

ORDINANCE NO 2013- 3641

AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN A MEMORANDUM OF UNDERSTANDING WITH SANDUSKY TOWNSHIP, BALLVILLE TOWNSHIP, AND THE SANDUSKY COUNTY COMMUNITY IMPROVEMENT CORPORATION, WHICH INVOLVES THE EXPANSION OF A WATER LINE OUTSIDE THE CITY OF FREMONT'S MUNICIPAL BOUNDARIES PURSUANT TO R.C. 743.12, AND ALLOWS ALL PARTIES WHO HAVE SIGNED THE MEMORANDUM OF UNDERSTANDING TO RECEIVE CITY WATER WITHOUT ANNEXATION INTO THE CITY AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FREMONT, STATE OF OHIO,

SECTION 1. That the Fremont City Council hereby authorizes the Mayor to sign a Memorandum of Understanding (attached as Exhibit A) with Sandusky Township, Ballville Township, and the Sandusky County Community Improvement Corporation which would allow expansion of a water line on Hayes Avenue to extend beyond the City of Fremont's municipal border.

SECTION 2. Fremont City Council, pursuant to R.C. 743.12, has the power to authorize expansion of public utility service beyond the municipal corporation limits.

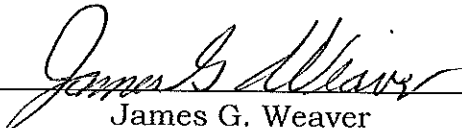
SECTION 3. Pursuant to the Memorandum of Understanding, Fremont City Council understands that the parties involved will not be annexing into the City of Fremont. Further, Fremont City Council accepts and understands that all parties that have signed the MOU will be eligible to receive Fremont city water without annexation.

The residential property owners that are located outside the boundaries of the Municipality that are affected by the expansion of the waterline project may request a water tap and will be subject to the annexation covenant for the city of Fremont.

SECTION 4. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Revised Code of Ohio.

SECTION 5. The immediate operation of the provisions of this ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare of the citizens of the City of Fremont. Said emergency being the need to complete the project in an expeditious manner.

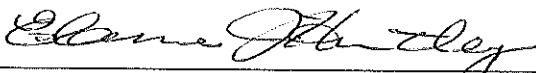
This ordinance, provided it receives a two-thirds yea or nay vote of all the members elected to the Fremont City Council, is hereby declared to be an emergency measure and this ordinance shall be in full force and effect from and after its passage by the Council of the City of Fremont

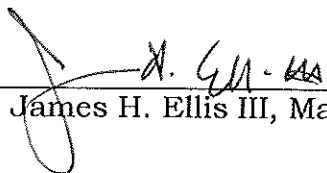

James G. Weaver
President of Council

PASSED: 6-30-13

Effective date: 6-30-13

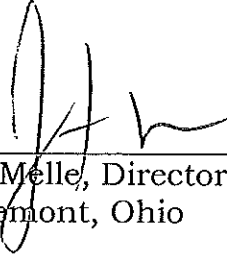
YEAS: 7 NAYS: 0


Elaine J. Huntley, City Council Clerk


James H. Ellis III, Mayor

ORDI792FINAL

Approved as to form:

A handwritten signature in black ink, appearing to read 'J. Melle', is written over a horizontal line.

James F. Melle, Director of Law
City of Fremont, Ohio

MEMORANDUM OF UNDERSTANDING

The Memorandum of Understanding ("MOU") signed and acknowledged this ____ day of June, 2013, by and between the City of Fremont, Ohio ("City"), the Township of Ballville, Sandusky County, Ohio ("Ballville Township"), the Township of Sandusky, Sandusky County, Ohio ("Sandusky Township"), the Sandusky County Community Improvement Corporation ("SCCIC"), who represents various private business entities ("Private Partners") as further identified and discussed in Section 4, below, is entered into for the purpose of clarifying and stating the conditions of the proposed extension of the City's municipal water services along Hayes Avenue, which lies along the adjoining borders of Ballville Township and Sandusky Township, from the current service point at Michaels Road west along Hayes Avenue to 2780 Hayes Avenue (the "Project").

With the specific exception of the commitments and obligations contained in paragraph 10, below, this MOU is a non-binding summarization of the proposed terms of the contemplated extension of municipal water services along Hayes Avenue. The terms and conditions of this extension of municipal water services are as follows:

- 1.) **Cost of the Project:** The City has estimated that the cost to extend municipal water services is Three Hundred Thousand Dollars (\$300,000). This cost would include physical connection and tap-in costs associated with all the Private Partners who make a financial contribution in connection with this MOU, including businesses or entities located along the municipal water service extension contemplated herein which are owned by or controlled by the Private Partners. This is a cost estimate

only, and the parties acknowledge that this project would have to go out for bid, so the costs may change. The Private Partners and the townships will be provided with the detailed final costs of the Project once the contract has been bid (the “Final Cost”), and the Private Partners and the townships will determine whether to provide the additional funding needed (if the Final Cost exceeds the estimate) prior to the start of work on the project. If the Final Cost comes in under the estimate, the excess funds, if any, will be refunded to the Private Partners and the townships on a pro rata basis.

2.) **Third Party Tap-In and Connection to System:** Additional connection and tap-in costs would be assessed by the City to other businesses or residents who wish to utilize the municipal water supply on a case-by-case basis, in accordance with the applicable City ordinances and procedures.

3.) **Financial Contribution by Ballville and Sandusky Townships:** Ballville Township and Sandusky Township will each contribute One Hundred Thousand Dollars (\$100,000), for a total of Two Hundred Thousand Dollars (\$200,000) to the Project. The townships will pay Fifty Thousand Dollars (\$50,000), each, at the start of the project, and Fifty Thousand Dollars (\$50,000), each, at the mid-point of the construction of the Project. In accordance with Ohio Revised Code § 505.70.5, the boards of township trustees will pay their share of this project directly to the City.

4.) **Private Partners:** The Private Partners to this MOU are Zimmerman Paint Contractors, Co., Unique Fabrications, Inc., Karl J. Honsperger (personally), Standard Technologies, LLC, ProMedica Health System, Inc., and Norwalk Area Health Systems, Inc. Any additional Private Partners who contribute to the Project after the

date of signing of this MOU and before the start of the Project must contribute a minimum of Five Thousand Dollars (\$5,000) in order to receive a physical connection and tap-in costs at no additional fee.

5.) Financial Contribution by Private Partners: The Private Partners have committed to contribute Ninety Thousand Dollars (\$90,000) to the municipal water extension project. The individual financial commitments are broken down as follows:

Zimmerman Paint Contractors, Co. has committed to contribute Twenty Five Thousand Dollars (\$25,000), and further commits to make an additional contribution of up to Ten Thousand Dollars (\$10,000), if necessary, in order to meet the Three Hundred Thousand Dollar (\$300,000) estimate for the cost of the Project. Standard Technologies, LLC has committed to contribute Twenty Five Thousand Dollars (\$25,000). Karl J. Honsperger (personally) has committed to contribute Fifteen Thousand Dollars (\$15,000). Unique Fabrications, Inc. has committed to contribute Ten Thousand Dollars (\$10,000). ProMedica Health System, Inc. has committed to contribute Ten Thousand Dollars (\$10,000). Norwalk Area Health Systems, Inc. has committed to contribute Five Thousand Dollars (\$5,000). The Private Partners will make their contributions to the SCCIC, which will coordinate the collection and disbursement of the Private Partners' financial contributions to the City. The individual contribution amounts are subject to change if additional Private Partners come on board construction of the Project has begun.

6.) Connection to Municipal Water Service for Private Partners: By providing their financial and business support, the Private Partners who make a financial contribution

in connection with this MOU will be provided a connection and tap-in to the extended City municipal water service at no additional charge.

- 7.) **Return of Financial Contributions:** In the event that the municipal water service extension is not installed along Hayes Avenue as contemplated by this MOU, all financial contributions shall be returned to the parties making such contributions.
- 8.) **Estimated Start and End Dates of Project:** Work on the Project is estimated to begin as soon as possible in the early Summer, 2013, and is estimated to be completed by the end of 2013. However, no bid for construction of the Project will be accepted until both townships have made their initial financial contributions to the City and all Private Partners have made their financial contributions to the SCCIC.
- 9.) **Disbursement of Financial Contributions by Private Partners:** The SCCIC will disburse the Private Partners' funds to the City upon completion of the Project. This shall not occur until the SCCIC and the townships have confirmed that the municipal water service line has been fully tested and has passed all inspections.
- 10.) **No Financial Contribution by City:** Except as provided in this Section 10, as the entirety of the extension of the municipal water supply line along Hayes Avenue lies outside of the city limits of Fremont, Ohio, the City will not commit or contribute any of its own funds to the Project. The City shall provide design services for the Project in accordance with this MOU. In the event that design costs are incurred in relation to the Project, but construction never begins on the Project, then the City, the townships, and the Private Partners hereby commit and obligate themselves to pay for one third, each, of these design costs, up to a capped amount of Thirty Thousand Dollars (\$30,000), total. Accordingly, the maximum amount which could be assessed

to the parties would be Ten Thousand Dollars (\$10,000) to the City, Ten Thousand Dollars (\$10,000) to the townships (collectively, not per township), and Ten Thousand Dollars (\$10,000) to the Private Partners (collectively, not per party).

- 11.) **Public Bid:** The City will put the Project out for public bid, and will be responsible for compliance with all relevant laws, rules, regulations and ordinances pertaining to the bid process. All bids shall be available for review by the townships and Private Partners.
- 12.) **Design, Oversight and Management of Project:** The City will be responsible for the design, oversight and management of the Project and the contractor(s) chosen to perform the necessary work on the Project.
- 13.) **Ownership and Maintenance of Water Line:** Following the completion of the Project, the municipal water service line will be owned by the City, and the City shall be responsible for all maintenance thereof (and shall have adequate rights of access to maintain said water service line).
- 14.) **Rates for Municipal Water Service:** The City will set and control the utility rates for the municipal water service provided to all parties who connect to this extension – including the Private Partners referenced herein – in accordance with the applicable City ordinances and procedures.
- 15.) **Annexation to City:** It is not the parties' desire or intention that the lands located within Ballville Township and Sandusky Township which will gain access to the City's municipal water services by operation of this extension project will be annexed into the City. The parties understand that by application of relevant City ordinances, the question of a possible annexation must be presented to the Fremont City Council.

However, the commitment to provide financing from the townships and from the Private Partners is conditioned on the lack of any on-going annexation covenant in relation to this water line project. Furthermore, none of the Private Partners nor their successors in interest may apply for annexation to the City for a period of twenty five (25) years from the execution of this MOU.

By signature below, the undersigned parties acknowledge that they have read and understand the terms and conditions as stated above.

Approved as to form:

City of Fremont, Ohio

By: Jim Ellis, Mayor

Approved as to form:

Ballville Township

By: W. Robert Kusmer, Trustee - Chairman

Approved as to form:

Sandusky Township

By: Gilbert C. Overmyer, Trustee - Chairman

Approved as to form:

Sandusky County Community Improvement Corporation

By: William A. Wingard, President

Approved as to form:

Zimmerman Paint Contractors, Co.

By: Jack R. Zimmerman, President

Approved as to form:

Unique Fabrications, Inc.

By: Karl J. Honsperger, President

Approved as to form:

Karl J. Honsperger, Personally

Approved as to form:

Standard Technologies, LLC

By: Maxwell S. Valentine, CEO

Approved as to form:

ProMedica Health System, Inc.

By: Randy Oostra, President & CEO

Approved as to form:

Norwalk Area Health Systems, Inc.

By: Patrick J. Martin, President

This instrument prepared by:

Thomas M. Bowlus, Esq.
The Bowlus Law Firm, Ltd.
207 North Park Avenue
Fremont, Ohio 43420
(419) 332-8260