

**ORDINANCE NO. 23-095**

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE SANDUSKY STATE THEATRE FOR THE STAFFING AND OPERATION OF THE RED POPCORN WAGON FOR 2023; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, the Red Popcorn Wagon was built by Cretors Company of Chicago, Illinois, a company founded by Charles Cretor in 1885, and is an original 1905 Special Model 'D'; and

**WHEREAS**, a number of local residents have owned and operated the Red Popcorn Wagon, the Colvin family had done so since February 2, 1980, and the Red Popcorn Wagon has remained at its current location on Washington Row since 1910; and

**WHEREAS**, in November, 1982, the Red Popcorn Wagon was entered in the National Register of Historic Places by the National Park Service; and

**WHEREAS**, the Red Popcorn Wagon was donated to the City by Mr. Jack P. Colvin and the Colvin family with the condition the City restore it and maintained in its current location in Washington Park and the City formally accepted the gift of the Red Popcorn Wagon by Ordinance No. 02-094, passed on April 8, 2002; and

**WHEREAS**, since 2002, operation of the Red Popcorn Wagon has been provided by volunteers from the United Way of Erie County and its partners, the Sandusky Police and Fire departments, The Old House Guild, and countless other organizations and individuals; and

**WHEREAS**, this City Commission approved a Lease Agreement with the Sandusky State Theatre for the staffing and operation of the Red Popcorn Wagon for calendar years 2021 and 2022 by Ordinance No. 21-072, passed on May 24, 2021; and

**WHEREAS**, the Sandusky State Theatre will continue to be responsible to provide personnel to staff and operate the Red Popcorn Wagon beginning on the Friday prior to Memorial Day through Labor Day, Monday through Saturday, and thereafter on Saturdays only through the end of October for 2023 and with an option to extend for 2024; and

**WHEREAS**, the City will received 20% of the State Theatre's gross revenue of the operation of the Red Popcorn Wagon which will be placed in the trust fund account established by the City for future maintenance and repair costs of the Red Popcorn Wagon and the net proceeds of the revenue generated will be distributed to the Sandusky State Theatre; 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

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order to immediately execute the agreement to allow training for the staffing and operation of the Red Popcorn Wagon prior to opening on May 26, 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 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 be and hereby is authorized to enter into Lease Agreement with the Sandusky State Theatre for the staffing and operation of the Red Popcorn Wagon on Washington Row for calendar year 2023, substantially in the same form as reflected in Exhibit "1" which is attached to this Ordinance and 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

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

Passed: April 24, 2023

## LEASE AGREEMENT

This Agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by and between the **CITY OF SANDUSKY**, a Municipal Corporation (herein referred to as "City") 240 Columbus Avenue, Sandusky, Ohio and the **SANDUSKY STATE THEATRE**, an Ohio non-profit organization (herein referred to as "Lessee") 107 Columbus Avenue.

**WHEREAS**, the City of Sandusky acquired by gift the Red Popcorn Wagon by Ordinance Number 02-094, passed on April 8, 2002, and this acquisition was a recognition by the City that the Red Popcorn Wagon has been continuously located in Washington Park since 1910; and

**WHEREAS**, the Lessee is interested in assisting the City of Sandusky by keeping the Red Popcorn Wagon a vibrant and integral part of the community and has agreed to provide, through its partner agencies, personnel to staff and operate the Red Popcorn Wagon; and

NOW THEREFORE, in consideration of the mutual covenants herein set forth, the parties agree as follows:

1. Lessee agrees, through each of its partner agencies, to provide operating staff for the Red Popcorn Wagon beginning on the Friday before Memorial Day through Labor Day, six days per week, Monday through Saturday, and thereafter, on Saturdays through the end of October, between the hours of 11:00 a.m. until 2:00 p.m. for the calendar year 2023. This Agreement may be extended for an additional one (1) year term upon written agreement by the Parties.

Lessee agrees to provide staffing for special events, including but not limited to, the Sandusky Gazebo Concert Series, Remember Crusin' Car Club Shows, and Farmers' Markets.

2. The City, through the Recreation Superintendent, and Lessee agree to communicate regarding any other staffing needs that may occur during the effective time period of this Agreement. Lessee agrees to furnish any and all supplies necessary for the operation of the Red Popcorn Wagon, with the exception of the popcorn and boxes, the

cost of which shall be offset by the revenue generated from the operation of the Red Popcorn Wagon during the effective time period of this Agreement.

3. The City agrees to allow the Lessee and each of their partner agencies to sell bottled water and/or peanuts separate from the popcorn sales. Lessee and their partner agencies may keep the proceeds of the sale of bottled water and/or peanuts.

4. If Lessee uses a partner agency to staff the Red Popcorn Wagon Lessee may remit 50% of the sales of popcorn sold by a partner agency to that partner agency. Any amount remitted to a partner agency is not considered as part of Lessee's gross revenue.

5. The City and Lessee agree that twenty per cent (20%) of the Lessee's gross revenue from the sale of popcorn at the Red Popcorn Wagon during the effective time period of this Agreement shall be placed in a trust fund account established by the City for the future maintenance and repair costs of the Red Popcorn Wagon.

The City and Lessee agree that any net proceeds of the revenue generated by the operation of the Red Popcorn Wagon during the effective time period of this Agreement shall be distributed to the Lessee.

6. The Lessee agrees to defend, indemnify, and hold City and its agents, representatives and volunteers, harmless from any claims or demands, including injury to Lessee's employees, agents, representatives, and volunteers, related to the operation, maintenance and utilization of the Red Popcorn Wagon, excepting the sole negligence of the City, its agents, representatives and volunteers.

7. Either party may terminate this Agreement by giving the other party written notification of termination to the following:

TO THE CITY:

City of Sandusky  
City Manager  
240 Columbus Avenue  
Sandusky, OH 44870

TO THE LESSEE:

Sandusky State Theatre  
Chris Parthemore, Executive Director  
107 Columbus Avenue  
Sandusky, OH 44870

8. That this Agreement shall be fully binding upon the parties hereto, their successors and/or assigns.

9. That this Agreement and the content thereof shall constitute the full and complete agreement of the parties in relation to this matter and shall be interpreted in compliance with the laws of the State of Ohio.

**EXHIBIT "1"**

**SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, the parties hereto have set their hands this day and year first above written, in duplicate.

Signed and acknowledged  
in the presence of:

LESSOR:  
SANDUSKY STATE THEATRE

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Chris Parthemore  
Executive Director

\_\_\_\_\_  
Signature

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

**EXHIBIT "1"**

LESSEE:  
THE CITY OF SANDUSKY

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Signature

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

Approved as to Form:

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