

ORDINANCE NO. 2007- 19

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF RIGHT-OF-WAY ACQUISITIONS FOR THE FAIRCHILD AVE/CRAIN AVE. BRIDGE PROJECT, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ohio and Federal law, the City has to enter into an agreement outlining the City's responsibilities for right-of-way acquisitions for the Fairchild Avenue/Crain Avenue Bridge Project; and

WHEREAS, time is of the essence to keep the project on the projected timetable.

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 authorize the City Manager, or his designee, to enter into an agreement with the Ohio Department of Transportation for the purpose of right-of-way acquisitions for the Fairchild Avenue/Crain Avenue Bridge Project.

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: 2/21/07 _____
DATE PRESIDENT PRO TEM

ATTEST: _____
ACTING CLERK OF COUNCIL

I hereby certify that Ordinance No. 2007- 19 is hereby enacted this 21 day of
February, 2007, by the Council of the City of Kent, Ohio

ACTING CLERK OF COUNCIL

EXHIBIT "A"

Real Estate Agreement No. 04-1068
POR-Crain Avenue Bridge
PID 18466

January 16, 2007

Pursuant to both Federal and State law, 49 CFR Part 24 and ORC 163 et.seq., the Ohio Department of Transportation is required to monitor all highway development projects receiving funds from the Federal Highway Administration. The rights of way acquired for the above referenced project will be incorporated into a Federally-assisted project and the following provisions must be set forth and agreed upon between the City of Kent and the ODOT.

Ordinance No. 2005-154, passed on December 28, 2005 by the City of Kent, and subsequently accepted and journalized by the Director of Transportation, provides for cooperation with the State on the acquisition of right of way on the above referenced project, which is described as follows:

Replace Bridge over the Cuyahoga River, CSX and ABC Railroads with improvements to S.R 43, Gougler, Fairchild, Crain, Water and Lake Street/Avenue.

Discussions and understandings between representatives from our organizations in reference to the acquisition of rights of way must now be officially set forth and agreed upon. If you agree to the following facts and stipulations, please sign all copies of this agreement and return them to the ODOT District Office. The State will authorize acquisition of right of way after this agreement has been executed, the environmental document has been approved and Federal authorization has been obtained.

The **ESTIMATED** right of way cost pertinent to this agreement based upon the right of way plans and work plan is \$2,325,000. This is composed of the following:

Property & Relocation Costs	\$2,000,000
Right of Way Services	275,000
Appraisal & Relocation Review	<u>50,000</u>
Total	\$2,325,000

This project as programmed, provides for participation in project right of way costs as follows:

	Total	Federal	State	Local
Federal (AMATS 80/20)	\$1,250,000	\$1,000,000	0	\$250,000
State HSP	<u>\$2,250,000</u>	<u>0</u>	<u>\$2,250,000</u>	<u>0</u>
Total	\$3,500,000	\$1,000,000	\$2,250,000	\$250,000

The City of Kent must have authorization from the ODOT District Real Estate Office to begin any phase of the acquisition process.

Federal participation in this project has a cap of **\$1,000,000** which will not be exceeded or revised. The City of Kent must have environmental clearance and authorization from the Federal Highway Administration before Federal funds can be used. The City of Kent will work through the District Real Estate Office to secure Federal Authorization.

Upon receiving authorization to proceed, Federal funds shall be used before State HSP.

The City of Kent agrees that it will acquire the right of way necessary in accordance with sections 163.51 through 163.62, inclusive of the revised code of Ohio, sections 5501:2-5-01 et. seq. of the Ohio Administrative Code and any future amendments thereto which supplement and support Title II and Title III of the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970 as amended, and Federal Highway regulations and directives on Relocation Assistance and Real Property Acquisition, as well as full compliance with Title VI of the Civil Rights Act of 1964. The City of Kent, in accordance with 23 CFR, Part 710, Subpart B., Sec. 710.203, paragraph (c), certifies it is adequately staffed, equipped and organized to manage the Real Estate functions through its own ODOT pre-approved staff and/or pre-approved contractual agents. The City of Kent will comply with the Ohio Department of Transportation Real Estate Administration's Policies and Procedures Manual and all applicable State and Federal laws, rules and regulations.

The City of Kent shall maintain all files, accounting records, and other evidence pertaining to costs incurred and agrees to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the Ohio Department of Transportation, Federal Highway Administration or their authorized representatives and copies thereof shall be furnished if requested.

The City of Kent shall submit a letter to ODOT identifying the pre-qualified individuals for the following items pertaining to specific real estate functions and must comply with ODOT policies and procedures and are incorporated herewith:

Title

The City of Kent will provide or arrange to provide for a search of title for each property required for the projects right of way.

Appraisal

The City of Kent will be responsible for the appraisals and will execute any necessary contracts with private fee appraisers in accordance with ODOT's approved list of appraisers.

Appraisal Review

The City of Kent will be responsible for contracting with a review appraiser in accordance with ODOT's approved list of review appraisers who will be responsible for approving and/or disapproving the appraisals submitted by the fee appraiser. This contract must be held by the City of Kent and cannot be part of a City of Kent's Prime Consultants contract if they are responsible for the appraisals. Just compensation must be authorized by an appropriate official of the City of Kent.

Negotiations

In compliance with State policies and procedures, negotiations shall not commence until the City of Kent is in possession of an approved Fair Market Value Estimate. Negotiations and the settlement shall be governed by said approved fair market value. The City of Kent shall negotiate with the owners for the purchase of real property and the conveyance of fee simple title by warranty deed or whatever lesser interest is required for the needs of the project. Such title will be taken in the name of the City of Kent. The City of Kent shall utilize negotiators in accordance with ODOT's approved list of negotiators.

Warrants for payment of all expenditures incurred in the acquisition of right of way will be issued by the City of Kent.

Administrative and/or Case Settlement Review:

The City of Kent shall have authority to approve administrative reviews and case settlement reviews up to \$500 over the original Fair Market Offer. The City of Kent must contact the District for any settlement authority over \$500. All requests for administrative reviews and case settlement reviews must be in writing and contain all the appropriate documentation to support the request. Any settlement in excess of the approved administrative review or case settlement review will be the responsibility of the City of Kent.

Appropriations

The City of Kent will appropriate properties that it is unable to negotiate for the project in accordance with Chapter 163 of the Revised Code of Ohio.

Relocation

The City of Kent will administer the Relocation Assistance Program (RAP), using ODOT pre-approved relocation agents, if displacement is caused by the project.

Relocation Review

The City of Kent will be responsible for all Relocation Reviews. Relocation reviews will consist of approving and/or disapproving all relocation determinations before offers are made to the displacee. Reviews will also consist of approving and/or disapproving all relocation claims and supporting documentation prior to presenting the claim(s) to the displacee. The City of Kent shall utilize Relocation Reviewers in accordance with ODOT's approved list of Relocation Reviewers. This contract must be held by the City of Kent and cannot be part of a City of Kent's Prime Consultant's contract if they are responsible for relocation.

Utility Relocation

The City of Kent will be responsible for the relocation and accommodation of all affected utilities. If needed, the State can provide assistance in this matter.

Reimbursement

For reimbursement of the allowable federal and state funds in the right of way phase, the City of Kent shall submit monthly expenditures to the District Office detailing any cost incurred in the right of way. FHWA will NOT participate in the acquisition of standard highway easements or bike trails without prior written approval. The District will coordinate the reimbursement at the same percentage and cap as outlined in this agreement

Right of Way Certification

Upon completion of the acquisition process, the City of Kent will certify to the District that the right of way has been fully acquired. The District will then certify the right of way to the Federal Highway Administration. The City of Kent will coordinate this certification with the District Real Estate Office. This certification will include the utilities, encroachment removals and all applicable notes and exhibits.

The City of Kent will provide the **PROPERTY MANAGEMENT, BUILDING DISPOSITION and ASBESTOS TESTING & ABATEMENT** functions, if necessary.

Disadvantaged Business Enterprise (DBE) Obligation: The City of Kent or its contractor agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this agreement. The City of Kent and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for, receive and perform such contracts/subcontracts. The City of Kent and its contractors shall not discriminate on the basis of race, color, national origin, age or sex in the award and performance of USDOT-assisted contracts.

Attest:

Date: _____

City of Kent

David Ruller
City Manager, City of Kent

Attest:

Date: _____

Ohio Department of Transportation

John Avery
District Deputy Director