



CITY OF KENT, OHIO

DEPARTMENT OF COMMUNITY DEVELOPMENT

December 16, 2010

TO: Dave Ruller
City Manager

FROM: Gary Locke
Community Development Director *GL*

RE: Renewal Of Lease With Kent Board of Education –
Central School Parking Lot

On March 1, 2008, the City began its current lease with the Kent Board of Education to lease 30 parking spaces in the Board owned parking lot between Gougler Avenue and North Mantua Street commonly known as the Central School Parking Lot. That lease extends through February 28, 2011. In that lease, the City is provided 30 parking spaces in the lot to make available for public use and this is done through the parking permit system that the City administers for the West River area and portions of Downtown. The City currently pays \$372.69 per month to the schools for the lease of the lot and the City is also responsible for the maintenance of the lot including but not limited to snow plowing.

In February, 2010, the City also executed a sublease involving the same parking lot with the Unitarian Universalist Church. This sublease was approved by the Board of Education and Kent City Council and allows for the use of the same 30 parking spaces by the Church on Saturdays, Sundays and weekdays after 6 PM. The church is responsible for snow plowing the lot for access to its weekend services. Under the terms of this sublease, the Church pays the City \$100.00 and is current in its payments.

As the primary lease with the School Board nears completion, the City will need to decide whether to continue with the lease of the parking area. In a recent conversation with Mr. Jim Soyars, Business Manager for the Kent Schools, Mr. Soyars advised that the Board was willing to continue the lease under its present terms. This would cause the current monthly payment to increase next year and each year thereafter by 2.5% per year. This has been the rate of increase each year over the term of the various leases.

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Dave Ruller, City Manager

Re: Central School Parking Lot Lease Extension

December 16, 2010

I would therefore request committee time in January to have Council consider this matter and determine the appropriate course of action. Staff has no objection to continuing the lease and is of the opinion that it continues the commitment made to both West River Place and West River Medical to assist with parking which at the time was critical to the redevelopment of both facilities.

cc: File

MEMORANDUM
DEPARTMENT OF COMMUNITY DEVELOPMENT
City of Kent

Date: November 10, 2010

To: Dave Ruller, City Manager

From: Jennifer Barone, Development Engineer *JB*

Re: Planning Commission Recommendation – Zoning Text Amendment to amend section 1147 for public-private student housing in U: University District

Copy: Gary Locke, Director of Community Development
Linda Copley, Clerk of Council
Jim Silver, Law Director
Eric Fink, Assistant Law Director
file

I hereby respectfully request City Council agenda time on January 5, 2011 to consider an amendment to the zoning code (Part 11 of the Codified Ordinances).

On Tuesday, November 2, 2010 the Kent Planning Commission conducted a public hearing to consider repealing Section 1147.02(a)(3) of the Kent Codified Ordinances (KCO). After concluding the public hearings, the Planning Commission voted 3-0 to recommend to City Council that this section enacted by Ordinance No. 2009-110 be repealed. Community Development staff has had the opportunity to review this action and fully supports the Planning Commission's recommendation.

This amendment was originally initiated by Kent Presbyterian Church at 1456 East Summit Street in July of 2009 to include church owned or sponsored educational, recreational, and/or residential uses as a permitted use in the University (U) Zone District. The Church's desire was to erect student housing and an amendment was necessary to allow this use. The original language was modified during Council's deliberations and thence enacted into code. The result of this language has had greater ramification than anticipated. As per the language finally adopted in 2009, any private entity could construct a student residential project with no limitations.

The U District was originally intended for Kent State University (KSU) properties in which the City of Kent has no jurisdiction. Therefore, the requirements put into place for this District back in the mid 1980's were very lenient. For example, buildings may be up to 100' in height, there is no limit on density, no open space is required, etc.

As you may know, the Presbyterian Church did eventually obtain Site Plan approval from Planning Commission. Since that time, other private entities have looked at the U District as the means to construct private student housing projects. The neighbors have come out in full force against these requests.

The Planning Commission is not against student housing, but feels it should be a conditional use and have constraints to limit the impact to the neighborhoods not only aesthetically but the impact on infrastructure (roads, sanitary sewers, etc.) They have requested that this topic be discussed at the next joint meeting of Council, Planning Commission, Board of Zoning Appeals, Sustainability Commission and Architectural Review Board.

A copy of the proposed amendment/repeal is attached. Since these are text amendments and not amendments to the Zoning Map, only a newspaper advertisement of City Council's public hearing is required by Chapter 1117 of the Kent Zoning Code. As such, this item will need to be scheduled for a public hearing and Land Use Committee review by Kent City Council.

1147.02. USES

Within a University District, no building, structure or premises shall be used, arranged to be used, or designed to be used except for one or more of the following uses:

(a) Permitted Uses.


- (1) University or other uses of a public educational character, including such university owned, operated, leased, or licensed facilities as dormitory, dining hall, retail facility, gymnasium, classroom, swimming pool, laboratory, studio, laundry, office, heating or power plant, off-street parking of motor vehicles, museum, library, recreation building, R.O.T.C. facility, or place of assembly for entertainment, athletics or training.
- (2) Fraternity or sorority house.
- (3) ~~Scientific, educational, religious, charitable, indoor or outdoor recreational, and residential uses which do not qualify as a permitted use under (a)(1) above are permitted uses when owned or sponsored by churches, other religious organizations, public or quasi-public organization, and/or private organization. Other uses may also include common student dining hall, food courts, and confectionaries as well as a common lounge and study areas.~~



CITY OF KENT, OHIO

DEPARTMENT OF LAW

**TO: CITY COUNCIL,
MAYOR FIALA
DAVE RULLER, CITY MANAGER**

FROM: JAMES R. SILVER 

DATE: DECEMBER 20, 2010

RE: VENDING, PEDDLING & SOLICITING

Pursuant to Councils' request, attached is a DRAFT of proposed legislation regulating vendors, solicitors and peddlers. It has turned out to be fairly complicated. However, staff has done its best to come up with legislation which is fair and offers some protection to the citizens of Kent.

Essentially, there are three (3) classes of licenses that would be issued: 1) those for licensed vehicle trailer food sales (like carnival vendors, the Dogfather and Gyro Bob); 2) those for small hand carts on the sidewalks; 3) peddlers going door to door throughout the City.

Staff recommends adoption of these proposals.

**CHAPTER 745
Peddlers and Solicitors**

745.01 Purpose.	745.10 Vending equipment.
745.02 Definitions.	745.11 Vending areas.
745.03 Regulations of vendors, peddlers and solicitors; penalties.	745.12 Vending hours.
745.04 Licensing procedure.	745.13 Street sales – general.
745.05 Approval / Rejection of License Applications.	745.14 Trespassing of peddlers or solicitors.
745.06 License fees.	745.15 False representation.
745.07 Non-transferability of licenses.	745.16 Exemptions.
745.08 Visibility of licenses.	745.17 Revocation or suspension of license.
745.09 License renewal.	745.18 Appeals.
	745.19 Severability.
	745.99 Penalties.

745.01 PURPOSE.

The purpose and intent of this chapter shall be to regulate vending, peddling and soliciting in the City of Kent, Ohio, enabling the authorities to protect the citizens of Kent while not restricting free enterprise.

745.02 DEFINITIONS.

For purposes of this chapter, certain words and phrases are defined, and certain provisions shall be construed as herein set out, unless it appears from their context that a different meaning is intended.

- (a) "Category 'A' License" is a license which enables the holder to vend at authorized locations as specified in Section 745.12, and at times specified in Section 745.13 from licensed vehicles, trailers and/or wagons.
- (b) "Category 'B' License" is a license which enables the holder to vend at authorized locations as specified in Section 745.12, and at times specified in Section 745.13, from handcarts, wagons, or other vehicles that are not licensed and can be moved by hand, in a size that doesn't exceed three feet (3') wide by five feet (5') feet long.
- (c) "Category 'C' License" is a license which enables a peddler or solicitor, whether a resident of the City or not, traveling either by foot, wagon, automobile, motor truck or any other type of conveyance, from place to place, from house to house or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, and shall include any person who, for himself, or for another person, hires, leases, uses or occupies any building, structure, tent, hotel room, lodging house, apartment, shop or any other place within the City for the sole purpose of taking orders for future delivery.

- (d) "Employee" is any person hired or paid compensation by or under contract to a licensed vendor, peddler or solicitor.
- (e) "Identification (I.D.) Card" is the card issued by the City to identify those authorized to vend, peddle or solicit.
- (f) "License" is the permit issued by the City of Kent, Ohio, authorizing a person to vend, peddle or solicit within the City boundaries.
- (g) "Peddle" is to move about the City and offer legal goods, wares and/or services for sale or immediate delivery.
- (h) "Peddler" is a person who moves about the City and offers legal goods, wares and/or services for sale or immediate delivery.
- (i) "Person" refers to any individual, stockholder, partner, or entity capable of taking title to vend, peddle, or solicit in the City of Kent, Ohio.
- (j) "Solicit" is to sell, entice for sale or encourage the purchase of offers for sale legal goods, wares or services for future delivery.
- (k) "Solicitor" is a person who sells, entices for sale or encourages the purchase of or offers for sale legal goods, wares or services for future delivery.
- (l) "Vend" is to sell legal goods or wares from vehicles, stands, carts, machines or wagons approved by the City.
- (m) "Vendor" is a person who sells legal goods or wares from approved vehicles, stands, carts, machines or wagons.

745.03 REGULATION OF VENDORS, PEDDLERS AND SOLICITORS; PENALTIES.

- (a) All vendors, peddlers and solicitors must be duly licensed by the City of Kent unless otherwise except pursuant to Section 745.19.
- (b) All vendors, peddlers and solicitors must have a retail sales license as directed by Ohio Revised Code Section 5739.17, unless otherwise exempt, and are liable for all pertinent regulations of Section 5739.01 to 5739.99, inclusive, of the Ohio Revised Code.
- (c) Any person vending, peddling or soliciting with a duly issued license found in violation of any provisions of this chapter shall be guilty of an infraction.
- (d) The code enforcement office and/or police officers may issue or cause to have issued citations for violations of this chapter, and the City is empowered to enforce this chapter pursuant to Ohio Revised Code Section 715.24 and 715.61.

745.04 LICENSING PROCEDURE.

Every person desiring a license for vending, peddling or soliciting within the City of Kent, Ohio shall file an application with the City Manager's Office upon a form provided by said office in duplicate. A \$5.00 application fee, deductible from the license fee, the balance of which is due upon receipt of the license, shall accompany the application. The application shall contain the following information:

- (a) The name, description, mailing address, permanent address, telephone number and social security number of the applicant.
- (b) Federal and state employer's identification number and sales tax identification number, if applicable.
- (c) A description of the product or service to be vended, peddled or solicited;
- (d) The names, addresses and telephone numbers of at least three (3) business references to prove applicant's credibility;
- (e) The supplier of the applicant's merchandise, or by whom the services solicited shall be rendered, unless the said applicant shall supply the goods or services.
- (f) The length of time for which the right to do business is desired;
- (g) The place where the goods or property are proposed to be sold, or orders taken for the sale thereof, are manufactured or produced; where such goods or products are located at the time such application is filed and the proposed method of delivery;
- (h) Two (2) photographs of the applicant and everyone who will be vending, soliciting or peddling under the license, taken within sixty (60) days immediately prior to the date of the filing of the application, which picture shall be two inches (2") by two inches (2") showing the head and shoulders of the applicant in a clear and distinguishing manner.
- (i) A statement as to whether or not the applicant has been convicted of or plead guilty to any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefore; and
- (j) Any other information the City Manager's office shall deem necessary.

745.05 APPROVAL / REJECTION OF LICENSE APPLICATION.

- (a) Upon receipt of such application, the original shall be referred to the Chief of Police or their designee, who shall cause such investigation of the applicant to be made as he/she deems necessary for the protection of the public good.
- (b) If, as a result of such investigation, the applicant is found to be unsatisfactory, the Chief of Police or their designee shall endorse on such application his/her disapproval and his/her reasons for the same, and return the application to the City Manager, who shall notify the applicant that his/her application is disapproved and that no permit and license will be issued. The Chief of Police or their designee shall have two (2) business days to review the application.

- (c) If, as a result of such investigation, the applicant are found to be satisfactory, the Chief of Police or their designee shall endorse on the application his/her approval, execute a permit addressed to the applicant for the carrying on of the business applied for and return such permit, along with the application to the City Manager, who shall, upon payment of the prescribed license fee and payment of the bond as described in Section 745.05(d), deliver to the applicant his/her permit and issue a license. Such license shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of such licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such soliciting or canvassing. The Manager shall keep a permanent record of all licenses issued. The license shall be good for the calendar year in which it was issued.
- (d) Every person vending, peddling or soliciting under the terms of this chapter shall be required to obtain a vendor I.D. card from the City Manager's Office. A valid I.D. card must be in the vendor's, peddlers or solicitors possession and clearly visible while vending, peddling or soliciting. The term of the I.D. card shall correspond with the term of the applicable vending license.
- (e) All peddlers, vendors and solicitors must file with the City's Chief Financial Officer a surety bond in the amount of \$5,000.00 indemnifying the City, on the condition that the said applicant shall comply fully with all the provisions of the ordinances of the City and the statutes of the State of Ohio regulating and concerning the sale of goods, wares, merchandise or services to be performed, and will pay all judgments rendered against said applicant for any violation of said ordinances or statutes, together with all judgments and costs that may be recovered against him/her by any person or persons for damage growing out of any misrepresentations or deception practiced on any person transacting such business with such applicant, whether said misrepresentations or deceptions are made by or practiced by the owners or by the servants, agents or employees, either at the time of making the sale or through any advertisement of any character, printed or circulated with reference to the goods, wares and merchandise sold, or any part thereof, and further guaranteeing to any citizen of the City that the property purchased will be delivered according to the representation of said solicitor. Action on the bond may be brought in the name of the City to the use of the aggrieved person.
- (f) The City Manager's Office shall reserve the right to deny the applicant a license, should the application, vending equipment, if applicable, or requirement to post a surety bond, if applicable, fail to meet the guidelines of this chapter.
- (g) Any applicant denied a license may appeal the decision under Section 745.21 of this chapter.
- (h) These licenses shall not be valid and shall not entitle vendors, peddlers, or solicitors to sell or vend, or solicit, or peddle in areas where streets are closed by the City for special events, such as the Kent Heritage Festival; or when repairs or replacement of utilities,

roadways or sidewalks are being undertaken; or by order of the Police Department or other lawful authority.

- (i) The licenses shall be good until January 1 of the following year after issuance, or until it is revoked, whichever occurs first.

745.06 LICENSE FEES.

- (a) The license fees prescribed below shall be paid in full to the City Budget & Finance Department before issuance of any license. The fees shall include a five dollar (\$5.00) application fee applied to the license fee, if approved. The licensing year shall run from January 1 through December 31, prorated on a monthly basis.

- (b) Vending:

- i) Category "A" License - \$1,000.00, effective January 1, 2011.

- A) The maximum number of Category "A" licenses shall be five (5).

- ii) Category "B" License - \$100.00 per year.

- A) These licenses shall allow the license holder to vend from sidewalks in any designated area pursuant to Section 745.12 herein, except during the times listed in 745.05(g) and special situations as may be established by Kent City Council. Only one license shall be issued in each category per person, business or family. Vendors must display their permit while vending.

- B) There shall be a maximum number of ten (10) category "B" licenses.

- iii) Category "C" License - \$25.00 per month. These licenses apply to door to door peddlers and solicitors, and vendors.

- (c) There will be a \$5.00 fee for each identification card issued.

745.07 NON-TRANSFERABILITY OF LICENSES.

All licenses issued for vending, peddling or soliciting are non-transferable except as otherwise provided herein and may be used only by the applicant individual, stockholders, partners or entities capable of taking title to whom the license was granted. Any change in stockholders, partners, or other entity capable of taking title is a transfer of ownership interest and voids the license, except as noted below. A license may be transferred one time as a result of the licensee's death to the holder's heirs and assigns provided the transferee intends to continue the business. If the business is to be sold or liquidated, the license is non-transferable at death.

745.08 VISIBILITY OF LICENSES.

Vending licenses shall be visible at all times at the sales location. Other licensees shall carry their license certificates at all times and shall surrender for inspection said license upon request by any law enforcement officer or citizen.

745.09 LICENSE RENEWAL.

Any vendor, peddler or solicitor whose license has not been revoked or suspended may, within three (3) months of the expiration of the license, between October 1 and December 31, renew that license upon a renewal-of-license form provided by the City Manager's Office. Category "A" licenses will only be renewed if the applicant is the successful bidder for a location for the following year.

The renewal form shall contain the name and social security number of applicant for renewal, expiration date of license to be renewed, period for which renewal is requested and any appropriate corrections of information provided on the original application. Fees for the renewal period shall accompany the application.

Any vendor, peddler or solicitor whose license has expired for more than three (3) months prior to the attempt to renew the license must reapply for a license in the same manner as the original application under Section 745.04.

The City Manager's Office shall submit to the Kent Police Department a copy of all license renewals issued.

745.10 VENDING EQUIPMENT.

Vendors for Category "A" licenses may only conduct their business from vending equipment approved by the Kent Police Department and/or the Code Enforcement office and/or the City Health Department. All equipment must be constructed in a safe and professional manner, and the primary purpose of such equipment shall be that of vending. All vending vehicles that dispense food must conform to the requirements of the City of Kent Health Department and the State of Ohio food service laws. Vending equipment to be used on public streets shall be no larger than eight feet (8') wide, ten feet (10') high as measured from the ground and sixteen feet (16') long including the trailer hitch or tow bar. All equipment used by the vendor must be self contained within the vehicle. The equipment must be mobile, non-motorized and have at least one axle with which to move the equipment. All items sold must be contained upon the vending equipment itself. No part of the vending equipment may block, impede or hamper pedestrian movement or cause any hazard to pedestrians.

745.11 VENDING AREAS.

All vending on public streets and sidewalks of Kent, Ohio, shall be conducted only in the designated vending areas, upon implementation of this ordinance.

- (a) Category "A" license holders shall only vend in the five (5) spaces designated by the City Service Director on Water Street, Main Street, Depeyster Street and Franklin Avenue. No other vehicles may park in this area. Spaces are to be obtained on an annual basis by auction in December for the following year under guidelines established by the City Service Director. The auctions shall be held at 2:00 p.m. on the first Monday of December. Notice of the auction shall be published in the local newspaper at least one week prior to auction.

If not all spaces are sold at auction, remaining spaces will be sold on a first come first serve basis, with the cost being equal to the last price paid by a winning bidder in the same year. The auction for the first year of these regulations may be held whenever the Service Director directs.

- (b) Category "B" license holders shall only vend on the sidewalks on: Main Street between Lincoln Street and the main bridge over the Cuyahoga River; on Water Street between Portage Street and Erie Street; on Franklin Avenue between Main Street and College Street.
- (c) No vending shall take place anywhere else on the public streets in the City of Kent.

745.12 VENDING HOURS.

- (a) Category "A" license vending may be conducted between the hours of 7:30 a.m. and 3:00 a.m.
- (b) Category "B" license vending may be conducted between the hours of 7:30 a.m. and 3:00 p.m.
- (c) Vending shall not be conducted between 3:00 a.m. and 7:30 a.m. anywhere in the City of Kent, Ohio.
- (d) Category "C" license peddling may be conducted between the hours of 9:00 a.m. and 6:00 p.m.
- (e) No permitted vending equipment shall be left unattended on the street or sidewalks, at any time during vending hours. Vending equipment must be removed once the vendor has ceased operation. The City may remove any vending equipment left unattended or non-licensed vehicles. It shall be treated as an illegally parked vehicle pursuant to Kent City Code Chapter 356. This right is granted pursuant to Ohio Revised Code Section 723.01.

745.13 STREET SALES – GENERAL

No person licensed as a peddler or street vendor shall demonstrate, sell or offer for sale or barter any goods, wares, merchandise, food, confection or drink upon any highway or sidewalk or any other City owned property within the City except in accordance with all of the following provisions:

- (a) No merchandise shall be displayed or sold by a peddler or street vendor in any place within the City except a Street Vending District. This section shall not apply to a peddler or street vendor selling prepackaged ice cream, popsicles or frozen desserts of any kind for purposes of retail sale, or offered for retail sale, while operating a motor vehicle within the City.
- (b) No merchandise shall be displayed or sold to the occupants of vehicles stopped on roadways or alleys.
- (c) Each peddler or street vendor selling from a motor or animal drawn vehicle must comply with all traffic regulations at the location the vehicle is parked or standing.
- (d) No merchandise shall be displayed or sold at any sidewalk location where the sidewalk is less than twelve feet (12') in width from the private property line to the curbline.

- (e) No merchandise shall be displayed or sold within twenty feet (20') from the point of intersection of the curblines (except alleys), crosswalks or bus stop or stairway leading to or from any overhead walkway.
- (f) No merchandise shall be displayed or sold within ten feet (10') of a fire hydrant, standpipe, a sprinkler intake, a doorway or other access point to abutting property, a store window or a sidewalk elevator.
- (g) No merchandise shall be displayed or sold at a location which hinders or restricts access to a telephone booth, mailbox, parking meter, fire alarm call box or traffic control box.
- (h) No merchandise shall be displayed or sold within forty feet (40') of the location at which another peddler or street vendor is already displaying or selling merchandise. In the case of a dispute between peddlers or street vendors, the peddler or street vendor who arrived first on the day involved shall be deemed to have the privilege of operating at that location on that day. A peddler must continue to be there in person with wares to claim such privilege. Such distance shall be measured from the end of one display stand, table, cart, container or other appurtenance to the beginning of the next.
- (i) No merchandise or food shall be displayed or sold at a location within fifty feet (50') of an existing entrance of a business that sells food.
- (j) No merchandise shall be displayed or sold in a manner that blocks, obstructs or restricts the free passage of pedestrians or vehicles in the lawful use of the sidewalks or highways or ingress or egress to the abutting property.
- (k) All merchandise shall be displayed or sold from portable stands or containers. Each peddler or street vendor shall remove all merchandise, packaging, paper, containers, display stands or tables, or other materials brought to the location at the termination of sales each day. No permanent stands or displays will be permitted.
- (l) No peddler's or street vendor's display stand, cart, container or other appurtenances, paraphernalia, merchandise, supplies or signage shall occupy more than thirty six inches (36") of lateral sidewalk width, nor more than seventy two inches (72") of longitudinal sidewalk area.
- (m) Each peddler or street vendor during the period of selling shall keep the area within ten feet (10') of the location where the peddler or street vendor sells or displays merchandise free from all litter and debris arising from the operations, including the litter which arises from actions of customers in disposing of wrapping or packaging materials on merchandise sold by the peddler or street vendor.
- (n) No peddler's or street vendor's display stand, cart, container, or other appurtenance or paraphernalia shall be set up along street plantings, or street furniture, or on grass, or park areas.
- (o) Peddlers or street vendors shall at all times exercise reasonable care that their merchandise, packaging material, display equipment and other paraphernalia shall not

create a safety or health hazard to customers or other persons using the public highways or sidewalks.

- (p) Category "A" license vendors shall only sell and display what they are selling on the sidewalk side of their cart, vehicle, trailer or wagon.
- (q) No food, confection or drink except prepackaged and/or containerized products shall be displayed or sold from any unimproved public property, including unimproved sidewalks or pedestrian walkways.
- (r) Each peddler or street vendor must police their own area and a ten foot (10') radius of same to keep it free from debris and litter.
- (s) No street sales shall be conducted and no peddler's or street vendor's display stand, cart, container or other appurtenance or paraphernalia shall be set up on private property, or on the sidewalks adjacent to private property, without prior written consent of such property owner or without the prior written consent of the owners of any property adjoining or abutting such property.
- (t) Nothing herein shall be construed to prohibit the distribution of noncommercial handbills, cards, leaflets, other literature of the sale of newspapers and magazines on the sidewalks.
- (u) All food sales must be approved by the City of Kent Health Department.

745.14 TRESPASSING OF PEDDLERS OR SOLICITORS.

No peddler or solicitor shall attempt to peddle or solicit upon any property that has a public display, sign or warning prohibiting peddling or soliciting on the property.

Peddlers or solicitors who violate this section may be charged with trespassing and may have their licenses revoked or suspended.

745.15 FALSE REPRESENTATION.

No peddler or solicitor shall falsely represent or falsely insinuate employment, partnership or other affiliation with a legitimate enterprise where, in fact, such employment, partnership or affiliation does not exist.

745.16 EXEMPTIONS.

- (a) The following persons shall be exempt from the licensing procedures outlined in Section 745.04 to 745.10, inclusive:
 - i) Any person soliciting or peddling anything which such person has personally manufactured or produced.
 - ii) Any farmer, poultry man or horticulturist, who is a person, who is soliciting or peddling his own product, but who has not bought goods for resale to sell along with his own product.

- iii) Any person, eighteen (18) or over soliciting for personal services to be performed by the person so soliciting.
 - iv) The provisions of this chapter shall not apply to the peddling or soliciting of ice, milk, cream, ice cream, butter, eggs, cottage cheese or any dairy products.
 - v) The provisions of this Chapter shall not apply to persons of the age of eighteen (18) or younger selling items for non-profit agencies/schools, nor to salesmen or agents for wholesale houses or firms who solicit orders from or sell to retail dealers for resale or to manufacturers for manufacturing purposes or to bidders for public works or supplies.
 - vi) People distributing or disseminating literature and/or information.
 - vii) Any person who regularly sells food to local employees out of their vehicles, when the caterer/vendor goes to the place of employment of its customers, at the customer's request.
 - viii) Any person, vending, peddling or soliciting under special event authorization of the City and the event sponsor, do not have to register under this chapter. They do have to comply with the event sponsor rules and regulations, tax laws, and health laws, rules and regulations.
- (b) The following persons are exempt from the prohibition against the business, of selling merchandise, wares, produce, fruits, vegetables or products of any kind on public streets or sidewalks in the City:
- i) Sidewalk sales conducted by charitable and nonprofit organizations, where approved by the adjacent landowner and the City Manager's office.
 - ii) Sales conducted in commercial parking lots, where approval of the parking lot owner has been obtained.
 - iii) Periodic sidewalk sales by downtown merchants with presales notice to the City Manager's office.
 - iv) The delivery of merchandise or products of any kind to places of business or residences or the sale of products from house to house.
- (c) **Farmers Market:** The City of Kent has recognized a portion of the parking lot on the Northwest corner of Summit Street and Franklin Avenue, for the express purpose of maintaining an area for persons to set up a farmer's market. The City shall not require these sellers to be licensed under this chapter.

745.17 REVOCATION OR SUSPENSION OF LICENSE.

- (a) The following conditions may allow for the revocation or suspension of a vending, peddling or soliciting license:
- i) Violations of any of the provisions of this chapter or other law or ordinance relating to the operation of the business or enterprise for which the license was issued; or upon conviction of a license for any federal, state or city law or ordinance involving moral turpitude;
 - ii) For any conditions or considerations which, had they existed at the time of issuance, would have been valid grounds for the denial of a license application;
 - iii) For any misrepresentation of any information given on the application discovered after the issuance of the license;
 - iv) For any public offense or violation by the licensee relating to the vending, peddling or soliciting activity; and/or
 - v) For any good cause shown.
- (b) Licenses issued for vending, peddling or soliciting may be revoked or suspended by the code enforcement office for any of the causes enumerated in this section, using the following procedure:
- i) The code enforcement office or the Police Department shall issue an order suspending the license, which shall become effective immediately upon service of a written notice to the licensee. Such notice shall specify the reason for termination and may provide for conditions upon which the license may be reinstated, upon compliance with said conditions.
 - ii) Should no conditions be given for the possible reinstatement of the terminated license, the order shall constitute a revocation of the license.
 - iii) Appeals may be initiated on any suspension or revocation, following the guidelines in Section 745.18 of this chapter.

745.18 APPEALS.

Any person aggrieved by denial, suspension or revocation of license may, within five (5) working days submit to the Clerk of Council an appeal to be heard by the Board of Zoning Appeals.

The hearing shall be held within forty (40) days of the Clerk of Council receiving the Notice of Appeal.

The Clerk of Council or Community Development Department shall notify all members of the Board of the time and place of the appeals hearing, not less than twelve (12) hours in advance thereof. The appellant may appear and be heard in person or by Counsel. If, after the hearing, a majority of the members at such hearing declare in favor of the appellant, the license must be approved or reinstated, as the case may be; otherwise, the order appealed from shall become final.

745.19 SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or any part thereof, is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional or invalid.

745.99 PENALTIES.

- a) Any first violation of any provision of this chapter (unless otherwise specified), is a minor misdemeanor. A second or additional violation of a provision of this chapter within a two (2) year period is a misdemeanor of the fourth degree.

- b) Any person found vending, peddling or soliciting without a license will be asked to cease said behavior. Failure to cease vending, peddling or soliciting after a request to do so by a City official is a fourth degree misdemeanor.

MEMORANDUM
DIVISION OF ENGINEERING
City of Kent Department of Public Service

DATE: December 09, 2010

TO: Dave Ruller
Jim Silver
Linda Copley

FROM: Jim Bowling

SUBJECT: Crain Avenue Resurfacing – ODOT Agreement

Engineering is requesting agenda time to obtain signatory authority to enter into an LPA agreement with O.D.O.T. for the resurfacing of Crain Avenue from North Willow Street to Elmwood Drive.

The agreement is transmitted with this correspondence for Jim Silver to review. This is the same agreement that we have used with ODOT on the Spaulding Drive Bridge Replacement, Portage Hike and Bike Trails, SR 59 Signalization Improvements and Summit Street Resurfacing.

C: Pat Homan, Engineering Technician

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the City of Kent, hereinafter referred to as the LPA, 940 Overholt Rd., Kent OH 44240.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (C) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The resurfacing of Crain Ave from North Willow St. to Elmwood Drive (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES

- 2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:
 - a. Section 5501.03(C) of the Ohio Revised Code;
 - b. ODOT Policy No. 25-001(P), Development Process Policy for Locally-Administered Transportation Projects;
 - c. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
 - d. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105.
- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be \$222,000 as set forth in Attachment 1. ODOT shall provide to the LPA 80 percent of the eligible construction costs, up to a maximum of \$172,040 in Federal MPO STP funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through

ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.

- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication. Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: www.dot.state.oh.us/drrc.)

- 4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the PROJECT Design Engineer and serve as the LPA's principal representative for attending to PROJECT responsibilities, or engage the services of a pre-qualified ODOT consultant who has been chosen using a Qualification-Based Selection (QBS) process as required pursuant to Ohio Revised Code sections 153.65 through 153.71. The pre-qualified list is available on the ODOT web page at <http://www.dot.state.oh.us/CONTRACT>.)

- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.

- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.

- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at <http://www.dot.state.oh.us/CONTRACT>. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.

- 5.3 ODOT shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements.
- 5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. As specified in ODOT's Real Estate Policy and Procedures Manual, Section 5202.01-II-(B), any LPA staff who perform any real estate functions shall be prequalified by the ODOT's Office of Real Estate. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work can not also perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of

the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.

- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8 The LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the Ohio Revised Code regarding all activities relating to Railroad-Highway projects.
- 6.9 Consistent with sections 10.1 and 10.4 of this agreement, the LPA shall assure that if any property acquired for this project is subsequently sold for less than fair market value that all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 of this agreement the LPA shall assure that if the LPA grants a permit or license for the property acquired for this project that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.

7. ADVERTISING, SALE AND AWARD

- 7.1 The LPA shall not advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.
- 7.4 The LPA shall incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts, as well as appropriate subcontracts and purchase orders.
- 7.5 The LPA shall require the contractor to be enrolled in, and in good standing with, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP) or a similar program

approved by the Bureau of Workers' Compensation, and require the same of any of its subcontractors.

- 7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in force **at the time of bidding, at the time of award, and through the life of the construction contract**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. In accordance with FHWA Form 1273 Section VII, and 23 CFR 635.116, the "prime" contractor must perform no less than 30 percent of the total original contract price. The 30 percent prime requirement does not apply to design-build contracts.
- 7.7 In accordance with Section 153.54, et. seq. of the Ohio Revised Code, the LPA shall require that the selected contractor provide a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not subject to a finding for recovery under R.C. 9.24, or that the contractor has taken the appropriate remedial steps required under R.C. 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <http://www.auditor.state.oh.us/WhatsNew/FFR/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.9 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.10 After analyzing all bids for completeness, accuracy, and responsiveness, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this agreement, if applicable.

8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this agreement.
- 8.2 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.
- 8.3 The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a

written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

8.4 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.

8.5 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the Ohio Revised Code may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.

8.6 Payment or reimbursement to the LPA shall be submitted to:

James Bowling
930 Overholt Road
Kent, OH 44240
Phone: 330-878-8106

8.7 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all federal funding commitments.

8.8 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and if necessary, unilaterally modify any other term of this Agreement in order to preserve its federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

8.9 Any right, claim, interest, and/or right of action, whether contingent or vested, of the LPA, arising out of or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the "Claim"), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in and to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.

- 8.10 After completion of the PROJECT and in accordance with Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it had received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the project, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

- 10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.
- 10.2 The LPA agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.
- 10.3 For any project in which the Engineer's Estimate exceeds \$500,000, the LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all

contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this project for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the Ohio Revised Code.

WAIVER PROCESS FOR DBE GOALS

In the event the Contractor is unable to meet the DBE Goal placed on this project, a request for waiver of all or part of the goal may be made to the Ohio Department of Transportation through the LPA. The Contractor must document the progress and efforts being made in securing the services of DBE subcontractors. In the event the Contractor is unable to meet the DBE Goal placed on this Local Let project, a request for a waiver of all or part of the goal may be made. The written request must indicate a good faith effort was made to meet the goal and be sent to the LPA contracting authority. The LPA forwards the request with recommended action to the ODOT District. The ODOT District then makes recommendation and forwards the request to Division of Equal Opportunity, 1980 West Broad Street, Columbus, Ohio, 43223. There will be no extension of time for the project granted if the Contractor wishes to avail himself of this process. If an item of work subcontracted to a DBE firm is non-performed by LPA or the subject of an approved VECP, the Contractor may request a waiver for the portion of work excluded.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. The LPA must obtain written, signed documentation from the contractor that the DBE goal has been satisfied prior to executing the contract with the contractor. The LPA, in turn, must provide such documentation to ODOT in order for ODOT to encumber the Federal/State funds.

10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest (hereinafter referred to as the "LPA") agrees as follows:

(1) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

(2) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(3) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be

notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

(4) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration (hereinafter "FHWA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the LPA under the contract until the LPA complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs (1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT shall relinquish any such protections should they exist.
- 11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with section 12.3 of this Agreement.

12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between

the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.

13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. **NOTICE**

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

If to the LPA:	If to ODOT:
James Bowling	ANTHONY ZUMBO, PE, PS
930 Overholt Road	ODOT DISTRICT 4 LPA COORDINATOR
Kent, OH 44240	2088 SOUTH ARLINGTON RD.
	AKRON OH 44306

15. **GENERAL PROVISIONS**

15.1 *Audit Requirements:* The LPA shall comply with the audit requirements of 49 CFR Part 18.26 (Federal Single Audit Act) for any and all projects with a total cost of \$500,000 or more.

15.2 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final Federal voucher for reimbursement of PROJECT expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

15.3 *Ohio Ethics Laws:* In accordance with Executive Order 2007-01S, the LPA, by signing this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no action inconsistent with those laws and this order. The LPA understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this contract and may result in the loss of other contracts with the State of Ohio.

15.4 [Conditional] *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its

employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

- 15.5 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.6 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.7 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.8 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.9 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: _____

STATE OF OHIO
OHIO DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Title: _____

Jofene M. Malitaris
Director

Date: _____

Date: _____

Approved as to form:

James R. Silver, Law Director
City of Kent

Certificate of Director of Budget and Finance

It is hereby certified that the amount **NINE THOUSAND NINE HUNDRED SIXTY Dollars (\$49,960)** required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the City Treasury or in the process of collection to the credit of the CAPITAL Fund free from any obligation or certificates now outstanding.

Dave Coffee, Director of Budget and Finance

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

USES											
PE Preliminary develop: environ clearance	\$0		\$0								\$0
PE final design; construction plans and specs	\$0		\$0								\$0
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION	\$0		\$0								\$0
ADVERTISING, COMPETITIVE BIDDING & CONTRACT AWARD	\$0		\$0								\$0
CONSTRUCTION fund source 1	\$38,709	20	LNTP	\$154,836	80	4TA7					\$193,545
Const. admin, mat'l testing & inspection	\$4,301	20	LNTP	\$17,204	80	4TA7					\$21,505
CONSTRUCTION fund source 2	\$6,455	100	LNTP	\$0							\$6,455
Const. admin, mat'l testing & inspection	\$495	100	LNTP	\$0							\$495
OTHER DIRECT OUT -OF-POCKET EXPENSES (provide details)	\$0			\$0							\$0
	\$43,624			\$172,040							\$222,000

Attachment 2

DIRECT PAYMENT OF CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's contractor shall be paid directly to the contractor in the prorata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this agreement, and shall indicate that the payment is to be made to the contractor. In addition, the invoice must state the contractor's name, mailing address and Federal tax ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

We the City of Kent request that all payments for the Federal/State share of the construction costs of this agreement performed by _____

{CONTRACTOR'S NAME}

be paid directly to _____
{CONTRACTOR'S NAME}

Contractor Name:
OAKS Vendor ID:
Mailing Address:

LPA signature

LPA Name:
Oaks Vendor ID:
Mailing Address:

Approved, ODOT signature