

AGENDA
City Commission Meeting
222 Meigs Street
5:00 p.m.

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MONDAY, JUNE 11, 2007

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Prayer
Pledge of Allegiance
Meeting Called to Order
Roll Call - DW, CS, DE, DK, DM, BC, BF
Minutes - May 29th

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Charter Officers - (Don) James L. Miers, Interim City Manager, Don Icsman, Law Director, Ed Widman, Finance Director, B. Joyce Brown, Clerk of the City Commission

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Audience Participation - Agenda Items Only (3 minute limit)

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PROCLAMATION - " UNITED STATES ARMY'S 232ND BIRTHDAY"- June 14th -June 21st

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PRESENTATION - Tom Kiser - Alternative Energy

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OLD BUSINESS

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THIS ITEM WAS READ AT FIRST READING MAY 29th.

ITEM# 1 - Communication submitted by Gary Packan, Assistant City Manager, and Mike Pisarsky, Horticultural Services Superintendent.

ORDINANCE NO. _____ Authorizing the City Manager and/or Finance Director to utilize a portion of the Oakland Cemetery Endowment Fund to pay seasonal employee wages and fringe benefits. **Request passed at second reading under suspension of rules in full accordance of Section 14 of the City Charter.**

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THIS ITEM WAS TABLED MAY 29th.

ITEM# 2 - Communication submitted by Kathryn K. McKillips, Director of Engineering Services.

ORDINANCE NO. _____ Authorizing the execution of an agreement for the acquisition and installation of Energy Conservation Measures and Facilities. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

ORDINANCE NO. _____ Authorizing the execution of a Lease-Purchase Agreement and related Escrow Agreement in connection with the acquisition and installation of Energy Conservation Measures and Facilities. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

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NEW BUSINESS

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ITEM# 3 - Communication submitted by Mary Bird, Program Administrator.

ORDINANCE NO. _____ Amending Part One - Administrative Code, Title Five - Officers and Departments, by the amendment of Chapter 143 - Department of

Community Development, in the manner and way specifically set forth. **Request passed under suspension of rules in full accordance of Section 13 of the City Charter.**

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ITEM# 4 - Communication submitted by John Lippus, Downtown Development Director.
ORDINANCE NO. _____ Enter into a Lease Agreement with Lake Erie Island Cruises, LLC, substantially in the same form as attached, for a portion of the Dock Facilities located on the Jackson Street Pier. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

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ITEM# 5 - Communication submitted by Kathryn K. McKillips, Director of Engineering Services.
ORDINANCE NO. _____ Approve the Second Amendment to the agreement for Certified Professional Services with Partners Environmental Consulting, Inc. in Partnership with Hull & Associates, Inc. of Solon, Ohio, for the Bayfront Paper District Redevelopment Project, Phase I. **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

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ITEM# 6 - B. Joyce Brown, Clerk of the City Commission submitting on the behalf of Thomas J. Paul, Erie County Auditor, six renewal applications for the placement of Farmland into Agricultural Districts.

Owner's Name	Owner's Address	Tax District(s)	Parcel Numbers(s)	
Mark Wiedenheft	4019 Homegarderner Road Sandusky, OH 44870	Sandusky City Annexation Margaretta TWP	60-00162.000-4.74A 33-00598.000-46.05A	
Second Baptist Church	P.O. Box 1192 Sandusky, OH 44870	Sandusky City Annexation	60-00261.000-15.15A	
Wiedenheft Bros A Partnership	4019 Homegarderner Road, Sandusky, OH 44870	Sandusky City Annexation Margaretta TWP	60-00474.000-7.13A 33-01591.000-4.31A 33-01840.000-105.66A	
James Bertsch Tr.	802 Bardshar Road Sandusky, OH 44870	Sandusky City Annexation	60.00022.001-4.99A 60-00023.000-5.80A 60-00022.000-4.87A	
Robert & Alice Bertsch Trs	802 Bardshar Road Sandusky, OH 44870	Sandusky City Annexation	60-00025.000-13.14A 60-00024.000-29.85A	
Joanne Braun	1115 Lima Sandusky Road Sandusky, OH 44870	Sandusky City Annexation Margaretta TWP	60-00161.000-51.18A 33-00595.000-33.08A 33-01122.00-47.32A 33-00596.00-70.66A 33-01123.007-47.44A	

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 THIS ITEM WAS TABLED MAY 14th.

ITEM# 7
ORDINANCE NO. _____ Ratifying, accepting and approving a Collective Bargaining Agreement between the City of Sandusky, an Ohio Charter Municipal Corporation, and the American Federation of State, County and Municipal Employees Local #1519, the Collective Bargaining Unit for certain employees of the City of Sandusky, for the period

January 1, 2007, through December 31, 2009 , a copy of which is attached to this ordinance; and declaring that this ordinance shall take immediate effect in accordance with Section 14 of the City Charter. . **Request passed under suspension of rules in full accordance of Section 14 of the City Charter.**

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City Manager's Report

Old Business

New Business

Audience Participation - open discussion on any item (5 minute limit)

Press Question/Answers

Executive Session

Adjournment

TO: Don Miers, Interim City Manager
FROM: Gary Packan, Assistant City Manager
Mike Pisarsky, Horticultural Services Superintendent
DATE: May 18, 2007
RE: Item for Commission Agenda – Utilization of the Oakland Cemetery
Endowment

ITEM FOR CONSIDERATION: This communication is requesting approval to utilize a portion of the Oakland Cemetery Endowment Fund (876-2600) to pay seasonal employee wages and fringe benefits on an annual basis.

BACKGROUND INFORMATION: The Oakland Cemetery Endowment Fund was originally set up for the purchase of capital equipment at the cemetery. The current balance of the endowment fund as of April 30, 2007 was \$168,853.74.

The account receives 25% of revenues collected from Lot Sales, Burial Permits and Foundation Permits. The endowment has averaged approximately \$24,000 in deposits annually over the past four years.

On March 26, 2007, city staff presented the proposed changes to the endowment to the City Commission. The proposed resolution was defeated by a 3-3 vote.

At a regularly scheduled Oakland Cemetery Board meeting, the board discussed the proposed change again and voted to re-submit the resolution to the City Commission for the regularly scheduled meeting on May 29th.

Board members stated that they wish to be present to address any concerns the City Commission may have concerning this change to the endowment. Minutes from the April 25th board meeting are attached for review.

BUDGET IMPACT: This will remove a burden of \$18,000 - \$20,000 each year from the general fund budget and still allow for the capital purchase equipment needed to sustain Oakland Cemetery over the long term.

ACTION REQUESTED: It is requested that the proper legislation be prepared to expand the use of the Oakland Cemetery Endowment Fund to include payment of seasonal employee wages and fringe benefits for the care and maintenance of Oakland Cemetery grounds. It is further requested that this legislation take effect in full accordance with Section 14 of the City Charter in order to release the Oakland Cemetery Endowment funds for seasonal pay beginning with 2007 and relieve expenses from General Fund Budget.

I concur with this recommendation.

Don Miers, Interim City Manager

Attachments

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER AND/OR FINANCE DIRECTOR TO UTILIZE A PORTION OF THE OAKLAND CEMETERY ENDOWMENT FUND TO PAY SEASONAL EMPLOYEE WAGES AND FRINGE BENEFITS; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the Oakland Cemetery Endowment was originally created for the purchase of capital equipment and receives 25% of revenues collected from Lot Sales, Burial Permits and Foundation Permits with annual deposits averaging approximately \$24,000 over the last 4 years; and

WHEREAS, it is requested that this City Commission authorize and approve the expenditure of a portion of the Oakland Cemetery Endowment Fund for the purpose of defraying the annual cost of wages and fringe benefits for seasonal employees employed at the Oakland Cemetery which, if approved, is estimated to reduce General Fund expenditures approximately \$18,000 to \$20,000 annually; and

WHEREAS, the Sandusky Cemetery Board met on January 31, 2007, and April 25, 2007, and unanimously approved this proposed additional expenditure from the Oakland Cemetery Endowment Fund and is recommending approval to the City Commission; and

WHEREAS, this legislation should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to release the Oakland Cemetery Endowment funds for seasonal employee wages and fringe benefits beginning in 2007 to relieve these expenses from the General Fund budget; 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. This City Commission authorizes and approves the expenditure of a portion of the Oakland Cemetery Endowment Fund for the purpose of defraying the annual cost of wages and fringe benefits for the seasonal employees employed at the Oakland Cemetery.

Section 2. This City Commission authorizes and directs the City Manager and/or Finance Director to take the necessary action to utilize a portion of the Oakland Cemetery Endowment Fund to defray the annual cost of wages and fringe benefits for the seasonal employees employed at the Oakland Cemetery.

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 from and after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

DANIEL J. KAMAN
PRESIDENT OF THE CITY COMMISSION

ATTEST:

B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

TO: James L. (Don) Miers
Interim City Manager

FROM: Kathryn K. McKillips, P.E.
Director of Engineering Services

DATE: May 21, 2007

SUBJECT: Commission Agenda Item

ITEM FOR CONSIDERATION: Two Ordinances: the first Ordinance authorizes the execution of an agreement by the City Manager with Honeywell International Inc. for the acquisition and installation of energy conservation measures and facilities and the second Ordinance provides for the funding of those energy conservation measures and facilities by authorizing the execution by the City Manager and the Finance Director of a lease-purchase agreement with Honeywell Global Finance Inc. and a related escrow agreement.

This project qualifies under House Bill 300 because the preliminary program report dated April 9, 2006 confirms that it will pay for itself through energy and operational savings within ten years with no additional annual expense to the City of Sandusky during the ten year term.

BUDGETARY INFORMATION: The total project implementation cost (approximately \$1.5 million) will be funded through a lease-purchase agreement and related escrow agreement with Honeywell Global Finance LLC, with that cost, plus interest, spread over a ten year period.

ACTION REQUESTED: It is recommended that both Ordinances be approved to implement and fund an energy conservation program under current House Bill 300 guidelines and that the necessary legislation be passed as an emergency in full accordance with Section 14 of the City Charter. The sooner the project is implemented, the sooner the City will realize savings in energy and operational costs.

I concur with this recommendation:

James L. (Don) Miers
Interim City Manager

Kathryn K. McKillips, P.E.
Director of Engineering Services

KKM/cal

cc: Ed Widman, Finance Director
Joyce Brown, Clerk of City Commission

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE ACQUISITION AND INSTALLATION OF ENERGY CONSERVATION MEASURES AND FACILITIES, AND DECLARING AN EMERGENCY.

WHEREAS, the City Commission has heretofore found and determined it to be in the best interest of the City to reduce energy and operating costs by acquiring and installing energy conservation measures and facilities from an energy management contractor experienced and specialized in that type of work; and

WHEREAS, in furtherance thereof and as a result of an RFQ process that the City has undertaken and subsequent evaluation of submissions and proposals received in response thereto, as required by and consistent with law, the City Commission has determined that it is in the best interest of the City to enter into an agreement (together with all addenda, exhibits and attachments, the "Agreement") between the City and Honeywell International Inc. (the "Vendor") for the acquisition and installation of energy conservation measures and facilities which are expected to result in annual energy and operational cost savings to this City; and

WHEREAS, an emergency exists in that, for the immediate preservation of the public peace, property, health and safety, it is necessary that this ordinance be immediately effective to enable the City to enter into the Agreement with the Vendor so that the acquisition and installation of those energy conservation measures facilities can occur at the earliest possible time in order to begin to realize energy savings at the earliest possible time and thereby preserve and improve the finances and credit of the City, and by reason thereof, this ordinance shall take effect forthwith upon its passage, 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 Commission hereby approves the form of the Agreement, a copy of which is on file in the office of the Clerk of the City Commission, and the City Manager (including with the meaning of such term as used in this ordinance any interim or acting City Manager) is hereby authorized and directed to sign and deliver, in the name of and on behalf of the City, the Agreement substantially in the form on file with the Clerk of the City Commission, together with such changes thereto as are approved by the Law Director as not being materially inconsistent with this ordinance and not substantially adverse to the City and that are permitted by law, provided that any changes in the "Work" (as defined in the Agreement) shall have first been approved by the City Commission. The approval of such changes, and that such changes are not materially inconsistent with this ordinance and not substantially adverse to the City, shall be conclusively evidenced by the signing of the Agreement by that officer; and the City Manager, Law Director, Finance Director, Clerk of the City Commission, and other City officials, as appropriate, are each hereby authorized to sign such certifications, documents or instruments and to take such other actions as are desirable, advisable, necessary or appropriate to consummate the transactions contemplated by this ordinance and the Agreement.

Section 2. This City Commission finds and determines that all formal actions of this City Commission or of any of its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this City Commission and of any of its committees, and

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

Section 3. That, for the reasons set forth in the last preamble hereto, this ordinance is hereby declared to be an emergency measure and shall take effect immediately upon its passage and due authentication by the President and the Clerk of the City Commission.

DANIEL J. KAMAN
PRESIDENT OF THE CITY
COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed: _____, 2007

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE EXECUTION OF A LEASE-PURCHASE AGREEMENT AND RELATED ESCROW AGREEMENT IN CONNECTION WITH THE ACQUISITION AND INSTALLATION OF ENERGY CONSERVATION MEASURES AND FACILITIES, AND DECLARING AN EMERGENCY.

WHEREAS, the City Commission has heretofore passed an ordinance authorizing the execution of an agreement (the "Agreement") with Honeywell International Inc. (the "Vendor") for the acquisition and installation of energy conservation measures and facilities which are expected to result in annual energy and operational cost savings to this City; and

WHEREAS, the City Commission has determined, in accordance with the Charter of the City, including Section 3 thereof, that it is in the best interest of the City to provide for the acquisition and installation of energy conservation measures and facilities under the Agreement from the Vendor pursuant to a master state and municipal lease/purchase agreement and schedule thereto (together with all addenda, exhibits and attachments, the "Lease") between Honeywell Global Finance LLC, as lessor (the "Lessor"), and the City, as lessee, and with disbursements under the Lease to the Vendor expected to be made pursuant to an escrow agreement (the "Escrow Agreement") among the Lessor, the City, as lessee, and a banking institution, which Escrow Agreement is an exhibit to the Lease; and

WHEREAS, the obligations of the City under the Lease are subject to annual appropriations by the City Commission; and

WHEREAS, an emergency exists in that, for the immediate preservation of the public peace, property, health and safety, it is necessary that this ordinance be immediately effective to enable the City to enter into the Agreement with the Vendor so that the acquisition and installation of those energy conservation measures facilities can occur at the earliest possible time in order to begin to realize energy savings at the earliest possible time and thereby preserve and improve the finances and credit of the City, and by reason thereof, this ordinance shall take effect forthwith upon its passage, 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 Commission hereby approves the form of the Lease and the related Escrow Agreement, a copy of each of which is on file in the office of the Clerk of the City Commission, and the City Manager (including with the meaning of such term as used in this ordinance any interim or acting City Manager) and the Finance Director are each hereby authorized and directed to sign and deliver, in the name of and on behalf of the City, the Lease and the Escrow Agreement each substantially in the form on file with the Clerk of the City Commission, together with such changes thereto as are approved by the Law Director as not being materially inconsistent with this ordinance and not substantially adverse to the City and that are permitted by law, provided that the aggregate principal components of the Rental Payments (as defined in the Lease) payable during all Lease terms under the Lease shall not exceed \$1.5 million, the interest component of the Rental Payments shall accrue at an annual rate not in excess of 4.25%, and the final Lease term shall end not more than eleven (11) years after the commencement of the initial Lease term. The approval of such changes, and that such changes are not materially inconsistent with this ordinance and not substantially adverse to the City, shall be conclusively evidenced by the signing of the Lease and the Escrow Agreement by such officers; and the City Manager, Law Director, Finance Director, Clerk of the City

Commission, and other City officials, as appropriate, are each hereby authorized to sign such certifications, financing statements, or other documents or instruments and to take such other actions as are desirable, advisable, necessary or appropriate to consummate the transactions contemplated by this ordinance, the Agreement, the Lease and the Escrow Agreement.

Section 2. The City covenants to use, and to restrict the use and investment of, the proceeds of the Lease in such manner and to such extent as may be necessary so that (a) the obligations of the City under the Lease will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the "Code") or (ii) be treated other than as obligations to which Section 103 of the Code applies, and (b) the interest components of the Rental Payments will not be treated as an item of tax preference under Section 57 of the Code.

The City further covenants (a) to take or cause to be taken such actions that may be required of it for the interest components of the Rental Payments to be and to remain excluded from gross income for federal income tax purposes, (b) to take or authorize to be taken any actions that would adversely affect that exclusion, and (c) that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Lease to the governmental purpose of the Lease, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely and adequate payments to the federal government if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of the interest components under the Code.

The Finance Director, as the fiscal officer, or any other officer of the City having responsibility for signing the Lease is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Lease as the City is permitted to or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Lease or the interest components of the Rental Payments or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as

determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of the interest components of the Rental Payments from gross income and the intended tax status of the interest components of the Rental Payments and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings relating to the Lease, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Lease, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest components of the Rental Payments and the tax status of the Lease.

Section 3. This City Commission finds and determines that all formal actions of this City Commission or of any of its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this City Commission and of any of its committees, and that all deliberations of this City Commission and of any 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 last preamble hereto, this ordinance is hereby declared to be an emergency measure and shall take effect immediately upon its passage and due authentication by the President and the Clerk of the City Commission.

DANIEL J. KAMAN
PRESIDENT OF THE CITY
COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed: _____, 2007

TO: James L. (Don) Miers, Interim City Manager
FROM: Mary Bird, Program Administrator
DATE: May 30, 2007
**SUBJECT: Item for June 11th, 2007 City Commission Agenda
Land Reutilization Program**

ITEM FOR CONSIDERATION: An Ordinance adopting the Land Reutilization Program set forth in Chapter 5722 of the Ohio Revised Code.

BACKGROUND INFORMATION: The City of Sandusky has many vacant and abandoned non-productive tax delinquent properties in neighborhoods and commercial areas which detract from community attractiveness and erode economic health and safety. Legislation effective in September 1976, under the Ohio Revised Code, Chapter 5722 permits municipalities to adopt land reutilization programs and gain clear title to unproductive tax delinquent properties. These properties may be held and managed by the City in a Land Bank and/or marketed and sold bringing these properties back to a tax revenue producing use. In order for the City to employ the provision of the Ohio Revised Code, Chapter 5722, City Commission must first pass an ordinance which adopts and implements the provision of this Chapter, Once the ordinance has been enacted, certified copies of the ordinance are delivered to the Erie County Auditor, Treasurer, and Prosecutor. Upon the effective date of the ordinance, all no-productive lands within the City's boundaries are subject to the provision of this chapter.

BUDGET IMPACT: Existing Development Staff will administer/manage this program. The City is already maintaining most of these properties, as they are vacant and abandoned. Upon the properties becoming tax revenue producing, there will be an increase in revenues for the general fund.

STRATEGIC PLAN IMPACT: A Land Reutilization Program (Land Bank Program) will be a key tool in the revitalization of Sandusky's neighborhoods. It will add green space to neighborhoods by providing expanded yard spaces for adjacent owners of land banked parcels, create new infill housing opportunities and assist in the removal of blight by renovating or demolishing vacant and abandoned structures.

ACTION REQUESTED: It is requested that the City Commission authorize and direct the City of Sandusky to adopt a Land Reutilization Program and to implement the provision of Chapter 5722 of the Ohio Revised Code, to facilitate the effective reutilization of nonproductive, tax delinquent land to a tax revenue generating status and/or devotion of public use. It is further requested that this legislation take effect in full accordance with Section 13 of the City Charter.

I concur with this recommendation:

Gary Packan
Assistant City Manager

James L. (Don) Miers
Interim City Manager

cc: Donald Icsman, Law Director
Joyce Brown, Commission Clerk

status or the devotion thereof to public use.

(c) The City of Sandusky hereby agrees to implement and abide by the provisions of Ohio R.C. Chapter 5722 currently in effect and as may be amended, for a Land Reutilization Program as therein provided.

(d) The Clerk of the City Commission is hereby authorized and directed to transmit certified copies of this section to the Erie County Auditor, Treasurer, and Prosecutor as provided in Ohio R.C. 5722.02.

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 shall take effect under suspension of the rules as provided in Section 13 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission.

DANIEL J. KAMAN
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

MEMO

TO: City Commission

FROM: John Lippus, Downtown Development Director

DATE: May 30, 2007

RE: Commission Agenda Item

ITEM FOR CONSIDERATION: This communication requests approval of an ordinance authorizing and approving a dock lease at the Jackson Street Pier for Lake Erie Island Cruises, LLC (Joe Lamb) as owner and operator of the excursion boat Goodtime I.

BACKGROUND INFORMATION: In December 2006 George Smith sold the excursion boat Goodtime I to Lake Erie Island Cruises, LLC, a company wholly owned and operated by Joe Lamb. Lamb is experienced in running lake cruises and ferryboats, as he has been a captain with Jet Express for several years. As the new owner of the Goodtime I, Lamb will continue lake excursions and service to Kelly's Island and Put-in-Bay and will continue to act as agent for both the Goodtime I and the Pelee Islander.

Lamb will be an independent operator with self-control of all aspects of his company's services. Plans call for daily cruises leaving Sandusky at 9:30 AM calling at both Kelly's Island and Put-In-Bay and returning to Sandusky at 6:00 PM. Lamb will also operate a variety of scheduled evening cruises, special events cruises and charter operations.

Lamb has served as the Facilities Security Officer for the Jet Express and has agreed to assume those duties for the Goodtime I.

City staff met with Homeland Security and U.S. Coast Guard representatives concerning the sale of the boat and what changes might be required at the Jackson Street Pier under the Safe Ports Act. We were told that the city's Port Security Plan is out-of-date and that there will be some minor changes required to the pier facilities and screening procedures. Lamb as Facilities Security Officer will be responsible for working with city officials to update the Port Security Plan and will work with the Coast Guard and city officials to implement whatever additional changes may be required for Homeland Security purposes. It should be noted that the Coast Guard was pleased that Lamb was assuming these roles as they found him to be diligent and conscientious as the Jet Express's Security Officer.

The five-year lease calls for annual rents of \$12,500 for years one and two with rents rising to \$15,000 for years three through five (total \$70,000 for five years). I should be noted that the previous owner paid \$72,855.94 in total lease payments over the prior five years but staff recommends the proposed lease payment schedule in view of the additional responsibilities being taken on by the new owner.

BUDGET IMPACT: When the Goodtime I was put up for sale there was concern that the

boat would be sold to someone who would remove the vessel from the Sandusky market. This happened several years ago when the City of Sandusky excursion boat was sold.

Fortunately, a local owner/operator has emerged which will assure that the city continues to receive dock lease payments as well as all taxes due and payable on the operation of the Goodtime I.

STRATEGIC PLAN IMPACT: The continued operation of the Goodtime I is an essential element in the revitalization of Downtown Sandusky as well as a vital part of the city's tourism infrastructure. This task satisfies the strategic plan by maintaining an active Lake Erie cruise boat to the islands from the City owned Jackson Street Pier.

ACTION REQUESTED: Approval of the Lease Agreement and attached legislation under suspension of the rules as an emergency measure and in accordance with Section 14 of the City Charter is requested. Delays in presenting this lease to the Commission were unavoidable as staff worked on Homeland Security details as well as negotiated lease terms.

I concur with this recommendation:

Approved by: _____
Gary Packan
Assistant City Manager

Approved by: _____
James (Don) L. Miears
Interim City Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH LAKE ERIE ISLAND CRUISES, LLC, SUBSTANTIALLY IN THE SAME FORM AS ATTACHED, FOR A PORTION OF THE DOCK FACILITIES LOCATED ON THE JACKSON STREET PIER; AND DECLARING THAT THIS ORDINANCE TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the predecessor owners of the Goodtime I operated the excursion boat from the Jackson Street Pier since 1985 and in December, 2006, Lake Erie Island Cruises, LLC, purchased the Goodtime I and desire to continue to operate from the City's Jackson Street Pier; and

WHEREAS, approval of this Lease Agreement will provide both parties with the stability and continuity necessary for the continued revitalization of the City's waterfront; and

WHEREAS, this Ordinance should be approved as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter to allow the immediate execution of the Lease Agreement, the prior agreement with the former owners expired on April 30, 2007; 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 form of the Lease Agreement, a copy of which is attached to this Ordinance, and the City Manager is hereby authorized and directed to sign and deliver, in the name of and on behalf of the City, the Agreement substantially in the form attached together with such changes thereto as are approved by the Law Director as not being materially inconsistent with this Ordinance and not substantially adverse to the City and that are permitted by Law.

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

Section 3. This Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken

in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

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

DANIEL J. KAMAN
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

LEASE AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into by and between the City of Sandusky, Ohio, a political subdivision of the State of Ohio, hereinafter referred to as “Lessor” and Lake Erie Island Cruises, LLC, a Limited Liability Company organized and existing under the laws of the State of Ohio with its principal place of business located at 109 west Shoreline Drive and whose mailing address is P.O. Box 60, Sandusky, Ohio 44870, hereinafter referred to as “Lessee.”

In consideration of the mutual covenants herein set out, the parties agree as follows:

I. LEASED PREMISES - DESCRIPTION

The premises subject to this Lease consist of the Dock Facilities located on the Jackson Street Pier and being more specifically the west side of the Jackson Street Pier, the Dock Facilities are more fully delineated in Exhibit “A” attached hereto and incorporated herein.

The Lessee’s right to the Dock Facility is contingent upon the harmonious and cooperative use of the west side of the Jackson Street Pier by two (2) vessels, the Pelee Islander, and the Lessee’s vessel the Goodtime I or substitute vessels owned or chartered and operated by the Lessee. The Goodtime I shall have the right to the primary use of the Dock Facilities which are currently occupied by the Goodtime I and which are specifically identified in attached Exhibit “A.” The term “primary use” is intended to mean that in the event of a conflict between the other vessels concerning the usage of the dock facilities as depicted in attached Exhibit “A,” Goodtime I shall be given priority in terms of usage of the dock facilities. The privileges and rights granted herein to the Lessee for the vessel the Goodtime I or substitute vessels owned or chartered and operated by the Lessee, shall not be to the exclusion of the Pelee Islander seeking to use the Jackson Street Pier with the permission of the Lessor. It is the intent of both parties that the harmonious use of the Jackson Street Pier and the specific Dock Facilities be consistent with this provision and the Lessor shall not make said Dock Facilities

available for use by others so as to interfere with the rights of the Lessee.

II. TERM

The term of this Lease is for a period of Two (2) years beginning on May 1, 2007 and ending on April 30, 2009 and shall include the rights, dock privileges, easements, licenses, permits, and appurtenances attached thereto, subject to the right reserved herein on the part of Lessor for termination of this Lease. Lessee shall have the right to renew this lease under the same terms and conditions except for the annual rent for an additional term of Three (3) years by providing written notice of its election to Lessor on or before December 31, 2008.

III. CONSIDERATION

A. **Rent.** The annual rent to be paid by Lessee is Twelve Thousand Five Hundred and 00/1000 (\$12,500.00) for each year of the initial term of the lease.

B. **Rent Increase.** The annual rent shall be increased for each of the years during the three (3) year renewal term pursuant to the following schedule:

	<u>Annual Base Rent</u>
Year 3 (2009-2010)	\$15,000.00
Year 4 (2010-2011)	\$15,000.00
Year 5 (2011-2012)	\$15,000.00

The annual rent payments shall be paid by Lessee in three equal installments, due on or before the following dates:

- a. May 1 (for the first year (2007-2008) the first installment is due upon City Commission approval of this Lease Agreement)
- b. August 31
- c. December 31

C. **Penalty for late payment.** If any payment of base rent or percentage rent is not paid within thirty (30) days after the due date, Lessee shall pay a penalty equal to ten percent (10%) of the past due amount plus interest thereon at the legal rate.

IV. UTILITIES AND MAINTENANCE

A. Utilities. Lessee shall pay for all utility services to the premises, including connection charges and meter costs incurred by the Lessee. Lessor shall provide separate metering of utility services to Lessee.

B. Maintenance and Repair. Lessee, at its own expense, shall keep the premises and appurtenant installations being utilized by Lessee in good repair and working order. Lessor at its own expense, shall maintain the structural and foundational aspects of the premises in good condition and repair including the sheetpiling and asphalt except for repairs to these facilities as may be necessitated due to damage caused by accidents or abuse of the premises as they may have been damaged due to the activities of the Lessee.

C. Health, Sanitation and Safety. Lessee, at its own expense, shall keep the premises being utilized by the Lessee, clean, neat orderly, safe and sanitary at all times, and provide for the proper handling and disposal of garbage, trash, and other refuse.

V. ADDITIONAL PAYMENTS BY LESSEE

In the event Lessee fails to keep the premises and appurtenances in good condition and repair, or in a clean and orderly condition, or fails to pay any taxes or discharge any lien required by this Lease to be paid or discharged by Lessee, or fails to purchase and maintain insurance as required by the Lease, or otherwise fails to perform any condition of the Lease, the City may after providing Thirty (30) days written notice to the Lessee; (unless an emergency exists which requires immediate action), cure any such default by Lessee in the manner and to the extent the City considers reasonably necessary in order to protect its interests or the interest of the public. In any such case, the City shall be reimbursed by Lessee for the cost of curing the default. In addition, in the event the City incurs any expense by reason of any default by lessee under this lease, regardless of whether the City elects to cure

the same, the City shall be reimbursed by Lessee for such expense. At the City's option, any such cost or expense, together with interest and penalties, if any, may be added to the base rent, and shall thereby become part of, and be payable the same as other rent.

VI. CONDITION OF PREMISES

Condition of Premises. At the commencement of the original term, Lessee accepts the premises, to be used by the Lessee as it is concerning its condition and acknowledges that it is in good and usable condition.

Work to be Done by Lessor. Lessor may, at its option, renovate or update any current facilities or make any other improvements, which, at the option of the Lessor may be considered necessary or desirable in order to enhance the aesthetics or security of the premises.

Work to be Done by Lessee. Lessee, at its own expense, will undertake any other aesthetic or functional improvements to the leased premises as is considered necessary for the efficient and successful operation of a boat dock in the discretion of the Lessee. Lessee may apply to Lessor for a rental credit for any future improvements made by the Lessee that are permanent improvements to the premises which are of a general utility to the use of the premises. Any improvement for which a credit is given shall become the property of the City of Sandusky.

Approval of Plans and Specifications: Inspection. Before commencing any construction, remodeling, alteration, decoration or installation, whether at the commencement of the term or thereafter, Lessee shall submit detailed plans and specifications to the Director of Engineering Services of the City of Sandusky for approval. The City reserves the right to reject any design proposals, which the City determines to be unsuitable. The reasons for said

rejection shall be provided to the Lessee in writing. Lessee shall obtain all necessary permits required under federal or state law or regulations, or under ordinances and regulations of the City. During construction, all materials, installations and workmanship are subject to inspection and approval by the City of Sandusky or its authorized representatives. Lessee and his contractors and subcontractors shall give two (2) days advance notice to Department of Engineering Services before commencing any new work, and shall afford the City's representatives all reasonable and necessary facilities for inspection. All work shall be according to the approved plans and specifications. The City's approval shall also indicate whether or not the improvement will be eligible for a rental credit.

Ownership of Improvements and Fixtures. Title to all leasehold improvements to the dock, including without limitation; lighting and plumbing, vests in the City upon installation. Lessee shall retain title to trade fixtures and equipment, furniture and furnishings installed by Lessee, for which no rental credit has been granted, and shall remove the same at his expense on termination of the Lease.

VII. PAYMENT OF PROPERTY TAX

In the event that any property tax is imposed on the property which is attributed in whole or in part to the operation of the business and/or the leasing of the Dock Facilities for that use the parties agree that the cost shall be apportioned among the various holders of dock space at the Jackson Street Pier. The parties further agree that in the event that a property tax is imposed that the parties will negotiate in good faith a reasonable formula to determine apportionment of the payment of the property tax and that the City of Sandusky will take all reasonable and necessary steps to minimize the tax on the subject property.

VIII. PAYMENT OF OTHER TAXES

Any vessel or vessels operated by Lessee from Downtown Sandusky shall be deemed as having its homeport in the City of Sandusky and County of Erie and Lessee shall charge and/or remit any personal property taxes, sales taxes and other taxes or fees related to that vessel or those vessels accordingly.

IX. USE OF PREMISES

The Lessee agrees to use the leased premises for year round docking of the Goodtime I vessel, or successor or other vessels owned or leased and operated by Lessee, and for the boarding and unboarding of passengers thereon. The Lessee shall also have the right to the continued use of the Customs-Pelee Island office presently located and currently utilized by the Lessee at the Jackson Street Pier, under the same terms and conditions which currently exist.

X. COMPLIANCE WITH LAWS AND REGULATIONS

Lessee shall comply at all times with all applicable federal, state, and local statutes, ordinances, regulation, policies and executive orders pertaining to all aspects of its operations. This includes but is not limited to equal opportunity employment, drug and alcohol regulation, disadvantaged business enterprises, disabled persons, environment and resource protection, public utilities, homeland security, the Safe Port Act, the Immigration Reform and Control Act and any other maritime and coastal regulations applying to the premises or their use, or to Lessee's operation at the Jackson Street Pier.

Nondiscrimination. Lessee shall refrain from discrimination on the grounds of race, color, creed or sex in his employment practices, in it's occupancy and operation of the leased premises, and in offering and providing goods and services to the public.

Americans with Disabilities Act. Lessor acknowledges that its vessel or vessels may

be subject to the Americans with Disabilities Act ("ADA"). Lessor shall comply with the requirements of the ADA, including, without limitation, accessibility of Vessels to the extent the ADA is applicable.

XI. COMPLIANCE WITH HOMELAND SECURITY

In accordance with 33CFR Parts 105.200, 105.205 and 105.210 the City of Sandusky through Joseph M. Lamb, owner and operator of the Goodtime I vessel will be responsible for security at the Jackson Street Pier. The Sandusky City Manager will designate Joseph M. Lamb or his designee the duties of Facility Security Officer and designated contact person in accordance with the City of Sandusky, Ohio Jackson Street Pier Port Security Plan.

The Lessor shall work cooperatively with Joseph M. Lamb as Facility Security Officer to assure compliance with the Jackson Street Pier Port Security Plan or any changes or amendments to that Plan as may be required by the U.S. Coast Guard, the Office of Homeland Security or other regulatory agencies having jurisdiction over the terms of that Plan.

XII. DISCHARGE OF LIENS

Lessee shall promptly pay and discharge or cause to be cancelled any lien attaching to the leased premises or the leasehold interest, and arising from an act or omission by Lessee or his agents or employees, or arising from Lessee's use and occupancy of the leased premises, or his operations of the concession, including without limitation judgment liens, mechanics', and materialmen's liens, workers' compensation and unemployment compensation liens, federal tax liens, and other liens.

XIII. INSURANCE

Lessee covenants at all times to indemnify, defend and save Lessor harmless from all loss, liability, cost or damages that may occur or be claimed with respect to any person or

property on, in, or about the leased premises or to the leased premises themselves resulting from any act done or omission by or through Lessee, it's agents, employees, invitees, or any person on the premises by reason of Lessee's use or occupancy or resulting from Lessee's non-use, or possession of such property and any and all loss, cost, liability, or expense resulting therefrom; and further covenants at all times to maintain such premises in a safe and careful manner.

During the term of this agreement, Lessee shall obtain, pay all premiums for, and furnish certificates to, Lessor for insurance as specified herein:

a. Public liability insurance protecting the parties hereto, their agents, officers, elected officials, representatives, or employees because of liability incurred by the parties in the performance of the terms of this Lease when such liability is imposed on account of injury to or death of a person or persons, such policy to provide limits on account of any accident resulting in injury or death to one person of not less than Two 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 parties because of liability that may be incurred by the parties, their officers, agents, elected officials, representatives, or employees in the performance of the terms of this lease, such policy to provide for a limitation on account of each accident of not less than Two Million Dollars.

All such insurance contracts shall name Lessor and Lessee as their interests appear and shall inure to the benefit of Lessee and Lessor and their officers, agents, elected officials, representatives, or employees. Such insurance contracts shall be with companies acceptable to Lessor and they shall require thirty (30) days prior written notice to both parties hereto of

any cancellation or material change in the insurance coverage.

c. Lessee shall comply with all applicable State, Federal, and Local Air and Water Pollution Control and prevention laws and regulations regarding the use and occupancy of the Leased Premises.

Lessee shall not cause or permit any hazardous material to be brought upon, or used in or about the Leased Premises by Lessee, its agents, employees, contractors, invitees or guests except for such hazardous material as is necessary to the operation of the Lessee.

Any Hazardous Material permitted in the Leased Premises as provided above, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all federal, state, and local laws or regulations applicable to this Hazardous Material.

Lessee shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system, or any body of water, that material (as is reasonably determined by a governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located in the Leased Premises or elsewhere, of (b) the condition, use or enjoyment of the water or any other real or personal property.

As used herein, the term "Hazardous Material" means (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive and Liability Act of 1980, as amended from time to time. And regulations promulgated thereunder; (c) any oil, petroleum products, and their by-products; and (d) any substance that is or becomes regulated by any federal, state, or local governmental authority.

Lessee hereby agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material utilized in the Leased Premises by the Lessee its agents, employees, contractors, invitees, or guests. Lessee shall defend, indemnify, and hold harmless Lessor and its officers, agents, elected officials, employees, any representatives from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorneys' and consultants' fees, court costs, and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise, arising out of or in any way related to (a) the presence, disposal, release, or threatened release of any such Hazardous Material that is on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to that Hazardous Material; (c) any lawsuit brought or threatened, settlement reached, or (d) any violation of any laws applicable thereto.

d. Lessee shall carry such additional insurance(s) as may be required to comply with Coast Guard, O.D.O.T. or P.U.C.O. requirements for common carriers engaged in an excursion boat operation.

XIV. SIGNAGE

The City Agrees to allow Lessee to erect signage, subject to all applicable zoning and sign ordinances, within the Sandusky City Limits directing passengers to their facilities.

XV. DAMAGE TO PROPERTY ON PREMISES

Lessee agrees that all property of every kind and description kept, stored, or placed in or on the premises shall be at Lessee's sole risk and hazard and that Lessor shall not be responsible for any loss or damage to any of such property resulting from fire, explosion,

water, steam, gas, electricity, or the elements, whether or not originating in the premises, caused by or from leaks or defects in or breakdown of plumbing, piping, wiring, heating, or any other facility, equipment, or fixtures or any other cause or act and whether or not resulting from the negligence of Lessor or other tenants of Lessor or anyone for whom Lessor may be responsible.

XVI. DAMAGE BY CASUALTY

In case the leased premises shall be destroyed or shall be so damaged by fire or other casualty, as to become untenable, then in such event, at the option of Lessor, this lease shall terminate from the date of such damage or destruction and Lessee shall immediately surrender such premises and all interest therein to Lessor, and Lessee shall pay rent only to the time of such surrender. Any unused rent shall be refunded to the Lessee within thirty (30) days from the date of surrender. Lessor shall exercise such option to terminate this lease by notice in writing delivered to Lessee within thirty (30) days after such damage or destruction. In case Lessor shall not elect to terminate this Lease in such event, this Lease shall continue in full force and effect and Lessor shall repair the leased premises with all reasonable promptness, placing the same in as good a condition as they were at the time of the damage or destruction and for that purpose may enter such premise, and rent shall abate in proportion to the extent and duration of untenability. In either event, Lessee shall remove all rubbish, debris, merchandise, furniture, equipment, and other personal property, within thirty (30) days after the request of Lessor. If the leased premises shall be only slightly injured by fire or the elements, so as not to render the same untenable, unfit for occupancy and not fit for its intended use, then Lessor shall repair the same with all reasonable promptness, and in that case the rent shall not abate. No compensation or claim shall be made by or allowed to

Lessee by reason of any inconvenience or annoyance arising from the necessity of repairing any portion of the building or the leased premises, however, the necessity may occur.

XVII. LOSS OR DAMAGE TO LEASED PREMISES

Assessment of damage. In the event the leased premises are damaged through fire or other casualty, the Lessee without delay shall contact claims adjuster, architects, contractors, damage repair specialists or other competent persons to make estimates of needed repairs, including estimates of the time such repairs will reasonably require to effect.

Damage repairable within ninety (90) days. In the event repairs can reasonably be effected and the property restored to usable condition within ninety (90) days from the date of the first or other casualty, Lessee shall proceed promptly to make such repairs. Provided the repairs are prosecuted with diligence, and any delay is not occasioned by Lessee's fault, the duty to make rent payments shall be abated until the premises are restored to operating condition.

Damage not repairable within ninety (90) days. In the event repairs cannot reasonably be effected and the property restored to usable condition within ninety (90) days from the date of the fire or other casualty, Lessee at his option may terminate the Lease by giving written notice of termination, in which case all insurance proceeds covering the loss shall be paid to the City.

XVIII. INDEMNIFICATION

Lessee agrees to indemnify, defend and hold the City, its employees, agents, officers, and/or representatives harmless from any liability for injuries or death to persons or loss or damage to property arising from any act or omission of Lessee, or its agents or employees, with respect to its use or occupancy of the leased premises or operations at or away from the

dock facilities. Lessee agrees to give the City prompt notice of any claim or suit, which may result in a judgment against the City. Lessee/Lessor are entitled to compromise, defend or participate in the defense of any such claim or suit to the extent of their respective interest.

XIX. CANCELLATION

A. Termination by the City. In addition to any other right of cancellation under this lease, the City may terminate and seek all remedies under this agreement if any of the following occur:

1. Lessee fails to pay rent or other charges under this lease within thirty (30) days after the due date;

2. Lessee assigns the lease or any part of his interest in the lease, or sublets any part of the leased premises, in violation of Section XX of this lease;

3. Lessee voluntarily abandons operations at the leased premises for a continuous period of thirty (30) days, not including the Winter months which shall be defined as November 1st to March 1st; or Lessee business has gross annual ticket sales in an amount less than \$150,000.00 for two consecutive operating seasons or less than Seventy-Five Percent (75%) of Lessee's gross ticket sales originate from the Jackson Street Pier.

4. Lessee is compelled to cease operations at the leased premises for a continuous period of ninety (90) days, by reason of fire or other casualty, a strike or other calamity beyond Lessees' control. This provision does not apply when Lessee elects to make repairs under Section XVII of the Lease, even though the work requires longer than ninety (90) days to complete, provided Lessee begins repairs without undue delay, diligently prosecutes the work, and renews operations on completion of repairs;

5. Lessee defaults under any condition of this Lease, and the default is not cured

within thirty (30) days after written notice of default. If the default is such that it cannot reasonably be corrected within thirty (30) days, it will be considered timely cured if Lessee begins corrective measures promptly after notice and diligently prosecutes them to completion, provided the default is fully corrected within a reasonable time;

6. Lessee makes a general assignment for the benefit of his creditors or consents to the appointment of a receiver or trustee for substantially all of his property for the benefit of creditors, or files, under the federal bankruptcy laws, a voluntary petition for bankruptcy, reorganization or financial rehabilitation; or

7. Lessee is adjudged bankrupt or an order is made for his reorganization or financial rehabilitation under the federal bankruptcy laws, or pursuant to court order a receiver or trustee takes possession of substantially all of Lessee's property for the benefit of creditors. The right to cancel under this provision shall be held in abeyance during any period the judgment or order is stayed pending proceedings to contest or appeal the judgment or order.

B. Termination by Lessee. In addition to any other right of cancellation under this Lease. Lessee may terminate this Lease if any of the following occur:

1. The City defaults under any condition of this Lease, and the default is not cured within thirty (30) days after written notice of default. If the default is such that it cannot reasonably be corrected within thirty (30) days after notice, it will be considered timely cured if the City begins corrective measures promptly after notice and diligently prosecutes them to completion, provided the default is fully corrected within a reasonable time;

2. Lessee is prevented by court order from using a substantial part of the leased premises for a continuous period of ninety (90) days;

3. Lessee's ability to conduct operations at the leased premises in the same manner

and to the same extent as previously is substantially curtailed for a continuous period of ninety (90) days, by reason of a court order, a change in laws or regulations subsequent to execution of this lease, any governmental action or inaction other than revocation or suspension of a liquor license, a fire or other casualty, or any other cause not due to Lessee's fault; or

4. The water level in Sandusky Bay becomes so low as to prevent the operation of the boat by the Lessee from using the leased premises.

C. Notice of cancellation; effective date. In order to exercise a right of termination under this section, the party entitled to terminate the Lease shall give the other party written notice of cancellation, specifying the reason under division (A) or (B) of this section, and specifying the date termination becomes effective, which shall be not less than thirty (30) nor more than ninety (90) days from the date of the notice. At any time before the effective date of termination specified in the notice, the notice of cancellation may be rescinded in writing by the party giving it, in which case the parties shall be in the same position as if notice of cancellation had not been given.

D. Waiver of right to terminate. A party waives the right to terminate this Lease based on a particular occurrence or default of the other party, by written waiver given at any time, or by failing to give written notice of cancellation within ninety (90) days after the right to cancel accrues. The City waives a default for nonpayment of rent or other charges by accepting full payment for the past due amounts made within sixty (60) days after the due date of the last such past due rent payment or other charge.

Waiver of the right to cancel based on a particular occurrence or default does not constitute a waiver of the right to cancel for subsequent occurrences or defaults of the same kind.

XX. NON-ASSIGNMENT

The Lessee covenants and agrees not to assign this Lease or sublet said Leased Premises or permit other vessels or ships which are not owned or leased and operated by Lessee to occupy the same that are not otherwise under contract with the City.

XXI. SURRENDER OF PREMISES

At the end of the term or any renewal term of this Lease, or upon termination of this Lease by either party or for any cause, Lessee shall remove his trade fixtures and equipment, furniture and furnishings, and surrender possession of the premises to the City in as good order and condition as at the commencement of the original lease term, reasonable use and fair wear and tear excepted.

XXII. NOTICES, DEMANDS AND REQUESTS

Whenever in this Lease there shall be required or permitted that notice or demand be given on or served by either party to this Lease, to or on the other, such notice or demand shall be given or served in writing, addressed as follows:

TO THE LESSOR:	City of Sandusky c/o Interim City Manager 222 Meigs Street Sandusky, OH 44870
TO THE LESSEE:	Lake Erie Island Cruises, LLC c/o Joseph M. Lamb P.O. Box 60 Sandusky, OH 44870

These addresses may be changed from time to time by either party by serving notice as above provided.

XXII. ENTIRE AGREEMENT

No amendment, change, modification or addition to this Lease shall be binding upon

the parties unless it is in writing and signed by them.

XXIII. BINDING EFFECT

This Lease, and all the terms and provisions hereof, shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, administrators, executors, successors and assigns.

SIGNATURE PAGES TO FOLLOW

WITNESS the signatures of the parties _____, 20____ .

LESSOR:
THE CITY OF SANDUSKY

By: _____

Witness

Witness

STATE OF OHIO)
) ss:
ERIE COUNTY)

Before me, a Notary Public in and for said County and State, personally appeared the said James L. (Don) Mears on the _____ day of _____, 20____, who after having been first duly sworn, acknowledged that he is the person identified hereinabove, that he has been properly authorized and empowered to execute this document for and in behalf of the City of Sandusky, Ohio, and that the same was his free act and deed.

Notary Public

WITNESS the signatures of the parties _____, 20____ .

LESSEE:
LAKE ERIE CRUISES, LLC

By: _____

Witness

Witness

STATE OF OHIO)
) ss:
ERIE COUNTY)

Before me, a Notary Public, personally appeared the said Joseph M. Lamb on the
_ day of _____, 20____, who, after having been first duly sworn, acknowledged
that he/she is the person identified hereinabove, the he/she has been properly authorized and
empowered to execute this document for and on behalf of Lake Erie Cruises, LLC, and that
the same was his/her free act and deed.

Notary Public

Approved as to form:

Donald C. Icsman
Law Director

To: James L. (Don) Mears, Interim City Manager
From: Kathryn K. McKillips, Director of Engineering Services
Date: May 30, 2007
Subject: Commission Agenda Item

ITEM FOR CONSIDERATION: Second Amendment to the Agreement for Professional Services with Partners Environmental Consulting, Inc., Solon, Ohio for the Bayfront Paper District Redevelopment Project. Partners Environmental is the Certified Professional for this project.

The Certified Professional will perform all necessary tasks to obtain an Ohio EPA Voluntary Action Program (VAP) No Further Action (NFA) letter for the Tricor, Keller, and Chesapeake Buildings. These tasks include oversight for asbestos abatement, hazardous material removal and disposal, PCB remediation, and any necessary sampling and monitoring of the site. Once the EPA determines that the program standards have been met regarding public health and safety, a covenant not to sue will be requested from the Ohio EPA.

The consultant will exceed the agreement amount with additional testing, sampling, monitoring and reporting needed to bring this project to meet the VAP standards. The following tasks, considered Additional Services, were requested by either the City or the Developer and have already been performed in order to keep the project progressing:

1. Keller Building Roof Materials Surveyed for Asbestos	\$2,000
2. Prepared Soil management Plan for Shoreline Drive	\$2,500
3. Conducted Sampling and Analysis of Offsite Fill Materials	\$5,000
4. Responded to OEPA's Comments on NFA – Chesapeake Lofts	\$11,500
5. Prepared Addendum to the O&M Plan for Chesapeake Lofts	\$2,500
6. Prepared a Soil management Plan for Marina Excavation	\$5,500
7. Prepared 2006 Annual Hazardous Waste Report for OEPA	\$1,500

Although the above listed tasks currently fit within the current project budget, work still remains with finalizing the NFA for the entire project site. And, due to delays in obtaining permits, the marina work will more than likely take place after the NFA letter is issued. Additional work will be required to include the marina construction in the Operations and Maintenance Plan and Risk Mitigation Plan for the property. The remaining project budget will be used to accomplish this work. Therefore, an increase in the overall contract is necessary to continue the progress in the Paper District.

BUDGETARY INFORMATION: The current cost for the Certified Professional Services is \$362,253.36, which is a 'Not to Exceed' figure (only actual costs incurred will be billed up to a ceiling). With the approval of the Additional Services in the amount of \$30,500.00, the revised agreement will be \$392,753.36. The Certified Professional Services cost is included in the Clean Ohio Revitalization Fund Grant which will contribute 75% of the balance of the contract (\$392,753.36-\$43,200=\$349,553.36) or

\$262,165.02. (The City is funding \$43,200.00 for the Chesapeake Property NFA Letter.) The developer, Mid-States Development Corp., will fund the match, \$87,388.34 upon completion of the Developer's Agreement and the work.

ACTION REQUESTED: It is recommended that the Second Amendment to the Agreement for Professional Services with Partners Environmental Consulting, Inc., Solon, Ohio, in the amount of \$30,500.00 be approved and that the necessary legislation be passed under suspension of the rules in full accordance with Section 14 of the City Charter in order not to delay the completion of the project.

Kathryn K. McKillips, P.E.
Director of Engineering Services

I concur with this recommendation:

James L. (Don) Mears
Interim City Manager

KKM/cal

cc: Joyce B. Brown, City Commission Clerk
Ed Widman, Finance Director

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO APPROVE THE SECOND AMENDMENT TO THE AGREEMENT FOR CERTIFIED PROFESSIONAL SERVICES WITH PARTNERS ENVIRONMENTAL CONSULTING, INC., IN PARTNERSHIP WITH HULL & ASSOCIATES, INC., OF SOLON, OHIO, FOR THE BAYFRONT PAPER DISTRICT REDEVELOPMENT PROJECT, PHASE I; 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 Phase I of the Bayfront Paper District Redevelopment Project, by the passage of Resolution No. 006-04R, effective March 8, 2004, and authorized entering into an agreement with Partners Environmental Consulting, Inc., in partnership with Hull & Associates, Inc., of Solon, Ohio, in an amount of \$261,550.00, by Ordinance No. 04-107, passed June 14, 2004; and

WHEREAS, this City Commission authorized the approval of the First Amendment to the Agreement for additional environmental work and additional required services in order for Partners to prepare a no further action (NFA) letter under the Ohio Voluntary Action Program (VAP) for the Chesapeake, Tricor, and Keller properties totaling \$100,703.36, in which the City provided \$43,200.00 for the NFA letter, by Ordinance No. 06-047, passed on April 24, 2006; and

WHEREAS, additional services conducted between April 24, 2006, and May 18, 2007, included the following:

1. Surveyed Keller Building Roofing Materials for Asbestos - \$2,000;
2. Prepared a Soil Management Plan for Shoreline Drive - \$2,500;
3. Conducted Sampling and Analysis of Offsite Fill Materials - \$5,000;
4. Responded to OEPA's Comments on the NFA Letter for Chesapeake Lofts - \$11,500;
5. Prepared an Addendum to the O&M Plan for Chesapeake Lofts - \$2,500;
6. Prepared a Soil Management Plan for Marina Excavation - \$5,500;
7. Prepared the 2006 Annual Hazardous Waste Report for OEPA - \$1,500.

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter for tasks already completed and so as not to delay the completion of the project for Mid-States Development and continue the progress in the Paper 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 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 is authorized and directed to execute the Second Amendment to the Agreement for Certified Professional Services with Partners Environmental Consulting, Inc., in partnership with Hull & Associates, Inc., of Solon, Ohio, for the Bayfront Paper District Redevelopment Project, Phase I, in an amount **not to**

exceed Thirty Thousand Five Hundred and 00/100 Dollars (\$30,500.00) consistent with the amendment request a copy of which is marked Exhibit "A", attached to this Ordinance and specifically incorporated as if fully rewritten herein.

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

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

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

DANIEL J. KAMAN
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed:

ORDINANCE NO. _____

AN ORDINANCE RATIFYING, ACCEPTING AND APPROVING A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF SANDUSKY, AN OHIO CHARTER MUNICIPAL CORPORATION, AND THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL #1519, THE COLLECTIVE BARGAINING UNIT FOR CERTAIN EMPLOYEES OF THE CITY OF SANDUSKY, FOR THE PERIOD JANUARY 1, 2007, THROUGH DECEMBER 31, 2009, A COPY OF WHICH IS ATTACHED TO THIS ORDINANCE; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the most recent collective bargaining agreement between the City of Sandusky, Ohio, an Ohio Charter Municipal Corporation, and the American Federation of State, County and Municipal Employees Local #1519, the collective bargaining unit for certain employees of the City of Sandusky, expired on December 31, 2006; and

WHEREAS, pursuant to the terms and provisions of Chapter 4117 of the Ohio Revised Code, the City engaged in negotiations with the bargaining unit for the purpose of agreeing upon and entering into a successor agreement to the most recent collective bargaining agreement; and

WHEREAS, representatives of the City and the bargaining unit have negotiated a new agreement, a copy of which is attached to this Ordinance, marked Exhibit "A" and specifically incorporated as if fully rewritten herein; and

WHEREAS, this agreement is subject to the ratification, acceptance, and approval by this City Commission and it is the recommendation of the representatives of the City that the agreement substantially in the same form as reflected in Exhibit "A" be ratified, accepted, and approved by this City Commission; 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 new agreement to be ratified, accepted and approved immediately as the predecessor agreement expired on December 31, 2006; 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 to permit the immediate ratification, acceptance and approval of the collective bargaining agreement with the American Federation of State, County and Municipal Employees Local #1519, 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 agreement between the City of Sandusky, Ohio, and the American Federation of State, County and Municipal Employees Local #1519, by its terms effective from January 1, 2007, through December 31, 2009, substantially in the same form as reflected in Exhibit "A" which is specifically incorporated as if fully rewritten herein is ratified, accepted and approved by this City Commission 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 the purpose of this Ordinance as set forth in the preambles hereto.

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

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

Section 4. The City Manager is authorized and directed to forward certified copies of the foregoing Ordinance, together with copies of the agreement appended hereto to the State of Ohio, Employment Relations Board, and to the Association.

Section 5. That for reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter upon its passage, and its due authentication by the President, and the Clerk of the City Commission of the City of Sandusky, Ohio.

DANIEL J. KAMAN
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
B. JOYCE BROWN
CLERK OF THE CITY COMMISSION

Passed: