

City of Niles, Ohio

SPONSORED BY: FINANCE COMMITTEE
AUTHORIZED BY: CANTOLA

DRAFT NO. 121-20

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING BUDGET TRANSFERS WITHIN POLICE AND FIRE 1% FUND 217 FOR THE PURPOSE OF A DIRECT PURCHASE OF A FIRE ENGINE FROM FINLEY FIRE EQUIPMENT; AND, DECLARING AN EMERGENCY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: That Council hereby authorizes the following transfers for the purpose of a direct purchase of a fire engine from Finley Fire Equipment.

SECTION 2: This Ordinance is hereby declared to be an emergency measure in the interest of the public health, safety, and welfare and to allow for the purchase at the earliest possible date.. As such an emergency measure, this Ordinance shall take effect immediately upon passage by Council and approval by the Mayor.

Appropriation Budget Transfers		
Police & Fire 1% Fund 217		
Account Number	Description	+/- Appropriation
217-1715-53450	Education	(\$6,000.00)
217-1715-53650	Building Repairs	(\$10,000.00)
217-1715-53980	Contracted Labor	(\$8,000.00)
217-1715-54150	Uniforms	(\$9,000.00)
217-1715-56300	Equipment Purchases	\$33,000.00

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

CLERK OF COUNCIL

Received by the Mayor of the City of Niles this _____ day of _____, 2020,
and approved by me as such Mayor this _____ day of _____, 2020.

MAYOR



5255 N State Route 60 NW * McConnellsville, Ohio 43756
 800-545-3280 * 740-962-4328 * Fax 740-962-5422
 www.finleyfire.com

CONTRACT

THIS AGREEMENT, made by and between Finley Fire Equipment Co., Inc. McConnellsville, Ohio, Party of the First Part and the Niles Fire Department, Party of the Second Part, WITNESSETH that the Party of the First Part agrees to sell upon the terms and conditions herein listed, the 1996 Pierce Dash Pumper #21908 / E9643 herein before described, which is in accordance with the specifications and guarantee, herein before described the same being a part of the agreement and contract.

The Party of the Second Part agrees to purchase and pay for the aforesaid apparatus the sum of \$33,000.00.

All contracts are taken subject to written acceptance of the Party of the First Part of its duly authorized officers. At the request of the Party of the First Part a written opinion of the attorney for the municipality or political subdivision, as to the power of the Party of the Second Part to enter into a contract, will be furnished to the Party of the First Part.

It is further agreed between the parties hereto that the stipulations of this agreement have been read and understood by the Party of the Second Part and that there are no warranties, agreements, or understandings, written or oral, which in any manner, alter, abridge or conflict with the above, and that this agreement may be altered, modified or abridged only in writing, duly signed by an officer of the Party of the First Part, duly authorized, in addition to all other legal remedies and actions.

FINLEY FIRE EQUIPMENT CO., INC.
 MCCONNELLSVILLE, OHIO

Witness our hands and official seal this _____ day of _____, 2020.

Finley Fire Equipment Co., Inc.

By: _____
 Officer of Party of First Part (Purchaser)

 (Name) (Title)

 (Name) (Title)

City of Niles, Ohio

SPONSORED BY: FINANCE COMMITTEE
AUTHORIZED BY: CANTOLA

DRAFT NO. 122-20

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING MONTHLY CASH TRANSFERS; AND,
DECLARING AN EMERGENCY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: Authorizing the cash transfer of One Hundred Eighty Five
Thousand Dollars and 00/100 dollars from the General Fund Account No: 101-1090-
59000 to the following funds:

Monthly Cash Transfers		
From General Fund TRANSFER Account 101-1090-59000 To:		
FUND 215	POLICE PENSION	\$60,000.00
FUND 216	FIRE PENSION	\$100,000.00
FUND 255	CEMETERY	\$25,000.00
		\$185,000.00

SECTION 2: This Ordinance is hereby declared to be an emergency measure in
the interest of the public health, safety, and welfare for the reason that these funds are to
be transferred on a regular basis. As such an emergency measure, this Ordinance shall
take effect immediately upon passage by Council and approval by the Mayor.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

CLERK OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio on the _____ day of
_____, 2020 and signed by me as such Mayor on this _____
day of _____, 2020.

MAYOR

City of Niles, Ohio

SPONSORED BY: SAFETY COMMITTEE
AUTHORIZED BY: MARCHESE

DRAFT NO. 123-20

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE SALE BY INTERNET AUCTION OF A CERTAIN OBSOLETE BRUSH HOG NO LONGER NEEDED FOR ANY MUNICIPAL PURPOSE BY THE CITY; AND, DECLARING AN EMERGENCY

WHEREAS, the City of Niles is in possession of a Brush Hog that is no longer suitable for and not needed for any purpose by the City; and

WHEREAS, the City has chosen GovDeals as the vendor to implement an internet auction to dispose of the Brush Hog.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NILES, STATE OF OHIO:

SECTION 1: That this Council finds that the City of Niles is in possession of a certain Brush Hog, namely: 2002 Woods BB720, which is obsolete, surplus, has little monetary value, and is no longer needed for any municipal purpose. Council further finds that it will be in the best interest of the City that such property be sold by public internet auction through GovDeals.

SECTION 2: That pursuant to Ohio Revised Code Section 721.15, the City is authorized to sell or dispose of such property by internet auction.

SECTION 3: That the net proceeds of the auction contemplated by this Resolution shall be deposited into the Street Fund Account 223.

SECTION 4: That this Resolution is hereby declared to be an emergency measure in the interests of the public health, safety and welfare for the reason that the immediate sale of such obsolete and unneeded municipal property is necessary in order to assist in purchasing replacement parts for other police vehicles. As such an emergency measure, this Resolution shall take effect upon passage by Council and approval by the Mayor.

PASSED:

PRESIDENT OF COUNCIL

ATTEST:

CLERK OF COUNCIL

Received by the Mayor of the City of Niles this _____ day of _____, 2020,
and approved by me as such Mayor this _____ day of _____, 2020.

MAYOR

City of Niles, Ohio

SPONSORED BY: SAFETY AND FINANCE COMMITTEE DRAFT NO. 124-20
AUTHORIZED BY: MARCHESE AND CANTOLA

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE SERVICE DIRECTOR TO ENTER INTO A WATER SUPPLY AGREEMENT WITH THE VILLAGE OF LORDSTOWN; AND, DECLARING AN EMERGENCY

WHEREAS, the City of Niles supplies the Village of Lordstown with surplus water; and, WHEREAS, a new business named Ultium Cells LLC (hereafter Ultium) proposes to construct the a new battery plant facility in the Village of Lordstown , which will provide a significant economic benefit to the region; and,

WHEREAS, in order to make the Project economically feasible, Lordstown has requested an economical water rate and a long term supply of sufficient quantities of water to be purchased through Niles; and,

WHEREAS, Lordstown has requested it be able to purchase water at a bulk rate through Niles ; and

WHEREAS, in order for such an agreement to be executed by the Service Director, Council must authorize same. (See Exhibit A attached)

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

SECTION 1: Council hereby authorizes the Service Director to execute a Bulk Water Agreement with the Village of Lordstown whereby the City would agree to sell water to Lordstown at a bulk water rate as outlined in Exhibit A incorporated herein by reference.

SECTION 2: This Ordinance is hereby declared to be an emergency measure in the interest of the public health, safety and welfare for the reason that the Agreement is needed for completion of the project. As such an emergency measure, this Ordinance shall take effect upon passage by Council and approval by the Mayor. If not so passed as an emergency measure, it shall become effective at the earliest date allowed by law.

PASSED: _____

PRESIDENT OF COUNCIL

ATTEST: _____

CLERK OF COUNCIL

Filed with the Mayor of the City of Niles, Ohio on the ____ day of _____, 2020 and signed by me as such Mayor on the ____ day of _____, 2020.

MAYOR

**MASTER BULK
WATER SERVICE AGREEMENT**

This Agreement between the City of Niles, hereinafter referred to as "Niles", and the Village of Lordstown, hereinafter referred to as "Lordstown", is entered into on this ____ day of _____, 2020; however, to be effective January 1, 2022.

Whereas, Niles, by Ordinance No. _____, passed by its Council on the day of _____, 2020, and approved by its Mayor on the ____ day of _____, 2020, has authorized its Director of Public Service and its Mayor to enter into a contract with Lordstown for the purpose of selling surplus water to Lordstown at a bulk water rate.

Whereas, Lordstown, by Ordinance No. _____, passed by its Council on the day of _____, 2020, has authorized its Mayor and Clerk to enter into a contract to purchase such surplus water from Niles.

NOW, THEREFORE, contingent on approval by the legislative authority of each party, the parties hereto agree as follows:

SECTION 1: Niles agrees to supply, to sell, and to deliver to Lordstown the quantity of its surplus potable water required for Lordstown's distribution system to its domestic, commercial, and industrial users, including water used for fire protection, Said water supply delivered and sold to Lordstown shall be of a quality approved by the Ohio Environmental Protection Agency, and of the same quality supplied to Niles' customers.

SECTION 2: Subject to the conditions listed in this Section and upon the Effective Date of this Agreement, the bulk water rate charged to Lordstown for all water supplied under this Agreement shall be Two and 53/100 Dollars (\$2.53) per one thousand gallons (hereafter "new rate") which rate shall be fixed during the term of this Agreement; provided, however, that should Meander Water (fka the Mahoning Valley Sanitary District) increase the cost which it charges Niles, then any such increase may be added to the new rate which Niles charges Lordstown. NOTE: By way of illustration, if the Meander Water rate charged to Niles which is currently \$2.1059 per one thousand gallons is increased by two cents to \$2.1259, then the rate which Niles charges to Lordstown under this Agreement may be adjusted accordingly to \$2.55 per one thousand gallons. Notwithstanding any changes to the charges to the City of Niles from Meander Water, the minimum charge under this agreement to Lordstown from the City of Niles will never be less than \$2.53 per thousand gallons. By way of further illustration, should the charge to Niles from MVSD fall below \$2.1059 to \$2.04 per one thousand gallons the rate charged to Lordstown will remain at \$2.53.

The parties understand and acknowledge that at times the Meander Rate may be increased to Niles with limited notice. Therefore, the parties agree that Niles will use best efforts to provide Lordstown with a ninety-day (90) day notice prior to implementing any increase from the Meander Water rate. However, the parties also agree that the lack of a ninety-day (90) notice from Niles to Lordstown regarding an increase in the Meander Rate shall not preclude Niles from charging Lordstown for any rate increases. The parties agree that any amounts owed from Lordstown to Niles as a result of an increase in the Meander Rate in which Lordstown did not receive the ninety day (90) notice outlined in this paragraph shall be paid by Lordstown no later than the end of each calendar year commencing after the "Effective Date" of this Agreement. Notwithstanding the foregoing, Niles will bill Lordstown on a monthly basis for water use. Statements for water use shall be submitted by Niles on or about the 1st day of each calendar month. All statements shall be due and payable within 90 days after billing. If not paid within 90 days, an interest charge of 10% per annum on the amount then due shall be added thereto during the time the bill remains unpaid. Any assertions of incorrect billing or charges, including any rate increase to Niles as a result of an increase in the Meander rate not previously billed to Lordstown as outlined in section 2, must be raised within one year of the assessment or omission of any such charge or charges.

As material consideration to the City of Niles to provide the new rate, Lordstown warrants and agrees that during the ten (10) year initial term of the contract, the City of Niles shall be the exclusive provider of water to Ultium Cells LLC, the GM/LG Chem Battery Plant Project (hereafter Battery Plant).

Lordstown represents the intended construction of a water tower with a capacity of 3 million gallons per day. As further consideration to the City of Niles to provide the new rate, Lordstown warrants and agrees that the City of Niles will be the exclusive source of water for the intended water tower during the initial ten (10) year term of this Agreement.

As further consideration for Niles to enter into this agreement, Lordstown agrees to the following:

- a) Lordstown further agrees that the current rate charged for consumption through the Salt Springs Road and the Brunstetter meter shall continue until the Effective Date at which time the current charge shall be adjusted in accordance with Section 2 of this Agreement.
- b) The average monthly consumption shall be calculated based on each twelve-month (12) period beginning on the Effective Date.
- c) On the effective date if the average monthly consumption from all current and future meters (hereafter master meters), minus the LEC usage as calculated in paragraph (b) is less than twenty-eight 28 million gallons per month (adjusted annually), then Lordstown warrants and guarantees that Niles will receive no less than the current annual net adjusted profit. The parties stipulate that the current annual net adjusted profit is calculated from the current rate of \$3.48 per thousand gallons minus the MVSD rate of \$2.1059 per thousand gallons purchased equaling One Hundred Forty-Two Thousand Seventy-Eight and 49/100 Dollars (\$142,497) Provided,

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however, that the above-noted Lordstown guaranty payment to Niles may be suspended during a period when the Force Majeure provisions of Section 15 of this Agreement may be enforceable

SECTION 3: The failure of any party to perform any of its obligations under this agreement, including any obligations listed in Section 2, may allow the nonbreaching party to declare the agreement in default after thirty day written notice of any breach and opportunity to cure. In the event of a default, the nonbreaching party is entitled to all remedies available under the contract, at law and/or equity. Any notice of breach shall be served pursuant to Section 18.

SECTION 4: Lordstown will purchase, install, replace and maintain any infrastructure or conveyances required to operate and maintain its water distribution system as it now exists or may be altered during the term of this Agreement. In addition, any new connection, metering and equipment must be approved by Niles. Lordstown also agrees to permit Niles to inspect any meters related to this agreement.

All equipment and installations, new or existing, shall meet the standards and specifications required by Niles.

Other connection points to the Niles' system presently exist on Salt Springs Road and on Brunstetter Road. Lordstown will maintain and replace these meters as well as necessary. Water consumptions at all meter locations will be combined into one sum as if service was provided through a single metering point, and the rate applicable for the total combined consumption by Lordstown will be applicable for billing to and payment by Lordstown.

Every three years during the term of this Agreement, Lordstown will, at its own expense, have each master meter tested by a certified water meter testing company to determine that the meters are properly operating, and shall have a copy of such testing results given to Niles. Any repairs required as a result of improper operation of any meter shall be paid for by Lordstown. In addition, either party may request additional master meter testing during the term of this agreement. The party ordering such additional testing shall bear the cost for such testing, but the cost of repairs made necessary due to test results shall be borne by Lordstown. Each party will be given reasonable notice of any testing being conducted under this paragraph so that representatives of either party may be present during the testing. Additionally, Niles may, at its own expense, install any equipment or software enabling compatibility between the Meters and the City of Niles billing system.

SECTION 5: Lordstown shall not distribute any water purchased by it to any new users outside its corporate limits (excepting individual single-family residential construction) without the prior approval of Niles. Such approval shall not be unreasonably withheld. Lordstown shall, prior to construction, notify Niles of any extensions of lines outside of its corporate limits permitted under this Agreement.

SECTION 6: Any re-pressurizing or significant modification by Lordstown of its new

force main or existing distribution system must be reviewed and approved by Niles. Niles shall not unreasonably withhold its approval where such proposed action will not adversely affect the ability of Niles to adequately serve all of its customers.

Niles agrees to notify Lordstown of any significant changes to its distribution system during the term of this Agreement.

SECTION 7: The term of this contract shall be for ten years commencing as of the Effective Date. The contract shall automatically renew for an additional ten years unless either party notifies the other party in writing of the intent to cancel the contract. Such notification shall be in writing within 30 days of ten years from the effective date of the agreement. Notice shall be provided as outlined in Section 18.

SECTION 8: Lordstown agrees to assume full ownership and responsibility for the operation and maintenance of all lines, meters, taps, etc., and to indemnify and save Niles harmless from any responsibility in connection with same.

SECTION 9: It is further agreed by and between the parties to this Agreement that, in the event any circumstances during the term of this Agreement should cause a water shortage, Lordstown shall apply the same regulations and institute the same practices to conserve water and avoid unnecessary use and waste of water in Lordstown and in its sale to its customers as shall be applied by the Department of Public Service of Niles in its dealings with its customers.

SECTION 10: If an act of God, war, terrorism, or unforeseen event occurs which prohibits the delivery or processing of surplus water by Niles, the parties agree that Niles shall not be liable for any damages, including consequential damages, that may result.

SECTION 11: The parties agree that the terms of this contract will be binding upon both of the parties hereto.

SECTION 12: So that Niles may accurately determine the extent of Lordstown's distribution system, Lordstown shall provide Niles a map of its present distribution system. Said map shall be upgraded by Lordstown as modifications to the system occur. Additionally, Lordstown agrees that Niles may inspect any and all meters related to this contract.

SECTION 13: Entire Agreement; No Third-Party Beneficiaries. This Agreement is the entire agreement between the Parties concerning its subject matter, supersedes the agreement among Niles and Lordstown dated February 5, 2003 and any or all understandings, whether or not written, and is not intended to confer upon any person other than the Parties any rights or remedies hereunder."

Section 14: Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right,

remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

Section 15: Force Majeure:

- a. A party to this Agreement shall not be liable to any other party for any delay or failure in the performance of obligations hereunder, if and to the extent such delay or failure is due to, or results from riots, labor disputes, labor or material shortages, explosions, insurrections, transportation disruptions, civil commotions, acts of God, fires, floods, breakdown of or damage to plants, equipment or facilities, roof falls or any other similar cause or any other causes beyond the reasonable control of such party ("Force Majeure"). To the extent a Force Majeure is claimed hereunder by a party to this Agreement, such Force Majeure shall relieve the other party from fulfilling its corresponding obligations hereunder to the party claiming such Force Majeure, but only for the period affected by and to the extent of the claimed Force Majeure, unless otherwise mutually agreed to by the parties. The party that is subject to a Force Majeure shall use commercially reasonable efforts to cure or remove the Force Majeure event as promptly as possible to resume performance of its obligations under this Agreement.
- b. The party whose performance of any obligation of this Agreement is directly affected or that has reason to believe such performance may be affected by reason of any Force Majeure, shall, as promptly as possible, give notice thereof to the other party by electronic means and shall also within ten (10) days thereafter notify the other party in writing of the particulars of such Force Majeure and shall supply supporting evidence, if possible. The party so affected shall take all reasonable steps to resume performance under this Agreement with the least possible delay.
- c. If the Battery Plant shall cease operations during the term of this contract then the parties agree that the rate charged for the Brunstetter and Salt Springs Rd Meters shall return to the \$3.48 as adjusted from the Meander Water Rate explained in Section 2.

Section 16: Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

Section 17: Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns.

Section 18: Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice", and with the correlative meaning

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“Notify”) must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) on receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this Section 18.

To Niles:

City of Niles
Attn Office of the Mayor
34 W State St
Niles Ohio 44446

To Lordstown:

Village of Lordstown Board of Public Affairs
1455 Salt Springs Road
Warren, OH 44481

Section 18: Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to the court may modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Witness the signatures of the authorized officials of Niles and Lordstown hereto:

CITY OF NILES, OHIO

BY: _____
MAYOR

BY: _____
SAFETY-SERVICE DIR.

VILLAGE OF LORDSTOWN, OHIO

BY: _____
MAYOR

BY: _____

CLERK

Approved as to form and
legal sufficiency:

VILLAGE OF LORDSTOWN
BOARD OF PUBLIC AFFAIRS

Solicitor for Lordstown, Ohio (date)

Law Director of Niles, Ohio (date)

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