

MUNICIPAL ORDER 07-2022

A MUNICIPAL ORDER AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT WITH AMERICAN HYDROPLANE EVENTS, LLC, PROVIDING FOR A HYDROPLANE RACING EVENT IN OWENSBORO IN 2022.

WHEREAS, the City of Owensboro has provided hydroplane racing events to spectators in the past; and

WHEREAS, American Hydroplane Events (AHE) is a Limited Liability Company that can secure and coordinate assets, personnel, and resources required for the proper and safe running of a hydroplane racing event; and

WHEREAS, City and AHE have negotiated a Memorandum of Agreement, a copy of which is attached hereto as Exhibit A, to work together and complete a project of providing a hydroplane racing event in Owensboro on August 19-21, 2022.

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. That the Mayor of the City of Owensboro, Kentucky, be, and he hereby is, authorized and directed to execute a Memorandum of Agreement, by and between the City of Owensboro, Kentucky and American Hydroplane Events, LLC, for purposes of providing a hydroplane racing event in Owensboro on August 19-21, 2022.

Section 2. That the Mayor, City Manager, and other City staff be, and they hereby are authorized to execute any and all other agreements, instruments or documents necessary and appropriate to effectuate and implement this Memorandum of Agreement and/or documents related thereto.

**INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE
READING,** this the 15th day of February, 2022.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT made and entered into this _____ day of February, 2022, by and between CITY OF OWENSBORO, KENTUCKY, a municipality of the home rule class, 101 East Fourth Street, P. O. Box 10003, Owensboro, Kentucky 42302-9003, (hereafter referred to as "City"), and AMERICAN HYDROPLANE EVENTS, LLC, 215 NW Martin Luther King, Jr. Blvd., Evansville, Indiana 47708 (hereinafter referred to as "AHE"). City and AHE are each a "Party" and collectively the "Parties".

RECITALS

WHEREAS, City is a municipal corporation located on the Ohio River and has provided hydroplane racing events to spectators in the past; and

WHEREAS, AHE is a Limited Liability Company that can secure and coordinate assets, personnel, and resources required for the proper and safe running of a hydroplane racing event; and

WHEREAS, City and AHE desire to enter into this Memorandum of Agreement in order to collaborate and complete a project of providing a hydroplane racing event in Owensboro during August 2022 and to set out the working arrangements that each of the Parties shall perform to provide the above referenced hydroplane racing event.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions contained herein, the Parties agree as follows:

Section 1. The Hydroplane Race Event shall be August 19-21, 2022.

Section 2. AHE shall provide the following financial, material, and/or labor resources in respect to the project:

- (a) All race operations personnel;
- (b) All race officials and personnel;
- (c) All race volunteers;
- (d) Communication, contract consulting, and implementation of all race-related organizations including but not limited to Grand Prix America and American Power Boat Association (APBA) and all teams associated with race organizations;
- (e) Placement of all racecourse buoys/markers on the Ohio River;
- (f) All official timing and scoring personnel and equipment;
- (g) Dock system at English Park;
- (h) Two official public address announcers;
- (i) Work in conjunction with the City of Owensboro to provide technical support personnel for on-water safety/rescue vessels and equipment, to include AHE's Rescue Director, certified divers, and other personnel as determined. Additional vessels could include jet skis, specialized rescue boats, and appropriate equipment as determined. This will be determined by communication with Owensboro Fire Department and AHE's Rescue Director;
- (j) Work in conjunction with the City of Owensboro to provide all on-water APBA official, tow, drift, and spectator control personnel, vessels, and equipment;
- (k) Sponsorship presentations and procurement for the project, in cooperation with City;
- (l) Project creative design, consultation, and implementation on the marketing plan following approval from City; and

(m) Consultation on project news/public relations events and implementation following approval from City.

Section 3. The City shall be responsible for the following financial, material, and labor resources in respect to the project:

(a) Ninety-Two Thousand Seven Hundred Twenty-Two Dollars (\$92,722.00) shall be paid to AHE for:

1. Hydroplane race teams, to include: All equipment, personnel, and supplies required to successfully race.
2. Participant Accident Medical Insurance, with the following coverage and limits. Participant accident medical coverage is provided only for eligible participants as defined in the policy. This coverage is for accidental bodily injury/death suffered during APBA Insured Sanctioned Events:
 - a. Accidental Death and Dismemberment \$10,000.00.
 - b. Medical Excess Expense \$10,000.00; \$1,000.00 deductible.
3. Comprehensive Event Liability Insurance, with the following coverage and limits for APBA Insured Sanctioned Events:
 - a. General Liability \$5,000,000.00 each occurrence, each event unless otherwise noted below.
 - b. Products and Completed Operations Liability covers injury loss from sale of APBA and AHE products.
 - c. Spectator Liability provides protection in the event of spectator bodily injury or property damage liability.

- d. Unintentional Errors and Omissions Liability protects against allegations of breach of duty in conducting the sanctioned event; \$100,000.00 limit.
- e. Personal and Advertising Injury Liability provides coverage for false arrest, libel, slander, wrongful eviction, and privacy violation.
- f. Property Damage to Official Watercraft provides coverage for loss resulting from damage to official watercraft; \$1,000,000.00 limit; \$1,000.00 deductible per loss.
- g. Contractual Liability provides coverage for liability assumed under leased premises, municipal indemnification, or sidetrack agreement. Does not indemnify certain professionals for their failure to perform their function.

4. APBA race officials, including but not limited to: Race Director, Chief Referee, Assistant Referee, Risk Manager, Scorer, Timer, Registrar, Pit Boss, Turn Judges, and Inspector.

- (b) Award trophies for hydroplane teams;
- (c) Owensboro HydroFair shirts and hats for race operations volunteer personnel;
- (d) Presenting sponsor decals for hydroplanes;
- (e) Sound system for the Owensboro riverfront, Judges' Stand at Convention Center, and race pits at English Park;
- (f) Wi-Fi service for English Park pit area;

- (g) Use of Lockmaster Building at English Park for registration, storage, and other race related activities;
- (h) Six (6) utility task vehicles (UTV's) or golf carts and fuel for race operations personnel in pits at English Park;
- (i) Eight (8) golf carts for race operations personnel at English Park;
- (j) Thirty-six (36) two-way portable radios (walkie-talkies) with external microphones, headsets, extra battery, and battery charger for race operations personnel;
- (k) Four (4) 40-ton capacity cranes with licensed or certified operators;
- (l) Electricity in the pit area at English Park;
- (m) Three (3) 20'x20' tents, eight (8) tables, and forty-eight (48) chairs at the pit area at English Park;
- (n) Tables, chairs, and electrical power at the Convention Center east balcony. One (1) 20'x20' tent, two (2) tables, and four (4) chairs, and electricity on the Pier for timing clock operators;
- (o) One (1) fire truck and one (1) mobile EMT Ranger unit with personnel at pit area at English Park;
- (p) One (1) ambulance with personnel at pit area at English Park;
- (q) In conjunction with AHE, provide technical support personnel for on-water safety/rescue vessels and equipment, to include Safety Director appointed by City, certified divers, and other personnel as determined by Safety Director. Additional vessels needed for race operations as determined by Safety Director;

- (r) Work in conjunction with AHE to provide all on-water personnel, vessels, and equipment;
- (s) On-water spectator control personnel and equipment;
- (t) Fuel voucher for on-water vessels;
- (u) Two (2) 4-wheel rough terrain telehandlers for pit area at English Park;
- (v) Food, hydration, and ice for race operations and race official personnel at English Park and Convention Center;
- (w) Six (6) portalets for pit area at English Park;
- (x) One (1) 10'X20' tent in English Park pit area for race team radio spotters;
- (y) Up to nineteen (19) hotel rooms for up to four (4) nights each for race operations staff;
- (z) Two (2) mini-vans to transport race team personnel, AHE race operations personnel, and APBA officials to/from English Park and Convention Center;
- (aa) Sponsorship presentations and procurement for the project, in cooperation with AHE;
- (bb) Production and implementation of project marketing, creative, and media initiatives, in cooperation with AHE;
- (cc) Production and implementation of project news/public relations events and communications, including but not limited to: all press announcements and/or press conferences, social media pages, livestream of race weekend, etc.;
- (dd) Communication, planning, and implementation with all public safety/service entities for the event including but not limited to Owensboro Fire Department, Owensboro Police Department, United States Coast Guard, Kentucky

Department of Fish & Wildlife, Spencer County EMA, and all partnering first-responder agencies; and

(ee) Approval of the classes of boats invited to compete on race weekend, race schedule prior to race weekend, and any changes in the race schedule during race weekend.

Section 4. AHE acknowledges and agrees that the fee for the services rendered directly by AHE is not to exceed Ninety-Two Thousand Seven Hundred Twenty-Two Thousand Dollars (\$92,722.00). City will not reimburse AHE for any additional expenses unless approved by City prior to incurring any expense.

Section 5. AHE's status shall be that of an independent contractor reporting to the Director of Public Events for the City of Owensboro, and not an employee or agent of the City or the Project/Event Manager. All communications with supporting entities for the event (other than race teams, race operations personnel, and race sponsors), will be handled solely by the City, unless City requests AHE to communicate directly with a sponsor/vendor due to its relationship with that sponsor/vendor. These entities include, but are not limited to: United States Coast Guard, Owensboro Convention Center, Owensboro-Daviess County CVB, emergency response personnel, rental/service companies, audio/video contractors, etc. In instances of an urgent nature during race weekend when communication is needed to avoid potential safety concerns or operational delays, AHE may communicate directly with supporting agencies providing support in those areas.

Section 6. AHE shall, at its expense, secure and maintain until the completion of the services being rendered under this Agreement, a comprehensive general liability

race insurance policy which specifies coverage for the services contemplated under this Agreement which shall be written on an occurrence basis with a minimum single-limit liability of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage, and which names the City as an additional insured.

Section 7. To the extent permitted by applicable law in the Commonwealth of Kentucky, AHE shall indemnify and hold harmless the City, its officers, officials, employees, subcontractors, affiliates and agents, from and against any and all liability, damages, losses, demands, or claims arising under this agreement or out of AHE's participation in hydroplane racing event.

Section 8. Care and maintenance of AHE's equipment is the sole responsibility of AHE. In the event that AHE is unable to perform any of the above responsibilities at the Owensboro Hydroplane Event, the City shall not be obligated to remit the fee to AHE and AHE agrees to refund to the City any deposit minus reasonable expenses actually incurred by AHE's staff members.

Section 9. AHE retains all visual, audio and television rights to any performance provided under this Agreement, and hereby grants to the City the right to use such photograph, video and audio material for promoting future events, for broadcast on public access TV, and in the direct promotion of the City.

Section 10. AHE represents that it has the authority to enter in this binding agreement with the City for the August 19-21, 2022 Owensboro Hydroplane Race Event on behalf of AHE.

Section 11. This Agreement shall commence upon its execution by both Parties and in the absence of a default by either Party, shall remain in full force and effect until

September 30, 2022. The term can be extended only by written agreement of the Parties.

Section 12. This Agreement may be terminated by the City or AHE by written notice to the other Party in the event either Party breaches any one or more of the terms and conditions set forth herein and fails to cure said breach within thirty (30) days after written notice thereof. Any written notices or requests required under the terms of this Agreement shall be delivered in person or by certified mail, return receipt requested to the following:

CITY: City of Owensboro, Kentucky
Attention: Nate Pagan
P. O. Box 10003
101 East Fourth Street
Owensboro, Kentucky 42302-9003

AHE: American Hydroplane Events, LLC
Attention: Randy Lientz
215 NW Martin Luther King, Jr. Blvd.
Evansville, Indiana 47708

Section 13. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements, promises, communications, representations, whether oral or written, by any employee, officer, or representative of either Party hereto. There are no promises, representations, covenants, undertakings, restrictions, or conditions, other than those expressly set forth herein. Any subsequent amendment hereto shall be in writing and executed by authorized representatives of both Parties. This Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and assigns, provided, however, that this

Agreement shall not be transferred or assigned without the prior written consent of the non-assigning Party, which approval shall not be unreasonably withheld.

Section 14. The provisions of this Agreement are independent of and severable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason, other provisions herein may be invalid or unenforceable, in whole or in part. If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable as written, a court may interpret, construe, rewrite or revise such provision, to the fullest extent allowed by law, so as to make it valid and enforceable consistent with the intent of the Parties. In the event a court of competent jurisdiction finally determines that any portion of this Agreement is invalid or unenforceable as written, neither Party shall have any liability to the other as a result thereof.

Section 15. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. The Parties hereby agree that the State and Federal Courts of Daviess County and the Commonwealth of Kentucky shall have exclusive jurisdiction to hear and determine any claims or disputes.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the day and year first hereinabove written.

CITY OF OWENSBORO, KENTUCKY

By: _____
Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

AMERICAN HYDROPLANE EVENTS, LLC

By: _____
Randall E. Lientz, Race Director