

ORDINANCE NO. 23-165

AN ORDINANCE AUTHORIZING AND APPROVING A GRANT IN THE AMOUNT OF \$1,000,000.00 THROUGH THE ECONOMIC DEVELOPMENT FUND PROGRAM TO SANDUSKY STATE THEATRE, INC. IN RELATION TO THE PROPERTY LOCATED AT 107 COLUMBUS AVENUE; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, since 1928, the Sandusky State Theatre has been providing residents and visitors with the opportunity to experience the power of the performing arts and this iconic Theatre, at the corner of Water Street and Columbus Avenue, is synonymous with Downtown Sandusky; and

WHEREAS, on June 10, 2020, a storm with winds of over 55 miles per hour blew the roof off the Theatre, collapsed the auditorium ceiling, and destroyed the stage and seating areas, and while the damage was devastating, the spirit of Theatre supporters, staff and the community was not broken; and

WHEREAS, with the support of visionary leaders and generous donors, Theatre restoration and expansion is underway and will soon welcome audiences and performers back with a combination of preserved historic beauty and modern features; and

WHEREAS, the total project costs for the restoration and expansion of the Sandusky State Theatre are approximately \$30 Million with some of the costs being paid with insurance claim funds in the amount of \$18 Million and through fundraising, philanthropic support and individual contributions; and

WHEREAS, it is the recommendation of City Staff to support the restoration and expansion efforts underway with \$1 Million in grant funds to Sandusky State Theatre, Inc. to preserve a Downtown structure, foster economic development and job retention and creation through Theatre operations resuming, and provide for a variety of programs of artistic, educational, and social value to the lives of Sandusky residents; and

WHEREAS, the City has determined that this project and the fulfillment generally of this Grant Agreement are in the vital and best interests of the City and for the health and safety and welfare of its residents, and are necessary to improve the economic and general welfare of people of the City; 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 approve the Grant Agreement to ensure the timely completion 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 Community Development, 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,

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

Section 1. This City Commission authorizes and directs the City Manager to enter into a Grant Agreement with Sandusky State Theatre, Inc. for financial assistance through the Economic Development Fund Program for the purpose of furthering economic development and commercial revitalization, 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. This City Commission authorizes and approves the grant funding to Sandusky State Theatre, Inc. in an amount **not to exceed** One Million and 00/100 Dollars (\$1,000,000.00) from the Economic Development Capital Projects Fund of the City of Sandusky pursuant to and in accordance with the terms of the Grant Agreement.

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's Commission and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

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: August 14, 2023

GRANT AGREEMENT

THIS GRANT AGREEMENT (the "**Agreement**") is made and entered into this ____ day of _____, 2023 (the "**Effective Date**"), by and between the CITY OF SANDUSKY, OHIO, an Ohio municipal corporation, and the SANDUSKY STATE THEATRE, INC., an Ohio not-for-profit corporation (the "**Corporation**"). The City and the Corporation are collectively referred to herein as the "**Parties**".

WITNESSETH:

WHEREAS, in accordance with Section 13 of Article VIII of the Ohio Constitution and pursuant to Ordinance No. [____], passed by the City Commission of the City of Sandusky, Ohio (the "**City Commission**") on [____], 2023, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference (the "**Approval**"), the City determined that it is in the best interest of the citizens of the City to grant funds to financially support a portion of the renovation of the Sandusky State Theatre (the "**Project**") at 107 Columbus Avenue, Sandusky, Ohio 44870 (the "**Property**"); and,

WHEREAS, said Approval was rendered in order to encourage economic development and employment within the City; and,

WHEREAS, the Corporation is a community-based, non-profit 501(c)(3) corporation that has been operating the Sandusky State Theatre since 1988; and,

WHEREAS, the Project constitutes a historic landmark that enhances the lives of the residents of North-Central Ohio by providing a variety of programs of artistic, educational, and social value; and,

WHEREAS, the Project will improve and rehabilitate a historic structure in downtown Sandusky that has been inoperable for some time due to storm damage; and,

WHEREAS, the Project includes the installation of a new roof, walls, a larger stage, modern amenities, and a better amphitheater at a total renovation cost of approximately Thirty Million Dollars (\$30,000,000); and,

WHEREAS, in accordance with Section 13 of Article VIII of the Ohio Constitution, it is a public interest and a proper public purpose for the City, in order to create jobs, employment opportunities, and to improve the economic welfare of the people of the state of Ohio, to make or guarantee loans or provide moneys for the acquisition, construction, enlargement, improvement, or equipment of property, structures, equipment, and facilities within the State of Ohio that are used for industry and commerce; and,

WHEREAS, the City desires to assist the Project and encourage economic development and employment, and therefore has agreed to provide, in the manner further described in Section 1 hereof, an economic incentive grant to the Corporation for offsetting a portion of the costs of the Project; and,

WHEREAS, the prohibition of the City's loaning of credit under Section 6 of Article VIII of the Ohio Constitution does not extend to non-profit corporations that fulfill public functions; to wit: Sandusky State Theatre, Inc. is a duly registered non-profit corporation doing business in Ohio, and the City deems the operation and maintenance of the Sandusky State Theatre to be a public function, all in accordance with *State ex rel. Pugh v. Sayre*, 90 Ohio St. 215, 107 N.E. 512 (1914) (Article VIII, Section 6 does not prohibit donation of non-tax moneys to nonprofit corporations that fulfilled public functions) and *Leaverton v. Kerns*, 104 Ohio St. 550, 136 N.E. 217 (1922) (public funds may be given to a private, non-profit organization serving public purposes); and,

WHEREAS, the Corporation acknowledges the City's commitment to provide financial assistance through this Grant and has agreed to enter into this Agreement, which sets forth the Company's obligations concerning the use of the Grant's proceeds; and,

WHEREAS, the City has determined this Project and the fulfillment generally of this Agreement are in the vital and best interests of the City and the health, safety, and welfare of its residents, and are necessary to improve the economic and general welfare of people of the City.

NOW THEREFORE, the Parties covenant, agree and obligate themselves as follows:

Section 1. Terms of the Grant. The City shall grant to the Corporation funds in the amount of One Million Dollars (\$1,000,000) (the "**Grant**") for use by the Corporation exclusively to pay a portion of the costs of the Project. The Grant shall be disbursed in two equal lump sums each consisting of Five Hundred Thousand Dollars (\$500,000) (each a "**Lump Sum**", and collectively "**Lump Sums**"). This Grant will not increase if the Corporation chooses to make additional improvements not contemplated in the application submitted to the City for the Project.

The first Lump Sum shall be paid within fourteen (14) days following the full execution of this Agreement by check placed in the U.S. regular mail to the notice address provided hereunder.

The City reserves the right to make adjustments to the grant amount awarded hereunder, pursuant to substantive changes to the Project's scope. Construction must be completed in accordance with and to the reasonable satisfaction of the City, which includes, but is not limited to, compliance with all Planning, Zoning and Building code regulations, and other applicable codes and regulations of the City, including obtaining permits. Furthermore, the Corporation agrees to display a sign noting the City's support during construction and continuing for at least one (1) year upon completion of the Project.

The Corporation shall notify the City promptly following the completion of the Project consistent with this Section and provide any documents reasonably requested by the City that are related to the Project's costs and construction. Upon such receipt, the City will promptly review those documents and inspect the Property; the City will communicate to the Corporation whether the conditions set forth in this section have been satisfied and, if not, describe what is found to be deficient. In order to receive the second and final Lump Sum, the Corporation must complete the Project by December 31, 2024, which date may be extended at the discretion of the City Manager.

The second Lump Sum shall be paid within fourteen (14) days following the confirmation of the satisfactory completion of construction by check placed in the U.S. regular mail to the notice address provided hereunder.

Section 2. Use of Funds. The Corporation will use the Grant to pay for a portion of the costs of completing the Project. The Corporation shall use the Grant solely in connection with eligible expenses incurred under the Project. By accepting the Grant herein provided, the Corporation agrees to meet the terms of this Agreement. All improvements to the Premises must be made in accordance with any approvals for the Project and permits and inspections as may be required by the City.

The Parties acknowledge and agree that portions of the construction of the Proposal may be subject to the prevailing wage requirements of Ohio Revised Code Chapter 4115 and all wages paid to laborers and mechanics employed in constructing those portions of the Proposal shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Proposal, which wages shall be determined in accordance with the requirements of that Chapter 4115.

Section 3. City's Obligation to Make Payments Not Debt. Notwithstanding anything to the contrary herein, the obligations of the City pursuant to this Agreement are not a general obligation debt or bonded indebtedness, or a pledge of the general credit or taxes levied by the City, and the Corporation has no right to have excises or taxes levied by the City, the State or any other political subdivision of the State for the performance of any obligations of the City herein. Consistent with Section 13 of Article VIII of the Ohio Constitution, any payments required to be made by the City pursuant to this Agreement are to be payable solely from the City's non-tax revenues. Furthermore, the obligation of the City to make the payments pursuant to this Agreement are in accordance with the City Commission's approval and subject to certification by the Director of Finance of the City as to the availability of such non-tax revenues.

Section 4. Events of Default. At any time during the Term of this Agreement, and solely at the discretion of the City, should the City determine the Corporation is not in compliance with the terms of the Grant set forth herein, then the City shall provide Notice of Default to the Corporation pursuant to Section 5 demanding strict compliance therewith. If the Corporation fails to take necessary action during the notice period herein to regain and remain in compliance, then the City can immediately seek any legal or equitable remedy to which it is entitled including the repayment of any Grant amount.

Section 5. Notice of Default. Pursuant to Section 4, should the City determine that the Corporation is not in compliance with the terms of the Grant, then the City shall provide written notice to the Corporation, addressed to and sent via the notice provisions of Section 7(a) below (the "**Notice of Default**"). The Notice of Default shall state clearly the reason(s) for which the City determines the Corporation to be out of compliance. The Corporation shall have ten (10) days from the date it received the Notice of Default to cure or otherwise take the necessary corrective action to regain, and remain in, compliance with the terms of the Grant under this Agreement.

Section 6. Indemnification of the City. The Corporation shall indemnify, defend, and hold harmless the City from and against all claims, losses, liabilities, damages, costs, and expenses, including reasonable attorneys' fees, costs and expenses, arising from the City's remittance of funds under the Grant.

Section 7. Miscellaneous.

(a) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by a recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice is deemed to have been received when the return receipt is signed or refused. For purposes of this agreement, Notices shall be addressed to:

(i) If to the City:

City of Sandusky, Ohio
240 Columbus Avenue
Sandusky, Ohio 44870
Attention: Director of Community Development

City of Sandusky, Ohio
240 Columbus Avenue
Sandusky, Ohio 44870
Attention: City Manager

(ii) If to the Corporation:

Sandusky State Theatre, Inc.
107 Columbus Avenue
Sandusky, Ohio 44870
Attention: Administrative Office

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications are to be sent.

(b) Extent of Provisions: Personal Liability. All rights, remedies, representations, warranties, covenants, agreements and obligations of the City under this Agreement are effective to the extent authorized and permitted by applicable law. No representation, warranty, covenant, agreement, obligation, or stipulation contained in this Agreement is to be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future

director, member, officer, agent or employee of the City. No official executing or approving the City's participation in this Agreement is liable personally under this Agreement or subject to any personal liability or accountability by reason of the issuance thereof.

(c) Successors. This Agreement is neither binding upon nor inures to the benefit of the Corporation's successors and assigns unless with the prior written consent of the City.

(d) Assignment or Transfer. This Agreement is not to be assigned or transferred without the express written consent of the City.

(e) Amendments. This Agreement may only be amended by a written instrument executed by both Parties.

(f) Authority to Sign. The Corporation and City both represent that this Agreement has been approved by formal action of the duly authorized representatives of both Parties.

(g) Executed Counterparts. This Agreement may be executed in several counterparts, each of which is to be regarded as an original and all of which constitutes but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(h) Severability. In case any section or provision of this Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason:

(i) that illegality or invalidity does not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into, or taken, all of which are to be construed and enforced as if the illegal or invalid portion were not contained herein or therein;

(ii) the illegality or invalidity of any application hereof or thereof does not affect any legal and valid application hereof or thereof; and

(iii) each section, provision, covenant, agreement, obligation or action, or part thereof is deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the fullest extent permitted by law.

(i) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of the Agreement.

(j) Governing Law and Choice of Forum. This Agreement is to be governed by and constructed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes, and other matters in question between the City, its agents and employees,

and the Corporation, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Erie County, Ohio.

(k) Further Assurances. The Corporation shall, upon request of the City, duly execute and deliver to the City such further instruments, and do and cause to be done such further acts, as may be necessary or proper in the opinion of the City to carry out the provisions and purposes of this Agreement.

[Signature Page to Follow]

EXHIBIT "1"

IN WITNESS WHEREOF, the City and the Corporation have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the Effective Date.

SANDUSKY STATE THEATRE, INC.

By: _____
Chris Parthemore, Executor Director

CITY OF SANDUSKY, OHIO

By: _____
John Orzech, City Manager

Approved as to Form:

By: _____
Sarah S. Chiappone, Assistant Law Director

FISCAL OFFICER'S CERTIFICATE

The undersigned, Finance Director of the City of Sandusky, hereby certifies that the moneys required to meet the obligations of the City during the year 2023 under the foregoing Grant have been lawfully appropriated by the City Commission of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Michelle Reeder, Finance Director

Dated: [_____], 2023

EXHIBIT "1"

EXHIBIT A

Ordinance Approving Economic Development Grant Agreement

[See Attached.]

EXHIBIT "1"