

(Mayor Potter)

**CITY OF KIRTLAND**

**ORDINANCE NUMBER 22-O-20**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE UPGRADE OF SIGNAL TIMING EQUIPMENT ON STATE ROUTE 306, PID 114791, IN THE CITY OF KIRTLAND, OHIO, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Ohio Department of Transportation (“ODOT”) had performed an analysis of signal timing at the intersections of Interstate-90 and State Route (SR) 306 in the City of Willoughby along with the signals at SR-306 and Clocktower Drive, SR-306 and Kirtland Road, and SR-306 and SR-615 in the City of Kirtland, this analysis being referred to as LAK-306 @ IR-90 Signal Timing Analysis PID 114791 (hereinafter called “the Project”); and

**WHEREAS**, the City of Kirtland and ODOT determined the need to upgrade signal timing on State Route (SR) 306 at the intersections of Clocktower Drive, Kirtland Road, and SR-615; and

**WHEREAS**, an Agreement, which is attached hereto and incorporated herein as Exhibit A, has been drafted to memorialize an understanding between the City and ODOT to formalize the parties’ obligations for the installation and maintenance of signal upgrades at the above intersections within the City.

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Kirtland, County of Lake and State of Ohio, that:

**SECTION I.** The Mayor is hereby authorized to enter into and execute the Agreement with ODOT, which is attached hereto and made a part hereof as Exhibit A for the purpose of completing the Project by upgrading the signal timing equipment at the above-named intersections on SR-306 within the City of Kirtland. The Mayor is hereby authorized to execute such changes to the Agreement as he deems necessary after any subsequent discussions with ODOT.

**SECTION II.** The State of Ohio shall assume and bear 100% of all costs of the Project Improvement. The City of Kirtland agrees to pay 100% of the cost of any features requested by the City of Kirtland and determined by the State and Federal Highway Administration to be unnecessary for the project up to \$25,000.

**SECTION III.** The City of Kirtland agrees that all right-of-way required for the Project will be made available in accordance with current State and Federal regulations, including eligible utility costs. The City of Kirtland agrees that all utility accommodation, relocation and reimbursement will comply with the current provisions of 32 CFR 645 and the ODOT Utilities Manual.

**SECTION IV.** Upon completion of the Project, and unless otherwise agreed, the City of Kirtland shall provide adequate maintenance for the Project in accordance with all applicable State and Federal Laws, including, but not limited to, Title 23, U.S.C. Section 116; provide ample financial provisions as necessary for the maintenance of the Project, maintain the right-of-way, keeping it free of obstructions and hold said right-of-way inviolate for public highway purposes.

**SECTION V:**

(a) It is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed 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 including Section 121.22 of the Ohio Revised Code.

(b) This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that the Project is immediately necessary in order to expedite the execution of the Project per ODOT requirements and to promote highway safety. Therefore, this Ordinance shall be in full force and effect immediately upon its passage by the affirmative vote of five (5) members of Council and approval by the Mayor, otherwise this Ordinance shall be in effect from and after its adoption at the earliest period allowed by law.

First Reading: \_\_\_\_\_  
Second Reading: \_\_\_\_\_  
Third Reading: \_\_\_\_\_

DATE PASSED: \_\_\_\_\_

\_\_\_\_\_  
President of Council

Submitted to the Mayor for his  
Approval on this \_\_\_\_ day of  
\_\_\_\_\_, 2022.

ATTEST:

Approved by the Mayor, this \_\_\_\_ day  
of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Clerk of Council  
ODOT Agreement for SR-306 Signal Upgrades

\_\_\_\_\_  
Mayor Kevin F. Potter

AGREEMENT  
State provided equipment

This Agreement is made by and between the Ohio Department of Transportation whose address is 5500 Transportation Boulevard, Garfield Heights, OH 44125 (hereinafter referred to as ODOT), and the Mayor of the City of Kirtland whose address is 9301 Chillicothe Road, Kirtland, Ohio 44094 (hereinafter referred to as the City), hereinafter collectively known as the "Parties".

**WHEREAS**, each of the aforesaid agencies have an interest in the efficient operation of the traffic signal(s) at the subject intersections and in the surrounding area; and

**WHEREAS**, each of the aforesaid agencies have an interest in the efficient operation of the traffic signal(s) at the subject intersections and in the surrounding area; and

**WHEREAS**, the City and ODOT have identified the need for traffic signal equipment on State Route (SR) 306, in and of the City of Kirtland; and

**WHEREAS**, the signalized intersection between the intersections of SR-306 and SR-615, the signalized intersection of SR-306 and Kirtland Road, and the signalized intersection of SR-306 and Clocktower Drive (hereinafter referred to as the Signals) are within the corporation limits of the City; and

**WHEREAS**, ODOT and the City desire that the traffic signal equipment upgrade be purchased and installed by ODOT or its contractors as part of ODOT's Systematic Traffic Signal Timing program for the surrounding area; and

**WHEREAS**, the upgrade of traffic signal equipment and the connection with the City's signal system would promote progressive movement of vehicular traffic; and

**NOW THEREFORE**, in consideration of the mutual covenants hereinafter contained and for the purpose of installing traffic signal equipment on SR-306, in Lake County, Ohio, in and of the City of Kirtland; it is mutually agreed as follows:

**I. CONSTRUCTION**

The City will install the items needed to upgrade the signal system. Work will take place on SR-306 between the signalized intersection of SR-306 and SR-615, SR-306 and Kirtland Road, and SR-306 and Clocktower Drive.

Installation work will include GPS time clock and other appurtenances necessary to implement the traffic signal equipment upgrade. Installation work will include the utilization of existing traffic signal cabinet with the existing signal installations. Access to the signal housing(s) will be needed for connecting control equipment.

**II. MAINTENANCE**

The City shall continue to provide all maintenance for the signal(s) within the corporation limits of the City. This includes but is not limited to: call outs for signal malfunctions and burned out lamps; repair and replacement of malfunctioning signal components or those damaged either by accident

or deterioration which includes replacing the controller with the same model as installed; maintenance of pre-emption systems; and replacement or repair of damaged loop detectors or lead-in cables, including the loop detectors installed as a part of the signal system, located on SR-306. The equipment installed in the cabinet is to remain at the intersection(s) indefinitely until this Agreement is terminated.

The City shall also be responsible for any traffic studies and for any modifications to the existing equipment necessitated by their changing of traffic conditions. (e.g. altered lane usage, lane additions, signal heads, or turn phases)

### **III. ELECTRICAL ENERGY CHARGES**

The City shall remain responsible for the cost of all electrical energy charges for the operation of the signal(s) within the City.

### **IV. OPERATION**

The day-to-day management of the traffic signal equipment will be the responsibility of the City.

### **V. RIGHT OF ENTRY**

The City does hereby grant ODOT and its employees and contractors the Right of Entry to operate and maintain the traffic signal equipment and appurtenances located within the City. Access to the signal housing(s) and equipment shall be continuously provided to ODOT by the City for the purpose of maintaining or troubleshooting the traffic signal system operation.

### **VI. REMOVAL**

When it is determined by ODOT that said signal system is no longer essential to the safety, convenience and welfare of the traveling public, or that the maintenance of traffic in general would be better served by the discontinuance of the signal system, then all such equipment, material and devices installed including the controller, maintained and operated by ODOT shall be removed or abandoned by ODOT at no expense to the City. All salvageable materials and equipment shall be returned to ODOT's signal inventory and the parties shall be relieved of all obligations under this Agreement.

The determination that the signal system involving the signal(s) within the City is no longer useful or desirable shall be made by ODOT, in any reasonable manner, including, but not limited to, findings based on a traffic engineering study.

### **VII. NOTICES**

Notices shall be sent or otherwise delivered to the following persons:

**Ohio Department of Transportation:**  
Tony Toth  
5500 Transportation Blvd.  
Garfield Hts., OH 44125  
Anthony.Toth@dot.ohio.gov

**City:**  
Kevin Potter, Mayor  
9301 Chillicothe Road  
Kirtland, Ohio 44094  
KPotter@KirtlandOhio.com

## **VIII. GOVERNING LAW**

This Agreement and the performance thereof shall be governed and interpreted, where applicable, solely by the laws of the State of Ohio. The parties recognize and agree that the provisions of Ohio Revised Code 126.07 apply to this Agreement. The parties further recognize and agree that funds for installation and operation of the system must be appropriated and encumbered during the biennium in which the work is to be performed. If there is no such appropriation and encumbrance, ODOT's obligations terminate.

## **IX. COMPLIANCE WITH LAWS**

**Negligent Acts or Omissions.** To the extent permitted by Ohio Law, including but not limited to the Ohio Constitution, Ohio Revised Code Chapter 2743 *et seq.* and Ohio Revised Code Section 3345.40, each Party agrees to be responsible for those damages or losses which arise directly from the negligent acts or omissions of its own employees in performance of the agreement.

**Indemnification and Hold Harmless:** The City shall indemnify and hold ODOT, the State, and their agents harmless against any and all loss, claims, causes of action, damages, liabilities, lawsuits, costs, judgments, expenses or any other liabilities which arise as a result of any negligent, intentional, willful or wanton actions or inactions or failure to act by the City or its employees or agents which is in any way connected with or based upon this Agreement. In no event shall the City's indemnification obligation be limited by the scope or amount of any insurance policy held by the City.

## **X. SEVERABILITY**

If, and to the extent that any court of competent jurisdiction holds any provision or part thereof of this Agreement to be invalid, unenforceable or prohibited by law, such holding shall in no way affect the validity of the remainder of this Agreement.

## **XI. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the City and ODOT and supersedes all previous written and oral negotiations, commitments and understandings. Its terms, conditions and covenants shall not be altered or otherwise amended except pursuant to an instrument in writing signed by each of the parties hereto and making specific reference to this Agreement.

## **XII. CONSIDERATION**

Each party to this Agreement recognizes that the rights and benefits received by the respective parties to this Agreement are valuable and substantial; enforcement of this Agreement cannot be challenged for lack of consideration.

This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

## **XIII. TERM**

This Agreement shall remain in full force and effect between the Parties until the signal system is no longer useful or desirable, as determined by ODOT in good faith and based on engineering

judgment, at which time ODOT shall notify the City. The signal system shall be removed and this Agreement shall terminate.

The foregoing is accepted as a basis for proceeding with the improvement herein described.

**XIV. SIGNATURES**

Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by City to enter into agreements with the Ohio Department of Transportation.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

Any Party hereto may deliver a copy of its counterpart signature page to the Agreement via fax or e-mail. Each Party hereto shall be entitled to rely upon a facsimile signature of any other Party delivered in such a manner as if such signature were an original.

**IN WITNESS WHEREOF**, the Parties hereunto have caused the Agreement to be duly executed as of the last day and year written below.

For the City Kirtland, Ohio

\_\_\_\_\_  
Kevin F. Potter, Mayor

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

For the State of Ohio  
Ohio Department of Transportation

\_\_\_\_\_  
Dr. Jack Marchbanks  
Director

\_\_\_\_\_  
(DDD Initial Here)

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