



City of Kent  
**Wednesday, March 6, 2024**  
Special City Council Meeting  
320 S. Depeyster Street, Kent, OH 44240

**AGENDA**

1. 6:45 p.m. Welcome/Roll Call
2. Legislation
  - 2.1. **Draft 2024-012** AN ORDINANCE AUTHORIZING THE STAFF OF THE COMMUNITY DEVELOPMENT DEPARTMENT TO ADMINISTER THE REVIEW OF ZONING AND BUILDING PERMITS IN THE OVERLAY DISTRICT WHILE THE CITY TRANSITIONS TO THE NEW DESIGN GUIDELINES AND DECLARING AN EMERGENCY (2nd Reading; Authorized 2/7/24)
  - 2.2. **Draft 2024-021** AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A CONSTRUCTION MAINTENANCE AND USE AGREEMENT BETWEEN THE CITY OF KENT AND THE CITY OF AKRON TO PERMIT THE CITY OF KENT TO CONSTRUCT A SHARED USE PATH (BIKE & HIKE TRAIL) TO IMPROVE ACTIVE TRANSPORTATION CONNECTIVITY, AND DECLARING AN EMERGENCY (Authorized)
3. Adjournment

Any person who requires an auxiliary aid or service for effective communication or a modification of policies and procedures to participate in any City or City Council public meeting or event should contact the Clerk of Council at 330-676-7555 or [councilclerk@kent-ohio.org](mailto:councilclerk@kent-ohio.org). Any request for auxiliary aid or other accommodation should be made as soon as possible, but no later than forty-eight hours prior to the event.

**DRAFT ORDINANCE NO. 2024 - 012**

**AN ORDINANCE AUTHORIZING THE STAFF OF THE COMMUNITY DEVELOPMENT DEPARTMENT TO ADMINISTER THE REVIEW OF ZONING AND BUILDING PERMITS IN THE OVERLAY DISTRICT WHILE THE CITY TRANSITIONS TO THE NEW DESIGN GUIDELINES AND DECLARING AN EMERGENCY.**

**WHEREAS,** certain provisions within the Zoning and Building Code require the Architectural Review Board to review submissions made to properties in the Overlay District; and

**WHEREAS,** Council has approved new Design Guidelines which will require a text amendment to the Codified Ordinances before being implemented; and

**WHEREAS,** Community Development has two submittals in the Overlay District waiting for approval and the implementation process will take some time; and

**WHEREAS,** the Director of Community Development reports that the two pending matters meet the Code requirements and has asked Council for authority to approve the submissions at the Administrative level.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Kent, Portage County, Ohio:

**SECTION 1.** That Council hereby authorizes the staff of the Community Development Department to administer the review of Zoning and Building permits in the Overlay District while the City transitions to the New Design Guidelines

**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: \_\_\_\_\_  
Date

\_\_\_\_\_  
Jerry T. Fiala  
Mayor and President of Council

EFFECTIVE: \_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_  
Amy Wilkens, CMC  
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF **RESOLUTION No. \_\_\_\_\_**, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
AMY WILKENS, CMC  
CLERK OF COUNCIL

**DRAFT ORDINANCE 2024 – 021**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A CONSTRUCTION MAINTENANCE AND USE AGREEMENT BETWEEN THE CITY OF KENT AND THE CITY OF AKRON TO PERMIT THE CITY OF KENT TO CONSTRUCT A SHARED USE PATH (BIKE & HIKE TRAIL) TO IMPROVE ACTIVE TRANSPORTATION CONNECTIVITY, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Kent desires to enter into a Construction Maintenance and Use Agreement with the City of Akron; and

**WHEREAS**, it will permit the City of Kent to construct a shared use path (bike & hike trail) to improve active transportation connectivity in the region and also to build a facility to work and perform construction on the property.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Kent, Portage County, Ohio:

**SECTION 1.** That Council does hereby authorize the City Manager, or his designee, to enter into a Construction Maintenance and Use Agreement between the City of Kent and the City of Akron to permit the City of Kent to construct a shared use path (Bike & Hike Trail) and is more fully described in 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: \_\_\_\_\_  
Date

\_\_\_\_\_  
Jerry T. Fiala  
Mayor and President of Council

EFFECTIVE: \_\_\_\_\_  
Date

ATTEST: \_\_\_\_\_  
Amy Wilkens, CMC  
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF *ORDINANCE No.* \_\_\_\_\_, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON \_\_\_\_\_, 20\_\_\_\_.

(SEAL)

\_\_\_\_\_  
AMY WILKENS, CMC  
CLERK OF COUNCIL

## **Construction, Maintenance and Use Agreement**

This Construction and Maintenance Agreement (“Agreement”), made this \_\_\_\_ day of \_\_\_\_\_, 2024 by and between the City of Kent, Ohio, a municipal corporation organized under the laws of Ohio, having its principal address located at 930 Overholt Road, Kent, Ohio 44320 (hereinafter referred to as “Kent”) and the City of Akron, a municipal corporation organized under the laws of Ohio, having its principal address located at 166 South High Street, Akron, Ohio 44308 (hereinafter referred to as “Akron”).

### **Recitals:**

WHEREAS, Akron maintains and operates transmission water mains through Kent in land owned fee simple interest or right-of-way deeded to Akron (hereinafter referred to as “Property”); and

WHEREAS, Akron desires to improve access to its transmission water mains for routine inspections and maintenance; and

WHEREAS, Kent owns, maintains and desires to improve an active transportation network of facilities that connect to regional facilities in Akron, Tallmadge, Stow and Portage County; and

WHEREAS, both parties desire to improve active transportation connectivity in the region; and

WHEREAS, Kent desires to construct an active transportation shared use facility (hereinafter referred to as the “Facility”), located generally on and along the Property owned by Akron in Kent; and

WHEREAS, in order to construct Facility, Kent needs access to work and perform construction on the Property; and

WHEREAS, Akron desires to provide Kent permission to work on the Property to construct the Facility, and desires to provide Kent future access to the property necessary to maintain the Facility; and

WHEREAS, Akron desires to be able to use the Facility to access the Property to inspect and maintain its transmission water mains; and

WHEREAS, Akron and Kent desire to enter into this Agreement to provide for the rights and responsibilities of each party.

NOW THEREFORE, in consideration of the mutual agreements contained herein, the parties do hereby agree as follows:

## **Article I Location**

The Facility construction and subsequent maintenance shall occur in the Property as depicted on **Exhibit A**, attached hereto and incorporated herein.

For purposes of constructing the Facility, Akron hereby grants Kent permission and authority to work on the Property shown on Exhibit A, where Akron has the right to grant such rights to Kent. Akron also hereby grants Kent permission and authority to access the Property in order to maintain the Facility throughout this Agreement.

Akron hereby grants the public access to use the Facility upon completion of any portions of the Facility. No part of this agreement shall limit Akron's use of its Property to provide clean, safe and reliable drinking water to its customers.

## **Article II Construction**

Akron hereby grants Kent access and use of the Property for construction of the Facility under the terms and conditions of this Agreement. Kent may access and use the Property for construction purposes upon execution of this Agreement. Kent shall be responsible for the cost of construction of the Facility and impacts to Akron's infrastructure caused by the construction of the Facility.

The Facility shall be designed and constructed to serve active transportation uses and to serve as an inspection route for Akron. This includes designing and constructing the Facility to support access vehicles no larger than a pick-up truck. Any subsurface investigations performed to support the design of the Facility, such as soil borings or subsurface utility investigations, shall be coordinated and approved by Akron before the investigations begins.

Kent shall obtain Akron's approval prior to construction of the Facility. Such approval shall not be unreasonably withheld and shall be given within a reasonable timeframe.

Akron agrees to allow a construction trailer and/or construction equipment to be staged within the Property, as described on Exhibit A and as approved by Akron, for both Kent and Akron inspectors and staff for the administration, management and inspection of the Project.

Kent will continue to improve, modify, and maintain areas adjacent, and within the boundaries of this Project, as outlined in Article III. Kent and Akron agree that both parties will work to coordinate on the Project and minimize conflicts.

Kent and Akron will work jointly to promote the partnership along the Facility with interpretive signage showing the water treatment process and the importance of water protection and conservation. Kent shall be responsible for the costs of this work within the City of Kent.

### **Article III Maintenance**

Once the Facility is completed, Kent, at its sole expense, shall maintain the Facility on the Property that it is occupying. This includes maintenance of the following items on the Property: pavement, storm drainage, emergency vehicle access, lawns and landscaping, pavement markings and signing related to the Facility.

Upon completion of any portion of the Facility, Kent will be responsible to mow the Property where the Facility has been completed.

Prior to commencement of any work, Kent shall secure, and thereafter maintain, at its sole cost and expense, all necessary licenses and permits required in connection with the use of the Facility and shall comply with all federal, state and local statutes, ordinances, rules or regulations which may affect, in any respect, Kent's use of the Property.

Kent shall perform non-emergency repairs to the Project in such a manner as to minimize disturbance to the functioning of the Property for Akron. Kent shall use its best efforts to restore the Property as close to the quality of its prior existing state as possible with similar materials whenever Kent disturbs such while the course of repairing and/or maintaining the Facility.

No part of this agreement shall limit Akron's use of its Property to provide clean, safe and reliable drinking water to its customers. Upon the event that Akron is required to impact the Facility to maintain its transmission water mains, Akron shall be responsible to perform reasonable repairs to the Facility upon completion of Akron's work. The repairs to the Facility shall be performed within a reasonable time frame using good faith efforts to reopen the Facility.

The maintenance responsibilities shall remain in full force for the duration of the term of this agreement.

### **Article IV Costs**

Kent shall be solely responsible for and pay all costs associated with the Facility, which includes all costs to complete the construction of the Facility, including, but not limited to, design, access, construction engineering, construction inspection services, testing services, utility fees, legal fees, and all other incidental items.

### **Article V Term & Renewal**

The term of this Agreement shall be twenty -five (25) years from the execution date of this Agreement ("Original Term"). Kent shall have the option to renew for two (2) consecutive ten (10) year renewal periods, each upon the same terms and conditions as contained in this Agreement (each a "Renewal Term"). Additionally, if Kent does not provide written notice of termination

prior to expiration of the then-current term, the Agreement shall automatically renew for each subsequent Renewal Term.

At the end of the term, if this Agreement is not renewed, Kent has the option to either (1) remove the Facility; or (2) transfer ownership of the Project to Akron, if Akron agrees, and the Akron will own and maintain the Project.

## **Article VI**

### **Default**

In the event Kent shall default in the performance of any obligation hereunder, including the obligation to perform each and every covenant, term and condition contained herein, Akron may, at any time, serve written notice of Kent's default under any provision of this Agreement, and if Kent's failure is not remedied within thirty (30) days of receiving notice of any such default or non-compliance, Akron may, without limiting any other remedy or rights available under law to Akron, terminate this Agreement. In the event the nature of the default prohibits Kent from completing the remedy within thirty (30) days, and Kent has promptly commenced and is diligently pursuing completion of the remedy, Akron shall, instead of terminating or utilizing any other remedy available to Akron, assist and permit Kent to complete such remedy, but in no case shall Kent's right to cure exceed ninety (90) days. Any violation of any federal, state or local law that has not been cured within the time periods set forth herein shall be considered a default. If during the term of this Agreement, Akron shall serve more than three (3) notices of default or non-compliance on Kent, and after the curing of said three (3) defaults, Akron shall, at Akron's option, notify Kent that it shall no longer be permitted to the cure period described herein. Thereafter, for the duration of the term of this Agreement, Akron shall have all rights and remedies available under law.

In the event Akron shall default in the performance of any obligation hereunder, including the obligation to perform each and every covenant, term and condition contained herein, Kent may, at any time, serve written notice of Akron's default under any provision of this Agreement, and if Akron's failure is not remedied within thirty (30) days of receiving notice of any such default or non-compliance, Kent may, without limiting any other remedy or rights available under law to Kent, terminate this Agreement or sue for specific performance of Akron's obligations. In the event the nature of the default prohibits Akron from completing the remedy within thirty (30) days, and Akron has promptly commenced and is diligently pursuing completion of the remedy, Kent shall, instead of terminating or utilizing any other remedy available to Kent, assist and permit Akron to complete such remedy, but in no case shall Akron's right to cure exceed ninety (90) days. Any violation of any federal, state or local law that has not been cured within the time periods set forth herein shall be considered a default. If during the term of this Agreement, Kent shall serve more than three (3) notices of default or non-compliance on Akron, and after the curing of said three (3) defaults, Kent shall, at Kent's option, notify Akron that it shall no longer be permitted to the cure period described herein. Thereafter, for the duration of the term of this Agreement, Kent shall have all rights and remedies available under law.

## **Article VII Liability**

Kent agrees to maintain insurance coverage in the event Kent causes damage to Akron property in the performance of its rights and obligations under this Agreement. Upon notification from the Akron of any such damage, Kent shall promptly remedy the same. Additionally, Kent shall maintain general liability insurance at commercially reasonable coverage limits insuring against bodily and property damage of anyone using the Project upon completion.

## **Article VIII Independent Contractor**

Kent is a separate political subdivision and none of its agents, officers, members, employees, or subcontractors are agents or employees of Akron and shall make no representations to the contrary. Nothing in this Agreement is intended to create a joint venture or anything other than an independent contractor relationship between Akron and Kent. Akron will not be liable for Worker's Compensation or Unemployment Compensation attributable to Kent. Kent, its agents, officers, members, employees, or subcontractors will not participate in the hospital, medical, and/or retirement plans available to employees of Akron. As a separate political subdivision, Kent's employees are not employees of Akron, Kent acknowledges that it is providing personal services to a public employer and that its officers, members, or employees are considered public employees and that Kent will cover contributions made to the Ohio Public Employees Retirement System (OPERS) where appropriate.

## **Article IX Equal Opportunity**

Kent agrees, in performing the Services, to abide by the applicable terms and provisions of Sections 38.01-38.06 of the Code of Ordinances of the City of Akron, Ohio, regarding public contracts as if the same be fully rewritten herein.

## **Article X Severability**

In the event any one or more of the provisions contained in the Agreement shall be determined to be invalid and the remaining provisions can be given effect, then in such event the remaining provisions shall remain in full force and effect.

## **Article XI Non-Assignment**

The rights, duties and responsibilities of parties under this agreement shall not be assignable by either party without written consent of the other party.

## **Article XII Non-Waiver of Breach**

The waiver of a breach of any one or more of the terms, provisions and conditions set forth and included in this Agreement shall not constitute, nor be construed to represent or constitute, the waiver in whole or in part of any subsequent breach of any term, provision or condition contained in this Agreement.

### **Article XIII Integrated Agreement**

This Agreement, including exhibits, represents the entire, complete and exclusive understanding and agreement of the parties hereto and reduces to writing all oral negotiations and agreements of the parties and shall not be changed, varied or otherwise amended except in writing, signed by each of the parties hereto.

### **Article XIV Notices**

Unless and until otherwise advised in writing in accordance herewith, all notices required to be given under this Agreement shall be in writing sent by certified mail, postage prepaid, as follows:

To Kent:                      City of Kent  
                                     Attn: Jim Bowling, PE  
                                     930 Overholt Road  
                                     Kent, Ohio 44240  
                                     [jim.bowling@kentohio.gov](mailto:jim.bowling@kentohio.gov)

With a copy to:            City of Kent  
                                     Attn: Hope Jones, Esq.  
                                     320 S Depeyster Street  
                                     Kent, Ohio 44240  
                                     [Hope.jones@kentohio.gov](mailto:Hope.jones@kentohio.gov)

To City:                      City of Akron  
                                     Attn: Jeff Bronowski, PE  
                                     1460 Triplett Boulevard  
                                     Akron, Ohio 44306  
                                     [JBronowski@akronohio.gov](mailto:JBronowski@akronohio.gov)

With a copy to:            \_\_\_\_\_  
                                     \_\_\_\_\_  
                                     \_\_\_\_\_  
                                     \_\_\_\_\_

**Article XV**  
**Article Headings**

The article headings contained herein are inserted only as a matter of convenience and for reference and in no way shall be construed to define, limit or describe the scope or intent of this Agreement, nor in any way to affect the interpretation of any provision of this Agreement.

**Article XVI**  
**Governing Law**

This Agreement is being executed in the State of Ohio and the laws of Ohio shall govern its validity, effect, and performance.

[Remainder of this page intentionally left blank – signatures follow.]

IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their hands on the day and year first written above.

CITY OF KENT

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

CITY OF AKRON

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

## **EXHIBIT A**

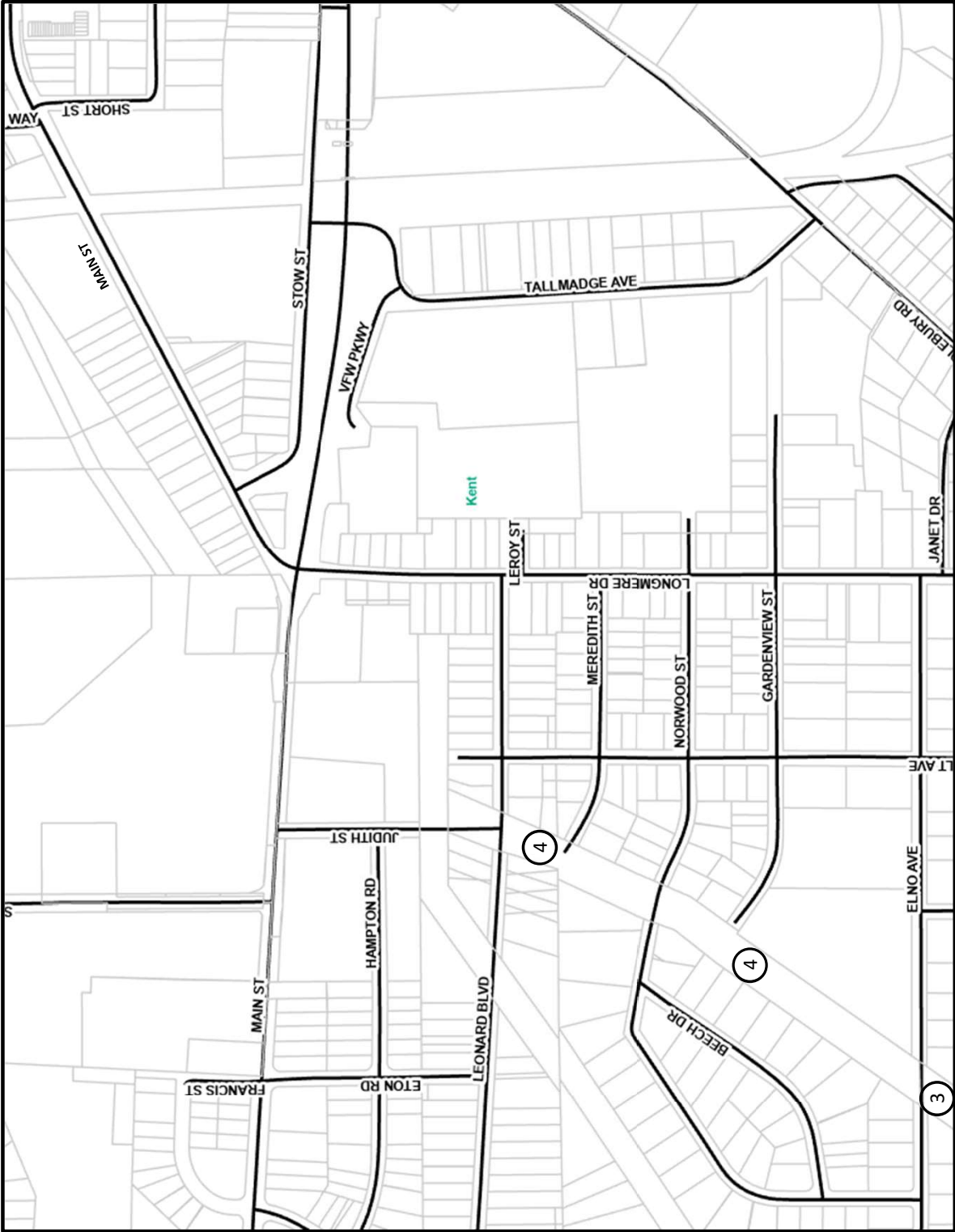
Property Depiction



**Parcels**

- ① City of Akron Right-of-Way
- ② 17-009-00-00-039-000
- ③ 17-010-00-00-021-000

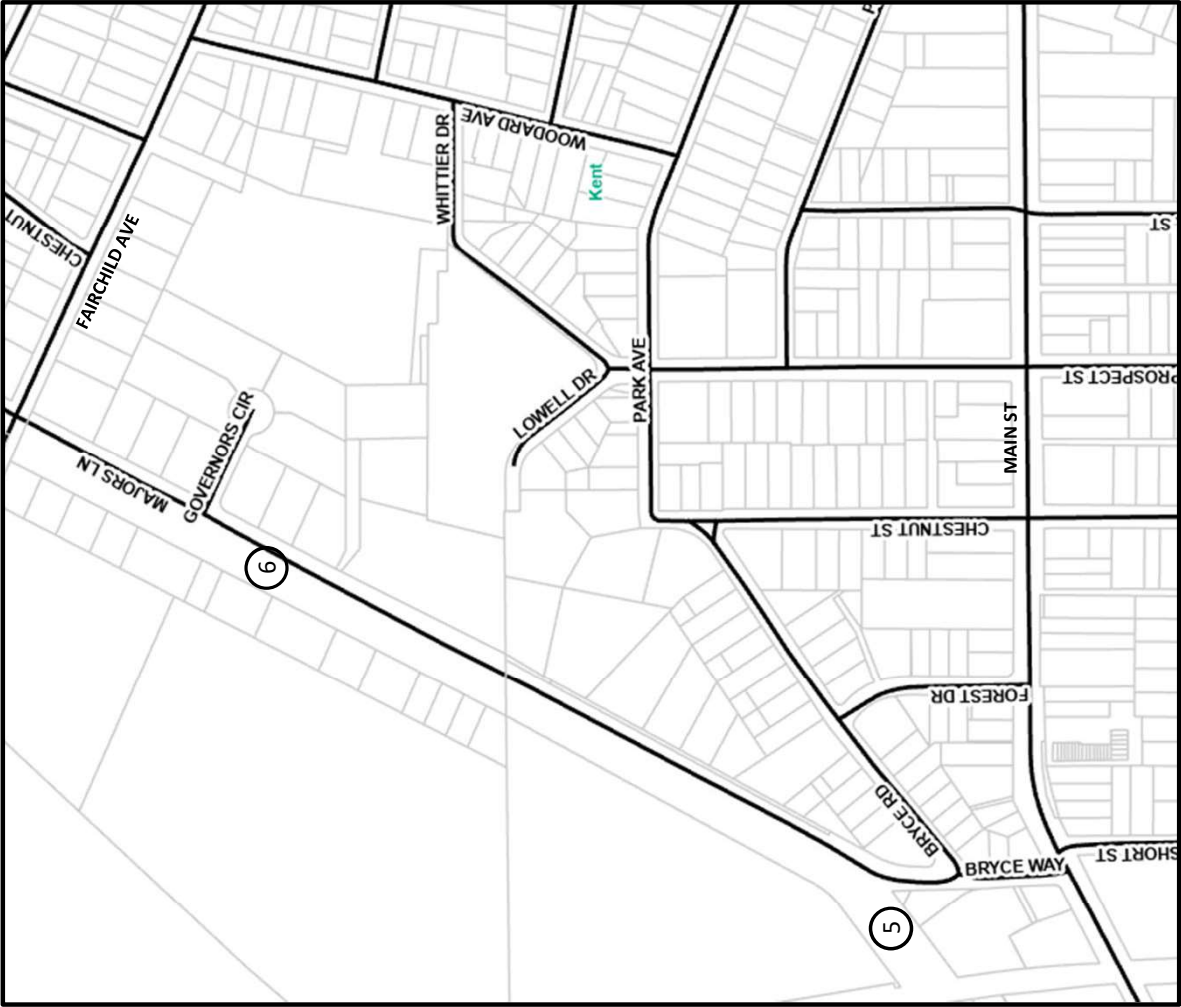
PROPERTY DEPICTION



Parcels

- ③ 17-010-00-00-021-000
- ④ 17-010-00-00-020-000

PROPERTY DEPICTION



Parcels

- ⑤ City of Akron Right-of-Way
- ⑥ 17-029-00-00-012-000

# PROPERTY DEPICTION



## Parcels

- ⑥ 17-029-00-00-012-000
- ⑦ City of Akron Right of Way
- ⑧ 17-030-10-00-123-000
- ⑨ City of Akron Easement

