

ORDINANCE NO. 20-116

AN ORDINANCE APPROVING A TEMPORARY CONSTRUCTION AND PERMANENT UTILITY EASEMENT GRANTED TO THE CITY BY ERIE METROPARKS FOR THE LANDING PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, the City Commission declared their support for The Landing Park Project by Resolution No. 005-18R, passed on January 22, 2018; and

WHEREAS, the City Commission authorized and directed the City Manager to enter into an agreement for professional design services with Environmental Design Group, LLC, of Akron, Ohio, for the Landing Project by Ordinance No. 18-127, passed on June 25, 2018; and

WHEREAS, the City owns property identified as Erie County Permanent Parcel Nos. 57-01824.000, 57-01824.003, 57-01824.004, and intends to develop the contiguous property into a public park (commonly known as "Landing Park"), which must be utilized exclusively for recreational and educational public-park land uses, including walking, biking, kayaking, canoeing, rowing, sculling, paddle boarding, running trails and related facilities and improvements, such as parking areas, walks, paths, boardwalks, education and observation facilities, playground and picnic areas, traffic-control facilities and improvements, flood and erosion control facilities and improvements, or other non-commercial public amenities; and

WHEREAS, Erie MetroParks is the owner of property consisting of approximately 230.64 acres located in the City and identified as Erie County Permanent Parcel No. 57-62420.000 and desires to grant the City an easement to allow the City to construct, install and maintain certain transmitter lines and water and sewer lines across Erie MetroPark's property, in the Utility Easement Area, in order to access and tie into the electrical infrastructure established by Ohio Edison and the water/sewer infrastructure for the Landing Project; 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 for the easement to be immediately approved and allow the consultant to proceed with finalizing plans and permits for The Landing; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Public Works, 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 approves the Temporary Construction and Permanent Utility Easement granted to the City by Erie MetroParks for the construction, installation, and maintenance of certain transmitter lines and water

and sewer lines across property owned by Erie MetroParks, a copy of which is attached and marked Exhibit "1" and is specifically incorporated as if fully rewritten herein. together with any revisions or additions as are approved by the Law Director as 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 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.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST: _____
MCKENZIE E. SPRIGGS
CLERK OF THE CITY COMMISSION

Passed: August 10, 2020

**TEMPORARY CONSTRUCTION AND
PERMANENT UTILITY EASEMENT AGREEMENT**

This Temporary Construction and Permanent Utility Easement Agreement (the "Agreement") is entered into by and between THE BOARD OF PARK COMMISSIONS OF THE ERIE METROPARKS (a political subdivision under the provisions of Section 1545.07 of the Ohio Revised Code herein called "MetroParks") and THE CITY OF SANDUSKY (an Ohio chartered municipal corporation, herein called "City of Sandusky").

RECITALS

A. WHEREAS, MetroParks owns 230.64 acres of real property located off of Cleveland Road, in the City of Sandusky, Erie County, Ohio, which is known as Erie County Permanent Parcel Number 57-62420.000 (herein called "MetroParks Property"); and

B. WHEREAS, the City of Sandusky owns several parcels of contiguous real property adjacent to the MetroParks Property, including the following Permanent Parcel Numbers: 57-01824.000, 57-01824.003, 57-01824.004 (herein collectively called the "City Contiguous Property"); and

C. WHEREAS, the City of Sandusky intends to develop the City Contiguous Property into a public park (commonly known as "Landing Park"), which must be utilized exclusively for recreational and educational public-park land uses, including walking, biking, kayaking, canoeing, rowing, sculling paddle boarding, running trails and related facilities and improvements, such as a parking areas, walks, paths, boardwalks, education and observation facilities, playground and picnic areas, traffic-control facilities and improvements, flood and erosion-control facilities and improvements, or other non-commercial public amenities (herein called "Public Recreational Purposes"); and

D. WHEREAS, the City of Sandusky's intended utilization of the City Contiguous Property for Public Recreational Purposes is consistent with the MetroParks' public purposes; and

E. WHEREAS, a specified 2.2062 acre portion of the MetroParks Property (as more fully described on attached Exhibits A & B, and herein called the “Utility Easement Area”) is uniquely situated in a location which is feasible to run the necessary utilities lines to and through for the benefit of the City Contiguous Property; and

F. WHEREAS, the Utility Easement Area is located in a such an area which makes it both convenient and cost-efficient to run conduit transmitter lines across the MetroParks Property, underground (for the benefit of the City Contiguous Property and for the development of Landing Park) in order to access the existing public infrastructure, which has been established by public electrical systems (Ohio Edison) adjacent to Cleveland Road; and

G. WHEREAS, the Utility Easement Area is located in such an area which makes it both convenient and cost-efficient to run water storm, sewer, gas, fiber optic, or other similar public utility lines across the MetroParks Property, underground (for the benefit of the City Contiguous Property and for the development of Landing Park) in order to access the existing public water and sewer infrastructure, which has been established by public water/sewer systems (the City of Sandusky) adjacent to Cleveland Road; and

H. WHEREAS, the City of Sandusky has or will obtain the requisite consent and have or will enter into all necessary documentation and agreements with Ohio Edison which will allow the City of Sandusky to access, via the transmitter lines, and tap into the electrical system; and

I. WHEREAS, the City of Sandusky agrees to have its electrical and water consumption separately metered and billed through Ohio Edison and the appropriate tribunals; and

J. WHEREAS, the MetroParks desire to grant the City of Sandusky an easement to allow the City of Sandusky to construct, install and maintain certain transmitter lines and water and sewer lines across the MetroParks’ Property, in the Utility Easement Area, in order to access and tie into the electrical infrastructure established by Ohio Edison and the water/sewer infrastructure; and

NOW, THEREFORE, for the sum of One Dollar (\$1.00) to be paid by the City of Sandusky to the MetroParks and for other valuable consideration and the promises made by the respective parties herein, the City of Sandusky and the MetroParks covenant and agree as follows:

1. Grant of Easement

1.1 Utility Easement. The MetroParks, for themselves and for their respective heirs, executors and assigns, hereby convey and grant to the City of Sandusky, a permanent, non-exclusive utility easement under, in, along, across and upon a certain specified portion of the MetroParks Property (a sketch of which is found on attached Exhibit A, which is attached hereto and incorporated by reference herein, and referred to as the “Utility Easement Area”, the Utility Easement Area is depicted with hatching on the attached Exhibit A) solely for the lawful construction, installation, maintenance, operation, repair, replacement and use of underground

conduit, electrical lines, meters, connections, and related equipment, fiber optic, telephone, water/sewer lines natural gas lines and other similar public utilities (the “Improvements”). A legal description of the Utility Easement Area is found on Exhibit B, which is attached hereto and incorporated by reference herein.

1.2 Temporary Construction Easement. The MetroParks, for itself and for its successors and assigns, hereby convey and grant to the City of Sandusky or the water and sewer provider to the City Contiguous Property, to Ohio Edison, or the electricity provider to the City Contiguous Property, and to Columbia Gas, or the natural gas provider of the City Contiguous Property, a temporary, non-exclusive easement (the “Temporary Construction Easement”) over, under, in, along, across and upon the MetroParks Property (“Temporary Easement Area”) for use in the initial construction and installation of the Improvements and other construction purposes reasonably related to the initial construction of the Improvements. Prior to commencement of the Temporary Construction Easement, the City of Sandusky and its contractors shall have reasonable access to the MetroParks Property (upon the provision of advanced notice) to conduct all studies, tests, examinations, and surveys necessary to design and construct the Improvements. The granting of the Utility Easement and Temporary Construction Easement is expressly conditioned upon the City of Sandusky performing all necessary maintenance and upkeep on the Improvements to ensure the efficient and proper operation of the City Contiguous Property for Public Recreational Purposes and further is conditioned upon the City of Sandusky’s agreement to use its best efforts to finish its construction of the public-park improvements and have the public park open no later than June 30, 2025.

2. Terms of Easements

2.1 Utility Easement. The Utility Easement shall commence on the effective date of this Agreement and shall run with the land, be binding on the respective parties’ successors and future owners of the respective properties and continue in full force and effect until terminated as specified in Section 5.5 herein.

2.2 Temporary Construction Easement. The Temporary Construction Easement shall commence on the effective date of this Agreement and shall automatically terminate and expire upon (a) the date construction of the Improvements are completed; or (b) June 30, 2025, whichever date shall first occur. Upon the expiration of the term of the Temporary Construction Easement, all of the rights and benefits of The City of Sandusky in, to and under this Agreement with respect to the Temporary Construction Easement, shall automatically terminate and be of no further force and effect.

3. Reservation by Erie MetroParks / Non-Exclusive Use

All right, title, and interest in and to any easement area under this Agreement which may be used and enjoyed without interfering with the rights conveyed by this Agreement are reserved to the MetroParks, provided, however, that MetroParks shall not enact or maintain any buildings which may cause damage to or interfere with the Improvements to be placed within

the Utility Easement Area; or develop, landscape, or beautify any easement area in any way which would unreasonably or materially increase the costs to The City of Sandusky of installing the Improvements or restoring any of the Easement Areas after such installation.

4. Construction of Utility Improvements

4.1 Costs/Lien-Free Construction. The City of Sandusky shall bear and promptly pay without the imposition of any lien or charge on or against all or any portion of the MetroParks' Property all costs and expenses of construction and maintenance of the Improvements.

4.2 Compliance With Laws & Existing Restrictions. The City of Sandusky shall construct the Improvements in a workmanlike manner and in compliance with the applicable statutes, ordinances, rules and regulations of all governing public authorities as those statutes, ordinances, rules and regulations are amended from time to time, including, but not limited to, all Environmental Protection Agency regulations. All Improvements shall be constructed and maintained in such a manner as to not conflict with the MetroParks' conservation and public recreational policies and objectives and shall be in conformity with all restrictions and mandates of the existing conversation easements, trail easements and restrictions which the MetroParks Property is current subject to, including, but not limited to those restrictions and mandates found within RN 20071450, RN 200714533, and RN 200322578 of the Official Records of Erie County, Ohio .

4.3 Restoration. In the event the surface of any easement area is disturbed by the City of Sandusky exercise of any of its easement rights under this Agreement, such area shall be restored to the condition in which it existed at the commencement of such activities.

5. General Provisions

5.1 Covenants Running with the Land/Assignment. The parties to this Agreement acknowledge and agree that the easements and other rights conferred by this Agreement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors, and assigns.

5.2 Insurance. The City of Sandusky shall maintain proper levels of liability insurance by reason of the location, construction, installation, maintenance and operation the Improvements which are the subject of the Temporary Construction Easement and Utility Easement, as described herein, and shall name the MetroParks as an additional insured on said policies. Upon reasonable request, the City of Sandusky shall provide to the MetroParks written substantiation of the fact that such mandated insurance coverage is in full force and effect.

5.3 Effective Date. This Agreement shall be effective upon the date it is executed by an authorized representative of each signing party.

5.4 Notices. Any notice permitted or required by this Agreement shall be deemed received, if delivered, when actually received, or, if mailed, on the third day after mailing by

registered or certified mail, postage prepaid, to the party's address set forth below their respective signatures to this Agreement, or to such other address designated in writing to the other parties.

5.5 Choice of Law / Venue. In the event any disputes arise between the parties regarding the enforcement, interpretation or effect of this Agreement, the parties agree that Ohio law shall govern and that the State Courts of Erie County, Ohio shall be the exclusive venue to resolve said disputes.

5.6 Termination. If The City of Sandusky fails to: (a) maintain or keep the Improvements in proper working condition; or (b) ceases use of the City Contiguous Property for the stated Public Recreational Purposes, the easement rights afforded to The City of Sandusky pursuant to this Agreement shall terminate.

5.7 Repair and Maintenance. The City of Sandusky, or its designee, shall, at all times, keep the Improvements in good repair and proper operating condition as to not negatively impact the preservation and recreational nature of the MetroParks Property. The City of Sandusky shall exclusively be responsible for all maintenance and repair costs associated with the obligations set forth in this Section 5.6. Failure to comply with the mandates of this Section 5.6 may result in termination of the easement rights afforded to The City of Sandusky herein.

5.8 Further Cooperation. Each of the signatures to this Agreement agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this agreement.

[SIGNATURE PROVISIONS ON SUBSEQUENT PAGE]

IN WITNESS of this, the undersigned have executed this Agreement as of this _____ day
of _____, 2020.

THE CITY OF SANDUSKY

By: _____

Date _____

-The City of Sandusky-

ERIE METROPARKS

By: _____
Amy Bowman-Moore, Executive Director

Date _____

- Erie MetroParks-

STATE OF OHIO)
) :ss
COUNTY OF ERIE)

On this _____ day of _____, 2020 before me, personally appeared _____ authorized representative of The City of Sandusky, the grantee in the aforestated Easement Agreement, and acknowledged said instrument to be his/her free and voluntary act and deed and the act of The City of Sandusky.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

Notary Public

My Appointment Expires _____

STATE OF OHIO)
) :ss
COUNTY OF ERIE)

On this ____ day of _____, 2020 before me, personally appeared Amy Bowman-Moore authorized representative of Erie Metroparks, the grantor in the aforestated Easement Agreement, and acknowledged said instrument to be his/her free and voluntary act and deed and the act of Erie Metroparks.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

Notary Public

My Appointment Expires _____

Instrument prepared by:
James E. Peters, Esq.
Reminger Co., L.P.A.
237 W. Washington Row, 2nd Floor
Sandusky, Ohio 44870
419-609-1311



March 15, 2019

THE CANOPY WALK UTILITY EASEMENT DESCRIPTION
TO THE CITY OF SANDUSKY
2.2062 ACRE EASEMENT

Situated in the State of Ohio, County of Erie, and the City of Sandusky, being part of Outlot 1 in Darling's Survey East of Sycamore Line in Ward 2 of the City of Sandusky, and also being part of those lands conveyed to Erie Metroparks by deed in RN 200322577, Kelly Tract Parcels 1 and 2 of Erie County Records, said easement being more fully described as follows:

Beginning at a 5/8-inch iron pin found at a southwesterly corner of the lands conveyed to Cedar Point Park, LLC by deed in RN 201600753, Conservation Area, on a northerly line of Cleveland Road (U.S. 6) (R/W Varies) and at a southeasterly corner of said Erie Metroparks lands, said iron pin found being the TRUE PLACE OF BEGINNING for the easement area herein described;

COURSE NO. 1: Thence **North 58°-08'-14" West, 106.89 feet** along the southerly line of said Erie Metroparks lands and along the northerly line of said Cleveland Road to a point;

COURSE NO. 2: Thence **North 11°-10'-24" East, 942.13 feet** to a point;

COURSE NO. 3: Thence **South 78°-49'-02" East, 100.00 feet** to a point on the easterly line of said Erie Metroparks lands and on the westerly line of the lands conveyed to the City of Sandusky by deed in RN 200714534, West Parcel;

COURSE NO. 4: Thence **South 11°-10'-24" West, 979.88 feet** along the easterly line of said Erie Metroparks lands, along the westerly line of said City of Sandusky lands and along the westerly line of said Cedar Point Park, LLC lands to the True Place of Beginning and containing **2.2062 acres** of land, more or less, as determined in February 2019 by Adam D. Treat, P.S. 8058 for **Environmental Design Group** under project number 16-00259-050 and being subject to all legal highways, easements and restrictions of record.

This easement description and basis of bearing are based on a survey as provided by Contractors Design Engineering, LTD. to Environmental Design Group for this project. All pins set are 5/8-inch diameter by 30 inches long rebar with an identification cap stamped "Environ. Design Group, Akron, Ohio". This described easement is 2.2062 acres within Erie County Auditor Parcel Number 57-62420.000.

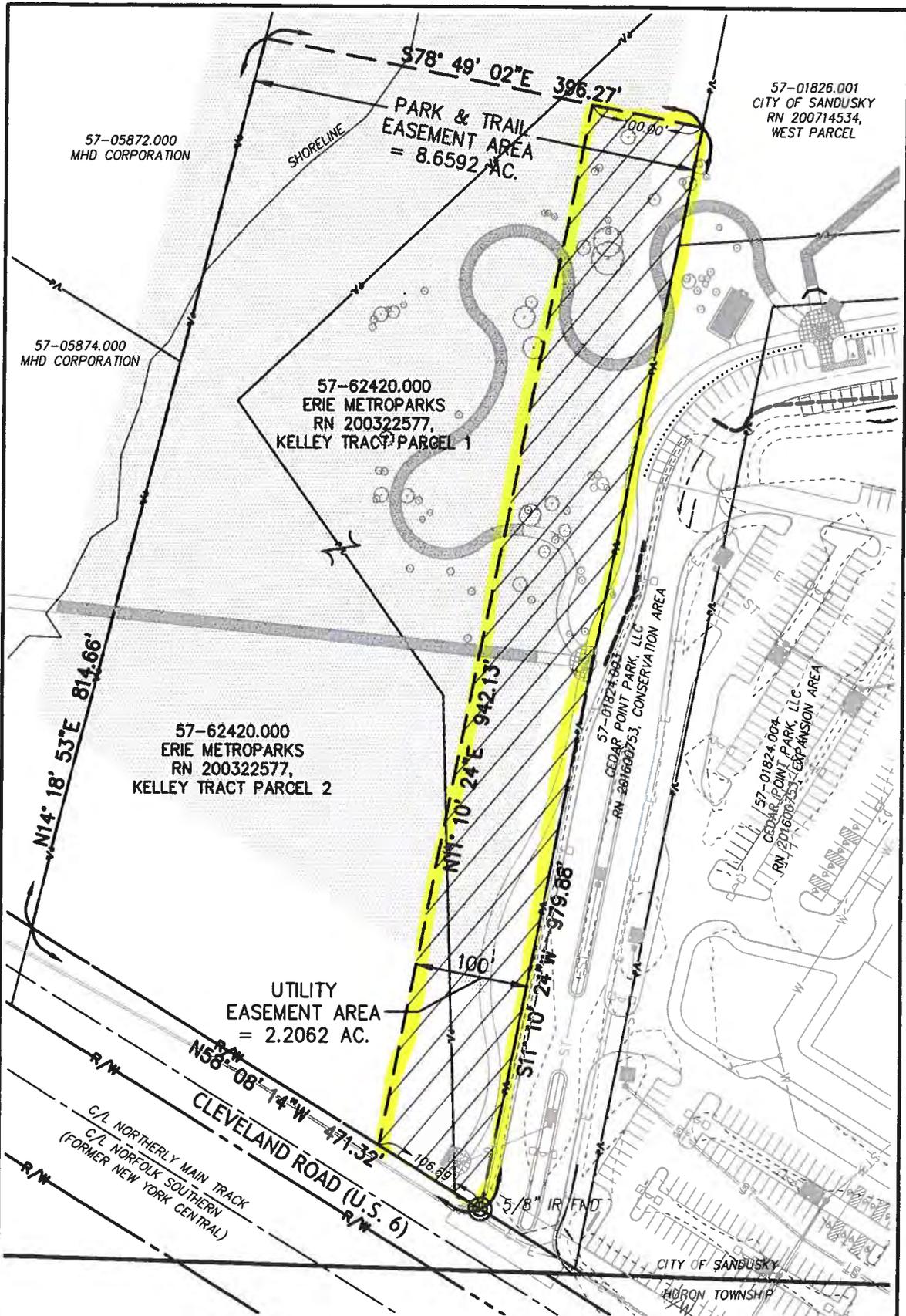
ADAM D. TREAT, P.S.

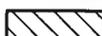
Ohio Registered Professional Surveyor No. 8058



The community impact people.





-  PARK & TRAIL EASEMENT AREA
-  UTILITY EASEMENT AREA



<p>CITY OF SANDUSKY – LANDING PARK ERIE METROPARKS EASEMENT SITUATED IN THE CITY OF SANDUSKY, COUNTY OF ERIE, STATE OF OHIO</p>	<p>PROJ. NO.: 16-0259-050 DRAWN: AT CHECK: RW DATE: 03-15-2019 REV:</p>		<p>Environmental Design Group ENVDESIGNGROUP.COM</p>
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