

**CITY OF KIRTLAND**

**RESOLUTION NUMBER 22-R-64**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A JOINT USE AGREEMENT WITH THE HOLDEN ARBORETUM TO ASSIST IT IN THE RECEIPT OF APPROPRIATED FUNDS, AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Holden Arboretum is an Ohio nonprofit corporation that received an appropriation of funds through HB 597 to make improvements and construct facilities on its property within the City of Kirtland; and

**WHEREAS**, in order to receive said funds, the nonprofit must demonstrate that City of Kirtland will be able to use the Arboretum's facilities to the extent that it equals or exceeds the value of the appropriation; and

**WHEREAS**, the Holden Arboretum and the City of Kirtland have negotiated and drafted a Joint Use Agreement outlining the respective rights and responsibilities of the parties which would enable the receipt of the appropriated funds; and

**WHEREAS**, the Mayor has recommended approval of said Joint Use Agreement for not only the benefit of the Holden Arboretum but also for benefits of the City of Kirtland and its residents.

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

**SECTION I:** The Mayor is hereby authorized and directed to sign a Joint Use Agreement with the Holden Arboretum for the purposes of compliance with HB 597, Section 509.11(B)(1-3). A copy of the Joint Use Agreement, in its substantial form, is attached hereto as Exhibit A.

**SECTION II:**

(a) It is found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution 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 actions were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

(b) This Resolution 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 it is necessary to solidify this agreement to ensure and assist with the overall health of

the residents; therefore, this Resolution 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 Resolution 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  
Joint Use Agreement with Holden

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

**JOINT USE AGREEMENT**

This Joint Use Agreement (“Agreement”) is entered into by and between the City of Kirtland, whose address is 9301 Chillicothe Rd., Kirtland, OH (the “Government Agency”), and the Holden Arboretum, an Ohio nonprofit corporation, whose address is 9500 Sperry Rd., Kirtland, OH (the “Nonprofit”).

WHEREAS, through HB 597, Nonprofit received an appropriation in the amount of \$250,000 (the “Appropriated Funds”), and

WHEREAS Nonprofit will use these Appropriated Funds for The Boardwalk Improvement Project (the “Project”); and

WHEREAS the Appropriated Funds will be used to make improvements and construct facilities on real property owned by Nonprofit (the “Property”); and

WHEREAS the parties to this Agreement will each have obligations and duties in regard to the Project; and

WHEREAS, to establish the right of Government Agency to make public use of the Property Section 509.11 of HB 597 requires Nonprofit to enter into a Joint Use Agreement with Government Agency that contains the requirements in HB 597 Section 509.11 (B)(1)-(3); and

WHEREAS, Government Agency has demonstrated that the value of the use of the Property is reasonably related to the amount of the Appropriated Funds through the worksheet included in this Agreement as Attachment A.

NOW, THEREFORE, in consideration of the mutual benefits hereunder, it is hereby agreed to between the parties as follows:

1. Property leased or owned by Nonprofit. The Property consists of eleven contiguous parcels of land located at The Holden Arboretum. Nonprofit owns the Property.
2. Use of Property by Government Agency. The Arboretum is open to the general public at usual admission fees at all times. Nonprofit will host a free week for all Government Agency’s residents on dates to be mutual agreed upon by Nonprofit and Government Agency. Additionally, property (specifically the Pierson Creek Area) will be used as a point of interest when collaborating on land and tree canopy management in the area including shared management techniques and consistent forest management practices in the area.

3. Reimbursement of funds. The State of Ohio shall be reimbursed should the Government Agency's right to use the Property be terminated by Nonprofit prior to the expiration of the term of this Agreement, calculated by dividing the awarded funds by 15 and multiplying that sum by 15 less the number of full years the acquired or improved property has been used by the Government Agency.
4. Use of funds. The Appropriated Funds shall be used as described in HB 597 and shall be used only for capital improvements and not operating costs. Any Appropriated Funds that are not spent shall be returned in full to the State of Ohio.
5. Insurance for Nonprofit's Property and indemnification. Nonprofit agrees, at its own cost, to procure and continue in force at all times that this Agreement is in effect, in its name, general liability insurance against any and all claims for injuries to persons or damage to property occurring or arising out of any use of the Property contemplated herein. Nonprofit shall also procure, and continue in force, casualty insurance, insuring against all risks of loss or damage to the Property and the improvements made thereto under the Project.
6. Indemnification. Nonprofit shall indemnify and hold Government Agency harmless from all liability for construction, operation and maintenance costs of the Project.
7. Compliance with federal, state and local law. Nonprofit shall comply with all applicable federal, state and local laws as well as state administrative regulations relating to the capital improvement process, including construction, bidding and ethics laws and regulations.
8. Competitive bidding. Nonprofit will follow competitive bidding procedures to include, at a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidder, as described generally in Ohio Revised Code Chapter 153.
9. Term. The term of this Agreement shall be coextensive with the grant agreement between the Ohio Department of Natural Resources ("ODNR") and Nonprofit, relating to the Appropriated Funds and Project.
10. Amendments. Any amendments to this Joint Use Agreement require must be approved by ODNR before any amendment takes effect.

\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

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

\_\_\_\_\_  
Signature

Printed Name: \_\_\_\_\_

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

## ATTACHMENT A

Project: Boardwalk Improvement Project/Pierson Creek Experience

Date: 08/11/2022

Directions: The purpose of this worksheet is to enable a Government Agency to demonstrate how the value of the parks and recreation uses that will be derived from a Joint Use Agreement is reasonably related to the value of the state capital appropriation made to the Nonprofit or Government Agency. Section I will be filled out by Department of Natural Resources staff. Sections II and III are to be filled out by the Government Agency.

*Section I: State appropriation information.*

1. Amount of state appropriation provided:	\$250,000
2. Estimated annual debt service on the appropriation:	\$16,667
3. Term of the state bond, in years:	15

*Section II: Estimated value of use of the facility.*

Use(s) of the facility*	Annual value of use	# of years
<i>Collaboration on land and tree canopy management Kirtland, OH</i>	<i>No monetary value assigned</i>	<i>15</i>
<i>Free Admission Week for City of Kirtland residents</i>	<i>20,811</i>	<i>15</i>
\$		
\$		
\$		

(\* List additional uses on separate page as needed.)

*Section III:*

*On a separate page, explain how each use listed in Section II was valued for this analysis.*

Section III:

*Explain how each use listed in Section II was valued for this analysis*

The Holden Arboretum desires to increase its community engagement with the City of Kirtland. The Arboretum is open to the general public at usual admission fees at all times. To further facilitate community awareness and engagement, The Holden Arboretum will provide an all-access week to be held on a mutually agreed upon week to the residents of Kirtland. The staircase structures into the Pierson Creek area covered by the appropriation are included in the \$20 admission price to access The Holden Arboretum, thereby providing access to the capital project. The participation rate of Kirtland residents is estimated at 15%.

**Calculation:**

6,937 residents (2020 census) \* 15% = 1,040 residents \* \$20 admission price = \$20,811 \* 15 years = \$312,165