RESOLUTION NO. 2018 –124

A RESOLUTION AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A TRAIL CROSSING LIGHTING AGREEMENT BETWEEN THE CITY OF KENT AND KENT STATE UNIVERSITY TO JOINTLY INSTALL ROADWAY LIGHTS AT THE TRAIL/ESPLANADE CROSSINGS OF WILLOW AND LINCOLN STREETS, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Kent desires to enter into a Trail Crossing Lighting Agreement with Kent State University (KSU) to jointly install roadway lights (not traffic signals) at the Trail/Esplanade crossings of Willow and Lincoln Streets; and

WHEREAS, the City and KSU have noticed an increase in pedestrian/bike traffic along the Trail/Esplanade to and from downtown and campus; and

WHEREAS, adding lighting to the existing electrical circuits owned by KSU would be the most cost effective method to improve visibility at the roadway crossings; and

WHEREAS, the agreement includes KSU managing the installation of the lights and the City reimbursing KSU for fifty percent (50%) of the out of pocket expenses.

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 Trail Crossing Lighting Agreement between the City and KSU to jointly install roadway lights at the Trail/Esplanade crossings of Willow and Lincoln Streets, and is more fully described in 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 Resolution 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 Resolution 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 Resolution is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: November 14, 2018
Date

EFFECTIVE: November 14, 2018
Date

ATTEST:
Tara Grimm, MMC
Clerk of Council

Jerry T. Fiala
Mayor and President of Council


(SEAL)

TARA GRIMM, MMC
CLERK OF COUNCIL
Trail Crossing Lighting Agreement
POR-KSU Gateway Bike Trail (PID 88517)

KENT STATE UNIVERSITY
AND
THE CITY OF KENT

ALL PARTIES BEING IN THE COUNTY OF PORTAGE,
STATE OF OHIO

This Agreement, dated ____________________________ 2018, is an agreement made and entered into between Kent State University ("KSU") and the City of Kent, Ohio, duly formed under the laws of the State of Ohio (the "City").

WITNESSETH:

WHEREAS, KSU and the City worked collaboratively to connect KSU and downtown Kent through the construction of the POR-KSU Gateway Bike Trail (PID 88517), hereinafter referred to as the Gateway Bike Trail; and

WHEREAS, KSU and the City executed the Construction, Maintenance and License Agreement POR-KSU Gateway Bike Trail (PID 88517) on November 17, 2011 (Attachment "A") to formalize the collaboration on the Gateway Bike Trail; and

WHEREAS, the Gateway Bike Trail crosses Lincoln Street and Willow Streets; and

WHEREAS, KSU is responsible for the safety, maintenance and use of the Gateway Bike Trail; and

WHEREAS, the City is responsible for the safety, maintenance and use of the Lincoln and Willow Streets; and

WHEREAS, both KSU and the City desire to improve the safety and usability of the Gateway Bike Trail crossings at Lincoln Street and Willow Streets by installing street lights ("Project"); and

WHEREAS, KSU and the City have determined that the most cost effective method to install street lights at the Gateway Bike Trail crossings would be to expand KSU’s existing lighting circuits for a budgeted cost of one hundred thousand dollars ($100,000);

NOW THEREFORE, in consideration of the mutual agreements contained herein, the parties hereby agree as follows:
KSU Responsibilities:

- Manage the design and construction of the project, including holding all contracts with outside entities required to complete the Project. The design will include KSU’s light poles, including brackets for banners, while lighting the crossings to applicable standards.
- Submit plans to the City for review and to obtain a Right of Way Permit for the Project.
- Invoice the City fifty percent (50%) of out of pocket expenses required to complete the project.
- Maintain the project after completion in accordance with the terms of the existing agreement included in Attachment “A”.

City Responsibilities:

- Waive all City permit and review fees associated with the Project.
- Reimburse KSU fifty percent (50%) of all out of pocket expenses for the completion of the Project not to exceed $50,000.

City and KSU Responsibilities:

- KSU and the City shall review and approve plans and specifications associated with the construction of the Project.

Schedule:

The City and KSU will diligently pursue the completion of the Project. Construction shall be completed by June 30, 2019 unless otherwise modified by both parties.

Term, Termination and Abandonment:

The Term, Termination and Abandonment of the facilities constructed under the Project shall be included as part of the existing agreement included in Attachment “A”.

Severability:

In the event any one or more of the provisions contained in the Agreement shall be determined to be invalid and the remaining provisions can be given effect, then in such event the remaining provisions shall remain in full force and effect.

Non-Assignment:

The rights, duties and responsibilities of parties under this agreement shall not be assignable by either party without written consent of the other party.
Non-Waiver of Breach:

The waiver of a breach of any one or more of the terms, provisions and conditions set forth and included in this Agreement shall not constitute, nor be construed to represent or constitute, the waiver in whole or in part of any subsequent breach of any term, provision or condition contained in this Agreement.

Integrated Agreement:

This Agreement, including attachments, represents the entire, complete and exclusive understanding and agreement of the parties hereto and reduces to writing all oral negotiations and agreements of the parties and shall not be changed, varied or otherwise amended except in writing, signed by each of the parties hereto.

Notices:

Unless and until otherwise advised in writing in accordance herewith, all notices required to be given under this Agreement shall be in writing sent by certified mail, postage prepaid, as follows:

To City: City of Kent
301 South Depeyster Street
Kent, Ohio 44240
Attn: City Manager

To KSU: Vice President for Administration
Kent State University
P.O. Box 5190
Kent, Ohio 44242

Article Headings:

The article headings contained herein are inserted only as a matter of convenience and for reference and in no way shall be construed to define, limit or describe the scope or intent of this Agreement, nor in any way to affect the interpretation of any provision of this agreement.

Governing Law:

This Agreement is being executed in the state of Ohio and the laws of Ohio shall govern its validity, effect and performance.
EXHIBIT "A"

In witness whereof, the Parties hereto have offered their hands and seals:

KENT STATE UNIVERSITY

Approved and Accepted by:

______________________________
Mark Polatajko,
Senior Vice President
for Finance and Administration

______________________________
Witness:

Date: _______________________

______________________________
CITY OF KENT

Approved and Accepted by:

______________________________
Dave Ruller
City of Kent, City Manager

______________________________
Witness:

Date: _______________________

Approved as to Form:

______________________________
Hope Jones
City of Kent, Law Director

Date: _______________________

Resolution No. 2018-124
Certificate of Director of Budget and Finance

It is hereby certified that the amount FIFTY THOUSAND Dollars ($50,000) 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 Capital Fund free from any obligation or certificates now outstanding.

__________________________
Dave Coffee,
Director of Budget and Finance

__________________________
Date
Construction Maintenance and License Agreement
POR-KSU Gateway Bike Trail (PID 88517)

THIS CONSTRUCTION, MAINTENANCE AND LICENSE AGREEMENT made this __________ day of __________, 2011, by and between the CITY OF KENT (hereinafter referred to as "CITY") and KENT STATE UNIVERSITY (hereinafter referred to as "KSU") recites that:

WHEREAS, the CITY and KSU agreed to cooperate in the design, construction and funding of the Esplanade Extension, SR 59 crossing and Erie Street upgrade on March 5, 2010. This Memorandum of Understanding is included as Exhibit A; and

WHEREAS, the CITY and KSU amended the Memorandum of Understanding dated March 5, 2010 on June 17, 2010 to incorporate a $700,000 grant received by the City for the construction of the Esplanade Extension. This amendment to the Memorandum of Understanding is included as Exhibit B; and

WHEREAS, the construction of the Esplanade Extension shall now be known as POR-KSU Gateway Bike Trail - PID 88517 (hereafter referred to as ("POR-KSU") to coincide with the funding obtained; and

WHEREAS, a portion of the POR-KSU will traverse the property of KSU for the enjoyment and use by the general public including KSU (hereinafter referred to as "USERS"); and

WHEREAS, the CITY and KSU desire to delinicate the duties, rights, and responsibilities of each party to the other regarding POR-KSU;

NOW THEREFORE, in consideration of the mutual agreements contained herein, the parties do hereby agree as follows:

CONSTRUCTION

KSU hereby grants to the City a license for the construction, maintenance and use of the POR-KSU across a portion of the KSU campus. The City shall construct the POR-KSU in accordance with plans and specifications that have been approved by KSU and the City. KSU shall maintain the POR-KSU in accordance with terms defined later in this agreement.

The POR-KSU shall be designed to meet minimum AASHTO standards for bike and hike trails and be approved by The Ohio Department of Transportation. The project shall be constructed in accordance with the policies of the Local Public Administered projects required by the Ohio Department of Transportation. Additional amenities for the POR-KSU such as observation points, bridges, boardwalks, lighting, water fountains, art, trash bins, signage, etc. shall also conform to current KSU standards. These amenities shall receive KSU approval prior to installation regarding its proposed type, size and location.
KSU shall be responsible for the cost of all utilities connected for use along the POR-KSU.

The City shall administer the contracts for the design and construction of the POR-KSU. KSU shall reimburse the City all local share costs for the project. The project construction budget of $3,282,000, previously approved by the KSU Board of Trustees on 6-2-11, shall not be exceeded without the written approval of KSU. The project construction budget includes all costs to complete the construction of the project, including but not limited to; construction engineering, inspection services, testing services, utility fees, legal fees, construction & contingencies. KSU shall assist the City's Engineer to complete the construction of the project within the approved budget.

LOCATION

The POR-KSU shall commence at or near the intersection of Erie Street and S.R. 59 and continue easterly to its terminus at the existing Esplanade at Lincoln Street generally following the route delineated in Exhibit C.

KSU reserves the right to relocate the POR-KSU on its property and or its related amenities at any time during the term of this agreement. KSU shall be responsible for the cost of any such relocation, shall maintain the POR-KSU connectivity to The Portage Bike and Hike Trail system and shall meet minimum AASHTO standards for bike and hike trails effective the date of this agreement. Conversely, the City may not alter the POR-KSU on KSU property without receiving the written approval of KSU.

MAINTENANCE

The POR-KSU, including all improvements and amenities, shall be the sole maintenance and repair responsibility of KSU. The City shall have the right to make any and all emergency repairs necessary at roadways to protect the safety and welfare of the traveling public. The City shall notify KSU of the emergency repairs and KSU shall diligently pursue to make all permanent repairs to the facility upon receipt of notification from the City.

The City & KSU shall perform non-emergency repairs to its utilities in such a manner as to minimize disturbance to the functioning of the POR-KSU. The POR-KSU shall be restored to the quality of the existing facility with similar materials whenever the City and/or KSU disturb the facility in the course of repairing and/or maintaining its utilities or facilities.

Maintenance shall be in accordance with the standards generally applied to public facilities of this nature, including repair and/or replacement as a result of weather, animals, individuals or any other cause. The maintenance responsibility shall remain in full force for the duration of the terms of this agreement.

SAFETY/LIABILITY
EXHIBIT "A"

The safe and secure enjoyment of The POR-KSU by users while on the property of KSU shall be the sole responsibility of KSU. KSU hereby indemnifies and saves harmless the City from and against any liability actions, claims and causes of action, whether in law or in equity, for injury or death to persons or damage to property related to the use of The POR-KSU.

KSU shall maintain general liability insurance coverage to such extent and in such amounts, as it deems appropriate, but in no event less than the amount of coverage that the City carries for general liability coverage. KSU shall cause the city to be named as additional insured, whether in law or in equity. Further the City shall name KSU as an additional insured on any liability coverage in place for the operation and use of The POR-KSU.

TERM, TERMINATION AND ABANDONMENT

It is the desire of the parties that this agreement shall remain in full force in perpetuity, but in no event shall the initial term of this agreement expire before January 1, 2062. After such initial term, should the City wish to abandon the other portions of the Portage, or should KSU abandon The Portage-KSU, and/or terminate this agreement, the moving party shall give the other party no less than 365 days prior notice.

SEVERABILITY

In the event anyone or more of the provisions contained in the Agreement shall be determined to be invalid and the remaining provisions can be given effect, then in such event the remaining provisions shall remain in full force and effect.

NON-ASSIGMNENT

The rights, duties and responsibilities of parties under this agreement shall not be assignable by either party without written consent of the other party.

NON-WAIVER OF BREACH

The waiver of a breach of any one or more of the terms, provisions and conditions set forth and included in this Agreement shall not constitute, nor be construed to represent or constitute, the waiver in whole or in part of any subsequent breach of any term, provision or condition contained in this Agreement.

INTEGRATED AGREEMENT

This Agreement, including exhibits, represents the entire, complete and exclusive understanding and agreement of the parties hereto and reduces to writing all oral negotiations and agreements of the parties and shall not be changed, varied or otherwise amended except in writing, signed by each of the parties hereto.
NOTICES

Unless and until otherwise advised in writing in accordance herewith, all notices required to be given under this Agreement shall be in writing sent by certified mail, postage prepaid, as follows:

To City:    City of Kent
           215 East Summit street
           Kent, Ohio 44240

To KSU:    Vice President for Administration
           Kent State University
           P.O. Box 5190
           Kent, Ohio 44242

ARTICLE HEADINGS

The article headings contained herein are inserted only as a matter of convenience and for reference and in no way shall be construed to define, limit or describe the scope or intent of this Agreement, nor in any way to affect the interpretation of any provision of this agreement.

GOVERNING LAW

This Agreement is being executed in the state of Ohio and the laws of Ohio shall govern its validity, effect and performance.
IN WITNESS WHEREOF, the parties to this agreement have hereunto set their hands on the day and year first written above.

KENT STATE UNIVERSITY
By: Gregg S. Floyd
   Vice President for Finance & Administration

CITY OF KENT
By: David Ruller
   City Manager

APPROVED AS TO FORM:

UNIVERSITY COUNSEL

Legal Council for Kent State University

APPROVED AS TO FORM:

Jim Silver
Law Director

Certificate of Director of Budget and Finance

It is hereby certified that the amount SEVEN HUNDRED THOUSAND Dollars ($700,000) 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 Capital Fund free from any obligation or certificates now outstanding.

Dave Coffee, Director of Budget and Finance

11-17-2011

Date
Exhibit A
Esplanade – Erie Street Memorandum of Understanding
ESPLANADE – ERIE STREET
MEMORANDUM OF UNDERSTANDING
KENT STATE UNIVERSITY
AND
THE CITY OF KENT
ALL PARTIES BEING IN THE COUNTY OF PORTAGE,
STATE OF OHIO

This Memorandum of Understanding, dated March 5, 2010, is an
agreement made and entered into between Kent State University (“KSU”) and the City
of Kent, Ohio, duly formed under the laws of the State of Ohio (the “City”).

WITNESSETH:

WHEREAS, KSU and the City desire better connectivity for pedestrians between
KSU and downtown Kent; and

WHEREAS, The City and KSU agree that an extension of the pedestrian facility on
campus called the “Esplanade” to downtown Kent would provide the better connectivity
desired; and

WHEREAS, The construction of the Esplanade Extension requires approval of a
break in the Limited Access along SR 59 from the Ohio Department of Transportation; and

WHEREAS, The construction of the Esplanade Extension will require an upgrade
and extension of the Esplanade from Lincoln Street to SR 59 and road and pedestrian
improvements on Erie Street from SR 59 to Water Street; and

WHEREAS, The KSU Board of Trustees approved revisions to the KSU Campus
Master Plan and the City presented to the public on July 9 and 14, 2009 and City Council a
downtown redevelopment plan that depicts the extension of the Esplanade from KSU to
downtown Kent along Erie Street in downtown Kent; and

WHEREAS, The above Esplanade Extension, SR 59 crossing and Erie Street
upgrade represent a significant investment.

THEREFORE, The City and KSU agree to cooperate in the design, construction
and funding of the Esplanade Extension, SR 59 crossing and Erie Street upgrade. Each party
agrees to the following to create the connectivity described above:
City:

- Improve East Erie Street from SR 59 to Water Street, including street condition, streetscape with increased pedestrian and bicycle facilities and other amenities consistent with other downtown streets.
- Continue to diligently pursue limited access breaks on SR 59 from the Ohio Department of Transportation for the Esplanade-Erie Street connection at SR 59.
- Permit construction of the Esplanade Extension in the existing Erie Street Right-of-Way from SR 59 to Willow Street with consideration of the existing utilities and upon approval of the final plans.
- Perform non-emergency repairs to the existing utilities within the existing Erie Street Right-of-Way in such a manner as to minimize disturbance to the functioning of the Esplanade.
- Repair the Esplanade Extension to the quality of the existing facility with similar materials when the City disturbs the facility in the course of repairing and/or maintaining its utilities.

KSU:

- Extend the Esplanade in accordance with the Board of Trustee approved revisions to the KSU Campus Master Plan, including design, land acquisition and construction.
- Assist the City in pursuing the limited access breaks on SR 59 from the Ohio Department of Transportation for the Esplanade-Erie Street connection at SR 59.
- Maintain the Esplanade Extension from Lincoln Street to SR 59, including routine maintenance such as sweeping, plowing and landscaping, repairs to the surface, lighting system and other amenities and eventually replacement at the end of the facility's useful life.

City and KSU:

- Collaborate to expand and extend the proposed community sculpture walk along the esplanade.
- Collaboratively pursue Federal, State or other funding for the Esplanade Extension from SR 59 to Lincoln Street.
- Collaborate to provide a safe, vibrant pathway between the City and the University including individual and jointly sponsored regularly scheduled events.

Schedule:

The City and KSU will diligently pursue the completion of the Esplanade Extension and Erie Street Upgrade. Construction shall be completed for both facilities by December 1, 2012 unless otherwise modified by both parties.
In witness whereof, the Parties hereto have offered their hands and seals:

CITY OF KENT

Approved and Accepted by:

[Signature]

Dave Ruller
City of Kent, City Manager
Date: 2-23-10

Witness: [Signature]

[Signature]

Witness: Elizabeth Zorc

Approved as to Form:

[Signature]

Jim Silver
City of Kent, Law Director
Date: 2-23-10

KENT STATE UNIVERSITY

Approved and Accepted by:

[Signature]

Gregg S. Floyd
Vice President for Finance and Administration
Date: 3-6-10

Witness: [Signature]

[Signature]

Witness: [Signature]

REVIEWED BY

FEB 25, 2010
UNIVERSITY COUNSEL
ESPLANADE - ERIE STREET
MEMORANDUM OF UNDERSTANDING

Amendment #1

KENT STATE UNIVERSITY
AND
THE CITY OF KENT

ALL PARTIES BEING IN THE COUNTY OF PORTAGE,
STATE OF OHIO

This Amendment, dated June 17, 2010, is by and between Kent State University ("KSU") and the City of Kent, ("City"), duly formed under the laws of the State of Ohio.

WITNESSETH:

WHEREAS, The City and KSU agreed on March 5, 2010 to complete the design, construction and funding of the Esplanade Extension, SR 59 crossing and Erie Street upgrade, herein after referred to as the "project".

WHEREAS, The City obtained a $700,000 grant for the Esplanade Extension which requires the City manage the design and construction of the project.

NOW, THEREFORE, in consideration of the mutual covenants, promises, conditions and terms to be kept and performed, it is agreed between the parties that the City and KSU agree to collaborate on the design and construction of the Esplanade Extension ("Project"). Each Party shall be responsible for the following tasks to complete the "Project":

City:

- Manage the Local Public Agency (LPA) Agreement with O.D.O.T.
- A City of Kent Engineer will be in responsible charge of the Project.
- Administer the contract involving the Design and Construction of the Project.

KSU:

- Reimburse the City all local share costs for design and construction.
- Assist the City’s Engineer in responsible charge to complete the design and construction of the project within the approved frame.
- KSU will pay for all design expenses up to $300,000.
City and KSU:

- KSU and the City shall review and approve design plans and specifications.
- KSU and City shall both approve all Project invoices and expenses prior to payment.

In witness whereof, the Parties hereto have offered their hands and seals:

CITY OF KENT

Approved and Accepted by:

[Signature]
Dave Ruller
City of Kent, City Manager

Date: 6-8-10

Approved as to Form:

[Signature]
Jim Silver
City of Kent, Law Director

Date: 6-9-10

Certificate of City of Kent Director of Budget and Finance

It is hereby certified that the amount THREE HUNDRED THOUSAND Dollars ($300,000) 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.

[Signature]
Dave Coffin, Director of Budget and Finance

Date: 6-17-10
KENT STATE UNIVERSITY

Approved and Accepted by:

Gregg S. Floyd,
Vice President
for Finance and Administration

Date: 6/2/10

Witness: G. Sherman

Witness: Leta Leppo