ORDINANCE NO. 2017 - 96

AN ORDINANCE ACCEPTING AND AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE AN AGREEMENT BETWEEN KAREN ANN MULLENIX AND GENE TRIMBLE AND THE CITY OF KENT, OHIO, WITH THE CITY OBTAINING A TEMPORARY EASEMENT OF 0.023 ACRES OF REAL PROPERTY, FOR $700.00, FOR RIGHT-OF-WAY PURPOSE, TO INSTALL, CONSTRUCT AND RECONSTRUCT THE ROADWAY AND SIDEWALKS FOR THE PROJECT POR-43-10.26 KNOWN AS SR 43 TRAFFIC IMPROVEMENT PROJECT; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent Council desires to obtain a temporary easement of 0.023 acres of real property from Karen Ann Mullenix and Gene Trimble; and

WHEREAS, Karen Ann Mullenix and Gene Trimble are willing to grant a temporary easement in said property for $700.00; and

WHEREAS, the City needs the property for right-of-way purposes to install, construct and reconstruct the roadway and sidewalks for the project known as SR 43 Traffic Improvement Project; 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 agreement for the City of Kent to obtain a temporary easement of 0.023 acres of real property for right-of-way purposes to install, construct and reconstruct the roadway and sidewalks for the project known as SR 43 Traffic Improvement Project from Karen Ann Mullenix and Gene Trimble for $700.00; said Agreement marked as Exhibit "A", on file in the Council office.

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: August 16, 2017

Date

JERRY T. FIALA
Mayor and President of Council

EFFECTIVE: August 16, 2017

Date

ATTEST: 

TARA GRIMM, CMC
Clerk of Council


TARA GRIMM, CMC
CLERK OF COUNCIL
(SEAL)
TEMPORARY EASEMENT

KNOW ALL MEN BY THESE PRESENTS THAT: Karen Ann Mullenix, Married, and Mark Gene Trimble, Married, the Grantor(s) herein, in consideration of the sum of $700.00, to be paid by the City of Kent, Portage County, Ohio, the Grantee herein, does hereby grant, bargain, sell, convey and release to said Grantee, its successors and assigns, a temporary easement to exclusively occupy and use for the purposes mentioned in Exhibit A the following described real estate:

PARCEL(S): 25-T
POR-43-10.26

SEE EXHIBIT A ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF
Portage County Current Tax Parcel No. 17-013-20-00-125-000

To have and to hold said temporary easement, for the aforesaid purposes and for the anticipated period of time described below, unto the Grantee, its successors and assigns.

The duration of the temporary easement herein granted to the Grantee is 12 months immediately following the date on which the work described above is first commenced by the Grantee, or its duly authorized employees, agents, and contractors.

The temporary easement interest granted herein is being acquired by Grantee for a public purpose, namely the establishment, construction, reconstruction, widening, repair or maintenance of a public road.

Page 1 of 3
And, for the consideration hereinafter written, David R. Mullenix, the spouse of Karen Ann Mullenix, hereby relinquishes to said Grantee, its successors and assigns, all rights and expectancies of Dower in the above described premises.

IN WITNESS WHEREOF Karen Ann Mullenix, Married, and David R. Mullenix, Husband, have hereunto set their hands on the 18th day of May, 2017.

Karen Ann Mullenix, Married

David R. Mullenix, Husband

STATE OF OHIO, COUNTY OF Portage ss:

BE IT REMEMBERED, that on the 18th day of May, 2017, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Karen Ann Mullenix and David R. Mullenix, who acknowledged the foregoing instrument to be their voluntary acts and deeds.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Notary Public

This document was prepared by: The City of Kent, Portage County, Ohio
And, for the consideration hereinabove written, Libby Trimble, the spouse of Mark Gene Trimble, hereby relinquishes to said Grantee, its successors and assigns, all rights and expectancies of Dower in the above described premises.

IN WITNESS WHEREOF Mark Gene Trimble, Married, and Libby Trimble, Wife, have hereunto set their hands on the 18th day of May, 2017.

[Signature]
Mark Gene Trimble, Married

[Signature]
Libby Trimble, Wife

STATE OF OHIO, COUNTY OF Portage ss:

BE IT REMEMBERED, that on the 18th day of May, 2017, before me the subscriber, a Notary Public in and for said state and county, personally came the above named Mark Gene Trimble and Libby Trimble, who acknowledged the foregoing instrument to be their voluntary acts and deeds.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

[Signature]
Notary Public
My Commission expires: 8/2/20

This document was prepared by: The City of Kent, Portage County, Ohio
Situated in the City of Kent, County of Portage, State of Ohio, being part of Lot 13 in Franklin Township, and being part of lands described in the deed to KAREN ANN MULLENIX AND MARK GENE TRIMBLE (Grantor) as recorded in Instrument 200425902 on file in the Portage County Recorder’s office and laying on the right side of the existing centerline of right-of-way of State Route 43 as recorded as Plat ___________ and as shown on the POR-43-10.26 right-of-way plans prepared by Arcadis U.S., Inc. for the City of Kent, Ohio, and more fully described as follows:

**Beginning** on the existing easterly right of way line of said State Route 43 at 34.85 feet right of Station 575+30.05;

1. Thence North 90° 00' 00" East, along the Grantor’s northerly line, a distance of 8.08 feet being 42.93 feet right of Station 575+30.03;

2. Thence along the arc of a curve deflecting to the left, through the Grantor, a distance of 113.45 feet being 38.00 feet right of Station 574+00.48; said curve having a radius 512.00 feet, a central angle of 12° 41' 45", and a chord length of 113.22 feet which bears South 14° 28' 57" East;

3. Thence South 20° 49' 49" East, continuing through the Grantor, a distance of 11.39 feet to the existing northerly right of way line of East School Street being 30.00 feet right of East School Street Station 1+29.40;

4. Thence South 89° 31' 51" West, along said existing northerly right of way line, a distance of 8.53 feet to said existing easterly right of way line of said State Route 43 being 30.00 feet right of Station 573+92.05;

5. Thence North 20° 49' 49" West, along said existing easterly right of way line, a distance of 8.42 feet being 30.00 feet right of Station 574+00.48
6. Thence along the arc of a curve deflecting to the right, along said existing easterly right of way line, a distance of 116.37 feet to the Point of Beginning; said curve having a radius of 520.00 feet, a central angle of 12° 49' 18", a chord length of 116.12 feet which bears North 14° 25' 10" West.

The above described easement contains 0.023 acres (999 square feet, including 0.000 acres within the present road occupied), within Parcel Number 17-013-20-00-125-000 and subject to all legal highways and easements of record.

This description was prepared by Arcadis U.S., Inc. under the supervision of Robert G. Hoy, Ohio Professional Surveyor No. 8142, and is based on a field survey performed by Arcadis U.S., Inc. in September 2014 under the direction of Robert G. Hoy, Ohio Professional Surveyor No. 8142;

Bearings in this description are based on the Ohio State Plane Coordinate System, NAD83(2011), North Zone, Grid North;

Grantor claims title as recorded in Instrument 200425902 of Portage County Deed Records.

The stations referred are from the existing centerline of right-of-way of State Route 43 as shown on the POR-43-10.26 right-of-way plans unless noted otherwise.

[Signature]
Arcadis U.S., Inc. Date
Robert G. Hoy, Ohio Professional Surveyor No. 8142
CITY OF KENT, OHIO
LICENSE AGREEMENT

THIS AGREEMENT is made by and between the CITY OF KENT, OHIO, hereinafter called "City" and Mark Gene Trimble & Karen Ann Mullenix, hereinafter called the "Licensee."

The City is the owner, in fee simple, of land, hereinafter known as the "Property." For and in consideration of the covenants, conditions, agreements and stipulations of the License expressed herein, the City does hereby agree the Property may be used by the Licensee for the purpose as outlined in Part I below, in accordance with the laws and Charter of the City of Kent. The Property is more particularly described in the attached exhibits listed below.

Exhibit "A" – POR-43-10.26 R/W Plan, showing area being leased

The parties hereto covenant and agree as follows:

1. NATURE OF INTEREST:

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: __________________________

installing and maintaining planters and pergolas

____________________________

and for no other purpose.

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.

3. TERM:

The City does hereby agree the Property may be used by the Licensee for a term of one (1) year commencing on ________, 2017, and ending on ________, 2018 unless terminated earlier by either party. This license will automatically renew yearly unless one (1) month before expiration either party notifies the other of its intention to terminate per Paragraph 1.

4. NECESSARY LICENSES AND PERMITS:

4.1 Licensee shall be licensed to do business in the State of Ohio and City of Kent, and upon request, Licensee shall demonstrate to the City that any and all such licenses are in good standing. Correspondence shall be addressed as follows:
the Property, in the amount of not less than *Five Hundred Thousand Dollars* ($500,000.00), to indemnify against the claim of one person, and in the amount of not less than *One Million Dollars* ($1,000,000.00) against the claims of two (2) or more persons resulting from any one (1) accident.

(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.

12.2 A copy of the "Certificate of Insurance" will be submitted to the City at the time of execution of license and annually thereafter.

13. **MODIFICATION:**

The terms of this Agreement may be modified upon agreement of the parties.

14. **REVOCATION AND TERMINATION:**

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

14.2 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.

14.3 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.
15. **RELOCATION:**

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

IN WITNESS WHEREOF, 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: 1109 S. WATER STREET KENT, OH 44240

Telephone: (330) 673-9844

Date: 5/18/2017

CITY OF KENT, OHIO

Director of Public Service

Date

APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent
CITY OF KENT, OHIO
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4.1 Licensee shall be licensed to do business in the State of Ohio and City of Kent, and upon request, Licensee shall demonstrate to the City that any and all such licenses are in good standing. Correspondence shall be addressed as follows:
EXHIBIT "A"

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:
Mark Gene Trimble & Karen Ann Mullenix
1109 S. Water Street
Kent, Ohio 44240

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 agrees to be responsible for and to timely pay all taxes and/or assessments that may be legally assessed on Licensee's interest, or on any improvements placed by Licensee on said Property, during the continuance of the license hereby created, including any real estate taxes. The Licensee must provide written notice to the City, at the address referenced in Paragraph 4.1, within thirty (30) days of payment of all taxes and/or assessments.

7. DIRECTOR OF PUBLIC SERVICE TO ACT FOR CITY:

The granting of this permit 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 permit.
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 City's 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 permit will be cause for suspension, revocation or annulment of this permit, as the Director of Public Service deems necessary.

9. **MAINTENANCE OF PROPERTY:**

Licensee shall, at its sole expense, keep and maintain the Property free of all weeds, debris, and flammable materials of every description, and at all times in an orderly, clean, safe, and sanitary condition consistent with neighborhood standards. A high standard of cleanliness, consistent with the location of the area as an adjunct of the City, will be required. Defoliant, noxious, or hazardous materials or chemicals shall not be used or stored on the Property.

10. **MAINTENANCE OF IMPROVEMENTS:**

10.1 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.

10.2 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 any person entering upon the same with the consent of the Licensee, expressed or implied.

11. **HOLD HARMLESS:**

Licensee shall occupy and use Property at its own risk and expense and shall save the City, its officers, agents, and employees, harmless from any and all claims for damage to property, or injury to, or death of, any person, entering upon same with Licensee's consent, expressed or implied, caused by any acts or omissions of the Licensee.

12. **INSURANCE:**

12.1 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), to indemnify against the claim of one person, and in the amount of not less than *One Million Dollars* ($1,000,000.00) against the claims of two (2) or more persons resulting from any one (1) accident.

(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 oblige 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.

12.2 A copy of the "Certificate of Insurance" will be submitted to the City at the time of execution of license and annually thereafter.

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

14.2 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.

14.3 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.
15. **RELOCATION:**

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IN WITNESS WHEREOF, 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

1109 S. WATER STREET, KENT, OH 44240

Telephone

(330) 673-9844

Date

5/18/2017

CITY OF KENT, OHIO

Director of Public Service

[Signature]

Date

APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent