CITY COMMISSION MEETING AGENDA

CITY COMMISSION          DAYTON, OHIO          FEBRUARY 24, 2021

8:30 A.M.

I. AGENDA SCHEDULE

Please register to speak on items 9, 11 and 13 with the Clerk of the Commission.
(Sign-up sheets at entrance of Commission Chambers.)
1. Call Meeting to Order
2. Invocation
3. Pledge of Allegiance
4. Roll Call
5. Approval of Minutes
6. Communications and Petitions Distribution (if any)
7. Special Awards/Recognition
8. Discussion of City Manager’s Recommendations (See Section II)
9. Citizen Comments on City Manager's Recommendations
10. City Commission Action on City Manager’s Recommendations
11. Public Hearing: N/A
12. Discussion Item: N/A
13. Comments by Citizens - Please register to speak with the Clerk of Commission
   (Non - Calendar items)  sign-up sheets at entrance of Commission Chambers
14. Comments by City Manager
15. Comments by City Commission
16. Work Session: N/A
17. Miscellaneous (See Section VI)

II. CITY MANAGER RECOMMENDATIONS (Item #8 above)
The following recommendations are offered for City Commission approval.

A. Purchase Orders, Agreements and Contracts:
(All contracts are valid until delivery is complete or through December 31st of the current year).

  1. Purchase Orders:

     ECONOMIC DEVELOPMENT
     A1. Comptech Computer Technologies, Inc. (temporary staffing services
         as needed through 12-31-23) $10,000.00
1. (Cont’d):

INFORMATION TECHNOLOGY
B1. Pitney Bowes, Inc. (postage fees as needed through 12-31-24)  

PUBLIC WORKS
C1. MDSolutions (U-Channel posts as needed through 12-31-22) 11,016.00
C2. Pioneer Manufacturing Co. (one synthetic turf brush attachment with spring tine rake) 13,288.14

RECREATION & YOUTH SERVICES
D1. Fitness Doctor LLC (fitness equipment maintenance services through 05-31-22) 11,239.74

WATER
E1. Barrett Paving Materials, Inc. (washed gravel #4 as needed through 12-31-21) 65,000.00
E2. McCluskey Chevrolet, Inc. (five four-wheel drive pick-up trucks with various optional equipment through 03-31-21) 198,925.00
-Depts. of Economic Development, Information Technology, Public Works, Recreation & Youth Services and Water. Total: $949,468.88

2. Bricker & Eckler LLP – Contract Modification – sixth amendment for additional legal services in connection with Ohio’s Enterprise Zone, Tax Increment Financing, Community Reinvestment Area programs, New Community Authority Districts and other urban economic development incentive programs – Dept. of Economic Development. $25,000.00 (Thru 03/31/22)

3. Montgomery County – Service Agreement – professional services for Montgomery County Operating a Vehicle While Impaired Task Force – Dept. of Police. $18,000.00 (Thru 09/30/21)

4. SAMBA Holdings, Inc. dba SambaSafety – Service Agreement – for Automated Driver’s License Verification – Dept. of Human Resources. $30,000.00 (Thru 02/23/22)
B. Construction Contracts:

5. **Relyco Sales Incorporated – Award of Contract** – professional services for Online Access to City Employee Direct Deposit Notices and W-2’s – Dept. of Finance/Tax & Accounting. $74,625.00

C. Revenue to City:

6. **Gem City Market – Lease Agreement** – for Parking at 15 Georgeana Ct – Dept. of Planning & Community Development. $100.00 (Thru 02/28/31)

7. **Paradies-Cooper, LLC (f/k/a Paradies-Dayton, Inc.) – Contract Modification** – Third Amendment to Amended and Restated Master Lease and Concession Agreement with Paradies-Dayton Inc. – Dept. of Aviation/AP Admin. & Finance. $650,580.00 – Rev. $75,000.00 – Exp. (Thru 12/31/23)

E. Other – Contributions, Etc.:

8. **Airport Council International - NA – Other** – for annual ACI membership – Dept. of Aviation. $29,482.00

9. **Dayton Power & Light Company – Other** – for payment of voucher for energy usage – Dept. of Public Works/Civil Engineering. $7,052.98

IV. LEGISLATION:

**Ordinance – Second Reading:**

10. **No. 31870-21** Appropriating Funds for the Year 2021 to Provide for the Operating and Capital Expenses of Various Offices, Departments, and Divisions of the Government of the City of Dayton.
VI. MISCELLANEOUS:

ORDINANCE NO. 31873-21

RESOLUTION NO. 6565-21

IMPROVEMENT RESOLUTION NO. 3599-21

INFORMAL RESOLUTION NO. 985-21
ECONOMIC DEVELOPMENT

(A1) P0210502 – COMPTECH COMPUTER TECHNOLOGIES, INC., CENTERVILLE, OH

- Temporary staffing services as needed through 12/31/2021.
- These services are required to augment staff to maintain daily operations.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 18066JL with pricing through 12/31/2023.
- This amendment increases the previously authorized amount of $10,000.00 by $10,000.00 for a total not to exceed $20,000.00 and therefore requires City Commission approval.
- The Department of Economic Development recommends approval of this order.
INFORMATION TECHNOLOGY

(B1) P0210266 – PITNEY BOWES, INC., DUBLIN, OH
- Postage fees as needed through 12/31/2021.
- These fees are required to affix postage to outgoing mail through the City’s postage meter.
- Rates are in accordance with the State of Ohio Term Schedule contract #800547 and Index #STS111.
- The Department of Information Technology requests additional authority of $480,000.00 through 12/31/2024.
- The Department of Information Technology recommends approval of this order.

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<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>2024</td>
<td>General Fund</td>
<td>10000-5560-1132-65</td>
<td>$160,000.00</td>
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</table>

PUBLIC WORKS – CIVIL ENGINEERING

(C1) P0210658 – MDSOLUTIONS, PLAIN CITY, OH
- U-Channel posts as needed through 12/31/2021.
- These goods are required for repair projects.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20009D with pricing through 12/31/2022.
- The Department of Public Works recommends approval of this order.

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<tr>
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<td>$11,016.00</td>
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PUBLIC WORKS – STREET MAINTENANCE

(C2) P0210648 – PIONEER MANUFACTURING CO., CLEVELAND, OH
- One (1) synthetic turf brush attachment with spring tine rake.
- These goods are required to maintain the NFL turf field.
- Three (3) possible vendors were solicited and three (3) responses were received.
- The Department of Public Works recommends acceptance of the low response.

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<tr>
<th>Fiscal Year</th>
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<td>2021</td>
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<td>$13,288.14</td>
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RECREATION AND YOUTH SERVICES

(D1) P0210634 – FITNESS DOCTOR LLC, VERSAILLES, OH
- Fitness equipment maintenance services.
- These services are required to maintain fitness equipment at various recreation centers across the City.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB S16040 with pricing through 5/31/2022.
- The Department of Recreation and Youth Services recommends approval of this order.

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WATER – WATER SUPPLY AND TREATMENT

(E1) P0210379 – BARRETT PAVING MATERIALS, INC., HARRISON TOWNSHIP, OH
- Washed gravel #4 as needed through 12/31/2021.
- These goods are required for repair projects.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 19001D with pricing through 12/31/2021.
- The Department of Water recommends approval of this order.

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WATER – WATER UTILITY FIELD OPERATIONS

(E2) P0210649 – MCCLUSKEY CHEVROLET, INC., CINCINNATI, OH
- Five (5) 2021 four-wheel drive pickup trucks with various optional equipment.
- These vehicles are required to support the daily operations of the Division and will replace Units #1022, #1028, #2003, #2048 and #2074 which will be disposed of in the best interest of the City.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 20041D with pricing through 3/31/2021.
- The Department of Water recommends approval of this order.

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The aforementioned departments recommend approval of these orders.
City Manager's Report

From

2600 - Economic Development

Supplier, Vendor, Company, Individual

Bricker & Eckler LLP

Address

100 S. Third Street
Columbus, Ohio 43215-4291

Date February 24, 2021

Expense Type Contract Modification

Total Amount $25,000.00 (thru 3-31-2022)

Fund Source(s) Fund Code(s) Fund Amount(s)

General Fund 10000-2600-1152-41 $25,000.00

Includes Revenue to the City  Yes  No  Affirmative Action Program  Yes  No  N/A

Description

Professional Services Agreement – Sixth Amendment

The Department of Economic Development is requesting approval of a Sixth Amendment to a Professional Services Agreement with Bricker & Eckler LLP. The amendment will allow up to $25,000.00 in additional legal services and extend the agreement through March 31, 2022. The legal services being performed include but are not limited to activities in connection with Ohio’s Enterprise Zone (EZ), Tax Increment Financing (TIF), Community Reinvestment Area (CRA) programs, New Community Authority Districts (NCAD), and other urban economic development incentive programs. The City currently utilizes these programs to facilitate new investment within the community. Bricker & Eckler is very experienced in providing these services to many Ohio communities. This brings the total agreement to $310,000.00.

The Amendment will be effective upon execution and will expire on March 31, 2022.

The Department of Law has reviewed and approved this Amendment as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016
February 10, 2021

TO: Shelley Dickstein, City Manager
    City Manager’s Office
LaShea Lofton, Acting Director
    Finance Department

FROM: Ford P. Weber, Director
    Department of Economic Development

SUBJECT: Request for Certificate of Funds – Bricker and Eckler, LLP

Attached please find a Certificate of Funds and a Sixth Amendment to a Professional Services Agreement with Bricker and Eckler, LLP for review and approval by the Dayton City Commission. The Amendment adds additional funding for specialized legal services for 2021 and into 2022. Because Bricker provides unique and timely services to multiple departments, the Department of Economic Development is recommending approval of the amended agreement at this time.

If you have any questions, please contact me at extension 3621.

FPW
**CERTIFICATE OF FUNDS**

**SECTION I - to be completed by User Department**

<table>
<thead>
<tr>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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**Original CT/CF**
- CT171657
- CT181657
- CT191657
- CT201657

| Increase Encumbrance | $25,000.00 |  |
| Decrease Encumbrance | $- |  |
| Remaining Commission Approval | $- |  |

**Required Documentation**
- x Initial City Manager's Report
- x Initial Certificate of Funds
- x Initial Agreement/Contract
- x Copy of City Manager's Report
- x Copy of Original Certificate of Funds

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**Amount:** $25,000.00

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**Vendor Name:** Bricker & Eckler LLP

**Vendor Address:**
- 100 S. Third St.
- Columbus OH 43215-4291

**Federal ID:** 31-4359739

**Commodity Code:** 96150

**Purpose:** Professional Services Agreement for legal services related to special assessment financing, community reinvestment area abatements and agreements, joint economic development districts and zones, municipal job creating tax credits, special improvement districts and new community authority districts. Sixth Amendment

**Contact Person:** Jill Bramini
**Economic Development Department/Division Date**

**Originating Department Director's Signature:**

---

**SECTION II - to be completed by the Finance Department**

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

**Finance Director Signature:**

**CF Prepared by:**

---

Finance Department
October 18, 2011
SIXTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS SIXTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT, ("Sixth Amendment") is made and entered into between the City of Dayton, Ohio, ("City") a municipal corporation in and of the State of Ohio and Bricker & Eckler, LLP, ("Consultant"), with an office located at 100 South Third Street, Columbus, Ohio 43215-4291.

WHEREAS, The City entered into a Professional Services Agreement ("Agreement") with Consultant which was approved by the Dayton City Commission on March 8, 2017; and,

WHEREAS, The City entered into a First Amendment to the Agreement which was approved by the Dayton City Commission on July 12, 2017; and,

WHEREAS, The City entered into a Second Amendment to the Agreement which was approved by the Dayton City Commission on June 20, 2018; and,

WHEREAS, The City entered into a Third Amendment to the Agreement which was approved by the Dayton City Commission on December 5, 2018; and,

WHEREAS, The City entered into a Fourth Amendment to the Agreement which was approved by the Dayton City Commission on May 29, 2019; and,

WHEREAS, The City entered into a Fifth Amendment to the Agreement which was approved by the Dayton City Commission on July 8, 2020; and,

WHEREAS, The City has requested and the consultant has agreed to provide additional services under the Agreement; and,

NOW THEREFORE, in order to accommodate the City’s need for additional services, both parties have agreed to amend the Agreement as follows:

1. Paragraph 1 of Section 3, PAYMENT, of the Agreement, is hereby deleted in its entirety and replaced with the following:

   The remuneration for the professional services shall be for an amount not to exceed THREE HUNDRED TEN THOUSAND DOLLARS AND ZERO CENTS ($310,000.00); and

2. Section 6, TERM, is hereby deleted in its entirety and replaced with the following:

   This Agreement shall commence upon full execution by the City and it shall expire on March 31, 2022 unless terminated or amended by mutual written agreement.

3. Except as amended herein, all other terms and conditions of this Agreement shall remain in full force and effect.

   [Signature Pages to Follow]
IN WITNESS WHEREOF, the parties have caused this Sixth Amendment to be executed, each by a duly authorized representative, on the day and date set forth below.

BRICKER & ECKLER, LLP.

By: [Signature]
Partner
Its: [Signature]

CITY OF DAYTON, OHIO

[Signature]
City Manager

Date

APPROVED AS TO FORM
AND CORRECTNESS:

2/9/2021

[Signature]
John Musto for
City Attorney

Signed by: Musto, John

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO:

[Signature], 2021

Min./Bk.: _____ Page: ____________

Clerk of the Commission
## TRANSACTION DETAILS
- **Reference Number**: 550C698C-99DE-477A-A79B-93AD7A5D989F
- **Transaction Type**: Signature Request
- **Sent At**: 02/10/2021 08:35 EST
- **Executed At**: 02/10/2021 08:39 EST
- **Identity Method**: email
- **Distribution Method**: email
- **Signed Checksum**: 473coc698c99de4774a7a93ad7a5d989f

### SIGNERS
- **Name**: J. Caleb Bell
- **Email**: jbell@bricker.com
- **Components**: 2

### SIGNATURE
- **Status**: signed

### E-SIGNATURE
- **Multi-factor Digital Fingerprint Checksum**: 5724430d8e019f17a99b62b7
- **IP Address**: 174.232.8.128
- **Device**: Chrome Mobile via Android

### EVENTS
- **Viewed At**: 02/10/2021 08:38 EST
- **Identity Authenticated At**: 02/10/2021 08:39 EST
- **Signed At**: 02/10/2021 08:39 EST

### AUDITS
- **02/10/2021 08:35 EST**: Brandi Matlock (bmatlock@bricker.com) created document 'sixth_amendment_to_bricker_and_eckler_professional_service_agreement_2_9_2021_.pdf' on Chrome via Windows from 174.105.135.176.
- **02/10/2021 08:35 EST**: J. Caleb Bell (jbell@bricker.com) was emailed a link to sign.
- **02/10/2021 08:38 EST**: J. Caleb Bell (jbell@bricker.com) viewed the document on Chrome Mobile via Android from 174.232.8.128.
- **02/10/2021 08:39 EST**: J. Caleb Bell (jbell@bricker.com) authenticated via email on Chrome Mobile via Android from 174.232.8.128.
- **02/10/2021 08:39 EST**: J. Caleb Bell (jbell@bricker.com) signed the document on Chrome Mobile via Android from 174.232.8.128.
City Manager's Report

From 2600 - Economic Development

Supplier, Vendor, Company, Individual
Bricker & Eckler LLP

Address 100 S. Third Street
Columbus, Ohio 43215-4291

Date July 8, 2020
Expense Type Contract Modification
Total Amount $20,000.00 (thru 3-31-2021)

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund 10000-2800-1152-41 $20,000.00

Includes Revenue to the City ✔ No Affirmative Action Program ✔ Yes  N/A

Description

Professional Services Agreement – Fifth Amendment

The Department of Economic Development is requesting approval of a Fifth Amendment to a Professional Services Agreement with Bricker & Eckler LLP. The amendment will allow up to $20,000.00 in additional legal services and extend the agreement through March 31, 2021. The legal services being performed include but are not limited to activities in connection with Ohio's Enterprise Zone (EZ), Tax Increment Financing (TIF), Community Reinvestment Area (CRA) programs, New Community Authority Districts (NCAD), and other urban economic development incentive programs. The City currently utilizes these programs to facilitate new investment within the community. Bricker & Eckler is very experienced in providing these services to many Ohio communities. This brings the total agreement to $285,000.00.

The Amendment will be effective upon execution and will expire on March 31, 2021.

The Department of Law has reviewed and approved this Amendment as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Division

Department

City Manager

FORM NO. MS-16

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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Attach additional pages for more FOAPALS

Vendor Name: Bricker & Eckler LLP
Vendor Address: 100 S. Third St, Columbus, OH 43215-4291
Federal ID: 31-4359739
Commodity Code: 96160
Purpose: Professional Services Agreement for legal services related to special assessment financing, community reinvestment area abatements and agreements, joint economic development districts and zones, municipal job creating tax credits, special improvement districts and new community authority districts.

Contact Person: Jill Bramini
Economic Development Department/Division 6/25/2020

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature: [Signature]
Date: 06/30/2020

CF Prepared by: [Signature]
Date: 06/30/2020

Finance Department
October 18, 2011
FIFTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS FIFTH AMENDMENT, ("Fifth Amendment") is made and entered into between the City of Dayton, Ohio, ("City") a municipal corporation in and of the State of Ohio and Bricker & Eckler, LLP, ("Consultant"), with an office located at 100 South Third Street, Columbus, Ohio 43215-4291.

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WHEREAS, The City entered into a Second Amendment to the Agreement which was approved by the Dayton City Commission on June 20, 2018; and,

WHEREAS, The City entered into a Third Amendment to the Agreement which was approved by the Dayton City Commission on December 5, 2018; and,

WHEREAS, The City entered into a Fourth Amendment to the Agreement which was approved by the Dayton City Commission on May 29, 2019; and,

WHEREAS, The City has requested and the Consultant has agreed to provide additional services under the Agreement; and,

NOW THEREFORE, in consideration of the foregoing, both parties have agreed to amend the Agreement as follows:

1. Paragraph 1 of Section 3, PAYMENT, of the Agreement, is hereby deleted in its entirety and replaced with the following:

   The remuneration for the professional services shall be for an amount not to exceed TWO HUNDRED EIGHTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($285,000.00).

2. Section 6, TERM, is hereby deleted in its entirety and replaced with the following:

   This Agreement shall commence upon full execution by the City and it shall expire on March 31, 2021 unless terminated or amended by mutual written agreement.

3. Except as amended herein, all other terms and conditions of this Agreement shall remain in full force and effect.

[Signature Pages to Follow]
IN WITNESS WHEREOF, the parties have caused this Fifth Amendment to be executed, each by a duly authorized representative, on the day and date set forth below.

BRICKER & ECKLER, LLP

By: ____________________________

Its: Partner______________________

CITY OF DAYTON, OHIO

______________________________
City Manager

7-14-2020
Date

APPROVED AS TO FORM AND CORRECTNESS:

______________________________
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

______________________________
July 8, 2020
Min./Bk.: J-16e Page:

______________________________
Clerk of the Commission
**SECTION I - to be completed by User Department**

- **New Contract**: 
  - Contract Start Date: 3/10/2017
  - Expiration Date: 3/31/2020
  - Original Commission Approval: $265,000.00
  - Initial Expense Encumbrance: $231,616.41
  - Remaining Commission Approval: $33,383.59

- **Renewal Contract**: 
  - Required Documentation:
    - Initial City Manager's Report
    - Initial Certificate of Funds
    - Initial Agreement/Contract

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**Attach additional pages for more FOAPALs**

- Vendor Name: Bricker & Eckler LLP
- Vendor Address: 100 S. Third St., Columbus, OH 43215-4291
- Federal ID: 31-4359739
- Commodity Code: 96150
- Purpose: Professional Services Agreement for legal services related to special assessment financing, community reinvestment area abatements and agreements, joint economic development districts and zones, municipal job creating tax credits, special improvement districts and new community authority districts.

Close CT19-1657 and re-encumber with 2020 budget.

- Contact Person: Jill Bramini
- Economic Development Department/Division: 3/6/2020

**SECTION II - to be completed by the Finance Department**

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

**Financeウィルス Signature**

**CF Prepared by**

**Date**

**October 18, 2011**
City Manager's Report

From 2600 - Economic Development
Supplier, Vendor, Company, Individual
Name Bricker & Eckder LLP
Address 100 S. Third Street
Columbus, Ohio 43215-4291

Date May 29, 2019
Expense Type Contract Modification
Total Amount $75,000.00 (thru 10-31-2020)

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund 10000-2600-1152-41 $75,000.00

Includes Revenue to the City Yes No Affirmative Action Program Yes No N/A
Description

Professional Services Agreement – Fourth Amendment

The Department of Economic Development is requesting approval of a Fourth Amendment to a Professional Services Agreement with Bricker & Eckder LLP. The amendment will allow up to $75,000.00 in additional legal services and extend the agreement through 2020. The legal services being performed are related to activities in connection with Ohio’s Enterprise Zone (EZ), Tax Increment Financing (TIF), Community Reinvestment Area (CRA) programs, New Community Authority Districts (NCAD), and other urban economic development incentive programs. The City currently utilizes these programs to facilitate new investment within the community. Bricker & Eckder is very experienced in providing these services to many Ohio communities. This brings the total agreement to $265,000.00.

The Amendment will be effective upon execution and will expire on October 31, 2020.

The Department of Law has reviewed and approved this Amendment as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Division

Department

City Manager

FORM NO. MS-16

Approved by City Commission

Date: May 29, 2019

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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Amount: $75,000.00

Fund Code 10000 - 2600 - 1162 - 41

Fund Code

Fund

Org

Acct

Prog

Act

Loc

Amount: X

Fund Code

Fund

Org

Acct

Prog

Act

Loc

Purpose: Professional Services Agreement for legal services related to special assessment financing, community reinvestment area abatements and agreements, joint economic development districts and zones, municipal job creating tax credits, special improvement districts and new community authority districts. Fourth Amendment adding $75,000.

Contact Person: Ronelle Kinney

Economic Development Department/Division 5/17/2019

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature: 5-17-19

Date: 5/17/19

CF/CT Number: CT19-11557

Finance Department

October 18, 2011
FOURTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS FOURTH AMENDMENT, ("Fourth Amendment") is made and entered into between the City of Dayton, Ohio, ("City") a municipal corporation in and of the State of Ohio and Bricker & Eckler, LLP, ("Consultant"), with an office located at 100 South Third Street, Columbus, Ohio 43215-4291.

WHEREAS, the City entered into a Professional Services Agreement ("Agreement") with Consultant which was approved by the Dayton City Commission on March 8, 2017; and,

WHEREAS, the City entered into a First Amendment to the Agreement which was approved by the Dayton City Commission on July 12, 2017; and,

WHEREAS, the City entered into a Second Amendment to the Agreement which was approved by the Dayton City Commission on June 20, 2018; and,

WHEREAS, the City entered into a Third Amendment to the Agreement which was approved by the Dayton City Commission on December 5, 2018; and,

WHEREAS, the City has requested and the consultant has agreed to provide additional services under the Agreement; and,

NOW THEREFORE, in consideration of the foregoing, both parties have agreed to amend the Agreement as follows:

1. Section 3, PAYMENT, is hereby deleted in its entirety and replaced with the following:

   The total remuneration for the professional services shall be for an amount not to exceed TWO HUNDRED SIXTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($265,000.00).

   Consultant shall submit invoices for payment, not more frequently than monthly or in such frequency as the parties may mutually agree, for payment of the professional services provided at the hourly rate outlined in Exhibit A. Such invoices shall detail the professional services provided during the invoice period, list the total charges for such professional services, and total amount of reimbursable expenses incurred during the invoice period, listed by category and type of expense. All invoices shall be accompanied by such supporting documentation and information substantiating the invoiced amount or expenses incurred, as may be requested by the City. Unless disputed, the City shall tender payment within thirty (30) days of receipt of Consultant’s invoice.

2. Section 6, TERM, is hereby deleted in its entirety and replaced with the following:

   This Agreement shall commence upon full execution by the City and it shall expire on October 31, 2020 unless terminated or amended by mutual written agreement.
3. Except as amended herein, all other terms and conditions of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Fourth Amendment to be executed, each by a duly authorized representative, on the day and date set forth below.

BRICKER & ECKLER, LLP.

By: [Signature]

Its: [Signature]

CITY OF DAYTON, OHIO

[Signature]

City Manager

6-12-19

Date

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

May 29, 2019

Min./Bk: T-15 Page: __________

[Signature]

Clerk of the Commission
# CERTIFICATE OF FUNDS

## SECTION I - to be completed by User Department

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| Amount: | $41,648.95 |
| Fund Code | 10000 - 2600 - 1152 - 41 - |
| Fund | Org | Acct | Prog | Act | Loc |

| Amount: | |
| Fund Code | XXXX - XXXX - XXXX - XX - XXXX - XXXX |
| Fund | Org | Acct | Prog | Act | Loc |

Attach additional pages for more FOAPALs

Vendor Name: Bricker & Eckler LLP
Vendor Address: 100 S. Third St. Columbus OH 43215-4291
Federal ID: 31-4359739
Commodity Code: 96150
Purpose: Professional Services Agreement for legal services related to special assessment financing, community reinvestment area abatements and agreements, joint economic development districts and zones, municipal job creating tax credits, special improvement districts and new community authority districts.

Close CT18-1657 and re-encumber with 2019 budget.

Contact Person: Ronelle Kinney
Economic Development Department/Division 2/11/2019

Originating Department Director's Signature: [Signature]
Date: 2/11/2019

## SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature: [Signature]
Date: 2/26/19

CF Prepared by: [Signature]
Date: 2/26/19

CF/CT Number: CT19-1657

October 18, 2011
City Manager's Report

From: 2500 - Economic Development
Supplier, Vendor, Company, Individual: Bricker & Eckler LLP
Address: 100 S. Third Street, Columbus, Ohio 43215-4291

Date: December 5, 2018
Expense Type: Contract Modification
Total Amount: $65,000.00 (thru 12-31-2019)

Fund Source(s): General Fund
Fund Code(s): 10000-2600-1152-41
Fund Amount(s): $55,000.00

Includes Revenue to the City: No
Affirmative Action Program: No

Professional Services Agreement – Third Amendment

The Department of Economic Development is requesting approval of a Third Amendment to a Professional Services Agreement with Bricker & Eckler LLP. The amendment will allow up to $55,000.00 in additional legal services and extend the agreement an additional six months. The legal services being performed are related to activities in connection with Ohio's Enterprise Zone (EZ), Tax Increment Financing (TIF), Community Reinvestment Area (CRA) programs, New Community Authority Districts (NCAD) and other urban economic development incentive programs. The City currently utilizes these programs to facilitate new investment within the community. Bricker & Eckler is very experienced in providing these services to many Ohio communities. This brings the total agreement to $180,000.00.

The Amendment will be effective upon execution and will expire on December 31, 2019.

The Department of Law has reviewed and approved this Amendment as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Division: Economic Development
Department: Legal
City Manager: [Signature]

Approved by City Commission

Clerk: [Signature]

Date: December 5, 2018

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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Fund Code: ______

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<th>Act</th>
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Attach additional pages for more POAPALs

Vendor Name: Bricker & Eckler LLP
Vendor Address: 100 S. Thirld St, Columbus, OH 43215-2991
Federal ID: 91-3527339
Commodity Code: X0000
Purpose: Professional Services Agreement for legal services related to special assessment financing, community reinvestment area statements and agreements, joint economic development districts and zones, municipal job creation tax credits, special improvement districts and new community authority districts. Third Amendment adding $16,000.

Contact Person: Jill Brumini
Originating Department Director's Signature: P. W. [Signature]

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director's Signature: P. W.
Date: 11/17/18

CP Prepared by: [Signature]
Date: 11-26-2018

Finance Department

October 18, 201
THIRD AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS THIRD AMENDMENT, ("Amendment") is made and entered into between the City of Dayton, Ohio, ("City") a municipal corporation in and of the State of Ohio and Bricker & Eckler, LLP, ("Consultant"), with an office located at 100 South Third Street, Columbus, Ohio 43215-4291.

WHEREAS, the City entered into a Professional Services Agreement ("Agreement") with Consultant which was approved by the Dayton City Commission on March 8, 2017; and,

WHEREAS, the City entered into a First Amendment to the Agreement which was approved by the Dayton City Commission on July 12, 2017; and,

WHEREAS, the City entered into a Second Amendment to the Agreement which was approved by the Dayton City Commission on June 20, 2018; and,

WHEREAS, the City desires and Consultant has agreed to provide additional services under the Agreement.

NOW THEREFORE, in consideration of the foregoing, both parties have agreed to amend the Agreement as follows:

1. Section 3, PAYMENT, is deleted in its entirety and replaced with the following:

The total remuneration for the professional services shall be for an amount not to exceed ONE HUNDRED NINETY THOUSAND DOLLARS AND ZERO CENTS ($190,000.00).

Consultant shall submit invoices for payment, not more frequently than monthly or in such frequency as the parties may mutually agree, for payment of the professional services provided at the hourly rate outlined in Exhibit A. Such invoices shall detail the professional services provided during the invoice period, list the total charges for such professional services, and total amount of reimbursable expenses incurred during the invoice period, listed by category and type of expense. All invoices shall be accompanied by such supporting documentation and information substantiating the invoiced amount or expenses incurred, as may be requested by the City. Unless disputed, the City shall tender payment within thirty (30) days of receipt of Consultant’s invoice.

2. Section 6, TERM, is deleted in its entirety and replace with the following:

This Agreement shall commence upon full execution by the City and it shall expire on December 31, 2019, unless terminated or extended by mutual written agreement.
3. Except as amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be executed, each by a duly authorized representative, on the day and date set forth below.

BRICKER & ECKLER, LLP.
By: [Signature]
Its: [Signature]

CITY OF DAYTON, OHIO
By: [Signature]
City Manager: [Signature]
Date: 12-12-18

APPROVED AS TO FORM AND CORRECTNESS:
[Signature]
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:
December 5, 2018

Min./Bk.: [Signature]
Page: [Signature]
Clerk of the Commission
City Manager's Report

From 2500 - Economic Development
Supplier, Vendor, Company, Individual
Name Bricker & Eckler LLP
Address 100 S. Third Street
Columbus, Ohio 43215-4291

Date June 20, 2018
Expense Type Contract Modification
Total Amount $35,000.00 (thru 06-30-2019)

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Includes Revenue to the City ☑️ Yes ☐ No
Affirmative Action Program ☑️ Yes ☐ No ☐ N/A

Professional Services Agreement – 2nd Amendment

The Department of Economic Development is requesting approval of a Second Amendment to a Professional Services Agreement with Bricker & Eckler LLP. The amendment will allow up to $35,000.00 in additional legal services. The legal services being performed are related to activities in connection with Ohio's Enterprise Zone (EZ), Tax Increment Financing (TIF), Community Reinvestment Area (CRA) programs, New Community Authority Districts (NCAD) and other urban economic development incentive programs. The City currently utilizes these programs to facilitate new investment within the community. Bricker & Eckler is very experienced in providing these services to many Ohio communities. This brings the total agreement to $135,000.00.

The Amendment will be effective upon execution and will expire on June 30, 2019.

The Department of Law has reviewed and approved this Amendment as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

FORM NO. MS-16

Updated 8/2016
### CERTIFICATE OF FUNDS

**SECTION I - to be completed by User Department**

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**Vendor Name:** Bricker & Eckler LLP  
**Vendor Address:** 100 S. Third St. Columbus OH 43215-4281  
**Federal ID:** 31-4597339  
**Commodity Code:** 935150  
**Purpose:** Professional Services Agreement for legal services related to special assessment financing, community reinvestment area abatements and agreements, joint economic development districts and zones, municipal job creation tax credits, special improvement districts and new community authority districts. Second Amendment adding $35,000.  
**Contact Person:** Jill Bramimi  
**Economic Development Department/Division:**  
**Date:** 5/30/2018  
**Originating Department Director's Signature:** [Signature]  

**SECTION II - to be completed by the Finance Department**

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

---

**Finance Division Signature:** [Signature]  
**Date:** 6-12-12  
**CF Prepared by:** [Signature]  
**Date:** 10-14-12  
**CFI Code Number:** [Code]  
**Oct 16, 2011**
SECOND AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS SECOND AMENDMENT, ("Amendment") is made and entered into between the City of Dayton, Ohio, ("City") a municipal corporation in and of the State of Ohio and Bricker & Eckler, LLP, ("Consultant"), with an office located at 100 South Third Street, Columbus, Ohio 43215-4291.

WHEREAS, the City entered into a Professional Services Agreement ("Agreement") with Consultant which was approved by the Dayton City Commission on March 8, 2017; and,

WHEREAS, the City entered into a First Amendment to the Agreement which was approved by the Dayton City Commission on July 12, 2017; and

WHEREAS, the City desires and Consultant has agreed to provide additional services under the Agreement.

NOW THEREFORE, in consideration of the foregoing, both parties have agreed to amend the Agreement as follows:

1. Section 3, PAYMENT, is deleted in its entirety and replaced with the following:

The total remuneration for the professional services shall be for an amount not to exceed ONE HUNDRED THIRTY-FIVE THOUSAND DOLLARS AND ZERO CENTS ($135,000.00).

Consultant shall submit invoices for payment, not more frequently than monthly or in such frequency as the parties may mutually agree, for payment of the professional services provided at the hourly rate outlined in Exhibit A. Such invoices shall detail the professional services provided during the invoice period, list the total charges for such professional services, and total amount of reimbursable expenses incurred during the invoice period, listed by category and type of expense. All invoices shall be accompanied by such supporting documentation and information substantiating the invoiced amount or expenses incurred, as may be requested by the City. Unless disputed, the City shall tender payment within thirty (30) days of receipt of Consultant’s invoice.

2. Section 6, TERM, is deleted in its entirety and replace with the following:

This Agreement shall commence upon full execution by the City and it shall expire on June 30, 2019, unless terminated or extended by mutual written agreement.
3. Exhibit A is deleted in its entirety and replaced with the revised Exhibit A.

4. Except as amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to be executed, each by a duly authorized representative, on the day and date set forth below.

BRICKER & ECKLER, LLP.

By: [Signature]

Its: [Signature]

CITY OF DAYTON, OHIO

[Signature]
City Manager

[Signature]
Date

6-26-18

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

[Signature]

[Signature]

Min./Bk.: T-15 Page: 11

Clerk of the Commission
June 14, 2018

VIA E-MAIL
(Bridget.Findley@daytonohio.gov)

City of Dayton
101 West Third Street
Room 430
Dayton, Ohio 45402
ATTN: Ms. Bridget Findley, Assistant City Attorney

Dear Bridget:

We are pleased that you have asked Bricker & Eckler LLP to represent the City of Dayton (the “City”) with respect to serving as outside legal counsel to the City on various legal matters from time to time (the “Representation”). We recognize that our work for the City will include: (1) assistance at your direction for the Arcade project, (2) assistance at your direction with negotiating financing, new community authority, tax abatement, TIF exemption, and special assessment programs for economic development projects within the City, and (3) assistance at your direction with negotiating and/or implementing other economic development projects within the City that may arise from time to time.

Scope of Representation

One of the purposes of this letter is to set forth the nature of our engagement and the roles and responsibilities we will assume in our representation of the City. Caleb Bell will be the attorney in our firm primarily responsible for coordinating our effort to provide outside legal counsel to the City. Please note, however, that we take pride in the fact that we provide services to you as a firm, and as such, Caleb will retain the discretion in the exercise of his professional judgment to assign portions of the work to attorneys and legal assistants who are best able to handle particular aspects of the representation on a cost-efficient basis. However, while he may refer certain matters to other attorneys and legal assistants based on his individual knowledge and experience, Caleb will continually maintain primary responsibility for making sure that each question is thoroughly and efficiently addressed by the attorney or legal assistant to which such matter is assigned.

Billing Arrangement

We render our statements on a monthly basis, and we find that most clients appreciate receiving statements every month. The statements break out the disbursements incurred on your behalf. Disbursements include long distance telephone charges, delivery charges, reproduction costs, fax charges, filing fees, travel expenses and other related costs incurred in the performance of our services.
City of Dayton
June 14, 2018
Page 2

The principal factors in determining our fees will be the time and effort devoted to the matter, the complexity of the matter, and the hourly rates of the lawyers and assistants involved in working on the matter. We believe our hourly billing rates for attorneys and assistants are competitive with other major firms in the Dayton and Ohio markets that provide economic development services. Depending upon the special expertise and amount of experience involved, our institutional hourly rates range from $560 per hour for our most experienced partners to $190 per hour for our most junior lawyers. For services rendered to the City, we will charge (1) a blended rate of $310 per hour for all work related to the Arcade project, and (2) $295 per hour for all other work.

From time to time, the City engages in economic development projects with private developers or other entities that are willing to pay all or a portion of the City’s costs in connection with a development project. If as part of a development project a private developer or other entity agrees to pay or finance the City’s costs in connection with our representation, our firm and the City agree to consider adjustments in our rates so that the developer is charged our institutional hourly rates instead of the blended rate charged to the City as disclosed in the preceding paragraph.

Before bills for legal services are submitted to the client, the primary billing attorney reviews each bill to ensure that it accurately reflects services rendered and that those services are within the scope of the representation for which the firm is engaged.

Client Responsibilities

You agree to cooperate fully with us and to provide promptly all information known or available to you relevant to our representation.

Other Matters

We understand that our client for purposes of this representation is the City, and not any of its individual officer holders or staff members. If the City would wish to retain our services for another matter different from those discussed in this letter, we would prepare an additional letter similar to this one; absent any other special arrangements, the terms and conditions of that other work done by us would be determined at the time the new engagement would commence.

Relative to conflict matters, we have performed a formal conflicts check within our office. Because of our vast and diverse representation of many other clients in and around the state of Ohio, including, but not limited to, public entities, banks, financial institutions, lenders, developers, and real estate sellers and buyers, it is possible that in the future, a dispute may arise between you and another client that we represent or a transaction in which your interests do not coincide with those of another client that we represent, and we reserve the right to continue to represent or to undertake to represent existing or new clients in any matter that is not substantially related to our work for the City, even if the interests of such clients in other matters are directly adverse to you. In order to distinguish those instances in which you consent to our representation of such other clients from those instances in which your consent is not given, you have agreed, as
a condition to our undertaking this engagement, that during the period of this engagement we will not be precluded from representing clients who may have interests adverse to yours so long as (1) such adverse matter is not substantially related to our work for the City; (2) our representation of the other client does not involve the use, to the disadvantage of you, of any of your confidential information that we have obtained as a result of our representation of you; and (3) we reasonably believe we will nonetheless be able to competently and diligently serve both you on this matter and the other client on the different matter.

Please note, specifically, that our firm has represented the Dayton City School District (the “School District”) in the past and, as a result, if our representation of the City involves negotiation with the School District and we determine that such representation would be a conflict of interest with our prior representation of the School District, we will either need a waiver from the City and the School District or we will be prohibited from engaging in that particular aspect of the representation.

Please note, specifically, that our firm has represented Ellway Group, LLC, the development group currently investing in the Fire Blocks District area of the City, under a waiver that has been previously agreed upon by the City and our firm.

Finally, please note that our representation of the City will not disqualify us from continuing our representation of the Dayton-Montgomery County Port Authority or any financial institutions including undertaking the closing of new loans for existing or new clients. We find that our representation of such entities is frequently consistent with and not adverse to the goals of the City. You are waiving any right to object to such representation now or in the future.

We specifically reserve the right to withdraw from representation if we feel that we cannot properly represent your interests. Likewise, should we at any time during the representation, even after the conflicts check, determine that representation of your interests would conflict with our previous representation and/or previous relationship with other clients relative to your matter, we do reserve the right, after discussion with you, and at our sole discretion, to withdraw from representation of your interests, or refer that particular matter out to other counsel to handle.

If the foregoing terms of this engagement are acceptable to you, please so indicate by returning the enclosed copy of this letter signed by an appropriate officer, retaining the original for your files. Again, we would like to express our appreciation for asking us to serve the City as outside legal counsel. We look forward to being of service to you.
Accepted and Approved:

CITY OF DAYTON

By: [Signature]

Title: Chief Civil Counsel to City Attorney

Date: 6/15/18
**SECTION I - to be completed by User Department**

<table>
<thead>
<tr>
<th>New Contract</th>
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<tr>
<td>Remaining Commission Approval</td>
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**Required Documentation**

- Initial City Manager's Report
- Initial Certificate of Funds
- Initial Agreement/Contract
- Copy of City Manager's Report
- Copy of Original Certificate of Funds

**Amount:** $56,988.95

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**Attach additional pages for more FOAPALS**

**Vendor Name:** Bricker & Eckler LLP

**Vendor Address:** 100 S. Third St. Columbus OH 43215-4291

**Federal ID:** 31-4359739

**Commodity Code:** 96150

**Purpose:** Professional Services Agreement for legal services related to special assessment financing, community reinvestment area abatements and agreements, joint economic development districts and zones, municipal jobs creating tax credits, special improvement districts and new community authority districts.

**Close CT17-1657 and re-encumber with 2018 budget.**

**Contact Person:** Jill Bramini

**Economic Development Department/Division:** 2/16/2018

**Originating Department Director's Signature:** [Signature]

**SECTION II - to be completed by the Finance Department**

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

**Finance Director Signature:** [Signature]

**Date:** 2/26/2018

**CF Prepared by:** [Signature]

**Date:** 2/22/18

**CF/CT Number:** CT18-11657

**Finance Department:** October 18, 2011
City Manager's Report

From 2600 - Economic Development
Supplier, Vendor, Company, Individual
Name Bricker & Eckler LLP
Address 100 S. Third Street
Columbus, Ohio 43215-4291

Date July 12, 2017
Expense Type Contract Modification
Total Amount $70,000.00 (thru 06-30-2018)

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund 10000-2600-1152-41 $70,000.00

Includes Revenue to the City ☐ Yes ☑ No Affirmative Action Program ☑ Yes ☐ No ☐ N/A

Description
The Department of Economic Development is requesting approval of a First Amendment to a Professional Services Agreement with Bricker & Eckler LLP. The amendment will allow up to $70,000.00 in additional consulting services. The legal services being performed are related to activities in connection with Ohio's Enterprise Zone (EZ), Tax Increment Financing (TIF), Community Reinvestment Area (CRA) programs, New Community Authority Districts (NCAD) and other urban economic development incentive programs. The City currently utilizes these programs to facilitate new investment within the community. Bricker & Eckler is very experienced in providing these services to many Ohio communities. This brings the total agreement to $100,000.00.

The Amendment will be effective upon execution and will expire on June 30, 2018.

The Department of Law has reviewed and approved this Amendment as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Division
Jerol P. Weber
Department
City Manager
FORM NO. MS-16

Approved by City Commission

Rashinda Lawrence
Clerk
July 12, 2017
Date
Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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Required Documentation
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Attach additional pages for more FOAPALs

Vendor Name: Bricker & Eckler LLP
Vendor Address: 100 S. Third St.
Columbus OH 43215-4291
Federal ID: 31-4359739
Commodity Code: 96150
Purpose: Professional Services Agreement for legal services related to special assessment financing, community reinvestment area abatements and agreements, joint economic development districts and zones, municipal job creating tax credits, special improvement districts and new community authority districts. Amendment adding $70,000.

Contact Person: Jill Bramini

Fire Nation

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature

CF Prepared by

Date: 6-30-17
CT17-1657
CORD #1
Date: 6-30-17

October 18, 2011
FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

THIS FIRST AMENDMENT, ("Amendment") is made and entered into between the City of Dayton, Ohio, ("City") a municipal corporation in and of the State of Ohio and Bricker & Eckler, LLP, ("Consultant"), with an office located at 100 South Third Street, Columbus, Ohio 43215-4291.

WHEREAS, the City entered into a Professional Services Agreement ("Agreement") with Consultant which was approved by the Dayton City Commission on March 8, 2017; and,

WHEREAS, the City desires and Consultant has agreed to provide additional services under the Agreement.

NOW THEREFORE, in consideration of the foregoing, both parties have agreed to amend the Agreement as follows:

1. Section 3, PAYMENT, is deleted in its entirety and replaced with the following:

   The total remuneration for the professional services shall be for an amount not to exceed ONE HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($100,000.00).

   Consultant shall submit invoices for payment, not more frequently than monthly or in such frequency as the parties may mutually agree, for payment of the professional services provided at the hourly rate outlined in Exhibit A. Such invoices shall detail the professional services provided during the invoice period, list the total charges for such professional services, and total amount of reimbursable expenses incurred during the invoice period, listed by category and type of expense. All invoices shall be accompanied by such supporting documentation and information substantiating the invoiced amount or expenses incurred, as may be requested by the City. Unless disputed, the City shall tender payment within thirty (30) days of receipt of Consultant’s invoice.

2. Section 6, TERM, is deleted in its entirety and replace with the following:

   This Agreement shall commence upon full execution by the City and it shall expire on June 30, 2018, unless terminated or extended by mutual written agreement.
3. Except as amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed, each by a duly authorized representative, on the day and date set forth below.

BRICKER & ECKLER, LLP.
By: 
Its: 

CITY OF DAYTON, OHIO
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

Min./Bk.: Page:

Clerk of the Commission

Date

July 12, 2017
From 2600 - Economic Development

Supplier, Vendor, Company, Individual

Name Bricker & Eckler LLP

Address 100 S. Third Street
Columbus, Ohio 43215-4291

Date March 8, 2017
Expense Type Service Agreement
Total Amount $30,000.00 thru 12-31-2017

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Includes Revenue to the City ☑ Yes ☐ No
Affirmative Action Program ☑ Yes ☐ No ☐ N/A

Description

This Department of Economic Development requests permission to enter into a Professional Services Agreement with Bricker & Eckler LLP to provide consulting and other related activities in connection with Ohio’s Enterprise Zone (EZ), Tax Increment Financing (TIF), Community Reinvestment Area (CRA) programs, New Community Authority Districts (NCAD) and other urban economic development incentive programs. The City currently utilizes these programs to facilitate new investment within the community. Bricker & Eckler is very experienced in providing these services to many Ohio communities.

The Agreement will be effective upon execution and will expire on December 31, 2017.

The Department of Law has reviewed and approved this Agreement as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Division

City Manager

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS
CT17-1657

SECTION I - to be completed by User Department

x New Contract

Renewal Contract

Change Order

Contract Start Date: upon execution
Expiration Date: 12/31/17
Original Commission Approval: $30,000.00
Initial Encumbrance: $30,000.00
Remaining Commission Approval

Original CT/CF Increase Encumbrance
Decrease Encumbrance
Remaining Commission Approval

Required Documentation

x Initial City Manager's Report
x Initial Certificate of Funds
x Initial Agreement/Contract

Copy of City Manager's Report
Copy of Original Certificate of Funds

Amount: $30,000

Fund Code: 10000 - 2600 - 1152 - 41 - Loc

Amount: 

Fund Code: XXXX - XXXX - XXXX - XX - XXXX - XXXX - XXXX - XXXX - Loc

Fund Code: XXXX - XXXX - XXXX - XX - XXXX - XXXX - Loc

Fund Code: XXXX - XXXX - XXXX - XX - XXXX - XXXX - Loc

Attach additional pages for more FOAPALS

Vendor Name: Bricker & Eckler LLP
Vendor Address: 100 S. Third St., Columbus, OH 43215-4291
Federal ID: 31-4359739
Commodity Code: 96150
Purpose: Professional Services Agreement for legal services related to special assessment financing, community reinvestment area abatements and agreements, joint economic development districts and zones, municipal job creating tax credits, special improvement districts and new community authority districts.

Contact Person: Jill Bramini
Economic Development
Department/Division 2/21/2017 Date

Originating Department Director's Signature: 

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature: 
Date: 2/21/17

CF Prepared by: 
Date: 2/22/17
CF/CT Number: CT17-1657

October 18, 2011
PROFESSIONAL SERVICES AGREEMENT
WITH BRICKER & ECKLER LLP

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered
between the City of Dayton, Ohio ("City"), a municipal corporation in and of the State of Ohio,
and Bricker & Eckler LLP ("Consultant"), with an office located at 100 South Third Street,
Columbus, Ohio, 43215-4291.

WITNESSETH THAT:

WHEREAS, the City’s Department of Economic Development identified a need for
certain professional services for its economic development programs, projects and initiatives; and

WHEREAS, Consultant represented that it is a skilled, experienced and competent
consulting firm, with the personnel and equipment to perform the professional services set forth
hereinafter for the City’s Department of Economic Development.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth
below, the parties agree as follows:

SECTION 1. CONSULTANT

Consultant is an Ohio law firm with offices in Dayton, Columbus, Cleveland and Cincinnati.
Their attorneys serve as business advisors for businesses, nonprofit organizations, government
agencies, health care facilities, school districts, municipalities, and individuals.

Consultant has significant expertise in the use of municipal economic development tools such as
special assessment financing, community reinvestment area ("CRA") abatements and
agreements, joint economic development districts ("JEDDs") and zones ("JEDZs"), municipal
job creation tax credits, special improvement districts ("SIDs"), and new community authority
("NCA") districts.

SECTION 2. SCOPE OF ASSIGNMENT

As further described in the attached Exhibit A, Consultant shall provide professional services
work for the City including, but not limited to:

(1) assistance with negotiating financing, NCA districts, CRA abatement, tax abatement,
TIF exemption, and special assessment programs in connection with economic
development projects throughout the City; and,
(2) assistance with the City’s enterprise zone ("EZ") programs, the City’s existing tax
increment financing ("TIF") programs, and the City’s existing CRA programs; and
(3) assistance with negotiating and/or implementing other economic development
projects within the City that may arise from time to time.
SECTION 3. PAYMENT

The remuneration for the professional services shall be for an amount not to exceed THIRTY THOUSAND DOLLARS AND ZERO CENTS ($30,000.00).

Consultant shall submit invoices for payment, not more frequently than monthly or in such frequency as the parties may mutually agree, for payment of the professional services provided at the hourly rate outlined in Exhibit A. Such invoices shall detail the professional services provided during the invoice period, list the total charges for such professional services, and total amount of reimbursable expenses incurred during the invoice period, listed by category and type of expense. All invoices shall be accompanied by such supporting documentation and information substantiating the invoiced amount or expenses incurred, as may be requested by the City. Unless disputed, the City shall tender payment within thirty (30) days of receipt of Consultant’s invoice.

SECTION 4. ASSIGNMENT AND LIMITATIONS ON SUBCONTRACTING

A. Restriction against assignment. The City is relying upon the professional skill and experience of Consultant. Therefore, assignment of this Agreement by Consultant is prohibited.

B. Limitations on subcontracting. Because the City is relying upon the professional skill and experience of Consultant, no part of the professional services to be provided hereunder may be subcontracted by Consultant to other organizations or sub-Consultants without the prior written and express consent of the City. Any such consent shall be deemed to require, even though not stated in the consent language, that a written contract be used between Consultant and such a consented-to subcontractor or sub-Consultant (both referred to as “sub-Consultant”), that such a contract be approved in advance by the City and contain, unless waived by the City, provisions similar or identical to those in this Agreement. Consultant shall, at all times, remain primarily responsible for the professional services and duties it may delegate to any sub-Consultant as Consultant is for its own performance. The mere fact that Consultant used reasonable care in selecting the sub-Consultant shall not relieve its primary responsibility nor shall consent by the City to part of the professional services being subcontracted to a sub-Consultant or approval of the terms of a contract with a sub-Consultant relieve Consultant’s primary responsibility for the professional services.

SECTION 5. TERMINATION

A. Termination of Agreement for Cause. If, through any cause, Consultant fails to fulfill in a timely and proper manner its obligations under this Agreement, or if Consultant defaults in the performance of any terms or conditions of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to Consultant specifying the effective date of the termination, at least five (5) days before such effective date. In the event of such termination, Consultant will be paid for the professional services actually performed and reasonable expenses incurred up to the effective date of termination.

B. Termination of Agreement without Cause. The City may terminate this Agreement at any time and without cause upon giving Consultant fifteen (15) days prior written notice. The notice of termination shall be made by mailing written notice to Consultant by certified mail to its usual
place of business. If such termination occurs, Consultant will be paid for the professional services actually performed and reasonable expenses incurred up to the effective date of termination.

SECTION 6. TERM

This Agreement shall commence upon full execution by the City and it shall expire on December 31, 2017, unless earlier terminated or extended by mutual written agreement.

SECTION 7. DISPUTE RESOLUTION

A. Mediation Period. If during the term of this Agreement the parties are unable to resolve a dispute or controversy among themselves, prior to instituting any court action the parties shall first try, in good faith, to settle the dispute by non-binding mediation administered by the Dayton Mediation Center. All mediation proceedings shall take place in Montgomery County, Ohio.

B. In the event a dispute arises that cannot be resolved through mediation, and one or both parties seek relief through the court, both parties agree to waive their right to a jury trial.

SECTION 8. INSURANCE

Consultant shall, at its expense, maintain with an insurance company authorized to do business in the State of Ohio and having at least an “A” rating from A.M. Best, no less than the following insurance:

1. Professional Liability/Errors and Omissions Insurance, with a one million dollar ($1,000,000) annual aggregate. This annual aggregate amount requirement for professional liability / errors and omissions may be met on a combined basis, i.e., by combining such insurance maintained by Consultant with similar insurance maintained by any sub-Consultant (to the extent that a sub-Consultant is consented to by the City through the process described above in this Agreement).

2. General Liability Insurance, with a combined single limit of one million dollars ($1,000,000) per occurrence and one million dollars ($1,000,000) in the aggregate. This policy shall name the City of Dayton, Ohio and its elected officials, officers, agents, and employees as additional insureds.

Consultant shall also maintain Workers’ Compensation Insurance in such amounts as prescribed by law. All policy/policies of insurance to be maintained by Consultant pursuant to this Section, excluding Workers’ Compensation Insurance, shall provide that the insurance may not be reduced, decreased, cancelled or terminated without thirty (30) days prior written notice to the City. Upon execution of this Agreement, Consultant shall furnish the City with a copy of certificates of insurance demonstrating compliance with this Section. Consultant shall also provide, upon the City’s request, complete copies of any insurance policies required hereunder.
SECTION 9. OWNERSHIP OF WORK PRODUCT AND DOCUMENTS

All work product, including, but not limited to, documents, drawings, analysis, reports, charts, and/or graphs, which are prepared by Consultant pursuant to this Agreement shall, upon payment by the City, become the sole and exclusive property of the City, except to the extent that the Consultant retains copies of their work files for a period of not less than five (5) years.

SECTION 10. CONFIDENTIALITY

Due to the nature of the professional services to be provided by Consultant hereunder, Consultant agrees that all work product, including, but not limited to, all documents, databases, reports, opinions, and information prepared hereunder and/or furnished to Consultant by the City, is confidential, and shall not be divulged, in whole or in part, to any person or entity, other than duly authorized representatives of the City, without prior written approval of the City; but excepting therefrom, instances wherein disclosure is required by law, including by order of a court of competent jurisdiction or disclosure under oath in a judicial proceeding. Consultant shall take all necessary steps to ensure that all its employees, agents, and/or contractors abide by and adhere to this confidentiality requirement.

SECTION 11. CONFLICT OF INTEREST

The City recognizes that Consultant does not provide services exclusively to the City. During the term of this Agreement, Consultant agrees not to accept employment, or to perform for or on behalf of another client for which a conflict of interest between the City and Consultant would be created, without the prior written consent of the City and Consultant. Assisting other communities with grant or loan applications that may be in competition with the City is not considered a conflict of interest, but Consultant will disclose, subject to confidentiality obligations, any such projects to the City prior to accepting the engagement.

SECTION 12. INDEMNIFICATION

To the full extent permitted by law, Consultant shall indemnify, defend and hold harmless the City and its elected officials, officers, agents, and employees from and against all claims, demands, losses, and expenses, including but not limited to reasonable attorneys' fees, to the extent arising out of or resulting in whole or in part from any negligent act or omission, and/or from any failure to perform Consultant's duties under this Agreement, attributable to Consultant its employees, agents, and sub-Consultants, and any other person or entity for whose conduct Consultant may be liable under Ohio law.

SECTION 13. RECORDS

Consultant shall use Generally Accepted Accounting Principles ("GAAP") in recording and documenting all costs and expenditures related in whole or in part to the performance of this Agreement. Such costs and expenditures shall be supported by time records, invoices, contracts, vouchers, or other accounting documents pertaining in whole or in part to this Agreement and shall be clearly identified and readily accessible to the City. At any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to the City...
and/or its designees all of its records with respect to all matters covered under this Agreement. Consultant will permit the City and/or its designees to audit, examine, and make excerpts or transcripts from such records.

If Consultant performs an independent audit of business financial records, Consultant shall require the company or auditor to comply with all applicable GAAP standards that have been developed by the American Institute of Certified Public Accountants.

SECTION 14. MISCELLANEOUS

A. Non-Discrimination. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship. It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the City to terminate this Agreement at its option.

B. Remedies. The remedies provided in this Agreement are cumulative. Delay or forbearance in the enforcement of any right under this Agreement shall not be deemed a waiver of, or estoppel against the exercise of such right.

C. Entire Agreement. This Agreement, together with all Exhibits referred to herein, represents the entire and integrated Agreement between the City and Consultant and supersedes all prior negotiations, representations, and Agreements regarding the subject hereof, whether oral or written.

D. Independent Contractor Status. By executing this Agreement for professional services, Consultant acknowledges and agrees that it will be providing services to the City as an "independent contractor." As an independent contractor for the City, Consultant shall be prohibited from representing or allowing others to construe the parties' relationship in a manner inconsistent with this subsection. Consultant shall have no authority to assume or create any obligation on behalf of, or in the name of the City, without the express prior written approval of a duly authorized representative of the City.

Consultant, its employees and any approved sub-Consultants performing the duties and responsibilities under this Agreement are not City employees, and therefore, such persons shall not be entitled to, nor will they make a claim for, any of the emoluments of employment with the City. Further, Consultant shall be responsible to withhold and pay, or cause such agents and sub-Consultants to withhold and pay, all applicable local, state and federal taxes.

Consultant acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System ("OPERS") membership.

E. Amendment. This Agreement may be amended by mutual agreement between the City and Consultant. Any such amendment shall be reduced to a writing, which makes specific
reference to this Agreement, approved by the Director of Economic Development or designee, executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.

F. Applicable Law and Venue. This Agreement shall be governed and construed under the laws of the State of Ohio. By execution hereof, Consultant irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement.

G. Political Contributions. Consultant affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

H. Notices. Any notice required under this Agreement shall be deemed to have been given on the date actually received or forty-eight (48) hours having been deposited in the United States mail, postage prepaid, registered or certified, and addressed to the parties as set forth below, whichever occurs earlier. Either party may change its address from time to time by written notice given in this manner.

If to the City:
City of Dayton, Ohio
Department of Economic Development
101 W. Third Street
Dayton, OH 45402

If to Consultant:
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, the City and Consultant, each by a duly authorized representative, have executed this Agreement as of the date first set forth below.

CITY OF DAYTON

\[Signature\]
City Manager

3-10-17
Date

BRICKER & ECKLER LLP

\[Signature\]
Title: [Title]

APPROVED AS TO FORM AND CORRECTNESS:

\[Signature\]
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

\[Signature\]
March 8, 2017

Min./bk.: [Page]

\[Signature\]
Clerk of the Commission
February 9, 2017

VIA E-MAIL
(Shelley.Dickstein@daytonohio.gov)
(Bridget.Findley@daytonohio.gov)

City of Dayton
101 West Third Street
Room 430
Dayton, Ohio 45402
ATTN: Ms. Shelley Dickstein, City Manager
ATTN: Ms. Bridget Findley, Assistant City Attorney

Dear Shelley and Bridget:

We are pleased that you have asked Bricker & Eckler LLP to represent the City of Dayton (the “City”) with respect to serving as outside legal counsel to the City on various legal matters from time to time (the “Representation”). We recognize that our work for the City in will include: (1) assistance at your direction with negotiating financing, new community authority, tax abatement, TIF exemption, and special assessment programs for economic development projects within the city, and (2) assistance at your direction with negotiating and/or implementing other economic development projects within the City that may arise from time to time.

Scope of Representation

One of the purposes of this letter is to set forth the nature of our engagement and the roles and responsibilities we will assume in our representation of the City. Caleb Bell will be the attorney in our firm primarily responsible for coordinating our effort to provide outside legal counsel to the City. Please note, however, that we take pride in the fact that we provide services to you as a firm, and as such, Caleb will retain the discretion in the exercise of his professional judgment to assign portions of the work to attorneys and legal assistants who are best able to handle particular aspects of the representation on a cost-efficient basis. However, while he may refer certain matters to other attorneys and legal assistants based on his individual knowledge and experience, Caleb will continually maintain primary responsibility for making sure that each question is thoroughly and efficiently addressed by the attorney or legal assistant to which such matter is assigned.

Billing Arrangement

We render our statements on a monthly basis, and we find that most clients appreciate receiving statements every month. The statements break out the disbursements incurred on your behalf. Disbursements include long distance telephone charges, delivery charges, reproduction costs, fax charges, filing fees, travel expenses and other related costs incurred in the performance of our services.
The principal factors in determining our fees will be the time and effort devoted to the matter, the complexity of the matter, and the hourly rates of the lawyers and assistants involved in working on the matter. We believe our hourly billing rates for attorneys and assistants are competitive with other major firms in the Dayton and Ohio markets that provide economic development services. Depending upon the special expertise and amount of experience involved, our institutional hourly rates range from $560 per hour for our most experienced partners to $190 per hour for our most junior lawyers. For services rendered to the City in 2017, we will charge a blended rate of $295 per hour for all work.

From time to time, the City engages in economic development projects with private developers or other entities that are willing to pay all or a portion of the City’s costs in connection with a development project. If as part of a development project a private developer or other entity agrees to pay or finance the City’s costs in connection with our representation, our firm and the City agree to consider adjustments in our rates so that the developer is charged our institutional hourly rates instead of the blended rate charged to the City as disclosed in the preceding paragraph.

Before bills for legal services are submitted to the client, the primary billing attorney reviews each bill to ensure that it accurately reflects services rendered and that those services are within the scope of the representation for which the firm is engaged.

Client Responsibilities

You agree to cooperate fully with us and to provide promptly all information known or available to you relevant to our representation.

Other Matters

We understand that our client for purposes of this representation is the City, and not any of its individual officer holders or staff members. If the City would wish to retain our services for another matter different from those discussed in this letter, we would prepare an additional letter similar to this one; absent any other special arrangements, the terms and conditions of that other work done by us would be determined at the time the new engagement would commence.

Relative to conflict matters, we have performed a formal conflicts check within our office. Because of our vast and diverse representation of many other clients in and around the state of Ohio, including, but not limited to, public entities, banks, financial institutions, lenders, developers, and real estate sellers and buyers, it is possible that in the future, a dispute may arise between you and another client that we represent or a transaction in which your interests do not coincide with those of another client that we represent, and we reserve the right to continue to represent or to undertake to represent existing or new clients in any matter that is not substantially related to our work for the City, even if the interests of such clients in other matters are directly adverse to you. In order to distinguish those instances in which you consent to our representation of such other clients from those instances in which your consent is not given, you have agreed, as a condition to our undertaking this engagement, that during the period of this engagement we will
not be precluded from representing clients who may have interests adverse to yours so long as
(1) such adverse matter is not substantially related to our work for the City; (2) our representation
of the other client does not involve the use, to the disadvantage of you, of any of your confidential
information that we have obtained as a result of our representation of you; and (3) we reasonably
believe we will nonetheless be able to competently and diligently serve both you on this matter
and the other client on the different matter.

Please note, specifically, that our firm has represented the Dayton City School District
(the "School District") in the past and, as a result, if our representation of the City involves
negotiation with the School District and we determine that such representation would be a
conflict of interest with our prior representation of the School District, we will either need a
waiver from the City and the School District or we will be prohibited from engaging in that
particular aspect of the representation.

Please note, specifically, that our firm has represented Ellway Group, LLC, the
development group currently investing in the Fire Blocks District area of the City, under a waiver
that has been previously agreed upon by the City and our firm.

Finally, please note that our representation of the City will not disqualify us from
continuing our representation of the Dayton-Montgomery County Port Authority or any financial
institutions including undertaking the closing of new loans for existing or new clients. We find
that our representation of such entities is frequently consistent with and not adverse to the goals
of the City. You are waiving any right to object to such representation now or in the future.

We specifically reserve the right to withdraw from representation if we feel that we
cannot properly represent your interests. Likewise, should we at any time during the
representation, even after the conflicts check, determine that representation of your interests
would conflict with our previous representation and/or previous relationship with other clients
relative to your matter, we do reserve the right, after discussion with you, and at our sole
discretion, to withdraw from representation of your interests, or refer that particular matter out to
other counsel to handle.

If the foregoing terms of this engagement are acceptable to you, please so indicate by
returning the enclosed copy of this letter signed by an appropriate officer, retaining the original
for your files. Again, we would like to express our appreciation for asking us to serve the City as
outside legal counsel. We look forward to being of service to you.
City of Dayton
February 9, 2017
Page 4

Accepted and Approved:

CITY OF DAYTON
By: [Signature]
Title: City Attorney
Date: 02/17/17

BRICKER & ECKLER LLP

By: [Signature]
John Caleb Bell
City Manager’s Report

From: 6210-Police Director  
Supplier, Vendor, Company, Individual: Montgomery County  
Address: 451 W Third Street  
Dayton, OH 45422

Date: February 24, 2021  
Expense Type: Service Agreement  
Total Amount: $18,000.00 (thru 9/30/21)

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<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
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<td>2021 OVI</td>
<td>28268-6210-1271-71</td>
<td>$18,000.00</td>
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Includes Revenue to the City: Yes  
Affirmative Action Program: Yes

Description:

Professional Services Agreement  
Montgomery County Operating a Vehicle While Impaired (OVI) Task Force

The Department of Police requests permission to enter into an Agreement with Montgomery County for the 2021 OVI task force. This Agreement was delayed while the County requested a change to the contract language, which required approval from the State. The other participating jurisdiction contracts were approved December 16, 2020. The funding will be used to implement saturation patrols and area checkpoints in an effort to reduce speed, increase seat belt usage and reduce fatal accidents. The Agreement shall commence upon execution and expire on September 30, 2021.

The Agreement is funded from the OVI Task Force grant award number OVI-2021-Dayton Police Dept.-00012 from the Ohio Department of Public Safety. The Dayton City Commission accepted the $224,997.26 grant on October 7, 2020 by Resolution No. 6540-20.

The Department of Law has reviewed and approved the Agreement as to form and correctness.

A copy of the Certificate of Funds and Agreement requiring City Commission approval is attached.

SM

Signatures/Approval

Approved by City Commission

Division

Department

City Manager

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
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<tr>
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<th>Renewal Contract</th>
<th>Change Order</th>
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<td>Initial Encumbrance</td>
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<td>-</td>
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<td>Required Documentation</td>
<td>X Initial City Manager's Report</td>
<td>X Initial Certificate of Funds</td>
<td>X Initial Agreement/Contract</td>
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<td></td>
<td>Copy of City Manager's Report</td>
<td>Copy of Original Certificate of Funds</td>
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| Amount: $ 18,000.00 |
| Fund Code 28268 - 6210 - 1271 - 71 - Act - Loc |

| Amount: |
| Fund Code |
| Fund - Org - Acct - Prog - Act - Loc |

Attach additional pages for more FOAPALs

Vendor Name: Montgomery County
Vendor Address: 451 W Third St Dayton OH 45422
Street City State Zipcode + 4
Federal ID: 31-6000172
Commodity Code: 91899
Purpose: For participation in Ohio Department of Public Safety Operating a Vehicle While Impaired (OVI) grant
No. OVI-2021-Dayton Police Dept.-00012. The grant was accepted in Resolution 6540-20 on October 7, 2020.

Contact Person: Sheelah Moyer ext. 1045
Contact Person: Police/Director's Office 2/12/2021
Department/Division Date
Originating Department Director's Signature: 

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director's Signature: 
Date: 2/16/2021
CF Prepared by: 
Date: 2/15/2021
CF/CT Number: CT21-2930
Date: 2/12/2021

Finance Department
October 18, 2011
February 12, 2021

TO: Shelley Dickstein
   City Manager

FROM: Richard S. Biehl
       Director and Chief of Police


Attached is the City Manager Report (CMR) for Montgomery County who is participating in the county-wide Operating a Vehicle while Intoxicated (OVI) task force grant from the Ohio Department of Public Safety. This contract was delayed while the County requested a change to the State’s contract language. The County delivered the signed contract on February 2, 2021.

The OVI grant award of $224,997.26 is a collaboration with multiple jurisdictions with a minimum of 17 sobriety checkpoints, impaired driving saturation patrols, public awareness and education. The grant period began on October 1, 2020 and will end on September 30, 2021.

Please contact Lt. Col. Matt Carper at ext. 1082 or Sheelah Moyer at ext. 1045 about the attached information.

Attachments

RB:sm

c: Lt. Col. Carper (w/o Attachment)
Major Saunders (w/o Attachment)
Ms. Moyer (w/o Attachment)
OPERATING A VEHICLE WHILE IMPAIRED
COUNTYWIDE TASK FORCE
AGREEMENT

THIS AGREEMENT is entered into as of this 2nd day of February, 2021,
by and between the City of Dayton, Ohio (hereinafter referred to as the “Lead Agency”) and
Board of County Commissioners of Montgomery County, Ohio (hereinafter referred to as the
“Sub-grantee”):

WITNESSETH:

WHEREAS, The State of Ohio, Department of Public Safety (“ODPS”) administers the
Operating a Vehicle While Impaired Task Force (“OVI”) Grant Program in an effort to increase
alcohol-related traffic enforcement, reduce speeding violations, increase seat belt usage, and
reduce fatal and injury accidents; and

WHEREAS, the Lead Agency has received a Montgomery County OVI Task Force
grant from ODPS, Grant Number OVI-2021-Dayton Police Dept.-00012, for Two Hundred
Twenty-Four Thousand Nine Hundred Ninety-Seven Dollars and Twenty-Six Cents
($224,997.26) subject to all grant terms and conditions; and

WHEREAS, the Sub-grantee provides law enforcement agency services to its respective
community and is eligible to participate in OVI activities; and

WHEREAS, the Lead Agency desires to engage the Sub-grantee to provide targeted
enforcement activity in completion of the aforementioned grant; now, therefore;

The parties hereto do mutually agree as follows:

I. SERVICE RENDERED BY SUB-GRAANTEE

Targeted enforcement by sworn law enforcement officers will take place at approved
problem sites as determined by the Task Force “problem ID process.” Targeted
enforcement will be conducted in support of the Montgomery County OVI Task
Force goals, which are to decrease the incidence of OVI violations and crash fatalities
and increase seat belt usage while using the low manpower OVI checkpoint model to
conduct low-cost, highly-effective OVI checkpoints throughout Montgomery County.
Also, there will be zero tolerance enforcement with respect to violations of safety belt
and child safety seat laws during enforcement efforts in targeted communities. In
addition:

a. Law Enforcement Reports: Sub-grantee will report enforcement activity on
OCJS-TS Law Enforcement Activity (GR-24A or GR-24C) forms on a monthly
basis. Monthly reporting must be submitted by the fifth (5th) calendar day of the
following month to Lead Agency. Justification for sites selected for enforcement
activity should be documented and maintained as a part of Sub-grantee’s file for this agreement.

b. **Training Certification:** Sub-grantee will assure that all enforcement personnel to be involved in approved enforcement-related activity will be certified in the following type(s) of training as appropriate: Alcohol-related Traffic Enforcement, Sobriety Checkpoint Training, and SFST/ADAP Training, as well as training in standard procedures and operations associated with staffing and staging OVI checkpoints and OVI patrols.

c. **Enforcement Hours Eligibility:** Direct labor hours expended in traffic safety enforcement programs must be over and above the normal work week. Part-time permanent staff is eligible for funding. Only one officer per patrol car will be funded as part of traffic enforcement grants.

d. **Safety Belt Policy:** Sub-grantee must have a policy statement requiring employees to wear safety belts. Sub-grantee must agree to conduct zero tolerance enforcement of Ohio’s occupant restraint laws.

e. **Required Activity:** All agencies utilizing National Highway Traffic Safety Administration (NHTSA) funding for overtime enforcement are required to participate in and report by the required deadlines on the “Drive Sober or Get Pulled Over” mobilization. Scheduled dates for the mobilization are as follows and are subject to change due to federal requirements: December 18, 2020 through January 1, 2021 and August 20, 2021, through September 6, 2021.

f. **Lead Agency will fund overtime enforcement during the “Click It or Ticket” (CIOT) mobilization. The scheduled dates for the mobilizations are as follows and are subject to change due to federal requirements:** November 16, 2020 through November 29, 2020 and May 24, 2021 through June 6, 2021.

### II. COMPENSATION AND PAYMENT

Funding for this Agreement is contingent on receipt of funds from the State of Ohio, Department of Public Safety for the OVI grant number OVI-2021-Dayton Police Department-00012 received by the Lead Agency.

Compensation shall be on the basis of direct costs based on actual activity completed in an amount not to exceed Eighteen Thousand Dollars and No Cents ($18,000.00).

To be eligible for reimbursement, Sub-grantee will complete and submit a GR-24 progress report by the fifth (5th) calendar day of the following month to the Lead Agency. Sub-grantee shall complete and submit a GR-12 detailing name and rank of officer working the overtime activity, dates and hours worked, overtime rate earned and check/warrant/voucher number of overtime payment. Sub-grantee must provide documentation that the officer has been paid. Reimbursement will only be made for
actual costs and pre-approved fringe rate incurred in support of the OVI Task Force activities.

Proof of payment documentation must include the officer’s name, regular hourly rate of pay, overtime rate of pay, overtime hours for the pay period covering the requested reimbursement, the check or pay stub number, and detail for each fringe benefit being claimed for reimbursement under the grant. Failure to provide appropriate payment documentation may result in a demand for repayment of any previously reimbursed funds and the cancellation of this Agreement.

III. DELIVERY OF SERVICES

Sub-grantee will begin work after execution of this document and complete all work no later than September 30, 2021.

IV. SUBCONTRACTORS

Sub-grantee shall not subcontract, in whole or in part, with any other firm, partnership, corporation, or entity to perform the services to be done on the OVI Task Force without prior approval from the Lead Agency.

Sub-grantee warrants that it has not employed or retained any company or person other than a bona-fide employee working solely for Sub-grantee to solicit or secure this agreement and has not paid or has not agreed to pay any fee, commission, percentage, brokerage fee, gift, or contingent fee in violation hereof.

V. MAINTENANCE OF RECORDS

Sub-grantee shall maintain all records pertaining to this contract for a minimum of three (3) years, pursuant to the requirements of the ODPS. This Agreement provides the right of any authorized representative of the federal or state government to audit and inspect any and/or all project-related records at all reasonable normal working hours during the contract period and for a period of at least three (3) years after the completion of this agreement.

Sub-grantee shall obtain and retain in force workers’ compensation and proof of liability insurance for its employees and autos operated by them for and during their employment.

VI. ASSURANCES AND INCORPORATION OF PARENT CONTRACT

The provisions of this Agreement include all of the terms, conditions and assurances of the parent agreement for OVI Task Force Grant OVI-2021-Dayton Police Department-00012, dated October 1, 2020 between ODPS and Lead Agency and the additional Sub-grantee provisions. This Agreement shall be predicated upon the receipt of the parent agreement from ODPS and the approval of the Dayton City
Manager and the Dayton City Commission, if required. The “Terms and Conditions for All Grants” from ODPS is incorporated into this document and attached as “Exhibit A.”

VII. SANCTIONS FOR NON-COMPLIANCE

Should Sub-grantee fail to fulfill any of its contractual duties in a timely manner, Lead Agency shall notify Sub-grantee in writing as to such deficiencies. Such notification shall be sent by certified mail, return receipt requested. Sub-grantee shall have 30 days from the date of the transmitted letter to resolve such deficiencies, unless otherwise stated by Lead Agency.

VIII. OTHER REQUIREMENTS

The following are Provisions that shall be used by Lead Agency when entering into an agreement (contract) where funds are administered by the OCJS-TS with a total of Five Thousand Dollars ($5,000) or more. This provision includes requirements of both the federal or state government. Note: for clarification purposes the work contractor is the agency, vendor, or individual that Lead Agency is contracting with for the desired scope of service.

PROVISION 1 Security Agreement Disclaimer
Sub-grantee warrants that it has not employed or retained any company or person other than a bona-fide employee working solely for the Sub-grantee to solicit or secure this agreement, and that he has not paid or has not agreed to pay any fee, commission, percentage, brokerage fee, or other considerations contingent upon or resulting from the awarding or making of this agreement.

For breach or violation of this warrant, the State, in conjunction with Lead Agency, shall have the right to annul this agreement without liability, or in its discretion, to deduct from the agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

Either party may terminate this agreement by giving the other party written advanced notice of its election to do so. If the contract is canceled under this provision, Lead Agency shall reimburse Sub-grantee for all work completed and in progress to that date. Upon termination and final payment, all design materials, artwork and any other items/products developed by Sub-grantee shall become the property of Lead Agency.

PROVISION 2 Reporting Requirements
Performance reports will be required to be submitted by Sub-grantee as frequently as required by Lead Agency. Performance reports shall include brief information on (1) a comparison of actual accomplishments to the objectives established for the period and can include a computation of the cost per unit of output, (2) the reasons for
slippage if established objectives were not met, and (3) additional pertinent information including analysis and explanation of cost overruns or high unit cost.

PROVISION 3  Intellectual Property
Neither the Sub-grantee nor any of its employees, agents, subcontractors or assigns shall make a disclosure for the purpose of securing a patent or copyright in the United States or any other country for any product resulting from this agreement unless such disclosures are approved in writing by the Lead Agency prior to application for the patent/copyright. In the event that such patent/copyright is obtained, the Sub-grantee shall provide the Lead Agency written authorization for the Sub-grantee and any other person, agency or instrumentality contributing financial support to the work covered by this agreement to make use of the subject of said intellectual property without payment.

PROVISION 4  Audit Practices
The Sub-grantee agrees to provide access to the Lead Agency, Montgomery County OVI Task Force, ODPS, OCJS-TS or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audits, examinations, excerpts, or transcriptions.

PROVISION 5  Equal Employment Opportunity (E.E.O.)
The Sub-grantee and Lead Agency must abide by all E.E.O. regulations, including but not limited to, Executive Order 11264 of September 24, 1965 “Equal Employment Opportunity” as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations. (41 CFR Chapter 60) and Section 3(a)(2)(C) of the UMT Act of 1934, as amended, which prohibits the use of exclusionary or discriminatory specifications.

PROVISION 6  Certification Regarding Lobbying
None of the funds under this program will be used for any activity specifically designed to urge or influence a Federal, State, or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any Federal, State, or local legislative body. Such activities include both direct and indirect (e.g. “grassroots”) lobbying activities, with one exception. This does not preclude an official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, as long as this activity is documented in writing.

PROVISION 7  Labor Relations
The Sub-grantee and Lead Agency must comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

PROVISION 8  Energy Policy
The Sub-grantee must apply mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163).

PROVISION 9  Assurances Regarding the Parent Agreement
The provisions of this agreement include all of the terms and conditions and assurances of the parent agreement between the ODPS and the Sub-grantee and are attached hereto as an Appendix.

PROVISION 10  Liability Disclaimer
The parties agree that the ODPS, OCJS-TS is not the employer of any personnel involved in said contract. The Sub-grantee agrees to pay any wages and related tax obligations resulting from employment of personnel in order to perform the terms of this contract.

PROVISION 11  Disclosure Disclaimer
Sub-grantee shall include language on the cover or first page of any report that reads substantially as follows:

“Funding provided in part or solely by the:

National Highway Traffic Safety Administration
Federal Highway Administration
Ohio Department of Public Safety
Office of Criminal Justice Services – Traffic Safety”

The remainder of this page left blank.
APPROVED AS TO FORM
AND CORRECTNESS:

 Recoverable Signature

 X John Musto for
 City Attorney

Signed by: Musto, John

APPROVED AS TO FORM ONLY:
MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY
Studies, evaluations, etc., shall also include the following disclaimer: “The opinions, findings, and conclusions expressed in this publication are those of the author and not necessarily those of, the National Highway Traffic Safety Administration, Federal Highway Administration, Ohio Department of Public Safety and the Office of Criminal Justice Services – Traffic Safety.”

IN WITNESS WHEREOF, the Lead Agency and Sub-grantee, each by a duly Authorized Representative, have executed this Agreement on the date first written above.

CITY OF DAYTON, OHIO

By: ______________________________
    City Manager

MONTGOMERY COUNTY, OHIO
SHERIFF’S OFFICE

By: ______________________________
    Rob Streck, Sheriff

BOARD OF MONTGOMERY COUNTY
COMMISSIONERS, MONTGOMERY COUNTY, OHIO

By: ______________________________
    Carolyn Rice

By: ______________________________
    Deborah A. Lieberman

By: ______________________________
    Judy Dodge

By: ______________________________
    Michael Colbert, Administrator
    Montgomery County, Ohio

APPROVED BY THE COMMISSION OF
THE CITY OF DAYTON, OHIO:

 _______________________________ , 2020

Min./Bk. _______ Pg. _________

__________________________
Clerk of the Commission
A RESOLUTION

Authorizing the Acceptance of a Grant Award from the Ohio Department of Public Safety Not To Exceed Two Hundred Twenty-Four Thousand Nine Hundred Ninety-Seven Dollars and Twenty-Six Cents ($224,997.26) on Behalf of the City of Dayton, and Declaring an Emergency.

WHEREAS, The Ohio Department of Public Safety, Office of Traffic Safety, administers the Operating a Vehicle While Impaired Task Force ("OVI") Grant Program in an effort to increase alcohol-related traffic enforcement, reduce speeding violations, increase seat belt usage, and reduce fatal and injury accidents; and

WHEREAS, The City of Dayton ("City") submitted a federal fiscal year ("FFY") 2021 grant application entitled "OVI Task Force" to implement area checkpoints and saturation patrols with approximately nineteen (19) jurisdictions and the Dayton Police Department; and

WHEREAS, Pursuant to Section 36.10 of the Revised Code of General Ordinances of the City of Dayton, the City Manager executed the grant application on behalf of the City; and

WHEREAS, The Ohio Department of Public Safety has awarded the City Grant Number OVI-2021-Dayton Police Dept.-00012 for Two Hundred Twenty-Four Thousand Nine Hundred Ninety-Seven Dollars and Twenty-Six Cents ($224,997.26) subject to the City accepting all terms and conditions; and

WHEREAS, It is necessary to meet the grant terms for implementation to begin at the earliest possible date to conduct the required minimum enforcement efforts that will preserve public peace, property, health and safety that this resolution take effect at the earliest possible date; now, therefore,

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That the City Manager is authorized to accept the FFY 2021 grant allocation for Catalog of Domestic Assistance (CDFA) No. 20.616 National Priority Safety Programs known as the Montgomery County OVI Task Force grant in an amount not to exceed Two Hundred Twenty-Four Thousand Nine Hundred Ninety-Seven Dollars and Twenty-Six Cents ($224,997.26) on behalf of the City of Dayton and is directed to execute any and all documents and agreements on behalf of the City of Dayton which are necessary to accept the grant from the Ohio Department of Public Safety.
Section 2. That the City Manager or her designee is authorized to allocate and distribute funds accordingly, not to exceed the total grant award.

Section 3. That for the reasons set forth in the preamble hereof, the Commission declares this resolution to be an emergency measure and shall take effect immediately upon its adoption.

ADOPTED BY THE COMMISSION...October 7...., 2020

SIGNED BY THE MAYOR...October 7.........., 2020

[Signature]
Mayor of the City of Dayton, Ohio

Attest:

[Rachelle Lavender]
Clerk of Commission

Approved as to Form:

[Signature]
City Attorney
GRANT INFORMATION

Grant Number: OVI-2021-Dayton Police Dept.-00012
Grant Title: OVI Task Force Proposal 2021
Grant Term: 10/01/2020 - 09/30/2021

ORGANIZATION CONTACTS

Authorized Official
Name: Richard Biehl
Title: Chief
Phone: (937) 333-1263
Email: richard.biehl@daytonohio.gov

Project Director
Name: Carlene Maynes
Title: Coordinator
Phone: (937) 831-6311
Email: carlene.maynes@aol.com

Fiscal Officer
Name: Sheelah Moyer
Title: Grants and Budget Coordinator
Phone: (937) 333-1045
Email: sheelah.moyer@daytonohio.gov

GRANT SERVICE AREA INFORMATION

Area Type: Urban
County or Counties served: Montgomery

Senate Legislative District(s) served:
- District 5
- District 6

House Legislative District(s) served:
- District 39
- District 40
- District 41
- District 42
- District 43

US Congressional District(s) served:
- District 10
<table>
<thead>
<tr>
<th>FSRS FUNDING INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
</tr>
<tr>
<td>In your business or organization's preceding completed fiscal year, did your business or organization (the legal entity to which the specific CCR records, represented by a DUNS number, belongs) receive (1) 80 percent or more of your annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; AND (2) $25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TERMS AND CONDITIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>✔</td>
</tr>
<tr>
<td>By checking this box, our agency acknowledges that it has reviewed and agrees to abide by the Terms and Conditions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COUNTY PROFILE</th>
</tr>
</thead>
<tbody>
<tr>
<td>✔</td>
</tr>
<tr>
<td>By checking this box, our agency acknowledges that it has accessed and reviewed the OTSO Statistics Portal to help with problem identification. This information must be used in preparing this grant proposal and in the workplan activities to achieve the goals of the proposal.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PROPOSAL GUIDELINE PRESENTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>✔</td>
</tr>
<tr>
<td>By checking this box, our agency acknowledges that it has accessed and reviewed the Proposal Guideline Presentation prior to applying for this grant.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>COUNTERMEASURES THAT WORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>✔</td>
</tr>
<tr>
<td>By checking this box, our agency acknowledges that it has accessed and reviewed the Countermeasures That Work. All activities proposed must address problem ID as shown in the county profile and be data driven and evidence-based. This guide must be used in preparing this grant proposal and in the work plan activities to achieve the goals of the proposal.</td>
</tr>
<tr>
<td>Agency Name</td>
</tr>
<tr>
<td>-----------------------------------</td>
</tr>
<tr>
<td>Butler Township</td>
</tr>
<tr>
<td>Centerville</td>
</tr>
<tr>
<td>Clay Township</td>
</tr>
<tr>
<td>Clayton</td>
</tr>
<tr>
<td>Five Rivers MetroParks</td>
</tr>
<tr>
<td>German Township</td>
</tr>
<tr>
<td>Huber Heights</td>
</tr>
<tr>
<td>Kettering</td>
</tr>
<tr>
<td>Miami Township</td>
</tr>
<tr>
<td>Miamisburg</td>
</tr>
<tr>
<td>Montgomery County Sheriff's Office</td>
</tr>
<tr>
<td>Moraine</td>
</tr>
<tr>
<td>Perry Township</td>
</tr>
<tr>
<td>Trotwood</td>
</tr>
<tr>
<td>West Carrollton</td>
</tr>
<tr>
<td>Vandalia</td>
</tr>
</tbody>
</table>
# GOAL TITLE
Alcohol-Related Fatal Crash Goal

# GOAL DESCRIPTION
Reduce the number of alcohol-related fatal crashes to no more than 12

# BASELINE
Last year, there were 16 alcohol-related fatal crashes.

# SCOPE
Through problem identification of traffic crash data, conduct checkpoints and saturation patrols in locations and at times that will have the greatest impact in reducing alcohol-related fatal/serious injury crashes. Raise public awareness through local media and personal contacts. Attend at minimum, quarterly regional meetings to coordinate and review activity including current crash data throughout the region to achieve high visibility enforcement and awareness.

# EVALUATION
Conduct monthly reviews comparing stats from the previous year.
<table>
<thead>
<tr>
<th><strong>GOAL TITLE</strong></th>
<th>Checkpoint Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GOAL DESCRIPTION</strong></td>
<td>Conduct 16 checkpoints (see the grant solicitation package for the minimum required number of checkpoints - number of checkpoints in goal must equal number of checkpoints submitted in the work plan.)</td>
</tr>
<tr>
<td><strong>BASELINE</strong></td>
<td>Last year, 16 checkpoints were conducted.</td>
</tr>
<tr>
<td><strong>SCOPE</strong></td>
<td>Through problem identification of traffic crash data, conduct checkpoints locations and at times that will have the greatest impact in reducing alcohol-related fatal/serious injury crashes.</td>
</tr>
<tr>
<td><strong>EVALUATION</strong></td>
<td>Number of checkpoints conducted.</td>
</tr>
<tr>
<td>MONTH</td>
<td>Media Events</td>
</tr>
<tr>
<td>---------</td>
<td>--------------</td>
</tr>
<tr>
<td>OCTOBER</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>NOVEMBER</td>
<td>1</td>
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<tr>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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<tr>
<td>DECEMBER</td>
<td>0</td>
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<tr>
<td></td>
<td></td>
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<td></td>
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<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>FEBRUARY</td>
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<tr>
<td>MARCH</td>
<td>Media Events</td>
</tr>
<tr>
<td>-------</td>
<td>--------------</td>
</tr>
<tr>
<td></td>
<td>Press Releases</td>
</tr>
<tr>
<td></td>
<td>Task Force Meeting</td>
</tr>
<tr>
<td></td>
<td>Saturation Patrol Hours</td>
</tr>
<tr>
<td></td>
<td># of Low Manpower Checkpoints</td>
</tr>
<tr>
<td></td>
<td>Low Manpower Hours</td>
</tr>
<tr>
<td></td>
<td># of High Manpower Checkpoints</td>
</tr>
<tr>
<td></td>
<td>High Manpower Hours</td>
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<table>
<thead>
<tr>
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<th>Media Events</th>
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<tr>
<td></td>
<td>Press Releases</td>
<td>3</td>
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<td></td>
<td>Task Force Meeting</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Saturation Patrol Hours</td>
<td>162</td>
</tr>
<tr>
<td></td>
<td># of Low Manpower Checkpoints</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Low Manpower Hours</td>
<td>56</td>
</tr>
<tr>
<td></td>
<td># of High Manpower Checkpoints</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>High Manpower Hours</td>
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</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>MAY</th>
<th>Media Events</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Press Releases</td>
<td>4</td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td></td>
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<td>260</td>
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<tr>
<td></td>
<td># of Low Manpower Checkpoints</td>
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</tr>
<tr>
<td></td>
<td>Low Manpower Hours</td>
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<tr>
<td></td>
<td># of High Manpower Checkpoints</td>
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<td></td>
<td>High Manpower Hours</td>
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<table>
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<tr>
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<td>Press Releases</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Task Force Meeting</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>Saturation Patrol Hours</td>
<td>160</td>
</tr>
<tr>
<td></td>
<td># of Low Manpower Checkpoints</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Low Manpower Hours</td>
<td>100</td>
</tr>
<tr>
<td></td>
<td># of High Manpower Checkpoints</td>
<td>0</td>
</tr>
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</table>
### OVI Task Force Proposal 2021
**OVI-2021-Dayton Police Dept.-00012**  
**Version Date: 10/15/2020 09:07:24**  
Dayton Police Dept.

#### July

<table>
<thead>
<tr>
<th>Media Events</th>
<th>Press Releases</th>
<th>Task Force Meeting</th>
<th>Saturation Patrol Hours</th>
<th># of Low Manpower Checkpoints</th>
<th>Low Manpower Hours</th>
<th># of High Manpower Checkpoints</th>
<th>High Manpower Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3</td>
<td>Yes</td>
<td>170</td>
<td>1</td>
<td>56</td>
<td>0</td>
<td>0</td>
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</table>

#### August

<table>
<thead>
<tr>
<th>Media Events</th>
<th>Press Releases</th>
<th>Task Force Meeting</th>
<th>Saturation Patrol Hours</th>
<th># of Low Manpower Checkpoints</th>
<th>Low Manpower Hours</th>
<th># of High Manpower Checkpoints</th>
<th>High Manpower Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4</td>
<td>Yes</td>
<td>190</td>
<td>2</td>
<td>100</td>
<td>0</td>
<td>0</td>
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</table>

#### September

<table>
<thead>
<tr>
<th>Media Events</th>
<th>Press Releases</th>
<th>Task Force Meeting</th>
<th>Saturation Patrol Hours</th>
<th># of Low Manpower Checkpoints</th>
<th>Low Manpower Hours</th>
<th># of High Manpower Checkpoints</th>
<th>High Manpower Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>3</td>
<td>Yes</td>
<td>160</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

#### Regional Meetings

- By checking this box, our agency agrees to attend all scheduled regional meetings to coordinate and review activity including current crash data throughout the region to achieve high visibility enforcement and awareness.
### Lead Agency Labor

<table>
<thead>
<tr>
<th>Number of Hours</th>
<th>Hourly Rate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1076</td>
<td>$53.2500</td>
<td>$57,297.00</td>
</tr>
</tbody>
</table>

### Participating Agencies (Contractual)

<table>
<thead>
<tr>
<th>Number of Hours</th>
<th>Hourly Rate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2034</td>
<td>$49.5000</td>
<td>$100,683.00</td>
</tr>
</tbody>
</table>

### Lead Agency Coordination Hours

<table>
<thead>
<tr>
<th>Number of Hours</th>
<th>Hourly Rate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>$0</td>
<td>$0</td>
</tr>
</tbody>
</table>

### Contractual Coordination Hours

<table>
<thead>
<tr>
<th>Number of Hours</th>
<th>Hourly Rate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>520</td>
<td>$30.0000</td>
<td>$15,600.00</td>
</tr>
</tbody>
</table>

### Lead Agency Fringe

<table>
<thead>
<tr>
<th>Retirement</th>
<th>Medicare</th>
<th>Total Fringe Rate</th>
<th>Total Fringe Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.5000%</td>
<td>1.45%</td>
<td>20.95%</td>
<td>$12,003.72</td>
</tr>
</tbody>
</table>

### Participating Agency (Contractual) Fringe

<table>
<thead>
<tr>
<th>Retirement</th>
<th>Medicare</th>
<th>Total Fringe Rate</th>
<th>Total Fringe Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.9800%</td>
<td>1.45%</td>
<td>20.43%</td>
<td>$20,569.54</td>
</tr>
</tbody>
</table>
### Lead Agency Education

| Amount Requested | $2,200.00 |

### Participating Agency Education

| Amount Requested | $3,045.00 |

### Lead Agency Transportation Costs

| Amount Requested | $2,864.85 |

### Participating Agency Transportation Costs

| Amount Requested | $5,034.15 |

---

<table>
<thead>
<tr>
<th>Budget Category</th>
<th>Short Description of Budget Item</th>
<th>Quantity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Travel Expense</td>
<td>Travel to approved traffic safety conferences.</td>
<td>2</td>
<td>$1,900.00</td>
</tr>
<tr>
<td>Supplies/Materials/Other Direct Costs</td>
<td>Supplies and materials to help with OVI saturation patrol and OVI checkpoints.</td>
<td>4</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Equipment</td>
<td>Purchase of equipment to aid in IOVI saturation patrol and OVI checkpoints.</td>
<td>4</td>
<td>$1,800.00</td>
</tr>
</tbody>
</table>

**Total:** 10  
$5,700.00
<table>
<thead>
<tr>
<th>Budget Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lead Agency Labor</td>
<td>$57,297.00</td>
</tr>
<tr>
<td>Contractual Labor</td>
<td>$100,683.00</td>
</tr>
<tr>
<td>Lead Agency Coordination</td>
<td>$0</td>
</tr>
<tr>
<td>Contractual Coordination</td>
<td>$15,600.00</td>
</tr>
<tr>
<td>Lead Agency Fringe Benefit</td>
<td>$12,003.72</td>
</tr>
<tr>
<td>Contractual Fringe Benefit</td>
<td>$20,569.54</td>
</tr>
<tr>
<td>Lead Agency Education</td>
<td>$2,200.00</td>
</tr>
<tr>
<td>Contractual Education</td>
<td>$3,045.00</td>
</tr>
<tr>
<td>Lead Agency Transportation Costs</td>
<td>$2,864.85</td>
</tr>
<tr>
<td>Contractual Transportation Costs</td>
<td>$5,034.15</td>
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<tr>
<td>Additional Contractual</td>
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<tr>
<td>Equipment</td>
<td>$1,800.00</td>
</tr>
<tr>
<td>Supplies/Materials/Other Direct Costs</td>
<td>$2,000.00</td>
</tr>
<tr>
<td>Travel Expenses</td>
<td>$1,900.00</td>
</tr>
<tr>
<td>Totals:</td>
<td>$224,997.26</td>
</tr>
</tbody>
</table>
Terms and Conditions for All Grants

The following terms and conditions must be met in order to obtain and conduct a federally-funded traffic safety program. Upon approval of this grant award, these terms and conditions will become a part of the executed agreement. The term “sub-recipient” refers to the Administering Agency of the project.

1.) Agreement
   Any inconsistencies between agreements and any attached documents shall be resolved in favor of the most current revised agreement on the online system, which shall be the controlling document. All activities conducted under this grant program must address problem ID as shown in the county profile and be data driven and evidence-based. “Countermeasures That Work” must be used to determine the work plan activities to achieve the goals of the grant.

2.) Legislative Authority
   The Authorizing Official shall obtain the legal legislative authority necessary to implement the activity, to make expenditures and to receive funds, as set forth by this agreement.

3.) Nondiscrimination
   The sub-recipient will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:
   - Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
   - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
   - The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age);
   - The Civil Rights Restoration Act of 1987, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal aid recipients, sub-recipients and contractors, whether such programs or activities are Federally-funded or not);
• **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38;

• **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and

• **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/ discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR at 74087 to 74100).

The sub-recipient —

• Will take all measures necessary to ensure that no person in the United States shall, on the grounds of race, color, national origin, disability, sex, age, limited English proficiency, or membership in any other class protected by Federal Nondiscrimination Authorities, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of its programs or activities, so long as any portion of the program is Federally-assisted.

• Will administer the program in a manner that reasonably ensures that any of its subrecipients, contractors, subcontractors, and consultants receiving Federal financial assistance under this program will comply with all requirements of the Non-Discrimination Authorities identified in this Assurance;

• Agrees to comply (and require any of its subrecipients, contractors, subcontractors, and consultants to comply) with all applicable provisions of law or regulation governing US DOT's or NHTSA's access to records, accounts, documents, information, facilities, and staff, and to cooperate and comply with any program or compliance reviews, and/or complaint investigations conducted by US DOT or NHTSA under any Federal Nondiscrimination Authority;

• Acknowledges that the United States has a right to seek judicial enforcement with regard to any matter arising under these Non-Discrimination Authorities and this Assurance;

• Insert in all contracts and funding agreements with other State or private entities the following clause:

During the performance of this contract/funding agreement, the contractor/ funding recipient agrees—

a. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;

b. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in Appendix B of 49 CFR part 21 and herein;
c. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;

d. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and

e. To insert this clause, including paragraphs a through e, in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.


The sub-recipient will provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

b. Establishing a drug-free awareness program to inform employees about:
   - The dangers of drug abuse in the workplace.
   - The grantee's policy of maintaining a drug-free workplace.
   - Any available drug counseling, rehabilitation, and employee assistance programs.
   - The penalties that may be imposed upon employees for drug violations occurring in the workplace.
   - Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a).

c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will –
   - Abide by the terms of the statement.
   - Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

d. Notifying the agency within ten days after receiving notice under subparagraph (c) (2) from an employee or otherwise receiving actual notice of such conviction;

e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c) (2), with respect to any employee who is so convicted –
   - Taking appropriate personnel action against such an employee, up to and including termination.
   - Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all the paragraphs above.

5.) **Buy America Act**

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase only steel, iron and manufactured products produced in the
United States with Federal funds, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

6.) Political Activity (Hatch Act)
The sub-recipient will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

7.) Certification Regarding Federal Lobbying

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

8.) Restriction on State Lobbying
None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from
engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

9.) **Certification Regarding Debarment and Suspension**

**Instructions for Primary Certification (States)**

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180 and 1300.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded**, as used in this clause, have the meaning set out in the Definitions and coverage sections of 2 CFR Part 180. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1300.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that its principals:

   a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

   b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;

   c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

   d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Instructions for Lower Tier Certification**
1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180 and 1300.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definition and Coverage sections of 2 CFR Part 180. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1300.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency with which this transaction originated may disallow costs, annul or
terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

10.) **Prohibition On Using Grant Funds To Check For Helmet Usage**
The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

11.) **Policy on Seat Belt Use**
In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Grantee is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program, or statistics on the potential benefits and cost-savings to your company or organization, please visit the Buckle Up America section on NHTSA's website at www.nhtsa.dot.gov. Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in the Washington, D.C. metropolitan area, and dedicated to improving the traffic safety practices of employers and employees. NETS is prepared to provide technical assistance, a simple, user-friendly program kit, and an award for achieving the President's goal of 90 percent seat belt use. NETS can be contacted at 1 (888) 221-0045 or visit its website at www.trafficsafety.org.

The Administering Agency certifies that an "employee seat belt usage policy" is in place that requires employees to wear seat belts while working on agency business. This policy will be made available for review by OTSO representatives upon request.

12.) **Policy to Ban Text Messaging While Driving**
In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, States are encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or -rented vehicles, Government-owned, leased or rented vehicles, or privately-owned when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit
text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

13.) **Limitations**
This agreement is a commitment to perform the work identified herein and this authorization is limited to:

A.) The scope of work performed after the “Authorized to Proceed” and before the “Agreement Termination” dates, as specified in the transmittal letter.
B.) The scope of work, rates of participations, federal funds, special conditions, and cost category amounts as defined by the online GRANTS Plus System;
C.) Actual costs that are incurred in accordance with OMB Circulars 2 CFR Part 200, Part 215, Part 220, Part 225, Part 230 and 45 CFR Part 74 Appendix E limited to the approved activity.

14.) **Supplanting**
Grant funds must not be used to supplant state or local funds, meaning that grant funds must not be used to replace routine or local expenditures for costs of activities that constitute general expenses required to carry out the overall responsibilities of the sub-recipient and/or its sub-recipients.

15.) **Food**
Costs relating to food for meetings, award banquets, etc. are not allowable.

16.) **Pre-Activity**
A grant pre-activity is required before any costs can be eligible for reimbursement. OTSO will notify the sub-recipient of the availability of the pre-activity prior to the “Authorized to Proceed Date” in the transmittal letter for the executed agreement. The pre-activity must be reviewed by, but not limited to, the designated project director and fiscal officer. The Pre-Activity must be reviewed, certified (check the box), and submitted to OTSO through GRANTS Plus. If there are changes to the Project Director and/or Fiscal Officer, the Pre-Activity must be reviewed by the new personnel.

17.) **OTSO/Sub-recipient Meetings**
Sub-recipients must attend all scheduled OTSO/Sub-recipient meetings to coordinate and review activity including current crash data to achieve high visibility enforcement, education and awareness.

18.) **Press Release**
Each sub-recipient is required to submit a press release to their local media announcing the grant award, including amount and purpose of award. Additional press releases are required depending on grant type; see Special Conditions beginning on page 24 for additional requirements.

19.) **Grant Revisions**
Any changes, additions, or deletions to this agreement must be submitted online and approved by OTSO prior to implementing proposed changes. All final revisions to this
agreement (either programmatic or fiscal), must be submitted online prior to September 1, 2021. Any requests for revisions after this date will not be approved.

OTS reserves the right to limit grant amounts at any time based on performance and/or available funding. Any changes made to the executed agreement limiting grant amounts by the OTS shall be made in writing.

20.) **Required Personnel**
Each proposal/grant is required to have, at a minimum, an authorizing official, a project director and a fiscal officer. See pages 7 and 8 for a description of each. This information must be kept current.

21.) **GRANTS Plus User Accounts/Password Security**
For security purposes, each person using the GRANTS Plus system must have a separate user name and password. Each account must have its own email account. **Sub-recipient agency personnel must not share passwords with agency staff or ODPS staff.**

22.) **Labor Costs**
All work (personnel labor costs) reimbursed under this grant must be for actual paid hours worked. Labor costs based on a percentage of hours worked or hours accrued as comp time will not be accepted for reimbursement. Leave hours (i.e., sick, vacation, personal, holiday, etc.) are not reimbursable as direct labor. The employer's share of certain fringe benefits (i.e., retirement, Medicare, etc.) are eligible for reimbursement. Documentation verifying fringe percentages must be available to OTS upon request.

23.) **Personnel Activity Reports**
Personnel activity reports may be required for any individual working on this federal grant program. These reports, at a minimum, must document date worked, detailed explanation of activity performed and the number of hours per day to be charged to this agreement. This document must be signed and dated by the individual and their immediate supervisor, maintained by the administering agency and submitted as a part of the expenditure report documentation required.

24.) **Sub-Contracts**
All sub-contracts and all purchases made under a sub-contract with any one vendor in excess of a combined total of $5,000 must be submitted to OTS for review prior to their execution and are subject to the same laws, regulations, and policies that govern this agreement. Contracts and procurements must include a copy of these Terms and Conditions. Do not include a specific contractor's name/vendor's name in the proposal/grant.

All items, other than labor, fringe and mileage, that are purchased as a part of this sub-contract must be submitted to and approved by OTS on a Request to Purchase form prior to incurring the cost.

Any training courses must be submitted to and approved by OTS on a Request to Purchase form prior to scheduling.

25.) **Equipment**
All non-expendable equipment (i.e., having a useful life of one year or more and cost $1,000 or more) shall be entered into OTSO equipment inventory system. All purchased equipment must be used for approved traffic safety activities throughout its useful life. All purchases must be submitted to and approved by OTSO on a Request to Purchase form prior to incurring the cost.

26.) **Central Services**  
Costs for certain operational services provided to an agency on a centralized basis are unallowable. To be eligible for a reimbursement, a cost must be documented with an actual transfer of funds.

27.) **Supplies / Materials / Other Direct Costs**  
All supplies, materials, and other direct costs must be used for approved traffic safety activities throughout its useful life. All purchases must be submitted to and approved by OTSO on a Request to Purchase form prior to incurring the cost. Outreach efforts should be made and materials should be provided to reach the county’s ethnic and/or limited English speaking populations.

Alcohol is not allowed to be purchased with funds from this grant.

The sub-recipient must submit a final draft copy of all materials to OTSO for approval prior to production. In addition:

A.) All materials shall include federal sponsorship credit and/or disclaimer clauses as directed by OTSO. The credit line shall state: Funded by U.S. DOT/NHTSA and ODPS.

B.) All public service announcements funded with federal funds, in whole or in part, must be closed captioned for the hearing impaired.

C.) All data results, reports, equipment, supplies and other materials (including but not limited to electronic versions) developed by the sub-recipient must be available to ODPS/OTSO upon request.

28.) **Request for Bids**  
OTSO will not reimburse for costs incurred by a sub-recipient for “requests for bids” for any services or purchases.

29.) **Travel**  
Any request for travel and associated costs must be submitted to and approved by OTSO on a Request to Purchase form prior to incurring any travel related costs.

Attendance at any conference/seminar/workshop that charges a registration fee must be submitted to and approved by OTSO on a Request to Purchase form prior to registration. All conferences/seminars/workshops must be traffic safety related; an agenda must be provided to OTSO.

All out of state travel conducted under this grant agreement will be reimbursed using U.S. General Services Administration (GSA) rates based on travel location or your agency’s travel policy whichever is less.

A current travel policy must be submitted with the grant proposal. OTSO will not reimburse for meals provided by the conference. Dietary restrictions need to be worked
out with the conference organizer. Alcohol is not allowed to be purchased with funds from this grant.

30.) **Training**
The cost of training personnel for traffic safety purposes may be funded when the training supports both the goals and scope of work of the approved grant program and the goals of OTSO. All training requests and purchases must be submitted to and approved by OTSO on a Request to Purchase form prior to incurring the cost.

31.) **Request to Purchase (RTP)**
All RTPs must be submitted to OTSO by August 1, 2021.

32.) **Expenditure Reports (Reimbursement Claims/Progress Reports)**
This agreement will operate on a reimbursement basis only. The administering agency must first incur the costs for approved expenditures and then apply for the reimbursement. Appropriate and accurate documentation will be required for each expense. Expenditure Reports with accurate documentation and corresponding report information must be submitted monthly. If there wasn’t any activity, a zero expenditure report must be submitted. The expenditure report must be submitted online to OTSO by the 15th calendar day of the following month. Failure to submit these reports in a timely manner will cause a delay in payment of claims, may jeopardize funding for present and future projects and may result in being placed in Sub-Recipient on Notice status.

33.) **Denial of Costs**
OTSO may deny costs for non-compliance with OTSO policies and procedures, terms and conditions and/or federal and state regulations by requesting the cost(s) be removed from the online expenditure report. A written response to all denials must be provided to OTSO within 30 days after the date transmitted to the sub-recipient or the sub-recipient relinquishes all rights to the denied cost(s).

34.) **Monitoring**
Programmatic and fiscal monitoring of grants shall be conducted in accordance with U.S. DOT/NHTSA and OTSO guidelines. Programmatic and fiscal monitoring may include representatives from the federal and/or state government.

35.) **Sub-recipient on Notice**
Sub-recipients that fail to meet performance standards and/or grant requirements may be placed in Sub-Recipient on Notice status. This designation will last until an agency satisfies agreed upon requirements.

Criteria for being placed in Sub-Recipient on Notice status:

a) A pattern of untimely submissions of required expenditure reports (including required supporting documentation).

b) Sub-recipient fails to perform activities according to the approved plan.

c) A pattern of utilizing funds for unapproved activities, or has attempted to as identified in the review of expenditure reports and supporting documentation.

For more information about Sub-Recipient on Notice, contact the OTSO.

36.) **Final Report and Final Expenditure Report**
A final comprehensive annual report and a properly documented final expenditure report are due to the OTSO October 15th.

The final expenditure report will not be reviewed until the annual report has been submitted.

- If either the final expenditure report or the annual report are not submitted by November 1st, a 10 percent penalty may be deducted from the final expenditure report.
- If either the final expenditure report or the annual report are not submitted by November 15th, the final expenditure report will not be reimbursed.

The previous year's final expense report and/or annual report will be completed during the current federal fiscal year with a reasonable amount of hours.

37.) Records Retention
All records relating to project activity and/or expenditures must be maintained for review by representatives of the federal or state government for at least three years following the final reimbursement payment.

38.) Management Letter/Audit Report Submission
As a pass-through agency for federal funding, OTSO is required by the Office of Management and Budget (OMB) SubPart F of the Uniform Guidance to ensure you have met the audit requirements of the circular.


You are required to retain a copy of your most recent Audit Report, Management Letter and/or Single Audit Report and provide to ODPS/OTSO upon request.

39.) Termination of Agreement
Either OTSO or the sub-recipient may terminate this Agreement for any reason by giving the other party 30 days written notice. If the Agreement is cancelled under this provision, OTSO shall reimburse the sub-recipient for approved work completed and documented to that date. Upon termination all data results, reports and other materials developed by the sub-recipient will become the property of OTSO. All of the equipment, materials and/or supplies provided to the sub-recipient for use under this agreement must be returned to OTSO upon request within 30 days of said written notice. Should any change in federal funding adversely affect OTSO's ability to complete the fiscal year's activities, OTSO has the right to revise or terminate the agreement in writing.

40.) End of Grant
If a subsequent grant is not awarded after the end of the grant period, all data results, reports, equipment, supplies and other materials developed by the sub-recipient must be returned to OTSO upon request within 30 days.

Special Conditions
In addition to Terms and Conditions # 1 – 40, the following Special Conditions apply to Impaired Driving Enforcement Program (IDEP)/Selective Traffic Enforcement Program (STEP), Drugged Driving Enforcement Program (DDEP), OVI Task Forces (OVITF), Safe Communities (SC) and General (GG) grant awards:

**Impaired Driving Enforcement Program/Selective Traffic Enforcement Program**

41.) **Enforcing Seat Belt Laws**
The agency will enforce all seat belt and child restraint laws on all traffic stops made under this grant.

42.) **Training Certification**
The sub-recipient must assure all enforcement personnel involved in approved overtime enforcement-related activities are certified in the following type(s) of training, as appropriate:

- **Alcohol-related traffic enforcement** – (Arresting officer only): Standardized Field Sobriety Testing (SFST)
- **Drugged Driving traffic enforcement** - Advanced Roadside Impaired Driving Enforcement (ARIDE)
- **Speed management-related traffic enforcement** – Electronic Speed Measuring Device Training (ESMD)

43.) **Mandatory Blitzes**
Funding for all OTSO identified blitzes must be used for overtime traffic enforcement, saturation patrols and OVI checkpoints only. Directing traffic, conducting parking detail at events, crash investigations, criminal investigations (i.e., drug investigation/enforcement, assaults, thefts, etc.), any non-traffic safety related activities, or any activities not identified in scope of work or work plan are not reimbursable activities.

44.) **National Enforcement Campaigns**
All agencies utilizing overtime enforcement funds from OTSO are required to participate in the “Click It or Ticket” (CIOT) mobilization and the “Drive Sober or Get Pulled Over” (DSOGPO) alcohol crackdown.

Scheduled dates for the national enforcement campaigns are:

- **Thanksgiving CIOT:** November 16 – 29, 2020
- **Winter Holiday DSOGPO:** December 18, 2020 – January 1, 2021
- **CIOT:** May 24 – June 6, 2021
- **DSOGPO:** August 20 – September 6, 2021

45.) **Press Releases**
In addition to the grant award press release, STEP and IDEP sub-recipients must attempt to publicize its local efforts during each blitz and national enforcement campaign prior to the enforcement activity and again with the results of the enforcement effort. OTSO will provide media toolkits for the blitzes and enforcement campaigns to assist with these efforts.

46.) **Enforcement Hours Eligibility**
Direct labor hours expended in traffic safety enforcement programs must be over and above the normal active pay status work week as defined in the sub-recipient’s current labor agreement or departmental policy. Part-time permanent staff members are eligible
for funding, with prior approval by OTSO. Only one officer per patrol car will be funded as part of traffic enforcement grants. All full time officers working on OTSO grant must be paid their actual overtime hourly rate.

47.) **Transportation Costs**
OTSO will reimburse a maximum of five percent of direct labor costs (Blitz and Non-Blitz hours only) for the agency to put towards fuel/transportation costs. Do not include education costs in the labor costs. Mileage logs, receipts, etc. are not required to be submitted with reimbursement claims, but must be maintained by the agency for auditing purposes.

48.) **Education Efforts**
OTSO will reimburse for hours/costs spent towards education efforts for IDEP/STEP grants. These efforts can be used towards educating students, the general public at events, or officers and must be consistent with traffic safety problem identification (no interview techniques or other courses not related to traffic safety). Education efforts must be submitted to and approved by OTSO on a Request to Purchase form prior to incurring any costs. See page 32 for maximum amounts based on jurisdiction size.

**Drugged Driving Enforcement Program**

49.) **Enforcing Seat Belt Laws**
The agency will enforce all seat belt and child restraint laws on all traffic stops made under this grant.

50.) **Training Certification**
The sub-recipient must assure all enforcement personnel involved in approved overtime enforcement-related activities are certified in the following type(s) of training, as appropriate:

- Alcohol-related traffic enforcement – (Arresting officer only): Standardized Field Sobriety Testing (SFST)
- Drugged Driving traffic enforcement - Advanced Roadside Impaired Driving Enforcement (ARIDE)

51.) **Press Releases**
In addition to the grant award press release, DDEP sub-recipients must attempt to publicize its local efforts prior to the enforcement activity and again with the results of the enforcement effort.

52.) **Enforcement Hours Eligibility**
Direct labor hours expended in traffic safety enforcement programs must be over and above the normal active pay status workweek as defined in the sub-recipient’s current labor agreement or departmental policy. Part-time permanent staff members are eligible for funding, with prior approval by OTSO. Only one officer per patrol car will be funded as part of traffic enforcement grants. All full time officers working on OTSO grant must be paid their actual overtime hourly rate.

**OVI Task Forces**

53.) **Enforcing Seat Belt Laws**
The agency will enforce all seat belt and child restraint laws on all traffic stops made under this grant.
54.) **Site Selection**
Justification for sites selected for enforcement activities must be documented and maintained as a part of the sub-recipient’s file for this agreement.

55.) **Training Certification**
The sub-recipient must assure all enforcement personnel involved in approved overtime enforcement-related activities are certified in the following type(s) of training, as appropriate:

- Alcohol-related traffic enforcement – (Arresting officer only): Standardized Field Sobriety Testing (SFST)
- Drugged Driving traffic enforcement - Advanced Roadside Impaired Driving Enforcement (ARIDE)

56.) **National Enforcement Campaigns**
All agencies utilizing overtime enforcement funds from OTSO are required to participate in both “Drive Sober or Get Pulled Over” (DSOGPO) alcohol crackdowns.

Scheduled dates for the national enforcement campaigns are:

- **Winter Holiday DSOGPO**: December 18, 2020 – January 1, 2021
- **DSOGPO**: August 20 – September 6, 2021

57.) **Press Releases**
In addition to the grant award press release, OVI Task Forces are required to conduct three press conference events (one in coordination with the Drive Sober or Get Pulled Over alcohol crackdown), promote the task force through press releases and publicize checkpoints as required by law. OTSO will provide media toolkits for the blitzes and enforcement campaigns to assist with these efforts.

58.) **Enforcement Hours Eligibility**
Direct labor hours expended in traffic safety enforcement programs must be over and above the normal active pay status workweek as defined in the sub-recipient’s current labor agreement or departmental policy. Part-time permanent staff members are eligible for funding, with prior approval by OTSO. Only one officer per patrol car will be funded as part of traffic enforcement grants. All full time officers working on OTSO grant must be paid their actual overtime hourly rate.

59.) **Transportation Costs**
OTSO will reimburse a maximum of five percent of direct labor costs (saturation patrol and checkpoint hours for both the lead and participating agencies) for the agency to put towards fuel/transportation costs. Do not include coordination or education costs in the labor costs. Mileage logs, receipts, etc. are not required to be submitted with reimbursement claims, but must be maintained by the agency for auditing purposes.

60.) **Education Efforts**
OTSO will reimburse for hours/costs spent towards education efforts for OVITF grants. These efforts can be used towards educating students, the general public at events, or officers and must be consistent with traffic safety problem identification (no interview techniques or other courses not related to traffic safety). Education efforts must be submitted to and approved by OTSO on a Request to Purchase form prior to incurring
any costs. A total of five percent of direct labor costs (do not include coordination costs) will be allowed towards education efforts.

61.) **Participating Law Enforcement Agencies**
Participating law enforcement agencies performing activity under this grant must be paid for activity performed before reimbursement will be paid to the lead agency.

62.) **Documentation for Overtime Activity with Participating Agencies**
Documentation (check numbers, EFT, or DD) that the lead agency paid participating agencies working under the grant must be provided. Additional information may be requested.

63.) **Personnel Activity Reports**
Personnel Activity Reports are required for all coordination hours on this federal grant program. These reports, at a minimum, must document date worked, detailed explanation of activity performed and the number of hours per day to be charged to this agreement. Individuals working on more than one grant, must also include start and end times in the description. This document must be signed and dated by the individual and their immediate supervisor. It must be included as a part of the expenditure report documentation.

**Safe Communities**

64.) **Coalition Meetings**
Safe Communities programs must conduct a minimum of four coalition meetings during the grant period. Copies of signature rosters and the coalition meeting agenda must be kept on file and made available during an OTSO grant monitoring visit. Notice of meetings must be sent to the assigned planner and LEL.

64.) **Kick-Off Events**
Each Safe Communities program is required to conduct a “Click It or Ticket” and a “Drive Sober or Get Pulled Over” kick-off event. Each Safe Communities must conduct their own event in their own county. The CIOT event must be no earlier than May 17, 2021 and no later than May 28, 2021. The DSOGPO event must be no earlier than August 13, 2021 and no later than August 27, 2021. These events must include participation, at a minimum, by your coalition members, local law enforcement, community leaders, and the media. Each Safe Communities must complete and submit a Kick-off Event Form by the required deadline. Each form will be reviewed for content. Additional participation in an adjacent county’s event will be considered on a case by case basis.

65.) **Fatal Crash Data Review Committee**
A Fatal Data Review Committee will meet in any quarter that a fatality has been reported in the county to review fatal crash reports to identify patterns or trends that could increase impact of traffic safety countermeasures. Notice of meetings must be sent to the assigned planner and LEL.

66.) **Reporting of Fatality Information**
In order for communities to be kept informed on fatal crashes occurring in their areas, each Safe Communities program is required to report to their local media, at least quarterly, on the fatal crashes occurring in the communities. This notification will be
structured similar to a template developed by OTSO. Notification shall be sent to the media no later than the 15th of the month following the ending quarter. For example: Fatalities occurring in October, November and December must be reported by January 15th. Media can include: television, radio, newspapers, etc. Copies of these releases must be kept in file and will be subject to review by OTSO.

67.) Personnel Activity Reports
Personnel Activity Reports are required for all individuals working on this federal grant program. These reports, at a minimum, must document date worked, detailed explanation of activity performed and the number of hours per day to be charged to this agreement. Individuals working on more than one grant, must also include start and end times in the description. This document must be signed and dated by the individual and their immediate supervisor. It must be included as a part of the expenditure report documentation.

General Grants

68.) Personnel Activity Reports
Personnel Activity Reports are required for all individuals working on this federal grant program. These reports, at a minimum, must document date worked, detailed explanation of activity performed and the number of hours per day to be charged to this agreement. Individuals working on more than one grant, must also include start and end times in the description. This document must be signed and dated by the individual and their immediate supervisor. It must be included as a part of the expenditure report documentation.
City Manager’s Report

From 5610 - Human Resources
Supplier, Vendor, Company, Individual
Name SAMBA Holdings, Inc. dba SambaSafety
Address 8814 Horizon Blvd., NE, Suite 100
Albuquerque, NM 87113

Date February 24, 2021
Expense Type Service Agreement
Total Amount $30,000.00 (thru 2/23/2022)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims Administration/Workers’</td>
<td>65000-5610-1159-62</td>
<td>30,000.00</td>
</tr>
<tr>
<td>Compensation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Includes Revenue to the City □ Yes □ No
Affirmative Action Program □ Yes □ No □ N/A

Description
Automated Driver’s License Verification

The Department of Human Resources requests permission to enter into a one (1) year extension of its Agreement with SAMBA Holdings, Inc. dba SambaSafety in the amount of $30,000.00 for automated driver’s license verification and reporting for employees in all departments except the Dayton Police Department.

The agreement will cover the period of February 24, 2021 through February 23, 2022. Annual costs associated with these services are not to exceed $30,000.00.

The Law Department has previously reviewed and approved the document as to form and correctness.

A Certificate of Funds is attached for $30,000.00 for the period of February 24, 2021 through February 23, 2022.

Signatures/Approval
Approved by City Commission

Division Kenneth R. Couch
Department
City Manager
FORM NO. MS-16

Digitally signed by Kenneth R. Couch
Date: 2021.02.10 18:46:13 -06'00'

Clerk
Date
Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>New Contract</th>
<th>x</th>
<th>Renewal Contract</th>
<th>Required Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>02/24/21</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>02/22/22</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 30,000.00</td>
<td></td>
<td>Initial City Manager's Report</td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$ 30,000.00</td>
<td></td>
<td>Initial Certificate of Funds</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$ -</td>
<td></td>
<td>Initial Agreement/Contract</td>
</tr>
<tr>
<td>Original CT/CF</td>
<td>CT19-1941</td>
<td>x</td>
<td>Copy of City Manager's Report</td>
</tr>
<tr>
<td>Increase Encumbrance</td>
<td>$ -</td>
<td>x</td>
<td>Copy of Original Certificate of Funds</td>
</tr>
<tr>
<td>Decrease Encumbrance</td>
<td>$ -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Amount: | $ 30,000.00 |
| Fund Code | 65000 - 5610 - 1159 - 62 - XXXX - XXXX |
| Fund Org Acct Prog Act Loc |

| Amount: |
| Fund Code | XXXX - XXXX - XXXX - XX - XXXX - XXXX |
| Fund Org Acct Prog Act Loc |

Attach additional pages for more FOAPALs

Vendor Name: SAMBA Holdings, Inc.
Vendor Address: 8814 Horizon Blvd., NE, Suite 100, Albuquerque, NM 87113
Federal ID: 850468538
Commodity Code: 99032
Purpose: Automated driver's license verification and reporting for employees in departments of Aviation, Public Works, Water and Human Resources. The cost is $1.50 per employee per month with an additional charge per license report if requested.
Cost not to exceed $30,000.00 for 2021.

Contact Person: Katy Branson x4063
Human Resources: 2/10/2021

 Originating Department Director's Signature: Kenneth R. Couch
Date: 2021.02.10

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature: 2/17/2021

CF Prepared by: CF/CF Number

Finance Department
October 18, 2011
SECOND RENEWAL AND AMENDMENT TO THE SAMBA SAFETY INFORMATION SERVICES AGREEMENT
BETWEEN THE CITY OF DAYTON, OHIO AND SAMBA SAFETY

THIS SECOND RENEWAL AND AMENDMENT TO THE INFORMATION SERVICES AGREEMENT ("Renewal and Amendment"), is entered into this ___ day of __________, 2021 between the City of Dayton, Ohio, a municipal corporation in and of the State of Ohio, (hereinafter referred to as "City") and SambaSafety.

WITNESSETH THAT:

WHEREAS, the City and SambaSafety entered into an Agreement ("Agreement") on January 10, 2018 for City access to the SambaSafety Information Services System; and,

WHEREAS, the City and SambaSafety agree to amend the Agreement to extend the City’s access to the SambaSafety Information Services System and the term of the Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the parties agree as follows:

1. "Subscription and Services Fees" is hereby amended to include the following additional language:

Customer will pay SambaSafety all the fees in accordance with this Agreement, for the Extension Term, commencing on February 24, 2021, defined in Paragraph Two of this Renewal and Amendment. Total remuneration for all subscription and service fees during this Extension Term shall not exceed THIRTY THOUSAND DOLLARS AND ZERO CENTS ($30,000.00). All payments of fees shall be made in U.S. dollars.

2. The rates contained on the Pricing Sheet on page two of the 2018 Agreement, is hereby replaced with the rates contained on the Service Order, attached hereto as Exhibit A.

3. "Contract Term" is hereby amended to include the following additional language:

City and SambaSafety agree to a one-year Extension Term, which shall commence on February 24, 2021 and terminate upon the expiration of one (1) calendar year from such commencement date.

4. Except as modified by this Second Renewal and Amendment, the Agreement between the City and SambaSafety shall remain unchanged and in full force and effect.
IN WITNESS WHEREOF, the City and SambaSafety, each by a duly authorized representative, have executed this Second Renewal and Amendment as of the day and date first set forth above.

THE CITY OF DAYTON, OHIO

__________________________
City Manager

SAMBASAFETY

__________________________
By: Jay Triplett

__________________________
Print: Jay Triplett

__________________________
Its: Senior Director Sales Operations

APPROVED AS TO FORM AND CORRECTNESS:

2/5/2021

X John Musto for

__________________________
City Attorney

Signed by: Musto, John

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

__________________________
, 2021

Min. Bk. _____ Pg. _____

__________________________
Clerk of the Commission
**Service Order**
**Account Name:** City of Dayton

*In addition to the Services and associated fees in the table below, state data and additional resource fees ("State Data Fees") may apply*

<table>
<thead>
<tr>
<th>Payment Terms</th>
<th>Payment Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net 30</td>
<td>ACH</td>
</tr>
</tbody>
</table>

### Subscription Services

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Number of Drivers</th>
<th>Price Per Unit*</th>
<th>Total per Billing Period</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Driver Monitor Professional</td>
<td>991</td>
<td>$1.50</td>
<td>$1,486.50 / Month</td>
<td>Driver Risk Management web-based application to increase visibility of risk with MVR monitoring service. Access to driver data reporting, alerts, driver roster mgmt and MVR decoding. Enhanced MVR scoring, online ReleaseManager and ComplianceManager.</td>
</tr>
</tbody>
</table>

### Implementation Services

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Price</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
</table>

### On-Demand and Support Services

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Price</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Description</th>
</tr>
</thead>
</table>

*SambaSafety MVR service fee charged in addition to data fee for on-demand MVRs. Scheduled MVRs or Annual MVRs defined by Customer's policy; details on fees are included below under the Services Description. Invoiced based on actual usage.*

*The Price Per Unit is based upon the commitment by Customer of monitoring minimally the Number of Drivers set forth above, commencing on the Subscription Start Date throughout the remainder of the Service Order Term.*

<table>
<thead>
<tr>
<th>Subscription Start Date</th>
<th>Initial Term (Months)**</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 days after the Effective Date below</td>
<td>12</td>
</tr>
</tbody>
</table>

**Initial Term begins on the Subscription Start Date**

All of the aforementioned fees shall apply to this Agreement from the Subscription Start Date through the duration specified in the Initial Term. After the Initial Term and until the Service Order Term terminates or expires, the fees shall be at SambaSafety's then-current pricing applicable to its customers without discount.

The above terms will be effective only if Customer signs and returns this agreement on or before 03/05/2021.

---

**EXHIBIT A**

---

SambaSafety Service Order  

v12.16.2019
# SAMBASAFETY INFORMATION SERVICES AGREEMENT

(THE "AGREEMENT")

## CUSTOMER ACCOUNT INFORMATION

<table>
<thead>
<tr>
<th>ACCOUNT INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Dayton</td>
</tr>
<tr>
<td>Company Name (must be legal name registered with the state filing office)</td>
</tr>
<tr>
<td>101 W 3rd St</td>
</tr>
<tr>
<td>Mailing Address</td>
</tr>
<tr>
<td>Dayton</td>
</tr>
<tr>
<td>OH</td>
</tr>
<tr>
<td>45402</td>
</tr>
<tr>
<td>City</td>
</tr>
<tr>
<td>State</td>
</tr>
<tr>
<td>Zip</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Billing Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
</tr>
<tr>
<td>State</td>
</tr>
<tr>
<td>Zip</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Brent McKenzie</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary Contact Name</td>
</tr>
<tr>
<td>937-333-4062</td>
</tr>
<tr>
<td>Phone</td>
</tr>
<tr>
<td><a href="mailto:Brent.mckenzie@cityofdayton.org">Brent.mckenzie@cityofdayton.org</a></td>
</tr>
<tr>
<td>Email</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Billing Contact Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Phone</td>
</tr>
<tr>
<td>Email</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business Fax</td>
</tr>
<tr>
<td>Business Email</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal Employer ID Number</th>
<th>Years Business Established</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date Incorporated</td>
<td>State Incorporated</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business License Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>State</td>
</tr>
<tr>
<td>Expiration</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Website (URL)</th>
</tr>
</thead>
</table>
# Pricing Sheet
(the "Commercial Terms")

**Customer Name:** City of Dayton

In addition to the Information Services and associated fees in the table below, state, data and additional resource fees ("State/Data Fees") may apply.

<table>
<thead>
<tr>
<th>Subscription Services</th>
<th>Monthly Minimum</th>
<th>Price Per Driver*</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>DriverMonitor Standard</td>
<td>991 Number of Drivers*</td>
<td>$1.00</td>
<td>Designed for fleets looking to immediately increase visibility and reduce risk with continuous driver monitoring. Includes Driver monitoring, Samba DriverScore, Driver list management, Real time reporting, On-demand MVRs, Access to Driver Training. Customer invoiced monthly.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Implementation Services</th>
<th>Fee</th>
<th>Description</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>DriverMonitor On-Boarding</td>
<td>$ 0.00</td>
<td>One-time prof. services fee for initial on-boarding. Includes system provisioning, user account configuration, enrollment of all drivers in the system, and online training. Customer invoiced after initial drivers are loaded into the SambaSafety System. Customization for API and PolicyManager implementations may require a separate Scope-of-Work.</td>
<td></td>
</tr>
<tr>
<td>Product Training</td>
<td>NA</td>
<td>Customized training for Customer's Admin and End Users using Customer's product instance and driver data. Each custom class lasts one (1) hour and is delivered live on-line. Customer invoiced the month following the completion of such training.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>On-Demand Services</th>
<th>Fee</th>
<th>Description</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>MVR Service Fees</td>
<td>$2.00</td>
<td>Samba MVR service fee charged in addition to data fee for on-demand MVRs, Scheduled MVRs or Annual MVRs defined by Customer's policy; details on fees are included below under the Description of Information Services. Invoice monthly based on actual usage.</td>
<td></td>
</tr>
<tr>
<td>Online Driver Training</td>
<td>$17.95</td>
<td>Price per on-demand Samba DriverTraining class; price is charged when a driver is enrolled in an online DriverTraining class. Customer invoiced monthly based on actual usage.</td>
<td></td>
</tr>
</tbody>
</table>

N/A in the table above means that these Services are not currently agreed to be provided, but will be added only upon an amendment to the Agreement.

*The price per driver fee is based upon the commitment by Customer of monitoring the Monthly Minimum number of Drivers set forth above, commencing on the Subscription Start Date throughout the remainder of the Contract Term.

<table>
<thead>
<tr>
<th>Subscription Start Date</th>
<th>Initial Term**</th>
</tr>
</thead>
<tbody>
<tr>
<td>02/01/2018</td>
<td>2 years</td>
</tr>
</tbody>
</table>

**Initial Term begins on the Subscription Start Date.

All of the aforementioned fees shall apply to this Agreement from the Subscription Start Date through the duration specified in the Initial Term. After the Initial Term and until the Agreement terminates or expires, the fees shall be at SambaSafety's then-current pricing applicable to its customers without discount.
Description of Information Services:
Samba DriverMonitor provides continuous visibility into employees’ driving records. This is accomplished via a complex set of DMV connections and 3rd party data sources, triggering an MVR only when there is new activity to report, thereby providing actionable information to improve drivers’ performance and mitigate risks. The following MVR fees may also apply, depending upon Customer’s account activity:

- **Baseline MVR**: A baseline MVR is procured within 24 hours of a driver being added to Samba DriverMonitor. The baseline MVR provides the employer a minimum 3-year driving history, before beginning monthly monitoring. This history is critical in determining if the driver has a valid driver’s license and if there are risk factors in the driver’s recent driving history. **State/Data Fees for Baseline MVRs are billed to the Customer. No additional MVR Service Fee is added to Baseline MVR orders.**

- **Activity MVR**: Samba DriverMonitor monitors drivers at least monthly for new activity on the driver’s driving record. This is done via multiple methodologies without always procuring a full MVR. If activity is found, an official MVR will be automatically procured on behalf of the Customer. **State/Data Fees for Activity MVRs are billed to the Customer. No additional MVR Service Fee is added to Activity MVR orders.**

- **On-Demand MVR**: At any time, the Customer can manually procure an MVR for any driver. This can be done via the DRM dashboard. **State/Data Fees for On-Demand MVRs and an MVR Service Fee specified above is billed to the Customer.**

- **Scheduled Annual MVR**: Annual motor vehicle records can optionally be procured once every 12 months. The Customer can configure the schedule for annual MVR procurement by configuring its annual policy in the DriverMonitor console. **Scheduled Annual MVRs are disabled by default. State/Data Fees for Scheduled Annual MVRs and a MVR Service Fee specified above is billed to the Customer.**

- **Dynamic Baseline MVRs**: In some states where public records are leveraged as activity triggers dynamic baseline MVRs are procured automatically to ensure completeness and accuracy. A dynamic baseline MVR computes the time since the last full MVR was purchased for any reason (baseline, activity, on-demand, scheduled, etc.) and procures a new MVR when the gap exceeds 12 months. **State/Data Fees for Dynamic Baseline MVRs are billed to the Customer. No additional MVR Service Fee is added to Dynamic Baseline MVR orders.**

- **No-Hit MVR**: Some states charge a data fee even if the driver information submitted by SambaSafety on behalf of the Customer returns no results. This can happen when the Customer submits inaccurate driver information, including but not limited to license number, first and last name, or date of birth. Samba DriverMonitor enforces certain checks to validate that a license number follows the appropriate format for a given state before the request is made to the state in an effort to minimize no-hit charges.

- **Enrollment Fees**: Some states, such as California, charge enrollment fees when adding drivers to the state monitoring programs. These fees vary in price and are passed to the Customer as-is with no additional service fees.

- **State/Data Fees Pricing**: The latest pricing info for SambaSafety State/Data Fees are maintained online and can be found using the following URL: [https://www.sambasafety.com/resources/state-data-fee-schedules/](https://www.sambasafety.com/resources/state-data-fee-schedules/).

Term, Price and Payment:

- **Contract Term**: “Contract Term” shall mean the period for which this Agreement is operative, which commences on the Effective Date and continues through the Initial Term and, if applicable, any Extension Term(s), subject to early termination of any of the foregoing in accordance with the terms and conditions of this Agreement. Upon early termination of this Agreement, a Discontinuance Fee may apply. At the end of the Initial Term (and any Extension Term(s)), this Agreement shall automatically be extended for automatic and successive additional one-year terms (each, an "Extension Term") unless either party gives written notice to the other not fewer than ninety days prior to the expiration of the then-current term.

- **Subscription and Service Fees**: Customer will pay SambaSafety all of the fees in accordance with this Agreement. Total remuneration for all subscription and service fees during the contract term shall not exceed Forty Thousand Dollars ($40,000.00). All payments of fees shall be made in U.S. dollars.

- **Minimum Monthly Fee**: Commencing on the Subscription Start Date and through the remainder of the Contract Term. Customer agrees to minimally pay SambaSafety an amount equal to the Minimum Number of Drivers (as set forth in the Pricing Sheet above) multiplied by the Monthly Price per Driver set forth above (“Monthly Minimum”).

- **Subscription Start Date and Customer Onboarding**: Customer agrees to provide a completed Driver Upload Template and other required State Forms (Exhibit C) to SambaSafety within 15 business days prior to the Subscription Start Date specified above. If drivers are located in California or Pennsylvania, Customer must provide SambaSafety with the Driver Upload Template and additional required State Forms within six (6) weeks prior to the Subscription Start Date.

- **Payment Terms**: Commencing on the Subscription Start Date or the actual date on which any of Customer’s drivers are uploaded into the SambaSafety System, whichever occurs first. SambaSafety will invoice Customer on a monthly basis for the greater of (a) the Monthly Minimum Fee plus all other Information Service fees applicable for the preceding month, or (b) for all Subscription Fees incurred by Customer during the preceding month plus all other Information Service fees applicable for the preceding month. All invoices are due and payable by Customer within 15 days of the invoice date (Net 15 payment terms). Customer agrees to facilitate automatic payments to SambaSafety by setting up either (a) Automated Clearing House (ACH) payments, or (b) automatic monthly credit card payments. Customer shall allow SambaSafety to initiate a monthly draft for either payment method, and complete all necessary forms to facilitate such automatic payments, which shall be drawn 15 days after Invoice Date. All fees are non-refundable. Any invoices which are not paid in full on the first of the month following the invoice due date shall accrue interest at the lesser of one and one-half percent (1 3/4%) per month or the maximum amount permitted by law. If an account is suspended for
non-payment, a $100 reinstatement fee may be added to the following invoice as a condition for account reactivation. In addition to any other rights or remedies available to SambaSafety, any failure by Customer to timely pay any amounts due for any period in full will result in SambaSafety’s immediate discontinuation of Customer’s access to the SambaSafety System and any related Information Services. A twenty-five dollar ($25.00) Non-Sufficient Funds Fee will be assessed for all dishonored payments.

- **Taxes:** In addition to any fees owing, Customer must pay or reimburse SambaSafety for all sales, use, transfer, privilege, excise or other taxes and duties, whether national, state, or local, however designated, which are levied or imposed by reason of this Agreement or any services provided hereunder; excluding, however, income taxes on profits which may be levied against SambaSafety.

- **Inactive Accounts:** If following the Contract Term, Customer’s account includes amounts owing to Customer, Customer shall request a refund of the balance within 5 months of the termination or expiration of this Agreement. If such refund is not requested, SambaSafety may charge a communication maintenance fee of the lesser of $15 per month, or the maximum amount permitted by applicable law. Such communication maintenance fee, if applied, will be charged to Customer’s account on the first day of each month until the Customer’s account balance is $0.00.

- **Discontinuance Fee:** The parties have mutually agreed upon the fees for the Subscription Services to be provided hereunder based upon certain assumed volumes of processing activity, and the Contract Term. Customer acknowledge and agrees that, without the certainty of revenue promised by the commitments set forth in this Agreement, SambaSafety would have been unwilling to provide the Subscription Services at the fees set forth in this Agreement. Because of the difficulty in ascertaining SambaSafety’s actual damages for a termination or other breach of this Agreement by Customer, Customer agrees that prior to any termination taking effect and in addition to all other amounts then due and owing to SambaSafety, Customer will pay to SambaSafety (as a contract discontinuance fee and not as a penalty) an amount equal to the balance of the fees that would have been due under this Agreement had there been no termination, but no amount less than the fifty percent (50%) of the Monthly Minimum multiplied by the number of months remaining in the remaining Contract Term (“Discontinuance Fee”). Customer acknowledges and agrees that the Discontinuance Fee is a reasonable estimation of the actual damages that SambaSafety would suffer if SambaSafety were to fail to receive the amount of processing business contemplated by this Agreement. Customer shall not be required to pay the Discontinuance Fee if SambaSafety terminates this Agreement other than due to a material breach of its obligations hereunder or if Customer terminates this Agreement for a material, uncured breach by SambaSafety of one of its material obligations under this Agreement.

**Additional Terms**

- **Additional Legal Terms:** The parties expressly incorporate by reference and intend this Agreement to include the additional legal terms and conditions attached hereto in Exhibit A (the “Applicable Terms and Conditions”).

**Accepted by:** By executing below, Customer acknowledges and agrees to the terms and conditions set forth herein (the “Commercial Terms”) and the Applicable Terms and Conditions. Any reference to the “Agreement” shall refer to these Commercial Terms, together with the Applicable Terms and Conditions.

This Agreement shall only become effective when signed by both Customer and SambaSafety, and any fees or other terms and conditions may be withdrawn or altered at any time unless and until this Agreement is executed by both parties. If this Agreement is signed by SambaSafety, but not countersigned by the Customer within ninety days after the date of SambaSafety’s signature, this Agreement shall be deemed not to have been signed by SambaSafety and shall have no effect. The later date on which either party signs shall be deemed the “Effective Date” of this Agreement.

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SambaSafety Information Services Agreement v10.10.17
Exhibit A: SAMBASAFETY
Applicable Terms and Conditions

These Applicable Terms and Conditions supplement the foregoing Commercial Terms executed between Customer and SambaSafety, and form an integral part of the Agreement between SambaSafety and the Customer.

1. Definitions. The following terms, when capitalized, will have the meaning set forth in this section. All other capitalized terms when used shall have the meaning ascribed to them as set forth elsewhere in the Agreement.

   "SambaSafety System" means the proprietary system(s) developed and operated by SambaSafety or Vigillo for facilitating requests for, and retrieval and distribution of Information Services from Data Providers with which SambaSafety maintains license arrangements, and which comprises a gateway server or servers, and other equipment, SambaSafety proprietary software, and telecommunication lines.

   "Data Provider" means any Federal or State agencies, private service providers, and other service bureaus that provide SambaSafety with Information Services.

   "Information Services" means any data, reports, indicators, products, and/or services, including Motor Vehicle Reports ("MVRs"), vehicle, title, and registration histories, driver monitoring, database records, and analytic services provided by SambaSafety to Customer.

   "Information Services Fees" means any fees for the Information Services, excluding State/Debit Cards and any taxes that may be paid or owing by Customer pursuant to the Agreement.

   "Personal Information" means (i) any information about an identifiable individual and (ii) information that is not specifically about an identifiable individual but, when combined with other information, may identify an individual. Personal Information includes names, email addresses, postal addresses, telephone numbers, government identification numbers, financial account numbers, payment card information, credit report information, biometric information, IP addresses, network and hardware identifiers, and geolocation information.

   "User" means any person or entity who or that access the SambaSafety System on behalf of Customer or clients or customers of Customer or (ii) using any password or access code of Customer or clients or customer of Customer and the employees and agents thereof.

2. License Grant; Restrictions

2.1 License Grant. Subject to the terms and conditions of the Agreement, during the Contract Term, SambaSafety hereby grants to Customer a limited, worldwide, enterprise-wide, royalty-free, non-exclusive, non-transferable license and right to access and use the SambaSafety System and any Information Services provided by SambaSafety solely for its internal business purposes. Exclusive proprietary ownership of MVRs remains with state Data Providers.

2.2 Restrictions on Use. Customer shall not, nor allow or authorize any third party to: (a) alter, enhance or otherwise modify or create derivative works of or from the SambaSafety System; (b) disassemble, decompile, reverse engineer or otherwise attempt to derive the source code of the SambaSafety System; (c) merge the SambaSafety System with other software; provided that utilizing SambaSafety's APIs in accordance with the purposes such APIs are provided shall not be deemed a merger of the SambaSafety System with other software; (d) remove or destroy any proprietary markings, confidential legends or any trademarks or trade names of SambaSafety or its licensors placed upon or contained within the SambaSafety System, its documentation or the Information Services; (e) upload, post or transmit into the SambaSafety System any unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, profane, or otherwise objectionable information of any kind, including any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any Applicable Law, including violations of the intellectual property rights or any other rights of a third party; or (f) post or transmit into the SambaSafety System any information, content or software which is subject to any open source or freeware license or contains a virus, cancelbot, Trojan horse, worm or other harmful component. Use, duplication or disclosure by the U.S. Government or any of its agencies is subject to restrictions set forth in the Commercial Computer Software and Commercial Computer Software Documentation clause at DFARS 227.7202 and/or the Commercial Computer Software Restricted Rights clause at FAR 52.227.19(c). Customer further acknowledges and agrees that each individual accessing the SambaSafety System may be required to agree and consent to SambaSafety's then-current online end user license terms and conditions prior to accessing or utilizing the SambaSafety System's functionality.

2.3 Public Record Indicators. Customer elects to receive traffic and court records available to the public which might indicate the need to procure a current, up-to-date MVR ("Public Record Indicators"). Due to the limited nature of Public Record Indicators, Customer acknowledges that these Public Record Indicators shall only be used as pointers of possible records or changes in an individual's status. Customer represents and warrants that (a) it will not knowingly use Public Record Indicators to deny insurance coverage or to take an adverse action against any individual; and (b) prior to
making any decisions to deny insurance coverage or take an adverse action against any individual, Customer will verify the activity on a Public Record Indicator directly with a current, up-to-date MVR.

3. Confidentiality and Treatment of Information
3.1 Personal Information. Customer acknowledges that in connection with the Agreement, it may receive Personal Information from SambaSafety and/or Data Providers. Customer agrees to treat as confidential all Personal Information received from or through SambaSafety and to use such information only as permitted under the Agreement and all Applicable Laws and to disclose Personal Information only to those authorized and who have a need to know such information to accomplish their duties in accordance with the Agreement and all Applicable Laws. Customer shall not use Personal Information for any purpose except the purpose permitted by the Agreement.

3.2 Confidential Information. “Confidential Information” means information that one party, or a party’s affiliate, discloses to the other party or its affiliate(s) under this Agreement, and that is marked as confidential or a reasonable person would believe to be considered confidential information given the nature of the information and the circumstances under which such information is disclosed; provided, however, so long as such Confidential Information is not Personal Information (which must always be treated as Confidential Information), neither party shall have any obligation to maintain the confidentiality of any Confidential Information which: (a) is or becomes publicly available by other than unauthorized disclosure by the recipient; (b) is independently developed by the recipient; or (c) is received from a third party who has lawfully obtained such Confidential Information without a confidentiality restriction.

3.3 Reciprocal Obligations. Without limiting Customer’s obligations with regards to Personal Information, the recipient will not disclose Confidential Information of the discloser, except to recipient’s affiliates, employees, agents or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities to whom and which it transfers any Confidential Information of the discloser shall only use such information as permitted under the Agreement and that such individuals and entities shall keep it confidential in accordance with the Agreement. Notwithstanding the foregoing, if required by any court of competent jurisdiction or other governmental authority, the recipient may disclose to such authority, data, information or materials involving or pertaining to Confidential Information to the extent required by such order or authority; provided that the recipient shall have given reasonable notice to the discloser prior to such disclosure.

3.4 No Rights. Except for the limited use rights under the Agreement, neither party acquires any right, title, or interest in the other party’s Confidential Information.

3.5 Change in Customer’s Business. Customer shall immediately notify SambaSafety of any of the following events: change in ownership of Customer (over 50%); a merger, change in name or change in the nature of Customer’s business that in any way affects Customer’s rights to request and receive consumer reports.

4. SambaSafety System and Information Services Availability
4.1 No Availability Guarantee. SambaSafety will use commercially reasonable efforts to deliver the Information Services. Customer acknowledges that SambaSafety relies totally on the information contained in the records and/or information provided by various Data Providers for its Information Services and response times for fulfillment of Information Services. Requests through the SambaSafety System may be subject to delays occasioned by numerous technical factors which cannot be fully anticipated. SambaSafety does not guarantee availability of the SambaSafety System, any Information Services from any particular Data Provider. SambaSafety makes no representation or warranty whatsoever regarding anticipated response times for retrieval or delivery of Information Services.

4.2 Records Not Available. Data Providers may offer multiple types of records, including records that are not available to SambaSafety and/or not provided by SambaSafety as part of the Information Services. Customer is responsible for accessing and using the appropriate record type for Customer’s particular use. If Customer requires Information Services not provided by SambaSafety (such as a certified copy of a driving record), Customer is responsible for contacting the appropriate Data Provider directly.

5. Termination
5.1 Termination. SambaSafety may immediately terminate this Agreement upon the occurrence of the following events: (a) Customer files a petition in bankruptcy, files a petition seeking any reorganization, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of creditors; (b) Any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against Customer and is not stayed, enjoined or discharged within sixty days; (c) Customer adopts a resolution for discontinuance of its business; (d) Default in payment of any fees or other related amounts for the Information Services; (e) Misuse of Information Services; (f) Uncured (after 30 days written notice by SambaSafety to Customer) material breach of this Agreement; or (g) Unauthorized release or use of any information contained or related to the Information Services.

5.2 Survival. Termination or expiration of this Agreement shall not impair either party’s then accrued rights, obligations, liabilities or remedies. The terms and conditions of Sections 1, 2, 3, this Section 5.2, Sections 6, 7, 8, 9, and 10, and any other provision which by its nature is intended to survive, shall survive the termination or expiration of this Agreement.
6. **Limited Warranty; Disclaimer.**

6.1 **Performance and Non-infringement.** SambaSafety warrants that it will use reasonable commercial efforts to provide the Information Services substantially in accordance with the Commercial Terms and the then-current documentation of the SambaSafety System, and to use commercially reasonable efforts to make the SambaSafety System continuously available to Customer during regular business hours and to attempt to restore availability if it is within SambaSafety’s reasonable control. SambaSafety warrants that, to the best of its knowledge, SambaSafety (a) owns or has licensed the intellectual property rights to offer the SambaSafety System to Customer for use within the United States, and (b) the SambaSafety System does not violate or infringe intellectual property rights of any third party within the United States; provided, however, Customer’s exclusive remedy and SambaSafety’s sole liability for any breach of the warranties set forth in the foregoing sentence shall be the rights set forth to Customer within the indemnification section set forth in Section 7.

6.2 **Disclaimer of Warranty.** Except as set forth herein, SambaSafety MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND ABOUT THE AVAILABILITY, ACCURACY, RELIABILITY, COMPLETENESS OR TIMELINESS OF THE SAMBASAFETY SYSTEM, ANY INFORMATION SERVICES, ANY DATA PROVIDER’S DATABASE, OR ANY INFORMATION CONTAINED THEREIN, OR ABOUT ANY RESULTS TO BE OBTAINED FROM USING THE SAMBASAFETY SYSTEM, ANY INFORMATION SERVICES, OR ANY DATA PROVIDER’S DATABASE, USE OF ANY OF WHICH IS AT CUSTOMER’S OWN RISK. THE SAMBASAFETY SYSTEM, ANY INFORMATION SERVICES, ANY DATA PROVIDER’S DATABASE, AND ANY INFORMATION CONTAINED THEREIN IS PROVIDED ON AN “AS IS” BASIS, WITHOUT ANY WARRANTIES OF ANY KIND. WHERE PERMITTED, PUBLIC RECORD INDICATORS USED FOR DRIVING MONITORING SERVICES MAY BE SUPPLIED FROM DATABASE FILES OF VARIOUS PRIVATE DATA PROVIDERS. THESE PUBLIC RECORD INDICATORS MAY PRODUCE DATA NOT CONTAINED IN A MOTOR VEHICLE REPORT PROVIDED BY A STATE AGENCY DATABASE. EXCEPT AS SET FORTH HEREIN, SAMBASAFETY AND ITS DATA PROVIDERS, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE SAMBASAFETY SYSTEM, ANY INFORMATION SERVICES, ANY DATA PROVIDER’S DATABASE, OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OF CONDITIONS OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY OR FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT SAMBASAFETY KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE) WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE. SAMBASAFETY FURTHERMORE EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY THIRD PARTY WITH RESPECT TO THE SAMBASAFETY SYSTEM, INFORMATION SERVICES, ANY DATA PROVIDER’S DATABASE, OR ANY PART THEREOF.

7. **IP Infringement Indemnity and Procedures.**

7.1 **IP Claim.** SambaSafety agrees, at its own expense, to defend (or at SambaSafety’s option, settle) and hold harmless Customer from and against any claims of a third party the SambaSafety System infringes any valid United States copyright, patent or trademark ("IP Claim") and shall indemnify Customer against any liabilities, obligations, damages and penalties awarded in any final judgment, or final settlement of any IP Claim; provided that Customer: (a) promptly notifies SambaSafety in writing of any such IP Claim; and (b) permits SambaSafety to control and direct the investigation, preparation, defense and settlement of the IP Claim; and (c) assists and cooperates in the defense of the IP Claim.

7.2 **Mitigation.** Following notice of an IP Claim or any facts that may give rise to such IP Claim, SambaSafety may, in its sole discretion and at its option: (a) procure for Customer the right to continue to use the Information Services or SambaSafety System; (b) replace the SambaSafety System with content that does not materially degrade the functionality of the Information Services; or (c) modify the SambaSafety System to make the challenged product non-infringing; provided that the modification does not impose any material costs on Customer and the modification does not materially diminish the features or functionality of the Information Services. If it is not commercially reasonable to perform any of these alternatives, SambaSafety shall have the option to terminate the Agreement without any further obligation to perform Information Services; provided, however, SambaSafety shall refund to Customer a proratable share of any fees actually paid by Customer for Subscription Services not rendered prior to the date the termination of this Agreement takes effect.

7.3 **Exclusions.** In no event will SambaSafety have any obligations under this Section 7 or any liability for any claim or action if the IP Claim is caused by, or resulting from: (a) modification, customization, translation or alteration of the SambaSafety System of the Information Services by or on behalf of Customer if such IP Claim would have been avoided without such modification, customization or alteration; or (b) Customer’s continued allegedly infringing activity after SambaSafety provides a non-infringing replacement in accordance with Section 7.2; or (c) Customer’s use of the SambaSafety System of the Information Services in a manner prohibited by or not provided for in this Agreement.

8. **Limitation of Liability and Available Remedies.**

8.1 **Disclaimer of Remedies.** REGARDLESS OF THE FORM OF ACTION OR THEORY OF RECOVERY, WHETHER IN CONTRACT, TORT, STATUTORY, WARRANTY OR OTHERWISE, IN NO EVENT SHALL EITHER
PARTY BE LIABLE OR RESPONSIBLE FOR: (a) INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, MULTIPLE OR EXEMPLARY DAMAGES, REGARDLESS OF ITS AWARENESS OF THESE RISKS; AND/OR (b) LOST PROFITS, LOST REVENUES, LOST DATA, LOSS OF BUSINESS EXPECTANCY, BUSINESS INTERRUPTION LOSSES, OR BENEFIT OF THE BARGAIN DAMAGES.

8.2 Limitation of Liability. Subject to Section 8.1 and Section 8.3, but notwithstanding any language elsewhere to the contrary, to the maximum extent permissible by law, each PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES SHALL NOT BE IN EXCESS OF THE AMOUNTS OF INFORMATION SERVICES FEES ACTUALLY PAID BY CUSTOMER IN THE PREVIOUS 3-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE INITIAL CLAIM FOR DAMAGES.

8.3 Exclusions to Caps and Exculpations. Notwithstanding the foregoing, the Parties expressly agree that the limits and exclamations set forth in this Section 8 shall not apply to Customer's obligation to pay any transaction fees or any discontinuance fee, whether committed or rendered, or any breach relating to, or infringement of, SambaSafety's or its licensees' intellectual property or confidential information, or any obligation by a party to indemnify and defend as set forth in this Agreement.

8.4 Reliance on Information. In providing the Information Services, SambaSafety shall be entitled to rely upon and act in accordance with any instructions, guidelines, data or information provided by Customer, and shall incur no liability in doing so.

9. State- and Data-Mandated and Government Restrictions

9.1 Required Documents. Customer agrees to promptly execute and return to SambaSafety all documentation required, now or in the future, by any Data Provider or SambaSafety to permit release of information or to ensure compliance with any Applicable Laws or as part of SambaSafety's routine and specific audit requests in order to verify that requests are being sought for permissible purposes. Customer agrees to only use the information obtained as set forth in any applicable state-mandated forms, or that they will obtain approval from applicable state agencies prior to the release of any individual's name and address. The failure to return such documentation will result in Customer being blocked from receiving the information related to the documentation, and may result in all Information Services being suspended or terminated.

9.2 Compliance with Laws. Customer represents, warrants, covenants and certifies that it shall order, receive, disseminate and otherwise use the Information Services in compliance with all applicable federal, state and local statutes, rules, codes and regulations, including the Fair Credit Reporting Act ("FCRA"), the Driver's Privacy Protection Act, 18 U.S.C. §2721 et seq. ("DPPA"), and their state equivalents, including any changes, supplements or amendments to such statutes, rules, codes and regulations (collectively, "Applicable Laws"). Customer further represents, warrants, covenants and certifies that before ordering Information Services, it will comply with any applicable consumer disclosure-authorization and adverse action requirements under the FCRA and will not use any information contained in the Information Services in violation of any applicable federal or state equal opportunity law or regulation. Customer understands that violators of the FCRA, the DPPA, and other federal and state laws governing protection of Personal Information are potentially subject to civil actions and penalties, including fines. Customer shall be responsible for understanding and for staying current with all Applicable Laws.

9.3 Credentialing. Credentialing is the process for verifying that entities are legitimate and their purpose for the use of Information Services is authorized. Customer agrees to cooperate fully with continued monitoring of Customer credentials. Monitoring includes the recertification of credentials (i.e., business license). SambaSafety reserves the right to make credentialing requests as it deems necessary.

9.4 Information Security. Customer shall make commercially reasonable efforts to: (a) implement reasonable data security procedures that meet or exceed current industry standards to protect Information Services provided by SambaSafety under this Agreement from unauthorized disclosure. Such reasonable procedures shall include, but are not limited to, user name and password access policies, firewalls, background investigations of employees or any other individuals authorized to access Information Services; (b) physically secure and tightly control all Customer information technology assets that store, house or process Information Services in order to prevent unauthorized access; (c) employ adequate measures to ensure that unauthorized users cannot successfully attack Customer information technology assets in a manner that allows the SambaSafety System or the Information Services to be compromised; (d) periodically scan Customer information technology hosts and networks that hold or process Information Services for known vulnerabilities to search for exploits; (e) have a formal process in place to install vendor-recommended security patches in a timely manner for all information technology assets, hosts and networks that process Information Services or connect with the SambaSafety System; (f) provide periodic, but minimally annual, security training to employees on best security practices and the practices of the Customer; (g) ensure that each User or Customer employee or other individuals who will have access to Customer Information Services execute an SambaSafety User Statement of Confidentiality in a form directed by SambaSafety from time-to-time; (h) have a reasonable computer incident policy and procedure program in place.

9.5 Use of the Internet. Customer and any of its Users will not disseminate any unsecured or unencrypted Information Services over the Internet. Internet dissemination includes e-mail, World Wide Web access, FTP and all other mechanisms where data is transmitted across the Internet. This shall not prohibit Customer from transmitting such information over a secure network using current security technologies to Users with a legitimate need to receive the...
information, provided that such actions comply with Applicable Laws as well as any other state and federal statutes and regulations governing the confidentiality, security and transmission of the Information Services.

9.6 Account Information. Customer: (a) shall remain fully responsible for any use of its and its Users’ SambaSafety account number, User IDs, and passwords granted in connection with the Agreement and to prevent the disclosure or distribution thereof; (b) shall not provide any such information to any third party; (c) agrees to limit access to Information Services only to its current employees whose responsibilities require such access and only to the extent necessary for its proper use in accordance with Applicable Law and as authorized by the Agreement; (d) agrees to immediately terminate the User ID and password granted in connection with the Agreement for any employee that leaves Customer’s organization or violates any terms or conditions of the Agreement or in the event there is reason to believe such User ID or password might be compromised; (e) shall remain fully responsible and liable for any unauthorized use of account number, User IDs or passwords granted in connection with the Agreement; (f) agrees that Customer’s employees shall be forbidden to attempt to obtain Information Services on themselves, associates, or any other persons, except in the exercise of their official duties for Customer; and (g) shall ensure each User of the SambaSafety System by or on behalf of Customer is assigned a unique user ID and password.

9.7 Audits. Beginning on the Effective Date of the Agreement, Customer must maintain all records related to its ordering and using Information Services, for a period of five (5) years from the date each Information Services report is ordered. The information retained pursuant to this section must include without limitation the request date, requested individual, requestor, and permissible purpose for each Information Services report, a signed release from the prospective or current employee each time a request is made for employment purposes, and any other information sufficient to verify that the ordering and use of the Information Services complies with the terms of the Agreement and Applicable Laws. Upon receipt of written SambaSafety audit requests, Customer agrees to respond with all documentation as requested within the time period specified in the audit notice or request for information. Access privileges to the Information Services may be suspended upon failure to comply with such requests.

9.8 Notification in Event of Breach or Misuse of Information. Customer will promptly (but in any event within 72 hours of any inadvertent or unauthorized release) notify SambaSafety of any inadvertent or unauthorized release of any Information Service or other security breach of Personal Information contained in any Information Service. To the extent required by Applicable Law, Customer agrees to notify all affected consumers in writing that their Personal Information has been potentially compromised in the event of the Customer's or its Users', inadvertent or unauthorized release, misuse, or other security breach of Personal Information contained in the Information Services supplied to Customer. Customer shall retain documentation of such notification and provide it to SambaSafety and any governmental representatives immediately upon request.

9.9 Archiving. Customer and any of its Users shall not use Information Services supplied by or through SambaSafety, or data derived from them, including any MVR data, to directly or indirectly compile, store, or maintain the Information Services or derivative data to develop its own source or database of such services or data. Customer agrees that use of Information Services is restricted to use, one time, for the permissible purpose referenced in the Permissible Purpose Disclosure completed by the Customer. Customer shall actually complete the Account Information Sheet upon request of SambaSafety and prior to accessing the Information Services.

9.10 Retention of Information Services. Customer shall make commercially reasonable efforts to promptly and adequately destroy any Information Services in its possession when the Information Services are no longer required for the purpose authorized in the Agreement, or sooner, if required by any Applicable Law.

9.11 No Solicitations. Customer shall not, and shall not permit others to, use any Information Services for any solicitations, direct mail advertising, or any other mailings or communications.

9.12 Use of Information Services. Customer will not disclose, distribute, resell and/or transfer any Information Services to any third party, nor provide any Information Services directly to individuals who are the subjects of Information Services, or to the general public except as required by the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., nor permit any third party direct access to the SambaSafety System except as expressly permitted by the Agreement.

9.13 Failure to Comply. Failure of Customer to fully comply with the requirements of all of this Section 9 shall be a material breach of the Agreement and shall permit SambaSafety to immediately terminate the Agreement and the delivery of any Information Services to Customer without notice or delay.

9.14 Other Restrictions. SambaSafety shall have the right to amend upon written notice any term or condition of the Agreement, including as necessary or recommended to comply with any statute, rule, regulation, interpretation or contract, or in the event any modification or termination of any license for Information Services with any Data Provider, as determined by SambaSafety in its reasonable discretion. In the event of such notification from SambaSafety, (a) Customer may elect to terminate the Agreement by providing written notice of such termination to SambaSafety; provided, however, if Customer requests, uses or accepts any Information Services after such notification or fails to promptly provide notice of termination pursuant to this section, then such terms and conditions shall take effect and become a part of the Agreement as specified in SambaSafety’s notice to Customer.


10.1 Notice. All notices and demands pursuant to the Agreement must be in writing. Notices to Customer shall be effective upon receipt thereof and may be delivered via the SambaSafety System, an email address of one of the Customer’s designated SambaSafety administrator(s) or any email or mailing address specified on the Commercial
Terms. Notice to SambaSafety shall be provided by a reputable overnight courier with required signed receipt, or via certified mail of the U.S. postal system, and shall be deemed effective solely upon receipt if delivered to, SambaSafety, 8814 Horizon Blvd., Suite 100, Albuquerque, NM 87113, ATTN: Compliance Officer.

10.2 **Intellectual Property Rights.** Notwithstanding anything in the Agreement to the contrary, the SambaSafety System and its documentation and all intellectual property rights therein are proprietary to SambaSafety and its third party suppliers or licensors, and SambaSafety and its third party suppliers and licensors as applicable retain ownership of all rights whatsoever in the SambaSafety System and all intellectual property rights therein.

10.3 **Electronic Signature.** If Customer elects to obtain a signed release, authorization or consent in the form of an electronic signature, the electronic signature shall meet the standards defined under ESIGN and UETA. SambaSafety shall have the right to audit and request any documentation regarding the Customer's compliance with the requirements regulating electronic signatures. Furthermore, upon written notice SambaSafety may require Customer to cease using electronic signatures for a particular Data Provider. Customer shall assume full responsibility for obtaining signatures in electronic format and shall hold harmless SambaSafety from any damages, losses or claims related to the validity of an electronic signature.

10.4 **Entire Agreement; Modification; Counterparts.** The Agreement, including the Commercial Terms, constitutes the entire agreement and understanding between the parties concerning its subject matter, and supersedes in full all prior and contemporaneous written and oral agreements, understandings, proposals, promises and representations of the parties concerning its subject matter and its terms, provided, however, nothing herein shall affect or terminate ongoing rights from non-disclosure agreements entered into by the parties prior to the Effective Date; provided, further, any new Confidential Information exchanged between the parties shall be governed by the confidentiality obligations set forth herein. Except as otherwise provided herein regarding SambaSafety's rights to modify or amend this Agreement, the Agreement may not be modified or amended except in writing signed by duly authorized representatives of SambaSafety and Customer.

10.5 **Independent Contractor.** SambaSafety and Customer are independent contractors with respect to all activities under the Agreement, and nothing in the Agreement may be construed to create any employment, joint venture, agency, partnership or other relationship other than independent contractors. Neither SambaSafety nor Customer, or any of their respective employees, consultants, contractors or agents has any authority to bind the other party. Each party is responsible for its own costs and expenses in executing, implementing and performing under the Agreement, unless otherwise explicitly stated, in the Agreement. Contractor understands and agrees that he, and any persons retained or hired to perform the duties and responsibilities under this Agreement, are not "public employees" for the purpose of participation in the Ohio Public Employees Retirement System.

10.6 **Non-Exclusivity.** Nothing in the Agreement is intended to, or may be construed to prevent SambaSafety from entering into similar agreements with other persons or entities to provide Information Services or other services through the SambaSafety System or otherwise, even if such persons or entities are or may become competitors of Customer.

10.7 **Assignment.** The Agreement may not be assigned, in whole or in part, by either party without the prior written consent of the other party, except that SambaSafety may (a) subcontract any of its obligations under the Agreement, and (b) assign the Agreement, and Customer hereby consents to any successor entity in any merger or corporate reorganization, or to the purchaser of all or substantially all of the assets related to the SambaSafety System. Any attempted assignment in violation of the foregoing will be void. Subject to the foregoing, the Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective representatives, successors and assigns.

10.8 **Invalid Provision.** If any part of the Agreement, for any reason, is declared by a court of competent jurisdiction to be invalid or unenforceable, then: (a) the validity and enforceability of all provisions of the Agreement not ruled to be invalid or unenforceable, will be unaffected; (b) the effect of the ruling will be limited to the jurisdiction of the court making the ruling; (c) the provision(s) held wholly or partly invalid or unenforceable will be deemed amended, and the court is authorized to reform the provision(s) to the minimum extent necessary to render them valid and enforceable in conformity with the parties' intent as manifested herein; and (d) if the ruling, or the controlling principal of law or equity leading to the ruling is subsequently overruled, modified, or amended by legislative, judicial, or administrative action, then the provision(s) in question as originally set forth in the Agreement will be deemed valid and enforceable to the maximum extent permitted by the new controlling principal of law or equity.

10.9 **No Waiver.** The failure of SambaSafety at any time to require performance of any provision of the Agreement, in no way affects the right of SambaSafety to require performance of that provision at any time. Any waiver by either party of any breach of any provision of the Agreement is not a waiver of any continuing or succeeding breach of that provision, or a waiver of the provision itself, or a waiver of any right under the Agreement.

10.10 **Force Majeure.** Except for Customer's payment obligations, neither party shall be liable for any failure or delay in performance directly or indirectly caused by any act or omission beyond its reasonable control.

10.11 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts of choice of laws.

10.12 **Injunctive Relief.** The parties agree that any violation or breach of the Agreement by Customer may cause SambaSafety irreparable harm. Accordingly, in addition to any other remedies available at law or equity, SambaSafety shall be entitled to seek an injunction or other decree of specific performance with respect to any violation or explicit threat thereof in any court of competent jurisdiction, without any bond or other security being required and without the necessity of demonstrating actual damages.
10.13 **Construction, Counterparts.** The captions and headings contained herein are for purposes of convenience only and are not a part of the Agreement; all references to the Agreement and the words "herein," "hereof," "hereto" and "hereunder" and other words of similar import refer to the Agreement as a whole and not to any particular section, or other subdivision unless expressly specified otherwise; and the words "including," "included" and "includes" mean inclusion without limitation. In the event of any ambiguities in the language hereof, there shall be no inference drawn in favor of or against either party. The parties agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in the Agreement shall be construed against the party drafting any language herein.

10.14 **Signatures, Counterparts.** The Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement. A document signed and transmitted by .pdf or electronic copy shall have the same binding effect as an original signature.

10.15 **Political Contributions.** Contractor affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.
EXHIBIT B: REQUIRED COMPLIANCE FORMS

USER STATEMENT OF CONFIDENTIALITY

As an employee, principal, officer, temporary employee or subcontractor of Customer you may have access to official government motor vehicle and/or driver record information contained in SambaSafety information reports ("Records"). The Confidentiality of the information contained within these Records shall be maintained at all times. Information contained in records shall not be distributed, sold or shared with any third party nor used by you in any way except as expressly authorized by law. Disclosure of such information may be cause for criminal and/or civil legal action against you, Customer, and any involved third party. The State providing Records shall not be in any way responsible for defense of any such action.

Pursuant to State and Federal law, any person who willfully and knowingly obtains, resells, transfers, or uses information in violation of law may be subject to criminal charges and/or liable to any injured party for treble damages, reasonable attorneys’ fees, and costs. Other civil and criminal laws may also apply.

<table>
<thead>
<tr>
<th>USER</th>
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<tbody>
<tr>
<td>User</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Signature</td>
<td>Bret L. McKenzie</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>1-16-18</td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td></td>
<td>Deputy Director HR</td>
</tr>
<tr>
<td>Title</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT B: REQUIRED COMPLIANCE FORMS
SAMBASAFETY PERMISSIBLE PURPOSE DISCLOSURE

Permissible Purpose: Upon the terms and subject to the conditions set forth in the Applicable Terms and Conditions, Safety Holdings, Inc. ("SambaSafety") grants to Customer for the license period, a limited, nonexclusive, nontransferable, and revocable license to access the SambaSafety system only for the following purposes (check all that apply):

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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<tbody>
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</tbody>
</table>
| CDL Employer: For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under state or federal law.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</table>
| Employment Signed Release: For use by a business, its agents, employees, or contractors for employment purposes, if the requestor obtains the written consent of the individual to whom the information pertains.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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</table>
| Insurance Claims: For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, or anti-fraud activities.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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<tbody>
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</tbody>
</table>
| Insurance Underwriting: For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with rating or underwriting activities.

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
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<tbody>
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<td>☑</td>
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</tbody>
</table>
| Government: For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State, or local agency in carrying out its functions.

Customer certifies that:
1. Customer shall use Information Services for the sole and exclusive purpose(s) Customer has selected above and for no other purpose; and
2. Customer will only use Information Services for its own use and Customer is the end user of the Information Services.

Customer certifies that when requesting Information Services for Employment purposes Customer certifies that it will:
1. Prior to requesting a report, provide a written disclosure to the employee or prospective employee in a document consisting solely of the disclosure that Information Services may be obtained for employment purposes;
2. Prior to requesting a report, obtain express written consent from the employee or prospective employee prior to obtaining any Information Services which expressly authorizes the retrieval and use by Customer, its agents or contractors of any Information Services regarding the particular employee or prospective employee in question; each submission of an order is a certification that the disclosure was provided and authorization has been obtained.
3. Provide the employee or prospective employee a notice, along with a copy of his or her report and a summary of rights under the FCRA before taking adverse action; and
4. After taking adverse action, provide the employee or prospective employee a notice that adverse action has been taken along with a copy of the report and summary of rights under the FCRA.
5. Not use Information Services in violation of any employment equal opportunity laws. This includes any laws generally known as "Ban-the-Box". Customer certifies that it will not order a report until allowed under these laws.

Customer acknowledges it is aware and will comply with all of the requirements of the Fair Credit Reporting Act ("FCRA"), and has received from SambaSafety the following documents:
1. The Notice to Users of Consumer Reports; Obligations of Users under the FCRA;
2. Summary of Your Rights under the Fair Credit Reporting Act; and
3. Remediying the Effects of Identity Theft

Customer understands that there are legal requirements and responsibilities when taking adverse action based on whole or part on consumer reports. Customer understands and agrees to comply with adverse action procedures required by the FCRA including requirements to provide a preliminary adverse action notice to consumers, along with a copy of the consumer report and a Summary of Your Rights Under the Fair Credit Reporting Act, allowing the consumer a designated period of time to contact the CRA if consumer wishes to dispute any information in the consumer report or to provide mitigating information to you, providing CRA contact information and providing a final adverse action notice to the consumer if a final adverse employment decision is made.

Customer understands that SambaSafety is not legal counsel and cannot provide legal advice. Customer should work with counsel to develop an employment screening program specific to your needs. It is necessary for Customer to work with counsel to ensure that Customer's policies and procedures related to the use of CRA-provided information are in compliance with applicable state and federal laws and your legal responsibilities.

I hereby certify that I am a legally authorized representative of Customer, and I hereby obligate Customer to the terms and conditions listed above:

<table>
<thead>
<tr>
<th>APPROVAL</th>
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<td>3</td>
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</tbody>
</table>

Signature
Brett L. McKenzie
City of Dayton, OH

Date: 1/16/18
Title: Deputy Director HR

Company Name

Page 13 of 17

SambaSafety Information Services Agreement v10.10.17
Samba Safety - Renewal FY2018

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

January 10, 2017

Min. Bk. 115 Pg. ___

Clerk of the Commission
City Manager’s Report

From 5320 - Finance/Tax & Accounting
Supplier, Vendor, Company, Individual
Name Relyco Sales Incorporated
Address 121 Broadway
          Dover, NH 03820-3299

Date February 24, 2021
Expense Type Award of Contract
Total Amount $74,625.00

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund 10000-5320-1158-64 74,625.00

Includes Revenue to the City Yes No Affirmative Action Program Yes No N/A

Description

Professional Service Agreement for
Online Access to City Employee Direct Deposit Notices and W-2’s

The Department of Finance requests City Commission approval to enter into an Agreement with Relyco Sales, Inc. (Relyco) for five (5) years at the cost of $14,925.00 per year. Relyco is an authorized reseller of TranZParent’s software and services. The Master Service Agreement with TranZParent is incorporated in the Agreement with Relyco as Exhibit A. The term of the Relyco Agreement commences upon its execution and expires on February 28, 2026, with two one (1) year renewal options.

Relyco will provide services and support that allows City employees secure access to a payroll portal to obtain their pay stub records and W2 for employees who opt in for electronic access. The W2 will be printed and mailed to employees who do not choose to opt-in to receive it electronically.

The Department of Finance requested these services through a Request for Proposal (RFP # 20-014FIN). Seven (7) vendors were solicited, and four (4) responded. The review committee scored and ranked the submitted responses, and Relyco was selected based on their overall score, including the quality of their service proposal and past performance with the City.

Authority is being requested to cover estimated expenses for the following periods as below:

<table>
<thead>
<tr>
<th>Period</th>
<th>Amount</th>
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<tbody>
<tr>
<td>03/01/2021-02/28/2022</td>
<td>$14,925.00</td>
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<tr>
<td>03/01/2022-02/28/2023</td>
<td>$14,925.00</td>
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<td>03/01/2023-02/28/2024</td>
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</tr>
<tr>
<td>03/01/2024-02/28/2025</td>
<td>$14,925.00</td>
</tr>
<tr>
<td>03/01/2025-02/28/2026</td>
<td>$14,925.00</td>
</tr>
</tbody>
</table>

The Department of Law has reviewed and approved the contract to form and correctness.

A Certificate of Funds for $14,925.00 is attached.

Signatures/ Approval

Approved by City Commission
Clerk
Date

FORM NO. MS-16

Updated 10/2019
February 16, 2021

TO: Shelley Dickstein, City Manager
    Office of the City Manager

FROM: C. LaShea Lofton, Acting Finance Director
    Department of Finance

SUBJECT: Request for Professional Services Agreement with Relyco Sales, Inc.

The Department of Finance is seeking Commission approval to enter a Professional Services Agreement with Relyco Sales Inc. Relyco will provide services and support that allow City employees secure access to a payroll portal to obtain their pay stub records and W2 documents. Relyco Sales Inc. provides these services as an approved reseller for Transparent Hosting Solutions whose Master Services Agreement is attached as Exhibit A.

The Relyco Sale Agreement's terms are for five (5) years at the cost of $13,925.00 per year with two one (1) year renewal options. In addition, there will be a charge of $1.50 for each W-2 that has to be printed and mailed to employees who do not choose to opt to receive their W-2's electronically. Finance estimates an additional $1,000 per year based on past years for this cost. We ask for an authority of $74,625.00 (($13,925.00 + 1,000.00) x 5)) to cover the five (5) year cost of this contract.

Finance recently request these services through a Request for Proposal (RFP#20-014FIN). Seven (7) vendors were solicited, and four (4) responded. The review committee scored and ranked the submitted responses based on their overall score. The committee has recommended selecting Relyco. Since Relyco has been and is the current vendor providing these services, the City will not have disruption to service, and any new upgrades or enhancements can be made seamlessly.

The Agreement would commence upon execution by the City Commission and be effective until February 28, 2026. The Department of Law has reviewed the Agreement for form and correctness. If you have any questions or concerns, please contact Bejoy John, Deputy Director at ext. 3510 or Financial Services Supervisor-Payroll and Disbursements, Roberta Lohrey at ext. 3941.

CLL: bj
Attachments

C: Mr. John
    Ms. Lohrey
    File
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>X</th>
<th>New Contract</th>
<th>Renewal Contract</th>
<th>Change Order</th>
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<tr>
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<td>Contract Start Date</td>
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<td>Expiration Date</td>
<td>02/28/26</td>
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<td></td>
<td>Original Commission Approval</td>
<td>$74,625.00</td>
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<td></td>
<td>Initial Encumbrance</td>
<td>$14,925.00</td>
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<td>Remaining Commission Approval</td>
<td>$59,700.00</td>
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<td>Increase Encumbrance</td>
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<td>Decrease Encumbrance</td>
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<td>Remaining Commission Approval</td>
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Required Documentation

- X Initial City Manager's Report
- Initial Certificate of Funds
- Initial Agreement/Contract
- Copy of City Manager's Report
- Copy of Original Certificate of Funds

<table>
<thead>
<tr>
<th>Amount:</th>
<th>$14,925.00</th>
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<tbody>
<tr>
<td>Fund Code</td>
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<tr>
<td>Fund</td>
<td>Org</td>
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<td>Fund</td>
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</table>

Attach additional pages for more FOAPALs

Vendor Name: Relyco Business Printing Solutions
Vendor Address: 121 Broadway Dover NH 03820-3299
Federal ID: 02-0431887
Commodity Code: 96-100
Purpose: To provide a web-based delivery of paycheck stubs and W-2's.
Contact Person: Roberta Lohrey
Finance Department: 2/14/2021
Department/Division: Date

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature: [Signature]
Date: 2/16/2021

CF Prepared by: [Signature]
Date: 2/16/2021
CT21-1386 CORD #: [Number]
February 11, 2021

TO: Shelley Dickstein, City Manager
Office of the City Manager

FROM: C. LaShea Lofton, Acting Finance Director
Department of Finance

SUBJECT: Request for Professional Services Agreement with Relyco Sales, Inc.

The Department of Finance is seeking Commission approval to enter a Professional Services Agreement with Relyco Sales Inc. Relyco will provide services and support that allows City employees secure access to a payroll portal to obtain their pay stub records and W2 documents. Exhibit

The terms of the Relyco Sale Agreement is for five (5) years at the cost of $13,925.00 per year with two one (1) year renewal options. In addition, there will be a charge of $1.50 for each W-2 that has to be printed and mailed to employees who do not choose to opt to receive their W-2’s electronically. Finance estimates an additional $1,000 per year based on past years for this cost. We ask for an authority of $74,625.00 (($13,925.00 + 1,000.00) x 5)) to cover the five (5) year cost of this contract.

Finance recently request these services through a Request for Proposal (RFP#20-014FIN). Seven (7) vendors were solicited, and four (4) responded. The review committee scored and ranked the submitted responses based on their overall score. The committee has recommended selecting Relyco. Since Relyco has been and is the current vendor providing these services, the City will not have disruption to service, and any new upgrades or enhancements can be made seamlessly.

The Agreement would commence upon execution by the City Commission and be effective until February 28, 2026. The Department of Law has reviewed the Agreement for form and correctness. If you have any questions or concerns, please contact Bejoy John, Deputy Director at ext. 3510 or Financial Services Supervisor-Payroll and Disbursements, Roberta Lohrey at ext. 3941.

CLL: bj
Attachments

C: Mr. John
Ms. Lohrey
File
City Manager's Report

From 5320 - Finance/Tax & Accounting

Date February 24, 2021

Expense Type Award of Contract
Total Amount $74,625.00

Supplier, Vendor, Company, Individual
Relyco Business Printing Solutions

Address 121 Broadway
Dover, NH 03820-3299

Fund Source(s) Fund Code(s) Fund Amount(s)
General Fund 10000-5320-1158-64 74,625.00

Includes Revenue to the City [ ] Yes [x] No
Affirmative Action Program [x] Yes [ ] No [ ] N/A

Description

Professional Service Agreement for Online Access to City Employee Direct Deposit Notices and W-2's

The Department of Finance requests City Commission approval to enter into an Agreement with Relyco Business Printing Solutions (Relyco) for five (5) years at the cost of $14,925.00 per year. Relyco will provide services and support that allows City employees secure access to a payroll portal to obtain their pay stub records and W2. The W2 will also be printed and mailed to employees who do not choose to opt-in to receive it electronically. The term of the Agreement commences upon execution of the contract and expires on February 28, 2026, with two one (1) year renewal options.

The Department of Finance requested these services through a Request for Proposal (RFP). Seven (7) vendors were solicited, and four (4) responded. The review committee scored and ranked the submitted responses, and Relyco was selected based on their overall score.

Authority is being requested to cover estimated expenses for the following periods as below:

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</table>

The Department of Finance has reviewed and approved the contract to form and correctness.

A Certificate of Funds for $14,925.00 is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 10/2019

City Manager
FORM NO. MS-16
SALE AGREEMENT

This SALE AGREEMENT, (the “Agreement”) is entered into on, 2021 by and between Relyco Sales, Inc., a New Hampshire corporation with its principal place of business located at 121 Broadway, Dover, NH 03820 (“Relyco”), and The City of Dayton, Ohio, an Ohio municipal corporation with its principal place of business located at 101 W. Third St., Dayton, Ohio 45401 (the “Buyer”).

1. Background. Relyco has been authorized by TranZParent Hosting Solutions, LLC (“TranZParent”) as an authorized reseller of TranZParent’s software and services located at www.mypaystub.com (the “Software”). Buyer desires to purchase the Software pursuant to the terms set forth in this Agreement.

2. Supply. Buyer agrees to purchase the Software upon the terms and subject to the conditions of this Agreement as well as the terms of TranZParent’s Master Services Agreement, and associated Statements of Work thereto, attached hereto as Exhibit A (the “EULA”). Buyer acknowledges that the terms of the EULA will be between Buyer and TranZParent. Relyco is neither a party to the EULA nor does Relyco have any control over the Software or Buyer’s use thereof.

3. Purchase Price. Buyer shall pay all amounts set forth in the EULA as directed by TranZParent from time to time. Additionally, Buyer agrees to pay all sales tax and any other taxes associated with its use of the Software.

4. Due Diligence. Buyer acknowledges that it: (a) has conducted its own inquiry and investigation into, and based thereon, has formed an independent judgment concerning, the Software; (b) has been furnished with or given access to such information about the Software as it has requested; (c) has inspected the Software; and (d) based on all such information has found the Software to be acceptable for the purposes intended by Buyer.

5. Warranty Disclaimer. (a) Buyer acknowledges that Relyco is not (i) the developer of the Software; or (ii) responsible for the maintenance or support of the Software. ACCORDINGLY, RELYCO HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, CONDITION, QUALITY, DURABILITY, DESIGN, OPERATION, FITNESS FOR USE, OR SUITABILITY OF THE SOFTWARE IN ANY RESPECT WHATSOEVER, INCLUDING ANY WARRANTY REGARDING THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT – IT BEING UNDERSTOOD AND AGREED THAT THE ONLY WARRANTIES PROVIDED WITH THE SOFTWARE ARE THE WARRANTIES SET FORTH IN THE EULA BETWEEN BUYER AND TRANZPARENT.

(b) RELYCO SHALL IN NO EVENT BE LIABLE FOR ANY CLAIM WHATSOEVER BY OR THROUGH BUYER, OR ANY THIRD PARTY, FOR ANY INOPERABILITY OR FAILURE OF THE SOFTWARE TO PERFORM AS DESIGNED OR INTENDED, WHETHER SUCH CLAIM IS BASED IN ANY FORM OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WHETHER FOR DIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHER DAMAGES. RELYCO NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR RELYCO ANY LIABILITY IN CONNECTION WITH THE SALE OR USE OR MISUSE OF THE SOFTWARE. IN THE EVENT THAT THE FOREGOING DISCLAIMER IS RENDERED UNENFORCEABLE, IN NO EVENT WILL RELYCO’S TOTAL LIABILITY FOR ANY CLAIMS ARISING HEREUNDER WILL NOT EXCEED ONE THOUSAND DOLLARS ($1,000).

6. Release. Buyer hereby releases Relyco, its successors and assigns, from and against any and all claims, causes of action, damages and demands, losses and expenses of every kind, arising out of or in any way related to Buyer’s possession, access or use of the Software.

7. Miscellaneous. (a) This Agreement and the terms and conditions set forth herein constitute the complete and final agreement between Relyco and Buyer relating to subject matter hereof, and no other agreement in any way modifying these terms and conditions will be binding upon Relyco unless made in writing and signed by a duly authorized representative of the parties hereto.

(b) This Agreement shall not be construed as creating any agency, partnership, joint venture, or other similar legal relationship between the parties; nor will either party hold itself out as an agent, partner, or joint venture party of the other party. Both parties shall be, and shall act as, independent contractors. Neither party shall have authority to create any obligation for the other party, except to the extent expressly stated herein.
(c) All notices required or permitted to be given hereunder shall be in writing, and shall be valid and sufficient if personally delivered, or dispatched by registered mail, postage prepaid, to the addresses first above written, or any other address designated by a party in accordance with the provisions of this paragraph. All notices shall be deemed delivered when actually received if personally delivered or three (3) days after having been placed in the mail addressed as set forth above.

(d) The parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

(e) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

(f) This Agreement shall be governed by and construed in all respects, under the laws of the United States of America and the State of Ohio. The parties hereto agree that any claims arising out of this Agreement will be resolved exclusively in the courts sitting within the State of Ohio.

The undersigned have each read the foregoing Agreement and each fully understands it and agrees to it.

By: RELYCO SALES, INC.
Title: Tyler Purchase - Director
Date: 2-11-2020

By: BUYER
Title: ____________________________
Date: ____________________________

APPROVED AS TO FORM
AND CORRECTNESS:

______________________
City Attorney

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO:

______________________  ___, 2021

Min./Bk.: _____  Page: ______

Clerk of the Commission
EXHIBIT A

TransZParent Master Service Agreement
MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement") is entered into this _____ day of ________, (the "Effective Date") by and between Tran2parent Hosting Solutions, LLC., having a principal place of business at 14046 Ballantyne Corporate Place, Suite 140, Corporate Headquarters, Charlotte, NC 28277, (hereinafter "THS"), and City of Dayton, Ohio, (hereinafter "Company").

1. SERVICES

Subject to the terms and conditions of this Agreement, during the term of this Agreement, THS will provide Company with services (the "Services") as described more particularly on THS's Service Order and Statement of Work attached hereto and incorporated herein (collectively "SO") in the THS Internet Utility Center(s) as identified on the SO.

2. PAYMENT

2.1 Company will pay the fees for the Services as set forth on the SO.

2.2 Upon execution of this Agreement, Company shall pay to THS the Initial Setup Fee (as set forth on the SO) prior to any installation or setup of the services. Fees for the Hosting Services shall be billed on an annual basis in advance. In the event that Company orders additional Services to be covered by the SO such additional Services shall be included at mutually agreed upon prices in a written addendum to the SO.

2.3 Payment of Annual Hosting Fees (as described on the SO) ("Annual Fees") shall be due within thirty (30) days of the date of each invoice. Payments should be paid to the address below.

Relycro Sales, Inc.
PO Box 1229
Dover, OH 43017

Attn: Accounts Receivable

2.4 All payments will be made in U.S. dollars. Late payments hereunder will accrue interest at a rate of one and one-half percent (1 1/2%) per month, or the highest rate allowed by applicable law, whichever is lower.

2.5 In the event Company's account becomes past due for more than sixty (60) days after written notice of such past due payment is received by Company, then THS may, in its sole discretion, terminate this Agreement, in which event the terms of Section 4.3 shall be applicable.

2.6 All payments required by this Agreement are exclusive of all national, state, municipal or other governmental excise, sales, value-added, use, personal property, and occupational taxes, excises, withholding taxes and obligations and other levies now in force or enacted in the future, all of which Company will be responsible for and will pay in full, except for taxes based on THS's income.

3. CONFIDENTIAL INFORMATION

3.1 Each party (the "Receiving Party") acknowledges that it will have access to certain confidential and/or proprietary information of the other party (the "Disclosing Party") concerning the Disclosing Party's business, plans, customers, employees, companies, technology, and products, including the terms and conditions of this Agreement ("Confidential Information").
4.6 Responsibilities of the Parties upon Termination. Upon termination of this Agreement for any reason, (a) the Receiving Party shall return all of Disclosing Party’s, defined in Section 3, above, Confidential Information that is in its possession or subject to its control and, upon written request of Disclosing Party, the Receiving Party shall provide a sworn affidavit executed by an officer of Receiving Party certifying that it has complied with the confidentiality provisions of the Agreement (b) Company shall remain liable for payment of fees due prior to such termination, and (c) Company shall return any Deliverables in its possession (d) Company shall pay THS for conversion services to package and return any Electronic Data requested at current rates.

5. OWNERSHIP OF INTELLECTUAL PROPERTY

5.1 All pre-existing materials (“Materials”) provided by THS, other than the deliverables created specifically for Company (“Deliverables”), as specifically set forth in the SO, shall be the sole and exclusive property of THS. Materials shall mean Licensed Products User’s Manuals and Administrative Guides. Deliverables shall mean all Company related PDF documents including those generated by the Licensed Products and related Database information supplied by Company. To the extent, however, that any ideas, concepts, inventions, know-how, data-processing techniques, software or documentation developed by THS in connection with Materials or services provided to Company are a derivative of THS’s Intellectual Property (collectively, the “Licensed Products”), THS retains the sole and exclusive right therein and grants Company a worldwide, non-exclusive, royalty-free license (“License”) during the term of this Agreement, to use THS’s Licensed Products and derivations thereof as incorporated or necessary in conjunction with any such Deliverables.

6. CUSTOMER DATA

6.1 All Company Data provided to THS will remain the sole property of Company to the full extent provided by law.

6.2 Company will have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness of and copyright permissions for all Company Data. THS will not use the Company Data for any purpose other than to provide the Service to Company and for statistical reporting to Company or for Company audit purposes.

6.3 THS will use commercially reasonable security measures to protect Company Data against unauthorized disclosure or use. THS will notify Company in the event that a security breach has been detected.

6.4 In the event the Company determines that a breach or potential breach involves unauthorized access of the THS network, the Company should contact THS immediately and report the incident. THS will take all commercially reasonable measures to assess the incident and implement measures to prevent further risk.

7. DISCLAIMERS AND WARRANTIES.

7.1 Each party represents and warrants to the other party that it has the power and authority to enter into and perform under this Agreement, that this Agreement has been duly executed and delivered by authorized individuals of each party and constitutes a valid, legal and binding agreement.

7.2 THS represents and warrants that the Services, Materials and Deliverables, including any systems it may install as part of possible Services, will operate substantially as described in the SO and any technical documentation accompanying the system or Services, and will be free of defects in materials and workmanship, for the Term of this Agreement. This warranty includes, but is not limited to, the cost of parts and labor to perform the Services again, or to restore the system, Materials or Deliverables to good working condition by adjustment, repair or other replacement of defective parts with new parts, at THS’s sole cost and expense.
11. MAINTENANCE SUPPORT

11.1 THS reserves the right to notify the Company of scheduled maintenance times to allow general maintenance to be performed on the site.

12. GENERAL PROVISIONS.

12.1 Governing Law and Venue. This Agreement, any dispute arising under or which is related to this Agreement (whether in contract, tort or otherwise), and the validity, performance and interpretation of this Agreement shall be governed by and construed in all respects, under the laws of the United States of America and the State of Ohio.

12.2 Authority of Authorized Affiliate. Customer understands that THS's Authorized Affiliate is not an employee of THS and is an independent business entity and, therefore has not express or implied authority to bind THS nor is THS liable for any acts of the Authorized Affiliate which are outside the scope of such agency.

12.3 Relationship of the Parties. THS is an independent contractor. At no time will either party represent itself as an agent, employee, lessee, sub-lessee, partner or joint venture partner of the other party, and no employer-employee relationship shall exist between either party and any employee or agent of the other party. Neither party hereto shall have the express or implied right or authority to assume or create any obligation on behalf or in the name of the other party or to bind the other party in regard to any contract, agreement or undertaking with any third party.

12.4 Amendment. This Agreement may not be released, discharged, supplemented, interpreted, amended, or modified in any manner except in a writing signed by a duly authorized representative of each of the parties.

12.5 Waiver. The failure of either party to require the performance of any obligation under this Agreement shall not be a waiver of that or any other or subsequent breach; all waivers must be in writing signed by the waiving party. The waiver by either party of any breach hereunder, shall not prevent a subsequent enforcement of such obligation or constitute a waiver of any subsequent breach.

12.6 Severability. If any provision of this Agreement is held to be invalid or unenforceable, such provision will be amended to achieve as nearly as possible the objectives of, and the same economic effect as the original provision and all other provisions will remain in full force and effect.

12.7 Release From Obligations. Neither party shall be liable for any delay or failure to perform its obligations hereunder due to (i) a force majeure event (including, without limitation, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, civil unrest, terrorism, labor conditions, earthquakes, or any other cause); (ii) or any material condition beyond such party's reasonable control, provided however, that this paragraph does not excuse any breach of the terms of this Agreement (a) governing the use, reproduction, disclosure or transfer of the Licensed Products or of any Confidential Information of a party; or (b) for failure to pay for Licensed Products or Services rendered hereunder. If the force majeure event referred to herein continues for a period of thirty (30) consecutive days either party may terminate this Agreement and neither party shall be deemed in default.

12.8 Non-Solicitation. The parties agree that they will not, either directly or through recruiters, solicit any employee of the other party for the Term of this Agreement. Solicitations of a general nature (e.g., newspaper advertisements) are not prohibited by the foregoing provision.

12.9 Counterparts and Admissibility of Electronic Copies. The Agreement and any amendment or Addendum thereto may be executed in counterparts each of which when executed by the requisite parties shall be deemed to be a complete original document. An electronic or facsimile copy of the executed Agreement or any amendment or Addendum thereto or
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

City of Dayton, Ohio

By: _____________________________
Name: ___________________________
(print or type)
Title: _____________________________
Date: _____________________________

TRANSPARENT HOSTING SOLUTIONS, LLC

By: _____________________________
Name: ___________________________
(print or type)
Title: _____________________________
Date: _____________________________

APPROVED AS TO FORM
AND CORRECTNESS

By: _____________________________
Name: ___________________________
(print or type)
Title: _____________________________
Date: _____________________________

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO

Date: _____________________________ 2021

Min/Bk ___________________________
(print or type)

Name: ___________________________
Clerk of the Commission
City Manager’s Report

From: 2340 - Planning & CD / Land Use Administration
Supplier, Vendor, Company, Individual: Gem City Market
Address: 840 Germantown Street, Dayton, OH 45402

Date: February 24, 2021
Expense Type: Lease Agreement
Total Amount: $100.00 (thru 2/28/31)

Fund Source(s) | Fund Code(s) | Fund Amount(s)
--- | --- | ---
General Fund | 10000-2340-29601-31 | $100.00

Includes Revenue to the City: Yes
Affirmative Action Program: No

Description

LEASE AGREEMENT WITH GEM CITY MARKET FOR PARKING AT 15 GEORGEANA CT.

The Department of Planning and Community Development is requesting approval to enter into a lease agreement with Gem City Market. It is a ten year lease at the rate of $10.00 per year. The lease is for a vacant 0.28 acre parcel (R72 07405 0053) at 15 Georgeana Court, to be used for additional parking for the market.

This Agreement shall commence upon execution and it shall terminate after ten years.
This Agreement has been reviewed by the Law Department as to form and correctness.
A Certificate of Revenue for the amount of $100.00 and the Agreement are attached.

Tony Kroeger
Division Administrator

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Gem City Market
Address 840 Germantown Street (324 Salem Avenue upon opening)
City Dayton State Ohio Zip 45402
(45406 upon open)
Customer Number 821168121 Address Location ________________

Revenue Information:
Fund 10000 Organization 2340 Revenue 29601 Program 31

Revenue Information:
Contract Start Date 3/01/2021 Contract Expiration Date 2/28/2031

Billing Information:
Rate: Arrears ___________ Pre-bill X ___________
Monthly (1st month of billing) ________________
Quarterly (1st month of quarter) ________________
Semi-annual (1st month of half) ________________
Annual (1st month of billing) $10.00/year
Other (explain) ________________
Rate Change Date N/A Rate Change Amount N/A

Description of Services (wording on invoice): Lease agreement for City-owned land located at 15 Georgeana Court (R72 07405 0053) to be used for parking for the Gem City Market.

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number 8 - 8121 Auditor D 8/17/21 Date 7/12/2021
I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance
"2021 CMR Gem City Market Parking Lease" History

Document created by Tony Kroeger (tony.kroeger@daytonohio.gov)
2021-02-09 - 6:43:35 PM GMT - IP address: 198.30.33.2

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Signature Date: 2021-02-09 - 6:45:55 PM GMT - Time Source: server - IP address: 74.83.54.61

Agreement completed.
2021-02-09 - 6:45:55 PM GMT
Certificate of Revenue Form Gem City Market

Final Audit Report

2021-02-09

Created: 2021-02-09
By: Tony Kroeger (tony.kroeger@daytonohio.gov)
Status: Signed
Transaction ID: CBJCHBCAABAAqOEEmZXBrlpS-syVAXScx7nK1ypfclOh

"Certificate of Revenue Form Gem City Market" History

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Signature Date: 2021-02-09 - 6:44:19 PM GMT - Time Source: server - IP address: 74.83.54.61

☁️ Agreement completed.
2021-02-09 - 6:44:19 PM GMT
LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this ___ day of _____________, 2021 ("Effective Date"), between CITY OF DAYTON, OHIO, a municipal corporation in and of the State of Ohio ("Lessor") and the GEM CITY MARKET ("Lessee").

WITNESSETH THAT:

WHEREAS, Lessor owns real property located at 15 Georgeana Court, more particularly described in the attached and incorporated Exhibit A ("R72 07405 0053"); and,

WHEREAS, Lessee desires to lease the Premises for the purposes of constructing a parking lot that will primarily serve the Gem City Market; and,

WHEREAS, Lessor deems it advantageous to itself, and in the best interest of the public, to lease the Premises to Lessee.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and the mutual benefits to be derived, the parties agree as follows:

ARTICLE I – TERM

The term of this Lease shall be ten (10) years, commencing on the Effective Date of this Lease, and expiring at 11:59 p.m. on the ten-year anniversary of the Effective Date ("Term"), unless terminated earlier or extended as provided herein.

ARTICLE II - USE OF PREMISES

The Lessee shall have the right to enter and access the Premises for purposes of making leasehold improvements. These improvements include, but are not limited to the following activities: construction of approximately twenty-four (24) parking spaces on the property which requires approval of the City of Dayton Board of Zoning Appeals as a “restricted parking lot,” including but not limited to all required site elements including pavement, signage, lighting, and landscaping.

Lessee shall not do or permit anything to be done on or about the Premises that will in any way conflict with any applicable law, ordinance, rule, or regulation issued by any competent governmental authority. Further, Lessee shall not use or permit others to use the Premises for any improper, immoral or unlawful purpose.

ARTICLE III - PAYMENT

Lessee shall pay to Lessor a sum not to exceed Ten Dollars and Zero Cents ($10.00) annually, which amount shall be invoiced by Lessor on the Effective Date of the Lease to Lessee, and payable by Lessee thirty (30) days after receipt of such invoice.
ARTICLE IV - OBLIGATIONS OF LESSEE

Lessee shall be responsible for maintaining the Premises during the Term including: lighting, signage, trash removal, grass mowing, and trimming of vegetation. During the Term, Lessee shall not modify or alter the Premises without the prior written consent of Lessor, and if necessary, the approval of the City Commission of the City of Dayton, Ohio.

In addition to Lessee’s obligations above, Lessee acknowledges and agrees that all alterations, improvement, modifications, or actions taken on the Premises shall be made in conjunction with Lessor.

ARTICLE V - NON-DISCRIMINATION

Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment advertising, lay-off, termination, rates of pay or other forms of compensation, or selection for training, including apprenticeship.

It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Lease as fully and as if specifically rewritten herein and that failure to comply therewith shall constitute a breach thereof entitling the Lessee to terminate this Lease at its option.

ARTICLE VI - INSURANCE

Lessee, at its sole cost and expense, shall procure and maintain, or cause to be maintained, at all times during the term of this Lease, beginning on the Effective Date, unless otherwise specified herein, the following insurance, with insurance companies authorized to do business in the State of Ohio and having at least an “A” rating from A. M. Best, or any successor thereto, and covering all operations under this Lease, whether performed by Lessee or by its contractors:

Commercial Liability Insurance (Primary and Umbrella):

Commercial Liability Insurance with limits of not less than One Million Dollars ($1,000,000) per occurrence combined single limit, for bodily injury and property damage liability. Coverage extensions shall include the following: All Premises and operations, completed operations, explosion, collapse, underground, independent contractors, broad form property damage, separation of insured and contractual liability (with no limitation endorsement). The Lessor shall be named as additional insureds, on a primary, noncontributory basis for any liability arising directly or indirectly from this Lease. Lessor shall be named as a loss payee on said policy or policies of insurance.

Original certificates of insurance evidencing the required coverage to be in force on the Effective Date of this Lease as set forth herein, and all renewal certificates of such insurance shall be provided to Lessor. All such policies shall name the City of Dayton, Ohio, its elected officials, officers, agents, volunteers and employees as additional insureds. Lessee shall furnish complete
copies of all policies of insurance. The receipt of any certificate or policy does not constitute agreement by the Lessor that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Lease. The failure of the Lessor to obtain certificates or other insurance evidence from Lessee shall not be deemed to be a waiver by the Lessor. Lessee shall advise all insurers of these Lease provisions regarding insurance. Non-conforming insurance shall not relieve of their obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of this Lease, and the Lessor retains the right to terminate this Lease unless proper evidence of insurance is provided. All policies of insurance shall provide for a minimum of thirty (30) days prior written notice to be given to the Lessor in the event coverage is substantially changed, canceled, or non-renewed.

If Lessee fails to obtain or maintain any of the insurance policies under this Lease or to pay any premium in whole or in part when due, Lessor may (without waiving or releasing any obligation or default by Lessee hereunder) obtain and maintain such insurance policies and/or take any action which Lessor deems appropriate. In such instances, reasonable attorney’s fees, court costs and expenses shall be reimbursed by the Lessee upon demand by Lessor.

The insurance required hereunder shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law. The Lessor maintains the right to modify, delete, alter or change these requirements.

ARTICLE VII - ASSIGNMENT AND SUBLETTING

Lessee is prohibited from assigning or transferring this Lease without receiving prior written consent from Lessor. This Lease shall survive any sale, assignment, or transfer of the Premises by Lessor, and Lessee shall be bound by this Lease under any new ownership, unless earlier terminated as defined herein.

Lessor may sublease or underlet certain pieces of the Premises by obtaining the prior written consent of Lessee. Any such sublease or underlet shall not void any of the terms and conditions contained in this Lease.

ARTICLE VIII - CANCELLATION BY LESSOR

In addition to all other remedies available to Lessor under this Lease or at law, this Lease shall be subject to cancellation by Lessor should any one or more of the following events occur:

1. If a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act;

2. If a receiver for Lessee's assets is appointed by a court of competent jurisdiction;

3. If Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law;
4. If Lessee fails to cure any default within thirty (30) days after Lessor notifies Lessee in writing of the default then Lessor shall have the right, at once and without further notice to Lessee, to declare this Lease terminated;

5. If Lessee defaults in the performance of any term or condition of this Lease, but excluding the payment of amounts due and owing hereunder, and Lessee fails to cure such default within thirty (30) days from receipt of written notice to cure such default; or if by reason of the nature of such default the same cannot be remedied within said thirty (30) days, then Lessor shall have the right, at once and without further notice to Lessee, to declare this Lease terminated.

6. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease, if the same shall not be corrected or action taken to correct, within thirty (30) days after Lessee's receipt of written notice, which shall state in detail the violation.

ARTICLE IX - INVALID PROVISIONS

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease.

ARTICLE X - WAIVER

No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Lease, or noncompliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by the other. Receipt by Lessor of rent or other payments with knowledge of the breach by Lessee of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by either party of any provisions of this Lease shall be deemed to have been made unless expressed in writing and signed by a duly authorized representative of Lessor or Lessee, as the case may be.

No option, right, power, remedy or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the other or exclusive of any remedies provided by law except as specifically provided herein and that the exercise of one right, power, option or remedy by either party shall not impair its right or any other right, power, option or remedy, except as specifically provided herein.
ARTICLE XI – GENERAL PROVISIONS

A. Any notice required under this Lease shall be deemed to have been given on the date actually received or forty-eight (48) hours having been deposited in the United States mail, postage prepaid, registered or certified, and addressed to the parties as set forth below, whichever occurs earlier. Either party may change its address from time to time by written notice given in this manner.

If to Lessor:
City of Dayton, Ohio
Department of Planning and Community Development
101 W. Third Street
Dayton, OH 45402
Attention: Todd Kinskey

If to Lessee:
Gem City Market
324 Salem Avenue
Dayton, OH 45406
Attention: Lela Klein

B. This Lease merges all prior negotiations and understandings and there are no other agreements and understandings, oral or otherwise, between the parties pertaining to the Premises. This Lease and any written agreement hereafter made between the parties hereto shall be binding upon Lessee only when fully executed by an officer or authorized representative of both parties. A signed copy of this Lease shall be mailed or delivered to Lessee after execution thereof by Lessor.

C. Lessee and Lessor represent that each has carefully reviewed the terms and conditions of this Lease and are familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Lease.

D. By execution of this Lease, Lessee hereby irrevocably submits to the original jurisdiction of the courts located within the County of Montgomery, State of Ohio, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Lease.

E. By entering into this Lease, Lessor shall in no way be deemed a partner or joint venturer with Lessee, nor shall any term or provision hereof be construed in any way to grant, convey or create any rights or interests to any person or entity not a party to this Lease.

F. The parties may amend or modify this Lease, at any time, provided that no such amendment or modification shall be effective unless it is reduced to a writing, which makes specific reference to this Lease, executed by a duly authorized representative of Lessor and Lessee and, if required or applicable, approved by the Commission of the City of Dayton, Ohio.
G. This Lease shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, Lessor and Lessee, each by a duly authorized representative, have executed this Lease as of the date first set forth above.

CITY OF DAYTON, OHIO

______________________________________________
City Manager

______________________________________________
Date

APPROVED BY THE COMMISSION
OF THE CITY OF DAYTON, OHIO:

______________________________________________, 2021

Min./Bk. ________________ Page ____

______________________________________________
Clerk of the Commission

APPROVED AS TO FORM
AND CORRECTNESS:

2/4/2021

X  Amelia N. Blankenship for

City Attorney
Signed by: Blankenship, Amelia

GEM CITY MARKET

Leah Bahan-Harris
By: Leah Bahan-Harris [Feb 12, 2021 13:12 EST]

Title: General Manager
Date: February 12th 2021
Draft Lease Agreement - Georgeana Court (2.2.2021)

Final Audit Report

Created: 2021-02-09
By: Tony Kroeger (tony.kroeger@daytonohio.gov)
Status: Signed
Transaction ID: CBJCHBCAABAApD6kT_-BhHDwrz8oarxu3e5HeyVUtzh

"Draft Lease Agreement - Georgeana Court (2.2.2021)" History

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2021-02-09 - 6:38:53 PM GMT

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2021-02-09 - 6:40:00 PM GMT - IP address: 66.249.88.167

Document e-signed by Leah Bahan-Harris (lela.klein@coopdayton.org)
Signature Date: 2021-02-12 - 6:12:52 PM GMT - Time Source: server - IP address: 65.29.86.39

Agreement completed.
2021-02-12 - 6:12:52 PM GMT
City Manager’s Report

From: 3210 - Aviation/AP Admin & Finance
Supplier, Vendor, Company, Individual: Paradies-Cooper, LLC (f/k/a Paradies-Dayton, Inc)
Address: 2849 Paces Ferry Road
Atlanta, GA 30339

Date: February 24, 2021
Expense Type: Contract Modification
Total Amount: $850,580.00 Rev. $75,000.00 Exp - 12/31/2023

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Includes Revenue to the City: Yes  No  Affirmative Action Program: Yes  No  N/A

Description:

THIRD AMENDMENT TO AMENDED AND RESTATED MASTER LEASE AND CONCESSION AGREEMENT WITH PARADIES-DAYTON, INC.

The Department of Aviation requests permission to amend the Amended and Restated Master Lease and Concession Agreement (Agreement) with Paradies-Cooper, LLC (f/k/a Paradies-Dayton, Inc. (Paradies)).

The original Agreement was approved September 25, 1991, covering the Operation of a Newsstand/Gift Concession at the Dayton International Airport (Agreement) commencing on November 1, 1991 and expiring October 31, 2001. The Agreement was Amended in 1997 and 2003, then Amended and Restated in 2008. There was a First and Second Amendment (2011 and 2017) to the Restated Master Lease, with a final termination date of 12/31/2020. The Agreement is currently in month-to-month, as approved in the Agreement. An RFP was planned to be administered for all concession operations at the airport in 2020, however, due to the current economic climate, that was unattainable.

This Third Amendment will extend the Agreement for a period of three (3) years, and, will coincide with the agreement of the other Master Concessionaire at the Airport, Host International, Inc. therefore having a new expiration date of December 31, 2023. The minimum annual guarantee (“MAG”) is abated and Paradies will continue to pay Periodic Rent as defined in this Amendment. This Third Amendment will allow for Paradies to re-locate the CNBC concept as required in the Airport Master Plan project, and, allow for the amortization of that investment. Aviation agrees to reimburse Paradies an amount not to exceed $75,000.00 for the required re-location. Further adjustments may need to be made as the economy and air service industry continues to be fluid in recovery. Market conditions permitting, an RFP may be completed in 2023 for all concession locations at the Airport. A Second Renewal Term option of two (2) years is included if circumstances do not return to a level where an RFP can be issued at that time. This Third Amendment will generate an estimated additional $650,580.00 in rental revenue for the three (3) year term, and, an estimated additional $626,250.00 if the Second Renewal Term of two (2) years is exercised. Paradies will be billed for utilities and property taxes based on actual charges.

The Department of Law has reviewed and approved the Third Amendment as to form and correctness. A Certificate of Funds and two (2) Certificates of Revenue are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

FORM NO. MS-16

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

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Required Documentation:
- Initial City Manager's Report
- Initial Certificate of Funds
- Initial Agreement/Contract
- Copy of City Manager's Report
- Copy of Original Certificate of Funds

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| Amount: |
| Fund Code |
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Attach additional pages for more FOAPALs

Vendor Name: Paradies-Cooper, LLC (f/k/a Paradies-Dayton, Inc.)
Vendor Address: 2849 Paces Ferry Road Atlanta, GA 30339
Federal ID: 32-0313792
Commodity Code: 91065
Purpose: This project under the Third Amendment will re-locate the Great American Bagel concept.

Contact Person: Sarah Spees 454-8207
Contact Person: Aviation Department/Division 2/8/2021
Originating Department Director's Signature: 

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature Date

CF Prepared by Date CF/CT Number

Finance Department October 18, 2011
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  Paradies-Cooper (f/k/a Paradies-Dayton, Inc.)
Address  2849 Paces Ferry Road, Suite 400
City  Atlanta State  GA Zip+4  30339
Customer #  320313792 Address Location #
Federal ID#  32-0313792

Revenue Information: Fund  51000 Organization  3212 Revenue  1335-2-3 Program  43

Contract Information: Contract Start Date  2/1/2021 Contract Expiration Date  12/31/2023

Billing Information: Rate: N/A Arrears X Pre-bill
Monthly (1st month of billing)  July – Electricity
Quarterly (1st month of quarter)  
Semi-annual (1st month of half)  January – Property Tax
Annual (1st month of billing)  
Other (explain)  
Rate Change Date  1/1/2023 Rate Change Amount  TBD

Description of Services (wording on invoice):  
AIR Terminal Utilities  
Electricity for Concourse stores  
Cost of Property Taxes  

Departmental Approval  

TO BE COMPLETED BY FINANCE

Revenue Contract Number  1-37921 Auditor  D. Billy Date  1/12/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance  

[Signature]
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  Paradies-Cooper, LLC (f/k/a Paradies-Dayton, Inc.)
Address  2849 Paces Ferry Road, Suite 400
City  Atlanta  State  GA  Zip+4  30339
Customer #  320313792  Address Location #
Federal ID#  32-0313792

Revenue Information: Fund  51000  Organization  3212  Revenue  23361  Program  43

Contract Information: Contract Start Date  2/1/2021  Contract Expiration Date  12/31/2023

Billing Information: Rate:  10% Actual Gross  Arrears  X  Pre-bill
Monthly (1st month of billing)  Feb
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)
Rate Change Date  1/1/2022  Rate Change Amount  11% Gross

Description of Services (wording on invoice): 10% of Actual Monthly Gross Revenue at Dayton International Airport

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number  3792  Auditor  D Billy  Date  2/12/2021

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance
February 4, 2021

TO: City Commission Office
    City Manager’s Office

FROM: Gilbert B. Turner, Director
       Department of Aviation

SUBJECT: Third Amendment to Aviation Concession Agreement,
         Paradies-Cooper, LLC

In June and December 2020, you received Memo’s from Aviation giving you a summary of the global COVID situation and its’ direct effect on the Aviation industry concession operations, as well as the changes Aviation would need to make as a result. In summary, here are the specifics related to the news and gift Master Concessionaire, Paradies-Cooper, LLC Agreement:

- **Original Agreement Term** - 1991 – 2001 (10 years total)
  - **First Amendment**, 1997
    - Changed name; Allowed for re-concepting and amortization for the Capital Improvements; Added 12 years to the Term, therefore now terminating 2013 (22 years total).
  - **Second Amendment**, 2003
    - Permitted pre-packaged food and liquors; investment and amortization for Mid-Term renovations; Added 5 years to the Term, therefore now terminating 2018 (27 years total).

- **Amended and Restated Master Lease**, 2008
  - Allowed for development, installation and construction of 3 new concepts.
    - **First Amendment**, 2011
      - Adjusted support space.
    - **Second Amendment**, 2017
      - Allowed for re-development of concept as required within the Airport Master Plan; Added 2 years to Term to coincide with the other Master Concessionaire (Host – Food/Beverage Operator) so an RFP could be administered for all concession operations in 2020, therefore now terminating 2020 (29 years total).

Both Master Concessionaire contracts expired 12/31/2020, and, are currently in month-to-month carryover, as stated in their agreements. As mentioned in previous communications, an RFP could not be administered due to the economic circumstances. We received approval from the FAA for a 3-year term extension, and an additional 2-year renewal for each operator. A proforma review of each operator identifies the need for the term to allow for return on capital expenditures with dramatically reduced organic growth. Now presented to Commission for approval is the following for Paradies-Cooper, LLC:

- **Third Amendment**, 2021
  - 3-year term renewal, with additional 2-year renewal if conditions warrant; CNBC concept moves location, as required in the Airport Master Plan; Term still coincides with other Master Concessionaire, Host, therefore now terminating 2023, or 2025 if the additional 2-year renewal is executed.
We are confirming final details on revised contract obligations for the Host, which will be presented to Commission shortly. Thank you for the effort and understanding City leadership has provided to work with the Department of Aviation specifically. If you would like further information, please contact me or Sarah Spees at sspees@flydayton.com.

GBT/ses

Attachments (CMR packet for Commission Approval Feb. 17, 2021)

cc/ S. Spees
    S. Beck
    E. Fields
    C. Wimsatt
THIRD AMENDMENT TO THE
AMENDED AND RESTATE MASTER LEASE AND CONCESSION AGREEMENT WITH PARADIES-DAYTON, INC.

This THIRD AMENDMENT TO THE AMENDED AND RESTATE MASTER LEASE AND CONCESSION AGREEMENT WITH PARADIES-DAYTON, INC. ("Third Amendment") is dated this ______ day of __________, 2021 between the City of Dayton, Ohio (hereinafter referred to as "City") and Paradies-Cooper, LLC (previously known as Paradies-Dayton, Inc.) (hereinafter referred to as "Concessionaire").

WHEREAS, On the 8th day of October, 2008, the Commission of the City of Dayton ("Commission") approved an Amended and Restated Master Lease and Concession Agreement at the James M. Cox Dayton International Airport ("Lessor") between City and Concessionaire; and,

WHEREAS, On the 26th day of April, 2011, the Commission approved a First Amendment thereto; and,

WHEREAS, On the 27th day of September, 2017, the Commission approved a Second Amendment thereto (the Amended and Restated Master Lease, the First Amendment, and the Second Amendment thereto, collectively, "Agreement"); and,

WHEREAS, The parties now mutually agree to further amend the Agreement to extend the termination date due to the COVID-19 Pandemic and to allow for the amortization of the costs related to the relocation of the concession concept in the Airport Secure location M-6 "CNBC" concept store; and,

WHEREAS, Paradies-Dayton, LLC, a Georgia Limited Liability Company, formally changed its name to Paradies-Cooper, LLC, amended its articles of incorporation to reflect the change, and the name change was recognized by the Secretary of State and Corporations Commissioner of the State of Georgia; and,

NOW, THEREFORE, in considerations of the mutual agreements herein contained and the mutual benefits derived, IT IS AGREED AS FOLLOWS:

1. Any references to "Concessionaire" in the Agreement shall now refer to Paradies-Cooper, LLC, a Georgia Limited Liability Company.

2. Article 1 – Definitions, "Term" is deleted it in its entirety and replaced with the following:

"Term" – means the period that commenced under the Original Concession Agreement on November 1, 1991, and continues through December 31, 2020, unless sooner terminated in accordance with the terms and provisions of this Agreement.

"First Renewal Term" – means the period of three (3) years effective January 1, 2021 and terminating on December 31, 2023. "Second Renewal Term" – means the period of two (2) years, effective January 1, 2024 and terminating on December 31, 2025. The Second Renewal Term shall be effective upon written notice from the Concessionaire to the Lessor in the event one or both of the following conditions is applicable:
(i) As of June 30, 2023, the total number of Enplaned Passengers at the Airport for the consecutive 6-month period then-ending is less than seventy percent (70%) of the total number of Enplaned Passengers at the Airport for the consecutive 6-month period ended June 30, 2019.

(ii) As of June 30, 2023, Concessionaire has not recouped at least seventy percent (70%) of its losses at the Airport for fiscal year 2020 and at least seventy percent (70%) from its’ Capital Improvement costs (to relocate the CNBC as required by Section 9.11 below), as certified as true and correct by its Chief Financial Officer as of that date.

3. Article III – Concessionaire’s Obligation. The following Section 3.5 (a) is hereby added:

Section 3.5 (a) Those Concession Locations which are currently closed as of the date of this Amendment shall be reopened at such time and date mutually agreed to by the parties, as shall be documented by written notice of such agreed upon date provided by the City to the Concessionaire. The parties agree that the CNBC News Express (pre-security location PS-2) and Heritage Bookstore (secure location M-5) will not be reopened. Such physical spaces shall be removed as Concession Locations under the Agreement immediately upon execution of this Amendment, and the space returned to the City as described in Article IX Section 9.9 of the Agreement.

4. Article IV - Financial Terms. The following Section 4.1(c) is hereby added:

Section 4.1(c) For the period commencing April 1, 2020, and ending December 31, 2020, the monthly MAG will be abated by the City and the Concessionaire will pay Periodic Rent as defined in the current Agreement for the remainder of the current Lease Year Term.

For each Lease Year in the First Renewal Term, the monthly MAG will be abated and the Concessionaire will pay Periodic Rent determined as follows:

(i) Ten percent (10%) of Gross Receipts derived from all Concession Operations at all Concession Locations for year one (1) of the Renewal Term;

(ii) Eleven percent (11%) of Gross Receipts derived from all Concession Operations at all Concession Locations for year two (2) of the Renewal Term; and,

(iii) Twelve percent (12%) of Gross Receipts derived from all Concession Operations at all Concession Locations for year three (3) of the Renewal Term.

For each Lease Year in the Second Renewal Term, the monthly MAG will be abated and the Concessionaire will pay Periodic Rent determined as follows:

(iv) Thirteen percent (13%) of Gross Receipts derived from all Concession Operations at all Concession Locations.
If Concessionaire or City receive Federal or State Covid-19 pandemic relief or recovery funding during any term of this Agreement, any amounts abated under this Amendment will, if eligible pursuant to the funding source, be counted as a City contribution to Concessionaire, and City will retain such funds as to make itself whole for any amounts abated hereunder.

5. Article IX Construction: Capital Improvements. The following Section 9.11 is hereby added:

Section 9.11 Relocation of CNBC concept. Concessionaire agrees to relocate the CNBC concept store, as required in the Airport Master Plan project, from the Airport Secure location M-6 to Secure location M-1, the current location of the Great American Bagel Shop concept operating under the HMSHost Concession Agreement. Concessionaire agrees to incorporate an adequate book section within this new location based on historical sales generated from its Heritage Books Concession Location described in Section 3.5(a) above. The City agrees this concept will no longer be a CNBC national brand, and will be then branded a generic name, as approved by the City prior to the re-location construction beginning. The City will reimburse Concessionaire up to fifty percent (50%) of all costs associated with this relocation project, up to a maximum of seventy-five thousand dollars ($75,000.00). The balance of all costs are the sole responsibility of the Concessionaire.

Concessionaire must provide a detailed and audited report of all construction costs associated with this relocation for City’s approval prior to the City reimbursement. The Concessionaire may leave the current CNBC concept Concession Location M-6 in ‘as is’ condition upon the completion of the relocation. Such relocation shall commence upon the new space being vacated, and, be completed within ninety (90) days.

6. The City and Concessionaire mutually agree to renew the terms and conditions of the Agreement for an additional three (3) year term. The renewal term shall commence upon execution, and shall terminate on December 31, 2023, unless earlier terminated or renewed pursuant to the terms of the Agreement.

7. All other provisions of the Agreement, except as changed or modified hereby, shall remain in full force and effect.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, City and Concessionaire, each by a duly authorized representative, have executed this Third Amendment as of the day and date first set forth above.

WITNESSED BY:

[Signature]

PARADIES-COOPER, LLC (f/k/a Paradies-Dayton, Inc.)

By: [Signature]

Its: President

WITNESSED BY:

[Signature]

CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

1/13/2021

✓ Amelia N. Blankenship for City Attorney

Signed by: Blankenship, Amelia

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

______________________________, 2021

Min. / Bk. __________  Pg. __________

Clerk of the Commission
October 7, 1991

Mr. Richard H. Wesson
Vice President - Business Development
The Paradies Shops
5950 Fulton Industrial Boulevard, S.W.
Atlanta, GA 30336

Dear Dik:

Enclosed is your executed copy of the Agreement and Lease covering the operation of a newsstand/gift shop concession at the James M. Cox Dayton International Airport by and between the City of Dayton, Ohio and The Paradies Shops, Inc.

I look forward to working with you in this endeavor. Please contact me should you have any questions regarding the enclosed.

Very truly yours,

[Signature]
Roy A. Williams
Director of Aviation

RAW/rjb
Enclosure
AGREEMENT AND LEASE
COVERING THE OPERATION
OF A
NEWSSTAND/GIFT SHOP CONCESSION
AT THE
JAMES M. COX DAYTON INTERNATIONAL AIRPORT
BY AND BETWEEN
THE CITY OF DAYTON, OHIO
AND
THE PARADIES SHOPS, INC.

DATE PREPARED: 9/18/91
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name The Paradies Shops, Inc.
Address 5950 Fulton Industrial Blvd., S.W.
City/State/Zip Atlanta, GA 30336
Customer Number 61280100

Revenue Information: Fund 51100 Org 3210 Revenue 1306

Contract Information: Effective Date 11/1/91 Expiration Date 10/31/2001
Rate $21,666.67 Rate Change Date _ Rate change amount _
Payment Due Date: If Monthly Bill X If Annual Bill
If Quarterly Bill _
One time bill or other _

Description of Services:
Minimum Monthly Guarantee for the News/Gift Shop Concession at the Dayton International Airport.

Department Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 3210 - 112 - 0 Auditor _ Date 9-25-91

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the term and conditions necessary for collection.

Director of Finance (Rev 1-1-91)
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AGREEMENT AND LEASE
COVERING THE OPERATION OF A
NEWSSTAND/GIFT SHOP CONCESSION
AT THE
JAMES M. COX DAYTON INTERNATIONAL AIRPORT
BY AND BETWEEN
THE CITY OF DAYTON, OHIO
AND
THE PARADIES SHOPS, INC.

THIS LEASE AGREEMENT, made and entered into this 25th day of
September, 1991, by and between the City of Dayton, Ohio,
(hereinafter referred to as "LESSOR" or "CITY"), and The Paradies
Shops Inc., (hereinafter referred to as "LESSEE"").

W I T N E S S E T H

WHEREAS, the City is the owner and operator of the James M.
Cox Dayton International Airport (hereinafter referred to as
"AIRPORT"), situated in the City of Dayton, Counties of
Montgomery and Miami, and State of Ohio; and

WHEREAS, Lessee desires to lease space at said Airport for
the purpose of operating a retail Newsstand/Gift Shop; and

WHEREAS, the City deems it advantageous to itself and to its
operation of the Airport to grant unto the Lessee certain
privileges, rights, uses and interests therein as hereinafter set
forth; and

WHEREAS, Lessee desires to obtain and avail itself of said
privileges, rights, uses, and interests from the City;

NOW, THEREFORE, in consideration of the mutual covenants
contained herein, the parties hereto agree as follows:

ARTICLE I - LEASED PREMISES

A. Lessor hereby leases to Lessee the Leased Premises
consisting of four thousand forty-eight and one-tenth (4,048.1)
square feet of space located in the passenger terminal building
at the James M. Cox Dayton International Airport, and more
specifically set forth as two thousand three hundred seventy-one
(2,371) square feet of existing Newsstand/Gift concession space
as shown in yellow on Exhibit A and one thousand six hundred
seventy-seven and one-tenth (1,677.1) square feet of space as
shown in blue (Museum Space) on Exhibit A as attached hereto and
made a part hereof.
B. Lessee is granted an exclusive option for news/gift concession space in the proposed second level connector between the north and northeast concourses. The specific terms and conditions relative to this space shall be set forth in another document should Lessee exercise its exclusive option for the proposed space.

C. Lessor shall have the option, in its sole discretion, to delete the Museum Space from Lessee's leasehold at any time during the first twelve (12) months of the Primary Term of the Lease Agreement or prior to Lessee's commencement of actual renovation of the Museum Space, whichever comes later.

**ARTICLE II - IMPROVEMENTS**

A. The Leased Premises includes, in part, the existing Newsstand/Gift Shop areas located in the Main Terminal area and the Northeast and Southeast Concourses as shown in Exhibit A. All existing Lessee improvements in the Newsstand/Gift Shop area are to be removed by the current Lessee. This area will then be a shell.

B. The Lessee will be required to furnish and install the following items, as required, at Lessee's expense, subject to the approval of the Lessor and in compliance with local codes and regulations.

1. Wall finishes.
2. Floor finishes, if other than existing floor.
3. Lighting and wall or floor mounted outlets as required by Lessee, including conduit and wiring to existing electrical panels as directed by the Lessor. If additional electrical panels are required, they shall be supplied and installed including necessary conduit and wiring from the main panel board at the Lessee's expense.
4. Store front or other security enclosures as required for the open sides of the area.
5. Any other electrical, mechanical or plumbing work as required by Lessee.
6. Furnishing within the leased area.
7. Graphics as required by the Lessee.

C. Lessee agrees to spend a minimum of seven hundred thousand dollars ($700,000) for leasehold and other improvements which include Lessee's renovation of the Museum Space. Four hundred fifty thousand dollars ($450,000) will be spent at the inception of this agreement, one hundred thousand dollars ($100,000) will
be spent to develop the "Museum Space", (unless Lessor exercises its option in Article I, Paragraph C.) and one hundred fifty thousand dollars ($150,000) will be spent at the midpoint of the Primary Term. Lessee shall provide to Lessor an accounting of such expenditures and any funds not spent by Lessee shall be turned over to Lessor.

D. Any and all construction, renovation or installation of furniture, fixtures and equipment into the Leased Premises by Lessee shall be in accordance with its proposal and renderings, as submitted in its proposal, which is on file with the Lessor, subject to approved revisions and adjustments.

E. Prior to commencement of the term of this Lease Agreement and when so advised by Lessor's engineers that Lessee may enter upon the Leased Premises or a portion thereof, Lessee shall, without cost to Lessor and within the periods prescribed herein, commence and complete the installation of the Newsstand/Gift Shop together with all improvements and trade fixtures as are necessary for the customary operation of such services.

F. Lessee shall, without cost to Lessor and within the periods prescribed herein, commence and complete the installation of all trade fixtures and leasehold improvements not provided by the Lessor (including, but not limited to, counters, interior partitions, special lighting, fixtures, wall coverings, and finishes, and all other equipment, furniture, furnishings and supplies necessary in the proper conduct of Lessee's business). All improvements of furniture, fixtures, and equipment used in the Premises shall be of high quality and attractive in appearance.

All facilities which are affixed to the Premises are referred to herein as "Leasehold Improvements". All nonaffixed items provided by Lessee are referred to herein as "Trade Fixtures".

G. Title to the Leasehold Improvements shall vest in Lessor at such time as this Lease Agreement and Lease is terminated as provided herein.

H. Lessee may, at its sole expense, install in or upon the Leased Premises trade fixtures and equipment provided, however, the type and proposed location of any such fixtures and/or equipment must be approved by the Director of Aviation prior to Lessee's installation. Lessee shall, upon termination of this Lease Agreement, remove any such fixtures and/or equipment and restore the premises to their original condition, ordinary wear and tear excepted. In the event Lessee and Lessor mutually agree to leave any or all of the trade fixtures or equipment installed by Lessee in or upon the Leased Premises upon termination of this Lease Agreement, same shall remain and legal right to ownership shall vest in Lessor thereafter.
I. The initial layout, Leasehold Improvements and Trade Fixtures to be made to or installed upon the Leased Premises by Lessee, and any subsequent alterations or additions thereto, shall be subject to prior written approval, which approval shall not be unreasonably withheld. Full and complete plans and specifications for all work, facilities and improvements, and the time required to complete same, shall be submitted and receive written approval before work or construction is commenced. First-class standards of design and construction will be required in connection with all such work, facilities and improvements. All construction shall conform with the general architectural requirements of Lessor.

J. All structural improvements, equipment, and interior design and decor constructed or installed by Lessee, its agents or contractors, including the plans and specifications therefore, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations. The approval given by Lessor shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain in the Lessee.

K. It is understood and agreed by both parties that Lessee shall commence and substantially complete construction of the initial Leasehold Improvements, facilities, furniture and equipment within one year from the commencement of this Lease Agreement. During such construction Lessee agrees to maintain a minimal amount of service to the public within the leased premises. Lessee's plan for the continuance of such service shall be submitted to Lessor prior to commencement of construction. Final plans and specifications for construction of Leasehold Improvements shall be submitted to the Director of Aviation within thirty (30) days after commencement of this Lease Agreement. Within thirty (30) days of receipt of such plans and specifications, Lessor shall either approve or disapprove said plans and specifications. Lessor reserves the right to reject any design submitted and require Lessee to resubmit designs and layout proposals until they meet Lessor's approval. No substantial changes or alterations shall be made in said plans and specifications after approval by Lessor, and no structural alterations or improvements shall be made to or upon the Leased Premises without the prior written consent of Lessor. Any delay in construction due to fire, earthquake, wars, acts of Lessor, or other calamity beyond the control of Lessee shall extend the time which such construction shall be completed.

L. During the term of this Lease Agreement, Lessee shall not remove, demolish or alter any Leasehold Improvement without the prior written consent of the Director of Aviation.

M. Prior to or upon execution of this Lease Agreement, Lessee shall provide Lessor with a performance bond in an amount equal to the first year's Minimum Annual Guarantee of Two Hundred Sixty Thousand Dollars ($260,000). The performance bond will be
forwarded the the Director of Aviation prior to the commencement of construction.

N. The difference between the "Initial Year" (as defined in Article VII, Paragraph B.) Minimum Guarantee and the second year minimum guarantee shall be divided by 1,000. The resulting number shall be divided by 24. One is added to the result. The resulting number ("Year Factor") shall be applied to the year and month of the start of the Initial Year to determine the Adjustment Date. (For example if the Year Factor is 3.5 and the Initial Year starts January 1, 1992, the Adjustment Date is July 1, 1995). This paragraph N expires on the Adjustment Date.

**ARTICLE III - USE OF PREMISES**

A. Lessee shall enjoy the following rights and privileges in connection with its use of the Premises:

1. **Newsstand**
   a. Lessee shall have the exclusive right to operate a Newsstand in the Terminal Building on the premises set forth in Article I of this Agreement. In addition, Lessee shall have the exclusive right to sell tobacco and tobacco related products in the Terminal building.
   b. The Newsstand shall carry a complete line of merchandise adequate for the traveling public and similar to that carried by other facilities of this nature at other airports in the United States.
   c. Newspaper and cigarette vending machines as permitted by the Director of Aviation within and outside the Terminal Building do not constitute an infringement on Lessee's exclusive rights under this Lease.

2. **Gift Shop**
   a. Lessee shall have the non-exclusive right to operate a Gift Shop in conjunction with the Newsstand in the Terminal Building on the Leased Premises set forth in Article I of this Agreement.
   b. The Gift Shop operation shall carry a diverse line of merchandise of the highest quality, including but not limited to: boxed candy, men's and women's apparel, amusements, electronic devices, luggage and other miscellaneous travel apparel, and other merchandise adequate for the traveling public.

B. Merchandise carried by the Newsstand/Gift Shop Concession in the Terminal Building shall be of the highest quality and
shall present the greatest variety possible within the scope of good business judgement to the general public. Prices shall be competitive with other facilities of this nature in the City of Dayton and other medium size airports throughout the United States.

C. Lessee shall not sell food, alcoholic or non-alcoholic beverages for consumption on the premises. Lessee may sell packaged foods and liquors.

D. Lessee, its employees, guests, patrons, invitees and suppliers, shall have the right in common with others to use the roadways on the Airport available to the general public, subject to the rates and charges, if any, prevailing at the time of such use.

E. The Leased Premises shall be used only for the purposes specified in this Lease Agreement. Lessee shall, at all times during the term hereof, actively use the Leased Premises for those purposes, and shall not at any time leave the Leased Premises vacant without the written consent of the Lessor. Lessee shall not do or permit anything to be done in or about the Leased Premises or bring or keep anything therein which will in any way conflict with any law, ordinance, rule or regulation, or use, or allow the Leased Premises to be used for any improper, immoral or unlawful purpose, or place any loads upon the floor, walls or ceiling which endanger the structure, or obstruct the sidewalks or passageways or stairways in the front of, within or adjacent to the Leased Premises.

ARTICLE IV - RIGHTS AND OBLIGATIONS OF LESSEE

A. Lessee agrees that it will operate and manage the Newsstand/Gift Shop facility in a first-class manner and comparable to other such facilities operated in the City and at other medium size airports during the term of this Lease Agreement.

B. Lessee agrees, at its own expense, to cause the Leased Premises and the improvements and appurtenances thereto, as constructed, to be maintained in a presentable condition consistent with good business practices and equal in appearance and character to their constructed appearance and character, normal wear and tear excepted. This shall include, although not limited to, the obligations of the Lessee to maintain the Leased Premises in a clean, neat and orderly condition at all times.

C. The Lessee shall, at its sole cost and expense, procure from all authorities having jurisdiction over the operation of the Lessee at these premises, all licenses, certificates, permits or other authorizations which may be lawfully required for the conduct of its operation.
D. Lessee shall provide its own interior maintenance of the leased space, including janitorial service and the replacement of electric light bulbs and tubes. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport, of all trash, garbage and other refuse caused as a result of its operation as described herein. Lessee shall provide and use suitable covered metal receptacles for all garbage, trash and other refuse. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Leased Premises is forbidden.

E. Lessee shall, during the term of this Lease, engage and have on duty an adequate staff of employees necessary for the proper operation of the facilities. Lessee shall require its employees to be clean, courteous, neat and efficient.

F. Lessee agrees to conduct its business and operations at the Dayton International Airport in a fair and businesslike manner so that same will be a credit to the Lessor and to said Airport. Lessee's employees, agents and servants will obey such rules and regulations as may from time to time be promulgated by Lessor pursuant to Article V, hereof, and Lessee will obey all applicable rules and regulations as may from time to time be promulgated by the United States government or any department or agency thereof, and by the State of Ohio.

G. In addition to rents and fees, Lessee shall, at its expense, pay all taxes and assessments that are now and may be levied or imposed upon the Premises and any real, leasehold and personal properties situated or placed thereon, provided, however, that real property taxes and assessments shall be pro-rated so as to require Lessee to pay such taxes and assessments only for the period of Lessee's tenancy. Lessee shall have the right to protest or contest by legal proceeding, or in such other manner as it may deem suitable, the validity or amount of any such tax or assessment. If Lessor is obligated to pay such tax or assessment under this provision, Lessor shall bill Lessee and Lessee shall pay the invoiced amount to Lessor within 15 days after receipt of invoice.

H. Lessee shall bear, at its own expense, all costs of operating the facilities and shall pay in addition to rental, all other costs connected with the use of the Leased Premises and facilities, except as otherwise provided for herein. Lessee shall pay all licenses, permits, or other similar authorizations as required under federal, state or local laws and regulations insofar as they are necessary to comply with requirements of this Lease Agreement and the rights and privileges extended hereunder. Lessee also agrees to repair or pay for all damage to the Lessor and its property, caused by the wrongful or negligent acts or omissions of Lessee, its agents, servants, employees and contractors arising out of Lessee's use or occupancy of the Leased Premises.
I. Lessee shall not do anything or permit anything to be done within the Leased Premises which may interfere with the effectiveness or accessibility of the drainage and sewer system.

J. Lessee will not suffer or permit to be maintained upon the outside of any improvements of the Leased Premises any billboards or advertising signs except those which have prior written approval of Lessor's Director of Aviation. It is specifically agreed, however, that Lessee may maintain on the Leased Premises its name or trade name, on a neatly painted sign or signs, the size and type of which will be subject to the approval of Lessor's Director of Aviation, such approval not to be unreasonably withheld.

K. Lessee shall appoint and maintain a local manager to manage and supervise the Newsstand/Gift Shop operation. Said manager shall have full authority to make day-to-day business decisions on behalf of Lessee and shall be responsible for ordering and receiving Newsstand/Gift Shop merchandise, maintaining concession books and records, hiring, training and supervising Newsstand/Gift Shop sales personnel and coordinating all concession activities with Lessor.

L. Lessee shall be open for business seven (7) days per week, sixteen (16) hours per day, or at times mutually agreed upon and approved by the Director of Aviation.

M. Lessee, as a condition of this agreement, agrees to engage in an agreement with a Disadvantaged Business Executive (DBE) participant. The DBE agreement must show the type of agreement (joint venture, partnership, etc.), stipulate the DBE participation which is to be no less than twenty-five percent (25%) and identify the DBE participant and the name under which the DBE will be operating. Said DBE agreement shall be submitted to Lessor's Director of Aviation for approval, such approval not to be unreasonably denied. If Lessee is unable to achieve the DBE percentage stated above, Lessor shall have the right to terminate this agreement.

ARTICLE V - RIGHTS AND OBLIGATIONS OF LESSOR

A. Lessor shall have the right to adopt and enforce reasonable rules and regulations, with respect to the use of the Airport and facilities thereon, which Lessee agrees to observe and obey.

B. Lessor's Director of Aviation and his duly authorized representatives shall at any and all times have the full and unrestricted right to enter the Premises for the purpose of inspecting said premises and doing any and all things thereto which Lessor is obligated and authorized to do, as set forth herein, or which is necessary in the exercise of Lessor's police power.
C. Lessor warrants to Lessee peaceful possession and quiet enjoyment of the Leased Premises during the term hereof upon the performance of Lessee's covenants herein.

D. Lessor shall, at its expense, provide, operate and maintain all utilities serving the airport and the premises.

ARTICLE VI - TERM

A. Primary Term: If Lessee commences operations on or before the tenth of November, 1991, then the Primary Term of this Lease Agreement shall commence on the first day of November, 1991 and terminate on the thirty-first day of October, 2001.

In the event Lessee commences operations later than November 10, 1991, through no fault of Lessee, the commencement date shall be set as follows:

i) If operations commence on or before the tenth of any month, the commencement date shall be the first day of that month; or

ii) If operations commence after the tenth of the month, the commencement date shall be the first day of the month following the date of beneficial occupancy.

For a commencement date other than November 1, 1991, a Supplemental Writing setting said commencement date shall be executed by both parties and attached hereto as if written herein. The termination date of this Lease Agreement shall be the last day of the 120th month after the commencement date.

B. Option Term: The Lessee shall have the option, subject to Lessor's agreement, to extend the term herein for an additional five (5) years commencing on October 1, 2001 and terminating on September 30, 2006. In exercising the additional option period, the Lessee shall notify Lessor in writing, not less than six (6) months prior to the expiration of the Primary Term of its intent to exercise the option period.

ARTICLE VII - RENTALS, MINIMUM GUARANTEES AND ACCOUNTING RECORDS

A. Lessee agrees to pay and Lessor agrees to accept as rent for the Primary Term and any Option Term a minimum annual guarantee of two hundred sixty thousand dollars ($260,000) or thirteen percent (13%) of the Gross Receipts for Category A items and twenty-three percent (23%) of the Gross Receipts for Category B items as described in Subparagraphs 1. and 2. below whichever is greater. This rent is subject to further adjustment in accordance with the provisions of this Article.
1. Category A - Required Items - Traveler Necessities: Lessee shall be required to offer for sale the items listed below from its newsstands in the Terminal Building.

i. Newspapers, including all local daily newspapers that request distribution and sufficient out-of-state and business newspapers to meet reasonable public demand.

ii. Current magazines and periodicals.

iii. Paperback books, including the national best sellers.

iv. Popular brand cigarettes, cigars, and pipe tobacco.

v. Post cards.

vi. Prepackaged snacks and nuts.


viii. Prepackaged candy: bars, sacked and small packages.

ix. A full assortment of popular brand camera film and basic camera accessories (flashbulbs and batteries).

x. Minor nonprescription drugs, including but not limited to items such as aspirin and aspirin-type remedies, antacids, iodine, merthiolate, travel sickness remedies, cold capsules, inhalers, chapsticks, sunburn lotions, etc., with at least one aspirin-type medication and one travel sickness remedy being offered in single-dosage packets.

xi. Traveler necessities, including but not limited to bandaids, pocket facial tissues, women's hygiene products, utility pens and pencils (inexpensive wood pencils and ball-point pens), utility writing tablets, pocket notebooks, disposable diapers, eyeglass cleaners, dry or liquid clothes wash packets, toothbrushes, toothpaste, shampoo, deodorants, manicure aids, pocket combs, women's utility hosiery (nondesigner), sewing kits, disposable razors, etc., all in travel sizes.

xii. Travel guides and maps.

xiii. From time to time and at its sole discretion, Lessor may require that Lessee offer for sale other items that it determines necessary to serve the traveling public.
2. Category B - Items: Lessee shall submit to Lessor an inventory of merchandise which it shall maintain in its Terminal locations. Said inventory listing shall be specific and not a general description of merchandise. Includable items shall be all items not classified in Category A. Category B items shall also include any specialty merchandise. Specialty merchandise includes but is not limited to, apparel, sports equipment and accessories, jewelry, pottery and framed art. Any items sold through the museum area shall also be classed as Category B items.

B. The "Initial Year" is the first 12 months of the Lease Agreement, which the parties expect to be November, 1991 through October 31, 1992.

The "Initial Year" minimum guarantee will be established at $260,000 and Paradies will remit 1/12 of that amount each month during the "Initial Year" of the term ($21,666.67).

In the first month of the second year of the term, or at such time as all of the necessary enplanement information will be available, Lessor will compare the enplanements for the "Initial Year" to the enplanements for the 12 month period immediately prior to the "Initial Year". The reduction in enplanements expressed as a percentage will represent the loss of traffic and will be used to determine the second year minimum guarantee.

For example, a 25% reduction in traffic (e.g. 90/91 enplanements = 2.0 Million; 91/92 enplanements = 1.5 Million), the new minimum guarantee would become $195,000. During the second year, assuming all of the above to be accurate, Lessee would remit monthly payments of $16,250.00 or the appropriate percentages of the total gross sales by category, whichever is greater.

In the third and all subsequent years, the annual minimum guarantee shall be eighty-five percent (85%) of the preceding year's total payments to Lessor but in no event less than the minimum annual guarantee for the second year, as calculated above.

C. Gross Receipts are all receipts for cash or credit received by Lessee and its employees of the Newsstand/Gift Shop regardless of whether paid for or not. There shall be allowed when properly recorded and accounted for, as a reduction from gross receipts; (1) Sales taxes (when stated separately and collected from the customer) and (2) refunds made by Lessee to customers because of unacceptable or unsatisfactory goods or services.

D. Minimum rentals under this contract shall be the annual sum as set forth under Paragraphs A and B of Article VII, herein. One-twelfth (1/12) of the annual minimum rental amounts shall be payable in advance for the current month.
Commencing November 1, 1992, or on the first day of the second contract year whichever is later, Lessee's rent shall be further adjusted as follows:

i) The monthly payments shall be reduced by two thousand dollars for such time as the provisions of Article II, paragraph N are in effect.

E. Within twenty (20) days after the close of each calendar month of the term of this Agreement, Lessee shall submit to Lessor in a form and with detail satisfactory to Lessor, a statement of its gross receipts during the preceding month upon which the percentage payments set forth in Article VII, Paragraph A. are computed, such statement to be signed by a responsible accounting officer of Lessee. This statement of Gross Receipts and the computation of the rental due which represents the applicable percentage rental on Gross Receipts for the previous month shall, when paid and added to the previous months in the same lease year, be no less than the amount of the minimum rental set out, prorated on a twelve (12) month basis. Payment of the percentage rental, as set forth in Paragraph A, Article VII, shall accompany said statement.

F. Lessee shall keep a full and accurate set of books and records showing all of its said Gross Receipts and Lessor shall have the right through its representatives at all reasonable times to inspect such books and records, including sales tax returns for the State of Ohio. Lessee hereby agrees that all such records and instruments will be made available to Lessor for at least a three year period.

G. Lessor reserves the right to audit Lessee's books and records of receipts at any time for the purpose of verifying the Gross Receipts reported by Lessee hereunder. If, as a result of such audit, it is established that Lessee has understated the Gross Receipts received by it from all operations on the premises by three percent (3%) or more, the entire expense of said audit shall be borne by Lessee. Any additional percentage rentals due shall be paid by Lessee to Lessor within fifteen (15) days of notification to Lessee of the amount due.

H. In the event Lessee's payments of any amounts due are more than thirty (30) days delinquent, Lessor may assess Lessee a ten percent (10%) penalty on the amount outstanding. Interest shall also be assessed at a rate of two (2%) over the prevailing prime rate as published in The Wall Street Journal and shall be subject to adjustment throughout the collection period. Said penalty and interest shall not apply to any amounts contested in good faith by Lessee.

I. All rentals and other amounts provided in this Article VII shall be paid to: City Treasurer, City Hall, 101 West Third Street, Dayton, Ohio 45402, or at such other address as Lessor shall so direct in writing.
ARTICLE VIII - DISCRIMINATION

A. Lessee agrees that it will not discriminate by segregation or otherwise, against any person or persons because of race, color, religion, sex, ancestry, national origin or place of birth in furnishing or by refusing to furnish to such person or persons the use of any facility, including any and all services, privileges, accommodations and activities provided thereby. The terms and conditions provided in Section 35.14 of the Revised Code of General Ordinances of the City of Dayton are hereby incorporated by reference in this Lease and made a part hereof as if written in full herein.

Lessee's noncompliance with the terms and conditions provided in Section 35.14 of the Revised Code of General Ordinances and the provisions of this clause may constitute a material breach of this Lease Agreement. In the event of such noncompliance, the Lessor may take appropriate action to enforce compliance and may terminate this Lease Agreement, or may pursue such other remedies as may be provided by law.

B. The Lessee, for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agrees as a covenant running with the land that (1) no person on the grounds of race, creed, color, national origin or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, creed, color, national origin or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 and as said regulations may be amended.

That in the event of breach of any of the above non-discrimination covenants, Lessor shall have the right to terminate this Lease Agreement and to re-enter and repossess said land and facilities thereon, and hold the same as if said Lease Agreement had never been made or issued.

C. Notwithstanding the foregoing, it is specifically agreed that nothing herein contained shall prevent Lessee from exhausting all administrative and/or judicial remedies available to Lessee in resisting or defending against any claims or claim of breach or default or noncompliance hereunder.
ARTICLE IX - INSURANCE AND INDEMNITY

A. Lessee agrees to indemnify, save and hold harmless Lessor from and against any and all claims and actions, and all expenses incidental to the investigation and defense thereof, based upon or arising out of any accident or damages suffered by third persons and arising from, or in any way connected with, Lessee's use or occupancy of the Leased Premises, or any condition of the Leased Premises, fixtures, structures, or other improvements thereon, or Lessee's exercise of any right granted herein, or Lessee's performance, breach or default in the performance of any obligation to be performed pursuant to this Lease Agreement, or any wrongful or negligent act or omission of Lessee, its agents and employees; provided, however, that Lessee shall not be liable for any accident or damages occasioned by the fault or negligence of Lessor, its agents, employees, tenants, contractors or suppliers, and provided further that Lessor shall give to Lessee prompt and reasonable notice of any such claim or actions and Lessee shall have the right to investigate, compromise and defend the same.

B. Lessee shall indemnify, save and hold harmless Lessor from and against any mechanics or other lien or order for the payment of money filed against the Leased Premises, Lessor or any property of Lessor, arising out of any act or omission of Lessee, its tenants or subtenants or anyone claiming through or under Lessee. Lessee shall, at Lessee's expense, cause the same to be cancelled or discharged of record and shall save and hold harmless Lessor from and against any and all costs, expenses, claims, losses or damages including reasonable counsel fees resulting therefrom or by reason thereof.

C. Lessee shall, at its expense, maintain with an insurance company authorized to do business in the State of Ohio, public liability insurance in a sum of not less than $500,000.00 for personal injury to any person; and in a sum of not less than $1,000,000.00 for personal injury for each accident; and in a sum not less than $100,000.00 for property damage for each accident.

D. Lessee shall, at its expense, keep all improvements constructed on the Leased Premises insured in the name of Lessor, Lessee and any leasehold mortgagees, as their interest may appear, to the full insurable value thereof against the perils insured by a Standard Fire Policy with an Extended Coverage endorsement and a Vandalism and Malicious Mischief endorsement.

E. Current certificates of insurance for each policy or concurrent policies required to be maintained by Lessee shall be furnished to Lessor. All such policies shall provide notice of cancellation to Lessor equal to that given Lessee.
ARTICLE X - HOLDING OVER

A. In the event that Lessee holds over and remains in possession of the Leased Premises and rights granted herein after expiration of this Lease Agreement and without any written renewal thereof, such holding over shall not be deemed to operate as a renewal or extension of this Lease Agreement but shall only create a tenancy from month to month which may be terminated at any time by Lessor.

ARTICLE XI - ASSIGNMENT AND SUBLETTING

A. The Leasehold Estate and rights granted herein are the personal property of Lessee. Lessee agrees that it will not assign this Lease Agreement without the express consent of Lessor in writing. Any purported assignment in violation hereof shall be void. Notwithstanding the foregoing, this Lease Agreement may be assigned by Lessee without such consent to any successors-in-interest of Lessee with or into which Lessee may merge or consolidate or which may succeed to the assets of Lessee or a major portion thereof.

B. Lessor shall be the sole judge as to the reliability, character, capability and desirability of the proposed assignee in granting said consent, which consent shall not be unreasonably withheld.

C. Lessee may assign this Lease Agreement without Lessor's consent by way of leasehold mortgage. All such leasehold mortgagees shall not be personally liable to perform the agreements contained in this Lease until such time as they or their assigns become the owner of the Leasehold Estate hereby created. Any leasehold mortgage or transfer of Lessee's Leasehold Estate by operation of law shall not release Lessee from any liability arising under this Lease Agreement.

D. Notwithstanding any other provisions, Lessee shall have the right to sublet a portion or portions of the Leased Premises to any such person or persons as Lessee shall choose for purposes that are consistent with this Lease Agreement; providing, however, all such subleases shall be subject to the provisions of this Lease Agreement and subordinate hereto.

ARTICLE XII - SUCCESSORS AND ASSIGNS BOUND BY COVENANTS

All covenants, stipulations and agreements in this Lease Agreement shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.
ARTICLE XIII - INVALID PROVISIONS

In the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained shall not constitute a material breach of this Lease Agreement; provided that the validity of any such covenant, condition or provision does not materially prejudice either the Lessor or Lessee in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Lease Agreement.

ARTICLE XIV - TERMINATION BY LESSEE

A. In addition to all other remedies available to the Lessee, this Lease Agreement shall be subject to cancellation by the Lessee should any one or more of the following events occur:

1. The issuance by any court of competent jurisdiction of any injunction, order or decree preventing or restraining the use of the Airport for usual airport purposes in its entirety, or the use of any part thereof which is used by Lessee and which is necessary for Lessee's operations on the Airport, which remains in force unvacated or unstayed for a period of 30 consecutive days and results in material interference with Lessee's normal business operations;

2. The issuance of any order, rule or regulation of the taking of any action by the Civil Aeronautics Board or the Federal Aviation Administration or other authorized competent government authority, or the occurrence of any fire, other casualty, act of God or the public enemy substantially affecting, for a period of at least 30 consecutive days, Lessee's use of the Airport in the conduct of its business;

3. The substantial restriction of Lessor's operation of the Airport by action of the Federal Government, the State of Ohio, any local governmental authority, or any authorized department or agency of any of those entities and continuance thereof for a period of not less than 60 consecutive days provided such restriction adversely affects the operations of Lessee at the Airport.

4. The assumption by the United States Government, or any authorized agency of same, of the operation, control or use of the Airport and its facilities in such a manner as to substantially restrict Lessee from conducting its business if such restriction be continued for a period of 90 days or more.

5. The permanent abandonment of the Airport as an air transportation terminal.
6. Lessee's failure to secure adequate construction and permanent financing of the facility subject to the terms, conditions and approval of Lessor.

7. If Lessee is unable to obtain necessary permits or other authorizations for the construction of the Facility, including approval of plans and specifications by Lessor.

8. The breach by Lessor of any of the terms, covenants or conditions of this Lease Agreement to be kept, performed and observed by Lessor, and failure of Lessor to remedy such breach for a period of 60 days after written notice from Lessee of the existence of such breach; or if by reason of the nature of such default the same cannot be remedied within said 60 days, then Lessee shall have the right to terminate this Lease Agreement if Lessor shall have failed to commence the remedying of such default within said 60 days following such written demand, or having so commenced, shall fail thereafter to continue with diligence the remedying thereof.

B. Lessee may exercise its rights of termination by written notice to Lessor at any time after the lapse of the applicable periods of time and this Lease Agreement shall terminate as of that time. Rentals due hereunder shall be payable only to the date of termination.

**ARTICLE XV - TERMINATION BY LESSOR**

A. In addition to all other remedies available to the Lessor, this Lease Agreement shall be subject to cancellation by the Lessor should any one or more of the following events occur:

1. If the Lessee shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to proceedings; or if a court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Lessee's assets is appointed by a court of competent jurisdiction; or if Lessee shall be divested of its rights, powers and privileges under this Lease by other operation of law.

2. If Lessee shall default in or fail to make payments at the times and in the amounts as required of it under this Lease Agreement and said default is not cured by amounts due and owing within 15 days after Lessor notifies Lessee in writing of the default;

3. If Lessee shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease Agreement to be performed, kept and observed by it, and said
failure is not cured, or action taken to correct such failure, within 30 days after Lessor notifies Lessee in writing of said failure;

4. Violations by Lessee, its agents or employees, of applicable laws, ordinances, codes, rules and regulations issued by any competent governmental authority, or revocations of permits or licenses required in the performance of this Lease Agreement, shall be cause for termination of this Lease Agreement if the same shall not be corrected or action taken to correct, within 30 days after Lessee's receipt of written notice, which shall state in detail the violation.

5. If Lessee at any time during the term of this Lease Agreement shall default in the payment of any installment of rent or any sum specifically to be paid by Lessee hereunder and such default shall not have been cured within 10 days after notice of the date of such default; or if Lessee shall default in the observance or performance of any other of Lessee's covenants or obligations hereunder, other than the covenant to pay rent or any other sum herein specified, and such default shall not have been cured within 60 days after Lessor shall have given written notice to Lessee specifying such default; then and in any such event, Lessor shall have the following remedies:

a. Lessor may sue to collect any and all sums which may accrue to Lessor under this Lease Agreement.

b. Lessor may, without further notice to Lessee, terminate this Lease Agreement and re-enter the Leased Premises.

6. In the event of any assignment or subletting in violation of Article XI hereof; or if Lessee shall be declared insolvent or bankrupt; or if the Lessee's leasehold interest herein shall be levied upon under execution; or if a petition be filed to declare the Lessee bankrupt; or a receiver be appointed for Lessee; then in any such case the Lessor may, at its option and without notice to the Lessee, terminate this Lease Agreement and immediately retake possession of the premises.

ARTICLE XVI - GENERAL PROVISIONS

A. The term Lessor, as used in this Lease Agreement, means the City of Dayton, Ohio and where this Lease Agreement speaks of approval and consent by Lessor, such approval is understood to be manifested by act of Lessor's Director of Aviation, except as otherwise expressly stated in this Lease.
B. Notices to Lessor provided for in this Lease Agreement shall be sufficient if sent by registered mail, postage pre-paid, addressed to the Director of Aviation, Terminal Building, Room 304, Dayton International Airport, Vandalia, OH 45377.

C. Notices to Lessee provided for in this Lease Agreement shall be sufficient if sent by registered mail, postage prepaid, addressed to The Paradies Shops, Inc., 5950 Fulton Industrial Blvd., Atlanta, GA 30336.

D. This Lease Agreement merges all prior negotiations and understandings and there are no other agreements and understandings, oral or otherwise, between the parties pertaining to the Leased Premises. This Lease Agreement and any written agreement hereafter made between the parties hereto shall be binding upon Lessee only when executed on Lessee's behalf by an officer or authorized representative of Lessee at its address above set forth. A signed copy of this Lease Agreement shall be mailed or delivered to Lessee after execution by Lessor.

E. Lessee represents that it has carefully reviewed the terms and conditions of this Lease Agreement and is familiar with such terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Lease Agreement.
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers and their respective seals to be hereunto affixed the day and year first above written.

WITNESSES:

The City of Dayton, Ohio
City Manager

Charles G. Jones
Lessor

The Paradies Shops, Inc.

By John P. Bock
Lessee

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO


Clerk of Commission
STATE OF OHIO, MONTGOMERY COUNTY, SS:

BE IT REMEMBERED that on the 1st day of October, 1991, before me a Notary Public in and for said county personally came The City of Dayton, Ohio, by Charles A. Opeka, its City Manager, Lessor, one of the parties named in the foregoing Agreement and Lease and acknowledged the signing thereof to be its and his voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year first above written.

[Signature]
NOTARY PUBLIC

CYNTHIA WARD-PAAZ
Notary Public
In and for
My Commission Expires March 28, 1996

STATE OF Georgia, COUNTY OF Fulton, SS:

BE IT REMEMBERED that on the 20th day of September, 1991, before me a Notary Public in and for said county personally came The Paradies Shops, Inc, by James W. Paradies, its Exec. Vice President, Lessee, one of the parties named in the foregoing Agreement and Lease and acknowledged the signing thereof to be its and their voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year first above written.

[Signature]
NOTARY PUBLIC

Notary Public, Coweta County, Georgia
My Commission Expires August 8, 1994
COMMUNITY INDUSTRIES, INC.

P. O. BOX 17016
DAYTON, OHIO 45417-0016

Phone (513) 223-6127
Fax (513) 223-6637

FACSIMILE TRANSMISSION REQUEST AND RECORD

Fax Nr. to be Called: (404) 349-7529
Person to be Called upon Receipt: Dick Dickson Office Ext.:

Company: ________________________________

City, State: Atlanta, GA

********************************************************************************
MESSAGE:

********************************************************************************

SENDER
Name: George Cooper

Phone: (513) 223-6127 Fax: (513) 223-6637

Date/Time Transmitted: 01/19/91 12:45 p.m.

Number of Sheets, Including this Cover Sheet: 8

NOTE: If this transmission is not received in its entirety, please call us at (513) 223-6127.

FORM 004 12/90

JAN 14 '91 13:39 443 PAGE 001
From the Desk of...

1-14-91

George Cooper

Hi Dick

Please find enclosed:

1. Copy of Ted's memo to The City Mayor of 12-31-90 - copies sent to Commission.

2. Documents signed by me prior to action on 1-7-91. Fully executed copy on file in my files dated 1-9-91.

3. Copy of News Story day before our meeting - correction next day.

4. Copy of chek(s) to City dated 1-10-91.

Thank you.
December 31, 1990

TO: Richard B. Helwig
    City Manager

FROM: Theodore J. Staton

SUBJECT: Airport Leases: AGL Ltd. (DBA: The Sports Emporium) and C & C Concessions

We have reached a tentative settlement on the matter of the defaults of the aforementioned leases. The lessors have proposed paying the full amounts past due and to mutually agree to terminate the leases.

The amount past due on the AGL Ltd. lease is $10,000.08. This amount represents the amount of the minimum guarantee. There is some dispute over an additional $11,422.08 in improvement costs that the lessors never agreed to pay. The lease amendment for these costs was never consumated. Therefore, it is my opinion, and the Department of Law concurs, that we have no legal basis to seek payment of these costs. I do intend to determine how these costs could have been incurred without clear plans for recovery. I will take appropriate administrative action to ensure nothing of this nature happens in the future.

The AGL Ltd. lease would otherwise terminate on December 31, 1993. Our proposed tentative settlement calls for this lease to terminate January 1, 1991.

The lease with C & C Concessions, Inc. is $7,766 past due. The lease is scheduled to terminate June 30, 1991. The proposed tentative settlement calls for this lease to terminate January 1, 1991.
Mr. Helwig
December 31, 1990
Page 2

I would also like to say that the lessee has been extremely responsive to our attempts to bring closure to these issues. He will soon have paid all amounts past due and in my opinion has left himself in good standing with the Department of Aviation and the City of Dayton.

With your concurrence, we will prepare City Manager's Reports to terminate the leases as I have outlined above. It is our intention to have these ready for City Commission action at their January 9, 1991 meeting.

Theodore J. Staton
Assistant City Manager
for Strategic Planning

kmh-a

CC: Ms. Mason
Mr. Schiefler
Mr. Riordan
Mr. Sawyer
AMENDMENT TO LEASE AND CONCESSION AGREEMENT
COVERING THE OPERATION OF AN APPAREL/GIFT SHOP
CONCESSION AT THE DAYTON INTERNATIONAL AIRPORT

It is hereby mutually agreed by the City of Dayton, Ohio, as Lessor, and ABL Ltd., as Lessee, that the certain lease agreement dated September 20, 1980 be amended as follows:

1. That said lease agreement dated September 20, 1980, shall terminate effective January 1, 1991. Lessor shall be liable for all obligations by Lessee until that time. Upon payment of any outstanding arrearages, Lessor shall release Lessee from any further obligations under said lease.

2. That as of this date the outstanding arrearages total $10,000.00.

3. In light of a dispute over improvement costs, Lessor hereby agrees to waive same.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized officers and their respective seals to be hereunto on this ___ day of January, 1991.

WITNESSES:

THE CITY OF DAYTON, OHIO
CITY MANAGER

gress

LESSOR

AGL Ltd.

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

APPROVED BY THE COMMISSION OF
THE CITY OF DAYTON, OHIO
19  Min.Dk.  Pg.
AMENDMENT TO AGREEMENT AND LEASE
COVERING THE OPERATION OF A CONFECTION SHOP AT THE
JAMES M. COX DAYTON INTERNATIONAL AIRPORT

It is hereby mutually agreed by the City of Dayton, Ohio, Lessor,
and C & C Concessions, Inc., as Lessee, that the certain lease agreement
dated June 10, 1981 be amended as follows:

1. That said lease agreement dated June 10, 1981, by and between
the City of Dayton and Boyd-Plane-Dalite Confection Shop, to
which C & C Concessions, Inc. has been assigned rights as
Lessee, shall terminate effective January 1, 1991. Lessee
shall be responsible for all rent payments due until that
time. Upon payment of any outstanding arrearages, Lessor
shall release Lessee from any further obligations under said
lease.

2. That said arrearages as of January 1, 1991 total $2,999.83.

This agreement is dated the __________ day of January, 1991.

WITNESSES:

______________

THE CITY OF DAYTON, OHIO
CITY MANAGER

______________

LESSOR

______________

C & C CONCESSIONS, INC.

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

APPROVED BY THE COMMISSION OF
THE CITY OF DAYTON, OHIO

19 Min.Bk. Pg.
June 12, 1997

Mr. James N. Paradies, Vice President
Paradies-Dayton, Inc.
5950 Fulton Industrial Boulevard, S.W.
Atlanta, GA 30336

Dear Mr. Paradies:

Enclosed please find your executed copy of Amendment #1 to the Agreement and Lease covering the operation of a Newsstand/Gift Shop Concession at the James M. Cox Dayton International Airport by and between the City of Dayton, Ohio and Paradies-Dayton, Inc.

We look forward to your developing a first-class Bookstore to complement your existing gift shop operation.

Please contact me or Ms. Elizabeth Davis should you have any questions.

Very truly yours,

[Signature]
Roy A. Williams
Director of Aviation

RAW/rjb

CC: Mr. Barry Young
    Ms. Robin Thomas
    Ms. Davis

Enclosure
AMENDMENT #1
TO THE
AGREEMENT AND LEASE
COVERING THE OPERATION
OF A
NEWSSTAND/GIFT SHOP CONCESSION
AT THE
JAMES M. COX DAYTON INTERNATIONAL AIRPORT
BY AND BETWEEN
THE CITY OF DAYTON, OHIO
AND
PARADIES-DAYTON, INC.

4/10/97
AMENDMENT #1 TO THE
AGREEMENT AND LEASE
WITH
PARADIES-DAYTON, INC.
AT THE
JAMES M. COX DAYTON INTERNATIONAL AIRPORT

THIS AMENDMENT, made and entered into this __ day of
May__, 1992, by and between the City of Dayton, Ohio
(the "LESSOR"), and Paradies-Dayton, Inc. a corporation organized and
existing under the laws of the State of Georgia and authorized to do
business in the State of Ohio, (the "LESSEE").

W I T N E S S E T H

WHEREAS, under the date of September 25, 1991, the City of Dayton
and The Paradies Shops, Inc. entered into an agreement and lease
covering the operation of retail newsstand(s)/gift shop(s) located in
the terminal building at the James M. Cox Dayton International
Airport; and

WHEREAS, Lessee's business operations at the Airport are now
known as Paradies-Dayton, Inc.; and

WHEREAS, all existing leases, agreements and amendments with the
Paradies Shops, Inc. are hereby understood to be with
Paradies-Dayton, Inc.; and

WHEREAS, the parties hereto now desire to amend said agreement
and lease to provide for a bookstore; and

WHEREAS, the adjustments as set forth herein have been mutually
agreed upon,

NOW, THEREFORE, in consideration of the mutual covenants and
agreements to be performed by the parties hereto; it is agreed that
the agreement and lease be amended as follows:

1. A copy of the Corporate Certificate for Paradies-Dayton, Inc. is
hereby incorporated as Appendix "B" and attached hereto.

2. ARTICLE I - LEASED PREMISES, Paragraph A., is hereby amended by
deleting it in its entirety and substituting the following:

   A. Lessor hereby leases to Lessee the Leased Premises
   consisting of 4,356 square feet, more or less, of space
   located in the passenger terminal building at the James M.
   Cox Dayton International Airport, and more specifically as
   shown on the attached Exhibit "A". All references to
   Exhibit "A", the Leased Premises or the Newsstand/Gift Shop
   throughout this lease shall be deemed to reference the
   spaces assigned to Lessee on the revised Exhibit "A" in this
   amendment.
3. All references to the "Museum Space" throughout this Amendment are deleted with no substitution.

4. **ARTICLE I - LEASED PREMISES**, Paragraph C., is hereby amended by deleting it in its entirety with no substitution.

5. **ARTICLE II - IMPROVEMENTS**, Paragraph C., is hereby amended by deleting it in its entirety and substituting the following:

   C. Lessee agrees to spend a minimum of One Hundred Fifty Dollars ($150.00) per square foot of sales area for leasehold and other improvements which include renovation of the area designated for the bookstore. Areas not used for sales to the public, including, but not limited to, office and storage spaces, would not be subject to the renovation requirement of One Hundred Fifty Dollars ($150.00) per square foot. Lessee's requirement for nonsales spaces would instead be any requirements to meet all building, fire and safety codes. Lessee has or will fully renovate all existing areas described in Exhibit "A".

   Lessee agrees spend no less than Fifty Dollars ($50.00) per square foot for each retail location at the midpoint between the date the location was renovated and October 31, 2013. Lessee will provide Lessor with a schedule of the renovation dates and the midpoint dates.

   Lessee may apply capital improvement costs made prior to the midpoint toward the Fifty Dollars ($50.00) per square foot expenditure requirement. Only the remaining undepreciated value of these improvements will apply toward the Fifty Dollars ($50.00) per square foot cost. All such improvements are assumed to be depreciable over seven (7) years.

6. **ARTICLE III - USE OF PREMISES**, Paragraph A., is hereby amended by adding the following section:

   3. **Bookstore**

   a. Lessee shall have the exclusive right and obligation to operate a bookstore in the Terminal Building on the Leased Premises as set forth in Article I of this Agreement. If Lessee leaves the bookstore premises vacant or closed for a period of ninety (90) days without the express written approval of Lessor, then Lessor has the right to terminate Lessee's tenancy of the bookstore and retake the Premises and all leasehold improvements. Lessee is granted approval to close the store for construction, renovation or repairs provided these activities are actively taking place.

   b. The bookstore shall carry no less than Two Hundred Fifty (250) titles, hardback and paperbacks, best
sellers, new releases, back list titles covering all significant categories such as fiction, nonfiction, business, trade, children's, travel and audio.

7. **ARTICLE IV - RIGHTS AND OBLIGATIONS OF LESSEE**, is hereby amended by adding the following:

   N. Lessee shall abide by Appendix "A" attached hereto.

8. **ARTICLE VI - TERM**, Paragraph A., is hereby amended by deleting it in its entirety and substituting the following:

   A. **Primary Term**: The Primary Term of this lease shall be for a period of twenty-two (22) years commencing on November 1, 1991 and terminating on October 31, 2013.

9. **ARTICLE VI - TERM**, Paragraph B., Option Term is hereby amended by deleting it in its entirety with no substitution.

10. **ARTICLE VII - RENTALS, MINIMUM GUARANTEES AND ACCOUNTING RECORDS**, Paragraph A., 2., shall be amended by renumbering it as Paragraph A., 3., and inserting the following new Paragraph A., 2.:

   2. **Category A - Required Items - Bookstore**: Lessee shall be required to offer for sale the items listed in Article III, A., 3b. from its bookstore in the Terminal Building.

THIS AMENDMENT #1 shall be deemed effective as of the first day of October, 1997. All other terms and conditions of said Agreement and Lease shall remain unchanged and in full force and effect except as modified herein.
IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by duly authorized officers and their respective seals to be hereunto affixed the day and year first above written.

WITNESSES:

Sue W. Janssen

Jessica Landis

THE CITY OF DAYTON, OHIO

First CITY MANAGER

William L. Hulbig

LESSOR

PARADIES-DAYTON, INC.

Charlene B. Yoho

LESSEE

VP

TITLE

APPROVED AS TO FORM, CORRECTNESS AND LEGAL SUFFICIENCY:

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

May 14, 1991

Min. Bk 1-5pg

Clerk of Commission
STATE OF OHIO, MONTGOMERY COUNTY, SS:

BE IT REMEMBERED that on the 30th day of March, 1997, before me a Notary Public in and for said county personally came The City of Dayton, Ohio by William L. Gillispie, its City Ass't. Manager, Lessor, one of the parties named in the foregoing Amendment and acknowledged the signing thereof to be its and his voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year first above written.

[Signature]
Notary Public

STATE OF Georgia, COUNTY OF Fulton, SS:

BE IT REMEMBERED that on the 17th day of April, 1997, before me a Notary Public in and for said county personally came Paradies-Dayton, Inc. by James W. Horrie, its Vice President, Lessee, one of the parties named in the foregoing Amendment and acknowledged the signing thereof to be its and his voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year first above written.

[Signature]
Notary Public

Notary Public, Coweta County, Georgia
My Commission Expires August 8, 1998
APPENDIX "A"

PLAN REVIEW AND CONSTRUCTION PROCEDURES

DAYTON INTERNATIONAL AIRPORT

CITY OF DAYTON

DEPARTMENT OF AVIATION

The City of Dayton requires all buildings constructed on land within the City's jurisdiction to meet certain building and fire codes. In addition, construction at the Dayton International Airport requires approval by Lessor's Director of Aviation or his/her designee for aesthetic and operational purposes which also include regulations promulgated by the Federal Aviation Administration (FAA) or its successor. The following are the general provisions concerning construction procedures.

General Provisions

City of Dayton regulations and requirements which concern building and fire codes, landlord/tenant policies and FAA regulations apply to any and all proposed construction, alteration, change of tenant, occupancy, sublease, or use on City of Dayton owned property at Dayton International Airport. Tenants, subtenants and their contractors shall obtain Department of Aviation approval prior to commencing any of the above referenced actions.

Customer Service

It is the desire of the Department of Aviation that tenants of the airport have one person to contact concerning any of the above issues. The airport telephone directory customer service easy reference list is updated and published yearly for your use. The airport general offices can be reached at 937-454-8200.

A partial list of airport contacts is provided below for construction plan review and lease matters:

1. Plans and Specifications - Mr. David A. Mason, P.E., Airport Engineer/Planning Coordinator, 4th Floor Terminal Building (Phone Number 937-454-8208).


Airport Requirements for Plan Review

1. Submit two (2) sets of plans and specifications to the Airport Engineer for review. This shall also include a
vicinity drawing, schedule, contact's name, address, and phone number.

2. Projects may require structural building permit, mechanical permit (HVAC, plumbing and electrical), Health Department permit, wastewater discharge permit, FAA approval, zoning permit, OEPAP approval, etc.

3. Tenant/contractor shall agree in writing to restore damaged areas. All work shall be in accordance with standards for that particular trade and skill. Liability and property damage insurance coverage shall be provided by tenant/contractor.

Airport Requirements for Construction

Prime Contractor shall contact the Airport Engineer with the following information:

1. Name of prime contractor, subcontractors, addresses, contacts, phone numbers during business hours and for emergency purposes.

2. Location and schedule of proposed work.

3. A pre-construction meeting may be required by either party.

4. The contractor shall call OUPS and contact the airport to have utilities marked.

5. Permits shall be obtained and posted and approved building plans shall be on site at all times.

6. Material alterations, additions, or deletions in the plans or specifications shall require review and approval by the Airport Engineer and/or the City of Dayton.

7. Safety procedures shall be clear, Airport Security (phone number: 937-454-8327) and Airport Operations (phone number 937-454-8231) shall both be contacted by the prime contractor at least 48 hours prior to construction.

8. Two (2) copies of the as-built drawings shall be provided to the Airport Engineer subsequent to the completion of the work or as requested by the airport.
The State of Ohio

Bob Taft

Secretary of State

FL826373

Certificate

It is hereby certified that the Secretary of State of Ohio has custody of the Records of Incorporation and Miscellaneous Filings; that said records show the filing and recording of: 95N of:

PARADIES-DAYTON, INC.

STATE OF INCORP:

TYPE OF LICENSE: 
EXPIRATION DATE: VALID UNTIL CANCELLED FOR FAILURE TO FILE REPORTS

United States of America
State of Ohio
Office of the Secretary of State

Recorded on Roll 5258 at Frame 0406 of
the Records of Incorporation and Miscellaneous Filings.

Witness my hand and the seal of the Secretary of State at
Columbus, Ohio, this 5TH day of APRIL,

[Signature]
Bob Taft
Secretary of State
March 31, 2003

Mr. Lou Bottino, Sr. Vice President
Paradies-Dayton, Inc.
5950 Fulton Industrial Blvd., SW
Atlanta, GA 30336

Dear Mr. Bottino:

Enclosed please find your executed copy of the Second Amendment to the Agreement for News/Gift Stores at the Dayton International Airport between the City of Dayton and Paradies-Dayton, Inc.

Please contact me or Ms. Elizabeth Davis should you have any questions.

Sincerely,

Eugene B. Conrad, Jr., A.A.E.
Director of Aviation

EBC/rjb

Enclosure
SECOND AMENDMENT TO AGREEMENT AND LEASE
WITH PARADIES-DAYTON, INC.

THIS SECOND AMENDMENT is made this 19th day of March, 2003, between the City of Dayton, Ohio ("Lessor") and Paradies-Dayton, Inc. ("Lessee").

On September 25, 1991, the Commission of the City of Dayton approved an Agreement and Lease for certain Premises at the James M. Cox Dayton International Airport ("Airport") between Lessor and Lessee ("Agreement"). On May 14, 1997, the Commission of the City of Dayton approved an "Amendment #1" to the Agreement, which amended the Premises, rentals and term of the Agreement.

The Lessee advised the Lessor that it will make approximately Three Hundred Fifty Thousand Dollars ($350,000) in improvements to its main concession area in the Airport Terminal Building to create a visually stimulating "CNBC" concept store. In consideration of Lessee’s significant investment, Lessor finds it advantageous to extend the term of the parties’ existing Agreement to allow for the amortization of the costs related to such improvements. In addition, Lessor and Lessee find it advantageous to have Lessee offer additional amenities to the travelling public including packaged foods and liquors not meant for consumption on the Premises and non-alcoholic beverages. Therefore, the parties agree to amend their existing Agreement as follows:

1. ARTICLE III – USE OF PREMISES, Paragraph C of the Agreement shall be deleted in its entirety and replaced by the following:

   C. Lessee may sell packaged foods and liquors not meant for consumption on the Premises. Lessee may sell packaged snack items from any of its locations and may sell cold, bottled or canned non-alcoholic beverages solely at its concourse locations. Sales permitted under this Paragraph C are non-exclusive.

2. ARTICLE VI – TERM, Paragraph A of the Agreement shall be deleted in its entirety and replaced by the following:

   A. **Primary Term:** The Primary Term of this Agreement shall be for the period commencing on November 1, 1991 and terminating on December 31, 2018.

3. ARTICLE II – IMPROVEMENTS, Paragraph C of the Agreement shall be deleted in its entirety and replaced by the following:

   C. Lessee agrees to expend the following amounts for leasehold improvements and renovations to the Premises:

   1. Not later than April 21, 1999, Lessee will invest Eight Hundred Thirty Two Thousand Five Hundred Dollars ($832,500) in
leasehold and other improvements to the news/gift concession space, including the renovation/improvement of the area designated for the bookstore.

2. Lessee shall invest Three Hundred Fifty Thousand Dollars ($350,000) to renovate the main news/gift retail area in the Terminal Building to create a “CNBC” concept store. Such improvement/renovation shall commence in calendar year 2003 and must be completed not later than December 31, 2004.

3. Prior to December 31, 2010, Lessee shall invest a minimum of $50.00 per square foot in leasehold improvement/renovations to the two retail news/gift areas located in the Terminal Building concourses (being concourses “B” and “C”).

4. Lessee shall provide an accounting of the expenditures as described in this subsection C, and any funds under the minimums specified herein and not expended by Lessee for the leasehold improvements and other renovations shall be paid to Lessor.

All other terms and conditions of the Agreement, as previously amended, shall remain in full force and effect, and shall remain unchanged.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, Lessor and Lessee have caused this Second Amendment to be executed by their duly authorized representatives as of the date set forth above.

WITNESSED BY: PARADIES-DAYTON, INC.

By: Lou Scattinin
Its: Sr VP

WITNESSED BY: CITY OF DAYTON, OHIO

Kathy Hill

City Manager

APPROVED AS TO FORM, CORRECTNESS AND LEGAL SUFFICIENCY:

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

MARCH 19, 2003

Min./Bk. Pg.

Clerk of the Commission
CITY OF DAYTON  
CITY MANAGER'S REPORT  

TO: City Manager  
FROM: Aviation  
Department/Division  

(Date)  
March 19, 2003  
Code  
51000-3212-23361-43  

Fund Title  
Aviation Operating  
Amount $  
19,983.70/year  

Payment to City  

Supplier/Vendor/Company/Individual:  
NAME  
Paradies-Dayton, Inc.  
ADDRESS  
5950 Fulton Industrial Bl., SW  
Atlanta, GA 30336  

Justification and description of purchase, contract or payment:  

Second Amendment to Agreement for News/Gift Stores at the Dayton International Airport  
Paradies operates the news/gift and bookstore at the Dayton International Airport. This amendment allows Paradies to sell cold, bottled beverages at its concourse locations in addition to previously permitted packaged foods and drinks.  
Paradies has already invested $832,500 in the renovation of the various shops at the Airport. Under this amendment, Paradies will renovate the main news/gift retail area to create a CNBC store. In return for an investment of $350,000 for this renovation plus an additional $50.00 per square foot in the concourse stores (estimated total investment of $42,200), the City will agree to extend the lease an additional 5 years and 2 months terminating on December 31, 2018.  
Over the term of this Agreement, a minimum of approximately $3,800,000 of revenue will be generated.  
A Certificate of Revenue is attached.  

Approved Affirmative Action Program on File  
Yes  
No  
NA  

Approved by City Commission  

Clinic E. Vancho  

Clerk  
March 19, 2003  

Division  

City Manager  

Date  

FORM NO. MS-16
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Paradies-Dayton, Inc.
Address 5950 Fulton Industrial Blvd. SW
City Atlanta State GA Zip+4 30336 -
Customer Number 1335 Address Location 1409

Revenue Information: Fund 51000 Organization 3212 Revenue 23361 Program 43

Contract Information: Contract Start Date 11/1/91 Contract Expiration Date 12/31/2018

Billing Information: Rate: $19,983.70 Arrears Pre-bill X
Monthly (1st month of billing) November
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)
Rate Change Date 12/1/03 Rate Change Amount To be Determined

Description of Services (wording on invoice):
1. Monthly Minimum Guarantee at the Dayton Intl. Airport (1-1335-1)
2. Percentage less Minimum Guarantee at Dayton Intl. Airport (1-1335-3)
(NOTE: There are no changes to any invoices)

Departmental Approval

TO BE COMPLETED BY THE DEPARTMENT OF FINANCE

Revenue Contract Number 1-1335-1 & -3 Auditor Am Date 3-10-03

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance
April 29, 2011

Ms. Charlene Yde
The Paradies Shops
5950 Fulton Industrial Boulevard, SW
Atlanta, GA 30336

Dear Charlene:

Enclosed is an executed copy of the First Amendment to Amended and Restated Master lease and Concession Agreement between the City of Dayton and Paradies –Dayton, Inc. If you have any questions, please call me at 454-8207.

Sincerely,

[Signature]

Beth Vincent
Acting Airport Properties Manager

Encls.
FIRST AMENDMENT TO
AMENDED AND RESTATED MASTER LEASE AND CONCESSION AGREEMENT
(Paradies-Dayton, Inc.)

THIS FIRST AMENDMENT is dated this 24th day of April, 2011 between the City of Dayton, Ohio ("City") and Paradies-Dayton, Inc. ("Concessionaire").

On October 8, 2008, the Commission of the City of Dayton approved an Amended and Restated Master Lease and Concession Agreement with Concessionaire (the "Agreement") for the news, gift and specialty retail businesses at the Dayton International Airport ("Airport").

City has provided Concessionaire with certain storage areas which the parties agree to incorporate into the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants, and the benefits to be derived by each party, City and Concessionaire agree to amend the Agreement as follows:

1. EXHIBIT D, is deleted in its entirety and replaced with the Exhibits D-1, D-2, D-3 and D-4 attached hereto and incorporated herein.

2. Except as amended hereby, all other terms and conditions of the Agreement shall remain in full force and effect and shall remain unchanged.

IN WITNESS WHEREOF, the City and Concessionaire, each by a duly authorized representative, have executed this First Amendment as of the date first above written.

CONCESSIONAIRE:

PARADIES-DAYTON, INC.

By: Charlene Yde

Printed Name: Charlene Yde

Title: Regional Vice President

CITY:

CITY OF DAYTON, OHIO

By: 

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

**No Commission Action Required
PARADIES SUPPORT SPACE 182 +/- SF

C Concourse
AMENDED AND RESTATE MASTER LEASE
AND CONCESSION AGREEMENT

BY AND BETWEEN

CITY OF DAYTON, OHIO

AND

PARADIES-DAYTON, INC.

DATED AS OF __________, 2008
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## ARTICLE I

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AMENDED AND RESTATED MASTER LEASE
AND CONCESSION AGREEMENT

THIS AMENDED AND RESTATED MASTER LEASE AND CONCESSION AGREEMENT (the “Agreement”) is made and entered into as of this ___ day of __________, 2008 (the “Effective Date”), by and between CITY OF DAYTON, OHIO, a municipal corporation existing under the laws of the State of Ohio (the “City”), and PARADIES-DAYTON, INC., a Georgia corporation authorized to do business in the State of Ohio (the “Concessionaire”), and successor-in-interest to Paradies-Dayton, LLC.

WITNESSETH:

WHEREAS, City is the owner and operator of the James M. Cox Dayton International Airport located in Montgomery County, Ohio and Miami County, Ohio (the “Airport”) and, in connection with its operation of the Airport, City leases space within the Terminal (as defined herein) and grants concession rights for the operation of news, gifts and specialty retail businesses within such space; and

WHEREAS, City and Concessionaire previously entered into the Original Concession Agreement (as defined herein), under which City presently leases to Concessionaire space within the Terminal for the purpose of operating news, gifts and specialty retail businesses at designated Concession Locations (as defined herein), subject to the terms and provisions of the Original Concession Agreement (as defined herein); and

WHEREAS, City and Concessionaire have agreed to amend and restate the Original Concession Agreement on the terms set forth herein;

NOW, THEREFORE, for and in consideration of the covenants of City and Concessionaire contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Concessionaire hereby agree to amend and restate the Original Concession Agreement as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. In addition to terms defined elsewhere in this Agreement, the following words and phrases are defined as follows (such definitions to be applicable equally to singular and plural nouns and verbs of any tense):

“Additional Rent” means all costs and expenses that Concessionaire assumes or is obligated to pay under any provision of this Agreement in addition to Periodic Rent.

“Affiliate” means, with respect to any Person, (i) any Person who controls, is controlled by or is under common control with such Person; (ii) any Person who is a manager, director or officer of, partner in, trustee of, or blood or legal relative living in the same household, guardian or representative of, the specified Person, or any Person who acts or serves in a similar capacity with respect to the specified Person; (iii) any Person of which or whom the specified Person is a manager, director or officer, partner, trustee or blood or legal relative living in the same
household, guardian or representative, or with respect to which or whom the specified Person acts or serves in a similar capacity; (iv) any Person, who, directly or indirectly, is the legal or beneficial owner of or controls ten percent (10%) or more of the equity ownership interests of the specified Person; and (v) any Person who is an Affiliate as defined in the preceding clauses (i), (ii), (iii) or (iv) of an Affiliate of the specified Person.

“Air Transportation Company” means a company engaged in the business of scheduled or non-scheduled commercial transportation by air at the Airport.

“Aircraft” has the meaning assigned thereto in Section 24.27 hereof.

“Airport Security Plan” means a program developed by City for the maintenance of the safety and security of the Airport and Persons using the Terminal or any other portion of the Airport premises, as it may be amended, modified or revised by City from time to time. The Airport Security Plan is a part of the Rules and Regulations.

“Applicable Laws” means all present and future applicable laws, ordinances, orders, directives, rules, codes and regulations of all Governmental Authorities and all present and future grant assurances provided by City to any Governmental Authority in connection with City’s ownership or operation of the Airport, as the same may be amended, modified or updated from time to time, applicable decisional law (including, without limitation, judicial or administrative interpretations, orders and judgments) and the Rules and Regulations.

“Architect/Engineer” means the licensed firm or firms engaged by Concessionaire or other Concession Operator from time to time, and approved by City, to design and prepare the plans and specifications for improvements to the Premises.

“Assistant Concession Manager” means the natural person employed by Concessionaire to assist the Concession Manager with managing and overseeing the day-to-day management of Concession Operations, as further described in Section 3.3 hereof. Upon written request of Concessionaire and upon receipt of advance approval by City, Concessionaire may designate a supervisor and/or team leader to perform the duties and functions of an Assistant Concession Manager. City may rescind this approval at any time upon sixty (60) days prior notice to Concessionaire.

“Auto Coverage” has the meaning assigned thereto in Section 14.3 hereof.

“Base Building Work” means the sub-floor, structural elements, demising walls at the exterior of a Concession Location, utilities infrastructure and other base building improvements, structures and fixtures that City installs within the Concession Locations.

“Bookstore” means a type of Concession Operation that specializes in the sale of books (hard cover, paperback and audio) and other tangible media materials.

“CGL Coverage” has the meaning assigned thereto in Section 14.1 hereof.

“Capital Improvements” means the improvements, structures and fixtures installed by Concessionaire and/or any Concession Operator in the Premises, including, without limitation,
finish-out work on floors, ceilings, demising walls and store facades; storefront signage; panel boxes and hook-ups to utilities; wires and conduits infrastructure; decorations; furniture; equipment; shelves; counters; cash wraps; lighting; and interior design and construction work necessary in general to accommodate the Concession Operations.

“City-Financed Improvements” means Capital Improvements the cost of which is paid by City, or reimbursed to Concessionaire by City, pursuant to Section 9.2 hereof.

“Common Area” means each area within the Terminal that is accessible to the public and not subject to exclusive occupancy by a tenant of the Terminal under a lease with City, including, without limitation, any common corridor, hall, passageway, walkway, entrance, exit, aisle, stairway, elevator, escalator, seating or waiting area and restroom.

“Concession Location” means each of the concession areas as described and identified in Exhibit A attached hereto and incorporated herein, and located within the Premises. A specific Concession Location is referenced in this Agreement by the identification number assigned to such Concession Location in Exhibit A hereto.

“Concession Manager” means the natural person employed by Concessionaire to manage the day-to-day Concession Operations, as further described in Section 3.3 hereof.

“Concession Operator” means each of Concessionaire, in its capacity as an operator of a Concession Location, a Sublessee and any other Person that conducts Concession Operations pursuant to rights granted in this Agreement.

“Concession Operations” means the operation of one or more news, gifts and/or specialty retail businesses within the Premises pursuant to rights granted in this Agreement.

“Concession Program” means the Interim Concession Program and the Permanent Concession Program, collectively.

“Concessionaire Insurance Requirements” means the requirements for the maintenance of the Insurance Coverages set forth in Article XIV hereof.

“Concessionaire’s Share” shall the meaning assigned thereto in Section 13.2 hereof.

“Concourse” means each of the areas of the Terminal known as Concourse B and Concourse C and so designated in Exhibit C attached hereto and incorporated herein.

“Construction Costs” means the amounts that Concessionaire and the Concession Operators spend on the construction and installation of Capital Improvements to the Premises, with the approval of City, as provided herein.

“Construction Schedule” means the timetable submitted by Concessionaire and approved by City for the construction and installation of the Capital Improvements.
“Construction Period” means the period commencing on the Effective Date and expiring on the earlier of (i) the date on which the Construction Period Capital Improvements are completed as certified to City by the Architect/Engineer or (ii) March 31, 2009.

“Construction Period Capital Improvements” means the Capital Improvements to the Concession Locations described in Exhibit B attached hereto and incorporated herein.

“Construction Representative” means a Person retained by Concessionaire to manage construction and renovation activities within the Premises by Concessionaire and the Concession Operators.

“Construction Permit” means an authorizing document permitting certain construction work to be performed within specified portions of the Premises in accordance with the terms thereof.

“DBE” means a business entity, whether a sole proprietorship, partnership, corporation or other entity, of which at least fifty-one percent (51%) of the ownership thereof is owned and controlled by a “socially and economically disadvantaged individual” as such term is defined in the Airport and Airways Improvement Act of 1982, as amended, and the regulations promulgated pursuant thereto in 49 C.F.R. Part 23, as amended. To qualify as a DBE, a business entity must meet the experience and economic guidelines for an “Airport Concession Disadvantaged Business Enterprise” set forth in 49 C.F.R. Part 23, as amended, and must be certified by City as a DBE.

“Day” means a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

“Depreciation Schedule” means a schedule reflecting the monthly depreciation of the costs for Capital Improvements (excluding City-Financed Improvements) made by Concessionaire or a Concession Operator in or to the Premises, which schedule is subject to approval by City and shall reflect depreciation on a straight-line basis of the property described therein over the portion of the Term remaining at the time City provides such approval. Any schedule submitted for this purpose shall not be deemed a “Depreciation Schedule” until City has approved it.

“EPA” means the United States Environmental Protection Agency, and any successor agency, office or department thereto.

“Eligible Costs” means the following: (i) Construction Costs; (ii) architectural and engineering fees, construction management fees and the cost to obtain applicable permits (which amounts under this item (ii) shall not exceed fifteen percent (15%) of the contracted Construction Costs, unless otherwise approved by City in writing); and (iii) the cost of permanent fixtures. Notwithstanding the foregoing, the definition of “Eligible Costs” shall not include: (a) costs for Base Building Work incurred by City; (b) costs in excess of one hundred twenty-five percent (125%) of the estimated cost of Capital Improvements provided by Concessionaire to and approved in writing by City at the time preliminary approval is sought unless otherwise specifically approved by City in writing; (c) any overhead, financing costs (e.g., loan origination fees or interest, points, legal fees or any non-construction-related costs) in connection with such
Capital Improvements; or (d) amounts paid to any Affiliate of Concessionaire or a Concession Operator, unless otherwise specifically approved by City in writing. In addition, a cost or expenditure shall not qualify as an “Eligible Cost” unless Concessionaire submits to City documentary evidence of the payment thereof, as described in Section 9.5 hereof.

“Enplaned Passenger” means any passenger, except the flight crew, boarding an Aircraft at the Airport, even if such passenger previously disembarked from another Aircraft of the same or a different Air Transportation Company.


“Event of Default” has the meaning assigned thereto in Section 18.1 hereof.

“Federal Aviation Act” means the Federal Aviation Act of 1958, as amended.

“FAA” means the United States Federal Aviation Administration, and any successor agency, office or department thereto.

“First Class Manner” means the manner of operation of business within the Premises for which the standards for cleanliness and customer service meet those of upscale malls and similar high quality airport and non-airport news, gifts and/or specialty retail business facilities.

“Force Majeure” means any strike, boycott, labor dispute, embargo, shortage of material, act of God, act of the public enemy, act of superior Governmental Authority (other than City), weather conditions, riot, rebellion, sabotage terrorism or any other circumstances for which the affected party is not responsible or which is not within its control and that prevents the affected party from performing any obligation hereunder.

“GAAP” means the conventions, rules and procedures that define approved accounting practices at a particular time issued by the Financial Accounting Standards Board for use by accountants in preparing financial statements and include not only broad guidelines of general application but also detailed practices and procedures.

“Governmental Authority” means each federal, state and municipal government, authority and agency and its respective agencies, departments, authorities and commissions. “Governmental Authority” shall specifically include, without limitation, City, the State of Ohio, the United States Department of Transportation, the FAA and the TSA.
“Gross Receipts” means all monies paid or payable, whether in cash, credit or otherwise, for sales made or services rendered at or from a Concession Location regardless of when or where the order therefor is received, or outside such Concession Location if the order is received at the Airport, including, without limitation:

(a) Proceeds from the sale of gift and merchandise certificates (but only when such certificates are treated as a sale from the Concession Location pursuant to the applicable Concession Operator’s record-keeping system);

(b) Mail order sales arising out of preliminary contacts made at Airport facilities;

(c) Catalog sales (catalogs displayed in a Concession Location must include a tracking number unique to the Concession Location that allows for an auditable method for tracking such sales);

(d) Computer/Internet sales for delivery at the Airport or when merchandise to fill such orders is taken from Airport locations;

(e) Other electronic or telephone orders received or filled by a Concession Operator at the Airport;

(f) Deposits not refunded to purchasers;

(g) Orders taken within a Concession Location (although such orders may be filled elsewhere);

(h) Sales through vending machines or other devices located within the Concession Locations; and

(i) All insurance proceeds received due to loss of gross earnings under any business interruption insurance coverage maintained by a Concession Operator.

A “sale” shall be treated as consummated, and a service shall be deemed rendered, for the purposes of this definition, and the entire amount of the sales price shall be included in “Gross Receipts” and deemed received, at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise, and not at the time of payment. No deduction shall be allowed for uncollected or uncollectible credit accounts or checks returned for insufficient funds. “Gross Receipts” shall not include:

A. Any sums collected for any federal, state, county or municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of merchandise or services, but only if separately stated from the sales price and only to the extent paid by a Concession Operator to any duly constituted Governmental Authority;

B. The exchange of merchandise between the stores or warehouses owned by or affiliated with a Concession Operator, if any, where such exchanges of goods or merchandise are made solely for the convenient operation of the business of such Concession Operator and not
for the purpose of consummating a sale which has theretofore been made at, in, from or upon a
Concession Location nor for the purpose of decreasing payments otherwise due to City
hereunder which otherwise would be made at, in, from or upon a Concession Location;

C. The amount of any cash or credit refund made upon any sale where the
merchandise sold, or some part thereof, is thereafter returned by a purchaser and accepted by the
Concession Operator to which it is returned;

D. Sales of fixtures, equipment or other items of property that are not stock in trade
and not sold in the ordinary course of the business of the selling Concession Operator;

E. Any receipts of a Concession Operator that arise from its operations under any
other contract with City and are subject to a percentage fee or percentage rent under such other
contract;

F. Shipping and delivery charges if provided at the cost of such shipping or delivery
and such services are merely an accommodation to customers;

G. Receipts in the form of refunds from, or the value of merchandise, services,
supplies or equipment returned to, a vendor, shipper, supplier or manufacturer, including volume
discounts received from a vendor, supplier or manufacturer or a Concession Operator;

H. Customary discounts given by a Concession Operator on sales of merchandise or
services to its own employees, if separately stated and limited in total amount to not more than
one percent (1%) of its Gross Receipts per month, unless otherwise agreed by City;

I. Discounts, if separately stated, given by a Concession Operator on sales of
merchandise or services to employees of City, other Air Transportation Company lessees in the
Terminal, and other natural persons employed at the Airport who are in possession of a valid
identification badge issued by City or an Air Transportation Company;

J. Gratuities for services performed by employees of a Concession Operator that are
paid by such Concession Operator or its customers to such employees, except to the extent such
Concession Operator may be entitled to receive a portion of such gratuities;

K. The sale or transfer in bulk of the inventory of a Concession Operator to a
purchaser of all or substantially all of the assets of such Concession Operator in a transaction not
in the ordinary course of business of the selling Concession Operator;

L. Amounts given as discounts to customers redeeming coupons issued by a
Concession Operator; and

M. Except with respect to insurance proceeds received due to loss of gross earnings
under any business interruption insurance coverage as provided above and/or insurance proceeds
that may be payable to City under such coverage, receipts from all other insurance proceeds
received by a Concession Operator as a result of a loss or casualty.
“Hazardous Materials” means and includes any and all substances, materials, wastes, pollutants, oils or governmentally regulated substances or contaminants defined or designated as hazardous, toxic, radioactive, dangerous or any other similar term in or under any of the Environmental Laws, including, without limitation, asbestos and asbestos-containing materials, petroleum products (such as crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents), urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, and any other substance that, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, distributed, disposed or released.

“Indemnified Parties” means City and its elected officials, officers, employees, agents, servants, representatives, contractors, subcontractors, Affiliates, successors and assigns.

“Insurance Coverages” has the meaning assigned thereto in Section 14.5 hereof.

“Interim Concession Program” means the concession and construction program as prepared by Concessionaire in accordance with Section 3.4(a) hereof and approved by City, and as modified from time to time, for the operation and development of Concession Operations during the Construction Period.

“Kiosk” means a site within the Premises that is a mobile or non-mobile, free-standing temporary facility not affixed to the Terminal, whether completely free-standing or located against the wall, which is used as a selling location for merchandise or services during the Construction Period.

“Landside” means all parts of the Terminal not located within the Non-Public Area or the Secured Area.

“Lease Year” means each twelve (12) calendar month period commencing on January 1 of each calendar year and ending on December 31 of each calendar year.

“MAG” means the minimum amount payable by Concessionaire to City as Periodic Rent for the Premises during the Term as set forth herein. The MAG shall equal the greater of the following amounts per Lease Year: (i) Three Hundred Thousand and No/100 Dollars ($300,000.00) or (ii) eighty-five percent (85%) of the aggregate Periodic Rent due hereunder for the immediately preceding Lease Year.

“Midterm Renovations” means Capital Improvements to the Concession Locations to be completed in accordance with Section 9.8 hereof.

“Minimum Rating” means a rating (if A.M. Best Company is the Rating Service) of A-(Financial Size: X) based upon the criteria for financial strength and financial size ratings utilized by A.M. Best Company on the date of this Agreement, or such equivalent rating (if A.M. Best Company is not the Rating Service or if A.M. Best Company subsequently revises its criteria for financial strength and financial size ratings) as determined by City.
“News & Conveniences” means a type of Concession Operation that specializes in the sale of newspapers, magazines, paperback books, gum, candies, pre-packaged snack foods, bottled water and other non-alcoholic beverages, greeting cards, non-prescription drugs and convenience/sundry items.

“Non-Public Area” means the non-public areas of the Terminal before the passenger security checkpoints to which an individual does not have access without either a Non-Public Identification Badge or a Secured Area Identification Badge.

“Non-Public Area Identification Badge” means the identification badge as may be required by City and issued by City to an individual for access to the Non-Public Area only.

“Operating Expenses” means all costs incurred by all Concession Operators in day-to-day Concession Operations.

“Original Concession Agreement” means the Agreement and Lease Covering the Operation of a Newsstand/Gift Shop Concession at the James M. Cox Dayton International Airport, dated September 25, 1991, by and between City and The Paradies Shops, Inc., as amended by the Amendment #1 to the Agreement and Lease Covering the Operation of a Newsstand/Gift Shop Concession at the James M. Cox Dayton International Airport, dated May 14, 1997, by and between City and Concessionaire, and by the Second Amendment to Agreement and Lease with Paradies-Dayton, Inc., dated March 19, 2003, by and between City and Concessionaire.

“PC Coverage” has the meaning assigned thereto in Section 14.2 hereof.

“Periodic Rent” means the periodic payments due from Concessionaire to City as described in Section 4.1 hereof.

“Permanent Concession Program” means the concession program prepared by Concessionaire in accordance with Section 3.4(b) hereof and approved by City, and as modified from time to time, for the operation of the Concession Locations after the expiration of the Construction Period.

“Person” means any natural person, corporation, partnership, limited liability company, trust, association, firm, entity or Governmental Authority.

“Personal Property Taxes” means any form of personal property taxes and other governmental charges or impositions of any kind, including, without limitation, ad valorem taxes, special assessments and liens for public improvements, that are levied, assessed or imposed against personal property by any Governmental Authority having the direct or indirect power to tax.

“Plans” means the completed set of architectural working plans, drawings and specifications and engineering drawings and specifications prepared by Concessionaire’s Architect/Engineer of record for the construction and installation of Capital Improvements.
“Point of Sale Data” means sales data reflecting the amount of each sales transaction, items sold per transaction, time and date of the transaction and the sales category applicable to each item sold.

“Premises” has the meaning assigned thereto in Section 2.1 hereof.

“Price Comparison Location” means, as to a good, product or service offered at a Concession Location, an off-Airport location offering the same or a comparable good, product or service, determined as follows:

(a) If an entity of the same business, franchise or trade name as such Concession Location operates at one or more non-Airport locations within the greater Dayton, Ohio metropolitan area, the Price Comparison Location shall mean such non-Airport location designated by Concessionaire and approved by City; or

(b) If an entity of the same business, franchise or trade name as such Concession Location does not operate within the greater Dayton, Ohio metropolitan area, Concessionaire shall propose to City a comparable location closest to the greater Dayton, Ohio metropolitan area, which City shall review and, if approved by City, such location shall be the Price Comparison Location.

A request for a change to the Price Comparison Location for a particular good, product or service shall be provided to City for its approval and shall become effective only upon receipt of City’s approval.

“Rating Service” means A.M. Best Company, or, if A.M. Best Company no longer exists or discontinues its rating of insurance companies, such alternative rating service for insurance companies as determined by City.

“Reasonable Pricing” shall have the meaning set forth in Section 7.1 hereof.

“Real Property Taxes” means any form of real property taxes and other governmental charges or impositions of any kind, including, without limitation, ad valorem taxes, special assessments and liens for public improvements, that are levied, assessed or imposed against real property or real property interests by any Governmental Authority.

“Releasing Parties” has the meaning assigned thereto in Section 24.27 hereof.

“Rent” means the Periodic Rent, the Additional Rent and any other charges due from Concessionaire to City hereunder.

“Report” shall have the meaning assigned thereto in Section 13.2 hereof.

“Rules and Regulations” means those rules, procedures and regulations promulgated by City from time to time for the orderly use of the Airport, as the same may be amended, modified or supplemented from time to time, and including, without limitation, the Airport Security Plan.
“Secured Area” means all non-public areas of the Airport beyond the passenger security checkpoint, including the designated “SIDA” and the “AOA”, as these terms are defined in 49 C.F.R. Part 1542, as amended or replaced from time to time, and the Airport Security Program, to which an individual does not have access without a Secured Area Identification Badge.

“Secured Area Identification Badge” means the Airport’s security identification badge required by City and issued by City to an individual for access to the Non-Public Area and the Secured Area.

“Specialty Retail” means a type of Concession Operation that specializes in the sale of a particular category of consumer products such as clothing, sporting goods, electronics, travel accessories, leather goods and luggage and all personal and home accessories.

“Sublease” means a lease executed by Concessionaire and a Sublessee and approved by City by which Concessionaire subleases to such Sublessee one or more Concession Locations and any of the Support Space for a specified term.

“Sublessee” means any person or entity that is party to a Sublease with Concessionaire and has the right thereunder to occupy a Concession Location and any of the Support Space and to use other portions of the Premises for Concession Operations as provided under its Sublease.

“Sublease Rents” means the amounts paid by all Sublessees to Concessionaire under Subleases.

“Support Space” means the areas within the Premises as may be approved from time to time by City for use by Concession Operators for storage, as described in Section 3.15 hereof.

“TSA” means the United States Transportation Security Administration, and any successor agency, office or department thereof.

“Taxes” means (i) Personal Property Taxes, (ii) Real Property Taxes and (iii) any amounts assessed against the Premises or any property of Concessionaire or a Concession Operator by any Governmental Authority if, at any time during the Term, the present method of taxation shall be changed so that, in lieu of the whole or any part of any Personal Property Taxes or Real Property Taxes levied, assessed or imposed on the Premises or any property of Concessionaire or a Concession Operator, there shall be levied, assessed or imposed a capital levy or other tax directly on the Rent and/or any assessment, levy or charge measured by or based in whole or in part upon the Rent.

“Term” means the period that commenced under the Original Concession Agreement on November 1, 1991, and continues through December 31, 2018, unless sooner terminated in accordance with the terms and provisions of this Agreement.

“Terminal” means the interconnected facilities at the Airport, existing or under construction as of the date of this Agreement, known individually as Concourse B and Concourse C, along with all user movement areas, public areas and baggage claim areas therein and interconnecting the facilities, as shown in Exhibit C hereto, and all future expansions thereto.
“WC Coverage” has the meaning assigned thereto in Section 14.4 hereof.

ARTICLE II
DEMISE OF PREMISES

Section 2.1 Demise of Premises. Subject to the terms and provisions of this Agreement, City hereby leases to Concessionaire for the Term, and Concessionaire hereby leases and rents from City, the following (collectively, the “Premises”): (i) the Concession Locations, (ii) the Support Space (subject to the terms of Section 3.15 hereof), and (iii) the non-exclusive right and privilege, for the benefit of Concessionaire and the Concession Operators and their respective employees, guests, patrons, invitees, suppliers and other authorized individuals, to use the Common Areas in common with other tenants and occupants of the Terminal during the Term and to use the Airport roadways as they may exist from time to time, including common use roadways, for ingress to and egress from the Premises, subject to Applicable Laws.

Section 2.2 Concession Locations. Each of the Concession Locations identified below and as shown on Exhibit A hereto is leased to Concessionaire as of the Effective Date; provided, however, that Concessionaire shall have no right to use, possess or occupy a Concession Location (or a portion thereof not presently occupied under the Original Concession Agreement by Concessionaire on the Effective Date) until City permits Concessionaire (or a Concession Operator) to send construction workers therein to commence the construction of the Construction Period Capital Improvements therein in accordance with the terms and provisions of this Agreement:

<table>
<thead>
<tr>
<th>Concession Location</th>
<th>Approximate Square Footage</th>
</tr>
</thead>
<tbody>
<tr>
<td>PS-2</td>
<td>340 sq. ft.</td>
</tr>
<tr>
<td>M-5</td>
<td>1255 sq. ft.</td>
</tr>
<tr>
<td>M-6</td>
<td>1226 sq. ft.</td>
</tr>
<tr>
<td>B-2</td>
<td>1470 sq. ft.</td>
</tr>
<tr>
<td>C-2</td>
<td>1000 sq. ft.</td>
</tr>
</tbody>
</table>

Concessionaire shall move as expeditiously as possible in the development, renovation and construction of Construction Period Capital Improvements within the Concession Locations; provided, however, that City recognizes that, during the Construction Period, it may be necessary for Concessionaire and the Concession Operators to utilize a program of temporary Kiosks to provide adequate levels of customer service to Airport users in accordance with Concessionaire’s Interim Concession Program. Sizes of Concession Locations set forth above and shown on Exhibit A hereto are approximate. Concessionaire is responsible for the coordination, design and completion of such Concession Locations with the Capital Improvements. Without the prior written consent of City, not more than five percent (5.0%) of a Concession Location may be used for storage, office or non-revenue generating functions.

Section 2.3 Changes to Premises. This Agreement shall be supplemented to reflect any additions, deletions or modifications to the Premises. Any deletion to the Premises under this Section 2.3 shall not affect Concessionaire’s payment obligations under this Agreement.
For any addition to the Premises under this **Section 2.3** resulting in an increase of fifteen percent (15%) or greater in the total square footage of the Concession Locations, the MAG will be increased in proportion to the amount of such percentage increase.

**Section 2.4  Airport Required Deletion or Reduction.** City reserves the right, in its sole discretion, to delete or reduce any of the Concession Locations or the Support Space due to Airport development/construction, operational necessity, security or safety considerations. In the event of any such deletion or reduction under this **Section 2.4**, Concessionaire shall be given no less than thirty (30) days’ prior notice unless circumstances beyond the control of City occur (e.g., because of a direct or indirect requirement of the TSA or other Governmental Authority). City will attempt to provide reasonably comparable space for relocation within the Terminal but City has no obligation to make any such comparable space available. City agrees to reimburse Concessionaire for the reasonable and proper moving costs (from a Concession Location only) of movable furniture, equipment, appliances, carpeting, decorations, special finishing work, signs, trade fixtures and other items. In addition, City agrees to reimburse Concessionaire for the un-depreciated value of the Capital Improvements (excluding City-Financed Improvements) that are not replaced or relocated, based upon the Depreciation Schedule therefor. For purposes of this **Section 2.4**, “reasonable and proper moving costs” means the moving of furniture, equipment, appliances, carpeting, decorations, signs, trade fixtures and other items into the new comparable space, moving and reinstalling telephone lines and computer equipment and connections, and reasonable expenses associated with reinstalling electrical connections and other utilities (if any). If a modification to the Common Areas renders a Concession Location no longer commercially viable for the Concession Operator conducting Concession Operations within such Concession Location, as determined by City based on information to be provided by Concessionaire, then City will reimburse Concessionaire for the remaining un-depreciated portion of the affected Capital Improvements within such Concession Location (excluding City-Financed Improvements) based upon the Depreciation Schedule therefor. If City exercises its right to delete or reduce space from the Premises, the portion of the Premises to be reduced shall cease to be leased to Concessionaire and shall no longer be subject to the terms and provisions of this Agreement. In addition, if City requires deletion or reduction of the Premises, City shall not be liable to Concessionaire or any Concession Operator for any damages, including, without limitation, damages for any inconvenience or loss of business as a result of the deletion or reduction of any Premises, except for the reimbursement of the un-depreciated cost of Capital Improvements (excluding City-Financed Improvements) as expressly set forth in this **Section 2.4**. If any deletion or reduction of the Premises under this **Section 2.4** results in a reduction of greater than fifteen percent (15%) of the total square footage of the Concession Locations leased to Concessionaire, then the MAG will be decreased in proportion to the amount of such percentage reduction until space of similar square footage is provided by City to Concessionaire for use in or as one or more Concession Locations.

**Section 2.5  Concession Numbering.** Concessionaire shall assign to each business conducting Concession Operations a unique concept number for the purpose of tracking its productivity, and such unit number will follow such business regardless of where it is located within the Terminal. If a Concession Operator has Concession Operations within multiple Concession Locations, the business conducted within each Concession Location shall receive a separate number, regardless of whether one or more such businesses are operated by the same Concession Operator or under the same name, gift or specialty retail concept.
ARTICLE III
CONCESSIONAIRE’S OBLIGATIONS

Section 3.1 General Operational Standards. Concessionaire shall develop the Concession Locations and manage the Concession Operations so as to provide high quality, customer service-oriented news, gift and/or specialty retail concessions within the Premises to accommodate the traveling public and other Airport users. Development and management of the Concession Locations shall be the responsibility of Concessionaire, notwithstanding the execution of one or more Subleases with respect to Concession Locations in accordance with the terms and provisions of this Agreement.

Section 3.2 Concession Management. Concessionaire shall perform the following duties, subject to the terms and provisions of this Agreement:

(a) Prepare the Plans as required in Section 9.1 hereof;

(b) Coordinate its subleasing activities with City and submit each proposed Sublease and supporting documentation therefor to City at least forty-five (45) days prior to the date on which the proposed Sublessee thereunder proposes to commence the construction and renovation of the Concession Location that is the subject of such proposed Sublease. No construction or renovation of a subleased Concession Location may commence until at least ten (10) days after the Sublease for such Concession Location has been approved by City. The term of any Sublease may not extend beyond the expiration of the Term;

(c) Bill and collect all amounts payable by Sublessees under Subleases;

(d) Pay all Operating Expenses required under this Agreement;

(e) Select, engage, employ, pay, supervise, direct and discharge all employees or independent contractors reasonably necessary or appropriate for the proper and safe operation and maintenance of the Premises; satisfy the Concessionaire Insurance Requirements; and use reasonable care in the selection, supervision and discharge of Concessionaire’s employees and independent contractors;

(f) Comply with all Applicable Laws, including, without limitation, Applicable Laws providing for the fair and non-discriminatory hiring, promotion and treatment of all employees, and monitor and enforce compliance with such Applicable Laws by Concession Operators;

(g) Cause Concession Operations within any Concession Location that becomes vacant to be recommenced within forty-eight (48) hours after the discontinuance of such Concession Operations, either directly by Concessionaire or another Concession Operator, regardless of the cause of the vacancy;

(h) Monitor the sales activity, pricing, customer service, hours of operation, merchandise and sales reporting of Concession Operators;
(i) Ensure and oversee compliance by Concession Operators with First Class Manner maintenance and performance standards;

(j) Cooperate with City in the event of the failure of any Concession Operator to meet performance standards to be established by City;

(k) Remain current with all trends in Airport news, gift and/or specialty retail concession operations and provide to City an annual update regarding recent trends or developments in Airport news, gift and/or specialty retail concession operations;

(l) Direct, coordinate and monitor procedures and practices for deliveries of goods, products, materials, equipment and supplies to Concessionaire or any Concession Operator from any designated on- or off-Airport loading or storage area. All deliveries to Concession Locations that are not located on the Landside will be completed, unless otherwise agreed by City, from the Secured Area through Non-Public Area, and the persons and vehicles making deliveries to Concession Locations must have all applicable clearances and approvals from Governmental Authorities and must comply with all Airport and TSA security requirements to complete deliveries in this manner;

(m) Provide quality control audits and reports covering compliance with the requirements of this Agreement, the cleanliness of the Premises, the timeliness of service within the Concession Locations, and the quality of the products served or provided in the Concession Locations;

(n) Collect and dispose of all concession-related refuse and garbage in City-approved dumpsters and compactor(s);

(o) Maintain and develop, and cause each of the Concession Operators to maintain and develop, programs to increase the business conducted within each Concession Location(s) in which it conducts Concession Operations. All Concession Locations shall be operated: (i) in a First Class Manner seven (7) days a week, every day of the year (unless otherwise agreed by City or prevented by Force Majeure) and during the hours specified in Section 3.5 hereof; (ii) in accordance with the terms and provisions of this Agreement and Applicable Laws; and (iii) in a manner otherwise consistent with the requirements prescribed by City in accordance with City’s own determination of its operational needs within the Terminal. Concessionaire shall establish reasonable procedures for all Concession Operators to meet high quality customer service standards, to adjust (with City approval) the opening and closing times of Concession Locations based on daily flight schedules, and to receive from City and to disseminate schedule changes, weather or maintenance delays and other flight information that will require adjustments in Concession Operations to meet such customer service standards; provided, however, that, notwithstanding the foregoing, upon the expiration or early termination of a Sublease, Concessionaire may leave the Concession Location subject thereto vacant on an interim basis, but in any event, Concession Operations within such Concession Location must be recommenced within not less than thirty (30) days after the cessation of Concession Operations therein. Concessionaire’s failure to cause the re-commencement of Concession Operations within any vacant Concession Location will not result in a
reduction of the MAG owed to City. In addition, if a vacated Concession Location has not re-opened for business within such thirty (30) day period, then City may reclaim such Concession Location and remove it from the Premises with no reduction in the MAG. City may offer any such Concession Location so reclaimed by City to others to develop, lease, operate or manage a concession operation therein;

(p) Serve as the project manager and provide the management, administration and coordination of all design and construction associated with the maintenance, repair and/or subleasing of the Premises, including, without limitation, all Capital Improvements to be constructed, installed or completed within the Concession Locations or the Support Space, whether initial construction and alterations associated with any expansion, redevelopment or refurbishment of the Premises or future construction and alterations and including cleaning and maintenance of external design elements installed;

(q) Have the right, but not the obligation, to finance the improvement, construction and equipping of any Capital Improvements pursuant to such financing arrangements as Concessionaire may determine; provided, however, that, (i) although City shall not be a party to such agreements or responsible in any manner for the performance or enforcement thereof, no improvement, construction or equipping of any part of the Premises may be commenced until City shall have reviewed and approved such financing arrangement for the applicable portion of the Premises; (ii) if Concessionaire finances a Concession Operator’s costs of improving, constructing or equipping a Concession Location or any of the Support Space in accordance with the terms and provisions of this Agreement, Concessionaire’s right to repayment or reimbursement under such financing arrangement shall be junior and subordinate in all respects to any obligation of such Concession Operator to City (and Concessionaire agrees to execute any such additional instruments or agreements evidencing such subordination as City may require); and (iii) Concessionaire may not agree or arrange to tie-in or otherwise condition such financing or undertaking for any Concession Operator on any other rights, privileges, allowances or business terms and conditions granted to a Concession Operator. Concessionaire shall not waive any right to receive rents, fees, charges or other revenues that may be paid or payable by any Concession Operator without the prior written consent of City, and shall not grant any rent abatements, extensions or other modifications without the prior consent of City;

(r) Maintain, and cause each Concession Operator to maintain in each of its Concession Locations, an adequate sales and work force at all times, including, without limitation, sales, cashiers, management and supervisory personnel on-site to fully meet customer needs at all times and to use skill and diligence in the conduct of business. Concessionaire shall cause, and shall cause Concession Operators to cause, their respective employees to be courteous and helpful to the public at all times;

(s) Not divert any business from the Airport or cause or allow any Concession Operator to do so;
(t) Monitor consumer sentiment within the Premises through periodic consumer surveys, the content of which shall be approved by City in advance, and regularly study new industry trends;

(u) Cooperate, and cause each Concession Operator to cooperate, in a timely manner with City in the testing of all safety systems as required by City or any Governmental Authority;

(v) Exercise, and cause each Concession Operator to exercise, a high degree of safety and care in the operation of the Premises;

(w) Not create, and not allow any Concession Operator to create, any hazardous conditions on or about the Premises, the Terminal or the Airport;

(x) Operate, use and maintain, and cause each Concession Operator to operate, use and maintain, the Concession Locations and the Support Space in accordance with high standards and in such manner as to minimize emissions of all types, noises or noxious odors therefrom;

(y) Not permit, and not allow any Concession Operator to permit, any music or other audio merchandising or background within a Concession Location to be audible outside of such Concession Location; provided, however, that City reserves the right to require that all music within Concession Locations be kept to reasonable levels or be turned off at the request of City;

(z) Answer, and cause any affected Concession Operator to answer, all written customer complaints within five (5) days after the receipt thereof, and provide to City copies of all complaints to Concessionaire or any Concession Operator and the answer thereof on or before the last day of the calendar month in which such answer was provided;

(aa) Participate in meetings with City staff representatives to discuss operational issues not less frequently than monthly; and

(bb) Construct additional offices and/or facilities that are displaced as a result of Concessionaire’s use or occupancy of all or a portion of a Concession Location hereunder.

Section 3.3 Concessionaire Staff. Concessionaire shall employ, at no cost to City, at least one full-time, dedicated, on-site Concession Manager, and at least two full-time, dedicated, on-site Assistant Concession Managers. The individual whom Concessionaire proposes to employ as the Concession Manager is subject to the prior approval of City. The Concession Manager and Assistant Concession Managers shall serve as liaisons with City and Concession Operators and have sufficient authority and support staff and appropriate equipment, supplies and means to manage and perform the development, management, maintenance, repair and other functions and obligations of Concessionaire with respect to the Premises, including, without limitation, the obligation to administer the Subleases and other contracts to which Concessionaire is a party, to monitor and enforce compliance by Sublessees with their Subleases.
and this Agreement, and to resolve operational issues that do not require the execution of an amendment to this Agreement. The Concession Manager and the Assistant Concession Managers shall use commercially reasonable efforts to remedy any problem or issue raised by Airport patrons with respect to Concession Operations within the Premises. Unless otherwise approved in writing by City, the Concession Manager or an Assistant Concession Manager shall be available twenty-four (24) hours per day to resolve any issues pertaining to Concession Operations, shall be present at the Airport a minimum of twelve (12) hours per day and available to meet with City representatives at the Airport, and shall be available at all other times by telephone or pager to arrive by car at the Airport within one (1) hour after being called in an emergency situation. City reserves the right to require Concessionaire to remove and replace any Concession Manager or Assistant Concession Manager who, in the determination of City, does not satisfactorily perform his duties hereunder; provided, however, that no Concession Manager or Assistant Concession Manager shall be deemed to be an employee, agent or representative of City for any purposes whatsoever.

Section 3.4 Concession Program.

(a) Within thirty (30) days after the Effective Date, Concessionaire shall submit to City for its approval the final Interim Concession Program to provide Concession Operations in a First Class Manner during the transition to Concessionaire’s Permanent Concession Program. This Interim Concession Program:

(i) shall ensure a high level of customer satisfaction during the Construction Period;

(ii) shall ensure that passengers within the Terminal are provided with a variety of news, gift and/or specialty retail choices;

(iii) shall establish a barricade signage program for any unoccupied or incomplete Concession Locations, the design of which shall be subject to Airport’s permitting process and must compliment the interior design and finish of the Terminal. Such barricades shall provide information on locations providing similar products or services within reasonable walking distance in the Terminal, as well as “coming soon” information, as it is available;

(iv) shall specify the existing Concession Locations, if any, that will continue to function in the same capacity during the Construction Period and for how long such operations shall continue;

(v) may include a combination of temporary Concession Locations and permanent Concession Locations; and

(vi) shall identify the Construction Schedule for those portions of the Premises to be subject to construction or renovation.

Construction of all Concession Locations, temporary and permanent, is subject to City’s permitting process as described in Section 9.1 hereof and City’s procurement requirements described in Section 9.2 hereof.
(b) Within thirty (30) days after the date of City’s approval of the Interim Concession Program, Concessionaire shall submit to City for its approval the Permanent Concession Program for Concession Operations in a First Class Manner, which shall include, without limitation, the following:

(i) The type, quantity, size, designated location and configuration of each Concession Location, as well as the overall plan for the Concession Locations, including, without limitation, the news, gift and/or specialty retail concept to be located within each Concession Location and the identity of proposed Concession Operator thereof;

(ii) Concessionaire’s specific plans to include DBEs as Concession Operators;

(iii) Concessionaire’s quality and service standards and required hours of operation;

(iv) Concessionaire’s specific plans to monitor and enforce Reasonable Pricing;

(v) A procedure to handle unusual situations in the Terminal such as excessive lines, weather delays, etc.; and

(vi) Such other information as City may reasonably deem appropriate.

Section 3.5 Hours of Operation. The Airport is open every day of the year and travelers using the Airport have often just traveled from different time zones and are not yet acclimated to the time zone in which the Airport is located. For these reasons, all Concession Locations shall be operated seven (7) days a week, every day of the year, unless otherwise approved by City, and in a manner otherwise consistent with the requirements prescribed by City in accordance with the actual aviation operations at the Airport. Concessionaire shall provide to City for City approval a detailed schedule of the hours of operation for each Concession Location by day of the week. This schedule must accommodate the Airport's flight schedules. Generally, a Concession Location in the Secured Area shall be open, except as otherwise approved by City, from one hour before the first scheduled departure of the day from the Concourse where it is located until the last actual departure of the day from such Concourse. A Concession Location on the Landside shall be open from one hour before the first scheduled departure of the day from any Concourse until at least 11:00 p.m. Any Concessionaire-requested permanent change to the City-approved schedule must be delivered to City not less than thirty (30) days prior to proposed change, and City shall provide its approval or disapproval of the request, in part or total, within thirty (30) days after receipt of such request. Specific requests for a temporary exceptions to City-approved operating hours for holidays and other reasons must be submitted to City at least fifteen (15) days before the proposed change, and City shall provide its approval or disapproval of the request, in part or total, within five (5) days after receipt of such request. City reserves the right to modify the aforementioned hours of operation based on flight schedules and/or customer demands. Neither Concessionaire nor any Concession Operator shall have the right to modify the operating hours of any Concession Location without the prior
approval of City. City reserves the right to require Concessionaire to operate, or to cause the applicable Concession Operator to operate, a specific Concession Location beyond the approved operating hours due to unusual circumstances (e.g., delayed flights, weather). Concessionaire shall establish reasonable procedures for adjusting the opening and closing times of Concession Locations based on daily flight schedules and incorporating those schedules into shift schedules for a Concession Operator's staff, as well as for receiving and disseminating schedule changes, weather or maintenance delays and other flight information that will require adjustments in such Concession Operator's operations. In addition, Concessionaire shall ensure that each Concession Operator is aware of the peak hours for its Concession Location and will staff the Concession Location appropriately to provide excellent customer service and avoid lengthy service lines. The staffing levels at a Concession Location must reflect both the hourly and seasonal fluctuations in passenger traffic that affect such Concession Location.

**Section 3.6 Annual Reporting.** Concessionaire shall submit, within sixty (60) days after the end of each Lease Year, an operations report that shall contain the following information:

(a) A review of the performance of Concession Operations for such prior Lease Year, including, without limitation, an unaudited statement of Gross Receipts derived from the Concession Program for such Lease Year and Concession Operators' achievement of sales projections, financial results and other goals and objectives;

(b) The establishment of new operational goals and objectives for the forthcoming Lease Year, including projections, for each Concession Location, of sales, sales per square foot, sales per Enplaned Passenger and payments to City for the forthcoming Lease Year;

(c) Identification of Concession Operations that either will or might be replaced during the forthcoming Lease Year, along with photos, drawings, etc., of proposed replacement concepts and the reasons for such recommended changes;

(d) A discussion of Concession Operators' customer service initiatives and activities, including, without limitation, information on surveys, secret shopper programs, incentives, etc.;

(e) Any planned expenditures or investments for improvements in the Concession Locations;

(f) Any changes or improvements in Concession Operations anticipated in the forthcoming Lease Year, such as marketing efforts, training or services at Concession Locations by Concession Operators;

(g) Copies of any consumer surveys completed by a Concession Operator and other industry trend studies;

(h) Any other information concerning Concession Operations during the prior Lease Year or the current Lease Year as reasonably requested by City.
Section 3.7 Signage Policy. Except with the prior approval of City, neither Concessionaire nor any Concession Operator may erect, maintain or display any permanent signage or advertising in, on or within the Premises. A Concession Operator may maintain and display temporary or other moveable signage, including, without limitation, stanchion signs and floor-standing sandwich boards, within the limits of a Concession Location; provided, however, that (i) no handwritten signs shall be permitted (except boards that reflect daily specials and change on a daily basis), and (ii) City may require the removal of any signs or advertising in, on or within the Premises that City determines to be unacceptable or improper. Upon the expiration or earlier termination of this Agreement, Concessionaire shall remove or cover, as City may direct, any and all signs and advertising in, on or within the Premises or elsewhere at the Airport installed by or on behalf of Concessionaire or any Concession Operator. Concessionaire shall restore the portion of the Premises and the Airport affected by such signs or advertising to the same condition as existed prior to the installation of such signs and advertising. In the event of a failure on the part of Concessionaire to remove or cover each and every such sign or advertising and to restore the Premises and the Airport as required in this Section 3.7, City may perform the necessary work and Concessionaire shall pay, upon demand of City, the actual and reasonable cost thereof along with an administrative fee to City equal to fifteen percent (15%) of such cost.

Section 3.8 Rules and Regulations. City shall have the right to adopt and enforce the Rules and Regulations and operating performance standards with respect to the use of the Premises and related facilities. City may amend or modify such Rules and Regulations and operating performance standards from time to time after prior notice, which is reasonable under the circumstances, to Concessionaire. From time to time, City may issue directives or advisories that provide information to all Airport tenants regarding issues that affect operations at the Airport. Concessionaire shall be responsible for distributing copies of such directives or advisories to all Concession Operators on a timely basis to ensure that all Concession Operators are aware of the contents thereof and able to comply therewith. Concessionaire is responsible for complying with, and ensuring that each Concession Operator complies with, the Rules and Regulations as they exist from time to time, including, without limitation, the Airport Security Plan.

Section 3.9 Concession Operator Performance Reviews; Operational Audits. Concessionaire shall complete regular reviews and operational audits of each Concession Operator as described in Section 22.2 hereof.

Section 3.10 Transition. Upon the expiration or earlier termination of this Agreement, Concessionaire shall cooperate fully with City and any successor to Concessionaire to ensure an effective and efficient transition of concession operations within the Premises to Concessionaire’s successor. Concessionaire acknowledges and agrees, and shall cause each Concession Operator to acknowledge and agree, that any licenses or permits granted for use at the Airport in Concession Operations shall not be taken off-Airport for use at other locations. Concessionaire acknowledges its responsibility to help to ensure continued Concession Operations within the Premises in a First Class Manner during any transition to a successor and shall take no action that would impair the ability of any successor to Concessionaire to obtain, in a timely manner, licenses and permits required to commence and maintain such operations.
Section 3.11 Airport Security. Employees, agents and representatives of Concessionaire and Concession Operators and their respective contractors and subcontractors shall comply with the Airport Security Plan and all other airport security regulations as adopted or required by City, the TSA or other Governmental Authorities from time to time. If a breach of the Airport Security Plan or such other airport security regulations occurs as a result of the acts or omissions of an employee, agent, representative, contractor or subcontractor of Concessionaire or a Concession Operator in any manner or form at any time during the Term, Concessionaire immediately shall, or shall cause such Concession Operator immediately to, remedy such breach or assist the TSA or other Governmental Authorities in remedying such breach, regardless of the circumstances and shall assume full and complete responsibility for such breach, including payment of any penalty imposed, and shall defend, indemnify and hold the Indemnified Parties harmless therefrom. Concessionaire shall maintain, and shall cause the Concession Operators to maintain, the integrity of the controlled access security system of the Airport for the Term.

Section 3.12 Identification Badges and Security Clearances.

(a) To the extent any of the personnel of Concessionaire or any Concession Operator or any of their respective contractors or subcontractors requires identification badges or security clearances for access at the Airport, Concessionaire is responsible, at its expense, for obtaining such identification badges and security clearances. Each employee of Concessionaire or a Concession Operator or their respective contractors or subcontractors who requires access to the Non-Public Area in the performance of his duties must first obtain a Non-Public Area Identification Badge, which requires no criminal history records check. Each employee of Concessionaire or a Concession Operator or their respective contractors or subcontractors who requires access to the Secured Area in the performance of his duties must first obtain a Secured Area Identification Badge. Prior to the issuance of a Secured Area Identification Badge to any individual, the applicant must submit to fingerprinting for the purposes of undergoing a criminal history records check that will determine whether such individual has, within the last ten (10) years, been convicted of, or found innocent by reason of insanity with respect to, one of thirty-six (36) disqualifying crimes. In accordance with 49 C.F.R. Part 1542 and Public Law 106-528, the results of this criminal history records check will be used as the sole determining factor for granting permanent unescorted Secured Area access privileges at the Airport. In addition to the required criminal history records check for access to the Secured Area, each individual applying for access thereto must attend a required security training class sponsored by City before such identification badge will be issued. If the work to be completed by a particular individual is of limited duration and Concessionaire or a Concession Operator or any of their respective contractors or subcontractors has an employee with a Secured Area Identification Badge, as required, available, an individual without the required Secured Area Identification Badge may be escorted within the Secured Area as long as the individual with the required Secured Area Identification Badge remains with such escorted individual at all times and is able to control him.

(b) Concessionaire shall be responsible for sponsoring (i.e., signing applications for identification badges) one (1) manager of each Concession Operator.
Thereafter, each manager of a Concession Operator so sponsored by Concessionaire shall be responsible for sponsoring (i.e., signing applications for identification badges) employees, contractors or subcontractors of such Concession Operator. Concessionaire shall provide to City notice of the names and specimen signatures for each Concession Operator manager sponsored by Concessionaire. An employee of Concessionaire or a Concession Operator who must receive a Secured Area Identification Badge to perform his duties may not begin work until the required Secured Area Identification Badge has been issued. A person who possesses a Non-Public Area Identification Badge or a Secured Area Identification Badge must display it at all times while on Airport premises.

(c) City reserves the right (i) to confiscate or suspend a City-issued identification badge of any person allegedly involved in any of the criminal acts enumerated under 49 C.F.R. Part 1542 or for a violation of the Airport Security Plan or other airport security regulations applicable to the Airport; and (ii) to permanently revoke a City-issued identification badge of any person upon a guilty or nolo contendere plea or probation before final disposition of any such criminal charges. City, the TSA and other security personnel may challenge any person in the Non-Public Area or the Secured Area who is not properly identified by a City-issued identification badge, and, if positive identification or association cannot be made, such person may be escorted from the Non-Public Area or the Secured Area, as the case may be, and will be subject to all civil and criminal penalties prescribed under the Airport Security Plan and Applicable Laws.

(d) All City-issued identification badges are the property of City and, upon the expiration or earlier termination of the Term, the termination of the employment or resignation of any employee of Concessionaire or a Concession Operator or any of their respective contractors or subcontractors, City-issued identification badges issued to employees of Concessionaire and such Concession Operator or any of their respective contractors or subcontractors must be returned to City within twenty-four (24) hours. In addition, the holder of a lost City-issued identification badge is responsible for the replacement cost thereof. The issuance of City-issued identification badges is subject to the completion of such applications and conditions as City may require from time to time. Each perimeter fence gate and Secured Area access point (manual and automatic) at the Airport must be secured or manned at all times for the entire duration it is open. Any access gate or door found to be unsecured, or any entry by an unauthorized person(s) and/or vehicle(s), as a result of Concessionaire’s or a Concession Operator’s failure to comply, or to cause compliance by any of their respective contractors or subcontractors, with the Rules and Regulations may subject Concessionaire or such Concession Operator to a TSA-imposed fine of up to Ten Thousand and No/100 Dollars ($10,000.00) per occurrence, and/or suspension or revocation of the violator’s City-issued identification badge.

(e) In the event City determines that any fine or penalty has been imposed upon City as a result of the failure of Concessionaire or a Concession Operator or any of their respective contractors or subcontractors to comply with Applicable Laws, Concessionaire shall pay such fine or penalty or reimburse City therefor upon demand by City. Concessionaire shall monitor compliance by each Concession Operator and its contractors and subcontractors with the requirements for identification badges and
security clearances and the screening of goods, products, equipment, materials and supplies of such Concession Operator and its contractors and subcontractors. Concessionaire shall enforce the remedies under its agreements with other Concession Operators to rectify violations or other deficiencies by them with respect to the requirements of this Section 3.12.

Section 3.13 Employee Parking. Employees of Concessionaire and Concession Operators are permitted to park their personal vehicles in the employee surface parking areas designated by City from time to time, subject to the same terms and conditions of use as are applicable to employees of other tenants at the Airport, Air Transportation Companies and other concessionaires using the employee surface parking areas at the Airport. No parking will be provided to employees of Concessionaire or Concession Operators in the parking garages at the Airport.

Section 3.14 Knowledge of the Airport. Employees of a Concession Operator are expected to be able to assist Airport users with wayfinding within the Airport. As such, Concessionaire shall ensure that each Concession Operator (i) causes its employees to have information regarding the locations of other concessions, restrooms, elevators, airlines, gates, information desks and other facilities within the Terminal and to provide such information upon request and with courtesy and dispatch, and (ii) provides all of its employees with a list of emergency and other important telephone numbers as well as other means through which such employees can respond to customers' requests for information.

Section 3.15 Support Space. City will provide to Concessionaire, as a part of the Premises (but not accessible to the public), the Support Space as identified in Exhibit D hereto for use in connection with the management and development of Concession Operations. The use and distribution of such Support Space among Concession Operators shall be the responsibility of Concessionaire. City reserves the right (i) to require Concessionaire to relocate from any such Support Space, at Concessionaire’s expense, to other reasonably comparable areas in the Terminal upon not less than thirty (30) days’ prior notice to Concessionaire or (ii) to reduce the amount of such Support Space available to Concessionaire. Concessionaire shall be responsible for the payment of all utilities consumed within the Support Space and for the cost of any utility installations or hook-ups that are in addition to those provided in the Support Space by City.

ARTICLE IV
FINANCIAL TERMS

Section 4.1 Periodic Rent. For the right to develop, manage and operate the Concession Program as described herein and to lease the Premises in the Terminal during the Term, Concessionaire shall pay, commencing on the first day of the Effective Date and continuing throughout the Term, Periodic Rent determined as follows:

(a) For each Lease Year, Concessionaire shall pay Periodic Rent in an amount equal to the greater of (i) the MAG due for such Lease Year as set forth herein or (ii) an amount equal to the applicable percentages of Gross Receipts from Concession Operations for such Lease Year as set forth below:
(i) Fifteen and eight-tenths percent (15.8%) of the first Two Million Eight Hundred Thousand and No/100 Dollars ($2,800,000.00) of Gross Receipts from Concession Operations during such Lease Year; and

(ii) Seventeen and eight-tenths percent (17.8%) of Gross Receipts from Concession Operations during such Lease Year in excess of the first Two Million Eight Hundred Thousand and No/100 Dollars ($2,800,000.00).

Periodic Rent for any partial Lease Year shall be prorated on the basis of the actual number of days included in such partial Lease Year.

(b) On or before the first day of each month of the Term, Concessionaire shall pay a monthly installment of the MAG due hereunder equal to one-twelfth (1/12) of the MAG specified herein for the Lease Year in which such month occurs. On or before the twentieth (20th) day of each month of the Term, and ending with the month following the final month of the Term, Concessionaire shall remit to City the difference, if any, between the monthly installment of MAG paid for the preceding month and the aggregate amount of Gross Receipts due for such preceding month as specified in this Section 4.1. Regardless of whether any additional payment is due for the preceding month, Concessionaire shall submit, on or before the twentieth (20th) day of each month, (i) a Concession Location sales report that details the total Gross Receipts for such preceding month from the Concession Program and a breakdown of such Gross Receipts by Concession Location, and (ii) DBE utilization reports in a form acceptable to City. In addition, within sixty (60) days after the end of each Lease Year, Concessionaire shall provide its annual report, as required by Section 3.6 hereof, along with a reconciliation and payment to City (if any is due) as follows: (A) a comparison of the MAG for such preceding Lease Year and the percentage of Gross Receipts due to City for such Lease Year to determine the total amount owed to City by Concessionaire for such preceding Lease Year under this Section 4.1; and (B) payment of any additional amount owed as Rent for such preceding Lease Year under the terms of this Agreement. In the event that such Annual Report reflects an overpayment by Concessionaire of Periodic Rent for such preceding Lease Year, Concessionaire shall receive a credit by City for the overpayment with respect to subsequent Periodic Rent due to City or a refund, as City may determine; provided, however, that in no event shall Concessionaire take a credit against any subsequent Periodic Rent owed to City for any such overpayment without the prior written approval of City. Concessionaire shall have no right to set-off or off-set any Rent owed under this Agreement against any against amounts that may be payable by City to Concessionaire. Upon City’s receipt of the annual report for the immediately preceding Lease Year pursuant to Section 3.6 hereof, the MAG for the then-current Lease Year shall be established and Concessionaire shall remit, together with such annual report, any additional amount due under such newly-established MAG for the then-current Lease Year; provided, however, that such newly-established MAG may be further adjusted upon City’s receipt of the audited statement of Gross Receipts for the immediately preceding Lease Year pursuant to Section 12.1 hereof. Until the MAG is so established for a Lease Year pursuant to this Section 4.1(b), the monthly installment of MAG due hereunder shall remain in the amount due for the immediately preceding Lease Year.
Section 4.2  Payments to City. All payments to City shall be made payable to "City of Dayton, Ohio" and forwarded as set forth in this Section 4.2. All annual reports and monthly statements of Gross Revenues and the associated payments of Periodic Rent to City shall be sent to City at the following address:

City of Dayton, Ohio
Department of Aviation
Attn: Accounts Receivable
3600 Terminal Drive, Suite 300
Vandalia, OH 45377

or to other such party or addressee as designated by City pursuant to this Agreement. Except as provided above in this Section 4.2, all fees and other amounts payable hereunder shall be remitted by Concessionaire to the following address:

City of Dayton, Ohio
P. O. Box 632094
Cincinnati, OH 45263-2094

or to other such party or addressee as designated by City pursuant to this Agreement.

Section 4.3 Utilities. It is the responsibility of Concessionaire to provide any utility connections (other than those provided by City when a Concession Location is provided in Shell Condition) necessary for the safe, convenient and legal operation of Concession Operations within a Concession Location and the Support Space. All telecommunications connections serving the Concession Locations and expenses therefor, both hard-wired and wireless, are the responsibility of Concessionaire and must be completed through existing cables. Concessionaire shall pay all charges for heat, water, gas, sewage, electricity and other utilities used or consumed within the Concession Locations and the Support Space. City shall provide, without cost to Concessionaire, general heat, air conditioning and general lighting that cannot reasonably be separately metered and provided for the Concession Locations and the Support Space. City is not liable for any interruption or failure in the supply of any such utility services to the Premises, and Concessionaire covenants and agrees that City shall in no event be liable or responsible to Concessionaire or any Concession Operator for any loss, damage or expense that Concessionaire or such Concession Operator may sustain or incur if either the quality or character of any utility service is changed or is no longer suitable for the requirements of Concessionaire or such Concession Operator. Concessionaire covenants and agrees that, at all times, the use of electric current by Concessionaire and Concession Operators shall never exceed the capacity of existing feeders and wiring to the applicable portion of the Premises and that Concessionaire and Concession Operators shall make no alterations or additions to the electric equipment and/or appliances serving the Premises without the prior consent of City in each instance. Access to the Airport's fiber optic backbone and/or neutral wireless system shall be available to Concessionaire and Concession Operators at rates established by City from time to time.

Section 4.4 Late Payments. If Concessionaire is delinquent for a period of thirty (30) days or more in paying to City any Periodic Rent, fee or other charge due hereunder, then Concessionaire shall pay a late charge of two percent (2%) per month of the amount due and
owing from the date such item was due until full payment, including late charges, have been paid. Such late charges shall not occur with respect to disputed items being contested in good faith by Concessionaire.

ARTICLE V
CONCESSION OPERATIONS

Section 5.1 Permitted Uses. Concessionaire shall provide a variety of news, gift and/or specialty retail Concession Operations in the Premises to serve Airport users news, gift and/or specialty retail options comparable to those available in a typical retail mall environment in the greater Dayton, Ohio metropolitan area and shall ensure that Concession Operations are maintained in the Concession Locations for the uses as specified below:

<table>
<thead>
<tr>
<th>Concession Location</th>
<th>Type of Concession Operations</th>
</tr>
</thead>
<tbody>
<tr>
<td>PS-2</td>
<td>News &amp; Conveniences under the CNBC News Express concept</td>
</tr>
<tr>
<td>M-5</td>
<td>Bookstore</td>
</tr>
<tr>
<td>M-6</td>
<td>News &amp; Conveniences and Specialty Retail under the CNBC News Store concept</td>
</tr>
<tr>
<td>B-2</td>
<td>News &amp; Conveniences and Specialty Retail with an emphasis upon the sale of locally and regionally manufactured and themed products</td>
</tr>
<tr>
<td>C-2</td>
<td>News &amp; Conveniences</td>
</tr>
</tbody>
</table>

Each Concession Operator is responsible for obtaining all licenses and permits necessary for all merchandise sales it wishes to offer. In addition, Concessionaire shall ensure that the Concession Operation at each Concession Location shall provide change to patrons upon request and without requiring a purchase. In the event any question or dispute arises as to whether any specific item or category of items may be sold at a Concession Location, City shall give a decision in writing and such determination shall be considered as the final resolution of the matter. Concessionaire shall abide by and conform to the decisions of City.

Section 5.2 Prohibited Concession Activities. Concessionaire understands and agrees that the following products or services are not permitted to be sold or provided under or through the Concession Program within or from the Premises:

(a) Insurance of any kind;

(b) Commercial advertising services, signage and displays;
(c) Telephone (other than prepaid telephone cards), telegraph, Internet access and broadband facilities;

(d) Lockers for immediate storage of baggage;

(e) Ground transportation and parking services;

(f) Hotel accommodations;

(g) Foreign currency exchange (although foreign currencies may be accepted for payment for items purchased in a Concession Location in the discretion of the applicable Concession Operator);

(h) Automatic teller machines;

(i) Baggage carts;

(j) Airline tickets;

(k) Travel agency activities;

(l) Postage stamp machines;

(m) Check-cashing services; and

(n) Food, except for pre-packaged nuts, candy and snacks items;

(o) Non-alcoholic beverages, except (i) Concession Operators may sell refrigerated bottled, canned or otherwise pre-packaged non-alcoholic beverages from Concession Locations PS-2, B-2 and C-2, and (ii) Concession Operators may sell non-refrigerated bottled, canned or otherwise pre-packaged non-alcoholic beverages from Concession Location M-6; and

(p) Alcoholic beverages meant for consumption in the Terminal.

ARTICLE VI
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

Section 6.1 Encouragement of DBE Participation. This Agreement is a revenue-producing contract awarded to Concessionaire to develop, manage and operate the Concession Program and will result in the provision of goods and services to passengers, patrons and tenants at the Airport. City encourages Concessionaire voluntarily to strive to include significant minority business involvement in the Concession Program. City also encourages both Concessionaire and Concession Operators to subcontract the design and construction aspects of the Concession Program to DBEs.

Section 6.2 DBE Participation Goals. To provide a fair opportunity for DBE participation in the Concession Program, City requires that Concessionaire make good faith efforts, as described in 49 C.F.R. Section 23.95(i), to provide for a level of Ohio-certified DBEonso.
participation in the Concession Program that results in the generation of five and nine-tenths percent (5.9%) or more of total Gross Receipts from Concession Operations that are attributable to the participation of Ohio-certified DBEs in the Concession Program. A DBE is required to perform a commercially useful function by being independently responsible for the execution of a distinct element of the work and carrying out its responsibilities by actually performing, managing and supervising the work involved. In light of industry practices and other relevant considerations, the DBE must have a necessary and useful role in the transaction of a kind for which there is a market outside the context of the DBE program (e.g., operating one or more Concession Locations). For goal-attainment purposes, all DBEs must be certified by City. Concessionaire shall engage in good faith efforts to meet the DBE participation goal set forth in this Section 6.2 and shall submit executed agreements with Ohio-certified DBEs to City to evidence such DBE participation. Exhibit F attached hereto and incorporated herein contains copies of the DBE Participation Reports for all DBEs with which Concessionaire has entered into contractual agreements for participation in the Concession Program that result in the generation of Gross Receipts which Concessionaire attributes to satisfaction of the goal for participation of Ohio-certified DBEs set forth in this Section 6.2. In the event of a change in the identity of the DBEs participating in the Concession Program during the Term, Concessionaire shall deliver, within ten (10) days after such change, a revised Exhibit F hereto to City in the manner and to the addressees for City specified in accordance with Section 24.10 hereof. A notice by Concessionaire to City to remove a particular DBE Participation Report from Exhibit F hereto or to substitute one DBE Participation Report for another is not sufficient for purposes of this Section 6.2. When Concessionaire submits a revised Exhibit F hereunder, Concessionaire must submit a complete revised Exhibit F that includes DBE Participation Reports for all DBEs then participating in the Concession Program. Concessionaire also shall send a copy of such revised Exhibit F in the manner provided by Section 24.10 hereof to City of Dayton, Ohio, Department of Aviation, Attn: DBE Liaison Officer, 3600 Terminal Drive, Suite 300 Vandalia, OH 45377. In addition, City also requires that Concessionaire submit certified monthly reports indicating the Gross Receipts of all Concession Operations and the Gross Receipts of all DBEs participating in the Concession Program as described in this Section 6.2. City and its duly authorized representatives shall have the right to audit such monthly reports with or without prior notice, and all such records must be retained by Concessionaire for a period of three (3) years following the expiration or earlier termination of the Term and will be made available for inspection upon request by City or other Governmental Authority.

Section 6.3 Failure to Meet DBE Goal. If Concessionaire fails to achieve and maintain the goal of Ohio-certified DBE participation set forth herein, Concessionaire shall submit documentation demonstrating its good faith efforts to include DBEs within the Concession Program to achieve and maintain the specified goal for DBE participation. The documentation shall include, without limitation, correspondence, telephone calls, etc., to locate and obtain the participation of Ohio-certified DBEs in the Concession Program.

Section 6.4 Discrimination Prohibited. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 C.F.R. Part 23, Subpart F. Concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement covered by 49 C.F.R. Part 23, Subpart F. Concessionaire agrees to
include the above statements in any subsequent concession agreements that it executes and cause those businesses to similarly include the statements in further agreements.

ARTICLE VII
PRICING

Section 7.1 Reasonable Pricing. Concessionaire and Concession Operators shall observe and maintain Reasonable Pricing for goods, products and services sold within the Concession Locations. For purposes of this Agreement, the term “Reasonable Pricing” means the regular price of the good, product or service charged at the applicable Price Comparison Location; provided, however, that, if a good, product and/or service is not available from a Price Comparison Location, the regular price for such good, product or service shall be determined by reference to a range of the regular prices of three (3) separate businesses for such good, product and/or service, of comparable nature, ambiance and product and service lines, within a twenty-five (25) mile geographic radius from the Airport or at the nearest entity of the same business, franchise or trade name, as agreed by City and Concessionaire. Concessionaire is required to submit, prior to the opening of a Concession Location, a complete list of items to be offered by the Concession Operator therein and the prices to be charged for City’s approval. No Concession Location shall open without such City approval. Concessionaire shall submit to City, within sixty (60) days after the end of each Lease Year, an annual pricing report for each Concession Location that indicates the extent of compliance by the Concession Operator thereof with Reasonable Pricing and the actions taken by Concessionaire and each Concession Operator to remedy any noncompliance.

Section 7.2 Pricing Adjustments. Not less than bi-annually, Concessionaire shall conduct, or shall cause to be conducted, an audit concerning compliance with the Reasonable Pricing requirement by Concession Operators for current products available and price levels within Concession Locations. The audit shall compare the price levels of current goods, products and services available at the Airport through Concession Operations with the prices of such goods, products and services at the applicable Price Comparison Locations. In the event of noncompliance with the Reasonable Pricing requirements herein by a Concession Operator, Concessionaire shall cause such Concession Operator to bring all products into compliance with the Reasonable Pricing requirements based upon the audit results within seven (7) days after such noncompliance is identified. Not less than fifteen (15) business days for City prior to any adjustment to the Reasonable Pricing for a good, product or service, Concessionaire shall notify City of such adjustment. The notification shall include the Price Comparison Location to which the current and proposed price for the good, product or service and the price for such good, product or service at the applicable Price Comparison Location therefor. The proposed adjustment to price of such good, product or service shall not be implemented unless City shall have approved such adjustment.

Section 7.3 Discounts for Airport Employees. Concessionaire shall provide, at all Concession Locations operated by Concessionaire, discounts to employees of City employed at the Airport, employees of Air Transportation Companies operating at the Airport, and other employees of tenants operating at the Airport. Concession Operators other than Concessionaire may provide such employee discounts but are not obligated to do so. No discounts may be
changed, modified or discontinued without not less than thirty (30) days’ prior notice to and approval by City.

ARTICLE VIII
SUBLEASES; AGREEMENTS WITH CONCESSION OPERATORS

Section 8.1 Permitted Subleases. Concessionaire may sublease any Concession Location to a Sublessee pursuant to a Sublease previously approved by City. No Sublessee may commence any work in the construction, renovation or development of any portion of a Concession Location until ten (10) days after City has received a fully executed Sublease by and between Concessionaire and such Sublessee in the form approved by City.

Section 8.2 Agreements with Concession Operators. Without the prior approval of City, Concessionaire shall not assign, delegate, transfer or convey to any Person the right to conduct Concession Operations within or on the Premises other than to a Sublessee in accordance with a Sublease otherwise permitted by the terms of this Agreement. No such assignment, delegation, transfer or conveyance approved by City may extend beyond the Term.

ARTICLE IX
CONSTRUCTION; CAPITAL IMPROVEMENTS

Section 9.1 Permitting; Planning Requirements. Before Concessionaire or any Concession Operator may undertake any construction or improvement work within the Terminal, City requires that Concessionaire and such Concession Operator obtain required permits and otherwise comply with the requirements of City. Concessionaire or any Concession Operator shall submit for approval by City’s Department of Aviation, the Plans for all Capital Improvements before seeking any construction permits. Concessionaire shall act as the construction coordinator with City for each Concession Operator’s design and construction requirements.

Section 9.2 Construction Period Capital Improvements. During the Construction Period, Concessionaire has agreed to develop, install and construct, pursuant to Plans approved by City in accordance with Section 9.1 hereof, the Construction Period Capital Improvements. In consideration of Concessionaire’s agreement to develop, install and construct the Construction Period Capital Improvements, City agrees to reimburse Concessionaire for certain costs of the Construction Period Capital Improvements in an aggregate amount not to exceed One Million and No/100 Dollars ($1,000,000.00), subject to the following:

(a) Notwithstanding that the costs associated with Construction Period Capital Improvements may constitute Eligible Costs under this Agreement, City shall have no obligation to pay, or to reimburse Concessionaire for, the cost of any Capital Improvements that comprise movable equipment, furniture and furnishings, decorations, signage containing proprietary information, trade names or registered trademarks or service marks or non-permanent fixtures used in connection with Concession Operations;

(b) Concessionaire shall submit to City, not more frequently than monthly, requests for reimbursement, together with detailed invoices and other supporting documentation reasonably requested by City to substantiate each such request; and
(c) As to any costs for which Concessionaire requests reimbursement from City hereunder, Concessionaire shall have complied with the procurement requirements of City set forth in Exhibit F attached hereto and incorporated herein.

Unless Concessionaire complies with the requirements of this Section 9.2, City shall have no obligation to pay, or reimburse Concessionaire for, the costs of any Construction Period Capital Improvements.

Section 9.3 General Requirements for Capital Improvements. Concessionaire shall construct, equip and install, or cause to be constructed, equipped, and installed, the Capital Improvements in a Concession Location in accordance with the plans and specifications to be submitted to and approved by City, free and clear of all liens, encumbrances and security interests. The construction, equipping and installation of the Capital Improvements within a Concession Location shall be completed within ninety (90) days after the commencement of construction therein, unless an extension of such ninety (90) day period is approved in advance by City. Concessionaire shall ensure that construction activities are closed off from public view with a painted gypsum board dust partition with attractive, easily readable signs explaining the construction, as approved by City prior to such construction.

Section 9.4 City Responsibility. Concessionaire’s previous acceptance of any portion of the Premises shall be conclusive evidence that Concessionaire has accepted such portion of the Premises in “as is, where is, and with all faults” condition and that such portion of the Premises was in good and satisfactory condition for the use intended at the time such possession was taken.

Section 9.5 Certification of Expenditures. Concessionaire shall provide City with certified receipts and lien releases for any Capital Improvements within ninety (90) days after the completion thereof in detail acceptable to City to enable City to verify compliance with the requirements of this Agreement. In the event that such certified receipts indicate that Eligible Costs incurred with respect to the Midterm Renovations required hereunder are less than required under the terms and provisions of this Agreement, Concessionaire shall pay to City one hundred ten percent (110%) of the difference between the amount required to be spent and the Eligible Costs actually incurred by Concessionaire and/or a Concession Operator as indicated by such certified receipts. If City disputes the amount of Eligible Costs claimed by Concessionaire and/or a Concession Operator, City may utilize its own audit and accounting staff or, at its option and expense, hire a certified public accountant to audit the Eligible Costs actually incurred by Concessionaire and/or a Concession Operator with respect to such Concession Location. If it is determined that the Eligible Costs actually incurred by Concessionaire and/or a Concession Operator with respect to such Concession Location are less than the minimum required hereunder, then Concessionaire shall pay, in addition to the other amounts due hereunder, the cost of conducting such audit to City within thirty (30) days of the determination.

Section 9.6 Financing Capital Improvements/Liens. If Concessionaire decides to finance a Sublessee’s construction costs for Capital Improvements, Concessionaire shall not be entitled to deduct any costs or expenses it incurs in connection with any such financing or undertakings from Sublease Rents, nor shall interest earned and/or principal payments from such financing be included in Sublease Rents. All Capital Improvements, upon termination or earlier
expiration of the Term shall, at the option of City, immediately become the property of City, free and clear of any liens or encumbrances whatsoever. To the extent City elects not to retain title to some or all of the Capital Improvements, Concessionaire immediately shall remove, or shall cause the applicable Concession Operator immediately to remove, any such Capital Improvements. Concessionaire shall repair any damage to the Base Building Work due to removal of Capital Improvements at no cost to City. Concessionaire agrees that any contract for construction, alteration or repairing of Capital Improvements or for the purchase of material to be used, or for work and labor to be performed within or on the Premises, shall be in writing and shall contain provisions to protect City from the claims of any laborers, subcontractors or materialmen against the Premises and otherwise comply with the requirements of this Agreement. Concessionaire agrees to give City immediate notice of the placing of any lien or encumbrance against the Premises or the Terminal and further agrees to extinguish such lien in accordance with Section 13.1 hereof.

**Section 9.7 Construction Fines.** All contracts for the construction of Capital Improvements shall require completion of such Capital Improvements within the applicable Construction Schedule submitted by Concessionaire and accepted by City and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages in the event a contractor fails to complete such construction on a timely basis. Concessionaire agrees that it will take all necessary action available under each such construction contract to enforce the timely completion of the work covered thereby.

**Section 9.8 Midterm Renovations.** During the Lease Year commencing January 1, 2014, Concessionaire shall complete, or shall cause the applicable Concession Operator to complete, Capital Improvements to the Concession Locations in accordance with the requirements of this Agreement and the following schedule:

<table>
<thead>
<tr>
<th>Aggregate Gross Receipts During Lease Year Ending December 31, 2013*</th>
<th>Eligible Costs Per Square Foot of the Concession Locations Required for Midterm Renovations</th>
</tr>
</thead>
<tbody>
<tr>
<td>An amount that does not exceed $2,800,000</td>
<td>$25.00</td>
</tr>
<tr>
<td>An amount that is greater than $2,800,000 but does not exceed $2,900,000</td>
<td>$37.50</td>
</tr>
<tr>
<td>An amount that is greater than $2,900,000 but does not exceed $3,000,000</td>
<td>$50.00</td>
</tr>
<tr>
<td>An amount that exceeds $3,000,000</td>
<td>$62.50</td>
</tr>
</tbody>
</table>

*Amounts are rounded to the nearest full dollar.
Section 9.9  **Surrender of Premises.** Upon the expiration or earlier termination of the Term, Concessionaire shall yield and deliver peaceably to City possession of the Premises and the Capital Improvements (to the extent City has elected to retain title thereto), broom clean and in a condition at least as good as that which existed on the Effective Date, except for obsolescence and ordinary wear and tear. Concessionaire shall cause the immediate removal of all Capital Improvements for which City has not elected to retain title thereto from the Premises upon the expiration or earlier termination of the Term, and Concessionaire shall repair any damage caused by such removal at its sole cost and expense.

Section 9.10  **Displaced Offices and Facilities.** In the event City requests that Concessionaire construct and/or remove offices and/or facilities that are displaced as a result of Concessionaire’s use or occupancy of all or a portion of a Concession Location hereunder as provided in Section 3.2(bb), City agrees to reimburse Concessionaire the cost of such construction and/or removal work in an aggregate amount not to exceed Five Hundred Thousand Dollars ($500,000) upon satisfaction of the following requirements: (i) prior to the commencement of such work, City has approved the plans and specifications for such work and the contractor cost estimates therefor; and (ii) the work is completed in accordance with City-approved plans and specifications.

**ARTICLE X**

**PREMISES MAINTENANCE; RESERVATION OF RIGHTS**

Section 10.1  **Premises Maintenance.** City shall have primary responsibility for all maintenance, cleaning and routine upkeep of the Common Areas and shall keep such Common Areas in a clean, neat, orderly, sanitary and attractive condition. Concessionaire shall be responsible for the cleaning, maintenance, repair and replacement of the Concession Locations and the Support Space and shall keep, and cause the applicable Concession Operators to keep, the Concession Locations and the Support Space in a clean, neat, orderly, sanitary and attractive condition. Concessionaire agrees that all personal property brought into the Premises by Concessionaire or any Concession Operator or any of their respective agents, contractors, employees, invitees, assignees, subtenants or licensees, shall be at the sole risk of Concessionaire and such Concession Operator. City is not liable for theft thereof or for money deposited therein or for any damage thereto, such theft or damage being the sole responsibility of Concessionaire or such Concession Operator, and Concessionaire shall indemnify, defend and hold the Indemnified Parties harmless from any and all claims arising or resulting directly or indirectly from any such theft or damage. Concessionaire agrees to provide at its own expense such janitorial, toilet and cleaning services and supplies as may be necessary or required in the operation and maintenance of the Concession Locations and the Support Space.

Section 10.2  **Maintenance and Repair.** Concessionaire, at its sole cost and expense, shall be responsible for the repair and maintenance of the Capital Improvements and any other equipment or property of Concessionaire or Concession Operators located within the Premises. Without limiting the generality of the foregoing, Concessionaire shall, at its sole cost and expense:

(a) Maintain the Concession Locations and the Support Space, and all fixtures, equipment and personal property of Concessionaire and Concession Operators
that are located in any other part of the Premises, in a clean and orderly condition and
appearance at all times, including, without limitation, painting areas visible to the general
public and, subject to the requirements of Article X hereof, make all repairs and
replacements and all rebuilding of the Capital Improvements, ordinary and extraordinary,
partial and entire, foreseen and unforeseen, structural or otherwise, which repairs,
replacements and rebuilding shall be in quality and class equal to or better than the
original in materials and workmanship, and pay promptly the cost and expense of all such
maintenance, repairs, replacements and rebuilding;

(b) Keep the Concession Locations and the Support Space at all times free of
insects, vermin, rodents and other pests;

(c) Provide and maintain all fire protection and safety equipment and all other
equipment of every kind and nature required by any Applicable Laws, the terms and
provisions of this Agreement and any insurance carrier providing insurance covering any
portion of the Premises or the Capital Improvements; and

(d) Be responsible for the maintenance and repair of all utility service lines,
connections and valves, including, without limitation, service lines for the supply of
electric power, telephone and data transmission conduits and lines, located upon or
exclusively serving a Concession Location (except to the extent repair relates to Base
Building Work installed by or on behalf of City) or the Support Space.

Section 10.3 Notice of Injury or Damage. Concessionaire shall promptly notify City
at Department of Aviation, Attn: Director of Aviation, Dayton International Airport, 3600
Terminal Drive, Suite 300, Vandalia, Ohio 45377, of any accident or event arising in any manner
from the Concession Operations that results in or might have resulted in bodily injury, personal
injury, property damage or loss of any kind. In addition, Concessionaire shall send a written
report to City within twenty-four (24) hours or as soon as possible, but no more than four (4)
business days for City, after such accident or event.

Section 10.4 Reservation of Rights by City. City and its elected officials, officers,
employees, agents, representatives, contractors and subcontractors, and furnishers of utilities and
other services, shall have the right from time to time, at their own cost and expense, to do or
permit any of the following: (i) to construct and maintain existing and future utility and other
systems; (ii) to enter upon the Concession Locations and the Support Space at all reasonable
times and upon reasonable notice, with such reasonable notice understood not to exceed twenty-
four (24) hours (provided no notice shall be required during any real or threatened emergency) to
inspect any part thereof, and to make such repairs, replacements or alterations thereto as may, in
the opinion of City, be deemed necessary or advisable; (iii) to inspect, install, operate, maintain,
recover and repair the Common Areas; (iv) to have access to all mail facilities according to the
rules and regulations of the United States Post Office; (v) to approve the weight, size and
location of safes, computers and other heavy articles in or about the Premises and to require all
such items and other office furniture and equipment to be moved in and out of the Terminal and
the Premises only at such times and in such manner as City shall direct and in any event at
Concessionaire’s sole risk and responsibility; (vi) to perform any acts related to the safety,
protection or preservation of the Premises; (vii) to do or permit to be done any work in or about
the Premises or any adjacent or nearby building, land, street or alley; (viii) to grant to anyone the exclusive right to conduct any business or render any service in the Terminal that does not operate to exclude Concessionaire from the beneficial use of the Premises as expressly permitted by this Agreement; (ix) to adopt, amend, modify, rescind or suspend any of the Rules and Regulations of City in effect from time to time and to adopt such additional Rules and Regulations as City shall determine to be desirable for the safe, economical and efficient operation of the Premises; (x) to exercise all other rights reserved by City pursuant to the provisions of this Agreement; and (xi) to construct or install over, in, under or through the Premises new lines, pipes, mains, wires, conduits and equipment; provided, however, that in each case in the exercise of any such rights, City shall not unreasonably interfere with the use and occupancy of the Premises by Concessionaire or the Concession Operators to extent reasonably practicable under the circumstances.

ARTICLE XI
SMOKING

Section 11.1 Smoking. The Terminal is a non-smoking facility, and smoking is not permitted in the Concession Locations or the Support Space.

ARTICLE XII
BOOKS, RECORDS, RECORDKEEPING AND REPORTS

Section 12.1 General Requirements. Concessionaire shall maintain, or cause to be maintained (including, without limitation, requiring each Concession Operator to maintain), for a period of three (3) years, or, in the event of a claim by City, until such claim shall have been fully resolved, separate and accurate daily records of Gross Receipts derived from the Concession Program, in accordance with GAAP, showing in detail all business done or transacted in, on, about or from the Premises and pertaining to the Concession Program. Concessionaire also shall maintain, and cause to be maintained by Concession Operators, separate and accurate records with respect to the construction of Capital Improvements in the Concession Locations and the Support Space in accordance with GAAP. Amounts expended shall be reported in the annual audited financial statements of Concessionaire. Concessionaire shall enter, and shall cause the Concession Operators to enter, all receipts arising from such business in regular books or electronic records of account, and all entries in any such records or books shall be made at or about the time such transactions occur. In addition, Concessionaire shall prepare monthly and annual reports of Gross Receipts derived from the Concession Program and separately listing Gross Receipts by Concession Operator, Concession Location and type of Concession Operations, using a form and method as directed by City, which reports shall be simultaneously delivered to City. Annually, within ninety (90) days after the end of each Lease Year, Concessionaire shall furnish City with an audited statement of Gross Receipts derived from the Concession Program for such Lease Year certified by an independent public accounting firm. Upon City's receipt of such audited statement of Gross Receipts for a Lease Year, the MAG for the then-current Lease Year shall be further adjusted if necessary and Concessionaire shall remit, together with such audited statement, any additional amount due under such adjusted MAG for the then-current Lease Year. Upon City's written request, Concessionaire shall make available, and shall cause all Concession Operators to make available, within seven (7) days after a request therefor, to City or its authorized representative(s) any and
all reports, books, records and accounts, including, without limitation, electronic data, pertaining to the Concession Program necessary to conduct an audit of the Concession Operations of Concessionaire and Concession Operators. Concessionaire further agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees or others who might reasonably have information related to such records. In the event that such books and records are not made available in the greater Dayton, Ohio metropolitan area, Concessionaire shall reimburse City for reasonable travel, lodging and meal expenses to examine them at the location(s) where such books and records are available. The intent and purpose of this Section 12.1 is to require Concessionaire to keep and maintain, and to cause the Concession Operators to keep and maintain, books and records that will timely enable City to clearly and accurately ascertain, determine and audit, if so desired, the amount of Gross Receipts derived from the Concession Program. The form and method of Concessionaire’s reporting of Gross Receipts shall be adequate to provide a control and test check of all Gross Receipts derived from the Concession Program. In the event records and reports are not maintained in a form that will permit an expeditious audit, Concessionaire may be assessed charges representing costs associated with extraordinary audit time and effort needed to complete the review. If any such examination, inspection or audit of Concessionaire’s books and records by City discloses any underpayment by Concessionaire in excess of two percent (2%) of the total Rent due, Concessionaire shall pay City the amount of such underpayment with interest within no more than thirty (30) days after such disclosure and including all of City’s costs in connection with such audit. If the discrepancy is a result of Concessionaire’s negligence, intentional act or fraud, Concessionaire also shall reimburse City for all reasonable and actual costs incurred in the conduct of such examination, inspection or audit (including, without limitation, reasonable attorneys’ fees and litigation expenses).

Section 12.2 Minimum Features of Point of Sale Terminals. In order to provide an accurate record of concessions transactions and to provide a high level of service to customers, all cash registers or other point of sale terminals used in Concession Locations must have, as a minimum, the features listed below:

(a) A reasonable number of segregated category addresses to allow for analysis of sales trends and sales by types of products;
(b) An input device consisting of a keyboard, scanner or both;
(c) A patron fee display of sufficient size and legibility to be readily observed by the patron during the processing of a transaction;
(d) The capability (i) to record transactions by sequential control number to the audit tape or computer files, (ii) to print a transaction history to tape or file by hour (time of day), day, month and year, and (iii) to print a customer receipt showing the amount due, amount tendered and the change due to the customer together with the time and date, as well as the printed customer service number and website address for the applicable Concession Operator; and
(e) Unless otherwise approved by City prior to the opening of a business within a Concession Location, the capability to accept at least three (3) major credit cards.
and, wherever commercially reasonable, to provide a so-called “swipe and go” credit card service to customers.

Section 12.3 Statistics Report. City has the right at any time to request that Concessionaire make available to City Point of Sale Data for a one month period occurring within the most recent three (3) months prior to the date of the request, including, without limitation, daily, day-part and product category totals for weekly sales, average transaction values, average number of items sold per transaction per Concession Location and the total number of transactions per Concession Location. Unless otherwise approved in writing by City, such data shall be provided to City within twenty (20) days of its request therefor.

ARTICLE XIII
TAXES AND ASSESSMENTS; LIENS

Section 13.1 Payment of Taxes and Assessments; Liens. Concessionaire shall pay all Taxes and assessments applicable to or resulting from the Concession Operations on a timely basis. City is not responsible for the payment of any Taxes or assessments arising in connection with the Concession Program and the Concession Operations at the Airport. Concessionaire agrees not to permit or suffer any liens to be imposed upon the Terminal or any part thereof as a result of the Concession Operations, and, in the event that any such lien is filed, Concessionaire will cause such lien to be discharged of record within fifteen (15) days after the filing thereof.

Section 13.2 Real Property Taxes and Assessments. Concessionaire acknowledges that Real Property Taxes are assessed on the entire Airport parcel, of which the Premises are a portion thereof. Concessionaire shall pay the Real Property Taxes becoming due and payable from time to time that are attributable to the Concession Locations and the Support Space during the Term (the “Concessionaire’s Share”). The Concessionaire’s Share is based on the valuations set forth in the industrial report of the auditor of Montgomery County, Ohio (the “Report”) for Montgomery County Auditor Parcel #R727-174-13-0001 (or the Report’s successor and any updates thereto), in which the Concession Locations and the Support Space have been identified as “Paradies improvements” (or such other manner of identifying the Concession Locations and Support Space in said Report). City shall bill Concessionaire for Concessionaire’s Share, which Concessionaire agrees to pay within thirty (30) days from the date of the invoice. Concessionaire may protest or contest, in the manner specified by City, the validity or amount of any such Real Property Taxes. City, as required by law, agrees to file such protest or contest for Concessionaire with the taxing authority for Montgomery County, Ohio; provided, however, that Concessionaire shall provide, at its own cost and expense, legal representation and the information, documentation and required appraisals for such protest or contest to City. Except for filing such protest or contest, City is not obligated or otherwise responsible to take any other action with respect to the protest or contest. Further, Concessionaire’s right to protest or contest Real Property Taxes hereunder does not relieve it of the obligation to pay the invoiced amount for Real Property Taxes to City. In the event the protest or contest is successful and a reduction of Real Property Taxes is granted, City will credit the amount overpaid to the next invoice for Real Property Taxes, unless the parties mutually agree to credit or pay the amount overpaid in a different manner. Concessionaire shall also pay any and all Taxes due with respect to its personal property situated on the Premises.
ARTICLE XIV
INSURANCE

Section 14.1 CGL Coverage. Concessionaire shall obtain and maintain continuously in effect at all times during the Term, at its sole cost and expense, commercial general liability and liquor liability insurance coverage (the “CGL Coverage”), with coverage limits of not less than One Million and No/100 Dollars ($1,000,000.00) per occurrence and One Million and No/100 Dollars ($1,000,000.00) in aggregate, that insures against claims, damages, losses and liabilities arising from bodily injury, death and/or property damage, including any such claims, damages, losses or liabilities arising from or relating to Concession Operations, the presence of Concessionaire and Concession Operators at the Airport or the sale of alcoholic beverages. The aggregate deductible amount under the insurance policy or policies providing the CGL Coverage shall not exceed Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per occurrence. Each insurance policy providing the CGL Coverage shall name City and its managers, commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid andcollectible insurance or self-insured retention City may possess or retain. Any insurance coverages maintained by City shall be considered excess insurance only. Each insurance policy providing the CGL Coverage shall provide contractual liability coverage under which the issuing insurance company agrees to insure (i) Concessionaire’s obligations under Sections 15.1 and 15.3 hereof and (ii) any other liability that Concessionaire has under this Agreement for which such insurance policy would otherwise provide coverage. Each insurance company issuing an insurance policy providing the CGL Coverage shall be (A) admitted to do business in the State of Ohio and rated not less than the Minimum Rating or (B) otherwise approved by City. Such approval may be denied or withheld based upon an insurance company’s rating by the Rating Service or other indications of financial inadequacy, as determined by City.

Section 14.2 PC Coverage. Concessionaire shall obtain and maintain continuously in effect at all times during the Term, at its sole cost and expense, property insurance coverage (the “PC Coverage”) with respect to the Capital Improvements for one hundred percent (100%) of the insurable replacement value of thereof, with no co-insurance penalty, that provides (i) special form property insurance at least as broad as that provided by form CP 10 30 (© ISO Properties, Inc.), together with builder’s risk (with respect to the construction or alteration of or addition to a Concession Location during the Term) with any deductible in excess of Ten Thousand and No/100 Dollars ($10,000.00) to be approved by City, and (ii) ordinance and law coverage. Each insurance policy providing the PC Coverage shall name City as a co-loss payee and shall provide that such insurance policy shall be considered primary insurance as to any other valid andcollectible insurance or self-insured retention City may possess or retain. Any insurance coverages maintained by City shall be considered excess insurance only. Each insurance company issuing an insurance policy providing the PC Coverage shall be (A) admitted to do business in the State of Ohio and rated not less than the Minimum Rating or (B) otherwise approved by City. Such approval may be denied or withheld based upon an insurance company’s rating by the Rating Service or other indications of financial inadequacy, as determined by City.

Section 14.3 Auto Coverage. Concessionaire shall obtain and maintain continuously in effect at all times during the Term, at its sole cost and expense, automobile liability insurance coverage (the “Auto Coverage”), with a coverage limit of not less than One Million and No/100
Dollars ($1,000,000.00) per occurrence, that insures against claims, damages, losses and liabilities arising from automobile related bodily injury, death and/or property damage, including any such claims, damages, losses or liabilities arising from or relating to Concession Operations or the presence of Concessionaire and Concession Operators at the Airport. The aggregate deductible amount under the insurance policy or policies providing the Auto Coverage shall not exceed Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per occurrence. Each insurance policy providing the Auto Coverage shall name City and its commissioners, officers and employees as additional insureds thereunder and shall provide that such insurance policy will be considered primary insurance as to any other valid andcollectible insurance or self-insured retention City may possess or retain. Any insurance coverages maintained by City shall be considered excess insurance only. Each insurance policy providing the Auto Coverage shall provide contractual liability coverage under which the issuing insurance company agrees to insure (i) Concessionaire’s obligations under Section 15.1 hereof and (ii) any other liability that Concessionaire has under this Agreement for which such insurance policy would otherwise provide coverage. Each insurance company issuing an insurance policy providing the Auto Coverage shall be (A) admitted to do business in the State of Ohio and rated not less than the Minimum Rating or (B) otherwise approved by City. Such approval may be denied or withheld based upon an insurance company’s rating by the Rating Service or other indications of financial inadequacy, as determined by City.

Section 14.4 WC Coverage. Concessionaire shall obtain and maintain, and shall cause each Concession Operator to obtain and maintain, continuously in effect at all times during the Term, at its sole cost and expense, worker’s compensation insurance coverage (the “WC Coverage”) in accordance with statutory requirements and providing employer’s liability coverage with limits of not less than One Hundred Thousand and No/100 Dollars ($100,000.00) for bodily injury by accident, One Hundred Thousand and No/100 Dollars ($100,000.00) for bodily injury by disease, and Five Hundred Thousand and No/100 Dollars ($500,000.00) policy limit for disease. Each insurance company issuing an insurance policy providing the WC Coverage shall be (A) admitted to do business in the State of Ohio and rated not less than the Minimum Rating or (B) otherwise approved by City. Such approval may be denied or withheld based upon an insurance company’s rating by the Rating Service or other indications of financial inadequacy, as determined by City.

Section 14.5 General Requirements. For purposes of this Agreement, the CGL Coverage, the PC Coverage, the Auto Coverage and the WC Coverage are collectively referred to as the “Insurance Coverages”. Concessionaire agrees that each insurance policy providing any of the Insurance Coverages (i) shall not be altered, modified, cancelled or replaced without thirty (30) days prior notice from Concessionaire to City, (ii) shall provide for a waiver of subrogation by the issuing insurance company as to claims against City and its elected officials, officers and employees, (iii) shall provide that any “other insurance” clause in such insurance policy shall exclude any policies of insurance maintained by City and that such insurance policy shall not be brought into contribution with any insurance maintained by City, and (iv) shall have a term of not less than one year. City shall have the right to change the terms and amounts of the Insurance Coverages if such changes are required or imposed by City’s insurers. Concessionaire shall provide, prior to the commencement of Concessionaire’s performance under this Agreement, one or more certificates of insurance which shall indicate that the Insurance Coverages have been obtained and that the insurance policy or policies referenced or described
in each such certificate of insurance comply with the requirements of this Agreement. Each such certificate of insurance shall name City and its elected officials, officers, agents, employees and volunteers, as additional insureds and shall provide that the insurance company issuing the insurance policy or policies referenced or described therein shall give to City notice of the cancellation or non-renewal of each such insurance policy not less than thirty (30) days prior to the effective date of such cancellation or the expiration date of such insurance policy, as applicable. Upon receipt of a request from City, Concessionaire also agrees to provide to City duplicate originals of any or all of the insurance policies providing the Insurance Coverages. The certificate(s) of insurance provided by Concessionaire to evidence the WC Coverage shall specifically certify that the insurance policy or policies which provide the WC Coverage cover Concessionaire’s or the applicable Concession Operator’s activities in the State of Ohio. If Concessionaire shall at any time fail to obtain or maintain any of the Insurance Coverages, City may take, but shall not be obligated to take, all actions necessary to effect or maintain such Insurance Coverages, and all monies expended by it for that purpose shall be reimbursed to City by Concessionaire upon demand therefor or set-off by City against funds of Concessionaire held by City or funds due to Concessionaire. Concessionaire hereby grants, approves of and consents to such right of set-off for City. If any of the Insurance Coverages is not obtained within a period of time to be determined solely by City, City may terminate this Agreement by providing notice of termination to Concessionaire.

Section 14.6 No Limitation on Liability. It is expressly understood and agreed that the minimum limits set forth in the Insurance Coverages shall not limit the liability of Concessionaire for its acts or omissions as provided in this Agreement.

ARTICLE XV
INDEMNIFICATION

Section 15.1 Negligent Acts or Omissions. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) claimed or incurred by reason of any bodily injury, death and/or property damage arising from any negligent act or omission of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees.

Section 15.2 Intentional Acts. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) claimed or incurred by reason of any bodily injury, death and/or property damage arising from any intentional act of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees.

Section 15.3 Placement or Use of Hazardous Materials. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation
expenses) arising from any negligent act or omission of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees with respect to any bodily injury, death or property damage related to the use or placement of Hazardous Materials on the Airport premises or other areas.

Section 15.4 Negligent Acts or Omissions as to Hazardous Materials. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) arising from any negligent act or omission of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees with respect to (i) any investigation, monitoring, clean-up, containment, removal, storage or restoration work performed by City or a third party with respect to the use or placement of Hazardous Materials (of whatever kind or nature, known or unknown) on the Airport premises or any other areas; (ii) any actual, threatened or alleged contamination by Hazardous Materials on the Airport premises or other areas; (iii) the disposal, release or threatened release of Hazardous Materials on the Airport premises or other areas that is on, from or affects the soil, air, water, vegetation, buildings, personal property, Persons or otherwise; or (iv) any violation of any applicable Environmental Laws.

Section 15.5 Intentional Acts as to Hazardous Materials. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) arising from any intentional act of Concessionaire or any Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees with respect to (i) any investigation, monitoring, clean-up, containment, removal, storage or restoration work performed by City or a third party with respect to the use or placement of Hazardous Materials (of whatever kind or nature, known or unknown) on the Airport premises or any other areas; (ii) any actual, threatened or alleged contamination by Hazardous Materials on the Airport premises or other areas; (iii) the disposal, release or threatened release of Hazardous Materials on the Airport premises or other areas that is on, from or affects the soil, air, water, vegetation, buildings, personal property, Persons or otherwise; (iv) any bodily injury, death or property damage related to the use or placement of Hazardous Materials on the Airport premises or other areas; or (v) any violation of any applicable Environmental Laws.

Section 15.6 Operation of Aircraft and Vehicles. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys’ fees, court costs and litigation expenses) arising from any use, non-use or condition in, on or about, or possession, alteration, repair, operation, maintenance or management of, any Aircraft, vehicle, mobile equipment or other property of Concessionaire or a Concession Operator used or available for use on Airport premises.

Section 15.7 Representations and Warranties; Violations of Agreement. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless
from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation expenses) arising from (i) any representation or warranty made herein by Concessionaire or in any other agreement between City and Concessionaire being false or misleading in any material respect as of the date such representation or warranty was made or (ii) any violation of, or failure of Concessionaire to comply with, the terms of this Agreement.

Section 15.8 Failure to Comply with Applicable Laws. Concessionaire agrees to defend, indemnify and hold each of the Indemnified Parties harmless from and against any and all suits, losses, costs, claims, damages, demands, penalties, fines, settlements, liabilities and expenses (including, without limitation, reasonable attorneys' fees, court costs and litigation expenses) arising from any lien, encumbrance or claim arising from the actions of Concessionaire or a Concession Operator or the failure of Concessionaire or a Concession Operator to comply with any Applicable Laws.

Section 15.9 Survival of Article XV. It is expressly understood and agreed that Concessionaire's obligations under this Article XV shall survive the expiration or earlier termination of this Agreement.

ARTICLE XVI
RELATIONSHIP OF CITY AND CONCESSIONAIRE

Section 16.1 Relationship of City and Concessionaire. City and Concessionaire are not and shall not be considered as joint venturers, partners or agents of each other, and neither shall have the power to bind or obligate the other except as set forth in any contract executed by the party to be bound or obligated. There shall be no liability on the part of City to any Person for any debts incurred by Concessionaire or any Concession Operator or by any business conducted on- or off-Airport in connection with the development or management of Concession Operations.

ARTICLE XVII
CONDUCT OF BUSINESS

Section 17.1 Conduct of Business. Concessionaire and Concession Operators shall have the right to use public Airport facilities in common with others authorized to do so, subject to compliance with Applicable Laws.

ARTICLE XVIII
EVENTS OF DEFAULT; REMEDIES

Section 18.1 Events of Default. The occurrence of any of the events described in this Section 18.1 shall be defined as and shall constitute an “Event of Default” under this Agreement:

(a) Concessionaire becomes insolvent, or takes the benefit of any present or future insolvency law, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof, or consents
to the appointment of a receiver, trustee or liquidator of all or substantially all of its property;

(b) By order or decree of a court, Concessionaire is adjudged bankrupt or an order is made approving a petition filed by any of the creditors or equity owners of Concessionaire seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof;

(c) A petition or action under any part of the federal bankruptcy laws or under any other law or statute of the United States or of any state thereof is filed against Concessionaire and such petition or action against Concessionaire is not dismissed within sixty (60) days after the filing thereof;

(d) By or pursuant to or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator takes possession or control of all or substantially all of the property of Concessionaire and such possession or control shall continue in effect for a period of fifteen (15) days;

(e) Any materialman, construction, mechanic or other voluntary lien, judgment, attachment or encumbrance is filed against the Premises or any portion thereof as a result of any act or omission of Concessionaire or any Concession Operator and is not removed within fifteen (15) days after the filing thereof;

(f) Concession Operations are abandoned, deserted, vacated or discontinued in any of the Concession Locations (other than permitted under this Agreement) for a period of forty-eight (48) hours without the prior consent of City;

(g) Concessionaire assigns, transfers or encumbers this Agreement or any interest herein, without the prior consent of City;

(h) Concessionaire fails duly and punctually to pay any portion of the Rent when due or to make any other payment required hereunder when due to City and such failure continues for a period of ten (10) days after notice from City to Concessionaire of such failure;

(i) Concessionaire fails to comply with the Concessionaire Insurance Requirements;

(j) Concessionaire fails to maintain, or to cause the Concession Operators to maintain, Concession Operations in the manner required under this Agreement, as determined in the reasonable discretion of City, and such failure continues for a period of ten (10) days after notice from City to Concessionaire of such failure;

(k) Concessionaire fails to implement or to maintain, or to cause the Concession Operators to implement and maintain, Reasonable Pricing, and such failure
continues for a period of ten (10) days after notice of from City to Concessionaire of such failure;

(l) Concessionaire fails to demonstrate a good faith effort to achieve and maintain the level of Ohio-certified DBE participation throughout the Term as required under Section 6.2 hereof;

(m) Independent certified public accountants retained by City determine that Concessionaire’s failure to maintain a proper internal control structure has resulted in an audit adjustment to the amount due to City of two percent (2%) or more on a monthly basis, or Concessionaire has engaged in fraudulent practices regardless of the amount of any audit adjustment; or

(n) Concessionaire fails to comply with each and every promise, covenant, condition and agreement set forth in this Agreement on its part to be kept, performed or observed (other than the promises, covenants, conditions and agreements otherwise addressed by specific provisions of this Section 18.1), and such noncompliance continues for a period of ten (10) days after notice from City to Concessionaire of such noncompliance; provided, however, that if correction of such noncompliance (i) does not involve the payment of money, (ii) requires activity over a period of time and (iii) Concessionaire promptly commences to cure such noncompliance, to the satisfaction of City, within such ten (10) day period, then such noncompliance shall not constitute an Event of Default hereunder so long as Concessionaire diligently pursues the cure of such noncompliance as determined by City.

Section 18.2 Remedies. Upon the occurrence of an Event of Default, City may exercise any and all rights and remedies permitted under law or equity, including, without limitation, any one or more of the following:

(a) City may, at its option, declare all installments of Rent payable under this Agreement for the remainder of the Term to be immediately due and payable, whereupon such amount, discounted to net present value using a discount rate that is then consistent with current market conditions, shall be immediately due and payable hereunder;

(b) City may re-enter and take possession of the Premises and sublease all or any portion(s) of the Premises for the account of Concessionaire, and Concessionaire shall remain liable for the difference between the Rent and other amounts payable by Concessionaire hereunder and the rent and other amounts actually paid by any such subtenant(s);

(c) City, as Concessionaire’s agent, without terminating this Agreement, may enter upon and operate the Premises and, in this connection, Concessionaire authorizes City upon such entry to take over and assume the management, operation and maintenance of the Premises for the account of Concessionaire, and Concessionaire shall remain liable for all Rent and other amounts payable by Concessionaire hereunder;
(d) City may terminate this Agreement and exclude Concessionaire from the Premises, and Concessionaire shall remain liable for all Rent and other amounts payable by Concessionaire hereunder;

(e) City may take whatever action at law or in equity may appear necessary or desirable to collect the Rent and any other amounts then due and thereafter to become due hereunder or to enforce performance and observance of any obligation, agreement or covenant of Concessionaire under this Agreement and to recover any and all damages to City for Concessionaire’s violation or breach of this Agreement, including, without limitation, attorneys’ fees, leasing commissions and all other costs incurred by City in re-leasing or subleasing the Premises or any part thereof to one or more other tenants;

(f) No termination of this Agreement prior to the last day of the Term, by lapse of time or otherwise, shall affect Concessionaire’s obligation to pay, and City’s right to collect, the entire Rent and any other amounts due under this Agreement; and

(g) In the event City elects to terminate this Agreement as hereinabove provided, City may, in addition to any other remedies it may have, recover from Concessionaire all damages City may incur by reason of such Event of Default, including, without limitation, the cost of recovering the Premises, attorneys’ fees and the value, at the time of such termination, of the excess, if any, of the amount of Rent for the remainder of the Term due from Concessionaire over the then estimated rent and other amounts for the remainder of the Term that City expects to receive from one or more replacement tenants, all of which amounts shall be immediately due and payable from Concessionaire to City.

The rights and remedies of City provided under this Section 18.2 shall not be exclusive and are in addition to any other rights and remedies which City may have at law or in equity or under this Agreement.

Section 18.3 No Waiver. No waiver by City at any time of any of the terms, conditions, covenants or agreements herein shall be deemed or taken as a waiver at any time thereafter of the same or any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof. No delay, failure or omission of City to take or to exercise any right, power, privilege or option arising upon any Event of Default, or subsequent acceptance of any Rent, shall impair any such right, power, privilege or option or be construed to be a waiver of any such Event of Default or a relinquishment thereof or acquiescence therein; and no notice by City shall be required to restore or revive any option, right, power, remedy or privilege after waiver by City of an Event of Default in one or more instances.

Section 18.4 Termination by Concessionaire. Concessionaire shall have the right to terminate this Agreement in its entirety upon the occurrence of any of the following:

(a) The destruction of all or a material portion of the Airport facilities that has a significant impact on the volume of passengers using the Airport; or

(b) The occupation of the Airport or a substantial part thereof by any Governmental Authority (other than City) for a period of ninety (90) consecutive days;
provided, however, that, in the event Concessionaire elects to terminate this Agreement under the conditions of this Section 18.4, City shall have no obligation to reimburse Concessionaire or any Concession Operator for any Capital Improvements.

ARTICLE XIX
DAMAGE OR DESTRUCTION OF PREMISES

Section 19.1 Partial Damage. If all or any portion of the Premises is partially damaged by fire, explosion, the elements, act(s) of war or terrorism or other casualty, but the Concession Locations are not rendered untenable or inaccessible to passengers, such damage will be repaired with due diligence by City at its own cost and expense and there shall be no abatement of payments to City; provided, however, that (i) if the damage is caused by the act or omission of Concessionaire or a Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees, Concessionaire shall be responsible at its expense for making the necessary repairs and restorations as approved by City, and (ii) City shall have no obligation to repair or restore any damage to the Capital Improvements of a Concession Operator. City shall make any insurance proceeds of the PC Coverage paid to City available to Concessionaire in a manner reasonably acceptable to City for the purpose of paying the costs of repairing and restoring such Capital Improvements. If such insurance proceeds are not sufficient to pay such costs of repairing or restoring such Capital Improvements, Concessionaire shall pay the deficiency. If Concessionaire fails to make the necessary repairs and restorations in a timely manner as determined by City, then City may, at its option, cause such repairs and restorations to be completed and Concessionaire shall reimburse City for the costs and expenses incurred in such repairs and restorations, plus an administrative fee equal to fifteen percent (15%) of such costs and expenses.

Section 19.2 Extensive Damage. If all or any portion of the Premises is damaged by fire, explosion, the elements, act(s) of war or terrorism, or other casualty, and such damage shall be so extensive as to render part or all of the Concession Locations untenable or inaccessible to passengers, but such damage is capable of being repaired and restored within one hundred twenty (120) days, such damage shall be repaired and restored with due diligence by City at its own cost and expense and the MAG for such period shall be reduced in proportion to the portion of the Concession Locations rendered untenable or inaccessible, from the time of such damage until such time as the Premises are fully restored and certified by City's engineers as ready for occupancy; provided, however, that (i) if the damage is caused by the act or omission of Concessionaire or a Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees, there shall be no abatement in the MAG and Concessionaire shall be responsible at its expense for making the necessary repairs and restorations as approved by City, and (ii) City shall have no obligation to repair or restore any damage to the Capital Improvements of a Concession Operator. City shall make any insurance proceeds of the PC Coverage paid to City available to Concessionaire in a manner reasonably acceptable to City for the purpose of paying the costs of repairing and restoring such Capital Improvements. If such insurance proceeds are not sufficient to pay such costs of repairing or restoring such Capital Improvements, Concessionaire shall pay the deficiency. If Concessionaire fails to make the necessary repairs and restorations in a timely manner as determined by City, then City may, at its option, cause such repairs and restorations to be completed and
Concessionaire shall reimburse City for the costs and expenses incurred in such repairs and restorations, plus an administrative fee equal to fifteen percent (15%) of such costs and expenses.

Section 19.3 Complete Destruction. In the event the Premises are completely destroyed by fire, explosion, the elements, act(s) of war or terrorism or other casualty or are so damaged that they are untenable and cannot be replaced except after more than one hundred twenty (120) days, City shall be under no obligation to repair and restore the Premises, and the obligation of Concessionaire to pay Periodic Rent shall abate as of the date of such damage or destruction until such time as the Premises are fully restored or until City provides substitute facilities, reasonably acceptable to Concessionaire, for use by Concessionaire; provided, however, that (i) if the damage is caused by the act or omission of Concessionaire or a Concession Operator or any of their respective officers, contractors, subcontractors, agents, representatives or employees, there shall be no abatement in Periodic Rent and Concessionaire shall be responsible at its expense for making the necessary repairs and restorations as approved by City, and (ii) City shall have no obligation to repair or restore any damage to the Capital Improvements of a Concession Operator. City shall make any insurance proceeds of the PC Coverage paid to City available to Concessionaire in a manner reasonably acceptable to City for the purpose of paying the costs of repairing and restoring such Capital Improvements. If such insurance proceeds are not sufficient to pay such costs of repairing or restoring such Capital Improvements, Concessionaire shall pay the deficiency. If City undertakes the repair and restoration of the Premises under this Section 19.3 and does not complete such repair and restoration of the Premises within twelve (12) months after the time of such damage or destruction, or City has not supplied substitute facilities reasonably acceptable to Concessionaire, Concessionaire may terminate this Agreement in its entirety as of the date of such damage or destruction. If Concessionaire is responsible for the repair and restoration of the Premises under this Section 19.3 and does not complete such repair and restoration of the Premises within twelve (12) months after the time of such damage or destruction in a timely manner as determined by City, then City may, at its option, cause such repairs and restorations to be completed and Concessionaire shall reimburse City for the costs and expenses incurred in such repairs and restorations, plus an administrative fee equal to fifteen percent (15%) of such costs and expenses.

ARTICLE XX
OPERATING RIGHTS

Section 20.1 Operating Rights. Concessionaire, subject to the terms and provisions of this Agreement, has the exclusive right under this Agreement during the Term to operate all current and future non-vending machine areas in the public portions of the Terminal that City designates from time to time during the Term for the sale of newspapers, magazines and other periodicals. The other rights of Concessionaire under the terms and provisions of this Agreement are non-exclusive.

ARTICLE XXI
ENVIRONMENTAL PROTECTION

Section 21.1 Compliance with Environmental Laws. Concessionaire hereby agrees to comply with the Environmental Laws. Further, any fines or penalties that may be levied
against City by the EPA or any other Governmental Authority arising from or relating to
Concessionaire’s failure to comply with any of the Environmental Laws shall be reimbursed to
City by Concessionaire immediately after notice of the amount of such fines or penalties from
City. Upon the expiration or earlier termination of the Term, Concessionaire shall, at
Concessionaire’s sole expense, remove or permanently clean all Hazardous Materials that
Concessionaire, a Concession Operator or anyone for whom Concessionaire or a Concession
Operator is responsible, caused to be situated on, at, in or under any Airport premises. This shall
be done in compliance with all Applicable Laws and shall include the performance of any
necessary clean-up or remedial action. Concessionaire shall provide City with copies of all
records related to any Hazardous Materials that are required to be maintained by any Applicable
Laws.

ARTICLE XXII
OPERATIONAL AUDITS

Section 22.1 Operating Standards. Concessionaire shall cause all Concession Operators to keep and maintain their respective Concession Locations and Support Space in a
First Class Manner in compliance with all Applicable Laws, including, without limitation, applicable health, fire and building inspection requirements.

Section 22.2 Performance Audits. Concessionaire shall conduct formal performance audits for each Concession Location on a bi-monthly basis to ensure that all of the operational, safety and customer service requirements for Concession Operations are consistently met and that patrons of the Airport receive the quality of service required under this Agreement. City reserves the right to participate in such audits at its discretion. The form of the evaluation document to be used in such performance audits by Concessionaire shall be subject to the prior approval of City. The operating standards to be used for such performance audits shall address product quality, customer service and cleanliness and maintenance, and such standards shall be, to the greatest extent possible, objective measures. Concessionaire shall also establish a means for communicating results of such performance audits to Concession Operators and for addressing any deficiencies found.

ARTICLE XXIII
LEASEHOLD MORTGAGES

Section 23.1 Leasehold Mortgages Not Permitted. Concessionaire shall have no right (and shall not permit any other Concession Operator) (i) to convey, pledge or encumber, by deed of trust, mortgage or similar instrument, its leasehold interest in and to the Premises or any Capital Improvements constructed or placed on the Premises, or (ii) to assign this Agreement or any Sublease as collateral security for any indebtedness.

ARTICLE XXIV
GENERAL PROVISIONS

Section 24.1 Attempts or Payments to Influence. Concessionaire certifies to the best of its knowledge and belief that:
(a) No federally or state-appropriated funds have been paid or will be paid by or on behalf of Concessionaire or a Concession Operator to any person for influencing or attempting to influence an officer or employee of any agency of the United States government or a member, officer or employee of the United States Congress, or an employee of a member of the United States Congress, in connection with the awarding of any federal contract, the making of any federal grant or loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement;

(b) If Concessionaire or a Concession Operator has compensated or does compensate any person for influencing or attempting to influence an officer or employee of any agency of the United States government, a member, officer or employee of the United States Congress, or any employee of a member of the United States Congress, in connection with any contract, grant, loan or cooperative agreement, then Concessionaire or such Concession Operator shall complete and submit to City, in accordance with its instructions, Standard Form LLL, "Disclosure of Lobbying Activities"; and

(c) Concessionaire shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and make disclosures in accordance with this Section 24.1.

Section 24.2 Ohio Revised Code § 3517.13 Compliance. By execution hereof, Concessionaire affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

Section 24.3 Drug-Free Workplace. City operates a drug-free workplace program in compliance with Ohio Administrative Code § 123:1-76-01, et. seq. Concessionaire hereby agrees to submit, and to cause each Concession Operator to submit, an affidavit not less than annually while this Agreement is in effect certifying that Concessionaire or such Concession Operator, as the case may be, operates a drug-free workplace program or other drug or alcohol testing program containing requirements at least as stringent as those of the program operated by City.

Section 24.4 Affirmative Action. Concessionaire shall undertake, to the extent applicable, an affirmative action program as required by 14 C.F.R. Part 152, Subpart E, as amended from time to time, to ensure that no person shall, on the grounds of race, creed, color, national origin or sex, be excluded from participating in any employment, contracting or leasing activities covered in 14 C.F.R. Part 152, Subpart E, as amended from time to time. Concessionaire further assures that (i) no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by 14 C.F.R. Part 152, Subpart E, as amended from time to time, and (ii) it will require that its covered organizations under 14 C.F.R. Part 152, Subpart E, as amended from time to time, and the Concession Operators provide assurances to Concessionaire that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 C.F.R. Part 152, Subpart E, as amended from time to time, to the same effect. Concessionaire agrees to comply with any affirmative action plan or steps for equal employment opportunity required by 14 C.F.R. Part 152, Subpart E, as amended from time to time, as part of
the affirmative action program, and by any federal, state or local agency or court, including those resulting from a conciliation agreement, a consent decree, court order or similar mechanism. Concessionaire agrees that state or local affirmative action plans will be used in lieu of any affirmative action plan or steps required by 14 C.F.R. Part 152, Subpart E, as amended from time to time, only when they fully meet the standards set forth in 14 C.F.R. 152.409, as amended from time to time. Concessionaire agrees to obtain a similar assurance from its covered organizations and the Concession Operators, and to cause them to require a similar assurance of their covered suborganizations, as required by 14 C.F.R. Part 152, Subpart E, as amended from time to time.

Section 24.5 No Discrimination. Concessionaire hereby agrees as follows:

(a) Concessionaire will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, handicap or creed, and Concessionaire will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, handicap or creed, including, without limitation, action relating to employment; upgrading, demotion or transfer; recruitment or recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. It is expressly agreed and understood that Section 35.14 of the Revised Code of General Ordinances of the City of Dayton constitutes a material condition of this Agreement as fully and as if specifically written herein and that failure to comply therewith shall constitute a breach thereof entitling City to terminate this Agreement at its option;

(b) Concessionaire will post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Section 24.5;

(c) Concessionaire will, in all solicitations or advertisements for employees placed by or on behalf of Concessionaire, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, ancestry, national origin, handicap or creed;

(d) Concessionaire will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising such labor unions or workers' representatives of Concessionaire's commitments under this Section 24.5(d) and will post copies of the notice in conspicuous places available to employees and applicants for employment;

(e) Concessionaire will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the United States Secretary of Labor;

(f) Concessionaire will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the United States Secretary of Labor, or pursuant thereto, and will permit access to its
books, records and accounts by the administering agency and the United States Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders;

(g) In the event of Concessionaire’s noncompliance with the nondiscrimination requirements of this Agreement, this Agreement may be immediately canceled, terminated or suspended, in whole or in part, by City by providing notice of termination to Concessionaire, and Concessionaire may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the United States Secretary of Labor, or as otherwise provided by law; and

(h) Concessionaire will include the provisions of this Section 24.5 in each Sublease and other agreement establishing a Concession Operator’s ability to conduct Concession Operations and in each of its subcontracts or purchase orders unless exempted by rules, regulations or orders of the United States Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Sublessee, other Concession Operator, subcontractor or vendor. Concessionaire will take such action with respect to any Sublease, other agreement establishing a Concession Operator’s ability to conduct Concession Operations, subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Concessionaire becomes involved in or is threatened with litigation by a Sublessee, other Concession Operator, subcontractor or vendor as a result of such direction by the administering agency, Concessionaire may request the United States to enter into such litigation to protect the interests of the United States.

Section 24.6 No Exclusive Right. Nothing herein contained shall be deemed to grant Concessionaire any exclusive right or privilege within the Federal Aviation Act, or the conduct of any activity at the Airport, except that, subject to the terms and provisions hereof, Concessionaire shall have the right to use the Premises for the purposes stated in this Agreement.

Section 24.7 Subordination to Other Agreements. This Agreement is subject and subordinate to the provisions of any agreement heretofore or hereafter made between City and any other Governmental Authority relative to the operation or maintenance of the Airport, the execution of which has been required as a condition precedent to the transfer of federal rights or property to City for Airport purposes, or the expenditure of federal funds for the improvement or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Federal Aviation Act.

Section 24.8 Subordination to City Encumbrances. This Agreement and all rights of Concessionaire hereunder shall be subject and subordinate to any deed of trust or mortgage lien or security interest encumbering City’s interest in the Premises and to any renewal, extension, modification or consolidation of such deed of trust or mortgage or security agreement granting such security interest. Concessionaire agrees, at any time, and from time to time, upon not less
than ten (10) days prior notice by City, to execute, acknowledge and deliver to City a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the Rent and other charges have been paid, and stating whether, to the best knowledge of Concessionaire, City is in default in the performance of any covenant, agreement, provision or condition contained in this Agreement and, if so, specifying each such default of which Concessionaire may have knowledge. City and Concessionaire intend that any such statement delivered pursuant hereto may be relied upon by any prospective mortgagee of City and any purchaser or tenant of the Premises or the Terminal and such purchaser’s or tenant’s mortgagee or prospective mortgagee, and by any prospective assignee and its mortgagee or prospective mortgagee. Concessionaire also agrees to execute and deliver from time to time, upon not less than ten (10) days prior notice by City, such similar estoppel certificates as a lender to City may require with respect to this Agreement. If Concessionaire fails or refuses to furnish such certificate within the time provided, it will be conclusively presumed that this Agreement is in full force and effect in accordance with its terms and City is not in default hereunder.

Section 24.9 No Waiver. No waiver of default by either party of any of the terms, covenants or conditions herein to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

Section 24.10 Notices, Approvals, Consents, etc. All notices, approvals, consents, demands, requests and other communications required or permitted by this Agreement must be in writing to be effective and personally delivered or sent by certified United States Mail, postage prepaid, or by a recognized delivery service that provides registered and verifiable shipment or airbill tracking and delivery record, with costs prepaid, to the addresses set forth below:

To City: City of Dayton, Ohio
Department of Aviation
Dayton International Airport
3600 Terminal Drive, Suite 300
Vandalia, Ohio 45377
Attn: Director of Aviation

Concessionaire: Paradies-Dayton, Inc.
5950 Fulton Industrial Blvd.
Atlanta, Georgia 30336
Attn: Don Marek

The person and place to which notices, approvals, consents, demands, requests and other communications are to be sent may be changed by a party hereto upon written notice to the other. A notice, approval, consent, demand, request or other communication required or permitted hereunder shall be deemed received and effective (i) on the date that is three (3) days after the date on which it is deposited in the United States Mail if sent by certified mail, or (ii) on the date it is received by the recipient if sent by personal delivery, or (iii) on the date on which the
signature receipt is recorded by the recognized delivery service if it is sent by a recognized delivery service.

Section 24.11 Consents, Approvals, etc., of City. Whenever any provision of this Agreement requires the consent or approval of City or provides to City the right to make a determination or judgment, City shall have the absolute and unconditional right to withhold its consent or approval, in its sole discretion, and to make such determination or judgment in its sole discretion on the basis of such factors and considerations as it shall deem relevant (including, without limitation, self-interest), except for those circumstances, if any, where this Agreement expressly provides that such consent or approval will not be unreasonably withheld or City will make such determination or judgment reasonably.

Section 24.12 Headings. The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction hereof.

Section 24.13 Severability. If one or more clauses, sections or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, the parties hereto agree that the material rights of either party hereto shall not be affected thereby except to the extent of such holding, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted herefrom.

Section 24.14 Agents for Service of Process. The parties hereto hereby designate the following as their agents for service of process and will waive any objection to service of process if served upon its agent as set forth below:

To City: Director of Law
City of Dayton, Ohio
101 W. Third Street
P.O. Box 22
Dayton, Ohio 45202

Concessionaire: Legal Counsel
Paradies-Dayton, Inc.
5950 Fulton Industrial Blvd.
Atlanta, Georgia 30336

Section 24.15 Waiver of Anticipated Profits. Concessionaire hereby waives any claim against City and its managers, commissioners, officers, employees, agents, servants, representatives, contractors, subcontractors, affiliates, successors and assigns for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Agreement or any part hereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable, or delaying the exercise of any rights under this Agreement.
Section 24.16 Right of City to Develop Airport. The parties hereto further covenant and agree that City reserves the right to further develop or improve the Airport as it may see fit, regardless of the desires or views of Concessionaire and without interference or hindrance.

Section 24.17 Incorporation of Legally Required Provisions. The parties incorporate herein by reference all provisions legally required to be contained herein by any Governmental Authority.

Section 24.18 Limitation of City’s Liability. Neither City nor any elected official, employee, officer or agent thereof shall have (i) any personal liability with respect to any of the provisions of this Agreement, or (ii) any liability for any consequential damages resulting from a default by City hereunder or from the exercise by City of any of its remedies hereunder upon the occurrence of an Event of Default. Concessionaire further agrees not to initiate or participate in any involuntary bankruptcy, reorganization, receivership or insolvency proceeding against City.

Section 24.19 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

Section 24.20 Required Modifications. In the event that a Governmental Authority requires modifications or changes to this Agreement as a condition precedent to the granting of funds for the improvement of the Airport, or otherwise, Concessionaire shall make or agree to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of this Agreement as may be reasonably required and any expenses resulting from such amendments, modifications, revisions, supplements or deletions shall be paid by City.

Section 24.21 Time is of the Essence. Time is of the essence in the performance of the terms and conditions of this Agreement.

Section 24.22 Construction of Agreement. Words of any gender used in this Agreement shall be deemed to include any other gender, and words in the singular number shall be deemed to include the plural, unless the context otherwise requires.

Section 24.23 Understanding of Agreement. The parties hereto acknowledge that they thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received such competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein.

Section 24.24 Legal Interest and Other Charges. Any payment of Rent or any other amount due and payable hereunder that is not paid on the date it is due shall bear interest until paid at the maximum lawful rate of interest permitted by Applicable Laws. Notwithstanding any provision of this Agreement to the contrary, it is the intent of City and Concessionaire that City shall not be entitled to receive, collect, reserve or apply, as interest, any amount in excess of the maximum amount of interest permitted to be charged by Applicable Laws. In the event this Agreement requires a payment of interest that exceeds the maximum amount of interest permitted under Applicable Laws, such interest shall not be received, collected, charged or reserved until such time as that interest, together with all other interest then payable, falls within the maximum amount of interest permitted to be charged under Applicable Laws. In the event
City receives any such interest in excess of the maximum amount of interest permitted to be charged under Applicable Laws, the amount that would be excessive interest shall be deemed a partial prepayment of Rent and treated under this Agreement as such, or, if this Agreement has been terminated, any remaining excess funds shall immediately be paid to Concessionaire.

Section 24.25 Holding Over. Any holding over by Concessionaire after the expiration or termination of this Agreement, without the consent of City, shall not be deemed to operate as an extension or renewal of this Agreement, but shall only create a tenancy from month to month which may be terminated by City at any time.

Section 24.26 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Section 24.27 Avigation Easement. City hereby reserves from the Premises, for the use and benefit of itself and its successors and assigns, and the operators, owners and users of Aircraft of all types and for the public in general, a perpetual easement and right-of-way for the free and unobstructed flight and passage of Aircraft ("Aircraft" being defined for the purposes of this Agreement as any contrivance now known or hereafter invented, used or designed for navigation of or flight in or through the air) by whomsoever owned or operated, in and through the airspace above, over and across the surface of the Premises, together with the right to cause in such airspace such noise, vibration, odors, vapors, particulates, smoke, dust and other effects as may be inherent in the operation of Aircraft for navigation of or flight or passage in and through such airspace, and for the use of such airspace by Aircraft for approaching, landing upon, taking off from, maneuvering about or operating at the Airport.

This easement is reserved upon and subject to the following terms and conditions:

(a) Concessionaire shall not hereafter use, cause or permit to be used, or suffer use of, the Premises so as: (i) to cause electrical, electronic or other interference with radio, radar, microwave or other similar means of communications between the Airport and any Aircraft; (ii) to adversely affect or impair the ability of operators of Aircraft to distinguish between regularly installed air navigation lights and visual aids and other lights serving the Airport; or (iii) to cause glare in the eyes of operators of Aircraft approaching or departing the Airport, or to impair visibility in the vicinity of the Airport, or to otherwise endanger the approaching, landing upon, taking off from, maneuvering about or operating of Aircraft on, above and about the Airport; provided, however, that, notwithstanding any contrary provision contained above, Concessionaire shall be permitted to construct and maintain such improvements and to utilize all lighting, finishes and building materials as shall have been submitted to and approved by City; and

(b) Concessionaire, for itself and Concession Operators and their respective assigns, subtenants and legal representatives (collectively, the "Releasing Parties"), hereby expressly releases and forever discharges City and its Board of Commissioners, legal representatives, officers, assigns, associates, employees, agents and all others acting in concert with City, from any and all claims, debts, liabilities, obligations, costs, expenses, actions or demands, vested or contingent, known or unknown, whether in tort, contract or otherwise, that the Releasing Parties may now own or hold, or have any time
heretofore owned or held, or may at any other time own or hold, by reason of noises, vibration, odors, vapors, particulates, smoke, dust or other effects as may be inherent in the operation of Aircraft and caused or created by the flight or passage of Aircraft in or through the airspace subject to the easement and right-of-way herein reserved; provided, however, that such operation or use is in compliance with Applicable Laws.

Section 24.28 Attorneys' Fees. If any Rent due and payable under this Agreement is collected by or through an attorney, Concessionaire shall pay as Additional Rent all attorneys' fees and costs. Concessionaire also shall pay all attorneys' fees incurred by City as a result of any legal or equitable action proceeding arising from any breach or Event of Default by Concessionaire under this Agreement in the event City is the prevailing party in such proceeding.

Section 24.29 Amendment and Restatement. This Agreement amends and restates the Original Agreement in full.
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and date first written above to be effective as of the Effective Date.

CITY:

CITY OF DAYTON, OHIO

[Signature]
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

[Signature]
Clerk of the Commission
Acting

CONCESSIONAIRE:

PARADIES-DAYTON, INC.

By: [Signature]
Printed Name: Gregg Paradies
Title: President
Exhibit A

Concession Locations
Exhibit B
Capital Improvements During Construction Period

The Capital Improvements during the Construction Period will include the following:

I. **CNBC News Express** – Pre-Security – Approximately 340 SF
   CNBC News Express will be designed with freestanding, lockable kiosk wall units and a stand alone single register cash wrap. Store brand identification and signage will be designed into the kiosk wall units.

II. **Miami Valley Marketplace** – B Concourse – Approximately 1470 SF
   This location of the current B Concourse newsstand will be expanded by the inclusion of adjacent space, approximately 800sf and completely redeveloped. The Marketplace will be designed with a regional theme and ambience. Redevelopment will include new lighting, millwork, flooring, store gates, beverage coolers, floor fixtures (nested tables, item fixtures, etc) and a cash wrap with two POS terminal stations. Store brand identification and exterior signage will be designed into the storefront portal.

III. **Wright Stop TravelMart** – C Concourse – Approximately 1000 SF
    The current News/Gift on Concourse C will be redeveloped as a TravelMart. This concept will be located across from the Food and Beverage location and replace the current Newsstand. The store design will feature aviation and Wright Brothers icons. The scope of work will include new lighting, millwork, flooring, storefront gate, beverage cooler, floor fixtures (nested tables, item fixtures, etc) and a cash wrap with two POS terminal stations. Store brand identification and exterior signed will be designed into the storefront portal.
Exhibit C

Terminal
Exhibit D

Support Space
Exhibit E

DBE Participation Form(s)
DBE PARTICIPATION REPORT

CONCESSIONAIRE:
Name: Paradies-Dayton, Inc.
Address: 5950 Fulton Industrial Blvd
Atlanta, GA 30336
Phone: 404-344-7905
Contact Person: Don Marek
Title: VP of Finance

DBE:
Name: George Cooper Enterprises
Address: P. O. Box 26106
Trotwood, OH 45426
Phone: 937 279 3000
Contact Person: Julius Carter
Title: Deputy Manager

[X] Male-Owned [ ] Female-Owned

Ethnic Group:
Caucasian ______ Asian Indian ______ Asian Pacific ______ Native American ______ Hispanic American ______ African American ______ Other [Specify: ____________________________]

Scope of Services Provided by DBE: Various management and oversight functions

Total Amount of Contract with DBE: $ 25%
Commencement Date of Contract with DBE: 1992
Expiration Date of Contract with DBE: 2018

Other Terms of Contract with DBE: (see attached)

The DBE is a certified Disadvantaged Business Enterprise under City’s Disadvantaged Business Enterprise program.

CONCESSIONAIRE:
Paradies-Dayton, Inc.

By: Don Marek
Printed Name: Don Marek
Title: VP of Finance
Date: 9/22/08

DBE:
George Cooper Enterprises

By: Margaret G. Cooper
Name: Margaret G. Cooper
Title: Founding Partner
Date: September 23, 2008
Exhibit F

City Procurement Requirements

City of Dayton, Department of Aviation
Concession Design and Construction Requirements

1. City participation is limited to design and construction costs. All furniture, fixtures and equipment shall be the responsibility of Concessionaire.

2. Concessionaire will provide City with an initial cost estimate with sufficient detail to determine City’s potential participation.

3. All labor will be at Ohio prevailing wages.

4. The applicable construction project will be competitively bid.

5. The lowest and best bid shall be selected for the construction project.

6. If all bids are greater than 110% of the cost estimate, City has the option to reduce all or part of its participation on the amount over the cost estimate.

7. City will participate up to 10% of a pre-determined contingency amount.

8. The City of Dayton through the Ohio Uniform Certification Program, maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm’s name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform. The directory is available at https://www.ohioucp.org/index.vm.

9. For a list of certified small business and DBE providers in the greater Dayton, Ohio metropolitan area, please contact:

   Minority Contractors Business Assistance Program
   210 Riverside Drive, Suite 1-E
   Dayton, OH 45405-4956
   mcbaphrc@dayton.net
   (937) 223-2164
Amended and Restated Master Lease and Concession Agreement with Paradies-Dayton, Inc.

The Department of Aviation requests permission to enter into an Amended and Restated Master Lease and Concession Agreement ("Amendment") with Paradies-Dayton, Inc. ("Paradies"). This Amendment modifies and restates an existing concession agreement with Paradies, which does not expire until December 31, 2018.

Under this Amendment, Paradies will continue to operate the news and gift shop concession at the Dayton International Airport ("Airport"), but is required to construct/refurbish B and C concourse stores and install a pre-security news/convenience store ("Construction Project"). The Department of Aviation agrees to reimburse Paradies an amount not to exceed $1,500,000 for the Construction Project. Items eligible for reimbursement include architectural and engineering services, construction (including relocation of any displaced facilities or offices as a result of store expansion) costs and the cost of permanent fixtures.

Upon execution of the Amendment, Paradies will begin payment of an increased rental, which is the greater of a Minimum Annual Guarantee of $300,000 per year or the following percentages of Gross Receipts from Concession Operations during each lease year: 15.8% of the first $2,800,000 of Gross Receipts; and 17.8% of Gross Receipts in excess of the first $2,800,000. The total estimated revenue for the remaining term (approximately 10 years and 3 months) is a minimum of $3,086,820.39. This Amendment does not modify the original expiration date, which is December 31, 2018.

Certificates of Revenue (2) are attached. A Certificate of Fund(s) will be sought in 2009 from Aviation Capital (2009) once the City approves the scope of work and a final cost estimate for the Construction Project.
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information:
Name: Paradies-Dayton, Inc.
Address: 5950 Fulton Industrial Blvd. SW
City: Atlanta  State: GA  Zip+4: 30336
Customer #: 1335  Address Location #: 1409
Federal ID#

Revenue Information:
Fund: 51000  Organization: 3212  Revenue: 23361  Program: 43

Contract Information:
Contract Start Date: 11/1/91  Contract Expiration Date: 12/31/18

Billing Information:
Rate: $28,940.13  Arrears  Pre-bill X
Monthly (1st month of billing): November
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)
Rate Change Date: 1/1/09  Rate Change Amount: TBD

Description of Services (wording on invoice):

Monthly Minimum Guarantee at Dayton International Airport

(MAG for 2008 is based on 2007 percentage payments to City – annual settlement for 2008 will be
Completed 60 days after the end of the Lease Year)

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number: 1-1335-1  Auditor:  Date: 9-24-08

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially
in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance: 09/27/08

Cheryl Howard
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Paradies-Dayton, Inc.
Address 5950 Fulton Industrial Blvd. SW
City Atlanta State GA Zip+4 30336 -
Customer # 1335 Address Location # 1409

Federal ID# 

Revenue Information: Fund 51000 Organization 3212 Revenue Various Program 43

Contract Information: Contract Start Date 11/1/91 Contract Expiration Date 12/31/18

Billing Information: Rate: N/A Arrears Pre-bill X
Monthly (1st month of billing) November - % of Gross Sales
Quarterly (1st month of quarter)
Semi-annual (1st month of half) January - Property Tax
Annual (1st month of billing)
Other (explain)
Rate Change Date 1/1/09 Rate Change Amount TBD

Description of Services (wording on invoice):

Extend the following with no changes

Cost of Property Taxes
Percentage of gross sales less MAG

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1-1335-2, -3 Auditor A D Date 9-26-08

I hereby certify that the agreement containing a source of revenue to the City of Dayton is officially in the Accounts Receivable data base and contains the terms and conditions necessary for collection.

Director of Finance

for Cheryl Harrell
SECOND AMENDMENT TO
AMENDED AND RESTATED MASTER LEASE AND CONCESSION AGREEMENT WITH
PARADIES-DAYTON, INC.

This First Amendment is dated this 11th day of September, 2017 between the
City of Dayton, Ohio (hereinafter referred to as “City”) and Paradies-Dayton, Inc. (hereinafter referred
to as “Concessionaire”).

WHEREAS, On October 8, 2008, the Commission of the City of Dayton approved an
Amended and Restated Master Lease and Concession Agreement at the James M. Cox Dayton
International Airport (“Lessor”) between City and Concessionaire and on April 26, 2011 approved a
First Amendment thereto (collectively, “Agreement”);

WHEREAS, The parties now mutually agree to further amend the Agreement to extend the
termination date to allow for the amortization of the costs related to the re-development to its
concession area in the Airport Pre-Security location “CNBC Express” concept store;

NOW, THEREFORE, in considerations of the mutual agreements herein contained and the
mutual benefits derived, IT IS AGREED AS FOLLOWS:

1. Article I – Definitions, “Term” is deleted in its entirety and replaced with the following:

   “Term” – means the period that commenced under the Original Concession Agreement
   on November 1, 1991, and continues through December 31, 2020, unless sooner
terminated in accordance with the terms and provisions of this Agreement.

2. Article IX Construction; Capital Improvements – the following section 9.10 is hereby added:

   Section 9.10 Concessionaire agrees to re-develop the CNBC Express concept store, as
   required in the Airport Master Plan project. All costs associated with
   this project are the sole responsibility of the Concessionaire. Such re-
   development shall commence in calendar year 2017 or 2018, as required
   by the Lessor approved Airport Master Plan project.

3. All other provisions of the Agreement, except as changed or modified hereby, shall remain in
full force and effect.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, City and Concessionaire, each by a duly authorized representative, have executed this Second Amendment as of the day and date first set forth above.

WITNESSED BY: PARADIES-DAYTON, INC.

Yvonne Luteo By: [Signature]

Its: President

WITNESSED BY: CITY OF DAYTON, OHIO

Jana Lee [Signature] Jordan A. Clendinin
City Manager

APPROVED AS TO FORM AND CORRECTNESS:

John M. MacH [Signature]
City Attorney 593 153

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO:

September 27, 2017

Min. / Bk. 1-15 Pg. 0047

Bethella L. Swander
Clerk of the Commission
Annual ACI Membership

The Department of Aviation requests to encumber the funds necessary to pay for the 2021 annual membership dues to the Airport Council International – North America (ACI-NA). The membership dues are calculated by using Dayton International Airport’s annual enplanements.

ACI-NA is a worldwide association that represents common interests and fosters cooperation with partners throughout the air transport industry. ACI-NA membership primarily consists of airports throughout North America. ACI-NA provides members numerous training opportunities, customer service and other benchmarking programs, detailed aviation industry statistical analyses and aviation relevant publications.

A Certificate of Funds is attached for the dues in the amount of $29,482.00.

Approved by City Commission

Updated 8/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

☐ New Contract ☐ Renewal Contract ☐ Change Order:

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>02/28/21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expiration Date</td>
<td>12/31/21</td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 29,482.00</td>
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<tr>
<td>Initial Encumbrance</td>
<td>$ 29,482.00</td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td>$ -</td>
</tr>
</tbody>
</table>

Original CT/CF

| Increase Encumbrance | $ - |
| Decrease Encumbrance  | $ - |
| Remaining Commission Approval | $ - |

Amount: $ 29,482.00

Fund Code 51000 - 3210 - 1221 - 43 -

Fund Code XXXX - XXXX - XXXX - XX - XXXX - XXXX

Attach additional pages for more FOAPALS

Vendor Name: Airport Council International - NA
Vendor Address: 1615 L Street, NW Suite 300 Washington DC 20036
Federal ID: 530209303
Commodity Code: 96102
Purpose: 2021 Membership Dues

Contact Person: Chris Wimsatt Aviation / Admin & Finance

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature: 

CF Prepared by: 

Date 2/10/2021

Date 2/15/21

CF/CT Number CF21-0412

October 18, 2011
## 2021 AIRPORT MEMBER DUES

<table>
<thead>
<tr>
<th></th>
<th>Non-Discounted Regular Dues</th>
<th>COVID-19 Relief 15% Savings</th>
<th>Early Bird Add 15% discount by 12/31/20</th>
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<tbody>
<tr>
<td>Total 2021 Airport Membership Dues††</td>
<td>$25,732.00</td>
<td>$24,092.20</td>
<td>$23,545.60</td>
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</table>

### What's Included:

#### 2021 Base Membership Dues:

Members in good standing are able to take full advantage of the many benefits of membership, including participation in all ACI-NA committee activities, access to first-in-class tools and resources, and legislative and regulatory advocacy to benefit our members.

\[\text{2021 Base Membership Dues} = \$10,932.00 \]  
\[\text{COVID-19 Relief 15\% Savings} = \$9,282.20 \]  
\[\text{Early Bird Add 15\% discount by 12/31/20} = \$8,745.60 \]

#### 2021 International Air Service Program Dues:

This fee gives U.S. airports information on U.S. government negotiations on Open Skies, air service and international agreements, allowing airports to promote and protect their interests with U.S. and foreign decision makers.

\[\text{2021 International Air Service Program Dues} = \$2,300.00 \]

#### 2021 Legislative Assessment†:

The Legislative Assessment allows ACI-NA to provide the most up-to-date information to members on legislative activities and congressional hearings, while educating Capitol Hill on airport financial issues and operational concerns.

\[\text{2021 Legislative Assessment} = \$7,500.00 \]

#### 2021 Policy Assessment‡:

The Policy Assessment covers research and review of federal policies or proposed regulations that could impact the industry.

\[\text{2021 Policy Assessment} = \$3,500.00 \]

#### 2021 Legal Assessment‡:

The Legal Assessment provides resources for airport legal issues that require court action. ACI-NA can file an amicus brief on issues affecting member airports using outside expert legal counsel. The assessment also helps us provide legal guidance in specialized areas.

\[\text{2021 Legal Assessment} = \$1,500.00 \]

**SHOW YOUR SUPPORT FOR THE AIRPORT INDUSTRY BY RENEWING TODAY AS A PREMIER LEGISLATIVE SUPPORTER**

<table>
<thead>
<tr>
<th></th>
<th>Non-Discounted Regular Dues</th>
<th>COVID-19 Relief 15% Savings</th>
<th>Early Bird Add 15% discount by 12/31/20</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total 2021 Premier Airport Membership Dues‡‡</td>
<td>$29,482.00</td>
<td>$27,842.20</td>
<td>$26,985.80</td>
</tr>
</tbody>
</table>

By contributing 150 percent of your legislative assessment to actively support the work being done on behalf of airports, you will receive all of the benefits listed above and additional value-added benefits including:

- Two (2) complimentary registrations to the Spring Washington Legislative Conference
- Invitations to special events
- Recognition as a Premier Airport member throughout the year

\[\text{Premier Airport Membership Dues} = \$11,250.00 \]

---

**HOW ACI-NA DUES ARE CALCULATED**

All airport membership dues are formula-based using an airport's passenger and cargo activity. See reverse for more information.

**2019 Traffic Units:** 1,860,930.00

- **Total Passengers:** 1,785,040
- **Total Cargo (Metric Tonnes):** 7,589
- **Total International:** 0

*One Traffic Unit=100 kilograms (220.46lbs.) freight or mail.*

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‡While assessments are voluntary, the legislative, policy and legal assessments support ACI-NA efforts to advance airport priorities.

††Contributions or gifts to ACI-NA are not tax deductible as charitable contributions for federal income tax purposes. However, they may be tax deductible as ordinary and necessary business expenses subject to restrictions imposed as a result of ACI-NA’s lobbying activities. ACI-NA estimates that the non-deductible portion of your membership dues allocable to lobbying is 21.84 percent.

Thank you for your prompt payment.
UNDERSTANDING YOUR DUES INVOICE

As a member-based trade association, ACI-NA’s success in advancing airport priorities is only possible through the strong support of members who contribute financial resources to help ACI-NA fulfill its mission to ensure a modern and competitive airport industry.

Members in good standing are able to take full advantage of the many benefits of membership, including participation in all ACI-NA committee activities, access to first-in-class tools and resources, and legislative and regulatory advocacy to benefit our members. Additionally, ACI-NA provides a forum where airport industry leaders can network with industry peers to discuss and develop cost-effective solutions for enhanced safety, security, and efficiency. Participation in ACI-NA also provides access to ACI World programs and data. This includes the Airports Service Quality Program (ASQ), the only global airport survey based on measuring passengers satisfaction while they are at the airport.

All airport membership dues are formula-based and are a function of an airport’s passenger and cargo activity, except for general aviation airports. The passenger and cargo levels are accounted for through the determination of an airport’s ‘traffic units’ (TUs). For the determination of traffic units, a TU is assigned for the following:

- Each enplaned passenger = 1 TU
- Each deplaned passenger = 1 TU
- Each 100 kilograms (220.45 lbs) of enplaned freight and mail = 1 TU
- Each 100 kilograms (220.45 lbs) of deplaned freight and mail = 1 TU

Dues levels are based on total TUs at an airport for the year in which a full year of traffic data is available from ACI World Traffic Reports. 2021 membership dues are based on 2019 traffic data since the information is calculated in the fall 2020 time period.

<table>
<thead>
<tr>
<th>2019 Traffic Units (TUs)</th>
<th>Dues Calculation</th>
<th>2021 Dues Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zero - 99,999</td>
<td>Flat Fee</td>
<td>$895</td>
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<tr>
<td>100,000-299,999</td>
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<td>Flat Fee</td>
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<tr>
<td>600,000-999,999</td>
<td>Flat Fee</td>
<td>$6,433</td>
</tr>
<tr>
<td>1,000,000-1,999,999</td>
<td>Formula *</td>
<td>Varies by Traffic Unit</td>
</tr>
<tr>
<td>100,000,001+</td>
<td>Flat Fee</td>
<td>$143,086</td>
</tr>
</tbody>
</table>

*Formula: Dues Amount = $1,495 + 0.0021 TUs + $1.8875 * (TUs - 1,000,000)*

U.S. INTERNATIONAL AIR SERVICE PROGRAM DUES

This fee gives U.S. airports information on U.S. government negotiations on Open Skies, air service and international agreements, allowing airports to promote and protect their interests with U.S. and foreign decision makers. ACI-NA staff participates as a member of the U.S. delegations which negotiate international aviation issues and in preparations leading up to aviation consultations and decisions. The direct participation ensures that the U.S. is aware of general and specific U.S. airport/community interests during the discussions. It also enables staff to inform participating airports of ongoing developments so they can effectively pursue their interests with airlines and the governments.

<table>
<thead>
<tr>
<th>2021 USIAS Program Dues</th>
<th>Amount</th>
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<tbody>
<tr>
<td>0-49,999</td>
<td>$2,300</td>
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<tr>
<td>50,000-99,999</td>
<td>$3,500</td>
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<tr>
<td>100,000-249,999</td>
<td>$7,000</td>
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<tr>
<td>250,000 and Above</td>
<td>$9,000</td>
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</table>

ASSESSMENT PROGRAMS

In addition to basic membership dues, the ACI-NA Board of Directors established three voluntary assessments to support our efforts in research, the use of expert consultants and outside legal counsel, and staff costs associated with ensuring that airport policies and recommendations as directed by our Board of Airport Directors are heard by the appropriate parties.

Legislative Assessment: The ACI-NA Government Affairs team not only provides the most up to date information to members on legislative activities and Congressional hearings, but educates Members of Congress and their staff on airport financial issues and operational concerns. Whether working for additional airport financial resources; improved airport operational efficiency; legal protections, or airport proprietor rights, ACI-NA ensures your voice is heard on Capitol Hill. There are additional benefits for airports that participate in the Premier Legislative Assessment.

<table>
<thead>
<tr>
<th>2021 Legislative Assessment</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Class A Airports (0-99,999)</td>
<td>$250</td>
</tr>
<tr>
<td>Class A Airports (100,000-999,999)</td>
<td>$1,500</td>
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<tr>
<td>Class B Airports (1,000,000 - 4,900,000)</td>
<td>$7,500</td>
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<tr>
<td>Class C Airports (4,900,001 - 19,500,000)</td>
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<tr>
<td>Class D1 Airports (19,500,001 - 58,000,000)</td>
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<tr>
<td>Class D2 Airports (58,000,001 + )</td>
<td>$30,000</td>
</tr>
</tbody>
</table>

Policy Assessment: The Policy Assessment covers research and review of federal policies or proposed regulations and ACs that could impact the industry. ACI-NA staff is recognized as experts in the areas of safety, operations, technical, security, facilitation, environmental, public safety and consumer protection/passerger rights, and both federal and Congressional staff seek our input on proposals impacting airports. We also can assist with peer reviews related to environment, operations and technical matters, and financial best practices.

<table>
<thead>
<tr>
<th>2021 Policy Assessment</th>
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<tbody>
<tr>
<td>Class A Airports (0-99,999)</td>
<td>$250</td>
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<tr>
<td>Class A Airports (100,000-999,999)</td>
<td>$750</td>
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<tr>
<td>Class B Airports (1,000,000 - 4,900,000)</td>
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<td>Class C Airports (4,900,001 - 19,500,000)</td>
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<tr>
<td>Class D1 Airports (19,500,001 - 58,000,000)</td>
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<tr>
<td>Class D2 Airports (58,000,001 + )</td>
<td>$25,000</td>
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</table>

Legal Assessment: The Legal Assessment provides resources if you have an issue that requires court action. ACI-NA can file an amicus brief on your behalf using outside expert legal counsel. The assessment also helps us provide legal guidance in specialized areas.

<table>
<thead>
<tr>
<th>2021 Legal Assessment</th>
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<tr>
<td>Class A Airports (0-99,999)</td>
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<tr>
<td>Class A Airports (100,000-999,999)</td>
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<td>Class B Airports (1,000,000 - 4,900,000)</td>
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<tr>
<td>Class C Airports (4,900,001 - 19,500,000)</td>
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<tr>
<td>Class D1 Airports (19,500,001 - 58,000,000)</td>
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<tr>
<td>Class D2 Airports (58,000,001 + )</td>
<td>$7,500</td>
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City Manager’s Report

From 6450 - PW/Civil Engineering
Supplier, Vendor, Company, Individual Dayton Power and Light Company
Address PO Box 740598
Cincinnati, OH 45274-0598

Date February 24, 2021
Expense Type Payment of Voucher
Total Amount $7,052.98

Fund Source(s) | Fund Code(s) | Fund Amount(s)
Street Maintenance | 21000-6450-1291-54 | $7,052.98

Includes Revenue to the City □ Yes □ No Affirmative Action Program □ Yes □ No □ N/A

Description

Dayton Power and Light Company Utility Bills

The Department of Public Works, Division of Civil Engineering is submitting a Payment of Voucher for Dayton Power and Light Company to pay for invoices received from 10/30/2020 through 12/28/2020. This Payment of Voucher resulted from insufficient funds.

Payments of energy usage for traffic signals citywide was not appropriately monitored. Moving forward, we are modifying the monitoring of traffic signals monthly billings to ensure accurate accounting for encumbered budget.

Invoices effected were as follows:
1/4/2021 Inv# 7952816741 $1,871.41
12/30/2020 Inv# 0192368613 $1,405.67
12/30/2020 Inv# 3180284749 $2,238.53
12/30/2020 Inv# 5758188026 $1,537.37
$7,052.98

A Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 10/2019
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

<table>
<thead>
<tr>
<th>Contract Start Date</th>
<th>Expiration Date</th>
<th>Original Commission Approval</th>
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<th>7,052.98</th>
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<td>Initial Encumbrance</td>
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<td>$1,052.98</td>
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<tr>
<td>Remaining Commission Approval</td>
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<table>
<thead>
<tr>
<th>Required Documentation</th>
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<tbody>
<tr>
<td>Initial City Manager's Report</td>
</tr>
<tr>
<td>Initial Certificate of Funds</td>
</tr>
<tr>
<td>Initial Agreement/Contract</td>
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</table>

<table>
<thead>
<tr>
<th>Original CT/CF</th>
<th>Increase Encumbrance</th>
<th>$</th>
<th>-</th>
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<tbody>
<tr>
<td>Decrease Encumbrance</td>
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<td>$</td>
<td>-</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Amount: $7,052.98</th>
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<tbody>
<tr>
<td>Seq. #1</td>
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<tr>
<td>Fund Code 21000 - 6450 - 1291 - 54 - XXXX- XXXX</td>
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<td>Fund Org Acct Prog Act Loc</td>
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<table>
<thead>
<tr>
<th>Amount:</th>
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<tbody>
<tr>
<td>Seq. #2</td>
</tr>
<tr>
<td>Fund Code</td>
</tr>
<tr>
<td>Fund Org Acct Prog Act Loc</td>
</tr>
</tbody>
</table>

Attach additional pages for more FOAPALs

Vendor Name: Dayton Power and Light Company
Vendor Address: PO Box 740598 Cincinnati OH 45274-0598
Federal ID: 310258470
Commodity Code: 90692
Purpose: To cover payment that was not properly encumbered.

Contact Person: Joe Brzozowski x4088
Contact Person: Public Works/Civil Engineering 2/3/2021
Originating Department Director's Signature: 2/4/2021

SECTION II - to be completed by the Finance Department

I hereby certify that the amount of money required to meet the payment(s) called for in the aforesaid request have been lawfully appropriated for such purpose and is in the Treasury, or in the process of collection, to the credit of the fund from which it is to be drawn free and clear from any previous encumbrance.

Finance Director Signature: 2/16/2021
Date: 2/16/2021
CF/CT Number: CF21-011
CF Prepared by: SA 2/11/2021

October 18, 2011
<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
<td>Account Number</td>
<td>3180284749</td>
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<tr>
<td>Due Date</td>
<td>01/20/2021</td>
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<tr>
<td>Amount Due</td>
<td>$2,975.38</td>
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<tr>
<td>Previous Balance</td>
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<tr>
<td>12/22/2020 Payment - Thank You</td>
<td>-1,439.12</td>
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<tr>
<td>Late Payment Charge</td>
<td>32.16</td>
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<tr>
<td>Amount Past Due</td>
<td>736.85</td>
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<tr>
<td>Total Amount Billed This Month</td>
<td>2,238.53</td>
</tr>
<tr>
<td>Total Account Balance</td>
<td>$2,975.38</td>
</tr>
</tbody>
</table>

Please detach and return only this portion with your check made payable to Dayton Power & Light Company.
Account Number: 7952816741
Due Date: 01/25/2021
Amount Due: $1,871.41

Monthly Account Summary
Mail Date: 01/04/2021

Previous Balance: $1,843.62
12/23/2020 Payment - Thank You: -$1,843.62
Balance Forward: 0.00
Total Amount Billed This Month: $1,871.41
Total Account Balance: $1,871.41

Account Distribution:
(Required)

DIVISION APPROVAL:
Joseph C. Brandt

DEPT APPROVAL:

Mount, Division of Traffic Signals
520 Kiser St
Dayton OH 45404-1642

Emergency Service
877-4OUTAGE
877-468-6243

Online Anytime
dpandl.com

DP&L Customer Service
800-433-8500
Account Number 5758188026
Due Date 01/20/2021
Amount Due $3,433.96

Monthly Account Summary

Previous Balance $3,350.96
12/22/2020 Payment - Thank You -1,504.63
Late Payment Charge 50.26
Amount Past Due 1,896.59
Total Amount Billed This Month 1,537.37
Total Account Balance $3,433.96

CITY OF DAYTON
DIVISION OF TRAFFIC SIGNALS
520 KISER ST
DAYTON OH 45404

Processed by
JAN 1, 2021

DATE GOODS/SVC REC'D 12/20/20
FINAL PAY - YES/NO 12/21
DIVISION APPROVAL DJA A. M.
DEPT APPROVAL Joel C. Brown

Emergency Service
877-4OUTAGE
877-468-8243

Online Anytime
dpandl.com

DP&L Customer Service
800-433-8500

Please detach and return only this portion with your check made payable to Dayton Power & Light Company.

BL-CO050-BILL-PRINT-PRD-311-000000080

The Dayton Power and Light Company
dpandl.com

Account Number 5758188026
$1,886.59 BALANCE FORWARD

PROMPT AMOUNT pay by 01/20/2021 $3,433.96
LATE AMOUNT pay after 01/20/2021 $3,485.47

Amount Enclosed $
AN ORDINANCE

Appropriating Funds for the Year 2021 to Provide for the Operating and Capital Expenses of Various Offices, Departments, and Divisions of the Government of the City of Dayton.

WHEREAS, State law and the Charter of the City of Dayton require an Annual Appropriation Ordinance to provide for the expenses and obligations of various City Departments for the ensuing year; and,

WHEREAS, State law imposes an April 1 deadline by which each political subdivision or other taxing unit of the State of Ohio shall pass an annual appropriation measure for that fiscal year; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That there shall be and hereby are appropriated out of any monies in the treasury, or any accruing revenues of the City available for said purposes, the sums of appropriation hereafter set forth in the column marked “2021 Appropriations”.

<table>
<thead>
<tr>
<th>GOVERNMENTAL FUND TYPE</th>
<th>2021 Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>1200 Clerk of Commission</td>
<td>1,255,400</td>
</tr>
<tr>
<td>1300 Civil Service Board Expenses</td>
<td>1,384,900</td>
</tr>
<tr>
<td></td>
<td>Transfers Out</td>
</tr>
<tr>
<td>Total</td>
<td>1,399,600</td>
</tr>
<tr>
<td>1400 Human Relations Council</td>
<td>870,000</td>
</tr>
<tr>
<td>2100 City Manager's Office</td>
<td>1,321,900</td>
</tr>
<tr>
<td>2101 Public Affairs</td>
<td>1,198,000</td>
</tr>
<tr>
<td>2105 Office of Sustainability</td>
<td>155,000</td>
</tr>
<tr>
<td>2300 Dept. of Planning and Community Development (including Housing Inspection) Expenses</td>
<td>3,680,500</td>
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<tr>
<td></td>
<td>Transfers Out</td>
</tr>
<tr>
<td>Total</td>
<td>3,830,500</td>
</tr>
<tr>
<td>2500 Clerk of Courts</td>
<td>3,740,300</td>
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<tr>
<td>2510 Municipal Court</td>
<td>4,672,900</td>
</tr>
<tr>
<td>2600 Department of Economic Development (including Zoning Admin. &amp; Building Inspection)</td>
<td>3,439,600</td>
</tr>
<tr>
<td>2700 Dept. of Procurement, Management &amp; Budget</td>
<td>1,889,100</td>
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<tr>
<td>3400 Department of Water</td>
<td>104,000</td>
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<tr>
<td>5200 Department of Law</td>
<td>2,621,900</td>
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<tr>
<td>5300 Department of Finance</td>
<td>4,007,300</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
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<tr>
<td>--------</td>
<td>-----------------------------------------------------------------------------</td>
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<tr>
<td>5500</td>
<td>Department of Information Technology Expenses</td>
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<td></td>
<td>Transfers Out</td>
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<td></td>
<td><strong>Total</strong></td>
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<tr>
<td>5600</td>
<td>Department of Human Resources</td>
</tr>
<tr>
<td>6200</td>
<td>Department of Police</td>
</tr>
<tr>
<td></td>
<td>Expenses</td>
</tr>
<tr>
<td></td>
<td>Transfers Out</td>
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<tr>
<td></td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td>6300</td>
<td>Department of Fire</td>
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<tr>
<td></td>
<td>Expenses</td>
</tr>
<tr>
<td></td>
<td>Transfers Out</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td>6400</td>
<td>Department of Public Works</td>
</tr>
<tr>
<td>6500</td>
<td>Department of Recreation &amp; Youth Services (incl. Convention Ctr.)</td>
</tr>
<tr>
<td>9980</td>
<td>Non-Departmental</td>
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<tr>
<td></td>
<td>Expenses</td>
</tr>
<tr>
<td></td>
<td>Transfers Out</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Issue 9 - General Fund - 10001</strong></td>
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<tr>
<td>6400</td>
<td>Department of Public Works</td>
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<tr>
<td>9980</td>
<td>Non-Departmental</td>
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<td>Transfers Out</td>
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<tr>
<td></td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Total Issue 9 - General Fund</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Community Golf &amp; Recreation Fund - 13000</strong></td>
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<tr>
<td>6550</td>
<td>Department of Recreation &amp; Youth Services</td>
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<tr>
<td></td>
<td>Expenses</td>
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<td>Transfers Out</td>
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<tr>
<td></td>
<td><strong>Total Community Golf &amp; Recreation Fund</strong></td>
</tr>
<tr>
<td>16999</td>
<td>Special Projects</td>
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<td>Expenses</td>
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<td>75000</td>
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<td></td>
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</table>

**Total General Fund**

196,071,400

**(2) Special Revenue**

**Roadway Maintenance Fund – 21999**

**Street Maintenance Fund - 21000**

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>2021 Appropriations</th>
</tr>
</thead>
<tbody>
<tr>
<td>6400</td>
<td>Department of Public Works</td>
<td>5,992,000</td>
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<td><strong>Total Roadway Maintenance Fund</strong></td>
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<tr>
<td></td>
<td></td>
<td>5,992,000</td>
</tr>
<tr>
<td>Fund Description</td>
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<td>Code 2</td>
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<tr>
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<tr>
<td>Street Maintenance Capital - 21200</td>
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<td>Highway Maintenance Fund - 21100</td>
<td>6400</td>
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<tr>
<td>Total Roadway Maintenance Fund</td>
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<tr>
<td>HUD Programs Operating</td>
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<tr>
<td>Community Dev. Block Grant Fund - 26204-26209 and 26102</td>
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<tr>
<td></td>
<td>5300</td>
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<tr>
<td>HOME Operating Fund - 27000</td>
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<td>Total HUD Programs Operating</td>
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<td>HUD Programs Non-Operating</td>
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<td>Fair Housing Grant Fund - 23000 - 23999</td>
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<td>Continuum of Care Grant - 25525 - 25599</td>
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<tr>
<td>Community Dev. Block Grant Non-Operating Fund - 26001 - 26906</td>
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<tr>
<td>HOME Non-Operating Fund - 27001 - 27999</td>
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</tbody>
</table>


<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Prior Year's Unexpended Appropriation</td>
<td>4,096,500</td>
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<tr>
<td>Total HOME Non-Operating Fund</td>
<td>5,427,200</td>
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<tr>
<td><strong>Total HUD Programs Non-Operating</strong></td>
<td>25,506,500</td>
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<tr>
<td>Miscellaneous Grants - 28000; 29000</td>
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</tr>
<tr>
<td>Various Departments</td>
<td>2,068,000</td>
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<tr>
<td><strong>Total</strong></td>
<td>2,068,000</td>
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<tr>
<td>Prior Year's Unexpended Appropriation</td>
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<tr>
<td>Total Miscellaneous Grants</td>
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<tr>
<td><strong>Other Special Revenue - 22111-515</strong></td>
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<tr>
<td>Various Departments</td>
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<td><strong>Total</strong></td>
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<tr>
<td>Prior Year's Unexpended Appropriation</td>
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<td>Total Other Special Revenue Fund</td>
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<td><strong>Total Special Revenue</strong></td>
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(3) Debt Service

<table>
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<tbody>
<tr>
<td>General Debt Retirement Fund - 31100-33100</td>
<td></td>
</tr>
<tr>
<td>5300 Department of Finance</td>
<td>11,150,800</td>
</tr>
<tr>
<td><strong>Total General Debt Retirement Fund</strong></td>
<td>11,150,800</td>
</tr>
<tr>
<td><strong>Total Debt Service</strong></td>
<td>11,150,800</td>
</tr>
</tbody>
</table>

(4) Capital Project Funds

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Capital Fund - 40000</td>
<td></td>
</tr>
<tr>
<td>Various Capital Projects</td>
<td>18,718,800</td>
</tr>
<tr>
<td>Transfers Out</td>
<td>337,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>19,055,800</td>
</tr>
<tr>
<td>Prior Year's Unexpended Appropriation</td>
<td>47,105,400</td>
</tr>
<tr>
<td><strong>Total Capital Project Funds</strong></td>
<td>66,161,200</td>
</tr>
</tbody>
</table>

(5) Permanent Funds

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanent Fund - 71000</td>
<td></td>
</tr>
<tr>
<td>Various Departments</td>
<td>50,000</td>
</tr>
<tr>
<td><strong>Total Permanent Fund</strong></td>
<td>50,000</td>
</tr>
<tr>
<td><strong>TOTAL GOVERNMENTAL FUND</strong></td>
<td>339,789,300</td>
</tr>
</tbody>
</table>

**PROPRIETARY FUND TYPE**

(6) Enterprise Funds

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aviation Operating Fund - 51000 and 51001</td>
<td></td>
</tr>
<tr>
<td>3200-9990 Department of Aviation</td>
<td></td>
</tr>
<tr>
<td>Expenses</td>
<td>30,590,200</td>
</tr>
<tr>
<td>Transfers Out</td>
<td>2,133,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>32,723,200</td>
</tr>
<tr>
<td><strong>Total Aviation Operating Fund</strong></td>
<td>32,723,200</td>
</tr>
<tr>
<td>Fund Name</td>
<td>2021 Appropriations</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td><strong>Aviation Capital Fund - 51002 - 52999</strong></td>
<td></td>
</tr>
<tr>
<td>Various Capital Projects</td>
<td>9,066,800</td>
</tr>
<tr>
<td>Transfers Out</td>
<td>5,056,200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>14,123,000</strong></td>
</tr>
<tr>
<td>Prior Year's Unexpended Appropriation</td>
<td>21,587,500</td>
</tr>
<tr>
<td>Total Aviation Capital Fund</td>
<td>35,710,500</td>
</tr>
<tr>
<td><strong>Water Operating Fund - 53000, 53997 and 53998</strong></td>
<td></td>
</tr>
<tr>
<td>2600 Department of Economic Development</td>
<td>123,400</td>
</tr>
<tr>
<td>3400 Department of Water - 3400 and 9970</td>
<td>52,197,600</td>
</tr>
<tr>
<td>Expenses</td>
<td>9,058,400</td>
</tr>
<tr>
<td>Transfers Out</td>
<td>61,256,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>65,459,600</strong></td>
</tr>
<tr>
<td><strong>Water Capital Fund - 53001 - 53996</strong></td>
<td></td>
</tr>
<tr>
<td>Various Capital Projects</td>
<td>12,658,400</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>12,658,400</strong></td>
</tr>
<tr>
<td>Prior Year's Unexpended Appropriation</td>
<td>28,507,400</td>
</tr>
<tr>
<td>Total Water Capital Fund</td>
<td>41,165,800</td>
</tr>
<tr>
<td><strong>Sanitary Sewer Operating Fund - 55000</strong></td>
<td></td>
</tr>
<tr>
<td>3400 Department of Water - 3400 and 9970</td>
<td>35,073,500</td>
</tr>
<tr>
<td>Expenses</td>
<td>6,925,000</td>
</tr>
<tr>
<td>Transfers Out</td>
<td>41,998,500</td>
</tr>
<tr>
<td><strong>Total Sanitary Sewer Operating Fund</strong></td>
<td><strong>41,998,500</strong></td>
</tr>
<tr>
<td><strong>Sanitary Sewer Capital Fund - 55001 - 55999</strong></td>
<td></td>
</tr>
<tr>
<td>Various Capital Projects</td>
<td>15,258,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>15,258,500</strong></td>
</tr>
<tr>
<td>Prior Year's Unexpended Appropriation</td>
<td>35,404,000</td>
</tr>
<tr>
<td>Total Sanitary Sewer Capital Fund</td>
<td>50,662,500</td>
</tr>
<tr>
<td><strong>Storm Water Operating Fund - 58000</strong></td>
<td></td>
</tr>
<tr>
<td>3400 Department of Water - 3400 and 9970</td>
<td>5,962,000</td>
</tr>
<tr>
<td>Expenses</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Transfers Out</td>
<td>6,962,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>6,962,000</strong></td>
</tr>
<tr>
<td>6400 Department of Public Works</td>
<td></td>
</tr>
<tr>
<td>Expenses</td>
<td>1,522,500</td>
</tr>
<tr>
<td>Transfers Out</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,522,500</strong></td>
</tr>
<tr>
<td><strong>Total Storm Water Operating Fund</strong></td>
<td><strong>8,484,500</strong></td>
</tr>
<tr>
<td><strong>Storm Water Capital Fund - 58001 - 58999</strong></td>
<td></td>
</tr>
<tr>
<td>Various Capital Projects</td>
<td>1,000,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,000,000</strong></td>
</tr>
<tr>
<td>Prior Year's Unexpended Appropriation</td>
<td>6,999,900</td>
</tr>
<tr>
<td>Total Storm Water Capital Fund</td>
<td>7,999,900</td>
</tr>
</tbody>
</table>
### Golf Operating Fund - 59000

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Expenses</th>
<th>Transfers Out</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>6500</td>
<td>Department of Recreation &amp; Youth Services</td>
<td>6,000</td>
<td>0</td>
<td>6,000</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td></td>
<td>6,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Total Golf Operating Fund</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>6,000</td>
</tr>
</tbody>
</table>

### Golf Capital - 59001

<table>
<thead>
<tr>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Various Capital Projects</td>
<td>0</td>
</tr>
<tr>
<td>Prior Year's Unexpended Appropriation</td>
<td>44,800</td>
</tr>
<tr>
<td>Total</td>
<td>44,800</td>
</tr>
</tbody>
</table>

### Total Enterprise Funds

<table>
<thead>
<tr>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Enterprise Funds</td>
<td>284,255,300</td>
</tr>
</tbody>
</table>

### (7) Internal Service Funds

#### Fleet Management Fund - 61000

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Total Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6400</td>
<td>Department of Public Works</td>
<td>6,891,000</td>
</tr>
<tr>
<td></td>
<td>Total Fleet Management Fund</td>
<td>6,891,000</td>
</tr>
</tbody>
</table>

#### Document Management Services Fund - 62100

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Total Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>5500</td>
<td>Department of Central Services</td>
<td>520,500</td>
</tr>
<tr>
<td></td>
<td>Total Stores and Reproduction Fund</td>
<td></td>
</tr>
</tbody>
</table>

#### Healthcare Self Insurance - 63000

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Total Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>5600</td>
<td>Department of Human Resources</td>
<td>33,325,600</td>
</tr>
<tr>
<td></td>
<td>Total Healthcare Self Insurance Fund</td>
<td></td>
</tr>
</tbody>
</table>

#### Workers' Compensation Fund - 65000

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Total Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>5600</td>
<td>Department of Human Resources</td>
<td>4,741,600</td>
</tr>
<tr>
<td></td>
<td>Total Workers' Compensation Fund</td>
<td></td>
</tr>
</tbody>
</table>

#### Plumbing Shop - 66000

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Total Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6400</td>
<td>Department of Public Works</td>
<td>725,100</td>
</tr>
<tr>
<td></td>
<td>Total Plumbing Shop</td>
<td>725,100</td>
</tr>
</tbody>
</table>

#### Fire Fleet Management - 67000

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Total Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6330</td>
<td>Department of Fire</td>
<td>1,559,700</td>
</tr>
<tr>
<td></td>
<td>Total Fire Fleet Management Fund</td>
<td></td>
</tr>
</tbody>
</table>

### Total Internal Service Funds

<table>
<thead>
<tr>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Internal Service Funds</td>
<td>47,763,500</td>
</tr>
</tbody>
</table>

### TOTAL PROPRIETARY FUND

<table>
<thead>
<tr>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL PROPRIETARY FUND</td>
<td>332,018,800</td>
</tr>
</tbody>
</table>

### TOTAL ALL OPERATING FUNDS

<table>
<thead>
<tr>
<th>Description</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL ALL OPERATING FUNDS</td>
<td>671,808,100</td>
</tr>
</tbody>
</table>

### Section 2.

That the City Manager is authorized to advance up to One Million Dollars and Zero Cents ($1,000,000.00) from the General Fund to HUD Non-Operating Programs due to timing of grant agreements.
Section 3. That the City Manager is authorized to transfer funds in the amounts set forth in Section 1 and as described below:

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
<th>2021</th>
</tr>
</thead>
<tbody>
<tr>
<td>10000-1300 Civil Service</td>
<td>40000-1300</td>
<td>Capital</td>
</tr>
<tr>
<td>10000-2300 Planning and Community Development 16999-2300</td>
<td>Special Projects</td>
<td>150,000</td>
</tr>
<tr>
<td>10000-6200 Police</td>
<td>16000-2300</td>
<td>Special Projects</td>
</tr>
<tr>
<td>10000-9980 Non-Departmental</td>
<td>16999-2700</td>
<td>Special Projects</td>
</tr>
<tr>
<td></td>
<td>16999-5600</td>
<td>Special Projects</td>
</tr>
<tr>
<td></td>
<td>16999-1400</td>
<td>Special Projects</td>
</tr>
<tr>
<td>28999-1400 Miscellaneous Grants</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Subtotal Transfers Out 10000</strong></td>
<td></td>
<td><strong>822,500</strong></td>
</tr>
<tr>
<td>13000-6550 Golf Operating</td>
<td>40000-6550</td>
<td>Capital</td>
</tr>
<tr>
<td>16999-2600 Special Projects</td>
<td>40000-2600</td>
<td>Capital</td>
</tr>
<tr>
<td></td>
<td>31100-5300</td>
<td>G.O. Debt</td>
</tr>
<tr>
<td></td>
<td>65000-5600</td>
<td>Worker’s Compensation</td>
</tr>
<tr>
<td><strong>Issue 9 - General Fund - 10001</strong></td>
<td></td>
<td><strong>2,093,400</strong></td>
</tr>
<tr>
<td>10001-9980 Non-Departmental</td>
<td>16999-2300</td>
<td>Special Project</td>
</tr>
<tr>
<td><strong>Subtotal Transfers Out 10001</strong></td>
<td></td>
<td><strong>4,300,000</strong></td>
</tr>
<tr>
<td>75000-5300 Income Tax Fund</td>
<td>16999-2600</td>
<td>Special Projects</td>
</tr>
<tr>
<td></td>
<td>16999-2300</td>
<td>Special Projects</td>
</tr>
<tr>
<td></td>
<td>40000-6400</td>
<td>Capital</td>
</tr>
<tr>
<td></td>
<td>59000-6550</td>
<td>Golf</td>
</tr>
<tr>
<td><strong>Subtotal Transfers Out 75000</strong></td>
<td></td>
<td><strong>5,280,000</strong></td>
</tr>
<tr>
<td><strong>Total General Fund Transfers Out</strong></td>
<td></td>
<td><strong>13,350,600</strong></td>
</tr>
</tbody>
</table>

(4) Capital Projects

| 40001-49999 General Capital Fund | 31100-5300 G.O. Debt | 337,000 |

PROPRIETARY FUND TYPE

(6) Enterprise Funds

<p>| 51000 and 51001-9960 Aviation Operating Fund | 51002-52999-3200 Aviation Capital | 2,133,000 |
| 51002-52999-3200 Aviation Capital | 51000-51000-3200 Aviation Operating | 5,056,200 |</p>
<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
<th>Transfers Out</th>
</tr>
</thead>
<tbody>
<tr>
<td>53000-9970 Water Operating Fund</td>
<td>53001-53996-3400 Water Capital</td>
<td>9,058,400</td>
</tr>
<tr>
<td>55000-9970 Sanitary Sewer Operating Fund</td>
<td>55001-55999-3400 Sanitary Sewer Capital</td>
<td>6,925,000</td>
</tr>
<tr>
<td>58000-9970 Storm Water Operating Fund</td>
<td>58001-58999-3400 Storm Water Capital</td>
<td>1,000,000</td>
</tr>
</tbody>
</table>

**Total Enterprise Fund Transfers Out**

|              | 24,172,600 |

**TOTAL ALL FUNDS**

|              | 37,860,200 |

**Section 4.** That all books of accounts, warrants, orders, vouchers, and other official documents that refer to any appropriation shall identify the fund from which monies are appropriated or drawn by the code number set forth in the detailed budget.

**Section 5.** That the temporary appropriations made by Ordinance Number 31852-20, which was approved by the Commission on November 18, 2020, shall be considered as part of and charged against the sum appropriated for the same purpose by this Ordinance.

PASSED BY THE COMMISSION.................................................., 2021

SIGNED BY THE MAYOR.........................................................., 2021

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
MEMORANDUM

February 9, 2021

TO: Shelley Dickstein, City Manager

FROM: Diane T. Shannon, Director
Department of Procurement, Management & Budget

SUBJECT: 2021 Original Appropriation Ordinance

Attached, for your review and submission to the City Commission, is the 2021 Original Appropriation Ordinance. Overall, the original appropriation totals $671.8 million. We are requesting the first reading on February 17 and the second reading, to include City Commission approval, on February 24, as a non-emergency ordinance. The appropriation ordinance reflects the budget as presented and discussed with the City Commission during the budget work sessions held in December of 2020, and as reflected in the 2021 Budget Resolution with a few modifications. The changes are summarized below.

1. The original General Fund appropriation of $196.1 million reflects an increase of $1.1 million, itemized below:
   - A decrease of $150,100 in the City Manager’s Office reflects staffing adjustments and the legislative affairs function moving to the Department of Procurement, Management & Budget.
   - An increase of $335,500 in Procurement, Management & Budget for staffing adjustments, legislative affairs function and OpenGov budget book addition.
   - $170,000 increase in Finance for a delinquent collections contract.
   - $120,000 increase to Police for Eastway Behavioral Healthcare to provide mental health intervention funded by ADAMHS.
   - An increase of $78,500 in Public Works for capital equipment.
   - A net decrease of $93,900 in Recreation & Youth Services reflects staffing adjustments.
   - A $30,000 increase in transfers out from Income Tax to the Golf Enterprise Fund to close out the fund.
   - An increase of $650,000 to the Community Golf Fund for capital expenses including bunkers.
   - Special Projects has a net decrease of $67,500, which reflects the 2020 carryover budget offset by a correction to budgeted transfers out.

2. An increase of $30,800 in Street Maintenance for a deicing dump truck.

3. An increase of $144,900 in the CDBG Operating budget to match the most recent Action Plan.

4. $49,900 increase to the HOME Operating budget to match the most recent Action Plan.

5. CDBG Non-Operating decrease of about $2.7 million as a result of budget clean up and to reflect the recent Action Plan.
6. HOME Non-Operating increase of $217,600, reflecting the recently announced 2021 HUD allocation.

7. Other Special Revenue increase of $2.0 million for Police’s Property Room budget. The Police Property Room Fund was reclassified from an Agency Fund to an Other Special Revenue Fund in mid-2020, in accordance with GASB 84.

8. General Capital Fund increase of $1.8 million. $1.5 million is for 2021 capital equipment allocations and $300,000 is for golf capital expenses, including bunkers.

9. Aviation’s 2021 Operating budget decrease of nearly $2.7 million reflects an intra-fund transfer budgeted incorrectly. Transfers made within the legal level of control do not require an appropriation.

10. Aviation’s 2021 Capital budget decrease of $5.0 million correctly distributes the expense and transfer out budgets.

11. The Sewer Operating Fund increases $96,100 to reflect the actual budget.

12. The 2021 original appropriation includes the current year appropriation along with the prior year’s unexpended appropriation balance for all non-operating and capital funds. The Budget Resolution, adopted in December of 2020, included the 2021 current year appropriation only and did not include any carry-over budget. The prior year’s unexpended appropriation balance (carry-over budget) adjustments are listed below.

<table>
<thead>
<tr>
<th>Fund</th>
<th>Carry-Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Projects</td>
<td>1,228,100</td>
</tr>
<tr>
<td>Fair Housing</td>
<td>154,300</td>
</tr>
<tr>
<td>Emergency Solutions</td>
<td>2,403,400</td>
</tr>
<tr>
<td>Continuum of Care</td>
<td>2,229,700</td>
</tr>
<tr>
<td>CDBG Non-Operating</td>
<td>11,521,900</td>
</tr>
<tr>
<td>HOME Non-Operating</td>
<td>4,096,500</td>
</tr>
<tr>
<td>Miscellaneous Grants</td>
<td>21,915,100</td>
</tr>
<tr>
<td>Other Special Revenue</td>
<td>1,539,500</td>
</tr>
<tr>
<td>General Capital</td>
<td>47,105,400</td>
</tr>
<tr>
<td>Aviation Capital</td>
<td>21,587,500</td>
</tr>
<tr>
<td>Water Capital</td>
<td>28,507,400</td>
</tr>
<tr>
<td>Sewer Capital</td>
<td>35,404,000</td>
</tr>
<tr>
<td>Storm Water Capital</td>
<td>6,999,900</td>
</tr>
<tr>
<td>Golf Capital</td>
<td>44,800</td>
</tr>
<tr>
<td><strong>Total Carry-Over Budget</strong></td>
<td><strong>$184,737,500</strong></td>
</tr>
</tbody>
</table>

Please let me know if you have any questions or require additional information.

DTS/sb

Attachment

cc: Mr. Parlette, Ms. Lofton, M&B Staff