

## ORDINANCE NO. 21-052

**AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A NAMING RIGHTS AGREEMENT WITH THE MYLANDER FOUNDATION RELATING TO THE PAVILION AT THE JACKSON STREET PIER; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, in 2016 the City's Bicentennial Vision Plan was adopted which identified increased programming as a driver of economic activity and as a way to enrich the lives of Sandusky residents and the recently adopted Downtown Master Plan identified programming as a top 10 priority; and

**WHEREAS**, the renovated Jackson Street Pier provides the City with the opportunity to program in high quality and innovative ways; and

**WHEREAS**, the City desires to generate revenue for Sandusky programming at the Jackson Street Pier, as well as repair, maintain, and improve amenities offered to the public at the Jackson Street Pier, which includes a mobile (LED) digital screen, ice skating rink, pavilion, and performance stage; and

**WHEREAS**, the City has partnered with Civista Bank, the Mylander Foundation, Firelands Regional Health System, and the Erie County Community Foundation through the Randolph J. and Estelle M. Dorn Foundation for the purchase of these amenities at the Jackson Street Pier through generous donations in exchange for naming rights to certain amenities; and

**WHEREAS**, the Mylander Foundation desires to donate \$314,000.00 for the purpose of paying the costs of the Jackson Street Pier amenities, signage for said amenities, and programming at the Jackson Street Pier; and

**WHEREAS**, in exchange for the donation, the City desires to grant the Mylander Foundation naming rights for the pavilion at the Jackson Street Pier to be named "Mylander Pavilion"; and

**WHEREAS**, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to immediately execute the agreement to allow the donation to be issued and accepted in a timely manner and to meet the City's summer programming goals; 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,

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

Section 1. The City Manager be and hereby is authorized to execute a Naming Rights Agreement with the Mylander Foundation relating to the pavilion at the Jackson Street Pier, substantially in the same form as reflected in Exhibit "1" which is attached to this Ordinance and 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 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.



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RICHARD R. BRADY  
PRESIDENT OF THE CITY COMMISSION



ATTEST:

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MCKENZIE E. SPRIGGS  
CLERK OF THE CITY COMMISSION

## NAMING RIGHTS AGREEMENT

This Naming Rights Agreement (the “Agreement”) is made and entered into on this \_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and between **City of Sandusky** (the “City”), and **the Mylander Foundation** (“Donor”).

**WHEREAS**, the City owns what is known as the Jackson Street Pier (the “Property”);

**WHEREAS**, the City wants to generate revenue for Sandusky programming at the Jackson Street Pier, as well as repair, maintain, and improve amenities offered to the public at the Jackson Street Pier, which include, but are not limited to a:

- a). Mobile (LED) Digital Screen;
- b). Ice Skating Rink;
- c). Pavilion; and
- d). Performance Stage.

**WHEREAS**, the Donor desires to facilitate said programming and improvements at the Jackson Street Pier; and

**WHEREAS**, the Donor, in exchange of a monetary donation, request the “naming rights” to the Pavilion.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, the parties hereby agree as follows:

1. Donation of Funds. Donor hereby donates Three Hundred Fourteen Thousand, and 00/100 Dollars (\$314,000) for the purpose of paying for the costs of Jackson Street Pier amenities, signage for said amenities, and programming at the Jackson Street Pier.

2. Use of Funds. The funds and any and all interest income shall be used solely for the stated purposes set forth in this Agreement. If the funds and any and all interest income are not expended in accordance with the terms, conditions and time period set forth in this Agreement or the total amount of the funds and any and all interest income exceeds the eligible costs of the Project, the amounts improperly expended or not expended shall be returned to Donor within thirty (30) days after the expiration or termination of this Agreement. In the event that the Project does not become operational and/or is abandoned, all moneys paid by Donor to the City under this Agreement shall be remitted to Donor by the City within thirty (30) days after such event has occurred.

3. Specific Benefits to Donor. In exchange for the funds provided herein to the City, the City shall

- a). Cause the name of the Pavilion to be “Mylander Pavilion” for successive five (5) year periods, up to thirty (30) years if the lifespan of the amenity allows, commencing on the \_\_\_ day of \_\_\_\_\_, 2021;

b). Allow Donor to have exclusive use of the amenities, including the pavilion, ice rink, performance stage, and LED screen once a year for one event, provided said request is made by October 31<sup>st</sup> for the following calendar year. The date must be approved by the City Manager to avoid the City's programming;

c). Prevent competitors of Donors from sponsoring events at an amenity named by the Donor (for example, another bank or hospital will not be able to sponsor an event using an amenity named by Civista Bank or Firelands Regional Medical Center); and

d). Provide Donor at the expiration of the term of this Agreement, upon mutual agreement of the parties, the opportunity to provide an additional donation, to replace, repair, and/or improve the amenity named by the Donor and continue its naming rights.

4. Accounting of Funds. The funds and any and all interest income therefrom shall be deposited and maintained in a separate account upon the books and records of the City (the "Account"), separate from the "General Fund." The City shall keep all records of the Account in a manner consistent with generally accepted accounting principles established by the Director of Finance. All disbursements from the Account shall be for the amenities construction, purchase, and/or installation, and any programming using said amenities and shall be supported by contracts, invoices, vouchers, paid receipts and other data, as appropriate, evidencing the necessity of such expenditure.

5. Insurance. The City, or its agents, shall cause the amenities to be insured against loss or damage by fire or other casualties normally covered by standard fire and extended coverage policies for not less than one hundred percent (100%) of its actual replacement value through responsible insurance carriers licensed to do business in Ohio. Should the amenities be damaged or destroyed by fire, weather condition, or significant damage or loss, the City, in its sole discretion, shall determine if the structure will be repaired, rebuilt, or replaced.

6. Submission of Annual Progress Reports. The City shall submit to Donor an annual progress report, as specified by Donor, detailing the condition and use of the amenities from the previous year. Said annual report shall be received by Donor no later than the 30<sup>th</sup> day of January each year. In addition, the City shall supply Donor with additional reports containing such information as Donor may from time to time reasonably require. All costs incurred by the City in complying with the reporting requirements contained in this Agreement shall be borne by the City and shall not be an allowable expense of the funds granted herein.

7. Contingency of the Donation of Funds. Donor's obligations are contingent upon the appropriation and certification of available funds. By executing this Agreement, the City represents that sufficient funding, in addition to the funds granted hereunder, has been obtained to construct, purchase and/or install the amenities.

8. Records, Access and Maintenance. The City shall establish and maintain for at least three (3) years from the expiration or termination of this Agreement such records as are required by Donor, including but not limited to, financial reports, intake and participant

information, and all other relevant information. The parties further agree that records required by Donor with respect to any questioned costs, audit disallowances, litigation or dispute between Donor and the City shall be maintained for the time needed for the resolution of said question and that in the event of early termination of this Agreement, or if for any other reason Donor shall require a review of the records related to the amenities, the City shall, at its own cost and expense, segregate all such records related to the Project from its other records of operation and provide such records to Donor.

9. Event of Default. The City shall be deemed to be in default under this Agreement upon the occurrence of any one or more of the following events (each an “Event of Default”):

- a). The City assigns this Agreement, or any funds advanced hereunder or any interest herein to a third party or if the Property or any interest is conveyed, assigned or otherwise transferred without the prior written consent of the Donor;
- b). Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall prove to be false in any material respect; and
- c). The City defaults in the performance of any term, covenant or condition to be performed hereunder.

If an Event of Default remains uncured for a sixty (60) day period following written notice from Donor, then Donor may terminate this Agreement in which event the City shall return monies in its possession which have not yet been spent per the terms of this Agreement.

10. Termination of Rights. This Agreement terminates on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

11. Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance by the City of its obligations under this Agreement, either express or implied, shall be construed as a waiver by Donor of any of its rights hereunder. No act of forbearance or failure to insist on the prompt performance by Donor of its obligations under this Agreement, either express or implied, shall be construed as a waiver by The City of any of its rights hereunder.

12. Adherence to State and Federal Laws, Regulations. The City agrees to comply with all applicable federal, state, and local laws related to the City’s performance of the obligations of this Agreement.

13. Falsification of Information. The City affirmatively covenants that it has made no false statements to Donor in the process of obtaining this donation of funds. If the City has knowingly made a false statement to Donor to obtain this donation of funds, the City shall be required to return all funds immediately.

14. Miscellaneous.

a). Governing Law. This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

b). Forum and Venue. All actions regarding this Agreement shall be venued in a court of competent subject matter jurisdiction in Erie County, Ohio.

c). Entire Agreement. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

d). Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

e). Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, or by a delivery service that can provide proof of mailing and receipt by both parties, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

1). In case of Donor, to:

The Mylander Foundation  
Eric M. Muehlhauser  
165 E. Washington Row  
Sandusky, Ohio 44870

2). In case of the City, to:

The City Manager  
240 Columbus Ave.  
Sandusky, Ohio 44870

f). Amendments or Modifications. All material changes or modifications to this Agreement, including the amenity activities, shall be approved in writing by both parties prior to such change or modification becoming effective. Should the parties consent to modification of the Agreement, then an amendment shall be drawn, approved, and executed in the same manner as this Agreement.

g). Pronouns. The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

h). Headings. Article headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

i). Assignment. The City shall not assign or attempt to assign directly or indirectly, any of its rights under this Agreement or under any instrument referred to herein without the prior written consent of the Donor. The City shall not assign all or any portion of the Property made the subject of this Agreement without the prior written consent of the Donor.

j). Third Party Rights. This Agreement is not intended to create or vest any rights in any third party or to create any third-party beneficiaries.

k). Successor in Interest. Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of not only the City, but to its successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have caused this Naming Rights Agreement to be executed by their respective officers thereunto duly authorized on the day and year set forth above.

THE CITY:

DONOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_