

ORDINANCE NO. 2019 -61

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A NEW BIKE SHARE MEMORANDUM OF UNDERSTANDING BETWEEN KENT STATE UNIVERSITY DEPARTMENT OF RECREATION AND THE CITY OF KENT TO ESTABLISH A BIKE SHARE SYSTEM FOR A ONE (1) YEAR PERIOD, AND DECLARING AN EMERGENCY.

WHEREAS, the Kent State University Department of Recreational Services is entering into a leasing contract with a new third party bike share provider to lease a bike share program with dockless technology on the Kent State University Campus and surrounding areas; and

WHEREAS, this system will be primarily for student usage and their benefit but also desires usage by faculty/staff, residents and professionals in the City and visitors; and

WHEREAS, the cost to the City of Kent shall not exceed \$5,000.00 per year.

NOW, THEREFORE, BE IT ORDAINED 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 new Bike Share Memorandum of Understanding between Kent State University Department of Recreation and the City of Kent to establish a bike share system for one (1) year 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: May 15, 2019
Date

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

EFFECTIVE: May 15, 2019
Date

ATTEST: Dawn Bishop
Dawn Bishop
Interim Clerk of Council

I, DAWN BISHOP, INTERIM 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. _____, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON _____, 20____.

(SEAL)

DAWN BISHOP
INTERIM CLERK OF COUNCIL

Kent State University Bike Share Agreement

This Memorandum of Understanding ("*MOU*") dated this 18th day of April, 2019 shall confirm an understanding between Kent State University and its Department of Recreational Services ("*KSU DRS*") and the City of Kent, Ohio ("*City of Kent*") concerning the establishment of a bike share system operated by *KSU DRS* with shared services for the *City of Kent* that will be operated on campus and in the City of Kent, Ohio.

WHEREAS, *KSU DRS* and the *City of Kent* entered into a Bike Share Memorandum of Understanding in 2015 (attachment A), which has expired and both parties wish to replace the previous memorandum to accommodate the current goals of the system.

WHEREAS, *KSU DRS* is entering into a leasing contract with a new third party bike share provider to lease a bike share program with dockless technology to operate a on the Kent State University ("*KSU*") Campus, in the City of Kent and surrounding areas.

WHEREAS, *KSU DRS* desires for this system to primarily be for student usage and their benefit; *KSU DRS* also desires strong usage by *KSU* Faculty/Staff, residents and professionals in the City of Kent, Ohio, and visitors to *KSU* and the City of Kent, Ohio.

WHEREAS, the bike share program will be operated on Campus and in the City of Kent, including potential locations for payment options and bike storage between uses. Which in effect would further support the existing connections between Kent State University, *KSU DRS*, and the *City of Kent* and benefit aforementioned users.

NOW THEREFORE, in consideration of the benefits to the students, faculty/staff, and visitors of Kent State University, city residents and professionals, and visitors to the City of Kent, Ohio each of the parties to this *MOU* agrees as follows:

1. **LENGTH OF TERM.** This *MOU* between *KSU DRS* and *City of Kent* shall be for a term of 1 years (12 months), commencing on _____, 2019. The partnership and the *MOU* will be reexamined at beginning of year 2 for non-renewal, continuation of comparable terms, or expansion beyond year 2.
2. **SHARE.** *KSU DRS* and the *City of Kent* shall permit the operations of the bike share program within their jurisdictions as further defined in paragraph 4 below. This includes working with the provider to establish any reasonable regulations and terms of operations that may be required as the program is established.
3. **COST OF SHARE.** No specific cost share is required for this program. However, ancillary costs may be required to help facilitate the success of the program. The *City of Kent* and *KSU DRS* will share the costs of any installation of additional racks, docking stations, painted fleet parking spots and/or recommended parking areas, and signage as mutually agreed by the parties. The cost to the City of Kent shall not exceed \$5,000 in

any given calendar year and shall only be used for facilities located off campus and in the City of Kent. Moreover, the City shall maintain sole discretion for the consideration and decisions made on any final permit or necessary applications or approvals submitted by the third party bike share provider that must be secured prior to installation. At all times the third party bike share provider, and not KSU DRS, shall be responsible for any issues, claims, or fees associated with its own property as installed and for any issues associated therewith.

4. **LOCATION.** *KSU DRS* will work with the City of Kent to establish areas for service and areas for bike parking in the City of Kent. *KSU DRS* will work with the third party bike share provider to establish areas for service and areas for bike parking off Campus within the City of Kent.
5. **SEASON.** This service will be operated year round. However, it is anticipated that reduced services are expected during the winter season.
6. **BRANDING.** All pedal and E-assist bicycles and bike share appurtenances will be color branded with an appropriate *KSU* scheme.
7. **MAINTENANCE & OFF SEASON STORAGE.** The third party bike share provider will be responsible for the maintenance of the bicycles and off season storage. The terms through which the bicycles will be maintained will be part of *KSU DRS's* agreement with the third party bike share provider.
8. **REPORTING.** The third party bike share provider will provide reporting on the usage of the bike share program. The data to be reported and frequency with which it will be made available will be part of *KSU DRS's* agreement with the third party bike share provider. The reporting will be made available for the *City of Kent*.
9. **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.
10. **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.
11. **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.

- 12. **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.
- 13. **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.
- 14. **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.
- 15. **CHOICE OF LAW.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Ohio.
- 16. **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

Kent State University Representative:

By: _____

Title: _____

Date: _____

Veotide Representative:

By: _____

Title: _____

Date: _____

City of Kent, Ohio Representative:

By: _____

Title: _____

Date: _____

Approved as to form:

Hope Jones, Law Director
City of Kent, Ohio

Certificate of Director of Budget and Finance

It is hereby certified that the amount FIVE THOUSAND Dollars (\$5,000) required to meet the contract, agreement, obligation, payment or expenditure, for the above, 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 General Fund free from any obligation or certificates now outstanding.

Dave Coffee, Director of Budget and Finance

Date