



CITY OF KETTERING

DONALD E. PATTERSON, MAYOR • TONY KLEPACZ, VICE MAYOR
BRUCE E. DUKE • JACQUE FISHER • BILL LAUTAR

KETTERING COUNCIL AGENDA

July 13, 2021

Kettering Government Center – South Building
3600 Shroyer Rd. Kettering, Ohio 45429

6:00 P.M. **WORKSHOP** Deeds Room
7:30 P.M. **REGULAR MEETING** Council Chambers

PLEDGE OF ALLEGIANCE

INVOCATION

APPROVAL OF MINUTES

June 22, 2021- Council Meeting & Workshop Minutes

PROCLAMATIONS, SPECIAL PRESENTATIONS, AWARDS, SPECIAL RESOLUTIONS, APPOINTMENTS TO BOARDS AND COMMISSION

Proclamation Dayton Region Intern Appreciation Week
Proclamation Joe Wanamaker Day

PUBLIC HEARINGS

1. P.C. 21-007- Request for a street vacation at the northeast corner of Wilmington Pike and Brownleigh Road.

PUBLIC COMMENT ON LEGISLATION

(5 Minute Limit per Speaker)

ORDINANCES IN SECOND READING

RESOLUTIONS

2. To accept the resignation of Council Member Joseph D. Wanamaker and to declare the District 2 council seat vacant.
3. Authorizing the purchase of road salt through an approved state or local cooperative purchasing program.
4. Authorizing the City Manager to enter into a cost-sharing agreement with the Board of Education of the Kettering City School District for the Safety Section Program for the 2021-2022 school year.
5. Dedicating Parcel 4-WD of the Kettering Traffic Signal Replacements - Phase 3 Project, City Project 02-005D (ODOT Project MOT-Kettering Signals, Phase 3, PID No. 105950), as permanent right-of-way.
6. Authorizing the City Manager to enter into agreements with the Ohio Department of Transportation (ODOT) to allow the City of Kettering to serve as responsible lead agency for the administration of the Kettering Traffic Signal Replacements - Phase 4 Project (City Project No. 02-005E; ODOT Project MOT-Kettering Signals Phase 4, PID 115201).
7. Declaring as "surplus" and approving a contract to sell approximately 3.4 acres, more or less, of city-owned property in Research Park.
8. Authorizing the City Manager to accept grant funds from the Ohio Department of Public Safety, Ohio Division of EMS.
9. To amend Resolution No. 10573-21.
10. To make supplemental appropriations for current expenses and other expenditures of the City of Kettering, State of Ohio, during the fiscal year ending December 31, 2021.

ORDINANCES IN FIRST READING

CERTIFICATIONS AND PETITIONS

MANAGER'S REPORT/COMMUNITY UPDATE

OTHER BUSINESS NOT ON WRITTEN AGENDA

Audience Participation (5 Minute Limit per Speaker)

CITY COUNCIL REPORT/UPDATE

The City of Kettering wishes to make certain that all citizens have the opportunity to actively participate in their local government. If you have a disability and require accommodations to participate in a Council meeting, please contact the Clerk of Council at 296-2416 so that reasonable modifications can be made.

KETTERING CITY CALENDAR
2021

July 13	4:00 p.m. 6:00 p.m. 7:30 p.m.	Partners for Healthy Youth Council Workshop City Council Meeting
July 19	7:00 p.m. 7:00 p.m.	Planning Commission Board of Community Relations
July 26	7:00 p.m. 7:30 p.m.	Board of Zoning Appeals Sister Cities
July 27	6:00 p.m. 7:30 p.m.	Council Workshop City Council Meeting

Proclamation

Whereas:

There are hundreds of interns working in many different industry sectors throughout the summer in the Dayton Region; and

WHEREAS: Companies in the Dayton Region rely on interns over the summer months to help contribute to organizational mission; and

WHEREAS: The Dayton Region is thankful to all the interns who come to work for various communities throughout the summer months; and

WHEREAS: The Dayton Region is excited to showcase amenities across the region to potential new employees contemplating a position within the region; and

WHEREAS: The Dayton Region looks forward to interns returning back to our communities once they have graduated from school.

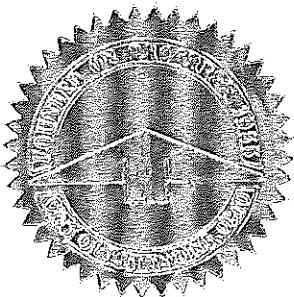
NOW, THEREFORE, I, Donald E. Patterson, Mayor of the City of Kettering, Ohio, on behalf of City Council and the community, and hereby proclaimed

July 12-16, 2021

to be

DAYTON REGION INTERN APPRECIATION WEEK

in the City of Kettering, Ohio, and on behalf of the members of City Council, City Administration and the citizens of the community do hereby express our appreciation to all of the interns who serve the Kettering community.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Kettering, Ohio, to be affixed this 13th day of July, in the Year of our Lord, Two Thousand and Twenty-One.

DONALD E. PATTERSON
Mayor of the City of Kettering, Ohio

Proclamation

Whereas:

Joe Wanamaker began his public service career in 1959, as a Light Equipment Operator for the City of Kettering; and

WHEREAS: Joe's passion for people and humble demeanor has been felt throughout our community for more than 62 years; and

WHEREAS: Under Joe's tenure as Streets Maintenance Director for the City of Kettering, residents became introduced to quality services including the mulch and compost program which Kettering residents still enjoy today; and

WHEREAS: Joe is the only Kettering employee to have ever worked for every City Manager and all City Council members since Kettering has been named a city; and

WHEREAS: After retiring from the City in 2003, Joe was elected to serve the residents of District 2 in 2004 where he advocated for the betterment of the Kettering community for 17 years; and

WHEREAS: Joe has shown us the true meaning of being a public servant and the Kettering community will truly miss his leadership.

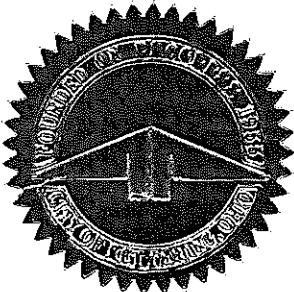
NOW, THEREFORE, I, Donald E. Patterson, Mayor of the City of Kettering, Ohio, on behalf of City Council and the community, do hereby proclaim

July 13, 2021

to be

JOE WANAMAKER DAY

in the City of Kettering, Ohio, and on behalf of City Council, City Administration and the residents of Kettering would like to commend Joe Wanamaker for his exemplary service and devotion to the Kettering community and offer our sincere best wishes for a bright and rewarding future filled with good health and happiness.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Kettering, Ohio, to be affixed this 13th day of July, in the Year of our Lord, Two Thousand and Twenty-One.

DONALD E. PATTERSON
Mayor of the City of Kettering, Ohio

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**TO ACCEPT THE RESIGNATION OF COUNCIL MEMBER
JOSEPH D. WANNAMAKER AND TO DECLARE THE
DISTRICT 2 COUNCIL SEAT VACANT**

WHEREAS, before being elected to City Council, Mr. Wannamaker served as an employee of the City for forty-four years, retiring as Street Maintenance Director in 2003; and

WHEREAS, after retiring, Joseph D. Wannamaker was elected as District 2 City Council representative and has served in that capacity since 2004, which means he has served the City and its citizens for over 61 years; and

WHEREAS, because of health reasons, Mr. Wannamaker has submitted a letter of resignation, a copy of which is attached hereto;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. This Council regretfully accepts the resignation of Joseph D. Wannamaker as District 2 Council Member. As stated in his letter, Mr. Wannamaker's resignation was effective as of June 22, 2021 at 11:30 P.M. Furthermore, this Council hereby declares the District 2 Council seat held by Mr. Wannamaker, with a term ending December 31, 2023, vacant as of the effective date and time of the resignation. The vacancy will be filled through the election of a successor in accordance with City Charter Section 3-4.

Section 2. This Council hereby recognizes and thanks Mr. Wannamaker for his years of dedicated service to this community and wishes him and his family all the best.

Section 3. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2021.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Council Office)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE PURCHASE OF ROAD SALT THROUGH AN
APPROVED STATE OR LOCAL COOPERATIVE PURCHASING
PROGRAM**

Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. The City Manager is hereby authorized to purchase approximately 5,500 tons of road salt through an approved state or local cooperative purchasing program.

Section 2. As provided in Section 4-8 of the City Charter, this resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2021.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

Estimated Cost: \$312,400.00
Amount Budgeted: \$180,000.00
Acct. No: 2000-72224

(Requested by: Public Service Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**AUTHORIZING THE CITY MANAGER TO ENTER INTO A
COST-SHARING AGREEMENT WITH THE BOARD OF
EDUCATION OF THE KETTERING CITY SCHOOL DISTRICT
FOR THE SAFETY SECTION PROGRAM FOR THE 2021-2022
SCHOOL YEAR**

Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. The City Manager is hereby authorized to enter into an agreement with the Board of Education of the Kettering City School District to share the cost of maintaining the Engineering Department's Safety Section Program for adult crossing guards and safe route monitoring for elementary school areas and elementary students for the 2021-2022 school year. The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

Section 2. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2021.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Engineering Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

**DEDICATING PARCEL 4-WD OF THE KETTERING TRAFFIC
SIGNAL REPLACEMENTS - PHASE 3 PROJECT, CITY
PROJECT NO. 02-005D (ODOT PROJECT MOT-KETTERING
SIGNALS, PHASE 3, PID NO. 105950), AS PERMANENT RIGHT-
OF-WAY**

Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. This Council hereby dedicates Parcel 4-WD of the Kettering Signals Phase 3 Project, which is more particularly described in Exhibit A attached hereto and incorporated herein, as permanent right-of-way.

Section 2. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2021.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Engineering Department)

EXHIBIT A

LPA RX 851 WD

Page 1 of 2

Rev. 06/09

Ver. Date 07/08/20

PID 105950

**PARCEL 4-WD
MOT – KETTERING SIGNALS PHASE 3
ALL RIGHT, TITLE AND INTEREST IN FEE SIMPLE
IN THE FOLLOWING DESCRIBED PROPERTY
WITHOUT LIMITATION OF EXISTING ACCESS RIGHTS
IN THE NAME AND FOR THE USE OF THE
CITY OF KETTERING, OHIO**

Grantor/Owner, for himself and his heirs, executors, administrators, successors and assigns, reserves all existing rights of ingress and egress to and from any residual area (as used herein, the expression "Grantor/Owner" includes the plural, and words in the masculine include the feminine or neuter).

(Surveyor's description of the premises follows)

Situate in the City of Kettering, County of Montgomery, State of Ohio, Section 22, Town 2, Range 6, M.Rs., being part of a 14.28 acre parcel of land owned by the City of Kettering, as recorded in Deed M.F. 91 271B02 of the records of the Montgomery County Recorder's Office and being more particularly described as follows:

Being on the RIGHT side of the centerline of right-of-way of East David Road, as shown on the East David Road MOT – Kettering Signals Phase 3 Centerline Plat as recorded in Plat Book 236, Page 23 (I.R. Plat 20-_____) and being located within the following described points in the boundary thereof: **00074145**

All references herein to station and offset are to the centerline of right-of-way of East David Road.

COMMENCING, for reference, at a 1" iron pin found in a monument box in the west line of Section 22, the east line of Section 28, and being in the intersection of the existing centerline of Marshall Road and the existing centerline of East David Road, as recorded in Plat Book 104, Page 52 of the Plat Records of the Montgomery County Recorder's Office, being located at 0.00 feet left, Station 59+00;

thence with said west line of Section 22 and the east line of Section 28, **South 4°51'44"** West for a distance of **40.62 feet** to a point, being located 40.65 feet right, Station 59+00.55;

thence departing said west line of Section 22 and the east line of Section 28, **South 85°08'02" East** for a distance of **40.67 feet** to a point on the existing east right-of-way line of Marshall Road, the existing south right of way line of East David Road, at the northwest corner of a 52 square feet roadway easement conveyed to the City of Kettering as recorded on Deed M.F. 77 251A04, and the northwest corner of said 14.28 acre parcel of land, being located at 40.00 feet right, Station 59+41.21, said point being the **TRUE POINT OF BEGINNING**, of a parcel herein described;

EXHIBIT A

thence with the existing south right-of-way line of East David Road, the north line of said 52 square feet roadway easement, and the north line of said 14.28 acre parcel of land, **South 84°21'12" East** for a distance of **67.22 feet** to an iron pin set, passing a point at the northeast corner of a said 52 square feet roadway easement at 15.46 feet, being located at 40.00 feet right, Station 60+08.42;

thence with a new division line, **South 52°43'42" West** for a distance of **89.30 feet** to an iron pin set on the existing east right-of-way line of Marshall Road and the west line of said 14.28 acre parcel of land, being located at 100.81 feet right, Station 59+43.03;

thence with the existing east right of way line of Marshall Road and the west line of said 14.28 acre parcel of land, **North 3°56'04" East** for a distance of **60.84 feet** to the **TRUE POINT OF BEGINNING**, of the parcel herein described passing a point at the southwest corner of a said 52 square feet roadway easement at 45.38 feet.

The above described area is contained within Montgomery County Auditor's Parcel Number N64 03404 0012 and contains 0.0469 acres, more or less, and being subject to all legal highway and any easements or restrictions of record. The P.R.O. in Take for Auditor's Parcel N64 03404 0012 is 0.0012 acres.

Prior instrument reference as of the date this survey was prepared: Deed M.F. 91 271B02 in the Deed Records of Montgomery County, Ohio.

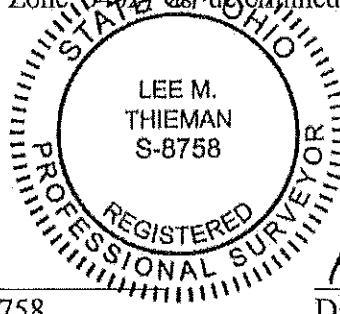
This description was prepared and reviewed on May 21, 2020 by the City of Kettering Engineering Department.

This description is based on a survey made under the direction and supervision of Lee M. Thieman, Registered Surveyor Number 8758 in January, 2019.

Monuments referred to as iron pins set are 30 inch long No. 5 iron pin with a yellow cap stamped "City of Kettering". Right-of-way monuments called for as set herein will be set upon the completion of the acquisition process.

All bearings shown are for project use only. They are based on 1983 North American Datum (2011 Adjustment) State Plane Coordinates (Ohio South Zone, 1402) as determined by the City of Kettering.

PAUL W. GRUNER, P.E., P.S.
MONTGOMERY COUNTY ENGINEER
APPROVED FOR POINT OF BEGINNING,
ACREAGE AND CLOSURE ONLY
DATE 12/09/20 FILE NO. 2020-0130



BY Wayne B. [Signature]
[Signature]

Lee M. Thieman, Ohio Registered Surveyor No. 8758

12/07/2020
Date

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENTS WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) TO ALLOW THE CITY OF KETTERING TO SERVE AS RESPONSIBLE LEAD AGENCY FOR ADMINISTRATION OF THE KETTERING TRAFFIC SIGNAL REPLACEMENTS – PHASE 4 PROJECT (CITY PROJECT NO. 02-005E; ODOT PROJECT MOT-KETTERING SIGNALS PHASE 4, PID 115201)

WHEREAS, Section 5501.03(D) of the Ohio Revised Code provides that the Director of the Ohio Department of Transportation (ODOT) may coordinate the activities of the Department with other appropriate public authorities and enter into contracts with such authorities as necessary to carry out its duties, powers and functions; and

WHEREAS, the following listed project is a transportation activity eligible to receive federal/state funding:

- a. Kettering Traffic Signal Replacements - Phase 4 Project (City Project No. 02-005E; ODOT Project MOT-Kettering Signals Phase 4, PID 115201);

WHEREAS, the City of Kettering has received funding approval for the project listed above from the program manager having responsibility for the federal/state funds involved; and

WHEREAS, it is the mutual desire of ODOT and the City of Kettering to have the City of Kettering serve as the responsible lead agency for administration of the project;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. This Council hereby authorizes the City Manager to enter into one or more agreements with ODOT to allow the City of Kettering to serve as the responsible lead agency for administration of the Kettering Traffic Signal Replacements - Phase 4 Project (City Project No. 02-005E; ODOT Project MOT-Kettering Signals Phase 4, PID 115201). The City Manager is further authorized to sign any amendments or extensions thereto that the City Manager deems appropriate.

Section 2. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____, 2021.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: Engineering Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

DECLARING AS "SURPLUS" AND APPROVING A CONTRACT TO SELL APPROXIMATELY 3.4 ACRES, MORE OR LESS, OF CITY-OWNED PROPERTY IN RESEARCH PARK

WHEREAS, the City seeks to preserve jobs, increase employment opportunities and to encourage establishment of new jobs within the corporate boundaries of the City, in order to improve the economic welfare of the City and its citizens, in furtherance of the public purposes enunciated in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, the City has received an offer to purchase 3.4 acres, more or less, of City-owned property near Donation Circle and College Drive in the Research Park for development which will in turn preserve and/or create positive employment and economic activity in the City;

NOW THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. Council hereby ratifies and approves the Contract To Purchase Real Estate attached hereto as Exhibit 1. The City Manager is hereby authorized to enter into that contract on behalf of the City of Kettering and to dispose of the real estate described in Exhibit A, and to take any and all additional action necessary and proper to do so. The City Manager is further authorized to sign any amendments or extensions thereto and any other related agreements and instruments that the City Manager deems appropriate.

Section 2. The real property described in Exhibit A, or the portion of said real property actually conveyed to the buyer, is hereby declared as surplus property and no longer required for municipal purposes effective as of the date of closing.

Section 3. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2021.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI
Clerk of Council

THEODORE A. HAMER III,
Law Director

(Requested by: City Manager's Office)

EXHIBIT**1****CONTRACT TO PURCHASE REAL ESTATE**

Date: 02/19/21

1. **OFFER.** The undersigned Purchaser offers to buy through Mark Pomes Realty, Inc., Broker(s), on the terms and conditions set forth below, the real property located in Kettering, County of Montgomery, State of Ohio, described as following: a newly created +/-3.4336 acre parcel to be split by Seller prior to closing from current Parcel ID: # N64-03501-0050, as shown on the attached Exhibit A.
2. **INCLUDED IN THE SALE.** The Property shall include the land, all appurtenant rights, privileges and easements, and all buildings, improvements and fixtures, including, but not limited to, such of the following as are now on the Property: all electrical, plumbing, heating and air conditioning equipment.
3. **PRICE.** Purchaser agrees to pay for the Property the sum of \$55,000/acre, payable as follows: (a) **EARNEST MONEY:** Within five (5) days of full execution of this Contract to Purchase Real Estate, Purchaser shall deliver to First American Title American Company, c/o Linda S. Wendling, 3800 Pentagon Blvd., Suite 120, Dayton, OH 45431, Title Company, the sum of \$2,500 ("Earnest Money") to be deposited in the trust or escrow account of the party holding the Earnest Money. The Earnest Money shall be paid to Buyer or delivered to the closing or escrow agent to be applied on the purchase price at closing. If the closing does not occur because of Seller's default or because any condition of this Contract is not satisfied or waived, Buyer shall be entitled to the Earnest Money. If Buyer defaults, Seller shall be entitled to the Earnest Money. (b) **BALANCE:** the balance of the purchase price shall be paid at the time of closing.
4. **DEED.** Seller shall furnish a transferable and recordable limited warranty deed conveying to Purchaser, or nominee, a marketable title to the Property (as determined with reference the Ohio State Bar Association Standards of Title Examination) with dower rights, if any, released and free and clear of liens, rights to take liens, and encumbrances whatsoever, except (a) legal highways, (b) any mortgage assumed by Purchaser, (c) all installments of taxes and assessments becoming due and payable after the closing, (d) rights of tenants in possession, (e) zoning and other laws, and (f) easements and restrictions of record which would not prevent Purchaser from using the Property for the following purpose: office/warehouse/research/light manufacturing. If title to all or part of the Property is unmarketable or is subject to matters not excepted as provided above, Seller at Seller's sole cost shall cure any title defects and/or remove such matters within 10 days after receipt of written notice from Purchaser, and if necessary the closing date shall be extended to permit Seller the full 10 days to clear title. Seller shall have the right at closing to pay for the removal of any encumbrances or liens out of the purchase price.
5. **INSPECTION.** Purchaser reserves the right to perform inspections of the Property per the attached Addendum to Contract to Purchase Real Estate.
6. **TAXES.** At closing, Seller shall pay or credit on the purchase price (a) all real estate taxes and assessments, including penalties and interest, which became due and payable prior to the closing, (b) a pro rata share, calculated as of the closing date in the manner set forth below, of the taxes and assessments becoming due and payable after the closing, and (c) The tax pro-ration shall be made in accordance with the Montgomery County "short pro-ration" method, in which Seller's share is based upon the number of days from the date of the immediately preceding semi-annual installment to the date of closing.
7. **PRORATIONS.** Rents, utilities, and other operating income and expenses shall be prorated as of the date of closing. Purchaser shall pay all utilities and other operating expenses which may become due and payable following the date of closing. Any security deposits held by Seller shall be transferred to Purchaser at closing.
8. **SELLER'S REPRESENTATIONS.** Seller represents that those signing this Contract constitute all of the owners of the Property, together with their respective spouses. Seller further represents that with respect to the Property (a) no orders of any public authority are pending, (b) no work has been performed or improvements constructed that may result in future assessments, (c) no notices have been received from any public agency with respect to condemnation or appropriation, change in zoning, proposed future assessments, correction of conditions, or other similar matters, and (d) the Property is currently zoned _____, and to the best of Seller's knowledge, except as indicated below: (1) no toxic, explosive or other hazardous substances have been stored, disposed of, concealed within or released on or from the Property in violation of applicable environmental laws, and no other adverse environmental conditions affect the Property; (2) no underground storage tanks are currently located on the Property nor have any been previously removed from the Property; (3) there is no PCB-containing equipment on the Property; (4) removal of asbestos materials from the Property is not required under any applicable governmental laws, order or regulations; (5) none of the Property consists of wetlands, and (6) the Property has not been the subject of any type of environmental investigation or cleanup; and (7) there are no
9. **POSSESSION.** Possession shall be given at closing, subject to tenant's rights. (N/A as to tenants) leases.
10. **DAMAGE OR DESTRUCTION TO PROPERTY.** If any buildings or other improvements are substantially damaged or

destroyed prior to closing, Purchaser shall have the option (a) to proceed with the closing and receive the proceeds of any insurance payable in connection therewith, or (b) to terminate this Contract. Seller shall keep the Property adequately insured against fire and extended coverage perils prior to closing. Seller agrees to maintain the Property in its present condition until delivery of possession, subject to ordinary wear and tear and the provisions of this paragraph.

11. ACCEPTANCE; CLOSING. This offer shall remain open for acceptance until February 26, 2021 at 5:00 p.m. The closing delivery of the deed and payment of the balance of the purchase shall be held within thirty (30) days of the expiration of the Due Diligence Period at a time and place mutually agreed upon by Seller and Purchaser.

12. GENERAL PROVISIONS. Upon acceptance, this offer and the attached addenda shall become a complete agreement binding upon and inuring to the benefit of Purchaser and Seller and their respective heirs, personal representatives, successors, and assigns, and shall be deemed to contain all the terms and conditions agreed upon, there being no oral conditions, representations, warranties or agreements. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the parties unless in writing signed by both parties. Upon Purchaser's examination of the Property as provided herein, and except as otherwise provided in this Contract, Purchaser is accepting the Property "as is" in its present condition, relying upon such examination as to the condition, character, size, utility and zoning of the Property. Time is of the essence of all provisions of this Contract. All representations, warranties and agreements in this Contract shall survive the closing. Any word used in this offer and the acceptance thereof shall be construed to mean either singular or plural as indicated by the number of signatures hereto.

13. ADDENDA. The following Addenda and attachments are included and shall be considered an integral part of this Contract:
See Attached Addendum to Contract to Purchase Real Estate.

WITNESS: *Aria J. Wiggant* Purchaser: *David M. Duntz*
YOLO Development I, LLC

MAKE DEED TO (Print): YOLO Development I, LLC Address: 3500 Pentagon Blvd. #500, Beavercreek, OH 45431

ACCEPTANCE Date: 2/26/2021

The undersigned Seller () accepts the foregoing offer; or (X) counteroffers according to the initialed changes set forth above or in the attached Addenda, which counteroffer shall remain open for acceptance until March 8, 20 21 at 5:00 p.m.

WITNESS *Amy J. Haylip* Seller City of Kettering, Ohio
Print BY: *Mark W. Schwieterman*
Mark W. Schwieterman, City Manager

Addendum to Contract to Purchase Real Estate

Purchaser: YOLO Development 1, LLC

Property: +/-3.4336 acre parcel to be split from current Parcel ID #: N64-03501-0050

1. Inspection Period. Purchaser shall have a period of 120 calendar days after Seller's acceptance of this contract (the "Physical Inspection Period") to obtain inspection of the property (at Purchaser's expense) in each of the following areas:

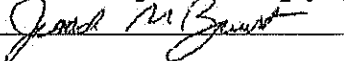
- A. Title Search
- B. Survey
- C. Environmental Audit
- D. Soil Boring Tests

Purchaser may cancel this contract if inspection results are, in Purchaser's sole opinion, unsatisfactory to Purchaser, and earnest money shall be returned to Purchaser. Cancellation shall be by written notice to Seller prior to the end of the Physical Inspection Period.

2. Feasibility Study and Board Approval Period. Purchaser shall have a period of one-hundred twenty days (120) after Seller's acceptance of this contract to complete a project feasibility study and obtain board approval. Purchaser may cancel this Agreement if the results are, in Purchaser's sole opinion, unsatisfactory to Purchaser, and the earnest money shall be returned to Purchaser. Cancellation shall be by written notice to Seller prior to the end of the Feasibility Study and Board Approval Period.

3. City of Kettering Council Approval. Purchaser acknowledges that this contract and the sale of the Property are contingent upon City of Kettering Council approval. Seller shall notify Purchaser when final approval has been granted.

4. Broker. Seller shall be responsible for paying any commission to Mark Fornes Realty.

Purchaser: 

Seller: 
Mark W. Schwieterman, City Manager

Date: 02/23/21

Date: 2/20/21



AGENCY DISCLOSURE STATEMENT



The real estate agent who is providing you with this form is required to do so by Ohio law. You will not be bound to pay the agent or the agent's brokerage by merely signing this form. Instead, the purpose of this form is to confirm that you have been advised of the role of the agent(s) in the transaction proposed below. (For purposes of this form, the term "seller" includes a landlord and the term "buyer" includes a tenant.)

Property Address: A newly created +/- 3.4336 acre parcel to be split from current Parcel ID #: N64-03501-0050

Buyer(s): YOLO Development 1, LLC

Seller(s): City of Kettering

I. TRANSACTION INVOLVING TWO AGENTS IN TWO DIFFERENT BROKERAGES

The buyer will be represented by _____, and _____
AGENT(S) BROKERAGE

The seller will be represented by _____, and _____
AGENT(S) BROKERAGE

II. TRANSACTION INVOLVING TWO AGENTS IN THE SAME BROKERAGE

If two agents in the real estate brokerage _____ represent both the buyer and the seller, check the following relationship that will apply:

- Agent(s) _____ work(s) for the buyer and Agent(s) _____ work(s) for the seller. Unless personally involved in the transaction, the broker and managers will be "dual agents", which is further explained on the back of this form. As dual agents they will maintain a neutral position in the transaction and they will protect all parties' confidential information.
- Every agent in the brokerage represents every "client" of the brokerage. Therefore, agents _____ and _____ will be working for both the buyer and seller as "dual agents". Dual agency is explained on the back of this form. As dual agents they will maintain a neutral position in the transaction and they will protect all parties' confidential information. Unless indicated below, neither the agent(s) nor the brokerage acting as a dual agent in this transaction has a personal, family or business relationship with either the buyer or seller. *If such a relationship does exist, explain:* _____

III. TRANSACTION INVOLVING ONLY ONE REAL ESTATE AGENT

Agent(s) Jason M. Rudzinski and real estate brokerage Mark Fornes Realty, Inc. will

- be "dual agents" representing both parties in this transaction in a neutral capacity. Dual agency is further explained on the back of this form. As dual agents they will maintain a neutral position in the transaction and they will protect all parties' confidential information. Unless indicated below, neither the agent(s) nor the brokerage acting as a dual agent in this transaction has a personal, family or business relationship with either the buyer or seller. *If such a relationship does exist, explain:* _____
- represent only the (check one) seller or buyer in this transaction as a client. The other party is not represented and agrees to represent his/her own best interest. Any information provided the agent may be disclosed to the agent's client.

CONSENT

I (we) consent to the above relationships as we enter into this real estate transaction. If there is a dual agency in this transaction, I (we) acknowledge reading the information regarding dual agency explained on the back of this form.

Jason M. Rudzinski 2/23/21
BUYER/TENANT DATE

Mark Fornes 2/20/21
SELLER/LANDLORD DATE

DUAL AGENCY

Ohio law permits a real estate agent and brokerage to represent both the seller and buyer in a real estate transaction as long as this is disclosed to both parties and they both agree. This is known as dual agency. As a dual agent, a real estate agent and brokerage represent two clients whose interests are, or at times could be, different or adverse. For this reason, the dual agent(s) may not be able to advocate on behalf of the client to the same extent the agent may have if the agent represented only one client.

As a dual agent, the agent(s) and brokerage shall:

- Treat both clients honestly;
- Disclose latent (not readily observable) material defects to the purchaser, if known by the agent(s) or brokerage;
- Provide information regarding lenders, inspectors and other professionals, if requested;
- Provide market information available from a property listing service or public records, if requested;
- Prepare and present all offers and counteroffers at the direction of the parties;
- Assist both parties in completing the steps necessary to fulfill the terms of any contract, if requested.

As a dual agent, the agent(s) and brokerage shall not:

- Disclose information that is confidential, or that would have an adverse effect on one party's position in the transaction, unless such disclosure is authorized by the client or required by law;
- Advocate or negotiate on behalf of either the buyer or seller;
- Suggest or recommend specific terms, including price, or disclose the terms or price a buyer is willing to offer or that a seller is willing to accept;
- Engage in conduct that is contrary to the instructions of either party and may not act in a biased manner on behalf of one party.

Compensation: Unless agreed otherwise, the brokerage will be compensated per the agency agreement.

Management Level Licensees: Generally the broker and managers in a brokerage also represent the interests of any buyer or seller represented by an agent affiliated with that brokerage. Therefore, if both buyer and seller are represented by agents in the same brokerage, the broker and manager are dual agents. There are two exceptions to this. The first is where the broker or manager is personally representing one of the parties. The second is where the broker or manager is selling or buying his own real estate. These exceptions only apply if there is another broker or manager to supervise the other agent involved in the transaction.

Responsibilities of the Parties: The duties of the agent and brokerage in a real estate transaction do not relieve the buyer and seller from the responsibility to protect their own interests. The buyer and seller are advised to carefully read all agreements to assure that they adequately express their understanding of the transaction. The agent and brokerage are qualified to advise on real estate matters. **IF LEGAL OR TAX ADVICE IS DESIRED, YOU SHOULD CONSULT THE APPROPRIATE PROFESSIONAL.**

Consent: By signing on the reverse side, you acknowledge that you have read and understand this form and are giving your voluntary, informed consent to the agency relationship disclosed. If you do not agree to the agent(s) and/or brokerage acting as a dual agent, you are not required to consent to this agreement and you may either request a separate agent in the brokerage to be appointed to represent your interests or you may terminate your agency relationship and obtain representation from another brokerage.

Any questions regarding the role or responsibilities of the brokerage or its agents should be directed to an attorney or to:

Ohio Department of Commerce
Division of Real Estate & Professional Licensing
77 S. High Street, 20th Floor
Columbus, OH 43215-6133
(614) 466-4100



ADDENDUM 2

The following additional terms and conditions are made part of the Contract To Purchase Real Estate between Purchaser and Seller, including the Addendum to Contract to Purchase Real Estate, (collectively "Contract") to which this Addendum 2 is attached. In case of conflict, the terms of this Addendum 2 shall control. Terms defined in the Contract shall have the same meaning when used in this Addendum 2.

Notwithstanding anything else in the Contract to the contrary:

- A. Purchaser shall be solely responsible for the payment of all title examination fees and title insurance premiums necessary to provide Purchaser with an owner's policy of title insurance if Purchaser desires to purchase one. All closing costs and transfer taxes shall be paid by Purchaser. Purchaser and Seller shall each be responsible for the payment of their own attorneys' fees and expenses.
- B. Seller shall convey to Purchaser fee simple title to the Property by recordable limited warranty deed, free and clear of all liens and encumbrances by any party claiming by, through, or under Seller, except (i) liens for real property taxes and assessments due and payable in the year of closing and thereafter and any CAUV recoupment, (ii) easements and restrictions of record, (iii) existing encroachments and impediments, (iv) coal, oil, gas, and other mineral rights and interests previously transferred or reserved of record; and (v) governmental laws, restrictions, and ordinances affecting the Property. Purchaser shall be responsible for any real estate taxes that are recouped or recaptured as a result of any change of use of the Property.
- C. Purchaser shall indemnify and hold Seller harmless from any and all claims and expenses (including, without limitation, attorneys' fees) arising out inspections, testing, or other activities of Purchaser, its agents and representatives, on, at, or related to the Property; Purchaser shall also repair any resulting damage to the Property. Purchaser shall provide Seller with copies of any reports resulting from any inspections and tests. The obligations of Purchaser under this paragraph shall survive the termination of the Contract. Seller will not indemnify or defend any other person, party, or entity.
- D. Section 8(d) of the Contract is amended to read:

to Seller's knowledge (i) no Hazardous Materials (defined below) have been stored at, disposed of or are located in, on, or about the Property by Seller; (ii) no Hazardous Materials have been buried or accumulated

in, on, or about the Property by Seller; and (iii) no permit related to Hazardous Materials is required from the Ohio or Federal Environmental Protection Agency for the use or maintenance of any existing improvement or facility on the Property due to its current condition.

For purposes of this Contract, the following terms shall have the following meanings:

"Environmental Laws" shall mean all present and future federal, state and local laws, regulations and ordinances and principles of common law relating to the protection of the environment, public health or public safety including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. § 9601, et seq., as amended), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq., as amended), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq., as amended), the Clean Water Act (33 U.S.C. § 7401, et seq. as amended), the Safe Drinking Water Act (42 U.S.C. § 300f, et seq., as amended) the Toxic Substances Control Act (15 U.S.C. § 2601, et seq. as amended) and any state and local counterparts of such statutes or regulations.

"Hazardous Materials" shall mean all those things defined as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutants," "contaminants," "toxic substances" or other similar terms in any of the Environmental Laws.

Except as expressly set forth herein, it is understood and agreed that Seller is not making and has not at any time made any warranties or representations of any kind or character, expressed or implied, with respect to the Property, including, but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, zoning, tax consequences, physical defects or condition, environmental condition, utilities, leases, governmental approvals or compliance with applicable laws, rules and regulations, or any other matter regarding the Property. Purchaser acknowledges and agrees that upon closing Seller shall sell and convey the Property to Purchaser and Purchaser shall accept the Property "AS IS, WHERE IS, AND WITH ALL FAULTS", except to the extent expressly provided otherwise in this Addendum 2. Purchaser has not relied and will not rely on, and Seller is not liable for or bound by, any expressed or implied warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto made or furnished by Seller or any agent representing or purporting to

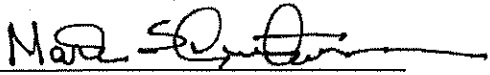
represent Seller, unless specifically set forth in this Addendum 2. Purchaser represents to Seller that Purchaser has conducted or will conduct prior to closing such inspections and investigations of the Property as Purchaser deems necessary and appropriate to satisfy itself as to the condition of the Property, and will rely solely upon the same and not upon any information provided by or on behalf of Seller or its agents, other than the warranties and representations of Seller expressly set forth in this Addendum 2. Upon closing, Purchaser shall assume the risk that adverse matters may not have been revealed by Purchaser's investigations, and Purchaser, upon closing, shall be deemed to have waived, relinquished and released Seller (and Seller's elected officials, officers, directors, employees, volunteers, and agents) from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees) that Purchaser might have asserted or alleged against Seller at any time by reason of any and all circumstances, events, or matters regarding the Property except for any representations or warranties expressly set forth in this Addendum 2.

- E. The parties recognize that the Seller is the City, and affirm (i) that this Contract does not contractually obligate the entity or body which may receive an application from Purchaser (even if an entity or body within the City) to approve such application if denial is warranted in the body's or entity's sole discretion and (ii) that Seller shall not take any action to assist the Purchaser that may create a conflict of interest.
- F. The Contract may not be assigned without the express written agreement of Seller.
- G. As soon as possible after closing, Purchaser shall consolidate into one lot the Property and Lot 5 of Miami Valley Research Park Section 4 as recorded in Plat Book 219, Page 40. Seller agrees to prepare at its expense another record plan for Purchaser to record to effect the required consolidation. Until the consolidation, the Property may not be separately conveyed to any other party, except the owner of Lot 5 of Miami Valley Research Park Section 4, without written authorization from Seller.

[Signature page to follow.]

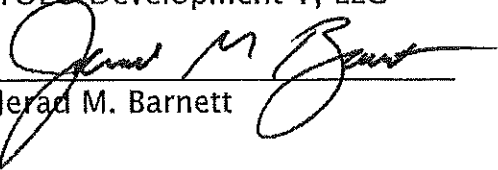
The parties agree to and accept the foregoing terms and conditions.

Seller:
City of Kettering, Ohio

By 
Mark W. Schwieterman
City Manager

Date 2/26/2021

Purchaser(s):
YOLO Development 1, LLC


Jerad M. Barnett

Date 2/26/2021

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE OHIO DEPARTMENT OF PUBLIC SAFETY, OHIO DIVISION OF EMS

WHEREAS, the City has applied for a Priority One Training and Equipment Grant from the Ohio Department of Public Safety, Ohio Division of EMS; and

WHEREAS, said grant funds will be used to purchase emergency medical equipment; and

WHEREAS, the grant requires no matching contribution from the City; and

WHEREAS, the City's grant application has been approved;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, Ohio that:

Section 1. The City Manager is authorized to take all necessary and proper action to accept the above-described grant from the Ohio Department of Public Safety, Ohio Division of EMS. Further, this Council hereby affirms all matters and statements included in the grant application.

Section 3. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2021.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

Estimated Cost: \$2,765.56
Amount Budgeted: \$0
Acct. No.: Special Grants & Programs

(Requested by: Fire Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

TO AMEND RESOLUTION NO. 10573-21

WHEREAS, Resolution No. 10573-21 authorized the City Manager to enter into one or more agreements with the Ohio Department of Transportation (ODOT) for ODOT pavement resurfacing and repair Project MOT SR 835, PID 103421 (Project) and to share in the cost of the Project; and

WHEREAS, at the time Resolution No. 10573-21 was adopted, the City's share of the Project cost was estimated to be \$123,804.00; and

WHEREAS, the low bid for the Project exceeded ODOT's estimate and the City's share of the Project cost will increase to \$158,436.00;

NOW, THEREFORE, Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. Resolution No. 10573-21 is amended to authorize an expenditure of funds in the amount of \$158,436.00 for the Project.

Section 2. In all other respects, Resolution No. 10573-21 shall remain in full force and effect.

Section 3. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2021.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

Estimated Cost: \$158,436.00
Amount Budgeted: \$80,000.00
Acct. No.: 2071-77750

(Requested by: Engineering Department)

CITY OF KETTERING, OHIO

A RESOLUTION

By:

No.

TO MAKE SUPPLEMENTAL APPROPRIATIONS FOR
CURRENT EXPENSES AND OTHER EXPENDITURES OF
THE CITY OF KETTERING, STATE OF OHIO, DURING
THE FISCAL YEAR ENDING DECEMBER 31, 2021

Be It Resolved by the Council of the City of Kettering, State of Ohio, that:

Section 1. To provide for the current expenses and other expenditures of the City of Kettering during the fiscal year ending December 31, 2021, the following supplemental sums are set aside and appropriated:

A. From the General Fund:

TRANSFERS TO OTHER FUNDS	
Streets Maintenance Fund	\$ 53,700.00
State Highway Fund	\$ 78,500.00
Parks & Recreation Fund	\$ 18,900.00

B. From the Street Maintenance Fund:

STREET DEPARTMENT	
Personal Service	\$ 53,700.00

C. From the State Highway Construction and Maintenance Fund:

Street Surfacing	\$ 318,000.00
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D. From the Parks & Recreation Fund:

PARKS & RECREATION DEPARTMENT	
Personal Service	\$ 18,900.00

E. From the Special Grants and Programs Fund:

Other	\$ 2,765.56
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Section 2. The Director of Finance is authorized to adjust appropriations within any fund or department as long as the adjustments made do not exceed the total appropriation authorized within that fund or department.

Section 3. The Clerk of Council is authorized and directed to forward a copy of this Resolution to the Montgomery County Auditor.

Section 4. As provided in Section 4-8 of the City Charter, this Resolution takes effect immediately upon its adoption.

Passed by Council this _____ day of _____ 2021.

DONALD E. PATTERSON, Mayor

ATTEST:

CERTIFICATE OF APPROVAL

LASHAUNAH D. KACZYNSKI,
Clerk of Council

THEODORE A. HAMER III,
Law Director

Estimated Cost: \$393,365.56
Amount Budgeted: \$0
Acct. No. Various

(Requested by: Finance Department)