

ORDINANCE NO. 23-180

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF SANDUSKY AND JOHN T. ORZECH, JR.; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this City Commission has determined that it is appropriate and in the best interests of the City of Sandusky, Ohio, to enter into an Employment Agreement with John T. Orzech, Jr., setting forth the terms of his employment as City Manager thereof (the "Employment Agreement"), a copy of which is marked Exhibit "A" and is attached to this Ordinance; 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. For the reasons set forth in the preambles hereto, this City Commission hereby approves the Employment Agreement, and the President of the City Commission, as the Ex-Officio Mayor of this City, is hereby authorized and directed to execute the Employment Agreement on behalf of this City substantially in the same form as attached to this Ordinance, a copy of which is marked Exhibit "A", and is specifically incorporated as if fully rewritten herein, together with any 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 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

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deliberations of this City Commission and of any committees that resulted in those formal actions were in meetings held in compliance with the law.

Section 4. For the reasons set forth in the last 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 passage 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 28, 2023

EMPLOYMENT AGREEMENT
FOR JOHN T. ORZECH JR.

This Employment Agreement (the "Agreement"), made at Sandusky, Ohio, effective as of the ____ day of August, 2023, by and among CITY OF SANDUSKY, a chartered, Ohio Municipal Corporation organized under the laws of Ohio (hereinafter referred to as "City" or "Employer") and JOHN T. ORZECH, JR. who is herein called "Employee," is to EVIDENCE THAT, in consideration of the mutual promises made in this Agreement, the City and Employee (collectively, the "Parties") agree as follows:

1. Employment.

1.1 Offer and Acceptance of Employment. Upon the terms and conditions stated in this Agreement and in reliance upon Employee's promises made in this Agreement, the City hereby offers to employ Employee (as an "at-will" employee) in the capacity of City Manager, and Employee hereby accepts such employment with the City.

1.2 Entire Agreement. This Agreement represents the entire agreement between Employee and the City regarding Employee's employment with the City. Both Parties acknowledge that there are no verbal or other written understandings, arrangements, commitments and/or agreements between the Parties regarding Employee's employment with the City. Employee acknowledges that, as an inducement to sign and perform under this Agreement, Employee has not relied upon any promises, statements or representations of the City which are not expressly stated in this Agreement.

1.3 Changes to Agreement. Except as otherwise expressly stated herein, this Agreement may be changed or amended only by a written document which is clearly designated as an amendment to this specific Agreement and only if such written document is signed by both the City and Employee.

1.4 Waiver of Agreement Provisions. No course of action by either Party and no refusal or neglect of either Party to exercise a right granted under this Agreement or to enforce compliance with any provision of this Agreement shall constitute a waiver of any provision of or any right under this Agreement, unless such waiver is expressed in a written document which is clearly designated as a waiver of a specific provision(s) of this Agreement and unless such document is signed by the waiving Party.

1.5 Survival of Agreement. All provisions of this Agreement are severable and neither this Agreement nor any provision hereof shall be affected by the invalidity or unenforceability of any other provision of this Agreement.

2. Term.

The term of this Agreement (the "Employment Term") shall commence on August 8, 2023 and shall continue for a period of three (3) years, unless terminated earlier as provided herein. This Agreement shall automatically be extended an additional one (1) year unless notice that the Agreement shall terminate is given at least six (6) months before the anniversary date. In the event the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns.

3. Compensation.

3.1 Annual Base Salary. In consideration for the satisfactory performance of

Employee's promises made in this Agreement (as determined by the City in its reasonable discretion), the City shall pay Employee a basic salary (the "Basic Salary") in the amount of One Hundred Forty Thousand and 00/100 Dollars (\$140,000.00). The Basic Salary shall be payable in the same manner and at the same time as other non-bargaining employees of the City are paid.

3.2 Raises & Adjustments. At any time during the term of this Agreement, Employer may, in its discretion, review and adjust the salary of the Employee, but in no event shall the Employee be paid less than the salary set forth in Section 3.1 of this Agreement, except by mutual written agreement between Employee and Employer. Unless Employer determines otherwise, the Employee shall receive the same percentage increase in pay as the non-bargaining employees receive.

4. Employee's Duties and Responsibilities.

4.1 Professional and Administrative Duties and Responsibilities. During the Employment Term, Employee will perform certain functions and duties including those specified in Section 32 of the Charter of the City, the Codified Ordinances of the City, the laws of the State of Ohio, to perform any other legally permissible duties and functions as the Commission shall from time-to-time assign, and to develop and establish internal regulations, rules, and procedures which the Employee deems necessary for the efficient and effective operation of the Employer.

4.2 Expenditure of Time. During the Employment Term, Employee shall devote full-time business and practice time and Employee's best efforts, skill, labor, expertise, and attention to the position of City Manager exclusively for the City and to performing Employee's duties and obligations assigned to Employee under this Agreement and, at all times, shall faithfully and diligently serve and further the best interests of the City and its citizens. The employment provided for by this Agreement shall be the Employee's sole employment, except that Employee may elect to accept limited teaching, consulting, or other business opportunities with the understanding that such arrangements must neither constitute interference with or a conflict of interest with the responsibilities of the Employee under this Agreement.

4.3 Hours of Work. It is recognized that the responsibilities of the City Manager require 24-hour access and a flexible schedule. It is understood the Employee may be required to work outside the normal business hours and shall be allowed to adjust his schedule accordingly to establish an appropriate work week. The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his assigned duties and responsibilities.

5. Vacations and Other Time-Off.

5.1 Vacations. The Employee currently has 25 years of total service credit for purpose of vacation accrual and shall continue to accrue such leave in accordance with the schedule set forth in Section 145.11 of the City of Sandusky Codified Ordinance.

5.2 Holidays. During the Employment Term, Employee shall also be entitled to additional days of time-off, with full Basic Salary, for holidays in accordance with the City's general holiday policy as may be periodically amended or pro-rated by the City' in its reasonable discretion.

5.3 Sick-Time. The Employee shall accrue sick leave as set forth in Section 145.15 of the City of Sandusky Codified Ordinances and shall be paid out, at the appropriate time, as set forth in Section 145.18 of the City of Sandusky Codified Ordinances.

6. Fringe and Other Benefits.

6.1 Fringe Benefit Programs. During the Employment Term, Employee shall be eligible to participate in the City' fringe benefit programs and plans in accordance with their terms, conditions and eligibility requirements as may be periodically amended by the City in its reasonable discretion.

6.2 Working Facilities. During the Employment Term, the City will furnish Employee with an office, support and secretarial assistants and other facilities and services suitable (as determined by the City) to Employee's position and for the performance of Employee's duties and obligations under this Agreement.

6.3 Mileage Reimbursement. Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of Employee's vehicle that is not related to commuting to and from work.

6.4 Insurance Benefits. The Employer agrees to make available such health care insurance plan(s) as is generally available to other non-bargaining employees of the City. In the event no such plan exists, Employer agrees to make its best efforts to make available to Employee a health care insurance plan for the Employee, and if the Employee elects, his dependents, in a manner mutually agreed upon by Employer and Employee. Employee shall be entitled to other benefits available to non-bargaining unit employees, as set forth in Chapter 145 of the City of Sandusky Codified Ordinances.

7. Termination.

7.1 Termination by Notice. In addition to termination under any other provision of this Agreement, the Employment Term may be terminated by the majority of the City Commission votes to terminate the Employee in a properly posted and duly authorized open public meeting.

7.2 Employee's Death or Disability. In addition to termination under any other provision of this Agreement, the Employment Term shall terminate: (a) automatically, immediately and without prior notice upon Employee's death; or (b) at the option of the City, upon Employee's incurring a disability as defined herein. For purposes of this Agreement, the term "disability" means any physical or mental condition resulting from accident or illness which prevents (as determined by the City in their reasonable discretion) Employee from performing Employee's then-existing duties and obligations under this Agreement for any period or periods aggregating three hundred sixty (360) days whether consecutive or not, within any twenty-four (24) month period. Provided, however, that the payments, if any, required to be made pursuant to Section 3 may be made.

7.3 Immediate Termination "For Cause". In addition to termination under any other provision of this Agreement, the City may (by majority vote of City Commission) immediately terminate the Employment Term, at any time and without prior demand or notice, if: (a) Employee commits a crime against the City, or any of their respective officers, directors, shareholders, members, employees, Clients or agents of the City; (b) Employee is convicted of a felony or crime of moral turpitude; (c) Employee is declared of unsound mind by an Order of a Court; or (d) willful misconduct or gross neglect of duties which has resulted in or in all probability will likely result in damage to the City (provided that within 30 days after receiving notice of such misconduct or neglect, on which the Employer is relying to terminate Employee for cause, the Employee is provided the opportunity to defend himself before the Employer).

7.4 Legislative Termination. If the Employer, citizens or legislature acts to amend any provisions of the Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

7.5 Breach by Employer. If the City reduces the base salary, compensation, or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average deduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

7.6 Termination by Mutual Consent. In addition to termination under any other provision herein, the Parties may terminate the Employment Term upon entering into a written instrument outlining the terms and conditions of the termination, signed, and dated by both Parties.

7.7 Results of Termination of Employment Term. Upon termination or cessation of the Employment Term by either Party (for any reason, with or without cause), neither Party shall have any further obligation to the other Party, except for obligations which have accrued prior to or at such cessation or termination (including, but not limited to, Employee's promises and obligations under Section 4).

7.8 Right to Cure. Breach of contract declared by either party will have a mutual 30-day cure period. Written notice of a breach of contract shall be provided in case of the Employer's breach, to the Commission Clerk at 240 Columbus Avenue, Sandusky, OH 44870 or the City Manager's office at 240 Columbus Avenue, Sandusky, OH 44870, in case of a breach by Employee.

8. Severance.

8.1 Applicability. Severance shall be paid to the Employee when employment is terminated as defined by Sections 7.1, 7.4, 7.5 or 7.6 of this Agreement.

8.2 Compensation. If the Employee is terminated in accordance with either Section 7.1, 7.4, 7.5 or 7.6 of this Agreement, the Employer shall provide a minimum severance equal to six (6) months' salary at the then current rate of pay. This severance shall be paid in a lump sum or in a continuation of salary on the existing biweekly basis, at the Employee's option. Should the Employee be terminated under Section 7.4, and there is a similar position offered to the Employee of similar pay, the Employee may at his option, choose the position in lieu of the severance.

8.3 Fringe Benefits. Upon termination, the Employee shall also be compensated for all accrued vacation, leave and all paid holidays.

8.4 Health Insurance. For a minimum period of six (6) months following termination as defined by Sections 7.1, 7.4, 7.5 or 7.6 of this Agreement, Employer shall pay the cost to continue health insurance for the Employee and all dependents, after which time, Employee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Action ("COBRA").

8.5 Forfeiture of Severance. If the Employee is terminated "For Cause" pursuant to Section 7.3, then the Employer is not obligated to pay severance under this Section.

9. Miscellaneous.

9.1 Headings and Captions. The headings and captions designated in this Agreement are for convenience only and shall not be used to interpret, enlarge or limit any provision of this Agreement.

9.2 Word Usage. For purposes of this Agreement, the singular includes the plural and vice-versa and the feminine, masculine, and neuter include each other.

9.3 Ohio Law. This Agreement is signed and executed in the City of Sandusky, Erie County, Ohio and Ohio's laws shall govern all disputes, controversies, matters of interpretation, and litigation arising hereunder. The City and Employee agree that, even if Employee becomes a resident of another State, exclusive venue for all litigation arising under this Agreement lies with the State Courts located within Erie County, Ohio and, further, agree to submit (jointly and individually) to the personal jurisdiction of such State Courts.

9.4 Survival. Notwithstanding termination of the Employment Term hereunder, this Agreement shall survive for the purpose of enforcing the duties and obligations of the respective Parties subsequent to said termination.

9.5 Notices. Any and all notices or other communications provided for herein shall be given in writing by Certified Mail, Return Receipt Requested, which shall be addressed in the case of the City to its principal office in Sandusky, Ohio and in the case of Employee to his last usual place of residence.

9.6 Integration. It is further mutually understood and agreed by the Parties that this Agreement constitutes the sole and complete agreement between the Parties and that no other verbal or other statements or representations, or inducements have been made by either the City or Employee.

9.7 Modifications. This Agreement may not be modified, altered or revoked unless a written instrument is entered into signed by both Parties and clearly referencing this Agreement and the specific provisions being modified, altered or revoked.

9.8 Indemnification. Notwithstanding any contrary provision herein, Employee shall be responsible for the professional services actually rendered to Clients and agrees to indemnify and hold the City harmless from any and all damages, liabilities, costs, expenses, or charges incurred by reason of any and all claims and actions which may be asserted against or accrued as a result of any gross negligence in performance or willful misconduct by Employee to Clients. The City and Employee agree that in the event any claim for professional malpractice shall be asserted or a legal proceeding commenced based upon professional services rendered by the Employee during the Employment Term, and any such claim or proceedings results in a settlement or judgment in excess of any insurance coverage amounts insuring either/ or both of them or any other professional employee of the City, the Employee shall be personally liable for the amount by which such settlement or judgment exceeds the amount of the City' insurance coverage plus the deductible and shall indemnify and hold the City harmless from any such claim, charge, expense, judgment or settlement. Provided, however, that payments made as a result of the deductible provisions of insurance policies owned by the City shall be the sole responsibility of the City.

[SIGNATURE PROVISIONS ON SUBSEQUENT PAGE]

EXHIBIT "A"

IN WITNESS WHEREOF, the Parties have set their hands as of the day and year first above written.

CITY OF SANDUSKY

By: _____
Richard Brady, President

Date: _____

-CITY-

JOHN T. ORZECH, JR

By: _____
John T. Orzech, Jr

Date: _____

-EMPLOYEE-

EXHIBIT "A"