

**RESOLUTION NO. 2020-33**

Introduced by: Christine Crawford

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER TO ENTER INTO AN AGREEMENT ON BEHALF OF THE CITY OF HURON, OHIO, WITH THE PADDLE SHACK, LLC., FOR COMMERCIAL RENTAL OPERATIONS AND STORAGE FACILITY USAGE AT NICKEL PLATE BEACH**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:**

**SECTION 1.** The Interim City Manager be, and he hereby is, authorized and directed to execute an agreement for and on behalf of the City of Huron, Ohio with The Paddle Shack, LLC, for a commercial rental operation and storage facility usage at Nickel Plate Beach, said agreement to be substantially in the form of Exhibit "A" attached hereto and made a part hereof.

**SECTION 2.** That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22

**SECTION 3.** This Resolution shall be in full force and effect from and immediately following its adoption.



Sam Artino, Mayor

ATTEST:

  
Clerk of Council

ADOPTED:

09 JUN 2020



## **AGREEMENT**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between **THE CITY OF HURON, OHIO**, an Ohio Municipal Corporation, hereinafter referred to as "City" and **THE PADDLE SHACK, LLC**, an Ohio Limited Liability Company, hereinafter referred to as Company

### **WITNESSETH:**

**WHEREAS**, the City operates a public beach located known as Nickel Plate Beach which is subject to a long term lease from Norfolk and Southern Railroad, and;

**WHEREAS**, the City desires to provide amenities and attractions for the benefit of visitors to its public beach, and;

**WHEREAS, COMPANY** has proposed an opportunity to the City which satisfies that goal, and;

**WHEREAS**, it is the purpose and intent of this document to set forth the agreements which have been reached by the parties concerning the above referenced to matters and other matters.

**NOW, THEREFORE**, in consideration of the mutual promises of the parties and other good and valuable consideration of the mutual promises of the parties and other good and valuable consideration, the parties agree as follows:

1. **PURPOSE.** The Purpose of this Agreement is to establish a License Agreement between the City and the Company for the use of land consistent with Company's rental service. Additionally, this Agreement shall establish a Lease Agreement for miscellaneous storage which is supplemental to, and in support of, Company's rental service.

1.1. **License Agreement:** Company will own and operate a rental service consisting of the rental of kayaks, paddle boards and other related merchandise consistent with non-motorized water recreation activities. Company is expressly prohibited from any commercial activities which may be deemed in competition with City sponsored endeavors on the property. Additionally, Company is expressly forbidden to engage in marketing or advertisement of any form identifying Company as being a partner, subsidiary or agent of the City. It is anticipated by the Parties that the rental of equipment for water recreation activities will commence on Memorial Day Weekend and conclude on Labor Day of each calendar year subject to this Agreement. This Agreement shall convey from the City to Company a License to permit such operations.

1.2. **Lease Agreement:** The City will provide storage space on site for storage of kayaks, paddles boards and other related merchandise consistent with non-motorized water recreation activities to Company. Storage for this purpose is secondary to the needs of the City and the City will make reasonable accommodations to assist Company in utilizing the storage. Said storage is anticipated by the City to be needed by Company during all months of this Agreement. This Agreement shall convey from the City to Company a Lease for the storage of said property. Company understands and affirms that the storage facility

is not monitored by the City and Company assumes the risk of loss when utilizing the storage facility. At any time during this Agreement, the City reserves the right to rescind any access privilege afforded to Company by way of keycode, or key access to said storage facility.

2. **TERM.** The term of this Agreement shall commence upon the execution of all parties and shall terminate upon completion of the summer season which shall be on or about Labor Day weekend of 2020. This Agreement is subject to annual renewal periods of twelve months unless written notice is provided by a party to the Agreement of an intent to terminate the Agreement pursuant to Section 4 or renegotiate the Agreement's terms within sixty [60] days prior to the expiration of the then existing term.

3. **COSTS.** The Costs of this Agreement shall be determined by the Purpose. The following itemization of costs shall be applicable unless otherwise agreed upon by the Parties in accordance with this Agreement.

3.1. **License for commercial operations.** Upon execution of the Agreement, and for the term of the Agreement, Company agrees to pay \$450.00, payable in three monthly installments of \$150.00 each, for June, July and August. Payments are due no later than the 7<sup>th</sup> day of the month.

3.2. **Lease for storage facility.** Should Company desire to utilize the lease option identified in Section 1.2 herein, the cost of such option shall be \$300.00 payable in a one-time payment upon Company's notice of its intent to execute the lease option. Company shall notify the City of its intent to exercise the lease option no later than October 1, 2020. Notwithstanding the termination provisions set forth in Section 4 below, the cost of the lease is non-refundable and shall not be prorated in the event of Company's early termination of the lease option.

4. **TERMINATION.** The City shall have the option to terminate this Agreement in the event the property being leased to Company becomes unavailable for any reason. The decision as to whether or not the property is unavailable shall be decided by the Huron City Administration, notice of which will be provided to Company in writing no less than thirty (30) days prior to termination.

4.1. Should City terminate this Agreement for reason other than that which is identified in Section 9 herein, all costs associated with this Agreement shall be prorated for those monies due up to the termination date.

4.2. Should Company terminate the License for commercial operations prior to the expiration of the term, all costs associated with this Agreement shall be prorated for those monies due up to the termination date.

5. **AMENDMENT.** This Agreement may only be amended by written instrument executed by all parties.

6. **ASSIGNABILITY AND TRANSFER.** The rights and authority conveyed through this Agreement shall not be assignable or transferrable by either party. This Agreement shall not be

recognized as valid for any sublease, subcontract or conveyance to another party regardless of whether said sublease, subcontract or conveyance is in exchange for compensation.

7. LIMITATION OF LIABILITY AND INDEMNIFICATION. Company agrees to indemnify and hold the City harmless from any and all claims, demands, or suits arising or claimed to arise from its use or the use by participants, customers, creditors related to Company use as authorized by this Agreement and shall secure liability insurance, at least in the amount of One Million Dollars (\$1,000,000) bodily injury and death; One Hundred Thousand Dollars (\$100,000) property damage, which policies shall name City as an additional named insured. Company shall furnish City with evidence that the required insurance has been obtained, with proof of payment of the premium for the duration of this Agreement, prior to the opening event and a copy of such shall herein be attached and incorporated as Exhibit A. Such policy shall include a 30 day cancellation clause. This indemnification shall include all costs of defense, including reasonable attorneys' and expert witness fees, and shall also extend to use of the any City equipment by the Licensee.

8. CHOICE OF LAW. This Agreement shall be governed and interpreted in accordance with the laws of the State of Ohio and the parties hereto agree that any dispute or other matter arising out of the interpretation or operation of this Agreement shall be determined in a Court of competent jurisdiction located within the State of Ohio and County of Erie.

9. EVENTS OF DEFAULT. The following events are referred to, collectively, as "Event(s) of Default";

9.1. Failure to provide due and timely rent payments. In the event that Company fails to provide timely rent payments, the City shall provide written notice no later than ten (10) days after the first day of the month in which the rent is due. Such written notice shall permit the Company five (5) business days to rectify the delinquency of rent. Failure to do so shall result in an immediate default of the Lease Agreement. The City will not be required to provide any further written notice beyond the first notice; or,

9.2. Company vacates or abandons the Land; or,

9.3. Company purports to assign this Lease, or sublet all or a portion of the Land, in violation of the terms set forth herein; or,

9.4. Company breaches any of the other agreements, terms, covenants, or conditions not in conflict with the terms included herein, and such breach continues for a period of ten (10) days after written notice from the City to Company or, if such breach cannot be cured reasonably with such ten (10) day period, if Company fails to diligently commence to cure such breach within ten (10) days after written notice from the City and to complete such cure within a reasonable time thereafter.

10. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAW, ORDERS, GUIDANCE, RULES AND REGULATIONS. Company shall that it and all employees, agents, contractors, and any other

persons subject to their direction and control shall **strictly** comply with all federal, state, and local laws, orders, instructions, requirements, guidance, and any other safeguards, including those related to any and all communicable diseases, including COVID-19. Company agrees to be solely responsible for ensuring that the activities covered by this Agreement will be operated, run, managed, and conducted in a manner consistent with all applicable all federal, state, and local laws, orders, instructions, requirements, guidance, and any other safeguards, including those related to COVID-19, and will coordinate with the Erie County Department of Health to ensure the same. Company understands the Event will expose the it and its employees, agents, contractors and other persons subject to its control to a risk of injury and illness (ex: communicable diseases such as MRSA, influenza, and COVID-19), including the potential for permanent paralysis and death, and while particular rules, equipment, and personal discipline may reduce these risks, the risks of serious injury and illness do exist, and KNOWINGLY AND FREELY ASSUME ALL SUCH RISKS, both known and unknown, EVEN IF ARISING FROM THE NEGLIGENCE OF THE CITY, and assumes full responsibility for any such risk which may occur at the Event. Company further AGREES TO INDEMNIFY, RELEASE, AND HOLD HARMLESS the City, and its officials, agents, and/or employees (“RELEASEES”), WITH RESPECT TO ANY AND ALL CLAIMS, DEMANDS, LAWSUITS, ACTIONS, ETC. OF ANY TYPE FOR ANY ALLEGED INJURY, ILLNESS, DISABILITY, DEATH, or loss or damage to person or property, WHETHER ARISING FROM THE NEGLIGENCE OF THE CITY OR OTHERWISE, to the fullest extent permitted by law.

11. **REMEDIES OF DEFAULT.** If any one or more Events of Default set forth in this Agreement occurs then the City has the right, at its election:

11.1. To terminate this Lease Agreement, in which case Company’s right to possession of the Land will cease and this Agreement will be terminated as if the expiration of the Term fixed in such notice were the end of the Term. If this Agreement is terminated pursuant to this Section, the City will be entitled to recover from Company: (i) the unpaid rent that has been earned at the time of termination; (ii) the unpaid rent for the balance of the Term of this Agreement.

11.2. To reenter and take possession of the Land, expel Company and remove the effects of Company, using such force for such purposes as may be necessary, without being liable for prosecution, and without prejudice to any remedies for arrears of all amounts payable under this Agreement.

11.3. Remedies Cumulative. The City’s rights hereunder shall be in addition to, and not in lieu of, every other right or remedy provided for herein or now or hereafter existing at law or in equity by statute or otherwise, including, but not limited to injunctive relief, specific performance and damages. The exercise or beginning of exercise by the City of any one or more rights or remedies, provided herein or now or hereafter existing at law or in equity by statute or otherwise, shall not preclude the simultaneous or later exercise by the City of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. All such rights and remedies shall be considered cumulative and nonexclusive.

12. GENERAL TERMS AND CONDITIONS. This Agreement constitutes the entire Agreement between the parties and supersedes all prior or written agreements or understandings. Company shall comply with all Federal, State and Local laws and ordinances. Company shall submit a completed Regional Income Tax Registration Form at the time of execution of this Agreement.

**IN WITNESS WHEREOF**, the parties have hereunto subscribed their names to duplicates hereof on the day and year last aforesaid.

**CITY OF HURON, OHIO**

**THE PADDLE SHACK, LLC**

\_\_\_\_\_  
Michael Spafford, Interim City Manager

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

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

Its: \_\_\_\_\_

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Law Director