

ORDINANCE NO. 2008-82

AN ORDINANCE ACCEPTING AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A PURCHASE AGREEMENT WITH THE CITY OF KENT, OHIO, BUYING AN INTEREST IN 9,898 SQUARE FEET OF REAL PROPERTY FROM CHARLES W. FRANKHOUSER, 501 GOUGLER, FOR \$201,000.00 FOR PURPOSES OF RIGHT-OF-WAY ACQUISITION, AND THE CONSTRUCTION OF THE NEW CRAIN AVENUE/FAIRCHILD AVENUE BRIDGE PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent Council desires to purchase an interest in 9,898 square feet of real property from Charles W. Frankhouser, 501 Gougler in Kent/Franklin Township, Portage County, Ohio; and

WHEREAS, Charles W. Frankhouser is willing to sell said interest in said property for \$201,000.00; and

WHEREAS, the City needs the property for right-of-way purposes for the construction of the new Crain Avenue/Fairchild Avenue Bridge project; and

WHEREAS, time is of the essence because the sooner the City acquires the necessary right-of-way for this project, the sooner construction may begin.

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

SECTION 1. That Council does hereby accepts and authorizes the City Manager or his designee to execute the purchase agreement for the City of Kent to purchase 9,898 square feet of real property from Charles W. Frankhouser, 501 Gougler for \$201,000.00 for right-of-way purposes for the Crain Avenue/Fairchild Avenue Bridge project in substantial conformity with the terms of the Purchase Agreement marked as Exhibit "1", attached hereto and incorporated herein.

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

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

PASSED: 05/21/08
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2008- 82 was duly enacted this 21 day of May, 2008 by the Council of the City of Kent, Ohio.

Linda M. Copley, Clerk of Council

CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY
WITH BUILDING(S)

PARCEL(S): 23 WDV
POR-CRAIN AVENUE

This Agreement is by and between the The City of Kent ["Purchaser"] and Charles W. Frankhouser, by Betty J. Thomas, Power of Attorney, "Seller" includes all of the foregoing named persons or entities]. Purchaser and Seller are referred to collectively in this Agreement as "Parties."

In consideration of the mutual promises, agreements and covenants herein contained, the Parties contract as follows:

1. Price and Consideration

Purchaser shall pay to Seller the sum of \$201,000.00, which sum shall constitute the entire amount of compensation due Seller for: (a) the real property to be conveyed, including all fixtures; (b) any and all damages to any residual lands of Seller; (c) Seller's covenants set forth herein; (d) any and all supplemental instruments reasonably necessary to transfer the title of the subject property; and (e) *other items*.

Seller shall be exclusively responsible for all delinquent taxes and assessments, including penalties and interest, and for all other real estate taxes and assessments that are a lien as of the date on which this Agreement closes. The taxes and assessments for the current calendar year shall be prorated on an estimated basis to the date of acquisition of title or date of possession, whichever is earlier in time. Seller shall be responsible for any and all future installments of any special assessments levied and assessed against the real property, whether or not any such special assessment has been certified to the county auditor for collection, provided that such installments of special assessments shall be a lien on the subject real property as of the date of transfer of title. Purchaser may withhold in escrow a sufficient amount of the purchase money to satisfy the foregoing items to be paid by Seller; any balance remaining after such taxes, assessments, etc., are discharged shall be paid to Seller and any deficiency shall be the responsibility of Seller.

2. Estate Sold and Deed to Transfer

Seller, upon fulfillment of all the obligations and terms of this Agreement, shall sell and convey to Purchaser, its successors and assigns, the property which is more particularly described in Exhibit A attached hereto and by this reference incorporated herein, together with all the appurtenances and hereditaments thereunto belonging and with all buildings and improvements now located thereon, and all

fixtures of every nature now attached to or used with said land, buildings and improvements including, but not limited to, all heating, hot water, air conditioning, plumbing, attached electrical fixtures with bulbs or tubes, window shades, venetian blinds, curtain and traverse rods, awnings, storm and screen sashes and doors, and shrubbery and trees.

If the rights, titles and estates described in Exhibit A constitute the fee simple in, to and of the real property, then such sale and conveyance by Seller shall be by a good and sufficient general warranty deed with, if applicable, full release of dower. In the event the rights, titles, and estates described in Exhibit A constitute something less than the fee simple of the real property, then such sale and conveyance by Seller shall be by a good and sufficient deed or other instrument regularly and ordinarily used to transfer such lesser rights, titles and estates with, if applicable, full release of dower.

3. Limited Access Parcels - Waiver of Abutters' Rights

If the property described in Exhibit A is designated by Purchaser as a limited access parcel, then Seller further agrees to release to Purchaser, its successors and assigns, any and all abutters' rights, including access rights, appurtenant to any remaining lands of Seller (from which the property described in Exhibit A is being severed) in, over, on, from and to the property described in Exhibit A.

4. Supplemental Instruments

Seller agrees to execute any and all supplemental instruments or documents necessary to vest Purchaser with the rights, titles and interests described in Exhibit A.

5. Warranty of Title

Seller shall, and hereby does, warrant that the property described in Exhibit A is free and clear from all liens and encumbrances whatsoever, except: (a) easements, restrictions, conditions and covenants of record; (b) all legal highways; (c) zoning and building laws, ordinances, rules and regulations; and (d) any and all taxes and assessments not yet due and payable.

6. Elimination of Others' Interests

Seller shall assist, in whatever manner reasonably possible under the circumstances, to procure and deliver to Purchaser releases and cancellations of any and all other rights, titles and interests in the property described in Exhibit A, such as, but not limited to, those belonging to tenants, lessees, mortgagees or others now in possession or otherwise occupying the subject premises, and all assessment claims against said property.

7. No Change in Character of Property

Seller shall not change the existing character of the land or alter, remove, destroy or change any structure or fixture located on the property described in Exhibit A. If, prior to the date on which possession of the subject property is surrendered to Purchaser, the subject property, including structures and fixtures, suffers any damage, change, alteration or destruction then, and without regard to the cause

thereof, Seller shall restore the subject property to the condition it was in at the time Seller executed this Agreement; in the alternative, Seller may agree to accept the abovementioned purchase price less the costs associated with such restoration. If Seller refuses to either restore the premises or accept the decreased consideration as aforementioned, then Purchaser, at its option after discovery or notification of such damage, change, alteration or destruction, may terminate and cancel this Agreement upon written notice to Seller.

8. Offer to Sell

If Seller executes this Agreement prior to Purchaser, then this Agreement shall constitute and be an Offer to Sell by Seller that shall remain open for acceptance by Purchaser for a period of 20 days immediately subsequent to the date on which Seller delivers such executed Agreement to Purchaser. Upon Purchaser's acceptance and execution of this Agreement within said period of 20 days, this Agreement shall constitute and be a valid Contract for Sale and Purchase of Real Property that is binding upon the Parties.

9. Designation of Escrow Agent

Seller agrees that Purchaser may designate an escrow agent to act on behalf of the Parties in connection with the consummation and closing of this Agreement.

10. Closing Date

The consummation and closing of this Agreement shall occur at such time and place as the Parties may agree, but no later than 10 days after Purchaser notifies Seller in writing that Purchaser is ready to consummate and close this Agreement. Provided, however, in no event shall such consummation and closing occur more than 120 days after the last date on which one of the Parties executes this Agreement.

11. Physical Possession of Structures Occupied by Seller

Seller shall surrender physical possession of all structures occupied by Seller, or the portions thereof occupied by Seller, to Purchaser not later than 30 days after Purchaser tenders the purchase price to Seller. Seller agrees that Purchaser may withhold in escrow from the purchase price the sum of \$N/A to ensure that the subject structures will be vacated on or before the 30 days mentioned above and that the subject structures will be surrendered to Purchaser in the same condition as it was in at the time Seller executed this Agreement. If Seller properly vacates and surrenders possession of the subject structures as aforesaid, then said \$N/A shall be paid immediately to Seller. If the subject structures are not vacated as aforesaid, a rental agreement for the subject structures shall be entered into by the Parties, in which Seller shall be the lessee and Purchaser shall be the lessor, and upon execution of such rental agreement the said \$N/A shall be paid immediately to Seller; in the event Seller fails or refuses for any reason to enter into such rental agreement, then Purchaser may retain all or part of the said \$N/A withheld in escrow to compensate Purchaser for the reasonable amount of rent that Seller owes for holding over possession of

the subject structures, plus an amount to pay for any taxes, assessments and for any costs of restoration necessary to put the structures in the same condition as they were at the time Seller executed this Agreement.

12. Physical Possession of Vacant Land and Structures

Seller shall surrender physical possession of vacant land and vacant structures to Purchaser not later than the date on which Purchaser tenders the purchase price to Seller.

13. Control of Property Occupied by Seller's Tenant(s)

Control of property occupied by Seller's tenant(s) shall be assumed by Purchaser on the date Purchaser tenders the purchase price to Seller. From that date forward, Purchaser shall be entitled to collect and retain as its own funds any and all rental payments thereafter made by such tenant(s). If any rents due under the lease(s) with Seller have been prepaid by Seller's tenant(s), then said prepaid rents shall be prorated to the date on which the purchase price is tendered by Purchaser, and said prepaid rents shall be paid to Seller and Purchaser in accordance with such proration.

14. Binding Agreement

Any and all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, successors and assigns.

15. Multiple Originals

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

16. Entire Agreement

This instrument contains the entire agreement between the Parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions or obligations whatsoever, either express or implied, other than herein set forth, shall be binding upon Seller or Purchaser.

17. Amendments and Modifications

No amendment or modification of this Agreement shall be valid or binding upon the Parties unless it is made in writing, cites this Agreement and is signed by Seller and Purchaser.

CHARLES W. FRANKHOUSER, BY BETTY J. THOMAS, P.O.A

By: Betty J. Thomas, P.O.A.
Betty J. Thomas
Power of Attorney

STATE OF OHIO, COUNTY OF PORTAGE ss:

BE IT REMEMBERED, that on the 29 day of March, 08, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Betty J. Thomas, who acknowledged being the Power of Attorney of Charles W. Frankhouser, and who signed or acknowledged the signing of the foregoing instrument to be the voluntary act and deed of said Charles W. Frankhouser

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Jennifer Collins
NOTARY PUBLIC
My Commission expires: _____
JENNIFER COLLINS
Notary Public - State of Ohio
My Commission Expires June 9, 2010

CITY OF KENT

Deputy Service Director

Date: _____

By: _____

STATE OF OHIO, COUNTY OF _____ ss:

BE IT REMEMBERED, that on the _____ day of _____, _____, before me the subscriber, a Notary Public in and for said state and county, personally came the above named _____, the duly authorized representative of the City of Kent, who signed or acknowledged the signing of the foregoing instrument to be the voluntary act and deed of the City of Kent.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

NOTARY PUBLIC

My Commission expires: _____

EXHIBIT A

RX 251
Rev. 10/06

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23-WDV
POR-CRAIN_AVENUE
12/01/06
PID
PARCEL
CTY-RTE-SEC
Version Date

**PARCEL 23-WDV
POR-CRAIN_AVENUE
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF KENT, PORTAGE COUNTY, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

[Surveyor's description of the premises follows]

Situated in the City of Kent, County of Portage and State of Ohio, being part of Lot 30 of Original Franklin Township, T-3-N, R-9-W, being a parcel of land lying on the right side of the centerline of right-of-way of S.R. 43 (Gougler Avenue) (R/W 60 feet), as shown on the POR-CRAIN AVENUE plans made for the City of Kent, Ohio by ARCADIS G & M of Ohio, Inc. and as recorded in Reception Number _____ of the records of Portage County, Ohio and being located within the following described points in the boundary thereof:

Commencing at a 1" bar in a monument box found at the intersection of the centerline of right-of-way of Rockwell Street (49.5 feet) and the centerline of right-of-way of S.R. 43 (Gougler Avenue) (60 feet), said monument box at Station 634+26.46, on the centerline of right-of-way of S.R. 43 (Gougler Avenue);

Thence **South 78° 05' 42" East 31.44'** along the centerline extension of Rockwell Street to the easterly right-of-way line of S.R. 43 (Gougler Avenue) at Station 634+17.06, 30.00' right of the centerline of right-of-way of said S.R. 43 (Gougler Avenue);

Thence **North 05° 28' 50" West 54.52'** along the easterly right-of-way line of S.R. 43 (Gougler Avenue) to an iron pin set at the southwesterly corner of a parcel of land now or formerly owned by Charles W. Frankhouser (Grantor) recorded in Volume 220, Page 712, at Station 634+71.59, 30.00' right of the centerline of right-of-way of said S.R. 43 (Gougler Avenue); also being the TRUE PLACE OF BEGINNING of the parcel herein described:

1. Thence **North 05° 28' 50" West 117.82'** along the easterly right-of-way line of S.R. 43 (Gougler Avenue) to the northwest corner of said Frankhouser parcel at Station 635+89.41, 30.00' right of the centerline of S.R. 43 (Gougler Avenue), witness 635+89.44, 29.97' right of the centerline of S.R. 43 (Gougler Avenue);
2. Thence **South 68° 38' 28" East 110.55'** along the northerly property line to an iron pin set at the northeast corner of said Frankhouser parcel at Station 635+39.50, 128.64' right of the centerline of S.R. 43 (Gougler Avenue);
3. Thence **South 34° 17' 05" East 20.44'** along the easterly property line of said Frankhouser parcel to an iron pin set at Station 635+21.59, 138.49' right of the centerline of S.R. 43 (Gougler Avenue);
4. Thence **South 12° 37' 00" East 50.39'** along the easterly property line of said Frankhouser parcel to an iron pin set at the southeast corner of said parcel at Station 634+71.59, 144.75' right of the centerline of S.R. 43 (Gougler Avenue);
5. Thence **South 84° 31' 10" West 114.75'** along the southerly property to the TRUE PLACE OF BEGINNING.

EXHIBIT A

RX 251
Rev. 09/06

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	PARCEL	18466
	CTY-RTE-SEC	23-WDV
	Version Date	POR-CRAIN_AVENUE
		12/01/06

The above described parcel contains 9898 square feet of land, which includes 0 square feet in the present road occupied, resulting in a net take of 4317 square feet of land of which is contained within Portage County Auditor's Permanent Parcel Number 170302000011 and 5581 square feet of land of which is contained within Permanent Parcel Number 170302000012 and subject to all legal highways and easements of record.

This description was prepared by Angela M. Metz, E.I. in December 2006 under the direct supervision of Charles A. Hauber, Registered Surveyor Number 8034 and is based on a field survey performed by Finkbeiner, Pettis & Strout, Inc. (now known as ARCADIS G & M of Ohio, Inc.) in 2004 under the direction and supervision of Michael E. Durbin, Registered Surveyor Number 7528.

Bearings in this description are based on the Ohio Coordinate System, NAD83(86), North Zone.

Grantor claims title by instrument(s) of record in Volume 220, Page 712 of the records of Portage County.

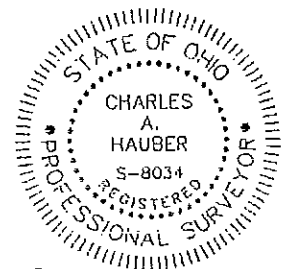
The stations referred to herein are from the centerline of right-of-way of S.R. 43 (Gougler Avenue) as found on the City of Kent Right-of-Way Plan POR-CRAIN AVENUE.

Iron pins set in the above description are 5/8 inch diameter by 30 inch long rebars with a plastic cap stamped "HAUBER 8034" or a drill hole depending upon the nature of the material that is present at each corner after construction.

Grantor conveys all of the property described above, except they reserve the right of ingress and egress to and from S.R. 43 (Gougler Avenue) for himself and his heirs, executors, administrators and assigns.

Grantor, for himself and his heirs, executors, administrators and assigns, reserves the right of ingress and egress to and from any residual area.

This instrument prepared by ARCADIS G & M of Ohio, Inc. for the City of Kent, Ohio.



CEL AWL
20 Dec 2006