

ORDINANCE NO. 2012 - 92

AN ORDINANCE AUTHORIZING THE FIRST AMENDMENT TO ORDINANCE NO. 2011-27, PASSED APR. 20, 2011, ENTITLED "AN ORDINANCE AUTHORIZING A COOPERATIVE AGREEMENT AND LEASE AGREEMENT WITH THE PORTAGE AREA REGIONAL TRANSPORTATION AUTHORITY (PARTA) TO PROVIDE FOR THE CONSTRUCTION OF A MULTI-MODAL PUBLIC PARKING FACILITY, AND DECLARING AN EMERGENCY" SO AS TO INCLUDE THE DESIGN, CONSTRUCTION, INSTALLATION, AND FUTURE MAINTENANCE, REPAIR, AND REPLACEMENT OF A VETERANS MEMORIAL, AND DECLARING AN EMERGENCY.

WHEREAS, The City of Kent and the Portage Area Regional Transportation Authority ("PARTA"), entered into a Cooperative Agreement and Lease Agreement on April 20, 2011, for the multi-modal transportation facility (the "Multi-Modal Facility") and public parking, to help spur the redevelopment in the urban renewal area; and

WHEREAS, the Kent Gateway Veterans Memorial shall be constructed by PARTA, with the terms of its maintenance, repair, and replacement to be included in the First Amendment to the Lease Agreement; and

WHEREAS, the Project is already under construction; time is of the essence to get this agreement executed as soon as possible.

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 this Council approves the First Amendment to the Lease Amendment, so as to include the design, construction, installation, future maintenance, repair, and replacement of the Kent Gateway Veterans Memorial; and said First Amendment shall read as set forth in substantial compliance, with 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: 09/19/2012
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2012-92 was duly enacted this 19 day of September, 2012, by the Council of the City of Kent, Ohio.

CLERK OF COUNCIL

EXHIBIT "A"

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "First Amendment") is made and entered into as of this ____ day of July, 2012 (the "Effective Date"), by and between the PORTAGE AREA REGIONAL TRANSPORTATION AUTHORITY ("Lessor"), a duly organized political subdivision of the State of Ohio, and the CITY OF KENT, OHIO ("Lessee"), a municipal corporation and political subdivision organized and existing under the laws of the State of Ohio.

RECITALS

A. Lessor and Lessee entered into a Lease Agreement on August 3, 2011 (the "**Lease**") for certain parking facilities to be located on land along E. Erie Street between Haymaker Parkway and Depeyster Street in downtown Kent, which is more particularly described on Exhibit "A" attached hereto (the "Land"), and upon which Lessor is constructing a multi-modal transportation facility including: a three (3) level parking garage (the "Garage") which parking levels will be constructed above the proposed bus bays being a part of the Project; the shell of office and retail space for use by private tenants; and certain streetscape improvements (collectively, the "Project").

B. The parties have agreed to enter into this First Amendment to amend the Lease to add to the Project the design, construction and installation of a memorial to honor past, present, fallen and POW-MIA veterans from all branches of the United States military (the "Kent Gateway Veterans Memorial") and to clarify the intentions of the parties with respect to such matters as are specifically set forth herein.

C. Capitalized terms used herein but not otherwise defined in this First Amendment shall have the meanings ascribed to them in the Lease.

TERMS OF FIRST AMENDMENT

NOW, THEREFORE, the parties, intending to be legally bound, and for valid consideration, agree as follows:

1. The "Project" as defined in the Lease shall, hereafter, include the Kent Gateway Veterans Memorial.
2. The Kent Gateway Veterans Memorial shall be constructed by Lessor on the Land along Haymaker Parkway and Erie Street, and, once constructed, the Kent Gateway Veterans Memorial shall be maintained, repaired and replaced by Lessor as a part of the Project in accordance with the terms set forth in the Lease.
3. Once complete, the costs incurred and expended by Lessor to maintain, secure, illuminate, repair and replace the Kent Gateway Veterans Memorial shall be paid for out of Gross Receipts from the Project in accordance with the terms of Section 16 of the Lease.
4. The parties agree that, except as otherwise specifically set forth herein, the Lease is unamended and remains in full force and effect.
5. This First Amendment shall be governed by the laws of the state of Ohio.
6. This First Amendment may be executed in counterparts, each of which shall be an original, but all of which when taken together shall constitute one and the same instrument. The parties agree to accept facsimile copies of the fully signed First Amendment as originals of the document.
7. This First Amendment is binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns under the Lease.

IN WITNESS WHEREOF, the parties agree that this First Amendment shall be dated and effective as of the date first set forth above.

LESSOR

PORTAGE AREA REGIONAL TRANSPORTATION AUTHORITY

By: _____
Its: John H. Drew, Jr., General Manager

**LESSEE
CITY OF KENT, OHIO**

By: _____
David Ruller, City Manager

The legal form and correctness of the within instrument is hereby approved.

By: _____
James Silver, Director of Law

Date: _____, 2012

CERTIFICATE OF DIRECTOR OF FINANCE

The undersigned, fiscal officer of the City of Kent, Ohio, hereby certifies that the money required to meet the obligations of the City during the year 2012 under the foregoing Agreement has been lawfully appropriated by the Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Director of Finance

CERTIFICATE OF GENERAL MANAGER

The undersigned, fiscal officer of the Portage Area Regional Transportation Authority ("PARTA"), hereby certifies that the money required to meet the obligations of PARTA during the year 2012 under the foregoing Agreement has been lawfully appropriated by the General Manager of PARTA for such purposes (from the proceeds of federal grant funds pursuant to the Grant Agreement between PARTA and the U.S. Department of Transportation, Federal Transit Administration, dated _____, 2010) and are in the treasury of PARTA or in the process of collection/reimbursement to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

John H. Drew, Jr., General Manager

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

On this ____ day of _____, 2012, before me, a Notary Public in and for said County and State, personally appeared John H. Drew, Jr., General Manager of the Portage Area Regional Transportation Authority, who acknowledged the execution of the foregoing instrument as the authorized officer of said Transportation Authority on behalf of said Transportation Authority, and that the same is his voluntary act and deed as said officer and the voluntary act and deed of said Transportation Authority.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Kent, Ohio on the day and year aforesaid.

[SEAL] _____
Notary Public

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

On this ____ day of _____, 2012, before me, a Notary Public in and for said County and State, personally appeared David Ruller, City Manager of the City of Kent, Ohio, who acknowledged the execution of the foregoing instrument as the authorized officer of said City on behalf of said City, and that the same is his voluntary act and deed as said officer on behalf of said City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal at Kent, Ohio on the day and year aforesaid.

[SEAL] _____
Notary Public