

ORDINANCE NO. 2021 - 031

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO AMEND THE RIGHT OF ACCESS AGREEMENT WITH ABB INSTALLATION PRODUCTS INC. (ABB IP) FOR SITE REMEDIATION AT 800 MOGADORE ROAD THAT WAS PASSED IN ORDINANCE 2019-106, TO ALLOW ACCESS TO TWO ADDITIONAL OFF-PROPERTY AREAS OF INTEREST (OPAI-03 AND OPAI-06), AND DECLARING AN EMERGENCY.

WHEREAS, ABB IP has several identified OPAI's that are continually monitored and sampled to identify any change in conditions that may warrant remediation action and recent testing of near surface sediments in OPAI-3 and OPAI-6 have been identified as having the potential to generate a sheen in the water when these areas are disturbed; and

WHEREAS, in order to mitigate this concern, the Ohio Environmental Protection Agency (OEPA) has granted approval to ABB IP to use divers and/or small equipment to remove approximately 0.5-2.5 thick sections of sediment in these areas that are above an underlying clay layer; and

WHEREAS, since the work will require some site disturbances (removal of some trees), ABB IP is conducting a tree survey in these areas to ensure appropriate replacement and restoration of any removed trees; and

WHEREAS, tree removal is prohibited in Ohio from April 1st through September 30th to protect bat habitats so approval will ensure access is granted to allow for the timely removal of trees; and

WHEREAS, the City is granting access to OPAI-3 and OPAI-6 to ensure the timely completion of the necessary site preparation, remediation, and tree/site restoration activities in order to safeguard the Cuyahoga River, City property, and regional bat habitats.

WHEREAS, time is of the essence as ABB IP and the City desire this phase of the remediation work to begin immediately;

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

SECTION 1. That Council does hereby authorize the City Manager or his designee to amend the Right of Access Agreement with ABB IP for site remediation at 800 Mogadore Road to allow access to Off-Property Areas of Interest (OPAI-03 and OPAI-06), as more fully described in the attached agreement (Exhibit "A").

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after

passage.

PASSED: March 17, 2021
Date

EFFECTIVE: March 17, 2021
Date

ATTEST: Amy Wilkens
Amy Wilkens
Clerk of Council

Fiala
Jerry T. Fiala
Mayor and President 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. 2021-031, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON March 17, 2021.

(SEAL)

Amy Wilkens
AMY WILKENS
CLERK OF COUNCIL



PROJECT 3359181134
FIGURE - 1

wood.

BASE MAP
CUYAHOGA RIVER
KENT, PORTAGE COUNTY, OHIO

SHEEN OBSERVED DURING MONITORING OF SEDIMENT/BANK MATERIAL
NO SHEEN OBSERVED DURING MONITORING OF SEDIMENT/BANK MATERIAL
SEDIMENT CORE LOCATION
SEDIMENT CORE LOCATION WITH SHEEN

C:\Users\kook\kirk\274\Drawings\Kent Ohio\Browns\Drawings\1.dwg Thu, 21 Oct 2018 4:40pm bdy:mjz

ORDINANCE NO. 2019 -106

AN ORDINANCE AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A RIGHT OF ACCESS AGREEMENT WITH ABB INSTALLATION PRODUCTS INC. (ABB IP, INC.) FOR SITE REMEDIATION AT 800 MOGADORE ROAD, AND DECLARING AN EMERGENCY.

WHEREAS, ABB IP, Inc. is engaged in voluntary site remediation of the property known as 800 Mogadore Road, Kent, Ohio and related off-property impacts associated with the historical activities at this Site; and

WHEREAS, in order to complete this site remediation, ABB IP, Inc. and its agents need to enter onto City owned property; and

WHEREAS, ABB IP, Inc. will need to restore the City's property to a condition similar to the property's current condition as described in the attached agreement; and

WHEREAS, the attached agreement (Exhibit "A") needs to be executed in order to allow this access to ABB IP, Inc. and its agents in order to complete the remediation work and to ensure proper restoration of City owned property; and

WHEREAS, time is of the essence as ABB IP, Inc. and the City desire this phase of the remediation work to begin immediately;

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Kent, Portage County, Ohio at least three-fourths (3/4) of all members elected thereto concurring:

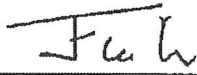
SECTION 1. That Council does hereby authorize the City Manager or his designee to enter into a Right of Access Agreement with ABB IP, Inc. and their agents so that they may cross over City owned property to remediate the historical activities of said property, as more fully described and in substantial compliance with the attached agreement (Exhibit "A").

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the residents of this City, for which reason and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED

September 18, 2019
Date



Jerry T. Fiala
Mayor and President of Council

EFFECTIVE:

September 18, 2019
Date

CITY OF KENT, OHIO

PROPERTY RIGHT OF ACCESS AGREEMENT

This CONDITIONAL PROPERTY RIGHT OF ACCESS AGREEMENT (the "Agreement") is made and entered into and shall be effective as of this 26 day of August, 2019, by and between the CITY OF KENT, Ohio, (the "City"), ABB Installation Products Inc. (ABB IP, formerly known as Thomas & Betts Corporation), and ABB IP's authorized representatives (its "Agents").

WHEREAS, the City owns certain parcels of real property in the State of Ohio, County of Portage, known as the North Ditch, Kramer Field Ball Field Complex, East Bank of the Cuyahoga River, and surrounding park land known as permanent parcel numbers 17-025-20-00-014-000, 17-012-10-00-007-000, 17-011-10-00-049-000, 17-012-10-00-006-000, and 17-011-10-00-048-000 (collectively the "Property") and as depicted on the attached map as "EXHIBIT A;" and

WHEREAS, ABB IP is conducting voluntary remediation of 800 Mogadore Road in Kent, OH (the "Site") and related off-property impacts associated with historical activities at the Site under the Resource Conservation and Recovery Act (RCRA) Voluntary Action Program Memorandum of Agreement (VAP MOA), and therefore will be performing remediation and restoration activities (the "Activities") at the Property and other off-property locations such as the Cuyahoga River.

THEREFORE, it is agreed as follows:

1. **Grant of Access.** The City hereby conditionally grants to ABB IP, its agents, employees, contractors, and subcontractors (collectively the "Agents") a limited right of access to enter upon the Property for the sole purpose of performing the Activities as described in the forthcoming Interim Remedial Action Plans (IRAPs) for the remediation of the petroleum seep on the Property at Off-Property Area of Interest - I ("OPAI-I") and/or Cuyahoga River, including any changes that might be required by the Ohio EPA subsequent to its review and required public notice and comment period.

2. **Duration and Termination of Access.** Conditional access shall be allowed upon the execution of this Agreement. The Agreement shall be in effect through June 30, 2020 and will renew automatically for one year periods until the remediation is deemed effective or either party terminates the agreement with 90 day written notice. If ABB IP or its Agents continues Activities after the remediation is deemed effective or termination by the City, the City maintains the right to issue a stop work order.

In the event ABB IP breaches any covenant or obligation under this Agreement and cure of such breach is not initiated and diligently pursued to the reasonable satisfaction of the City within five (5) days after receipt of notice thereof, the City may terminate this Agreement and revoke the access granted herein upon delivery of notice to Contractors, and take all other action authorized by law or pursuant to this Agreement, to remedy said breach.

3. **Covenants of Contractors.** The cost of the Activities shall be borne by ABB IP or its Agents. The work undertaken at the Property shall be (i) conducted in an expeditious, safe and diligent manner, (ii) All work shall be performed in compliance with all applicable federal, state and local laws, ordinances, rules and regulations; and (iii) ABB IP is responsible for ensuring ABB IP's Agents have knowledge of all of the terms and conditions of this Agreement, the IRAP and Corps Permit.

4. **Information Sharing.** At no cost to the City, ABB IP shall provide the City with all data collected by the ABB IP and its Agents, including but not limited to laboratory analyses, monitoring reports, photographs and field notes associated with the Activities undertaken in and on the Property.

The City maintains the right to provide its own representative to observe the Activities undertaken in and/or on the Property and to obtain its own samples for analyses

5. **Scope of Work.** Activities are limited to those specified in the IRAPs, both as modified and approved by the Ohio EPA, or as otherwise provided in writing and approved by the City. All shall be conducted in a manner that does not risk further release and migration of petroleum from the Site or Property. ABB IP will notify City of any changes required in the IRAP due to Ohio EPA requests or field conditions. ABB IP shall not use the Property for any other unrelated purpose or business.

6. **Local Permits, Approvals, and Conditions.** ABB IP shall secure written approval from the City Manager or his designee, prior to the placement staging of all clean fill materials, equipment and supplies; the removal of trees, shrubs and other vegetation; the expansion of existing or development of new access roads or paths to allow for ingress/egress; or any other activity that will alter the existing condition of any portion of the Property.

ABB IP shall obtain all permits and approvals necessary to comply with local laws prior to initiating authorized activities, including but not limited to Storm Water Pollution Prevention Plans (SWPPP) for the disturbance, removal or placement of clean fill on the Property; the expansion of existing or development of new access roads or paths to allow for ingress/egress; or any other activity(s) that results in ground disturbance.

ABB IP and its Agents shall notify the City of actual start date prior to commencement of Activities, any alterations to the schedule of planned Activities, and/or any changes to the scope of the Activities

If necessary for access, ABB IP shall videotape the roadway entering into Kramer Field Ball Field Complex, including parking area to be utilized for staging of clean fill, Redmond Bridge, the North Ditch area, and any area to be utilized for the Activities and the video shall be verified by the City as acceptable documentation of the present condition prior to the Contractors initiating the Activities.

ABB IP and its Agents shall comply with all recommendations delineated in the *McCormick Taylor Fred Fuller Park Redmond Bridge Report*, as revised September 16, 2016, when transporting materials and equipment across Redmond Bridge.

ABB IP shall provide all control measures necessary to limit public access to the Project Area, including all material and equipment staging locations, and provide appropriate traffic control measures, including but not limited to signage and flagger personnel, when transporting materials and equipment across Redmond Bridge.

7. **Restoration.** Restoration of the affected park lands, including but not limited to any and all temporary access roads or paths, shall be in accordance with the terms and conditions of this Agreement, the IRAPs and any permits that might be required.

ABB IP shall provide the City with an inventory of all trees, shrubs and vegetation planned for removal prior to initiating Activities. Trees shall be replaced, as specified in the City's Urban Forest Management Plan (the "UFMP"), modified if needed in accordance with the August 30th 2018 Fuller Park Replacement Plan letter from HZW, which was previously approved by the City.

ABB IP shall provide written certification detailing the composition of all fill materials to be utilized for the Activities.

ABB IP shall provide the City with the name and mobile telephone number for the representative(s) responsible for on-site management of the Activities at the Property.

8. **Materials Removed from Project Area.** Any samples, waste materials, contaminants, pollutants collected and removed from the Property shall be handled, stored, treated, transported and disposed of by the ABB IP and or its Agents as necessary and in accordance with all federal, state and local environmental regulations and requirements.

At no time shall waste materials, contaminants, or pollutants collected and removed be stored on the Property beyond the time necessary to sample, characterize and arrange proper disposal of such materials.

9. **Tools and Equipment.** All tools, equipment or other items placed upon the Property by ABB IP and its Agents shall remain under the ownership of the ABB IP and its Agents and shall be removed from the Property no later than June 30, 2020, with the exception of equipment that is an integral part of the long-term remedy.

10. **Insurance.** Prior to commencing the Activities and at all times during the performance of said Activities, ABB IP and its Agents shall maintain Workers' Compensation and Employer's Liability Insurance in the amount required by State of Ohio law; Commercial General Liability ("CGL") Insurance with combined single limits of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate; Comprehensive Automobile Liability Insurance (owned, not owned and hired) with a combined single limit of Five Hundred Thousand Dollars (\$500,000.00). To the extent of ABB IP's

indemnity obligations, the City shall be added as an additional insured to the CGL policy and such policy shall be considered primary insurance without recourse to or contribution from any similar insurance carried by the City.

The insurance certificate shall contain a provision that coverage afforded under the policy evidenced by such certificate will not be canceled or changed without providing at least thirty (30) days prior written notice to the City. ABB IP or its Agents shall deliver certificates of insurance to City evidencing the existence of such policy prior to the commencement of the Activities.

11. Bond. ABB IP or its Agents shall provide the City with a performance bond in the amount of \$25,000.00 to guarantee the satisfactory completion of the Activities on the Property as specified by this Agreement.

12. Indemnity. ABB IP shall indemnify, hold harmless and defend the City from and against any and all third party claims, demands, liabilities, causes of action, losses, costs, damages and expenses of any kind, including reasonable attorney fees, that may be asserted against or incurred by the City in any way relating to, arising out of, caused by or in connection with (i) the negligent acts or omissions of ABB IP or any its Agents performance of the Activities undertaken on the Property, (ii) violations or liens that may be filed against the Property as a result of the performance of the work, (iii) claims from ABB IP employees or claims of its Agents for personal injury, wrongful death, costs, expenses or property damage resulting from the performance of the work; (iv) any increased contamination at the Property caused by ABB IP or its Agent's activities, and (v) injunctive relief or other claims sought by any governmental authorities or third parties as a result of the work or contamination at the Property. ABB IP shall not be required to indemnify the City for claims, liabilities, damages, losses or expenses caused by wrongful acts or omissions by the City. The provisions of this paragraph shall survive the termination of this Agreement.

13. No Admission. The granting of conditional property right of access herein by the City is not intended, and shall not be construed, as an admission of liability on the part of the City or the City's successors and assigns for any contamination on the Property.

By execution of this Agreement, the City is not providing any consent or agreement to the contamination or conditions at the Property and the City does not waive any rights or remedies in connection with any contamination at the Property.

14. Miscellaneous.

- (a) Entire Agreement This Agreement shall constitute the entire agreement between the parties regarding the granting of conditional property right of access to ABB IP for the purposes herein. No modification, amendment, or waiver of the terms and conditions of this Agreement shall be binding upon the City or ABB IP unless approved in writing by an authorized representative of the City and ABB IP.

- (b) Governing Law, Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Venue for any action or proceeding arising from or relating to this Agreement shall be in the appropriate Ohio court having jurisdiction.
- (c) Severability. Any provision of this Agreement that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
- (d) No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and their respective successors and assigns and shall not be deemed to confer upon third parties any remedy, claim, liability, or reimbursement, claim of action or other right.
- (e) Representations. Each of the parties hereto represents and warrants to the other party executing this Agreement it has the authority to do so knowing that each of the other parties to this Agreement are acting in reliance upon such representation. The provisions of this Section shall survive the termination of this Agreement.
- (f) Notices. Any notice, demand, request payment or other communication which any party hereto may require or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand received, (b) if received via United States mail service or other reliable express courier service, or (c) if sent via e-mail to the addresses set forth below:

City of Kent: Bridget Susel
 Name
930 Overholt Rd, Kent Ohio 44240
 Address
suselb@kent-ohio.org
 E-mail

ABB Installation Products Inc.: Melody Christopher, ABB
 Name
131 Phoenix Crossing, Bloomfield CT 06002
 Address
melody.bchristopher@us.abb.com
 E-mail

EXECUTED ON this 26 day of August, 2019.

City of Kent

By 

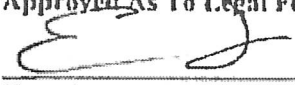
Dave Ruller, City Manager

ABB Installation Product Inc.

By 

Keith Knauerhase, Assistant Secretary

Approved As To Legal Form:



~~Hope Jones, Law Director~~

Eric Fink, Asst. Gen. Director