

Ohio Department of Development Brownfield Remediation Program Grant Agreement

This Grant Agreement (the "Agreement") is made and entered into between the Ohio Department of Development (the "Grantor"), located at 77 South High Street, Columbus, Ohio 43215 and **Kent, City of** (the "Grantee") for the period **January 1, 2022 to June 30, 2023** set forth the terms and conditions upon which Grantor will provide financial assistance to Grantee and Grantee will use the financial assistance for costs of implementing the Brownfield Remediation Program in accordance with the terms of this Agreement, the Grant Application (the "Application"), which consists of the collective materials submitted by Grantee to Grantor via Grantor's online system, the contents of this Agreement (collectively, the "Project") and the Brownfield Remediation Program Guidelines. In the event there is a conflict between this Agreement and the Exhibits, the Exhibits control.

Statement of the Agreement

- 1. Award of Grant Funds.** Grantor hereby grants funds to Grantee in the amount of **\$331,000.00** (the "Grant Funds"), for the sole and express purpose of providing for the performance of the program listed above and undertaking the Project(s) as listed in **Application** which is incorporated herein by reference. Grantee may not use the Grant Funds for any purpose other than completion of the Project. The Grant Funds shall be further contingent upon the Special Conditions set forth in Exhibit IV: Special Conditions, if applicable. Expenditures shall be supported by contracts, invoices, vouchers and other data as appropriate, including the reports listed in accordance with the schedule set forth in **Exhibit II: Reporting**, evidencing the costs incurred. If the Grant Funds are not expended in accordance with the terms, conditions and time period set forth in this Agreement or the total amount of the Grant Funds exceeds the eligible costs of the Project(s), the amounts improperly expended or not expended shall be returned to Grantor within 30 days after the expiration or termination of this Agreement. Grantee shall not pledge the Grant Funds as security for any loan or debt of any kind other than that described in this Agreement.
- 2. Funding Source.** The Brownfield Remediation Program was established in House Bill 110 of the 134th General Assembly, codified in Ohio Revised Code section 122.6511 and found in the Ohio Administrative Code sections 122:31-1-01 through 122:31-1-06. This program awards grants for the assessment or remediation of brownfield sites throughout Ohio.
- 3. Term of Agreement.** This Agreement shall be effective from the Beginning Date and shall continue through the Expiration Date set forth on page one of this Agreement, unless terminated earlier in accordance with Section 15 of this Agreement. Reporting and refund obligations shall continue in accordance with the schedules set forth in Exhibit II and until satisfactorily completed.
- 4. Scope of Work.** Grantee shall undertake the Project(s) as listed in the Application. Grantor may, from time to time, as it deems appropriate and necessary, communicate specific instructions and requests and provide guidance and direction to Grantee concerning the performance of the work described in this Agreement. Within a reasonable period of time, Grantee shall comply with such instructions and fulfill such requests to the satisfaction of Grantor. These instructions and requests are to ensure the satisfactory completion of the work contemplated under this Agreement. In no event shall the Grant Funds be used for any other purpose than that described in this Agreement.
- 5. Payment of Grant Funds.** Payment to Grantee of the Grant Funds shall be made upon the timely submission to Grantor of a financial reimbursement request. Grantee shall deposit all Grant Funds received under this Agreement in a Federal Deposit Insurance Corporation (FDIC) account and record in a separate account on the books of Grantee. Grantor reserves the right to suspend payments should Grantee fail to provide required reports in a timely and adequate fashion or if Grantee fails to meet other terms and conditions of this Agreement. Grantor may withhold payment requests if Grantee fails to comply with the above requirements until such compliance is demonstrated. If applicable, Grantor will not release the final 10% of funding until Grantee confirms matching funds are expended.

6. **Reporting Requirements.** Grantee shall submit to Grantor the reports required in **Exhibit II: Reporting**.
7. **Records, Access and Maintenance.** Grantee shall establish, and physically control for at least five years from the final close out of this Agreement such records as are required by Grantor, including but not limited to, financial reports, intake and participant information, program and audit reports. The parties further agree that records required by Grantor with respect to any questioned costs, audit disallowances, litigation or dispute between Grantor and Grantee shall be maintained for the time needed for the resolution of any such issue. If for any reason Grantor shall require a review of the records related to the Project(s), Grantee shall, at its own cost and expense, segregate all such records related to the Project(s) from its other records of operation.
8. **Audits.** Grantees receiving a state-funded grant award of less than \$500,000 do not have an audit requirement. Grantor may, at its option, choose to send department auditors to complete an audit of any state-funded grant award. Grantees receiving a state-funded grant award equal to or greater than \$500,000 are required to submit either a single audit or a grant specific audit report to Ohio Department of Development, Audit Office, P.O. Box 1001, Columbus, Ohio 43216-1001.
 - i. **Single Audit:** Grantee obtains an organization-wide audit. The report includes organization-wide financial statements, an opinion on the financial statements, a report on internal controls, and a report on compliance with the terms and conditions of the grant agreements. The audit report must include a schedule of federal grants. This report should include the division name, the grant name and number, the amount of cash received, the expenditures charged and the balance at the end of the audit period. The audit report must include a report on compliance with the terms and conditions of federal grants. Single audits must be performed by an independent public accountant. Single audits must be submitted to Grantor within 30 days of the date of the release, but no later than nine months after the end of the audit period.
 - ii. **Grant Specific Audit:** Grantee obtains an audit of a specific grant that is equal to or greater than \$500,000. The audit report must include a statement of revenues and expenditures for the grant, an opinion on the statements of revenues and expenditures, a report on internal controls as they relate to the grant, and a report on compliance with the terms and conditions of the grant agreement. A grant specific audit must be performed by an independent public accountant. Grant specific audits must be submitted to Grantor within 30 days of the date of the release, but no later than nine months after the end of the grant period.
 - iii. **Audit Standards:** Audits performed by independent public accountants must be performed in accordance with generally accepted auditing standards or generally accepted government auditing standards for financial and compliance audits, whichever is applicable.
9. **Monitoring, Evaluation and Audit Activities.** Grantor shall supervise, evaluate, and provide guidance and direction to Grantee in the conduct of the work and activities to be performed under the terms of this Agreement. Grantee's staff and all parties involved with the project shall cooperate with Grantor and its authorized representatives in their program monitoring and shall maintain and make available to Grantor all programmatic, fiscal, and performance records necessary for Grantor's monitoring and evaluation. Grantee shall submit to Grantor reports detailing the expenditures of the Grant Funds and such other reports as may be required by Grantor, including the reports listed and according to the schedule set forth in **Exhibit II: Reporting**.
10. **Reports and Records.**
 - a. **Performance Reports.** Grantor shall supervise, evaluate and provide guidance and direction to Grantee in the conduct of the work and activities to be performed under the terms of this Agreement.
 - b. **Signature and Costs.** The authorized representative on behalf of Grantee shall certify by his or her submission of each report required by Exhibit II that the information reported by Grantee is true, complete and correct.

11. **Rights of Inspection.** Grantee shall permit Grantor to inspect and copy, during normal business hours, any books and records necessary to ensure compliance with the terms and conditions of this Agreement. Grantee acknowledges and agrees that rights of inspection (1) extend to representatives and agents of Grantor and federal agencies that pass funds through Grantor including, but not limited to, the Auditor of State of Ohio, an appropriate inspector general appointed under applicable federal or state law, the Comptroller General of the United States and/or the Government Accountability Office; (2) include the rights to examine Grantee's corporate accounts or other accounts and/or funding sources within the control and/or name of Grantee when there is evidence (e.g., vouchers, invoices, canceled checks, descriptions, etc.) that these books contain original or substantial source documentation of the federal funds granted herein; (3) contain Grantee's covenant to make all fiscal records available to authorized audit personnel of Grantor and its federal agencies for inspection at any time and as often as Grantor may deem necessary and in a manner as not to interfere with the normal business operation of Grantee; and (4) include Grantee's undertaking to make available to Grantor for interview any officer or employee of Grantee or of any contractor or subcontractor of Grantee regarding the Grant Funds and any transaction involving the Grant Funds. Grantee shall also require each of its non-profit partners, contractors and subcontractors paid with Grant Funds to make its respective books and records available for inspection and copying in the same manner as described in this section for Grantee's books and records.
12. **Budget Alterations.** Grantee may make alterations to any line in its budget submitted with this Agreement as referenced in the **Application** so long as Grantee notifies Grantor of such budget alteration within the electronic application system 30 days prior to the date of the change and Grantor approves the proposed alteration within the electronic application system. Alterations to line items in Grantee's budget shall not increase the amount of Grant Funds awarded under this Agreement. Grantor shall respond to Grantee's request to approve a budget alteration within a reasonable period of time.
13. **Grantee Certifications and Assurances.** By signing this Agreement, Grantee certifies and assures the following:
- a. **Equal Employment Opportunity.** Grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee shall ensure that applicants for employment are considered for employment, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee will incorporate the requirements of this paragraph in all of its contracts for any of the work undertaken on the Project (other than subcontracts for standard commercial supplies or raw materials), and Grantee will require all of its contractors for any part of such work to incorporate such requirements in all subcontracts for such work.
 - b. **Property and Equipment Purchases.** All items purchased by Grantee are and shall remain the property of Grantee, except if Grantor exercises its right to terminate this Agreement pursuant to paragraph 14, in which case all property and equipment purchased by Grantee with any Grant Funds herein awarded shall revert to Grantor. Grantee shall provide for the security and safekeeping of all items obtained through this Agreement.
 - c. **Accounting systems** used by Grantee are in accordance with generally accepted accounting standards and other applicable local, state and federal statutes, regulations, policies, directives, and guidelines. Grantee has established procedures to ensure good fiscal and management practices to deposit and account for the Grant Funds. Grantee shall make appropriate documentation relating to the Grant Funds available to the Grantor and the U.S. Department of Treasury, the Comptroller General of the United States, or any of their duly authorized representatives, for examination or copying, upon a reasonable request.
 - d. Grantee is and shall remain throughout the term of this Agreement insured by a surety or fidelity insurance to cover all individuals responsible for the security and control of the Grant Funds covered under this Agreement. Grantee must file with Grantor a Certification of Fidelity Bonding and Collateral Security of Deposits.

- e. **Minority Hiring Goal** Grantee shall make a good faith effort to employ minority persons in the completion and operation of the Project in the same percentage as the average percentage of minority persons who reside in the county in which the Project is located and any contiguous Ohio counties.

14. Termination

- a. Grantor may immediately terminate this Agreement by giving reasonable written notice of termination to Grantee for any of the following occurrences:
 - i. Failure of Grantee to fulfill in a timely and proper manner any of its obligations under this Agreement.
 - ii. Failure of Grantee to submit any report required by this Agreement that is complete and accurate.
 - iii. Failure of Grantee to use the Grant Funds for the stated purposes in this Agreement.
 - iv. Failure to spend matching funds, if applicable.
- b. **Early Termination:** Grantor may also terminate this Agreement if Grantee (i) defaults under another Agreement between the Grantor and/or the Tax Credit Authority and Grantee (ii) admits Grantee's inability to pay its debts as such debts become due, (iii) Grantee commences a voluntary bankruptcy, (iv) an involuntary bankruptcy action occurs against Grantee which remains undismissed or unstayed for 60 days, (v) Grantee fails to meet the minimum funding requirements under the Employee Retirement Income Security Act or other such employee benefits plan, or (vi) Grantor has reason to believe Grantee has ceased operations at the Project location. The events permitting early termination by Grantor shall be considered a default by Grantee and subject to the Effects of Termination under Section 18 of this Agreement.

15. Remedies. Following a default by Grantee, Grantor may exercise one or more of the following remedies:

- a. **Discontinue Disbursements.** If the Grant Funds have not been fully disbursed, Grantor may terminate any and all of Grantor's obligations under this Agreement, including the obligation to make further disbursements of Grant Funds.
- b. **Suspension or Termination.** Grantor may withhold payment under this Agreement, suspend or terminate the Agreement in whole or in part for cause, which shall include, but is not limited to: (1) failure for any reason by Grantee to fulfill in a timely and proper manner its obligations under this Agreement, or other agreements entered into between the parties, including compliance with the approved program and any and all statutes, Executive Orders, regulations, directives, guidelines, plans or other requirements as may become generally applicable at any time; (2) Grantor determines that the nature or extent of noncompliance is extreme and warrants immediate termination of this Agreement; (3) Grantee ceases to exist or becomes legally incapable of performing its responsibilities under the Agreement; (4) Grantee has failed to comply with any timelines for the expenditure of Grant Funds as required by Grantor; (5) ineffective or improper use of the Grant Funds provided under this Agreement; (6) failure to comply with reporting requirements including, but not limited to, submission by Grantee to Grantor of reports that are incorrect or incomplete in any material respect; (7) suspension or termination of any funds provided under this Agreement, or the portion thereof delegated by this Agreement; and (8) cancellation of grant funds.
Grantee acknowledges that timely performance and attainment of performance measurements are material to Grantee's compliance with this Agreement and a priority of the federal and state governments in the administration of the Grant Funds.
- c. **Demand Repayment of Grant Funds.** Under the circumstances described in Section 5 of this Agreement, demand repayment of Grant Funds improperly expended. Grantee shall not be required to refund Grant Funds in an amount that exceeds the Grant Funds awarded.

- d. **Other Legal Remedies.** Pursue any other legal or equitable remedies Grantor may have under this Agreement or applicable law.
 - e. **Remedies Cumulative.** No remedy provided to Grantor under this Agreement or otherwise by law or in equity is exclusive of any other available remedy. No delay or omission by Grantor in exercising any right or power accruing upon any default shall impair any such right or power or be construed as a waiver, and each such right or power may be exercised from time to time as often as may be deemed by Grantor to be expedient.
- 16. Effects of Termination.** Within 60 days after termination of this Agreement, Grantee shall surrender all reports, documents, and other materials assembled and prepared pursuant to Agreement, which shall become the property of Grantor, unless otherwise directed by Grantor. After receiving written notice of termination, Grantee shall incur no new obligations and shall cancel as many outstanding obligations as possible. Upon compliance with this Section, Grantee shall receive compensation for all activities satisfactorily performed prior to the effective date of termination.
- 17. Liability.**
- a. **Public Agency or Governmental Entity.** If Grantee is a public agency or governmental entity, Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person and damage to property (including property of Grantor) caused by the negligent acts or omissions or negligent conduct of Grantee, to the extent permitted by law, in connection with the work and activities of this Agreement. Furthermore, as between the parties to this Agreement, each party agrees to be liable for the negligent acts or negligent omissions by or through itself and its respective employees, agents, and contractors. Each party to this Agreement further agrees to defend itself and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one party to the other.
- 18. Forbearance Not a Waiver.** No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by Grantor of any of its rights hereunder.
- 19. Certification of Funds Available.** None of the rights, duties, and obligations described in this Agreement shall be binding upon either party until all statutory provisions of the Ohio Revised Code, including, but not limited to, Section 126.07, have been complied with, and until such time as all necessary funds have actually been made available and forthcoming from the appropriate state and/or federal agencies.
- 20. Budget Reductions.** Grantee acknowledges that Grantor is subject to State of Ohio budgetary constraints that could result in the reduction of the amount of Grant Funds provided under this Agreement. Should Grantor's funding levels be reduced, Grantor shall notify Grantee in writing of the extent of any reduction to the Grant Funds and reduce Grantee's commitments in a manner corresponding to the reduction of Grant Funds and such notice shall result in the Agreement being amended without further action by the parties. Grantee hereby irrevocably authorizes Grantor to reduce the amount of Grant Funds provided under this Agreement upon written notice to Grantee provided there is a corresponding reduction in commitments outlined on page 1 of this Agreement
- 21. Conflict of Interest.** No personnel of Grantee, contractor of Grantee or personnel of any such contractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Grantee shall immediately disclose in writing to Grantor any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily. Grantee shall cause any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily, to immediately disclose such interest to Grantor in

writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless Grantor determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

22. Adherence to State and Federal Laws, Regulations.

- a. **General.** Grantee shall comply with all applicable federal, state, and local laws in the performance of Grantee's obligations under this Agreement, the completion of the Project and the operation of the Project as long as Grantee has any obligation to Grantor under this Agreement. Without limiting the generality of such obligation, Grantee shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholding, social security withhold, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in connection with the Project, and Grantee shall comply with all applicable environmental, zoning, planning and building laws and regulations.
- b. **Ethics.** Grantee, by its signature on this document, certifies: (1) it has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, **ORC Sections 102.01 et seq., 2921.01, 2921.42, 2921.421, 2921.43, and 3517.13(I) and (J), and (2)** will take no action inconsistent with those laws, as any of them may be amended or supplemented from time to time. Grantee understands that failure to comply with the ethics and conflict of interest laws, is in itself, grounds for termination of this Agreement and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

23. Outstanding Liabilities. Grantee represents and warrants that it does not owe: (1) any delinquent taxes to the State of Ohio (the "State") or a political subdivision of the State; (2) any amount to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other amount to the State, a state agency or a political subdivision of the State that are past due, whether or not the amounts owed are being contested in a court of law.

24. Falsification of Information. Grantee represents and warrants that it has made no false statements to Grantor in the process of obtaining this award of the Grant Funds. If Grantee has knowingly made a false statement to Grantor to obtain this award of the Grant Funds, Grantee shall be required to return all the Grant Funds immediately pursuant to **ORC Section 9.66(C)(2)** and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to **ORC Section 9.66(C)(1)**. Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to **ORC 2921.13(F)(1)**, which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than 180 days.

25. Public Records. Grantee acknowledges that this Agreement and other records in the possession or control of Grantor regarding the Project are public records under **ORC 149.43** and are open to public inspection unless a legal exemption applies.

26. Miscellaneous.

- a. **Forum and Venue.** Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to this Agreement, Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to this Agreement shall be brought only in a court in Columbus, Ohio.

- b. **Entire Agreement.** This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this Agreement.
 - c. **Program Income.** Any funds that were billed to the property owner as part of a nuisance order or other means and subsequently paid by a property owner to Grantee for Project work that was billed/paid by Grantor with Grant Funds, shall be returned to Grantor.
- 27. Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.
- 28. Pronouns.** The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.
- 29. Headings.** Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement
- 30. Counterparts; PDF Accepted.** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Copies of signatures sent by facsimile transmission or provided electronically in portable document format ("PDF") shall be deemed to be originals for purposes of execution and proof of this Agreement.
- a. **Notices.** All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.
 - i. In the case of Grantor, to:

Ohio Department of Development
Office of Energy and Environment
77 South High Street, P.O. Box 1001
Columbus, Ohio 43216-1001
Attn: Deputy Chief
 - ii. In the case of Grantee, to:

Kent, City of
930 Overholt Rd
Kent, OH 44240

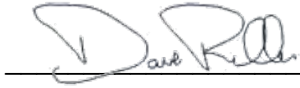
Signature

Kent, City of

Each of the parties has caused this Grant Agreement to be executed by its authorized representatives as of the dates set forth below their respective signatures.

Grantee:

Kent, City of



Authorized Official
David Ruller

Printed Name:
City Manager

Title:
May 16, 2022

Date:

Grantor:

State of Ohio, Department of Development

By:

Printed Name:

Title:

Date:

EXHIBIT I

Scope of Work/Budget/Grant Application

Project scope of work and budget is located within Grantor electronic application system (Salesforce).

EXHIBIT II

Reporting

Grantee shall provide the information listed below by the date(s) specified herein or to be determined by Grantor. Grantor shall provide a format to submit the information and shall instruct Grantee in the proper completion of such documents. The reporting and recordkeeping requirements listed herein shall not be construed to limit Grantor from making additional requests or from changing or including additional detail. Failure to submit required reports will result in non-payment of monthly expenditures.

1. **Financial Reimbursement Requests:** all financial reimbursement requests must be submitted electronically to the Grantor on a monthly basis as costs are incurred. Supporting documentation for costs submitted for reimbursement must be uploaded and submitted within the electronic system as part of the request. If an advance of funds is being requested, provide a rational for the advance and anticipated uses. The rational should include supporting documentation for the requested costs.
2. **Program Reports:** Program reports must be submitted on a quarterly basis. Program reports must be submitted by close of business, on the third Friday at the end of each quarter. Program reports must include the following information:
 - a. Narrative summary of use of funds during the reporting period.
 - b. Update of outcomes projected in Grantee's Application. Examples may include an assessment initiated or completed, remediation work beginning on the site, additional testing completed and/or further development with the proposed end-use.
3. **Final Report:** A final project report must be submitted 15 days after the end of this Agreement.

EXHIBIT III

Special Conditions may be included within this Grant Agreement as agreed upon by Grantee and Grantor.