

ORDINANCE NO. 2022 - 106

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF KENT AND KENT STATE UNIVERSITY TO CREATE A NEW SHARED SUSTAINABILITY COORDINATOR POSITION AND DECLARING AN EMERGENCY.

WHEREAS, the City administration has been looking for opportunities to increase staffing to work on sustainability goals and the climate action and response plan developed for the City of Kent; and

WHEREAS, Kent State University has identified a need for the hiring of a staff person to work on sustainability goals and climate action and response plans developed for the University; and

WHEREAS, the City of Kent and Kent State University have identified that the creation of a new shared Sustainability Coordinator position will allow for the work to be evenly divided (50%-50%) between the City of Kent and Kent State University to benefit both organizations efforts to address sustainability goals and objectives; and

WHEREAS, the City of Kent and Kent State University would like to create a new full-time shared Sustainability Coordinator position to work jointly for the City of Kent and Kent State University and the two parties will enter into a services agreement for the cost of the shared Sustainability Coordinator position; and

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

SECTION 1. That Kent City Council hereby authorizes the City Manager, or his designee, to enter into a services agreement between the City of Kent and Kent State University to share the costs associated with a new shared Sustainability Coordinator position, which is more fully described in Exhibit "A", attached hereto and made a part thereof.

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: October 19, 2022
Date


EFFECTIVE: October 19, 2022
Date

ATTEST: Amy Wilkens
Amy Wilkens
Clerk of Council

J. T. Fiala
Jerry T. Fiala
Mayor and President of Council

I, AMY WILKENS, 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. 2022-166 ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON October 19, 2022.

(SEAL)


AMY WILKENS
CLERK OF COUNCIL

SERVICES AGREEMENT
between
KENT STATE UNIVERSITY
and
CITY OF KENT

This Services Agreement (“Agreement”) is entered into effective on November 1, 2022 (“Effective Date”) between Kent State University (“University”), a state institution of higher education located at 1125 Risman Dr., Kent, OH, 44242, and the City of Kent, (“City”), with administrative offices located at 301 South DePeyster Street, Kent, Ohio 44240, Attn City Manager.

WHEREAS, the University employs staff that are uniquely qualified for the services provided for under this Agreement; and

WHEREAS, the parties recognize that collaboration between public institutions of higher education in Ohio and the City of Kent is essential to ensure the most efficient use of services and resources to the direct benefit of the community; and

WHEREAS, the services provided for under this Agreement are consistent with the University’s mission to serve the communities surrounding the University and to serve as a leader in higher education services for the region; and

WHEREAS, the Site desires to engage the University to provide the services described in this Agreement, and the University is willing to provide such services in accordance with the terms and conditions set forth here;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties hereto agree as follows, intending to be legally bound:

1. Provision of Services.
 - A. Services. The University shall, through its employees will provide the services at the Site in accordance with the terms and the schedule set forth in Schedule A or as otherwise agreed to in writing by the parties. All of the services described in Schedule A shall be collectively referred to in this Agreement as “Services.” The University, and such employees as appointed, agree to comply with all Site policies and procedures applicable to the Services that are provided to them by the Site.
 - B. University Employment. At all times under this Agreement, the employee assigned by the University to perform services shall be considered an employee of the University. University shall have the duty and right to determine the salary and benefits to be provided to the employee assigned under this Agreement to perform the services, including without limitation vacation, sick and personal leave. Such employee will not be eligible to participate in any health insurance program of Site or other benefit plan of Site. University agrees to be solely responsible for the collection, reporting and payment of applicable federal, state and local payroll taxes with respect to the employee under this Agreement. University shall retain responsibility for assigning and supervising the assigned employee in relation to work performed on behalf of the University under this Agreement. Decisions pertaining to appointment, reappointment, promotion, salary merit increases, discipline and termination will be the sole responsibility of University. University will provide Worker’s Compensation benefits to the employee.

2. Site Obligations.

- A. Where necessary to complete the services provided for under this Agreement, Site shall provide the appropriate access to training space, technology, and other essential components necessary to facilitate the Services.
- B. Site shall be responsible for scheduling and internal communications associated with its own employees.
- C. Site shall be responsible for its own expenses (i.e. administrative, materials, communications, etc.) for any services performed in Attachment A, unless otherwise agreed to in writing by the Parties.

3. Term and Termination

- A. Term. This Agreement shall begin on the Effective Date and continue for one year after the Effective Date ("Initial Term"). The Initial Term may be extended upon the mutual consent of the parties for additional one (1) year terms, with such consent to be secured no later than 60 days prior to the expiration of the current Term.
- B. Termination.
 - i. Termination by Agreement. The parties may mutually agree to terminate this Agreement in writing at any time.
 - ii. Termination Without Cause. Either party may terminate this Agreement without cause by providing the other party with at least sixty (60) days prior written notice.
 - iii. Termination for Breach. Either party may terminate this Agreement upon the breach by the other party of any material provision of this Agreement, provided such breach has not been cured, or cannot be cured, within thirty (30) days after written notice thereof.
 - iv. Automatic Termination. Either party may terminate this Agreement immediately without notice upon the occurrence of any of the following events:
 - a. The filing of a petition under federal or state law related to the bankruptcy or insolvency of either party;
 - b. The appointment of a receiver, trustee, or other similar officer to operate or wind up the affairs of the other party;
 - c. The dissolution or termination of existence of either party;
 - d. Conduct by either party in connection with performing their respective obligations under this Agreement that amounts to fraud, dishonesty, or gross negligence; or
 - e. The failure of either party, or University's employees as assigned, to maintain all licenses, permits, certificates, privileges, and insurance

coverage related to providing the Services necessary to satisfy the obligations of each party under this Agreement.

- v. Effect of Termination. As of the effective date of termination of this Agreement. Neither party shall have any further obligation hereunder, except for (a) obligations accruing prior to the effective date of termination, or (b) obligations, promises, or covenants contained in this Agreement which by their nature or intent survive termination of the Agreement.

- 4. Insurance and Liability. The parties shall independently maintain and, upon request, provide to the other party evidence of Comprehensive General Liability Insurance in the amount of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) and Professional Liability Insurance in the same amounts. Either party shall provide the other party with at least thirty (30) days prior written notice of any change, cancellation or termination of such insurance coverage. Either party shall, upon request from the other party, provide a certification of insurance.

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, claims, costs, expenses or damages arising from any claim with respect to that party's role in connection with this Agreement. The liability of Kent State University shall be subject in all cases to the immunities and limitations of the Ohio Court of Claims Act codified in Chapter 2743 of the Ohio Revised Code and Sections 9.86 and 9.87 of the Ohio Revised Code, as amended. The parties agree that nothing in this provision shall be construed as a waiver of the sovereign immunity of KSU and/or the State of Ohio beyond the waiver provided in Ohio Revised Code Section 2743.02.

LIMITED LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY BREACH THEREOF. EACH PARTY'S TOTAL LIABILITY TO THE OTHER, AND ITS TOTAL REMEDY FOR ANY AND ALL BREACHES OF THIS AGREEMENT AND/OR ITS OBLIGATIONS HEREUNDER, SHALL BE LIMITED TO THE TOTAL CONSIDERATION TO BE PAID TO UNIVERSITY FOR THE SERVICES.

- 5. Confidentiality. Each party, its agents and employees shall not at any time, either alone or in association with others, directly or indirectly, make or cause to be made any disclosure or other use not authorized by the other party of any information which in any way regards such other party or such other party's students, unless such information is or becomes, through no action of such party or any person associated with such party, disseminated or otherwise available to the public or required by law or court order.

Each party may learn of information, documents, data, records, or other material that is confidential in the performance of this Agreement to the other party. Neither party may disclose any information obtained by it as a result of this Agreement, without the written permission of the other party or unless required by law. Each party must assume that all information, documents, data, records or other material is confidential. Both parties further agree to abide by any and all pertinent federal, state and local laws and regulations.

- 6. Ownership of Intellectual Property. All rights in any materials previously developed or otherwise obtained by or for either party shall remain the sole property of the party providing the pre-existing

work. During the performance of the services, each party grants to the other party (and our contractors as necessary) a temporary, non-exclusive license to use any of its pre-existing work provided to the other party solely for the performance of such Services. This license does not provide either party with the right to reproduce, modify, or otherwise distribute the other's party's pre-existing work without the express written permission of the other party. It is the intent of this Agreement for each party to retain ownership of its own intellectual property rights and not to transfer any ownership to the other party. To be clear, the University retains at all times the exclusive right and ownership of any materials created during this engagement or pre-existing that may be provided to the Site, unless otherwise agreed to in writing by the parties.

7. **Billing for Services.** Unless otherwise provided by this Agreement, University shall have the right to bill and collect any available fees for the Services rendered herein in accordance with its normal billing practices. All invoices submitted to Site must be paid within thirty (30) days. In addition to the costs provided for in Schedule A, other expenses and reimbursements may be charged to Site by University with the prior written approval of the Site.
8. Each party covenants and agrees to obey all applicable federal, state and local laws, rules, regulations, and ordinances applicable to the services provided.
9. **Disclaimer of warranties.** To the maximum extent permitted by law, each party hereby specifically disclaims any and all representations and warranties whatsoever, whether express, implied or statutory, in connection with the performance of this Agreement, including any and all representations and warranties regarding merchantability, fitness for a particular purpose, except as provided for specifically in the Agreement. Both parties further understand that these services are being provided in accordance with the University's educational mission to its students and staff, and is not a professional service provider.
10. **Fair Market Value.** The parties acknowledge that the payments set forth in this Agreement are set at fair market value. The parties will, in good faith, periodically review the amount of the payments to ensure they remain at fair market value. In the event it is determined following such review that they payments must be adjusted to ensure they remain at fair market value, the payment shall be adjusted accordingly upon agreement of the parties.
11. **Non-Solicitation.** Site acknowledges that the University has a substantial investment in its employees. In consideration of this investment, Site agrees that during the term of this Agreement, and for a twelve-month period thereafter (regardless of the reason for termination), Site may not solicit for employment or contract with any employee who is providing services through this Agreement, except as otherwise agreed to in writing by both parties.
12. **Use of Name.** Neither party may use the other party's name, logo, trademarks, or other identifying marks without the prior written consent of the other party.
13. **Notices.**

Any notice required or permitted by this Agreement shall be sent by certified or registered mail, return receipt requested, and shall be deemed given upon receipt thereof.

All notices to Site shall be addressed to:

301 S. DePeyster Street
Kent, Ohio 44240

Attn: Dave Ruller

All notices to University shall be addressed to:
Kent State University – Kent Campus
1125 Risman Plaza
Kent, OH 44242
Attn:

14. General Terms.
 - A. No Agency. Nothing herein shall be construed to create an agency relationship between the University and Site, or any employment relationship between Site and any staff member provided by University to perform the services under this Agreement. Site will not represent to be or hold itself out as an agent of the University at any time during the term of this Agreement.
 - B. No Third Party Beneficiary. Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give to any person, other than the parties to this Agreement, any rights or remedies under or by reason of this Agreement. Without limiting the foregoing, no assigned employee shall have any rights as a third party beneficiary.
 - C. Severability. Should any provision of this agreement be found to be invalid, illegal, or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions hereof, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement, in which case either party may terminate this Agreement by giving sixty (60) days written notice. Such option to terminate expires sixty (60) days after the party receives notice of the invalidity.
 - D. 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.
 - E. 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.
 - F. This Agreement is not assignable in whole or in part by either party, but is binding on any corporate successor of either.
 - G. This Agreement shall be interpreted and construed in accordance with the laws of the State of Ohio.
 - H. This Agreement is non-exclusive and both parties have the right to enter into similar agreements with other parties.
15. 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 as of the day and the year first above written.

CITY OF KENT

By 

Date April 20, 2023

Name: Dave Ruller

Title: City Manager

KENT STATE UNIVERSITY

By 

Date 4/4/2023

Name:

Title:

Approved as to form:

Hope L. Jones

Crystal Burnett:
Approved as to legal
form and sufficiency
for Kent State
University 2023.04.03
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SCHEDULE A

HOURS AND SCHEDULE:

- 20 hours per week
- Weekly schedule to be determined by the parties, and documented in writing prior to implementation.

PAYMENT: \$2,291 per month.

SERVICES TO BE PROVIDED: Community Engagement

- Work with the City of Kent to design, facilitate, and/or implement project and programs in support of the City of Kent's Sustainability Goals, Climate Action and Response Plan, and in coordination with Kent State University's Sustainability Plan.
- Facilitate adoption, implementation and tracking of sustainability goals with city administration at city facilities and the community at-large.
- Work collaboratively to identify best practices, emerging trends, and design mitigation solutions for local climate impacts.
- Work with community partners on local sustainability programming/initiatives.
- Increase educational programming and recommend incentives for broader adoption of alternative transportation practices, energy efficiency, and renewable energy.
- Assist in identifying and applying for grant funding to support community and campus sustainability projects and programs.
- Support the City's Sustainability Commission, providing research, reports, monthly agenda planning, and follow up as needed.