

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2014 – 149

By: Mayor Perciak and All Members of Council

AN ORDINANCE APPROVING AN AGREEMENT WITH THE STRONGSVILLE ROTARY FOUNDATION FOR CONSTRUCTION AND DONATION OF A BUILDING TO HOUSE A FOOD BANK ON CITY-OWNED LAND ON ZVERINA LANE, AND DECLARING AN EMERGENCY.

WHEREAS, the Strongsville Rotary Foundation ("Rotary"), an independent Ohio non-profit corporation qualified as a federal tax-exempt 501(c)(3) entity, has raised funds for the purpose of establishing a location on City-owned land on Zverina Lane (part of PPN 396-08-005) for operation of a facility by the Strongsville Emergency Food Bank ("Food Bank"), by constructing the facility and then donating it to the City; and

WHEREAS, it is the intent of the City to consent to such construction by the Rotary of an approximate 1,955 square foot portion of a building as approved by the City's Planning Commission on February 13, 2014, and confirmed by City Council through Resolution No. 2014-092 (May 5, 2014), and after receiving it by way of donation from the Rotary, to thereafter lease it directly to the Strongsville Emergency Food Bank, Inc., with the City being responsible for the excavation, grading, preparation, landscaping and improvement of the site; and

WHEREAS, the City intends to later enter into a separate Lease Agreement with the Strongsville Food Bank in order that it may later occupy the aforesaid portion of the structure when it is completed and ready for occupancy for charitable use only; and

WHEREAS, the City will excavate, grade, bring in utilities and otherwise prepare the site for the Rotary's construction; and

WHEREAS, at the same time, the City will be constructing an adjacent garage addition with a common masonry wall to the Rotary portion, of approximately 960 square feet for City use and to be constructed and equipped solely at the City's cost, and as also approved by the Planning Commission; and

WHEREAS, the City and the Rotary now wish, by the attached Agreement marked as Exhibit "1" and incorporated herein by reference, to memorialize their various mutual intentions, understandings, promises and agreements in this regard.

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

Section 1. That accordingly the Mayor is authorized and directed to enter into the attached Agreement with the Strongsville Rotary Foundation for construction and donation of a structure to house a food bank on City-owned land with terms and

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2014 – 149

Page 2

conditions as specified therein, and in a form substantially in accordance with Exhibit 1 attached hereto and incorporated by reference.

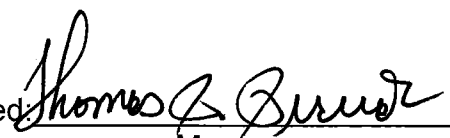
Section 2. That any required advance of funds under this Ordinance or expenditure of other limited costs by the City as required have been appropriated and will be paid from the General Capital Improvement Fund.

Section 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption 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.

Section 4. That this Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health, safety and welfare of the City, and for the further reason that it is immediately necessary to memorialize the agreements and understandings for construction of the Food Bank facility in order to ensure completion of the structure and facility during the advantageous spring-summer building season, and to promote charitable purposes within the municipality. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.



President of Council

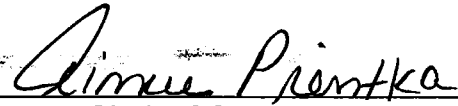
Approved: 

Mayor

Date Passed: July 21, 2014.

Date Approved: July 22, 2014.

	<u>Yea</u>	<u>Nay</u>
Carbone	<u>✓</u>	_____
Daymut	<u>✓</u>	_____
DeMio	<u>✓</u>	_____
Dooner	<u>✓</u>	_____
Maloney	<u>✓</u>	_____
Schonhut	<u>✓</u>	_____
Southworth	<u>✓</u>	_____

Attest: 

Clerk of Council

ORD. No. 2014-149 Amended: _____
1st Rdg. 07-21-14 Ref: _____
2nd Rdg. suspended Ref: _____
3rd Rdg. suspended Ref: _____

Pub Hrg. _____ Ref: _____
Adopted: 07-21-14 Defeated: _____

CITY OF STRONGSVILLE

**AN AGREEMENT WITH THE STRONGSVILLE ROTARY FOUNDATION
FOR CONSTRUCTION AND DONATION OF A BUILDING
STRUCTURE TO BE PLACED ON CITY-OWNED LAND ON ZVERINA LANE,
FOR USE BY THE STRONGSVILLE EMERGENCY FOOD BANK, INC.**

THIS AGREEMENT (the "Agreement"), is made and entered into as of _____, 2014, by and between the **CITY OF STRONGSVILLE** (the "City" or "Strongsville"), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio and its City Charter, located at 16099 Foltz Parkway, Strongsville, Ohio 44149; and the **STRONGSVILLE ROTARY FOUNDATION** ("Rotary"), an Ohio non-profit corporation, which is qualified as a tax-exempt 501(c)(3) organization under federal law, and located at 15300 Pearl Road, Suite 200, Strongsville, Ohio 44136;

WITNESSETH THAT:

WHEREAS, the Strongsville Rotary Foundation ("Rotary"), an independent Ohio non-profit corporation qualified as a federal tax-exempt 501(c)(3) entity, has raised funds for the purpose of assisting in the establishment of a location on City-owned land near the City's Communication and Technology Center for operation of a facility by the Strongsville Emergency Food Bank ("Food Bank"), by constructing the facility at the Rotary's sole cost and then donating it to the City; and

WHEREAS, specifically, it is the intent of the City to consent to the Rotary's construction of an approximate 1,955 square foot portion of a building as approved by the City's Planning Commission on February 13, 2014 and confirmed by City Council on May 5, 2014 ("new building"), and after receiving it by way of donation from the Rotary, to thereafter lease it directly to the Strongsville Emergency Food Bank, Inc.; and for the City to now proceed with excavation, preparation, and landscaping of the site; and

WHEREAS, the City intends to enter into a separate Lease Agreement with the Strongsville Food Bank to later occupy the Rotary portion of the structure when it is completed and ready for occupancy for charitable use only; and

WHEREAS, the City will excavate, grade, bring in utilities and otherwise prepare the site for the Rotary's construction; and

WHEREAS, at the same time, the City will be constructing an adjacent garage addition with a common masonry wall to the Rotary portion, of approximately 960 square feet for City use and to be constructed and equipped solely at the City's cost, and as also approved by the Planning Commission; and

WHEREAS, the City and the Rotary wish by the within Agreement to memorialize their various mutual intentions, understandings, promises and agreements in this regard.

NOW, THEREFORE, in consideration of these presents and the mutual promises and undertakings herein contained, and for other good, sufficient and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement do hereby covenant and agree as follows:

ITEM I: Site

The City and the Rotary acknowledge that the Site has been selected and is on property owned by the City and generally described in Attachment "A" hereto, which is incorporated by reference.

ITEM II: Construction of Structure

The Rotary shall submit plans to the City for the City's review and approval, and reflecting the design and construction of the new building and on the size, style and quality of the structure, and other improvements for the new building and the Site. The City and the Rotary intend that the new building to be constructed by Rotary shall have an area of not less than 1,955

gross square feet which shall be constructed solely at the cost of Rotary. Concurrently, the City shall be constructing an adjacent garage of not less than 960 gross square feet solely at the City's cost.

The Rotary shall expend whatever amount of money is necessary and sufficient for the construction only of the new building thereon, to be operated and utilized by the Strongsville Emergency Food Bank, Inc. for charitable distribution of foodstuffs. The parties understand and agree that the City is not obligated under any circumstances to expend any City funds for construction of the structure either directly or indirectly, exclusive of the costs of the real property for the site which real property is already owned by the City, and the site preparation (utilities, excavation, grading and landscaping). The City will be solely responsible for construction and equipping of its 960 square feet garage portion.

ITEM III: Ownership of Property/Leased Property

The City shall be the sole and absolute owner of the Site, the new building, upon its donation to the City, and all other improvements made by the Rotary for or as a part of the new facility. The City shall lease the new building to the Food Bank for such length of time, and under such terms and conditions, as are set out in a Lease Agreement, to be separately negotiated and approved by the City and Food Bank. The City and the Food Bank shall complete, sign and deliver the Lease Agreement promptly upon the issuance of a certificate of occupancy for the new building.

In the event that the Food Bank ceases to use the facility prior to expiration of the original Lease term or any permitted extension, then the Rotary shall be afforded the first opportunity for a one hundred twenty (120) day period to negotiate with the City in regard to taking over the Lease or entering into a new Lease for the facility subject, among other things, to the following terms, conditions and contingencies:

- (a) The proposed use will be by the Rotary and/or another affiliated non-profit [501(c)(3) qualified] entity;
- (b) The proposed use will be solely for public or charitable uses, and preferably for food bank-type purposes;
- (c) Any proposed use will not cause the City to lose its tax exemption on the property for real estate tax purposes;
- (d) The use will be in compliance with the City's Codified Ordinances, including but not limited to the Zoning Code;
- (e) The proposed Lease will not be in violation of law in regard to lending public credit to a private enterprise; and
- (f) The City Council will have made the necessary findings, including regarding use of the property, and will have approved the lease of property in accordance with SCO Chapter 264, and otherwise in accordance with law.

ITEM IV: Design and Construction

The City and the Rotary shall cooperate and consult with one another as to the preparation, landscaping and improvement of the site and the construction and improvement of the new building, including design thereof. The Rotary shall at its sole cost select an architect to provide professional design services for the new facility, and an individual and/or firm to be a separate construction manager, also at its cost, to provide construction management services for the new facility.

All costs incurred in the design and construction of the new facility, including without limiting the generality of the foregoing, in drafting designs, plans, specifications and other paper drawings or renderings, and in construction management and supervision, if any, shall be paid by the Rotary.

Promptly following its retention of the architect and the construction manager, the Rotary shall cause the architect and the construction manager to prepare, in consultation with the City, through its designated representative, a schedule of activities required to carry out the

preparation, landscaping and improvement of the Site and the design, construction, and improvement of the new building. That schedule shall include a timeline and shall identify the party or parties primarily responsible for each activity.

The Rotary's construction manager and the City's Building Commissioner shall confer regarding the construction and improvement of the new building. These agents of the parties hereto shall oversee all phases of the project jointly, including site inspection, plans review, materials purchase, and all matters related to the project, so as to promote the accomplishment of the purposes of this Agreement. Other than routine City inspections, each party shall apprise the other party of material directions and/or communications it has with the architect or construction manager.

The parties shall continue their cooperation after the City's completion of the preparation, landscaping and improvement for the Site; and the Rotary's construction of the new building in pursuing the correction of any defects, challenge of any warranty, actions on performance bonds, prosecution of litigation and any and all other actions that act to protect the project from fault, harm or defect, then and in the future, at law or in equity.

Any construction undertaken by either party shall be undertaken and performed in a reasonably workmanlike manner consistent with industry standards within the Northeast Ohio area.

ITEM V: Construction – Miscellaneous Conditions

In connection with construction of the structure, it will be the sole responsibility of the Rotary to do the following at its sole cost:

- (a) Construct and equip the new structure/facility including labor, materials, equipment – with the City bearing no responsibility for same or its costs.
- (b) To provide liability insurance, workers' compensation coverage, and comprehensive insurance on the partially completed structure – all in

accordance with Section VI below; and to insist that any subcontractors possess similar insurance.

- (c) Pay all labor at Ohio prevailing wage rates if the Rotary's total payroll cost of the new project exceeds \$250,000.00, not including any donated or volunteer labor, in accordance with law.
- (d) To complete the project within a six (6) month period of commencement of construction and submit the structure for City inspections necessary to obtain a Certificate of Occupancy.
- (e) To ensure that all tradesmen working on the project are properly licensed by the City of Strongsville.

ITEM VI: Insurance/Indemnification

Rotary shall maintain throughout the duration of this Agreement insurance on the Rotary portion of the structure it is constructing and area thereof in the following amounts:

- (a) Worker's Compensation and Employer's Liability
 - Worker's Compensation Statutory
 - Employer's Liability \$500,000/\$500,000/\$500,000
- (b) Comprehensive Automobile Liability
\$1,000,000 combined single limit Bodily Injury and Property Damage
- (c) Comprehensive General Liability including environmental coverage, (naming the City as additional insured)
 - \$1,000,000 per occurrence
 - \$2,000,000 annual aggregate
 - \$2,000,000 product/completed operations per occurrence
 - \$1,000,000 personal injury/advertising liability
- (d) Umbrella/Excess Liability
 - \$2,000,000 per occurrence
 - \$2,000,000 annual aggregate
 - \$2,000,000 products aggregate
- (e) Professional Liability Insurance (including errors and omissions) in an amount of \$1,000,000 per claim and annual aggregate, provided that such coverage shall be maintained for a period of not less than two (2) years after completion of the construction of the Projects.

The foregoing policies shall be with responsible carriers qualified to do business within the State of Ohio, and shall contain a provision that coverage will not be cancelled or

failed to be renewed until at least (30) days' prior written notice has been given to the City. Certificates of Insurance showing such coverage to be in force shall be filed with the City through its Director of Finance prior to commencement of the construction and shall be in proper form.

Rotary hereby agrees to maintain the insurances described above during the term hereof. If Rotary fails to furnish and maintain the insurances required, the City may purchase such insurance on behalf of Rotary, and Rotary shall pay the cost thereof to the City upon demand and shall furnish to the City any information needed to obtain such insurance.

The City will maintain appropriate insurance under its policies for the City's garage facility.

Rotary's Indemnification. Rotary hereby agrees with respect to its responsibilities under this Agreement, to defend, indemnify and hold harmless the City and any of its officers or employees from all loss, damage, cost or expense, including but not limited to attorney's fees and expert witness fees, arising out of or in any way caused by:

- (a) Rotary's negligent performance of its services or its construction under this Agreement;
- (b) Claims, suits or actions of every kind and description when such suits or actions are caused by negligent, willful and/or wanton acts, and/or errors or omissions of Rotary, its officers, employees, volunteers, agents, representatives, consultants, sub consultants, and/or subcontractors; or
- (c) Injury or damages received or sustained by any party because of the negligent willful and/or wanton acts, and/or errors or omissions of Rotary, its officers, employees, volunteers, agents, representatives, consultants, sub consultants, and/or subcontractors.

Rotary shall include a same or similar indemnity provision in each of its contracts with any approved consultant, sub consultant, and subcontractor, which requires that such person or entity defend, indemnify and hold harmless the City, its officers and employees from all loss,

damage, cost, or expense to the extent caused by the negligence, error, omission, or willful or wanton misconduct of such person or entity.

City's Responsibility for Garage Portion. Subject to statutory immunity provisions and appropriations, the City will be responsible for any negligence, errors or omissions occasioned on its part or by its subcontractors or employees and arising solely from its responsibilities under this Agreement.

ITEM VII: Relocation/Existing Temporary Facility

The Rotary and/or Strongsville Emergency Food Bank, Inc. shall be solely responsible for the relocation of their operations, including all furnishings and equipment to be used in the new facility, and for all costs and expenses associated therewith.

ITEM VIII: Miscellaneous/General

(a) **Powers of the City.** Nothing contained in this Agreement shall be considered to diminish the governmental or police powers of the City as City, including, but not limited to, the City's authority to enter into a similar agreement with any other entity.

(b) **Nondiscrimination.** Rotary agrees to comply with all applicable federal, state, county and local laws regarding nondiscrimination, and specifically agrees not to discriminate against any employee or applicant for employment because of race, color, religion, creed, gender, national origin, age, sexual preference, or disability.

(c) **Non-Waiver.** Neither the waiver by either party to this Agreement of any breach of any agreement, condition or provision of this Agreement, nor the failure of either party to seek redress for violation of, or to insist upon strict performance of any agreement, condition or provision, shall be considered to be a waiver of the agreement, condition or provision or of any subsequent breach of any agreement, condition or provision. No provision of this Agreement may be waived except by written agreement of the party to be charged.

(d) **Notices.** Any notice or other communication required or permitted hereunder shall be deemed to be properly given when sent by certified or registered mail, postage prepaid, return receipt requested, or when hand delivered, and addressed as follows:

If to City:

City of Strongsville
16099 Foltz Parkway
Strongsville, Ohio 44149
with a copy to the Law Director

If to Rotary:

Strongsville Rotary Foundation
c/o Mr. Brian Kiplinger
15300 Pearl Road, Suite 200
Strongsville, Ohio 44136

Either party may at any time, by giving ten (10) days' written notice to the other party, designate any other address in substitution of the foregoing address to which the notice or communication shall be transmitted.

(e) **Paragraph Headings.** The paragraph headings contained herein are merely for convenience and reference, and are not intended to be a part of this Agreement, or in any manner to limit or describe the scope or intent of this Agreement or the particular paragraphs to which they refer.

(f) **Legal Relationship of Parties.** It is expressly understood and agreed that during the term of this Agreement, Rotary shall be engaged in the provision of services solely as an independent contractor, and shall have no right to control City's officials, employees, agents, contractors, or representatives. It is further expressly understood that Rotary's officers, employees, agents, contractors, and representatives are acting solely and exclusively under the direction and control of Rotary. Nothing in this Agreement shall be deemed to create or establish a relationship of employment, agency, or representation between the City and Rotary, its officers, employees, agents, contractors or representatives; and Rotary shall have no authority whether express, implied, apparent or otherwise to bind or obligate the City in terms of any third parties.

(g) **No Partnership.** Nothing contained herein shall make, or be deemed to make, the City and Rotary a partner of one another, and this Agreement shall not be construed as creating a partnership between the parties. Neither party shall have the authority to bind the other in any way. Notwithstanding, the parties shall cooperate with one another in the joint undertaking of the portions and areas being constructed as outlined above.

(h) **Compliance with Certain State Laws.** Rotary is in compliance with and shall abide by any applicable reporting provisions of O.R.C. Sections 9.23-9.239 regarding reporting obligations with respect to the State Auditor; and also with respect to the amended requirements of O.R.C. Section 3517.13 regarding limitations and restrictions on contributions to the campaign committees of certain City officials.

(i) **Singular and Plural.** Wherever the context shall so require, the singular shall include the plural and the plural shall include the singular.

(j) **Binding Effect and Successors and Assigns.** This Agreement and all of the covenants hereof shall be binding upon and inure to the benefit of both the City and Rotary, and their respective successors and permitted assigns. Neither the City nor Rotary shall have the right to assign or transfer its interests or obligations hereunder without the advance written consent of the other party, which may be withheld.

ITEM IX: Authorization

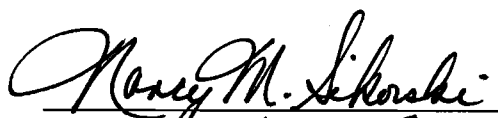
The provisions of this Agreement shall inure to the benefit of the City, and the Rotary and their respective successors at law, and represents the full and complete agreement between the parties hereto, it being acknowledged that neither party relies upon any outside representations, warranties, or parol statements of any kind or nature to vary the written terms and conditions herein contained.


The duly authorized and acting officers of the City, and of the Rotary, execute this Agreement pursuant to their respective offices and trusts, as established, under law. Execution of this Agreement is subject to prior approval of the Council of the City of Strongsville in accordance with law.

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

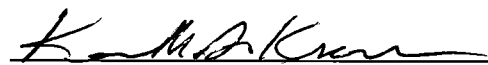
IN WITNESS WHEREOF, the parties to this Agreement have hereunto set their respective hands by their authorized agents, acting pursuant to the authority of the Council of the City of Strongsville and the Board of Trustees of the Strongsville Rotary Foundation.

ATTEST:

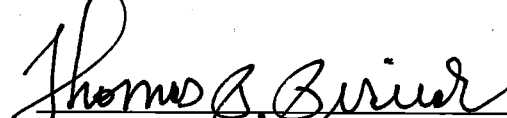

Printed Name: Nancy M. Sikorski


Printed Name: Tiffany Mekeel

Approved as to form:

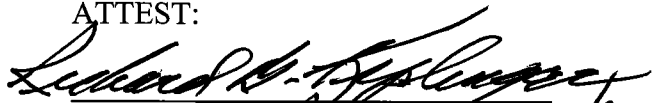

Law Director
City of Strongsville, Ohio


CITY OF STRONGSVILLE

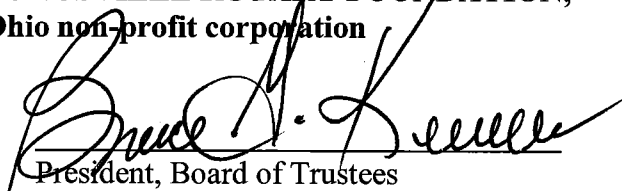
By: 
Thomas P. Perciak, Mayor

BOARD OF TRUSTEES OF THE
STRONGSVILLE ROTARY FOUNDATION,
an Ohio non-profit corporation

ATTEST:


Printed Name: ~~Richard H. Fitch~~


Printed Name: GERALD L. BALINT

By: 
President, Board of Trustees

By: 
Secretary, Board of Trustees

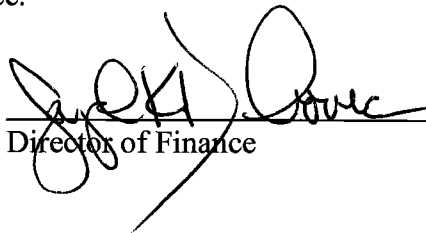
Approved as to form:

By: _____
Counsel to the Board of Trustees
of the Strongsville Rotary Foundation

CERTIFICATION OF FUNDS

I, Joseph K. Dubovec, Director of Finance for the City of Strongsville, Ohio hereby certify that the money to meet this Agreement has been lawfully appropriated for the purpose of the Agreement and is in the treasury of the City, or is in the process of collection to the credit of the appropriate fund free from prior encumbrance.

July 22, 2014
Date



Director of Finance

CERTIFICATE OF LAW DIRECTOR

I hereby certify that I have reviewed and approved the form of the foregoing Agreement this 22 day of July 2014.



Kenneth A. Kraus, Law Director