



CITY OF SANDUSKY COMMISSIONERS
REGULAR SESSION AGENDA
November 9, 2009 at 5 p.m.
City Hall, 222 Meigs Street

INVOCATION, PLEDGE OF ALLEGIANCE

CALL TO ORDER

ROLL CALL

D. Waddington, D. Kaman, J. Farrar, C. Stahl, B. Fuqua, P. Brown, B. Warner

APPROVAL OF MINUTES

Monday, October 26, 2009

AUDIENCE PARTICIPATION

Agenda Items Listed Below Only (3 minute limit)

COMMUNICATIONS

Motion to accept all Communications submitted below

ITEM #1 – Passed on First Reading 10.26.09

Budgetary Information: The Agreement will not result in any additional budgetary expenses. The city will benefit from the agreed upon rental fee income of \$70 per month and electric service reimbursement of \$30 per month.

ORDINANCE NO. ____: It is requested an Ordinance be passed authorizing and directing the City Manager to enter into a Lease Agreement with Eric Foltz dba Cold Creek Café for the Dorn Community Park Concession Area beginning March 15, 2010 through August 30, 2010.

ITEM #2 – Submitted by Scott A. Miller, Director of General Services

Budgetary Information: The material cost of this paving and patching performed is \$46,694.96 (\$35,254.96 in current invoices and \$11,440.00 in the process of being invoiced). Other anticipated paving work, trenches and potholes, will cost an additional \$5,000 totaling \$51,694.96.

ORDINANCE NO. ____: It is requested an Ordinance be passed authorizing and directing the City Manager to make payment to Erie Materials, Inc., of Sandusky, Ohio, for asphalt and paving material supplied and to be supplied for street resurfacing projects; and declaring that this Ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

ITEM #3 – Submitted by Scott J. Schell, Economic Development Specialist

Budgetary Information: This action will not impact the city operating budget. The loan funds are restricted in use and this loan is within the guidelines of the program. The company must certify hiring a minimum of fifteen new full-time equivalent employees within three years of receiving this loan. The new hires will result in additional income taxes for the city.

ORDINANCE NO. ____: It is requested An Ordinance be passed authorizing and approving an Economic Development Loan in the amount of \$60,000 to Markley's, LLC; and declaring that this Ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

ITEM #4 – Submitted by Carrie R. Handy, Chief Planner/Transit Administrator

Budgetary Information: This action will not impact the city's General Fund.

ORDINANCE NO. : ____: It is requested an Ordinance be passed authorizing the city's participation in the Ohio Department of Transportation's Cooperative Purchasing Program; and declaring that this Ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

ITEM #5 – Submitted by Carrie R. Handy, Chief Planner/Transit Administrator

Budgetary Information: This does not affect the city's General Fund as all Transit operations are paid for with Federal and State grant funds, farebox revenue and contract revenue. However, if the rate is not changed, it is estimated that paying the higher rate for 2010 would cost the Transit system budget approximately \$108,000 in additional funds that could otherwise be used to provide more service.

ORDINANCE NO. : ____: It is requested an Ordinance be passed authorizing and directing the City Manager to enter into an Amendment to the Contract for transportation services with MV Contract Transportation, Inc. for services related to the operation of the Sandusky Transit System; and declaring that this Ordinance shall take immediate effect in accordance with Section 14 of the City Charter.

CITY MANAGER'S REPORT

OLD BUSINESS

2nd Vote: Motion to prepare a Termination Agreement with the LLC for The Marina District project effective December 31, 2009

NEW BUSINESS

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

EXECUTIVE SESSION

ADJOURNMENT



TO: Matt Kline, City Manager

FROM: Michele Hall, Recreation Program Supervisor

DATE: October 14, 2009

RE: Item for Commission Agenda: Dorn Community Park Concession Agreement 2010

ITEMS FOR CONSIDERATION:

Legislation to enter into an Agreement with Eric Foltz dba Cold Creek Café for the lease of the Dorn Community Park Concession Stand (March 15 through August 30) beginning March 15, 2010.

BACKGROUND INFORMATION:

The City of Sandusky leased the Dorn Community Park Concession Stand to Eric Foltz dba Cold Creek Café for the 2009 ball league season. The concession stand was open for all scheduled games and tournaments. With the success of this past season, the lessor would like to lease the concession stand for the 2010 season.

BUDGET IMPACT:

The agreements will not result in any additional budgetary expenses. The City will benefit from the agreed upon rental fee income of \$70.00 per month and electric service reimbursement of \$30.00 per month.

ACTION REQUESTED: It is requested that legislation be approved authorizing the City Manager to enter into an Agreement with Eric Foltz dba Cold Creek Café for the lease of the Dorn Community Park Concession Stand.

I concur with this recommendation.

Matthew D. Kline, City Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH ERIC FOLTZ DBA COLD CREEK CAFÉ FOR THE DORN COMMUNITY PARK CONCESSION AREA BEGINNING MARCH 15, 2010, THROUGH AUGUST 30, 2010.

WHEREAS, the City of Sandusky entered into a lease agreement with Eric Foltz dba Cold Creek Café for the premises known as the Dorn Community Park Concession Area located in the City of Sandusky for the operation of selling food and beverages during baseball games being played at the park during the 2009 season and with the success of this past season the lessor would like to lease the concession stand for the 2010 baseball season; and

WHEREAS, this agreement will not result in any additional budgetary expenses and the City will benefit from the agreed upon rental fee income and electric service reimbursement; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of Municipal Departments, including the Recreation Department of the City of Sandusky, Ohio and, NOW, THEREFORE,

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

Section 1. The City Manager is authorized and directed to enter into a Lease Agreement with Eric Foltz dba Cold Creek Café for the Dorn Community Park Concession Area located in the City of Sandusky for the 2010 operating season beginning March 15, 2010, and concluding on August 30, 2010, substantially in the same form as Exhibit "1", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

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

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

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance shall take effect at the earliest time allowed by Law.

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
KELLY L. KRESSER
INTERIM CLERK OF THE CITY COMMISSION

Passed:



DEPARTMENT OF GENERAL SERVICES

Scott A. Miller, Director
smiller@ci.sandusky.oh.us

1024 Cement Avenue
Sandusky, OH 44870

Fleet Maintenance
Greenhouse
Horticultural Services
Oakland Cemetery & Memorial Park
Municipal Buildings
Traffic Services

419.627.5984 PHONE
419.627.5911 FAX

www.ci.sandusky.oh.us

To: Matthew D. Kline, City Manager
From: Scott A. Miller, Director of General Services
Date: October 28, 2009
Subject: Commission Agenda Item

ITEM FOR CONSIDERATION: Approval of the purchase of paving material from Erie Blacktop for work performed by the City's Traffic Division. Erie Blacktop was the sole provider of the material due to their proximity and availability of needed materials. Due to the fact that asphalt is a temperature-sensitive material, Erie Blacktop is the only local asphalt plant that will make asphalt for us, while still allowing us to do paving projects in a timely manner. All pothole patching material is in addition to the listed streets below as a part of this ordinance. The following streets, listed as part of the 2009 goals and objectives for the Traffic Division, were resurfaced in whole or in part:

<u>STREET</u>	<u>FROM</u>	<u>TO</u>
Maple Ave.	Monroe St.	Tyler St.
Ogontz St.	2 nd St.	4 th St.
Sycamore Line	East Follett St.	East Parish St.

BUDGETARY INFORMATION: The material cost of this paving and patching performed is \$46,694.96 (\$35,254.96 in current invoices and \$11,440.00 in the process of being invoiced). Other anticipated paving work (trenches and potholes) will cost an additional \$5,000, totaling \$51,694.96.

ACTION REQUESTED: It is requested that the purchase of this material be approved and that the necessary legislation be passed under suspension of the rules and in accordance with Section 14 of the City Charter so that the invoices can be paid in a timely manner and are due within thirty days of receipt. It should be noted that the work performed in this project is in conjunction with the strategic plan of the City by improving the adjacent property values on said streets and making Sandusky a better place to live, work, play and drive .

Scott A. Miller
Director of General Services

I concur with the recommendation:

Matthew D. Kline
City Manager

SANDUSKY, OHIO – HOME OF 'AMERICA'S ROLLER COAST'®

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO MAKE PAYMENT TO ERIE MATERIALS, INC., OF SANDUSKY, OHIO, FOR ASPHALT AND PAVING MATERIAL SUPPLIED AND TO BE SUPPLIED FOR STREET RESURFACING PROJECTS; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, Erie Materials, Inc., is the City's sole provider of asphalt and the only local asphalt plant that can supply this temperature-sensitive material due to their proximity and the ability to make the material available to the City for paving projects in a timely manner; and

WHEREAS, the current unpaid invoices from Erie Materials, Inc. in the amount of \$35,254.96 and an additional \$11,440.00 in the process of being invoiced are for pothole patching and resurfacing (in whole or in part) for the following streets which were listed as part of the 2009 goals and objectives for the Traffic Division:

<u>Street</u>	<u>From</u>	<u>To</u>
Maple Avenue	Monroe Street	Tyler Street
Ogontz Street	2nd Street	4th Street
Sycamore Line	E. Follett Street	E. Parish Street

and;

WHEREAS, the total cost for paving and patching materials already received is \$46,694.96, and other anticipated paving work to be completed in the calendar year 2009 is expected to cost an additional \$5,000.00, totaling \$51,694.96; and

WHEREAS, this legislation should be passed under suspension of the rules as an emergency measure in accordance with Section 14 of the City Charter in order to make payment for current unpaid invoices for materials already received and used by the City; 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 Department of Engineering Services 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 make payment to Erie Materials, Inc., of Sandusky, Ohio, for asphalt and paving material for street resurfacing projects in an amount **not to exceed** Thirty Five Thousand Two Hundred Fifty Four and 96/100 Dollars (\$35,254.96), consistent with the invoices submitted to the City.

Section 2. The City Manager is authorized and directed to expend Eleven Thousand Four Hundred Forty and 00/100 Dollars (\$11,440.00), for materials used and in the process of being invoiced and an additional amount not to exceed Five Thousand and 00/100 Dollars (\$5,000.00) for materials to be used in the calendar year 2009 for a

total amount **not to exceed** Sixteen Thousand Four Hundred Forty and 00/100 Dollars (\$16,440.00) to be paid to Erie Materials, Inc., of Sandusky, Ohio, based upon invoices to be submitted for asphalt and paving material.

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

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

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

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
KELLY L. KRESSER
INTERIM CLERK OF THE CITY COMMISSION

Passed: November 9, 2009

TO: City Commission
FROM: Scott J. Schell, Economic Development Specialist
DATE: October 27, 2009
RE: Commission Agenda Item – Markley’s Renovation Revolving Loan

ITEM FOR CONSIDERATION: Commission approval of a Revolving Loan Fund (RLF) Loan to Markley’s, LLC DBA the New Markley’s Restaurant for the amount of \$60,000.

BACKGROUND INFORMATION: Jim Miller and Gary Neill purchased all of the assets of the former Markley’s Restaurant from the foreclosing bank for \$30,000 and estimate that they will spend an additional \$250,000+ to modernize and expand the restaurant and return it to productive use. Miller and Neill own a number of commercial property ventures under their thirty-seven year old G & J Properties Company. Jim Miller has restaurant experience in that he managed the McDonald’s on River Road in Sandusky for 11 years. Gary Neill is retired from Ford. This exceptionally low turnkey cost should give the partners a low breakeven sales point and a significant competitive advantage.

Renovations are currently underway on the building with the partners acting as their own general contractor. This time, the restaurant will have one of Sandusky’s low-cost Entertainment District liquor licenses and the ambiance will be more Put-in-Bay than corner diner. Miller and Neill are funding the building renovations and expansion from their personal funds with the Revolving Loan Fund providing the only outside funding.

The City’s Revolving Loan Fund Committee met on October 16, 2009 and voted unanimously to recommend a loan to Markley’s, LLC DBA the New Markley’s Restaurant. The committee recommends a 7-year, 4% loan for a maximum of \$60,000 with an initial twelve-month interest only period. The loan proceeds will be used as partial payment for new capital equipment totaling approximately \$120,463 necessary to reopen Markley’s Restaurant. The City will have a first mortgage on the building and a lien on all other business assets and the personal guarantees of James Miller and Gary Neill.

BUDGETARY INFORMATION:

This action will not impact the City operating budget. The loan funds are restricted in use and this loan is within the guidelines of the program. The company must certify hiring a minimum of fifteen new full-time equivalent employees within three years of receiving this loan. The new hires will result in additional income taxes for the city.

ACTION REQUESTED:

It is requested that City Commission enact legislation under suspension of the rules as an emergency measure in accordance with Section 14 of the City Charter to assist the business in a timely manner. Restaurant equipment must be ordered and takes time to manufacture. Such equipment orders may not predate the approval of this loan and we do not wish to jeopardize the company’s ability to open by delaying the approval of this loan.

I concur with this recommendation:

Matthew D. Kline, City Manager

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND APPROVING AN ECONOMIC DEVELOPMENT LOAN IN THE AMOUNT OF \$60,000.00 TO MARKLEY'S, LLC; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, Markley's LLC, of Sandusky, Ohio, submitted an application to the City of Sandusky's Revolving Loan Fund Committee for partial funding for new capital equipment necessary to reopen Markley's Restaurant; and

WHEREAS, Jim Miller and Gary Neill of Markley's LLC, purchased all of the assets of the former Markley's Restaurant and with renovations currently underway on the building, estimate they will spend an additional \$250,000+ to modernize and expand the restaurant and return it to productive use with the addition of one of Sandusky's Entertainment District liquor licenses; and

WHEREAS, the RLF Committee met on October 16, 2009, and unanimously voted to recommend a 7 year loan for a maximum of \$60,000.00 at 4% with an initial twelve-month interest only period to Markley's, LLC, dba the New Markley's Restaurant with the City having a first mortgage on the building and a lien on all other business assets and the personal guarantees of James D. Miller and Gary Neill, as contained in the terms of the Promissory Note and Security Agreement, a copy of which is attached to this Ordinance and marked Exhibit "A" and specifically incorporated herein; and

WHEREAS, Markley's LLC, must certify hiring a minimum of fifteen new full-time equivalent employees within three years of receiving this loan which will result in additional income taxes for the City; and

WHEREAS, this loan will not impact the City's operating budget, the loan is restricted in use and is within the RLF guidelines and shall be monitored on an annual basis by the Department of Development; and

WHEREAS, this legislation should be passed under suspension of the rules as an emergency measure in accordance with Section 14 of the City Charter in order to approve the loan to Markley's LLC in a timely manner allowing for the placement of equipment orders necessary for the opening of the restaurant; 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 Finance Director is authorized and directed to deliver to Markley's, LLC, a draft in the sum of Sixty Thousand and 00/100 Dollars (\$60,000.00) from the Revolving Loan Fund of the City of Sandusky pursuant to and in accordance with the terms of the Promissory Note and Security Agreement, with Markley's, LLC, Inc., of Sandusky, Ohio, a copy of which is attached to this Ordinance, marked Exhibit "A" 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 City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City's Commission and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements;

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take effect and be in full force from and after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
KELLY L. KRESSER
INTERIM CLERK OF THE CITY COMMISSION

Passed: November 9, 2009

PROMISSORY NOTE AND SECURITY AGREEMENT
(COGNOVIT)
CITY OF SANDUSKY, OHIO REVOLVING LOAN FUND

\$60,000.00

October _____, 2009

FOR VALUE RECEIVED, the Markley's, LLC, an Ohio Limited Liability Company, located at 201ast Market Street, Sandusky, Ohio (hereinafter called "BORROWER") promises to pay to the order of the City of Sandusky, Ohio, a Commission-Manager form of government with its main offices at 222 Meigs Street, Sandusky, Ohio 44870 (hereinafter called "LENDER"), the principal sum of Sixty Thousand Dollars (\$60,000) or such lesser sum as may be owed to LENDER pursuant to the terms of a certain ECONOMIC DEVELOPMENT AGREEMENT dated October _____, 2009 between BORROWER and LENDER, to which reference is made for additional terms of the loan evidenced by this Promissory Note, together with interest as hereinafter provided.

SECTION I - DISBURSEMENT

Proceeds of the loan shall be disbursed on a pro-rata basis with other funding, public and private and upon presentment of bills of sale for store fixtures and equipment purchased by BORROWER.

SECTION II - INTEREST

During Disbursal: Interest shall accrue on the unpaid principal balance from the first disbursal date, estimated to be November 1, 2009 through approximately October 31, 2010 at the rate of Four Percent (4%) per annum calculated on a 365/365 day basis with monthly payments of interest only billed to BORROWER on or about the first of each month and payment due to LENDER by fifteenth of the following month.

During Amortization: Interest shall accrue on the unpaid principal balance at the rate of Four Percent (4%) per annum calculated on a 360/360 day basis from November 1, 2010 for the remaining term of the loan.

Default Rate: If the BORROWER is declared in default as defined below interest shall accrue at the rate of **Twelve Percent (12%)** per annum calculated on the unpaid principal balance on a 365/365 day basis until, at the sole discretion of LENDER, BORROWER is declared in compliance with the terms and conditions of the terms of this Note and/or the Economic Development Agreement.

SECTION III - REPAYMENT

Repayment. Interest Only Payments: Payments of interest only on the amount disbursed will be billed to BORROWER on or about the end of each month during the disbursal period with payment due LENDER by the fifteenth of the following month.

Repayment. Amortization: Commencing December 1, 2010 and continuing on the first day of each month thereafter through November 1, 2017, BORROWER shall pay LENDER Eight Hundred Twenty Dollars and Thirteen Cents (\$820.13) in principal and interest per month, in accordance

with an amortization schedule calculated to fully amortize the principal balance of the loan within Eighty-Four (84) months. Payment adjustments will be made if all funds are not disbursed. All payments shall be made to the City of Sandusky, Ohio.

SECTION IV - LATE PAYMENT FEE

A late payment fee of twenty-five Dollars (\$25.00) shall be due and payable for each and every installment of interest or principal and interest when such installments remain unpaid for a period of Ten (10) days after any such installment may have become due and payable.

SECTION V - PREPAYMENT

Prepayment of any principal sum of this loan may occur in whole, or in part, at any time, or times, without penalty. All such prepayments shall be applied to the payment of principal installments due hereon in the inverse order of their maturity.

SECTION V – SECURITY INTEREST

To secure payment of this Note or any extensions or renewals of this Note Borrower grants and pledges to Lender a security interest in the property listed below, and in after-acquired property of such description, replacements, substitutions, additions, accessions, products and the proceeds of all the foregoing and wherever such property is or may be located as follows:

1. The collateral acquired with the proceeds of this loan.
2. Accounts receivable, accounts chattel paper, documents, contract rights, instruments, general intangibles, and all right, title and interest in sold, leased, or furnished goods giving rise thereto (including, without limitation, all rights (a) of stoppage in transit, (b) of reclamation, and (c) in returned or repossessed goods).
3. Inventory (including, without limitation, all goods, that are (a) raw materials, (b) Work in process, (c) materials used or consumed in the ordinary course of Borrower's business, or (d) in the ordinary course of Debtor's business, held for sale or lease or furnished or to be furnished under contracts of service, all substitutes and replacements thereof, and all parts, accessories, additions, attachments, and accessions thereto and insurance proceeds from insurance of any of the above.
4. Proceeds, products, profit, and rents of and from all of the foregoing.
5. All ledger sheets, books, records and documents concerning any of the Collateral, including all computer records, programs, storage media and computer software useful or required in connection therewith.
6. All equipment, machinery, furniture and fixtures now owned and/or hereafter acquired.

In addition, the repayment of this loan is secured by the personal guarantees of James D. Miller and Gary Neill and the guarantee of G & J Properties. This loan is also secured by a mortgage on the real estate commonly known as Markley's Restaurant which is held in the name of G & J Properties and located at 201 East Market Street, Sandusky, Ohio.

SECTION VII - UPON RELOCATION

The entire balance of the outstanding principal and all accrued interest and charges shall, at the

option of the LENDER becomes immediately due and payable upon the relocation of BORROWER'S primary Sandusky business facility to any location outside the corporate limits of the City of Sandusky, Ohio.

SECTION VIII - DEFAULT/REMEDIES

All liabilities created by this instrument shall, at the option of Lender, accelerate, mature and become due and payable without demand or notice, which are hereby waived, if any maker, endorser, or guarantor of this Note shall:

- 1) suspend business;
- 2) become insolvent;
- 3) offer settlement to any creditors;
- 4) commit an act of bankruptcy;
- 5) file for, or have filed against it, any petition in bankruptcy or in any proceeding under any law relating to the relief of debtors, or for the appointment of a receiver of its property;
- 6) make any bulk sale of its property;
- 7) make any assignment for the benefit of creditors;
- 8) mortgage, pledge, or transfer any accounts receivable or otherwise impair the collateral or other property, in trust or otherwise; collateral or other property, in trust or otherwise without the prior consent of Lender;
- 9) make any false representation;
- 10) fail to furnish information or permit inspection of books or records on demand of the holder;
- 11) fail to pay any obligation when due;
- 12) have a warrant of attachment or execution issued against any of its property;
- 13) have any judgment entered against it;
- 14) be dissolved or have its capital impaired or die;
- 15) if the Sandusky, Ohio restaurant facility is relocated beyond the corporate limits of Sandusky, Ohio.

All liabilities created by this instrument shall, at option of LENDER, accelerate, mature and become due and payable without demand or notice, which are hereby waived, if for any other cause, the protection of the LENDER so requires.

Any event of default under any mortgage or other lien affecting the various security interests shall constitute an event of default hereunder, at Lender's option.

The BORROWER waives presentment, protest and demand, notice of protest, notice of demand and dishonor and nonpayment of this Note, and expressly agree that this Note or any payment thereunder may be extended from time to time without in any way affecting the liability of the BORROWER.

The rights and remedies of the LENDER, as provided herein, shall be cumulative and concurrent and may be pursued singly, successively or together at the sole discretion of the LENDER and may be exercised as often as the occasion shall occur, and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.

Any notice may be delivered personally or sent Certified Mail to BORROWER at the following address: G & J Properties, 231 East Washington Street, Sandusky, Ohio 44870.

SECTION VIII - MISCELLANEOUS

(a) **Severability** - If any provision of this Promissory Note or the application of any provision to any party or circumstance shall, to any extent, be adjudged invalid or unenforceable, the application of such provision to other parties or circumstances and the application of the remainder of this Agreement shall not be affected thereby. Each provision in this Agreement shall be valid and enforceable to the fullest extent of the law.

(b) **Headings** - The headings contained in this Promissory Note have been inserted for convenience and reference only and are not to be used for interpretive purposes.

(c) **Governing Law**-The parties agree that this Promissory Note shall be governed by and interpreted in accordance with the laws of the state of Ohio, and the parties submit to its jurisdiction for such purposes.

(d) **Non-Waiver**-The failure of either party to insist or enforce in any instance strict performance of any of the terms of this Promissory Note or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

(e) **Amendments**-This Promissory Note shall be amended only in a writing duly executed by the properly authorized representatives of both parties.

(f) **Assignment**-Neither party may assign this Promissory Note or any part hereof without prior written consent of the other party hereto.

WARNING - BY THE SIGNING OF THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGEMENT MAY BE TAKEN AGAINST YOU WITHOUT PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT OR ANY OTHER CAUSE.

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned acting on behalf of Markley's, LLC.

(Signatures Commence on the Following Page)

WITNESS OR ATTEST:

Markley's, LLC

By: _____
James D. Miller, Member, 50% Unit Folder

By: _____
Gary Neill, Member, 50% Unit Folder

GUARANTEE

The undersigned endorse, guarantee and promise to pay the above note (and all taxes and insurance premiums and any other sums that may become due and payable under and by virtue of the provisions of any mortgage or security instrument securing that note).

WAIVERS

The undersigned waive the following:

- (a) Presentment, demand, protest, notice of protest, notice of dishonor and notice of non-payment;
- (b) The right, if any, to the benefit of, or to direct the application of, any security hypothecated to the holder until all indebtedness of the maker to the holder, regardless of its source, has been paid; and
- (c) The right to require the holder to proceed against the maker, or to pursue any other remedy in the holder's power.

RIGHT OF DIRECT ACTION

The undersigned further agree that the holder may proceed against the undersigned directly and independently of the maker and that the cessation of the liability of the maker for any reason other than full payment, or any extension, renewal, forbearance, change of rate of interest or acceptance, release or substitution of security, or any impairment or suspension of the holder's remedies or rights against the maker, shall not in any way affect the liability of the undersigned.

RENEWALS AND EXTENSIONS

The undersigned further agree to all renewals and extensions of this Note for whatever period or periods. Any such renewals and extensions may be made without notice to or the further consent of the undersigned.

WARNING - BY THE SIGNING OF THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGEMENT MAY BE TAKEN AGAINST YOU WITHOUT PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU

**REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR
WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART
TO COMPLY WITH THE AGREEMENT OR ANY OTHER CAUSE.**

WITNESS OR ATTEST:

Approved as to form:

By: _____
Donald Icsman
Law Director

Markley's/Note+Security Agreement
ges 10/20/2009

GUARANTORS:

By: _____
James D. Miller, Individually

By: _____
Gary Neill, Individually

G & J PROPERTIES

By: _____
James D. Miller, 50% Partner

G & J PROPERTIES

By: _____
Gary Neill, 50% Partner

Accepted by the City

By: _____
Matthew D. Kline
City Manager

Date: November 2, 2009

To: Matthew D. Kline
City Manager

From: Carrie R. Handy
Chief Planner/Transit Administrator

Re: Commission Agenda Item – Authorization to Participate in the Ohio Department of Transportation’s Cooperative Purchasing Program

ITEM FOR CONSIDERATION: Legislation to authorize the City’s participation in the Ohio Department of Transportation’s Cooperative Purchasing Program. This will allow 12 vehicles to be purchased for the Sandusky Transit System program from state term contracts with ARRA transit grant funds from the Federal Transit Administration.

BACKGROUND INFORMATION: The Director of the Ohio Department of Transportation may permit any political subdivision to participate in selected contracts for the purchase of certain machinery, supplies, materials and other articles. This program allows political subdivisions to forego the competitive bidding process and assures them of the Department’s contract pricing. The City is then allowed to participate in a contract that has been awarded pursuant to ODOT’s competitive bidding procedures. This program is similar to the Cooperative Purchasing Program administered by the State Department of Administrative Services in which the City participates.

BUDGETARY INFORMATION: This action will not impact the City’s general fund.

ACTION REQUESTED: It is requested that the proper legislation be prepared to authorize the City to participate in the Ohio Department of Transportation’s Cooperative Purchasing Program. It is further requested that this legislation take immediate effect in accordance with Section 14 of the City Charter in order to provide a certified copy of this Ordinance to ODOT which will allow the City to participate in the contract for the purchase of vehicles for the Sandusky Transit System as soon as possible.

Approved:

I concur with this recommendation:

Carrie R. Handy
Chief Planner/Transit Administrator

Matthew D. Kline
City Manager

Cc: Donald Icsman, Law Director
Kelly Kresser, Interim City Commission Clerk

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE CITY'S PARTICIPATION IN THE OHIO DEPARTMENT OF TRANSPORTATION'S COOPERATIVE PURCHASING PROGRAM; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the Ohio Revised Code, Section 5513.01 (B) provides the opportunity for political subdivisions, as defined therein, including municipal corporations to participate in contracts of the Ohio Department of Transportation (ODOT) for the purchase of machinery, material, supplies, or other articles; and

WHEREAS, in order for the City to qualify to participate in ODOT's Cooperative Purchasing Program in addition to passing this Ordinance requesting permission to participate, the City must designate an agent and agree to and be bound by all ODOT contract terms and conditions and to assume all responsibility for placing contract orders and vendor payments, and to release ODOT employees and its director from responsibilities and obligations (other than caused by their own negligence) as a result of the City's participation in the program; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules as contained in Section 14 of the City Charter in order to allow a certified copy of this Ordinance to be forwarded to ODOT and the City's agent (the City Manager) to provide a written request to ODOT's office of contracts, purchasing services, to participate in the contract for the purchase of vehicles for the Sandusky Transit System, as soon as possible; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of Municipal Departments of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio, find that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which shall 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 designates the City Manager of the City of Sandusky as the City's agent and requests authority in the name of the City of Sandusky to participate in the Ohio Department of Transportation contracts for the purchase of machinery, materials, supplies or other articles which the Department has entered into pursuant to Ohio Revised Code, Section 5513.01 (B).

Section 2. The City Manager is hereby authorized to agree in the name of the City of Sandusky to be bound by all terms and conditions as the Director of Transportation prescribes.

Section 3. The City Manager is hereby authorized to agree in the name of the City of Sandusky to directly pay vendors, under each such contract of the Ohio Department of Transportation in which the City of Sandusky participates, for items it receives pursuant to the contract.

Section 4. The City of Sandusky agrees to be responsible for resolving all claims or disputes arising out of its participation in the Cooperative Purchasing Program under Section 5513.01 (B) of the Ohio Revised Code. The City of Sandusky releases

and forever discharges the Director of Transportation and the Ohio Department of Transportation from all such claims, actions, expenses, or other damages arising out of its participation in the Cooperative Purchasing Program which the City of Sandusky may have or claim to have against ODOT or its employees, unless such liability is the result of negligence on the part of ODOT or its employees.

Section 5. 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 6. 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 7. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
KELLY L. KRESSER
INTERIM CLERK OF THE CITY COMMISSION

Passed: November 9, 2009

TO: Matthew D. Kline, City Manager
FROM: Carrie R. Handy, Chief Planner/Transit Administrator
DATE: October 27th, 2009
SUBJECT: **Contract Amendment to MV Transportation Service Provider Contract**

ITEM FOR CONSIDERATION: Request for approval of legislation to amend the City of Sandusky's existing contract with MV Transportation to correct the hourly rate for 2010.

BACKGROUND INFORMATION: The City of Sandusky has a contract with MV Transportation to provide the Sandusky Transit System service. This contract provides for an hourly reimbursement rate for MV Transportation based on the number of service hours that they provide. The rate changes on an annual basis in the contract based on the hourly rate which MV bid during the service provider request for proposals process in 2007. In this regard, it was found recently in reviewing documents in preparation for the 2010 grant cycle that the rate for 2010 in the MV contract document did not match the rate MV submitted in their bid. The contract document has an hourly rate of \$48.39, whereas the proposal submitted by MV Transportation dated November 13, 2006, was incorporated in its entirety into the contract and indicates the correct rate of \$44.08. The proposed amendment to the contract would simply correct a typographical error in the contract. MV Transportation officials have indicated to City staff that this amendment is acceptable to them. Copies of the contract and the bid documents submitted by MV are attached to this communication.

BUDGET/STRATEGIC PLAN IMPACT: This does not affect the City's general fund as all transit operations are paid for with Federal and State grant funds, farebox revenue and contract revenue. However, if the rate is not changed, it is estimated that paying the higher rate for 2010 would cost the transit system budget approximately \$108,000 in additional funds that could otherwise be used to provide more service.

ACTION REQUESTED: An Ordinance authorizing the City Manager to execute the contract amendment with MV Transportation. It is further requested that this legislation take immediate effect in full accordance with Section 14 of the City Charter in order to have the amended contract rate become effective prior to the start of the 2010 calendar year.

I concur with this recommendation:

Matthew D. Kline
City Manager

Carrie R. Handy
Chief Planner/Transit Administrator

cc: Donald Icsman, Law Director
Kelly Kresser, City Commission Clerk

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO THE CONTRACT FOR TRANSPORTATION SERVICES WITH MV CONTRACT TRANSPORTATION, INC. FOR SERVICES RELATED TO THE OPERATION OF THE SANDUSKY TRANSIT SYSTEM; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this City Commission authorized and directed the City Manager to enter into a Transportation Services Agreement with MV Contract Transportation, Inc. for services related to the Sandusky Transit System by Ordinance No. 06-123, passed on December 11, 2006; and

WHEREAS, the original contract provides compensation for vehicle hours of service to MV Contract Transportation, Inc. based upon a vehicle hourly rate for each year of the contract from 1/1/07 through 12/31/2011 and in preparation for the 2010 grant cycle, it was determined the vehicle hourly rate in the contract for the CY 2010 did not match the vehicle hourly rate in the bid submitted by MV Contract Transportation, Inc. for the CY 2010; and

WHEREAS, this proposed amendment would amend the vehicle hourly rate from \$48.39 to \$44.08 for the period from January 1, 2010 through December 31, 2010, and is consistent with the proposal submitted by MV Contract Transportation, Inc.; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to amend the vehicle hourly rate for the 2010 calendar year before the commencing date of January 1, 2010; 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 Amendment to Contract for Transportation Services with MV Contract Transportation, Inc., amending the vehicle hourly rate from \$48.39 to \$44.08 for the period from January 1, 2010 through December 31, 2010, substantially in the same form as reflected in Exhibit "A" which is attached and specifically incorporated as if fully rewritten herein together with such revisions or additions as are approved by the Law Director as not being substantially adverse to the City and being consistent with the objectives and requirements of this Ordinance and with carrying out the City's public purposes.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any

reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

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

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

CRAIG H. STAHL
PRESIDENT OF THE CITY COMMISSION

ATTEST: _____
KELLY L. KRESSER
INTERIM CLERK OF THE CITY COMMISSION

Passed: November 9, 2009

**AMENDMENT
TO
CONTRACT FOR TRANSPORTATION SERVICES**

THIS AMENDMENT to the CONTRACT is made and entered on January 1, 2010, by and between the City of Sandusky, Ohio (hereinafter referred to as "the City") and MV Contract Transportation, Inc. (hereinafter referred to as "the Service Provider");

WHEREAS, the City and the Service Provider entered into a contract for the provision of transportation services, commencing on January 1, 2007 through December 31, 2011 (hereinafter referred to as "CONTRACT");

WHEREAS, the City and the Service Provider desire to amend the CONTRACT;

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

1. SECTION 6. COMPENSATION. The vehicle hourly rate shall be \$44.08 for the period from January 1, 2010 through December 31, 2010.
2. Except as expressly amended herein, all other terms and conditions of the CONTRACT shall remain unchanged, unless modified by a writing signed by both parties.

IN WITNESS WHEREOF, this CONTRACT is effective upon execution provided that the City of Sandusky, Ohio and the Service Provider sign below.

ATTEST:

The City of Sandusky, Ohio

By: _____
Matthew D. Kline, City Manager

ATTEST:

MV Contract Transportation, Inc.

By: _____
Kevin Klika, COO

Approved as to Form:

By: _____
Donald C. Icsman, Law Director
City of Sandusky
222 Meigs Street
Sandusky, Ohio 44870