, Clerk of Council  
Jim Silver, Law Director  
Gary Locke, Community Development Director

**CHAPTER 557**  
**Fair Housing Practice**

<b>557.01</b> Designation of policy.	<b>557.06</b> Procedures and enforcement.
<b>557.02</b> Definitions.	<b>557.07</b> Scope of chapter.
<b>557.03</b> Unlawful housing practices.	<b>557.08</b> Other legal action.
<b>557.04</b> Posting of notices.	<b>557.99</b> Penalty.
<b>557.05</b> Fair Housing Board.	

**CROSS REFERENCES**

Unlawful discriminatory practices - see Ohio R. C. 4112.02  
Interfering with civil rights - see GEN. OFF. 525.13

**557.01 DESIGNATION OF POLICY.**

It is hereby designated to be the policy of the City to do all of the things necessary and proper to secure for all its residents their right to equal housing opportunities regardless of their race, color, ~~creed~~, sex, ~~age~~, ~~religious belief~~, [religion, military status, familial status, ancestry, disability or] national origin ~~or handicap~~.  
(Ord. 1979-10. Passed 1-17-79.)

**557.02 DEFINITIONS.**

As used in this chapter:

- (a) "Real estate agent" means any real estate broker, real estate salesperson or an agent thereof, or any person, partnership, association or corporation who for consideration sells, purchases, exchanges, rents, negotiates, offers or attempts to negotiate the sale, purchase, exchange or rental of real property or holds himself out as engaged in the business of selling, purchasing, exchanging, renting or otherwise transferring any interest in real property.
- (b) "Board" means the Fair Housing Board created by this chapter.
- (c) "Director" means the ~~Planning~~ [Community Development] Director of the City of Kent or his/her designee and staff.
- (d) "Discrimination", "discriminating" or "discriminate" means to render any difference in treatment to any person in the sale, lease, rental or financing of a dwelling or housing unit because of a person's race, color, sex, ~~age~~, ~~religious belief~~, [religion, military status, familial status, ancestry, disability or] national origin ~~or handicap~~.
- (e) "Housings includes any building, facility or structure or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied as the home, residence or sleeping place of one or more persons, groups or families and any vacant land offered for sale for the construction or location thereof of such building, facility or structure.

- (f) "Lending institution" means any bank, building and loan association, savings and loan association, insurance company or other persons whose business consists in whole or in part in the lending of money or guaranteeing loans.
- (g) "Person" means one or more individuals, corporations, partnerships, associations, firms, or enterprises, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries. (Ord. 1981-148. Passed 11-18-81)

### 557.03 UNLAWFUL HOUSING PRACTICES.

(a) It shall be an unlawful housing practice and a violation of this chapter: a) For any person or real estate agent:

- (1) To discriminate against any person in the selling, leasing, renting, assigning or otherwise transferring of any interest in housing.
- (2) To discriminate against any person by refusing to negotiate, refusing to transmit a bona fide offer, making false representations on the availability of the housing unit for inspection, sale or rental, or withdrawing from the market a housing unit which is for sale, lease, sublease or rental.
- (3) To include in the terms, conditions or privileges of any sale, lease, sublease, rental, assignment or other transfer of any housing, any clause, condition or restriction discriminating against any person the use or occupancy of such housing.
- (4) To discriminate in the furnishing of any housing facilities, repairs, improvements or services or in the terms, conditions, privileges or tenure of occupancy by any person of any housing covered by this chapter.

(b) For any lending institution:

- (1) To discriminate in lending money, guaranteeing loans, accepting a deed of trust or mortgage or otherwise making available funds for purchasing any housing or to discriminate against in the fixing of the amount, interest rate, duration or other terms, conditions or provisions of any such financial assistance.
- (2) To discriminate in the lending of money, guaranteeing loans, accepting a deed of trust or mortgage or otherwise making funds available on the basis of geographic location.

(c) For any person, real estate agent or lending institution, with respect to any prohibited act specified in this chapter, to publish, circulate or cause to be published or circulated any notice, statement listing or advertisement; to announce a policy or to make any record in connection with the prospective sale, lease, sublease, rental or financing of any housing which indicates reliance, determination or decision based on race, color, creed, sex, age, religious belief, national origin or handicap.

(d) For any person or real estate agent to assist in, compel or coerce the doing of any act declared to be an unlawful housing practice under this chapter, or to obstruct or prevent endorsement or compliance with provisions of this chapter, or to attempt directly or indirectly to commit any act declared by this chapter to be an unlawful housing practice.

(e) For any person, real estate agent or lending institution:



- (1) To induce or attempt to induce the sale, transfer of interest or listing for sale of any housing by making representations regarding the existing or potential proximity of real property owned, used, or occupied by any person of any particular race, color, ~~creed~~, sex, ~~age~~, ~~religious belief~~, [religion, military status, familial status, ancestry, disability or] national origin ~~or handicap~~ by indirect or direct methods.
- (2) To make any representation to a prospective purchaser or lessee that any housing in a particular block, neighborhood or area may undergo, is undergoing or has undergone a change with respect to race, color, ~~creed~~, sex, ~~age~~, religion, [military status, familial status, ancestry, disability or] national origin ~~or handicap~~ of such block, neighborhood or area.
- (3) To induce or attempt to induce the sales or listing for sale of any housing by representing that the presence or anticipated presence of persons of any particular race, color, ~~creed~~, sex, ~~age~~, religion, [military status, familial status, ancestry, disability or] national origin ~~or handicap~~ in the block, neighborhood or area will or may result in:
  - A. The lowering of property values.
  - B. A change in the racial, color, religious, nationality or ethnic composition of the block, neighborhood or area in which the property is located.
  - C. An increase in criminal or antisocial behavior in the area.
  - D. A decline in the quality of the schools serving the area.

(f) For any person or real estate agent to cause, coerce or attempt to cause coerce retaliation against any person because such person has lawfully opposed any act or failure to act that is a violation of this chapter or has, in good faith, filed a complaint, testified, ~~participated or assisted, in any way in any proceeding under this chapter~~ or prevented any person from complying with this chapter.

(g) To deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting housing, or to discriminate against a person in the terms or conditions of such access, membership or participation.

(h) To do any other thing or engage in conduct which would otherwise make equal housing opportunities unavailable. (~~Ord. 1979-10. Passed 1-17-79.~~)

#### **557.04 POSTING OF NOTICES.**

Every real estate agent shall post in a conspicuous location in that portion of his/her place of business normally used by him/her for negotiating the terms of a sale or lease of housing, and each person who operates a multi-unit residential building containing more than three units shall post at all times when prospective tenants are being interviewed, in a conspicuous location in that portion of his/her housing business normally used by him/her for negotiating the rental of a housing unit therein, a notice ~~prepared by the Board~~ which contains the following language printed in black on a light-colored background, in not less than fourteen point type:

"It is a violation of [federal and State of Ohio] the fair housing law[s] ~~of the City of Kent, State of Ohio~~, for any real estate agent or any person owning or managing a multi-unit apartment dwelling to:

- (a) Deny housing to any person because of race, color, ~~creed~~, sex, [religion, military status, familial status, ancestry, disability] ~~age, religious belief~~ or national origin ~~or handicap~~.
- (b) Discriminate against any person because of that person's race, color, ~~creed~~, sex, ~~age, religious belief~~, [religion, military status, familial status, ancestry, disability or] national origin ~~or handicap~~ in the terms, conditions or privileges of housing accommodations or in the furnishing of facilities or services in connection therewith.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, CONTACT ~~THE CITY OF KENT'S FAIR HOUSING BOARD~~, THE OHIO CIVIL RIGHTS COMMISSION OR THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. "

Failure to comply with this section shall constitute a violation of this chapter.

~~(Ord. 1979-10. Passed 1-17-79.)~~

#### 557.05 FAIR HOUSING BOARD.

(a) The Fair Housing Board shall consist of seven members, appointed by Council, who shall be qualified electors of the City. Board members shall not hold any elected public office at the municipal, county, state or federal level at any time while a member of the Board and shall not be employed by the City, but he/she may be employed by the county, State or federal government. Any duly appointed Board member who is a candidate for any public office shall be automatically disqualified from further membership on the Board. The day the Board member files petitions with the Portage County Board of Elections shall be the date of the disqualification. As amended effective April 1, 1999, the members of this Board shall also be the members of the Housing Appeals Board (see §1375.01). There shall be seven members on the board, appointed by Council, beginning with the current members on Board, who shall serve out their terms until a successor is appointed.

(b) The Board members shall be appointed by Council with one member also being a member of the Kent Board of Health. Of the members first appointed, one shall hold office for a term of one year; one for a term of two years; and the other for a term of three years; and their successors shall be appointed for terms of three years. All vacancies shall be filled by appointment for the remainder of the unexpired term.

(c) The Board shall elect one of its members as chairman [and] one as vice-chairman ~~and one as secretary~~. The chairman shall preside over all meetings [and] sign the minutes of all actions taken by the Board; ~~and call such meetings as necessary to transact the business and affairs in matters~~ relating to fair housing. In the absence of the chairman, the vice-chairman shall act as chairman.

~~(1) The secretary shall be responsible for keeping the minutes of the Board and the administration of the files. The secretary shall also be responsible for preparation and delivery of notices, correspondence and other communication authorized by the Board. The secretary shall be responsible for the performance of such other duties as may be required by the Board. These responsibilities may be delegated to the Director.~~

(d) Council may remove a member of the Board from office by an affirmative vote of at least two-thirds of the Council only after having first given to such member a written copy of the



charges against him/her and an opportunity to be publicly heard in person or by counsel in his/her own defense and any such removal shall be final.

(e) Five members of the Board shall constitute a quorum for the purpose of conducting the business thereof. A vacancy on the Board shall not impair the right of the other members to exercise all the power of the Board. (Ord. 1999-41. Passed 3/17/99)

(f) Each member of the Board shall serve without salary.

(g) The Board is charged with the following **duties** [responsibilities] to implement the stated policy of this chapter:

- ~~(1) To hear all complaints regarding alleged violations of this chapter except for those complaints which are resolved by consent agreement or are dismissed pursuant to the terms of this chapter.~~
- (2) To inform all persons bringing complaints to the Board of their right to seek criminal or civil relief through the courts.
- (3) [May] ~~To~~ initiate or corroborate complaints of unlawful housing practices ~~on the basis of studies authorized by the Board.~~
- (4) ~~To endeavor, by conciliation, to resolve such complaints.~~ [refer any incidence of an alleged violation of fair housing law to the City of Kent designated fair housing provider agency for consideration and review. The Board may collaborate with the designated fair housing provider agency to facilitate a voluntary meeting between the person(s) reporting the alleged fair housing violation and the person(s) identified as the alleged violator(s) in an attempt to resolve the issue.
- ~~(5) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the Board.~~
- (6) To ~~render at least~~ [ensure information concerning any housing discrimination complaints filed with the State of Ohio through the Ohio Civil Rights Commission and/or filed with the federal government through the U.S. Department of Housing and Urban Development are reported in the City of Kent Consolidated Annual Performance and Evaluation Report and make the report available to Council, the City Manager and the public on an annual basis.] ~~a written report of all housing discrimination complaints filed with the state or federal government regarding property within the City of Kent and of which the Board has knowledge.~~
- ~~(7) To render at least once a year to the City Manager and Council a full written report of all its activities and recommendations.~~
- (8) To recommend to the City Manager, when it deems necessary, educational and other programs designed to promote the purpose stated in this chapter.
- (9) To adopt rules and procedures for the conduct of its business, and for the administration and enforcement of this chapter.
- (10) To do such other acts that are necessary and proper in order to perform



**557.06 PROCEDURES AND ENFORCEMENT.**

those duties with which it is charged under the terms of this chapter [, including reviewing and recommending actions needed to address perceived fair housing impediments included in the most current City of Kent Analysis of Impediments to Fair Housing Choice report.]

Nothing shall prohibit the Board from consulting and meeting with real estate agents or representatives of lending institutions in matters regarding educational or other programs, to further the purpose of this chapter. (Ord. 1981-148. Passed 11-18-81.)

**557.06 PROCEDURES AND ENFORCEMENT.**

(a) Any person subjected to an [alleged] unlawful housing practice [and brings the allegation to the attention of the Board, shall be referred to the City of Kent's designated fair housing provider agency for consideration and review]. ~~may file within 180 days of the alleged violation with the Board, a complaint in writing containing such information as the Board may require. The complaint may be reasonably and fairly amended.~~

~~(b) Upon the filing of a complaint, the Director shall make such investigations as he/she deems appropriate to ascertain facts and issues. The investigation shall be conducted within fifteen business days after the filing of the complaint. The investigation may be extended when deemed necessary by the Director.~~

~~(c) If the Director determines there are reasonable grounds to believe a violation has occurred, an effort shall be made to conciliate the matter by methods of initial conference and persuasion with all interested parties and such representatives as the parties may choose to assist them. Conciliation conferences shall be informal and nothing said or done during such initial conferences shall be made public by the Director or any member of the Board or its staff unless the parties agree thereto in writing.~~

~~(d) If, from all the evidence adduced, the Director finds probable cause that a violation has occurred he/she shall attempt to eliminate or correct such practice by conciliation and persuasion. The terms of conciliation agreed to by the parties shall be reduced to writing and incorporated into a consent agreement to be signed by the parties. Consent agreements shall be signed on behalf of the Board by its chairman.~~

~~(e) The Board is authorized to seek the cooperation and aid of the Ohio Real Estate Commission, Ohio Civil Rights Commission or the U. S. Department of Housing and Urban Development and any other person or group regarding any matter before the Board.~~

~~(f) If the Director determines the complaint lacks reasonable grounds on which to base a violation of this chapter the Board may in its discretion, dismiss such complaint or order such further investigation as may be necessary; provided, the Board shall not dismiss such complaint without first affording either party an opportunity to appear before the Board.~~

~~(g) If the Director, with respect to a matter which he/she finds to be a violation of this chapter, fails to conciliate a complaint after the parties have, in good faith, attempted such conciliation, fails to effect an informal conciliation agreement or a formal consent agreement or~~



~~determines that a complaint is not susceptible of conciliation, the Board shall thereafter schedule a public hearing to determine whether a violation of this chapter has been committed. The Board shall serve upon the respondent a written statement of charges and a summons and shall serve~~

~~upon all interested parties a notice of the time and place of the hearing. The respondent or his/her authorized counsel may file and amend such statements with the Board prior to the hearing date as it deems necessary in support of its position. The hearing shall be open to the public. The hearing shall be held not less than fifteen calendar days nor more than thirty calendar days after service of the statement of charges and summons. The notice of the public hearing shall appear at least once in a paper of general circulation at least ten days prior to the date of the hearing. The summons so issued must be signed by two members of the Board and the issuance of such summons shall require the attendance of named persons and the production of relevant documents and records. The failure to comply with a summons shall constitute a violation of this chapter. The interested parties may, at their option, appear before the Board in person or by a duly authorized representative and may have the assistance of an attorney. The parties may present testimony and evidence, and the right to cross examine witnesses shall be preserved. All testimony and evidence shall be given under oath or by affirmation. The Board shall keep a full record of the hearing which record shall be public and open to inspection by any person, and upon request by any principal party to the proceeding, the Board shall furnish such party a copy of the hearing record, at such cost as the Board deems appropriate. The proceedings shall be informal, but only as is compatible with the requirements of justice, and the Board need not be bound by formal rules of evidence or procedure.~~

~~(h) — If at the conclusion of the hearing the Board determines upon the preponderance of the evidence that the person complained against has violated this chapter, the Board shall, after consultation with the Law Director in executive session, state its findings to the Director of Law. The Board shall then cause its Law Director to prepare and issue an order under Board directive requiring the person complained against to cease and desist from such unlawful conduct and to take affirmative action as will effectuate the purpose of this chapter, with notice that if the Board, upon investigation, determines the person complained against has not after fifteen calendar days following the service of the Board's order complied with order, the Board will recertify the matter to the Law Director for enforcement.~~

~~(i) [b.] The Law Director is hereby authorized and directed to pursue appropriate legal action for the enforcement of this chapter or other fair housing laws as necessary.~~

~~(j) — If, at the conclusion of the hearing, the Board shall determine upon the preponderance of the evidence of the record that the person complained against has not violated this chapter, the Board shall so state and publish its findings and issue its order dismissing the complaint. (Ord. 1981-148. Passed 11-18-81.)~~

#### **557.07 SCOPE OF CHAPTER.**

The provision of this chapter shall apply to all housing located within territorial limits of the City. (Ord. 1979-10. Passed 1-17-79.)



**557.08 OTHER LEGAL ACTION.**

Nothing contained in this chapter shall prevent any person from exercising any right or seeking any remedy to which he/she might otherwise be entitled or from filing any complaint with any other agency or court of law or equity. ~~However, in the event that a complaint ant before the Board or Director files an action with any other agency or court in which action said complaint ant, as an element of his/her cause of action before said agency or court alleges the existence of a fact or facts which form the basis for the complaint pending before the Board or the Director, the Board and Director shall automatically lose all jurisdiction to hear said complaint, which shall be dismissed, with prejudice, with retroactive application, to the date of loss of jurisdiction by the Board and Director. (Ord. 1981-148. Passed 11-18-81.)~~

**~~557.99 PENALTY.~~**

~~Any proceeding where the court determines there has been a violation of this chapter, the court shall award compensatory damages, and where appropriate, punitive damages of not more than one thousand dollars (\$1000) along with attorney fees and court costs. The court may also order such other relief as it deems necessary or appropriate which may include, but is not limited to, issuance of any permanent or temporary injunction, temporary restraining order or other orders. (Ord. 1979-10. Passed 1-17-79.)~~

## COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2010 (the "Effective Date"), by and among the PORTAGE AREA REGIONAL TRANSIT AUTHORITY ("PARTA"), a duly organized political subdivision of the State of Ohio and THE CITY OF KENT, OHIO (the "City"), a municipal corporation and political subdivision organized and existing under the laws of the State of Ohio.

### RECITALS

A. The Kent Central Gateway project (the "Project") is a planned development of a multi-modal transportation facility. The Project will include: 10 bus bays; a climate-controlled waiting area; dynamic signage; bike storage; a garage with approximately 100 parking spaces for the Authority's Park-and-Ride service users and approximately [250] parking spaces above the bus bays, pedestrian connections to adjacent streets and promenades, the shell of space built for the potential creation of retail and office development, and adjacent roadway improvements (collectively the "Transportation Improvements"); and

B. The location of the Project, is situated on twelve (12) parcels of land along E. Erie Street between Haymaker Parkway and Depeyster Street in downtown Kent (the "Property"). Some of the specific reasons for choosing this location included: good accessibility to current transit routes, good proximity to both downtown and Kent State University, good ability to foster economic development along Main Street, high visibility, partially vacant land, unique topography that allows for multi-level development, good ability to leverage public transportation funding, good ability to connect to proposed Portage Hike and Bike Trail, good ability to take advantage of currently underutilized Depeyster Street, good linkage to other proposed developments downtown, and good ability to improve pedestrian connection and town-gown link; and

C. To carry out the City's Urban Renewal, to provide for the productive development and reuse of property, and to provide for sufficient parking for the Project and the downtown area, the City desires to provide for the development of portions of the Project pursuant to the terms of this Agreement and the Lease Agreement (the "City's Improvements"), attached hereto as Exhibit A and incorporated herein by reference (the "City Lease") and certain Project costs which are not Grant-eligible shall be paid for or financed by the City as described herein; and

D. The Project is intended to improve the connections between city neighborhoods, Kent State University's campus and the downtown; to enhance bicycle and pedestrian linkages; to support economic development; and to create opportunities for new community amenities. The Project is intended to help solve several transit-related problems: providing an efficient park-and-ride for express routes to Cleveland and Akron; serving as a transfer point for numerous PARTA routes; and providing a comfortable location to load and unload passengers with special needs away from the traffic along a major roadway (Haymaker Parkway). In addition to the transit benefits, the Project will incorporate businesses and community uses.



intended to make it a destination that citizens can be proud of and spur economic development of the downtown; and

E. It is intended that the Project will be complimented by the development of certain commercial improvements including office, hotel, retail and residential space in City's downtown to service the needs of the citizens of the City and surrounding areas; and

F. PARTA has received a grant in the amount of Twenty Million Dollars (\$20,000,000) (the "Grant") from the U.S. Department of Transportation ("DOT") under the Transportation Investments Generating Economic Recovery ("TIGER") Discretionary Grant Program authorized by the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (the "Recovery Act"), to be administered by the Federal Transit Administration ("FTA"), to facilitate PARTA's acquisition of Project property and construction of certain of the Project improvements, in accordance with the terms and conditions of the TIGER Grant and this Agreement, and PARTA shall apply to the Project the proceeds of the Grant; and

G. The parties to this Agreement agree to diligently pursue the Project objectives with respect to all matters concerning the acquisition, construction, development, financing, marketing and utilization of the Project, upon and subject to the terms and conditions contained in this Agreement, and the agreements attached as exhibits hereto and executed in conjunction herewith.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto set forth, each of them, does hereby covenant and agree as follows:

**Section 1. Commitment To and Use of Funds for the Project.**

(A) PARTA Funds. PARTA will use and apply proceeds of the Grant up to Twenty Million Dollars (\$20,000,000) to allowable Project costs. The parties intend that the Project will be paid for solely out of Grant proceeds and City Funds and the scope of the Project will be revised as necessary to comply with the parties' intentions. In no event will PARTA apply Grant proceeds to Project costs which are impermissible pursuant to the TIGER Grant Program under the Recovery Act. PARTA will use good faith efforts to maximize Grant-eligible Project reimbursements.

(B) City Funds. Subject to and conditioned upon the City's issuance of sufficient bonds, the City shall commit and apply allowable bond proceeds in the amount of Four Million Dollars (\$4,000,000) ("City Funds") to the construction of the Project.

(C) Project Budget. Attached to this Agreement as Exhibit B is a preliminary Project Budget. During the course of the development and construction of the Project, PARTA, in coordination the Construction Manager, shall prepare and, regularly revise a comprehensive budget for the Project (the "Project Budget") inclusive of, among other Project expenses, an estimate of all costs of Property acquisition, professional services, and construction. The Project Budget shall be revised and updated during the course of the Project to take into account change orders, cost overruns and similar events having impact on the Project Budget. The total cost of the Project is anticipated be \_\_\_\_\_ (\$ \_\_\_\_\_) ("Total Project Cost"), which Total Project Cost is allocated in accordance with the agreed upon Project Budget and

sources and uses of funds and such revisions to the Project Budget. It is expressly understood that the Project Budget has been formulated in reliance upon the commitment of each of the parties to obtain and apply to the Project the funds as set forth in this Section 1 above. Furthermore, the Project Budget will be prepared, and revised during the course of the Project, in accordance with the FTA requirements applicable to the Grant. It is also acknowledged that, in the event of a shortfall in Project funds, PARTA will work with the City and the Construction Manager to value engineer such aspects of the Project as possible. If the scope of the Project is revised and the Total Project Cost is or is likely to be exceeded, the City and PARTA will use best efforts to reach agreement on the sources and uses and application of funds available for the Project.

## **Section 2. Acquisition of Property.**

(A) Purchase and Assembly of Project Property. To facilitate the redevelopment of the Property, PARTA has acquired or will acquire title to the twelve (12) parcels of real property, or portions thereof, necessary to the Project, in accordance with the terms of this Section 2. Certain additional parcels may be added to the Project which additional parcels may be identified by the parties hereafter. The parties acknowledge and agree that such parcels together with the Property shall comprise the Project Property and may be purchased by PARTA provided that PARTA is satisfied with the condition of the site investigation work and the total aggregate purchase price for the Property, inclusive of certain closing costs.

(B) Properties Subject to Eminent Domain. After using best efforts to enter into agreements for acquisition of fee title to the following parcels: 40-00-002, 40-00-004, 40-00-005, 40-00-006, 40-00-007, 40-00-010, 40-00-023, 40-00-024, 40-00-0\_\_\_, 40-00-0\_\_\_ (collectively, the "Condemnation Parcels"), without success, by the lawful exercise of PARTA's powers of eminent domain, PARTA has commenced appropriation measures to acquire fee title to the Condemnation Parcels. All costs and expenses of the appropriation measures for the acquisition of the Condemnation Parcels, and all costs and expenses incurred by PARTA in acquiring the all of the Project Property are properly included in Project Costs and shall be a part of the Project Budget.

(C) Lease to City. Once all of the Property necessary to the Project is acquired and assembled, PARTA will cause certain buildings and improvements on the Property to be razed and demolished and the Property will be leveled and graded. The parking structure to be constructed as a part of the Project shall include a three (3) level public parking garage (the "Garage"). PARTA and the City agree to enter into the City Lease (in the form of Exhibit A) prior to construction of the Garage portion of the Project, which City Lease shall be an agreement and lease to convey to the City a fifty (50) year leasehold interest, with certain rights of renewal, and other property rights, for the two upper levels of the Garage. The City Lease shall evidence the prepayment of all rentals and costs payable by the City for the initial term of 50 years, by the City's payment of City's costs pursuant to Section 1(B) above. The entire Garage shall be open for use by users of the Project and members of the general public. PARTA and transportation users of the Project shall have the use of not less than one hundred (100) parking spaces (the "Transportation Parking"). The parties shall execute, deliver and cause to be recorded all instruments and documents as are necessary to the division of interests in the Property to facilitate use of the City Funds, and the requirements of the FTA associated with the award of the TIGER Grant to PARTA, and to retention in the City and PARTA of the necessary



interests in the Garage. The City Lease shall also provide for the parties' agreement with respect to the maintenance of the Garage as more fully described in Section 7 below.

**Section 3. Obligations of PARTA.** PARTA shall oversee the construction and completion of the Project, under a contract of construction management for the Project between PARTA and a construction management company selected by PARTA (the "Construction Manager") described more fully in Section 5 hereof.

(A) Property Acquisition & Engaging Necessary Parties. PARTA shall acquire and assemble the Project Property in accordance with the terms of Section 2 above and shall cause the Property to be replatted and consolidated as necessary to the Project. Once acquired, PARTA has engaged or will engage such reputable architects and engineers, licensed to do business in the State of Ohio, as necessary to the preparation of all site plans, surveys, maps, architectural plans, designs and specifications for the Project (the "Plans and Specifications"). PARTA will engage and employ the Construction Manager to facilitate and direct the design, construction, building, development and completion of the Project in accordance with the terms of Section 5 of this Agreement.

(B) Exempting Property from Taxation. Once the Property is acquired and assembled, PARTA will complete and prosecute all filings necessary to remove such Property as is entitled to exemption from real property taxation under the laws of the State of Ohio, from the real estate tax rolls of Portage County.

(C) Preparation of Plans. PARTA shall facilitate the preparation and completion of Plans and Specifications, budgets, proposals and necessary information required for completion of the Project.

(D) Preparation of Budgets. PARTA will coordinate the preparation of and, regularly during the term and pendency of this Agreement, supervise the revision of a comprehensive Project Budget which Budget shall require an initial contingency of not less than fifteen percent (15%) of the total Project Budget, as may change from time-to-time in accordance with the terms of this Agreement. The Project Budget shall be revised and updated during the course of the Project to take into account change orders, cost overruns and similar events having impact on the Project Budget. The Project Budget will clearly identify and track grant eligible Project costs and Project costs which are ineligible of Grant reimbursement.

(E) Coordinating Permits. PARTA, with the City's cooperation, will help to facilitate the Construction Manager's application for and processing of, in a timely manner as required to maintain the Project schedule, all approvals and permits required for the Project.

(F) Granting Easements and Property Rights. PARTA, in cooperation with the City, will grant and work to obtain such temporary construction easements and permanent easements and other licenses and right over the Property as are reasonably necessary from time to time to enable Construction Manager and its contractors to construct and complete the Project.

(G) Payment of Costs. PARTA shall pay the costs to acquire the Property in accordance with Section 2 and shall pay all Grant-eligible Project Costs allocated to PARTA in the Project Budget. PARTA shall coordinate the timely payment of all sums due for completion

of Project in accordance with the terms of the Construction Manager's Contract, and subject to any retention provisions therein.

(H) Owning Transportation Improvements. From and after Completion of the Project, PARTA shall own, operate and maintain the Project, including the Garage, in accordance with the terms of this Agreement, all laws, ordinances, orders now existing or hereinafter enacted or promulgated by proper authority ("Applicable Laws"), and in accordance with the City Lease. As permitted by the City Lease, and as further described in Section 7 below, PARTA may engage a parking management or parking operations company with respect to the management and operation of portions of the Project and the Garage.

(I) Regular Project Reporting. PARTA shall supply or cause the Construction Manager to supply progress reports on the Project development relating to the Project Budget and Project Schedule and such other information as the City may reasonably request from time to time.

#### **Section 4. Obligations of the City.**

(A) Compliance with Process Applicable to City Funds. The City shall use good faith efforts to timely prepare and consider, and cause the preparation and submission of all the necessary documentation and legislation associated with the City Funds.

(B) City's Project Payments. The City shall use good faith efforts to obtain and pay to PARTA the City Funds on or before the last day of the eighth (8th) week following the Effective Date, and the City shall pay the City Funds into one or more Project accounts established and maintained by PARTA to pay Project costs.

(C) Cooperation on Plans and Budgets. The City shall fully and timely cooperate with PARTA on the preparation of the initial Plans and Specifications and the initial Project Budget, attached hereto. In addition to the City's normal permitting processes as may be applicable to the Project, the City shall have the right to approve change orders and modifications to the Plans and Specifications and the Project Budget as specifically set forth in Section 6 hereof, and as relate to the adjacent roadways and City infrastructure.

(D) Granting Easements and Property Rights. The City shall grant and work to obtain such temporary construction easements and permanent easements and other licenses and rights over the Property as are reasonably necessary from time to time to enable PARTA, Construction Manager and its contractors to construct and complete the Project.

(E) Coordinating Permits. The City will cooperate with PARTA to facilitate PARTA's or the Construction Manager's application for and processing of, in a timely manner as required to maintain the Project schedule, all approvals and permits required for the Project. The City shall and does hereby agree to waive all permitting fees applicable to the Project and the designs, Plans and Specifications therefor.

(F) Owning Roadway Improvements. From and after completion, the City will own and maintain the roadways and City infrastructure improvements constructed or improved as a part of the Project.



(G) Contribution of Certain Project Materials. The City shall give and make available to PARTA and the Project, at no cost, all sandstone material salvaged from the Plum Creek Stream restoration project.

**Section 5. Employment of Construction Manager.**

(A) PARTA shall engage the Construction Manager pursuant to the terms of that a Construction Manager At Risk Contract (the "Construction Manager's Contract"). The Construction Manager shall coordinate the design and engineering, and manage the construction of the Project consistent with and in compliance with this Agreement. Pursuant to the terms of the Construction Manager's Contract, Construction Manager shall be responsible for providing all of the services necessary to the prompt and timely Completion of the Project.

(B) Upon execution of this Agreement and during the pendency of the Construction Manager's Contract, Construction Manager is a corporation duly formed, validly existing and in good standing under the laws of the state of its formation. Construction Manager is authorized to transact business in the State of Ohio. Construction Manager shall provide to each of the parties copies of its Articles of Formation, a Certificate of Good Standing issued by the Secretary of State of Ohio dated not more than thirty (30) days prior to the date of this Agreement, and a copy of the consents/resolutions pursuant to which the Construction Manager's Contract has been approved in form and content by the shareholders/directors/members of Construction Manager. During the term of this Agreement, Construction Manager shall not amend, modify, pledge, hypothecate, mortgage, assign or terminate Construction Manager's Articles of Formation or any interest in Construction Manager without first obtaining the written consent of the parties hereto.

**Section 6. Project Changes Requiring City Approval.**

(A) Project Changes Subject to Approval. The parties acknowledge and agree that the City shall have the right to review and approve amendments and modifications to the Project Plans and Specifications and the Project Budget to the extent such amendments and modifications ("Consent Requiring Changes"):

- (1) make a material change in the scope of the Project such that the upper two (2) floors of the Garage will not be constructed, or the Project will create parking for fewer than three hundred fifty (350) vehicles available to the public; or
- (2) will require the Project to exceed the Project Budget, after application of Project Budget contingencies, by more than [S\_\_\_\_\_ or \_\_\_\_\_%]; or
- (3) make a material change in the adjacent streets and City infrastructure.

(B) City's Review and Approval Process. When a Consent Requiring Change, is required or becomes known to PARTA, PARTA agrees to use good faith efforts, coordinating with the Construction Manager, to submit each component of the Plans and Specifications or the Project Budget causing the Consent Requiring Change to the City in sufficient time to permit the City to complete its review and approval functions prior to the commencement of construction of the Project improvements. Any disapproval by the City of a Consent Requiring Change shall

promptly be made in writing (setting forth details) to PARTA, not later than [fifteen (15) days] following PARTA's submittal of the Consent Requiring Change to the City. The City and PARTA agree to work cooperatively and in a coordinated fashion and to use best efforts to develop strategies to ensure that the that such Plans and Specifications and the Project Budget can be modified and approved by the appropriate review bodies at the earliest feasible time and the Project can be achieved. Any change in the Project, its Plans and Specifications or the Project Budget requested or required by the City, which is not a change necessitated by the City's normal permitting processes, and is not a change necessitated by a Consent Requiring Change, but which change PARTA believes cannot reasonably be incorporated into the Project within the Project Budget, then PARTA shall notify the City in writing. The City may then elect: to pursue an alternative within the Project Budget; to rescind the request for the change; or to pursue the change, which change will be designed, permitted, constructed and completed by PARTA as a part of the Project, but at the City's sole additional expense. The City shall notify PARTA of its election in a timely manner consistent with the Project Schedule. In no event, shall the City approval processes or City required changes deny to PARTA satisfactory continuous control of the Project as required by the FTA in connection with the Grant.

**Section 7. Operation of Parking Facilities and Maintenance of Public Improvements.**

Garage Management Agreement. The parties contemplate that PARTA will enter into and execute a fee-based parking management agreement with a recognized company specializing in the operation of parking garage facilities ("Parking Management Agreement") for the day-to-day operations and maintenance of the Garage. The Parking Management Agreement is in addition to and not in substitution of the City Lease, but shall be consistent with the terms of the City Lease. The Parking Management Agreement shall maximize the transit uses of the parking facilities and shall require that the Garage operator to provide all ordinary and necessary routine maintenance, repairs and security for the Garage for such hours of operation as the parties may hereafter prescribe. PARTA agrees that the Parking Management Agreement shall structure the compensation to be paid to the operator in a manner consistent with the federal tax requirements for such public sector management contracts.

**Section 8. Term of Agreement.**

(A) Survival of Provisions. The provisions of this Agreement shall be effective as of the Effective Date first hereinabove stated, and shall continue in full force and effect for a period of \_\_\_\_\_ (\_\_\_) years following Completion of the Project. If a conflict between this Agreement and the City Lease exists or occurs, the terms of this Agreement shall govern and control all matters relating to the construction of the Project and the City Lease shall govern and control with respect to matters relating to the operation of the Project after completion.

(B) Termination of the Agreement. Either party to this Agreement shall have the right to terminate this Agreement in the event any of the following conditions occurs:

(1) PARTA determines that it is not able to satisfy the conditions and obligations of the TIGER Grant such that PARTA is unlikely to realize Grant proceeds in the amount of not less than Twenty Million Dollars (\$20,000,000) on or before the commencement of construction under the Construction Management Agreement;



(2) the City is unable, on or before close of business on the last business day of the [eighth (8th)] week following the Effective Date, to realize City Funds allocated solely to the Project in the amount of Four Million Dollars (\$4,000,000); and

(3) Prior to commencement of construction of the Project, PARTA determines that the Project cannot be constructed and completed for the agreed upon Total Project Cost.

In the event of a termination of this Agreement as permitted by this Section 8, after Grant funds or City Funds have been contributed to the Project or a Project fund, the City Funds shall be promptly returned to the City and the Grant funds and any other PARTA funds shall be promptly returned to PARTA and PARTA shall repay Grant funds FTA in accordance with the applicable TIGER regulations. This Agreement may not be terminated after the commencement of construction.

(C) Good Faith Efforts; Process for Termination; Right to Cure. Each party to this Agreement agrees:

(1) to attempt, in good faith and with reasonable efforts, to comply in a timely manner with its obligations under this Agreement; and

(2) to provide reasonable notice to the other of any event or matter which, in the opinion of the notifying party, would constitute grounds for the notifying party to terminate this Agreement pursuant to this Section.

The parties further agree to attempt in good faith, for a reasonable period after delivery of any notice described in clause (2) above (not less than ten (10) nor more than thirty (30) days), to work out an acceptable settlement either (a) of terms with respect to such event or matter, in which case this Agreement shall continue in effect, modified as required to reflect such terms, or (b) of terms and conditions of termination of this Agreement, in which case this Agreement shall be terminated upon such terms and conditions. In the event the parties are unable to reach such a settlement, the notifying party shall be entitled to exercise such rights and remedies as are afforded it under this Agreement and applicable law.

(D) Return of Excess Funds. In the event the Project is completed in accordance with the Construction Management Contract and PARTA's operations have commenced on the Project Property, and excess funds remain in the construction account (or accounts) established for the Project, then excess funds shall be ratably refunded and returned to the party contributing such excess funds to the Project, as evidenced by a final agreed upon Project Budget and allocation of Project costs to the responsible party. No funds shall be returned or disbursed in a manner which is inconsistent with the FTA regulations adopted for TIGER Grants.

**Section 9. Restrictions on Transfer.**

Except as otherwise expressly set forth herein, neither the City nor PARTA shall have any right to assign this Agreement or to pledge or encumber its interests arising under this Agreement. Notwithstanding such prohibition, the parties acknowledge and agree that pursuant to the rules and regulations governing the Grant, in the event of default by PARTA under, or other failure by PARTA to satisfy the terms of the agreements and covenants governing the Grant, and as a remedy available to the FTA, the FTA may require the imposition of a nominee party to assume certain of PARTA's duties and obligations as well as PARTA's rights under this Agreement upon such terms as the FTA may reasonably impose in connection with the Grant and completion of the Grant-eligible portions of the Project.

**Section 10 Default and Remedies.**

(A) Except as otherwise provided in this Agreement, and except as expressly set forth in Section 8 above, in the event of breach of this Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed promptly to cure or remedy such breach, and, in any event, within thirty (30) days after receipt of such notice. In case action is not taken to promptly commence a cure within the thirty (30) day period and diligently pursued, and the breach or default is not remedied by the ninetieth (90th) day from the notice date, then the party asserting breach may institute such proceedings at law or in equity as may be necessary or desirable in its opinion to remedy such breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations, or proceedings to recover damages suffered as the result of such default.

(B) Pursuit of any of the remedies in this Section shall not preclude pursuit of any of the other remedies herein provided, or any other remedies provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any damages accruing to a party by reason of the violation of any of the other party's obligations hereunder. Forbearance by a party to enforce one or more of the remedies herein provided upon the occurrence of an event of default shall not be construed to constitute a waiver of such default.

**Section 11. Force Majeure.**

Except as otherwise provided herein, neither party to this Agreement shall be considered in default in their obligations to be performed hereunder, if delay in the performance of such obligations is due to unforeseeable causes beyond its control and without its fault, including but not limited to, acts of God or of the public enemy, acts of the Federal or state government, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes, it being the purpose and intent of this Section that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this Section shall within fourteen (14) days after the beginning of such enforced delay, notify the other party in writing thereof and of the cause thereof and of the duration thereof, or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within thirty (30) days after the end of the delay, notify the other party in writing of



the duration of the delay. The parties acknowledge that PARTA intends to enter into a project labor agreement with respect to the construction of the Project will endeavor to require the terms thereof to be consistent with the terms of this Section 11.

**Section 12. Miscellaneous.**

(A) No Merger. This Agreement, together with the agreements and exhibits attached hereto, embodies the entire agreement of the parties and supercedes all prior agreements. The covenants and obligations of the City and PARTA shall survive the expiration or termination of this Agreement in accordance with the terms of Section 8 above and shall remain binding on the parties and their respective successors and assigns.

(B) Counterparts. This Agreement may be signed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

(C) City Approvals. Any provision of the Agreement requiring the approval of the City, satisfaction or evidence of satisfaction of the City, or certification or opinion of the City, shall be interpreted as requiring action by the City Manager of the City, or his lawful designee, granting, authorizing or expressing such approval, satisfaction certificate, certification or opinion, as the case may be, unless such provision expressly provides otherwise, or unless authorization for such approval is required by the City Council of the City under Applicable Law.

(D) No Discrimination. No party to this Agreement, nor its successors and assigns, shall, in the use and redevelopment of the Property, discriminate against any person or group of persons based upon race, creed, sex, religion, color, age, national origin or ancestry in the sale, lease or other transfer, of the Property.

(E) PARTA Approvals. Any provision of the Agreement requiring the approval of PARTA, satisfaction or evidence of satisfaction by PARTA, or certification on PARTA's part, shall be interpreted as requiring action by the General Manager of PARTA, or his lawful designee, granting, authorizing or expressing such approval, satisfaction certificate, or certification, as the case may be, unless such provision expressly provides otherwise, or unless authorization for such approval is required by PARTA's Board of Trustees.

**Section 13. Notice.**

Any notice or communication between the parties required or permitted to be given under this Agreement shall be deemed sufficiently given if delivered personally or mailed by U.S. registered or certified mail, and addressed as follows:

- (A) Notices to PARTA:  
Portage Area Regional Transit Authority  
2000 Summit Road  
Attn: Mr. Bryan Smith  
Kent, Ohio 44240

With a copy to:  
Calfee, Halter & Griswold LLP  
800 Superior Avenue  
1400 KeyBank Center  
Cleveland, Ohio 44114-2688  
Attn: Mara E. Cushwa, Esq.

(B) Notices to the City:

City Manager  
City of Kent

\_\_\_\_\_  
Kent, Ohio  
Attn.: Mr. James Bowling, and  
Director of Law

With a copy to:  
Squire, Sanders & Dempsey  
4900 Key Tower  
127 Public Square  
Cleveland, OH 44114-1304  
Attn.: Pamela I. Hanover, Esq.

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IN WITNESS WHEREOF, the City and PARTA have each caused this Agreement to be executed after due authorization as of the date aforesaid.

**PORTAGE AREA REGIONAL TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
\_\_\_\_\_, General Manager

**CITY OF KENT, OHIO**

By: \_\_\_\_\_  
\_\_\_\_\_, City Manager

The legal form of the within instrument is hereby approved.

By: \_\_\_\_\_  
\_\_\_\_\_, Director of Law

Date: \_\_\_\_\_, 2010

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF PORTAGE         )

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, General Manager of the Portage Area Regional Transportation Authority, who acknowledged the execution of the foregoing instrument as the authorized officer of said Transit Authority on behalf of said Transit Authority, and that the same is his voluntary act and deed as said officer and the voluntary act and deed of said Transit Authority.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Kent, Ohio on the day and year aforesaid.

[SEAL]

\_\_\_\_\_  
Notary Public

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF PORTAGE         )

On this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, City Manager of the City of Kent, Ohio, who acknowledged the execution of the foregoing instrument as the authorized officer of said City on behalf of said City, and that the same is his voluntary act and deed as said officer on behalf of said City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Kent, Ohio on the day and year aforesaid.

[SEAL]

\_\_\_\_\_  
Notary Public



## CERTIFICATE OF DIRECTOR OF FINANCE

The undersigned, fiscal officer of the City of Kent, Ohio, hereby certifies that the money required to meet the obligations of the City during the year 2010 under the foregoing Agreement has been lawfully appropriated by the Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

\_\_\_\_\_  
Director of Finance

## LIST OF EXHIBITS

- Exhibit A - City Lease Agreement
- Exhibit B - Preliminary Project Budget
- Exhibit C -
- Exhibit D -

EXHIBIT A  
CITY LEASE AGREEMENT



EXHIBIT B

PRELIMINARY PROJECT BUDGET

