

ORDINANCE NO. 2014- 12

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A LICENSE AGREEMENT BETWEEN KENT STATE UNIVERSITY AND THE CITY OF KENT, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent wishes to enter into a License Agreement with Kent State University, for the purpose of expanding the Kent State University Campus Network and enhance downtown wireless communications by wireless access points on existing City utility poles; and

WHEREAS, the City of Kent and Kent State University recognize that such License is for the betterment of the city and the university and is provided in the spirit of "Town-Gown" relations; and

WHEREAS, time is of the essence to allow for the expansion and enhancement of downtown wireless communications; and

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 enter into a License Agreement with Kent State University for the purpose of expanding the Kent State University Campus Network and enhance downtown wireless communications by wireless access points on existing City utility poles; 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: 02/19/2014
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2014- 12 was duly enacted this 19th day of February, 2014, by the Council of the City of Kent, Ohio.

CLERK OF COUNCIL

CITY OF KENT, OHIO
LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made by and between the CITY OF KENT, OHIO, hereinafter called "City" and Kent State University, hereinafter called the "Licensee."

Background

The City is the owner, by Director's Deed from the Ohio Department of Transportation, of land and certain infrastructure, including traffic sign and light poles, located adjacent to the Kent State University esplanade, as more specifically described in Exhibit "A", and hereinafter referred to as the "Property." For and in consideration of the covenants, conditions, agreements and stipulations of the License expressed herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City does hereby agree the Property may be used by the Licensee for the purpose as outlined in Paragraph 2 below, in accordance with the laws and Charter of the City of Kent.

The parties hereto covenant and agree as follows:

1. LICENSE; NATURE OF INTEREST:

- 1.1 The Background set forth above is hereby incorporated by reference.
- 1.2 City hereby grants to Licensee, its employees and agents, a non-exclusive, revocable and non-assignable license to use the Property in accordance with the terms and conditions of this Agreement ("License").
- 1.3 The Licensee understands that by issuing this License, the City has merely granted the Licensee the right to occupy the right-of-way and this License does not grant or convey to the Licensee any interest in the Property.

2. USE:

- 2.1 The Property shall be used for the purpose of: To expand the Kent State University Campus Network and enhance downtown wireless communications by wireless access points on existing City utility poles, KSU will be implementing the first phase of extending wireless to the City perimeter for KSU esplanade use. Light Pole F5 (adjacent from Node 32, between the esplanade crosswalk and Willow Street Eastbound) and the sign pole adjacent to street light node 32 on SR 59 Eastbound will have a wireless device installed upon each of them to provide wireless data coverage to the KSU Esplanade area. Each light pole will have a single Cisco Wireless Access Point installed along with the installation of AC power requirements; and for no other purpose. The City has reviewed the proposed use of the property and determined that it will not impair the integrity of SR 59. If the Ohio Department of Transportation determines that this use impairs the integrity of SR 59, then the uses described in this agreement will be revised.
- 2.2 No structural alterations may be made to the City's property without the express written permission of the City of Kent, Director of Public Service.
- 2.3 No cost or fee shall be charged for the License Agreement. For the term of this Agreement, and for any amendments or extensions, the Licensee shall not pay any fees, costs, or charges levied by the City or any affiliated entity in connection with this Agreement. Both parties recognize that such License is for the betterment of the city and the university and is provided in the spirit of "Town-Gown" relations.

3. TERM:

The City does hereby agree the Property may be used by the Licensee for a term of five (5) years commencing upon execution of the agreement ("Commencement Date"), and ending five years after the commencement date, unless terminated earlier by either party. This Agreement will automatically renew annually on the anniversary of the Commencement Date, unless one (1) month before expiration either party notifies the other in writing of its intention to terminate.

4. NOTICE; NECESSARY LICENSES AND PERMITS:

4.1 All written correspondence required under this Agreement shall be addressed as follows:

All correspondence to the City shall be addressed:

Service Director
City of Kent
930 Overholt Road
Kent, Ohio 44240

All correspondence to the Licensee shall be addressed:

Kent State University

4.2 Licensee shall secure all necessary permits required in connection with the use of the Property and shall comply with all federal, state and local statutes, ordinances, rules, or regulations which may affect, in any respect, Licensee's use of the Property. Licensee shall, prior to the commencement of any work, obtain and thereafter maintain, at its sole cost and expense, all licenses, permits, etc., required by law with respect to its business use of the Property.

5. STORAGE AND VENDING:

No storage of materials or supplies of any nature will be permitted on the Property except as directly related to the agreed business use of the Property.

6. TAXES:

Licensee is a tax-exempt entity and shall provide a certificate upon request.

7. DIRECTOR OF PUBLIC SERVICE TO ACT FOR CITY:

The granting of this License shall not be construed as an abridgment or waiver of any rights which the Director of Public Service has in exercising his jurisdictional powers over the City highway system. The City Director of Public Service shall act for and on behalf of the City of Kent in the issuance of and carrying out the provisions of this License.

8. CITY USE OF PROPERTY:

If for any reason the Director of Public Service or his duly appointed representative deems it necessary to order the removal, reconstruction, relocation or repair of the Licensee's changes to the Property, then said removal, reconstruction, relocation or repair shall be promptly undertaken at the sole expense of the Licensee's thereof. Failure on the part of the Licensee to conform to the provisions of this License will be cause for suspension of the License or termination of this Agreement as the Director of Public Service deems necessary.

9. MAINTENANCE OF IMPROVEMENTS:

9.1 Licensee, at Licensee's own cost and expense, shall maintain all of his/her improvements to the property. Licensee shall take all steps necessary to effectively protect the property from damage incident to the Licensee's use of such property, all without expense to the City.

9.2 Licensee shall be liable to, and shall reimburse the City for any damage to City owned property that in any way results from or is attributable to the use of said Property by the Licensee or its agents.

10. HOLD HARMLESS:

10.1 Licensee shall occupy and use Property at its own risk and expense. To the extent permitted by Ohio law, each party agrees to be liable for the acts and omissions of its own officers, employees and agents engaged in the scope of their employment arising under this Agreement, and each party hereby agrees to

be responsible for any and all liability, claims, costs, expenses or damages arising from any claim with respect to that party's role in connection with this Agreement. The parties agree that nothing in this provision shall be construed as a waiver of the sovereign immunity of University and/or the State of Ohio beyond the waiver provided in Ohio Revised Code Section 2743.02.

- 10.2** The City and/or University shall not be responsible for the actions of any users who gain access to the network provided under this Agreement. Nothing herein shall be deemed to make the City and/or University responsible for losses arising out of or relating to any third party claim concerning: (a) any user's use of the services; (b) violation of applicable law by its users; or (c) alleged infringement or misappropriation of any third-party rights by users.

11. INSURANCE

11.1 At the time of the execution of this Agreement, Licensee shall, at its own expense, take out and keep in force during the terms of this Agreement:

(a) Liability insurance, in a company or companies to be approved by the City to protect against any liability to the public incident to the use of, or resulting from injury to, or death of, any person occurring in or about, the Property, in the amount of not less than **Five Hundred Thousand Dollars (\$500,000.00)**, for a single occurrence, and in the amount of not less than **One Million Dollars (\$1,000,000.00)** in the aggregate.

(b) Property damage or other insurance in a company or companies to be approved by the City to protect Licensee, and the City against any and every liability incident to the use of or resulting from any and every cause occurring in, or about, the Property, including any and all liability of the Licensee, in the amount of not less than **One Hundred Thousand Dollars (\$100,000.00)**. Said policies shall inure to the contingent liabilities, if any, of the Licensee and the City, and shall obligate the insurance carriers to notify Licensee and the City, in writing, not less than thirty (30) days prior to cancellation thereof, or any other change affecting the coverage of the policies. If said policies contain any exclusion concerning property in the care, custody or control of the insured, an endorsement shall be attached thereto stating that such exclusion shall not apply with regard to any liability of the Licensee and the City.

11.2 A copy of the "Certificate of Insurance" will be submitted to the City at the time of execution of this Agreement and annually thereafter.

12. REVOCAION AND TERMINATION:

12.1 The City may revoke this license at any time. The Licensee may terminate this Agreement at any time.

12.2 In the event this license is revoked or the Agreement is terminated the Licensee will peaceably and quietly leave, surrender, and yield up to the City the Property. The Property will be restored to its previous condition at the expense of the Licensee and no costs for removal will be reimbursed by the City.

12.3 Upon revocation of the license or upon termination or expiration of Agreement, any personal property, or other appurtenances, including all footings, foundations, and utilities, placed on the City property will be removed by Licensee. If any such appurtenances are not so removed after ninety (90) days written notice from the City to the Licensee, the City may proceed to remove the same and to restore the Property and the Licensee will pay the City, on demand, the reasonable cost and expense of such removal and restoration.

13. RELOCATION:

A Licensee who licenses property from the City shall not be eligible for relocation payments.

14. GENERAL TERMS:

13.1 No Third Party Beneficiary. Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give to any person, other than the

parties to this Agreement, any rights or remedies under or by reason of this Agreement. Without limiting the foregoing, no Leased Employee shall have any rights as a third party beneficiary.

- 13.2** Neither party shall assign any of its rights or delegate any of its duties under this Agreement without the consent of the other party. This Agreement shall not be construed as giving any person, other than the parties hereto and their permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained.
- 13.3** Entire Agreement and Amendment. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless such amendment or modification to this Agreement is (i) in writing; (ii) refers to this Agreement; and (iii) executed by an authorized representative of each party. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- 13.4** Waiver. The waiver of any breach of the terms of this Agreement shall not constitute the waiver of any other or further breach hereunder. No waiver of any provision of this agreement shall be valid unless in writing.
- 13.5** Headings. The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- 13.6** Severability. If any section or provision of this Agreement is held illegal, unenforceable or in conflict with any law by a court of competent jurisdiction, such Section or provision of this Agreement shall be deemed severed from this Agreement and the validity of the remainder of this Agreement shall not be affected thereby.
- 13.7** Choice of Law. This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Agreement and/or performance thereunder.

INTENDING TO BE LEGALLY BOUND, this Agreement has been executed in duplicate by the parties hereto as of the date herein last written below. Licensee acknowledges receipt of a copy of this Agreement and agrees to comply with the provisions herein contained.

LICENSEE(S):

Signature

Signature

Mailing Address

Telephone

Date

CITY OF KENT, OHIO

Director of Public Service

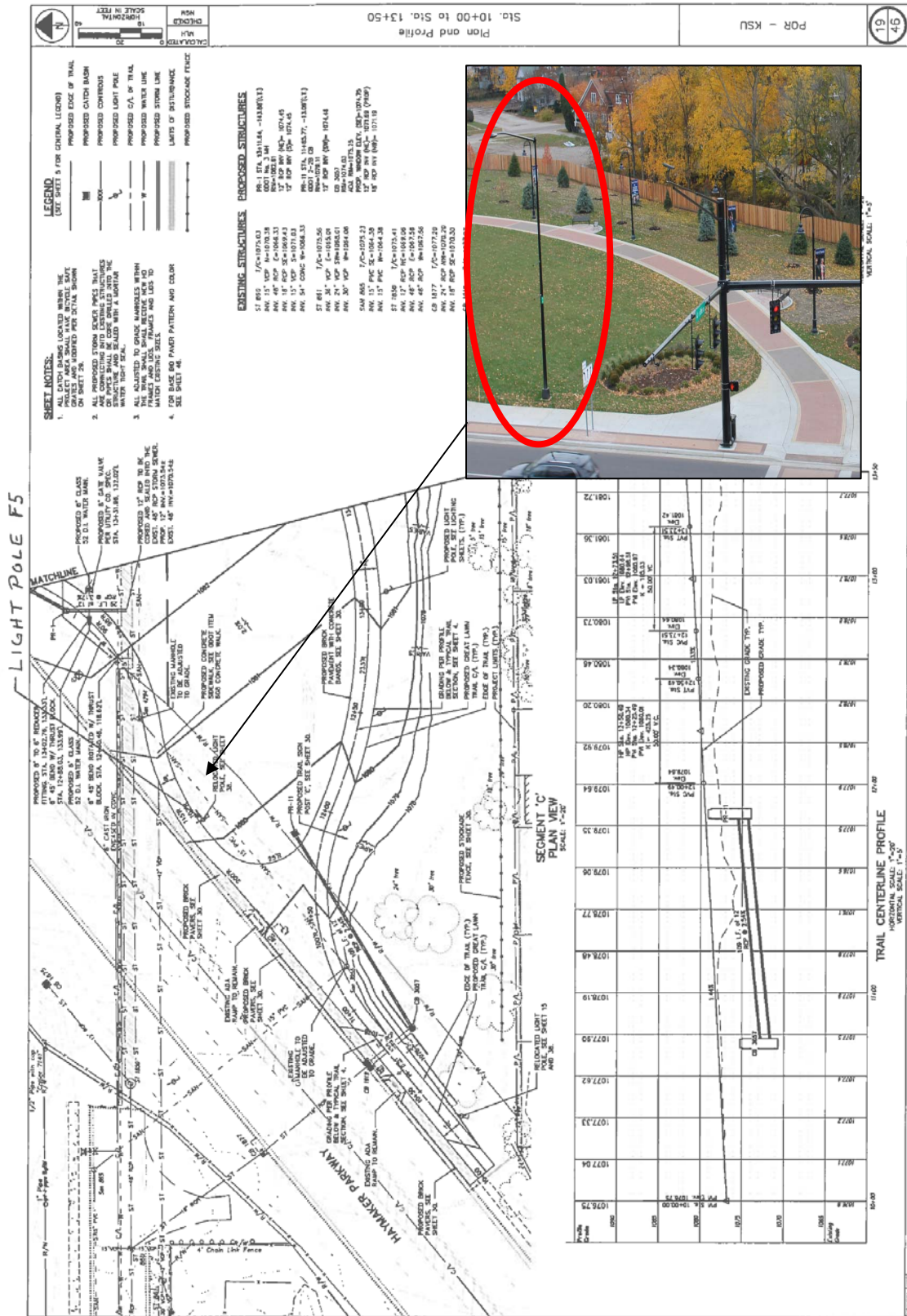
Date

APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent

EXHIBIT "A" LOCATION DESCRIPTION

Light Pole (F5) located near streetlight node 32



Street Sign Pole near Streetlight Pole node 30 (Willow St. and SR 59)

