

NOTICE OF PROCEEDINGS MEETING
City Council of the City of Defiance, Ohio
Charles D. Beard Council Chambers
City Hall, 631 Perry Street, Defiance, OH 43512

REGULAR MEETING OF COUNCIL
TUESDAY SEPTEMBER 6, 2022
OPENING COMMENTS – 7:00 P.M.

PUBLIC HEARING: NONE

SPECIAL GUEST: BICENTENNIAL COMMITTEE/DDVB – PROGRESS & PLANS FOR 2023
CIC EXECUTIVE DIRECTOR ERIKA WILLITZER – MONTHLY UPDATE

FIRST READING: AN ORDINANCE AUTHORIZING A CONTRACT FOR THE INSTALLATION OF PLAYGROUND EQUIPMENT FROM PENCHURA, LLC AND DECLARING AN EMERGENCY

FIRST READING: AN ORDINANCE APPROVING AND RATIFYING AN EXEMPTION APPLICATION AND AGREEMENT FOR A TAX INCENTIVE IN COMMUNITY REINVESTMENT AREA NO. 4 BETWEEN THE CITY OF DEFIANCE, OHIO AND TESSENDERLO KERLEY, INC. AND DECLARING AN EMERGENCY

FIRST READING: AN ORDINANCE DIRECTING THE CITY ADMINISTRATOR TO APPLY FOR A GRANT FROM THE OHIO PUBLIC WORKS COMMISSION TO ASSIST WITH THE REPLACEMENT COSTS FOR THE WATER LINES AND SURFACE OF THE DARBYSHIRE DRIVE AREA AND DECLARING AN EMERGENCY

STUDY SESSION: NONE

CITIZEN CONCERNS: NAME & ADDRESS FOR THE RECORD (5 MINS)

LIAISON ASSIGNMENTS	TIME P.M.	DATE (2022)	AGENDA
COMMITTEE OF A WHOLE McMASTER	7:00	Tuesday – SEPTEMBER	NO MEETING
BUILDING & LANDS EURESTE	7:00	Tuesday - SEPTEMBER	NO MEETING
ECONOMIC DEVELOPMENT ENGEL	7:00	Tuesday - SEPTEMBER	NO MEETING
FINANCE & BUDGET HANCOCK	7:00	Tuesday – SEPTEMBER	NO MEETING
POLICE & FIRE KRUTSCH	7:00	Tuesday - SEPTEMBER	NO MEETING
PUBLIC RELATIONS MAST	7:00	Tuesday - SEPTEMBER	NO MEETING
PUBLIC UTILITIES, GAS & LIGHTS CORBITT	7:00	Tuesday – SEPTEMBER	NO MEETING
SEWER & SANITATION CORBITT	7:00	Tuesday – SEPTEMBER	NO MEETING
STREETS & SIDEWALKS MAST	7:00	Tuesday - SEPTEMBER	NO MEETING
WATERWORKS – SERVICE WAXLER	7:00	Tuesday – SEPTEMBER	NO MEETING
TRAFFIC COMMISSION: MACK. Mayor. Zeedyk. Shafer. Wilkins. Sprow. Waxler. Eureste. Krutsch	5:30	Tuesday – SEPTEMBER	NO MEETING
BOARD OF CONTROL MEETING: MAYOR. Mack. O’Donnell. Lehner	1:30 P.M. MONDAY 9:00 A.M. THURSDAY	MONDAY and THURSDAY	POSTED AT 631 PERRY STREET MEETINGS IN FRONT CONFERENCE ROOM

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING A CONTRACT FOR THE
INSTALLATION OF PLAYGROUND EQUIPMENT FROM PENCHURA,
LLC AND DECLARING AN EMERGENCY**

WHEREAS, Council authorized the purchase of playground equipment from Penchura, LLC and Landscape Structures, Inc. in Ordinance Nos. 8429 and 8430 on August 9, 2022; and,

WHEREAS, the City Planner obtained a quote from Penchura, LLC of Brighton, MI for the playground installation at the price of \$64,900.00; and,

WHEREAS, Council finds that the vendor is a sole source provider uniquely qualified to perform the work because of its ability to construct the playground structures and preserve the warranty for the products;

Now therefore, be it enacted by the Council of the Municipality of Defiance, Ohio, that:

Section 1: The City Administrator is directed to award a contract to Penchura, LLC to construct and install the playground structures at Kingsbury Park according to the specifications of the proposal and at the quoted price of \$64,900.00.

Section 2: The Finance Director is authorized to pay the contract price from appropriated funds allocated by expenditure from Line 403-901-52-955012 of the 2022 annual budget.

Section 3: It is found and determined that all legislative actions pertaining to the adoption of this Ordinance were taken in Public Session and that all deliberations that affected or influenced any such legislative act, including all deliberations in Committee, were conducted in Public Session or in Executive Session duly convened in accordance with law.

Section 4: This Ordinance is declared to be an emergency measure necessary to preserve the health, safety, or welfare of the community for the reason that the quoted price is only valid for thirty days before it is subject to increase. As such, this Ordinance shall be effective immediately upon passage by an affirmative vote of not less than five (5) Members of Council and approval of the Mayor.

Passed: _____, 2022

President of Council

Votes in Favor of Adoption: _____
Votes Opposed to Adoption: _____

Attest: _____, Clerk

Approved: _____, 2022

Mayor

ORDINANCE NO. _____

AN ORDINANCE APPROVING AND RATIFYING AN EXEMPTION APPLICATION AND AGREEMENT FOR A TAX INCENTIVE IN COMMUNITY REINVESTMENT AREA NO. 4 BETWEEN THE CITY OF DEFIANCE, OHIO AND TESSENDERLO KERLEY, INC. AND DECLARING AN EMERGENCY

WHEREAS, Council established Community Reinvestment Area ("CRA") No. 4 in Ordinance No. 6606 on September 6, 2005 to encourage investments to construct and improve buildings within the designated area by exempting the value of new improvements from ad valorem property taxation for a designated period of time; and,

WHEREAS, Council expanded CRA No. 4 in Ordinance No. 8273 on January 5, 2021; and,

WHEREAS, Tessengerlo Kerley, Inc. ("TKI") submitted an application outlining a plan to construct a new fertilizer production facility and spend \$30 million on land acquisition and improvements, including the value of machinery, equipment, furniture, and fixtures, inside CRA No. 4 while employing seventeen (17) people at an annual payroll of \$1.1 million; and,

WHEREAS, the Board of Education of the Defiance City School District and the Four County Career Center Board of Education approved the exemption agreement on August 10, 2022 and August 18, 2022, respectively, pursuant to Section 3735.671(A)(1), Ohio Revised Code; and,

WHEREAS, Council finds that the proposed exemption furthers the Economic Development Pillar of the Defiance Community Strategic Plan by converting vacant land into productive use that generates revenue;

Now therefore, be it enacted by the Council of the Municipality of Defiance, Ohio, that:

Section 1: The Housing Officer is hereby directed to grant the exemption application of TKI for a CRA No. 4 ninety percent (90%) tax exemption on real property improvements for fifteen years in accordance with the terms of the Community Reinvestment Area Exemption Agreement attached hereto as "Exhibit A."

Section 2: The attached Community Reinvestment Area Exemption Agreement between the City of Defiance, Ohio, and TKI is approved and all municipal officials are authorized to execute the same.

Section 3: The Clerk of Council is hereby directed to transmit a certified copy of this Ordinance, along with the Tax Incentive Request, to the Defiance County Auditor, Ohio Department of Development and other appropriate state and local officials including without limitation the Defiance City School District and the Four County Career Center School District.

Section 4: It is found and determined that all legislative actions pertaining to the adoption of this Ordinance were taken in Public Session and that all deliberations that affected or influenced any such legislative act, including all deliberations in Committee, were conducted in Public Session or in Executive Session duly convened in accordance with law.

Section 5: This Ordinance is declared to be an emergency measure necessary to preserve the health, safety, or welfare of the community for the reason that the applicant desires to begin construction on this facility as soon as possible and CRA documentation approval is a prerequisite to construction. As such, this Ordinance shall be effective immediately upon passage by an affirmative vote of not less than five (5) Members of Council and approval of the Mayor.

Passed: _____, 2022 _____
President of Council

Votes in Favor of Adoption: _____
Votes Opposed to Adoption: _____

Attest: _____, Clerk

Approved: _____, 2022 _____
Mayor

**COMMUNITY REINVESTMENT AREA AGREEMENT BETWEEN THE CITY OF
DEFIANCE, OHIO AND TESSENDERLO KERLEY, INC. (TKI)**

This agreement made and entered into by and between the **City of Defiance, Ohio**, a municipality, with its main offices located at 631 Perry St, Defiance, OH 43512 and Tessengerlo Kerley, INC. (TKI), with its location to be Tessengerlo Kerley, Inc 1655 Quality Drive, Defiance, OH 43512, WITNESSETH;

WHEREAS, the City of Defiance has encouraged the development of real property and the acquisition of personal property located in the area designated as a Community Reinvestment Area; and

WHEREAS TKI is desirous of locating its new production facilities referred to as the ("PROJECT") within the boundaries of the Community Reinvestment Area, provided that the appropriate development incentives are available to support the economic viability of said PROJECT; and

WHEREAS, the City of Defiance, Ohio by Resolution No. 02-03-00 adopted March 25, 2002 designated the area as a "Community Reinvestment Area" pursuant Chapter 3735 of the Ohio Revised Code; and

WHEREAS effective May 15, 2002 the Director of Development of the State of Ohio determined that the aforementioned area designated in said city Resolution No. 02-03-00 contained the characteristics set forth in Section 3735.66 of the Ohio Revised Code and confirmed said area as a Community Reinvestment Area under said Chapter 3735; and

WHEREAS, the City of Defiance, having the appropriate authority for the stated type of project, is desirous of providing TKI. with incentives available for the development of the PROJECT in said Community Reinvestment Area under Chapter 3735 of the Ohio Revised Code; and

WHEREAS, TKI submitted a proposed agreement application (herein attached as Exhibit A) to the City of Defiance, (said application hereinafter referred to as "APPLICATION"); and

WHEREAS, TKI has remitted the required state application fee of \$750.00 made payable to the Ohio Development Services Agency with the application to be forwarded to said department with a copy of the final agreement; and

WHEREAS, the Housing Officer of the City of Defiance has investigated the application of TKI and has recommended the same to the Council of Defiance City Council on the basis that TKI is qualified by financial responsibility and business experience to create and preserve employment opportunities in said Community Reinvestment Area and improve the economic climate of the City of Defiance; and

WHEREAS the project site as proposed by TKI is located in the Defiance City Schools District and the Four County Career Center vocational school district have been notified in accordance with Section 5709.83 and have been given a copy of the APPLICATION; and

WHEREAS, pursuant to Section 3735.67 and in conformance with the format required under Section 3735.671(B) of the Ohio Revised Code, the parties hereto desire to set forth their agreement with respect to matters hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. TKI will build their new multi-million-dollar facility in Enterprise Industrial Park.

The PROJECT will involve a total investment to be no less than thirty million (\$30,000,000) with a real property value of approximately eleven million (\$11,000,000) by TKI, plus or minus 20%, at the site. All of this investment is for the new build of TKI's facilities. The PROJECT is estimated to begin construction on August 2022 and all acquisition, construction and installation are estimated to be complete by 2024.

2. TKI shall provide to the Defiance County Tax Incentive Review Council any information reasonably required by the council to evaluate the property owner's compliance with the agreement, including returns filed pursuant to section 5711.02 of the Ohio Revised Code if requested by the council.
3. TKI shall give preference to qualified residents of the zone within which the agreement applies relative to residents of this state who do not reside in the zone when hiring new employees under the agreement.
4. Property Owner shall maintain a business membership in the Defiance County Community Improvement Corporation for the duration of this agreement at a level of their choice per year.
5. The City of Defiance hereby grants TKI, a tax exemption for real property improvements made to the PROJECT site pursuant to Section 3735.67 of the Ohio Revised Code and shall be in the following amounts:

<u>Exemption Term</u>	<u>Percentage of Exemption</u>
15 Years	90%

Each identified project improvement shall receive a 15-year exemption period. The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation.

TKI must file the appropriate tax forms with the County Auditor to effect and maintain

the exemptions covered in the agreement.

6. The City of Defiance hereby waives the collection of an annual fee from TKI on this community reinvestment agreement per the provisions of O.R.C. section 3735.671.
7. TKI shall pay such real and tangible personal property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. If TKI fails to pay such taxes or file such returns and reports, all incentives granted under this agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.
8. The City of Defiance shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions."
9. If for any reason the Community Reinvestment Area designation expires, the Director of the Ohio Development Services Agency revokes certification of the zone, or the City of Defiance revokes the designation of the zone, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless TKI materially fails to fulfill its obligations under this agreement and the City of Defiance terminates or modifies the exemptions from taxation granted under this agreement.
10. If TKI materially fails to fulfill its obligations under this agreement, or if the City of Defiance determines that the certification as to delinquent taxes required by this agreement is fraudulent, the City of Defiance may terminate or modify the exemptions from taxation granted under this agreement and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement.
11. TKI hereby certifies that at the time this agreement is executed, TKI does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio and does not owe delinquent taxes for which TKI is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code, or, if such delinquent taxes are owed, TKI currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against TKI. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.
12. TKI affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State;

and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

13. TKI and the City of Defiance acknowledge that this agreement must be approved by formal action of the legislative authority of TKI as a condition for the agreement to take effect. This agreement takes effect upon such approval.
14. The City of Defiance has developed a policy to ensure recipients of Community Reinvestment Area tax benefits practice non-discriminating hiring in its operations. By executing this agreement, TKI is committing to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
15. Exemptions from taxation granted under this agreement shall be revoked if it is determined that TKI, any successor property owner, or any related member (as those terms are defined in Section 3735.671 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under Division (E) of Section 3735.671 of the Ohio Revised Code.
16. TKI affirmatively covenants that it has made no false statements to the State or local political subdivisions in the process of obtaining approval of the Community Reinvestment Area incentives. If any representative of TKI has knowingly made a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, TKI shall be required to immediately return all benefits received under the Community Reinvestment Area Agreement pursuant ORC Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66(C)(1). Any person who knowingly provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC Section 2921.13(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.
17. This agreement is not transferable or assignable without the express, written approval of the City of Defiance.
18. TKI has agreed to provide the local school districts an annual school donation equal to 12% of the annual real property tax savings from the Community Reinvestment Area Agreement for 15 years as follows: Defiance City Schools 10% and Four County Career Centers 2%.

IN WITNESS WHEREOF, the City of Defiance by Ryan Mack, its City Administrator, and pursuant to Resolution No. _____ has caused this instrument to be executed _____(Date). And TKI by, its Representatives, has caused this instrument to be executed on this _____(Date)

City of Defiance

By: _____
Ryan Mack, City Administrator

TKI, Representatives

By: _____
Company Executive

By: _____
Company Executive

Approved as to form:

By: _____
Sean O'Donnell, Director of Law

Dated: _____

ORDINANCE NO. _____

AN ORDINANCE DIRECTING THE CITY ADMINISTRATOR TO APPLY FOR A GRANT FROM THE OHIO PUBLIC WORKS COMMISSION TO ASSIST WITH THE REPLACEMENT COSTS FOR THE WATER LINES AND SURFACE OF THE DARBYSHIRE DRIVE AREA AND DECLARING AN EMERGENCY

WHEREAS, the water lines along Bassard Drive, Glenwood Drive, Mayo Drive, and part of Darbyshire Drive between Bassard Drive and Glenwood Drive are in need of complete replacement; and,

WHEREAS, the City intends to resurface these streets as part of its 2023 resurfacing program in conjunction with these waterline replacements; and,

WHEREAS, the project may qualify for funding in the amount of \$325,000.00 from the Ohio Public Works Commission ("OPWC"); and,

WHEREAS, the City requires outside funding for this project in order to make it viable; and,

WHEREAS, Council finds that the infrastructure improvements at this intersection promote the Connectivity Pillar of the Defiance Community Strategic Plan;

Now therefore, be it enacted by the Council of the Municipality of Defiance, Ohio, that:

Section 1: The City Administrator is directed to make application to the OPWC for a grant of \$325,000.00 to be applied towards the total cost of the Darbyshire area waterline and surface replacement.

Section 2: The City Administrator is authorized to enter into any contracts or agreements as may be necessary and appropriate for obtaining this financial assistance.

Section 3: It is found and determined that all legislative actions pertaining to the adoption of this Ordinance were taken in Public Session and that all deliberations that affected or influenced any such legislative act, including all deliberations in Committee, were conducted in Public Session or in Executive Session duly convened in accordance with law.

Section 4: This Ordinance is declared to be an emergency measure necessary to preserve the health, safety, or welfare of the community for the reason that the funding application is due to the Defiance County Engineer no later than September 9, 2022. As such, this Ordinance shall be effective immediately upon passage by an affirmative vote of not less than five (5) Members of Council and approval of the Mayor.

Passed: _____, 2022 _____
President of Council

Votes in Favor of Adoption: _____
Votes Opposed to Adoption: _____

Attest: _____, Clerk

Approved: _____, 2022 _____
Mayor