

ORDINANCE NO. 208-22

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A LISTING AND MARKETING AGREEMENT WITH BRINDLEE MOUNTAIN FIRE APPARATUS FOR THE SALE OF A 1997 PIERCE FIRE TRUCK FOR THE FIRE DEPARTMENT.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

- SEC. 1:** That the Mayor is hereby authorized and directed to execute a Listing and Marketing Agreement with Brindlee Mountain Fire Apparatus for the sale of a 1997 Pierce Fire Truck for the Fire Department.
- SEC. 2:** That a copy of the Agreement is marked Exhibit A attached hereto and incorporated herein.
- SEC. 3:** That the funds to cover the agreement, in the amount not to exceed \$1,000.00, are available in Account No. 107-0110-52215.
- SEC. 4:** That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.
- SEC. 5:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

PASSED: November 14, 2022

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: November 15, 2022

SIGNED: Dennis Hanwell
Mayor

ORD. 208-22

BRINDLEE MOUNTAIN FIRE APPARATUS
15410 Hwy 231 Union Grove AL 35175 • 256-776-7786 • Fax: 256-498-0924

Listing and Marketing Commission Agreement

The undersigned Seller and Brindlee Mountain Fire Apparatus, LLC ("Brindlee") being duly authorized, hereby enter into the following contractual agreement (the "Agreement") effective as of _____, 20____:

Apparatus: _____ (the "Apparatus")

Apparatus owned or exclusively offered for sale by: City of Medina ("Seller") if

Apparatus not owned by Seller, then owner of the Apparatus: _____ ("Owner")

List Price: The price at which the Apparatus will be listed shall be _____, or such other price agreed upon by Seller and Brindlee (the "List Price")

Seller grants Brindlee the non-exclusive right to offer the Apparatus for sale for the List Price. Brindlee shall have the right, but not the obligation, to market and advertise the Apparatus in any media of Brindlee's choosing, including the internet. Seller represents and warrants that the information provided to Brindlee by Seller, Owner and their agents and representatives regarding the Apparatus is true and correct and Seller holds Brindlee harmless and indemnifies Brindlee from any liability resulting from inaccuracies in such information. Seller agrees to pay Brindlee the commission set forth below (the "Commission") if Seller or Owner sells the Apparatus or any other fire apparatus to a buyer referred by Brindlee (a "Referral"), or anyone acting on behalf of a Referral, whether or not the Apparatus is sold at the List Price. The Commission shall be calculated as follows:

- The greater of 10% of the sales price or \$500 if the subject Apparatus is sold for less than \$125,000.00; -
- 7% of the sales price if the subject Apparatus is sold for a price from \$125,000.00 to \$200,000.00; and - 5%
- of the sales price if the subject Apparatus is sold for a price above \$200,000.00.

Payment of the Commission will be made to Brindlee within 10 days after the sale of the subject Apparatus. Seller shall pay interest in the amount of 1.5% per month on Commission not paid within such 10 day period. Seller further agrees that any additional costs incurred by Brindlee as part of collection efforts for past due Commission will be reimbursed to Brindlee by Seller. The Commission rights of Brindlee and the Commission obligations of Seller set forth in this Agreement shall survive expiration or termination of this Agreement.

Seller agrees to notify Brindlee at the time of sale of the Apparatus as to the sales price and the name and address of the buyer, regardless of whether such buyer is a Referral which was referred by Brindlee. Seller agrees that if Seller fails to provide such information then Seller will pay a Commission to Brindlee as if the buyer of the Apparatus was a Referral referred by Brindlee and the Apparatus was sold at the List Price.

Either party may terminate this Agreement at any time by notifying the other party in writing. If any sale of the Apparatus takes place to a Referral previously referred by Brindlee within one year subsequent to termination of this Agreement, Seller shall pay the same Commission to Brindlee as would have been paid if this Agreement had not been terminated.

Seller agrees that Brindlee may list, market and sell other fire apparatus to prospective buyers who are interested in the Apparatus, including but not limited to fire apparatus owned by Brindlee.

This Agreement shall create an independent contractor relationship between Brindlee and Seller. Brindlee shall at no time be considered an employee of Seller. Seller represents that Seller has full authority to enter into this Agreement.

This Agreement constitutes the entire agreement between the parties. This Agreement and the terms and conditions herein may not be amended, modified or waived except by the written agreement of the parties hereto. The failure of the parties to adhere to strictly to the terms and conditions of this Agreement shall not constitute a waiver of the right of the parties later to insist on such strict adherence. This Agreement may be executed in any number of separate counterparts and all such executed counterparts shall constitute one agreement, which shall be binding on the parties notwithstanding that all parties are not signatories to the same counterpart or counterparts. Each party may transmit its signature by facsimile or e-mail (.pdf or similar) to the other party or parties, and any faxed or e-mail signature and/or faxed or e-mail counterpart of this Agreement shall have the same force and effect as an original. This Agreement shall be governed by, construed, and enforced in accordance with the laws of Ohio. The undersigns by execution and delivery of this Agreement do hereby submit to the exclusive jurisdiction and venue of the state and federal courts located in Medina County, Ohio.

Agreed to by:

Seller: Brindlee:

City of Medina BRINDLEE MOUNTAIN FIRE APPARATUS, LLC [insert seller
name above]

By: Dennis Hanwell
Name: Dennis Hanwell
Title: Mayor
Date: 11-15-2022

By: _____
Name: _____
Title: _____