

ORDINANCE NO. 2026 – 68

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A JOINT USE AGREEMENT BETWEEN THE CITY OF KENT, THE DAVEY TREE EXPERT COMPANY AND KENT CITY SCHOOL DISTRICT TO OUTLINE THE SHARED USE OF THE EXISTING JOHN DAVEY ARBORETUM IN CONJUNCTION WITH THE NEW DAVEY SEED CAMPUS AND DECLARING AN EMERGENCY.

WHEREAS, City of Kent owns and operates The John Davey Arboretum located at 1499 North Mantua Street with no parking facilities on site; and

WHEREAS, City of Kent, Davey Tree Expert Company and the Kent City School District have come to an agreement with the following:

- 1) Construct a new sidewalk on North Mantua Street to connect the JDA cabin and public restroom to the new SEED Campus Arboretum Parking Lot;
- 2) Permit visitors to the JDA to use the SEED Campus Arboretum Parking Lot;
- 3) Permit visitors to the SEED Campus Arboretum to use the JDA public restroom.

WHEREAS, the costs to construct the sidewalk are included in the North Mantua Improvement Project budget.

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

SECTION 1. That Kent City Council does hereby authorize the City Manager, or his designee, to enter into a Joint Use Agreement between the City of Kent, the Davey Tree Expert Company and Kent City School District to outline the shared use of the existing John Davey 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: July 22, 2026
Date

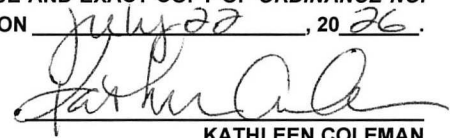
EFFECTIVE: July 22, 2026
Date

ATTEST: Kathleen Coleman
Kathleen Coleman
Clerk of Council

Jack Amrhein
Jack Amrhein
Mayor and President of Council

I, KATHLEEN COLEMAN, 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.*
2026-68, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON July 27, 20 26.

(SEAL)


KATHLEEN COLEMAN
CLERK OF COUNCIL

THE JOHN DAVEY ARBORETUM
JOINT USE AGREEMENT

CITY OF KENT
KENT CITY SCHOOL DISTRICT
AND
THE DAVEY TREE EXPERT COMPANY

**ALL PARTIES BEING IN THE COUNTY OF PORTAGE,
STATE OF OHIO**

This Agreement, dated _____ 2026, is an agreement made and entered into between The Davey Tree Expert Company (“Davey”), Kent City School District (“School District”) and the City of Kent, Ohio, duly formed under the laws of the State of Ohio (“City”).

WITNESSETH:

WHEREAS, Kent owns and operates The John Davey Arboretum (JDA) at 1499 North Mantua Street, which has no parking facilities on site, but has a restroom facility on site, and desires to see the JDA be more utilized; and

WHEREAS, Kent and Davey have an existing Agreement involving the maintenance of the JDA, included in Attachment “A”; and

WHEREAS, Davey is constructing an arboretum on the Davey Science, Employee Education and Development (SEED) Campus that is adjacent to The John Davey Arboretum, and it will have a parking facility on site, but no restroom facility site; and

WHEREAS, the City, Davey and the School District are jointly completing a project to improve North Mantua Street adjacent to both the JDA and SEED Arboretum (“Project”); and

WHEREAS, Davey and City entered into agreement on April 21, 2025 to jointly investigate the possibilities inherent to the JDA and SEED Arboretum and plan how they could become a destination place for visitors, included in Attachment “B”; and

WHEREAS, a proposed coordination diagram was developed depicting how the JDA and SEED Arboretum could be physically connected, included in Attachment “C”; and

WHEREAS, all parties desire to collaborate and partner to implement measures to physically connect and to permit and facilitate the public to jointly use both the JDA and SEED Arboretum.

THEREFORE, all parties commit to the following to physically connect the JDA and the SEED Arboretum and to jointly facilitate the public use of both the JDA and SEED Arboretum:

CONSTRUCTION

The proposed coordination diagram (Attachment "C") depicts two paths to connect the JDA and SEED Arboretum. One path, the main concrete path, will be constructed as part of the Project. The second path, a mulched path, will be constructed by Davey with the completion of the SEED Arboretum. Davey will coordinate with the City on the details of the mulched path prior to its construction.

JOINT USE

The visitors, guests and users of the JDA shall have the right to use the SEED Arboretum parking lot based on the following expectations and conditions:

- The parking lot will be available to the public seasonally corresponding roughly with the times that the public restroom is open at the JDA.
- Davey shall maintain ownership and operational control of the parking lot, and will not unreasonably withhold access to the parking lot from the public and JDA visitors, guests and users.
- The City can make reasonable requests to utilize the parking lot during closed times for events at the JDA. Reasonable requests shall be approved by Davey.

The visitors, guests and users of the SEED Arboretum shall have the right to use the JDA restroom based on the following expectations and conditions:

- The restroom will be available to visitors, guests and users of the SEED Arboretum seasonally from dawn till dusk.
- The City will winterize the restroom with the other City Parks and Recreation Facilities.
- The City shall maintain ownership and operational control of the restroom facility, and will not unreasonably withhold access to the restroom from the public and SEED Arboretum visitors, guests and users.
- Davey can make reasonable requests to utilize the restroom facilities during closed times for events at the SEED Arboretum. Reasonable requests shall be approved by the City.

MAINTENANCE/OPERATIONS

Nothing in this agreement is intended to transfer the owners' maintenance responsibilities and operational control of their respective facilities, beyond what has been agreed to in the existing agreement included in Attachment "A". The City and Davey commit to the following regarding maintenance/operations of their facilities:

- The City shall maintain the restroom in the JDA in good, sanitary working conditions and shall maintain the restroom in a condition to be utilized by the public.
- Davey shall maintain the parking lot in a condition that ensures that the lot can be utilized by the public.
- The City is not relinquishing their rights to reasonably use/close the restroom for events, maintenance or other short duration needs.
- Davey is not relinquishing their rights to reasonably use/close the parking lot for events, maintenance, misuse, or other short duration needs.

PAYMENT

The construction of the concrete path connecting the JDA and SEED Arboretum shall be included in a separate agreement by the parties. No payments for the remaining terms of this agreement are required by the parties.

TERM & RENEWAL

The term of this Agreement shall be ten (10) years from the execution date of this Agreement ("Original Term"). If the City and Davey desire to extend the agreement beyond the initial ten (10) year term, they shall agree to the renewal in writing.

Upon completion of the concrete path, the City and Davey can terminate the remaining terms of the agreement with no less than a 90-day notice to the other parties.

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.

AMENDMENTS

Parties may request changes to this Agreement. Any changes, modifications, revisions, or amendments to this Agreement shall be mutually agreed upon by all parties and shall be in a writing identified as an amendment to this Agreement and signed by all parties.

CITY OF KENT

Approved and Accepted by:

Dave Ruller
City of Kent, City Manager

Date: _____

Witness: _____

Angela Manley
City of Kent, Parks and Recreation Director

Date: _____

Witness: _____

Approved as to Form:

Hope Jones
City of Kent, Law Director

Date: _____

THE DAVEY TREE EXPERT COMPANY

Approved and Accepted by:

Name:

Title:

Witness:_____

Date: _____

KENT CITY SCHOOL DISTRICT

Approved and Accepted by:

Tom Larkin
Superintendent

Witness:_____

Date: _____

ATTACHMENT "A"



MEMORANDUM OF UNDERSTANDING AND AGREEMENT

THIS MEMORANDUM OF UNDERSTANDING AND AGREEMENT dated this ____ day of _____, 2018 ("Agreement"), is made by and between The Davey Tree Expert Company, 1500 N. Mantua Street, Kent, Ohio 44240 ("Davey Tree") and the City of Kent, Ohio Parks and Recreation Department, 497 Middlebury Road, P.O. Box. 5192, Kent, Ohio 44240 (the "City").

1. **Purpose.** The purpose of this Agreement is to establish the terms and conditions under which Davey Tree will provide the services set forth in paragraph 2 below to the City for the John Davey Arboretum.

2. **Services.** Davey Tree will perform the following landscaping services for the John Davey Arboretum (referred to herein as John Davey Arboretum or job site):

2.1. Re-landscaping of John Davey Arboretum Sign as depicted in Exhibit A, which includes the following:

- Remove existing Chamaecyparis and stones.
- Elevate/prune existing Heptacodium.
- Mulch with 2" hardwood mulch.
- Install the following:

Quantity	Description
4	Large boulders
1	8' Cotinus tree
14	#7 Wine & Rose Weigela
14	#5 Itasca Henry's Garnet (Sweetspire)
11	#1 Amsonia Pretty lady Diana (Bluestar)
50	#1 Angelina Sedum

- Supplemental watering to allow proper establishment of perennials and shrubs.

The value of the services set forth in paragraph 2.1 is \$7,000.00.

2.2. Yearly Maintenance of John Davey Arboretum to include the following:

- 23 Weekly Visits: mow, string trim, hard surface edge and bed detail, as needed.
- 4 Lawn Care Visits: turf fertilization and broadleaf weed control.
- Pruning: selective pruning of all existing plant material, removal of dead wood, and other pruning, as needed.
- 1 Spring Clean Up Visit: deep edge all beds, tree rings, and mulch.
- 1 Fall Clean Up Visit: leaf removal and perennial cut-back.

The value of the services set forth in paragraph 2.2 is \$8,500.00.

2.3. Additional Services to include the following:

- Prepare and repaint both sides of John Davey Arboretum sign.

- Top-dress path around cabin with new limestone.
The value of the services set forth in paragraph 2.3 is \$2,000.00.

2.4. Davey Tree will perform only those services set forth in this paragraph 2. The City understands and agrees that Davey Tree is not required and does not agree to perform any services that are not expressly described herein.

3. **Payment.** In exchange for the mutual covenants herein, Davey Tree will provide the services set forth in paragraph 2 free of charge, at no cost to the City.

4. **Term.** The term of this Agreement shall commence on [MONTH] [DAY], 2018 and shall terminate on [MONTH] [DAY], [YEAR]. Within thirty (30) days of the termination date, the parties may, upon mutual written agreement, extend this Agreement.

5. **Termination.** This Agreement shall terminate: (i) upon the occurrence of a material breach of a material provision by a party if such breach is not cured within thirty (30) days after written notice of such breach is received by the breaching party from the non-breaching party identifying the matter constituting the material breach; (ii) upon sixty (60) days advance written notice by the terminating party; or (iii) at any time upon the mutual, written consent of both parties.

6. **Warranties.** Davey Tree shall perform the services set forth in paragraph 2 in accordance with applicable federal, state, and local laws and industry standards. **Davey Tree disclaims all other warranties of any kind, express or implied, including any warranty of merchantability or fitness for any particular purpose.**

7. **Amendments.** Either party may request changes to this Agreement. Any changes, modifications, revisions, or amendments to this Agreement shall be mutually agreed upon by Davey Tree and the City and shall be in a writing identified as an amendment to this Agreement and signed by Davey Tree and the City.

8. **Limitation of Liability.** In no event shall Davey Tree be liable to the City for any lost or prospective profits or any other punitive, consequential, incidental, or indirect loss or damage, whether based in contract, strict liability, tort, or otherwise with respect to this Agreement, regardless of the foreseeability or cause thereof.

9. **Release of Claims Relating to Job Site Conditions.** The City hereby releases Davey Tree from all claims of any kind, including claims for personal injury, death, and property damages, arising from or relating to any condition of the job site or any hazard on the job site that existed prior to the execution of this Agreement, whether known or unknown.

10. **Indemnification.** The City shall indemnify, defend, and hold harmless Davey Tree from and against all claims, damages, losses, and expenses, including attorneys' fees, arising out of, resulting from, or relating to any breach by the City of this Agreement, the condition of the job site or any hazards on the job site prior to the execution of this Agreement, and/or any acts or omissions by the City or any of its employees, agents, contractors, or representatives.

11. **Force Majeure.** Davey Tree shall not be subject to any liability or damages for delay in performance or non-performance as a result of the storm conditions, fire, flood, ice, natural catastrophe, labor dispute, accident, riot, act of governmental authority, act of God, act of terrorism, or other contingencies and circumstances beyond Davey Tree's control interfering with its performance under this Agreement.

12. **Assignment.** The City may not assign any of its rights under this Agreement without the prior written consent of Davey Tree. This Agreement does not confer upon any third party any right to claim damages against Davey Tree.

13. **Relationship of the Parties.** The relationship of the parties to each other is that of independent contractors. Nothing herein shall create any association, joint venture, partnership, or agency relationship of any kind between the parties.

14. **Severability.** If any term of this Agreement is held invalid, illegal, or unenforceable, such term shall be limited to the extent necessary to comply with applicable law and if such limitation is not possible, severed and inoperative, and the remainder of this Agreement shall remain operative and binding on the parties.

15. **Governing Law.** The parties' rights and duties under this Agreement shall be governed by Ohio law, without regard to choice-of-law rules.

16. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior agreements, oral and written, between the parties relating to the subject matter hereof.

18. **Notice.** All notices and demands of any kind or nature that either party to this Agreement may be required or may desire to serve upon the other in connection with this Agreement shall be in writing and may be served personally, by certified mail, facsimile, or by commercial overnight carrier, to the following addresses:

Davey Tree
Sandra Reid
The Davey Tree Expert Company
1500 N. Mantua Street
Kent, Ohio 44240

The City
John Idone
Director of Parks and Recreation
497 Middlebury Road
P.O. Box 5192
Kent, Ohio 44240

IN WITNESS WHEREOF, the parties caused this Agreement to be executed by their authorized representatives as of the date set forth above.

The Davey Tree Expert Company

The City of Kent, Ohio Parks and Recreation
Department

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A



ATTACHMENT "B"

THE JOHN DAVEY ARBORETUM

CITY OF KENT AND THE DAVEY TREE EXPERT COMPANY

ALL PARTIES BEING IN THE COUNTY OF PORTAGE, STATE OF OHIO

This Agreement, dated April 21, 2025, is an agreement made and entered into between The Davey Tree Expert Company ("Davey") and the City of Kent, Ohio, duly formed under the laws of the State of Ohio (the "City").

WITNESSETH:

WHEREAS, Kent owns and operates The John Davey Arboretum (JDA) at 1499 North Mantua Street and desires to see the facility be more utilized; and

WHEREAS, Davey is constructing an arboretum on the Davey Science, Employee Education and Development (SEED) Campus that is adjacent to The John Davey Arboretum; and

WHEREAS, Davey desires to seek Level IV accreditation from the Interactive Community of Arboreta for their constructed arboretum. This accreditation is only held by 45 arboreta worldwide; and

WHEREAS, to achieve the Level IV accreditation, Davey's arboretum will require public access and educational/research components among other criteria; and

WHEREAS, Davey and the City wish the Davey arboretum and the JDA to become a destination place for visitors; and

WHEREAS, both the City and Davey to desire investigate the possibilities created by having the Davey Arboretum and the JDA adjacent to each other.

THEREFORE, The City and Davey commit to collaborate and partner to complete a conceptual study investigating the possibilities created by the two arboreta being located adjacent to each other. In the effort to complete this study the City and Davey agree to the following:

Davey:

- Take the lead role in completing the conceptual study. The study will be conducted with the Parks and Recreation Board's ("Board") input and presented to the "Board" upon completion.
- Jointly with the City, hire a consultant to assist in the planning process.
- Davey shall fund 50% of the planning consultant's services, up to \$10,000.

- Pursue outside funding for the completion of the project.

City:

- Assist Davey in the completion of the conceptual study, including facilitating the Board's input and presenting the results to the Board upon completion of the study.
- Jointly with Davey, hire a consultant to assist in the planning process.
- The City shall fund 50% of the planning consultant's services, up to \$10,000.
- Pursue outside funding for the completion of the project.

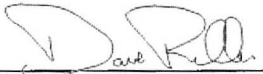
Schedule:

The City and Davey will diligently pursue hiring the consultant and thereafter completion of the planning process in an effort to complete process by December, 2025. This date can be adjusted by the mutual agreement of both parties. In addition, both parties will continually pursue outside funding sources until the project is completed or abandoned by both parties.

In witness whereof, the Parties hereto have agreed and offered their hands and seals:

CITY OF KENT

Approved and Accepted by:

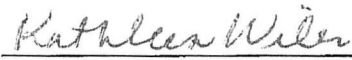


Dave Ruller
City of Kent, City Manager

Date: 4/21/2025

Witness: Cathy Wilson

Approved and Accepted by:

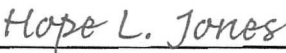


Chair, Parks & Recreation Board

Date: 4-17-25

Witness: Annie Marler
4-17-25

Approved as to Form:

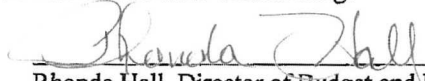


Hope Jones
City of Kent, Law Director

Date: 4/21/25

Certificate of Director of Budget and Finance

It is hereby certified that the amount TEN THOUSAND Dollars (\$10,000) required to meet this commitment has been lawfully appropriated or authorized or directed for such purpose and is in the City Treasury or in the process of collection to the credit of the CAPITAL Fund free from any obligation or certificates now outstanding.

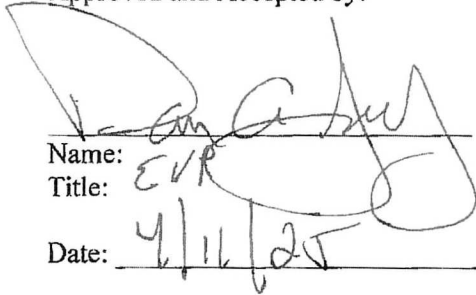


Rhonda Hall, Director of Budget and Finance

April 21, 2025
Date

THE DAVEY TREE EXPERT COMPANY

Approved and Accepted by:


Name: EVR
Title:
Date: 4/16/25

Witness: _____

ATTACHMENT "C"

COORDINATION DIAGRAM

DAVEY TREES/CITY/AT-HEAD
CONTRACTS/PAID/ABOUT
DISTANCE/ JUL 24, 2024

NOTES

- DAVEY TREE
- CITY/AT-HEAD
- CONTRACTS/PAID/ABOUT
- DISTANCE/ JUL 24, 2024

