

ORDINANCE NO. 16-16

BY: THOMAS J. HUNT

AN EMERGENCY ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN AGREEMENT WHEREBY THE STATE OF OHIO WILL SUPPLY UP TO \$30,000.00 FOR THE OPERATION OF THE MARINE PATROL FOR THE YEAR 2016, AND AS FURTHER DESCRIBED IN THE ATTACHED AGREEMENT

WHEREAS, the City of Rocky River desires to maintain participation with the State of Ohio, Department of Natural Resources, in the Marine Patrol program for the year 2016, wherein the City will receive up to \$30,000.00 from the State of Ohio upon execution of the Marine Patrol Assistance Agreement with the State, which is attached hereto; and

WHEREAS, City Council finds that it is in the best interests of the City to authorize the Mayor to enter into the 2016 Marine Patrol Assistance Program with the State of Ohio.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROCKY RIVER, COUNTY OF CUYAHOGA, STATE OF OHIO:

SECTION 1.- That the Mayor is hereby authorized and directed to enter into an Agreement with the State of Ohio whereby the State of Ohio will supply up to \$30,000.00 to the Rocky River Police Department for the operation of the Marine Patrol for the year 2016, and as further described in the attached Agreement.

SECTION 2.- That this ordinance is hereby declared to be an emergency measure, necessary for the immediate preservation of public peace, health and safety, and for the further reason that the Agreement must be completed, signed and returned to the Division of Watercraft by April 29, 2016, unless an extension is requested by April 22, 2016, and provided it receives the affirmative vote of two-thirds (2/3) of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_, 2016  
JAMES W. MORAN  
President of Council

PRESENTED  
TO MAYOR: \_\_\_\_\_, 2016      APPROVED: \_\_\_\_\_, 2016

ATTEST:

SUSAN G. PEASE  
Clerk of Council  
PAMELA E. BOBST  
Mayor

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**Marine Patrol Assistance Agreement**

This Agreement is made and entered into by and between the State of Ohio, acting by and through the Chief of the Division of Watercraft, with the consent and approval of the Director of the Department of Natural Resources, hereinafter referred to as the "STATE", pursuant to Section 1547.67 of the Ohio Revised Code, and acting by and through its duly authorized governmental officials, City of Rocky River Police Department, hereinafter referred to as the POLITICAL SUBDIVISION", for the purpose of establishing and/or maintaining and operating a marine patrol program, hereinafter referred to as the "PROGRAM", to enforce the watercraft laws of Ohio as set forth in Chapters 1547 and 1548 of the Ohio Revised Code and to enforce those regulations, rules, and ordinances promulgated by state and local authorities that pertain to the operation of watercraft, and to provide emergency response to boating accidents on the water.

WITNESSETH THAT:

WHEREAS, the POLITICAL SUBDIVISION has established a calendar year budget for the PROGRAM, which estimated budget as adjusted and approved by the STATE is attached hereto as Exhibit A; and

WHEREAS, duly authorized governmental officials of the POLITICAL SUBDIVISION have approved participation in the PROGRAM by ordinance or resolution dated \_\_\_\_\_ which ordinance or resolution is attached hereto as Exhibit B; and

WHEREAS, the estimated cost of the PROGRAM is \$40,002.00 as outlined in Exhibit A. The STATE agrees to pay \$30,000.00 and the POLITICAL SUBDIVISION agrees to provide twenty-five percent of the total program cost. In no case shall the STATE'S share exceed \$30,000.00. No grant funds will be available from the STATE after June 30, 2016. It is expressly understood and agreed by the parties that none of the rights, duties and obligations described in this agreement shall be binding on either party until all relevant statutory provisions of the O.R.C., including, but not limited to O.R.C. 126.07, have been met, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that the STATE gives POLITICAL SUBDIVISION written notice that such funds have been made available to the STATE by the STATE's funding source; and

WHEREAS, funds for paying for the POLITICAL SUBDIVISION'S share of the PROGRAM cost have been established through duly authorized acts of governmental officials and the fiscal officer/budget authority of the POLITICAL SUBDIVISION certifies by signing this Agreement that \$10,002.00 is available from funds at its disposal and will be expended for the purposes of the Agreement; and

WHEREAS, it will be in the best interest of the public health, safety, and welfare for the PROGRAM to be undertaken jointly by the STATE and the POLITICAL SUBDIVISION;

NOW THEREFORE, it is mutually agreed by the STATE and the POLITICAL SUBDIVISION that the following are the provisions and stipulations, which constitute the Agreement concerning said PROGRAM:

1. The details specified in the estimated budget as adjusted and approved by the STATE, Exhibit A, shall be binding in regard to expenditures under this Agreement. Pursuant to the total dollar amount budgeted for the PROGRAM as reflected in the estimated budget as adjusted and approved by the STATE, Exhibit A, specific estimated category amounts shall be prorated and reduced accordingly. Any changes in expenditures exceeding fifteen percent (15%) of the resulting budget amount in any major category (Personnel, Uniforms, Equipment, or Miscellaneous Expenses); require the written approval of the Chief of the Division of Watercraft.
2. Pursuant to the provisions of Section 1547.67 of the Ohio Revised Code, the STATE's contribution shall not exceed thirty thousand dollars and zero cents (\$30,000.00) on a cost share basis in any calendar year. The STATE's share of the PROGRAM cost shall be used exclusively for items contained in the PROGRAM's estimated budget as adjusted and approved by the STATE.
3. The POLITICAL SUBDIVISION agrees to establish an account or grouping of accounts and/or coding system so that PROGRAM expenditures can be readily identified.
4. The POLITICAL SUBDIVISION agrees to submit a complete and accurate accounting of expenditures under this Agreement to the Division of Watercraft postmarked on or before December 31, 2016. If any portion of the total program cost, as above specified, remains unexpended as of December 31, 2016, the STATE's share of the unexpended funds based upon the program cost established by this Agreement, said STATE funds shall be returned immediately to the STATE for redeposit in the Waterways Safety Fund.
5. The STATE may audit all records relating to this Agreement. If an audit discloses an unauthorized expenditure of STATE funds, said STATE funds shall be returned immediately to the STATE for redeposit in the Waterways Safety Fund. In addition, if an audit discloses duplicate reporting of PROGRAM hours, expenditures, and/or statistics for the purpose of fulfilling the requirements of one or more additional grant agreement or financial supplement to the POLITICAL SUBDIVISION'S marine patrol, it shall be considered an unauthorized expenditure of the STATE funds requiring immediate repayment of related expenses to the STATE by the POLITICAL SUBDIVISION.

6. Termination of the PROGRAM or failure to renew the PROGRAM entitles the STATE to reimbursement equal to the percentage of the STATE's contribution at a depreciated value of the equipment and supplies purchased under this Agreement.
7. The POLITICAL SUBDIVISION agrees to maintain a marine patrol program in accordance with the minimum specifications listed in Exhibit C, which is attached hereto and made a part of this Agreement.
8. The law enforcement efforts of the PROGRAM shall be concerned with enforcement of the statutory provisions of Chapters 1547 of the Ohio Revised Code, together with any rules of any waters within the territorial limits of the POLITICAL SUBDIVISION established by the Chief of the Division of Watercraft in accordance with the Administrative Procedures Act and any rules, regulations, or ordinances promulgated by state or local authorities pertaining to the operation of watercraft. All local ordinances pertaining to the operation of watercraft must be expressly approved by the Chief of the Division of Watercraft in order for the POLITICAL SUBDIVISION to remain eligible for funding.
9. In the event that a special or unusual problem arises in the PROGRAM established by this Agreement, the POLITICAL SUBDIVISION agrees to consult with the STATE in order to resolve the problem.
10. Pursuant to O.R.C. 125.11 and the STATE policy, POLITICAL SUBDIVISION agrees that POLITICAL SUBDIVISION, any subcontractor, and any person acting on behalf of POLITICAL SUBDIVISION or a subcontractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry against any citizen of this state in the employment of any person qualified and available to perform the Work. POLITICAL SUBDIVISION further agrees that POLITICAL SUBDIVISION, any subcontractor, and any person acting on behalf of POLITICAL SUBDIVISION, or a subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of the Work on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin or ancestry.
11. POLITICAL SUBDIVISION represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons pursuant to O.R.C. 125.11 (B) and has filed an Affirmative Action Program Verification form with a the Equal Employment Opportunity and Affirmative Action Unit of the Department of Administrative Services.
12. Pursuant to federal guidelines issued under the authority of Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, as amended, and Department of Interior Regulations as set out in 43 CFR 17, Subpart B, the POLITICAL SUBDIVISION agrees that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity funded through this Agreement.
13. On or after the date this Agreement is executed, it is understood and agreed that neither party to this Agreement shall be liable for any negligence or wrongful acts, either of commission or omission, chargeable to the other, unless such liability is imposed by law. Each party to this Agreement must seek its own legal representative and bear its own costs, including judgments, in any litigation that may arise from the performance of this Agreement.

It is specifically understood and agreed that neither party will indemnify the other party in such litigation.

14. The parties hereto agree that in the event the STATE, acting through the Chief of the Division of Watercraft, determines that the POLITICAL SUBDIVISION has substantially and materially failed to comply with any terms and conditions of this Agreement, the STATE may at such time terminate this Agreement by sending written notice of such termination and the reasons therefore to the governing body of the POLITICAL SUBDIVISION. Upon such termination, the POLITICAL SUBDIVISION shall immediately return to the STATE any and all moneys contributed by the STATE under the terms of this Agreement, which have not as of the date of termination been legitimately expended by the POLITICAL SUBDIVISION. If at any time, the STATE determines that the POLITICAL SUBDIVISION has made fraudulent expenditures with PROGRAM funds, the STATE reserves the right to demand and receive full repayment of the entire grant amount awarded to the POLITICAL SUBDIVISION.
15. The POLITICAL SUBDIVISION certifies that its employees are "public employees" under federal and state law for tax, retirement deduction, and Worker's Compensation purposes, and that the POLITICAL SUBDIVISION carries Worker's Compensation coverage. The POLITICAL SUBDIVISION shall be responsible for its employee's retirement benefits or for providing any notice under the O.R.C. 145.
16. The POLITICAL SUBDIVISION certifies that it will maintain a Drug-Free Workplace. The POLITICAL SUBDIVISION agrees to comply with all applicable state and federal laws regarding drug-free workplace. The POLITICAL SUBDIVISION shall make a good faith effort to ensure that no employee of the POLITICAL SUBDIVISION shall either purchase, transfer, manufacture, use, or possess illegal drugs or alcohol, or abuse prescription drugs, in any way while in the workplace.
17. The POLITICAL SUBDIVISION affirmatively represents and warrants to the STATE that it is not subject to a finding or recovery under Section 9.24 of the Ohio Revised Code, or that it has taken appropriate remedial steps required under Section 9.24 of the ORC, or otherwise qualifies under that Section. The POLITICAL SUBDIVISION agrees that if this representation and warranty is deemed to be false, this Agreement shall be void *ab initio* as between the parties to this Agreement, and any funds paid by the STATE hereunder shall be immediately repaid to the STATE, or an action for recovery may be immediately commenced by the STATE for recovery of said funds.
18. The POLITICAL SUBDIVISION, by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The POLITICAL SUBDIVISION understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.
19. POLITICAL SUBDIVISION hereby certifies that neither POLITICAL SUBDIVISION nor any of the POLITICAL SUBDIVISION's partners, officers, directors or shareholders, nor the spouse of any such person has made contributions to the STATE in excess of the limitations specified in O.R.C. 3517.13.

20. Political Subdivision affirms that it has all of the approvals, licenses, or other qualifications needed to conduct business in Ohio and that all are current. Political Subdivision further affirms that if at any time during the term of this Agreement Political Subdivision is the subject of any reportable event as outlined in Section 872 of Public Law 110-417 (41 U.S.C. 2313) or, for any reason, becomes disqualified from conducting business in the State of Ohio, or becomes debarred from doing business with the State Political Subdivision will immediately notify the State in writing and will immediately cease performance of the Work. Failure to provide such notice in a timely fashion as required by the Federal funding authority shall void this agreement and may be sufficient cause for the State or the Federal funding agency to debar the Political Subdivision from future State contracting opportunities as may be permitted by state or federal law, guidance for which is provided at 2 CFR Sections 180 and 200.202. Political Subdivision represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C.153.02 or R.C.125.25.

IN WITNESS WHEREOF, the State of Ohio, Department of Natural Resources, and the City of Rocky River Police Department have caused this instrument to be duly executed as of the day and year it is signed by the Director of the Ohio Department of Natural Resources.

**APPROVED BY THE POLITICAL SUBDIVISION: City of Rocky River Police Department**

DATE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**APPROVED BY THE FISCAL OFFICER:**

DATE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**APPROVED BY THE STATE:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Michael R. Miller, Acting Chief  
Division of Watercraft  
**AS DESIGNEE FOR:**  
James Zehringer, Director  
Ohio Department of Natural Resources

## Minimum Requirements - Exhibit C

### A. Agency Ability

The agency must have a comprehensive program to enable their marine patrol to:

1. respond to all search and rescue (SAR) and assistance calls.
  - a. The Division of Watercraft and the marine patrol should implement the Incident Command System (ICS), originally developed for response to wild fires but now adopted by the National Association for Search and Rescue (NASAR) to be utilized for all forms of emergency response.
  - b. All Division of Watercraft commissioned field staff and marine patrol staff should perform annual (or more frequent) joint training sessions on the Incident Command System, including actual practice search and rescue and/or boating accident response.
2. conduct boating accident investigations including proper filing of required boating accident reports.
  - a. For the purpose of this agreement a:
    - **boating casualty** is defined as an occurrence involving a vessel or its equipment that results in a fatality, a disappearance, or a personal injury that requires medical treatment beyond first aid.
    - **boating accident** is defined as an occurrence involving damage to a vessel and/or other property totaling more than \$500.00, or the total loss of a vessel.
  - b. Watercraft field offices and marine patrols shall immediately notify the other upon the initial awareness of any boating casualty or accident within the marine patrol's territorial jurisdiction in order to initiate a SAR response, begin an investigation, or both as appropriate.
  - c. The Division of Watercraft agrees to investigate all recreational boating casualties and will endeavor to investigate other recreational boating accidents.
  - d. The Division of Watercraft and marine patrols shall fully and expeditiously share all information relative to the investigation of a boating casualty or accident. The marine patrol or the Division, whichever is responsible, shall complete the investigation. In addition, the investigating agency shall complete and submit an Ohio Operator Boating Accident Report (BAR) to the Division of Watercraft's Law Enforcement/Search and Rescue Section. The information on the BAR will be included in the U.S. Coast Guard Boating Accidents Statistics Report.
3. conduct stolen boat and marine equipment theft investigations including proper filing of required forms.
4. maintain marine patrol services in the event of non-boating emergencies or assistance calls.

## **B. Enforcement**

1. The enforcement policy established by the agency's marine patrol program will coincide with the nationwide boating safety program.
2. Each marine patrol will maintain an operation and enforcement policy that is approved by the Division of Watercraft and practiced by each marine patrol officer.

## **C. Supervision**

1. Each agency shall evaluate their marine patrol program annually with input from the Ohio Division of Watercraft and shall adjust the program's direction in response to the evaluation.
2. Each agency will provide a supervisor for their marine patrol officers. The supervisor shall be responsible for the officers' performance in meeting Sections B(2), D(1), D(2), D(3), F(4), G, H, and I.

## **D. Officer Training**

1. Each marine patrol officer must be trained to meet the standards established by the agency for land patrol.
2. Each officer is required to successfully complete the:
  - a. Ohio Boating Education Course and
  - b. Ohio Basic Marine Patrol Training Course.
3. Each officer is required to be current in cardiopulmonary resuscitation (CPR) and basic first-aid training.
4. Representation and participation by the agency is mandatory at any refresher or specialized training pertaining to marine patrol and/or marine law enforcement.
5. Representation and participation by the agency is mandatory at the biennial Confluence & Awards Ceremony.

## **E. Schedule**

1. The marine patrol shall provide watercraft enforcement patrols on all three summer holiday weekends and the majority of the weekends between Memorial Day and Labor Day.
2. The marine patrol schedule shall be consistent with local boating traffic, with maximum patrol efforts corresponding to the heaviest boating traffic. Patrol schedules shall be coordinated with the local Watercraft field office. A copy of patrol schedules shall be provided to the local Watercraft field office one month prior to the start of the schedule. If a scheduled patrol is cancelled, the local Watercraft field office shall be notified of such cancellation at least 48 hours in advance.
3. Eighty percent (80%) of all marine patrol hours shall occur on boat patrol. The remainder of all marine patrol hours shall occur at the ramps, docks, or marinas conducting vessel safety inspections, or other marine patrol related duties and activities.
4. All marine patrol hours, expenses, and/or year-end statistics dedicated to the terms of this agreement may not also be reported or dedicated to any other agency or organization for the purpose of fulfilling the requirements one or more additional grant agreement or other financial supplement to the marine patrol (i.e., this grant program and a federal homeland security grant program simultaneously).

## F. Patrol Equipment

1. The marine patrol shall have a patrol boat that has the capability to efficiently handle all routine work including patrol, boardings, tows, entrance to harbors, and be able to function in storm conditions.
2. Each patrol vessel shall be equipped with the following equipment:
  - a. vessel equipment required by federal, state, or local laws
  - b. first-aid kit
  - c. PA system
  - d. blue flashing light and siren
  - e. radio communications
  - f. extra PFD's, fire extinguishers, and emergency navigation lights/chemical lights
  - g. tow equipment
3. All equipment shall be maintained at a level that eliminates shutdown or down time due to minor repairs.
4. The marine patrol shall require its officers and employees to wear a properly fitted USCG approved personal flotation device while on a vessel and conducting activities that are funded through the program. It will be the agency's discretion to determine the type of PFD to be worn. The PFD selected shall be used in accordance with the Ohio Revised Code. Additionally, the PFD must be worn in accordance to both the requirements listed on the approval label and the specifications listed in the owner's manual.

## G. Records

1. The marine patrol shall maintain record of the following daily activities:
  - a. date and day marine patrol activities were conducted
  - b. officer name and shift worked
  - c. officer patrol hours dedicated strictly to boat patrol
  - d. boat log (or engine) hours – amount of time patrol boat was actually on water
  - e. ramp hours conducting vessel safety inspections
  - f. officer land patrol hours that are strictly associated with marine patrol
  - g. number of written vessel safety inspections (DNR 8271 or equivalent) completed
  - h. number of warnings issued
  - i. number of citations issued
  - j. number of assistance calls responded to
  - k. number of boating education courses taught

## H. Inspection Program

Each marine patrol must develop a vessel safety inspection program. The inspection program shall meet the following criteria:

1. A vessel safety inspection shall be conducted:
  - a. upon boater request at a ramp or docking area
  - b. during the course of a watercraft enforcement contact

2. Each vessel safety inspection shall include:
  - a. an examination of required legal documents
  - b. an examination of all required safety equipment
  - c. a written copy that is retained as record of each inspection
  - d. a written copy that is provided to the boat owner or operator
  - e. educating the boater regarding required safety equipment, operational laws, local boating information, etc.

**I. Public Education**

1. The marine patrol officer shall be able to provide local boating information to the boating public.
2. The marine patrol officer shall be able to provide an educational response to questions concerning boating laws, local boating problems, or hazards.