

ORDINANCE NO. 2013-94

AN ORDINANCE AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO ENTER INTO A “MEMORANDUM OF UNDERSTANDING” WITH COLLEGE TOWN KENT, LLC, AN OHIO LIMITED LIABILITY COMPANY, FOR THE LANDSCAPING AND MAINTENANCE OF TREES, SHRUBS, AND LAWN ALONG THE NORTH SIDE OF S.R. 59, BETWEEN DEPEYSTER STREET, AND SOUTH WATER STREET, IN KENT, PORTAGE COUNTY, OHIO; AND DECLARING AN EMERGENCY.

WHEREAS, the property that fronts the north side of S.R. 59, between Water Street and Depeyster Street between the roadway and the building and the parking lot, is in need of landscaping; and

WHEREAS, the City owns the land; and

WHEREAS, College Town Kent, LLC (CTK) leases a portion of said land; and

WHEREAS, the community gateway sign, jointly funded by the City and Kent State University, also sits upon said land; and

WHEREAS, the lawn care and landscaping along the entire block should be continuous and consistent; and

WHEREAS, the parties desire to have a high quality area to enhance the City and the office space used by CTK’s tenants (such as the Davey Resource Group) and the general public; and

WHEREAS, the City and CTK wish to define the roles of the parties for the installation and maintenance of landscaping and lawn care in the area; and

WHEREAS, the City and CTK wish to outline the terms to continue the successful public/private partnership so that the installation and maintenance of landscaping and lawn care is viable and sustainable to the benefit of all; and

WHEREAS, the City will contribute \$20,000.00 for the landscaping and CTK will contribute \$10,000.00 for the landscaping and CTK will provide the water for watering said landscaping.

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 “Memorandum of Understanding” with College Town Kent, LLC to landscape and maintain the landscaping for the property located north of S.R. 59 between Depeyster Street and South Water Street, Kent, Ohio; as 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 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: 09/18/2013
DATE

MAYOR AND PRESIDENT OF COUNCIL

ATTEST: _____
CLERK OF COUNCIL

I hereby certify that Ordinance No. 2013- 94 was duly enacted this 18TH day of September, 2013, by the Council of the City of Kent, Ohio

CLERK OF COUNCIL

EXHIBIT "A"

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "MOU") is made and entered into this _____ day of _____, 2013 (the "Effective Date") by and between the City of Kent, Ohio (the "City") and College Town Kent, LLC, an Ohio limited liability company ("CTK"), or any of their assigns.

WITNESSETH

WHEREAS, the property that fronts the north side of S.R. 59, between Water Street and Depeyster Street between the roadway and the building and the parking lot, is in need of landscaping; and

WHEREAS, the City owns the land; and

WHEREAS, CTK leases a portion of said land; and

WHEREAS, the community gateway sign jointly funded by the City and Kent State University also sits upon said land; and

WHEREAS, the lawn care and landscaping along the entire block should be continuous and consistent; and

WHEREAS, the parties desire to have a high quality area to enhance the City and the office space used by CTK's tenants (such as the Davey Resource Group) and the general public; and

WHEREAS, the City and CTK wish to define the roles of the parties for the installation and maintenance of landscaping and lawn care in the area; and

WHEREAS, the City and CTK wish to outline the terms to continue the successful public/private partnership so that the installation and maintenance of landscaping and lawn care is viable and sustainable to the benefit of all.

NOW THEREFORE, for mutual consideration, the receipt of which is hereby acknowledged, the City and CTK express their mutual understanding as follows:

- 1) The area in need of landscaping and lawn care is shown on the map, attached hereto as Exhibit "A" and made a part hereof, consisting of the dirt and grassy areas between the north side of S.R. 59 (between Water Street and Depeyster Street) and the buildout areas and the parking lot and Locke Alley to the north.
- 2) The City will be responsible for:
 - a) managing the installation of the final landscaping and lawn, and the irrigation system within the project location; and
 - b) payment of the \$30,000.00 installation costs pursuant to the proposal from the Davey Tree Company, attached hereto as Exhibit "B" and made a part hereof; and
 - c) invoicing CTK its share of the installation costs; one-third (1/3) or \$10,000.00 after installation and after the City has been billed for the installation; and
 - d) maintaining the landscaping and the lawn (including the leased area and the irrigation system) for a period of fifteen (15) years from the Effective Date; and
 - e) payment of fifty percent (50%) of any capital repair costs – defined as any costs for lawn care and landscaping, not associated with the regular maintenance of the lawn or landscaping. Regular maintenance includes mowing and weeding.
- 3) CTK will be responsible for:
 - a) payment of \$10,000.00 towards the installation of the landscaping and lawn in the described area. The payment will be due thirty (30) days after CTK receives an invoice from the City; and
 - b) permitting the connection of the irrigation system to the water supply lines for Building "A" and the northeast corner of Water Street and S.R. 59. CTK will also be responsible for monitoring said connection; and
 - c) providing and paying for the water used by the irrigation system for a period of fifteen (15) years from the Effective Date; and
 - d) payment of fifty percent (50%) of any capital repair costs as defined in Section 2(e) of this MOU.
- 4) The term of this MOU shall expire fifteen (15) years from the Effective Date. Thereafter, this MOU will automatically renew on an annual basis for a one (1) year period, unless either party notifies the other, in writing, of its intent not to renew, by June 30th of such calendar year.

5) This MOU may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

6) This MOU, together with the attached exhibit(s), contains all of the terms and conditions of the agreement between the parties, and any and all prior and contemporaneous oral and written agreements are merged herein.

7) This MOU cannot be changed nor can any provision of this MOU, or any right or remedy of any party, be waived orally. Changes and waivers can only be made in writing, and the change or waiver must be signed by the party against whom the change or waiver is sought to be enforced. Any waiver of any provision of this MOU, or any right or remedy, given on any one or more occasions shall not be deemed a waiver with respect to any other occasion.

8) This MOU shall be binding upon and inure to the benefit of the heirs, executors, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this MOU on the date first above written.

CITY OF KENT, OHIO

COLLEGE TOWN KENT, LLC
an Ohio limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____