

ORDINANCE NO. 20-128

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A BINOCULAR AGREEMENT WITH THE TOWER OPTICAL COMPANY, INC. OF SOUTH NORWALK, CONNECTICUT, FOR COIN OPERATED VIEWERS AT THE JACKSON STREET PIER, MEIGS STREET PIER, AND SHORELINE PARK; AND DECLARING THAT THIS ORDINANCE TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, The Tower Optical Company has operated and maintained coin operated viewers at the Jackson Street Pier, Meigs Street Pier, and Shoreline Park in the City of Sandusky, County of Erie, and State of Ohio, for a number of years; and

WHEREAS, during the redesign process for the Jackson Street Pier in 2018, it was realized that an agreement was not in place to allow Tower Optical to install, operate, or maintain the binoculars at the Jackson Street Pier; and

WHEREAS, the City desires to contract with Tower Optical to install, operate, and maintain new coin operated viewers on the Jackson Street Pier and to continue to operate and maintain the coin operated viewers currently at the Meigs Street Pier and Shoreline Park in accordance with the terms of this Agreement; and

WHEREAS, this Agreement will commence on September 1, 2020, and expire on November 30, 2025, and may be extended for two (2) additional five (5) year terms upon written agreement by both parties; and

WHEREAS, pursuant to the agreement, the Sandusky Fire Department will collect the coins from the viewers on a regularly basis and retain 40% of the revenue for the Sandusky Firefighters Charity Fund and Tower Optical will pay an annual fee of \$100.00 plus 5% of all revenues attributable to the viewers; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to allow Tower Optical to install the binoculars at the Jackson Street Pier as soon as the travel ban are lifted; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Public Works, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into a Binocular Agreement with The Tower Optical Company, Inc., of South Norwalk, Connecticut, for coin operated viewers at the Jackson Street Pier, Meigs Street

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Pier, and Shoreline Park for the term of September 1, 2020, through November 30, 2025, substantially in the same form as attached to this Ordinance and marked Exhibit "A", and specifically incorporated as if fully rewritten herein, together with any revisions or additions as are approved by the Law Director as being consistent with the objectives and requirements of this Ordinance and with carrying out the City's public purposes.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter upon its passage, and its due authentication by the President, and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

MCKENZIE E. SPRIGGS
CLERK OF THE CITY COMMISSION

Passed: August 24, 2020

BINOCULAR AGREEMENT

This Agreement made on and entered into on this ____ day of _____, 2020, between the City of Sandusky, Ohio, a Municipal Corporation of the State of Ohio, located in the County of Erie, herein referred to as "City," and The Tower Optical Company, Inc., a Connecticut corporation, whose mailing address is P.O. Box 251, South Norwalk, Connecticut 06856-0251, herein referred to as "Tower Optical".

In consideration of the mutual promises herein set out, the City and Tower Optical agree as follows:

RECITALS

WHEREAS, Tower Optical has operated and maintained coin operated viewers at the Jackson Street Pier, Meigs Street Pier, and Shoreline Park in the City of Sandusky, County of Erie, and State of Ohio, for a number of years.

WHEREAS, the City began a construction project on the Jackson Street Pier, requiring Tower Optical to remove their coin operated viewers from the pier.

WHEREAS, the City desires to contract with Tower Optical to install, operate, and maintain new coin operated viewers on the Jackson Street Pier and to continue to operate and maintain the coin operated viewers currently at the Meigs Street Pier and Shoreline Park in accordance with the terms of this Agreement.

SECTION ONE TERM

The term of this Agreement shall commence on September 1, 2020 and shall expire on November 30, 2025, and may be extended for two (2) additional five (5) year terms upon written agreement by both parties.

SECTION TWO EQUIPMENT

Tower Optical shall provide no more than two (2) Tower Optical coin operated viewers for installation at mutually agreed upon sites on the Jackson Street Pier. Tower Optical shall

operate and maintain the coin operated viewers currently located at the Meigs Street Pier and Shoreline Park. Tower Optical is and shall remain the sole owner of all viewers installed, operated, and maintained under this Agreement. Viewers may not be altered or modified in any way without the express written consent of Tower Optical.

**SECTION THREE
MAINTENANCE, REPAIR, AND REPLACEMENT**

Tower Optical officers and employees, or duly appointed agents, shall have free access to go upon the property described herein for the purpose of installing and/or removing its viewers, and/or collecting, servicing, repairing, and maintaining the same. The City shall oversee and direct any installation or removal of viewers to ensure City property is not damaged.

Tower Optical shall maintain the inside and outside of each viewer and make any repairs needed on a timely basis. The City may provide Tower Optical with notice when any viewer requires maintenance or repair and Tower Optical shall, as soon as possible but not later than five (5) business days after the receipt of such notice, shall undertake the maintenance and repair required at Tower Optical's expense. Tower Optical may remove any viewer for maintenance and repair so long as Tower Optical provides a suitable substitute viewer at no cost to the City. If a viewer is damaged and rendered unusable, Tower Optical shall replace the station at no cost to the City.

Tower Optical, at its sole cost and expense, shall update or replace any and all viewers if new technology becomes available which supersedes technology or equipment currently utilized by the viewers at the Jackson Street Pier, Meigs Street Pier, and Shoreline Park.

**SECTION FOUR
FINANCIAL PROVISIONS**

Tower Optical agrees to allow the Sandusky Fire Department to collect all monies from said viewers on a regularly scheduled basis. The Sandusky Fire Department shall retain 40% of the monies for the Sandusky Firefighters Charity Fund and shall remit the remaining 60% to Tower Optical.

Tower Optical shall pay an annual fee of one hundred dollars (\$100.00) to the City. Such annual fee shall be paid by the 10th day of January, annually, except for the first year this Agreement is enacted, in which such annual fee shall be paid before viewers are installed on the Jackson Street Pier. Additionally, Tower Optical agrees to pay the City a fee equal to five percent (5%) of all revenues attributable to the viewers at the Jackson Street Pier, Meigs Street Pier, and Shoreline Park. These fees payable by Tower Optical to the City shall be paid by the 10th day of January, for the previous calendar year in which Tower Optical receives the revenue attributable to the viewers located at the Jackson Street Pier, Meigs Street Pier, and Shoreline Park.

**SECTION FIVE
LIABILITY**

The City shall notify Tower Optical regarding any viewer and/or installation covered under this Agreement which is deemed unsafe for public use. Tower Optical shall assume all risks of damage, theft, pilferage, and vandalism. The City shall not be held responsible for any damage to the viewers being installed on the Jackson Street Pier, so long as the damage is not caused by negligence or intentional misconduct of the City.

**SECTION SIX
TERMINATION**

Either party may terminate this agreement by giving the other party written notice by certified mail at least thirty (30) days before the desired termination date.

**SECTION SEVEN
GOVERNING LAW**

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Ohio.

**SECTION EIGHT
INDEMNIFICATION**

Tower Optical agrees to indemnify, hold harmless, protect, and defend the City, its governing board, officers, employees and agents from and against every claim or demand which may be made by any person, firm, or corporation, or any other entity arising from or caused by Tower Optical's performance of this Agreement.

**SECTION NINE
ASSIGNMENT**

Neither the City nor Tower Optical shall assign or transfer its interest or obligations under this Agreement to any third party, without the written consent of the other. Tower Optical shall have the right to assign its obligations and rights under this Agreement to any successor resulting from a merger, or in connection with a sale of all or substantially all of the assets of Tower Optical; provided, however, that Tower Optical provides the City with an executed form of assignment and assumption evidencing the successor in interest's assumption of liability for the full and faithful performance of all the terms, covenants, conditions and provisions under this Agreement.

**SECTION TEN
SEVERABILITY**

If any of the provisions of this Agreement are found or deemed by a Court of competent jurisdiction to be invalid, or unenforceable, they shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable.

**SECTION ELEVEN
NOTICE**

Unless otherwise specified, all notices, communications and consents required by this Agreement shall be given or served in writing and forwarded by email, with proof of service retained, and certified mail, return receipt requested, to:

For the City: City Manager
 City of Sandusky
 240 Columbus Avenue
 Sandusky, Ohio 44870
 ewobser@ci.sandusky.oh.us

With a copy to: Law Director
City of Sandusky
240 Columbus Avenue
Sandusky, Ohio 44870
thayberger@ci.sandusky.oh.us

For Tower Optical: The Tower Optical Company, Inc.
PO Box 251
South Norwalk, Connecticut 06856-0251
info@toweropticalco.com

The date of receipt of all notices, communications, and consents shall be the date of email as long as proof of sending is provided, if not, the date of receipt shall be the date of receipt via certified mail.

**SECTION TWELVE
POST AGREEMENT PROCEDURES**

Upon termination or expiration of this Agreement, without renewal, Tower Optical and the City shall cooperate in any transition of the services provided under this Agreement. Tower Optical shall return the property in question back to its condition prior to installation of viewers within thirty (30) days of the date of termination or expiration of this Agreement. The provisions of this Section shall survive the termination or expiration of this Agreement.

**SECTION THIRTEEN
ENTIRE AGREEMENT/MODIFICATION**

This Agreement supersedes any and all agreements, both oral and written, between the City and Tower Optical with respect to Tower Optical's viewers at the Jackson Street Pier, Meigs Street Pier, and Shoreline Park and contains all of the covenants and agreements between the City and Tower Optical. Each party acknowledges that no representations, inducements, promises, or agreements, written or oral, have been made by either party, or by anyone acting on behalf of either party, that are not embodied in this Agreement.

Any modification to this Agreement shall be effective only if it is in writing and signed by both the City and Tower Optical.

**SECTION FOURTEEN
BINDING EFFECT**

All the terms and conditions of this Agreement shall be binding on the City and Tower Optical, and their respective heirs, legal and personal representatives, successors and assigns.

In witness whereof, The Tower Optical Company, Inc. and the City of Sandusky have executed this contract form.

Date: _____

The Tower Optical Company, Inc.:

By: _____
(Authorized Signature)

(Print Name & Title)

Date: _____

City of Sandusky:

By: _____
Eric Wobser, City Manager

Approval: The legal form and correctness of the within instrument is hereby approved.

Justin D. Harris (#0078252)
Interim Law Director, City of Sandusky