

ORDINANCE 2022-19

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR AND VILLAGE ADMINISTRATOR TO ENTER INTO A FIRST AMENDMENT TO AN AGREEMENT REGARDING ROAD CONSTRUCTION AND ACCESS TO STATE ROUTE 762 WITH K-NOVA, LLC, AND DECLARING AN EMERGENCY.

WHEREAS, Ohio Revised Code Section 731.47 provides the Village Council authority over property of the Village of Commercial Point; and

WHEREAS, K-Nova, LLC, an Ohio limited liability company, and the Village of Commercial Point entered into an Agreement Regarding Road Construction and Access to State Route 762, which was approved by Ordinance 2021-04, enacted on February 22, 2021, (the "Agreement"); and

WHEREAS, the Agreement, in part, contemplated the donation of certain property from K-Nova, LLC to the Village of Commercial Point in partial consideration of the Agreement; and

WHEREAS, on December 20, 2021, via Ordinance 2021-54, the Village Council authorized the Mayor and Village Administrator to accept the donations of lot numbers 4A, 4B, and Reserve "A" in RICKENBACKER EXCHANGE PART 3, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 4, Page 79, Recorder's Office, Pickaway County, Ohio (the "Donation Ground") upon the satisfaction of the Village Solicitor to accept the Donation Ground after the completion of due diligence by the Village Solicitor and his law firm; and

WHEREAS, the Village Solicitor hereby recommends to the Village Council the passage of this Ordinance in order to authorize the execution of an amendment to the Agreement to clarify the responsibilities of K-Nova, LLC and the Village upon the acceptance of the Donation Ground; and

WHEREAS, the Village Council wishes to authorize and direct the Mayor and Village Administrator to enter into said amendment to the Agreement prior to the acceptance of the Donation Ground.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, OHIO, PICKAWAY COUNTY, OHIO, THAT:

SECTION 1. Authorization and Direction for Mayor and Village Administrator to Enter into First Amendment to Agreement Regarding Road Construction and Access to State Route 762. The Mayor and Village Administrator of the Village of Commercial Point are hereby authorized and directed to enter into the First Amendment to Agreement Regarding Road Construction and Access to State Route 762 in substantially the same form and on substantially the same terms as the Agreement attached hereto as Exhibit A and incorporated by reference herein.

SECTION 2. Open Meetings Certification. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any other 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.

SECTION 3. Declaration of Emergency; Effective Date. Because the Village must continue its efforts to expand the Village Utilities Complex without delay and because the Donation Ground is necessary to achieve those efforts, this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the Village of Commercial Point and, therefore, shall take immediate effect upon passage.

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Vote on Suspension of the Readings:

Motion by: Nancy Geiger

2nd: Tracy Joiner

Roll Call:

Yes Nancy Geiger

Yes Tracy Joiner

Yes Jason West

Yes Ross Crego

Yes Ryan Mitchem

Yes Laura Wolfe

Vote on Passage of the Ordinance:

Motion by: Tracy Joiner

2nd: Ryan Mitchem

Roll Call:

Yes Nancy Geiger

Yes Tracy Joiner


Yes Jason West

Yes Ross Crego

Yes Ryan Mitchem

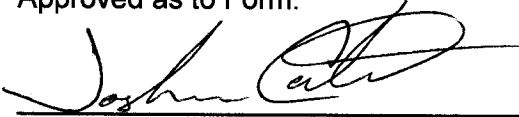
Yes Laura Wolfe

Adopted this 20th day of June, 2022.


Allan D. Goldhardt, Mayor


Wendy Hastings, Fiscal Officer

Approved as to Form:


Joshua Cartee, Village Solicitor

ORDINANCE 2022-17

Exhibit A

**First Amendment to Agreement Regarding Road Construction
and Access to State Route 762**

This First Amendment to Agreement Regarding Road Construction and Access to State Route 762 (the “Amendment”) is made and entered into as of _____, 2022 by and between the Village of Commercial Point, Ohio, an Ohio municipal corporation duly organized and validly existing under the constitution and laws of the State of Ohio (the “Village”) and K-Nova LLC, an Ohio limited liability company (“K-Nova”).

I. Background

- A. The Village and K-Nova entered into the Agreement Regarding Road Construction and Access to State Route 762, dated February 2, 2021 (the “Agreement”).
- B. Per the Agreement, K-Nova committed to donate to the Village approximately 7.003 acres of land (the “Donation Property”) for the future expansion of the Village’s municipal waste-water treatment facility.
- C. In June of 2021, K-Nova filed the Park Maintenance Declaration, dated June 21, 2021 (the “Declaration”) with the Pickaway County, Ohio Recorder. The Declaration is recorded as Instrument Number 202100005602, OR 784, Page 3898.
- D. The Donation Property is subject to the Declaration and, but for this Amendment, upon the transfer of the Donation Property to the Village, the Village would be subject to the terms of the Declaration, including the obligation to pay for Road Maintenance Costs (as defined in the Declaration).
- E. K-Nova and the Village enter into this Amendment in order to impose the obligation to pay the calculated share of the Road Maintenance Costs attributable to the Donation Property to K-Nova, notwithstanding the Village’s ownership of the Donation Property.

NOW, THEREFORE, in consideration of the terms and covenants contained herein, the Village and K-Nova agree as follows:

II. Terms of Conditions

- A. Background. The above Background is incorporated into the Terms and Conditions as if fully written herein.
- B. Amendment. The Agreement is hereby amended by adding a Subsection 4 to Section C thereof to read as follows:

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Exhibit A (continued)

4. Declaration. K-Nova shall pay the Road Maintenance Costs attributable to the Donation Property as allocated under Section 1 of the Declaration, and shall not allocate such Road Maintenance Costs to the Village. K-Nova shall not allocate such Road Maintenance Costs to the Village until the date that (i) K-Nova's obligation to maintain the Roads (as defined in the Declaration) expires, and (ii) the Village's obligation to maintain the Roads begins, in accordance with the Village Agreements (as defined in the Declaration).

C. Miscellaneous.

1. All other terms and conditions of the Agreement not specifically modified or supplemented by this Amendment shall remain unchanged and in full force and effect, and the Agreement, as supplemented by this Amendment, is hereby ratified and confirmed.
2. This Amendment (a) shall be governed, construed and enforced under the laws of the state of Ohio without regard to the principles of choice of law or conflicts of law, (b) contains the entire understanding of the parties with respect to the provisions of the Agreement amended and supplemented hereby, (c) may not be modified except by a writing signed by both parties, and (d) shall be binding upon and inure to the benefit of K-Nova and the Village, and their respective successors and permitted assigns.
3. In the event of any conflict between the terms of the Agreement and the terms of this Amendment, the terms of the Amendment shall control. The recitals contained in this Amendment and the facts set forth herein are hereby incorporated herein by reference. Capitalized terms used herein but not otherwise defined herein shall have the meaning ascribed to them in the Agreement, or the Declaration as noted.
4. The parties agree that this Amendment may be transmitted between them by facsimile machine or email, and the parties intend that a faxed or email Amendment containing either the original and/or copies of the signature of all parties shall constitute a binding Amendment. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original agreement, and all of which when taken together shall be deemed to be one and the same agreement.

[Signatures on Following Page.]

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Exhibit A (continued)

**First Amendment to Agreement Regarding Road Construction
and Access to State Route 762**

Signature Page

ATTEST:

Village of Commercial Point, Ohio,
an Ohio municipal corporation duly
organized and validly existing under the
constitution and laws of the State of Ohio

By: _____

By: _____

Its: Mayor

By: _____

By: _____

Its: Village Administrator

K-Nova LLC,
an Ohio limited liability company

By: _____

By: _____

Its: _____

ACCEPTED AS TO FORM:

Josh Cartee
Solicitor, Village of Commercial Point