

ORDINANCE NO. 2009-\_\_\_\_\_

**AN ORDINANCE ACCEPTING FOR DEDICATION PURPOSES, TWO (2) EASEMENTS FROM THE STATE OF OHIO FOR THE S.R. 59 SIGNALIZATION PROJECT AND DECLARING AN EMERGENCY.**

**WHEREAS**, the State of Ohio wishes to donate two (2) easements to the City of Kent for the SR 59 Signalization Project; and

**WHEREAS**, the State of Ohio has delivered to the City the necessary dedication plat for the easements, a copy of which is marked Exhibit "A", and placed on file with the Clerk of Council; and

**WHEREAS**, the Development Engineer for the City has given her opinion that the 0.1360 acres of right-of-way easement should be accepted for dedication purposes; and

**WHEREAS**, a committee of Council has reviewed the easements offered for dedication and has recommended to Council that the City accept the two (2) easements for dedication as contained on the attached Exhibit "A".

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

**SECTION 1.** That Council does hereby accept for dedication purposes, easements over 0.1360 acres of land owned by the State of Ohio, valued at \$14,800.00, for the SR 59 Signalization Project as the same is shown upon the copy of the dedication plat marked Exhibit "A" on file in the Clerk of Council's office, and incorporated herein.

**SECTION 2.** That Council does hereby direct the President and Clerk of Council to sign the original dedication plat, evidencing the dedication approval as authorized herein.

**SECTION 3.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council, and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements of Section 121.22 of the Ohio Revised Code.

**SECTION 4.** That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of this City for the reason that it is immediately necessary to allow the SR 59 Signalization Project to move forward without delay, for which reason and other reasons manifest to this Council this ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: \_\_\_\_\_  
DATE

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

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

I hereby certify that Ordinance No. 2009-\_\_\_\_\_ was duly enacted this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by the Council of the City of Kent, Ohio

\_\_\_\_\_  
CLERK OF COUNCIL

## STATE OF OHIO EASEMENT

**THIS AGREEMENT** ("Agreement"), dated as of \_\_\_\_\_ is made and entered into by and between the STATE OF OHIO acting by and through the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1395, (hereinafter referred to as "State"), for and on behalf of Kent State University (hereinafter referred to as "Agency"), and the City of Kent, a body politic duly formed and existing under the laws of the State of Ohio, (the "Grantee"), having its principal place of business located at 217 East Summit Street, Kent, Portage County, Ohio 44240, pursuant to the provisions of O.R.C. §123.01(A)(9).

**WHEREAS**, the State is the owner, in fee simple absolute, of the land described below (the "Easement Area") and more particularly depicted in Exhibit "A" attached hereto and made a part hereof:

### DESCRIPTION:

PARCEL 6-U  
POR-59-1.27

Situated in the State of Ohio, County of Portage, City of Kent, being in Township Lot 23, Township 3 North, Range 9 West, and also being on the right side of the centerline of right of way of State Route 59 (E. Main Street), as shown on a Right of Way Acquisition Plat made in 2009, for the City of Kent titled "POR-59-1.27" and bounded and described as follows:

BEGINNING at a deflection point in the southerly right of way line of said State Route 59 (E. Main Street) South 00 degrees 30 minutes 29 seconds East, 45.00 feet from an iron pin found at the intersection of the centerlines of Said State Route 59 and Luther Lane (State Route 59 Station 135+73.88), said point being 45.00 feet right of Station 135+73.88;

1. Thence North 89 degrees 27 minutes 04 seconds East a distance of 71.16 feet, along said existing southerly right of way line to a point 45.00 feet right of Station 136+45.00;
2. Thence South 00 degrees 32 minutes 56 seconds East a distance of 1000 feet to a point 55.00 feet right of Station 136+45.00;
3. Thence south 89 degrees 27 minutes 04 seconds West a distance of 32.00 feet to a point 55.00 feet right of Station 136+13.00;
4. Thence South 00 degrees, 32 minutes 56 seconds East a distance of 10.00 feet to a point 65 feet right of Station 136+13.00;
5. Thence S 89 Degrees 29 minutes 40 seconds West a distance of 83.09 feet to a point 65.00 feet right of Station 135+30.00;
6. Thence North 00 degrees 28 minutes 01 seconds West a distance of 20.00 feet to a point on the existing southerly right of way line of State Route 59 being 45.00 feet right of Station 135\_30.00;
7. Thence North 89 degrees 31 minutes 59 seconds East a distance of 43.91 feet, along said existing southerly right of way line to the TRUE POINT OF BEGINNING.

The above described area is contained within Portage County Auditor's Permanent Parcel Number 17-23-00-00-001.000 and contains a gross take of 0.046 acres more or less.

This description was prepared by Jon D. Bruner, Professional Surveyor Number 7098 of The Mannik & Smith Group, on February 19, 2009.

This description is based on a survey made in 2006 by the Mannik & Smith Group under the direction and supervision of Jon D. Bruner, Professional Surveyor Number 7098.

Grantor claims title by Deed Volume 221, Page 406 and Deed Volume 320, Page 229, Portage County Recorders office and also being on the right side of the centerline of right of way of State Route 59 (E. Main Street) as shown on a Right of Way Acquisition Plat made in 2009, for the City of Kent title "POR-59-1.27" and bounded and described as follows:

Beginning at an angle point in the southerly right of way line of said State Route 59 (E. Main Street) North 89 degrees 27 minutes 04 seconds East 523.45 feet and South 00 degrees 02 minutes 56 seconds East, 40.50 feet from an iron pin in monument box found at the intersection of the centerlines of Said State Route 59 and Luther Lane (State Route 59 Station 135+73.88), said point being 40.50 feet right of Station 140+97.33;

1. Thence North 89 degrees 27 minutes 04 seconds East a distance of 29.67 feet, along said existing southerly right of way line to a point 40.50 feet right of Station 141+27.00;
2. Thence South 00 degrees 32 minutes 56 seconds East a distance of 32.50 feet to a point 73.00 feet right of Station 141+27.00;
3. Thence South 89 degrees 27 minutes 04 seconds West a distance of 135.00 feet to a point 73.00 feet right of Station 139+92.00;
4. Thence North 00 degrees 32 minutes 56 seconds West a distance of 28 feet to a point on the existing southerly right of way line of State Route 59 being 45.00 feet right of Station 139+92.00;
5. Thence North 89 degrees 27 minutes 04 seconds East a distance of 105.33 feet, along said existing southerly right of way line to an angle point in said southerly right of way line 45.00 feet right of Station 140+97.33;
6. Thence North 00 degrees 32 minutes 56 seconds West a distance of 4.50 feet continuing along said right of way line to the TRUE POINT OF BEGINNING.

The above described area is contained within Portage County Auditor's Permanent Parcel Number 17-23-00-00-001.000 and contains a gross take of 0.090 acres more or less.

This description was prepared by Jon D. Bruner, Professional Surveyor Number 7098 of The Mannik & Smith Group, on February 19, 2009.

This description is based on a survey made in 2006 by the Mannik & Smith Group under the direction and supervision of Jon D. Bruner, Professional Surveyor Number 7098.

Grantor claims title by Deed Volume 320 Page 229 and Deed Volume 383, Page 585, Portage County Recorders office. The bearings are based on the Ohio State Plane Coordinate System, North Zone, and North American datum of 1983 (1986 Adjustment) as established from a GPS survey tied to a network of control monuments established by the City of Kent.

Further reference is made to File No. 6689 on file in the offices of the Ohio Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1935; and

**WHEREAS**, the Grantee desires to obtain from the State the within easement in order to permit the installation, construction, reconstruction, use, operation, maintenance, repair, replacement, removal, servicing and improvement of a certain electrical lines to upgrade crossings, signals, and provide video camera abilities. The easement will also allow for the reconstruction of the existing sidewalk and retaining wall upon the Easement Area; and

**WHEREAS**, the Agency requested the Department of Administrative Services to prepare this Agreement; and

**WHEREAS**, the Department of Administrative Services has determined that little or no adverse impact will occur to adjoining State-owned lands from the granting of the within easement, provided that Grantee fully adheres to all of the provisions hereof;

**NOW, THEREFORE**, in exchange and in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and legal sufficiency of which is acknowledged, the parties hereto agree as follows:

**1. Use of Premises.**

The State does hereby grant a non-exclusive easement unto Grantee to be used solely to install, construct, reconstruct, use, operate, maintain, repair, replace, remove, service and improve in, on, over, under, across, through and upon the Easement Area electrical lines to upgrade crossings, signals and provide video camera abilities. The easement will also allow for the reconstruction of the existing sidewalk and retaining wall (the "Improvement"). On or before the Expiration Date (as defined below) or earlier if this Agreement is terminated pursuant to the provisions hereof, Grantee shall at its own cost and expense, if State so requests, remove, or cause the removal of, all component parts of the Improvement and restore the ground to its original condition unless the parties agree otherwise in writing.

**2. Term.**

The term of this Agreement shall be for twenty-five (25) years, commencing on September 15, 2009, (the "Commencement Date") and expiring on September 14, 2034, (the "Expiration Date") unless earlier terminated pursuant to a subsequent agreement between the parties or in accordance with the provisions of paragraph 10 hereof.

**3. Consideration.**

Grantee shall pay to Agency the total sum of One and 00/100 Dollars (\$1.00) in consideration of the State's granting the within easement. Grantee shall tender such payment payable to the Treasurer, State of Ohio to Agency upon delivery to Grantee of a fully executed counterpart of this Agreement.

**4. Construction / Maintenance.**

- (A) The Improvement shall at all times be installed, constructed, reconstructed, used, operated, maintained, repaired, replaced, removed, serviced and improved in accordance with all local, state or federal laws, rules and regulations and applicable industry guidelines, including compliance with Equal Employment Opportunity laws. If no such laws, rules, regulations or industry guidelines are applicable to the Improvement, then responsible engineering practices shall be the control. If the surface of the ground in the Easement Area is disturbed at any time, Grantee
- (B) shall provide necessary fill, re-sod or re-seed any grassed areas, and make such repairs and replacements for a period of not later than one (1) year after the date of such disturbance as may be needed to restore the ground to its former condition or pay the State for all damages caused thereto.
- (C) The State shall be immediately notified when any installation belonging to a party other than Grantee or any unusual condition is encountered in the field. Grantee shall prior to the commencement of any work permitted hereunder obtain and
- (D) thereafter maintain, at its sole cost and expense, all licenses, permits, etc. required by law with respect to said work or the Improvement.
- (E) The State may locate, relocate, install, construct, reconstruct, maintain, operate, repair, remove, use and place property improvements in, on, over, under, across, through and upon the Easement Area, so long as the State's improvements do not

unreasonably impair the strength of or unreasonably interfere with the Grantee's ability to use and maintain the Improvement.

- (F) Grantee shall comply with the provisions of O.R.C. §4115, Prevailing Wage Requirements, as applicable.  
Grantee shall have the obligation, for the term of this Agreement, at its cost to
- (G) maintain and repair the Improvement on a continuous and ongoing basis, which maintenance and repairs shall be performed in a good and workmanlike manner to protect the safety and aesthetics of the Improvement.

## 5. **Liability.**

To the extent permitted by law, Grantee shall protect, indemnify and hold the State harmless, from and against any and all claims, demands, causes, actions and damages together with any and all losses, costs, and expenses, including without limitation, any attorney's fees, for the death of or injury to any person or persons or damage to property, of every kind and nature, which may arise out of or in any connection with the Grantee's use and operation of the Improvement or the Easement area or that of its successors, assigns, agents, servants, employees, contractors, subcontractors, invitees, and any other person acting under and by virtue of, by through the Grantee, except for any act, omission, or neglect caused by the State or any of its agents, servants, employees, contractors, subcontractors, and other persons' claim under, by and through the State.

The provision of this Paragraph 5 shall survive the expiration or termination of the term of this Agreement.

## 6 **Insurance.**

Grantee shall at all times during the term of this Agreement, maintain adequate reserves and funding to compensate for bodily injury, personal injury, wrongful death and property damage or other claims including defense costs and other loss adjustment expenses arising out of or related to the Easement Area. To protect the State's interest, the Grantee shall provide written proof (which is acceptable to the State) to assure that the appropriate levels of financial responsibility are being retained. Failure to comply with this clause shall constitute a material breach of this Agreement.

## 5. **Mechanic's Liens.**

- (A) Nothing contained in this Agreement shall be construed as constituting the State's consent, express or implied, to or for the performance of any labor or services or furnishing of any materials for the installation, construction, reconstruction, usage, operation, maintenance, repair, replacement or improvement of the Easement Area or any portion thereof or the Improvement or any portion thereof.

- (B) Grantee shall not allow any liens or encumbrances to be filed against the Easement Area or the Property, or any portion thereof, other than (i) liens created by or resulting from any act or status of the State or failure by the State to perform any obligation not required to be performed by Grantee hereunder, or (ii) created by or resulting from any act or status or failure to act by Grantee to which the State shall have expressly consented in writing. If such a lien or encumbrance is placed of record against the Easement Area or the Property, or any portion thereof, the Grantee shall, within thirty (30) days after receiving notice thereof, remove or discharge same or to bond off such lien or encumbrance.

**8. Taxes/Assessments.**

Intentionally Deleted.

**9. Assignment.**

This Agreement may not be assigned or transferred, in whole or in part, by Grantee without the prior consent of the Director of Administrative Services, which consent may be withheld for any reason. Should consent to any such assignment be granted, such assignment or transfer shall not relieve Grantee of its obligations and duties under the terms, covenants and conditions of this Agreement. Any assignee shall expressly assume, and by reason of such assignment or transfer shall be deemed as having assumed, all of the obligations and duties of Grantee hereunder.

**10. Termination.**

This Agreement may be terminated by State upon ninety (90) days notice given to Grantee if the Easement Area, or any portion thereof, is needed by the State for any public or quasi-public use or purpose. On or before the date stated in such notice of termination, Grantee shall, at its own cost and expense, if State so requests, remove, or cause the removal of all component parts of the Improvement and restore the ground to its former condition. Grantee shall have no claim against the State for the value of any unexpired portion of the original term of this Agreement or for the Improvement. Upon termination of this Agreement, the State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.

This Agreement may be terminated at any time by Grantee by delivering written notice to State and Agency setting forth the date Grantee intends to terminate. Upon either the voluntary termination of this Agreement, or the end of the term hereof, Grantee shall remove all of the Improvement prior to termination, and shall return the Easement Area to its original condition, unless otherwise agreed to in writing by State and Agency. Grantee's obligations hereunder shall continue until such time as the Improvement is fully removed and the Easement Area fully repaired as required herein, notwithstanding the stated date of termination in the notice provided by Grantee, or in the Agreement, but failure to remove the Improvement shall not be considered an extension of the term of the Agreement. No portion of any consideration paid pursuant to the terms of the Agreement will be refunded to Grantee.

**11. Default.**

- (A) In the event any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: (i) Grantee's failure to make any payment required to be paid by Grantee when the same shall become due and payable and the continuance of such failure for a period of fifteen (15) days after the giving of notice to Grantee by the State of such failure, (ii) the Grantee's failure to perform or observe any other covenant, condition or agreement herein contained on the Grantee's part to be performed or observed and the continuance of such failure without curing of same within thirty (30) days

after the giving of notice to Grantee by State of such failure (provided that in the case of any default referred to in this clause (ii) which cannot with due diligence be cured within such thirty (30) day period, if Grantee shall proceed promptly and continuously to cure the same default with due diligence, then upon receipt by the State of a certificate from Grantee stating the reason that such default cannot be cured within thirty (30) days and stating that Grantee is proceeding with due diligence to cure such default, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of same with due diligence); then, the State may, at its option, give to Grantee a notice of election to terminate this Agreement upon the date specified in such notice, which date shall not be less than ten (10) days after the date of such notice, and upon the date specified in such notice the term of this Agreement shall expire and terminate as fully and completely and with the same effect as if such date were the Expiration Date, and all rights of Grantee shall thereupon expire and terminate, and Grantee shall at its own cost and expense, if State so requests, remove or cause the removal of the Improvements.

- (B) Upon termination of this Agreement, the State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.
- (C) Upon the termination of this Agreement by reason of the happening of any event of default specified in this Paragraph 11, or in any other manner or circumstances whatsoever pursuant to legal process, by reason of or based upon or arising out of the occurrence of any such event of default under this Agreement, Grantee shall pay to Agency all sums required to be paid by Grantee up to the time of such termination.

## **12. Rights Cumulative.**

All rights and remedies of the State enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised or enforced concurrently and all obligations, rights or remedies shall survive formal termination of this Agreement.

## **13. Waiver.**

The waiver by the State of, or the failure of the State to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition herein contained. The subsequent acceptance of any payment hereunder by the State shall not be deemed to be a waiver of any preceding breach by Grantee of any term, covenant or condition of this Agreement.

## **14. Notices, Demands or instruments.**

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when hand-delivered or sent by U.S. registered or certified mail, return receipt requested, postage prepaid, (a) with respect to the State, addressed to:

General Services Division  
Office of Real Estate and Planning  
4200 Surface Road  
Columbus, Ohio 43228-1395  
Attention: Administrator

(b) with respect to Agency:

Kent State University  
P.O. Box 5190  
Kent, Ohio 44242  
Attention: Vice President for Administration

and,

(c) with respect to Grantee, addressed to:

The City of Kent, Ohio  
930 Overholt Road  
Kent, Ohio 44240  
Attention: City of Kent Service Director

Each party shall have the right from time-to-time to specify as its address for purposes of this Agreement any other address in the United States of America upon giving not less than fifteen (15) days notice thereof, similarly given, as provided for in this paragraph.

15. **Modifications.**

This Agreement may not be changed, modified or discharged except by a writing signed by duly authorized representatives of both the State and Grantee.

16. **Governing Law.**

This Agreement shall be governed by and interpreted under the laws of the State of Ohio. Any action or proceeding arising out of the terms of this Agreement shall be brought only in a court of competent jurisdiction located in Franklin County, Ohio.

17. **Headings.**

The headings to the various paragraphs and exhibits to this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

18. **Campaign Contributions & Ethics Compliance**

Grantee hereby certifies that all applicable parties listed in Division (I) (3) or (J) (3) of O.R.C. Section 3517.13 are in full compliance with Divisions (I) (1) and (J) (1) of O.R.C. Section 3517.13.

In accordance with Executive Order 2007-01S, Grantee, by signature on this document, certifies that it: (1) has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) will take no



action inconsistent with those laws and this order. The Grantee understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Easement and may result in the loss of other contracts with the State of Ohio.

Grantee certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio ethics laws.

**19. Declaration of Material Assistance**

In accordance with R.C. 2909.33(C), Grantee certifies that it meets one of the following conditions:

(a)(1) Grantee has not received, nor will it receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;

or

(a)(2) Grantee has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars (\$100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year.

and,

(b) Grantee has either pre-certified with the Office of Budget and Management, or has completed the provided Declaration of Material Assistance form as directed, certifying that Grantee has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

The terms of the within State of Ohio Easement are accepted and agreed to by Kent State University

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Gregg S. Floyd, Vice-President of Finance and Administration

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed and delivered this Agreement as of the date first set forth above.

**GRANTOR**  
THE STATE OF OHIO

By: \_\_\_\_\_  
TED STRICKLAND  
Governor of Ohio

By: \_\_\_\_\_  
\_\_\_\_\_

Director of Administrative Services or  
Signatory Designee Statutory Agent,  
RC 123.01(A)(9)

**ACKNOWLEDGMENT**

State of Ohio, Franklin County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_ before me personally appeared \_\_\_\_\_, who acknowledged that the foregoing document is being executed for and on behalf of the Department of Administrative Services, acting on behalf of the State of Ohio, that the same is his/her own and the Department of Administrative Services' voluntary act and deed and that he/she is duly authorized to enter into said document for and on behalf of the Department of Administrative Services.

\_\_\_\_\_  
Notary Public, State of Ohio  
My Commission Expires  
\_\_\_\_\_

APPROVED AS TO FORM:

Ohio Attorney General

By: \_\_\_\_\_

Gary R. Taylor, Assistant Section Chief, Business Counsel

GRANTEE  
CITY OF KENT OHIO

By: \_\_\_\_\_

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

**ACKNOWLEDGMENT**

State of Ohio, Portage County, ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally appeared \_\_\_\_\_, of the City of Kent, Ohio, a body politic, who acknowledged that he executed the foregoing State of Ohio Easement for and on behalf of the City of Kent and that the same is he and the Grantee's free and voluntary act and deed, and that he is duly authorized to execute the same on behalf of the Grantee.

Notary Public, State of Ohio  
My Commission Expires

This instrument was prepared by the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43225-1395.