

ORDINANCE NO. 2008- 43

AN ORDINANCE ACCEPTING AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A PURCHASE AGREEMENT FOR THE CITY OF KENT, OHIO, BUYING AN EASEMENT IN .049 ACRES OF REAL PROPERTY FROM THE AKRON METRO REGIONAL TRANSIT AUTHORITY FOR \$1,050.00 FOR PURPOSES OF RIGHT-OF-WAY ACQUISITION FOR THE CONSTRUCTION, MAINTENANCE, AND REPAIR OF THE NEW 12 IN WATER TRANSMISSION PIPELINE AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent Council desires to purchase an easement in .049 acres of real property located near Middlebury Road in Kent/Franklin Township, Portage County, Ohio; and

WHEREAS, the Akron Metro Regional Transit Authority is willing to sell said interest in said property for \$1,050.00; and

WHEREAS, the City needs the property for right-of-way purposes for the construction of a new 12 inch water transmission pipeline; and

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

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

SECTION 1. That Council does hereby accepts and authorizes the City Manager or his designee to execute the purchase agreement for the City of Kent to buy an easement over .049 acres of real property from the property located near Middlebury Road from the Akron Metro Regional Transit Authority for \$1,050.00 for right-of-way purposes in substantial conformity with the terms of the Purchase Agreement marked as Exhibit "1", attached hereto and incorporated herein.

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

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

PASSED: 02/27/2008
DATE

PRESIDENT PRO TEM

ATTEST: _____
ACTING CLERK OF COUNCIL

I hereby certify that Resolution No. 2008-43 was duly enacted this 27th day of February, 2008, by the Council of the City of Kent, Ohio.

ACTING CLERK OF COUNCIL

EXHIBIT "1"

WATER PIPELINE OCCUPANCY EASEMENT

THIS WATER PIPELINE OCCUPANCY EASEMENT ("Agreement") is made as of the ____ day of _____, 2007, by and between **METRO REGIONAL TRANSIT AUTHORITY**, a regional transit authority organized and existing pursuant to Ohio Revised Code §306, whose mailing address is 416 Kenmore Boulevard, Akron, Ohio 44310, Attention: General Manager, Rail Operations ("Grantor"), and **THE CITY OF KENT, OHIO** a municipal corporation, political subdivision or state agency, under the laws of the State of Ohio, whose mailing address is 930 Overholt Road, Kent, Ohio 44240, Attention: Kent Service Director ("Grantee").

WITNESSETH:

WHEREAS, Grantee desires to construct, use, inspect, maintain and repair a twelve (12) inch pipeline solely for the transmission of potable water (the "Pipeline") under or across the track(s) and property owned or controlled by Grantor at or near Middlebury Road, Kent, Ohio, in the City of Kent, County of Portage, State of Ohio (the "Occupancy Area"), as shown on the print of Grantee's Drawing, identified as **Attachment A**, attached hereto and made a part hereof, and in accordance with the other details and data pertaining to the Pipeline being as indicated on Grantee's Application Form, identified as **Attachment B** (the "Application Form"), attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, terms and agreements herein contained, the parties hereto agree and covenant as follows:

1. EASEMENT:

- 1.1 Subject to Article 15 of this Agreement, Grantor does hereby grant an easement to Grantee to construct, maintain, repair, renew, operate, use, alter or change the Pipeline at the Occupancy Area for the term herein stated, and to remove same upon termination, insofar as Grantor has the legal right, power and authority to do so, and its present title permits, and subject to:
 - 1.1.1 Grantor's present and future right to occupy, possess and use its property within the area of the Occupancy Area for any and all purposes;
 - 1.1.2 All encumbrances, conditions, covenants, easements, and limitations applicable to Grantor's title to or rights in the subject property;
 - 1.1.3 Compliance by Grantee with all the terms and conditions herein contained; and
 - 1.1.4 Grantor's, or its designee's, rules and regulations of operation as amended from time to time.

1.2 The term "Pipeline", as used herein, shall include only the pipes, ducts, casing, vents, manholes, connectors, fixtures, appliances and ancillary facilities devoted exclusively to the purpose above within the Occupancy Area, and as shown on the Application Form.

1.3 No additional pipeline or other facilities shall be placed, allowed or maintained by Grantee in, upon or along the Occupancy Area except upon separate prior written consent of Grantor.

2. LICENSE FEE; TERM:

2.1 Grantee shall pay Grantor a one-time fee of One Thousand Fifty Dollars 00/100 (\$1,050.00) for said easement upon execution of this Agreement.

2.2 Upon the execution of this Agreement, Grantee shall pay Grantor's current administrative and document preparation fees (including attorney, engineering and any other professional fees and expenses) for the costs incurred by Grantor in preparing and maintaining this Agreement and in the event of a successor (by merger, consolidation, reorganization and/or assignment) or if the original Grantee changes its name, Grantee shall be subject to payment of Grantor's then current administrative and document preparation fees (including attorney, engineering and any other professional fees and expenses) for the cost incurred by Grantor in preparing, amending and/or maintaining this Agreement on a current basis.

2.3 License assumes sole responsibility for, and shall pay directly (or reimburse Licensor), for any additional annual taxes and/or periodic assessments levied against Licensor or Licensor's property on account of or relating to the Pipeline or the Occupancy Area.

2.4 This Agreement shall become effective as of the date first written above. This Agreement and the easement granted herein shall be revocable by Grantor at any time for any valid, reasonable, reason, upon thirty (30) days advance written notice from Grantor to Grantee. This Agreement and the easement granted herein shall automatically terminate upon (a) Grantee's cessation of use of the Pipeline or the Occupancy Area for the purposes set forth above, (b) removal of the Pipeline, or (c) subsequent mutual consent.

2.5 In further consideration for this Agreement and the easement granted herein, Grantee hereby agrees that Grantor shall not be charged or assessed, directly or indirectly, with any part of the cost of the installation of said Pipeline and appurtenances, and/or maintenance thereof, or for any project of which the Pipeline is a part.

3. CONSTRUCTION, MAINTENANCE AND REPAIRS:

3.1 Grantee shall construct, maintain, relocate, repair, renew, alter, and/or remove the Pipeline, in a prudent, workmanlike manner, using quality materials and complying with any and applicable standards and/or regulations of Grantor and Grantee's particular industry, and/or any governmental or regulatory body having jurisdiction over the Occupancy Area and/or the Pipeline.

3.2 The location and construction of the Pipeline shall be made strictly in accordance with designs, plans and specifications furnished to and approved in writing by Grantor, and of materials and sizes appropriate for the purpose(s) above recited.

3.3 All Grantee's work and exercise of rights hereunder shall be undertaken at times satisfactory to Grantor so as to eliminate or minimize any impact on or interference with the safe use and operation of Grantor's tracks.

3.4 In the installation, maintenance, repair and/or removal of the Pipeline, Grantee shall not use explosives of any type or perform or cause any blasting without the separate express written consent of Grantor. As a condition to such consent, a representative will be assigned by Grantor to monitor blasting, and Grantee shall reimburse Grantor for the entire cost and/or expense of furnishing said monitor.

3.5 Any repairs or maintenance to the Pipeline, whether resulting from acts of Grantee, or natural or weather events, which are necessary to protect or facilitate Grantor's use of its property, shall be made by Grantee promptly, but in no event later than thirty (30) days after Grantee has notice as to the need for such repairs or maintenance.

3.6 Grantor, in order to protect or safeguard its property, rail operations, equipment and/or employees from damage or injury, may request that Grantee immediately repair or renew the Pipeline, and if the same is not performed, Grantor may make or contract to make such repairs or renewals, at the sole risk, cost and expense of Grantee.

3.7 Neither the failure of Grantor to object to any work done, material used, or method of construction or maintenance of the Occupancy Area, nor any approval given or supervision exercised by Grantor, shall be construed as an admission of liability or responsibility by Grantor, or as a waiver by Grantor of any of the obligations, liability and/or responsibility of Grantee under this Agreement.

3.8 Grantee hereby agrees to reimburse and indemnify Grantor, to the extent allowed by Ohio law, for any loss, cost or expense (including losses resulting from train delays and/or inability to meet train schedules) arising, directly or indirectly, from the Pipeline or Grantee's negligent repair or maintenance thereof.

3.9 Grantee shall coordinate all access onto Grantor's property with Grantor or other common carrier designated by Grantor. Grantee understands that Grantor's property is used for active railroad purposes and Grantee agrees to comply with all policies and/or procedures of Grantor or its designated operator for access unto Grantor's property, including but not limited to, the execution of permits and rights of entry. Any access without the prior permission of Grantor or its designated operator shall be considered a trespass unto Grantor's property, unless Grantee is performing emergency repairs to its waterline and Grantor cannot be contacted.

4. PERMITS, LICENSES:

4.1 Before any work hereunder is performed, or before the Occupancy Area is used for the contracted purpose, Grantee, at its sole cost and expense, shall obtain all necessary permit(s) (including but not limited to zoning, building, construction, health, safety or environmental matters, letters or certificates of approval). Grantee expressly agrees and warrants that it shall conform and limit its activities to the terms of such permits, approvals and

authorizations, and shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority (state, federal or local) having jurisdiction over Grantee's activities, including the location, contact, excavation and protection regulations of the Occupational Safety and Health Act (OSHA) (20 CFR 1926.651(b), et al.), and State "One Call" - "Call Before You Dig" requirements.

4.2 Grantee assumes sole responsibility for failure to obtain such permits or approvals, for any violations thereof, or for costs or expenses of compliance or remedy.

5. MARKING AND SUPPORT:

5.1 With respect to any subsurface installation upon Grantor's property, Grantee, at its sole cost and expense, shall:

5.1.1 Support the tracks and roadbed of Grantor, in a manner satisfactory to Grantor;

5.1.2 Backfill with satisfactory material and thoroughly tamp all trenches to prevent settling of surface of land and roadbed of Grantor; and

5.1.3 Either remove any surplus earth or material from Grantor's property or cause said surplus earth or material to be placed and distributed at locations and in such manner as Grantor may approve.

5.2 After construction of the Pipeline, Grantee shall:

5.2.1 Restore said tracks, roadbed and other disturbed property of Grantor; and

5.2.2 Erect, maintain and periodically (and upon Grantor's reasonable request) verify the accuracy of above-ground markers, in a form approved by Grantor, indicating the location, depth and ownership of the Pipeline or related facilities.

5.3 Grantee shall remain responsible for any settlement of the tracks or roadbed caused by Grantee's actions, for a period of at least one (1) year subsequent to completion of installation.

6. TRACK CHANGES:

6.1 In the event that Grantor's rail operations and/or track maintenance result in changes in grade or alignment of, additions to, or relocation of Grantor's track(s) or other facilities, or in the event future use by Grantor of right-of-way and property necessitate any change of location, height or depth of the Pipeline or the Occupancy Area, Grantee, at its sole cost and expense and within ninety (90) days after notice in writing from Grantor, shall make changes in the Pipeline or the Occupancy Area to accommodate Grantor's track(s) or operations.

6.2 If Grantee fails to so relocate the Pipeline or the Occupancy Area pursuant to Grantor's request, Grantor may make or contract to make such changes at Grantee's cost.

7. PIPE CHANGES:

7.1 Grantee shall periodically (and upon Grantor's reasonable request) monitor and verify the depth or height of the Pipeline and the Occupancy Area in relation to Grantor's tracks and facilities, and shall relocate the Pipeline or change the Occupancy Area, at Grantee's expense, should such relocation or change be necessary to comply with the minimum clearance requirements of this Agreement or of any public authority.

7.2 If Grantee undertakes to revise, renew, relocate or change all or any part of the Pipeline (including any change in circumference, diameter or radius of pipe or carrier pipe, change in operating pressure, or change in materials transmitted in and through said pipe), or is required by any public agency or court order to do so, plans therefore shall be submitted to Grantor for approval before any such change is made. After approval the terms and conditions of this Agreement shall apply thereto.

8. INTERFERENCE WITH RAIL FACILITIES:

8.1 In the event that the operation, existence or maintenance of the Pipeline, causes: (a) interference (physical, magnetic or otherwise) with Grantor's communication, signal or other wires, power lines, train control system, or facilities; or (b) interference in any manner with the operation, maintenance or use by Grantor of its right-of-way, track(s), structures, pole line(s), devices, other property, or any appurtenances thereto; then and in either event, Grantee, upon receipt of written notice from Grantor of any such interference, and at Grantee's sole risk, cost and expense, shall promptly take such remedial action or make such changes in the Pipeline or its insulation or carrier pipe, as may be required to eliminate all such interference. Upon Grantee's failure to remedy or change, Grantor may do so or contract to do so, at Grantee's sole cost.

8.2 Without assuming any duty hereunder to inspect the Pipeline, Grantor hereby reserves the right to inspect same and to require Grantee to undertake necessary repairs, maintenance or adjustments to the Pipeline, which Grantee hereby agrees to make promptly, at Grantee's sole cost and expense.

8.3 Grantee agrees to comply with all applicable safety rules, operating rules and other regulations as may be promulgated from time to time by any freight rail operator operating on Grantor's property.

9. RISK, LIABILITY, INDEMNITY:

With respect to the relative risk and liabilities of the parties, it is hereby agreed that:

9.1 Grantee hereby assumes, and shall defend, indemnify and hold Grantor harmless, to the extent allowed by Ohio law, from and against any and all liability, loss, claim, suit, damage, charge or expense which Grantor may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever (including officers, agents, employees or invitees of Grantor), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the construction, presence, existence, repair, maintenance, replacement, operation, use or removal of the Pipeline or any structure in connection therewith, or restoration of premises of Grantor to good order or condition after removal, EXCEPT when caused solely by the willful misconduct or negligence of

Grantor.

9.2 Grantee assumes all responsibility for, and agrees to defend, indemnify and hold Grantor harmless, to the extent allowed by Ohio law, from: (a) all claims, costs and expenses, including reasonable attorneys' fees and expenses, as a consequence of any sudden or non-sudden pollution of air, water, land and/or ground water on or off the Occupancy Area, arising from or in connection with the use of the Occupancy Area or resulting from leaking, bursting, spilling, or any escape of the material transmitted in or through the Pipeline; (b) any claim or liability arising under federal or state law dealing with either such sudden or non-sudden pollution of air, water, land and/or ground water arising therefrom or the remedy thereof; and (c) any subsidence or failure of lateral or subjacent support of Grantor's tracks arising, directly or indirectly, from the Pipeline or any leakage therefrom.

9.3 The obligations of Grantee hereunder to defend, indemnify and hold Grantor harmless to the extent allowed by Ohio law shall also extend to companies and other legal entities that control or are controlled by or subsidiaries of or are affiliated with Grantor, and their respective officers, agents and employees.

9.4 If a claim is made or action is brought against Grantee, for whom Grantor may be responsible hereunder in whole or in part, Grantor shall be notified and permitted to participate in the handling or defense of such claim or action.

9.5 If a claim is made or action is brought against Grantor, for whom Grantee may be responsible hereunder in whole or in part, Grantee shall be notified and permitted to participate in the handling or defense of such claim or action.

9.6 Except as contained in this Agreement, there is no waiver of any defenses or immunities available to the Grantee and/or Grantor either at law or by statute, nor shall this Agreement inure to the benefit of any third parties.

10. INSURANCE

10.1 Prior to commencement of surveys, construction or occupation of the Occupancy Area pursuant to this Agreement, Licensee shall procure and maintain during the continuance of this Agreement, at Licensee's sole cost and expense, a policy of Commercial General Liability Insurance ("CGL"), naming Licensor or its other operator, as additional insureds and containing a contractual liability endorsement covering obligations assumed by Licensee under this Agreement and such other endorsements as, in the opinion of Licensor, may be necessary to fully protect and indemnify the Licensor. Coverage of not less than TWO MILLION AND 00/100 U.S. DOLLARS (\$2,000,000.00) combined single limit per occurrence and may be maintained with the Ohio Municipal Joint Self-Insurance Pool or similar insuring entity, for bodily injury liability and property damage liability or such other amount as Licensor may designate from time to time is required as a prudent minimum to protect Licensee's assumed obligations hereunder. Licensee shall, on an annual basis, provide Licensor of proof of insurance satisfactory to Licensor. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Licensor prior to cancellation or modification of any policy.

10.2 If said CGL policy does not automatically cover Licensee's contractual obligations during periods of survey, construction, maintenance and continued occupation, a specific endorsement adding such coverage shall be purchased by Licensee. If said CGL policy

is written on a “claims made” basis instead of a “per occurrence” basis, Licensee shall arrange for adequate time for reporting losses. Failure to do so shall constitute a default of this Agreement and shall be at Licensee’s sole risk.

10.3 Notwithstanding the provisions of Sections 10.1 and 10.2, Licensee, pursuant to Ohio law, may self-insure or self-assume, in any amounts, any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of Licensee imposed by and in accordance with the procedures established by law.

10.4 Securing such insurance shall not limit Licensee’s liability under this Agreement, but shall be additional security therefor.

10.5 Licensors may at any time request evidence of insurance purchased by Licensee to comply with this Agreement. Failure of Licensee to comply with Licensors’ demand shall be considered a default subject to Article 13.

10.6 Specifically to cover construction and/or demolition activities within fifty feet (50') of any operating railroad tracks or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, Licensee shall pay to Licensors such amounts necessary to cover the cost of adding the Occupancy Area to Licensors’ Railroad Protective Liability (“RPL”) Policy, if any, for the period of actual construction.

11. GRADE CROSSINGS; FLAGGING:

11.1 Nothing herein contained shall be construed to permit Grantee, or any contractor of Grantee, to move any vehicles or equipment over tracks of Grantor, except at public road crossings, without separate prior written approval of Grantor.

11.2 If Grantor deems it advisable, during the progress of any construction, maintenance, repair, renewal, alteration, change or removal of the Pipeline, to place watchmen, flagmen, inspectors or supervisors at the Occupancy Area for protection of operations of Grantor or others on Grantor’s right-of-way, and to keep persons, equipment and materials away from Grantor’s tracks, Grantor shall have the right to do so at the expense of Grantee, but Grantor shall not be liable for failure to do so.

11.3 Subject to Grantor’s consent and to Grantor’s railroad operating rules and labor agreements, Grantee may provide such flagmen, watchmen, inspectors or supervisors, during all times of construction, repair, maintenance, replacement or removal, at Grantee’s sole risk and expense; and in such event, Grantor shall not be liable for the failure or neglect of such watchmen, flagmen, inspectors or supervisors.

12. GRANTOR’S COSTS:

12.1 Any additional or alternative costs or expenses incurred by Grantor to accommodate Grantee’s continued use of Grantor’s property as a result of Track Changes or Pipe Changes shall be paid by Grantee.

12.2 Grantor’s expense for wages (“force account” work) and materials for any work performed at the expense of Grantee pursuant hereto shall be paid by Grantee within sixty (60) days after receipt of Grantor’s bill therefore.

12.3 Such expense shall include, but not be limited to, cost of railroad labor and supervision under “force account” rules, plus current applicable overhead percentages, attorney, engineering, and other professional fees and expenses, the actual cost of materials, and insurance, freight and handling charges on all materials used. Equipment rentals shall be in accordance with Grantor’s applicable fixed rates.

12.4 Any bills or portions of any bills not paid within sixty (60) days shall thereafter accrue interest at five percent (5%) per annum, unless limited by local law, and then at the highest rate so permitted.

12.5 All cost under this section may be billed directly to the Grantee from the Grantor, or from its designated operator.

13. DEFAULT, BREACH, WAIVER:

13.1 The proper and complete performance of each covenant of this Agreement shall be deemed of the essence thereof, and in the event Grantee fails or refuses to fully and completely perform any of said covenants or remedy any breach within forty-five (45) days after receiving written notice from Grantor to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency or within thirty (30) days of when due in the event of the monetary payments or within any other lesser period of time provided herein), in addition to any other remedies provided herein or available under law, Grantor shall have the option of immediately revoking this Agreement and the privileges and powers hereby conferred, regardless of license fee(s) having been paid in advance for any annual or other period. Upon such revocation, Grantee shall make removal in accordance with Article 13.

13.2 No waiver by Grantor of its rights as to any breach of covenant or condition herein contained shall be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or condition is permanently waived in writing by Grantor.

14. TERMINATION, REMOVAL:

14.1 All rights that Grantee may have hereunder shall cease upon the date of (a) revocation as provided for in Section 13 above, (b) termination as provided for in Section 13 above (Licensor may terminate this Agreement upon thirty (30) days advance written notice), (c) any subsequent agreement between the parties, (c) removal of the Pipeline from the Occupancy Area, and (d) or such other reasons as allowed by Ohio law. However, neither revocation nor termination of this Agreement shall affect any claims and liabilities that may have arisen or accrued hereunder, and that at the time of termination or revocation have not been satisfied; neither party, however, waiving any third party defenses or actions.

14.2 Within one hundred twenty (120) days after termination, Grantee, at its sole risk and expense, shall (a) remove the Pipeline from the right-of-way of Grantor, unless the parties hereto agree otherwise, (b) restore property of Grantor in a manner satisfactory to Grantor, and (c) reimburse Grantor any loss, cost or expense of Grantor resulting from such removal.

15. NOTICE:

15.1 All notices and communications concerning this Agreement shall be addressed to Grantee and to Grantor at the addresses set forth below or at such other address as either party may designate in writing to the other. Grantee shall give Grantor at least five (5) days written notice before doing any work on the Occupancy Area or on any other part of Grantor's property, except that in cases of emergency, shorter notice may be given to Grantor. All notices should be addressed as follows:

if to Grantor: Metro Regional Transit Authority
416 Kenmore Boulevard
Akron, Ohio 44310
Attn: General Manager, Rail Operations

and if to Grantee: City of Kent, Ohio
930 Overholt Road
Kent, Ohio 44240
Attn: Service Director

15.2 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be considered effective upon: (a) actual receipt, or (b) date of refusal of such delivery.

16. ASSIGNMENT:

16.1 The rights herein conferred are the privileges of Grantee only, and Grantee shall obtain Grantor's prior written consent to any assignment of Grantee's interest herein.

16.2 Subject to Sections 2.2 and 15.1, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

16.3 Grantee shall give Grantor written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Grantee, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.4 Grantor shall give Grantee written notice of any legal succession (by merger, consolidation, reorganization, etc.) or other change of legal existence or status of Grantor, with a copy of all documents attesting to such change or legal succession, within thirty (30) days thereof.

16.5 Grantor expressly reserves the right to assign this Agreement, in whole or in part, to any grantee or vendee of Grantor's underlying property interests in the Occupancy Area.

17. TITLE; LIENS, ENCUMBRANCES:

17.1 Grantee understands that Grantor occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Grantor's title for any particular right-of-way in the Occupancy Area occupied, used or enjoyed in any manner by Grantee under any rights created in this Agreement. It is expressly understood that Grantor does

not warrant title to any right-of-way in the Occupancy Area, and Grantee will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the right-of-way, and all leases, licenses and easements or other interests previously granted to others herein.

17.2 The term “easement,” as used herein, shall have the meaning as determined by Ohio law with regard to any portion of the right-of-way which is owned by Grantor in fee simple absolute, or where the applicable law of the State of Ohio otherwise permits Grantor to make such grants to Grantee.

17.3 Grantee shall not at any time own or claim any right, title or interest in or to Grantor’s property occupied by the Occupancy Area, nor shall the exercise of this Agreement for any length of time give rise to any right title or interest in License to said property other than the easement herein created.

18. GENERAL PROVISIONS:

18.1 This Agreement, and the attached specifications, contains the entire understanding between the parties hereto.

18.2 Neither this Agreement, any provision hereof, nor any agreement or provision included herein by reference, shall operate or be construed as being for the benefit of any third person.

18.3 Neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.

18.4 This Agreement is executed under current interpretation of applicable federal, state, county, municipal or other local statute, ordinance or laws. However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

18.5 This Agreement shall be construed and governed by the laws of the State of Ohio.

18.6 Grantee understands and acknowledges that Grantor's property contains an active rail corridor subject to regulation by the Federal Railroad Administration, Surface Transportation Board, Public Utilities Commission and Federal Transit Administration. Grantee agrees to observe and comply with any and all regulations, rules and applicable laws promulgated by any board, agency, legislative body or other governmental body having jurisdiction over Grantor's property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate (each of which shall constitute an original) as of the date and year first above written.

GRANTOR:
METRO REGIONAL TRANSIT
AUTHORITY, a regional transit authority
organized and existing pursuant to Ohio

Revised Code §306

By: _____

Print/Type Name: _____

Print/Type Title: _____

GRANTEE:

THE CITY OF KENT, OHIO, a municipal corporation, political subdivision or state agency, under the laws of the State of Ohio

By: _____

David Ruller, City Manager
Who, by the execution hereof, affirms that
he/she has the
authority to do so and to bind
the Grantee to the terms and conditions of
this Agreement.

Print/Type Name: _____

Print/Type Title: _____

Tax Identification Number: _____

Authority under Ordinance or
Resolution No. _____

dated _____

APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent

CERTIFICATE OF DIRECTOR OF BUDGET AND FINANCE

I certify that the amount required to meet the Agreement has been lawfully appropriated or authorized or directed for such purpose and was at the time that the Agreement was made and is now in the treasury or in process of collection to the credit of the fund free from any obligation or certification outstanding.

Barbara Rissland, Director of Finance

STATE OF _____)
) SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared _____, as the _____ of **METRO REGIONAL TRANSIT AUTHORITY**, a regional transit authority organized and existing pursuant to Ohio Revised Code §306, to me known to be the person described in and who executed the foregoing instrument and he/she acknowledged before me that he/she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2007.

NOTARY PUBLIC
My Commission Expires: ____

STATE OF _____)
) SS:
COUNTY OF _____)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared DAVID RULLER, as the City Manager of **THE CITY OF KENT, OHIO**, to me known to be the person described in and who executed the foregoing instrument and he acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 2007.

NOTARY PUBLIC
My Commission Expires: ____