

**CITY OF KENT AND KENT STATE UNIVERSITY MUTUAL AID AGREEMENT FOR  
EMERGENCY POLICE SERVICES AND JOINT POLICE PATROL AUTHORITY**

**THIS AGREEMENT** made this \_\_\_\_\_ day of Month, 2012, by and between the City of Kent, Ohio, hereinafter called the "CITY", acting pursuant to Ordinance No. \_\_\_\_\_, passed \_\_\_\_\_, 2012, and Kent State University, hereinafter called the "UNIVERSITY", acting pursuant to Resolution No. \_\_\_\_\_, passed by its Board of Trustees on \_\_\_\_\_, 2012.

**WITNESSETH:**

**WHEREAS**, the CITY and the UNIVERSITY maintain separate police departments pursuant to Sections 3 and 7 of Article XVIII of the Ohio Constitution and the Ohio Revised Code Section 3345.04 AND 3345.041 respectively; and

**WHEREAS**, the CITY and the UNIVERSITY desire to provide for the mutual assistance and interchange and use of their police personnel and equipment in situations where one department needs and requests the assistance of the other; and

**WHEREAS**, the CITY, by virtue of Article XVIII of the Ohio Constitution, and the UNIVERSITY, by virtue of Ohio Revised Code Section 3345.041, are empowered to provide such mutual assistance by means of this Agreement;

**NOW, THEREFORE**, in consideration of the promises and obligations which are hereinafter set forth, the parties hereto agree as follows:

- 1) The law enforcement officers of the University shall have full authority to enforce both state laws and municipal ordinances while outside the jurisdiction of the University and in the Jurisdiction of the City if:
  - a) University officers observe violations or are responding to calls for services within the geographical boundaries of the joint patrol district, within the City of Kent. The joint patrol district is defined by the area described within the perimeter of the following streets: South Lincoln St. from Main St. southward to Summit St., west to S. Depeyster St., north to Haymaker Parkway, northeast to E. Main St., east to N. Lincoln St., north to Crain Ave., southeast to Wilson Ave., and southward to E. Main St., and westward on E. Main St. to the beginning point. The full right-of-way of each of these streets shall be included in the district; or
  - b) They are participating in a cooperative enforcement effort that has been approved in advance by the officers in charge of both jurisdictions; OR
  - c) Their assistance is requested by the police officer in charge of the city staff, and such assistance is approved by the police officer in charge of the University; OR
  - d) University officers are working a joint patrol unit with a City office, pursuant to program guidelines established in a memorandum of understanding between the two agencies.

2) The necessity, availability, and use of police equipment or personnel requested shall be subject to priority of use by the responding party within its own territorial limits. The discretion as to what police resources are necessary or available to the responding party for use in the emergency or disaster, lies solely with the Chief of Police of the responding party's police department, or designate.3) It is agreed there shall be no reimbursement by either party for loss or damage to equipment of the other while engaged in activity pursuant to this agreement.

3) Further, the parties may enter into mutual assistance for criminal investigations, or other public safety related functions which transcend the individual jurisdictional boundaries of the individual agencies. In such a circumstance, the parties may agree to enter into written memoranda of agreement regarding the nature and scope of such a joint operation.

4) When the UNIVERSITY's police officers are rendering assistance to the CITY in areas within the corporate limits of the CITY and not on UNIVERSITY property, they shall have full police authority commensurate with the authority enjoyed by the CITY's police officers.

5) In the event police resources are actively engaged within the territorial limits of the requesting party and such responding resources are required in the home area, the right is reserved to withdraw any and all of such police personnel and equipment for servicing the home area. It is agreed that no liability shall arise in any event for a failure to respond to a police emergency from a requesting party or for the necessary withdrawal of police facilities by either hereto.

6) A reasonable charge, as mutually agreed upon by the parties, may be made or levied for the services furnished in non-emergency situations by either party pursuant to the Agreement. Each party shall assume the expense of loss or damage to equipment or apparatus that may occur while in the requesting party's territorial limits or while responding to a call pursuant to this Agreement. The CITY will not indemnify and hold harmless the UNIVERSITY for any damages awarded by the Court of Claims in any civil action arising from any action or omission of any UNIVERSITY law enforcement officer acting pursuant to the Agreement. The UNIVERSITY will not indemnify and hold harmless the CITY for any damages awarded by the Court of Claims in any civil action arising from any action or omission of any CITY law enforcement officer acting pursuant to the Agreement. In addition, each party expressly waives any and all claims against the other party for compensation for any loss, damage, personal injury or death occurring as a result of or in connection with the performance of this Agreement.

7) All personnel of the responding agency, when responding to a call from a requesting agency, shall be acting within the scope of their employment of the responding party while en route

to, en route from and while acting within the territory of the requesting party and shall report promptly to the senior ranked officer of the requesting party or other officer requesting assistance.

8) When additional assistance is called, pursuant to the terms of this contract, the senior police officer of the requesting party present and in charge of the department

of such party shall have full charge of and authority over any assisting equipment and personnel responding pursuant to such a call.

9) Police officers who are rendering emergency assistance to the other department shall be entitled to all the rights and benefits of the Chapter 4123 of the Ohio Revised Code and the police pension fund, as applicable, to the same extent as when performing services within their respective territories.

10) Radio communication between parties shall be conducted on radio frequencies shared by both parties.

11) Neither of the parties hereto shall be liable for any damages to the other party for failure to answer, neglect in answering any call for additional police protection, for inadequacy, negligent operation of equipment and apparatus, for any cause whatsoever growing out of such use of said equipment and apparatus, or lack of performance of duties by police department members. Neither of said parties shall be liable in any manner or event for damages for personal injuries suffered by any member of said police department of the other contracting party hereto.

12) This Agreement shall be in effect for the period beginning July 1, 2012, provided however, that either party may withdraw from such mutual aid agreement upon giving the other party at least sixty (60) days prior written notice to such effect.

13) The parties agree herewith to an annual review of administrative procedures, policies, and their effects as may relate to the operation of this Agreement.

**IN WITNESS WHEREOF**, said parties hereby have, upon the dates hereinafter set forth, caused this Agreement to be executed.

**KENT STATE UNIVERSITY:**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Gregg S. Floyd  
VP, Finance & Administration

**CITY OF KENT, OHIO:**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
David Ruller  
City Manager

CITY OF KENT  
DEPARTMENT OF PUBLIC SERVICE  
DIVISION OF ENGINEERING

MEMO

TO: Dave Ruller  
Linda Copley

FROM: Jim Bowling

DATE: May 30, 2012

RE: Crain Avenue Resurfacing – LPA Federal Local-Let Project Agreement

Staff is requesting Council time to review and approve the City to enter into the attached LPA Federal Local-Let Project Agreement for the resurfacing of Crain Avenue. Crain Avenue will be resurfaced from the end of the Fairchild Bridge Project work just east of N. Water Street to N. Willow Street where the Crain Avenue Resurfacing Project completed in 2011 started. The opinion of probable project costs is \$103,000. Federal funding will contribute 80% of the eligible costs up to \$82,400 towards the completion of the project.

C: Gene Roberts  
Pat Homan  
Jim Silver

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 milling and resurfacing, including full depth asphalt repair where necessary, on Crain Avenue from Lake St to North Willow (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 \$ 103,000 as set forth in Attachment 1. ODOT shall provide to the LPA 80 percent of the eligible costs, up to a maximum of \$ 82,400 in Federal 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](http://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 Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not subject to suspension or debarment under the Federal Excluded Parties System List (EPSL). Contractors on the EPSL are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and the FHWA codification of the Common Rule for Nonprocurement suspension and debarment. The EPSL can be viewed on the Federal EPSL website at <https://www.epls.gov/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.10 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.
- 7.11 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, PE**  
**930 ~~940~~ Overholt Rd.**  
**Kent OH 44240**  
**330-678-8106**
- 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 aClaim), 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 Office of Contracts, 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:

James Bowling, PE	ODOT DISTRICT 4 LPA COORDINATOR
430 940 Overholt Rd.	2088 SOUTH ARLINGTON RD.
Kent OH 44240	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:* LPA agrees that it they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
- 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: \_\_\_\_\_

Jerry Wray  
Director

Title: \_\_\_\_\_

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 TWENTY THOUSAND SIX HUNDRED Dollars (\$20,600) 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

\_\_\_\_\_  
Date

POR-CRAIN AVE RESURFACING  
COUNTY-ROUTE SECTION

92656  
PID NUMBER

25007  
AGREEMENT NUMBER

Attachment 1

**PROJECT BUDGET – SOURCES AND USES OF FUNDS**

USES	LPA FUNDS		FHWA FUNDS		1011 Revenue Credit FUNDS	
	amount	%	amount	%	amount	%
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	\$18,540	20	\$74,160	80	\$0	
Const. admin, mat'l testing & inspection	\$2,060	20	\$8,240	80	\$0	
CONSTRUCTION fund source 2	\$0		\$0		\$0	
Const. admin, mat'l testing & inspection	\$0		\$0		\$0	
OTHER DIRECT OUT -OF-POCKET EXPENSES (provide details)	\$0		\$0		\$0	
	\$20,600		\$82,400		\$0	
					\$92,700	
					\$10,300	
					\$0	
					\$0	
					\$0	
					\$103,000	

## 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

CITY OF KENT  
DEPARTMENT OF PUBLIC SERVICE  
DIVISION OF ENGINEERING

MEMO

TO: Dave Ruller  
Linda Jordan

FROM: Jim Bowling

DATE: May 25, 2012

RE: Kent Panini's LLC License Agreement for Outdoor Dining

The Engineering Division is requesting Council time to review and approve a request from Kent Panini's LLC in conjunction with the Fairmount mixed-use development. Kent Panini's LLC is requesting to construct an outdoor patio at the northeast corner of South Water Street and Haymaker Parkway (SR 59). The patio will provide outdoor dining for Panini's restaurant located in the new Davey Resource Building. Kent Panini's LLC worked with the engineering department to minimize the impacts to the right-of-way and still provide the active street life that an outdoor patio will provide. The patio will not require any walls or permanent structures other than a fence in the right-of-way. The fence will be constructed to contain the dining area. The engineering department has reviewed the request to verify that it will not adversely impact existing utilities in the area, it will still provide a generous walk width (11 feet) around the patio and it will not prevent the City from maintaining Water Street and SR 59 in the future.

Attached is a copy of the proposed License Agreement.

C: Gene Roberts  
Jim Silver  
Suzanne Robertson  
Bill Lillich

**CITY OF KENT, OHIO**  
**LICENSE AGREEMENT**

THIS AGREEMENT is made by and between the CITY OF KENT, OHIO, hereinafter called "City" and KENT PANINI'S, LLC, hereinafter called the "Licensee."

The City is the owner, in fee simple, of land, hereinafter known as the "Property." For and in consideration of the covenants, conditions, agreements and stipulations of the License expressed herein, the City does hereby agree the Property may be used by the Licensee for the purpose as outlined in Part 1 below, in accordance with the laws and Charter of the City of Kent. The Property is more particularly described in the attached exhibits listed below.

Exhibit "A" – Site Plan  
Exhibit "B" – License Area Drawing  
Exhibit "C" – License Area Description

The parties hereto covenant and agree as follows:

**1. NATURE OF INTEREST:**

The Licensee understands that by issuing this license, the City has merely granted the Licensee the right to occupy the right-of-way and this license does not grant or convey to the Licensee any interest in the Property.

**2. USE:**

2.1 The Property shall be used for the purpose of: Constructing and operating an outdoor patio space for restaurant use including the sale of alcohol. The installation of fencing to contain the patio space is also included.  
and for no other purpose.

2.2 A 36 inch minimum pull back dimension shall be used for the table and seating layout in the patio.

2.3 No structural alterations may be made to the City's property, except as permitted herein, without the express written permission of the City of Kent, Director of Public Service.

**3. TERM:**

The City does hereby agree the Property may be used by the Licensee for a term of one (1) year commencing on \_\_\_\_\_, 2012, and ending on \_\_\_\_\_, 2013 unless terminated earlier by either party. This license will automatically renew yearly unless one (1) month before expiration either party notifies the other of its intention to terminate per Paragraph 1.

**4. NECESSARY LICENSES AND PERMITS:**

**4.1** Licensee shall be licensed to do business in the State of Ohio and City of Kent, and upon request, Licensee shall demonstrate to the City that any and all such licenses are in good standing. Correspondence shall be addressed as follows:

All correspondence to the City shall be addressed:  
Service Director  
City of Kent  
930 Overholt Road  
Kent, Ohio 44240

All correspondence to the Licensee shall be addressed:

Kent Panini's, LLC  
25201 Chagrin Blvd., Suite 300  
Beachwood, Ohio 44122

**4.2** Licensee shall secure all necessary permits required in connection with the use of the Property and shall comply with all federal, state and local statutes, ordinances, rules, or regulations which may affect, in any respect, Licensee's use of the Property. Licensee shall, prior to the commencement of any work, obtain and thereafter maintain, at its sole cost and expense, all licenses, permits, etc., required by law with respect to its business use of the Property.

**5. STORAGE AND VENDING:**

No storage of materials or supplies of any nature will be permitted on the Property except as directly related to the agreed business use of the Property.

**6. TAXES:**

Licensee agrees to be responsible for and to timely pay all taxes and/or assessments that may be legally assessed on Licensee's interest, or on any improvements placed by Licensee on said Property, during the continuance of the license hereby created, including any real estate taxes. The Licensee must provide written notice to the City, at the address referenced in Paragraph 4.1, within thirty (30) days of payment of all taxes and/or assessments.

**7. DIRECTOR OF PUBLIC SERVICE TO ACT FOR CITY:**

The granting of this permit shall not be construed as an abridgment or waiver of any rights which the Director of Public Service has in exercising his jurisdictional powers over the City highway system. The City Director of Public Service shall act for and on behalf of the City of Kent in the issuance of and carrying out the provisions of this permit.

**8. CITY USE OF PROPERTY:**

If for any reason the Director of Public Service or his duly appointed representative deems it necessary to order the removal, reconstruction, relocation or repair of the Licensee's changes to the City's property, then said removal, reconstruction, relocation or repair shall be promptly undertaken at the sole expense of the Licensee's thereof. Failure on the part of the Licensee to conform to the provisions of this permit will be cause for suspension, revocation or annulment of this permit, as the Director of Public Service deems necessary.

**9. MAINTENANCE OF PROPERTY:**

Licensee shall, at its sole expense, keep and maintain the Property free of all weeds, debris, and flammable materials of every description, and at all times in an orderly, clean, safe, and sanitary condition consistent with neighborhood standards. A high standard of cleanliness, consistent with the location of the area as an adjunct of the City, will be required. Defoliant, noxious, or hazardous materials or chemicals shall not be used or stored on the Property.

**10. MAINTENANCE OF IMPROVEMENTS:**

**10.1** Licensee, at Licensee's own cost and expense, shall maintain all of his/her improvements to the Property. Licensee shall take all steps necessary to effectively protect the Property from damage incident to the Licensee's use of such Property, all without expense to the City.

**10.2** Licensee shall be liable to, and shall reimburse the City for, any damage to City owned property that in any way results from or is attributable to the use of said Property by the Licensee or any person entering upon the same with the consent of the Licensee, expressed or implied.

**11. HOLD HARMLESS:**

Licensee shall occupy and use Property at its own risk and expense and shall save the City, its officers, agents, and employees, harmless from any and all claims for damage to property, or injury to, or death of, any person, entering upon same with Licensee's consent, expressed or implied, caused by any acts or omissions of the Licensee.

**12. INSURANCE:**

**12.1** At the time of the execution of this Agreement, Licensee shall, at its own expense, take out and keep in force during the terms of this Agreement:

(a) Liability insurance, in a company or companies to be approved by the City to protect against any liability to the public incident to the use of, or resulting from injury to, or death of, any person occurring in or about, the Property, in the amount of not less than *Two Million Dollars (\$2,000,000.00)*, to indemnify against the claim of one person, and in the amount of not less than *Four Million Dollars (\$4,000,000.00)* against the claims of two (2) or more persons resulting from any one (1) accident.

(b) Property damage or other insurance in a company or companies to be approved by the City to protect Licensee, and the City against any and every liability incident to the use of or resulting from any and every cause occurring in, or about, the Property, including any and all liability of the Licensee, in the amount of not less than *One Hundred Thousand Dollars (\$100,000.00)*. Said policies shall inure to the contingent liabilities, if any, of the Licensee and the City, and shall obligate the insurance carriers to notify Licensee and the City, in writing, not less than thirty (30) days prior to cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the Licensee and the City.

**12.2** A copy of the "Certificate of Insurance" will be submitted to the City at the time of execution of license and annually thereafter.

**13. MODIFICATION:**

The terms of this Agreement may be modified upon agreement of the parties.

**14. REVOCAION AND TERMINATION:**

**14.1** The City may revoke this license at any time. The Licensee may terminate this Agreement at any time.

**14.2** In the event this license is revoked or the Agreement is terminated the Licensee will peaceably and quietly leave, surrender, and yield up to the City the Property. The Property will be restored to its previous condition at the expense of the Licensee and no costs for removal will be reimbursed by the City.



14.3 Upon revocation of the license or upon termination or expiration of Agreement, any personal property, or other appurtenances, including all footings, foundations, and utilities, placed on the City property will be removed by Licensee. If any such appurtenances are not so removed after ninety (90) days written notice from the City to the Licensee, the City may proceed to remove the same and to restore the Property and the Licensee will pay the City, on demand, the reasonable cost and expense of such removal and restoration.

15. **RELOCATION:**

A Licensee who licenses property from the City shall not be eligible for relocation payments.

16. **UTILITIES**

Nothing in this License Agreement is intended, nor shall it, limit the authority granted to private and public utilities from using the right-of-way to maintain their existing infrastructure as granted in the Ohio Revised and Administrative Codes.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate by the parties hereto as of the date herein last written below. Licensee acknowledges receipt of a copy of this Agreement and agrees to comply with the provisions herein contained.

**LICENSEE(S):**

_____	_____
Signature	Signature
_____	
Mailing Address	
_____	
_____	_____
Telephone	Date

**CITY OF KENT, OHIO**

_____	_____
Director of Public Service	Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
James R. Silver, Law Director  
City of Kent

**EXHIBIT "A"**  
**SITE PLAN**

SK-1

DESIGNER  
MH

PROJECT MANAGER  
DS

JOB NO.  
2011020.46

CITY OF KENT  
DOWNTOWN REDEVELOPMENT  
KENT, OHIO

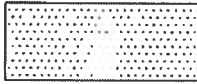
PANINI'S PATIO  
LICENSE TO OCCUPY  
REVISED 5/15/12



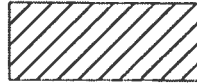
GPD GROUP  
320 South Main Street, Suite 2331 Akron, Ohio 44311  
330.572.1000 Fax 330.572.1101

LEGEND

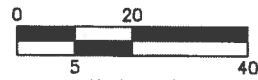
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- 000--- PROPOSED CONTOUR
- --- PROPOSED DRAINAGE SLOPE & DIRECTION
- --- ELECTRIC DUCT BANK
- --- WATER LINE
- --- STORM SEWER
- --- TELEPHONE LINE
- R/W --- RIGHT-OF-WAY LINE



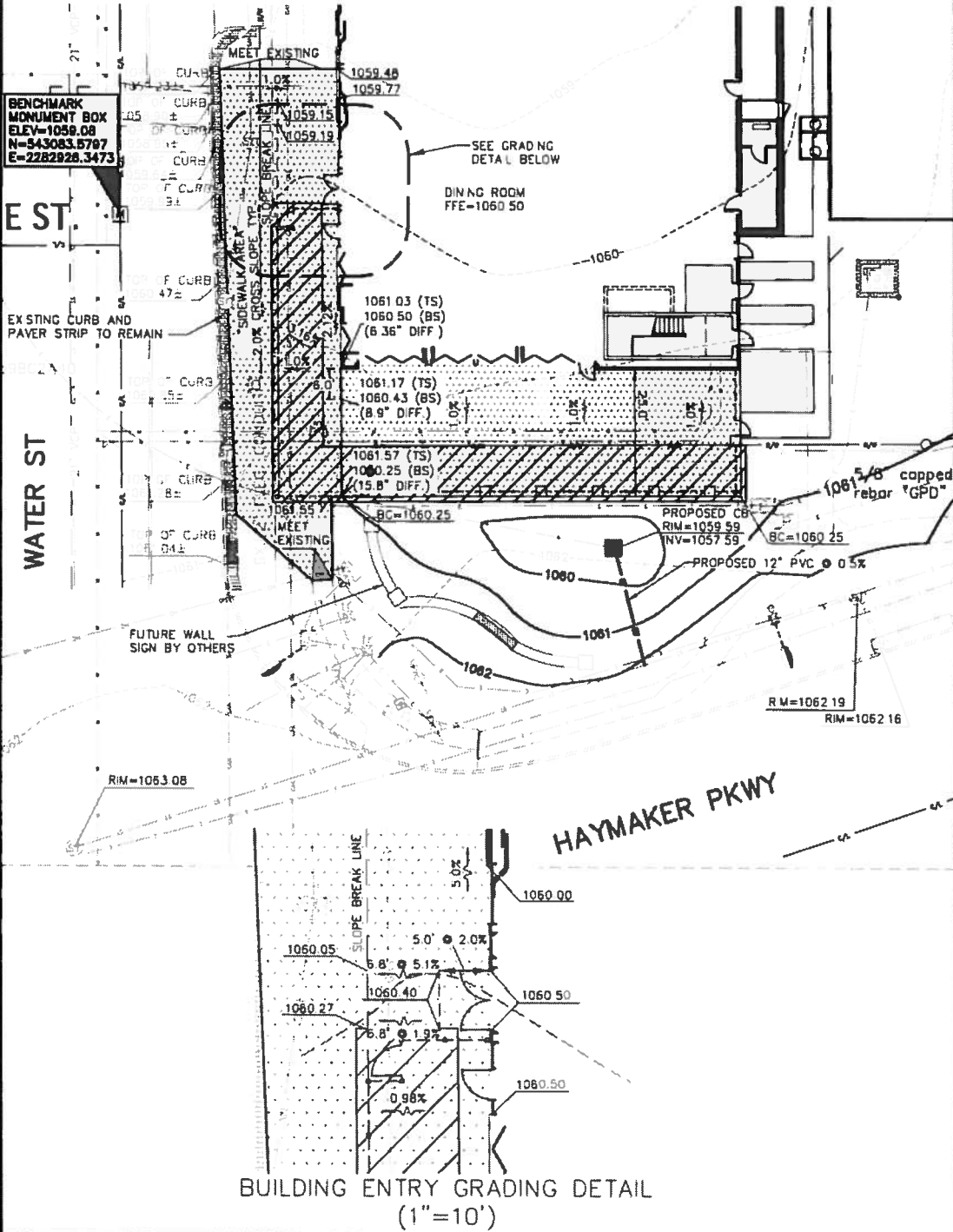
PROPOSED 4" CONCRETE WALK PAVEMENT PER CITY OF KENT SPEC ITEM 6.8.010



LICENSE TO OCCUPY AREA



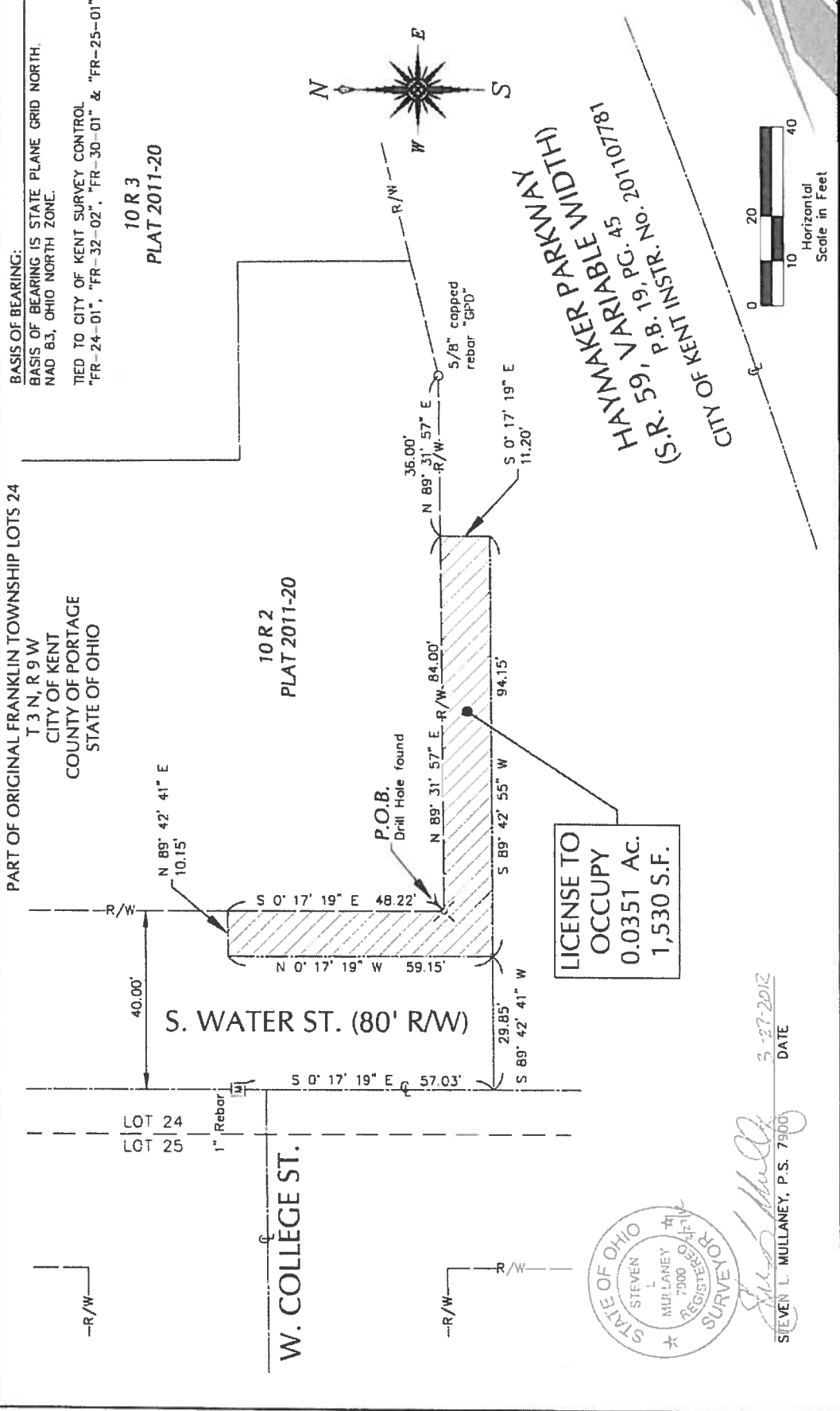
Horizontal Scale in Feet



BUILDING ENTRY GRADING DETAIL (1"=10')

Youngstown  
Seattle  
Phoenix  
Marion  
Louisville  
Indianapolis  
Columbus  
Cleveland  
Atlanta  
Akron

**EXHIBIT "B"**  
**LICENSE AREA DRAWING**



Alton Atlanta Cleveland Columbus Indianapolis Louisville Marion Phoenix Seattle Youngstown

Survey Plat 2011-20 (10 R 2 & 10 R 3) - Project Name: Downtown Redevelopment

**EXHIBIT "C"**  
**LICENSE AREA DESCRIPTION**

**DESCRIPTION OF  
LICENSE TO OCCUPY**

Situated in the City of Kent, County of Portage, State of Ohio, and known as being a part of Original Franklin Township Lot 24, Township 3 North, Range 9 West, and being a portion of the existing right of way of S. Water St. (80 feet wide) and a part of the existing right of way of Haymaker Parkway (S.R. 59, variable width) as recorded in Plat Book 19, Page 45 and City of Kent deed, Instrument No. 201107781 and being further bounded and described as follows:

Beginning at a Drill Hole found at the southwest corner of Lot 10 R 2 as recorded in Plat 2011-20, said Drill Hole found also being the intersection of the east right of way line of said S. Water St. and the north right of way line of said Haymaker Parkway, thence clockwise along the following six (6) courses and distances:

- 1) Along said north right of way line and the south line of said Lot 10 R 2, N 89° 31' 57" E for a distance of 84.00 feet to a point, said point witnessed by a 5/8 inch rebar with cap "GPD" found, N 89° 31' 57" E at 36.00 feet;
- 2) S 0° 17' 19" E for a distance of 11.20 feet to a point;
- 3) S 89° 42' 55" W for a distance of 94.15 feet to a point;
- 4) N 0° 17' 19" W for a distance of 59.15 feet to a point;
- 5) N 89° 42' 41" E for a distance of 10.15 feet to a point on the east right of way line of said S. Water St.;
- 6) S 0° 17' 19" E for a distance of 48.22 feet to the Point of Beginning and containing 0.0351 acres (1,530 sq.ft.) of land, more or less, and subject to all easements, restrictions and covenants of record as surveyed under the supervision of Steven L. Mullaney, P.S. Number 7900, for Glaus, Pyle, Schomer, Burns & DeHaven, Inc., dba GPD Group, in March of 2012.

Basis of Bearing is State Plane Grid North, NAD 83, Ohio North Zone.  
Tied to City of Kent survey control points "FR-24-01", "FR-32-02", "FR-30-01" & "FR-25-01".

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# CITY OF KENT, OHIO

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## DEPARTMENT OF ECONOMIC DEVELOPMENT

**Date:** May 23, 2012

**To:** David Ruller, City Manager  
Linda Jordan, Clerk of Council

**From:**  Dan Smith, Economic Development Director

**Subject:** Haymaker Farmer's Market Parking Sub-Lease

Per our efforts to secure much needed additional parking for construction as well as overflow parking for the Downtown Kent Revitalization Project, last fall we leased property (parking lot) from the Wheeling and Lake Erie Railway below the Haymaker Bridge. This site is providing critical parking resources (over 100 parking spaces) required for our development efforts. As we are all familiar this is also the site and home of the Haymaker Farmer's Market during the summer months. To that end, we need to grant permission to the Farmer's Market for the use of the area in the form of a sub-lease with the following parameters:

- Sub-lessee shall use and occupy the premises solely for the purpose of a Farmer's Market held on Saturday mornings (8:00 a.m. to 1:00 p.m.).
- The term is May 1 through November 1, 2012 for the rent or sum of one dollar (\$1.00).
- The usual legal terms for a sub-lease for City controlled property (sub-lease attached).

The Haymaker Farmer's Market is a Kent tradition that been supported for many years by the entire community. I respectfully request time on the June 6 Council Committee agenda to ask for our ongoing support and approval of the sub-lease. This measure will ensure the Haymaker Farmer's Market remains a quality community attraction generating tremendous synergy and enhanced activity within our entire Central Business District.



**SUB-LAND LEASE**

**THIS SUB-LEASE**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2012, between **THE CITY OF KENT, OHIO**, whose address is 215 East Summit Street, Kent, Ohio 44240, hereinafter referred to as **SUB-LESSOR**, and **HAYMAKER FARMERS' MARKET** whose address is 875 Vine Street, Kent, Ohio 44240, hereinafter referred to as **SUB-LESSEE**.

**I. PREMISES**

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

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

SUB-LESSOR currently leases the subject premises from Akron Barberton Cluster Railway Company (the ORIGINAL LESSOR) pursuant to a lease agreement dated \_\_\_\_\_. Permission has been obtained from Akron Barberton Cluster Railway Company for Robert Lindsey to sublet to the City of Kent, Ohio.

**II. TERMS AND CONDITIONS**

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

1. **Use.** SUB-LESSEE shall use and occupy the premises solely for the purpose of a farmer's market held on Saturday morning (8:00 a.m. to 1:00 p.m.).
2. **Term and Rent.** To hold the demised premises for and during the term of May 1, 2012 through November 1, 2012 (unless sooner terminated as hereinafter provided) for the rent or sum of one dollar (\$1.00) payable in advance.
3. **Expenses.** SUB-LESSOR shall be responsible for snow plowing costs, any utility costs or charges and shall maintain insurance on the premises pursuant to their lease with ORIGINAL LESSOR.
4. **Approval of Plans.** SUB-LESSEE, prior to erecting any structure on the premises, shall submit plans to, and secure approval in writing of, SUB-LESSOR and the ORIGINAL LESSOR. SUB-LESSEE shall not erect or place or allow to be erected or placed on the premises any buildings, structures, fixtures or obstructions of any kind, either temporary or permanent.
5. **Fire and Damage.** SUB-LESSEE shall cooperate with SUB-LESSOR and shall promptly comply with fire prevention measures requested by SUB-LESSOR. SUB-LESSEE shall make no electrical installation or alterations in and to the improvements or electrical circuits (whether for power, light, heat or other purposes) located on the premises except by a duly licensed electrician, and shall make not installation of natural gas, propane, kerosene or other combustion fuel heating or cooling units, except by licensed heating or cooling contractor; and no such alterations or installations shall be made without prior written approval of the ORIGINAL LESSOR.
6. **Ordinances and Regulations.**

6.1 SUB-LESSEE, at SUB-LESSEE's sole cost and expense, shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority having jurisdiction over the premises or SUB-LESSEE's intended use thereof, including but not limited to zoning,

health, safety, building or environmental matters. SUB-LESSEE shall supply SUB-LESSOR and ORIGINAL LESSOR with copies of letters or certificates of approval of SUB-LESSEE's use.

**7. Maintenance and Repairs.**

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

7.2 SUB-LESSEE will not make, or permit to be made, any improvements or alterations to the premises without the written consent of the ORIGINAL LESSOR. Approval by the ORIGINAL LESSOR of any improvements or installations made by SUB-LESSEE, or failure of the ORIGINAL LESSOR to object to any work done or material used, or the method of construction or installation, shall not be construed as an admission of responsibility by the ORIGINAL LESSOR or SUB-LESSOR or as a waiver of any of SUB-LESSEE's obligations under this Sub-Lease.

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

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

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

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

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

**12. Claim of Title.**

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

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

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

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

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

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

13.3 Should SUB-LESSOR default on their lease terms to the ORIGINAL LESSOR, SUB-LESSEE may contact ORIGINAL LESSOR in efforts to step-in for SUB-LESSOR, correct the default of SUB-LESSOR, and take SUB-LESSOR'S role in the original lease agreement dated October 5, 2007.

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

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

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

13.7 If SUB-LESSEE shall fail to make removal of any such property, the ORIGINAL LESSOR shall have the further option to elect and notify SUB-LESSEE that all right, title and interest of SUB-LESSEE in certain building(s) and/or facility(ies) shall be forfeit and shall vest absolutely in the ORIGINAL LESSOR as of the date of notice of such election.

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

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

**15. Insurance.** Prior to commencement of occupation or use of the premises/track for activities provided herein, SUB-LESSEE, at its sole cost and expense, shall procure and shall maintain during continuance of this Sub-Lease Public Liability Insurance covering liability assumed by SUB-LESSEE under this Sub-Lease with a combined single limit of not less than One Million (\$1,000,000.00) Dollars for personal injury and property damage per occurrence. SUB-LESSEE shall furnish the ORIGINAL LESSOR's Director Real Estate, 100 East First Street, Brewster, Ohio 44613 a certificate of insurance referring to this Sub-Lease by date, name of SUB-LESSOR, description of Sub-Lease and location covered. The certificate shall be endorsed to provide for thirty (30) days' notice to said Director Real Estate prior to termination of or change in the coverage provided. If a higher limit of liability is required by the ORIGINAL LESSOR, the ORIGINAL LESSOR shall provide SUB-LESSEE written notice of the limit required and within thirty (30) days thereafter SUB-LESSEE shall provide revised certificate of insurance for the increased required limit. Furnishing of this insurance by SUB-LESSEE shall not limit SUB-LESSEE liability under this Sub-Lease but shall be additional security therefor. SUB-LESSOR shall be named as an additional insured on said policy.

**16. Condemnation.** Should the premises or any part thereof be condemned, appropriated and/or acquired for public use, then this Sub-Lease, at the option of SUB-LESSOR or the ORIGINAL LESSOR, shall terminate upon the date when the premises or part thereof shall be taken. No part of any damages or award shall belong to SUB-LESSEE, except to the extent of any specific award from the governmental authority for improvements and/or facilities of SUB-LESSEE. SUB-LESSOR's land shall be valued as of such date (or other legal date of valuation) as vacant land, without consideration of this Sub-Lease or SUB-LESSEE improvements on said land as an enhancement or detriment to said land value. Improvements and/or facilities of SUB-LESSEE not so condemned, appropriated and/or acquired shall be removed in accordance with Section 13 hereof.

**17. Successors and Assigns.**

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

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

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

**19. Breach or Waiver.** If under the provisions hereof SUB-LESSOR shall institute proceedings and a compromise or settlement thereof shall be made, the same shall not constitute a permanent or general waiver of any covenant herein contained nor of any of SUB-LESSOR's rights hereunder. No waiver by SUB-LESSOR of any breach of any covenant, condition or agreement herein contained shall operate as a permanent waiver of such covenant, condition or agreement itself or of any subsequent breach thereof. No payment by SUB-LESSEE or receipt by SUB-LESSOR of a lesser amount than the monthly installments of rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or letter accompanying a check for payment of rent be deemed an accord and satisfaction and SUB-LESSOR may accept such check or payment without prejudice to SUB-LESSOR's right to recover the balance of such rent or to pursue any other remedy provided in this Sub-Lease. No re-entry by SUB-LESSOR after a breach shall be considered an acceptance of a surrender of the Sub-Lease.

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

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

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

**23. Environmental Compliance.**

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

23.2 Without limiting any other provisions of this Sub-Lease, SUB-LESSEE will at all times maintain and keep the Premises and all improvements and property now or hereafter erected or placed thereon, at its expense, including but not limited to the structures, equipment, and operations, in compliance with all federal, state, and local laws, rules and regulations designed to prevent the discharge of substances on the land, water, or air.

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

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

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

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

**As to SUB-LESSOR:**

**CITY OF KENT, OHIO  
c/o City Manager  
215 East Summit Street  
Kent, Ohio 44240**

**As to SUB-LESSEE:**

**HAYMAKER FARMERS' MARKET  
875 Vine Street  
Kent, Ohio 44240**

**As to ORIGINAL LESSOR:**

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

**27. General Provisions.**

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

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

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

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

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

**III. EXECUTION**

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

**WITNESS:**

**HAYMAKER FARMERS' MARKET**

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_

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

**WITNESS:**

**CITY OF KENT, OHIO**

\_\_\_\_\_

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

**WITNESS:**

**AKRON BARBERTON CLUSTER RAILWAY  
COMPANY**

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Chairman & Chief Executive Officer

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

**APPROVED TO FORM**

\_\_\_\_\_  
James R. Silver, Law Director