

ORDINANCE NO. 2012 - 26

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF KENT AND THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION, OFFICE OF JOBS AND COMMERCE (ODOT), FOR THE RECONSTRUCTION/IMPROVEMENT OF ERIE STREET, DEPEYSTER STREET, ALLEY #4 AND ALLEY#5, AS PART OF THE REDEVELOPMENT OF DOWNTOWN KENT, IN THE AMOUNT OF \$500,000.00, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to enter into an agreement with the State of Ohio, Department of Transportation, Office of Jobs and Commerce (ODOT), for the reconstruction/improvement of Erie Street, Depeyster Street, Alley #4 and Alley #5, as part of the redevelopment of Downtown Kent;

WHEREAS, the City wishes to receive a maximum of grant funding in the amount of \$500,000.00; and

WHEREAS, time is of the essence, requiring passage of this Ordinance on an emergency basis.

NOW, THEREFORE, BE IT RESOLVED 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 authorize the City Manager, or his designee, to execute the agreement with ODOT for the for the reconstruction/improvement of Erie Street, Depeyster Street, Alley #4 and Alley #5, as part of the redevelopment of Downtown Kent, in substantial conformity with the terms of the Agreement marked as Exhibit "A", attached hereto and incorporated herein.

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

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

PASSED: 03/07/2012
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2012- 26 as duly enacted this 7th day of March, 2012, by the Council of the City of Kent, Ohio

CLERK OF COUNCIL

Exhibit "A"

JOBS AND COMMERCE ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE STATE OF OHIO, DEPARTMENT OF TRANSPORTATION AND CITY OF KENT, OHIO

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the City of Kent, Ohio, hereinafter referred to as the CITY, 215 East Summit Street, Kent, Ohio 44240.

1. PURPOSE

1.1 Section 5501.03(A)(3) of the Ohio Revised Code (ORC) provides that ODOT may coordinate its activities with those of other appropriate state departments, public agencies, and authorities, and enter into any contracts with such departments, agencies, and authorities as may be necessary to carry out its duties, powers, and functions.

1.2 ORC § 5501.11(A)(4) states the department of transportation with respect to highways shall cooperate with the counties, municipal corporations, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges.

1.3 As part of the overall Redevelopment of Downtown Kent project, the CITY is reconstructing and improving Erie Street, Depeyster Street Alley 4, and Alley 5 to support increased traffic and provide transportation connectivity to serve: new corporate headquarters for Davey Resource Group, new office facilities for AMETEK Corporation, Kent State University's new hotel and conference center, and other new commercial office space in downtown Kent (hereinafter referred to as the PROJECT). The ODOT program funds identified in this agreement are to be utilized for roadway improvements along any portion of Erie Street, Depeyster Street, Alley 4, and/or Alley 5.

1.4 The purpose of this Agreement is to set forth the responsibilities of the parties associated with the Jobs & Commerce Economic Development ("JCED") program funding (SAC 4JC7) that is being made available for the PROJECT by ODOT.

1.5 The CITY shall comply with all applicable Federal and State laws, regulations, and applicable executive orders in regards to the PROJECT. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement. The program funding (SAC 4JC7) does not impose additional laws, regulations or executive orders than normally required by a municipality in regards to execution of a public project of this nature.

2. FUNDING AND PAYMENT

2.1 The total cost for the PROJECT is estimated to be **\$3,800,000** as set forth below. Funds provided through ODOT shall be applied only to the eligible costs associated with the actual design and construction of the Erie Street, Depeyster Street, Alley 4, and/or Alley 5 improvements, and construction engineering/inspection activities.

ODOT Jobs & Commerce ED Program Funds	\$500,000
ODOD Roadwork Fund 629 (anticipated)	\$300,000
City of Kent	\$2,220,000
Ohio Public Works Commission Rounds 24 and 25 Grant Funding	\$780,000
TOTAL	\$3,800,000

2.2 Funds provided by ODOT shall not exceed \$500,000.00. The CITY shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

2.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The CITY shall review and/or approve all invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.

2.4 The CITY shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The CITY must submit to ODOT a written request for reimbursement of the state share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted. The CITY may submit a maximum of two requests for reimbursement at quarterly intervals. The deadline for the final reimbursement request is December 31, 2012.

2.5 Payment or reimbursement to the CITY shall be submitted to:

City of Kent
Dave Ruller, City Manager
215 East Summit Street
Kent, Ohio 44240
330-676-7500

3. PROJECT DEVELOPMENT AND DESIGN

3.1 The CITY is administering this PROJECT and is responsible for all aspects of the project, including but not limited to: environmental responsibilities, permit requirements, right of way or utility reimbursement, and construction contract administration.

3.2 Any right, claim, interest, and/or right of action, whether contingent or vested, of the CITY, arising out of or related to any contract entered into by the CITY for the work to be performed by the Contractor on this PROJECT is the responsibility of the CITY. ODOT expressly rejects any liability for the PROJECT and any claims arising from the PROJECT.

4. CERTIFICATION AND RECAPTURE OF FUNDS

4.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

4.2 If for any reason the PROJECT is found to not be in compliance with all applicable local, state, or federal rules and processes the CITY shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT.

5. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

5.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.

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

6. NOTICE

6.1 Notice under this Agreement shall be directed as follows:

If to the CITY:

City of Kent
Dave Ruller
City Manager
215 East Summit Street
Kent, Ohio 44240

If to ODOT:

ODOT Central Office
Joanna Pinkerton, PE
Regional Manager
1980 West Broad Street
Columbus, Ohio 43223

7. GENERAL PROVISIONS

7.1 *Record Retention:* The CITY when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its books, documents, and records relating to the CITY's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute.

7.2 *Ohio Ethics Laws:* CITY agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

7.3 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the CITY hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

7.4 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

7.5 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.

7.6 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

7.7 *Term of Agreement:* This Agreement shall be in effect from the last day executed by the parties through the date which is three (3) years after the Project Completion Date. CITY acknowledges that the Term extends beyond the Project Completion Date for purposes of reporting by the CITY and monitoring by Grantor of the results of the award of Grant Funds.

7.8 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

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

CITY OF KENT

**STATE OF OHIO
OHIO DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Title: _____

Jerry Wray
Director

Date: _____

Date: _____

Approved as to form:

James R. Silver, Law Director
City of Kent

Certificate of Director of Budget and Finance

It is hereby certified that the amount TWO MILLION TWO HUNDRED AND TWENTY THOUSAND Dollars (\$2,220,000) required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purpose and is in the City Treasury or in the process of collection to the credit of the Sewer, Water, Capital, Storm, or 302 Fund free from any obligation or certificates now outstanding.

Dave Coffee, Director of Budget and Finance

Date: _____