

AN ORDINANCE AUTHORIZING AND DIRECTING THE DIRECTOR OF SAFETY AND SERVICE TO ENTER INTO A DOCKAGE AND WHARF AGREEMENT WITH THE SASSY SAL'S CHARTER SERVICE, INC., AND DECLARING AN EMERGENCY.

WHEREAS, the Sassy Sal's Charter Service, Inc., through its officers, has approached the City of Port Clinton to enter into a new dockage and wharfage agreement with the City, and

WHEREAS, the City of Port Clinton has available at the north end of Jefferson Street an area where dockage and wharfage for commercial purposes may be conducted, and

WHEREAS, the City, pursuant to the authority of Section 715.31 of the Ohio Revised Code, has the authority to regulate the public wharfs and piers and to fix the rates of such wharfage and dockage, and

WHEREAS, this Council has found and determined that it is in the best interest of the City to enter into an agreement with Sassy Sal's Charter Service, Inc., for dockage and wharfage at the Jefferson Street Dock, in furtherance of the public purposes of the City, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the City,

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Port Clinton, County of Ottawa and State of Ohio:

Section 1. That the Director of Safety and Service is hereby authorized and directed to enter into an agreement with Sassy Sal's Charter Service, Inc. for wharfage and dockage of two charter fishing boats from the Jefferson Street Pier in the City of Port Clinton. The agreement is to be for a maximum period of two operating season(s), defined as being April 15 to October 31, of each year for 2018 and 2019. The annual wharfage fee for 2018 shall be \$5,500.00, with an agreement for a second year (2019), at an annual wharfage fee of \$5,500.00.

Section 2. That the Director of Safety and Service, in consultation with the Director of Law, shall prepare a Dockage and Wharfage Agreement providing space for Sassy Sal's Charter Service, Inc. to dock two charter fishing boats, and such other terms and provisions as the Director of Safety and Service shall deem appropriate.

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

Section 4. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City, and for the further reason that in order to have the dockage facilities and appurtenances in place for the coming season, it is necessary to authorize and enter into the agreement as soon as possible, thereby maintaining employment and commerce in the City; **wherefore**, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: _____, 2018

President of Council

Attest: _____
Clerk of Council

Approved _____, 2018

Mayor

AGREEMENT

THIS AGREEMENT is made and entered as of _____, 2018, between the City of Port Clinton, Ohio (hereinafter called the "City") and Sassy Sal's Charter Service, Inc., of Port Clinton, Ohio (hereinafter called the "Company"), under the following circumstances:

- A. The City, by legislative action of its City Council, has heretofore determined that the policy of the City is to take such public actions and carry out such public activities as will carry out the City's public purpose of creation or preservation of jobs and employment opportunities and improve the economic welfare of the people, and to promote the health, safety, morals and general welfare of its inhabitants by encouraging and assisting in the development of employment and commercial activities which will expand the economic base of the City; and
- B. The City owns a municipal dock and wharf at Jefferson Street which has been used for many years to provide wharfage for water transportation services and commercial operations from the City; and
- C. The City Council has determined that the municipal dock at Jefferson Street should continue to be used to provide public docks, public landings, commercial operations, and for water transportation services to the general public, and that such uses will promote the welfare of the people of the City, will help stabilize the local economy, will provide employment and assist in the development of industrial and/or commercial activities to the benefit of the people of the City and will promote additional opportunities for their gainful employment, and will assist in the expansion of tourism, commerce and employment opportunities in the City, all to the benefit and welfare of the people of the City; and
- D. The City will additionally receive a benefit from the use of the municipal dock as a location for public docks, public landings, and for water transportation facilities, as the City owns and operates a public parking lot next to the location of the municipal dock area and derives revenue from the charge imposed for parking in such parking lot, which revenue has a direct benefit to the residents of the City and is used for their benefit and welfare.

NOW, THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, the parties hereto agree as follows:

In consideration of the fees and covenants hereinafter contained to be paid and performed, the City grants to Company a two year license to enter upon the area depicted in Exhibit A attached hereto (the "Licensed Premises") for dockage and wharfage purposes, for the operation of two charter fishing boats, one named Sassy Sal, and the other named Investigator, provided however, the City retains the right to modify, change or relocate the licensed area to further the needs of the City to utilize its riverfront area. The Company agrees upon ten (10) days notice to relocate, modify or change its dockage location and operations in compliance with any request to modify, change or relocate the licensed area as may be issued by the City.

The license will commence for the 2018 Operating Season (as defined below) on April 15, 2018 and shall terminate automatically on October 31, 2019, unless the license is extended for an additional Operating Season ("Operation Season" is defined as being April 15 to October 31 of each year) by mutual agreement of the parties. The agreement to extend the license for the additional Operating Season shall be made on or before October 31, so that each party may plan for its following operating season. The full term of this license agreement shall terminate on October 31, 2019, unless sooner terminated. Company shall only occupy the licensed area during the operating season.

Company shall pay to the City for the 2018 dockage and wharfage rights the sum of \$5,500.00, payable \$1,834.00 on May 1, 2018, \$1,833.00 on June 1, 2018 and the balance of \$1,833.00 on July 1, 2018, and time is of the essence in the payment of such charges and fees. In addition to the 2018 wharfage payment, Company shall provide, on the east side of the finger dock it has installed on the City bulkhead, a dockage space for the City of Port Clinton Police Harbor Patrol Boat for the 2018 & 2019 seasons. The City will waive the water billing for the dockage space. The dockage and wharfage charges the Company shall pay to the City for the 2019 Operating Season shall be the sum of \$5,500.00 payable \$1,834.00 on May 1, 2019, \$1,833.00 on June 1, 2019, and the balance of \$1,833.00 on July 1, 2019, and time is of the

essence in the payment of such fees. The 2019 dockage agreement includes the provision for the dockage of the Port Clinton Patrol Harbor Patrol Boat as provided above. If any payment of charges due under this paragraph is unpaid for five days after its due date it shall be considered delinquent and the City may immediately terminate this Agreement, remove the Company, and collect the amount due and owing to the date of termination.

The Company shall pay or cause to be paid as additional charges all taxes, assessments, water and sewer rents, and other governmental charges, all public utility charges, all premiums on insurance policies required by the terms hereof, and all other expenses and charges which during the continuance of this Agreement shall arise, be levied, assessed, charged or imposed upon or with respect to, or be incurred in connection with, the ownership, possession, use, occupation, operation, maintenance, repair and alteration of the licensed premises, it being the purpose and intent of the City and Company that the annual fee shall be absolutely net to the City so that the Agreement shall yield, net to the City, the annual fee specified above in each year during the continuance of this Agreement.

The Company hereby covenants and agrees with the City as to the Licensed Premises as follows:

1. The Company shall not place or erect any structures on the Licensed Premises without first having obtained the permission of the City, and obtaining the approval of the plans, location and specifications thereof by the Director of Safety and Service. Any structures located at the riverfront must be temporary in nature, and any such structures placed or hereinafter erected by the Company shall be kept, maintained and repaired by it in a clean and respectable condition. The dock area is defined as a sixty-five (65) foot long area along the steel bulkhead of Jefferson Street, as shown on Exhibit A. The Company shall, at its sole cost and expense, maintain and repair the Licensed Premises, including the dock area and plaza at the north end of Jefferson Street where it conducts its business and docks and loads its vessels, along with the appurtenances to such premises, in good repair and in at least as good condition as that in which such premises was delivered, allowing for ordinary wear and tear. The City shall bear no cost or expense of any maintenance or repair to said premises or wharf area during the term of this Agreement.
2. The Company shall not assign this Agreement. Any assignment shall be void and of no force and effect.

3. The Company shall pay all charges and bills for water rent, sewer rent and electric power which may be assessed or charged against the use of Licensed Premises and dock area during the term of this Agreement.
4. The Company shall use and occupy the Licensed Premises and dock area in a careful, safe and proper manner, and shall not make excessive noise or disturbance in its occupancy of the area.
5. The Company shall not fuel its vessels at the City dock area except from marine motor fuel-dispensing facilities which comply with the Fire Code of the State of Ohio, and which fueling facilities have been inspected and approved by the City Fire Chief. The Fire Chief may provide written criteria for fueling at the City Dock. Further, the Company shall not drive or park any vehicles in the plaza area at the North end of Jefferson Street.
6. The Company shall not commit or suffer any waste on the Licensed Premises of dock area.
7. The Company shall not use or occupy said dock or Licensed Premises for any unlawful purpose and it shall conform to and obey all present and future laws, ordinances, rules, regulations, requirements and orders of the United States of America, the State of Ohio, the City of Port Clinton and all governmental authorities and agents of all municipal departments, boards or officers of said City respecting the Licensed Premises and the use and occupancy thereof.
8. The Company shall make no alterations or additions in or to the Licensed Premises or dock area without the written consent of the Director of Public Safety and Service of the City of Port Clinton, which consent will not unreasonably be withheld, but such consent shall be exercised at the sole discretion of the Director of Public Safety and Service.
9. The Company shall permit the City or agents of the City to enter upon the Licensed Premises at all reasonable times to examine the condition of and to inspect the Licensed Premises and dock area for all purposes.
10. The Company shall surrender and deliver up the premises at the end of the term, in as good an order and condition as the same now are or may be put by the Company, reasonable use and natural wear and tear thereof, excepted.
11. Any failure of the City to enforce rights or seek remedies upon any default by the Company with respect to the obligations of the Company, or any of them, shall not prejudice or affect the rights or remedies of the City in the event of any subsequent defaults by the Company.
12. The Company shall indemnify and hold the City harmless from and against any and all claims, demands, liabilities, damages and losses, and any incidental expenses, resulting from injury to or death of persons or damage to property arising out of the use of the Licensed Premises by the Company or its agents, employees or invitees, or otherwise arising in connection with the License granted to the Company.

13. The Company, at its own cost and expense, shall keep all improvements on, in, or appurtenant to the Licensed Premises at the commencement of the term of this Agreement, and thereafter erected thereon or therein, including alterations, replacements and improvements, insured for the benefit of the City and itself, against loss or damage by fire, casualty and all available extended coverage or other hazards in a sum not less than the full current insurable replacement costs thereof. The Company covenants to pay all insurance premiums when and as the same become due and to name the City as an additional insured as its interest appears. The Company also covenants to provide, on or before the commencement of the term of this Agreement, and to keep in force during the term, a comprehensive public liability insurance policy protecting the City and Company against any liability for injury or death to persons and/or damage to property occurring in, on or about the Licensed Premises and dock area, or any appurtenances thereto. The Company agrees to carry such insurance in a solvent company or companies of recognized standing, licensed to do business in the State of Ohio, in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit bodily injury and property damage. The policy must be written for the use and benefit of the City and Company, with the City and Company being named insureds, and must be acceptable to the City. The Company shall provide the City with a copy of, or a certificate for all insurance policies required to be provided and maintained by the Company. The insurance coverage set forth above is intended to and shall include coverage for all elected officials, directors, officers and employees of the City.
14. The Company shall provide public restrooms on or near the Licensed Premises for the use of its customers. Restrooms shall be approved as to location by the Director of Public Safety and Service.
15. The Company agrees to comply with all applicable state, federal and local pollution control and prevention laws, ordinances and regulations while occupying the licensed premises. The Company shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises by its agents, employees, contractors or invitees. The Company shall not discharge, leak, or emit, or permit to be discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or any body of water, if that material (as is reasonably determined by the City, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Premises or elsewhere; or (b) the condition, use or enjoyment of the Jefferson Street plaza or any other real or personal property.

The City hereby covenants with the Company as follows:

- a. The Company shall have the right to use and shall maintain the spiles located near the face of said dock.
- b. In the event of the cancellation or the expiration of this Agreement, the Company, within thirty (30) days thereafter, shall remove any structures and improvements it placed upon the Licensed Premises and restore said premises to its original condition. Upon failure to do so, the City shall have the structures and improvements removed at the cost of the Company and shall have a cause of action against the Company to recover such costs.

If the City is made a party defendant to any third party litigation concerning this Agreement, or the Licensed Premises, or the occupancy of the premises by the Company, then the Company shall indemnify the City against all liability by reason of such litigation, including reasonable attorney's fees and expenses incurred by the City in any such litigation whether or not any such litigation is prosecuted to judgment. The indemnification set forth above is intended to and shall include indemnification of all elected officials, directors, officers and employees of the City. Such indemnification is intended to and shall be enforceable by the City, to the full extent permitted by law. If the City commences an action against the Company to enforce any of the terms of this Agreement, because of the breach by the Company of any of the terms of this Agreement, for the recovery of any charges due under this Agreement, or for the unlawful detainer of the premises, the Company shall pay to the City reasonable attorney's fees and expenses and the right to such attorney's fees and expenses shall be deemed to have been served on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. If the Company breaches any terms of this Agreement, the City may employ an attorney or attorneys to protect its rights under this Agreement and in the event of such employment, the Company shall pay the City reasonable attorney's fees and expenses incurred by it whether or not an action is actually commenced against the Company by reason of such breach.

This Agreement is subject to the condition, that if the charges or any part of them shall at any time be in arrears and unpaid for five (5) days after the due date of the payment, or if the Company shall at any time fail or neglect to perform and observe any of the covenants, conditions or agreements herein contained on its part to be performed and observed, or shall be adjudged bankrupt or insolvent, then and in such case, the City may give the Company written notice of such default and if the Company does not cure any charges or other default within ten (10) days after giving of such notice, or if such other default is of such nature that it cannot be completely cured within such period, if it does not commence such curing within ten

(10) days and thereafter proceed with reasonable diligence and in good faith to cure the default, then the City may terminate this Agreement on not less than twenty (20) days notice to the Company. On the date specified in the notice, the term of this Agreement shall terminate and the Company shall than quit and surrender the premises to the City. If this Agreement is terminated by the City, the City may, at any time thereafter, resume possession of the premises by any lawful means and remove the Company or other occupants and their effects.

IN WITNESS WHEREOF, the City of Port Clinton, Ohio and Sassy Sal’s Charter Service, Inc. have caused this Agreement to be duly executed in their respective names, all as of the date hereinbefore written.

CITY OF PORT CLINTON, OHIO

By: Olen Martin
Its: Director of Safety and Service

SASSY SAL’S CHARTER SERVICE, INC.

By: Dick Czerwinski
Its: President

STATE OF OHIO)
) ss.
OTTAWA COUNTY)

On this _____ day of _____, 2018, before me, a Notary Public in and for said County and State, personally appeared Olen Martin, the Director of Safety and Service of the City of Port Clinton, Ohio, and acknowledged his execution of the foregoing instrument as said officer of said City on behalf of said City and by its authority and that the same is his voluntary act and deed as said officer on behalf of said City and the voluntary act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Notary Public

STATE OF OHIO)
) ss.
OTTAWA COUNTY)

On this _____ day of _____, 2018, before me, a Notary Public in and for said County and State, personally appeared Dick Czerwinski, President of Sassy Sal's Charter Service, Inc., a Ohio corporation, and acknowledged his execution of the foregoing instrument on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Notary Public

Prepared by: George C. Wilber
Law Director-City of Port Clinton

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