

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2017-48

By Gene Zacharyasz Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE DIRECTOR OF FINANCE TO ENTER INTO AN AGREEMENT TO ACCEPT, ON BEHALF OF THE CITY OF BEREA, THE DONATION OF ONE HUNDRED THOUSAND DOLLARS (\$100,000), TOGETHER WITH AN INTEREST FREE LOAN OF TWO HUNDRED THOUSAND DOLLARS (\$200,000), FROM BALDWIN WALLACE UNIVERSITY FOR THE PURPOSE OF MAKING IMPROVEMENTS TO TRESSEL STREET BY THE CITY OF BEREA, SUBJECT TO APPROVAL OF COUNCIL AND THE APPROPRIATION OF FUNDS THEREFORE.

WHEREAS, Baldwin Wallace University has been an integral and long-standing member of the Berea community and has been located in or around Tressel Street; and

WHEREAS, Baldwin Wallace University desires for the City of Berea to authorize and perform certain improvements to take place in 2018 on Tressel Street in order to effectuate the repaving and reasonable and necessary ancillary improvements associated with the same, which the City Engineer estimates will cost approximately Three Hundred Thousand Dollars (\$300,000); and

Whereas, Baldwin Wallace University approached the City of Berea and has offered to donate the first One Hundred Thousand Dollars (\$100,000) of the cost of the improvements to Tressel Street, and to issue the City of Berea an interest-free loan in the amount of Two Hundred Thousand Dollars (\$200,000), payable in five consecutive equal annual payments of Forty Thousand Dollars (\$40,000), the first of which payment will be due on June 1, 2019.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That the Director of Finance be, and she hereby is, authorized to accept on behalf of the City of Berea the donation of One Hundred Thousand Dollars (\$100,000) from Baldwin Wallace University, in substantially the same form as set forth in the Agreement which is attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 2. That the Director of Finance be, and she hereby is, authorized to enter into an agreement with Baldwin Wallace University in furtherance of this Ordinance to accept an interest-free loan in the amount of Two Hundred Thousand Dollars (\$200,000), payable in five consecutive equal annual payments of Forty Thousand Dollars (\$40,000), the first of which payment will be due on June 1, 2019, as well as other such terms which have been agreed to by the parties and are, in substantially the same form, set forth in the Agreement which is attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 3. That this Ordinance and corresponding Agreement is contingent upon the performance of the Council and the Mayor authorizing the improvements to Tressel Street and the appropriate funding and soliciting of public improvements and other requirements as set forth by law and the City Charter in 2018.

SECTION 4. 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 actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 5. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: October 16, 2017

ATTEST: [Signature]
Clerk of Council

APPROVED: October 16, 2017

[Signature]
President of Council

Approved as to Form: [Signature] Director of Law

[Signature]
Mayor

TRESSEL STREET IMPROVEMENT LOAN AND DONATION AGREEMENT

Whereas, this Donation and Loan Agreement is authorized by Ordinance No. 2017-48, enacted by Berea City Council on October 16, 2017 and signed by Berea Mayor Cyril M. Kleem on October 16, 2017, a copy of which is attached hereto as Exhibit "A". Should any provisions of this Agreement and Ordinance No. 2017-48 conflict, the provisions of the Ordinance shall govern.

Whereas, Baldwin Wallace University has been an integral and long-standing member of the Berea community and has been located in or around Tressel Street; and

Whereas, Baldwin Wallace University desires for the City of Berea to authorize and perform certain improvements to take place in 2018 on Tressel Street in order to effectuate the repaving and reasonable and necessary ancillary improvements associated with same. The City of Berea Engineer estimates the cost to be approximately Three Hundred Thousand Dollars (\$300,000); and

Whereas, Baldwin Wallace University approached the City of Berea and has offered to donate the first One Hundred Thousand Dollars (\$100,000) of the cost of the improvement to Tressel Street and to issue the City of Berea an interest-free loan in the amount of Two Hundred Thousand Dollars (\$200,000), to be repaid by the City to Baldwin Wallace University in five (5) consecutive equal annual payments of \$40,000, beginning June 1, 2019.

1. NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

The City of Berea hereby accepts the donation of One Hundred Thousand Dollars (\$100,000.00) from Baldwin Wallace University ("the donation"). The donation shall be delivered to the City of Berea no later than January 1, 2018 and shall be used to pay for the first \$100,000 of the total Tressel Street Improvement Project.

Further, Baldwin Wallace University hereby agrees to loan the City of Berea the additional sum of Two Hundred Thousand Dollars (\$200,000.00) (hereinafter "the loan"), at a rate of zero percent (0%) interest. Baldwin Wallace shall deliver the full loan amount to the City of Berea no later than January 1, 2018. The donation and loan totaling \$300,000 shall be used for the sole purpose of making street improvements to Tressel Street.

The donation and the loan are contingent upon the following conditions and other terms set forth herein and in Ordinance No. 2017-48 and shall be held in trust by the City of Berea until said conditions are met. Should the terms and conditions fail to come to fruition, for any reason, the City of Berea shall refund Baldwin Wallace University the loan and the donation amounts held in trust on or before December 31, 2018.

2. CONDITIONS:

The City of Berea is a Charter City and political subdivision of the State of Ohio. Therefore, the City of Berea must follow proper and legal procedures when budgeting and authorizing the expenditure of funds; when soliciting bids for the implementation of improvements; and when awarding certain contracts. The City of Berea agrees to take all normal and appropriate steps to effectuate the improvement to Tressel Street as set forth in Ordinance No. 2017-48 or any subsequent resolution or ordinance amending Ordinance No. 2017-48 or complimenting the same.

The loan and donation to the City become irrevocable and non-refundable upon the appropriation of funds and approval of legislation authorizing the Tressel Street Repavement Project.

The City shall take all necessary and reasonable steps to ensure that the Tressel Street Improvement Project is complete by August 10, 2018. In order to achieve the August 10, 2018 completion target date, the City will start construction as early as May 7, 2018. Baldwin Wallace University may inform the City of select black-out dates during which the City's contractor will cease construction, and the City will make best efforts to accommodate same. Moreover, the City shall take all necessary and reasonable steps to ensure that Tressel Street is open to the public in one direction or the other during the pendency of the project; however, there may be times during which the temporary closure of Tressel Street is unavoidable.

The scope and appearance of the Tressel Street improvements will be the sole discretion of the City of Berea but shall be generally described as a repavement of Tressel Street from Center Street to Bagley Road. The City has no plans to widen or alter the boundaries of Tressel Street by virtue of the repavement project, and, Baldwin Wallace University may have public access to the plans as they develop.

3. CONTACTS:

A) Lender/Donor's name: Baldwin Wallace University
Address: 275 Eastland Road, Berea, Ohio 44017

B) Borrower/Donee's name: City of Berea
Address: 11 Berea Common, Berea, Ohio 44017

4. LOAN TERMS:

A) Duration of Loan: Five (5) Years
B) Amount of Loan: Two Hundred Thousand (\$200,000.00) Dollars
C) Dates: January 1, 2018 to June 1, 2023
D) Form: Certified or Bank Check, U.S. dollars only.
E) Delivery: Certified or Bank Check, on or before January 1, 2018
F) Costs: None
G) Interest: Zero (0) percent.
H) Payments: 5 consecutive equal annual payments of \$40,000.00, starting on June 1, 2019.

I) Acceleration of Loan Payments: Should the actual cost of the project be more than \$40,000.00 less than the City's estimate of \$300,000.00, then the final loan payment shall be accelerated and made payable to Baldwin Wallace University by the City of Berea to then be due with the 4th loan payment installment.

5. NOTICES:

Should any dispute arise between the parties, notice shall be given by certified or registered mail to:

A) On Behalf of the City of Berea:

Name: Cyril M. Kleem, Mayor

Address: 11 Berea Commons, Berea, Ohio 44017

Telephone: 440-826-5820

With copy to:

Name: Barbara L. Jones, Director of Law

Address: 11 Berea Commons, Berea, Ohio 44017

B) On Behalf of Baldwin Wallace University:

Name: William M. Reniff
V. P. Finance & Administration

Address: 275 Eastland Rd.
Berea, Ohio 44017

Telephone: 440-826-8101

6. GOVERNING LAW AND JURISDICTION:

This agreement shall be governed by the laws of the State of Ohio and Berea City Charter. Any conflicts between the two, and the Berea City Charter shall govern. Should any disputes or differences arise between the Baldwin Wallace University and The City of Berea arising out of this agreement, they shall be heard exclusively in the Court of Common Pleas for Cuyahoga County, Ohio.

7. INDEMNIFICATION AND HOLD HARMLESS:

Baldwin Wallace University hereby agrees to indemnify and hold harmless the City of Berea for its performance or non-performance of any of the terms of this agreement or any other terms and conditions precluding or subsequent to this agreement, other than direct breach of the non-repayment of loan funds, for any and all costs or expenses, including but not limited to reasonable attorney fees and to defend the City of Berea against any third party suits or actions, including but not limited to taxpayer causes of action, which may or may not come to fruition in relation to the performance of this agreement.

The City of Berea agrees to indemnify and hold harmless Baldwin Wallace University for breach of the payment of the loan or the donation should the project fail to move forward or should the City fail to timely make the loan payments according to the payment schedule set forth herein.

IT IS HEREBY AGREED:

ON BEHALF OF THE CITY OF BEREA:

Dana Kavander, City of Berea Finance Director

Date

ON BEHALF OF BALDWIN WALLACE UNIVERSITY

William M. Reniff, Baldwin Wallace University
V. P. Finance & Administration

Date