

ORDINANCE NO. 2015-123

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A BIKE SHARE MEMORANDUM OF UNDERSTANDING BETWEEN KENT STATE UNIVERSITY DEPARTMENT OF RECREATION AND THE CITY OF KENT TO ESTABLISH A BIKE SHARE SYSTEM OPERATED BY KENT STATE UNIVERSITY DEPARTMENT OF RECREATIONAL SERVICES FOR A THREE (3) YEAR PERIOD, AND DECLARING AN EMERGENCY.

WHEREAS, the Kent State University Department of Recreational Services is entering into a leasing contract with a third party bike share provider to lease a third generation technology based bike share equipment and operate a bike share system on the Kent State University Campus and surrounding area; and

WHEREAS, this agreement adds bicycle transportation as an option for the citizens of Kent, Ohio and visitors to the City; and

WHEREAS, the City of Kent, Burbick Companies and College Town Kent, LLC wish to share the \$8,000.00 annual expenses incurred for the placement of a bike kiosk in downtown Kent; and

WHEREAS, the cost to the City of Kent will be \$5,000.00 per year; and

WHEREAS, time is of the essence in order to install the kiosk as soon as possible for the enjoyment of the citizens of Kent, and people visiting the City.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Kent, Portage County, Ohio, at least three-fourths (3/4) of all members elected thereto concurring:

SECTION 1. That Council does hereby authorize the City Manager, or his designee, to enter into a Bike Share Memorandum of Understanding between Kent State University Department of Recreation and the City of Kent to establish the shared expenses incurred for the bike share system bike kiosk in substantial compliance with the MOU attached and marked as 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: 08/19/2015
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2015-123 was duly enacted this 19th day of August, 2015, by the Council of the City of Kent, Ohio

CLERK OF COUNCIL

3. **COST OF SHARE.** The cost to the *City of Kent* for the aforementioned share shall be \$8000 per year, payable to *KSU DRS*.
 - a. The *City of Kent* shall be given an annual financial report by *KSU DRS* showing all income and expenses generated by this agreement.
4. **LOCATION.** The majority of the bike share system will be operated on the *KSU* campus to serve the students and faculty/staff of *KSU*. *City of Kent* location will be on Erie Street at the PARTA Kent Central Gateway within view of the *KSU* Esplanade.
5. **SEASON.** The operating season will occur each year from approximately March 15th to November 15th. *KSU DRS* will notify *City of Kent* two (2) weeks prior to official start dates and end dates of season based on any forecasted weather constraints.
6. **PAYMENT TERMS.** *City of Kent* will be invoiced annually 2 weeks after the actual start date of the season. Failure to remit any payment within 30 days after such payment is due shall be cause for *KSU* to terminate the Agreement without penalty.
7. **BRANDING.** *City of Kent* will have the opportunity to utilize the ad space of 5 bicycles upon the approval of the *KSU DRS* marketing department at no additional cost. All bicycles and kiosks will be color branded with appropriate *KSU* scheme. *City of Kent* kiosk will have a small amount of physical space for sponsorship recognition upon approval of *KSU DRS* marketing department.
8. **KIOSK/DOCK SITE INSTALLATION & REMOVAL.** *City of Kent* will be responsible for any and all installation and removal costs of Kiosk and docks at the *City of Kent* location on Erie Street. Installation shall be in accordance to any and all city codes and regulations as well as *City of Kent* and *KSU DRS* agreed preferences.
9. **MAINTENANCE.** *KSU DRS* will be responsible for the maintenance of the bicycles. Upon notification, minor repairs will be completed within 48 hours and major repairs will be completed within 1 week. *KSU DRS* or a contractor will complete any maintenance required to docks or kiosk. Per *City of Kent* ordinances, snow removal and walk maintenance is the responsibility of the adjacent property (ie. PARTA).
10. **OFF SEASON STORAGE.** *KSU DRS* will store the bicycles, and kiosks if necessary, during non-operating season.
11. **REPORTING.** *KSU DRS* shall develop and provide an annual system-wide report each January for the previous operating year for *City of Kent* and any other *KSU* stakeholders. The reporting will provide location specific data to assist in the evaluation of the *City of Kent* location.
12. **NOTICES.** This *MOU* shall be terminable in whole or in part, by either party, with 30 days written notice to the other party. *KSU DRS* shall endeavor to resolve any issue with *City of Kent* that would, if left unresolved, lead to *KSU DRS* terminating this agreement. Should *KSU DRS* terminate this *MOU*, the *City of Kent* shall be reimbursed for payments previously provided for the unfulfilled portion of the operating season.

13. **LIABILITY.** To the extent permitted by Ohio law, each party agrees only to be liable for the acts and omissions of its own officers, employees and agents engaged in the scope of their employment arising under this Agreement, and each party hereby agrees to be responsible for any and all liability from a claim with respect to that party's role in connection with this Agreement. It is specifically understood that no party will indemnify the other party. The parties agree that nothing in this provision shall be construed as a waiver of the sovereign immunity of the University and/or the State of Ohio beyond the waiver provided in Ohio Revised Code Section 2743.02.
14. **INSURANCE.** Each party shall provide and maintain policies of general liability (including contractual liability) insurance with limits not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate to insure each party, its employees, and agents. Each party shall provide to the other party a certificate of insurance coverage specifically evidencing such coverage and must resubmit a certificate without notice each year. Each party shall provide the other party at least thirty (30) days' prior written notice of any material change, cancellation or termination of such insurance coverage.
15. **NO AGENCY.** Nothing herein shall be construed to create an agency relationship between the *KSU DRS* and *City of Kent*, or any employment relationship between *City of Kent* and any staff member provided by *KSU* to perform the services under this Agreement. *City of Kent* will not represent to be or hold itself out as an agent of the University at any time during the term of this Agreement.
16. **NON-WAIVER.** Non-enforcement of any provision of this agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this agreement.
17. **HEADINGS.** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
18. **CHOICE OF LAW.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Ohio.
19. **ENTIRE AGREEMENT.** This Agreement shall constitute the entire agreement between the parties and fully supersedes any and all prior agreements or understandings, written or oral, between the parties pertaining to the matters set forth herein. This Agreement shall not be amended, modified, or changed unless agreed such amendment is (i) in writing; (ii) refers to this Agreement; and (iii) executed by an authorized representative of each party.

INTENDING TO BE LEGALLY BOUND, the parties hereto have executed this Agreement the day and the year first above written.

CA

representative:

ent and Student Affairs

Date: July 15, 2015

City of Kent, Ohio Representative:

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

James R. Silver, Law Director
City of Kent

CERTIFICATE OF DIRECTOR OF BUDGET AND FINANCE

It is hereby certified that the amount of (\$24,000.00) required to meet the contract, agreement, obligation, payment or expenditure, for the above, has been lawfully appropriated or authorized or directed for such purposes and is in the City Treasury or in the process of collection to the credit of General Fund and Parks and Recreation Fund free from any obligation or certificates now outstanding. Total to be appropriated equally over a three (3) year period.

Date

David Coffee
Budget and Finance Director