



**SANDUSKY CITY COMMISSION  
REGULAR SESSION AGENDA  
MARCH 27, 2023 AT 5 P.M.  
CITY HALL, 240 COLUMBUS AVENUE**

INVOCATION	Mr. Waddington
PLEDGE OF ALLEGIANCE	
CALL TO ORDER	
ROLL CALL	D. Waddington, B. Harris, M. Meinzer, W. Poole, D. Murray, D. Brady, S. Poggiali
APPROVAL OF MINUTES	March 13, 2023 Regular Meeting
AUDIENCE PARTICIPATION	
PUBLIC HEARING	306 W. Water Street Rezoning, Arin Blair, Chief Planner Transient Rental Zoning Ordinance Amendment, Arin Blair, Chief Planner
PRESENTATION	Esports, Scott Norcross, KJK
COMMUNICATIONS	Motion to accept all communications submitted below
CURRENT BUSINESS	

**CONSENT AGENDA ITEMS**

**ITEM A – Submitted by Michelle Reeder, Finance Director**

**SUBMERGED LAND LEASE PAYMENT TO ODNR FOR CHESAPEAKE**

**Budgetary Information:** This submerged land lease is payable by the City of Sandusky as the lease holder. The Chesapeake Lofts Condo Association will reimburse the City for the cost of the lease. ODNR does not allow a sub-lease holder to make a Submerged Land Lease payment on the City's behalf.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to make payment to the Ohio Department of Natural Resources (ODNR), Office of Coastal Management for rental payment on Submerged Lands Lease File No. Sub-2119B-ER for the period of April 1, 2023, through March 31, 2024; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

**ITEM B – Submitted by Jason Werling, Parks & Recreation Superintendent**

**PRIORITY FIELD USE AGREEMENT FOR SANDUSKY HIGH SCHOOL**

**Budgetary Information:** The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to enter into a three (3) year license agreement with Sandusky City Schools for priority use of field #6 located at Dorn Community Park for Sandusky High School's varsity and junior varsity softball programs (March 1<sup>st</sup> through May 31<sup>st</sup>) beginning March 1, 2023; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

**ITEM C – Submitted by Jason Werling, Parks & Recreation Superintendent**

**PRIORITY FIELD USE AGREEMENT FOR SANDUSKY CENTRAL CATHOLIC SCHOOLS**

**Budgetary Information:** The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to enter into a three (3) year license agreement with Sandusky Central Catholic High School baseball and softball programs for priority use of field #5 and field #9 located at Dorn Community Park for Sandusky Central Catholic High School baseball and softball programs (March 1<sup>st</sup> through May 31<sup>st</sup>) beginning March 1, 2023; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

**ITEM D – Submitted by Jason Werling, Parks & Recreation Superintendent**

**PRIORITY FIELD USE AGREEMENT FOR SANDUSKY TRAVELERS BASEBALL ACADEMY**

**Budgetary Information:** The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to enter into a license agreement with Sandusky Travelers Baseball Academy for priority use of Rather Field located at Jaycee Park South for their baseball program beginning April 1, 2023, through October 31, 2023; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

**ITEM E – Submitted by Jason Werling, Parks & Recreation Superintendent**

**PRIORITY FIELD USE AGREEMENT FOR LADY LIGHTNING FAST PITCH LEAGUE**

**Budgetary Information:** The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to enter into a license agreement with Lady Lightning Fast Pitch League for priority use of fields #1, #2, and #6 located at Dorn Community Park for their softball program beginning April 1, 2023, through October 31, 2023; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

**ITEM F – Submitted by Jason Werling, Parks & Recreation Superintendent**

**PRIORITY FIELD USE AGREEMENT FOR PANTHER BASEBALL CLUB**

**Budgetary Information:** The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to enter into a license agreement with The Panther Baseball Club for priority use of Kiwanis Park Ball Field located at 2227 First Street, Sandusky, Ohio, for the Firelands Interleague Baseball League Program beginning March 1, 2023, through July 31, 2023; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

**ITEM G – Submitted by Jason Werling, Parks & Recreation Superintendent**

**PRIORITY FIELD USE AGREEMENT FOR SANDUSKY AMVETS BASEBALL LEAGUE**

**Budgetary Information:** The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to enter into a license agreement with Sandusky AMVETS Baseball League for priority use of Erie Blacktop Field and the concession stand located at AMVETS Park and fields #1, #2, and #3 and the concession stand and storage shed located at Sprau Park for the Sandusky AMVETS Baseball League Program beginning April 1, 2023, through August 31, 2023; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

**ITEM H – Submitted by Arin Blair, Chief Planner**

**APPLICATION FOR ZONING MAP AMENDMENT 306 W. WATER STREET**

**Budgetary Information:** The proposed redevelopment is expected to result in increased property and income revenue for the city.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed amending the official zone map of the City of Sandusky to rezone Parcel Nos. 56-00131.000 and 56-61007.000 located at 306 W. Water Street from "LM" Limited Manufacturing District to "DB" Downtown Business District; and declaring that this ordinance shall take effect under suspension of the rules as contained in and in accordance with Section 13 of the City Charter.

**REGULAR AGENDA**

**ITEM 1 – Submitted by Aaron Klein, Public Works Director**

**WPCLF LOAN AGREEMENT WITH EPA FOR MILLS ST. HRT & UV DISINFECTION PROJECT AT WWTP**

**Budgetary Information:** The total cost associated with the loan will be as follows:

Engineering, Design & Inspection Costs	\$3,808,578.72
Construction Costs	\$36,200,231.00
OWDA Administrative Fee (0.35%)	\$103,248.00
	\$40,112,057.72
Principal Forgiveness Applied	(\$4,000,000.00)
County Capital Obligation	(\$6,509,349.67)
Loan Amount	\$29,602,708.05

The terms of the loan agreement will be around \$30M, over 30 years, with a reduced interest rate based on the market rate at the time of the vote. Subtracting the reductions granted through EPA allowances (i.e. nutrient reduction), sponsorship of two environmental projects, and \$4M in principle forgiveness, the estimated rate in March would have been 1.5%. It is anticipated that a similar low-interest rate will be provided in the final agreement with the initial repayment likely being scheduled for 2026. Given these terms, repayment from the Sewer Fund would be approximately \$1.23M annually. Current annual loan payments from 8 different loans totaling around \$1.71M from the Sewer Fund will be paid off by 2026.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed approving a Water Pollution Control Loan Fund (WPCLF) agreement between the City of Sandusky, the Ohio Environmental Protection Agency (EPA), and the Ohio Water Development Authority (OWDA) to finance the cost of the design, construction, and inspection of the Mills Street High-Rate Treatment Project and the Ultraviolet (UV) Disinfection Refurbishment Project; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

ITEM 2 – Submitted by Josh Snyder, Public Works Engineer

AWARD CONTRACT FOR WARREN ST PROJECT TO SPEER BROS

**Budgetary Information:** The total construction cost of the project based on selecting the base bid and alternate items 2, 3 and 4; is \$3,032,220.00, which is (4%) under the engineer’s estimate and will be funded accordingly;

OPWC Grant	\$325,000.00
OPWC Loan	\$162,500.00
Issue 8 Street	\$62,093.00
PRK/ADM - Path	\$125,000.00
PRK/ADM - Street	\$448,978.00
Stimulus	\$168,649.00
OWDA Water	\$865,000.00
OWDA Sewer	\$875,000.00
	\$3,032,220.00

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to enter into a contract with Speer Bros., inc. of Sandusky, Ohio, for the Warren Street Reconstruction Project; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

ITEM 3 – Submitted by Josh Snyder, Public Works Engineer

OWDA LOAN FOR WARREN ST RECONSTRUCTION PROJECT

**Budgetary Information:** The total loan amount being financed will be as follows:

Construction	\$1,740,000.00
Contingency (10%)	\$174,000.00
<u>OWDA Administrative Fee (0.35%)</u>	<u>\$6,699.00</u>
	\$1,920,699.00

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing a cooperative agreement between the City of Sandusky and the Ohio Water Development Authority (OWDA) to finance the cost of construction for the storm sewer, sanitary and water portion of the Warren Street Reconstruction Project; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

ITEM 4 – Submitted by Megan Stookey, Project Manager

CONTRACT FOR YARD WASTE SERVICES WITH REPUBLIC SERVICES

**Budgetary Information:** Based on service for a one day per week pick up at \$15.00 per home per month and a contract for nine months, the estimated amount for the 2023 Yard Waste Collection Service is \$87,075.00 based on last year’s figure of 645 customers. This amount is subject to change due to additions and deletions of customers to the program. The cost of the service will be charged back to the customers in addition to a charge of \$0.50 per month for administrative costs.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to enter into a contract with Browning-Ferris Industries of Ohio, Inc. d.b.a. Republic Waste Services of Sandusky, Ohio, for the 2023 Yard Waste Collection Service which is available for the period of April 1, 2023 through December 31, 2023; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

ITEM 5 – Submitted by Arin Blair, Chief Planner

ADOPT TRANSIENT RENTAL ZONING REGULATIONS

**Budgetary Information:** Adoption of the ordinance will enable staff to collect new fees for 2023 transient rental permits.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed repealing Ordinance No. 17-088; amending Part Eleven (Planning and Zoning Code), Title One (Zoning Administration), Chapter 1107 (Definitions), Title Three (Zoning Districts and Regulations), Chapter 1129 (Residential Districts), Chapter 1133 (Business Districts), and Chapter 1137 (Commercial Districts), Title Five (Additional Zoning Requirements), Chapter 1151 (Nonconforming Structures and Uses) of the Codified Ordinances; and declaring that this ordinance take immediate effect in accordance with Section 14 of the City Charter.

ITEM 6 – Submitted by Nicole Grohe, Community Development Program Administrator

AWARD CDBG FY21 DEMOLITION PROJECT #5 TO ED BURDUE

**Budgetary Information:** The total cost for the asbestos abatement and demolition is \$145,300 and will be paid with FY21 Community Development Block Grant Funds. Liens will be placed on the properties for the total cost of the asbestos abatement and demolition.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to enter into a contract with Ed Burdue & Company of Sandusky, Ohio, for the CDBG FY21 Demolition Project #5; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

ITEM 7 – Submitted by James Stacey, Transit Administrator

AWARD STS CONTRACT WITH FIRST TRANSIT

**Budgetary Information:** STS operations and administration are funded by the Federal Transit Administration, State of Ohio, local contributing agencies, local contributing private entities, the daily farebox collections and the City’s General Fund. The City has agreed upon a vehicle service per hour rate of \$48.14 with a monthly fixed fee of \$35,511.40 for 2023.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to enter into a Transportation Services Agreement between the City of Sandusky and First Transit, Inc., of Lombard, Illinois, in relation to the Sandusky Transit System; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

ITEM 8 – Submitted by Jared Oliver, Police Chief

REPEALING ORD NO. 22-053 & PURCHASING SEVEN FORD UTILITY POLICE SUV’S FROM MONTROSE

**Budgetary Information:** The total cost for the seven vehicles is not to exceed \$288,930.88 and will be paid for using Capital Funds.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed repealing Ordinance No. 22-053, passed on March 14, 2022; authorizing and directing the City Manager to purchase seven (7) Ford Police Sport Utility Vehicles from Montrose Ford of Akron, Ohio, for the Police Department; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

ITEM 9 – Submitted by Mario D’Amico, Fire Chief

PERMISSION TO PURCHASE STRYKER POWER-LOAD SYSTEM FOR EMS

**Budgetary Information:** The total amount of this expenditure is \$65,702.03 of which \$40,000.00 will be paid with funds received from the Ohio Bureau of Workers’ Compensation Safety Intervention Grant (SIG) Program. The remaining amount of \$25,702.03 will be paid from monies budgeted in the EMS fund.

**ORDINANCE NO. \_\_\_\_\_:** It is requested an ordinance be passed authorizing and directing the City Manager to purchase one (1) Stryker Power-Load Cot System from Stryker Medical of Chicago, Illinois, for the Fire Department; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

CITY MANAGER’S REPORT

OLD BUSINESS

NEW BUSINESS

**AUDIENCE PARTICIPATION:** Open discussion on any item (5-minute limit)

EXECUTIVE SESSION(S)

ADJOURNMENT

Online: [www.CityofSandusky.com/Live](http://www.CityofSandusky.com/Live) – Click “Play” 





## FINANCE DEPARTMENT

240 Columbus Avenue

Sandusky, Ohio 44870

419.627.5776

[www.cityofsandusky.com](http://www.cityofsandusky.com)

TO: John Orzech, Interim City Manager  
FROM: Michelle Reeder, Finance Director  
DATE: March 14, 2023  
RE: Commission Agenda Item

### **ITEM FOR CONSIDERATION:**

City Commission approval of an ordinance authorizing payment in the amount of \$13,764.34 to the Ohio Department of Natural Resources (ODNR) for submerged land lease SUB-2119B-ER, the Chesapeake Lofts, for the period of April 1, 2023 to March 31, 2024.

### **BACKGROUND INFORMATION:**

This Submerged Lands Lease is payable by the City of Sandusky as the leaseholder. The Chesapeake Lofts Condominium Association, Mid-States Development Corporation's assigned sub-lessee, will reimburse the City for the cost of the lease payment pursuant to Submerged Lands Lease Agreement SUB-2119B-ER.

### **BUDGETARY INFORMATION:**

This submerged land lease is payable by the City of Sandusky as the lease holder. The Chesapeake Lofts Condo Association will reimburse the City for the cost of the lease. ODNR does not allow a sub-lease holder to make a Submerged Land Lease payment on the City's behalf.

### **ACTION REQUIRED:**

It is requested that the City Commission enact the ordinance and have it take immediate effect under Section 14 of the City Charter in order to make timely payment to the Ohio Department of Natural Resources.

I concur with this recommendation:

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John Orzech

Interim City Manager

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Michelle Reeder

Finance Director

CC: Brendan Heil, Law Director

State of Ohio - Ohio Dept of Natural Resources  
Submerged Lands Lease Invoice

Please Remit To:  
PO Box 97  
Huron OH 44839

Page: 2  
Invoice No: DNRSL23118  
Consolidated Invoice No:  
Invoice Date: 03/08/2023  
Customer Number: SUB-2119B-ER001  
Payment Terms: NET 30  
Due Date: 04/07/2023

Bill To:  
City of Sandusky  
Attn: Megan E. Stookey, Dept of Public Works  
240 Columbus Ave  
Sandusky OH 44870

AMOUNT DUE: 13,764.34 USD

Amount Remitted

Make Checks Payable To: Ohio Treasurer of State  
Billing Service Period: From 01-APR-2023 To 31-MAR-2024  
For billing questions, please call or email (419) 626-7980  
To ensure proper payment processing, please be sure the invoice number is on all payments.

Invoice Summary

SUBTOTAL of Invoice Details:

13,764.34

TOTAL AMOUNT DUE :

13,764.34

STANDARD

Original



## PARKS & RECREATION

1918 Mills Street  
Sandusky, Ohio 44870  
419.627.5886

[www.cityofsandusky.com/recreation](http://www.cityofsandusky.com/recreation)

To: John Orzech, Interim City Manager

From: Jason Werling, Recreation Superintendent

Date: March 14, 2023

Subject: Commission Agenda Item- Priority Use Agreement for Sandusky City Schools

### **ITEMS FOR CONSIDERATION:**

Legislation to enter into a three -year, License Agreement with Sandusky City Schools for priority use of Field #6 at Dorn Community Park for their high school varsity and junior varsity softball programs (March 1<sup>st</sup> through May 31<sup>st</sup>) beginning March 1, 2023 through May 31, 2025 with an additional three-year option for the years 2026 through 2028.

### **BACKGROUND INFORMATION:**

The City of Sandusky Recreation Division has had agreements for the priority use of ball fields with Sandusky City Schools for the past numerous years which has worked well for both parties. Because of the success of the agreement with the schools, it would be beneficial to enter into another agreement.

In the past, each league was given the option to do an in-kind permanent improvement or to pay cash for half of the expenses of the fields in which they would like to utilize. Each entity has agreed to continue to maintain the ball fields they use by dragging, litter pick up, and assist with mowing and trimming duties.

### **BUDGET IMPACT:**

The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ACTION REQUESTED:** It is requested that legislation be approved authorizing the City Manager to enter into a License Agreement with Sandusky City Schools for seasonal priority use of the listed ballfield above. It is further requested that the legislation take immediate effect in full accordance with Section 14 of the City Charter in order to immediately execute the License Agreement retroactively to the start of the 2023 season, which began on March 1, 2023.

I concur with this recommendation:

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Jason Werling  
Recreation Superintendent

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John Orzech  
Interim City Manager

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO MAKE PAYMENT TO THE OHIO DEPARTMENT OF NATURAL RESOURCES (ODNR), OFFICE OF COASTAL MANAGEMENT FOR RENTAL PAYMENT ON SUBMERGED LANDS LEASE FILE NO. SUB-2119B-ER FOR THE PERIOD OF APRIL 1, 2023, THROUGH MARCH 31, 2024; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the City of Sandusky is the Lessee of a Submerged Lands Lease, File No. SUB-2119B-ER, for the submerged land which is part of the Chesapeake Lofts and as the Lessee, is responsible for all terms and conditions contained in the Submerged Lands Lease, including any annual rent; and

**WHEREAS**, as part of the agreement with Mid-States Development Corporation, the cost for the annual Submerged Lands Lease rental payment is to be reimbursed by Mid-States to the City; and

**WHEREAS**, the total cost for Submerged Lands Lease File No. SUB-2119B-ER, as reflected on the current unpaid invoice, is \$13,764.34 and will initially be paid by the City and then reimbursed by the Chesapeake Lofts Condominium Association, Mid-States Development Corporation's assigned sub-lessee, in accordance with the Agreement; 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 make payment in a timely manner to the Ohio Department of Natural Resources; 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 Finance Department, 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 and/or Finance Director is authorized and directed to make payment to the Ohio Treasurer of State as requested by the Ohio Department of Natural Resources (ODNR), Office of Coastal Management, Sandusky, Ohio, for rental payment for Submerged Lands Lease File No. SUB-2119B-ER, for the period April 1, 2023, through March 31, 2024, in an amount **not**

to exceed Thirteen Thousand Seven Hundred Sixty Four and 34/100 Dollars (\$13,764.34), consistent with the invoice submitted to the City.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023





## PARKS & RECREATION

1918 Mills Street  
Sandusky, Ohio 44870  
419.627.5886

[www.cityofsandusky.com/recreation](http://www.cityofsandusky.com/recreation)

To: John Orzech, Interim City Manager

From: Jason Werling, Recreation Superintendent

Date: March 14, 2023

Subject: Commission Agenda Item- Priority Use Agreement for Sandusky Central Catholic Schools

### **ITEMS FOR CONSIDERATION:**

Legislation to enter into a three-year, License Agreement with Sandusky Central Catholic Schools for priority use of Field #5 and Field #9 at Dorn Community Park for their high school varsity and junior varsity baseball and softball programs (March 1<sup>st</sup> through May 31<sup>st</sup>) beginning March 1, 2023, through May 31, 2025 with an optional and additional three-year term for 2026-2028.

### **BACKGROUND INFORMATION:**

The City of Sandusky Recreation Division has had a License Agreement for the priority use of ballfields at Dorn Park with Sandusky Central Catholic Schools for the past numerous years which has worked well for both parties. Because of the success of the agreement with the schools, it would be beneficial to enter into another agreement.

In the past, each league was given the option to do an in-kind permanent improvement or to pay cash for half of the expenses of the fields in which they would like to utilize. Each entity has agreed to continue to maintain the ball fields they use by dragging, litter pick up, and assist with mowing and trimming duties.

### **BUDGET IMPACT:**

The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ACTION REQUESTED:** It is requested that legislation be approved authorizing the City Manager to enter into a License Agreement with Sandusky Central Catholic Schools for seasonal priority use of the listed ballfields above. It is further requested that the legislation take immediate effect in full accordance with Section 14 of the City Charter in order to immediately execute the License Agreement retroactively and prior to the start of the 2023 season, which began on March 1, 2023.

I concur with this recommendation:

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Jason Werling  
Recreation Superintendent

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John Orzech  
Interim City Manager

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A THREE (3) YEAR LICENSE AGREEMENT WITH SANDUSKY CITY SCHOOLS FOR PRIORITY USE OF FIELD #6 LOCATED AT DORN COMMUNITY PARK FOR SANDUSKY HIGH SCHOOL'S VARSITY AND JUNIOR VARSITY SOFTBALL PROGRAMS (MARCH 1<sup>ST</sup> THROUGH MAY 31<sup>ST</sup>) BEGINNING MARCH 1, 2023; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the Sandusky City Schools has utilized the City's ballfields for many years and desires to have priority use of Field #6 located at Dorn Community Park for Sandusky High School's Varsity and Junior Varsity Softball Programs during the season of March 1, 2023, through May 31, 2023, as documented in the schedules marked Exhibit "A" attached and incorporated in the License Agreement; and

**WHEREAS**, the initial term of the License Agreement will commence March 1, 2023, through May 31, 2025, during the softball season from March 1<sup>st</sup> through May 31<sup>st</sup>, with an option for an additional three (3) year period; and

**WHEREAS**, it is necessary for the City to grant the Sandusky City Schools permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, the Sandusky City Schools is willing to perform routine maintenance on the ball field areas under the direction of the Recreation Superintendent in exchange for the priority use of the ball fields; and

**WHEREAS**, this agreement will not result in any additional budgetary expenses and the City will benefit from the agreed upon routine maintenance to be performed by Sandusky City Schools; 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 immediately execute the agreement as the season began on March 1, 2023; 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 Recreation, 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 three (3) year License Agreement with Sandusky City Schools for priority use of field #6 located at Dorn Community Park for the Sandusky High School's Varsity and Junior Varsity Softball Programs during the softball season of March 1<sup>st</sup> through May 31<sup>st</sup>, beginning March 1, 2023, through May 31, 2025, substantially in the same form as Exhibit "1", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023

## **LICENSE AGREEMENT**

This Agreement made on and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between the City of Sandusky, Ohio, a Chartered Municipality, 240 Columbus Avenue, Sandusky, Ohio, hereinafter referred to as "City" and the Sandusky City Schools, 407 Decatur Street, Sandusky, Ohio, hereinafter referred to as "Licensee" for the purpose of utilizing Field No. 6 located at Dorn Community Park from March 1, 2023 through May 31, 2025.

**WHEREAS**, Sandusky City Schools desire to have priority use of Field No. 6 located at Dorn Community Park for the Sandusky High School Girl's Varsity and Junior Varsity Softball Programs beginning in CY 2023 for the season March 1, 2023, through May 31, 2025, as documented in the schedules marked Exhibit "A" attached and specifically incorporated as if fully rewritten herein; and

**WHEREAS**, it is necessary for the City to grant the Licensee permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, Licensee is willing to perform routine maintenance on the ball field areas under the direction of the Recreation Superintendent of the City in exchange for the priority use of the specific ball fields delineated in this license agreement; and

**WHEREAS**, the City and the Licensee understand and acknowledge they need to work cooperatively to insure that all City ball fields are equitably shared and available.

**NOW, THEREFORE**, the parties agree as follows:

**SECTION ONE**  
**GRANT OF LICENSE**

The City hereby grants to Licensee and to Licensee's students, members, guests, volunteers and invitees the right, privilege and permission to enter into and on certain tracts of real property owned by the City, known as Field No. 6 located at Dorn Community Park.

**SECTION TWO**  
**TERM**

The City grants to the Licensee the priority use of the above-described ball fields during the Licensee's yearly Girl's Varsity and Junior Varsity Softball schedules, for a period commencing March 1, 2023, through May 31, 2025.

This License may be granted for an additional three (3) year period from April 1, 2026, through May 31, 2028, upon written agreement by the Parties.

The City and Licensee shall meet annually prior to December 31 of each year of this Agreement beginning in CY 2023 to make any necessary adjustments required due to the scheduling of Girl's Varsity and Junior Varsity softball games for the following year.

The City shall have the option to modify this License Agreement pursuant to Section 9 of this Agreement in the event that the ball fields become unavailable for use, through no fault of the parties, which necessitates necessary public improvements.



### **SECTION THREE** **CONSIDERATION**

In addition to furthering the City's public purpose of equitably sharing the City's ball fields and avoiding scheduling conflicts, the priority use privilege granted by this Agreement is in exchange for the Licensee's Agreement to perform routine maintenance to the ball field areas and property described in Section One of this Agreement under the direction of the Director of Recreation of the City, which includes, but is not necessarily limited to, preparing, dragging and lining playing surfaces prior to each scheduled game, mowing, trimming, and making repairs to fencing and turf.

Licensee acknowledges and understands that the specific plans for repairs to the fencing and turf and any other improvements shall be pre-approved by the City Manager or their designee and shall satisfy any applicable legal requirements contained in the City's Codified Ordinances including all necessary permits and that once completed become part of the real property of the Dorn Community Park owned by the City.

Licensee agrees not to erect or cause to be erected on the property described in Section One any buildings or structures, whether permanent or temporary, without securing the prior approval of the City Manager or their designee pursuant to this Agreement.

### **SECTION FOUR** **INDEMNIFICATION**

In consideration of the privilege granted by this Agreement, Licensee agrees to indemnify, defend, and save the City harmless from all loss, liability,

cost or damages in connection with or on account of any injuries or damages that may occur or be claimed with respect to any person or property in or on the above-described property while being used by Licensee and Licensee's students, members, guests, volunteers or invitees unless the injuries or damages are the result of the sole negligence of the City or its employees, agents or contractors.

During the term of this Agreement for any priority use period Licensee shall secure, pay premiums for, and furnish certificates to the City annually and in advance of the start of each baseball and softball season for the following:

- a. Public liability insurance protecting the City and Licensee, and their respective agents, officers, employees, officials, and volunteers because of liability incurred in the performance of the terms of this Agreement when such liability is imposed on account of injury or death of a person or persons, such policy to provide limits on account of an accident resulting in injury or death to one person of not less than One Million Dollars and a liability limit on account of any accident resulting in injury or death to more than one person of not less than Two Million Dollars.
- b. Property damage insurance protecting the City and Licensee and their respective agents, officers, employees, officials and volunteers in the performance of the terms of this Agreement, such policy to provide for a limitation on account of each accident of not less than One Million Dollars.

All such insurance policies shall name the City and Licensee and shall inure to the benefit of City and Licensee and their agents, officers, employees, officials, and volunteers. Such insurance policies shall require immediate notification to both City and Licensee of any cancellation or material change in the insurance coverage.

## **SECTION FIVE**

## **MAINTENANCE AND OTHER OBLIGATIONS**

Licensee agrees that during all times of use of Field No. 6 located at Dorn Community Park all applicable Park rules and regulations promulgated by the City shall be enforced and adhered to including, but not necessarily limited to, the following:

The Sandusky Parks and Recreation Department's Rules and Regulations for all Organized Leagues. The City does not allow the consumption of alcoholic beverages in City ball fields or City parks. Licensee shall clean up and dispose of any refuse resulting from the use of the ball fields and shall remind spectators, parents, players and coaches to be respectful of residents in the area by not parking and/or trespassing on private property.

## **SECTION SIX GOVERNING LAW**

It is agreed that this License Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.

## **SECTION SEVEN TERMINATION**

Either party may terminate this Agreement upon written notification to the other party:

City of Sandusky:  
c/o City Manager  
240 Columbus Avenue  
Sandusky, OH 44870

Licensee:  
c/o Athletic Director  
Sandusky High School  
2130 Hayes Avenue  
Sandusky, OH 44870

## **SECTION EIGHT ASSIGNMENT**

This Agreement may not be assigned by either Party or by operation of law to any other person, firm, or entity without the express written approval of the other Party.

## **SECTION NINE MODIFICATIONS**

This Agreement may be amended by the parties at any time but any amendment must be in writing and signed by each Party.

## **SECTION TEN CAUSE BEYOND REASONABLE CONTROL**

Either Party will be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the Party. However, to be excused from delay or failure to perform, the Party must act diligently to remedy the cause of the delay or failure.

## **SECTION ELEVEN JOINT DRAFTING AND NEUTRAL CONSTRUCTION**

This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement

was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.

**SECTION TWELVE**  
**VALIDITY OF AGREEMENT**

If any term, provision, covenant, or condition of this Agreement is held by a Court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

**SECTION THIRTEEN**  
**ENTIRE AGREEMENT**

This Agreement, including Exhibit "A", contains the entire Agreement of the Parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the Party to be changed.

**SIGNATURE PAGES TO FOLLOW**



IN WITNESS WHEREOF, the City Commission of the City of Sandusky, Ohio, have caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

CITY OF SANDUSKY:

John Orzech  
Interim City Manager

STATE OF OHIO )  
 ) ss:  
ERIE COUNTY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared John Orzech, Interim City Manager of the City of Sandusky, Ohio, and acknowledged his execution of the foregoing instrument as said officer of said City on behalf of said City and by its authority and that the same is his voluntary act and deed as said officer on behalf of said City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

NOTARY PUBLIC

LICENSEE:

---

Shawn Coakley, Athletic Director  
Sandusky High School

STATE OF OHIO )  
                          ) ss:  
ERIE COUNTY    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared Shawn Coakley, Athletic Director, Sandusky High School and acknowledged his execution of the foregoing instrument as said Licensee on behalf of Sandusky High School and that the same is his voluntary act and deed as said Licensee on behalf of Sandusky High School.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

---

NOTARY PUBLIC

Approved as to Form:

---

Sarah S. Chiappone (#0101179)  
Assistant Law Director, City of Sandusky

## **EXHIBIT "A"**

Sandusky High School Girl's Varsity and Junior Varsity Softball Programs Schedules

March 1, 2023 through May 31, 2023

DRAFT

# Girls Varsity Softball

**Sandusky City Schools**  
2130 Hayes Ave  
Sandusky, OH 44870-4786

**2022-23 Season**

Shawn Coakley  
WCoakley@scs-k12.net  
(419) 984-1075

Date	Time	Type	Opponent	Site	Dismiss	Depart
3/25/2023 Sat	11:00 AM	NL	St. Mary Central Catholic High School	St. Mary Central Catholic High School - Dorn Park (Field #5)	N/A	N/A
3/29/2023 Wed	4:45 PM	L	Perkins High School	Sandusky City Schools - Dorn Park	N/A	N/A
4/1/2023 Sat	1:00 PM	NL	Western Reserve - Collins HS/MS	Sandusky City Schools - Dorn Park	N/A	N/A
4/4/2023 Tue	4:45 PM	L	Vermilion High School	Vermilion High School - Softball Diamond	N/A	12:00 PM
4/5/2023 Wed	4:45 PM	L	Clyde High School	Clyde High School - Clyde High School	N/A	N/A
4/7/2023 Fri	4:15 AM	NL	Monroeville JH / High School	Sandusky City Schools - Dorn Park	N/A	N/A
4/10/2023 Mon	4:45 PM	L	Bellevue High/Middle School	Sandusky City Schools - Dorn Park	N/A	N/A
4/12/2023 Wed	4:45 PM	L	Norwalk City Schools	Norwalk High School - Softball Field	N/A	N/A
4/14/2023 Fri	4:45 PM	L	Tiffin City Schools	Sandusky City Schools - Dorn Park	N/A	N/A
4/17/2023 Mon	4:45 PM	L	Perkins High School	Perkins High School - Perkins Softball Facility	N/A	N/A
4/20/2023 Thu	5:30 PM	NL	Start High School	Rich Arbinger Field at Bowman Park - Start HS Softball Complex at Bowman Park	N/A	N/A
4/21/2023 Fri	5:00 PM	NL	Danbury Middle/High School	Danbury Middle/High School - Softball Diamond	N/A	N/A
4/22/2023 Sat	11:00 AM	L	Huron High School	Woodlands Intermediate School - Softball Field in back of Woodlands	N/A	N/A
4/22/2023 Sat	1:00 PM	L	Huron High School	Woodlands Intermediate School - Softball Field in back of Woodlands	N/A	N/A
4/24/2023 Mon	4:45 PM	L	Vermilion High School	Sandusky City Schools - Dorn Park	N/A	N/A
4/25/2023 Tue	4:45 PM	L	Bellevue High/Middle School	Bellevue High School - Softball Diamond	N/A	N/A
4/26/2023 Wed	4:45 PM	L	Clyde High School	Sandusky City Schools - Dorn Park	N/A	N/A
4/27/2023 Thu	4:45 PM	NL	LORAIN HIGH SCHOOL - softball	Sandusky City Schools - Dorn Park	N/A	N/A

5/1/2023 Mon	4:45 PM	L	Norwalk City Schools	Sandusky City Schools - Dorn Park	N/A	N/A
5/3/2023 Wed	4:45 PM	L	Tiffin City Schools	Columbian High School - Tornado Softball Field	N/A	N/A
5/8/2023 Mon	4:45 PM	NL	Port Clinton High School	Port Clinton High School - Softball Field	N/A	N/A
5/9/2023 Tue	5:00 PM	NL	Seneca East High/Middle School	Sandusky City Schools - Dorn Park	N/A	N/A
5/10/2023 Wed	5:00 PM	NL	Fremont City Schools	Fremont Ross HS - Fremont field 2	N/A	N/A

Game types: P = Practice, S = Scrimmage, L = League, NL = Non League, T = Tournament, PS = Postseason

Printed from ArbiterLive.com



# Girls Junior Varsity Softball

**Sandusky City Schools**  
2130 Hayes Ave  
Sandusky, OH 44870-4786

**2022-23 Season**

Shawn Coakley  
WCoakley@scs-k12.net  
(419) 984-1075

Date	Time	Type	Opponent	Site	Dismiss	Depart
3/29/2023 Wed	4:45 PM	L	Perkins High School	Perkins High School - Perkins Softball Facility	N/A	N/A
4/1/2023 Sat	11:00 AM	NL	Western Reserve - Collins HS/MS	Sandusky City Schools - Dorn Park	N/A	N/A
4/4/2023 Tue	4:45 PM	L	Vermilion High School	Sandusky City Schools - Dorn Park	N/A	N/A
4/5/2023 Wed	4:45 PM	L	Clyde High School	Sandusky City Schools - Dorn Park	N/A	N/A
4/7/2023 Fri	4:15 AM	NL	Monroeville JH / High School	Monroeville JH / High School - Clark Park Softball	N/A	N/A
4/10/2023 Mon	4:45 PM	L	Bellevue High/Middle School	Bellevue High School - Softball Diamond	N/A	N/A
4/12/2023 Wed	4:45 PM	L	Norwalk City Schools	Sandusky City Schools - Dorn Park	N/A	N/A
4/14/2023 Fri	4:45 PM	L	Tiffin City Schools	Columbian High School - Tornado Softball Field	N/A	N/A
4/17/2023 Mon	4:45 PM	L	Perkins High School	Sandusky City Schools - Dorn Park	N/A	N/A
4/24/2023 Mon	4:45 PM	L	Vermilion High School	Vermilion High School - Softball Diamond	N/A	N/A
4/25/2023 Tue	4:45 PM	L	Bellevue High/Middle School	Sandusky City Schools - Dorn Park	N/A	N/A
4/26/2023 Wed	4:45 PM	L	Clyde High School	Clyde High School - Clyde High School	N/A	N/A
4/29/2023 Sat	11:00 AM	L	Vermilion High School	Vermilion High School - Softball Diamond	N/A	N/A
5/1/2023 Mon	4:45 PM	L	Norwalk City Schools	Norwalk High School - Softball Field	N/A	N/A
5/3/2023 Wed	4:45 PM	L	Tiffin City Schools	Sandusky City Schools - Dorn Park	N/A	N/A
5/9/2023 Tue	5:00 PM	NL	Seneca East High/Middle School	Seneca East High/Middle School - Softball Field	N/A	N/A
5/10/2023 Wed	4:45 PM	NL	Fremont City Schools - Junior Varsity	Sandusky City Schools - Dorn Park	N/A	N/A

Game types: P = Practice, S = Scrimmage, L = League, NL = Non League, T = Tournament, PS = Postseason

Printed from ArbiterLive.com





## PARKS & RECREATION

1918 Mills Street  
Sandusky, Ohio 44870  
419.627.5886

[www.cityofsandusky.com/recreation](http://www.cityofsandusky.com/recreation)

To: John Orzech, Interim City Manager

From: Jason Werling, Recreation Superintendent

Date: March 14, 2023

Subject: Commission Agenda Item

### **ITEMS FOR CONSIDERATION:**

Legislation to enter into a one-year, License Agreement with the Sandusky Travelers Baseball Academy for priority use of Rather Field at Jaycee Park South beginning April 1, 2023 through October 31, 2023 with an additional one-year option for 2024.

### **BACKGROUND INFORMATION:**

The City of Sandusky Recreation Division has worked with the Sandusky Travelers Baseball Academy, for many years for use of Rather Field at Jaycee Park. Because of the success of the continued use and upkeep of the park area, it would be beneficial to enter into this agreement.

The Sandusky Travelers Baseball Academy has taken on more responsibility to maintain the ball fields they use by dragging, litter pick up, and assist with mowing and trimming duties which is a tremendous help to the City.

### **BUDGET IMPACT:**

The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ACTION REQUESTED:** It is requested that legislation be approved authorizing the City Manager to enter into a License Agreement with Sandusky Travelers Baseball Academy for seasonal priority use of Rather Field at Jaycee Park. It is further requested that the legislation take immediate effect in full accordance with Section 14 of the City Charter in order to execute the agreement prior to the start of the season which begins on of April 1, 2023.

I concur with this recommendation:

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Jason Werling  
Recreation Superintendent

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John Orzech  
Interim City Manager

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A THREE (3) YEAR LICENSE AGREEMENT WITH SANDUSKY CENTRAL CATHOLIC SCHOOL FOR PRIORITY USE OF FIELD #5 AND FIELD #9 LOCATED AT DORN COMMUNITY PARK FOR THE SANDUSKY CENTRAL CATHOLIC HIGH SCHOOL BASEBALL AND SOFTBALL PROGRAMS (MARCH 1<sup>ST</sup> THROUGH MAY 31<sup>ST</sup>) BEGINNING MARCH 1, 2023; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the Sandusky Central Catholic School has utilized the City's ballfields for many years and desires to have priority use of Field #5 and Field #9 located at Dorn Community Park for the Sandusky Central Catholic High School Baseball and Softball Programs for the season March 1, 2023, through May 31, 2023, as documented in the schedules marked Exhibit "A" attached and incorporated in the License Agreement; and

**WHEREAS**, the initial term of the License Agreement will commence March 1, 2023, through May 31, 2025, during the softball season from March 1<sup>st</sup> through May 31<sup>st</sup>, with an option for an additional three (3) year period; and

**WHEREAS**, it is necessary for the City to grant the Sandusky Central Catholic School permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, the Sandusky Central Catholic School is willing to perform routine maintenance to the ball field areas under the direction of the Recreation Superintendent in exchange for the priority use of the ball fields; and

**WHEREAS**, this agreement will not result in any additional budgetary expenses and the City will benefit from the agreed upon routine maintenance to be performed by the Sandusky Central Catholic School; 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 immediately execute the agreement as the season began on March 1, 2023; 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 Recreation, 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 three (3) year License Agreement with Sandusky Central Catholic School for priority use of Field #5 and Field #9 located at Dorn Community Park for the Sandusky Central Catholic High School Baseball and Softball Programs (March 1<sup>st</sup> through May 31<sup>st</sup>) beginning March 1, 2023, through May 31, 2023, substantially in the same form as Exhibit "1", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023

### **LICENSE AGREEMENT**

This Agreement made on and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between the City of Sandusky, Ohio, a Chartered Municipality, 240 Columbus Avenue, Sandusky, Ohio, hereinafter referred to as "City" and the Sandusky Central Catholic School, 410 West Jefferson Street, Sandusky, Ohio, hereinafter referred to as "Licensee" for the purpose of utilizing Fields #5 and #9 located at Dorn Community Park from March 1, 2023, through May 31, 2025. .

**WHEREAS**, the Sandusky Central Catholic School desires to have priority use of Fields #5 and #9 located at Dorn Community Park for the Sandusky Central Catholic High School Baseball and Softball Programs beginning CY 2023 for the season March 1<sup>st</sup> through May 31<sup>st</sup> of each calendar year of this agreement, as documented in the schedules marked Exhibit "A" attached and specifically incorporated as if fully rewritten herein; and

**WHEREAS**, it is necessary for the City to grant the Licensee permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, Licensee is willing to perform routine maintenance on the ball field areas under the direction of the Recreation Superintendent of the City in exchange for the priority use of the specific ball fields delineated in the license agreement; and

**WHEREAS**, the City and the Licensee understand and acknowledge they need to work cooperatively to insure that all City ball fields are equitably shared and available.

**NOW, THEREFORE**, the parties agree as follows:

**SECTION ONE**  
**GRANT OF LICENSE**

The City hereby grants to Licensee and to Licensee's students, members, guests, volunteers and invitees the right, privilege and permission to enter into and on certain tracts of real property owned by the City, known as Fields #5 and #9 located at Dorn Community Park.

**SECTION TWO**  
**TERM**

The City grants to the Licensee the priority use of the above-described ball fields from March 1<sup>st</sup> through May 31 of each year of this agreement for the Licensee's yearly Junior Varsity and Varsity baseball and softball schedules. The term of this agreement shall be March 1, 2023, through May 31, 2025.

This License may be granted for an additional three (3) year period from March 1, 2026, through May 31, 2028, upon written agreement by the Parties.

The City and Licensee shall meet annually prior to December 31 of each year of this Agreement beginning in CY 2023 to make any necessary adjustments required due to the scheduling of Junior Varsity and Varsity baseball and softball games for the following year.

The City shall have the option to modify this License Agreement pursuant to Section 9 of this Agreement in the event that the ball fields become unavailable for use, through no fault of the parties, which necessitates necessary public improvements.

### **SECTION THREE** **CONSIDERATION**

In addition to furthering the City's public purpose of equitably sharing the City's ball fields and avoiding scheduling conflicts, the priority use privilege granted by this Agreement is in exchange for the Licensee's Agreement to perform routine maintenance to the ball field areas and property described in Section One of this Agreement under the direction of the Recreation Superintendent of the City, which includes, but is not necessarily limited to, preparing, dragging and lining playing surfaces prior to each scheduled game, mowing, trimming, and making repairs to fencing and turf.

Licensee acknowledges and understands that the specific plans for repairs to the fencing and turf and any other improvements, shall be pre-approved by the City Manager or their designee and shall satisfy any applicable legal requirements contained in the City's Codified Ordinances including all necessary permits and that once completed become part of the real property of the Dorn Community Park owned by the City.

Licensee agrees not to erect or cause to be erected on the property described in Section One any buildings or structures, whether permanent or temporary, without securing the prior approval of the City Manager or their designee pursuant to this Agreement.

### **SECTION FOUR** **INDEMNIFICATION**

In consideration of the privilege granted by this Agreement, Licensee agrees to indemnify, defend, and save the City harmless from all loss, liability, cost or damages in connection with or on account of any injuries or damages that



may occur or be claimed with respect to any person or property in or on the above-described property while being used by Licensee and Licensee's students, members, guests, volunteers or invitees unless the injuries or damages are the result of the sole negligence of the City or its employees, agents or contractors.

During the term of this Agreement for any priority use period Licensee shall secure, pay premiums for, and furnish certificates to the City annually and in advance of the start of each baseball season for the following:

- a. Public liability insurance protecting the City and Licensee, and their respective agents, officers, employees, officials, and volunteers because of liability incurred in the performance of the terms of this Agreement when such liability is imposed on account of injury or death of a person or persons, such policy to provide limits on account of an accident resulting in injury or death to one person of not less than One Million Dollars and a liability limit on account of any accident resulting in injury or death to more than one person of not less than Two Million Dollars.
- b. Property damage insurance protecting the City and Licensee and their respective agents, officers, employees, officials and volunteers in the performance of the terms of this Agreement, such policy to provide for a limitation on account of each accident of not less than One Million Dollars.

All such insurance policies shall name the City and Licensee and shall inure to the benefit of City and Licensee and their agents, officers, employees, officials, and volunteers. Such insurance policies shall require immediate notification to both City and Licensee of any cancellation or material change in the insurance coverage.

## **SECTION FIVE**

## **MAINTENANCE AND OTHER OBLIGATIONS**

Licensee agrees that during all times of use of Fields #5 and #9 located at Dorn Community Park the Sandusky Parks and Recreation Department's Rules and Regulations for all Organized Leagues and all applicable Park rules promulgated by the City shall be enforced and adhered to including, but not limited to, the following:

The Sandusky Parks and Recreation Department's Rules and Regulations for all Organized Leagues. The City does not allow the consumption of alcoholic beverages in City ball fields or City parks. Licensee shall clean up and dispose of any refuse resulting from the use of the ball fields and shall remind spectators, parents, players and coaches to be respectful of residents in the area by not parking and/or trespassing on private property.

## **SECTION SIX GOVERNING LAW**

It is agreed that this License Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.

## **SECTION SEVEN TERMINATION**

Either party may terminate this Agreement upon written notification to the other party:

City of Sandusky:  
c/o City Manager  
240 Columbus Avenue  
Sandusky, OH 44870

Licensee:  
c/o Athletic Director  
Sandusky Central Catholic School  
410 West Jefferson Street  
Sandusky, OH 44870

## **SECTION EIGHT** **ASSIGNMENT**

This Agreement may not be assigned by either Party or by operation of law to any other person, firm, or entity without the express written approval of the other Party.

## **SECTION NINE** **MODIFICATIONS**

This Agreement may be amended by the parties at any time but any amendment must be in writing and signed by each Party.

## **SECTION TEN** **CAUSE BEYOND REASONABLE CONTROL**

Either Party will be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the Party. However, to be excused from delay or failure to perform, the Party must act diligently to remedy the cause of the delay or failure.

## **SECTION ELEVEN** **JOINT DRAFTING AND NEUTRAL CONSTRUCTION**

This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.

**SECTION TWELVE**  
**VALIDITY OF AGREEMENT**

If any term, provision, covenant, or condition of this Agreement is held by a Court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

**SECTION THIRTEEN**  
**ENTIRE AGREEMENT**

This Agreement, including Exhibit “A”, contains the entire Agreement of the Parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the Party to be changed.

**SIGNATURE PAGES TO FOLLOW**

**IN WITNESS WHEREOF**, the City Commission of the City of Sandusky, Ohio, have caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

CITY OF SANDUSKY:

John Orzech  
Interim City Manager

STATE OF OHIO )  
 ) ss:  
ERIE COUNTY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared John Orzech, Interim City Manager of the City of Sandusky, Ohio, and acknowledged his execution of the foregoing instrument as said officer of said City on behalf of said City and by its authority and that the same is his voluntary act and deed as said officer on behalf of said City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

NOTARY PUBLIC

LICENSEE:

---

Toby Notestine, Athletic Director  
Sandusky Central Catholic School

STATE OF OHIO )  
                          ) ss:  
ERIE COUNTY    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared Toby Notestine, Athletic Director, Sandusky Central Catholic School, and acknowledged his execution of the foregoing instrument as said Licensee on behalf of Sandusky Central Catholic School and that the same is his voluntary act and deed as said Licensee on behalf of Sandusky Central Catholic School.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

---

NOTARY PUBLIC

Approved as to Form:

---

Sarah A. Chiappone (#0101179)  
Assistant Law Director, City of Sandusky

## **EXHIBIT "A"**

**Sandusky Central Catholic High School Baseball and Softball Programs Schedules**

**March 1, 2023, through May 31, 2023**

DRAFT

# Boys Varsity Baseball

**St. Mary Central Catholic  
High School**  
410 W. Jefferson St.  
Sandusky, OH 44870

**2022-23 Season**

Steve Ruthsatz  
sruthsatz@sanduskycc.org  
(419) 626-1892

Date	Time	Type	Opponent	Site	Dismiss	Depart
3/17/2023 Fri	5:00 PM	S	Plymouth High/Middle School	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
3/20/2023 Mon	4:45 PM	S	Woodmore HS/MS	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
3/25/2023 Sat	11:00 AM	NL	Sandusky City Schools	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
3/28/2023 Tue	5:00 PM	NL	St. Paul High/Jr. High School (Norwalk)	Contractors Park - Contractors Baseball Field	N/A	N/A
3/29/2023 Wed	5:00 PM	L	Gibsonburg Middle/High School	Sandusky DORN PARK - Field #4 (SMCC HS Bb Field)	N/A	N/A
3/31/2023 Fri	5:00 PM	L	Hopewell-Loudon High School	Hopewell-Loudon HS - Baseball Field	N/A	N/A
4/1/2023 Sat	11:00 AM	NL	Margaretta High School	Lion's Park - Varsity Baseball Field	N/A	N/A
4/3/2023 Mon	5:00 PM	L	Lakota High School	St. Mary Central Catholic High School - Dorn Park	N/A	N/A
4/4/2023 Tue	5:00 PM	NL	Edison Local Schools	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
4/5/2023 Wed	5:00 PM	L	New Riegel High School	New Riegel High School - Baseball Field	N/A	N/A
4/10/2023 Mon	5:00 PM	L	Old Fort High School	Sandusky DORN PARK - Field #4 (SMCC HS Bb Field)	N/A	N/A
4/11/2023 Tue	5:00 PM	NL	Oak Harbor High/Middle School	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
4/12/2023 Wed	5:00 PM	L	St. Joseph Central Catholic High School	fremont NADERER COMPLEX (Fremont St Joe HS) - Tom Rich Field #2 Baseball Only)	N/A	N/A
4/13/2023 Thu	5:00 PM	NL	Bucyrus High/Middle School	Bucyrus High/Middle School - Bucyrus HS Baseball Field	N/A	N/A
4/14/2023 Fri	5:00 PM	L	Calvert High School	Calvert Field House - Baseball Field	N/A	N/A
4/15/2023 Sat	12:00 PM	NL	Western Reserve - Collins HS/MS	Collins-Western Reserve HS/MS - baseball field	N/A	N/A
4/19/2023 Wed	5:00 PM	L	Danbury Middle/High School	Danbury Middle/High School - Baseball Diamond	N/A	N/A
4/21/2023	5:00		Gibsonburg	Hilfiker Elementary School - Baseball field	N/A	N/A



Fri	PM	L	Middle/High School	Lincoln Elementary School - Baseball Field	N/A	N/A
4/24/2023 Mon	5:00 PM	L	Hopewell-Loudon High School	Sandusky DORN PARK - Field #4 (SMCC HS Bb Field)	N/A	N/A
4/25/2023 Tue	5:00 PM	L	St. Joseph Central Catholic High School	St. Mary Central Catholic High School - Dorn Park	N/A	N/A
4/26/2023 Wed	5:00 PM	L	Lakota High School	Lakota High School - Baseball Field	N/A	N/A
4/27/2023 Thu	5:00 PM	NL	New London High School/Middle School	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
4/28/2023 Fri	5:00 PM	L	New Riegel High School	Sandusky DORN PARK - Field #4 (SMCC HS Bb Field)	N/A	N/A
4/29/2023 Sat	10:00 AM	L	Huron High School	Woodlands Intermediate School - Baseball Field in back of Woodlands.	N/A	N/A
5/4/2023 Thu	5:00 PM	NL	Port Clinton High School	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
5/5/2023 Fri	5:00 PM	L	Calvert High School	Sandusky DORN PARK - Field #4 (SMCC HS Bb Field)	N/A	N/A
5/6/2023 Sat	11:00 AM	NL	Monroeville JH / High School	Monroeville JH / High School - Clark Park Baseball	N/A	N/A
5/10/2023 Wed	5:00 PM	L	Danbury Middle/High School	Sandusky DORN PARK - Field #4 (SMCC HS Bb Field)	N/A	N/A
5/11/2023 Thu	5:00 PM	L	Old Fort High School	Old Fort High School - Baseball Fields	N/A	N/A

Game types: P = Practice, S = Scrimmage, L = League, NL = Non League, T = Tournament, PS = Postseason

Printed from ArbiterLive.com

# Boys Junior Varsity Baseball

**St. Mary Central Catholic  
High School**  
410 W. Jefferson St.  
Sandusky, OH 44870

**2022-23 Season**

Steve Ruthsatz  
sruthsatz@sanduskycc.org  
(419) 626-1892

Date	Time	Type	Opponent	Site	Dismiss	Depart
3/25/2023 Sat	1:00 PM	NL	Sandusky City Schools	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
3/30/2023 Thu	5:00 PM	L	Gibsonburg Middle/High School	Hilfiker Elementary School - Baseball field	N/A	N/A
4/1/2023 Sat	1:00 PM	NL	Margaretta High School	Lion's Park - Varsity Baseball Field	N/A	N/A
4/15/2023 Sat	10:00 AM	NL	Western Reserve - Collins HS/MS	Collins-Western Reserve HS/MS - baseball field	N/A	N/A
4/22/2023 Sat	10:00 AM	NL	Edison Local Schools	Edison High School - Baseball Field	N/A	N/A
4/29/2023 Sat	12:00 PM	L	Huron High School - Squad 1	Woodlands Intermediate School - Baseball Field in back of Woodlands.	N/A	N/A
5/1/2023 Mon	5:00 PM	NL	Bucyrus High/Middle School	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
5/2/2023 Tue	5:00 PM	NL	Perkins High School	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
5/3/2023 Wed	5:00 PM	L	Old Fort High School	St. Mary Central Catholic High School - Dorn Park (Field #4)	N/A	N/A
5/6/2023 Sat	1:00 PM	L	Monroeville JH / High School	Monroeville JH / High School - Clark Park Baseball	N/A	N/A

Game types: P = Practice, S = Scrimmage, L = League, NL = Non League, T = Tournament, PS = Postseason

Printed from ArbiterLive.com

# Girls Varsity Softball

**St. Mary Central Catholic  
High School**  
410 W. Jefferson St.  
Sandusky, OH 44870

**2022-23 Season**

Steve Ruthsatz  
sruthsatz@sanduskycc.org  
(419) 626-1892

Date	Time	Type	Opponent	Site	Dismiss	Depart
3/25/2023 Sat	11:00 AM	NL	Sandusky City Schools	St. Mary Central Catholic High School - Dorn Park (Field #5)	N/A	N/A
3/28/2023 Tue	5:00 PM	NL	St. Paul High/Jr. High School (Norwalk)	Contractors Park - Contractors Softball Field	N/A	N/A
3/29/2023 Wed	5:00 PM	L	Gibsonburg Middle/High School	St. Mary Central Catholic High School - Dorn Park	N/A	N/A
3/31/2023 Fri	5:00 PM	L	Hopewell-Loudon High School	Hopewell-Loudon HS - Softball Field	N/A	N/A
4/3/2023 Mon	5:00 PM	L	Lakota High School	St. Mary Central Catholic High School - Dorn Park	N/A	N/A
4/4/2023 Tue	5:00 PM	NL	Edison Local Schools	St. Mary Central Catholic High School - Dorn Park (Field #5)	N/A	N/A
4/5/2023 Wed	5:00 PM	L	New Riegel High School	New Riegel High School - Softball Field	N/A	N/A
4/10/2023 Mon	5:00 PM	L	Old Fort High School	St. Mary Central Catholic High School - Dorn Park	N/A	N/A
4/12/2023 Wed	5:00 PM	L	St. Joseph Central Catholic High School	fremont NADERER COMPLEX (Fremont St Joe HS) - Field #1 (Varsity Sb Field)	N/A	N/A
4/13/2023 Thu	5:00 PM	NL	Bucyrus High/Middle School	Bucyrus High/Middle School - Bucyrus HS Softball Field	N/A	N/A
4/14/2023 Fri	5:00 PM	L	Calvert High School	Calvert Field House - Softball Field	N/A	N/A
4/15/2023 Sat	10:00 AM	NL	Western Reserve - Collins HS/MS	Collins-Western Reserve HS/MS - SB Field	N/A	N/A
4/15/2023 Sat	12:00 PM	NL	Western Reserve - Collins HS/MS	Collins-Western Reserve HS/MS - SB Field	N/A	N/A
4/19/2023 Wed	5:00 PM	L	Danbury Middle/High School	Danbury Middle/High School - Softball Diamond	N/A	N/A
4/21/2023 Fri	5:00 PM	L	Gibsonburg Middle/High School	Gibsonburg Middle/High School - Softball Field	N/A	N/A
4/24/2023 Mon	5:00 PM	L	Hopewell-Loudon High School	St. Mary Central Catholic High School - Dorn Park	N/A	N/A
4/25/2023 Tue	5:00 PM	L	St. Joseph Central Catholic High School	St. Mary Central Catholic High School - Dorn Park	N/A	N/A
4/26/2023	5:00	L	Lakota High School	Lakota High School - Softball Field	N/A	N/A

Wed	PM	L	Lakota High School	Lakota High School - Softball Field	N/A	N/A
4/27/2023 Thu	5:00 PM	NL	New London High School/Middle School	St. Mary Central Catholic High School - Dorn Park (Field #5)	N/A	N/A
4/28/2023 Fri	5:00 PM	L	New Riegel High School	St. Mary Central Catholic High School - Dorn Park	N/A	N/A
4/29/2023 Sat	10:00 AM	L	Huron High School	Woodlands Intermediate School - Softball Field in back of Woodlands	N/A	N/A
4/29/2023 Sat	12:00 PM	L	Huron High School	Woodlands Intermediate School - Softball Field in back of Woodlands	N/A	N/A
5/4/2023 Thu	5:00 PM	NL	Port Clinton High School	St. Mary Central Catholic High School - Dorn Park (Field #5)	N/A	N/A
5/5/2023 Fri	5:00 PM	L	Calvert High School	St. Mary Central Catholic High School - Dorn Park	N/A	N/A
5/10/2023 Wed	5:00 PM	L	Danbury Middle/High School	St. Mary Central Catholic High School - Dorn Park	N/A	N/A
5/11/2023 Thu	5:00 PM	L	Old Fort High School	Old Fort High School - Softball Fields	N/A	N/A

Game types: P = Practice, S = Scrimmage, L = League, NL = Non League, T = Tournament, PS = Postseason

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## PARKS & RECREATION

1918 Mills Street  
Sandusky, Ohio 44870  
419.627.5886

[www.cityofsandusky.com/recreation](http://www.cityofsandusky.com/recreation)

To: John Orzech, Interim City Manager

From: Jason Werling, Recreation Superintendent

Date: March 14, 2023

Subject: Commission Agenda Item- Priority Use Agreement for Lady Lightning Softball

### **ITEMS FOR CONSIDERATION:**

Legislation to enter into a one-year, License Agreement with the Lady Lightning Fast Pitch for priority use of Dorn Park Fields 1, 2, and 6 from April 1, 2023 through October 31, 2023 with an additional one-year option for 2024.

### **BACKGROUND INFORMATION:**

The Lady Lightning Fast Pitch plans to use the Dorn Fields as their home for the 2023 season. The city maintains priority-use agreements with various leagues throughout the baseball/softball season and those leagues have agreed to continue to maintain the ball fields they use by dragging, litter pick up, and assist with mowing and trimming duties.

Field 6 is also used for the Sandusky High School varsity softball team. If there is a conflict of time, the Lady Lightning team will defer to the varsity team for use of the field.

### **BUDGET IMPACT:**

The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ACTION REQUESTED:** It is requested that legislation be approved authorizing the City Manager to enter into a License Agreement with Lady Lightning Fast Pitch for seasonal priority use of fields 1, 2, and 6 (SHS Varsity Softball Field). It is further requested that the legislation take immediate effect in full accordance with Section 14 of the City Charter in order to execute the License Agreement prior to the start of the season which begins on April 1, 2023.

I concur with this recommendation:

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Jason Werling  
Recreation Superintendent

---

John Orzech  
Interim City Manager

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LICENSE AGREEMENT WITH SANDUSKY TRAVELERS BASEBALL ACADEMY FOR PRIORITY USE OF RATHER FIELD LOCATED AT JAYCEE PARK SOUTH FOR THEIR BASEBALL PROGRAM BEGINNING APRIL 1, 2023, THROUGH OCTOBER 31, 2023; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, Sandusky Travelers Baseball Academy has utilized Rather Field for many years and desires to have priority use of Rather Field located at Jaycee Park South for their baseball program from April 1, 2023, through October 31, 2023, as documented in the schedule marked Exhibit "A" attached and incorporated in the License Agreement; and

**WHEREAS**, the agreement will provide an option for an additional one-year period from April 1, 2024, through October 31, 2024; and

**WHEREAS**, it is necessary for the City to grant Sandusky Travelers Baseball Academy permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, Sandusky Travelers Baseball Academy is willing to perform routine maintenance on the ball field areas under the direction of the Recreation Superintendent in exchange for the priority use of the ball fields; and

**WHEREAS**, this agreement will not result in any additional budgetary expenses and the City will benefit from the agreed upon routine maintenance to be performed by Sandusky Travelers Baseball Academy; 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 execute the License Agreement prior to the start of the season which begins on April 1, 2023; 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 Recreation, 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 License Agreement with Sandusky Travelers Baseball Academy for priority use of Rather Field located at Jaycee Park South for Sandusky Travelers Baseball

Academy Program beginning April 1, 2023, through October 31, 2023, substantially in the same form as Exhibit "1", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023

## **LICENSE AGREEMENT**

This Agreement made on and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between the City of Sandusky, Ohio, a Chartered Municipality, 240 Columbus Avenue, Sandusky, Ohio, hereinafter referred to as "City" and Sandusky Travelers Baseball Academy, 215 Windswood Way, Sandusky, Ohio, 44870, hereinafter referred to as "Licensee" for the purpose of utilizing Rather Field located at Jaycee Park South from April 1, 2023, through October 31, 2023.

**WHEREAS**, Sandusky Travelers Baseball Academy desires to have priority use of Rather Field located at Jaycee Park South beginning April 1, 2023, through October 31, 2023, as documented in the schedules marked Exhibit "A" attached and specifically incorporated as if fully rewritten herein; and

**WHEREAS**, it is necessary for the City to grant the Licensee permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, Licensee is willing to perform routine maintenance on the ball field areas under the direction of the Recreation Superintendent of the City in exchange for the priority use of the specific ball fields delineated in this License Agreement; and

**WHEREAS**, the City and the Licensee understand and acknowledge they need to work cooperatively to insure that all City ball fields are equitably shared and available.

**NOW, THEREFORE**, the parties agree as follows:

### **SECTION ONE** **GRANT OF LICENSE**



The City hereby grants to Licensee and to Licensee's students, members, guests, volunteers and invitees the right, privilege and permission to enter into and on certain tracts of real property owned by the City, known as Rather Field located at Jaycee Park South.

## **SECTION TWO**

### **TERM**

The City grants to the Licensee the priority use of the above-described ball fields during the Licensee's schedules, for a period commencing April 1, 2023, through October 31, 2023. This License may be granted for an additional one-year period from April 1, 2024, through October 31, 2024, upon written agreement by the Parties. If the Parties extend this License, the Licensee shall submit to the City the 2024 schedule prior to the beginning of the season.

The City shall have the option to modify this License Agreement pursuant to Section 9 of this Agreement in the event that the ball fields become unavailable for use, through no fault of the parties, which necessitates necessary public improvements.

## **SECTION THREE**

### **CONSIDERATION**

In addition to furthering the City's public purpose of equitably sharing the City's ball fields and avoiding scheduling conflicts, the priority use privilege granted by this Agreement is in exchange for the Licensee's Agreement to perform routine maintenance to the ball field areas and property described in Section One of this Agreement under the direction of the Recreation Superintendent of the City, which includes, but is not necessarily limited to,

preparing, dragging and lining playing surfaces prior to each scheduled game, mowing, trimming, litter pick up, and making repairs to fencing and turf.

Licensee acknowledges and understands that the specific plans for repairs to the fencing and turf and any other improvements shall be pre-approved by the City Manager or their designee and shall satisfy any applicable legal requirements contained in the City's Codified Ordinances including all necessary permits and that once completed become part of the real property of the Jaycee Park South owned by the City.

Licensee agrees not to erect or cause to be erected on the property described in Section One any buildings or structures, whether permanent or temporary, without securing the prior approval of the City Manager or their designee pursuant to this Agreement.

#### **SECTION FOUR** **INDEMNIFICATION**

In consideration of the privilege granted by this Agreement, Licensee agrees to indemnify, defend, and save the City harmless from all loss, liability, cost or damages in connection with or on account of any injuries or damages that may occur or be claimed with respect to any person or property in or on the above-described property while being used by Licensee and Licensee's students, members, guests, volunteers or invitees unless the injuries or damages are the result of the sole negligence of the City or its employees, agents or contractors.

During the term of this Agreement for any priority use period Licensee shall secure, pay premiums for, and furnish certificates to the City annually and in advance of the start of each baseball and softball season for the following:

- a. Public liability insurance protecting the City and Licensee, and their respective agents, officers, employees, officials, and volunteers because of liability incurred in the performance of the terms of this Agreement when such liability is imposed on account of injury or death of a person or persons, such policy to provide limits on account of an accident resulting in injury or death to one person of not less than One Million Dollars and a liability limit on account of any accident resulting in injury or death to more than one person of not less than Two Million Dollars.
- b. Property damage insurance protecting the City and Licensee and their respective agents, officers, employees, officials and volunteers in the performance of the terms of this Agreement, such policy to provide for a limitation on account of each accident of not less than One Million Dollars.

All such insurance policies shall name the City and Licensee and shall inure to the benefit of City and Licensee and their agents, officers, employees, officials, and volunteers. Such insurance policies shall require immediate notification to both City and Licensee of any cancellation or material change in the insurance coverage.

## **SECTION FIVE**

### **MAINTENANCE AND OTHER OBLIGATIONS**

Licensee agrees that during all times of use of Rather Field located at Jaycee Park South all applicable Park rules and regulations promulgated by the City shall be enforced and adhered to including, but not necessarily limited to, the following:

The Sandusky Parks and Recreation Department's Rules and Regulations for all Organized Leagues. The City does not allow the consumption of alcoholic beverages in City ball fields or City parks. Licensee shall clean up and dispose of

any refuse resulting from the use of the ball fields and shall remind spectators, parents, players and coaches to be respectful of residents in the area by not parking and/or trespassing on private property.

## **SECTION SIX** **GOVERNING LAW**

It is agreed that this License Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.

## **SECTION SEVEN** **TERMINATION**

Either party may terminate this Agreement upon written notification to the other party:

City of Sandusky:  
c/o City Manager  
240 Columbus Avenue  
Sandusky, OH 44870

Licensee:  
Sandusky Travelers Baseball Academy  
c/o Wilbert Farris, Academy President  
215 Windwood Way  
Sandusky, OH 44870

## **SECTION EIGHT** **ASSIGNMENT**

This Agreement may not be assigned by either Party or by operation of law to any other person, firm, or entity without the express written approval of the other Party.

## **SECTION NINE**

### **MODIFICATIONS**

This Agreement may be amended by the parties at any time but any amendment must be in writing and signed by each Party.

## **SECTION TEN**

### **CAUSE BEYOND REASONABLE CONTROL**

Either Party will be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the Party. However, to be excused from delay or failure to perform, the Party must act diligently to remedy the cause of the delay or failure.

## **SECTION ELEVEN**

### **JOINT DRAFTING AND NEUTRAL CONSTRUCTION**

This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.

## **SECTION TWELVE**

### **VALIDITY OF AGREEMENT**

If any term, provision, covenant, or condition of this Agreement is held by a Court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

**SECTION THIRTEEN**  
**ENTIRE AGREEMENT**

This Agreement, including Exhibit “A”, contains the entire Agreement of the Parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the Party to be changed.

**SIGNATURE PAGES TO FOLLOW**

IN WITNESS WHEREOF, the City Commission of the City of Sandusky, Ohio, have caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

CITY OF SANDUSKY:

John Orzech  
Interim City Manager

STATE OF OHIO )  
 ) ss:  
ERIE COUNTY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared John Orzech, Interim City Manager of the City of Sandusky, Ohio, and acknowledged his execution of the foregoing instrument as said officer of said City on behalf of said City and by its authority and that the same is his voluntary act and deed as said officer on behalf of said City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

NOTARY PUBLIC

LICENSEE:

\_\_\_\_\_  
Wilbert Farris, Academy President  
Sandusky Travelers Baseball Academy

STATE OF OHIO )  
                          ) ss:  
ERIE COUNTY    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared Wilbert Farris, Academy President, Sandusky Travelers Baseball Academy and acknowledged his execution of the foregoing instrument as said Licensee on behalf of Sandusky Travelers Baseball Academy School and that the same is his voluntary act and deed as said Licensee on behalf of Sandusky Travelers Baseball Academy.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

Approved as to Form:

\_\_\_\_\_  
Sarah S. Chiappone (#0101179)  
Assistant Law Director, City of Sandusky



## **EXHIBIT "A"**

### **Sandusky Travelers Baseball Academy Schedule**

**April 1, 2023, through October 31, 2023**

DRAFT



## PARKS & RECREATION

1918 Mills Street  
Sandusky, Ohio 44870  
419.627.5886

[www.cityofsandusky.com/recreation](http://www.cityofsandusky.com/recreation)

To: John Orzech, Interim City Manager

From: Jason Werling, Recreation Superintendent

Date: March 14, 2023

Subject: Commission Agenda Item- Priority Use Agreement for Panther Baseball Club

### **ITEMS FOR CONSIDERATION:**

Legislation to enter into a one-year License Agreement with the Panther Baseball Club for priority use of the field located at Kiwanis Park for the Firelands Interleague Baseball League program from April 1, 2023 through July 31, 2023 with an additional one-year option for 2024.

### **BACKGROUND INFORMATION:**

The City of Sandusky has held a Priority Use Agreement with the Firelands Interleague Baseball League from 2017-2022 which has worked well for all parties.

The Panther Baseball League has agreed to continue the responsibility to maintain the ball field by preparing, dragging and lining of the fields prior to games and as well as mowing, trimming, and making repairs to the fencing, concessions stand and storage shed which is a tremendous help to the City.

### **BUDGET IMPACT:**

The agreement will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the Panther Baseball Club.

### **ACTION REQUESTED:**

It is requested that legislation be approved authorizing the City Manager to enter into an Agreement with Panther Baseball Club for seasonal priority use of the Kiwanis Park Ball Field. It is further requested that this be passed to take immediate effect in accordance with Section 14 of the City Charter in order to execute the License Agreement and prior to the start of the season, which begins on April 1, 2023.

I concur with this recommendation:

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Jason Werling  
Recreation Superintendent

---

John Orzech  
Interim City Manager

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LICENSE AGREEMENT WITH LADY LIGHTNING FAST PITCH LEAGUE FOR PRIORITY USE OF FIELDS #1, #2, AND #6 LOCATED AT DORN COMMUNITY PARK FOR THEIR SOFTBALL PROGRAM BEGINNING APRIL 1, 2023, THROUGH OCTOBER 31, 2023; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the Lady Lightning Fast Pitch League utilized Dorn Fields last year and desires to have priority use of Fields #1, #2, and #6 located at Dorn Community Park for their softball program beginning April 1, 2023, through October 31, 2023, as documented in the schedule marked Exhibit "A" attached and incorporated in the License Agreement; and

**WHEREAS**, the agreement will provide an option for an additional one-year period from April 1, 2024, through October 31, 2024; and

**WHEREAS**, it is necessary for the City to grant the Lady Lightning Fast Pitch League permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, the Lady Lightning Fast Pitch League is willing to perform routine maintenance to the ball field areas under the direction of the Recreation Superintendent in exchange for the priority use of the ball fields; and

**WHEREAS**, this agreement will not result in any additional budgetary expenses and the City will benefit from the agreed upon routine maintenance to be performed by the Lady Lightning Fast Pitch League; 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 immediately execute the agreement and prior to the commencing date of April 1, 2023; 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 Recreation, 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 License Agreement with Lady Lightning Fast Pitch League for priority use of Fields #1, #2, and #6 located at Dorn Community Park for their girls softball league

beginning April 1, 2023, through October 31, 2023, substantially in the same form as Exhibit "1", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023

## **LICENSE AGREEMENT**

This Agreement made on and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between the City of Sandusky, Ohio, a Chartered Municipality, 240 Columbus Avenue, Sandusky, Ohio, hereinafter referred to as "City" and Lady Lightning Fast Pitch League, 1214 Waverly Road, Sandusky, Ohio, Sandusky, Ohio, 44870, hereinafter referred to as "Licensee" for the purpose of utilizing Fields No. 1, 2, and 6 located at Dorn Community Park from April 1, 2023, through October 31, 2023.

**WHEREAS**, the Lady Lightning Fast Pitch League to have priority use of Fields No. 1, 2, and 6 located at Dorn Community Park for their Girls Softball Program beginning April 1, 2023, through October 31, 2023, as documented in the schedules marked Exhibit "A" attached and specifically incorporated as if fully rewritten herein; and

**WHEREAS**, it is necessary for the City to grant the Licensee permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, Licensee is willing to perform routine maintenance on the ball field areas under the direction of the Recreation Superintendent of the City in exchange for the priority use of the specific ball fields delineated in this License Agreement; and

**WHEREAS**, the City and the Licensee understand and acknowledge they need to work cooperatively to insure that all City ball fields are equitably shared and available.

**NOW, THEREFORE**, the parties agree as follows:

## **SECTION ONE**

### **GRANT OF LICENSE**

The City hereby grants to Licensee and to Licensee's students, members, guests, volunteers and invitees the right, privilege and permission to enter into and on certain tracts of real property owned by the City, known as Fields No. 1, 2, and 6 located at Dorn Community Park.

## **SECTION TWO**

### **TERM**

The City grants to the Licensee the priority use of the above-described ball fields during the Licensee's schedules, for a period commencing April 1, 2023, through October 31, 2023.

This License may be granted for an additional one (1) year period from April 1, 2024, through October 31, 2024, upon written agreement by the Parties. If the Parties extend this License, the Licensee shall submit to the City the 2024 schedule prior to the beginning of the season.

The City shall have the option to modify this License Agreement pursuant to Section 9 of this Agreement in the event that the ball fields become unavailable for use, through no fault of the parties, which necessitates necessary public improvements.

## **SECTION THREE**

### **CONSIDERATION**

In addition to furthering the City's public purpose of equitably sharing the City's ball fields and avoiding scheduling conflicts, the priority use privilege granted by this Agreement is in exchange for the Licensee's Agreement to

perform routine maintenance to the ball field areas and property described in Section One of this Agreement under the direction of the Recreation Superintendent of the City, which includes, but is not necessarily limited to, preparing, dragging and lining playing surfaces prior to each scheduled game, mowing, trimming, litter pick up, and making repairs to fencing and turf.

Licensee acknowledges and understands that the specific plans for repairs to the fencing and turf and any other improvements shall be pre-approved by the City Manager or their designee and shall satisfy any applicable legal requirements contained in the City's Codified Ordinances including all necessary permits and that once completed become part of the real property of the Dorn Community Park owned by the City.

Licensee agrees not to erect or cause to be erected on the property described in Section One any buildings or structures, whether permanent or temporary, without securing the prior approval of the City Manager or their designee pursuant to this Agreement.

#### **SECTION FOUR** **INDEMNIFICATION**

In consideration of the privilege granted by this Agreement, Licensee agrees to indemnify, defend, and save the City harmless from all loss, liability, cost or damages in connection with or on account of any injuries or damages that may occur or be claimed with respect to any person or property in or on the above-described property while being used by Licensee and Licensee's students, members, guests, volunteers or invitees unless the injuries or damages are the result of the sole negligence of the City or its employees, agents or contractors.

During the term of this Agreement for any priority use period Licensee shall secure, pay premiums for, and furnish certificates to the City annually and in advance of the start of each baseball and softball season for the following:

- a. Public liability insurance protecting the City and Licensee, and their respective agents, officers, employees, officials, and volunteers because of liability incurred in the performance of the terms of this Agreement when such liability is imposed on account of injury or death of a person or persons, such policy to provide limits on account of an accident resulting in injury or death to one person of not less than One Million Dollars and a liability limit on account of any accident resulting in injury or death to more than one person of not less than Two Million Dollars.
- b. Property damage insurance protecting the City and Licensee and their respective agents, officers, employees, officials and volunteers in the performance of the terms of this Agreement, such policy to provide for a limitation on account of each accident of not less than One Million Dollars.

All such insurance policies shall name the City and Licensee and shall inure to the benefit of City and Licensee and their agents, officers, employees, officials, and volunteers. Such insurance policies shall require immediate notification to both City and Licensee of any cancellation or material change in the insurance coverage.

## **SECTION FIVE**

### **MAINTENANCE AND OTHER OBLIGATIONS**

Licensee agrees that during all times of use of Dorn Community Park all applicable Park rules and regulations promulgated by the City shall be enforced and adhered to including, but not necessarily limited to, the following:



The Sandusky Parks and Recreation Department's Rules and Regulations for all Organized Leagues. The City does not allow the consumption of alcoholic beverages in City ball fields or City parks. Licensee shall clean up and dispose of any refuse resulting from the use of the ball fields and shall remind spectators, parents, players and coaches to be respectful of residents in the area by not parking and/or trespassing on private property.

Licensee also acknowledges that Field 6 is utilized by the Sandusky High School Varsity Softball Team. If the Sandusky High School Varsity Softball Team's activities and Licensee's activities have a time conflict, the Licensee shall defer to the Sandusky High School Varsity Softball Team for use of Field 6.

#### **SECTION SIX** **GOVERNING LAW**

It is agreed that this License Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.

#### **SECTION SEVEN** **TERMINATION**

Either party may terminate this Agreement upon written notification to the other party:

City of Sandusky:  
c/o City Manager  
240 Columbus Avenue  
Sandusky, OH 44870

Licensee:  
Lady Lightning Fast Pitch League  
c/o Jen Sartor  
1214 Waverly Road  
Sandusky, OH 44870

## **SECTION EIGHT**

### **ASSIGNMENT**

This Agreement may not be assigned by either Party or by operation of law to any other person, firm, or entity without the express written approval of the other Party.

## **SECTION NINE**

### **MODIFICATIONS**

This Agreement may be amended by the parties at any time but any amendment must be in writing and signed by each Party.

## **SECTION TEN**

### **CAUSE BEYOND REASONABLE CONTROL**

Either Party will be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the Party. However, to be excused from delay or failure to perform, the Party must act diligently to remedy the cause of the delay or failure.

## **SECTION ELEVEN**

### **JOINT DRAFTING AND NEUTRAL CONSTRUCTION**

This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.

**SECTION TWELVE**  
**VALIDITY OF AGREEMENT**

If any term, provision, covenant, or condition of this Agreement is held by a Court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

**SECTION THIRTEEN**  
**ENTIRE AGREEMENT**

This Agreement, including Exhibit “A”, contains the entire Agreement of the Parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the Party to be changed.

**SIGNATURE PAGES TO FOLLOW**

IN WITNESS WHEREOF, the City Commission of the City of Sandusky, Ohio, have caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

CITY OF SANDUSKY:

John Orzech  
Interim City Manager

STATE OF OHIO )  
 ) ss:  
ERIE COUNTY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared John Orzechr, Interim City Manager of the City of Sandusky, Ohio, and acknowledged his execution of the foregoing instrument as said officer of said City on behalf of said City and by its authority and that the same is his voluntary act and deed as said officer on behalf of said City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

NOTARY PUBLIC

LICENSEE:

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Jen Sartor, President  
Lady Lightning Fast Pitch League

STATE OF OHIO )  
                          ) ss:  
ERIE COUNTY    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared Jen Sartor, President of the Lady Lightning Fast Pitch League and acknowledged their execution of the foregoing instrument as said Licensee on behalf of Lady Lightning Fast Pitch League and that the same is their voluntary act and deed as said Licensee on behalf of Lady Lightning Fast Pitch League.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

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NOTARY PUBLIC

Approved as to Form:

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Sarah A. Chiappone (#0101179)  
Assistant Law Director, City of Sandusky

## **EXHIBIT "A"**

Lady Lightning Fast Pitch League Schedule

April 1, 2023, through October 31, 2023

DRAFT



## PARKS & RECREATION

1918 Mills Street  
Sandusky, Ohio 44870  
419.627.5886

[www.cityofsandusky.com/recreation](http://www.cityofsandusky.com/recreation)

To: John Orzech, Interim City Manager

From: Jason Werling, Recreation Superintendent

Date: March 14, 2023

Subject: Commission Agenda Item- Priority Use Agreement for Sandusky AMVETS Baseball

### **ITEMS FOR CONSIDERATION:**

Legislation to enter into a one-year, License Agreement with the Sandusky AMVETS Baseball League for priority use of Amvets Park Erie Blacktop Field and the concession stand located at AMVETS Park and Fields No. #1-#3 and the concession stand located at Sprau Park for the Sandusky AMVETS Baseball League Programs (June 1 through August 15) beginning April 1, 2023 through August 31, 2023 with an additional one-year option for 2024.

### **BACKGROUND INFORMATION:**

The City of Sandusky Recreation Division has had License Agreements for the priority use of ball fields with the Sandusky AMVETS baseball league for the past numerous years which has worked well for all parties. Because of the success of the agreements with the leagues, it would be beneficial to enter into this agreement. During the term of the last agreement, the leagues took more responsibility to maintain the ball fields they use by dragging, litter pick up, and assist with mowing and trimming duties which is a tremendous help to the City.

### **BUDGET IMPACT:**

The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ACTION REQUESTED:** It is requested that legislation be approved authorizing the City Manager to enter into a License Agreement with the Sandusky AMVETS Baseball League for seasonal priority use of the listed ballfields above. It is further requested that the legislation take immediate effect in full accordance with Section 14 of the City Charter in order to execute the License Agreement prior to the start of the season which begins on April 1, 2023.

I concur with this recommendation:

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Jason Werling  
Recreation Superintendent

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John Orzech  
Interim City Manager

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LICENSE AGREEMENT WITH THE PANTHER BASEBALL CLUB FOR PRIORITY USE OF THE KIWANIS PARK BALL FIELD LOCATED AT 2227 FIRST STREET, SANDUSKY, OHIO, FOR THE FIRELANDS INTERLEAGUE BASEBALL LEAGUE PROGRAM BEGINNING MARCH 1, 2023, THROUGH JULY 31, 2023; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the Panther Baseball Club has utilized the City's ballfields since 2017 and desires to have priority use of the Kiwanis Park Ball Field located at 2227 First Street, Sandusky, Ohio for the Firelands Interleague Baseball League Program from April 1, 2023, through July 31, 2023, as documented in the schedule marked Exhibit "A" attached and incorporated in the License Agreement; and

**WHEREAS**, the agreement will provide an option for an additional one-year period from April 1, 2024, through July 31, 2024; and

**WHEREAS**, it is necessary for the City to grant the Panther Baseball Club permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, the Panther Baseball Club will perform routine maintenance to the ball field areas and concession stand, which includes preparing, dragging and lining of playing surfaces prior to each scheduled game, mowing, trimming, and making repairs to the fencing, concessions stand and storage shed, in exchange for the priority use of the baseball field; and

**WHEREAS**, this agreement will not result in any additional budgetary expenses and the City will benefit from the agreed upon maintenance performed by the Panther Baseball Club; 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 execute the agreement prior to the start of the season which begins on April 1, 2023; 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 Recreation, 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 License Agreement with the Panther Baseball Club for priority use of the Kiwanis Park Ball Field located at 2227 First Street, Sandusky, Ohio, for the Firelands Interleague Baseball League Program beginning April 1, 2023, through July 31, 2023, substantially in the same form as Exhibit "1", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023

## **LICENSE AGREEMENT**

This Agreement made on and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 between the City of Sandusky, Ohio, a Chartered Municipality, 240 Columbus Avenue, Sandusky, Ohio, hereinafter referred to as "City" and the Panther Baseball Club, 2806 Woodside Drive, Huron, Ohio, 44839, hereinafter referred to as "Licensee" for the purpose of utilizing the Kiwanis Park Ball Field, concession stand, and storage shed located at 2227 First Street, Sandusky, Ohio from April 1, 2023 through July 31, 2023.

**WHEREAS**, the Panther Baseball Club desires to have priority use of Kiwanis Park Ball Field, concession stand, and storage shed for the Firelands Interleague Baseball League beginning April 1, 2023 through July 31, 2023, which includes games and practices, as documented in the schedules marked Exhibit "A" attached and specifically incorporated as if fully rewritten herein; and

**WHEREAS**, it is necessary for the City to grant the Licensee permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, Licensee is willing to perform routine maintenance to the ball field areas and concession stand under the direction of the Recreation Superintendent of the City in exchange for the priority use of the ball field delineated in this License Agreement; and

**WHEREAS**, the City and the Licensee understand and acknowledge they need to work cooperatively to insure that all City ball fields are equitably shared and available.

**NOW, THEREFORE**, the parties agree as follows:

## **SECTION ONE**

### **GRANT OF LICENSE**

The City hereby grants to Licensee and to Licensee's participants, coaches, members, guests, volunteers and invitees the right, privilege and permission to enter into and on certain tracts of real property owned by the City, known as Kiwanis Park Ball Field, concession stand and storage shed located at 2227 First Street, Sandusky, Ohio.

## **SECTION TWO**

### **TERM**

The City grants to the Licensee the priority use of the above-described ball field, concession stand and storage shed during the Licensee's schedules, for a period commencing April 1, 2023 through July 31, 2023.

This License may be granted for an additional one (1) year period from April 1, 2024, through July 31, 2024, upon written agreement by the Parties. If the Parties extend this License, the Licensee shall submit to the City the 2024 schedule prior to the beginning of the season. The City shall have the option to modify this License Agreement pursuant to Section 9 of this Agreement in the event that the ball field becomes unavailable for use, through no fault of the parties, which necessitates necessary public improvements.

## **SECTION THREE**

### **CONSIDERATION**

In addition to furthering the City's public purpose of equitably sharing the City's ball fields and avoiding scheduling conflicts the priority use privilege granted by this Agreement is in exchange for the Licensee's agreement to

perform routine maintenance to the ball field area and property described in Section One of this Agreement under the direction of the Recreation Superintendent of the City, which includes, but is not necessarily limited to, preparing, dragging and lining of playing surfaces prior to each scheduled game, mowing, trimming, litter pick up, and making repairs to the fencing, concessions stands and storage shed.

Licensee acknowledges and understands that the specific plans for repairs to the fencing, turf and the concession stand and any other improvements shall be pre-approved by the City Manager and shall satisfy any applicable legal requirements contained in the City's Codified Ordinances including all necessary permits and that once completed become part of the real property of the Kiwanis Park owned by the City.

Licensee agrees not to erect or cause to be erected on the property described in Section One any buildings or structures, whether permanent or temporary, without securing the prior approval of the City Manager or their designee pursuant to this Agreement.

#### **SECTION FOUR** **INDEMNIFICATION**

In consideration of the privilege granted by this Agreement, Licensee agrees to indemnify, defend, and save the City harmless from all loss, liability, cost or damages in connection with or on account of any injuries or damages that may occur or be claimed with respect to any person or property in or on the above-described property while being used by Licensee and Licensee's participants, coaches, members, guests, volunteers or invitees unless the injuries

or damages are the result of the sole negligence of the City or its employees, agents or contractors.

During the term of this Agreement for any priority use period Licensee shall secure, pay premiums for, and furnish certificates to the City annually and in advance of the start of each baseball season for the following:

- a. Public liability insurance protecting the City and Licensee, and their respective agents, officers, employees, officials, and volunteers because of liability incurred in the performance of the terms of this Agreement when such liability is imposed on account of injury or death of a person or persons, such policy to provide limits on account of an accident resulting in injury or death to one person of not less than One Million Dollars and a liability limit on account of any accident resulting in injury or death to more than one person of not less than Two Million Dollars.
- b. Property damage insurance protecting the City and Licensee and their respective agents, officers, employees, officials and volunteers in the performance of the terms of this Agreement, such policy to provide for a limitation on account of each accident of not less than One Million Dollars.

All such insurance policies shall name the City and Licensee and shall inure to the benefit of City and Licensee and their agents, officers, employees, officials, and volunteers. Such insurance policies shall require immediate notification to both City and Licensee of any cancellation or material change in the insurance coverage.

## **SECTION FIVE**

### **MAINTENANCE AND OTHER OBLIGATIONS**

Licensee agrees that during all times of use of the Kiwanis Park Ball Field, concession stand, and storage shed located at Kiwanis Park all applicable Park

rules and regulations promulgated by the City shall be enforced and adhered to including, but not necessarily limited to, the following:

The Sandusky Parks and Recreation Department's Rules and Regulations for all Organized Leagues. The City does not allow the consumption of alcoholic beverages in City ball fields or City parks. Licensee is responsible for clean-up and dispose of any refuse resulting from the use of the ball field. Licensee shall remind spectators, parents, players and coaches to be respectful of residents in the area by not parking and/or trespassing on private property.

Kiwanis Park Ball Field, concession stand and storage shed located at Kiwanis Park are a part of the City's Public Park System and as such the City is responsible for all routine maintenance identical to the maintenance provided to all City parks and ball fields, which includes, but is not necessarily limited to, mowing, repairs to fencing, turf, playing surfaces and permanent structures.

## **SECTION SIX**

### **GOVERNING LAW**

It is agreed that this License Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.

## **SECTION SEVEN**

### **TERMINATION**

Either party may terminate this Agreement upon sixty (60) days written notification to the other party:

City of Sandusky:  
c/o City Manager  
240 Columbus Avenue  
Sandusky, OH 44870

Licensee:  
c/o Sean Finneran  
Panther Baseball Club  
2806 Woodside Drive  
Huron, OH 44839

#### **SECTION EIGHT ASSIGNMENT**

This Agreement may not be assigned by either Party or by operation of law to any other person, firm, or entity without the express written approval of the other Party.

#### **SECTION NINE MODIFICATIONS**

This Agreement may be amended at any time and from time to time, but any amendment must be in writing and signed by each Party.

#### **SECTION TEN CAUSE BEYOND REASONABLE CONTROL**

Either Party will be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the Party. However, to be excused from delay or failure to perform, the Party must act diligently to remedy the cause of the delay or failure.

#### **SECTION ELEVEN JOINT DRAFTING AND NEUTRAL CONSTRUCTION**

This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation

shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.

**SECTION TWELVE**  
**VALIDITY OF AGREEMENT**

If any term, provision, covenant, or condition of this Agreement is held by a Court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

**SECTION THIRTEEN**  
**ENTIRE AGREEMENT**

This Agreement, including Exhibit "A" contains the entire Agreement of the Parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the Party to be changed.

**SIGNATURE PAGES TO FOLLOW**



IN WITNESS WHEREOF, the City Commission of the City of Sandusky, Ohio, have caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

CITY OF SANDUSKY:

\_\_\_\_\_  
John Orzech  
Interim City Manager

STATE OF OHIO )  
                          ) ss:  
ERIE COUNTY    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared John Orzech, Interim City Manager of the City of Sandusky, Ohio, and acknowledged his execution of the foregoing instrument as said officer of said City on behalf of said City and by its authority and that the same is his voluntary act and deed as said officer on behalf of said City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

LICENSEE:

\_\_\_\_\_  
Sean Finneran, \_\_\_\_\_  
Panther Baseball Club

STATE OF OHIO )  
                          ) ss:  
ERIE COUNTY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared Sean Finneran, \_\_\_\_\_, Panther Baseball Club, and acknowledged his execution of the foregoing instrument as said Licensee on behalf of Panther Baseball Club and that the same is his voluntary act and deed as said Licensee on behalf of said Panther Baseball Club.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

Approved as to Form:

\_\_\_\_\_  
Sarah A. Chiappone (#0101179)  
Assistant Law Director, City of Sandusky

## **EXHIBIT "A"**

### **Firelands Interleague Baseball League Schedule**

April 1, 2023 through July 31, 2023

DRAFT



## PARKS & RECREATION

1918 Mills Street  
Sandusky, Ohio 44870  
419.627.5886  
[www.cityofsandusky.com/recreation](http://www.cityofsandusky.com/recreation)

To: John Orzech, Interim City Manager

From: Jason Werling, Recreation Superintendent

Date: March 14<sup>9</sup>, 2023

Subject: Commission Agenda Item- Priority Use Agreement for Sandusky AMVETS Baseball

### **ITEMS FOR CONSIDERATION:**

Legislation to enter into a one-year, License Agreement with the Sandusky AMVETS Baseball League for priority use of Amvets Park Erie Blacktop Field and the concession stand located at AMVETS Park and Fields No. #1-#3 and the concession stand located at Sprau Park for the Sandusky AMVETS Baseball League Programs (June 1 through August 15) beginning April 1, 2023 through August 31, 2023 with an additional one-year option for 2024.

### **BACKGROUND INFORMATION:**

The City of Sandusky Recreation Division has had License Agreements for the priority use of ball fields with the Sandusky AMVETS baseball league for the past numerous years which has worked well for all parties. Because of the success of the agreements with the leagues, it would be beneficial to enter into this agreement. During the term of the last agreement, the leagues took more responsibility to maintain the ball fields they use by dragging, litter pick up, and assist with mowing and trimming duties which is a tremendous help to the City.

### **BUDGET IMPACT:**

The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon ball field maintenance performed by the leagues.

**ACTION REQUESTED:** It is requested that legislation be approved authorizing the City Manager to enter into a License Agreement with the Sandusky AMVETS Baseball League for seasonal priority use of the listed ballfields above. It is further requested that the legislation take immediate effect in full accordance with Section 14 of the City Charter in order to ~~immediately~~ execute the License Agreement ~~to allow the Sandusky AMVETS Baseball League to move forward with scheduling activities~~ prior to the ~~start of the season which begins on commencing date of~~ April 1, 2023.

I concur with this recommendation:

\_\_\_\_\_  
Jason Werling  
Recreation Superintendent

\_\_\_\_\_  
John Orzech  
Interim City Manager

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LICENSE AGREEMENT WITH SANDUSKY AMVETS BASEBALL LEAGUE FOR PRIORITY USE OF ERIE BLACKTOP FIELD AND THE CONCESSION STAND LOCATED AT AMVETS PARK AND FIELDS #1, #2, AND #3 AND THE CONCESSION STAND AND STORAGE SHED LOCATED AT SPRAU PARK FOR THE SANDUSKY AMVETS BASEBALL LEAGUE PROGRAM BEGINNING APRIL 1, 2023, THROUGH AUGUST 31, 2023; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the Sandusky AMVETS Baseball League has utilized the City's ballfields for many years and desires to have priority use of Field #1 and the concession stand located at AMVETS Junior Park and Field #1, #2, and #3 and the concession stand located at Sprau Park for the Sandusky AMVETS Baseball League Program beginning April 1, 2023, through August 31, 2023, as documented in the schedules marked Exhibit "A" attached and incorporated in the License Agreement; and

**WHEREAS**, the agreement will provide an option for an additional one-year period from April 1, 2024, through August 31, 2024; and

**WHEREAS**, it is necessary for the City to grant the Sandusky AMVETS Baseball League permission to utilize the City's park property on a priority use basis; and

**WHEREAS**, the Sandusky AMVETS Baseball League is willing to perform routine maintenance to the ball field areas and concession stands under the direction of the Recreation Superintendent in exchange for the priority use of the ball fields and concession stands; and

**WHEREAS**, this agreement will not result in any additional budgetary expenses and the City will benefit from the agreed upon routine maintenance to be performed by the Sandusky AMVETS Baseball League; 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 immediately execute the License Agreement and prior to the commencing date of April 1, 2023; 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 Recreation, 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 License Agreement with the Sandusky AMVETS Baseball League for priority use of Erie Blacktop Field and the concession stand located at AMVETS Park and Fields #1, #2, and #3 and the concession stand and storage shed located at Sprau Park for the Sandusky AMVETS Baseball League Program beginning April 1, 2023, through August 31, 2023, substantially in the same form as Exhibit "1", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023

## **LICENSE AGREEMENT**

This Agreement made on and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 between the City of Sandusky, Ohio, a Chartered Municipality, 240 Columbus Avenue, Sandusky, Ohio, hereinafter referred to as “City” and the Sandusky AMVETS Baseball League, P.O. Box 1462, Sandusky, Ohio, hereinafter referred to as “Licensee” for the purpose of utilizing Erie Blacktop Field and the concession stand located at Amvets Park and Fields No. 1, 2, and 3 and the concession stand and storage shed located at Sprau Park from April 1, 2023 through August 31, 2023.

**WHEREAS**, the Sandusky AMVETS Baseball League desires to have priority use of Erie Blacktop Field and the concession stand located at AMVETS Park and Fields No. 1, 2, and 3 and the concession stand and storage shed located at Sprau Park for the Sandusky AMVETS Baseball League beginning June 1, 2023, through August 15, 2023, as documented in the schedules marked Exhibit “A” attached and specifically incorporated as if fully rewritten herein; and

**WHEREAS**, it is necessary for the City to grant the Licensee permission to utilize the City’s park property on a priority use basis; and

**WHEREAS**, Licensee is willing to perform routine maintenance to the ball field areas and concession stands under the direction of the Recreation Superintendent of the City in exchange for the priority use of the specific ball fields delineated in this License Agreement; and

**WHEREAS**, the City and the Licensee understand and acknowledge they need to work cooperatively to insure that all City ball fields are equitably shared and available.

**NOW, THEREFORE**, the parties agree as follows:

## **SECTION ONE**

### **GRANT OF LICENSE**

The City hereby grants to Licensee and to Licensee's participants, coaches, members, guests, volunteers and invitees the right, privilege and permission to enter into and on certain tracts of real property owned by the City, known as Erie Blacktop Field and the concession stand located at AMVETS Park and Fields No. 1, 2, and 3 and the concession stand and storage shed located at Sprau Park.

## **SECTION TWO**

### **TERM**

The City grants to the Licensee the priority use of the above-described ball fields, concession stands and storage shed during the Licensee's Sandusky AMVETS Baseball League schedule for a period commencing April 1, 2023, through August 31, 2023.

This License may be granted for an additional one (1) year period from April 1, 2024, through August 31, 2024, upon written agreement by the Parties. If the Parties extend this License, the Licensee shall submit to the City the 2024 schedule prior to the beginning of the season.

The City shall have the option to modify this License Agreement pursuant to Section 9 of this Agreement in the event that the ball field becomes unavailable for use, through no fault of the parties, which necessitates necessary public improvements.



### **SECTION THREE** **CONSIDERATION**

In addition to furthering the City's public purpose of equitably sharing the City's ball fields and avoiding scheduling conflicts the priority use privilege granted by this Agreement is in exchange for the performance of routine maintenance to the ball field areas and property described in Section One of this Agreement under the direction of the Recreation Superintendent of the City, which includes, but is not necessarily limited to, preparing, dragging and lining of playing surfaces prior to each scheduled game, mowing, trimming, and making repairs to the fencing, concessions stands and storage shed.

Licensee acknowledges and understands that the specific plans for repairs to the fencing, turf and the concession stands and any other improvements shall be pre-approved by the City Manager or their designee and shall satisfy any applicable legal requirements contained in the City's Codified Ordinances including all necessary permits and that once completed become part of the real property of the AMVETS Park and/or Sprau Park owned by the City.

Licensee agrees not to erect or cause to be erected on the property described in Section One any buildings or structures, whether permanent or temporary, without securing the prior approval of the City Manager or their designee pursuant to this Agreement.

### **SECTION FOUR** **INDEMNIFICATION**

In consideration of the privilege granted by this Agreement, Licensee agrees to indemnify, defend, and save the City harmless from all loss, liability,

cost or damages in connection with or on account of any injuries or damages that may occur or be claimed with respect to any person or property in or on the above-described property while being used by Licensee and Licensee's participants, coaches, members, guests, volunteers or invitees unless the injuries or damages are the result of the sole negligence of the City or its employees, agents or contractors.

During the term of this Agreement for any priority use period Licensee shall secure, pay premiums for, and furnish certificates to the City annually and in advance of the start of each baseball season for the following:

- a. Public liability insurance protecting the City and Licensee, and their respective agents, officers, employees, officials, and volunteers because of liability incurred in the performance of the terms of this Agreement when such liability is imposed on account of injury or death of a person or persons, such policy to provide limits on account of an accident resulting in injury or death to one person of not less than One Million Dollars and a liability limit on account of any accident resulting in injury or death to more than one person of not less than Two Million Dollars.
- b. Property damage insurance protecting the City and Licensee and their respective agents, officers, employees, officials and volunteers in the performance of the terms of this Agreement, such policy to provide for a limitation on account of each accident of not less than One Million Dollars.

All such insurance policies shall name the City and Licensee and shall inure to the benefit of City and Licensee and their agents, officers, employees, officials, and volunteers. Such insurance policies shall require immediate notification to

both City and Licensee of any cancellation or material change in the insurance coverage.

## **SECTION FIVE**

### **MAINTENANCE AND OTHER OBLIGATIONS**

Licensee agrees that during all times of use of Erie Blacktop Field and the concession stand located at AMVETS Park and Fields No. 1, 2, and 3 and the concession stand and storage shed located at Sprau Park all applicable Park rules and regulations promulgated by the City shall be enforced and adhered to including, but not necessarily limited to, the following:

The Sandusky Parks and Recreation Department's Rules and Regulations for all Organized Leagues. The City does not allow the consumption of alcoholic beverages in City ball fields or City parks. Licensee shall clean up and dispose of any refuse resulting from the use of the ball fields and shall remind spectators, parents, players and coaches to be respectful of residents in the area by not parking and/or trespassing on private property.

## **SECTION SIX**

### **GOVERNING LAW**

It is agreed that this License Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Ohio.

## **SECTION SEVEN**

### **TERMINATION**

Either party may terminate this Agreement upon written notification to the other party:

City of Sandusky:  
c/o City Manager  
240 Columbus Avenue  
Sandusky, OH 44870

Licensee:  
c/o Board President  
Sandusky AMVETS Baseball League  
P.O. Box 1462  
Sandusky, OH 44870

#### **SECTION EIGHT ASSIGNMENT**

This Agreement may not be assigned by either Party or by operation of law to any other person, firm, or entity without the express written approval of the other Party.

#### **SECTION NINE MODIFICATIONS**

This Agreement may be amended by the parties at any time but any amendment must be in writing and signed by each Party.

#### **SECTION TEN CAUSE BEYOND REASONABLE CONTROL**

Either Party will be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the Party. However, to be excused from delay or failure to perform, the Party must act diligently to remedy the cause of the delay or failure.

**SECTION ELEVEN**  
**JOINT DRAFTING AND NEUTRAL CONSTRUCTION**

This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.

**SECTION TWELVE**  
**VALIDITY OF AGREEMENT**

If any term, provision, covenant, or condition of this Agreement is held by a Court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

**SECTION THIRTEEN**  
**ENTIRE AGREEMENT**

This Agreement, including Exhibit "A" contains the entire Agreement of the Parties relating to the rights granted and obligations assumed in this Agreement. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the Party to be changed.

**SIGNATURE PAGES TO FOLLOW**

IN WITNESS WHEREOF, the City Commission of the City of Sandusky, Ohio, has caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

CITY OF SANDUSKY:

\_\_\_\_\_  
John Orzech  
Interim City Manager

STATE OF OHIO )

) ss:

ERIE COUNTY )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared John Orzech, Interim City Manager of the City of Sandusky, Ohio, and acknowledged his execution of the foregoing instrument as said officer of said City on behalf of said City and by its authority and that the same is his voluntary act and deed as said officer on behalf of said City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

LICENSEE:

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LaMarqus Carr, Board President  
Sandusky AMVETS Baseball League

STATE OF OHIO )  
                          ) ss:  
ERIE COUNTY    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, a Notary Public in and for said County and State, personally appeared LaMarqus Carr, Board President, Sandusky AMVETS Baseball League and acknowledged their execution of the foregoing instrument as said Licensee on behalf of Sandusky AMVETS Baseball League and that the same is their voluntary act and deed as said Licensee on behalf of Sandusky AMVETS Baseball League.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed by official seal on the day and year aforesaid.

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NOTARY PUBLIC

Approved as to Form:

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Sarah A. Chiappone (#0101179)  
Assistant Law Director, City of Sandusky

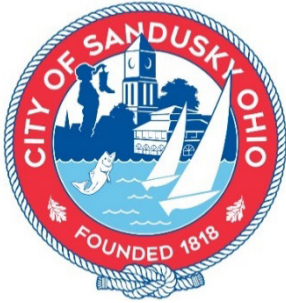
## **EXHIBIT "A"**

### **Sandusky AMVETS Baseball League Schedule**

**June 1, 2023, through August 15, 2023**

DRAFT





## DEPARTMENT of COMMUNITY DEVELOPMENT

*Division of Planning*  
240 Columbus Ave  
Sandusky, Ohio 44870  
419.627.5973  
[www.cityofsandusky.com](http://www.cityofsandusky.com)

**To:** John Orzech, Interim City Manager

**From:** Arin Blair, Chief Planner

**Date:** March 16, 2023

**Subject:** March 27, 2023 Agenda Item – Application for an amendment to the zoning map for parcels 56-00131.000, 56-61007.000 (306 W. Water Street).

**Item for Consideration:** To change the parcel from LM – Limited Manufacturing District to DB – Downtown Business District on Parcel No. 56-00131.000 and 56-61007.000

**Purpose:** The Bicentennial Vision/ Comprehensive Plan outlines the citywide development for the next ten (10) years. In general, zoning amendments should align with the proposed land uses stated in a Comprehensive Plan. Therefore, the Comprehensive Plan is utilized by staff as one factor when evaluating proposed amendments.

**Background Information:** Havinfun, LLC., has submitted an application for an amendment to the zoning map for 306 W. Water St. (parcels 56-00131.000, 56-61007.000). The application is to amend the zoning map from LM – Limited Manufacturing District to DB – Downtown Business District. The property is adjacent to DB – Downtown Business District zoning to the north, LM – Limited Manufacturing District to the east and west, and LM – Limited Manufacturing District and GB – General Business District to the south. The applicant at 306 W. Water St. is proposing to re-zone the property to use the second floor for transient occupancy and to provide the property more accurate zoning restrictions for the existing use.

Staff considers DB – Downtown Business District zoning as a more appropriate zoning for this site. The site is within the area of existing downtown business uses and is contiguous to a Downtown Business District zoning. From a zoning perspective, the DB – Downtown Business District zoning is more restrictive than LM – Limited Manufacturing District. This rezoning is a suitable change in line with the recent expansion of downtown business and mixed use development, and the expected downtown business character of development in this portion of the city.

At their regularly scheduled meeting, held on January 25, 2023, Planning Commission unanimously recommended approval of the rezoning.

**Correlation to the Comprehensive Plan:** According to the City's Downtown Master Plan, this parcel is within the "Downtown Core" boundaries of Fulton Street to the west, Adams Street to the south, Franklin Street to the east, and Sandusky Bay to the north. The Bicentennial Vision Comprehensive Plan and the Downtown Master Plan show mixed use redevelopment at this location aligned with downtown revitalization and downtown business uses.

Understanding the goals set for this area by the city's Comprehensive Plan and Downtown Plan and the reasons previously stated in this report staff believes the rezoning could satisfy the above conditions.

**Budgetary Impact:** The proposed redevelopment is expected to result in increased property and income revenue for the city.

**Action Requested:** It is requested that City Commission approve the proposed amendment to the zoning map, changing the zoning of Parcel Nos. 56-00131.000 and 56-61007.000 from LM – Limited Manufacturing District I to DB Downtown Business District. It is further requested that this ordinance take effect under Section 13 of the City Charter.

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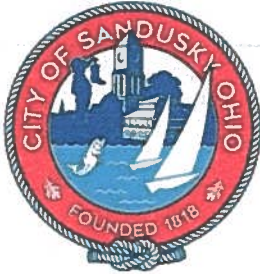
Arin Blair  
Chief Planner

I concur with this recommendation:

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John Orzech  
Interim City Manager

cc: Cathy Myers, Clerk of City Commission  
Michelle Reeder, Finance Director  
Brendan Heil, Law Director



## PLANNING COMMISSION

### Application for Zoning Map Amendment

Division of Planning

240 Columbus Ave

Sandusky, Ohio 44870

419.627.5891

[www.cityofsandusky.com](http://www.cityofsandusky.com)

#### APPLICANT/AGENT INFORMATION:

Property Owner Name: Havinsen LLC.

Property Owner Address: 161 Sunset Dr.

Sandusky, OH 44870

Property Owner Telephone: 419-656-2015

Email: da bier@aol.com

Authorized Agent Name: David Bier

Authorized Agent Address: 161 Sunset Dr.

Sandusky, OH 44870

Authorized Agent Telephone: 419-656-2015

Email: da bier@aol.com

#### LOCATION AND DESCRIPTION OF PROPERTY:

Municipal Street Address: 306 W. Water ST.

Legal Description of Property (check property deed for description):

44 Water Street E 1/2 + 1 Jackson ST 8x101 & 44 Water ST. 1.5 x 150'

Parcel Number: 56-00131.000 and 56-61007.000 Zoning District: \_\_\_\_\_

**DETAILED SITE INFORMATION:**

Land Area of Property: 0.1367 (sq. ft. or acres)

Total Building Coverage (of each existing building on property):

Building #1: 2,245 (in sq. ft.)

Building #2: \_\_\_\_\_

Building #3: \_\_\_\_\_

Additional: \_\_\_\_\_

Total Building Coverage (as % of lot area): \_\_\_\_\_

Gross Floor Area of Building(s) on Property (separate out the square footage of different uses  
– for example, 800 sq. ft. is retail space and 500 sq. ft. is storage space:

2,245 sq. ft. Restaurant/Bar 1st Floor

1,785 sq. ft. Residential - 2 one BR units 2<sup>nd</sup> Floor

Proposed Building Height (for any new construction): \_\_\_\_\_

Number of Dwelling Units (if applicable): 2

Number of Off-Street Parking Spaces Provided: 2 ++

Parking Area Coverage (including driveways): 20,000<sup>+-</sup> (in sq. ft.)

Landscaped Area: 2,500<sup>+-</sup> (in sq. ft.)

Requested Zoning District Classification: Downtown Business

**APPLICATION AUTHORIZATION:**

If this application is signed by an agent, authorization in writing from the legal owner is required. Where owner is a corporation, the signature of authorization should be by an officer of the corporation under corporate seal.

*Donald R. Thie*  
Signature of Owner or Agent

12-22-2022  
Date

**PERMISSION TO ACT AS AUTHORIZED AGENT:**

As owner of \_\_\_\_\_ (municipal street address of property), I hereby authorize \_\_\_\_\_ to act on my behalf during the Planning Commission approval process.

\_\_\_\_\_  
Signature of Property Owner

\_\_\_\_\_  
Date

**REQUIRED SUBMITTALS:**

1 copy of a site plan/off-street parking plan for property  
1 copy of the deed or legal description for property  
\$300.00 application fee

**STAFF USE ONLY:**

Date Application Accepted: \_\_\_\_\_ Permit Number: \_\_\_\_\_

Date of Planning Commission Meeting: \_\_\_\_\_

Planning Commission File Number: \_\_\_\_\_

CITY OF SANDUSKY, OHIO  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
PLANNING DIVISION

# PLANNING COMMISSION REPORT

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APPLICATION FOR A MAP AMENDMENT TO THE  
ZONING MAP FOR 306 W. WATER ST. (PARCELS 56-  
00131.000, 56-61007.000)

Reference Number: PRZ22-0010

Date of Report: January 12, 2022

Report Author: Alec Ochs, Assistant Planner



# City of Sandusky, Ohio

## Planning Commission Report

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### BACKGROUND INFORMATION

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Applicant / Owner: Havinfun, LLC  
161 Sunset Dr.  
Sandusky, OH 44870

Site Location: 306 W. Water St.  
Sandusky, OH 44870

Current Zoning: LM – Limited Manufacturing

Surrounding Zoning: North- DDB – Downtown Business District  
East- LM – Limited Manufacturing  
South- LM – Limited Manufacturing  
GB – General Business  
West- LM – Limited Manufacturing

Existing Use: Business

Proposed Zoning: DDB – Downtown Business District

Applicable Plans & Regulations: City of Sandusky Bicentennial Comprehensive Plan  
City of Sandusky Planning and Zoning Code Chapters:  
1133 Business Districts (a)(4)

SITE PICTURES

Subject Parcels Outlined in Yellow:



Zone Map Setbacks



PUD - Planned Unit Development



Parcels



TRO - Transient Rental Overlay



Zoning

- AG - Agriculture
- CA - Commercial Amusement
- CR - Commercial Recreation
- CS - Commercial Service
- DBD - Downtown Business
- GB - General Business
- GM - General MAnufacturing
- LB - Local Business
- LM - Local Manufacturing
- P - Auto Parking

- PF - Public Facilities
- R1-40 - Single Family Residential
- R1-50 - Single Family Residential
- R1-60 - Single Family Residential
- R1-75 - Single Family Residential
- R2F Two-Family Residential
- RB - Roadside Business
- RMF - Multi-Family Residential
- RRB - Residential/Business
- RS - Residential Suburban



Aerial of site



Southern side of W. Water St. looking eastward



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## PROJECT DESCRIPTION

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The site at 306 W. Water St. is currently a bar & restaurant on the first floor. The site is zoned LM – Local Manufacturing, but is a business use.

The applicant at 306 W. Water St. is proposing to re-zone the property to use the second floor for transient occupancy and to provide the property more accurate zoning restrictions for the existing use.

The applicant's property at 306 W. Water St. is contiguous to a DBD – Downtown Business Zoning District across the street to the north and east, and GB – General Business to the south, both districts that allow transient occupancy. The surrounding uses are a mix between light-manufacturing, downtown mixed use, vacant buildings anticipated to become downtown mixed use, and residential.

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## APPLICABLE CODE SECTIONS

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### **CHAPTER 1113 Amendments**

Chapter 1113 Amendments, of the Zoning Code states that the Zoning Map may be amended periodically in order to keep it abreast of new zoning techniques, as well as when the following general conditions arise:

- (1) Whenever a general hardship prevails throughout a given district;
- (2) Whenever a change occurs in land use, transportation, or other sociological trends, either within or surrounding the community; and
- (3) Whenever extensive developments are proposed that do not comply but would be in the public interest.

### **CHAPTER 1133 Business Districts**

#### **1133.08 PERMITTED BUILDINGS AND USES; DOWNTOWN BUSINESS DISTRICT.**

- (a) Main Buildings and Uses.
  - (1) Single, two and multi-family residential uses above the first floor.
  - (2) All stores and services permitted in the General Business District;
  - (3) Public uses as follows and as defined in Section [1123.02](#): governmental, civic, education, religious, recreational and transportation.
  - (4) Transient Occupancy.
- (b) Similar Main Uses. Any other business, service or recreation activity not listed above or in any subsequent use classification and determined as similar by the Commission.
- (c) Conditional Uses Permitted: Outdoor recreational facilities such as beaches, waterparks, amphitheaters, marinas, swimming pools, etc.
- (d) Accessory Buildings or Uses:

- (1) Accessory off-street parking and loading facilities as required and set forth in Chapter [1149](#);
- (2) Any accessory use and building clearly incident to the conduct of a permitted main use, providing the use has no injurious effect on adjoining residential districts.  
(Ord. 17-088. Passed 5-8-17.)

## **CHAPTER 1139**

### **Manufacturing Districts**

#### **1139.03 PERMITTED BUILDINGS AND USES; LIMITED MANUFACTURING DISTRICTS.**

- (a) Main Buildings and Uses.
  - (1) Living accommodations for watchmen and other personnel required to live in close proximity to their operation and their families;
  - (2) Retail stores and services as permitted in the General Business District;
  - (3) Offices, research and development parks and facilities;
  - (4) Wholesale business, services, and storage and manufacturing uses as permitted in Commercial Service Districts;
  - (5) Manufacturing limited to the following products and processes:
    - A. Aircraft and automobiles, trucks, trailers, motors, bodies, parts, supplies.
    - B. Building materials. Sash, doors, insulation, wallboards, partitions, prefabricated house panels;
    - C. Ceramic products. Pottery and glazed tiles; crayons;
    - D. Chemicals. Blending and packaging of disinfectants, insecticides, fungicides, ink, detergents, and related household and industrial chemical compounds;
    - E. Electrical supplies; miscellaneous manufacturing and assembly;
    - F. Glass products from previously manufactured glass;
    - G. Machinery and light equipment such as air conditioning, firearms, refrigerators, stoves, heaters, washing machines;
    - H. Machine tools such as metal lathes, presses, stamping machines, woodworking machines;
    - I. Metal alloys; miscellaneous products; brass, bronze, pewter, tin, lead;
    - J. Metal processes. Cleaning, enameling, galvanizing, japanning, lacquering, heat treatment, rust-proofing;
    - K. Metal products. Miscellaneous fabrication and assembly, cabinets, doors, fencing, furniture, small castings;
    - L. Paper products. Shipping containers, boxes, crates, newsprint;
    - M. Plastic products. Kitchenware, buttons, wallboards;
    - N. Porcelain products. Kitchen and bathroom equipment;
    - O. Rubber products. Gloves, footwear, bathing caps, tires, tubes, hose.
  - (6) Storage, limited to the following establishments and products:
    - A. Coal, and gas in tanks, in open yard;
    - B. Scrap metal, paper, rags, within an enclosed structure;
    - C. Materials used in, or goods produced by, permitted manufacturing uses in an enclosed structure.
  - (7) Miscellaneous uses, as follows:
    - A. Incinerators, sewage disposal plants;
    - B. Sand and gravel pits, quarries;

- C. Trucking terminals, motor freight stations.
- (8) Large brewery.
- (b) Similar Main Uses. Any other manufacturing use not listed above or in subsequent use classifications and determined as similar by the Commission. Main uses set forth in the General Manufacturing District may be permitted in the Limited Manufacturing District if a conditional use permit is granted.
- (c) Accessory Buildings or Uses.
- (1) Accessory off-street parking and loading facilities as regulated and set forth in Chapter [1149](#).
- (2) Any accessory use customarily incident to a permitted main use.  
(Ord. 15-201. Passed 12-28-15.)

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**DEPARTMENT OF PLANNING COMMENTS**

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The Bicentennial Comprehensive Plan outlines a number of priorities for the neighborhood. Some of the priorities related to this site are:

- 1) Support the development and rehabilitation of a variety of housing types that meet the needs of current and future residents including: rehabilitated homes, townhomes, new in-fill single family housing, upper floor condos and lofts, affordable housing, senior housing, permanent supportive housing, assisted living, and short-term transient rental.
- 2) Zoning changes to encourage hospitality: Determine appropriate zoning for transient rentals and hotels, and other hospitality development in the city.

Understanding the goals set for this area by the city's Comprehensive Plan and the reasons previously stated in this report staff believes the rezoning would satisfy the above conditions.

Staff considers DBD – Downtown Business zoning District as a more appropriate zoning for this site. The site is within the area of existing downtown business uses and is contiguous to a Downtown Business Zoning District. From a zoning perspective, the DBD – Downtown Business Zoning District is more restrictive than LM – Limited Manufacturing. This rezoning is a suitable change in line with the recent expansion of downtown business and mixed use development, and the expected downtown business character of development in this portion of the city.

The applicant has been working with city staff over the past year to pursue the best solution for this case. Staff encouraged the applicant to find neighboring property owners of the parcel within the block (bound north by Water Street, east by Jackson Street, south by Market Street, and west by Decatur Street) to also seek a rezoning to Downtown Business District. According to the applicant, neighboring property owners were not interested in being part of a rezoning application at this time. In turn, staff supports the rezoning of this single parcel and would encourage other owners or Planning Commission to pursue rezoning of the remaining parcels in this block to Downtown Business over time.

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**OTHER DEPARTMENT COMMENTS**

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**Engineering Staff:**

No objections have been received as of the writing of this report

**Building Staff:**

No objections have been received as of the writing of this report

**Police Department:**

The Police Department has no objections to this request.

**Fire Department:**

The Police Department has no objections to this request.

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**CONCLUSION/RECOMMENDATION**

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In conclusion, staff recommends the approval of the proposed amendment to the zoning map for 306 W. Water St. (Parcels 56-00131.000 & 56-61007.000),  
With the following conditions:

1. All applicable permits are obtained through the Building Department, Engineering Department, and any other applicable agency.



**Planning Commission  
January 25, 2023  
Meeting Minutes**

**Meeting Called to Order**

Chair McGory called the January 25<sup>th</sup> Planning Commissioner meeting to order. The following Members were present: Vice Chair Miller, Commissioner Poggiali, Commissioner Whelan, and Commissioner Zuilhof. Commissioners Castile and Jackson notified Staff that they were unable to attend the meeting in advance. Arin Blair and Alec Ochs were present on behalf of the Community Development Department, Brendan Heil was present on behalf of the Law Department and Quinn Rambo was the acting clerk.

**Approval of Minutes from November 22, 2022**

Chair McGory introduced the first item on the agenda, which was the approval of the minutes from the November 22, 2022 Planning Meeting. Vice Chair Miller moved to approve the minutes as distributed and Commissioner Poggiali seconded the motion. Chair McGory called for all those in favor of approving the minutes as submitted and the motion passed unanimously.

**Election of Officers**

Chair McGory introduce the next item on the agenda as election of officers for 2023 and asked for a motion. Vice Chair Miller moved to keep Chair McGory as chair and the motion was seconded by Commissioner Poggiali. Commissioner Zuilhof made a motion to keep Vice Chair Miller as vice chair and the motion was seconded by Commissioner Poggiali. A vote was called and the motions for Chair and Vice Chair were approved unanimously by the Commission.

**Transient Rental Zoning Ordinance Reintroduction**

Chair McGory stated that the Law Director had an item to present to the Commission for a vote. Mr. Heil requested that the Commission take up a piece of time sensitive business, which was the reintroduction of the Transient Rental Zoning Regulations. Mr. Heil continued that in 2017, the City passed a comprehensive update to the transient rental regulations that included zoning provisions, and also a regulatory portion in the Environmental Health and Safety Code. Mr. Heil explained that less than a week ago, the Sixth District Court of Appeals invalidated the ordinance on a technicality and therefore, in order for the City to continue as it had for the last five years, the Planning Commission would have to vote to reintroduce the ordinance for transient rental regulations in the zoning code. The only change would be to delete the words "non-transient" from the definition of dwelling. This would not change how the city handled

transient rental and would not expand it. It would keep the status quo. If approved, this would be presented at the next City Commission meeting and the other part of the ordinance, which was the Environmental Health and Safety Code portions, would be split from this vote because the zoning provisions need to follow the procedural mechanism, whereas the environmental health and safety provisions of the ordinance do not have those same procedural mechanisms. Chair McGory asked if the only difference between what was before the Commission was the highlighted language. Mr. Heil stated that the reason for the change was from a 2013 court case, where non-transient dwelling was not defined and was not needed in the City's Code because of its vagueness. Commissioner Zuilhof asked Mr. Heil what would be the appropriate motion. Mr. Heil answered he would ask for a motion to approve the proposed ordinance modifying the identified sections of the zoning code. Commissioner Whelan and Chair McGory asked if the Commission was being asked to recommend that the existing statute be reenacted with proper procedures and that the recommendation go to the City Commission, and if it would have to come to the Planning Commission. Mr. Heil stated that was correct, and if it had originated with the City Commission; it would have been required to come to the Planning Commission for approval. Commissioner Zuilhof made a motion to refer the planning legislation in question to City Commission. Commissioner Poggiali seconded the motion. Commissioner Poggiali asked if the City Commission had the option to send this back to the Planning Commission if they felt it needed to be reworked. Mr. Heil answered yes, just like any piece of legislation and recommended that time be of the essence, to at least return the City to where it was prior to this discovery. Mr. Heil indicated that the Commission could amend the motion to recommend the passage of the draft ordinance presented which amended the listed sections of the Planning and Zoning Code. Commissioner Zuilhof proposed to amend the original motion to Mr. Heil's recommendation and the motion was seconded by Commissioner Poggiali. Chair McGory asked if the typographical errors and errors of that nature would be cleaned up. Mr. Heil stated those items could be taken care of and that the definition in the 2017 ordinance of non-transient would be removed and the definition of transient occupancy would be updated. Chair McGory called for a vote on the amendment to the original motion and roll call resulted in a unanimous approval of the amendment to the original motion. Chair McGory asked Vice Chair Miller for his questions. Vice Chair Miller wanted to verify his impression that part of the urgency of this matter was the annual renewal of transient rental permits. Mr. Heil stated that was correct, that the City begins receiving those in January and was holding off processing those until this correction had been approved by Planning Commission and City Commission. Chair McGory called for approval of the amended motion. The roll call resulted in unanimous approval of the amended motion.



## **Public Hearing**

### **306 West Water Street**

**Havinfun, LLC, has submitted an application for an amendment to the zoning map for 306 West Water Street (parcels 56-00131.000, 56-61007.000). The application is to amend the zoning map from LM- Limited Manufacturing to DBD- Downtown Business District.**

Chair McGory introduced Havinfun, LLC and asked staff to present the application. Mr. Alec Ochs present the application to the Commission. Mr. Ochs stated the applicant was seeking to change the property's zoning to downtown business. The applicant's property is contiguous to downtown business zoning district to the north and also the east, which allows transient occupancy. Staff recommended approval of the application and considered downtown business a more appropriate zoning for this site. Mr. Ochs continued that from a zoning perspective the downtown business zoning was more restrictive than the property's current zoning of manufacturing. Ms. Blair mentioned the staff review and recommendations process for rezoning applications considers not only the existing land use and the desired land use of the applicant, but also the future land use of a property in context with surrounding land uses. In this case, the property is cohesive to the Downtown Business District, is within the Downtown Historic District, is functioning like a downtown business, which all leads to the staff recommendation that Downtown Business is a more appropriate zoning for this parcel. Staff asked if the Commission approved the application that the following conditions be applied, that all applicable permits were obtained through the Building, Engineering and Planning Departments and any other applicable agencies. Chair McGory asked if there was anyone who wished to speak on behalf of the applicant or against the application. No one came forward to speak. Chair McGory made a motion to approve the application as submitted subject to Staff recommendations. The motion was seconded by Commissioner Zuilhof. A vote was called and the motion to approve the application as presented with Staff recommendations was approved unanimously.

### **1315 Campbell Street**

**Lionel McCrimon, on behalf of Z Commercial, LLC, has submitted an application for an amendment to the zoning map for 1315 Campbell Street (parcel 57-000229.000). The application is to amend the zoning map from R2F- Two Family Residential to RRB- Residential Business District.**

Chair McGory introduce the application for 1315 Campbell Street and asked for the Staff Report. Mr. Ochs stated the property is currently zoned R2F- Two Family Residential and is surrounded on the north, south, east and west by Two Family Residential. The applicant was seeking to rezone the property to RRB- Residential Business. The applicant's property was not contiguous to any transient rental zoning classifications



and was surrounded by two family zoning on all sides and continued for the majority of the neighborhood. Staff did not recommend approval of the application because rezoning this property to a less restrictive use would not meet the goals of the Comprehensive Plan and does not meet the trends of the surrounding area. Mr. Ochs added that Code Compliance found this property illegally operating as a transient rental on November 9, 2022. Ms. Blair added when the Planning Department reviewed applications, that they were not just looking at what the current applicant wanted but to the future of the neighborhood. Staff has heard from the Commission and residents that they want their neighborhoods preserved. She continued this application was clearly surrounded by residential properties and was not in line with any expansion of transient rental in the City. Chair McGory inquired if the property owners within 300 feet had been notified of the application and if Staff had heard any feedback from surrounding neighbors. Both Ms. Blair and Mr. Ochs stated they had not heard from any property owners for or against the application. Chair McGory asked if the representative of the application would like to come forward to speak on behalf of the request. Mr. Lionel McCrimon came forward to speak on behalf of the application. Mr. McCrimon stated he recognized the importance of preserving the neighborhood and was originally from Florida and knew about the downfalls of transient rentals. He stated management was key to a successful transient rental property and he had worked closely with neighbors to make sure the property did not become a nuisance to the neighborhood. Chair McGory asked if the house was set up as a single family or apartments. Mr. McCrimon replied that the house is set up as two apartments. Chair McGory asked if the property was ever used for long term rentals. Mr. McCrimon stated that the downstairs apartment had been used as a long term rental. Commissioner Zuillhof asked what other uses are permitted in the Residential Business District. Mr. Ochs answered light scale business uses would be allowed with a conditional use permit, and only a handful of uses were permitted outright, some examples included baked good, flower sales, barber shops and hair salons. Ms. Blair added to think of the district like Sandusky's historic neighborhood commercial where there were often cases of storefront on the bottom floor and residents upstairs. Chair McGory asked if there was any other public comment and there was none. Chair McGory called for a motion. Commissioner Poggiali made a motion to follow Staff's recommendation and deny this application as presented. Commissioner Poggiali added that the first application was contiguous to areas that allow transient housing but moving into residential neighborhoods, was a no vote for him. Commissioner Zuillhof seconded the motion to deny the application. Vice Chair Miller stated for 18 months the discussion around expansion of the transient rental area, not currently zoned appropriately, has been ongoing and the lack of affordable long term rental spaces has many concerned. Vice Chair Miller continued that he believed there were willing renters at a good price point to rent spaces like this for a long term rental in a residential neighborhood, which was what the property was zoned for and an



appropriate use. Chair McGory expressed that the applicant seemed responsible and the kind of applicant that would properly run a transient rental but there were two kinds of transient rentals, ones that were no problem and the ones were constant problems. Chair McGory continued that a rezone for this situation was not how the applicant should proceed. Commissioner Whelan agreed with Chair McGory and added that he was normally in favor of the expansion of transient rental beyond what the Commission had been doing but not in the middle of a two family neighborhood. Commissioner Whelan explained that he did not like telling property owners what to do with their property, particularly when they seem responsible and the request was reasonable. Mr. McCrimon explained that there were a lot of properties in bad shape, that may be affordable but were not adequate housing and there were a lot of slum lords in the area. Mr. McCrimon stated his goal was to provide properties that include furnishings, internet, air conditioning, heat and a person to contact when something goes wrong and it doesn't have to be 100% Airbnb. The property would follow the Cedar Point schedule. Commissioner Zuilhof asked the applicant if this property was owned by a real estate investment company. Mr. McCrimon answered it was partnership and that he was the management company in the venture. Commissioner Zuilhof stated that this was a growing business model and was displacing a significant number of locals and that Sandusky needed a moratorium on Airbnbs, but the Commission may have found one because nothing could be passed at the moment. Commissioner Zuilhof pointed out that the property has alternatives to an Airbnb, the property could be used as it was zoned and earn a decent return. Chair McGory stated there was a motion on the table and called for a vote. The vote resulted in a unanimous vote to deny the application as recommend by Staff. Ms. Blair thanked the applicant for being at the meeting, spending his career in the area, and Staff would definitely like to help him find where he could invest in the City. Vice Chair Miller added that among his daughter's friends, Sandusky was ripe for attracting new people, with a modest cost of living and the multiple opportunities available, but they wanted to visit not move here- which aligned with what the applicant said about furnished apartments for a few months.

### **New Business**

#### **2130 Hayes Avenue- Site Plan**

**Claire Bank and Arie Swirsky with ThenDesign Architects, on behalf of the Sandusky Board of Education, has submitted a site plan for 2130 Hayes Avenue for a pool addition to Sandusky High School.**

Chair McGory introduced the Site Plan 2130 Hayes Avenue. Mr. Ochs presented the application and stated that the surrounding uses are park, business, and school facilities. The application is for the Sandusky City School Natatorium and scope of work consisted of renovating the existing locker rooms, converting the existing pool into a multi-purpose room, family locker rooms and constructing a new natatorium. This facility

would be available for use by the students and the community. Staff recommended approval of the site plan for 2130 Hayes Avenue with the following conditions that all applicable permits are obtained through the Building, Engineering, Planning Departments, and any other applicable agency prior to construction. Chair McGory asked for a motion. Commissioner Zuilhof made a motion to approve the site plan and the motion was seconded by Commissioner Poggiali. Mr. Feick, the applicant's representative, came forward to address the Commission. He stated that the School Board had approved ThenDesign Firm to start construction documents. The applicant was hoping to go out to bid in April, construction to start in June, and to take approximately 18 months to finish the project. Commissioner Poggiali asked if this site plan was the original layout. Mr. Feick stated that it was not, that after reviewing the original plan the costs were too much but the new layout would have the community gaining a multipurpose room. Commissioner Whelan asked were there considerations made to keep the school separate from the public. Mr. Feick answered that there would be separate entrance and locker rooms from the school. Chair McGory called for a vote. The roll call result in unanimous approval of the 2130 Hayes Avenue Site Plan.

#### **1502 Hayes Avenue- Site Plan**

##### **Victor Huston Has submitted a site plan for 1502 Hayes Avenue, to build a barber shop.**

Mr. McGory introduced the site plan for 1502 Hayes Avenue and asked for Staff report. Mr. Ochs stated the property is zoned RRB- Residential Business and surrounding properties were zoned both residential and business and that the existing lot was vacant. The site was located on a focus corridor in the Comprehensive Plan and the applicant would like to place a barber shop on the site. The site was currently part of the City's Landbank Program and this proposal would add a taxable parcel back into that Auditor's database. Staff added that the parking standard were below the requirement to enable the City's landscaping requirement but was recommending low level landscaping along the facades of Hayes Avenue and Osborne Street and that all area standards, yard regulations, and uses were satisfied by the site plan per the City's zoning code. Staff recommended approval of the site plan with the following conditions that all applicable permits were obtained from the Building, Engineering, Planning Departments, and any other applicable agency prior to construction, and that the parking space layout follows Staff's recommendations. Chair McGory asked if the picture provided was what the actual building. Mr. Ochs stated he believed that was what the applicant planned to put onsite and the applicant was present to speak more on that topic. Chair McGory stated that the building did not look like it had a foundation and wanted to know if that would be acceptable construction for that area. Ms. Blair answered that Staff had met with the Chief Building Inspector and the applicant to explain what the applicant would have to do to get the building seated on the site



properly and get his occupancy permit. Commissioner Zuilhof stated that a condition be made that the excessive apron be fixed. Commissioner Whelan asked if the building was set the way it was because of setback requirements and if the building could be moved closer to the street, like the beauty salon across the street, that there would be better flow of parking coming in from Hayes Avenue and exiting onto Osborne Street. Ms. Blair answered that the City wanted to limit the amount of curb cuts on Hayes Avenue since it was a travel corridor. Mr. Ochs added that what Commissioner Whelan was proposing would require a variance because residential business was at the top end of residential in regard to setback standards. Commissioner Zuilhof made a motion that the site plan be approved per staff recommendations, that the apron be fixed, and all parking areas be paved. Commissioner Poggiali seconded the motion. Vice Chair stated that it was good to see a small business appropriately zoned for this former derelict property. Commissioner Poggiali added that the Landbank Committee agreed to give the land to the applicant because he was going to make it a productive piece of property. Chair McGory asked if the applicant would come forward to explain their vision, and answer the Commission's questions. Mr. Victor Huston, the applicant, came forward to speak. He stated that he had been born and raised in Sandusky and had been operating a barbershop since 2011. Mr. Huston continued that everyone needs a haircut and the vacant lot being near an elementary school, middle school and high school would be a perfect location for his business. He added he has hosted events, such as a full day of free haircuts at Lion's Park and he provided 60 haircuts that day. He viewed his business as a place to bring the community together, mentor young people, and will provide two or three jobs in a small family owned business. The applicant let the Commission know he was open to the suggestions from the Commission but he was also ready to move forward since he had been pursuing this request since June of 2022. Commissioner Zuilhof proposed that the Commission could table the application to let the applicant make adjustments to finalize his plans. Chair McGory stated there was a motion and a second on the table. Commissioner Zuilhof stated that a discussion could be tabled at any time. Mr. Huston answered that he wanted the Commission to give him an answer today. Chair McGory called for a vote to approve the site plan with staff conditions, removing concrete and replacing with tree lawn all portions of the existing curb apron that are not needed as part of the new parking configuration, and all parking areas, including on site, were paved. The vote on the site plan for 1502 Hayes Avenue was approved unanimously by the Planning Commission.

### **223 Meigs Street- Site Plan**

**John Hancock, on behalf of McGookey Properties, LLC, has submitted a site plan for 223 Meigs Street for a building expansion at the Bait House Brewery.**

Chair McGory introduced the site plan for 223 Meigs Street and asked Staff to provide their report. Mr. Ochs presented the application stating that existing property was a



restaurant and brewery and was surrounded by two family residential and public facilities. The applicant requested to construct a building to expand seating for the restaurant/ brewery, move the second floor kitchen to the ground floor, additional parking and landscaped areas. On December 6, 2022 staff met with the applicant on site to better understand the concept for additional pedestrian circulation and parking constraints. Staff has determined that the proposed building configuration was optimal for the flow and placement of the back of house needs, which includes kitchen and staff areas and also the location of the walk-in cooler. Mr. Ochs continued that the parking demand for the site was 48 spaces but the municipal building parking lot had been utilized for overflow parking. Staff recommended approval of the site plan and the enhanced parking lot configuration recommended by the Engineering Department, and paving the existing gravel parking lot and any additional parking area that is currently grass or where the garage existed. Due to the close proximity to the Sandusky Bay Pathway, Staff also suggested that the applicant to add bicycle racks throughout the parking lot to accommodate up to six bicycles. If the application is approved tonight, the applicant would go to the Board of Zoning Appeals to request variances on the side setbacks and minimum buildable lot for the four lots that were not currently meeting the area/ yard requirements for R2F Residential zoned parcel. Mr. Ochs explained that the Engineering Department did give some parking feedback and recommendations to the applicant to maximize parking coverage at the site, and provided a better traffic flow pattern. Staff recommended approval of the site plan with the following conditions: (1) all applicable permits were obtained through the Building, Engineering, Planning Departments, and any other applicable agency, (2) a variance application would be submitted and approved by the Board of Zoning Appeals for encroachment to the 15 foot side yard minimum setback and also the creation of four parcels that would not meet the minimum area/ yard requirements, (4) a lot combination to consolidate the new lots into the bait house parcel, (5) the gravel portion of the existing parking lot and any new parking areas be paved and 100 foot of landscaped areas be added, bike racks added, and recommended layout of parking lot per Engineering Staff be incorporated. Ms. Blair added the applicant would like to keep their proposed parking plan. Chair McGory asked the applicant to come present their position on the parking lot and what they were advocating to keep. Mr. Dan McGookey, the applicant, and Mr. John Hancock, the applicant's engineer, were present to speak on behalf of the application. Mr. Hancock explained that the angled parking that the Engineering Staff suggested did several things that they wanted to avoid. One was that it lost the regularly configured center median, which provided the landscaping island requirements, which would be used for stormwater control. The second item was that the angled spots blocked off the back of the old bait shop building, which required unrestricted access because it was still used by the brew house. Commissioner Zuilhof asked if the perpendicular parking plan met requirements and that he did not recall many precedents where the City redesigned a

plan for an applicant. Ms. Blair confirmed that the applicant's plan did meet requirements. Commissioner Poggiali asked Staff if the parking plan from the City was Josh's recommendations. Ms. Blair stated that was correct, that he didn't say that the applicant's concept wouldn't work and that the applicant explained their reasoning fully of why they had designed the layout as presented. Commissioner Poggiali made a motion to approve the application with Staff conditions with the exception of Engineering Department designed parking lot, the applicant could move forward with their presented configuration. The motion was seconded by Vice Chair Miller. Chair McGory asked for a vote and the application was approved unanimously by the Commission.

### **Superior Street Public Right-of-Way Dedication**

Chair McGory introduced Mr. Jonathan Holody, Community Development Director to present the request. Mr. Holody stated that for the last year the City has been working with the Erie County Health Department to help them improve their entrance to their facility on Superior Street. The main objectives were to improve the signage to their facility and create a pedestrian walkway leading to their facility. It was determined that the best way to accomplish that would be to purchase the two family home at the corner of Superior Street and West Monroe Street. The City partnered with the County Landbank Program to have the house demolished. The City then entered into a 5 year lease with the Health Department for the property; at the end of the lease the Health Department would own the property. Mr. Holody continued that they worked with the Public Works Department and the Engineering Department for the expansion of the Superior Street Right-of-Way. This would allow for the jog in the road to be straightened out and for continuous/ consistent tree lawn. Commissioner Zuillhof made a motion to approve the Superior Street Right-of-Way Dedication and the motion was seconded by Commissioner Whelan. A vote was called for the motion and was approved unanimously by the Commission.

### **Public Comment**

Chairman McGory called for a motion to adjourn but Commissioner Poggiali pointed out that there was a citizen present to speak. Ms. Sue Doherty was representing Serving Our Seniors. She wanted to follow up on the recommendation that the Commission consider modifying ordinances that would allow for Accessory Dwelling Units, also known as ADUs. Ms. Doherty stated she attended the planning meeting when the recommendation was made by Ohio Leadership that the Commission consider modifying their ordinances to allow ADU's. She wanted the Commission to know that she was in favor of that proposal and if that recommendation was still being given consideration. Ms. Doherty gave examples of citizens that Serving Our Seniors helps and the desperate situations many of them were facing. Commissioner Zuillhof stated that



standards needed to be established to help solve this problem and our society has created the problem that some can afford multiple homes but others can't afford rent. Chair McGory asked if Staff had an update of the analysis. Ms. Blair answered that Staff need to do the research but seven cases this month and a bustling Community Development Department have taken priority. Chairman McGory contemplated with the number of derelict properties in Sandusky, if the bones were strong enough to be redone. If the City should rethink tearing down these houses, renovate them instead, and rent them out long term. Would a property owner be able to recoup their investment? Chair McGory continued that as a member of the Habitat for Humanity Board that low income houses get built on those demolished lots, and sometimes, although rarely, Habitat for Humanity has rehabbed existing homes. Commissioner Zuilhof stated part of the problem is the law, if a house was condemned, it was condemned to demolition. Mr. Heil stated that there had been some internal staff conversations about not just using demolition as a mechanism but that would take time for a municipality to do. It was not as easy for a municipality to accomplish as it was for a community development corporation. Commissioner Poggiali stated in 2008 it was the school of thought that not all the housing was needed anymore. Federal money was available for demolition and The City followed where there was fund availability.


### **Adjournment**


Commissioner Poggiali made a motion to adjourn the Planning Commission Meeting and the motion was seconded by Vice Chair Miller. The meeting adjourned at 7:13 pm.

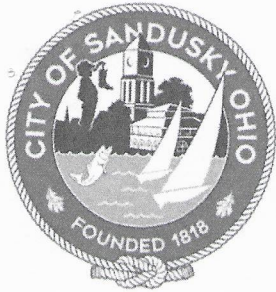
### **Next Meeting:**

February 22, 2023 at 5:00pm.

**Approved:**

  
Clerk

  
Chair/ Vice Chair



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DEPARTMENT of COMMUNITY DEVELOPMENT

*Division of Planning*  
240 Columbus Ave  
Sandusky, Ohio 44870  
419.627.5891

January 26, 2023

At the January 25, 2023 Planning Commission meeting, the Planning Commission recommended approval to the City Commission for an amendment to the Zoning Map for 306 West Water Street (parcels 56- 00131.000, 56-61007.000). The application is to rezone the property from LM – Limited Manufacturing to DBD – Downtown Business.

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Pete McGory  
Planning Commission Chairman



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING THE OFFICIAL ZONE MAP OF THE CITY OF SANDUSKY TO REZONE PARCEL NOS. 56-00131.000 AND 56-61007.000 LOCATED AT 306 W. WATER STREET FROM "LM" LIMITED MANUFACTURING DISTRICT TO "DB" DOWNTOWN BUSINESS DISTRICT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT UNDER SUSPENSION OF THE RULES AS CONTAINED IN AND IN ACCORDANCE WITH SECTION 13 OF THE CITY CHARTER.**

**WHEREAS**, a request is being made on behalf of Havinfun, LLC for an amendment to the Zone Map No. 96-01 as codified in Section 1121.03 of the Codified Ordinances of the City for Parcel Nos. 56-00131.000 and 56-61007.000 located at 306 W. Water Street from "LM" Limited Manufacturing District to "DB" Downtown Business District and as more fully described in Exhibit "A" which is attached to this Ordinance and specifically incorporated as if fully rewritten herein; and

**WHEREAS**, the change in zoning is being requested as the property owner is proposing to use the second floor of the property for transient occupancy and to provide the property more accurate zoning restrictions for the existing use; and

**WHEREAS**, this request was heard by the Planning Commission at their January 25, 2023, meeting resulting in the Planning Commission's recommendation to **approve** the requested Zone Map Amendment for Parcel Nos. 56-00131.000 and 56-61007.000 located at 306 W. Water Street; and

**WHEREAS**, a public hearing on the applicant's request was held by this City Commission at their March 27, 2023, regularly scheduled meeting; and

**WHEREAS**, this Ordinance should be passed under suspension of the rules in accordance with Section 13 of the City Charter approving the Amendment to the Zone Map 96-01 as Codified in Section 1121.03 of the Codified Ordinances to rezone Parcel Nos. 56-00131.000 and 56-61007.000 located at 306 W. Water Street from "LM" Limited Manufacturing District to "DB" Downtown Business District; 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 Municipal Departments, including the Department of Community Development, of the City of Sandusky, Ohio and, NOW, THEREFORE,

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

Section 1. This City Commission approves the requested rezoning and the Zone Map 96-01, as codified in Section 1121.03 of the Codified Ordinances of the City, is hereby amended to effect the rezoning of Parcel Nos. 56-00131.000 and 56-61007.000 located at 306 W. Water Street from "LM" Limited Manufacturing District to "DB" Downtown Business District as more fully described in Exhibits

“A” and “B” which are attached to this Ordinance and specifically incorporated herein.

Section 2. The City's Chief Planner is directed to make the change on the original Zoning Map on file in the Office of Planning and Zoning.

Section 3. 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 4. This City 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 5. That for the reasons set forth in the preamble hereto, this Ordinance shall take effect under suspension of the rules as contained in and in accordance with Section 13 of the City Charter after its adoption and due authentication by the President and the Clerk of The City Commission.

\_\_\_\_\_  
RICHARD R. BRADY  
PRESIDENT OF THE CITY COMMISSION

ATTEST: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023 (effective after 30 days)

<b>Transferred</b>	
In Compliance with sections 319-202 and 322-02 of the Ohio Revised Code.	
FEE \$	9.13
Exempt:	
R.E. TRANSFER:	
\$	29.19
Richard H. Jeffrey Erie County Auditor	
Trans. Fees: \$	.50
Date: 9/2/14	By: [Signature]

RN: 201407027 Page 1 of 2 ERIE COUNTY OHIO  
RECORDER, Barbara A. Sessler  
Recording Fee: \$28.00 Recorded 09/02/2014 Time  
12:05:58PM

## Warranty Deed

**KNOW ALL MEN BY THESE PRESENTS THAT Harvey Heys, single, the Grantor,** claiming title by or through instrument recorded in O. R. Book 214, Page 27, Erie County Recorder's Office, for valuable consideration thereunto given, and for the sum of Ten Dollars (\$10.00) received to his full satisfaction of **David R. Bier and Dawson E. Foster, the Grantees,** whose tax mailing address will be c/o P. O. Box 1862, Sandusky, Ohio 44870 does:

**GIVE, GRANT, BARGAIN, SELL AND CONVEY** unto said Grantees, their heirs and assigns, the following described premises, situated in the City of Sandusky, County of Erie, and State of Ohio:

Being the east one-half (1/2) of Lot number forty-four (44) on Water Street, subject to all legal highways.

Permanent Parcel No(s): 56-00131.000

Property Address: 306 W. Water Street, Sandusky, Ohio 44870

**TO HAVE AND TO HOLD** the above premises, with the appurtenances thereunto belonging, unto the said Grantees, and their separate heirs and assigns forever.

**AND THE SAID Grantor,** for himself and his heirs, executors and administrators, hereby covenants with the said Grantees, their heirs and assigns, that said Grantor is the true and lawful owner of said premises, and is well seized of the same in fee simple, and has good right and full power to bargain, sell and convey the same in the manner aforesaid, and that the same are free and clear from all encumbrances, except zoning ordinances, easements, reservations, conditions and restrictions of record, if any, and real estate taxes and assessments, general and special, which are a lien at the time of transfer, but which are not then due and payable, and further, that said Grantor will warrant and defend the same against all claims whatsoever except as provided herein.

The Grantor hereunto set his hand the 200 day of September, 2014.

**GRANTOR:**

  
**HARVEY HEYS**

**STATE OF OHIO**                   )  
  )**SS:**  
**ERIE COUNTY**                   )


**BEFORE ME**, a Notary Public in and for said County and State, personally appeared Harvey Heys, single the above named Grantor and acknowledged that he did sign this instrument and the same is his free act and deed.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal this 200 day of September, 2014.

(SEAL)



**JUDITH A SCHMENK**  
**NOTARY PUBLIC**  
**STATE OF OHIO**  
**MY COMMISSION**  
**EXPIRES 10/20/15**

  
**NOTARY PUBLIC**

**This Instrument Prepared By:**

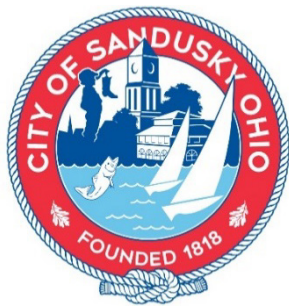
Paul M. Koch, Esq.  
THE LAW OFFICE OF PAUL M. KOCH, LLC  
Sandusky, Ohio 44870

**SOUTHERN TITLE OF OHIO LTD.**  
**14-125 • SANDUSKY, OHIO 44870**









## DEPARTMENT OF PUBLIC WORKS

240 Columbus Avenue  
Sandusky, Ohio 44870  
419.627.5829  
[www.cityofsandusky.com](http://www.cityofsandusky.com)

To: John Orzech, Interim City Manager

From: Aaron M. Klein, P.E., Director

Date: March 13, 2023

**Subject: Commission Agenda Item – WPCLF Loan Agreement with the Ohio EPA for the Mills Street High-Rate Treatment and the Ultraviolet Disinfection Projects at the Wastewater Treatment Plant**

**ITEM FOR CONSIDERATION:** Legislation approving a loan agreement between the City of Sandusky and the Ohio Environmental Protection Agency (OEPA) and the Water Pollution Control Loan Fund (WPCLF) for the Mills Street High-Rate Treatment and the Ultraviolet Disinfection Projects at the Wastewater Treatment Plant.

**BACKGROUND INFORMATION:** Previous resolution 001-23R, approved at the January 23, 2023, granted staff approval to apply for a WPCLF Loan for financing the Mills Street High-Rate Treatment and the Ultraviolet Disinfection Projects at the Wastewater Treatment Plant. The application has been submitted, bids have been accepted for both projects, and legislation has been passed awarding the project. The WPCLF board will vote on the loan in April but needs approval from the City to enter into an agreement prior to that vote. A template agreement is attached. If approved, the final loan agreement will be provided for execution.

**BUDGETARY INFORMATION:** The total cost associated with the loan will be as follows:

Engineering, Design & Inspection Costs	\$3,808,578.72
Construction Costs	\$36,200,231.00
<u>OWDA Administrative Fee (0.35%)</u>	<u>\$103,248.00</u>
	\$40,112,057.72
Principal Forgiveness Applied	(\$4,000,000.00)
<u>County Capital Obligation</u>	<u>(\$6,509,349.67)</u>
<b>Loan Amount</b>	<b>\$29,602,708.05</b>

The terms of the loan agreement will be around \$30M, over 30 years, with a reduced interest rate based on the market rate at the time of the vote. Subtracting the reductions granted through EPA allowances (i.e. nutrient reduction), sponsorship of two environmental projects, and \$4M in principle forgiveness, the estimated rate in March would have been 1.5%. It is anticipated that a similar low-interest rate will be provided in the final agreement with the initial repayment likely being scheduled for 2026.

Given these terms, repayment from the Sewer Fund would be approximately \$1.23M annually. Current annual loan payments from 8 different loans totaling around \$1.71M from the Sewer Fund will be paid off by 2026.

**ACTION REQUESTED:** It is recommended that proper legislation be prepared approving a loan agreement between the City of Sandusky and the Ohio Environmental Protection Agency (OEPA), Water Pollution Control Loan Fund (WPCLF) for the Mills Street High-Rate Treatment and the Ultraviolet Disinfection Projects at the Wastewater Treatment Plant and that the necessary legislation be passed under suspension of the rules, in full accordance with Section 14 of the City Charter in order to execute the Water Pollution Control Loan Fund Agreement as the WPCLF Board needs approval from the City Commission prior to voting on the loan in April and so funds already spent on the project can be recovered and applied to the loan.

I concur with this recommendation:

---

John Orzech  
Interim City Manager

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director

## CERTIFICATE OF FUNDS

In the Matter of: WPCLF Loan Agreement for Mills HRT & UV Disinfection

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Sandusky under the foregoing Contract have been lawfully appropriated for such purposes and are in the treasury of the City of Sandusky or are in the process of collection to an appropriate fund, free from any previous encumbrances. This certificate is given compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Account #613-5910

By: Michelle Reeder

Michelle Reeder

Finance Director

Dated: 3/23/2023



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROVING A WATER POLLUTION CONTROL LOAN FUND (WPCLF) AGREEMENT BETWEEN THE CITY OF SANDUSKY, THE OHIO ENVIRONMENTAL PROTECTION AGENCY (EPA), AND THE OHIO WATER DEVELOPMENT AUTHORITY (OWDA) TO FINANCE THE COST OF THE DESIGN, CONSTRUCTION, AND INSPECTION OF THE MILLS STREET HIGH-RATE TREATMENT PROJECT AND THE ULTRAVIOLET (UV) DISINFECTION REFURBISHMENT PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the Mills Street High Rate Treatment Project involves the is construction of a 16 million gallons per day (MGD) High-Rate Treatment (HRT) Facility intended to reduce permitted combined sewer overflows (CSO) from the Mills Street bypass station prior to December 1, 2024; and

**WHEREAS**, the Ultraviolet (UV) Disinfection Refurbishment Project involves the replacement of the Trojan UV4000 system with the newest Trojan model, TrojanUV Signa, which has a slightly different footprint requiring modifications to the channel and incorporated Parshall flume entering the disinfection building where the effluent flow is metered for permit compliance and includes instrumentation, controls, and electrical upgrades, as well as a new variable frequency drive for the effluent pumping system at the Plant; and

**WHEREAS**, the City Commission approved an agreement for Professional Design Services with Stantec Consulting Services, Inc. of Cleveland, Ohio, for the preliminary engineering and limited detailed design of the Mills Street High Rate Treatment Project by Ordinance No. 21-136, passed on September 13, 2021; and

**WHEREAS**, this City Commission declared the necessity for the City to proceed with the proposed Mills Street High-Rate Treatment (HRT) Project by Resolution No. 058-22R, passed on October 24, 2022; and

**WHEREAS**, this City Commission approved an Amendment to the agreement for Professional Design Services with Stantec Consulting Services, Inc. of Cleveland, Ohio, for the Mills Street High Rate Treatment Project, which included detailed design and preparation of bidding documents for the Ultraviolet (UV) Disinfection Refurbishment Project by Ordinance No. 22-047, passed on March 14, 2022, and subsequently approved a Second Amendment to the agreement for additional services which included construction administration for the Ultraviolet (UV) Disinfection Refurbishment Project by Ordinance No. 23-006, passed on January 9, 2023; and

**WHEREAS**, this City Commission approved the awarding of the contract to Great Lakes Construction Co. of Hinckley, Ohio, for work to be performed for the Mills Street High-Rate Treatment (HRT) Project by Ordinance No. 23-007, passed on January 9, 2023; and

**WHEREAS**, this City Commission approved the filing of an application with the Ohio Environmental Protection Agency for a loan through the Water Pollution Control Loan Fund Program for the design, construction, and inspection for the

Mills Street High Rate Treatment Project and the Ultraviolet (UV) Disinfection Refurbishment Project by Resolution No. 001-23R, passed on January 23, 2023; and

**WHEREAS**, this City Commission declared the necessity to proceed with the proposed Ultraviolet (UV) Disinfection Refurbishment Project by Resolution No. 004-23R, passed on January 23, 2023; and

**WHEREAS**, this City Commission approved the awarding of the contract to Great Lakes Construction Co. of Hinckley, Ohio, for work to be performed for the Ultraviolet (UV) Disinfection Refurbishment Project by Ordinance No. 23-059, passed on March 13, 2023; and

**WHEREAS**, the OWDA has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize and manage the water resources of the State, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the State for the protection and preservation of the comfort, health, safety, convenience, and welfare, and the improvement of the economic and general welfare and employment opportunities of and the creation of jobs for the people of the State, and to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Ohio Revised Code (ORC); and

**WHEREAS**, Title VI of the Clean Water Act (CWA), as amended, authorizes the Administrator of the United States Environmental Protection Agency to make capitalization grants to states to establish a state water pollution control revolving loan fund; and

**WHEREAS**, pursuant to the CWA, states can provide loans and other types of financial assistance from a water pollution control revolving loan fund to local communities and intermunicipal and interstate agencies for the construction of publicly-owned wastewater treatment facilities as defined in Section 212 of the CWA and for the implementation of nonpoint source pollution control management programs and development and implementation of plans under the estuary protection programs; and

**WHEREAS**, the Ohio General Assembly has created a water pollution control loan fund (WPCLF) pursuant to R.C. Section 6111.036 to provide loans and other types of financial assistance as set forth in said Section; and

**WHEREAS**, to assist the Director in providing loans and other types of financial assistance from the WPCLF, and to assist in the administration and operation of the WPCLF as authorized by the R.C. Section 6111.036, the Director has entered into an Interagency Agreement with the OWDA and has annually entered into a renewal of that Agreement; and

**WHEREAS**, the City of Sandusky is desirous of obtaining financing from the Ohio EPA and the OWDA using funds from the WPCLF for approximately \$30 million to finance the cost of the Design, Construction and Inspection of the Mills Street High-Rate Treatment Project and the Ultraviolet (UV) Disinfection Refurbishment Project with an estimated interest rate of 1.5% for a term of thirty (30) years; 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 execute the Water Pollution Control Loan Fund Agreement as the WPCLF Board needs approval from the City Commission prior to voting on the loan in April and so funds already spent on the projects can be recovered and applied to the loan; 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; and NOW, THEREFORE,

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

Section 1. This City Commission hereby approves the Mills Street High-Rate Treatment Project and the Ultraviolet (UV) Disinfection Refurbishment Project and to finance the costs of these projects in cooperation with the Ohio EPA and the OWDA under the provisions, terms and conditions set forth in the "Water Supply Revolving Loan Account Loan Agreement", substantially in the same form as attached hereto marked Exhibit "1".

Section 2. The City Manager and the Finance Director are hereby authorized and directed to execute the Agreement on behalf of the City in substantially the same form of the Agreement attached hereto and together with such revisions or additions as are approved by the Law Director as not being substantially adverse to the City and as being consistent with carrying out the City's public purpose.

Section 3. The dedicated source of repayment will be Sewer Funds; and

Section 4. 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 5. This City 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 6. That for the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023

## **WATER POLLUTION CONTROL LOAN FUND AGREEMENT**

This Agreement made and entered into as of the "Effective Date," by and among the Director of Environmental Protection (the "Director"), as the Director of the Environmental Protection Agency of the State of Ohio, an agency duly created and existing under the laws of the State of Ohio, the Ohio Water Development Authority<sup>1</sup>, a body corporate and politic organized and existing under the provisions of Chapter 6121 of the Ohio Revised Code (the "OWDA," and together with the Director, the "State"), and the governmental body specified as the "Borrower" on Exhibit 1, a governmental body organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or resolution passed by the legislative authority of the Borrower on the date specified on Exhibit 1 as the "Resolution Date" (the capitalized terms not defined in the recitals being as defined in Article I herein);

### **WITNESSETH:**

WHEREAS, the OWDA has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize, and manage the water resources of the State, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the State for the protection and preservation of the public health, safety, convenience, and welfare, and the improvement of the economic welfare or employment opportunities of and the creation of jobs for the people of the State, or to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Ohio Revised Code ("R.C."); and

WHEREAS, Title 33, Chapter 26, Subchapter VI of the Clean Water Act, as amended (the "CWA"), 33 U.S.C.A. § 1383 authorizes the Administrator of the United States Environmental Protection Agency to make capitalization grants to states which have established a state water pollution control revolving loan fund; and

WHEREAS, pursuant to the CWA, states can provide loans and other types of financial assistance from a water pollution control revolving loan fund to local communities, municipal or intermunicipal and interstate or state agencies for the construction of publicly-owned wastewater treatment facilities as defined in Section 212 of the CWA, 33 U.S.C.A. 1292, and for the implementation of nonpoint source pollution control management programs and development and implementation of plans under the estuary protection programs; and

WHEREAS, the Ohio General Assembly has created a water pollution control loan fund (the "WPCLF") pursuant to R.C. Section 6111.036 to provide loans and other types of financial assistance as set forth in said Section; and

WHEREAS, to assist the Director (whenever the term "Director" is used herein, such term shall also be deemed to include the Director's designated representative(s), if any) in providing loans and other types of financial assistance from the WPCLF, and to assist in the administration and operation of the WPCLF as authorized by the R.C. Section 6111.036, the Director has entered into an Interagency Agreement with the OWDA and has annually entered into a renewal of that Agreement; and

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<sup>1</sup> The approval and execution of this Agreement by the OWDA is required only if this Agreement provides for a loan and if the payments of the principal or interest on the loan are or are expected to be pledged to secure payment of bonds issued or expected to be issued by the OWDA.

## Water Pollution Control Loan Fund Agreement

WHEREAS, the Borrower is desirous of obtaining financing for necessary Project Facilities, using funds from the WPCLF; and

WHEREAS, the State is willing to provide financing to the Borrower for such Project Facilities, and the Director has determined that the Borrower has complied with the requirements of R.C. Section 6111.036, and is therefore eligible for financial assistance for its Project Facilities under the CWA and said Section; and

WHEREAS, the Borrower has demonstrated to the satisfaction of the State that it has the capability to pay the Semi-Annual Payment over the Contract Period of Years; and

WHEREAS, the State and the Borrower have determined to enter into this Agreement to set forth their respective obligations with respect to the financing, construction, operation and ownership of the Project Facilities;

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto do hereby agree as follows:

### ARTICLE I - DEFINITIONS

Section 1.1. Except where the context clearly indicates otherwise, the following terms as used in this Agreement shall have the meaning ascribed to them in this Article:

(a) "Application Fee" means a charge levied and paid by the Borrower at the time of the execution of this Agreement to partially offset administrative costs of the Agreement. This fee is not an Eligible Project Cost and is in addition to the Semi-Annual Payment. The fee is calculated at thirty-five hundredths of one percent (.35%) of the estimated Eligible Project Costs, or four hundred dollars (\$400.00), whichever is the greater.

(b) "Approved Application" means the application submitted to the Director on the date shown on Exhibit 1 as the "Application Date," together with all attachments, supporting documentation, amendments and supplements thereto as approved by the State, together with any amendments thereto approved by the Borrower and the State after the date of this Agreement.

(c) "Borrower" means the entity identified on Exhibit 1, which is an entity eligible to receive assistance under Section 603(C) of the CWA and R.C. Section 6111.036.

(d) "Capitalized Interest Rate" means the effective rate of interest at which interest accrues on Principal Amounts disbursed during the construction period from the date of such disbursement.

(e) "Contract Interest Rate" means the interest rate per annum shown on Exhibit 1 as "Interest Rate."

(f) "Contract Period" means the period beginning the Effective Date and ending on the date of the conclusion of the Contract Period of Years.

(g) "Contract Period of Years" means the period of calendar years shown on Exhibit 1 as "Term In Years," commencing on the Date of Initial Payment to the WPCLF as set forth on the project schedule on Exhibit 1, provided that it shall commence no later than twelve (12) months following the actual Initiation of Operation of the Project Facilities, as presently determined in the project schedule, but in no event shall the Contract Period of Years exceed 30 years.

(h) "Default Rate" means a rate equal to the Contract Interest Rate plus three percentage points.

(i) "Effective Date" means the most recent date of signature of this Agreement by the authorized representative of each of the parties, as indicated herein.

(j) "Eligible Project Costs" shall include, whether incurred before or after the date of this Agreement (but if incurred prior to the date hereof, subject to the restrictions set forth in the proviso below), costs that may be disbursed out of funds from the WPCLF, a description and distribution of which, subject to paragraph 4.1. hereof, is shown on Exhibit 1, which is hereby incorporated into this Agreement, and revision to which Exhibit can occur only with the agreement of the State and Borrower; provided, however, that Eligible Project Costs shall include costs incurred prior to the date hereof only if and to the extent that, in the opinion of nationally recognized bond counsel satisfactory to the State, the payment of such costs by the State would not cause the interest on any debt obligations of the OWDA to cease to be excluded from gross income for purposes of federal income taxation.

(k) "Facilities Plan" means all materials developed by the Borrower and the Director, including the Director's approval and any applicable conditions, in satisfaction of R.C. 6111.036 (K)(7).

(l) "Finding of No Significant Impact" or "FNSI" means all materials developed by the Borrower and the Director in satisfaction of R.C. Sections 6111.036 (K)(5) and (L).

(m) "Initiation of Operation" means the date that all Project Facilities are in full and sustained operation as planned and designed.

(n) "Participation Rate" means the dollar amount per semi-annual period necessary to amortize a principal amount of one dollar over the Contract Period of Years at the Contract Interest Rate.

(o) "Performance Certification" means the certification by the Borrower that the Project Facilities are meeting the agreed upon performance criteria on the date one year after Initiation of Operation of the Project Facilities.

(p) "Performance Criteria" means the standards set forth by the Director and agreed to in writing by the Borrower which the Borrower shall meet for the design life of the Project Facilities.

(q) "Pledged Revenues" means the one or more dedicated sources of revenue for payment of the Semi-Annual Payment, all as described in Exhibit 1, which shall include, unless otherwise indicated on Exhibit 1, Wastewater Service Charges and other revenues derived by the Borrower from the ownership and operation of its wastewater system (including, without limitation, any Special Assessment Funds), net of the costs of operating and maintaining the system and paying all amounts required to be paid under any Mortgage, Indenture of Mortgage, Trust Agreement or other instrument heretofore or hereafter entered into by the Borrower to secure debt obligations heretofore or hereafter issued or incurred by the Borrower for the system. These Pledged Revenues shall constitute a Dedicated Repayment Source, as defined in the CWA.

(r) "Project Facilities" means the facilities to be constructed pursuant to this Agreement as described generally in Exhibit 1 attached hereto and made a part hereof and more particularly described in the approved plans and specifications on file with the Director, together with any changes therein made pursuant to Article III hereof, but does not include facilities which are a part of the WRRSP Project.

(s) "Project Participation Principal Amount" means those Eligible Project Costs that are paid with moneys disbursed out of funds from the WPCLF, which costs shall in no event exceed the amount specified on Exhibit 1 as the "Principal Amount."

(t) "Project Site" means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the construction and operation of the Project Facilities, but it does not include the WRRSP Site.

(u) "Semi-Annual Payment" means the amount equal to the Project Participation Principal Amount multiplied by the Participation Rate. An estimate of the Semi-Annual Payment based on the Principal Amount and the Participation Rate is specified on Exhibit 1 beneath the Principal Amount. A portion of Semi-Annual Payment will be deposited into an account to offset Ohio EPA administrative expenses.

If the Contract Period of Years commences prior to the final determination of the Project Participation Principal Amount, the Semi-Annual Payment shall be based upon the best figures available at the time the computation of each semi-annual payment is required to be made. When such final costs are known, the Semi-Annual Payment shall be recomputed and the next following semi-annual payment shall be either increased or decreased by a factor sufficient to correct for any overpayment or underpayment through the date of such recomputation so that the total amount received by OWDA over the Contract Period of Years will be the same amount as would have been received had the final Project Participation Principal Amount been used in computing the Semi-Annual Payment at the commencement of the Contract Period of Years. The interest during construction computed at the Contract Interest Rate shall, however, be computed based on the then existing cost allocations at the time of such computation and shall not be recomputed.

(v) "Special Assessment Funds" means the proceeds from the special assessments to be hereafter levied, if any, by the Borrower to pay all or a portion of the cost of the Project Facilities including repayment of the loan provided for herein. In such cases where assessments are to be levied, Exhibit 1 sets out the Resolution of Necessity adopted by the appropriate legislative authority.

(w) "Wastewater Service Charge" means a charge against the user payable to the Borrower for the collection or collection and treatment of wastewater and for the provision of the facilities therefor.

(x) "WRRSP Project" means the actions and facilities, including the manner of their implementation and maintenance, which have been approved by the Director under the WPCLF's Water Resources Restoration Sponsor Program and identified by the approved WRRSP Restoration / Protection Plan.

(y) "WRRSP Restoration / Protection Plan" means all materials developed by the Borrower, including materials developed by the Implementer and submitted by the Borrower, in satisfaction of the requirements of the Director to approve a WRRSP Project for assistance, including the Director's approval and any applicable conditions.

(z) "WRRSP Site" means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the implementation, construction, and operation of the WRRSP Project.

## **ARTICLE II - PROPERTY INTEREST IN PROJECT SITE AND PROJECT FACILITIES AND RIGHTS OF ACCESS THERETO**

Section 2.1. All real estate and interests in real estate and all personal property constituting the Project Facilities and the Project Site shall be acquired by and shall be the property of the Borrower.

Section 2.2. The Borrower agrees that the State or its designated representatives shall have the right at all reasonable times to enter upon the Project Site, WRRSP Site, WRRSP Project location, and Project Facilities and to examine and inspect the same. The Borrower further agrees that the State or its designated



representatives shall have such rights of access to the Project Site and Project Facilities as may be reasonably necessary to enable the OWDA to exercise its rights pursuant to Section 5.8 hereof.

**ARTICLE III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITIES,  
AND PAYMENT OF COSTS THEREOF**

Section 3.1. Subject to the terms and conditions of this Agreement, the Borrower shall do all things necessary to construct the Project Facilities on the Project Site (which the Borrower hereby represents has been acquired by the Borrower) by means of the construction contract.

Section 3.2. In connection with the construction of the Project Facilities, the Borrower agrees that:

(a) It will proceed expeditiously with, and complete, the Project Facilities in accordance with the specific terms and conditions of each of the following: the approved facilities plan, the Finding of No Significant Impact, the approved project schedule, and the approved project detailed plans and specifications, or amendments thereto as approved by the Director. The Borrower accepts such performance as an essential element of this Agreement.

(b) The construction contract(s) will provide that the designated representatives of the State will have access to the work whenever it is in preparation or progress and that the contractor will provide for such access and inspection.

(c) The construction of the Project Facilities on the Project Site, including the letting of contracts in connection therewith, will conform to applicable requirements of Federal, State and local laws, ordinances, rules and regulations and will be performed in compliance with all applicable federal, state and local environmental laws and regulations in effect as of the date hereof.

(d) Following construction contract award and prior to the commencement of construction, the Borrower will arrange and conduct a pre-construction conference to include the Borrower, the consulting engineers of the Borrower, and all contractors, and designated representatives of the State as appropriate or necessary.

(e) All construction contracts and contractors' estimate forms will be prepared so that materials and equipment furnished to the Borrower may be readily itemized by the Borrower and identified, if necessary, as to Eligible Project Costs and non-Eligible Project Costs.

(f) The Borrower will not submit requests for disbursement of non-Eligible Project Costs. If, based on a payment request submitted by the Borrower, the State disburses funds from the WPCLF which are subsequently determined to be for non-Eligible Project Costs, the State will be under no obligation to provide WPCLF funding beyond the Eligible Project Costs as shown on Exhibit 1, as amended.

(g) Any change or changes in a construction contract regardless of costs which substantially modify the proposed Project Facilities or alter the direct or indirect impact of the Project Facilities upon the environment will be submitted to the Director for prior approval and then, upon approval, be forwarded to the OWDA. The Borrower shall be precluded from submitting to the OWDA payment requests for Eligible Project Costs associated with the change orders until such time as the Director's approval of the change orders has been obtained.

(h) Change orders not requiring prior approval of the State will be submitted to the Director within one (1) month of the time at which they are approved by the Borrower. The Borrower shall be precluded from

submitting to the OWDA payment requests for Eligible Project Costs associated with the change orders until such time as the Director's approval of the change orders has been obtained.

(i) The Borrower will comply with all certifications and assurances as agreed to in the Application Compliance Certification, signed by the Authorized Representative of the Borrower.

(j) The Borrower shall be precluded from submitting to the OWDA payment requests for Eligible Project Costs unless the Borrower is in full compliance with the certifications and assurances made in the above referenced Application Compliance Certification.

(k) Except as otherwise provided in this Agreement, the Borrower shall have the sole and exclusive charge of all details of the construction of the Project Facilities.

(l) In any year in which disbursements to the Borrower under this Agreement exceed \$750,000 the Borrower shall comply with the Single Audit Act (SAA) Amendments of 1996, 31 U.S.C.A. § 7501 and have an audit of its use of Federal financial assistance (see 2 CFR Part 200). The Borrower agrees to keep a copy of the SAA audit available for review, if requested, by the State for the life of the loan period.

(m) In the event construction costs are to be paid from loan proceeds under this Agreement, the Borrower shall comply with 40 U.S.C.A. § 3141 (known as the Federal Davis-Bacon Act), unless waived in writing by the State.

(n) The Borrower acknowledges and agrees that its obligation under Section 3.2(c) to conform to applicable requirements of Federal laws, rules and regulations, includes, without limitation, the obligation to:

(i) comply with all applicable Federal requirements imposed by the then most recent version of the Consolidated Appropriations Act and/or related State Revolving Fund Policy Guidelines, including, among others, requirements that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") and that if applicable, all manufactured products used in the projects are to be produced in the United States as required by the Build America, Buy America Act (BABAA), *eff. May 14, 2022* unless (A) the Borrower has requested and obtained a waiver from the Director pertaining to the Project or (B) the Director has otherwise advised the Borrower in writing that BABAA and/or the American Iron and Steel Requirement is not applicable to the Project; or

(ii) comply with all record keeping and reporting requirements under the CWA, including any reports required by the Federal agency or the Director such as performance indicators of program deliverables, information on costs and project progress. The Borrower understands that (A) each contract and subcontract related to the Project is subject to audit by appropriate Federal and State entities and (B) failure to comply with the CWA and this Agreement may be a default hereunder that may result in the required immediate repayment from the Borrower of financial assistance provided under this Agreement and/or other remedial actions.

(o) The Borrower agrees to comply with the requirements of section 603(d)(1)(E)(i) of the CWA, 33 U.S.C.A. 1383, (incorporated into the CWA by the Water Resources Reform and Development Act (WRRDA)), for the development and implementation of a Fiscal Sustainability Plan (FSP). The Borrower agrees to certify, as part of the Performance Certification, a Fiscal Sustainability Plan has been developed and implemented in accordance with the provisions of this Agreement and applicable law.

Section 3.3. The Borrower shall keep accurate records of the Eligible Project Costs. These records must be kept in accordance with generally accepted government accounting standards, including standards relating to the reporting of infrastructure assets, in accordance with generally accepted accounting principles as issued by the Governmental Accounting Standards Board. The Borrower shall permit the State, acting by or through its designated representatives, to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of said audit and examination, which examination may include examination for compliance with the CWA and R.C. Section 6111.036, and the Borrower shall submit to the State such documents and information as they may require in connection therewith.

Section 3.4. The Borrower shall require that each construction contractor shall furnish a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract.

Section 3.5. The Borrower shall require that each of its contractors and all subcontractors maintain during the life of its contract, Workers' Compensation Insurance, Public Liability, Property Damage, Vehicle Liability Insurance, and Flood Insurance if appropriate, in amounts and on terms satisfactory to the State. Until the Project Facilities are completed and accepted by the Borrower, the Borrower or (at the option of the Borrower) the contractor shall maintain Builders Risk Insurance (fire and extended coverage) on a 100 percent basis (completed value form) on the insurable portion of the Project Facilities for the benefit of the Director, the OWDA, the Borrower, the prime contractor, and all subcontractors, as their respective interests may appear.

Section 3.6. The Borrower shall provide and maintain competent and adequate engineering services; said services covering the supervision and inspection of the development and construction of the Project Facilities in accordance with the specific terms and conditions of each of the following: the approved project facilities plan, the Finding of No Significant Impact, and the approved project detailed plans and specifications, or State approved amendments thereto.

Section 3.7. Subject to the terms and conditions of this Agreement, the approval of the Director, and upon compliance by the Borrower with all the requirements of the WPCLF, the R.C. Section 6111.036, and the CWA, which must be met before receiving disbursement of Eligible Project Costs from the OWDA, the Eligible Project Costs shall be disbursed by the OWDA. In the event this Agreement is terminated by the State pursuant to, and not in breach of, the provisions of this Agreement, or by subsequent agreement of the parties, or in the event this Agreement is terminated by the Borrower, whether or not in breach of the Agreement, the Project Participation Principal Amount disbursed shall be due and payable in full no later than thirty (30) calendar days after said termination, or, at the State's option, upon terms mutually agreed to between the State and the Borrower.

Section 3.8. Upon being satisfied that the requirements of this Agreement have been met, the OWDA shall deliver to the Borrower a certificate, signed by the trustee for the WPCLF (hereinafter referred to as the "Trustee," which has entered into a Trust Agreement with the Director and the OWDA to provide for the administration of the WPCLF), certifying that monies in the amount necessary to pay all Eligible Project Costs are available or are within the present WPCLF Federal letter of credit ceiling and have been set aside by the Trustee to pay such Eligible Project Costs. When such Eligible Project Costs have been incurred and payment requested from the OWDA by the Borrower, subject to the terms and provisions of this Agreement and the Interagency Agreement, and in accordance with the requirements of paragraph (j) of Section 3.2. above, the OWDA shall cause the Trustee to disburse monies of the WPCLF in payment of the invoices,

demands for payment, or other evidence of cost incurrence to be made to the persons or entities entitled to payment in conformity with the encumbrance of funds set forth in such certificate to pay such obligated Eligible Project Costs. The Borrower represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the State.

Section 3.9. Upon completion of the Project Facilities, the Borrower shall make a full and complete accounting to the State of the final Eligible Project Costs.

Section 3.10. The Borrower shall comply with the following requirements in accordance with the time schedule contained in Section 3.11. hereof:

(a) In addition to the legislation required by this Agreement in the preambles, the Borrower, through its legislative body, shall pass legislation, to implement the system of user charges (Operation, Maintenance, and Replacement expenses) and the sewer use ordinance that was contingently approved by the Director prior to the execution of this Agreement. In addition, as appropriate, the Borrower shall execute an approved intermunicipal service agreement, as described in the State of Ohio EPA Guidance for a User Charge System, as amended.

(b) The Borrower shall complete all activities and documents provided in the Operation and Maintenance (O&M) Program Plan as amended.

(c) If deemed necessary by the approved Facilities Plan, the Borrower shall be in compliance with any required sewer system evaluation and rehabilitation schedules, as described in the approved Facilities Plan, accepted in the Approved Application, and incorporated into this Agreement on Exhibit 1 as "Special Terms and Conditions," and made a part hereof.

(d) The Borrower shall comply with applicable "fair share" goals and reporting annually by October 15<sup>th</sup> of each year for utilization of Disadvantaged Business Enterprises.

(e) On the date one year after Initiation of Operation of the Project Facilities, the Borrower shall prepare and submit to the Director the Performance Certification report and Performance Certification. Should the Project Facilities not be in compliance with the Performance Criteria, on the date one year after Initiation of Operation of the Project Facilities, the Borrower will prepare and submit to the Director a corrective action report outlining what tasks are necessary to meet the Performance Criteria, and setting forth a schedule, acceptable to the State, which will allow the Borrower to meet said Performance Criteria.

Section 3.11. The Borrower shall be in conformance with the requirements of Section 3.10. above and in compliance with the following:

(a) By the time 50% of the Eligible Project Costs to be reimbursed by WPCLF moneys have been disbursed by OWDA, the Borrower must demonstrate, to the satisfaction of the State, that it has completed the requirements of paragraph (a) of Section 3.10. above.

(b) No later than one year after Initiation of Operation, the Borrower shall complete all activities and documents provided in the O&M Program Plan and participate in a final evaluation meeting.

(c) At any time during the effective period of this Agreement, the Borrower must demonstrate, to the satisfaction of the State, that it is in compliance with the requirements of paragraphs (c) and (d) of Section 3.10. above, as the compliance relates to construction of the Project Facilities.

Except as related to paragraphs (c) and (d) of Section 3.10. above, upon the failure of the Borrower to comply with the provisions of Section 3.10. and 3.11. herein as determined by the Director, the OWDA shall employ consulting engineers or other qualified personnel to perform any services necessary for the implementation of such requirements. All costs incurred by the OWDA in the employment of said personnel will be included in the Eligible Project Costs of the Project Facilities. Additionally, during the period of non-compliance with any of the requirements, the Borrower shall be precluded from submitting payment requests as noted in paragraph (j) of Section 3.2. above and the State shall not be obligated to approve such requests during such period of non-compliance.

#### **ARTICLE IV - PAYMENTS BY BORROWER**

Section 4.1. Subject to the further provisions hereinafter set forth, the Borrower agrees to and shall pay at the time of the execution of this Agreement the Application Fee and thereafter, semi-annually on January 1, and July 1 of each year of the Contract Period of Years to the WPCLF, the Semi-Annual Payment, solely from the Pledged Revenues.

The obligation of the Borrower to pay the charges set forth in this Section 4.1 shall not be assignable, and the Borrower shall not be discharged therefrom, without the prior written consent of the State. In the event that construction or operation of the Project Facilities shall cease or be suspended for any reason, unless otherwise agreed to in writing by the State, the Borrower shall continue to be obligated to pay such charges pursuant to this Section 4.1. In the event the Borrower defaults in the payment of the Semi-Annual Payment, the amount of such default shall bear interest at the Default Rate from the date of the default until the date of the payment thereof. All costs incurred by the State in curing such default including, but not limited to, court costs and attorney's fees shall be paid by the Borrower upon demand, and shall not be eligible for inclusion in a WPCLF Loan Agreement.

In the event that the Borrower fails to make a full Semi-Annual Payment as provided herein, the amount of any such partial payment first shall be applied as interest on the loan, with the remainder being applied toward the payment of the outstanding principal.

With respect to this Agreement, neither the general resources nor the general credit of the Borrower but only the Pledged Revenues, shall be required to be used, or pledged for the performance of any duty under this Agreement. This Agreement does not represent or constitute a debt or a pledge of the faith and credit of the Borrower. However, if otherwise lawful, nothing herein shall be deemed to prohibit the Borrower from using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this Agreement.

Section 4.2. It is agreed that, no later than the fifteenth day of June, and December, the OWDA shall invoice the Borrower for the sum owing by the Borrower pursuant to Section 4.1. and that payment of each such invoice shall be made by the Borrower to the OWDA not later than the first day of the following July or January. No failure by the OWDA to send any such invoice and no failure by the Borrower to receive any such invoice shall relieve the Borrower from its obligation to pay the amount due hereunder on the applicable due date.

Section 4.3. The Borrower hereby agrees:

(a) That it will at all times prescribe and charge such rates, after meeting: (1) operation and maintenance expenses therefore, and, (2) if required by the Director pursuant to R.C. Section 6111.036, a contribution to the Borrower's Capital Improvements Fund and, (3) the payment of all amounts required by

any Mortgage, Indenture of Mortgage, Trust Indenture or other instrument heretofore or hereafter granted by the Borrower, or contractual obligations between the Borrower and the State, payable solely from Pledged Revenues, as shall result in revenues at least adequate, to provide for the payments required by Section 4.1. hereof minus the amount of such payment provided from other Dedicated Repayment Sources, if any, and

(b) That the Borrower will, for the Contract Period of Years, furnish annually to the State reports of the operation and income of the wastewater system and also an annual report of the accounts and operations of the wastewater system and such other documents as the State may reasonably request in order to respond to requests for documentation from rating agencies or providers or potential providers of credit enhancement for debt obligations of the OWDA, and the Borrower will permit the designated representative of the State to inspect all records, accounts and data of the Project Facilities at all reasonable times, and

(c) That the Borrower will segregate the revenues, funds and properties of the wastewater system from all other funds and properties of the Borrower.

All of the obligations under this Section are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the Borrower within the meaning of R.C. Section 2731.01.

Section 4.4. If the Borrower pays all or any portion of the Semi-Annual Payment from Special Assessment Funds, and if any payor of the Special Assessment Funds elects to pay the special assessments in a one-time, lump-sum payment in lieu of having the special assessments certified to the appropriate county auditor for periodic collection, then the Borrower may elect to apply the amount of such payment to the reduction of the Project Participation Principal Amount by including that amount with its next Semi-Annual Payment pursuant to Section 4.1. hereof, accompanied by a written notice to the State identifying the amount so included and directing the State so to apply that amount. Upon the receipt of such payment and notice, the OWDA shall recompute the remaining Semi-Annual Payments based on the reduced Project Participation Principal Amount, and the OWDA shall notify the Borrower in writing of the reduced amount of the remaining Semi-Annual Payments.

Section 4.5. The Borrower agrees to provide financing for all non-Eligible Project Costs. As a preliminary indication of that commitment, the Borrower has provided evidence that financing is readily available for all non-Eligible Project Costs which will be or may be incurred by the Borrower in connection with construction of the Project Facilities.

Section 4.6. The Borrower agrees that, in the event the Borrower or its contractors receives WPCLF moneys in excess of the Eligible Project Costs, the Borrower shall repay said excess moneys to the WPCLF at the time of the first Semi-Annual Payment, or as otherwise agreed to by the Borrower and the State.

Section 4.7. In order to enable the State to comply with the requirements of federal securities laws (including, without limitation, 17 C.F.R. § 240.10b-5 and 17 C.F.R. § 240.15c2-12 ("Rule 15c2-12") each promulgated by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended), the Borrower agrees to prepare and file with the State or, at the direction of the State, to file with the Municipal Securities Rulemaking Board ("MSRB") through the EMMA System (as defined below), any annual financial information or material events disclosures that the State may determine it requires to achieve such compliance. The Borrower consents to the State's incorporation by reference into State official statements or other State filings with the MSRB of any official statements or portions thereof, financial statements, or other documents that the Borrower may have filed or may file with the MSRB. In the event the

Borrower fails to prepare any financial statement or other financial information that this Section requires the Borrower to prepare and file with or at the direction of the State, then the State shall have the right (in addition to any other rights it may have to enforce the obligations of the Borrower hereunder) to inspect all records, accounts and data of the System and cause the preparation of the required financial statement or information and to employ such professionals as it may reasonably require for that purpose, and to be reimbursed from any available Pledged Revenues for the costs of its doing so. This Section shall not be construed to limit the generality of Section 4.3 hereof. For purposes of this Section 4.7, "EMMA System" shall mean the Electronic Municipal Market Access system of the MSRB for use in the collection and dissemination of information, which system the SEC has stated to be consistent with its Rule 15c2-12. Currently, the following is the website address for EMMA: [emma.msrb.org](http://emma.msrb.org).

## **ARTICLE V - MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION**

Section 5.1. The Borrower agrees that during the Contract Period of Years it will:

- (a) Operate the Project Facilities in compliance with all applicable federal, state and local environmental laws and regulations in effect during such period, and
- (b) Keep the Project Facilities including all appurtenances thereto and the equipment and machinery therein in good repair and good operating condition at its own cost so that the completed Project Facilities will continue to operate with substantially the same efficiency as when first constructed.

The Borrower shall have the privilege of making additions, modifications and improvements to, making deletions from and discontinuing the use or operation of all or any part of, the Project Site and the Project Facilities from time to time; provided, that the cost of any additions, modifications and improvements shall be paid by the Borrower, and the same shall be the property of the Borrower and be included under the terms of this Agreement as part of the Project Site or the Project Facilities, as the case may be; and provided further that the Borrower shall make no modification to, make any deletion from or discontinue the use or operation of all or any part of, the Project Site or the Project Facilities, the result of which would be a material decrease in the Pledged Revenues without first obtaining the written consent of the State thereto.

Section 5.2. The Borrower agrees that it will initiate operation of the Project Facilities in accordance with the Project Schedule, as amended, and will not discontinue operation of the Project Facilities without the approval of the Director. The Borrower agrees that it will provide adequate operation and maintenance of the Project Facilities to comply with all applicable rules and regulations of the Director. The Borrower agrees that, in accordance with its NPDES permit and the Operation and Maintenance Program sufficient qualified operating personnel certified by the State of Ohio will be retained by the Borrower to operate the Project Facilities, and all operational tests and measurements necessary to determine compliance with the preceding sentence will be performed to insure proper and efficient operation and maintenance of the Project Facilities from the time of Initiation of Operation until the end of the Contract Period of Years or the approval of the discontinuance of the operation of the Project Facilities by the Director. The Project Facilities shall be operated and maintained in accordance with the sewer use ordinance or resolution governing the use of the Project Facilities and any administrative regulations adopted pursuant thereto acceptable to the Director as appropriate.

The Borrower will permit the State or its designated representatives to have access to the records of the Borrower pertaining to the operation and maintenance of the Project Facilities at any reasonable time following completion of construction of the Project Facilities.

Section 5.3. The Borrower agrees to insure, or cause to be insured, the Project Facilities in such amounts as similar properties are usually insured by political subdivisions similarly situated, against loss or damage of the kinds usually insured against by political subdivisions similarly situated, by means of policies issued by reputable insurance companies duly qualified to do such business in the State of Ohio.

Section 5.4. The Borrower agrees that it will provide through self-insurance or obtain public liability insurance with reference to the Project Facilities in minimum amounts of \$500,000 for the death of or personal injury to one person and \$1,000,000 for personal injury or death for each occurrence in connection with the Project Facilities and \$500,000 for property damage for any occurrence in connection with the Project Facilities. The Director and the OWDA, on behalf of the WPCLF shall be made an additional insured under such policies.

Section 5.5. Throughout the Contract Period of Years, the Borrower shall maintain Worker's Compensation Coverage or cause the same to be maintained.

Section 5.6. Any insurance policy issued pursuant to Sections 5.3 and 5.4. hereof shall be so written or endorsed as to make losses with respect to the Project Facilities, if any, payable to the State on behalf of the WPCLF, and the Borrower as their respective interests may appear. Each insurance policy provided for in Sections 5.3. and 5.4. hereof shall contain a provision to the effect that the insurance company shall not cancel the same without first giving written notice thereof to the State and the Borrower at least ten days in advance of such cancellation. The Borrower shall deliver certificates of insurance evidencing the coverage required herein to the State.

Section 5.7. The net proceeds of the insurance carried pursuant to the provisions of Sections 5.3. and 5.4. hereof shall be applied as follows:

(a) The net proceeds of the insurance required in Section 5.3. hereof shall be applied as provided in Section 5.9. hereof, and

(b) The net proceeds of the insurance required in Section 5.4. hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 5.8. In the event the Borrower shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Project Facilities in good repair and operating condition, or shall fail to operate the Project Facilities in accordance with Section 5.2. hereof, the OWDA may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums of the same or may make such repairs or replacements as are necessary or may hire the necessary operating personnel to insure compliance with Section 5.2. and provide for payment thereof; and all amounts so advanced therefor by the OWDA shall become a separate obligation of the Borrower to the OWDA, which amounts, together with interest thereon at a rate equal to three percent (3%) above the Contract Interest Rate from the date thereof, the Borrower agrees to pay solely out of Pledged Revenues.

Section 5.9. If prior to the completion of the Contract Period of Years the Project Facilities shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, there shall be no abatement or reduction in the amounts payable by the Borrower pursuant to Section 4.1. hereof, and the Borrower will:

(a) Promptly repair, rebuild or restore the property damaged or destroyed, and



(b) Apply for such purpose so much as may be necessary of any net proceeds of insurance policies resulting from claims for such losses as well as any additional moneys of the Borrower necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the Borrower.

Section 5.10. In the event that title to or the temporary use of the Project Site or Project Facilities, or any part thereof, shall be taken by any person, firm, or corporation acting under governmental authority, there shall be no abatement or reduction on the amounts payable by the Borrower pursuant to Section 5.1. hereof, and any net proceeds received from any award made in such eminent domain proceedings shall be paid to and held by the Borrower in a separate condemnation award account and shall be applied by the Borrower in either or both of the following ways as shall be determined by the Borrower:

(a) The restoration of the improvements located on the Project Site to substantially the same condition as they existed prior to the exercise of said power of eminent domain; or

(b) The acquisition of additional real estate, if necessary, and facilities, by construction or otherwise, equivalent to the Project Facilities, which real estate and facilities shall be deemed a part of the Project Site and Project Facilities without the payment of any amounts other than herein provided, to the same extent as if such real estate and facilities were specifically described herein.

Any balance of the net proceeds of the award in such eminent domain proceedings shall be paid to the Borrower upon delivery to the OWDA of a certificate signed by an authorized officer of the Borrower that the Borrower has complied with either paragraph (a) or (b), or both, of this Section 5.10. The OWDA shall cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project Site or Project Facilities or any part thereof. In no event will the Borrower voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project Site or Project Facilities or any part thereof without the written consent of the State.

Section 5.11 This Section 5.11 shall apply if Exhibit 1 hereto indicates that the Contract Interest Rate includes a Water Resource Restoration Sponsor Program (WRRSP) discount.

(a) In accepting the WRRSP discount, the Borrower agrees that to the fullest extent permitted by law it shall assure implementation of the WRRSP Project in accordance with the specific terms and conditions of each of the following as applicable: approved Restoration / Protection Plans, the Finding of No Significant Impact, agreements or other mechanisms to restrict or maintain the identified uses associated with the WRRSP Project, and agreements between the Borrower and an entity responsible for implementing approved Restoration / Protection Plans (hereinafter the "Implementer") which are attached hereto as Exhibit 2 and made a part hereof. The Borrower accepts such performance as an essential element of this Agreement.

(b) Following the award of assistance, the Borrower may request disbursements for completion of a Restoration / Protection Plan and for implementation of an approved Restoration / Protection Plan. All such disbursements will be requested on the "Online Fund Payment Request Form" provided by the Ohio Water Development Authority website. The parties to this Agreement expect that costs directly associated with implementing the Restoration / Protection Plan will be disbursed by the OWDA either to the Borrower, the Implementer, an escrow agent jointly selected by the Borrower and the Implementer, or to contractors supplying materials or performing services in furtherance of this Agreement which have been designated by the Borrower as authorized recipients of such disbursements.

When WRRSP-eligible costs are incurred on behalf of the Implementer, invoices shall first be submitted to the Implementer which shall approve them to be requested for reimbursement by the Borrower and shall certify such invoices as eligible for assistance prior to forwarding them to the Borrower. The Borrower shall approve and certify all invoices (whether incurred by the Borrower directly or the Implementer) prior to submitting them to the Director with the accompanying disbursement request form. The Director shall review the disbursement request, including accompanying invoices, and if it is approved, shall transmit it to OWDA which then will be responsible for disbursing funds directly, either to the Borrower, escrow agent or to the contractor.

(c) Each interest in property acquired by either the Borrower or the Implementer as part of the WRRSP Project shall be subject to legally enforceable use restrictions which shall run with the property, perpetually limiting the use of the property to natural area uses consistent with the approved Restoration / Protection Plan. All conservation easements acquired either by the Borrower or the Implementer to implement or maintain the WRRSP Project shall be permanent easements and shall limit the uses of the land under easement to natural area uses consistent with the approved Restoration / Protection Plan. Borrower shall submit to the Director copies of documents containing such restrictions within ninety days of acquisition of the property interest.

(d) Borrower's failure to comply with any of the terms of this Section or the terms of any WRRSP-related requirements identified in any of the documents listed above during the time this Agreement is in effect shall be considered a default under this Agreement. If the State provides written notice of such default to the Borrower and the Borrower fails within sixty days of the date of such notice to satisfactorily demonstrate in writing to the Director that the Borrower is taking appropriate actions that will cure the default and will result in compliance with the WRRSP requirements, then from and after the date that is sixty days after the date of such notice the State will increase the Contract Interest Rate to a rate necessary to recover the amount of WRRSP funds disbursed and to eliminate any discount applied for the remainder of the Contract Period of Years, and all subsequent semi-annual payments for the remainder of the Contract Period of Years will be adjusted accordingly. Borrower agrees to submit in a timely manner the amounts required by the revised semi-annual payments for the remainder of the effective period of this Agreement.

The amount that the State recovers through the remedy provided for in this paragraph shall not exceed the total of the WRRSP Project cost financed by the WPCLF and any interest discount applied for the remainder of the Contract Period of Years, and any amount thus recovered by the State shall be credited toward the liquidation of any liability of the Borrower under this Section 5.11.

(e) To the extent that Borrower's failure to comply with WRRSP-related requirements involves a failure on the part of an Implementer to carry out a term or condition of an approved Restoration / Protection Plan for which a remedy exists via a separate enforceable agreement between the Director and the Implementer, the Director shall first attempt to address such non-compliance through the agreement between the Director and the Implementer prior to invoking any remedies under this agreement or otherwise available. If the Director, after exercising its obligation to attempt to address non-compliance through direct action between the Director and the Implementer, provides written notice to the Borrower that noncompliance continues to exist, the Director or the State may undertake any remedies under this agreement or otherwise available.

**ARTICLE VI - GENERAL REPRESENTATIONS AND AGREEMENTS;  
EVENTS OF DEFAULT AND REMEDIES**

Section 6.1. The Borrower hereby represents and warrants that:

(a) It is and shall remain in compliance, and shall take whatever actions are necessary to assure compliance during the Contract Period of Years, with all applicable federal, state, and local laws, ordinances, rules, regulations, and provisions of this Agreement, including without limitation the CWA and R.C. Section 6111.036, subject to its rights to contest in good faith the issue of non-compliance, and

(b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the Borrower, wherein a result adverse to the Borrower could reasonably be expected to have a materially adverse effect on the ability of the Borrower to meet its obligations under this Agreement, and

(c) Except as heretofore disclosed in writing to the State, no judgment or consent order has been rendered against the Borrower, and the Borrower is not a party to any agreement, which imposes, will impose, or has imposed any fines or monetary penalties upon the Borrower for the violation of any federal, state, or local law, ordinance, or regulation, which fines or monetary penalties have not heretofore been paid in full.

Section 6.2. Each of the following shall be an event of default ("Event of Default") under this Agreement:

(a) The Borrower shall fail to make any payment to the OWDA required pursuant to this Agreement when the same is due and payable, including, without limitation, any amount due and payable pursuant to Article III hereof.

(b) The Borrower shall fail to observe and perform any other obligations, agreements, or provisions of this Agreement, which failure shall continue for thirty (30) days after receipt of written notice thereof from the Director or the OWDA; provided, however, that such failure shall not constitute an Event of Default hereunder if the Borrower demonstrates both of the following to the satisfaction of the Director and OWDA: i) cure of such failure cannot be effected within thirty (30) days; and ii) the Borrower is taking all reasonably necessary actions to cure such failure with all deliberate speed. Notwithstanding the contents of this paragraph, the notice and cure provisions of paragraph 5.11(d) shall apply to the WRRSP Project portions of the assistance in the event of a failure to comply with the terms of WRRSP-related requirements under this Agreement.

(c) Any representations made by the Borrower in Section 6.1 or 7.1 shall at any time during the Contract Period of Years prove to be false.

(d) The Borrower shall fail to observe any of the covenants contained in Article VII herein.

Section 6.3. The Director may terminate, suspend, or require immediate repayment of financial assistance from the Borrower in the event of a default due to failure to make any required payment, or due to any violation of the terms or conditions of this Agreement, or of the documents referred to in Section 3.2.(a), or of the Plan Approval for the Project Facilities under Section 6111.44 of the Ohio Revised Code. The Director may also prescribe corrective action, or direct that corrective action be undertaken, to remedy the event or violation, and the Borrower agrees to perform such corrective action.

Section 6.4. Whenever an Event of Default of payment shall have occurred and be continuing, in addition to any other rights or remedies provided herein, by law or otherwise, the State may:

(a) declare the full amount of the then unpaid Project Participation Principal Amount to be immediately due and payable;

(b) to the extent permitted under any judgment, consent order, or agreement affecting the Borrower, require the Borrower to agree to, and the Borrower hereby agrees to, effect the subordination of the payment of any fine or penalties imposed for the violation of any federal, state, or local environmental law or regulation to the payment of the Eligible Project Costs and the interest due thereon.

Section 6.5. No right or remedy conferred upon the OWDA or the Director under Sections 5.11, 6.3 or 6.4 hereof is intended to be exclusive of any other right or remedy given herein, by law, or otherwise. Each right or remedy shall be cumulative and shall be in addition to every other remedy given herein, by law, or otherwise.

Section 6.6. The Borrower releases the State from, agrees that the State shall not be liable for, and agrees, to the fullest extent permitted by law, to hold the State, its officers, employees and agents harmless against, any loss or damage to property, or any loss or injury to or death of any person, or any other loss or damage, that may be occasioned by any cause whatsoever pertaining to the Project Facilities, or the use thereof; provided that such indemnity under this Section 6.6 shall not be effective for damages that result from negligent or intentional acts of the State, its officers, employees and agents. The Borrower further agrees, to the fullest extent permitted by law, to indemnify and hold harmless the State, its officers, employees and agents against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of the Borrower in the performance of any covenant or agreement on the part of the Borrower to be performed pursuant to the terms of this Agreement, arising from the acquisition, construction, installation, or improvement of the Project Facilities or arising from any act or negligence of or failure to act by the Borrower, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm, or corporation resulting from the Project Facilities (other than any accident, injury, or damage that results from negligent or intentional acts of the State, its officers, employees and agents), and from and against all cost, liability and expenses incurred in or in connection with any such claim or action, arbitration or proceeding brought thereon.

In case any action or proceeding be brought against the State by reason of any claim described in this Section, the State agrees to cause written notice of such action or proceeding to be given to the Borrower, and the Borrower upon notice from the State covenants to resist or defend such action or proceedings at the Borrower's expense including all legal and other expenses (including reasonable attorneys' fees).

#### **ARTICLE VII - MAINTENANCE OF TAX-EXEMPT STATUS OF BONDS / PRIVATE BUSINESS USE RESTRICTIONS**

Section 7.1. The Borrower acknowledges that the OWDA may issue tax-exempt bonds to provide the funds to meet the State's obligations with regard to funding the WPCLF and that the maintenance of the tax-exempt status of any such bonds will depend, in part, on the Borrower's compliance with the provisions of this Agreement. Accordingly, the Borrower agrees as follows:

(a) That it shall take no action that would cause bonds issued by the OWDA, the proceeds of which could fund the loan to the borrower (the "OWDA Bonds") to fail to qualify as tax-exempt bonds, nor omit to take any action necessary to maintain such status;

(b) That it shall take any action that the OWDA reasonably may request it to take to maintain the status of the OWDA Bonds as tax-exempt bonds;

(c) That, to assure that the OWDA Bonds will not be or become "private activity bonds" within the meaning of 26 U.S.C.A. Section 141 of the Internal Revenue Code of 1986, as amended:

(i) The Borrower shall not permit, at any time ten percent (10%) or more (in the aggregate) of that portion of the Project Facilities to be financed with funds borrowed from the State hereunder (the "State Funds") to be used by any person or persons for any private business use (as hereinafter defined) while at the same time the payment of principal of, or the interest on, the State Funds is directly or indirectly (A) secured by any interest in (1) property used or to be used for a private business use or (2) payments made with respect to such property or (B) derived from (1) payments with respect to such property (whether or not made to the OWDA) or (2) borrowed money used or to be used for private business use.

(ii) No portion of the State Funds will be used to make or finance loans to persons other than other governmental units.

For purposes of this Agreement, "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit (as hereinafter defined). Use of any Project Facility or Project Site as a member of the general public will not be considered a private business use. Any activity carried on by a person other than a natural person shall be treated as a trade or business. Use by an organization which qualifies under 26 U.S.C.A. Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, shall be considered a private business use.

For purposes of this Agreement, "governmental unit" means a political subdivision within the United States, including any political subdivision within the State of Ohio, but does not mean the United States or any of its governmental branches, departments or agencies.

If there is any question about the application of the foregoing restrictions relating to private business uses or loans, the Borrower agrees to immediately write the OWDA requesting assistance prior to entering into any agreement which may be prohibited as provided herein.

(iii) The Borrower shall not re-loan, directly or indirectly, any portion of the amounts advanced to it under this Agreement to any person;

(d) That, to assure that the OWDA Bonds will not be or become "arbitrage bonds" within the meaning of 26 U.S.C.A. Section 148 of the Internal Revenue Code of 1986, as amended, the Borrower, except upon the prior written consent of the OWDA, shall not create or permit to exist any fund pledged to, or expressly reserved exclusively for, the payment of amounts payable by the Borrower hereunder.

Section 7.2. The OWDA shall not be required to, and shall not, consent to any action by the Borrower referred to in Section 7.1 unless it first shall have received an opinion of nationally recognized bond counsel to the effect that the consummation of the transaction or transactions contemplated by such action will not adversely affect the tax-exempt status of the OWDA bonds.

Section 7.3. If the Borrower shall have any question about the application of Section 7.1., in the particular circumstances faced by it at any time during the term of this Agreement, it shall immediately

inform the OWDA of the circumstances and request the OWDA's assistance to resolve any such questions, to the end that the tax-exempt status of the OWDA Bonds and of the OWDA's bonds would be preserved.

#### **ARTICLE VIII - MISCELLANEOUS PROVISIONS**

Section 8.1. Any invoice, accounting, demand, or other communication under this Agreement by any party to this Agreement to any other party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

(a) in the case of the OWDA, is addressed to or delivered personally to the OWDA at:

Ohio Water Development Authority  
480 South High Street  
Columbus, Ohio 43215  
Attn: Executive Director

and,

(b) in the case of the Director, is addressed to or delivered personally to the Director at:

Ohio Environmental Protection Agency  
Lazarus Government Center  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Chief, Division of Environmental and Financial Assistance

and,

(c) in the case of the Borrower, is addressed to or delivered personally to the Borrower at the address listed on Exhibit 1, or at such other addresses with respect to any such party as that party may from time to time, designate in writing and forward to the other parties as provided in this Section.

Section 8.2. Any approval of the State required by this Agreement shall not be unreasonably withheld. Any provision of the Agreement requiring the approval of the State or the satisfaction or evidence of satisfaction of the State shall be interpreted as requiring a response by the Director and the OWDA granting, authorizing, or expressing such approval or satisfaction, as the case may be, unless such provision expressly provides otherwise.

Section 8.3. Upon request of the OWDA, the Borrower agrees to execute the information report required by 26 U.S.C.A. Section 149 of the Internal Revenue Code of 1986, as it may be amended from time to time, with respect to this Agreement, such form to be completed by the OWDA on the basis of information provided by the Borrower. The Borrower hereby agrees that the OWDA may file such information report for and on behalf of the Borrower with the Internal Revenue Service.

Section 8.4. This Agreement is made subject to, and conditional upon, the approval of this Agreement as to form by the General Counsel of the OWDA and Counsel to the Director and upon the certification of availability of funds as provided in Section 3.8. hereof.

Section 8.5. If any provision of this Agreement or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement

are severable. In lieu thereof the parties agree that there shall be added a provision as similar in terms to such illegal, invalid and unenforceable provision as may be possible and be legal, valid and enforceable.

Section 8.6. This Agreement shall become effective as of the "Effective Date" and shall continue in full force and effect until the final day of the Contract Period of Years, based on the Semi-Annual Payment being paid at the rate established in Section 4.1. hereof, or until the day the obligations of the Borrower under this Agreement have been fully satisfied, whichever is later.

Section 8.7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of any of the parties hereto. This Agreement shall not be assigned by the Borrower without the prior written consent of the State. The State, at its option, may assign this Agreement without the consent of the Borrower.

Section 8.8. As its record of this Agreement, the Borrower agrees to receive an electronic copy pursuant to R.C. 1306.06(C).

The remainder of this page is intentionally left blank.

Water Pollution Control Loan Fund Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the "Effective Date."

APPROVED AS TO FORM

By \_\_\_\_\_  
Ohio EPA Counsel

Print Name \_\_\_\_\_

OHIO ENVIRONMENTAL PROTECTION AGENCY

By \_\_\_\_\_  
Anne M. Vogel, Director

Date \_\_\_\_\_

APPROVED AS TO FORM

By \_\_\_\_\_  
General Counsel

Print Name \_\_\_\_\_

OHIO WATER DEVELOPMENT AUTHORITY<sup>2</sup>

By \_\_\_\_\_  
Ken J. Heigel, Executive Director

Date \_\_\_\_\_

APPROVED AS TO FORM

By \_\_\_\_\_  
Borrower's Counsel

Print Name \_\_\_\_\_

BORROWER

By \_\_\_\_\_  
Authorized Representative

Print Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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<sup>2</sup> If the execution of this Agreement on behalf of the OWDA is not required for the reason stated in note 1 on page 1 hereof, then "N/A" shall be inserted on the signature lines for the OWDA and its General Counsel.



## Water Pollution Control Loan Fund

**Exhibit 1****Project Name:** Mills Street High Rate Treatment Facility**Borrower:** Sandusky**Loan Number:** CS390830-0006**Address:** 240 Columbus Avenue**City & State:** Sandusky, OH**Zip Code:** 44870**Borrower's Authorized Representative:** John Orzech**Phone:** (419) 627-5846

### Project Description

Construction of a High Rate Treatment Facility at the WWTP to help reduce combined sewer overflows from the Mills Street of (west Side) CSO. The proposed improvements consist of a 16 mgd HRT Facility. The improvements are required as part of the City's General Plan Update and Compliance Schedule.

### Cost Data

Activities	Eligible	Erie County	Total Project Cost
<b>Technical Services</b>			
Engineering Services	\$1,642,466.88		\$1,642,466.88
<b>Construction</b>			
The Great Lakes Construction Co. - Mills Street High-Rate Treatment Project	\$26,852,304.65	\$5,174,195.35	\$32,026,500.00
The Great Lakes Construction Co. - UV Disinfection Refurbishment Project	\$1,075,805.69	\$1,335,154.31	\$2,410,960.00
<b>Other Costs</b>			
Contingency	\$3,443,745.94		\$3,443,745.94
Design	\$2,031,311.84		\$2,031,311.84
<b>Total Estimated Cost</b>	<b>\$35,045,635.00</b>	<b>\$6,509,349.66</b>	<b>\$41,554,984.66</b>

### WPCLF Loan Information

Interest Rate:	1.32%	Principal Amount:	\$30,995,635.00
Term in Years:	30.0	Interest:	\$6,641,985.20
Number of Payments:	60	Total Cost of Borrowing:	\$37,637,620.20
Participation Rate:	0.0202381	Payment:	\$627,293.67
Principal Forgiveness Amount	\$4,050,000.00	WRRSP Advance of Interest:	\$2,514,662.00

### Project Schedule

Application Date:	03/08/2023	Initiation of Operation:	10/18/2024
Resolution Date:	12/12/2022	Date of Initial Payment:	07/01/2025
Performance Certification:	10/18/2025		

### Pledged Revenues

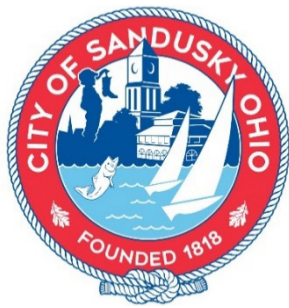
Section 603(d)(1)(C) of the Clean Water Act requires one or more dedicated sources of revenue for repayment of the loan. The following information specifies those sources

#### Revenue Source

Special Assessments	
General Taxes	
Wastewater Service Charge	\$38,065,805.40
Other:	
<b>Total</b>	<b>\$38,065,805.40</b>

To the best of my knowledge and belief, the information contained on this exhibit represents the actual project costs being requested from the WPCLF. I hereby acknowledge that the non-eligible and not funded costs identified above, if any, will be provided from sources other than the WPCLF as to allow the project to be fully implemented.

**John Orzech****Date**



## DEPARTMENT OF PUBLIC WORKS

240 Columbus Avenue

Sandusky, Ohio 44870

419.627.5829

[www.cityofsandusky.com](http://www.cityofsandusky.com)

To: John Orzech, Interim City Manager

From: Joshua R. Snyder, P.E., Public Works Engineer

Date: March 16, 2023

Subject: **Commission Agenda Item – Award Contract for the Warren Street Reconstruction Project to Speer Bros., Inc. of Sandusky, Ohio**

**ITEM FOR CONSIDERATION:** Legislation awarding a contract to Speer Bros., Inc. of Sandusky, Ohio for the Warren Street Reconstruction Project.

**BACKGROUND INFORMATION:** In August of 2021, City Commission approved legislation (Resolution No. 037-21R) allowing City Staff to apply for and receive funds through the Ohio Public Works Commission (OPWC) the Warren Street Reconstruction Project. Once awarded, City staff then contracted with the LJB, Inc. (Resolution No. 20-061) to preform design activity on the project, and then later completed by City Staff and Red Barn Engineering.

The project limits are Warren Street from Water to Market Streets, then again from Washington to Monroe Streets, totaling nearly a half mile in length. The 6-inch waterline being replaced is over eighty years old and most of the pavement was last paved prior to 1970. Historically the City has seen over thirty water main breaks within the stretch of Warren Street and the more than half of the roadways was rated worst-conditioned street sections city-wide.

The project consists of replacing the water main, fire hydrants, service lines and meters, adding storm sewer, curbing, driveway aprons, a sidewalk on the East side and an asphalt multi-use path on the West side tying Shoreline Park to Huron Park. Lastly, full depth asphalt pavement will be placed.

The City advertised for bids, receiving two on the bid due date of March 2, 2023, at a public bid opening;

Speer Bros., Inc.	Base Bid	\$3,097,332.50
Sandusky, Ohio	Alt. Bid 1	\$382,178.93
100% Bid Bond	Alt. Bid 2	\$16,000.00
	Alt. Bid 3	\$ 5,500.00
	Alt. Bid 4	\$144,000.00
<b>Base Bid + Alt. Bid Items 2,3,4:</b>		<b>\$3,032,220.00</b>

Underground Utilities Inc.	Base Bid	\$3,186,951.00
Monroeville, Ohio	Alt. Bid 1	\$386,193.47
100% Bid Bond	Alt. Bid 2	\$400,000.00
	Alt. Bid 3	\$11,000.00
	Alt. Bid 4	\$195,000.00
<b>Base Bid + Alt. Bid Items 2,3,4:</b>		<b>\$3,434,883.00</b>

The engineer's estimate for the project base bid was set at \$3,169,476.49. Staff recommends award of the base bid + Alt. Bid items 2 (pulverization of roadway in lieu of traditional excavating), 3 (added geotextile material for added roadway structure) and 4 (Water line gate valves and line stops in lieu of insertion valves).

Alternate Bid item 1 (traffic signal replacement) was not selected. The additions of alternate items 2, 3 and 4 to the base bid results in a net reduction, from just the base bid. This makes the overall award amount less than the of the overall award amount.

The contractual schedule for completion of this project is Friday, December 1, 2023.

**BUDGETARY INFORMATION:** The total construction cost of the project based on selecting the base bid and alternate items 2, 3 and 4; is \$3,032,220.00, which is (4%) under the engineer's estimate and will be funded accordingly;

OPWC Grant	\$325,000.00
OPWC Loan	\$162,500.00
Issue 8 Street	\$62,093.00
PRK/ADM - Path	\$125,000.00
PRK/ADM - Street	\$448,978.00
Stimulus	\$168,649.00
OWDA Water	\$865,000.00
OWDA Sewer	\$875,000.00
	\$3,032,220.00

**ACTION REQUESTED:** It is recommended that proper legislation be prepared awarding a contract to Speer Bros., Inc. of Sandusky, Ohio for the Warren Street Reconstruction Project in the amount of \$3,032,220.00 be approved and that the necessary legislation be passed under suspension of the rules and in accordance with Section 14 of the City Charter to allow the contractor to complete the project prior to the construction completion deadline of December 1, 2023.

I concur with this recommendation:

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John Orzech  
Interim City Manager

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director

## CERTIFICATE OF FUNDS

In the Matter of: Speer Bros -Warren Street Project

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Sandusky under the foregoing Contract have been lawfully appropriated for such purposes and are in the treasury of the City of Sandusky or are in the process of collection to an appropriate fund, free from any previous encumbrances. This certificate is given compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Account #612,613, 431-6200-55990, 431-6503-55990; 240-0000-55990

By: 

Michelle Reeder

Finance Director

Dated: 3/23/2023

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SPEER BROS., INC. OF SANDUSKY, OHIO, FOR THE WARREN STREET RECONSTRUCTION PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the Warren Street Reconstruction Project involves the reconstruction of Warren Street between Water Street and Market Street and between Washington Street and E. Monroe Street and includes the replacement of the waterline, fire hydrants, service lines and meters, adding storm sewer, curbing, driveway aprons, a sidewalk on the east side and an asphalt multi-use path on the west side tying Shoreline Park to Huron Park and full depth asphalt pavement; and

**WHEREAS**, the City Commission approved an Agreement for Professional Design Services with LJB, Inc. of Fairview Park, Ohio, for preliminary engineering and design for the Warren Street Reconstruction Project by Ordinance No. 20-061, passed on March 23, 2020; and

**WHEREAS**, the City Commission approved a First Amendment to the Agreement for Professional Design Services with LJB, Inc. of Fairview Park, Ohio, for additional work including encroachment license agreements, Elm Street realignment, and manage combined sewer cleaning contract for the Warren Street Reconstruction Project by Ordinance No. 20-108, passed on July 27, 2020, and the final design was completed by a local firm, Red Barn Engineering, Inc.; and

**WHEREAS**, the City Commission authorized the submission of an application and to enter into a Project Agreement with the Ohio Public Works Commission (OPWC) to participate in the Ohio Public Works Commission's State Capital Improvement and/or Local Transportation Improvement Programs authorized by Chapter 164 (Aid to Local Government Improvements) of the Ohio Revised Code for the Warren Street Reconstruction Project by Resolution No. 037-21R, passed on August 23, 2021; and

**WHEREAS**, this City Commission declared the necessity for the City to proceed with the proposed Warren Street Reconstruction Project by Resolution No. 006-23R, passed on February 13, 2023; and

**WHEREAS**, upon public competitive bidding as required by law, two (2) appropriate bids were received and the bid from Speer Bros., Inc. of Sandusky, Ohio, was determined to be the lowest and best bid; and

**WHEREAS**, the total construction cost of this project, based on bids and including Alternate Bid Items 2, 3 and 4, is \$3,032,220.00 and will be paid as follows:

OPWC Grant	\$325,000.00
OPWC Loan	\$162,500.00
Issue 8 Street	\$62,093.00
PRK/ADM - Path	\$125,000.00
PRK/ADM - Street	\$448,978.00
Stimulus	\$168,649.00
OWDA Water	\$865,000.00
OWDA Sewer	\$875,000.00
<b>TOTAL</b>	<b>\$3,032,220.00</b>

; and

**WHEREAS**, approval is being requested in companion legislation to approve a Cooperative Agreement with the Ohio Water Development Authority (OWDA) to finance the cost of construction for the storm sewer, sanitary and water portion of the Warren Street Reconstruction Project; 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 the contractor to complete the project prior to the construction completion deadline of December 1, 2023; 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 contract with Speer Bros., Inc. of Sandusky, Ohio, for the Warren Street Reconstruction Project, in an amount **not to exceed** Three Million Thirty-Two Thousand Two Hundred Twenty and 00/100 Dollars (\$3,032,220.00) consistent with the bid submitted by Speer Bros., Inc. of Sandusky, Ohio, currently on file in the office of the Director of Public Works.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023



## DEPARTMENT OF PUBLIC WORKS

240 Columbus Avenue  
Sandusky, Ohio 44870  
419.627.5829  
[www.cityofsandusky.com](http://www.cityofsandusky.com)

To: John Orzech, Interim City Manager

From: Joshua Snyder, P.E., Public Works Engineer

Date: March 16, 2023

**Subject: Commission Agenda Item – OWDA Loan for the Warren Street Reconstruction Project**

**ITEM FOR CONSIDERATION:** Legislation approving a cooperative agreement between the City of Sandusky and the Ohio Water Development Authority (OWDA) to provide a low-interest loan to finance the cost of construction for the Storm Sewer, Sanitary and Water, as part of the Warren Street Reconstruction project.

**BACKGROUND INFORMATION:** The City began the planning and design process for the Warren Street Reconstruction Project in early 2021, fueled by the amount of waterline breaks and poor road conditions along the entire stretch of Warren Street. The City worked with an Engineering Firm to develop a full set of construction plans installing a new water line, making necessary repairs to roads and repairing the storm flow along the roadway. Please see companion legislation to award the project for additional project details.

The Ohio Water Development Authority has been created to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize and manage the water resources of Ohio and to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects. The City of Sandusky desires to obtain a loan from the OWDA to finance the cost of construction activities for the Storm Sewer, Sanitary and Water, as part of the Warren Street Reconstruction project.

**BUDGETARY INFORMATION:** The total loan amount being financed will be as follows:

Construction	\$1,740,000.00
Contingency (10%)	\$174,000.00
OWDA Administrative Fee (0.35%)	\$6,699.00
	<hr/>
	\$1,920,699.00

**ACTION REQUESTED:** It is requested that an Ordinance be passed to allow the City Manager and the Finance Director to enter into a cooperative agreement with the Ohio Water Development Authority under suspension of the rules in accordance with Section 14 of the City Charter so the application can be filed with the Ohio Water Development Authority by April 1, 2023. This will allow OWDA to approve the loan, which will coincide with the construction phase.

I concur with this recommendation:

---

John Orzech  
Interim City Manager

---

Aaron Klein  
Director

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director



## CERTIFICATE OF FUNDS

In the Matter of: OWDA Loan- Warren Street Reconstruction

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Sandusky under the foregoing Contract have been lawfully appropriated for such purposes and are in the treasury of the City of Sandusky or are in the process of collection to an appropriate fund, free from any previous encumbrances. This certificate is given compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Account #612-5910, 613-5910

By: 

Michelle Reeder

Finance Director

Dated: 3/23/2023

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING A COOPERATIVE AGREEMENT BETWEEN THE CITY OF SANDUSKY AND THE OHIO WATER DEVELOPMENT AUTHORITY (OWDA) TO FINANCE THE COST OF CONSTRUCTION FOR THE STORM SEWER, SANITARY AND WATER PORTION OF THE WARREN STREET RECONSTRUCTION PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the Warren Street Reconstruction Project involves the reconstruction of Warren Street between Water Street and Market Street and between Washington Street and E. Monroe Street and includes the replacement of the waterline, fire hydrants, service lines and meters, adding storm sewer, curbing, driveway aprons, a sidewalk on the east side and an asphalt multi-use path on the west side tying Shoreline Park to Huron Park and full depth asphalt pavement; and

**WHEREAS**, the City Commission approved an Agreement for Professional Design Services with LJB, Inc. of Fairview Park, Ohio, for preliminary engineering and design for the Warren Street Reconstruction Project by Ordinance No. 20-061, passed on March 23, 2020; and

**WHEREAS**, the City Commission approved a First Amendment to the Agreement for Professional Design Services with LJB, Inc. of Fairview Park, Ohio, for additional work including encroachment license agreements, Elm Street realignment, and manage combined sewer cleaning contract for the Warren Street Reconstruction Project by Ordinance No. 20-108, passed on July 27, 2020, and the final design was completed by a local firm, Red Barn Engineering, Inc.; and

**WHEREAS**, this City Commission declared the necessity for the City to proceed with the proposed Warren Street Reconstruction Project by Resolution No. 006-23R, passed on February 13, 2023; and

**WHEREAS**, approval is being requested in companion legislation to award a construction contract to Speer Bros., Inc., of Sandusky, Ohio, for the Warren Street Reconstruction Project; and

**WHEREAS**, the Ohio Water Development Authority (OWDA) has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize and manage the water resources of Ohio, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of Ohio for the protection and preservation of the comfort, health, safety, convenience and welfare, and the improvement of the economic and general welfare and employment opportunities of and the creation of jobs for the people of Ohio, and to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Ohio Revised Code; and

**WHEREAS**, the City of Sandusky (referred to as the "LGA" in the Cooperative Agreement) desires to obtain a loan from the OWDA to finance the cost of certain construction activities on the terms as set forth in the "Cooperative Agreement for Construction, Maintenance and Operation of State Water Project or Wastewater Project", a copy of which is marked Exhibit "1" attached to this Ordinance and is specifically incorporated as if fully rewritten herein; and

**WHEREAS**, the City of Sandusky desires a loan from the Ohio Water Development Authority (OWDA) in the amount of \$1,920,699.00 to finance the cost of construction for the storm sewer, sanitary and water portion of the Warren Street Reconstruction Project as follows:

Construction	\$ 1,740,000.00
Contingency (10%)	\$ 174,000.00
OWDA Administrative Fee (0.35%)	\$ 6,699.00
Total	\$ 1,920,699.00

; 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 submit the application to the OWDA by April 1, 2023, which will allow approval of the loan by the OWDA to coincide with the construction phase of the project; 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; and NOW, THEREFORE,

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

Section 1. This City Commission (LGA) hereby approves the construction activities for the storm sewer, sanitary and water portion of the Warren Street Reconstruction Project and to finance the costs of these activities in cooperation with the OWDA under the provisions, terms and conditions set forth in the "Cooperative Agreement for Construction, Maintenance and Operation of State Water Project or Wastewater Project" substantially in the same form as attached hereto marked Exhibit "1".

Section 2. The City Manager and the Finance Director are hereby authorized and directed to execute the Agreement on behalf of the City in substantially the same form of the Agreement attached hereto and together with such revisions or additions as are approved by the Law Director as not being substantially adverse to the City and as being consistent with carrying out the City's public purpose.

Section 3. 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 4. This City 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 5. That for the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023

COOPERATIVE AGREEMENT FOR CONSTRUCTION, MAINTENANCE  
AND OPERATION OF STATE WATER PROJECT OR WASTEWATER PROJECT

THIS AGREEMENT made and entered into as of the date specified on Schedule I hereto (the "Term Sheet," which is fully incorporated herein and made a part hereof) as the "Agreement Date," by and between the OHIO WATER DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the provisions of Chapter 6121 of the Revised Code of Ohio (hereinafter referred to as the "OWDA") and the governmental body specified as the "LGA" on the Term Sheet (hereinafter referred to as the "LGA"), a governmental body organized and existing under the laws of the State of Ohio and acting pursuant to an ordinance or a resolution passed by the legislative authority thereof on the date specified on the Term Sheet as the Resolution Date;

WITNESSETH:

WHEREAS, the OWDA has been created, among other reasons, to carry forward the declared public policy of the State of Ohio to preserve, protect, upgrade, conserve, develop, utilize and manage the water resources of the state, to prevent or abate the pollution of water resources, to promote the beneficial use of waters of the state for the protection and preservation of the comfort, health, safety, convenience, and welfare, and the improvement of the economic and general welfare and employment opportunities of and the creation of jobs for the people of the state, and to assist and cooperate with other governmental agencies in achieving such purposes through the establishment, operation and maintenance of water development projects pursuant to Chapter 6121 of the Revised Code; and

WHEREAS, the water system or wastewater system (hereinafter more fully defined and referred to as the "System") of the LGA will require the supply of services (the "Services") for the treatment and/or transmission of drinking water (in the case of a water project) or for the treatment or disposal of wastewater (in the case of a wastewater project) from the construction, operation and maintenance of new or additional facilities (which facilities are hereafter referred to as the "Project Facilities"); and

WHEREAS, the LGA is desirous of obtaining the Services for the System in cooperation with the OWDA; and

WHEREAS, the OWDA is willing to cooperate with the LGA in obtaining such Services, and the LGA has given the OWDA reasonable assurances that the LGA will make the payments hereinafter provided for and will fulfill its other obligations hereunder; and

WHEREAS, the OWDA and LGA have determined to enter into this Agreement to set forth their respective obligations with respect to the financing, construction, operation and ownership of the Project Facilities;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto do hereby agree as follows:

## ARTICLE I - DEFINITIONS

Except where the context clearly indicates otherwise, the following terms as used in this Agreement shall have the meaning ascribed to them in this Article:

### DEFINITIONS RELATING TO PHYSICAL FACILITIES

(a) “Approved Application” means the application of the LGA dated as of the date specified on the Term Sheet as the “LGA Application Date,” submitted to the OWDA, together with all attachments, supporting documentation, amendments and supplements thereto as approved by the OWDA on the date specified on the Term Sheet as the “OWDA Application Approval Date,” together with any amendments thereto approved by the LGA and the OWDA after the date of this Agreement.

(b) “Project Facilities” means the facilities to be constructed pursuant to this Agreement as described generally in Exhibit A attached hereto and made a part hereof and more particularly described in the Approved Application together with any changes therein made pursuant to Article III hereof.

(c) “Project Site” means all land, rights-of-way, property rights, easements, franchise rights or other interests in real estate necessary for the construction and operation of the Project Facilities.

(d) “System” means the facilities of the LGA specified as the “System” on the Term Sheet.

### DEFINITIONS RELATING TO COSTS

(e) “Eligible Project Costs” shall include, whether incurred before or after the date of this Agreement (but if incurred prior to the date hereof, subject to the restrictions set forth in the first proviso below), the following costs of the Project Facilities and the Project Site: the purchase price of the Project Site when acquired by purchase, or the value thereof when appropriated as found by the jury, together with the costs of the proceedings and the damages assessed in favor of any owner of the adjoining lands and interests therein, subject to the second proviso set forth below; the cost of demolishing or removing any buildings or structures on the Project Site, including the cost of acquiring any lands to which such buildings or structures may be removed, subject to the second proviso set forth below; the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of easements therefor, subject to the second proviso set forth below; the costs of construction of the Project Facilities including, but not limited to, the cost of all machinery, furnishings and equipment included therein; interest on all funds disbursed by the OWDA (other than funds paid over to the OWDA by the LGA for disbursement by the OWDA) at the Contract Interest Rate from the date of disbursement by the OWDA of each portion thereof pursuant to Section 3.8 hereof to the first day of the January or the July next preceding the commencement of the Contract Period of Years based on the then existing cost allocations; engineering expenses for the Project Facilities including, but not limited to, the cost of preliminary and other surveys, the cost of preparing plans, estimates and specifications, the cost of all necessary soil and other investigations and laboratory testing, and resident engineering and inspection fees; the cost of printing and

publishing the notices and legislation required; legal expenses; administrative expenses of the OWDA in the amount of 0.35% of all Eligible Project Costs other than such administrative expenses, or \$400, whichever is the greater; any obligation for the repayment of borrowed money incurred by the LGA to the OWDA under any Cooperative Agreement for State Planning Project between the LGA and OWDA with respect to the Project Facilities, and any other necessary miscellaneous expenditures; provided, however, that Eligible Project Costs shall include costs incurred prior to the date hereof only if and to the extent that, in the opinion of nationally recognized bond counsel satisfactory to the OWDA, the payment of such costs by the OWDA would not cause the interest on any debt obligations of the OWDA to cease to be excluded from gross income for purposes of federal income taxation; and provided further, however, that Eligible Project Costs shall include costs for the acquisition of real property or interests therein (other than easements) only if the OWDA shall have received from the LGA reasonably sufficient assurances, satisfactory to the OWDA, as to environmental matters related to such real property. Notwithstanding anything contained herein to the contrary, Eligible Project Costs shall not include any commissions, fees and/or expenses which may be owed by the LGA to a broker or finder as a result of or in connection with the OWDA's agreement to pay the Eligible Project Costs to the LGA as provided herein.

#### DEFINITIONS RELATING TO PARTICIPATION IN COSTS

(f) "Original Loan Amount" means those Eligible Project Costs that are paid with moneys disbursed out of funds of the OWDA, which costs shall in no event exceed the amount specified on the Term Sheet as the "Maximum Original Loan Amount."

(g) "Semiannual Payment Obligation" means the amount payable semiannually by the LGA to amortize the Original Loan Amount over the Contract Period of Years with interest on the outstanding balance of the Original Loan Amount at the Contract Interest Rate. An estimate of the Semiannual Payment Obligation based on the Maximum Original Loan Amount and the Contract Interest Rate is specified on the Term Sheet beneath the Maximum Original Loan Amount.

If the Contract Period of Years commences prior to the final determination of the Original Loan Amount, the Semiannual Payment Obligation shall be based upon the best figures available at the time the computation of each semiannual payment is required to be made. When such final costs are known, the Semiannual Payment Obligation shall be recomputed and the next following semiannual payment shall be either increased or decreased by a factor sufficient to correct for any overpayment or underpayment through the date of such recomputation so that the total amount received by OWDA over the Contract Period of Years will be the same amount as would have been received had the final Original Loan Amount been used in computing the Semiannual Payment Obligation at the commencement of the Contract Period of Years. The interest during construction computed at the Contract Interest Rate shall, however, be computed based on the then existing cost allocations at the time of such computation and shall not be recomputed.

(h) "Contract Interest Rate" means the rate specified as such on the Term Sheet.

(i) “Contract Period of Years” means the period of the Contract Term specified in the Term Sheet, commencing on the date six months prior to the First Payment Date specified in the Term Sheet.

(j) “Default Rate” means a rate equal to the Contract Interest Rate plus three percentage points.

(k) “Pledged Revenues” means the revenues derived by the LGA from the ownership and operation of the System (including, without limitation, any Special Assessment Funds), net of the costs of operating and maintaining the System and paying all amounts required to be paid under any Mortgage, Indenture of Mortgage, Trust Agreement or other instrument heretofore or hereafter entered into by the LGA to secure debt obligations heretofore or hereafter issued or incurred by the LGA for the System.

(l) “Special Assessment Funds” means the proceeds from the special assessments to be hereafter levied, if any, by the LGA to pay all or a portion of the cost of the Project.

## ARTICLE II - PROPERTY INTERESTS IN PROJECT SITE AND PROJECT FACILITIES AND RIGHTS OF ACCESS THERETO

Section 2.1. All real estate and interests in real estate and all personal property constituting the Project Facilities and the Project Site shall be acquired by and shall be the property of the LGA.

Section 2.2. The LGA agrees that the OWDA and its duly authorized agents shall have the right at all reasonable times to enter upon the Project Site and Project Facilities and to examine and inspect the same. The LGA further agrees that the OWDA and its duly authorized agents shall have such rights of access to the Project Site and Project Facilities as may be reasonably necessary to enable the OWDA to exercise its rights pursuant to Section 5.8 hereof.

## ARTICLE III - ACQUISITION OF PROJECT SITE, CONSTRUCTION OF PROJECT FACILITIES AND PAYMENT OF COSTS THEREOF

Section 3.1. Subject to the terms and conditions of this Agreement, the LGA shall do all things necessary to construct the Project Facilities on the Project Site (which the LGA hereby represents has been acquired by the LGA) by means of the construction contract(s) specified on Exhibit B hereto. The LGA shall use its best efforts to cause the Project Facilities to be fully operational by the date specified on the Term Sheet as the “Operational Date.”

In connection with the construction of the Project Facilities, the LGA agrees that:

(a) The construction contract(s) will provide that the representatives of the OWDA will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection.



(b) The construction of the Project Facilities on the Project Site will be performed in compliance with all applicable federal, state and local environmental laws and regulations in effect as of the date hereof.

(c) All laborers and mechanics employed on the Project Facilities shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project Facilities, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.

(d) Prior to the commencement of construction, the LGA will arrange and conduct a preconstruction conference to include representatives of the OWDA, the LGA and the consulting or resident engineers of the LGA and each contractor.

(e) Each construction contract and contractor's estimate form will be prepared so that materials and equipment furnished to the LGA may be readily itemized.

(f) All requests submitted by the LGA for the payment or reimbursement of incurred Eligible Project Costs shall include evidence of the costs incurred and will be prepared so that such costs may be readily itemized.

(g) Any change or changes in a construction contract that would increase the contract price by an amount in excess of one percent (1%) or any change or changes regardless of cost that substantially modify the processes contemplated to be performed by the Project Facilities will be submitted to the OWDA for prior approval.

(h) Notification of all change orders not requiring prior approval of the OWDA will be submitted to the OWDA within one (1) month of the time at which they are ordered by the resident or consulting engineer of the LGA.

(i) The construction of the Project Facilities, including the letting of contracts in connection therewith, will conform to applicable requirements of federal, state and local laws, ordinances, rules and regulations.

(j) The LGA will proceed expeditiously with, and complete, the Project Facilities in accordance with the Approved Application and any surveys, plans, profiles, cross sections and specifications or amendments thereto approved by the Director of Environmental Protection of Ohio.

(k) Notwithstanding anything contained herein to the contrary, the obligation of the OWDA to pay Eligible Project Costs pursuant to the terms and conditions of this Agreement shall expire three (3) years from the date hereof. Upon the expiration of the aforesaid period of years, the OWDA shall not be obligated to pay any additional Eligible Project Costs to the LGA hereunder. In the event that the OWDA, in its sole discretion, decides to pay additional Eligible Project Costs after the expiration of its obligation to do so hereunder, it shall so notify the LGA. No such decision by the OWDA to pay any additional Eligible Project Costs hereunder shall be deemed to constitute an extension of its obligation to pay Eligible Project Costs hereunder.

Except as otherwise provided in this Agreement, the LGA shall have the sole and exclusive charge of all details of the construction of the Project Facilities.

Section 3.2. The LGA shall keep accurate records of the Eligible Project Costs. The LGA shall permit the OWDA, acting by and through the Executive Director of the OWDA or his authorized representatives, to inspect all books, documents, papers and records relating thereto at any and all reasonable times for the purpose of audit and examination, and the LGA shall submit to the OWDA such documents and information as they may reasonably require in connection therewith.

Section 3.3. The LGA shall require that each construction contractor shall furnish a performance and payment bond in an amount at least equal to one hundred percent (100%) of the contractor's contract price as security for the faithful performance of the contractor's contract.

Section 3.4. The LGA shall require that each of its contractors and all subcontractors maintain during the life of their contracts Workers' Compensation Insurance, Public Liability, Property Damage, and Vehicle Liability Insurance, in amounts and on terms that comply with all applicable legal requirements and that are commercially reasonable. Until the Project Facilities are completed and accepted by the LGA, the LGA or (at the option of the LGA) the contractor shall maintain Builders Risk Insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project Facilities for the benefit of the OWDA, the LGA, the prime contractor, and all subcontractors, as their respective interests may appear.

Section 3.5. The LGA shall provide and maintain competent and adequate resident engineering services satisfactory to the OWDA covering the supervision and inspection of the development and construction of the Project Facilities and bearing the responsibility of ensuring that construction conforms with the approved surveys, plans, profiles, cross sections and specifications and certifying to the OWDA and the LGA at the completion of construction that construction is in accordance with the approved surveys, plans, profiles, cross sections and specifications or approved amendments thereto.

Section 3.6. Subject to the terms and conditions of this Agreement, the Eligible Project Costs shall be paid by the OWDA. In the event this Agreement is terminated by the OWDA pursuant to, and not in breach of, the provisions of this Agreement, or by subsequent agreement of the parties, or in the event this Agreement is terminated by the LGA, whether or not in breach of the Agreement, the Eligible Project Costs incurred prior to the date of the commencement of the construction of the Project Facilities or the date of such termination, whichever is earlier, shall be paid by the LGA. If such termination takes place following the date of the commencement of the construction of the Project Facilities, all Eligible Project Costs incurred following such commencement date and prior to the date of termination, with the exception of all costs attributable to the acquisition of the Project Site, shall be borne by: (1) the LGA if this Agreement is terminated at such time by the LGA; or (2) by the OWDA if this Agreement is terminated at such time by the OWDA, but in any event, all costs attributable to the acquisition of the Project Site shall be borne by the LGA. Any moneys paid by either party hereto pursuant to this Agreement which become the obligation of the other party under the

provisions of this Section shall be repaid in not more than three (3) years after termination with interest on the outstanding balances at the Contract Interest Rate.

Section 3.7. The OWDA may decline to deliver any further certificates of availability of funds pursuant to Section 3.8 hereof from and after any determination by the OWDA that any information furnished to the OWDA, in writing or otherwise, in connection with the LGA's application for the transactions contemplated by this Agreement was false or misleading in any material respect or that such information omitted any other information needed to make the information furnished not false or misleading in any material respect.

Section 3.8. Subject to Section 3.7 hereof, the OWDA shall deliver to the LGA a certificate, certifying that moneys in the amount necessary to pay the Eligible Project Costs obligated or to be obligated up to the Maximum Original Loan Amount are available or are in the process of collection and have been encumbered by the Authority. When such Eligible Project Costs have been incurred and payment requested from the OWDA by the LGA in form and detail satisfactory to the OWDA, the OWDA shall cause to be delivered checks in payment of the invoices, demands for payment, approved contractors' estimates or other evidence of cost incurrence to the persons or entities entitled to payment in conformity with the encumbrance of funds set forth to pay such obligated Eligible Project Costs.

Section 3.9. The LGA represents and agrees that it will not seek or obtain alternative funding for the Eligible Project Costs of the Project Site and the Project Facilities without the prior written consent of the OWDA. The LGA acknowledges that the OWDA may inform potential and actual investors of bonds issued by the OWDA regarding the details of this Agreement, and that such investors may make an investment decision based on this Agreement.

Section 3.10. Upon completion of the Project Facilities, the LGA shall make a full and complete accounting to the OWDA of the final Eligible Project Costs.

#### ARTICLE IV - PAYMENTS BY LGA

Section 4.1. Subject to the further provisions hereinafter set forth, the LGA agrees to and shall pay semiannually on January 1 and July 1 of each year of the Contract Period of Years, commencing on the First Payment Date (each such date a "Due Date"), to the OWDA, but solely from the Pledged Revenues, the Semiannual Payment Obligation. In the event that the LGA pays less than the full amount due hereunder on any Due Date, then the amount so paid shall be applied first to interest payable hereunder, then to any late charges payable hereunder, and then to the Original Loan Amount payable hereunder. The LGA acknowledges and agrees that the OWDA afforded the LGA the opportunity to choose between a schedule of payments based on equal principal payments and one based on equal debt service payments and that the estimated Semiannual Payment Obligation shown on the Term Sheet reflect the choice of the LGA.

The obligation of the LGA to pay the charges set forth shall not be assignable, and the LGA shall not be discharged therefrom, without the prior written consent of the OWDA. In the event that services supplied by the Project Facilities or any other portion of the System shall cease or be suspended for any reason, the LGA shall continue to be obligated to pay the charges

pursuant to this Section 4.1, but solely from the Pledged Revenues. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 5th day after the Due Date, the amount of such default shall bear interest at the Default Rate from the Due Date until the date of the payment thereof. Interest at the Default Rate shall be calculated for the actual number of days of default from the Due Date until payment on the basis of a 360 day year. If the LGA does not pay any of the charges set forth in this Section 4.1 on or before the 30th day after the Due Date, in addition to the interest calculated at the Default Rate, a "late charge" of one percent (1%) on the amount of each default shall also be paid to the OWDA by the LGA from the Pledged Revenues for failure to make the payment as provided herein. Thereafter, for each additional thirty (30) days during which the charges remain unpaid, the LGA shall continue to pay from the Pledged Revenues an additional late charge of one percent (1%) on the amount of such default until such charges are paid. In no event shall the OWDA collect interest or late charges in excess of the maximum amount permitted by law. In addition to the foregoing, in the event of a default as aforesaid, all of the costs incurred by the OWDA in curing such default including, but not limited to, court costs and attorney fees, shall (to the extent not previously repaid to the OWDA and to the fullest extent permitted by law) be paid as part of the Eligible Project Costs hereunder and be repaid by the LGA to the OWDA as part of the Original Loan Amount.

Anything in this Agreement to the contrary notwithstanding, neither the general resources of the LGA shall be required to be used, nor shall the general credit of the LGA be pledged for the performance of any duty under this Agreement, but any payment to be made under this Agreement shall be required to be made only from the Pledged Revenues, which are hereby pledged to such payment; provided, however, that, if otherwise lawful, nothing herein shall be deemed to prohibit the LGA from using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this Agreement.

Section 4.2. It is agreed that, no later than June 15 and December 15 of each year of the Contract Period of Years, the OWDA shall invoice the LGA for the sum payable by the LGA pursuant to Section 4.1 and that payment of each such invoice shall be made by the LGA to the OWDA not later than the first day of the following month. No failure by the OWDA to send any such invoice and no failure by the LGA to receive any such invoice shall relieve the LGA from its obligation to pay the amount due hereunder on the applicable Due Date.

Section 4.3. The LGA hereby agrees that: (a) from and after the completion and placement into operation of the Project Facilities, it will at all times prescribe and charge such rates for the services of the System as shall result in Pledged Revenues at least adequate to provide for the payments required by Section 4.1 hereof and shall from time to time at the request of the Authority cause a study of the sufficiency of the LGA's rates for that purpose to be done by an independent expert acceptable to the OWDA; (b) the LGA will furnish to the OWDA annually reports of the operation and income of the System and also an annual report of the accounts and operations of the System and such other documents as the OWDA may reasonably request in order to respond to requests for documentation from rating agencies or providers or potential providers of credit enhancement for debt obligations of the OWDA, and the LGA will permit the authorized agent of the OWDA to inspect all records, accounts and data of the System at all reasonable times; and (c) that the LGA will segregate the revenues, funds and properties of the System from all other funds and properties of the LGA. All of the obligations under this

Section are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the LGA within the meaning of Section 2731.01 of the Ohio Revised Code.

Section 4.4. If the LGA pays all or any portion of the Semiannual Payment Obligation from Special Assessment Funds and if any payor of the Special Assessment Funds elects to pay the special assessments in a one-time, lump-sum payment in lieu of having the special assessments certified to the appropriate county auditor for periodic collection, then the LGA may elect to apply the amount of such payment to a reduction of the Original Loan Amount by including that amount with its next payment of the Semiannual Payment Obligation pursuant to Section 4.1 hereof, accompanied by a written notice to the Authority identifying the amount so included and directing the Authority so to apply that amount. Upon the receipt of such payment and notice, the Authority shall recompute the remaining payments of the Semiannual Payment Obligation based on the reduced Original Loan Amount and shall notify the LGA in writing of the reduced amount of the remaining payments.

Section 4.5. In order to enable the OWDA to comply with the requirements of federal securities laws (including, without limitation, Rule 10b-5 and Rule 15c2-12 (“Rule 15c2-12”) each promulgated by the Securities and Exchange Commission (the “SEC”) under the Securities Exchange Act of 1934, as amended), the LGA agrees to prepare and file with the OWDA or, at the direction of the OWDA, to file with the Municipal Securities Rulemaking Board (“MSRB”) through the EMMA System (as defined below), any annual financial information or material events disclosures that the OWDA may determine it requires to achieve such compliance. The LGA consents to the OWDA’s incorporation by reference into OWDA official statements or other OWDA filings with the MSRB of any official statements or portions thereof, financial statements, or other documents that the LGA may have filed or may file with the MSRB. In the event the LGA fails to prepare any financial statement or other financial information that this Section requires the LGA to prepare and file with or at the direction of the OWDA, then the OWDA shall have the right (in addition to any other rights it may have to enforce the obligations of the LGA hereunder) to inspect all records, accounts and data of the System and cause the preparation of the required financial statement or information and to employ such professionals as it may reasonably require for that purpose, and to be reimbursed from any available Pledged Revenues for the costs of its doing so. This Section shall not be construed to limit the generality of Section 4.3 hereof. For purposes of this Section 4.7, “EMMA System” shall mean the Electronic Municipal Market Access system of the MSRB for use in the collection and dissemination of information, which system the SEC has stated to be consistent with its Rule 15c2-12. Currently, the website address for EMMA is [emma.msrb.org](http://emma.msrb.org). The LGA acknowledges that the OWDA is not responsible for any of the LGA’s required filings under Rule 15c2-12 related to other indebtedness of the LGA, including, but not limited to, as to whether this Agreement is considered a “Financial Obligation” under Rule 15c2-12.

## ARTICLE V - MAINTENANCE, OPERATION, INSURANCE AND CONDEMNATION

Section 5.1. The LGA agrees that during the Contract Period of Years that: (a) it will, subject to its right to contest in good faith the issue of non-compliance, operate the Project

Facilities and the System, or cause them to be operated, in compliance with all applicable federal, state and local environmental laws and regulations in effect during such period, and (b) it will, subject to its right to discontinue use or operation of the Project Facilities or the System or any part thereof in accordance with this Agreement, keep the Project Facilities and the System, including all appurtenances thereto and the equipment and machinery therein, or cause them to be kept, in good repair and good operating condition so that the completed Project Facilities and System will continue to operate with substantially the same efficiency as when first constructed.

The LGA shall have the privilege of making additions, modifications and improvements to, making deletions from and discontinuing the use or operation of all or any part of, the Project Site, the Project Facilities, and the System from time to time; provided, that the cost of any additions, modifications and improvements shall be paid by the LGA, and the same shall be the property of the LGA and be included under the terms of this Agreement as part of the Project Site or the Project Facilities, as the case may be, and the System; and provided further that the LGA shall make no modification to, make any deletion from or discontinue the use or operation of all or any part of, the Project Site, the Project Facilities, or the System, the result of which would be a material decrease in the Pledged Revenues without first obtaining the written consent of the OWDA thereto.

Section 5.2. The LGA agrees that it will commence, or will cause to be commenced, operation of the Project Facilities immediately upon the completion of the construction thereof and the receipt of any governmental approvals required for the commencement of their operation, and will not discontinue operation of the Project Facilities or any other part of the System without meeting all conditions to and requirements for such discontinuance imposed by law and this Agreement. The LGA agrees that it will provide adequate operation and maintenance of the Project Facilities and the System to comply with all applicable water quality standards established for the river basin served by the Project Facilities and with all applicable rules and regulations of the Director of Environmental Protection of Ohio. The LGA agrees that sufficient qualified operating personnel will be retained by the LGA to operate the Project Facilities and the System, or will be required to be obtained by any independent contractor engaged by the LGA to operate the Project Facilities and the System or any portion thereof, and that all operational tests and measurements necessary to determine compliance with the preceding sentence will be performed to insure proper and efficient operation and maintenance of the Project Facilities and each other part of the System until the end of the Contract Period of Years or the discontinuance of the operation of the Project Facilities or of such other part of the System in accordance with Section 5.1 and this Section 5.2.

The LGA will permit the OWDA and its agents to have access to the records of the LGA pertaining to the operation and maintenance of the Project Facilities and the System at any reasonable time.

Section 5.3. The LGA agrees to insure, or cause to be insured, the Project Facilities and the System in such amounts as similar properties are usually insured by political subdivisions similarly situated, against loss or damage of the kinds usually insured against by political subdivisions similarly situated, by means of policies issued by reputable insurance companies duly qualified to do such business in the State of Ohio.

Section 5.4. Any insurance policy issued pursuant to Section 5.3 hereof shall be so written or endorsed as to make losses, if any, payable to the OWDA and the LGA as their respective interests may appear. Each insurance policy provided for in Sections 5.3 and 5.6 hereof shall contain a provision to the effect that the insurance company shall not cancel the same without first giving written notice thereof to the OWDA and the LGA at least ten (10) days in advance of such cancellation.

Section 5.5. The net proceeds of the insurance carried pursuant to the provisions of Sections 5.3 and 5.6 hereof shall be applied as follows: (i) the net proceeds of the insurance required in Section 5.3 hereof shall be applied as provided in Section 5.9 hereof, and (ii) the net proceeds of the insurance required in Section 5.6 hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 5.6. The LGA agrees that it will carry, or will cause to be carried, public liability insurance with reference to the Project Facilities with one or more reputable insurance companies duly qualified to do business in the State of Ohio, in minimum amounts of \$500,000 for the death of or personal injury to one person and \$1,000,000 for personal injury or death for each occurrence in connection with the Project Facilities and \$500,000 for property damage for any occurrence in connection with the Project Facilities. The OWDA shall be made an additional insured under such policies.

Section 5.7. Throughout the Contract Period of Years, the LGA shall maintain Workers' Compensation Coverage or cause the same to be maintained in accordance with state law.

Section 5.8. In the event the LGA shall fail to maintain, or cause to be maintained, the full insurance coverage required by this Agreement or shall fail to keep, or cause to be kept, the Project Facilities in good repair and operating condition, or shall fail to operate, or cause to be operated, the Project Facilities in accordance with Section 5.2 hereof, the OWDA may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary or may hire the necessary operating personnel to insure compliance with Section 5.2 and provide for payment thereof; and all amounts so advanced therefor by the OWDA shall become an additional obligation of the LGA to the OWDA which amounts, together with interest thereon at the Contract Interest Rate or at the rate of eight per centum (8%) per annum, whichever is greater, from the date thereof, the LGA agrees to pay.

Section 5.9. If prior to the completion of the Contract Period of Years the Project Facilities shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and the LGA will (i) promptly repair, rebuild or restore the property damaged or destroyed, and (ii) apply for such purpose so much as may be necessary of any net proceeds of insurance policies resulting from claims for such losses as well as any additional moneys of the LGA necessary therefor. All net proceeds of insurance resulting from claims for such losses shall be paid to the LGA.

Section 5.10. In the event that title to or the temporary use of the Project Site the Project Facilities, or the System, or any part thereof, shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, there shall be no abatement or reduction in the amounts payable by the LGA pursuant to Section 4.1 hereof, and any net proceeds received from any award made in such eminent domain proceedings shall be paid to and held by the LGA in a separate condemnation award account and shall be applied by the LGA in either or both the following ways as shall be determined by the LGA:

(a) The restoration of the facilities of the System to substantially the same condition as they existed prior to the exercise of said power of eminent domain, or

(b) The acquisition of additional real estate, if necessary, and facilities, by construction or otherwise, equivalent that, when added to the remaining real estate and facilities of the System, will cause the System to be substantially the equivalent of the System as it existed prior to the exercise of said power of eminent domain, which real estate and facilities shall be deemed a part of the Project Site or the Project Facilities, as the case may be, and the System, without the payment of any amounts other than herein provided, to the same extent as if such real estate and facilities were specifically described herein.

Any balance of the net proceeds of the award in such eminent domain proceedings shall be paid to the LGA upon delivery to the OWDA of a certificate signed by an authorized officer of the LGA that the LGA has complied with either paragraph (a) or (b), or both, of this Section. The OWDA shall cooperate fully with the LGA in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System, or any part thereof. In no event will the LGA voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project Site, the Project Facilities, the System or any part thereof without the written consent of the OWDA.

ARTICLE VI - REPRESENTATIONS AND AGREEMENTS  
OF THE LGA IN REGARD TO ENVIRONMENTAL MATTERS;  
EVENTS OF DEFAULT AND REMEDIES THEREFOR;  
INDEMNIFICATION

Section 6.1. The LGA hereby represents that:

(a) It is, and the LGA hereby covenants that it shall remain, in compliance with all applicable federal, state and local environmental laws and regulations applicable to the System during the Contract Period of Years, subject to its right to contest in good faith the issue of non-compliance;

(b) There is no litigation or administrative action or proceeding pending or, to the best of its knowledge, threatened against the LGA, alleging a violation of any federal, state or local environmental law or regulation applicable to the System except as set forth in the attached;



(c) No judgment or consent order has been rendered against it, nor is it a party to any agreement, which consent order, judgment or agreement imposes, will impose or has imposed any fines or monetary penalties for the violation of any federal, state or local environmental law or regulation applicable to the System that have not been paid in full except as set forth in the attached; and

Section 6.2. The LGA agrees that each of the following shall be an event of default ("Event of Default") under this Agreement:

(a) The LGA shall fail to make any payment to the OWDA required pursuant to this Agreement when the same is due and payable, including, without limitation, any amount due and payable pursuant to Article IV hereof; or

(b) The LGA shall fail to observe and perform any other obligations, agreements or provisions herein, which failure shall continue for thirty (30) days after receipt of written notice thereof from the OWDA; provided, however, that such failure shall not constitute an Event of Default under this Agreement if the LGA demonstrates both of the following to the satisfaction of the OWDA: i) cure of such failure cannot be effected within thirty (30) days; and ii) the LGA is taking all reasonably necessary actions to cure such failure with all deliberate speed.

(c) Any representations made by the LGA in Section 6.1. shall at any time during the Contract Period of Years prove to be false.

Section 6.3. Whenever an Event of Default shall have happened and be subsisting, the OWDA may exercise any and all rights and remedies for the enforcement of the obligations of the LGA hereunder. In addition to any other rights or remedies provided herein, by law or otherwise, the OWDA may:

(a) declare the full amount of the then unpaid Original Loan Amount to be immediately due and payable;

(b) to the extent permitted under any judgment, consent order or agreement affecting the LGA, require the LGA to agree to subordinate the payment of any fines or penalties imposed for the violation of any federal, state or local environmental law or regulation applicable to the System to the payment of the Original Loan Amount and the interest and any late charges due thereon, and the LGA hereby agrees to use its best efforts to effect such subordination.

Section 6.4. No right or remedy conferred upon the OWDA under Section 6.3 hereof is intended to be exclusive of any other right or remedy given herein, by law or otherwise. Each right or remedy shall be cumulative and shall be in addition to every other remedy given herein, by law or otherwise.

Section 6.5. The LGA releases the OWDA from, agrees that the OWDA shall not be liable for, and agrees, to the fullest extent permitted by law, to hold the OWDA, its officers, employees and agents harmless against, any loss or damage to property, or any loss or injury to or death of any person, or any other loss or damage, that may be occasioned by any cause whatsoever pertaining to the System, the Project Facilities, or the use thereof; provided that such

indemnity under this Section shall not be effective for damages that result from negligent or intentional acts of the OWDA, its officers, employees and agents. The LGA further agrees, to the fullest extent permitted by law, to indemnify and hold harmless the OWDA and its officers, employees and agents against and from any and all cost, liability, expenses and claims arising from any breach or default on the part of the LGA in the performance of any covenant or agreement on the part of the LGA to be performed pursuant to the terms of this Agreement, arising from the acquisition, construction, installation, or improvement of the Project Facilities or arising from any act or negligence of or failure to act by the LGA, or any of its agents, contractors, servants, employees or licensees, or arising from any accident, injury or damage whatsoever caused to any person, firm, or corporation resulting from the Project Facilities or the System (other than any accident, injury, or damage that results from negligent or intentional acts of the OWDA, its officers, employees and agents), and from and against all cost, liability and expenses incurred in or in connection with any such claim or action, arbitration or proceeding brought thereon.

In case any action or proceeding be brought against the OWDA by reason of any claim described in this Section, the OWDA agrees to cause written notice of such action or proceeding to be given to the LGA, and the LGA upon notice from the OWDA covenants to resist or defend such action or proceedings at the LGA's expense including all legal and other expenses (including reasonable attorneys' fees).

Section 6.6 Each party agrees that the venue of any suit, action or proceedings relating to this Agreement will be the courts of the County of Franklin, Ohio or the Ohio Supreme Court, and each party irrevocably waives any objection that it may have to that venue and waives any right to trial by jury for any such suit, action or proceedings.

## ARTICLE VII - PRIVATE BUSINESS USE RESTRICTIONS

Section 7.1. The LGA acknowledges that the OWDA may issue tax-exempt bonds to provide the funds to meet OWDA's obligations with regard to funding the applicable program and that the maintenance of the tax-exempt status of any such bonds will depend, in part, on the LGA's compliance with the provisions of this Agreement. Accordingly, the LGA agrees as follows:

(a) That it shall take no action that would cause bonds issued by the OWDA, the proceeds of which could fund this Agreement (the "OWDA Bonds") to fail to qualify as tax-exempt bonds, nor omit to take any action necessary to maintain such status;

(b) That it shall take any action that the OWDA reasonably may request it to take to maintain the status of the OWDA Bonds as tax-exempt bonds;

(c) That, to assure that the OWDA Bonds will not be or become "private activity bonds" within the meaning of 26 U.S.C.A. Section 141 of the Internal Revenue Code of 1986, as amended:

(i) The LGA shall not permit, at any time ten percent (10%) or more (in the aggregate) of that portion of the Project Facilities to be financed with funds borrowed from the OWDA hereunder (the "OWDA Funds") to be used by any person or persons for any private business use (as hereinafter defined) while at the same time the payment of principal of, or the interest on, the OWDA Funds is directly or indirectly (A) secured by any interest in (1) property used or to be used for a private business use or (2) payments made with respect to such property or (B) derived from (1) payments with respect to such property (whether or not made to the OWDA) or (2) borrowed money used or to be used for private business use.

(ii) No portion of the OWDA Funds will be used to make or finance loans to persons other than other governmental units.

For purposes of this Agreement, "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit (as hereinafter defined). Use of any Project Facility or Project Site as a member of the general public will not be considered a private business use. Any activity carried on by a person other than a natural person shall be treated as a trade or business. Use by an organization which qualifies under 26 U.S.C.A. Section 501(c)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, shall be considered a private business use.

For purposes of this Agreement, "governmental unit" means a political subdivision within the United States, including any political subdivision within the State of Ohio, but does not mean the United States or any of its governmental branches, departments or agencies.

If there is any question about the application of the foregoing restrictions relating to private business uses or loans, the LGA agrees to immediately write the OWDA requesting assistance prior to entering into any agreement which may be prohibited as provided herein.

(iii) The LGA shall not re-loan, directly or indirectly, any portion of the amounts advanced to it under this Agreement to any person;

(d) That, to assure that the OWDA Bonds will not be or become "arbitrage bonds" within the meaning of 26 U.S.C.A. Section 148 of the Internal Revenue Code of 1986, as amended, the LGA, except upon the prior written consent of the OWDA, shall not create or permit to exist any fund pledged to, or expressly reserved exclusively for, the payment of amounts payable by the LGA hereunder.

Section 7.2. The OWDA shall not be required to, and shall not, consent to any action by the LGA referred to in Section 7.1 unless it first shall have received an opinion of nationally recognized bond counsel to the effect that the consummation of the transaction or

transactions contemplated by such action will not adversely affect the tax-exempt status of the OWDA bonds.

Section 7.3. If the LGA shall have any question about the application of Section 7.1., in the particular circumstances faced by it at any time during the term of this Agreement, it shall immediately inform the OWDA of the circumstances and request the OWDA's assistance to resolve any such questions, to the end that the tax-exempt status of the OWDA Bonds and of the OWDA's bonds would be preserved.

#### ARTICLE VIII - MISCELLANEOUS PROVISIONS

Section 8.1. Any invoice, accounting, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by regular, registered or certified mail, postage prepaid, or delivered personally, and

(i) in the case of the OWDA, is addressed to or delivered personally to the OWDA at:

The Ohio Water Development Authority  
480 South High Street  
Columbus, OH 43215

and

(ii) in the case of the LGA, is addressed to or delivered personally to the LGA at the address listed on the Term Sheet as the "LGA Notice Address," or at such other addresses with respect to either such party as that party may from time to time, designate in writing and forward to the other as provided in this Section.

Section 8.2. Any approval of the OWDA required by this Agreement shall not be unreasonably withheld and shall be deemed to have been given on the thirtieth day following the submission of the matter requiring approval to the Executive Director of the OWDA unless disapproved in writing prior to such thirtieth day. Any provision of the Agreement requiring the approval of the OWDA or the satisfaction or evidence of satisfaction of the OWDA, shall be interpreted as requiring action by the Executive Director of the OWDA granting, authorizing or expressing such approval or satisfaction, as the case may be, unless such provision expressly provides otherwise.

Section 8.3. Upon request of the OWDA, the LGA agrees to execute the information report required by Section 149 of the Internal Revenue Code of 1986, as it may be amended from time to time, with respect to this Agreement, such form to be completed by the OWDA on the basis of information provided by the LGA. The LGA hereby agrees that the OWDA may file such information report for and on behalf of the LGA with the Internal Revenue Service.

Section 8.4. This Agreement is made subject to, and conditional upon, the approval of this Agreement as to form by the General Counsel of the OWDA and upon the certification of availability of funds as provided in Section 3.8 hereof.

Section 8.5. This Agreement shall become effective as of the date first set forth hereinabove and shall continue in full force and effect until all obligations of the LGA under Section 4.1 hereof have been fully satisfied.

Section 8.6. This Agreement shall be binding upon and inure to the benefit of the parties hereto and to any person, office, board, department, agency, municipal corporation, or body politic and corporate succeeding by operation of law to the powers and duties of either of the parties hereto. This Agreement shall not be assigned by the LGA without the prior written consent of the OWDA. The OWDA, at its option, may assign this Agreement without the consent of the LGA. All references to the Environmental Protection Agency of the United States of America or to the Director of Environmental Protection of the State of Ohio or to any offices or divisions of either shall include any successors thereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first hereinabove written.

APPROVED AS TO FORM

\_\_\_\_\_  
OWDA General Counsel

OHIO WATER DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_  
OWDA Executive Director

APPROVED AS TO FORM

\_\_\_\_\_  
LGA Legal Officer or Counsel

LGA: \_\_\_\_\_

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

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

TERM SHEET

*NOTE: The term sheet will be generated by OWDA after the loan is approved at the board meeting.*

**Exhibit A**

PROJECT FACILITIES DESCRIPTION

**Exhibit B**

CONSTRUCTION CONTRACT(S)





## DEPARTMENT OF PUBLIC WORKS

240 Columbus Avenue  
Sandusky, Ohio 44870  
419.627.5829  
[www.cityofsandusky.com](http://www.cityofsandusky.com)

To: John Orzech, Interim City Manager  
From: Megan Stookey, Project Manager  
Date: March 16, 2023  
Subject: **Commission Agenda Item – Yard Waste Services for Calendar Year 2023**

**ITEM FOR CONSIDERATION:** Legislation to enter into a one-year contract with Browning Ferris Industries of Ohio, Inc. dba Republic Services of Sandusky, Ohio for the 2023 Yard Waste Collection Services for the period of April 1, 2023 through December 31, 2023.

**BACKGROUND INFORMATION:** Since 2004 the City has offered a yard waste pick up for a monthly fee to residents who sign up for the program. The monthly fee consists of labor, disposal and administration and is added to the water bills of participating customers. The fee charged to residents in 2022 was \$13.10. The pickup service is available to residents starting April 1<sup>st</sup> and ends December 31<sup>st</sup>, with a one day per week pick up on Friday.

On March 2 & 9, 2023, the 2023 Yard Waste Collection Service was advertised, with bids being due on Thursday, March 16, 2023. Only one bid was received from Browning Ferris Industries of Ohio, Inc. dba Republic Services for \$15.00 per customer, per month. This is an increase of \$2.40 from the past three years. The contract is for one year, the vendor declined to hold this price for two additional years, which will result in the City going out to bid for 2024.

The monthly fee for 2023 to the residents will be \$15.50, this includes \$0.50 to cover all City administration costs. Services will remain the same as in past years with a one day per week pick up on Friday from April 1<sup>st</sup> to December 31<sup>st</sup>.

**BUDGETARY INFORMATION:** Based on service for a one day per week pick up at \$15.00 per home per month and a contract for nine months, the estimated amount for the 2023 Yard Waste Collection Service is \$87,075.00 based on last year's figure of 645 customers. This amount is subject to change due to additions and deletions of customers to the program. The cost of the service will be charged back to the customers in addition to a charge of \$0.50 per month for administrative costs.

**ACTION REQUESTED:** It is recommended that a contract with Browning Ferris Industries of Ohio Inc. dba Republic Services be approved for the 2023 Yard Waste Collection Services. It is also recommended that the necessary legislation be passed under suspension of the rules in full accordance with Section 14 of the City Charter so that the contractor can begin the program April 1<sup>st</sup>.

I concur with this recommendation:

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John Orzech, Interim City Manager

cc: Commission Clerk; M. Reeder, Finance Director; B. Heil, Law Director

## CERTIFICATE OF FUNDS

In the Matter of: Republic Services- Yard Waste

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Sandusky under the foregoing Contract have been lawfully appropriated for such purposes and are in the treasury of the City of Sandusky or are in the process of collection to an appropriate fund, free from any previous encumbrances. This certificate is given compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Account #110-3300-53000

By: Michelle Reeder

Michelle Reeder

Finance Director

Dated: 3/23/2023

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BROWNING-FERRIS INDUSTRIES OF OHIO, INC. D.B.A. REPUBLIC WASTE SERVICES OF SANDUSKY, OHIO, FOR THE 2023 YARD WASTE COLLECTION SERVICE WHICH IS AVAILABLE FOR THE PERIOD OF APRIL 1, 2023 THROUGH DECEMBER 31, 2023; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, since 2004, the City has offered a yard waste collection service for a monthly fee (labor, disposal, and administration) that is added to participating customer's water and sewer bills; and

**WHEREAS**, upon public competitive bidding as required by law one (1) appropriate bid was received and the bid for one (1) day per week service from Browning-Ferris Industries of Ohio, Inc. d.b.a. Republic Waste Services of Sandusky, Ohio, was determined to be the lowest and best bid; and

**WHEREAS**, this contract is for the period of April 1, 2023, through December 31, 2023, and since the vendor declined to hold this price for two (2) additional years, the City will go out for bid again next year; and

**WHEREAS**, the estimated cost of this program based upon service for a one (1) day per week pickup at a cost of \$15.00 per month per residence and a contract for (9) months is \$87,075.00 (based on 2022 enrollment of 645 customers) which will be charged back to the customers in addition to a charge of \$0.50 per month for administrative costs and is subject to change due to additions and deletions of customers in the program; 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 Browning Ferris Industries of Ohio, Inc. d.b.a. Republic Waste Services to begin the program on April 1, 2023; 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 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 contract with Browning-Ferris Industries of Ohio, Inc. d.b.a. Republic Waste Services of Sandusky, Ohio, for the 2023 Yard Waste Collection Service for the period of April

1, 2023, through December 31, 2023, at a cost of Fifteen and 00/100 Dollars (\$15.00) per month per residence opting into the program, consistent with the bid submitted by Browning-Ferris Industries of Ohio, Inc. dba Republic Waste Services of Sandusky, Ohio, currently on file in the office of the Director of Public Works.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023



## DEPARTMENT OF COMMUNITY DEVELOPMENT

240 Columbus Avenue  
Sandusky, Ohio 44870  
419.627.5829  
[www.ci.sandusky.oh.us](http://www.ci.sandusky.oh.us)

To: John Orzech, Interim City Manager

From: Arin Blair, Chief Planner

Date: March 21, 2023

**Subject: Commission Agenda Item – Chapter 1107 (Definitions), Chapter 1129 (Residential Districts), Chapter 1133 (Business Districts), Chapter 1137 (Commercial Districts), and Chapter 1151 (Nonconforming Structures and Uses) Transient Rental Zoning Regulations**

**ITEM FOR CONSIDERATION:** Legislation to adopt the previously codified sections of the Planning & Zoning Code regulating locations that allow transient rental land use in the City of Sandusky. This includes language in the following sections: Chapter 1107 (Definitions), Chapter 1129 (Residential Districts), Chapter 1133 (Business Districts), Chapter 1137 (Commercial Districts), and Chapter 1151 (Nonconforming Structures and Uses).

**BACKGROUND INFORMATION:** The city received a decision from the Sixth District Court of Appeals regarding a longstanding transient rental dispute that sought to invalidate the City's transient rental regulations. The Sixth District Court of Appeals determined that Ordinance No. 17-088 was invalidated because the City did not follow all the necessary procedural requirements for passing a zoning ordinance. Based on their reasoning, the court invalidated the entirety of Ordinance 17-088 but did not declare it unconstitutional.

In order to ensure existing transient rental operators, remain in compliance and permits for new operations in previously permissible zoning districts have the ability to seek a permit, the city must pass legislation to reinstate the zoning regulations for transient rental property locations. The proposed ordinance is identical to the language contained in the prior ordinance with a single clerical error correction.

The zoning regulations in the legislation include the following:

- Definition of "transient occupancy"
- Definition and establishment of the Transient Occupancy Overlay District
- Listing of Transient Occupancy as a main building or use in the following zoning districts: Roadside Business, Downtown Business, Commercial Recreation, Commercial Amusement.

Adoption of this ordinance will result in reinstating the ability of transient rental to be permissible in the current overlay district (also known as the Cove district), the zoning districts mentioned above, and the zoning districts that point to the above districts to define their list of main uses allowed. These include Commercial Services, General Business, Residential Business, and by Conditional Use Permit in Local Business.

**BUDGETARY INFORMATION:** Adoption of the ordinance will enable staff to collect new fees for 2023 transient rental permits.

**ACTION REQUESTED:** It is the proposed ordinance be approved and passed under suspension of the rules and in accordance with Section 14 of the City Charter in order to immediately return to transient rental property regulation protocols in the city.

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Arin Blair, Chief Planner

I concur with this recommendation:

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John Orzech  
Interim City Manager

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Brendan Heil  
Law Director

cc: C. Myers, Commission Clerk; M. Reeder, Finance Director; S. Rucker, Housing Manager



## COMMUNITY DEVELOPMENT

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*Division of Planning*  
240 Columbus Ave  
Sandusky, Ohio 44870  
419.627.5891

January 30, 2022

Dear City Commission,

On Wednesday, January 25, 2023, at their regularly scheduled meeting, the Sandusky Planning Commission recommended the approval of a zoning text amendment in Part Eleven (Planning and Zoning Code), Title One (Zoning Administration), Chapter 1107 (Definitions), Title Three (Zoning Districts and Regulations), Chapter 1129 (Residential Districts), Chapter 1133 (Business Districts), and Chapter 1137 (Commercial Districts), Title Five (Additional Zoning Requirements), Chapter 1151 (Nonconforming Structures and Uses) of the Codified Ordinance for the purpose and intent to regulate the health, safety and wellness of the public, including the owners, occupants, and neighboring property owners of properties being utilized for transient occupancy within the City.

The draft ordinance is attached.

Any questions on the process or recommendation can be directed to the Planning Division.

Arin Blair, AICP  
Chief Planner

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE REPEALING ORDINANCE NO. 17-088; AMENDING PART ELEVEN (PLANNING AND ZONING CODE), TITLE ONE (ZONING ADMINISTRATION), CHAPTER 1107 (DEFINITIONS), TITLE THREE (ZONING DISTRICTS AND REGULATIONS), CHAPTER 1129 (RESIDENTIAL DISTRICTS), CHAPTER 1133 (BUSINESS DISTRICTS), AND CHAPTER 1137 (COMMERCIAL DISTRICTS), TITLE FIVE (ADDITIONAL ZONING REQUIREMENTS), CHAPTER 1151 (NONCONFORMING STRUCTURES AND USES) OF THE CODIFIED ORDINANCES; AND DECLARING THAT THIS ORDINANCE TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

**WHEREAS**, the purpose and intent of these amendments is to regulate the health, safety and wellness of the public, including the owners, occupants, and neighboring property owners of properties being utilized for transient occupancy within the City; and

**WHEREAS**, the City must repeal and replace Ordinance No. 17-088 in order to reinstate the City's transient rental zoning regulations invalidated by the recent Sixth District Court of Appeals Decision in *Judith A. Kinzel, Trustee, et al. v. Douglas Ebner, et al.* Case No. E-21-0036; 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 immediately reinstate the City's transient rental zoning regulations and so that the City can immediately begin processing transient rental permit applications for 2023; 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 Municipal Departments 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:

**NEW LANGUAGE APPEARS IN BOLD PRINT**  
**LANGUAGE TO BE STRICKEN APPEARS WITH A STRIKE THROUGH IT**  
**LANGUAGE TO REMAIN UNCHANGED APPEARS IN REGULAR PRINT**

Section 1. This City Commission hereby repeals Ordinance No. 17-088, passed on May 8, 2017.

Section 2. Part Eleven (Planning and Zoning Code), Title One (Zoning Administration), Chapter 1107 (Definitions), Section 1107.01(h), of the Codified Ordinances of the City is hereby amended as follows:



**1107.01     DEFINITIONS.**

For purposes of this Chapter, the following words and phrases shall have the following meanings ascribed to them respectively.

- (h) Dwellings and other living accommodations.
  - (1) "Dwelling unit" means space, within a dwelling, comprising living, dining, and sleeping room or rooms, storage closets, as well as space and equipment for bathing and toilet facilities, all used by only one family.
  - (2) "Dwelling" means a building occupied exclusively for ~~non-~~~~transient~~ residential use (including one-family, two-family, or multi-family buildings).
  - (3) "One-family dwelling" means a building consisting of one dwelling unit only, detached or separated from other dwelling units by open spaces.
  - (4) "Two-family dwelling" means a building consisting of 2 dwelling units which are either attached side by side or one above the other, and each unit having either a separate or combined entrance or entrances (including duplex and flats).
  - (5) "Multi-family dwelling" means a building consisting of 3 or more dwelling units with varying arrangements of entrances and party walls (including apartment house, apartment hotel, and row house).
    - A. "Row house" means a multi-family dwelling comprising dwelling units attached in a row or group, having party walls, and each unit having at least one separate outside entrance.
    - B. "Apartment building" means a multi-family dwelling comprising 3 or more dwelling units (apartments), arranged side by side or one above the other, and each unit having a separate entrance or entrances connected to a common outside entrance or entrances.
    - C. "Apartment hotel" means a unit similar to an apartment house, except that the unit may be used for more or less transient occupancy.
  - (6) "Accessory living accommodations" means a building, or part thereof, used solely as accommodations for occupants, personal guests, or persons employed on the premises, or nonpaying transients, and in which no cooking or similar housekeeping equipment is provide.
  - (7) "Rooming house" means a building operated by a resident family, accommodating for compensation 3 through 10 persons.

- (8) "Tourist house" means a one-family dwelling, operated by a resident family, in which only overnight guests are lodged for compensation.
- (9) "Hotel" means a building containing living and sleeping accommodations (excluding cooking facilities within the rental unit) for transient occupancy, and having a common entrance or entrances.
- (10) "Motel" means a building or buildings (detached or semidetached) having separate outside entrance or entrances, and containing accommodations for compensation for automobile travelers and vacationers.

~~(11) "Non-transient" means a period of not less than 365 days.~~

~~(112) "Transient occupancy" means to use, occupy or possess, or the use, occupancy, or possession of a dwelling or other living accommodation for a period of 30 consecutive calendar days or less. occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.~~

~~(Ord. 15-201. Passed 12-28-15.)~~

Section 3. Part Eleven (Planning and Zoning Code), Title Three (Zoning Districts and Regulations), Chapter 1129 (Residential Districts), Section 1129.06 (Accessory Uses), of the Codified Ordinances of the City be amended by the addition of new subsection 1129.06(g) as follows:

**1129.06 ACCESSORY USES.**

**(g) Transient Occupancy Overlay District.** The renting from a resident family to other individuals for the purposes of transient occupancy is permitted within an approved Transient Occupancy Overlay District.

**(1) Establishment of a Transient Occupancy Overlay District.**

**A. Initiation of Change:**

**Whenever deemed appropriate and in the interest of the general welfare of the city, the City Commission or Planning Commission may initiate a Transient Occupancy Overlay District. The overlay district shall be created to spur investment in a declining geographic area with the goal of increasing property values and maintenance of homes in areas that are close in proximity to commercial and retail areas.**

**B. Action of Planning Commission:**

The Planning Commission shall hold a public hearing. The time, place, and purpose of the hearing shall be given by both of the following methods:

1. Publication at least once in a newspaper of general circulation in the City at least fifteen (15) days prior to the date of the hearing;
2. A printed notice, not less than ten (10) days prior to the date of the hearing, sent to the owners of all property as shown upon the records of the County Recorder within three hundred (300) feet of the area proposed to be changed; and
3. The Planning Commission shall forward their recommendation to the legislative body.

**C. Action by the Legislative Body:**

1. After the above recommendation is received, the City Commission shall set a date for a public hearing. In a newspaper of general circulation in the City, notice of the time and place of the meeting shall be given at least (30) days prior to the meeting. During the thirty (30) day period, the text or copy of the text of the ordinance, map of the proposed district boundaries and report submitted by the Planning Commission shall be on file, for public examination, in the office of the Clerk of the Planning Commission.
2. After the hearing, the legislative body may approve in whole or in part by majority vote of its entire membership the recommendation submitted by the Planning Commission. The legislative body may disapprove or modify the recommendations by Planning Commission by a vote of not less than three- fourths of its entire membership.

~~(1980 Code 151.14)~~

Section 4. Part Eleven (Planning and Zoning Code), Title Three (Zoning Districts and Regulations), Chapter 1133 (Business Districts), Sections 1133.05 (Permitted Buildings and Uses; Roadside Business District), and Section 1133.08 (Permitted Buildings and Uses; Downtown Business District, of the Codified Ordinances of the City are hereby amended as follows:

**1133.05 PERMITTED BUILDINGS AND USES; ROADSIDE BUSINESS DISTRICT.**

(a) Main Buildings and Uses.

- (1) All stores, services, dwellings, and other uses permitted in Local Business Districts;
- (2) Additional retail business stores and services conducted wholly within enclosed buildings, or adjoining and operated in connection with an establishment in an enclosed building to the following extent:
  - A. The sale and serving of all beverages and eating places of all types permitting dancing and live entertainment. Conditional use permits shall be obtained by places selling or serving alcoholic beverages, and by all drive-in establishments;
  - B. Motels, hotels; fraternal and social clubs, and labor union halls;
  - C. Automotive services, repair or service garages, and buildings for the sale of new and second-hand motor vehicles. The parking of vehicles with or without a fee, the sale of gasoline and oil, and the sale of motor vehicles may be permitted on an open lot, providing all requirements for front yards in the Business District as set forth in the Zoning Code are met;
  - D. The sale of boats and other marine supplies; motorcycles, bicycle shops; sports and athletic equipment; pet shops;
  - E. Amusement and recreational services, such as assembly and meeting halls, billiard halls, bowling alleys, dance halls, indoor theaters, skating rinks, and other social, sports, or recreation establishments, provided the services are conducted within a building, sufficiently sound-insulated to confine the noise to the premises;
  - F. Nursery stock, monuments, garden equipment, supplies, and garden furniture may be sold on an open lot, provided the operation is in connection with an established related business conducted within a building not more than 150 feet therefrom, and provided goods are not sold, displayed, or stored in a required yard;

(3) Microbrewery.

**(4) Transient Occupancy.**

(b) Similar Main Uses. Any other business store, shop, or service not listed above or in any subsequent use classification, and determined as similar by the Commission.

(c) Accessory Buildings or Uses.

- (1) Accessory off-street parking and loading facilities as required and set forth in Chapter 1149;

- (2) Any accessory use, such as the storage of goods and processing operations clearly incident to the conduct of a retail business or service establishment permitted as main uses, provided the use has no injurious effect on adjoining residential districts.

~~(Ord. 15-201. Passed 12-28-15.)~~

**1133.08 PERMITTED BUILDINGS AND USES; DOWNTOWN BUSINESS DISTRICT.**

(a) Main Buildings and Uses.

- (1) Single, two and multi-family residential uses above the first floor.
- (2) All stores and services permitted in the General Business District;
- (3) Public uses as follows and as defined in Section 1123.02: governmental, civic, education, religious, recreational and transportation.

**(4) Transient Occupancy.**

(b) Similar Main Uses. Any other business, service or recreation activity not listed above or in any subsequent use classification and determined as similar by the Commission.

(c) Conditional Uses Permitted: Outdoor recreational facilities such as beaches, waterparks, amphitheaters, marinas, swimming pools, etc.

(d) Accessory Buildings or Uses:

- (1) Accessory off-street parking and loading facilities as required and set forth in Chapter 1149;
- (2) Any accessory use and building clearly incident to the conduct of a permitted main use, providing the use has no injurious effect on adjoining residential districts.

~~(Ord. 04-057. Passed 1-12-04.)~~

Section 5. Part Eleven (Planning and Zoning Code), Title Three (Zoning Districts and Regulations), Chapter 1137 (Commercial Districts), of the Codified Ordinances of the City is hereby amended as follows:

**1137.03 PERMITTED BUILDINGS AND USES, COMMERCIAL RECREATION DISTRICTS.**

(a) Main Buildings and Uses.

- (1) One- and two-family dwellings, boathouses, motels;
- (2) The following amusement establishments, whether open or enclosed:

- A. Beaches and swimming pools, with accessory bath houses and locker rooms;
- B. Manufacturing, rental, repair, and storage of boats, marinas; sale of live bait for fishing;
- C. Hunting and fishing clubs, shooting ranges;
- D. Arenas, auditoriums;
- E. Golf courses, driving ranges;
- F. Riding academies, stables, race tracks;
- G. Assembly and meeting halls, bowling alleys, dance halls, skating rinks.
- H. All retail stores, services and offices as permitted in General Business Districts.
- I. **Transient Occupancy.**

(b) Similar Main Uses. Any other recreational use not listed above or in any other use classification, and if determined as similar by the commission.

(c) Accessory Buildings or Uses.

- (1) Accessory off-street parking facilities as regulated and set forth in Chapter 1149;
- (2) Eating places, sales of equipment or accessories, living quarters, maintenance facilities for caretakers, and any accessory use customarily incident to a permitted main use, provided the use has no injurious effect on adjoining residential districts.

~~(1980 Code 151.63)~~

#### **1137.04 PERMITTED BUILDINGS AND USES, COMMERCIAL AMUSEMENT DISTRICT.**

(a) Main Buildings and Uses.

- (1) All buildings and uses permitted in and as regulated in Commercial Recreation Districts; provided, however, that no residential units shall be constructed or maintained except as may be clearly secondary or incidental to the principal uses contemplated and permitted under this section;
- (2) The following amusement establishments, whether open or enclosed:
  - A. Ferris wheels, roller coasters, whips, merry-go-rounds, and other similar open midway attractions;
  - B. Freak shows, wax museums, dodgem scooters, and other semi-enclosed or enclosed midway attractions;
  - C. Open booths with games of skill or chance, including shooting galleries, penny arcades;
  - D. Public dance halls, skating rinks, indoor theaters;
- (3) The following businesses and services, open or enclosed:
  - A. Hotels, motels, taverns, eating places; the sale, serving, and consumption of soft drinks and alcoholic beverages;

B. The sale of foods, drugs, gifts, sports equipment.

**(4) Transient Occupancy.**

(b) Similar Main Uses. Any other amusement not listed above or in any other use classification, and determined as similar by the Commission.

(c) Accessory Buildings and Uses.

- (1) Accessory off-street parking facilities as regulated and set forth in Chapter 1149;
- (2) Living quarters for caretakers, maintenance facilities, and other accessory uses customarily incident to a permitted main use, providing the uses have no injurious effect on adjoining residential districts.

~~(1980 Code 151.64)~~

Section 6. Part Eleven (Planning and Zoning Code), Title Five (Additional Zoning Requirements), Chapter 1151 (Nonconforming Structures and Uses), Section 1151.08 (Certificates of Nonconformity), of the Codified Ordinances of the City is hereby amended as follows:

**1151.08 CERTIFICATES OF NONCONFORMITY.**

- (a) (1) The Division of Planning shall issue a certificate of nonconformity for legally nonconforming uses and structures if the nonconformity is included in an inventory of nonconformities created by the City or upon application by the owner, if the owner can document in detail the extent of nonconforming land uses, structures, signs, and/or lots or parcels at the time the nonconformity was established.
- (2) The inventory of nonconformities shall contain the detailed information that must be contained in a certificate. If there is no inventory, an owner of a nonconformity can obtain a certificate if he or she can establish the extent and nature of the nonconformity at the time it was established. The nonconformity must be in existence at the time the relevant ordinance(s) were adopted or amended. A nonconformity can be established through photographs, maps and drawings, and written statements describing the nonconforming use at the time it became nonconforming. **In the case of a transient occupancy use, annual nonconformity must be proven through the following methods: documentation of the previous years' Federal tax return and State tax return showing income from the property providing transient occupancy and executed rental agreements from the previous year.**

(b) A certificate of nonconformity shall describe the nonconforming land uses, structures, signs, and/or lots or parcels in sufficient detail so that a reasonable person can determine how the nonconformity is not in compliance with present or previous land development regulations. A map with drawings, with the location, height and size of structures and signs, and the area of the nonconformity shall be attached to the certificate.

(c) The City may rely on the description and/or map of a nonconformity in a certificate of nonconformity in determining whether a nonconformity has been discontinued, destroyed, changed or expanded.

(d) A Certificate of Nonconformity shall not entitle a property owner the re- establishment of a nonconforming use or reconstruction of a nonconforming structure. However, it shall serve as a base line record of the nonconformity when a property owner is requesting to reconstruct or re-establish a nonconformity.

~~(Ord. 02-191. Passed 12-9-02.)~~

Section 7. 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 8. This City 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 9. That for the 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.

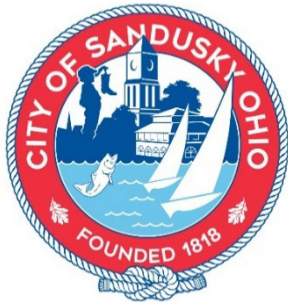
\_\_\_\_\_  
RICHARD R. BRADY  
PRESIDENT OF THE CITY COMMISSION

ATTEST:

\_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023





DEPARTMENT OF COMMUNITY DEVELOPMENT

240 Columbus Avenue  
Sandusky, Ohio 44870  
419.627.5730  
[www.ci.sandusky.oh.us](http://www.ci.sandusky.oh.us)

To: John Orzech, Interim City Manager  
From: Nicole Grohe, Community Development Program Administrator  
Date: March 14th, 2023  
Subject: Commission Agenda Item –Demolition Project #5 Contract

**Item for Consideration:** Ordinance authorizing and directing the City Manager to enter into a contract for the CDBG FY21–Demolition Project #5, involving asbestos abatement and demolition of two properties.

**Background Information:** On November 28th, 2022, City Commission approved Resolution No. 064-22R which directed the City Manager to advertise and receive bids for the demolition and asbestos abatement at two properties at 402 Hendry St. and 1228 Osborne St.

Results of the bids, opened on February 14th, 2023 were as follows:

Ed Burdue & Company	Sandusky, OH	\$145,300
Eagle Abatement & Demolition	Garfield Heights, OH	\$302,000
D2 Excavating LLC.	Vickery, OH	\$181,435

ED Burdue & Company was determined to be the lowest and best bid.

**Budgetary Information:** The total cost for the asbestos abatement and demolition is \$145,300 and will be paid with FY21 Community Development Block Grant Funds. Liens will be placed on the properties for the total cost of the asbestos abatement and demolition.

**Action Requested:** It is requested that the proper legislation be approved to permit the City Manager to enter into a contract with Ed Burdue & Company for asbestos abatement and demolition of two properties and that legislation be passed under suspension of the rules and in accordance with Section 14 of the City Charter in order to move forward with the project and to continue to implement the City's efforts towards blight elimination in the interest of the health and safety and general welfare of the citizens of Sandusky.

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Nicole Grohe, Community Development Program Administrator

I concur with this recommendation:

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Colleen Gilson  
Interim, Director of Community Development

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John Orzech  
Interim City Manager

cc: Brendan Heil, Law Director, Michelle Reeder, Finance Director, Cathy Myers, Clerk of City Commission

## CERTIFICATE OF FUNDS

In the Matter of: Ed Burdue- Demo Project #5

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Sandusky under the foregoing Contract have been lawfully appropriated for such purposes and are in the treasury of the City of Sandusky or are in the process of collection to an appropriate fund, free from any previous encumbrances. This certificate is given compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Account #241-4447-53000

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

*Michelle Reeder*

Michelle Reeder

Finance Director

Dated: 2/21/2023

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ED BURDUE & COMPANY OF SANDUSKY, OHIO, FOR THE CDBG FY21 DEMOLITION PROJECT #5; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, this City Commission declared the necessity for the City to proceed with the proposed CDBG FY21 Demolition Project #5 by Resolution No. 057-22R, passed on October 24, 2022; and

**WHEREAS**, the original CDBG FY21 Demolition Project #5 involved asbestos abatement and demolition of the commercial structure located at 1228 W. Osborne Street, which was condemned and ordered for demolition by the City's Chief Building Official due to structural failure of the roof and second floor; and

**WHEREAS**, subsequent to approval of the Resolution and prior to advertising, a residential structure located at 402 Hendry Street was ordered for demolition by the Housing Appeals Board and it is recommended to bid out both properties together to obtain lower pricing; and

**WHEREAS**, this City Commission amended Resolution No. 057-22R and declared the necessity for the City to proceed with the modified proposed CDBG FY21 Demolition Project #5 by Resolution No. 064-22R, passed on November 28, 2022; and

**WHEREAS**, the modified CDBG FY21 Demolition Project #5 involves the asbestos abatement and demolition of the commercial structure located at 1228 W. Osborne Street and the residential structure located at 402 Hendry Street; and

**WHEREAS**, upon competitive bidding as required by law three (3) appropriate bids were received and the bid from Ed Burdue & Company of Sandusky, Ohio, was determined to be the lowest and best bid; and

**WHEREAS**, the total cost for the asbestos abatement and demolition is \$145,300.00 and will be paid with FY21 Community Development Block Grant (CDBG) funds and subsequently all costs related to the demolition and asbestos abatement will be charged to the owners and assessed to the property; 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 move forward with the project and to continue to implement the City's efforts towards blight elimination in the interest of the health and safety and general welfare of the citizens of Sandusky; 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 Planning, 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 contract with Ed Burdue & Company of Sandusky, Ohio, for the CDBG FY21 Demolition Project #5, in an amount **not to exceed** One Hundred Forty-Five Thousand Three Hundred and 00/100 Dollars (\$145,300.00) consistent with the bid submitted by Ed Burdue & Company of Sandusky, Ohio, currently on file in the office of the Director of Public Works.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023



## Department of Community Development

240 Columbus Avenue  
Sandusky, Ohio 44870  
419.621.8462  
[www.ci.sandusky.oh.us](http://www.ci.sandusky.oh.us)

**TO:** John Orzech, Interim City Manager  
**FROM:** James A. Stacey III, Transit Administrator  
**DATE:** March 15, 2023  
**SUBJECT:** **STS 2023 RFP Contracted Services Bid Selection: First Transit, Inc.**

**ITEM FOR CONSIDERATION:** Legislation requesting approval for the City Manager to award and enter into a nine (9) month transportation services agreement with the option to renew for four (4) consecutive one (1) year terms with First Transit Inc., for the daily operation and management of the Sandusky transit System (STS), beginning April 1, 2023 through December 31, 2023. The optional years of renewal will be structured on a calendar year basis, beginning January 1 through December 31 of each year.

**BACKGROUND INFORMATION:** The City of Sandusky is the designated recipient of Federal Transportation Administration (FTA) funding dollars under Chapter 49, Section 5311 of the Code of Federal Regulations. As per the regulations, the daily operation and management of STS is to be bid to the general public for a designated period of time to be determined by the City. The City chose to request proposals for a one year period with an option for four additional one year renewal time periods. The City sought a third-party, turn-key service provider who could provide vehicles, vehicle maintenance, management, personnel, and dispatch services for STS. A Request for Proposal (RFP) was issued in January 2023, to solicit qualified passenger transportation entities for the demand responsive, fixed-route, curb-to-curb, rural public transit system within the designated service area of the current STS operation. One (1) proposal was received and reviewed by an evaluation committee and as a result, First Transit, Inc. was determined to provide the City the best value for the continued operation of the Sandusky Transit System. As a result of the Sandusky Transit System's Request For Proposals, the City proposes to enter into contract with First Transit, Inc. for the remainder of this year to conduct STS operations.

**BUDGET IMPACT:** STS operations and administration are funded by the Federal Transit Administration, State of Ohio, local contributing agencies, local contributing private entities, the daily farebox collections and the City's General Fund. The City has agreed upon a vehicle service per hour rate of \$48.14 with a monthly fixed fee of \$35,511.40 for 2023.

**ACTION REQUESTED:** It is therefore requested that legislation be approved to allow the City Manager to enter into a nine (9) month transportation services agreement with First Transit, Inc. to operate the Sandusky Transit System, with the option for four (4) additional one (1) year extensions. It is further requested that this legislation take immediate effect in full accordance with Section 14 of the City Charter to execute the agreement with First Transit, Inc. and allow for continued transportation services as the current contract expires on March 31, 2023.

---

James A. Stacey III, Transit Administrator

I concur with this recommendation:

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John Orzech, Interim City Manager

cc: Cathy Myers, Clerk of City Commission; Michelle Reeder, Finance Director; Brendan Heil, Law Director

## CERTIFICATE OF FUNDS

In the Matter of: First Transit Agreement

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Sandusky under the foregoing Contract have been lawfully appropriated for such purposes and are in the treasury of the City of Sandusky or are in the process of collection to an appropriate fund, free from any previous encumbrances. This certificate is given compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Account #218-6823, 218-6824, 431-6900

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



Michelle Reeder

Finance Director

Dated: 3/23/2023

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A TRANSPORTATION SERVICES AGREEMENT BETWEEN THE CITY OF SANDUSKY AND FIRST TRANSIT, INC., OF LOMBARD, ILLINOIS, IN RELATION TO THE SANDUSKY TRANSIT SYSTEM; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the City of Sandusky is the designated recipient of Federal Transportation Administration (FTA) funding under Chapter 49, Section 5311 of the Code of Federal Regulations and the Sandusky Transit System serves the residents within the City of Sandusky, and Erie County; and

**WHEREAS**, the City issued a Request for Proposals (RFP) in January of 2023, in which one (1) service provider submitted a proposal, including technical and service costs, that were scored by an evaluation committee and as a result First Transit, Inc., was selected as the best proposal which provided the City the best value for the continued operation of the Sandusky Transit System; and

**WHEREAS**, the proposed agreement provides for a nine (9) month agreement commencing April 1, 2023, through December 31, 2023, at an agreed upon vehicle service per hour rate of \$48.14 with a monthly fixed fee of \$35,511.40 for 2023 and the City has the option to extend the contract for four (4) additional one (1) year terms beginning January 1<sup>st</sup> through December 31<sup>st</sup>; 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 execute the contract with First Transit, Inc., and allow for continued transportation services, without interruption of services, as the current contract expires on March 31, 2023; 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 Sandusky Transit System, 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. This Commission hereby approves the Transportation Services Agreement, a copy of which is attached to this Ordinance marked Exhibit "1" and specifically incorporated as if fully rewritten herein, together with the proposal submitted by First Transit Inc., of Lombard, Illinois, which is on file in the office of the Transit Administrator, and the City Manager is authorized and directed to execute the Transportation Services Agreement on behalf of the City in

substantially the same form of the Agreement attached to this Ordinance together with such revisions or additions as are approved by the Law Director as being consistent with the requirements of this Ordinance.

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 City 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 the 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 after its adoption and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023



## TRANSPORTATION SERVICES AGREEMENT

THIS AGREEMENT is made and entered into as of the \_\_\_\_ day of \_\_\_\_, 2023, by and between the City of Sandusky, 240 Columbus Avenue, Sandusky, Ohio 44870 (hereinafter referred to as "THE CITY"), and First Transit, Inc., with its national headquarters at 720 E. Butterfield Rd, Suite 300, Lombard, Illinois 60148 and local business offices located at \_\_\_\_\_ (hereinafter referred to as "FT").

### WITNESSETH

WHEREAS, the City operates the Sandusky Transit System (STS) as a Small Rural Transit System under the guidelines of 49 USC 53 for which the City is designated recipient of Federal Transportation Administration funding under Title 49, Section 5311 of the United States Code; and

WHEREAS, as the result of a Request for Proposals for the Operation of the Sandusky Transit System issued on January 9, 2023 which includes RFP Question Responses from January 27, 2023, First Transit Inc. was selected as the best proposal to provide the City with competitive service costs and the best service for the continued operation of the Sandusky Transit System; and

WHEREAS, THE CITY desires to contract with FT to provide fixed route and para-transit on-demand transportation, logistics and related services (the "Transportation Service") for THE CITY using the City Fleet; AND

WHEREAS, FT is in the business of, and is an expert in, providing transportation and logistics services; FT maintains a staff of trained drivers and a fleet of buses in good working order (the "City Fleet"), and FT desires to utilize its expertise and assets to provide transportation, logistics and related services for THE CITY as set further herein;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration hereinafter contained, the parties agree:

### SECTION 1: PURPOSE, TYPE, AND TERM OF CONTRACT

- 1.1 The Purpose of this Contract/Agreement is to provide for the undertaking of transportation services to the general public for the City of Sandusky, as described herein (including the Exhibits), by First Transit Inc. and to state the terms, conditions, and mutual understandings of the parties as to the manner in which this project will be undertaken
- 1.2 This contract shall be a unit price contract based on a vehicle hour of service rate and fixed monthly fee and compensation thereunder shall be in accordance with Section 3 Compensation and Billing.

- 1.3 The term of this Agreement shall be a nine (9) month term commencing 12:00 am (EST) on April 1st, 2023 and shall continue through to 11:59 pm (EST) on December 31, 2023. This Agreement may be extended for four (4) additional one (1) year terms by mutual agreement of the parties. The option years will be on a calendar year basis, January 1 through December 31 of each year. Written notice of each extension shall be given by THE CITY to FT at least ninety (90) days prior to the end of the initial term for the first extension and upon written notice of THE CITY to FT which is at least ninety (90) days prior to the end of each subsequent extension. For purposes of this Agreement, the term "Contract Year" shall mean each one-year period commencing on January 1<sup>st</sup> during the term of this Agreement.

## SECTION 2: SCOPE OF SERVICES REQUIRED

- 2.1 FT shall, during the term of this Agreement, maintain such vehicles and personnel (in quantity and capacity) as are required to fulfill THE CITY's needs for transportation services as described in THE CITY's Request for Proposals (the "RFP") and FT's Proposal. In the event of a conflict between these documents and the provisions of this Agreement, this Agreement will control. Otherwise, the terms of the RFP and FT's Proposal shall govern the parties' relationship, each incorporated by reference herein, in the following order of precedence: (1) this contract, (2) THE CITY'S RFP, including RFP Question Responses, 2023 STS Facility Maintenance Plan, and Vehicle Replacement Plan thereto, attached hereto as **EXHIBIT A** and (3) FT's Proposal, including all Addenda thereto, attached hereto as **EXHIBIT B**. FT's additional responsibilities shall include:
- a. Providing janitorial services for the facility, including trash removal;
  - b. Inspection of facility and maintaining routine facility maintenance checklist documentation;
  - c. Maintain cleanliness at 14 bus shelters and 188 bus stops as needed. Cleanliness to include a minimum of quarterly power washing of all shelters and non-sheltered stops as needed, and cleaning windows and removal of trash and loose debris as needed.
  - d. Ordering and installing safety equipment to be paid for by THE CITY, including a fire extinguisher, first-aid kit, blood-borne pathogen kit, two complete sets of wheelchair tie-down belts or devices, functioning communications equipment and a set of safety triangles, if needed;
  - e. Performing preventative maintenance, repair and cleaning of vehicles; and
  - f. Hiring and training of all personnel required to provide the Transportation Service.
- 2.2 THE CITY shall be responsible for establishing all policies related to the provision and operation of transit service, including, but not limited to, the following:
- a. Appointment of a Transit Administrator to serve as FT's point of contact and oversee all media inquiries pertaining to Transportation Service;
  - b. All marketing and promotion of Transportation Service;
  - c. Planning and conducting all citizen participation meetings and or/public hearings;

- d. Payment of invoices submitted by FT in accordance with the terms set forth in Section 3.1 hereto;
- e. Reimbursement of FT for all vehicle maintenance costs and procedures;
- f. Providing an adequate facility in the City of Sandusky for the required on-site administration/operations staff, storage of vehicles, maintenance and cleaning transit service vehicles for the use by FT, as well as all water, sewer, electrical and natural gas service required for the administration of the facility. The Service provider is responsible for payment of electricity usage in excess of 108,693KWH and Natural Gas usage in excess of 2,528.85CCF, within a 1-year period (January 1<sup>st</sup> to December 31<sup>st</sup>);
- g. Providing and leasing to FT the fleet of vehicles for the provision of the Transportation Service including all required equipment;
- h. Purchasing all fuel required for the operation of the Transportation Service; and
- i. Certification of eligible passengers under the Americans with Disabilities eligibility guidelines.

2.3 THE CITY and FT will consult on a regular basis concerning the Transportation requirements of THE CITY. In the event of increases or decreases in the number of residents requiring Transportation, or in routes or schedules, the number of vehicles and the number of spare vehicles will be adjusted accordingly. THE CITY may increase or decrease services to be provided by FT under this Agreement. However, where such increases or decreases materially impact the service levels or equipment levels required of FT under the assumed routes, schedules, and vehicle requirements contained in this Agreement, FT and THE CITY shall negotiate in good faith to adjust rates at which services are provided to cover increases or decreases in cost structure associated with such changes by THE CITY. For purposes of this Agreement, increases or decreases that “materially impact the service levels or equipment levels required” shall mean revenue hours + or - 10% of agreed upon revenue hours. This section would also apply to an increase or decrease to the number of service hours or the like which would effect the fixed costs associated herein, meaning if the City reduces the service hours greater than 5% then the parties agree to negotiate in good faith a reduction of the contract price especially, but not limited to, the fixed costs.

- 2.3.1 Changes to this Contract shall be effective only upon written agreement between the parties. The City and FT shall renegotiate the rates contained in Section 3 of this Contract in the event of any of the following events:
- (a) An increase or decrease of 10% or more of the projected number of vehicle hours as detailed in Section 3.4 of this agreement ;
  - (b) An increase in the mandatory minimum wages or benefits to be paid to FT employees as the result of an act of any governmental entity with jurisdiction of the FT; or
  - (c) Changes to the costs of the FT as the result of changes to any law, rule or regulation subsequent to the execution of this Contract.

- 2.3.2 Any proposed changes to this Contract that is agreed upon by the City and FT must not alter the agreement between the City and ODOT. Any change that would alter the City's contract with ODOT must receive approval from ODOT prior to being effective.
- 2.4 THE CITY must notify FT in writing within ten (10) calendar days of discovery of an incident and THE CITY'S intent to assess any liquidated damages for a violation of a performance standards. FT shall have thirty (30) days following such notice to cure the incident prior to the assessment of liquidated damages.
- 2.5 In the event that there are any Schedule Readjustments, FT shall be afforded a period of thirty (30) days following implementation of such changes during which time no liquidated damages may be assessed for the impacted routes, while FT makes operational adjustments to meet THE CITY requirements. No liquidated damages will be assessed during the first sixty (60) days of the initial contract period.

### SECTION 3: COMPENSATION AND BILLING

- 3.1 In consideration for services rendered hereunder, THE CITY shall pay to FT all sums due and owing and calculated in accordance with the gate to gate Variable Expense per Hour rates and Monthly Fixed Fee set forth in **Exhibit C- Rates**, and pricing will be held firm as provided in said rate sheet for the initial term of this Agreement, unless with the written consent of THE CITY, as provided herein. In addition, all maintenance costs will be billed by FT to THE CITY as a pass-through cost and FT will be reimbursed by THE CITY for all actual costs of performing the maintenance services in accordance with this Agreement. Such costs include, but are not limited to, labor (including wages, benefits employment taxes, and workers' compensation insurance for all labor personnel), parts (including tires), vehicles body damage repairs, third party vehicle repairs, (including but not limited to alignments, body work, etc.), fluids, maintenance related incidentals (including but not limited to shop towels, waste oil removal, etc.) and other expenses incurred by FT in performing the maintenance services. Not later than the 5th working day after the end of each month during the term of this Agreement, FT will submit to THE CITY a statement of its services rendered during the prior month, including an itemized accounting of all maintenance costs included with each invoice.
- 3.2 PAYMENT TERMS. City shall pay FT within 30 days of receipt of FT's invoices. FT may cease to provide services under this Contract should The City fail to compensate FT for services rendered within the time period specified herein.
- 3.21 DISPUTED INVOICES. In the event City disputes any portion of FT's invoice, City shall notify FT in writing within fourteen (14) days of receipt of FT's invoice. City shall pay the undisputed portion of the invoice within thirty (30) days of receipt of FT's invoice.

- 3.22 DISPUTE RESOLUTION. FT and City shall meet within fourteen (14) days of FT's receipt of City's notice of a disputed invoice to negotiate a resolution to the dispute. In the event FT and City cannot resolve the dispute through negotiation, the dispute will be resolved in accordance with Section 30(below).
- 3.3 The revenue generated from STS shall be considered the property of the City. FT shall collect fares as directed by the City and shall credit the City on its monthly invoice for the amount of fares collected.
- 3.4 Projected Service Hours: The service shall be capped at 12,471 hours per quarter. The quarterly cap will be strictly enforced in order to ensure the sustainability of the service. Any hours in excess of the cap, may be paid in subsequent quarters, providing the quarterly cap is not exceeded. This will allow for the optimization of the service, and account for varying service days throughout the quarter as some months may have 20 service days while others may have 23, etc. It is understood that the priority of the services is as follows:
1. Fixed Route and ADA paratransit
  2. Contract dial-a-ride
  3. Non-Contract dial-a-ride

It is understood that the hours between the services will fluctuate from week to week. It is anticipated that the Fixed Route will average 8,594 service hours with the ADA paratransit and dial-a-rides to be 3,877 per quarter totaling 12,471 quarterly. The City and FT will jointly monitor the hours spent and adjust the Dial-A-Ride service per THE CITY'S instruction so as to not exceed THE CITY'S total budgeted hours. FT shall give THE CITY at least Fifteen (15) calendar days notice before exceeding the cap. FT shall not exceed the cap without written approval of THE CITY, said approval shall not unreasonably be withheld.

#### SECTION 4: FUEL

- 4.1 THE CITY shall, at THE CITY's sole cost and expense, purchase all fuel required for operation of vehicles and performance of the services required hereunder.

#### SECTION 5: ROUTES AND SCHEDULES

- 5.1 THE CITY, in conjunction with and input by FT, shall be primarily responsible for planning all routes, stops and schedules per **Exhibit D Transportation Schedule**.
- 5.2 THE CITY has furnished FT with a list of stops and routes, including the approximate time of pick up and drop off for each stop, which shall be included on **Exhibit D**. FT will continue to run the fixed routes in accordance with the established route schedules set forth on **Exhibit D**. FT shall utilize the Trapeze software provided by THE CITY to schedule the paratransit service for each service day.

- 5.3 FT will coordinate with THE CITY routes to be operated 7 days a week and during holiday periods or times of reduced services. This should occur thirty calendar (30) days in advance of such periods.

## SECTION 6: RECORDS AND REPORTS

- 6.1 FT shall provide within ten (10) calendar days of any request, those reports and records which may be reasonably requested by THE CITY pertaining to passengers, routes, stops, mileage audits, on-time performance and other information having to do with daily operations. The City shall inform FT immediately (within 24 hours) of any public records request or other such request for information or documents what are clearly marked "Confidential and Proprietary." FT will have 5 calendar days aer notice from the City of said request to file any appropriate injunction, restraining order, or any other such legal action. After the expiration of the 5 calendar days the City may produce any such documents in response to the request and shall not be held liable to FT for doing so.
- 6.2 FT shall establish and maintain in accordance with requirements and established by the City, the Ohio Department of Transportation (ODOT), and the Federal Transit Administration (FTA), separate accounts for the Project either independently or within its existing accounting system to be known as the Project Account. All cost charged to the Project, including any approved services contributed by FT, or others, shall be supported by properly executed payroll, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges in accordance with the rules and regulations of the City, ODOT and FTA. All checks, invoices, vouchers, orders or other accounting documents in whole or in part to the extent feasible, shall be kept separate and apart from all other such documents.
- 6.3 All accounting records shall be retained for three (3) years following payment of the final payment or completion of audit whichever is later, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case FT agrees to maintain the same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.
- 6.4 FT shall submit to the City at such times as the City may require such financial statements, records, and other fiscal documents as may be deemed necessary by the City, ODOT or FTA.
- 6.5 An annual audit shall be conducted. FT shall permit the City, ODOT, the FTA Administrator, the Comptroller General of the Unites States, or their agents or any of their authorized representatives to inspect all vehicles, facilities and equipment purchased by the City, including those obtained through the Project, all

transportation services rendered by FT by the use of such vehicles, facilities and equipment, and all relevant Project data and records. FT shall also permit the City, ODOT, the FTA Administrator, the Comptroller General of the United States, or their agents or any of their authorized representatives to audit the books, documents, papers, records, and accounts of FT pertaining to the Project and to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

- 6.6 FT agrees the City shall be permitted to inspect all work, materials, payrolls and other data and records with regard to the Project, and to audit the books, records, and accounts with regard to the Project. FT further agrees to allow the City to participate in the management of the Project, including but not limited to the hiring and appointment of Project personnel.
- 6.7 FT shall immediately notify THE CITY, or its designated representative, by telephone and confirm as soon as practicable in writing, of the occurrence of any incident involving riders, or a traffic violation or accident reportable by law that involves a vehicle with passengers. Written notification shall contain a full and complete statement of all relative facts including police case number when available.
- 6.8 FT shall provide all data required for monitoring and evaluation of the Project requested by the City, ODOT, and/or FTA. FT shall provide operating data, including but not limited to, ridership, vehicle hours of service, operation costs and revenues to the City for submission to ODOT as periodically required.

#### SECTION 7: INDEMNIFICATION

- 7.1 FT 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 FT's gross negligence in the performance of this Agreement, except to the extent such claim or demand arises from THE CITY's own negligence or willful misconduct, passenger-upon-passenger violence, or FT's good faith adherence to THE CITY's policies, procedures, certifications or directives.

#### SECTION 8: INSURANCE

- 8.1 FT agrees to provide continuous insurance coverage for the following:
  - A. Automobile Liability insurance, with a minimum combined single limit for bodily injury and property damage of five million dollars (\$5,000,000). Any deductible on such policies will be paid by FT. The City, ODOT, and FTA shall be named as additionally insured on all liability policies. All accidents must be reported within twenty-four (24) hours of Service Provider's

knowledge of occurrence.

- B. Comprehensive General Liability Coverage, with a minimum combined single limit of bodily injury and property damage of three million dollars (\$3,000,000) per each occurrence. Said coverage, which will protect FT, City, ODOT and FTA from claims for damages to property and bodily injury including death, which may arise from or in connection with operation of the Project by FT. FT agrees to protect, defend, indemnify and hold harmless the City, its officers, employees and agents against any and all charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this contract and/or performance hereof and resulting from the negligence or intentional misconduct of Service Provider, except to the extent that such charges, professional fees or other expenses or liabilities are the result of the negligence of the City or its employees, subcontractors or agents. FT further agrees to investigate, handle, respond to, and defend any and all such claims and to absorb all associated costs, even if such claims are groundless, false or fraudulent

- 8.2 FT agrees to provide THE CITY on an annual basis, certificates of insurance, naming THE CITY as an additional named insured on its policies for claims arising under this Agreement.

#### SECTION 9: FORCE MAJEURE

- 9.1 In the event FT is unable to provide the transportation services as specified in this Agreement because of any act of God, civil disturbance, fire, riot, war, terrorism, picketing, strike, labor dispute, labor shortages, pandemic, governmental action or any other condition or cause beyond FT's control, upon satisfactory evidence of such cause(s) being, THE CITY shall excuse FT from performance under this Agreement until such act or occurrence has been abated, or THE CITY decides to terminate the Agreement, as long as the cause is not the fault or negligence of FT. In the event that FT is unable to perform its duties hereunder as a result of such act(s) or occurrence(s), THE CITY will be excused from any payment obligations as provided in this Agreement unless and until FT begins providing services again as provided hereunder, unless the Agreement is terminated as otherwise provided in this Agreement.
- 9.2 The City may be excused from performing its obligations under this Contract during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incident of fire, flood, or strike; acts of God; acts of Government; war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants, or facilities by the



federal, state or local government; national fuel shortage or drastic increase in price; provided further that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the City.

#### SECTION 10: CHANGES IN SCHEDULE or CONTRACT

- 10.1 Whenever (a) inclement weather or impassability of roads occurs, (b) a scheduled route is canceled or delayed, or (c) a route is scheduled for other than regular start or end times, THE CITY shall notify FT not later than 5:00 pm the evening before (a) the first regularly scheduled route impacted by the weather; (b) the route time of a canceled or delayed ride, or (c) the scheduled time for a pick-up that is for other than the regular start or end times. In the case of if THE CITY does not notify FT about cancelled routes by 5:00 pm the night before such cancellation, THE CITY shall pay FT a minimum of 25% of the revenue hours scheduled for that day or the actual service hours performed, whichever is greater.
- 10.2 Notwithstanding the foregoing, in the event of circumstances which necessitate expedited service for rider health or safety reasons, the FT and THE CITY shall cooperate to facilitate orderly transportation of riders in the most efficient manner possible in light of the circumstances presented.

#### SECTION 11: SAFETY PROGRAM

- 11.1 FT shall be responsible for implementing and maintaining annually a comprehensive transportation safety program.
- 11.2 FT's employees shall not be required to perform any medical functions for passengers.

#### SECTION 12: MANAGEMENT PERSONNEL

- 12.1 FT shall employ management personnel who shall be responsible for the efficient operation of the transportation services furnished hereunder and who shall be FT's liaison to THE CITY. FT will designate a crisis management contact person for emergency contact with THE CITY. Prior to the start of the term of this Agreement, FT shall inform THE CITY of the name(s), contact telephone number(s) and address(es) of such management personnel.
- 12.2 THE CITY shall employ management personnel who shall be responsible for coordination of the transportation requirements of THE CITY to be furnished under this Agreement and who shall be THE CITY's liaison to FT. THE CITY will designate a crisis management contact person for emergency contact with FT. Prior to the start of the term of this Agreement, THE CITY shall inform FT of the name(s), contact telephone number(s) and address(es) of such management personnel.

### SECTION 13: OPERATIONS PERSONNEL/DRIVERS

- 13.1 FT shall employ a sufficient number of qualified drivers and support personnel to assure THE CITY of continuous, reliable, safe, and on -time service. Such personnel shall meet all regulatory requirements and the requirements set forth in **Exhibit B- Request for Proposals**. All qualified drivers and support personnel must be able to speak and understand the English language.
- 13.2 FT shall take reasonable steps to prevent its employees from exposing any rider to impropriety of word or conduct. FT shall not knowingly permit its drivers to smoke on the vehicle, to drink any intoxicating beverage, or to be under the influence of drugs or alcohol while operating any vehicle.
- 13.3 FT shall be responsible for hiring and discharging personnel employed by FT to perform its obligations hereunder; provided, however, that THE CITY shall have the right to request FT to remove from service to THE CITY any employee who, in THE CITY's sole discretion, is deemed unsuitable for the performance of transportation services for THE CITY; and provided, further, that THE CITY shall make such request in writing, state the reasons therefor and include any supporting documentation, and provided further that such request does not violate applicable local, state or federal laws, rules or regulations. To the extent permitted by law, THE CITY shall indemnify, defend, and hold FT harmless from and against all claims, expenses, or liabilities by or to a removed FT employee arising from the removal of that employee based on THE CITY's request.
- 13.4 FT shall provide qualified driver/trainers and qualified drivers, trained and licensed in accordance with applicable laws, rules, regulations, and the policies and procedures of THE CITY. THE CITY shall advise FT of THE CITY's requirements for training or qualification for drivers or driver/trainers. FT will, to the extent such requirements do not conflict with state or federal laws, implement such requirements into its hiring and training programs for drivers servicing THE CITY's participants. FT agrees that each driver shall:
- 13.4.1 Possess a valid license or permit issued by the State of Ohio authorizing such person to operate a vehicle.
- 13.4.2 Be certified by a duly licensed medical practitioner as medically qualified and free of medical or physical conditions, which would limit safe operation of a vehicle. The physical examination shall be conducted prior to employment and periodically thereafter.
- 13.4.3 Possess a satisfactory driving record and criminal history record, after review of such records prior to employment and periodically thereafter to the extent permitted or available by law.

13.4.4 Prior to employment and from time-to-time thereafter, to the extent permitted by law, undergo such tests as may reveal, within a reasonable degree of medical or scientific certainty, the presence or absence of drugs or controlled substances in the body and such tests as may clinically reveal alcoholism or alcohol abuse. Findings for such tests shall be a condition of employment.

13.4.5 Follow all Medicaid Rules for compliance.

#### SECTION 14: TRAINING REQUIREMENTS

14.1 FT shall provide thorough instruction to drivers in compliance with state and federal safety and operations guidelines and regulations. THE CITY shall have the right to review course content.

#### SECTION 15: EQUIPMENT

15.1 All equipment supplied by FT in performance of this Agreement shall meet or exceed the standards established by the applicable laws and regulations. FT shall maintain and insure the vehicles provided by THE CITY to be used to provide transportation services under this Agreement in accordance with law and accepted industry maintenance standards.

15.2 In the event that THE CITY or any governmental agency imposes additional equipment requirements other than those set forth above on FT's vehicles during the term of this Agreement which are specific requirements for the operation of this Agreement or immediate installation is required for continuing operation of the vehicles, the expense of such equipment installation shall be billed to THE CITY as a pass-through expense.

15.3 The equipment and facilities used by FT shall be maintained at a high level of safety, cleanliness, and mechanical soundness.

#### SECTION 16: ASSIGNMENT

16.1 This Agreement shall not be assigned by the parties hereto, without the written consent of THE CITY, which consent shall not be unreasonably withheld or delayed, except that FT may assign this Agreement without the consent of THE CITY if the assignment is made to a parent, subsidiary, related or affiliated company of FT, notice shall be given to THE CITY of the assignment. No assignment shall release FT, its assignors, employees, or agents from any obligations of this Contract.

16.2 No subcontracts shall be permitted without first being submitted to THE CITY for review and approval.

## SECTION 17: TERMINATION

17.1 The City may, by written notice to FT, terminate the Project and cancel this contract for any of the following reasons:

- 1) ODOT notifies the City of the termination of this Project without cause. City shall reimburse FT reasonable closeout costs should City terminate the Project prior to the end of the term or any extension term if the reason for termination is other than breach or default of FT.
- 2) FT discontinues providing rural public transportation services as described in the Application approved by ODOT and FTA or in approved modifications, thereto.
- 3) FT takes any action pertaining to this Contract without the approval of the City and which under the procedures of this contract would have required the approval of the City.
- 4) The commencement, prosecution, or timely completion of the Project by FT if for any reason is rendered improbable, impossible, or illegal.
- 5) FT is in default under any provision of this contract which default remains uncured following thirty (30) days written notice of default.
- 6) Sufficient Federal and/or State funding is not made available to the City for the operation of rural public transportation services. It is understood that funding provided to the Service Provider by the City is contingent upon a sufficient level of funding being available to the City through the FTA and ODOT. Should, at any time, sufficient Federal and/or State funds not be available to the City for the operations of rural public transportation services, the City may suspend or terminate the Project and cancel this contract as stipulated in in this section. In the event the Contract is terminated by City, FT shall be paid for services provided through the date of termination plus its reasonable termination costs. FT shall not be required to provide service if no funding is available.

17.2 In the event the Contract is terminated by City, except for default of FT, FT be paid for services provided through the date of termination plus its actual and reasonable termination costs

## SECTION 18: SURVIVAL

18.1 The mutual obligations described in Compensation and Billing, and Indemnification hereof shall survive the termination or expiration of the Agreement.

## SECTION 19: STATUS OF FIRST TRANSIT

- 19.1 It is expressly understood that FT is an independent contractor and not the agent, partner, or employee of THE CITY. FT and FT personnel are not employees of THE CITY and are not entitled to tax withholding, Worker's Compensation, unemployment compensation, or any employee benefits, statutory or otherwise. FT shall not have any authority to enter into any contract or agreement to bind THE CITY and shall not represent to anyone that FT has such authority.

## SECTION 20: SEVERABILITY

- 20.1 In the event any provision specified herein is held or determined by a court of competent jurisdiction to be illegal, void, or in contravention of any applicable law, the remainder of the Agreement and provisions shall be deemed to be separate and severable from the violating provision(s) and thus shall remain in full force and effect.

## SECTION 21: EXTENSION AND MODIFICATION

- 21.1 FT and THE CITY may extend or otherwise modify the terms of this Agreement in whole or in part as circumstances may justify by mutual written agreement executed by the duly authorized representatives of the parties.

## SECTION 22: NOTICE TO PARTIES

- 22.1 All notices to be given by the parties to this Agreement shall be in writing and served by depositing same in the certified mail.

Notices to THE CITY shall be addressed to:

City of Sandusky  
Attention: James A. Stacey III, Transit Administrator  
240 Columbus Avenue  
Sandusky, OH 44870

With a copy to:

City of Sandusky  
Attention: , Assistant Law Director  
240 Columbus Avenue  
Sandusky, Ohio 44870

Notices to FT shall be addressed to:

First Transit Inc.  
Attention: Patrick Smith  
1049 Ashfield Way  
Greensburg, PA 15601

With a copy to:

First Transit Inc.  
720 Butterfield Rd., Suite 300  
Lombard, IL 60148  
Attention: General Counsel

- 22.2 THE CITY or FT may change their address of record for receipt of official notice by giving the other written notice of such change and any necessary mailing instructions.

#### SECTION 23: ENTIRE AGREEMENT

- 23.1 This Agreement, along with the RFP, City of Sandusky, Sandusky Transit System(STS) the FT proposal and other exhibits hereto, sets forth the entire agreement between THE CITY and FT concerning the subject matter hereof. There are no representations, either oral or written, between THE CITY and FT other than those contained in this Agreement and attachments. If there is a conflict between the Agreement, RFP and the proposal or exhibit hereto, the Agreement controls.

#### SECTION 24: COMPLIANCE WITH THE LAW

- 24.1 Notwithstanding any contrary provision in this Agreement, FT shall comply with federal, state and local laws, rules and regulations in providing transportation services described herein.
- 24.2 FT shall be required to comply with all of the Federal requirements listed in Appendix A. FT shall also comply with any and all additional regulations, requirements, etcetera that may be required as part of the Rural Transit Program
- 24.3 FT agrees to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 USC 18579h), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15) which prohibits the use under non-exempted Federal Contracts, grants, loans of facilities included on the EPA list for Violating Facilities. FT shall report violations to THE CITY, ODOT, FTA, and the US EPA Assistant Administrator for enforcement.

- 24.4 FT shall recognize mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation plan issued in compliance with the Energy and Policy Conservation Act (42 USC 6321 et. esq.).
- 24.5 The Contract includes, in part, certain standard terms and conditions required by the FTA as set forth in Appendix A, which are incorporated by reference and made a part of the Contract as if fully rewritten herein. FT shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed in Appendix A of the Contract as they may be amended or promulgated from time to time during the term of the Contract. Further, FT shall comply with all applicable statutes, regulations, executive orders, FTA circulars, the FTA Master Agreement, other Federal and State administrative requirements, and permits in carrying out the Contract. FT's failure to comply shall constitute a material breach of contract. All FTA mandated requirements shall be deemed to control in the event of a conflict with other provisions contained in the Contract. FT shall not perform any act, or refuse to comply with any City requests that would cause THE CITY to be in violation of any FTA terms and conditions.
- 24.6 FT shall not have or perform any personal conflicts of interest, organizational conflicts of interest, debarment and suspension, collusion, fraud, false or fraudulent statements and claims and related acts, prohibitions against exclusionary or discriminatory specifications, interest of members or delegates to Congress, bonus or commission, lobbying or any other questionable or unethical actions that could compromise the integrity of this project. Additionally, no person under FT's employ, that presently exercises any functions or responsibilities in connection with THE CITY or projects or programs funded by THE CITY, shall have any personal financial interest, direct or indirect, in the Contract. Throughout the performance of the Contract, no person having such conflicting interest shall be employed by FT. Any such interest, on the part of FT or its employees, shall be disclosed in writing to THE CITY.
- 24.7 The Contract is intended for the exclusive benefit of THE CITY and FT to any contract arising there from and the respective successors and assigns of the same, and nothing contained in the Contract shall be construed as creating any rights or benefits in or to any third party.
- 24.8 FT's procurement and procurement system shall comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1F, "Third Party Contracting Requirements", and other implementing requirements FTA may issue. FT shall include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and shall ensure that each sub-recipient and FT shall also include in its sub-agreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

## 24.9 LABOR PROTECTION.

During the performance of this Contract, FT agrees to comply with the following:

### Labor Provisions

- 1) Overtime Requirements: FT shall not require or permit any laborer or mechanic to work in excess of forty hours in any work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his or her rate of pay for all hours worked in excess-of forty hours in such work weeks.
- 2) Violation: Liability for Unpaid Wages, Liquidated Damages: In the event of any violation of the clause set forth in subparagraph (b) (l) of 29 CFR Section 5.5, FT is responsible therefore shall be liable for the unpaid wages. In addition, FT shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchman and guards, employed in violation of the clause set forth in subparagraph (b) (1) of 29 CFR Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (l) of 29 CFR Section 5.5.
- 3) Withholding for unpaid wages and Liquidated Damages: US DOT or ODOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by FT under this Contract or any other Federal contract with FT, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by FT, such sums as may be determined to be necessary to satisfy any liabilities of FT for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR Section 5.5.
- 4) Non-construction Grants: FT shall maintain payrolls and basic payroll records during the course of the work and shall preserve for a period of three years from the completion of this Contract for all laborers and mechanics, including guards and watchman, working on the Project. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Further, FT shall insert in any subcontract a clause providing the records to be maintained under this paragraph shall be made available by the subcontractor for inspection, copying, or transcript by authorized representatives of US DOT and the Department of Labor. FT shall permit such representatives to interview employees during working hours.
- 5) Subcontracts: FT shall insert in any subcontracts the clauses set forth in subparagraphs (1) through (5) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. FT shall be



responsible for compliance by any lower tier subcontractor with the clauses set forth in subparagraphs (1) through 5) of this section.

#### 24.10 EQUAL EMPLOYMENT OPPORTUNITY/CIVIL RIGHTS REQUIREMENTS

In connection with the execution of this contract, FT shall not discriminate against any employee or applicant for employment or use of the transportation service provided because of race, religion, color, sex, age, or national origin. FT shall take affirmative action to ensure the applicants are employed and that employees are treated during their employment, without regard to their race, religion, color, sex, age, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or advertising, layoff or termination, and selection for training including apprenticeship.

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, FT agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, FT agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Service Provider agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. FT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, FT agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, FT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, FT agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, FT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, FT agrees to comply with any implementing requirements FTA may issue.

(3) FT also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(4) FT shall document such affirmative action efforts by providing THE CITY with data relating to the sex, race, age, and classification of each employee of FT's organization.

#### 24.11 COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT.

FT must comply with the Americans with Disabilities Act. FT agrees that as a condition to this Contract that no otherwise qualified disabled person shall, solely by reason of his/her disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under this program or activity that receives or benefits from Federal financial assistance administered by the City through funding by ODOT and FTA

(1) FT shall not be responsible for any violations of the complimentary paratransit provision of the Americans with Disabilities Act or its regulations for service denials in the event City does not authorize the number of vehicle hours required to meet all the trip demand. FT shall not be required to provide service without compensation. City shall be solely responsible for adopting operating policies which are in compliance with the ADA.

#### 24.12 MINORITY AND DISADVANTAGED BUSINESS ENTERPRISES:

(1) Policy. It is the policy of US DOT that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 23 apply to this contract.

(2) DBE Obligation. The City and FT agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this contract. In this regard the City and FT shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 and the DBE Policy as established by the City of Sandusky to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts.

FT shall not exclude DBEs from participation in business opportunities by entering into long-term, exclusive agreements with non-DBEs for operation of major transportation related activities or for the provision of goods and services for the Project.

#### 24.13 CIVIL RIGHTS ACT OF 1964 (TITLE VI).

FT will comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), The Regulation of DOT issued thereunder (CFR Title 49, Subtitle A, Part 21), and the requirements as identified in the attached Appendix A. See Section 25.10.

#### 24.14 DRUG FREE WORKPLACE ACT. DRUG AND ALCOHOL TESTING.

FT will be required to implement a drug and alcohol testing program for all safety-sensitive personnel, per 49 CFR Part 655 and Part 40. FT will also be required to comply with the Drug-Free Workplace Act of 1988 as amended.

#### 24.15 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPPA)

FT warrants that it will comply in all material respects with applicable HIPPA regulations when using or disclosing Protected Health Information received by subcontractor from or on behalf of the City. FT will ensure that all Protected Health Information obtained regarding participants in connection with the Agreement is held in strict confidence and is used only as required in the performance of FT's obligations. FT will provide HIPPA training to its entire location staff on an annual basis.

#### 24.16 The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT and ODOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated July 1, 2010 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. FT shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions or ODOT requirements.

## SECTION 25: PLACE OF CONTRACT/CONTROLLING LAW

25.1 This Agreement shall be governed by the laws of the State of Ohio. All references in this Agreement to the "state" shall mean the State of Ohio. All regulations, laws and requirements of the state shall mean the regulations, laws or requirements of the State of Ohio.

## SECTION 26: DISPUTE RESOLUTION

26.1 The parties shall negotiate in good faith in an attempt to resolve any dispute that may arise under this Agreement. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between THE CITY and FT shall be referred to the Director of ODOT whose decision shall be final, unless either party thereafter seeks resolution in a Court of Law.

## SECTION 27: CONTRA PROFERENTEM

27.1 The Parties acknowledge and agree that both parties have participated in the drafting of this Agreement, and any rule of law providing that ambiguities shall be construed against the drafting party, shall be of no force or effect.

## SECTION 28: WAIVER

28.1 Failure of either party to assert any right, which it has under this Contract, or to assess penalties as provided, shall not act as a waiver as to that party's right to enforce the provisions of this Contract, or assess penalties in the future.

## SECTION 29: DEFAULT

29.1 Neglect or failure of FT or the City to comply with any of the terms, provisions or conditions of this contract shall be an event of default. FT or the City shall correct its default or make substantial progress, as determined by the non-defaulting party, to correct the default within 30 days of receipt of written notice of default. In the event the defaulting party fails to cure the default within 30 days, then the non-defaulting party may terminate this Contract.

## SECTION 30: AUTHORITY

30.1 Both parties warrant that they are properly authorized to enter into this Agreement.

## SECTION 31: AWARD AND EXECUTION OF CONTRACT

31.1 The parties agree to mutually extend the time to execute this contract for 90 days in addition to the time allotted for in §153.12 of the Ohio Revised Code

SECTION 32: WAIVER OF LIQUIDATED DAMAGES

32.1 The City will waive liquidated damages for missed or late trips performed using contractor provided vehicles.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement the day and year first hereinabove written.

First Transit, Inc.

City of Sandusky

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

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

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

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

First Transit, Inc.

Attest:

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

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

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

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

Attest:

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

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

EXHIBIT "A"

CITY OF SANDUSKY'S REQUEST FOR PROPOSALS AND

ADDENDA (On File in Office of Transit Administrator)

DRAFT

EXHIBIT B

FIRST TRANSIT PROPOSAL (On File in  
Office of Transit Administrator)

DRAFT

# EXHIBIT C

## RATE SCHEDULE

City of Sandusky / Sandusky Transit System					
Pricing based on actual expected hours					
COST ASSUMPTIONS AND DETAIL					
	Year 1	Year 2	Year 3	Year 4	Year 5
<b>ASSUMPTIONS</b>					
START DATE	4/1/2023 -	1/1/2024 -	1/1/2025 -	1/1/2026 -	1/1/2027 -
END DATE	12/31/2023	12/31/2024	12/31/2025	12/31/2026	12/31/2027
VEHICLE MILES OF SERVICE	587,843	783,791	783,791	783,791	783,791
VEHICLE HOURS OF SERVICE *	37,724	49,883	49,883	49,883	49,883
VEHICLE HOURS OF SERVICE (Full-Year)	49,883	49,883	49,883	49,883	49,883
<b>VARIABLE EXPENSES</b>					
DISPATCHING	\$156,760.38	\$212,884.30	\$218,632.18	\$224,535.25	\$230,597.70
ROAD SUPERVISOR	\$36,102.72	\$49,171.56	\$50,646.70	\$52,166.10	\$53,731.09
DRIVERS	\$919,493.19	\$1,264,185.06	\$1,338,431.18	\$1,379,367.98	\$1,428,854.96
FRINGE BENEFITS	\$373,278.28	\$506,819.73	\$548,889.49	\$586,780.10	\$624,191.82
INSURANCE	\$180,504.37	\$248,232.11	\$257,843.94	\$268,061.04	\$278,805.81
CORPORATE SUPPORT	\$73,690.47	\$101,067.98	\$106,340.90	\$110,489.85	\$114,934.75
FEE (PROFIT)	\$58,589.33	\$80,255.39	\$84,662.22	\$87,993.54	\$91,628.44
SAFETY/TRAINING EXPENSES	\$17,794.47	\$24,118.25	\$24,401.94	\$25,126.80	\$25,833.08
<b>TOTAL VARIABLE EXPENSES</b>	<b>\$1,816,213.21</b>	<b>\$2,486,734.38</b>	<b>\$2,629,848.55</b>	<b>\$2,734,520.66</b>	<b>\$2,848,577.65</b>
<b>FIXED EXPENSES</b>					
MANAGEMENT	\$114,001.79	\$156,075.70	\$160,259.07	\$164,555.45	\$168,967.95
FRINGE BENEFITS	\$33,738.63	\$46,967.81	\$48,931.48	\$50,983.66	\$53,128.52
OFFICE SUPPLIES	\$4,635.00	\$6,334.50	\$6,492.86	\$6,655.18	\$6,821.56
OPERATIONS EXPENSES	\$36,420.00	\$50,056.25	\$51,903.02	\$53,795.97	\$55,761.92
CUSTODIAL	\$2,250.00	\$3,075.00	\$3,151.88	\$3,230.67	\$3,311.44
MISCELLANEOUS (Technology, Telephone)	\$46,702.80	\$63,827.16	\$65,422.84	\$67,058.41	\$68,734.87
CORPORATE SUPPORT	\$31,320.79	\$43,314.85	\$45,574.67	\$47,352.79	\$49,257.75
FEE (PROFIT)	\$30,030.92	\$41,421.98	\$43,619.38	\$45,329.75	\$47,170.71
DEPRECIATION	\$18,252.71	\$23,754.21	\$22,687.83	\$21,995.00	\$22,276.39
VEHICLE LICENSE FEES	\$2,250.00	\$3,090.00	\$3,182.70	\$3,278.18	\$3,376.53
<b>TOTAL FIXED EXPENSES</b>	<b>\$319,602.62</b>	<b>\$437,917.46</b>	<b>\$451,225.73</b>	<b>\$464,235.06</b>	<b>\$478,807.64</b>
<b>TOTAL ANNUAL EXPENSES</b>	<b>\$2,135,815.83</b>	<b>\$2,924,651.84</b>	<b>\$3,081,074.28</b>	<b>\$3,198,755.72</b>	<b>\$3,327,385.29</b>
<b>PRICING OPTIONS</b>					
<b>OPTION 1</b>					
<b>VARIABLE EXPENSES PER HOUR</b>	<b>\$48.14</b>	<b>\$49.85</b>	<b>\$52.72</b>	<b>\$54.82</b>	<b>\$57.11</b>
<b>MONTHLY FIXED FEE</b>	<b>\$35,511.40</b>	<b>\$36,493.12</b>	<b>\$37,602.14</b>	<b>\$38,686.26</b>	<b>\$39,900.64</b>
<b>MAINTENANCE EXPENSES</b>					
<b>MAINTENANCE EXPENSES</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
WAGES	\$227,000.78	\$310,868.23	\$319,291.03	\$327,942.12	\$336,827.70
FRINGE BENEFITS	\$45,308.21	\$63,474.49	\$65,889.66	\$68,406.08	\$71,028.24
PARTS AND SUPPLIES	\$117,221.41	\$174,284.25	\$194,377.92	\$212,411.36	\$229,832.42
<b>TOTAL MAINTENANCE EXPENSES (Note 1)</b>	<b>\$389,830.39</b>	<b>\$548,626.97</b>	<b>\$579,558.61</b>	<b>\$608,759.56</b>	<b>\$637,688.36</b>
Note 1: Maintenance expenses are an estimate for informational purposes only. Actual expenses will be a pass-through charge to the City of Sandusky.					



EXHIBIT D  
TRANSPORTATION SCHEDULE  
(On File in Office of Transit  
Administrator)

DRAFT

APPENDIX A  
REQUIREMENTS OF THE FEDERAL TRANSIT  
ADMINISTRATION

(On File in Office of Transit Administrator)

DRAFT



## CITY OF SANDUSKY POLICE DEPARTMENT

222 Meigs Street  
Sandusky, Ohio 44870  
419.627.5863  
[www.cityofsandusky.com](http://www.cityofsandusky.com)

To: John Orzech, Interim City Manager

From: Chief Jared Oliver

Date: March 15, 2023

Subject: **Commission Agenda Item – Repealing Ordinance No. 22-053, and Purchasing Seven Ford Utility Police SUV's**

**ITEM FOR CONSIDERATION:** Legislation repealing Ordinance No. 22-053, passed on March 14, 2022, and approving the purchase of seven (7) Ford Utility Police SUV's from Montrose Ford of Akron, Ohio, for the Police Department.

**BACKGROUND INFORMATION:** At the March 14, 2022, legislation was presented to City Commission for the approval to purchase three Ford Utility Police SUV's from Montrose Ford of Akron, Ohio under the State of Ohio's Cooperative Purchasing Program through the Department of Administrative Services, Contract #RS10006716, which was approved via Ordinance No. 22-053. Since then, Ford had halted all production of their Police SUV's due to industry issues with materials, resulting in the contractor price Montrose Ford offered expiring and not being able to supply the vehicles ordered. Ford has started back up with the production of the vehicle, however, cooperative purchasing programs do not have contracts available for the purchase of Utility Police SUV's at this time, which prompted the City to issue a Request for Proposal for the purchase of these types of vehicles.

A request for proposal was issued on February, 17, 2023, instructing potential respondents to provide pricing on a 2023 Ford Utility Police SUV, of which only one proposal was received on the proposal due date of March 7, 2023, from Montrose Ford of Akron, Ohio. After review of the proposal package by a selection committee and conversations with the dealer, it was determined the proposal from Montrose Ford was the lowest and best based upon vehicle specifications, delivery and cost.

The purchase of seven vehicles will account for the replacement of the three vehicles original purchased in 2022 and for four new cruisers for 2023.

**BUDGETARY INFORMATION:** The total cost for the seven vehicles is not to exceed \$288,930.88 and will be paid for using Capital Funds.

**ACTION REQUESTED:** It is recommended that the proper legislation be prepared repealing Ordinance No. 22-053, passed on March 14, 2022, and approving the purchase of seven (7) Ford Utility Police SUV's from Montrose Ford of Akron, Ohio, for the Police Department in an amount not to exceed \$288,930.88. It is further requested that legislation be passed under suspension for the rules in full accordance with Section 14 of the City Charter in order to be placed, receive the vehicles and place in service at the earliest opportunity to continue effective operations of the police fleet.

**Approved:**

**I concur with this recommendation:**

---

Jared Oliver, Police Chief

---

John Orzech, Interim City Manager

Cc: Michelle Reeder, Finance Director

Brendan Heil, Law Director

## CERTIFICATE OF FUNDS

In the Matter of: Seven Police Cruisers

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Sandusky under the foregoing Contract have been lawfully appropriated for such purposes and are in the treasury of the City of Sandusky or are in the process of collection to an appropriate fund, free from any previous encumbrances. This certificate is given compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Account #430-1010-55650, 431-1010-55650, 431-6503-54090

By: Michelle Reeder

Michelle Reeder

Finance Director

Dated: 3/15/2023

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REPEALING ORDINANCE NO. 22-053, PASSED ON MARCH 14, 2022; AUTHORIZING AND DIRECTING THE CITY MANAGER TO PURCHASE SEVEN (7) FORD POLICE SPORT UTILITY VEHICLES FROM MONTROSE FORD OF AKRON, OHIO, FOR THE POLICE DEPARTMENT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, a determination was made by the Police Chief and Fleet Maintenance Foreman that there is a need to replace three (3) police vehicles that have exceeded their useful life for the Sandusky Police Department and these vehicles will be placed in other City Departments; and

**WHEREAS**, this City Commission authorized the purchase of three (3) Ford Police Sport Utility Vehicles (SUVs) through the State of Ohio Department of Administrative Services Cooperative Purchasing Program from Montrose Ford of Akron, Ohio, for the Police Department by Ordinance No. 22-053, passed on March 14, 2022; and

**WHEREAS**, subsequent to placing the order for the vehicles, Ford halted all production of their Police SUV's due to industry issues with materials, resulting in Montrose Ford's contract price expiring and not being able to supply the vehicles; and

**WHEREAS**, Ford has restarted production of the Police SUVs but they are no longer available through the State's cooperative purchasing programs, prompting the City to issue a Request for Proposals for the replacement of the three (3) SUVs previously ordered in 2022 and four (4) SUVs for 2023 for a total of (7) Police SUVs; and

**WHEREAS**, a Request for Proposals (RFP) was issued on February 17, 2023, for pricing on 2023 Ford Utility Police SUV Cruisers in which one (1) proposal was received and evaluated by a selection committee and based upon vehicle specifications, delivery and cost, the proposal from Montrose Ford of Akron, Ohio, was selected as lowest and best; and

**WHEREAS**, the total cost for seven (7) Ford Police Sport Utility Vehicles is \$288,930.88 and will be paid with Capital Funds; 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 to allow the order to be placed, receive the vehicles, and place in service at the earliest opportunity to continue effective operations of the Police fleet; 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 of the City of Sandusky, Ohio, including the Police Department, 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. This City Commission hereby repeals Ordinance No. 22-053,  
passed on March 14, 2022.

Section 2. The City Manager is authorized and directed to purchase seven  
(7) new 2023 Ford Police Sport Utility Vehicles from Montrose Ford of Akron, Ohio,  
at an amount **not to exceed** Two Hundred Eighty-Eight Thousand Nine Hundred  
Thirty and 88/100 Dollars (\$288,930.88).

Section 3. 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 4. This City 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 5. That for the 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 after its adoption  
and 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: \_\_\_\_\_  
CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023



## FIRE DEPARTMENT

600 West Market Street

Sandusky, Ohio 44870

419.627.5822

Fire Prevention 419.627.5823

Fax 419.627.5820

[www.ci.sandusky.oh.us](http://www.ci.sandusky.oh.us)

**TO:** John Orzech, Interim City Manager

**FROM:** Mario D'Amico III, Fire Chief

**DATE:** March 16, 2023

**RE:** Commission Agenda Item – Purchase of Stryker Power-Load System

**ITEM FOR CONSIDERATION:** Requesting legislation authorizing the City Manager to purchase one (1) Stryker Power-Load System which includes a Cot and a Stair Chair from Stryker Medical of Chicago, Illinois.

**BACKGROUND INFORMATION:** Resolution No. 003-23R was passed on January 23, 2023 allowing for the grant submission to the Ohio Bureau of Workers' Compensation Safety Intervention Grant (SIG) Program and was awarded funds in the amount of \$40,000.00. With the grant funds, one (1) Stryker Power-Load System which includes a Cot and a Stair Chair will be purchased for the new ambulance that is due in year 2024. This system is specifically designed to self-load the cots and patients on and off the ambulance. The Power-Load System paired with the powered cot and stair chair will virtually eliminate the chance of firefighter injuries, worker's compensation claims, and lost work time.

Stryker Medical of Chicago, Illinois is the sole source provider of this system.

**BUDGETARY INFORMATION:** The total amount of this expenditure is **\$65,702.03** of which **\$40,000.00** will be paid with funds received from the Ohio Bureau of Workers' Compensation Safety Intervention Grant (SIG) Program. The remaining amount of **\$25,702.03** will be paid from monies budgeted in the EMS fund.

**ACTION REQUESTED:** It is requested that the proper legislation be prepared to purchase a Stryker Power-Load System in a total amount not to exceed **\$65,702**. It is further requested that this legislation take immediate effect in full accordance with Section 14 of the City Charter to allow the order to be immediately placed and production of the Stryker Power-Load System can begin as there is an approximate build time of 3 months which once complete it will then be shipped to Horton Emergency Vehicles for the production of the 2024 build of the new ambulance.

**Approved:**

**I concur with this recommendation:**

---

Mario D'Amico III, Fire Chief

---

John Orzech, Interim City Manager

CC: Brendan Heil, Law Director; Michelle Reeder, Finance Director





## Powered System/Stair-PRO

Quote Number: 10530265

Version: 1

Prepared For: SANDUSKY FIRE DEPT

Attn:

Remit to:

**Stryker Medical**

P.O. Box 93308

Chicago, IL 60673-3308

Rep:

Matt VanderWal

Email:

matt.vanderwal@stryker.com

Phone Number:

Mobile:

269-251-1150

Quote Date: 03/17/2023

Expiration Date: 06/15/2023

PowerLoad System

### Delivery Address

Name: HORTON EMERGENCY  
VEHICLES

Account #: 1120657

Address: 2200 SOUTHWEST BLVD  
ATTN: SANDUSKY FD (JOB  
7130)

GROVE CITY

Ohio 43123

### End User - Shipping - Billing

Name: SANDUSKY FIRE DEPT

Account #: 1120657

Address: 600 W MARKET ST

SANDUSKY

Ohio 44870-2412

### Bill To Account

Name: SANDUSKY FIRE DEPT

Account #: 1120657

Address: 600 W MARKET ST

SANDUSKY

Ohio 44870-2412

### Equipment Products:

#	Product	Description	Qty	Sell Price	Total
1.0	650705550001	6507 POWER PRO 2, HIGH CONFIG	1	\$31,641.61	\$31,641.61
2.0	650707000002	Lithium-Ion Battery	1	\$833.85	\$833.85
3.0	650700450301	ASSEMBLY, BATTERY CHARGER	1	\$1,193.40	\$1,193.40
4.0	650700450102	ASSEMBLY, POWER CORD, NORTH AM	1	\$27.20	\$27.20
5.0	639005550001	MTS POWER LOAD *INCLUDES FLOOR PLATE*	1	\$26,741.00	\$26,741.00
6.0	6252000000	Stair-PRO Model 6252	1	\$4,398.03	\$4,398.03
6.1	7777881660	1 year parts, labor & travel			
6.2	6252009001	Stair-Pro Operations Manual			
6.3	6250001162	In-Service Video (DVD)			
6.4	6252026000	Common Components			
6.5	6250021000	2 Piece ABS Panel Seat			
6.6	6250160000	Polypropelene Restraint Set(Plastic Buckles)			
6.7	6252022000	Main Frame Assy Option			
6.8	6250024000	Standard Length Lower LiftHandles			
6.9	6252027000	Footrest Option			
6.10	6252040000	Removable Head Support			
6.11	6252024000	No IV Clip Option			



## Powered System/Stair-PRO

Quote Number: 10530265

Version: 1

Prepared For: SANDUSKY FIRE DEPT

Attn:

Quote Date: 03/17/2023

Expiration Date: 06/15/2023

Remit to:

**Stryker Medical**

P.O. Box 93308

Chicago, IL 60673-3308

Rep:

Matt VanderWal

Email:

matt.vanderwal@stryker.com

Phone Number:

Mobile:

269-251-1150

Equipment Total:	\$64,835.09
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### Price Totals:

Estimated Sales Tax (0.000%):	\$0.00
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Freight/Shipping:	\$866.94
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Grand Total:	\$65,702.03
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Prices: In effect for 30 days

Terms: Net 30 Days

Contact your local Sales Representative for more information about our flexible payment options.

## CERTIFICATE OF FUNDS

In the Matter of: Stryker Power Load Cot System

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Sandusky under the foregoing Contract have been lawfully appropriated for such purposes and are in the treasury of the City of Sandusky or are in the process of collection to an appropriate fund, free from any previous encumbrances. This certificate is given compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Account #431-1330-54090, 239-1310-54090

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



Michelle Reeder

Finance Director

Dated: 3/23/2023

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO PURCHASE ONE (1) STRYKER POWER-LOAD COT SYSTEM FROM STRYKER MEDICAL OF CHICAGO, ILLINOIS, FOR THE FIRE DEPARTMENT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, this City Commission authorized the submission of a grant application to the Ohio Bureau of Workers' Compensation for the Safety Intervention Grant (SIG) Program to purchase a Stryker Power Load System for the new ambulance for the Fire Department by Resolution No. 003-23R, passed on January 23, 2023, and subsequently was awarded grant funds in the amount of \$40,000.00; and

**WHEREAS**, Stryker EMS is the sole source provider for the Stryker Power-Load Cot System which is designed to be used with the current powered patient cots and the new ambulance estimated to be delivered in 2024; and

**WHEREAS**, the total cost for the Stryker Power-Load System, which includes a cot and stair chair, is \$65,702.03 of which \$40,000.00 will be paid with funds from the Ohio Bureau of Workers' Compensation through the Safety Intervention Grant (SIG) Program and the remaining balance of \$25,702.03 will be paid with EMS Funds; 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 to allow the order to be immediately placed so production can began as there is an approximate build time of three (3) months and upon completion, the system will be shipped directly to Horton Emergency Vehicles for the production of the 2024 build of the new ambulance; 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 Fire Department, 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 purchase a Stryker Power-Load System, which includes a cot and stair chair, from Stryker Medical of Chicago, Illinois, for the Fire Department at an amount **not to exceed** Sixty-Five Thousand Seven Hundred Two and 03/100 Dollars (\$65,702.03).

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 City 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 the 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 after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

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RICHARD R. BRADY  
PRESIDENT OF THE CITY COMMISSION

ATTEST:

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CATHLEEN A. MYERS  
CLERK OF THE CITY COMMISSION

Passed: March 27, 2023