

ORDINANCE NO. 2015-124

**AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A BIKE SHARE MEMORANDUM OF UNDERSTANDING BETWEEN THE BURBICK COMPANIES, COLLEGE TOWN KENT, LLC AND THE CITY OF KENT TO ESTABLISH SHARED RESPONSIBILITIES FOR THE PLACEMENT OF A BIKE KIOSK NEAR THE PARTA MULTI-MODEL FACILITY IN THE BIKE SHARE SYSTEM OPERATED BY KENT STATE UNIVERSITY DEPARTMENT OF RECREATIONAL SERVICES, 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**, 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 City of Kent will install the kiosk and pay \$5,000.00 of the \$8,000.00 total expenses; 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 the Burbick Companies, College Town Kent, LLC 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. 2015-124 was duly enacted this 19<sup>th</sup> day of August, 2015, by the Council of the City of Kent, Ohio

\_\_\_\_\_  
CLERK OF COUNCIL

## **Bike Share Memorandum of Understanding**

This Memorandum of Understanding (“*MOU*”) dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015 shall confirm an understanding between the Burbick Companies (“*Burbick*”) and College Town Kent, LLC (“*College Town*”) 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 *City of Kent* and physical equipment located in the City of Kent, Ohio.

**WHEREAS**, Kent State University Department of Recreational Services (“*KSU DRS*”) 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 (“*KSU*”) Campus and surrounding areas, and;

**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, and;

**WHEREAS**, the physical positioning of bicycles, bicycle docks, and a payment processing kiosk in the City of Kent, Ohio with a share of financial support that would further support the existing connections between Kent State University, *KSU DRS*, and the *City of Kent* and benefit aforementioned users, and;

**WHEREAS**, the *City of Kent*, *Burbick*, and *College Town* wish to share the \$8,000.00 annual expenses incurred for the placement of a bike kiosk in downtown Kent, to be located on property near the PARTA multi model facility.

**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 *Burbick*, *College Town* and *City of Kent* shall be for a term of 3 years (36 months), commencing on the day and year of the initial actual system launch which is currently schedule to be August 15, 2015. The partnership and the *MOU* will be reexamined at beginning of year 3 for non-renewal, continuation of comparable terms, or expansion beyond year 3.
2. **SHARE.** The *City of Kent*, *Burbick* and *College Town* are interested in supporting a share of the system including 5 bicycles, 8 bicycle docks, 1 payment processing kiosk, with supporting maintenance, rebalancing, and administrative support provided by *KSU DRS*.

3. **COST OF SHARE.** The cost to the parties of this *MOU* for the aforementioned share shall be as follows:
  - a. *Burbick*: \$2,000.00 per year.
  - b. *College Town*: \$1,000.00 per year.
  - c. *City of Kent*: \$5,000.00 per year.
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 15<sup>th</sup> to November 15<sup>th</sup>. *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 invoice *Burbick* and *College Town* annually, 2 weeks after payment is made to *KSU DRS* by the *City of Kent*. Failure to remit any payment to the *City of Kent* within 30 days after such payment is due shall be cause for termination of the Agreement without penalty.
7. **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*'s location on Erie Street. Installation shall be in accordance to any and all city codes and regulations.
8. **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).
9. **OFF SEASON STORAGE.** *KSU DRS* will store the bicycles, and kiosks if necessary, during non-operating season.
10. **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.
11. **NOTICES.** This *MOU* shall be terminable in whole or in part, by any party, with 30 days written notice to the other party. The partners shall endeavor to resolve any issue which would, if left unresolved, lead to termination of this agreement. Should *KSU DRS* terminate

this *MOU*, the *City of Kent, Burbick* and *College Town* shall be reimbursed for payments previously provided for the unfulfilled portion of the operating season.

12. **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.
13. **INSURANCE.** *City of Kent* and *KSU DRS* 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.
14. **NO AGENCY.** Nothing herein shall be construed to create an agency relationship between the *City of Kent, Burbick* and *College Town*, or any employment relationship between the parties in the performance of the services under this Agreement. No party will not represent to be or hold itself out as an agent of the other parties at any time during the term of this Agreement.
15. **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.
16. **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.
17. **CHOICE OF LAW.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Ohio.
18. **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

**BURBICK COMPANIES:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CITY OF KENT, OHIO Representative:**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COLLEGE TOWN KENT, LLC:**

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

