

CITY OF KENT  
DEPARTMENT OF PUBLIC SERVICE

MEMO

August 16, 2010

To: Dave Ruller, City Manager

From: Gene Roberts, Service Director



RE: AMATS Support of Gas Tax Increase

At the August 12, 2010 Akron Metropolitan Area Transportation Study (AMATS) Policy Committee Meeting a lengthy and somewhat polarized discussion occurred regarding AMATS passing a resolution supporting an increase in the federal gasoline tax. The issue was tabled until the next AMATS Policy Committee scheduled for Wednesday, September 29, 2010. This issue is not specific to AMATS as the other Ohio Metropolitan Planning Organizations are also considering such resolutions of support.

There are two primary issues from the discussions. First, all members agreed that additional funding for transportation is needed and second, how best to develop the additional revenue. Proponents of increasing the current 18.4 cents per gallon gasoline tax, as previously set in 1993, by 10 cents per gallon stated that the increase is needed to maintain solvency in the Federal Highway Trust Fund and continue the user-pay principle that has been in place since the inception of the trust fund in 1956. Opponents to increasing the gasoline tax by 10 cents per gallon cite the current economic conditions; adding the tax at this time may be counterproductive to economic recovery.

Attached to this memo is a copy of AMATS Executive Director, Mr. Jason Sogedy's editorial providing relative background information and a copy of the draft resolution which members of AMATS are being asked to vote on. It is anticipated that the AMATS vote for this resolution will be completed by roll call and will thus directly reflect on the City. I respectfully request consideration by and the direction of Kent City Council regarding this resolution.

Cc: Jim Silver, Law Director  
Bill Lillich, Safety Director  
David Coffee, Budget & Finance Director  
James Bowling, P.E., City Engineer  
file



## **MOVING BEYOND 1956. . . A NEW VISION FOR TRANSPORTATION**

*By Jason Segedy, Director*

In 1956, President Eisenhower signed the Federal-Aid Highway Act into law. This sweeping piece of legislation appropriated \$25 billion in order to construct the Interstate Highway System, the largest and most visionary public works project in American history. It also established the Highway Trust Fund, which paid for 90% of the cost of building the system, using revenues that were generated through taxes on fuel.

This brief bit of history is instructive for two reasons:

First, it is a reminder that there once was a time when our federal government was capable of establishing a coherent vision for transportation, mobilizing public support for it, and working tirelessly to complete it. The 47,000 mile Interstate Highway System remains the largest and most comprehensive highway network in the world, and the vast majority of it was constructed in just 20 years.

Second, it demonstrates that the American public will support a massive expenditure of federal tax dollars (\$425 billion when adjusted for inflation). . . if it is confident that it is bankrolling a worthwhile endeavor.

Today, 54 years later, our federal government is rudderless and broke. There is no strategic vision from Washington guiding our national transportation future. Even more disturbingly, our existing system of transportation funding is in deep trouble. Last year, for the first time in history, the Highway Trust Fund went broke. Congress had to provide an emergency infusion of \$8 billion in general revenue funds in order to keep the fund solvent. Earlier this year, another \$19.5 billion was transferred (to a fund that is supposed to be self-supporting). Essentially, we are now borrowing money from China to pay for our transportation infrastructure. This is a future that President Eisenhower never would have imagined.

On the fiscal side of the transportation equation we have three options: cut spending, increase revenue, or do some combination of both. Reduced federal funding levels will mean that already cash-strapped local governments and states will have to tighten their belts even further. It will mean that our aging bridges and roads will continue to deteriorate and become more unsafe. It will also mean that transit systems will have to cut their already limited service even further, making it yet more difficult for our low-income residents to access jobs and economic opportunities.

On the policy side of the transportation equation, the situation is equally dysfunctional. The previous transportation bill expired in 2009, and Congress has yet to pass a new one. There is



no national transportation plan, and the federal government is unwilling, or unable, to come up with a vision for transportation that everyday Americans can easily understand and embrace. Our current national transportation policy is schizophrenic. Over 30% of federal transportation funds go toward expanding highway capacity, but, at the same time we are spending \$8 billion on high speed rail. We say we want people to consider alternatives to driving, but provide little real incentive to do so. Meanwhile, our existing network of roads and bridges continues to crumble. Washington is trying to be all things to all people, and not doing any of them particularly well.

So what should we do?

First, the difficult truth is this: we do not have enough money to pay for the transportation system that we need. Although a tax increase may not be politically palatable, a massive national debt and decaying infrastructure is even less appealing. It is not fiscally responsible and it is not in the public interest for our federal government to resort to deficit spending and rely on other countries to pay for our transportation infrastructure. The beauty of the Highway Trust Fund has always been that it is a self-supporting source of revenue, based upon a "user fee" -- the gasoline tax. This is no longer the case.

The current gasoline tax of 18.4 cents per gallon has not been increased since 1993. Because the tax was not indexed to inflation, its actual purchasing power has declined significantly. Meanwhile, there are 53 million more people living in the United States than there were 17 years ago.

In the short term, the federal tax on gasoline needs to be raised by 10 cents per gallon, and indexed to inflation. This would generate an additional \$20 billion per year in revenue. In the long term, a new mechanism for funding transportation should be found; preferably, one that is not predicated upon encouraging people to purchase more gasoline.

Second, Congress needs to pass a new transportation bill. This legislation should clearly define national transportation goals and priorities. It should adopt the same ambitious call-to-action that went into creating the Interstate Highway Act, but one that recognizes our current problems of urban sprawl and an uncertain energy future. It should also reform the convoluted system of dozens of separate federal funding categories, most of which contain cumbersome and outdated rules and regulations. This would improve flexibility and efficiency, and would allow states, metropolitan planning organizations, and transit agencies to better meet locally identified transportation needs. One example of this type of reform would be to allow transit agencies to spend federal funds on operating expenditures. They are currently prohibited from doing so.



Even though 2010 is an election year, and Americans are justifiably concerned with high taxes, I believe that people would support an increase in the federal gasoline tax if they understood why it is necessary. According to a recent poll conducted by *Building America's Future*; 60% of the American public erroneously believes that the gasoline tax is raised every year. At the same time, 62% correctly believe that funding decisions are too often based on "politics" rather than the "public good".

As transportation professionals and policy makers, I believe that it is our duty to provide leadership on this issue; both to ensure fiscal responsibility and to establish a transportation vision that the public can support. We did it in 1956, and we can do it again.

Sincerely,

Jason Segedy  
Director

Jason Segedy is the Director of the Akron Metropolitan Area Transportation Study (AMATS). AMATS is the Metropolitan Planning Organization responsible for regional transportation planning in Summit and Portage counties.

The opinions expressed in this column are solely those of the AMATS Director, and do not necessarily reflect the views of the AMATS Policy Committee.

**AKRON METROPOLITAN AREA TRANSPORTATION STUDY**

**M E M O R A N D U M**

**TO:** Policy Committee  
Technical Advisory Committee  
Citizens Involvement Committee

**FROM:** Jason Segedy, AMATS Director

**RE:** Resolution 2010-xx – Supporting an Increase in the Federal Gasoline Tax  
(DRAFT)

**DATE:** July 28, 2010

**Background**

The idea of supporting a federal gasoline tax increase was first raised at the May 19 Policy Committee meeting. The attached resolution was prepared based on the discussion which took place at that meeting.

I wrote an editorial further explaining this issue and endorsing the concept of a gasoline tax increase in the most recent version of the *AMATS Quarterly* Newsletter. That editorial is attached for your reference.

**Staff Recommendation**

Resolution 2010-xx is attached for your consideration. This resolution states that:

- The Policy Committee supports a 10-cent per gallon increase in the federal gasoline tax, in order to continue to fund transportation improvements in a fiscally-responsible manner.
- The Policy Committee recognizes that this fuel tax increase is a short-term solution, and that in the long-term, a more viable transportation funding mechanism which is not reliant upon the sale of petroleum should be found.
- The Policy Committee encourages Congress to pass a new transportation bill in 2011.

Based on the discussion which occurred at the May 19 Policy Committee meeting, the staff recommends that the Policy Committee review Resolution 2010-xx (DRAFT) and modify it as it sees appropriate. It is recommended that a final resolution containing an endorsement of a ten-cent per gallon increase in the federal gasoline tax be approved at the September 29 Policy Committee meeting.

**RESOLUTION NUMBER 2010-xx (DRAFT)**

**OF THE METROPOLITAN TRANSPORTATION POLICY COMMITTEE  
OF THE AKRON METROPOLITAN AREA TRANSPORTATION STUDY**

**SUPPORTING AN INCREASE IN THE FEDERAL GASOLINE TAX**

**WHEREAS**, the Akron Metropolitan Area Transportation Study (AMATS) is designated as the Metropolitan Planning Organization (MPO) by the Governor, acting through the Ohio Department of Transportation (ODOT) and in cooperation with locally elected officials in Summit and Portage Counties and the Chippewa Township area of Wayne County; and

**WHEREAS**, the Highway Trust Fund was established by Congress in 1956 as a means of funding transportation improvements; and

**WHEREAS**, the revenues that support the Highway Trust Fund are generated through taxes on fuel; and

**WHEREAS**, the Highway Trust Fund is currently insolvent, and has had to receive two infusions of over \$27 billion in general revenue funds from Congress over the course of the past year; and

**WHEREAS**, the Highway Trust Fund's precarious fiscal situation will necessitate spending cuts, tax increases, continued general fund transfers, or some combination of the three; and

**WHEREAS**, budget cuts in the federal transportation program will mean that local governments, states, and regional transit authorities will have greater difficulty in maintaining existing infrastructure and service levels; and

**WHEREAS**, the Highway Trust Fund's current reliance on general fund transfers is neither fiscally responsible, nor desirable for the following reasons: 1) it undermines the "user-pay" principle that has been in place since 1956; 2) it threatens the loss of contract authority for planned transportation improvements; and 3) it severely hampers the ability of AMATS and its member governments to reliably plan for the future; and

**WHEREAS**, the existing federal tax on gasoline of 18.4 cents per gallon has not been increased since 1993; and

**WHEREAS**, the National Commission on Surface Transportation Infrastructure Financing, created by Congress, has recommended increasing the federal tax on gasoline by 10 cents per gallon; and

**WHEREAS**, the existing system of federal transportation funding is no longer sustainable; and

**WHEREAS**, SAFETEA-LU, the existing transportation bill, expired in 2009 and has not yet been renewed; and

**RESOLUTION NUMBER 2010-xx (continued)**

**WHEREAS**, a new transportation bill is needed to: 1) clearly define national transportation goals and priorities; 2) reform existing federal funding programs; and 3) discourage urban sprawl which contributes to our nation's dependence on petroleum and reduces the cost-effectiveness of infrastructure investments; and

**WHEREAS**, this Committee believes that the continued ability of AMATS and its member local governments to plan for and to fund transportation improvements is of critical importance.

**NOW THEREFORE BE IT RESOLVED:**

1. That this Committee recognizes that it is not fiscally responsible, nor is it in the public interest, to resort to deficit funding to pay for critical transportation improvements.
2. That this Committee therefore supports a ten cent per gallon increase in the federal gasoline tax, in order to generate transportation revenue in a fiscally sound manner.
3. That this Committee recognizes that a gasoline tax increase is a short-term solution, and that in the long-term, a new federal mechanism for generating transportation revenue should be found; specifically, one that is not dependent upon encouraging the public to use more petroleum and other fossil fuels.
4. That this Committee urges Congress to pass a new transportation bill in 2011 that accomplishes the following:
  - a) Clearly defines national transportation goals and priorities vis-à-vis highway system preservation, highway system expansion, public transportation, and passenger rail.
  - b) Recognizes that urban sprawl contributes to our nation's dependence on petroleum and reduces the cost-effectiveness of infrastructure investments.
  - c) Reforms the convoluted system of dozens of separate transportation funding categories, most of which contain outdated rules and regulations.
  - d) Allows federal transportation dollars to be used for public transportation operating expenditures.
5. That this Committee authorizes the Staff to provide copies of this Resolution to the members of Ohio's Congressional delegation and other individuals and agencies, as appropriate, as evidence of action by the Metropolitan Planning Organization.

-----  
Al Bollas, 2010 Chairman  
Metropolitan Transportation Policy Committee

Date \_\_\_\_\_



(<http://www.joc.com>)

[Home](#) > LaHood Says No Fuel Tax Increase Needed for Transport

## LaHood Says No Fuel Tax Increase Needed for Transport

Jul 23, 2010 4:01PM GMT

Highway funding to come from tolls, Obama's proposed infrastructure fund

John D. Boyd

**Source:**

The Journal of Commerce Online

Transportation Secretary Ray LaHood said a combination of current-level gas tax receipts, road and bridge tolling and President Obama's proposed infrastructure fund could offer a way to fund a long-term federal infrastructure program without new taxes.

Appearing before a heavily attended conference in Washington, D.C., of the American Road and Transportation Builders Association, LaHood vowed "raising the gas tax is not an option" to increase money available for federal transport spending.

LaHood said the Highway Trust Fund's income stream is "insufficient" to meet all the needs, and said "tolling can raise a lot of money" to augment it. The Obama administration has also asked Congress for a new \$4 billion ongoing infrastructure fund that DOT would administer much like discretionary stimulus program grants, and LaHood said more use of creative public-private partnerships could help as well.

Adding up all such efforts, he said, raises the possibility of "a path forward without raising taxes."

LaHood's statement rejecting a fuel tax hike was the latest reiteration of the administration's standing policy -- to oppose raising federal gasoline and diesel fuel taxes while the economy is still recovering from recession and unemployment remains high.

But his July 23 comment also comes as the Department of Transportation prepares to issue guiding "principles" for how Congress develops its next multi-year surface transportation plan. Federal programs are due to expire at the end of this year unless lawmakers extend them again or pass a broad reauthorization that reshapes policy.

Many ARTBA members want the administration to back away from its fuel tax stance, and after his speech some were grumbling that a gas tax hike remains the simplest and least costly way to beef up transport infrastructure funding.



One ARTBA participant noted that LaHood early last year floated the idea of raising funds through a new tax on vehicle miles traveled, a concept that was soon rejected by the White House. Asked if a VMT plan could come back, LaHood quickly said, "No."

Another participant asked him if a tax that helps transport programs could emerge from climate or energy legislation, but LaHood deflected the question by saying that is someone else's portfolio. One bill offered by Sens. John Kerry, D-Mass., and Joseph Lieberman, I-Conn., would have directed billions of dollars into the Highway Trust Fund from sale of carbon emission allowances, but that legislation has failed to gain broad support.

-- Contact John D. Boyd at [jboyd@joc.com](mailto:jboyd@joc.com).

[Washington](#) [Government + Regulation](#) [United States](#)

Source URL: <http://www.joc.com/government-regulation/lahood-says-no-fuel-tax-increase-needed-transport>

CITY OF KENT  
DEPARTMENT OF PUBLIC SERVICE  
DIVISION OF ENGINEERING

MEMO

TO: Dave Ruller  
Linda Copley

FROM: Jim Bowling

DATE: August 20, 2010

RE: Haymaker Farmers Market – License to Occupy

The City Service department is requesting Council's time to consider the request of the Haymaker Farmers Market to install a mural on the two easternmost piers of the Haymaker Parkway Bridge over Franklin Ave./CSX/Cuyahoga River. Please refer to the market's web site for details on the mural (<http://haymakermarket.com/>).

Attached is the proposed License Agreement required if Council approves the Haymaker Farmers Market's request to install the mural.

C: Gene Roberts

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

THIS AGREEMENT is made by and between the CITY OF KENT, OHIO, hereinafter called "City" and Haymaker Farmers Market (HFM Inc.), hereinafter called the "Licensee."

The City is required to maintain Haymaker Parkway per its agreement with the Ohio Department of Transportation, 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 I below, in accordance with the laws and Charter of the City of Kent. The Property is more particularly described in the attached exhibit listed below.

Exhibit "A" – Site plan showing exact area being leased.

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 place a mural on two piers 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: \_\_\_\_\_  
Placement or installation of a painting on the two easternmost piers  
of Bridge No. POR 00043 1152 (SFN 6701132) located on SR 43/59  
immediately west of the Haymaker Parkway/Water Street Intersection  
\_\_\_\_\_

and for no other purpose.

2.2 No structural alterations may be made to the City's property 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 \_\_\_\_\_, 2010, and ending on \_\_\_\_\_, 2011 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:

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

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 and the State of Ohio, 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 *Five Hundred Thousand Dollars (\$500,000.00)*, to indemnify against the claim of one person, and in the amount of not less than *One Million Dollars (\$1,000,000.00)* 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 peacefully 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.

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**

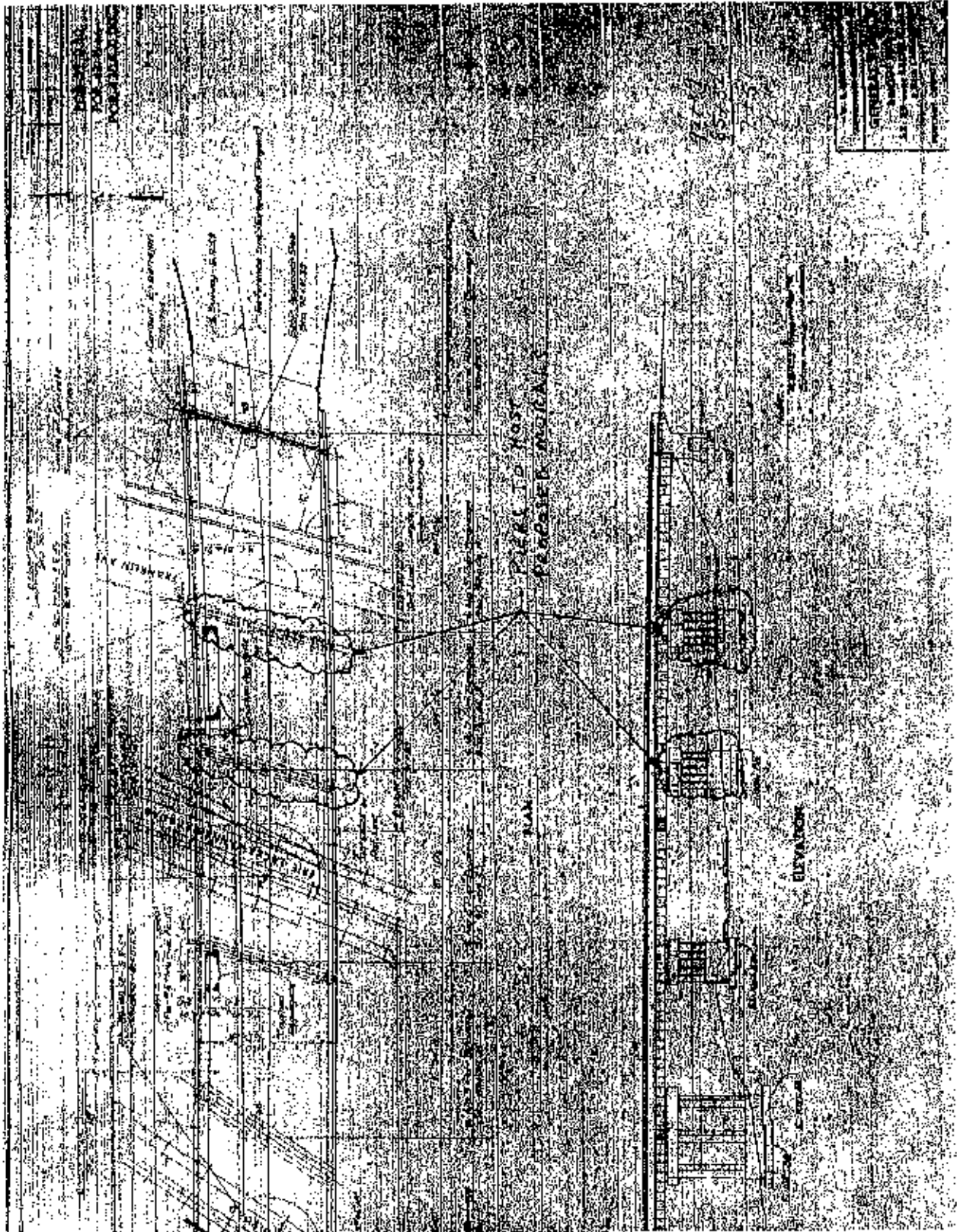
\_\_\_\_\_  
Director of Public Service

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

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

EXHIBIT "A"  
SITE PLAN







# CITY OF KENT, OHIO

## DEPARTMENT OF LAW

**TO: KENT CITY COUNCIL**  
**FROM: JAMES R. SILVER, LAW DIRECTOR**  
**DATE: AUGUST 25, 2010**  
**RE: STREET / SIDEWALK VENDORS**

Handwritten initials "JRS" in black ink, positioned to the right of the header information.

Several staff members met last week to discuss street/sidewalk vendors. Specifically, we were looking at situations like Gyro Bob's and the Dogfather.

The City does not currently regulate those type of enterprises. We do regulate push cart vendors. However, as John Ferlito gets more and more requests from people who want to set up carnival trailers to sell food on the weekends, staff decided we need guidance from City Council.

The two (2) vendors currently operating are probably doing so without proper permission from the City. They have trailers with license plates that cannot be handled by hand operating on City park property at the gazebo – one is on the grass and the other is on the sidewalk.

The questions to Council are as follows:

- a) Do we simply want to ban trailer vendors?
- b) Do we continue ignoring the legal restrictions that let these two operate, while i) letting others set up shop where they want, or ii) not letting anyone else set up (subjecting us to discrimination claims and a failure to equally apply City laws to other vendors?) or
- c) Regulate vendors as to
  - i) location and cost
  - ii) use of utilities
  - iii) insurance coverage
  - iv) licensing
  - v) access to restrooms
  - vi) other restrictions as needed

The issues are somewhat complex as your decisions affect the businesses that have invested in the downtown; that pay real estate taxes; that pay income taxes; and that pay for their licenses to sell food and beverages.

If you ask staff to propose regulations, we will contact local restaurants and bars, the licensed beverage group, the Chamber of Commerce, Main Street Kent, and the downtown Parking Action Committee for input.

Let us know what you would like us to do.



# CITY OF KENT, OHIO

## DEPARTMENT OF FINANCE

TO: Dave Ruller, City Manager  
FROM: Dave Coffee, Director of Budget and Finance  
DATE: August 26, 2010  
SUBJECT: Refunding Various Purpose Notes (BANs)

A handwritten signature in black ink, appearing to read "David Coffee".

I am respectfully requesting Finance Committee agenda time to seek their approval of three separate ordinances comprising the refunding of our existing Bond Anticipation Notes for the fire station, administrative offices and sewer trunk lines. The existing notes totaling \$3,820,000 will mature on October 14, 2010 and in accordance with our budget plan we will reduce the principal balance by the aggregate amount of \$300,000 in the replacement note issuances to a new total of \$3,520,000.

We have evaluated current and projected bond market conditions and determined that it is in the City's best interest to refund this debt in the form of Notes (BANs) rather than convert to Bonds. We anticipate a coupon rate around 1.25% for renewal of the one year notes while bond rates would likely be in the vicinity of an additional 300 basis points or higher at this point in time. On a principal balance of \$3.52 million the interest differential equates to over \$100,000 in reduced debt expense to the City which we believe adequately mitigates the interest rate risk by not bonding at this time.

Additionally, I would like to note that I will almost certainly be seeking Council's approval of what will likely be two other debt related ordinances authorizing issuance of new notes totaling \$900,000 at the 9/15/10 City Council Meeting. This need and debt strategy was concluded at our Debt Team meeting held late yesterday and is directly related to downtown redevelopment schedule priorities and will become part of the debt to be serviced by the TIF District. If approved, this debt authorization will enable us to issue the respective notes concurrent with the BAN refunding thus minimizing issuance costs and taking advantage of the same favorable market rates. Briefly, the breakdown for this total is as follows:

Remaining land acquisition:	\$ 60,000
Alley 4 utility relocations:	\$ 330,000
Alley 5 design costs:	\$ 270,000
East Ohio Gas relocations:	\$ 200,000
Professional services:	<u>\$ 40,000</u>
	\$ 900,000

Thank you in advance for your support of this request and the actions being recommended.

August 10, 2010

**VIA REGULAR MAIL W LETTER VIA E-MAIL**

David Coffee  
Director of Budget and Finance  
City of Kent  
325 South Depeyster  
Kent, Ohio 44240

**Re: \$3,520,000 City of Kent, Ohio  
Various Purpose Notes, Series 2010**

Dear David:

RECEIVED  
2010 AUG 11 A 9:40  
CITY OF KENT  
BUDGET AND FINANCE

I have enclosed the following documents relating to the above-captioned note issue, which includes refunding the outstanding notes for the fire station, administrative offices and sewer trunk lines:

1. **Three Fiscal Officer's Certificates**, to be reviewed and signed by you and presented to Council prior to its first consideration of the Note Ordinances. The Certificates are dated September 1 on the assumption that they will be presented to Council for the September 1 meeting.
2. **Three Note Ordinances**, which we understand will be on City Council's agenda for September 1. The Note Ordinances provide that the Notes will be dated the date of issuance, and mature not earlier than 11 months and not later than 1 year from that date, and shall bear interest at a rate not exceeding 5-1/2%, as determined by the Director of Budget and Finance in the Certificate of Award. As with last year, The Huntington National Bank is designated as Paying Agent.
3. **County Auditor's Receipt**, to be signed by the County Auditor upon receipt of a certified copy of the Note Ordinances.

Note that the Outstanding Notes mature October 14, 2010.

For the transcript of proceedings for this issue, we will need a signed copy of the Fiscal Officer's Certificates, the County Auditor's Receipt, a certified copy of the Note Ordinances and of minutes (or an

David Coffee  
August 10, 2010  
Page 2

excerpt of minutes) of the Council meeting and of any related committee meeting, reflecting the roll call vote upon suspension of the rules and upon passage, and an affidavit of publication for the Note Ordinances.

As always, should you have any questions, please give me a call.

Very truly yours,

A handwritten signature in black ink that reads "Pam Hanover". The signature is written in a cursive style with a large initial "P" and a long horizontal flourish at the end.

Pamela I. Hanover/cag  
Enclosures

Copy: David Ruller, City Manager  
James Silver, Law Director  
Linda M. Copley, Clerk of Council (via e-mail)  
Jeff Rink (w/ordinances via e-mail)

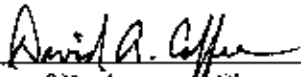
**FISCAL OFFICER'S CERTIFICATE**  
**(Fire Station)**

To the Council of the City of Kent, Ohio:

As fiscal officer of the City of Kent, I certify in connection with your proposed issue of \$2,485,000 notes (the Notes), to be issued in anticipation of the issuance of bonds (the Bonds), for the purpose of paying costs of renovating and expanding the City's main fire station, including acquisition of necessary real estate (the "improvement").

1. The estimated life or period of usefulness of the improvement is at least five years.
  
2. The estimated maximum maturity of the Bonds, calculated in accordance with Section 133.20 of the Revised Code, is thirty years, being my estimate of the life or period of usefulness of that improvement, less the six years that notes in anticipation of the Bonds will have been outstanding later than the last day of December of the fifth year following the year of issuance of the original issue of notes (2000).
  
3. The maximum maturity of the Notes is December 21, 2020.

Dated: September 1, 2010

  
\_\_\_\_\_  
Director of Budget and Finance  
City of Kent, Ohio

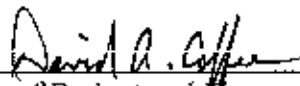
**FISCAL OFFICER'S CERTIFICATE**  
**(Sanitary Sewer Trunk Lines)**

To the Council of the City of Kent, Ohio:

As fiscal officer of the City of Kent, I certify in connection with your proposed issue of \$795,000 notes (the Notes), to be issued in anticipation of the issuance of bonds (the Bonds), for the purpose of replacing, upgrading and extending sanitary sewer trunk lines (the "improvement").

1. The estimated life or period of usefulness of the improvement is at least five years.
2. The estimated maximum maturity of the Bonds, calculated in accordance with Section 133.20 of the Revised Code, is forty years, less the two years that notes in anticipation of the Bonds will have been outstanding later than the last day of December of the fifth year following the year of issuance of the original issue of notes (2004).
3. The maximum maturity of the Notes is October 21, 2024.

Dated: September 1, 2010

  
\_\_\_\_\_  
Director of Budget and Finance  
City of Kent, Ohio

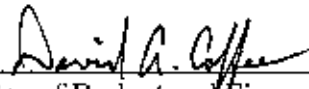
**FISCAL OFFICER'S CERTIFICATE**  
**(Administrative Office)**

To the Council of the City of Kent, Ohio:

As fiscal officer of the City of Kent, I certify in connection with your proposed issue of \$240,000 notes (the Notes), to be issued in anticipation of the issuance of bonds (the Bonds), for the purpose of paying costs of renovating the City's Administrative Office Building and reconstructing and expanding the related parking facilities (the "Improvement").

1. The estimated life or period of usefulness of the improvement is at least five years.
2. The estimated maximum maturity of the Bonds, calculated in accordance with Section 133.20 of the Revised Code, is twenty years, being my estimate of the life or period of usefulness of that improvement, less five years that notes in anticipation of the Bonds will have been outstanding later than the last day of December of the fifth year following the year of issuance of the original issue of notes (2001).
3. The maximum maturity of the Notes is December 5, 2021.

Dated: September 1, 2010

  
\_\_\_\_\_  
Director of Budget and Finance  
City of Kent, Ohio

ORDINANCE NO. 2010-\_\_\_\_\_

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$2,485,000 NOTES TO RETIRE NOTES THAT WERE PREVIOUSLY ISSUED, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING COSTS OF RENOVATING AND EXPANDING THE CITY'S MAIN FIRE STATION, INCLUDING ACQUISITION OF NECESSARY REAL ESTATE, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2009-100 passed September 16, 2009, notes in anticipation of bonds in the amount of \$2,700,000 dated October 14, 2009 (the Outstanding Notes), were issued for the purpose stated in Section 1, as part of a consolidated issue pursuant to Section 133.30(B) of the Revised Code, to mature on October 14, 2010; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City; and

WHEREAS, the Director of Budget and Finance as fiscal officer of this City has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 1 is 24 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is December 21, 2020.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least two-thirds (2/3) of all members elected thereto concurring:

SECTION 1. That it is necessary to issue bonds of this City in the aggregate principal amount of \$2,485,000 (the Bonds) for the purpose of paying costs of renovating and expanding the City's main fire station, including acquisition of necessary real estate.

SECTION 2. That the Bonds shall be dated approximately October 1, 2011, shall bear interest at the now estimated rate of 6.0% per year, payable semiannually until the principal amount is paid, and are estimated to mature in 20 annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are not more than 3 times the amount of those payments in any other fiscal year. The first principal payment of the Bonds is estimated to be December 1, 2012.

SECTION 3. That it is necessary to issue and this Council determines that notes in the aggregate principal amount of \$2,485,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to retire, together with other funds available to the City, the Outstanding Notes. The Notes shall be dated the date of issuance and shall mature not earlier than 11 months and not later than one year from that date, as shall be determined by the Director of Budget and Finance in the certificate awarding the Notes (the Certificate of Award) in accordance with Section 6. The Notes



shall bear interest at a rate or rates not to exceed 5.5% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Budget and Finance in the Certificate of Award.

SECTION 4. That the debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America as determined by the Director of Budget and Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at the principal corporate trust office of The Huntington National Bank, Columbus, Ohio, or its successor, or at the office of the Director of Budget and Finance if agreed to by the Director of Budget and Finance and the Original Purchaser (the Paying Agent).

SECTION 5. That the Notes shall be signed by the City Manager and Director of Budget and Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Director of Budget and Finance, provided that no Note shall be issued in a denomination less than \$100,000. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Budget and Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Director of Budget and Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Budget and Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this section and this ordinance:

"Book entry form" or "book entry system" means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes "immobilized" in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"Participant" means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in

the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Budget and Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Budget and Finance does not or is unable to do so, the Director of Budget and Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Budget and Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

SECTION 6. That the Notes shall be sold at not less than 97% of par plus accrued interest at private sale by the Director of Budget and Finance in accordance with law and the provisions of this Ordinance. The Director of Budget and Finance shall, in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers and conditions then existing in the financial markets, establish the purchase price of the Notes, the interest rate to be borne by the Notes, the maturity of the Notes, sign the Certificate of Award referred to in Section 3 evidencing that sale to the Original Purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The City Manager, the Director of Budget and Finance, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The Director of Budget and Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code; provided that no Note of that consolidated issue shall be issued in a denomination less than \$100,000.

The Director of Budget and Finance is hereby authorized to offer all or part of the Notes at par and any accrued interest to the Treasury Investment Board of the City for investment under Section 731.56 of the Revised Code in accordance with law and the provisions of this Ordinance if, as a result of the conditions then existing in the financial markets, the Director of Budget and Finance determines it is in the best financial interest of the City in lieu of the private sale authorized in the preceding paragraph.

SECTION 7. That the proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

SECTION 8. That the par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

SECTION 9. That during the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the Bonds when and as the same fall due. In each year to the extent other funds are available for the payment of debt charges on the Notes or the Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of other funds so available and appropriated.

SECTION 10. That the City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be an item of tax preference under Section 57 of the Code.

That the City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The City hereby represents that the Outstanding Notes (the Refunded Obligation) were designated or deemed designated, and qualified, as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Refunded Obligation from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating the amount of the Notes not in excess of the principal amount of the Refunded Obligation outstanding immediately prior to the redemption of the Refunded Obligation as "qualified tax-exempt obligations" without necessity for further designation and as not to be taken

into account under subparagraph (D) of Section 265(b)(3) of the Code pursuant to subparagraph (D)(ii) of Section 265(b)(3) of the Code.

The amount of the Notes (such amount being the issue price of the Notes less accrued interest, if any, as determined under the Code) in excess of the principal amount of the Refunded Obligation that is outstanding immediately prior to the redemption of the Refunded Obligation is hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, if there is such excess, the City hereby represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the aforesaid amount of the Notes, in an aggregate amount in excess of \$30,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the aforesaid amount of the Notes, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code to the extent that the amount of the refunding obligations does not exceed the outstanding principal amount of the refunded obligations) in an aggregate amount exceeding \$30,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Notes as "qualified tax-exempt obligations".

Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Notes as "qualified tax-exempt obligations," it has not formed or participated in the formation of, or benefitted from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

Each covenant made in this Section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Notes.

The Director of Budget and Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of

making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Notes.

SECTION 11. That the Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor.

SECTION 12. 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 actions, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 13. That this Ordinance is 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 and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit, for which reasons 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: \_\_\_\_\_  
DATE

\_\_\_\_\_  
MAYOR AND PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL.

I hereby certify that Ordinance No. 2010-\_\_\_\_\_ was duly enacted on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the Council of the City of Kent, Ohio.

\_\_\_\_\_  
Clerk of Council

ORDINANCE NO. 2010-\_\_\_\_\_

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$795,000 NOTES TO RETIRE NOTES THAT WERE PREVIOUSLY ISSUED, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF REPLACING, UPGRADING AND EXTENDING SANITARY SEWER TRUNK LINES, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2009-99 passed September 16, 2009, notes in anticipation of bonds in the amount of \$855,000 dated October 14, 2009 (the Outstanding Notes), were issued for the purpose stated in Section 1, as part of a consolidated issue pursuant to Section 133.30(B) of the Revised Code, to mature on October 14, 2010; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City; and

WHEREAS, the Director of Budget and Finance as fiscal officer of this City has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 1 is 38 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is October 21, 2024.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least two-thirds (2/3) of all members elected thereto concurring:

SECTION 1. That it is necessary to issue bonds of this City in the aggregate principal amount of \$795,000 (the Bonds) for the purpose of replacing, upgrading and extending sanitary sewer trunk lines.

SECTION 2. That the Bonds shall be dated approximately October 1, 2011, shall bear interest at the now estimated rate of 6.0% per year, payable semiannually until the principal amount is paid, and are estimated to mature in 20 annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are not more than 3 times the amount of those payments in any other fiscal year. The first principal payment of the Bonds is estimated to be December 1, 2012.

SECTION 3. That it is necessary to issue and this Council determines that notes in the aggregate principal amount of \$795,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to retire, together with other funds available to the City, the Outstanding Notes. The Notes shall be dated the date of issuance and shall mature not earlier than 11 months and not later than one year from that date, as shall be determined by the Director of Budget and Finance in the certificate awarding the Notes (the Certificate of Award) in accordance with Section 6. The Notes shall bear interest at a rate or rates not to exceed 5.5% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Budget and Finance in the Certificate of Award.

SECTION 4. That the debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America as determined by the Director of Budget and Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at the principal corporate trust office of The Huntington

National Bank, Columbus, Ohio, or its successor, or at the office of the Director of Budget and Finance if agreed to by the Director of Budget and Finance and the Original Purchaser (the Paying Agent).

SECTION 5. That the Notes shall be signed by the City Manager and Director of Budget and Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Director of Budget and Finance. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Budget and Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Director of Budget and Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Budget and Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this section and this ordinance:

“Book entry form” or “book entry system” means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes “immobilized” in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Participant” means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Budget and Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Budget and Finance does not or is unable to do so, the Director of Budget and Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Budget and Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

SECTION 6. That the Notes shall be sold at not less than 97% of par plus accrued interest at private sale by the Director of Budget and Finance in accordance with law and the provisions of this Ordinance. The Director of Budget and Finance shall, in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers and conditions then existing in the financial markets, establish the purchase price of the Notes, the interest rate to be borne by the Notes, the maturity of the Notes, the Certificate of Award referred to in Section 3 evidencing that sale to the Original Purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The City Manager, the Director of Budget and Finance, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The Director of Budget and Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code; provided that no Note of that consolidated issue shall be issued in a denomination less than \$100,000.

The Director of Budget and Finance is hereby authorized to offer all or part of the Notes at par and any accrued interest to the Treasury Investment Board of the City for investment under Section 731.56 of the Revised Code in accordance with law and the provisions of this Ordinance if, as a result of the conditions then existing in the financial markets, the Director of Budget and Finance determines it is in the best financial interest of the City in lieu of the private sale authorized in the preceding paragraph.

SECTION 7. That the proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

SECTION 8. That the par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

SECTION 9. That during the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the Bonds when and as the same fall due. In each year to the extent income from the City's sewerage system or other funds are available for the payment of debt charges on the Notes or the Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of other funds so available and appropriated.



SECTION 10. That the City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be an item of tax preference under Section 57 of the Code.

That the City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The City hereby represents that the Outstanding Notes (the Refunded Obligation) were designated or deemed designated, and qualified, as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Refunded Obligation from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating the amount of the Notes not in excess of the principal amount of the Refunded Obligation outstanding immediately prior to the redemption of the Refunded Obligation as "qualified tax-exempt obligations" without necessity for further designation and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code pursuant to subparagraph (D)(ii) of Section 265(b)(3) of the Code.

The amount of the Notes (such amount being the issue price of the Notes less accrued interest, if any, as determined under the Code) in excess of the principal amount of the Refunded Obligation that is outstanding immediately prior to the redemption of the Refunded Obligation is hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, if there is such excess, the City hereby represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the aforesaid amount of the Notes, in an aggregate amount in excess of \$30,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the aforesaid amount of the Notes, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code to the extent that the amount of the refunding obligations does not exceed the outstanding principal amount of the refunded obligations) in an aggregate amount exceeding \$30,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Notes as "qualified tax-exempt obligations".

Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Notes as "qualified tax-exempt obligations," it has not formed or participated in the formation of, or benefitted from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

Each covenant made in this section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Notes.

The Director of Budget and Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Notes.

SECTION 11. That the Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor.

SECTION 12. 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 actions, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 13. That this Ordinance is 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 and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit, for which reasons 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: \_\_\_\_\_  
DATE

\_\_\_\_\_  
MAYOR AND PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2010-\_\_\_\_\_ was duly enacted on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the Council of the City of Kent, Ohio.

\_\_\_\_\_  
Clerk of Council

ORDINANCE NO. 2010-\_\_\_\_\_

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$240,000 NOTES TO RETIRE NOTES THAT WERE PREVIOUSLY ISSUED, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING COSTS OF RENOVATING THE CITY'S ADMINISTRATIVE OFFICE BUILDING AND RECONSTRUCTING AND EXPANDING THE RELATED PARKING FACILITIES, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2009-101 passed September 16, 2009, notes in anticipation of bonds in the amount of \$265,000 dated October 14, 2009 (the Outstanding Notes), were issued for the purpose stated in Section 1, as part of a consolidated issue pursuant to Section 133.30(B) of the Revised Code, to mature on October 14, 2010; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds available to the City; and

WHEREAS, the Director of Budget and Finance as fiscal officer of this City has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the Bonds described in Section 1 is 15 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is December 5, 2021.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, at least two-thirds (2/3) of all members elected thereto concurring:

SECTION 1. That it is necessary to issue bonds of this City in the aggregate principal amount of \$240,000 (the Bonds) for the purpose of paying costs of renovating the City's Administrative Office Building and reconstructing and expanding the related parking facilities.

SECTION 2. That the Bonds shall be dated approximately October 1, 2011, shall bear interest at the now estimated rate of 6.0% per year, payable semiannually until the principal amount is paid, and are estimated to mature in 15 annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable are not more than 3 times the amount of those payments in any other fiscal year. The first principal payment of the Bonds is estimated to be December 1, 2012.

SECTION 3. That it is necessary to issue and this Council determines that notes in the aggregate principal amount of \$240,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to retire, together with other funds available to the City, the Outstanding Notes. The Notes shall be dated the date of issuance and shall mature not earlier than 11 months and not later than one year from that date, as shall be determined by the Director of Budget and Finance in the certificate awarding the Notes (the Certificate of Award) in accordance with Section 6. The Notes shall bear interest at a rate or rates not to exceed 5.5% per year (computed on the basis of a 360-day year

consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes shall be determined by the Director of Budget and Finance in the Certificate of Award.

SECTION 4. That the debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America as determined by the Director of Budget and Finance in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at the principal corporate trust office of The Huntington National Bank, Columbus, Ohio, or its successor, or at the office of the Director of Budget and Finance if agreed to by the Director of Budget and Finance and the Original Purchaser (the Paying Agent).

SECTION 5. That the Notes shall be signed by the City Manager and Director of Budget and Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Director of Budget and Finance. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Budget and Finance will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Director of Budget and Finance that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Budget and Finance and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this section and this ordinance:

"Book entry form" or "book entry system" means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes "immobilized" in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

"Depository" means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

"Participant" means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry

form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Director of Budget and Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Budget and Finance does not or is unable to do so, the Director of Budget and Finance, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Director of Budget and Finance is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

SECTION 6. That the Notes shall be sold at not less than 97% of par plus accrued interest at private sale by the Director of Budget and Finance in accordance with law and the provisions of this Ordinance. The Director of Budget and Finance shall, in accordance with his determination of the best interests of and financial advantages to the City and its taxpayers and conditions then existing in the financial markets, establish the purchase price of the Notes, the interest rate to be borne by the Notes, the maturity of the Notes, sign the Certificate of Award referred to in Section 3 evidencing that sale to the Original Purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The City Manager, the Director of Budget and Finance, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The Director of Budget and Finance is authorized, if it is determined to be in the best interest of the City, to combine the issue of Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code; provided that no Note of that consolidated issue shall be issued in a denomination less than \$100,000.

The Director of Budget and Finance is hereby authorized to offer all or part of the Notes at par and any accrued interest to the Treasury Investment Board of the City for investment under Section 731.56 of the Revised Code in accordance with law and the provisions of this Ordinance if, as a result of the conditions then existing in the financial markets, the Director of Budget and Finance determines it is in the best financial interest of the City in lieu of the private sale authorized in the preceding paragraph.

SECTION 7. That the proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

SECTION 8. That the par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

SECTION 9. That during the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the Bonds when and as the same fall due. In each year to the extent other funds are available for the payment of debt charges on the Notes or the Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of other funds so available and appropriated.

SECTION 10. That the City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes will not be an item of tax preference under Section 57 of the Code.

That the City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Notes to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Notes to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The City hereby represents that the Outstanding Notes (the Refunded Obligation) were designated or deemed designated, and qualified, as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Refunded Obligation from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating the amount of the Notes not in excess of the principal amount of the Refunded Obligation outstanding immediately prior to the redemption of the Refunded Obligation as

“qualified tax-exempt obligations” without necessity for further designation and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code pursuant to subparagraph (D)(ii) of Section 265(b)(3) of the Code.

The amount of the Notes (such amount being the issue price of the Notes less accrued interest, if any, as determined under the Code) in excess of the principal amount of the Refunded Obligation that is outstanding immediately prior to the redemption of the Refunded Obligation is hereby designated as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. In that connection, if there is such excess, the City hereby represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes are issued, (i) have not issued and will not issue tax-exempt obligations designated as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code, including the aforesaid amount of the Notes, in an aggregate amount in excess of \$30,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the aforesaid amount of the Notes, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code to the extent that the amount of the refunding obligations does not exceed the outstanding principal amount of the refunded obligations) in an aggregate amount exceeding \$30,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Notes as “qualified tax-exempt obligations”.

Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Notes as “qualified tax-exempt obligations,” it has not formed or participated in the formation of, or benefitted from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

Each covenant made in this Section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this Section to take with respect to the Notes.

The Director of Budget and Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes or interest thereon or assisting compliance



with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Notes.

SECTION 11. That the Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor.

SECTION 12. 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 actions, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

SECTION 13. That this Ordinance is 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 and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit, for which reasons 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: \_\_\_\_\_  
DATE

\_\_\_\_\_  
MAYOR AND PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2010-\_\_\_\_\_ was duly enacted on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by the Council of the City of Kent, Ohio.

\_\_\_\_\_  
Clerk of Council

CITY OF KENT  
DEPARTMENT OF PUBLIC SERVICE  
DIVISION OF ENGINEERING

MEMO

TO: Dave Ruller  
Linda Copley

FROM: Jim Bowling

DATE: August 24, 2010

RE: Downtown Redevelopment Plan- Restore Store Demolition

The Engineering Division is requesting council time to obtain council's approval for the appropriation of \$180,000 of capital funds to include the demolition of the Restore (Kent Hardware) with the Downtown Demolition – Phase 1. The demolition of the Restore is required for construction of the mixed-use building proposed to house Amctek, which is planned to start construction early in 2011.

The Restore was not included in the original demolition presented to council in May, 2010, because the Land Development agreement for the mixed use facility was still in negotiations and the Restore was still a tenant. With the approval of the mixed-use land development agreement, it is a requirement for the City to clear the site. When the negotiations were coming to a close and the Restore had moved to a new location, the engineering division added the demolition of the restore to the plans as an alternate bid item to achieve economies of scale in the demolition of the property. The requested \$180,000 is based on the contractor's bid for the alternate bid item. If the demolition of the Restore is completed with this contract, the City will have completed the demolition phase of the development project.

c: Gene Roberts, Service Director  
Suzanne Robertson, Executive Assistant  
Dave Coffee, Budget and Finance Director