CITY COMMISSION MEETING AGENDA

CITY COMMISSION    DAYTON, OHIO    JULY 17, 2019

6:00 P.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:

   **WATER**
   AI. M & R Electric Motor Service (electrical motor repair parts supplies
   and related items as needed through 9-30-19) $30,000.00
1. (Cont’d):

**WATER**
A2. Perkinelmer Health Sciences, Inc. (laboratory equipment as needed through 12-31-19) $9,978.16
A3. Rotork Controls, Inc. (Rotork brand actuator repair parts and services as needed through 12-31-19) $40,000.00
A4. Sullivan Environmental Technologies (one Weir pump and various Moyno brand replacement parts as needed through 12-31-19) $215,000.00
A5. ATR Distributing Company (programmable logic controller cards) 18,501.56
   -Dept. of Water.
   Total: $313,479.72

2. **ShotSpotter, Inc. – Service Agreement** – for a subscription-based gunshot detection system to assist in identifying, analyzing and responding to violent gun crimes – Dept. of Police Director.
   $205,000.00
   (Thru 01/31/21)

3. **Wood Environment & Infrastructure Solutions, Inc. – Service Agreement**
   – for groundwater monitoring well network expansion and investigations second amendment – Dept. of Water/Environmental Protection.
   $560,000.00
   (Thru 07/31/21)

C. Revenue to the City:

4. **City of Troy, Ohio – Other** – for pebble lime reclamation purchase and production – Dept. of Water/Water Supply & Treatment.
   $1,043,520.00
   (Thru 01/01/24)

   $1,440,000.00
   (Thru 12/31/24)

IV. LEGISLATION:

**Ordinance – Second Reading:**

6. **No. 31744-19** Consenting to the Replacement of Signs Within the City of Dayton, and Agreeing to Cooperate in Matters Incident to Thereto, Including the Execution of Agreements Necessary to Implement this Ordinance.
VI. MISCELLANEOUS:

ORDINANCE NO. 31745-19

RESOLUTION NO. 6426-19

IMPROVEMENT RESOLUTION NO. 3598-19

INFORMAL RESOLUTION NO. 972-19
City Manager’s Report

From: 2730 – PMB/Procurement  
Supplier, Vendor, Company, Individual: See Below  
Name: See Below  
Address: See Below  
Date: July 17, 2019  
Expense Type: Purchase Order  
Total Amount: $313,479.72

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>See below</td>
<td>See below</td>
<td>See below</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Includes Revenue to the City</th>
<th>☑ No</th>
<th>Affirmative Action Program</th>
<th>☑ Yes</th>
<th>☑ No</th>
<th>☑ N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**WATER – WATER RECLAMATION**

(A1) P1900019 – M & R ELECTRIC MOTOR SERVICE, DAYTON, OH

- Electrical motor repair, parts, supplies and related items as needed through 9/30/2019.
- These goods and services are required to repair motors that are a critical part of the treatment process.
- Rates are in accordance with the City of Dayton’s existing price agreement IFB 15065N with pricing through 9/30/2019.
- M & R Electric Motor Service qualifies as a Dayton local entity.
- This amendment increases the previously authorized amount of $20,000.00 by $30,000.00 for a total not to exceed $50,000.00 and therefore requires City Commission approval.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>Other Equipment Maintenance</td>
<td>55000-3460-1167-54</td>
<td>$30,000.00</td>
</tr>
</tbody>
</table>

**Signatures/Approval**

Approved by City Commission

Melissa P. Wilson 7-8-19  
Division  
Irene Zapham 7-8-19  
Department  
City Manager

FORM NO. MS-16  
Updated 06/2016
WATER – WATER RECLAMATION (CONTINUED)

(A2) P1900111 – PERKINELMER HEALTH SCIENCES, INC., SHELTON, CT
- Laboratory equipment as needed through 12/31/2019.
- These goods are required to support the operations of the newly acquired Inductively Coupled Plasma Mass Spectrometry (ICPMS).
- PerkinElmer Health Sciences, Inc. is recommended as the original equipment manufacturer (OEM) of existing laboratory equipment; therefore, this purchase was negotiated.
- This amendment increases the previously authorized amount of $8,000.00 by $9,978.16 for a total not to exceed $17,978.16 and therefore requires City Commission approval.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>Supplies and Materials</td>
<td>55000-3460-1301-54</td>
<td>$9,978.16</td>
</tr>
</tbody>
</table>

(A3) P1900157 – ROTORK CONTROLS, INC., MILWAUKEE, WI
- Rotork brand actuator repair parts and services as needed through 12/31/2019.
- These goods and services are required to maintain, repair or replace Rotork brand actuators.
- Rotork Controls, Inc. is recommended as the original equipment manufacturer (OEM) and sole source; therefore, this purchase was negotiated.
- This amendment increases the previously authorized amount of $30,000.00 by $40,000.00 for a total not to exceed $70,000.00 and therefore requires City Commission approval.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>Infrastructure</td>
<td>55003-3460-1424-54-SF1606</td>
<td>$40,000.00</td>
</tr>
</tbody>
</table>

(A4) P1900094 – SULLIVAN ENVIRONMENTAL TECHNOLOGIES, FT. MITCHELL, KY
- One (1) Weir pump and various Moyno brand replacement parts as needed through 12/31/2019.
- These goods are required to ensure proper solid stream operations.
- Sullivan Environmental Technologies is recommended as the authorized representative for various original equipment manufacturers (OEM’s); therefore, this purchase was negotiated.
- This amendment increases the previously authorized amount of $60,000.00 by $215,000.00 for a total not to exceed $275,000.00 and therefore requires City Commission approval.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>Furniture, Fixtures &amp; Equip Assets</td>
<td>55000-3460-1411-54</td>
<td>$28,762.00</td>
</tr>
<tr>
<td>2019</td>
<td>Infrastructure</td>
<td>55003-3460-1424-54-SF1606</td>
<td>$186,238.00</td>
</tr>
</tbody>
</table>
WATER – WATER SUPPLY AND TREATMENT

(A5) P1901012 – ATR DISTRIBUTING COMPANY, CENTERVILLE, OH

- Programmable logic controller cards.
- These goods are required to run the filter process and replace cards as a result of the tornado damage throughout the City.
- Pursuant to Section 86 of the City of Dayton Charter, the City has declared an emergency, the necessary funds have been encumbered, and the supplier has been notified to proceed.
- The Department of Water recommends approval of this order.

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>Supplies and Materials</td>
<td>53000-3430-1301-54</td>
<td>$18,501.56</td>
</tr>
</tbody>
</table>

The aforementioned departments recommend approval of these orders.
From
6210 - Police Director
Supplier, Vendor, Company, Individual
ShotSpotter, Inc.
Address
7879 Gateway Blvd., Suite 210
Newark, California 94560

Fund Source(s) Fund Code(s) Fund Amount(s)
Public Safety Photo Enforcement 16122-6210-1159-71 $205,000.00

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

Description
Professional Services Agreement
ShotSpotter Inc.

The Department of Police requests permission to enter into a Professional Services Agreement for $205,000.00 with ShotSpotter, Inc. The Contractor will provide the Dayton Police Department with a subscription-based gunshot detection system (ShotSpotter®) that will assist in identifying, analyzing and responding to violent gun crimes. ShotSpotter® will provide gunshot detection and acoustic surveillance technology that uses 15-25 sensors per square mile to detect, locate and alert law enforcement to gunshots within 30-60 seconds. The use of this technology enhances officer safety and effectiveness by providing critical data when dispatching officers, aiding potential victims and collecting evidence.

Founded in 1995, the Company has become an industry leader of gunshot detection technology with 31 issued patents. ShotSpotter® is used in approximately 90 cities across the country including the following Ohio cities: Cincinnati, Columbus, Toledo, Canton, and Youngstown.

Payment for services will be made according to the following schedule: $102,500.00 due upon execution of the Agreement and $102,500.00 due upon “live” status of ShotSpotter®.

The Agreement will commence upon execution by both parties and shall expire twelve months from ‘live date’ or January 31, 2021, which ever is earliest.

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

A Certificate of Funds and a copy of the Agreement are attached.

SM

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016
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 Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contract Start Date</td>
<td>08/01/19</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Expiration Date</td>
<td>01/31/21</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Original Commission Approval</td>
<td>$205,000.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Initial Encumbrance</td>
<td>$205,000.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Remaining Commission Approval</td>
<td>$-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Original CT/CF</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Increase Encumbrance</td>
<td>$-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Decrease Encumbrance</td>
<td>$-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Remaining Commission Approval</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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: $205,000.00

Fund Code: 16122 - 6210 - 1159 - 71 - -

Attach additional pages for more FOAPALS

Vendor Name: ShotSpotter Inc.
Vendor Address: 7979 Gateway Blvd., Suite 210 Newark California 94560
Federal ID: 470949915
Commodity Code: 990320
Purpose: Payment for subscription-based acoustic gunshot detection ShotSpotter® system. Payments to be made on the following schedule: $102,500.00 due upon execution of the Agreement; $102,500.00 due upon “live” status.
Contract ending date to be determined based on twelve (12) months from live date, but not to exceed 1/31/21.

Contact Person: Sheelah Moyer ext. 1045

Originating Department Director’s Signature: Lt. Col. [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: 7-9-19

CF Prepared by: [Signature]

Date: 7-8-19

CF/CT Number: C719 - 2319

October 18, 2011
PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into between ShotSpotter, Inc., currently located at 7979 Gateway Blvd., Suite 210, Newark, CA 94560 ("Contractor"), and the City of Dayton, Ohio, a municipal corporation in the State of Ohio, ("City") on this ____ day of _______________2019.

WITNESSETH THAT:

WHEREAS, the City desires to create a safe and secure community supported by the most effective and efficient law enforcement methods; and

WHEREAS, the City desires certain professional services related to software, hardware and support services that will assist the Dayton Police Department in identifying, analyzing and responding to violent gun crime; and

WHEREAS, the Contractor is a leader in the development and deployment of wide area acoustic gunshot surveillance systems; and

WHEREAS, Contractor is willing to perform and provide such professional services and represents that its staff is fully qualified to perform such services.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, City and Contractor agree as follows:

ARTICLE I. SCOPE OF SERVICES

The Contractor will provide a professional subscription service to identify and track gun shots within specific areas of the City ("Services"). In a manner satisfactory to the City, the Services provided by the Contractor shall include:

A. Install a gunshot detection system ("System") that shall include all acoustic sensor hardware, software, installation services, training services, support and maintenance;

B. Acquire and pay for any required permissions from property owners, all permits and approvals to install hardware and equipment for the System;

C. Create and support a cloud-based interface for gunshot detection Services;

D. Maintain a data center/telephone hotline operations 24 hours a day/7 days a week/365 days a year that reviews and confirms all suspected gunshot alerts prior to the police department receiving an alert;

E. Maintain and store geographic location of gunshot and any related recording or identification and tracking data for a minimum of seven calendar years from the date of the incident occurring;

F. System functional requirements shall include, but not be limited to:

1. Detect gunshots in an urban environment within a designated coverage area encompassing up to a minimum three-square mile area, in accordance with the Service Level commitments defined in Exhibit C of the Agreement; and
2. Identify the geographic location and accurately isolate any gunshot fired within any designated coverage area within 82 feet of accuracy and record audio content whenever the System identifies a gunshot, in accordance with the Service Level commitments defined in Exhibit C of the Agreement; and

3. Notify the City’s dispatch system (currently Montgomery County Regional Dispatch Center) mobile data computers and smartphones of gunshot detection within 30 to 60 seconds of gunshot incidents, in accordance with the Service Level commitments defined in Exhibit C of the Agreement; and

4. Record audio content using hardware installed in a designated coverage area whenever the system identifies a gunshot; and

5. Expand capacity of System to include new coverage area or within an existing coverage area based upon a mutually agreed to Change Order, pricing, and coverage area.

The complete Service and System requirements are attached as ShotSpotter Service Agreement ("Exhibit A"), Price Proposal for Subscription-Based ShotSpotter® Gunfire Location, Alert, and Analysis Service ("Exhibit B") and Subscription-Based ShotSpotter® Gunshot Location System, Reviewed Alert Service Levels ("Exhibit C") and incorporated as a part of this Agreement. Should there be discrepancies or conflicts between the exhibits and this Agreement, this Agreement shall take precedence.

ARTICLE II. FUNDING, FINANCIAL STANDARDS AND AUDITING

This Agreement is contingent upon the availability of funding for the initial annual subscription term as set forth in Article III.

A. Funding. The total compensation paid to Contractor under this Agreement shall not exceed Two Hundred Fifty Thousand Dollars and Zero Cents ($250,000.00) for the professional services detailed in Article 1 – Scope of Services. Payment shall be made according to the following schedule:

$102,500.00 due upon execution of Agreement
$102,500.00 due upon “live” status of System

B. Invoicing. The Contractor shall submit an invoice for payment for Services. The invoice(s) shall state the invoice period, state the total amount requested, the size of the coverage area under contract, the start and end dates for the subscription period, and the agreement number. Unless disputed, City will disburse payment within forty-five (45) days from receipt of the invoice.

C. Financial Standards. The Contractor agrees to require the use of Generally Accepted Accounting Principles (GAAP) in recording and documenting all costs and expenditures relating to this Agreement. All costs and expenditures pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to the City and its designees. At any time during normal business hours and as often as the City may deem necessary, the Contractor shall make available to the City all of its records with respect to all matters covered under this Agreement, and will permit the City or designee to audit, examine, and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data pertaining in whole or in part to matters covered by this Agreement.
and to have audits made of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data pertaining in whole or in part to matters covered by this Agreement.

D. Auditing. If the Contractor has an independent audit of business and/or financial records, the Contractor shall require the company and/or auditor(s) to comply with all applicable Generally Accepted Auditing Standards that have been developed by the American Institute of Certified Public Accountants. If the Contractor receives an audit, the City shall receive a copy of such audit report.

ARTICLE III. TERM

This Agreement shall begin upon execution by both parties and shall terminate one (1) year from the service activation date, or on January 31, 2021, whichever is earlier, unless extended to a later date by amendment or terminated earlier in accordance with the termination provision set forth in Article 5. This Agreement may be renewed for subsequent annual terms at the written agreement of the parties, subject to availability of funding.

ARTICLE IV. EQUAL EMPLOYMENT OPPORTUNITY

Contractor 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, and 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 contract as fully as if specifically rewritten herein and that failure to comply therewith will constitute a breach thereof entitling the City, at its option, to terminate this Agreement.

ARTICLE V. TERMINATION

Termination for Cause. In the event of a material breach of the terms of this Agreement by Contractor in performance of this Agreement, the City may terminate this Agreement upon giving thirty (30) days’ prior written notice to Contractor. If Contractor has not (i) cured the breach within said thirty (30) day period, or (ii) has not submitted a plan for cure acceptable to the City within said thirty (30) day period, the City may immediately terminate this Agreement and the City shall pay Contractor for those services rendered to the City. If termination of this Agreement is due to an uncured material breach by Contractor, Contractor will refund a pro-rated portion of the subscription fees paid by the City for the annual term in which the Agreement is terminated.

Termination for Convenience or Non-Appropriation of Funds. The City may terminate this Agreement for convenience following written notice to Contractor no less than thirty (30) days’ prior to the end of the then current annual subscription period. The City may also terminate this Agreement upon reasonable prior written notice due to non-appropriation of funds. In either case, Contractor shall not be obligated to provide a prorated refund of fees paid for the annual term in which this Agreement is terminated.

ARTICLE VI. COMMERCIAL CARRIER DATA SERVICES

The ShotSpotter Gunshot Location System may use wired, wireless or cellular wireless acoustic sensor communications which necessitates the existence of a real-time data communications channel from each sensor to the hosted servers via a commercial carrier. The unavailability or deterioration of the quality of such wired, wireless or wireless cellular communications may impact the ability of ShotSpotter to provide
the Service. In such circumstances, ShotSpotter will use commercially reasonable efforts to obtain alternate wired or wireless cellular communications or adjust the coverage area as necessary. In the event ShotSpotter is unable to do so, ShotSpotter will terminate the Service and refund a pro-rata portion of the annual Service fee to the City.

ARTICLE VII. INDEPENDENT CONTRACTOR

By executing this Agreement for professional services, Contractor acknowledges and agrees that it will be providing services to the City as an “independent contractor.” As an independent contractor for the City, Contractor shall be prohibited from representing or allowing others to construe the parties’ relationship in a manner inconsistent with this Article. Contractor 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.

Contractor, its employees and any persons retained or hired by Contractor to perform 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 of Dayton. Further, Contractor shall be responsible to withhold and pay, or cause such agents, contractors and sub-contractors to withhold and pay, all applicable local, state and federal taxes.

Contractor acknowledges its employees are not public employees for purposes of Ohio Public Employees Retirement System (“OPERS”) membership.

ARTICLE VIII. INDEMNIFICATION AND INSURANCE

As an independent contractor, the Contractor shall defend, indemnify and hold the City and its elected officials, officers and employees harmless against legal liability for claims, suits, judgments, losses, damages, and expenses (including attorney’s fees) (collectively “Claims”) of every kind whatsoever by reason of, arising out of, the negligent act, error or omission of the Contractor in the performance of this Agreement, including, but not limited to, any violation or alleged violation of any federal, state, or local law, regulation, or order related to the services to be provided by the Contractor under this Agreement.

During the entire term of this Agreement and at the Contractor’s sole cost and expense, the Contractor shall maintain, with an insurance company authorized to conduct business in the State of Ohio and having at least an “A” rating from A.M. Best, the following insurance:

A. Professional Liability Insurance with a $1,000,000 annual aggregate;
B. Automobile Liability Insurance, which shall provide coverage in an amount not less than $1,000,000 per person and $1,000,000 per occurrence; and
C. Workers’ Compensation Insurance, in such amounts as required by law.

All policies of insurance required herein, but excluding Workers’ Compensation Insurance, shall contain the requirement that the City be notified at least thirty (30) days in advance of any termination or diminution of coverage.

Upon execution of this Agreement, the Contractor shall furnish the City with copies of certificates of insurance demonstrating compliance with the insurance requirements contained herein.

Exhibit A sets forth Contractor’s obligations regarding limitation of liability.
ARTICLE IX. AMENDMENTS
The parties may amend this Agreement. However, no amendment shall be effective or binding unless it is in writing and executed by a duly authorized representative of each party; and, if required or applicable, approved by the Commission of the City of Dayton.

ARTICLE X. REFERENCES TO LAW
All references to local, state, or federal laws, regulations, rules, or orders contained in this Agreement shall include any and all subsequent amendments, modifications, additions, or other changes as may be enacted or codified by the proper governmental authority during the term of this Agreement. If a change in any local, state or federal law affects the work product prepared and delivered by Contractor under this Agreement subsequent to delivery of such to the City, Contractor shall not be responsible to adapt the work product to the change in the law.

ARTICLE XI. COMMUNICATIONS
Any written communication or notice required or permitted by this Agreement shall be made in writing and shall be delivered personally, sent by express delivery, certified mail or first class U.S. mail, postage pre-paid to the address specified below:

For City: City of Dayton – Police Department
335 W. Third Street
Dayton, OH 45402

For Contractor: ShotSpotter
7879 Gateway Blvd., Suite 120
Newark, California 94560

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Contractor and the City.

ARTICLE XII. WARRANTY
The Contractor warrants that the System will be free of defects in workmanship which materially impair the functioning of the services and software in substantial conformity with the specifications documentation accompanying the System. The software covered under this limited exclusive warranty consists exclusively of ShotSpotter Alert Console software and user interface, installed and operated locally on the City’s computers and devices supplied by ShotSpotter for its use by, on and in connection with a ShotSpotter system.

ShotSpotter warrants that the Service, Data and Software shall be free of viruses, Trojan horses, worms, spyware or other malicious code or components.

ARTICLE XIII. EXPORT CONTROL
The parties acknowledge that the ShotSpotter Flex System is the subject of a Commodity Jurisdiction determination by the United States (U.S.) Department of State, and has been determined to be a controlled commodity, software and/or technology subject to the United States Export Administration Regulations of the U.S. Department of Commerce. Accordingly, no part of the Data, Software, ShotSpotter Flex System or any Gunshot Location System component thereof may be transferred, consigned, shipped, delivered, received, exported or re-exported, nor may any technical data directly relating to any of the
same or the underlying information or technology be disclosed, downloaded, uploaded, transmitted, received, furnished, or otherwise provided, to, by or through any person, government, country, or to any end-user, or for any end-uses, except in compliance with applicable U.S. export control laws administered by the U.S. Government, and any other applicable U.S. laws, including the sanctions laws administered by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC), the U.S. Anti-Boycott regulations, and any applicable laws of the United States of America. In this respect, no resale, transfer, or re-export of any ShotSpotter Flex System exported to the City pursuant to a license from the U.S. Department of Commerce may be resold, transferred, or reported without prior authorization by the U.S. Government. The City agrees not to export, re-export or engage in any “deemed export,” or to transfer or deliver, or to disclose or furnish, to any foreign (non-U.S.) government, foreign (non-U.S.) person or end-user, or to any U.S. person or entity, any of the ShotSpotter Flex System, Gunshot Location System components, Data, Software, Services, or any technical data or output data or direct data product thereof, or any service related thereto, in violation of any such restrictions, laws or regulations, or without all necessary registrations, licenses and or approvals. Unless otherwise agreed and so specified in the Purchase Documents, the City shall obtain and bear all expenses relating to any necessary determinations, registrations, licenses and/or exemptions with respect to its exportation, re-exportation or “deemed export” of the ShotSpotter Flex System, Data, Software or any Gunshot Location System Components or Services, as well as with respect to the disclosure or furnishing of any technical data or other information and services relating to any of the same.

In addition to compliance with the foregoing, and without limiting the generality thereof, the City shall not disclose, discuss, download, ship, transfer, deliver, furnish, or otherwise export or re-export any such item(s) to or through: (a) any person or entity on the U.S. Department of Commerce, Bureau of Industry and Security’s List of Denied Persons or Bureau of Export Administration’s anti-proliferation Entity List; (b) any person on the U.S. Department of State’s List of Debarred Parties; (c) any person or entity on the U.S. Treasury Department Office of Foreign Asset Control’s List of Specially Designated Nationals and Blocked Persons; or (d) any other end-user or for any end-use prohibited by law or regulation, as any and all of the same may be amended from time to time, or any successor thereto.

ARTICLE XIV. GENERAL PROVISIONS

A. Conflict of Interest. Contractor covenants that it has no interest and shall not acquire any interest, direct or indirect, that would cause conflict in any manner or degree with the performance of this Agreement or completion of the project.

B. Governing Law and Venue. This Agreement is 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, and is deemed to be executed in Dayton, Ohio. Any suit regarding this Agreement must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

C. Third Party Rights. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Contractor.

D. Assignment. Except as may otherwise occur as a result of a ShotSpotter merger or acquisition, neither the City nor Contractor may assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article will prevent Contractor from employing independent Contractor, associates, and subcontractors to assist in the performance of the services.
E. Waiver. A waiver by either the City or Contractor of any breach of this Agreement shall be in writing. Such a waiver will be effective only in the specific instance and for the specific purpose for which it is given and will not affect the waive party’s rights with respect to any other or further breach.

F. Integration. This Agreement represents the entire and integrated agreement between the City and Contractor. This Agreement supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

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

IN WITNESS WHEREOF, City and Contractor, each by a duly authorized representative, have executed this Agreement as of the date set forth below.

CITY OF DAYTON, OHIO

By: ____________________________  
City Manager

SHOTSPOTTER, INC.

By: ____________________________  
It's: ____________________________

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
City Attorney

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

______________________________, 2019

Min. / Bk. _______  Pg. _______

Clerk of the Commission
ShotSpotter, Inc. (also "ShotSpotter," "we," "us," or "our") and the City of Dayton, OH (hereinafter referred to as "Customer," "you" or "your") agree to the following Services and License Agreement and General Terms and Conditions (hereinafter, "Agreement").

1. SERVICES

For purposes of this Agreement, the Service shall consist of (i) providing access by the Customer to Reviewed Alerts delivered via a password-protected internet portal ("Alert Console") and user interface supplied by ShotSpotter (together the Alert Console and interface shall be called the "Software") (ii) providing access to historical Reviewed Alerts and incident information via the Software; and (iii) other services as specified in the Purchase Documents.

Reviewed Alerts consist of data for gunfire incidents, detected by the ShotSpotter Gunshot Location System and reviewed by a ShotSpotter incident reviewer employee (see Exhibit B).

ShotSpotter will install or convert the ShotSpotter Gunshot Location System in the coverage area specified in the Price Proposal for Subscription-Based ShotSpotter® Gunfire Location, Alert, and Analysis Service ("Exhibit B"). ShotSpotter will host the Service and may update the functionality and Software of the Service from time to time at its sole discretion and in accordance with this Agreement.

ShotSpotter shall retain ownership of, and all rights to, all components of the ShotSpotter Gunshot Location System, including hardware components, Software and firmware. Under this Agreement the Customer is only licensing rights to access the incident information detected by the ShotSpotter Gunshot Location System.

2. LICENSE

The following sets forth the terms and conditions of your non-exclusive, non-transferable and terminable license to use the Service and Data (as those terms are defined herein).

This License creates important legal rights and obligations, so please read it carefully before using the Service. This License constitutes an offer by us to you.

A. RIGHTS IN DATA.

All data created, generated, modified, compiled, stored, kept or displayed by ShotSpotter in the course of providing the Service to Customer ("Data"), remains the sole and exclusive property of ShotSpotter. ShotSpotter expressly reserves the rights to copy, publish, display, adapt, modify, translate, perform publicly, make works derived from, transfer, sell, offer for sale, and to use any and all Data for internal purposes such as research or product development. ShotSpotter may provide, license or sell the Data on an aggregated basis to third parties (excluding press or media) to be used for research or analytical purposes, for example, but not by way of limitation, gunshot violence statistics or studies and other law enforcement-related purposes, including, for example, to create national gunfire indices or statistics.
Notwithstanding the foregoing sentence and although ShotSpotter owns the Data with respect to the Service, ShotSpotter will provide reasonable notice if any Data to be released is specific forensic or law enforcement sensitive incident information that may pertain to any active investigation or prosecution. At no time will ShotSpotter release, sell, license, or otherwise distribute the Data to the press or media without the prior express Customer consent, which shall not be unreasonably withheld.

Customer shall have the unrestricted right to access, download, make copies of, distribute and use Data within its own organization, for its own purposes, including but not limited to detecting and locating gunfire, routine archival recordkeeping, evidentiary, investigative, and/or analytic purposes. Customer will not provide, license the use of, or sell Data to any third party. Such restriction will not apply to: (i) collaborating with other law enforcement agencies with regard to the investigation and prosecution of criminal activity; (ii) transferring Data to other law enforcement or prosecutorial systems; (iii) research and training purposes; and dispatch data. Under no circumstances will Customer share Data with a company that actively competes with ShotSpotter in the Gunshot Detection or Predictive Policing market. The Customer’s use of the Data collected shall survive the termination of this Agreement.

B. RESTRICTIONS.

The Software and Data are our proprietary products, may incorporate components supplied to us under license by third-party suppliers, and may be protected by United States patent, trade secret, copyright law and international treaty provisions. All such rights in and to Software and Data and any part thereof are the property of us or our suppliers. By virtue of this License, you acquire only the right to use the Software and Data in accordance with this Agreement, but otherwise acquire no license, title or ownership rights, express or implied, in or to the Software or Data, or any right to use or practice any of our patents, copyrights, trademarks, or trade secrets, all of which rights are reserved expressly by us or our suppliers. You may not make any copies of the written materials or documentation that accompanied any component of the Software, or use them, or any other information concerning the Service that we have designated as confidential, for any purpose other than bona fide use of the Service or Software for the specific purposes contemplated herein, nor allow anyone else to do so. You shall not, without our express written consent, which may be withheld or conditioned at our sole discretion: (i) modify, adapt, alter, translate, copy, perform or display (publicly or otherwise) or create compilations, derivative, new or other works based, in whole or in part, on the Software, or on the Service; (ii) merge, combine, integrate or bundle the Software, in whole or in part, with other software, hardware, data, devices, systems, technologies, products, services, functions or capabilities; (iii) transfer, distribute, make available the Service or Software to any person other than the specific end-user customer identified to ShotSpotter in the Purchase Documents, sell, resell, sublicense, lease, rent, or loan the Service, Data, or Software, in whole or in part, or (iv) provide use or permit operation of any of the Service or Software by any person other than the original end-user customer designated in this Agreement, nor in or through any application service provider, service bureau, rental or time-sharing arrangement; (v) disassemble, decompile, or otherwise reverse engineer or attempt to reconstruct, derive, or discover any source code, underlying ideas, algorithms, formulae, routines, file formats, data structures,
programming, routines, interoperability interfaces, drawings, or plans from the Software, or any data or information created, compiled, displayed, or accessible through the System, in whole or in part; or (vi) remove, modify or obscure any identification or proprietary or restrictive rights markings or notices from the Software or any component thereof.

ShotSpotter and its licensors retain all ownership of all intellectual property rights in and to all Data, Software, all computer programs, related documentation, technology, knowhow and methods and processes embodied in or made available to you in connection with the Service, including, without limitation, all patent rights, copyrights, trade secret rights, trademarks and service marks. All rights not expressly granted to you herein are reserved by ShotSpotter. You shall take all reasonable measures to protect ShotSpotter’s intellectual property rights in the Service and Software, including providing assistance and measures as are reasonably requested by ShotSpotter from time to time.

You are hereby placed on notice that alteration or removal of copyright management information (including, without limitation, licensor’s name and other identifying information, name of the Service, the terms and conditions of this License, and identifying numbers or symbols) embodied in or associated with the Service is prohibited, because such conduct may cause others to infringe our rights in and to the system, Service and/or Software. You may also not obscure or remove any confidentiality, patent, trademark or copyright notices on any component of the Service, or any documentation.

C. TERMINATION.

You agree that your right to use the Service and Software and Data will terminate automatically if you violate any of the terms of this License, or fail to timely pay any sums you owe to us or resellers or integrators of our Service, or fail to renew the Service upon expiration of the Service term. In the event of termination, your access to the Data and Software will be terminated, and ShotSpotter will cease delivering Reviewed Alerts, and disable your access to the Data. Customer agrees that ShotSpotter shall not be liable to Customer nor to any third party for any suspension of the Service resulting from Customer’s nonpayment of fees as described in this section. However, Customer will be able to download all existing Data for up to seven days after termination. Customer’s ability to use the Data shall survive this Agreement.

D. MODIFICATION TO OR DISCONTINUATION OF THE SERVICE.

ShotSpotter reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof). In the event that ShotSpotter modifies the Service in a manner which removes or disables a feature or functionality on which Customer materially relies, ShotSpotter, at Customer’s request, shall use commercially reasonable efforts to restore such functionality to Customer. In the event that ShotSpotter is unable to substantially restore such functionality, Customer shall have the right to terminate the Agreement and receive a pro-rata refund of the annual Service fees paid under the Agreement for use of the Service which was paid for by Customer but not yet furnished by ShotSpotter as of the date of such termination. Customer acknowledges that ShotSpotter reserves the right to discontinue offering the
Service at the conclusion of Customer's then current term. Customer agrees that ShotSpotter shall not be liable to Customer or to any third party for any modification of the Service as described in this section.

E. OTHER RESTRICTIONS.

You acknowledge and agree that the source code and internal structure of the Software, Data and Service, as well as documentation, operations manual and training material are our confidential property, and trade secrets, the value of which would be destroyed by disclosure to the public. Use by anyone other than you of the Service, documentation, and Data is prohibited, unless otherwise allowed in this Agreement.

3. LIMITED EXCLUSIVE WARRANTY.

Provided that you comply with your obligations under the terms and conditions stated herein, we warrant that the Software (as defined herein) will be free of defects in workmanship which materially impair the functioning of the Service and Software in substantial conformity with the specifications documentation accompanying the Service. The Software covered under this limited exclusive warranty consists exclusively of ShotSpotter Alert Console software and user interface, installed and operated locally on customer's computers and devices supplied by ShotSpotter for your use by on and in connection with a ShotSpotter System, subject to the terms and conditions of the License between you and us.

A. REVIEWED ALERT SERVICE LEVELS.

As regards to sonic event review and alert services, subject to the Customer's compliance with its obligations hereunder, and to the disclaimers and limitations set forth in Exhibit C: Subscription-Based ShotSpotter Gunshot Location System Reviewed Alert Service Levels, and in Sections 5(C), 6, 7, 13 and 15 of this Agreement, we agree to provide the service levels set forth in Exhibit C, attached hereto.

B. OTHER WARRANTY.

ShotSpotter warrants that the Service, Data and Software shall be free of viruses, Trojan horses, worms, spyware, or other malicious code or components.

The limited exclusive warranties expressly set forth in this Agreement are the only warranties made to you and are provided in lieu of any other warranties (if any) created by any documentation or packaging, or otherwise express or implied. These limited exclusive warranties give you specific legal rights, and you may also have other rights which vary by jurisdiction.

4. SHOTSPOTTER SUPPORT.

During the term of the Services, ShotSpotter will make commercially reasonable efforts to promote Customer's successful utilization of the Service, including but not limited to providing Customer with user guides, online help, online training presentation, and online training sessions (as available). ShotSpotter will provide reasonable efforts to respond via email to requests for support relating to incident classification within 8 hours of the request.
In addition, ShotSpotter will use commercially reasonable efforts to respond to other support requests within 24 hours of receipt of the request during the period of 8 am to 5 pm Monday through Friday. The e-mail support specialist shall be responsible for receiving Customer reports of missed incidents, or errors in the Service, and, to the extent practicable over email or telephone, making commercially reasonable efforts to assist the Customer in resolving the Customer's reported problems. In the event the problem cannot be resolved telephonically, then ShotSpotter will use commercially reasonable efforts to restore functionality of the Service to Service specifications within 72 hours of receipt of the report.

A. FORENSIC REPORTS.

ShotSpotter, at the specific request of the customer, will produce and provide a reasonable quantity of detailed incident forensic reports for any ShotSpotter detected incidents, including Reviewed Alerts, if such information is deemed by the customer to be valuable to the customer for investigation follow-up, prosecutorial requirements, or after action review.

Such reports must be requested a minimum of 5 days in advance of when needed, and all such requests must be in writing and addressed to the ShotSpotter Customer Service Department. Customer should expect delivery of these reports within 5 days after receipt of the request. This benefit shall only be available to Customer if Customer is fully current with payments due under this Agreement. In the case that Customer is not current with their payments, then forensic reports shall not be generated or provided to Customer until Customer becomes current with its payment obligations.

B. EXPERT WITNESS SERVICES.

ShotSpotter offers reasonable expert witness services. The Customer will be responsible for all travel and per diem reimbursement. At the specific request of the customer, ShotSpotter will provide individual(s) for the purposes of expert witness testimony for any ShotSpotter-detected incidents, including Reviewed Alerts, for which the incident information is deemed by the customer to be valuable to the customer's prosecutorial requirements. Customer understands that ShotSpotter undertakes to provide individuals whose qualifications are sufficient for such services, but does not warrant that any person or his or her opinion will be accepted by every court. ShotSpotter requires at least fourteen (14) days prior notice of such a requirement in writing from the Customer. Customer must include dates, times, specific locations and a point of contact for ShotSpotter personnel. Due to the nature of legal proceedings, ShotSpotter cannot guarantee that its services described in this section shall produce the outcome, legal or otherwise, which Customer desires. Payment for expert witness services described shall be due and payable when services are rendered regardless of the outcome of the proceedings.
5. TERM, RENEWAL

A. COMMERCIAL CARRIER DATA SERVICES.

The ShotSpotter Gunshot Location System may use wired, wireless or cellular wireless acoustic sensor communications which necessitates the existence of a real-time data communications channel from each sensor to the hosted servers via a commercial carrier. The unavailability or deterioration of the quality of such wired, wireless or wireless cellular communications may impact the ability of ShotSpotter to provide the Service. In such circumstances ShotSpotter will use commercially reasonable efforts to obtain alternate wired or wireless cellular communications or adjust the coverage area as necessary. In the event ShotSpotter is unable to do so, ShotSpotter will terminate the Service and refund a pro-rata portion of the annual Service fee to Customer.

6. IP INFRINGEMENT; EXCLUSIVE REMEDY.

Subject to the terms and conditions hereof, ShotSpotter agrees to defend and indemnify Customer (provided it is the actual End-user Customer of the Service) from and against losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of a claim asserted in a lawsuit or action against the end-user customer by a third party unrelated to the customer, in which such third party asserts a claim that the Service and/or Software, when used in accordance with ShotSpotter’s specifications and for the purposes intended, infringes any United States patent which was issued by the U.S. Patent and Trademark Office, or United States copyright which was registered by the U.S. Copyright Office, as of the effective date of Customer’s agreement to purchase the ShotSpotter Flex System.

Provided, however, that ShotSpotter shall have the right to choose counsel to defend such suit and/or action, and to control the settlement (including determining the terms and conditions of settlement) and the defense thereof, and that Customer shall provide ShotSpotter with reasonably prompt written notice of any such suit or action, and of any oral, written or other communication or other information or circumstances of which Customer becomes aware that could reasonably be expected to lead to such a suit or action (including any and all cease and desist demands or warnings, and offers or invitations to enter license agreements), and shall provide ShotSpotter all reasonable assistance and information in connection with ShotSpotter’s investigation and defense of any claim of infringement.

Further provided, however, that this section shall not apply and ShotSpotter shall have no obligation to defend and indemnify Customer in the event the Customer or a reseller, integrator, service provider or supplier modifies, alters, substitutes, or supplements any of the Service, or Software, or to the extent that the claim of infringement arises from or relates to the integration, bundling, merger or combination of any of the same with other hardware, software, systems, technologies, or components, functions, capabilities or applications not licensed by ShotSpotter as part of the Service, nor shall it apply to the extent that the claim of infringement arises from or relates to meeting or conforming to any instruction, design, direction or specification furnished by the Customer, nor to the extent that the Service or Software are used for or in
connection with any purpose, application or function other than detecting and locating gunshots exclusively through acoustic means.

If, in ShotSpotter’s opinion, the Service, or Software may, or is likely to become, the subject of such a suit or action, does become the subject of a claim asserted against a customer in a lawsuit which ShotSpotter is or may be obliged to defend under this section, or is determined to infringe the foregoing patents or copyrights of another in a final, non-appealable judgment subject to ShotSpotter’s obligations under this section, then ShotSpotter may in full and final satisfaction of any and all of its obligations under this section, at its option: (1) procure for Customer the right to continue using the affected Service or Software, (2) modify or replace such Service or Software to make it or them non-infringing, or (3) refund to the purchaser a pro-rata portion of the annual Service price paid for the Service System.

The foregoing section states the entire liability of ShotSpotter and customer’s and its suppliers’ exclusive remedy for or relating to infringement or claims or allegations of infringement of any patent, copyright, or other intellectual property rights in or to the system, system components, and software. This section is in lieu of and replaces any other expressed, implied or statutory warranty against infringement of any and all intellectual property rights.

7. LIMITED WARRANTIES EXCLUSIVE; DISCLAIMERS IMPORTANT; PLEASE READ CAREFULLY

To the maximum extent permitted by applicable law, the limited warranties expressly set forth above are exclusive, and in lieu of all other warranties, whether written, oral, express, implied or statutory. There are no warranties that extend beyond those expressly set forth herein, and no prior statements, representations, or course of dealing by any ShotSpotter representatives shall vary, expand or modify these warranties.

To the maximum extent permitted by applicable law, all other representations or warranties, express, implied, or statutory, including without limitation, any warranties of non-infringement, quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any goods provided incidental to the services provided under this agreement are hereby expressly disclaimed and superseded by the exclusive limited express warranty and disclaimers set forth herein.

Without limiting the generality of the foregoing limitations and disclaimers, while the Service is not designed, sold, or intended to be used to detect, intercept, transmit or record oral or other communications of any kind, ShotSpotter cannot control how the Service is used, and, accordingly, ShotSpotter does not warrant or represent, expressly or implicitly, that use of the Service will comply or conform to the requirements of federal, state or local statutes, ordinances and laws, or that use of the Service will not violate the privacy rights of third parties. You shall be solely responsible for using the Service in full compliance with applicable law and the rights of third persons.
Further, regardless of any prior statements, representations, or course of dealings by any ShotSpotter representatives, we do not warrant or represent, expressly or implicitly, that the Service or its use will: result in the prevention of crime or hostile enemy action, apprehension or conviction of any perpetrator of any crime, military prosecution of any enemy force, or detection or neutralization of any criminal, combatant or threat; prevent any loss, death, injury, or damage to property due to the discharge of a firearm or other weapon; in all cases result in a Reviewed Alert for all firearm discharges within the designated coverage area; or that the ShotSpotter-supplied network will remain in operation at all times or under all conditions.

ShotSpotter expressly disclaims, and does not undertake or assume any duty, obligation or responsibility for any decisions, actions, reactions, responses, failure to act, or inaction, by Customer as a result of or in reliance on, in whole or in part, any Services or Reviewed Alerts provided by ShotSpotter, or for any consequences or outcomes, including any death, injury, or loss or damage to any property, arising from or caused by any such decisions, actions, reactions, responses, failure to act, or inaction. It shall be the sole and exclusive responsibility of the Customer to determine appropriate decisions, actions, reactions or responses, including whether or not to dispatch emergency responder resources. The Customer hereby expressly assumes all risks and liability associated with any and all action, reaction, response, and dispatch decisions, and for all consequences and outcomes arising from or caused by any decisions made or not made by the Customer in reliance, in whole or in part, on any Services provided by ShotSpotter, including any death, injury, or loss or damage to any property.

Any and all warranties, express or implied, of fitness for high risk purposes requiring fail-safe performance are hereby expressly disclaimed.

You and we each acknowledge and agree that the Service is not a consumer good, and is not intended for sale to or use by or for personal, family or household use.

8. YOUR OBLIGATIONS.

You acknowledge and agree that ShotSpotter’s duties, including warranty obligations, and ability to perform its obligations to you shall be predicated and conditioned upon your timely performance of and compliance with your obligations hereunder, including, but not limited to:

A. You agree to pay all sums due under the Agreement as and when they are due pursuant to the terms of such Agreement. Actual access and use of the ShotSpotter Service shall constitute evidence that the Service is active and the final payment is due.

B. You agree to use your best efforts to timely perform and comply with all of your obligations allocated to you in the Purchase Documents and/or other contract documents, including, without limitation, provisions regarding assisting ShotSpotter in obtaining sensor site permissions from premises owners or lessors, in locations reasonably acceptable to ShotSpotter, which obligations are incorporated by reference and made
a part hereof. Unless the Statement of Work or other contract documents signed by ShotSpotter allocates such obligations to ShotSpotter expressly, customer shall be responsible for securing from premises owners or lessors all rights necessary to enter onto their premises to install sensors, and to place, operate and maintain such sensors on such premises. ShotSpotter’s duties, including warranty obligations to you shall be predicated and conditioned upon your timely performance of and compliance with your obligations set forth herein, and in the Purchase Documents.

D. Unless otherwise expressly agreed in advance in writing by ShotSpotter, you shall not resell, transfer, distribute or allow access to the Service or web portal or any portion thereof, to any person other than the specific end-user previously identified to ShotSpotter in the Purchase Documents, and shall not authorize or appoint any contractors, subcontractors, original equipment manufacturers, value added integrators, systems integrators or other third parties to operate, have access to, or sublicense the Products.

F. Customer may designate up to the number of users under Customer’s account which corresponds to the access required by assigning unique passwords and user names. Customer will be responsible for the confidentiality and use of Customer’s password and user names, and agrees that sharing passwords and/or user names with unauthorized users is prohibited.

G. You shall comply with all applicable laws, rules and regulations relating to the goods and services provided hereunder.

9. INTELLECTUAL PROPERTY RIGHTS; LIMITED LICENSE.

We or our licensors retain all ownership of all intellectual property rights in and to all data, software, computer programs, related documentation, technology, know how and processes embodied in or made available to you in connection with the Service, and Software, including, without limitation, all patent rights, copyrights, trade secret rights, trademarks and service marks. Your rights to install and use the Data and Software are limited, and shall be strictly in accordance with the License setforth in Section 2 hereof. Any and all rights not granted expressly in such License are hereby reserved.

10. EXPORT CONTROL.

You acknowledge that the ShotSpotter Flex System is the subject of a Commodity Jurisdiction determination by the United States Department of State, and has been determined to be a controlled commodity, software and/or technology subject to the United States Export Administration Regulations of the U.S. Department of Commerce. Accordingly, no part of the Data, Software, ShotSpotter Flex System or any Gunshot Location System component thereof may be transferred, consigned, shipped, delivered, received, exported or re-exported, nor may any technical data directly relating to any of the same or the underlying information or technology be disclosed, downloaded, uploaded, transmitted, received, furnished, or otherwise provided, to, by or through any person, government, country, or to any end-user, or for any end-uses, except in compliance with applicable U.S. export control laws administered by the U.S. Government, and any other applicable U.S. laws, including the sanctions laws administered by the U.S.
Department of Treasury, Office of Foreign Assets Control (OFAC), the U.S. Anti-Boycott regulations, and any applicable laws of your country. In this respect, no resale, transfer, or re-export of any ShotSpotter Flex System exported to you pursuant to a license from the U.S. Department of Commerce may be resold, transferred, or reported without prior authorization by the U.S. Government. Customer agrees not to export, re-export or engage in any "deemed export," or to transfer or deliver, or to disclose or furnish, to any foreign (non-U.S.) government, foreign (non-U.S.) person or end-user, or to any U.S. person or entity, any of the ShotSpotter Flex System, Gunshot Location System components, Data, Software, Services, or any technical data or output data or direct data product thereof, or any service related thereto, in violation of any such restrictions, laws or regulations, or without all necessary registrations, licenses and or approvals. Unless otherwise agreed and so specified in the Purchase Documents, you shall obtain and bear all expenses relating to any necessary determinations, registrations, licenses and/or exemptions with respect to its exportation, re-exportation or "deemed export" of the ShotSpotter Flex System, Data, Software or any Gunshot Location System Components or Services, as well as with respect to the disclosure or furnishing of any technical data or other information and services relating to any of the same.

In addition to compliance with the foregoing, and without limiting the generality thereof, Customer shall not disclose, discuss, download, ship, transfer, deliver, furnish, or otherwise export or re-export any such item(s) to or through: (a) any person or entity on the U.S Department of Commerce Bureau of Industry and Security's List of Denied Persons or Bureau of Export Administration's anti-proliferation Entity List; (b) any person on the U.S. Department of State's List of Debarred Parties; (c) any person or entity on the U.S. Treasury Department Office of Foreign Asset Control's List of Specially Designated Nationals and Blocked Persons; or (d) any other end-user or for any end-use prohibited by law or regulation, as any and all of the same may be amended from time to time, or any successor thereto.

11. PROTECTION OF CONFIDENTIAL INFORMATION.

Unless either party (the "Receiving Party") obtains prior written consent from the other (the "Disclosing Party"), the Receiving Party agrees that it will not reproduce, use for purposes other than those expressly permitted herein, disclose, sell, license, afford access to, distribute, or disseminate any information: i) obtained from the Disclosing Party in connection with the System purchase, installation or operation, and designated by it from time to time as confidential; ii) the documentation, use and operations manuals; and output data created or compiled by the ShotSpotter Flex System; iii) your use of the ShotSpotter Flex System or technology, your deployment methodology, results, or related facts; iv) the contractual terms and payment terms applicable to the purchase of the ShotSpotter Flex System or technology, except as required by local law (collectively, “Confidential Information”). Unless a section of the Purchase Document(s) specifically identifies the identity of Customer as Confidential Information, the fact that Customer is a customer of ShotSpotter shall not itself be considered Confidential Information, nor shall the name of any city in which the ShotSpotter Gunshot Location System is deployed be considered confidential information. Recipient’s obligations under this section shall not apply to any of Discloser’s Confidential Information that Recipient can document: (a) was in the public domain at or subsequent to the time such Confidential
Information was communicated to Recipient by Discloser through no fault of Recipient; (b) was rightfully in Recipient’s possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to Recipient by such Discloser; (c) was developed by employees or agents of Recipient independently of and without reference to any of Discloser’s Confidential Information; or (d) was communicated by Discloser to an unaffiliated third party free of any obligation of confidence. A disclosure by Recipient of any of Discloser’s Confidential Information (a) in response to a valid order by a court or other governmental body; (b) as otherwise required by law; or (c) necessary to establish the rights of either party under this Agreement shall not be considered to be a breach of this Agreement by such Recipient; provided, however, such Recipient shall provide prompt prior written notice thereof to such Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure. Receiving Party shall use reasonable controls to protect the confidentiality of and restrict access to all such Confidential Information to those persons having a specific need to know the same for purposes expressly authorized herein, and render unreadable prior to discarding, all records containing our Confidential Information. In any event such controls shall not be less protective than those Receiving Party uses to secure and protect its own confidential, but not “Classified” or otherwise Government-legended, information.

12. NOTICES.

Any notice or other communication required or permitted to be given under this Agreement shall be in writing at such party’s address or number or at such party’s last known address or number. The party’s addresses may be changed by written notice to the other party as provided herein.

13. FORCE MAJEURE.

In no event shall ShotSpotter be liable for any delay or default in its performance of any obligation under this or any other agreement caused directly or indirectly by an act or omission of Customer, or persons acting under its direction and/or control, fire, flood, act of God, an act or omission of civil or military authority of a state or nation, strike, lockout or other labor disputes, inability to secure, delay in securing, or shortage of labor, materials, supplies, transportation, or energy, failures, outages or denial of services of wireless, power, telecommunications, or computer networks, acts of terrorism, sabotage, vandalism, hacking, natural disaster or emergency, war, riot, embargo or civil disturbance, breakdown or destruction of plant or equipment, or arising from any cause whatsoever beyond ShotSpotter’s reasonable control. At ShotSpotter’s option and following notice to Customer, any of the foregoing causes shall be deemed to suspend such obligations of ShotSpotter so long as any such cause shall prevent or delay performance, and ShotSpotter agrees to make and Customer agrees to accept performance of such obligations whenever such cause has been remedied.
14. DEFAULT; REMEDIES.

Upon the occurrence of any default by or breach of your obligations, we may at our option, effective immediately, terminate our future obligations under this agreement and terminate your License to use the Service and Software.

15. LIMITATIONS ON LIABILITY.

In no event shall either party, or any of its affiliates or any of its/their respective directors, officers, members, attorneys, employees, or agents, be liable to the other party under any legal or equitable theory or claim, for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.

In any event, except for its IP infringement indemnity obligations under section 6 hereof, ShotSpotter’s cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this agreement) and regardless of the form of action or legal theory shall not exceed two times the amount paid to ShotSpotter under this agreement, or the amount of insurance maintained by ShotSpotter available to cover the loss, whichever is greater. The foregoing limitations shall apply without regard to any failure of essential purpose of any remedies given herein.
Price Proposal for Subscription-Based ShotSpotter® Gunfire Location, Alert, and Analysis Service

Prospect: City of Dayton, OH
Proposal ID: DAYTONOH06212019
Date: June 21, 2019
Submitted by: Trish Layne, Director – Midwest Region
+1.415.254.8292 mobile
+1.650.887.2106 fax
tlayne@ShotSpotter.com

ShotSpotter, Inc.
7979 Gateway Blvd, Suite 210
Newark, California 94560
+1.888.274.6877
info@ShotSpotter.com
www.ShotSpotter.com
Table of Contents

ShotSpotter Introduction and Background 1
  About ShotSpotter, Inc. 1
  Our Core Beliefs 1
  Our Experience 2
  Our Service and Product Offerings 2
About Our Service – ShotSpotter 3
  Real-Time Gunfire Data 3
  Sensor Platform 4
  Subscription-based and Software as a Service 4
  Incident Review Center 5
  Best Practices and Onboarding Training 6
  Gunfire Data and Alerts 10
Customer References 15
Services & Support 16
Coverage Area 17
Analysis 17
Pricing, Terms and Conditions 18
  One-Time Service Startup Fees 18
  Annual Subscription Fee 18
  Payment Terms 19
Service Agreement (See Attached Exhibit) Error! Bookmark not defined. 19
Agreement Error! Bookmark not defined. 19
ShotSpotter Introduction and Background

About ShotSpotter, Inc.

ShotSpotter was founded in 1995 and with 31 issued patents, and over 90 agency engagements covering over 500 square miles, ShotSpotter has become the leader in the development and deployment of wide area acoustic gunshot surveillance systems. Our sensor-based technology detects, locates and alerts on all outdoor urban gunfire on a real time and precise basis. These alerts are then vetted by an acoustic reviewer in our 24/7 Incident Review Center before getting pushed to a customer web accessible laptop or mobile device. The alerts will show a precise dot on a map with the real recording of the actual gunfire event. The situational intelligence advantage and ground truth that our alerts bring to a tactical response provides for enhanced officer safety. At an agency level, it provides for an efficient and effective way to respond to and investigate gun crime.

Our service is delivered as an easily implemented Software as a Service (SaaS) solution requiring no investment in or maintenance of expensive hardware or software. Our contracts are based on an affordable one-year subscription agreement providing for maximum flexibility and the de-risking of a ShotSpotter deployment.

Our Core Beliefs

Our inspiration comes from our Principal Founder, Dr. Bob Showen's core belief that technology in its highest and best use should be harnessed for social good. The collective passion of our employees, investors and partners is based on providing a compelling solution and consulting expertise focused on helping reduce gun violence and creating safer more vibrant communities coping with the epidemic of gun violence. We are committed to developing comprehensive, respectful and intimate partnerships with agencies and their respective cities organized around making a positive difference. Today, ShotSpotter is highly regarded as a critical component of a comprehensive gun violence reduction strategy and is playing an active part in making communities safer for our future generations. We aspire to make that both our individual and firm wide legacy.
Our Experience

Our company has had over 20 years of successful experience in designing and deploying ShotSpotter arrays in a number of diverse urban environments with various acoustic and environmental challenges. We have the largest database of gunfire events and other impulsive noise detections on the planet allowing us to continually refine and improve our machine classification techniques. Our data is scientifically sound and used in court cases at both the state and federal levels.

Most importantly, we have over the years, been able to learn alongside our clients, a number of best practices techniques to improve on measurable outcomes and the operational effectiveness of our solution. We take a consultative approach to our client engagements and bring to bear a formal on boarding process and provide comprehensive training and ongoing webinars to advance the state of gun violence abatement.

Our Service and Product Offerings

ShotSpotter is well known and respected for its gunshot detection solutions that have historically helped police identify, analyze, and respond to violent gun crime in urban cities. The ShotSpotter product continues to become a household name in law enforcement agencies across the world. Today, the company has expanded its solution offering to include small area gunshot detection. This new security solution is focused on K-12 schools, college and university campuses, corporate facilities and other key critical infrastructure that are vulnerable to unpredictable active shooter attacks.

An overview of our suite of services include the following:

- **ShotSpotter** – gunfire alerting and analysis of gunfire for local law enforcement agencies in urban areas.
- **ShotSpotter SiteSecure™** for Critical Infrastructure – physical security designed to detect gunfire attacks on commercial and federal buildings, electrical substations, airports, and large outdoor structures.
- **ShotSpotter SecureCampus** – designed to provide outdoor gunfire coverage at university and school campuses.
About Our Service – ShotSpotter

Real-Time Gunfire Data

ShotSpotter helps law enforcement agencies by directing police to the precise location of illegal gunfire incidents. ShotSpotter instantly notifies officers of shootings in progress with real-time data delivered to dispatch centers, patrol cars and even smart phones. Instant alerts enable first responders to aid victims, collect evidence and quickly apprehend armed, dangerous offenders.

ShotSpotter’s actionable intelligence can then be used to prevent future crimes by positioning law enforcement when and where crime is likely to occur. Police now possess a scientific barometer of success: smart policing leads to fewer shootings.

<table>
<thead>
<tr>
<th>Key Features</th>
<th>Key Benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Constant, 360-degree wide-area acoustic surveillance throughout large coverage areas.</td>
<td>• Enhanced situational awareness and officer safety.</td>
</tr>
<tr>
<td>• Immediate alerts when no one calls 9-1-1.</td>
<td>• Faster evidence collection and witness identification.</td>
</tr>
<tr>
<td>• Precise location including latitude/longitude, street address.</td>
<td>• Court-admissible, detailed forensic reports (DFRs).</td>
</tr>
<tr>
<td>• Number and exact time of rounds fired.</td>
<td>• Increased gun crime arrests.</td>
</tr>
<tr>
<td>• Identification of fully-automatic or high-capacity weapons.</td>
<td>• Improved community relations and collaboration.</td>
</tr>
<tr>
<td>• Identification of multiple shooters.</td>
<td>• Proactive gun crime pattern analysis and strategic deterrence.</td>
</tr>
<tr>
<td>• Detailed forensic data for investigation, prosecution, analysis.</td>
<td>• No need to buy/manage a complex technology infrastructure.</td>
</tr>
<tr>
<td>• Easily-accessible single and cumulative historical reports.</td>
<td>• Expedited response to shooting victims.</td>
</tr>
<tr>
<td>• Annual subscription-based service is a hosted cloud-based solution.</td>
<td>• Increased suspect leads, suspect arrests.</td>
</tr>
<tr>
<td></td>
<td>• Increased ability to identify homicides and injured victims.</td>
</tr>
</tbody>
</table>
Sensor Platform

Our gunshot detection solution is enabled through proprietary special purpose-built sensors that are designed to trigger and time-stamp impulsive acoustic events that spike above ambient noise. When three or more sensors “trigger” the software system, it triangulates the exact location of the event within 25 meters.

ShotSpotter designs and deploys a sensor array of typically 20-25 sensors per square mile in order to support a coverage area.

Our detection solution is enabled through proprietary special purpose-built sensors that are designed to trigger and time-stamp impulsive acoustic events that spike above ambient noise. When three or more sensors “trigger” the software system, it is able to triangulate the exact location of the event within 82 feet.

Subscription-based and Software as a Service

**ShotSpotter’s cloud-based system is cost effective.**

In addition to owning and operating the underlying sensor network, ShotSpotter also owns and operates the data center infrastructure which provides the 24x7x365 real-time data. Sensors operate on “machine-to-machine” (M2M) data contracts provided by our cellular provider partners. Because ShotSpotter maintains thousands of live sensor connections with those partners, we achieve per-sensor connectivity savings far beyond what a single agency could negotiate, and we pass those savings along to our customers in the form of a fixed price subscription.

**Built-in redundancy eliminates any single point of failure.**

ShotSpotter operates redundant data centers on both the East and West Coasts, both of which have doubly-redundant power and HVAC, and triply-redundant Internet connectivity. The company has invested in full data redundancy and backups, as well as offsite backup, and provides a level of 24x7x365 fault tolerant hardware and network uptime that no agency—even the biggest—could afford to procure, let alone maintain, on its own.
Subscription Based

The subscription-based cost structure of ShotSpotter not only makes sophisticated gunshot detection a reality for your agency, it helps you maximize your people by speeding investigations, supporting prosecutions and deploying patrol officers where and when they're needed most to successfully prevent gun violence.

Annual terms provide the maximum flexibility and reduction of risks as an agency can opt out after the one-year term (although we trust our service will provide positive outcomes that you will want to continue to receive).

Incident Review Center

Our 24x7x365 commitment coupled with unparalleled acoustic expertise provides an instant assessment of all incidents, freeing up time that dispatchers and officers would otherwise spend analyzing alerts. We provide the level of data qualification needed to have confidence when dispatching based on alerts. Drawing on their experience, ShotSpotter experts add critical situational intelligence to alerts, that can help personnel respond more safely and successfully.

After an explosive (or impulsive) sound triggers ShotSpotter sensors that an incident is detected and located, audio from the incident is sent to the ShotSpotter Incident Review Center via secure, high-speed network connections for real-time qualification. Within seconds, an ShotSpotter professional reviewer analyzes audio data and recordings to confirm gunfire. The qualified alert is then sent directly to the dispatch center, PSAP, mobile/patrol officers and any other relevant safety or security personnel.

ShotSpotter's team of expert reviewers has direct experience reviewing thousands of incidents captured by ShotSpotter systems. Reviewed alerts help law enforcement respond safely and effectively to gunfire by providing:

- Precise location of gunfire, both latitude/longitude and street address.
- Number and exact time of shots fired.
- Shooter position, speed and direction of travel (if moving).
- Faster, more accurate alerts.
• Gunfire incident history and pattern analysis.

ShotSpotter's incident reviewers hear thousands of gunfire incidents during their training, and each incident is presented to them from the perspective of multiple sensors. ShotSpotter incident reviewers have reviewed and analyzed more acoustic gunfire incidents, from more perspectives, than quite literally anyone else in the world. ShotSpotter's Real-Time Incident Review Center operates 24 hours a day, 365 days a year in a protected and fully redundant environment. Our software provides live chat functionality for immediate communication and assistance when required.

Best Practices and Onboarding Training

Concurrent with the sensor design and deployment activities, ShotSpotter will provide a series of onboarding services to prepare the Dayton Police Department to maximize the value of the ShotSpotter Gunfire Location, Alert, and Analysis Service to the Department and citizens of Dayton. These standard onboarding steps will be refined to best serve the Police Department team and the ShotSpotter users in Dayton. ShotSpotter onboarding services are designed to:

• Ensure successful ShotSpotter activation (go-live)

• Ensure full utilization of the features and functions available with the ShotSpotter service

• Ensure that the Department's Best Practices are refined, as needed, to respond most effectively to the gun crime intelligence data being delivered for the coverage area

• Track and monitor the efficacy of the ShotSpotter Gunfire Location, Alert, and Analysis Service

• Maximize the value of the ShotSpotter Gunshot Detection and Location Service to the police department and the citizens of Dayton.

Customer Success Team
ShotSpotter has assembled a Customer Success Team consisting of professionals with more than 100 years of combined law enforcement experience. The mission of this team of Consultants, Trainers, and Analysts is to maximize customer success with the ShotSpotter Gunfire Location, Alert, and Analysis Service. This team is available to our customers both pre- and post-production to advise, train, and guide our customers on the most effective use of the tools and services available with the ShotSpotter solution.

**Onboarding Services**

The following provides a high-level overview of ShotSpotter’s standard Customer Onboarding Process, which will be tailored to support the Dayton Police Department.

**Getting Started**

Prior to contract execution, a ShotSpotter Customer Success Director will begin working with the Department project team to plan the Onboarding process. The process is initiated with an onsite Customer Kick-Off Meeting to bring all stakeholders together to review the goals and objectives of the program, lay out the key steps in the implementation process, agree on a targeted activation date (go-live) for the coverage area, and establish a communications protocol for ongoing communication and collaboration throughout the onboarding process. ShotSpotter will schedule Biweekly Status Calls with the Department’s Program Manager and other project leaders to maintain regular communication regarding the status of all project tasks throughout the implementation process.

**Best Practices**

Early in the Customer Onboarding Process, ShotSpotter’s Customer Success team, led by the assigned Customer Success Director, with work with the Department’s Program Manager and other project leaders to schedule and conduct a series of Best Practices sessions. These Best Practices sessions are designed to assist the Department in establishing response protocols and procedures for managing the gunshot alerts and gun crime intelligence data that will become available to the agency upon activation of the ShotSpotter service. These sessions are built upon the Customer Success Team’s knowledge of
those practices that have proven to be most effective in similar ShotSpotter customer sites across the country. ShotSpotter will customize and conduct these critical Best Practices Sessions for each of the following groups of users involved in the gun violence reduction program in the targeted coverage area:

- Program Management
- Dispatch/Communications
- Field Operations/Patrol
- Investigations
- Prosecution
- Intelligence & Crime Analysis

User Training

ShotSpotter will assign a Customer Success Trainer to the Department to ensure that wide-ranging, but consistent, quality training is delivered based on the Department’s needs. In preparation for the planned cutovers, ShotSpotter will train each group of users on utilization of the ShotSpotter application software products, including ShotSpotter Respond, ShotSpotter Dispatch, and the Investigator Portal. Using a combination of instructor-led training, train-the-trainer training, and on-line computer-based training tools, ShotSpotter’s Customer Success Team will work with the agency to tailor an onsite training program that addresses the unique needs and/or scheduling constraints of the Department users.

Agency Metrics/KPIs – Key Performance Indicators

As part of ShotSpotter’s Customer Onboarding Process, Customer Success team members, led by the assigned Customer Success Director, will work with the agency Program Manager and Command staff to review, define, and adopt a set of agency metrics, or Key Performance Indicators (KPIs), to establish and monitor the efficacy of the ShotSpotter service and related agency Best Practices. It is important to ensure that the agency and all stakeholders have visibility (and routines in place) to track the program metrics or KPIs needed to
monitor the status of the program and to make fully informed decisions regarding resources, response protocols, and the best practices to drive success.

**Onsite Support During Service Activation (Go-Live)**

On the day of ShotSpotter service activation to a live production status, ShotSpotter’s Customer Success Director will be onsite to ensure that the transition is smooth, that the established best practices surrounding the use of ShotSpotter’s tools and services are being implemented as planned, and that user questions are answered quickly. Following system activation, ShotSpotter’s Customer Success Director will facilitate a series of Weekly Status Calls with the agency to review the status and results being achieved by each group of users involved in the gun violence reduction program.
Gunfire Data and Alerts

The alerts that are generated by ShotSpotter are delivered in the following forms:

i. ShotSpotter® Dispatch™ and ShotSpotter® Respond™ Apps

The ShotSpotter Dispatch and ShotSpotter Respond apps are the user interface most often used by Call Takers, Dispatchers, and Patrol Officers in the field. Real-time notifications of gunfire incidents are delivered to this app.

The app provides the type of gunfire (single round, multiple round), a unique identification number (ID number), a date and time of the muzzle blast (trigger time), latitude-longitude of the location of the muzzle blast, nearest address of the location of the muzzle blast, number of shots, direction of travel (moving shooter, multiple rounds), speed of travel (moving shooter, multiple rounds), district identification, and beat identification.

An ShotSpotter analyst may add other contextual information related to the event such as the possibility of multiple shooters, high capacity weapons, full-automatic weapons, and the shooter's location related to a building (front yard, back yard, street, etc.). An audit trail of the time the alert was published, acknowledged and closed at customer facility is also contained in the report. All notes by Call Takers and Dispatchers are added to the alert are time and date stamped and indicate the operator's identification. For Patrol Officers, an audio clip of the incident is provided with the alert.
ii. Investigator Portal

All historical incident data in the ShotSpotter database can be viewed, searched, sorted, and filtered using the ShotSpotter Investigator Portal. Reports for single incidents and groups of incidents can be run. Parameters and filter settings may be used to select incidents grouped into a single report. Any predefined reports may be viewed on a monitor, printed, or exported to standard CSV format.

End-users can create their own custom reports or otherwise analyze the data using standard COTS products such as Microsoft SQL Server Report Builder, Crystal Reports, ArcGIS including Spatial Analyst, and any other SQL tools or SQL Server compatible tools. Because the system stores all incident details into an SQL database, generating reports is relatively simple.

The Investigator Portal also includes the ability to save any audio clip as a standard MP3 file to any recordable media (e.g., CDROM, USB drive).
iii. Mobile Alerts

Real-time gunfire alert data may also be delivered to smartphones and smart watches through a native smartphone application, ShotSpotter® Respond™, which is available for use on iPhones and Android platforms. The location of gunfire is represented as a dot on a map in addition to the number of rounds fired, including access to the incident audio.
iv. Notification Engine API (optional)

The ShotSpotter Notification Engine Application Programming Interface (API) permits client applications such as video management systems, Computer-Aided Dispatch (CAD), Records Management Systems (RMS), video analytics, automated license plate number readers (ALPR), camera management systems, crime analysis and statistics packages (including COMPSTAT software), and common operating picture (COP) software to receive accurate, timely, and detailed information about ShotSpotter gunfire alerts, including precise latitude and longitude (geolocation), GPS-synchronized timestamps, incident audio, and situational context provided by the 24x7x365 SHOTSPOTTER Incident Review Center.

Integration of ShotSpotter data with other systems has already proven successful in cities across the United States. Police in Minneapolis, MN used an earlier version of the ShotSpotter Notification Engine to trigger video recordings of certain key intersections in high crime areas. Soon thereafter, a ShotSpotter alert triggered those cameras to capture the image of a murderer fleeing the scene of a shooting. Similarly, in Boston, MA, police correlate ShotSpotter data with surveillance cameras and parolee ankle brace tracking data to maintain 24x7x365 awareness of any parolee who may be violating the terms of parole by committing crimes or consorting with those doing likewise.

Each Notification Engine API license pack may be purchased for annual subscription fee of $9,500, which includes:

- Up to three (3) integrations or endpoints
- Establishing an instance of the API for the City on ShotSpotter-hosted servers
- Consulting with the City, Dayton Police Department and third parties to ensure the API Operates according to the specifications
- 24x7 alerts to up to three third party endpoints
- Supporting the third party and City as systems are upgraded

Additional API licenses may be purchased in packs of three (integrations or endpoints) for $9,500 per year.
v. Forensic Reports & Certified Expert Witness Services

ShotSpotter data is also useful for detailed forensic analysis that helps reveal and clarify what actually occurred during a gunfire incident, including the identification of weapon type (i.e. automatic vs. semi-automatic), the number of rounds fired, the number of shooters involved, and the direction and speed of a shooter-in-motion for drive-by shootings. The audio clips also provide conclusive evidence to prosecutors to allow jurors to directly experience the incident and gain a more detailed firsthand awareness of what are often horrifying moments for the victims. In support of prosecutions, ShotSpotter offers key members of its staff to provide expert witness testimony to help interpret and clarify crime scene activity derived from the system’s data. In addition to predefined and customer-generated reports, ShotSpotter experts can create a detailed forensic report of any single gunfire incident. ShotSpotter detailed forensic reports have helped with many convictions and also to clarify what occurred during officer involved shootings. Nearly all of the criminal proceedings in which its experts have been called to testify, ShotSpotter has been able to produce a detailed, round-by-round analysis of the timing and location of the shots fired by one or more weapons. To the best of our knowledge, no other acoustic-based gunshot detection system has been accepted in a court of law as providing this kind of forensic evidence.

In 11 states and in the District of Columbia, ShotSpotter evidence and ShotSpotter expert witness testimony have been successfully admitted in over 50 court cases. In four of those states (CA, NY, MO, NE), ShotSpotter scientific technique was subject to Kelly (Frye) or Daubert challenges and was found to be admissible.
Customer References

Chicago Police Department

Contact:
Lieutenant Patrick O’Donnell
3510 South Michigan Avenue
Chicago, IL 60653
312-745-5677
patrick.odonnell@chicagopolice.org

Agency Metrics:
Population Served: 2,720,546
Sworn Officers: 12,244
Size of Jurisdiction: 237 mi²
ShotSpotter Coverage: 117.5 mi²
Original Go-Live: 2012
Expansions: 11

Cincinnati, OH

Contact:
Lt. Col. Paul Neudigate
Assistant Police Chief
310 Ezzard Charles Drive
Cincinnati, OH 45214
513-352-3028
paul.neudigate@cincinnati-oh.gov

Agency Metrics:
Population Served: 296,943
Sworn Officers: 1,057
Size of Jurisdiction: 79.54 mi²
ShotSpotter Coverage: 3 mi²
Original Go-Live: 2017
NIBIN Site: Yes

Peoria Police Department

Contact:
Assistant Chief Michael Mushinsky
600 SW Adams Street
Peoria, IL 61602
309.494.8381
mmushinsky@peoriagov.org

Agency Metrics:
Population Served: 112,883
Sworn Officers: 246
Size of Jurisdiction: 50.45 mi²
ShotSpotter Coverage: 6.0 mi²
Original Go-Live: 2013
Expansions: 1
NIBIN Site: Yes
Services & Support

ShotSpotter, Inc. ShotSpotter subscription service offering includes the following:

Coverage Area Details:

- Coverage area footprint is determined by customer’s needs and requirements.
- ShotSpotter hosts, secures, monitors and maintains all infrastructure.
- Qualified, reviewed and analyzed gunfire alerts verified by ShotSpotter acoustic analysts.
- Allocation of Alert Consoles, dispatcher or mobile, is configured at the discretion of the customer.

Data Retention:

- ShotSpotter provides seven (7) years of alert/incident history.
- Stored gunfire incidents and a complete summary report of gunfire and fireworks activity is available for analysis.
- High-level Summary and Basic Incident Reports
- Detailed Forensic Reports

ShotSpotter Onboarding:

- Comprehensive Onboarding Program tailored to customer's needs.
- Customers are eligible for an in-person training program which include the following:
  - Best Practices
  - Recommended Training, Tactics, and Procedures (TTPs)
  - End-user documentation
  - Administrator training
  - Online end-user training

Support:

- Standard customer support includes 24/7 assistance with user account, software interface, tools, features, incident (re)classification and review.
- Investigative and consultative support for gunfire incidents, forensic reports, and expert witness services.
Customer Requirements:

- Provision network access required to meet ShotSpotter minimum specifications and requirements (ref "Host and Services Required to Use ShotSpotter Clients" ShotSpotter FED-72-01) for all computers (PC and MDC) which will access the ShotSpotter Service.
- Run the ShotSpotter System Profiler (a web-based analyzer) to verify system configuration and network access required for each computer (PC or MDC) which will access the ShotSpotter service.

Coverage Area

ShotSpotter systems are deployed to provide a dome of coverage for one or more specified areas. Each area is bounded by a specific coverage area perimeter. The area is bounded by a specific coverage area perimeter. The area to be covered is in the West Patrol Division. The precise size of the area (e.g., in square miles) can only be verified during site survey and service implementation; therefore, the shape may vary.

Analysis

The crime data provided by the police department represents a density of 5,869 "Shots Fired" calls for service (city-wide) between January 1, 2015 and December 4, 2017. Additionally, there were 1,856 Gun-related Assault Offenses, 1,159 Weapons Violations, and 85 Gun-related Homicides during the same period.

The three (3.0) square mile coverage area in West Patrol – North (represents 1,511 "Shots Fired" calls (25.7% of the total), 447 Gun-Related Aggravated Assaults (24.1% of the total), 237 Weapons Violations (20.4% of the total) and 26 Gun-Related Homicides (30.6% of the total).
Pricing, Terms and Conditions

The following pricing is provided as a firm fixed price quotation for a three-year contract commitment (paid annually). The prices listed do not include any state or local taxes; if such taxes are required, please notify ShotSpotter® and we will be happy to provide an amended quotation. ShotSpotter’s proposal shall remain valid until July 31, 2019.

One-Time Service Startup Fees

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Initiation fee for 3.0 square miles @ $10,000/mi²</td>
<td>$30,000.00</td>
</tr>
<tr>
<td>ShotSpotter Onboarding, Training, and Best Practices Support</td>
<td>$10,000.00</td>
</tr>
<tr>
<td><strong>Total One-Time Fees</strong></td>
<td><strong>$40,000.00</strong></td>
</tr>
</tbody>
</table>

Annual Subscription Fee

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.0 square mile coverage area @ $65,000/mi²/year</td>
<td>$195,000.00</td>
</tr>
<tr>
<td><strong>Total Annual Fee</strong></td>
<td><strong>$195,000.00</strong></td>
</tr>
</tbody>
</table>

Total First-Year

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-Time Service Startup Fees</td>
<td>$40,000.00</td>
</tr>
<tr>
<td>Subscription for 3.0 square miles</td>
<td>$195,000.00</td>
</tr>
<tr>
<td><strong>Discount</strong></td>
<td><strong>-30,000.00</strong></td>
</tr>
<tr>
<td><strong>Grand Total First-Year Subscription</strong></td>
<td><strong>$205,000.00</strong></td>
</tr>
</tbody>
</table>
Payment Terms

Payment for the service initiation and startup, all subscription fees, and optional service fees for the initial annual subscription term shall be as follows:

- $102,500 due upon execution of agreement
- $102,500 due upon "live" status
ShotSpotter, Inc.
7979 Gateway Blvd, Suite 210
Newark, California 94560
+1.888.274.6877
info@ShotSpotter.com
www.ShotSpotter.com
Exhibit C
Subscription-Based ShotSpotter Gunshot Location System®
Reviewed Alert Service Levels

Summary

Under the terms and conditions of the Professional Services Agreement between ShotSpotter, Inc. ("ShotSpotter") and City, ShotSpotter commits to meet or exceed the following Agreement standards as it provides its ShotSpotter Gunshot Location Services:

<table>
<thead>
<tr>
<th>Service</th>
<th>SLA and Measurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gunshot Detection &amp; Location</td>
<td>90% of unsuppressed, outdoor gunfire incidents, using standard, commercially available rounds greater than .25 caliber, inside the Coverage Area will be detected and located within 25 meters of the actual gunshot location.</td>
</tr>
<tr>
<td>Reviewed Alerts</td>
<td>90% of gunshot incidents will be reviewed and published in less than 60 seconds.</td>
</tr>
<tr>
<td>Service Availability</td>
<td>The ShotSpotter Gunshot Location System service will be available to the City 99.9% of the time with online access to ShotSpotter data, excluding scheduled maintenance windows.</td>
</tr>
</tbody>
</table>

Gunshot Detection & Location Performance

ShotSpotter will detect and accurately locate to within 25 meters of the actual gunshot location 90% of unsuppressed, outdoor gunshots fired inside the contracted coverage area using standard, commercially available rounds greater than .25 caliber.

Reviewed Alerts Service

The ShotSpotter real-time Incident Review Center (IRC) will review at least 90% of all gunfire incidents within 60 seconds. This human review is intended to confirm or change the machine classification of the incident type, and, depending on the reviewer’s confidence level that the incident is or may be gunfire, will result in an alert ("Reviewed Alert") sent to the City’s Alert Console or ShotSpotter App, based on the following criteria:

<table>
<thead>
<tr>
<th>Incident Type</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>High confidence incident is gunfire</td>
<td>Reviewed Gunfire Alert, (Single Gunshot “SG” or Multiple Gunshots “MG”) sent to City’s Alert Console and/or ShotSpotter App</td>
</tr>
<tr>
<td>Uncertain if incident is gunfire or not</td>
<td>Reviewed Probable Gunfire (“PG”) Alert sent to ’s Alert Console and/or ShotSpotter App</td>
</tr>
<tr>
<td>Low confidence incident is gunfire</td>
<td>No alert will be sent; incident available for City review in the incident history available through the Investigator Portal</td>
</tr>
</tbody>
</table>

Reviewed Alerts are sent to the City’s Alert Console and/or ShotSpotter App. Information in a Reviewed Alert will include the following:

1 See attached “ShotSpotter – Definition of Key Terms” for a complete definition of terms associated with this SLA and further details in the expanded definitions listed below the Summary. The basis for this SLA and performance measurement will be total gunshot incidents as defined by the Definition of Key Terms.
• “Dot on the map” with latitude and longitude indicating the location of the incident.
• Parcel address closest to location of the incident.
• When available, additional situational awareness data points may be included, such as:
  o Qualitative data on the type/severity of incident: Fully automatic, High Capacity
  o Other comments (if any)

The Alerts Console, ShotSpotter App, and Investigator Portal provide the City with full and immediate access to incident history including information ShotSpotter uses in its internal review process. This information includes, among other things, the initial incident classification and any reclassifications of an incident, incident audio wave forms, and incident audio files. This data access is available as long as the City is under active subscription.

**Service Availability**

The ShotSpotter Gunshot Location Service\(^2\) will be able to detect gunfire and available to users with online access to ShotSpotter data 99.9% of the time, on a 24x7 by 365 day per year basis, excluding: a) scheduled maintenance periods which will be announced to City in advance; b) select holidays; and c) third party network outages beyond ShotSpotter’s control.

**City SLA Credits**

Each Service Level measurement shall be determined quarterly, the results of which will be reviewed during the periodic account review meetings with City. For each calendar quarter that ShotSpotter does not meet at least two of the three above standards, a fee reduction equivalent to one free week of service (for the affected Coverage Area) for each missed quarter shall be included during the next billing cycle.

**Service Level Exclusions and Modifications**

ShotSpotter takes commercially reasonable efforts to maintain Service Levels at all times. However, Service Level performance during New Year’s Eve and Independence Day and the 48 hour periods before and after these holidays, are specifically excluded from Service Level standards. During these excluded periods, because of the large amount of fireworks activity, ShotSpotter uses fireworks suppression techniques\(^3\).

The ShotSpotter sensors send incident information to the ShotSpotter cloud via third party cellular, wireless or wired networks. ShotSpotter is not responsible for outages on the third-party networks.

**Service Failure Notification**

Should ShotSpotter identify any condition (disruption, degradation or failure of network, cloud, servers, sensors etc.) that impacts ShotSpotter’s ability to meet the Gunshot Detection & Location standard (above), ShotSpotter will proactively notify the City with: a) a brief explanation of the condition; b) how the

\(^2\) Flex service includes all database, applications, and communications services hosted by ShotSpotter, Inc. at our data center and specifically exclude City’s internal network or systems or 3rd party communications networks, e.g. Verizon, AT&T or City’s Internet Service Provider.

\(^3\) ShotSpotter will put the ShotSpotter system into “fireworks suppression mode” during this period in order to reduce the non-gunfire incidents required for human classification. ShotSpotter will formally inform the City prior to the system being placed in fireworks suppression mode and when the mode is disabled. While in fireworks suppression mode, the incident alerts determined to be fireworks are not sent to the reviewer no the Alert Console or ShotSpotter App, however these non-gunfire incidents will continue to be stored in the database for use if required at a later time.
City’s service is affected; and c) the approximate timeframe for resolution. ShotSpotter will also notify the City once any such condition is resolved.

City Responsibilities

The purpose of the Reviewed Alert service is to provide incident data to the City, reviewed, analyzed and classified in the manner described above. However, it is the sole responsibility of the City to interpret the data provided, and to determine any appropriate follow-up reaction or response, including whether or not to dispatch emergency responder resources based on a Reviewed Alert. ShotSpotter does not assume any obligation, duty or responsibility for reaction, response, or dispatch decisions, which are solely and exclusively the responsibility of City, or for the consequences or outcomes of any decisions made or not made by the City in reliance, in whole or in part, on any services provided by ShotSpotter.

City must inform ShotSpotter when Verified Incidents of gunfire are missed by the ShotSpotter Gunshot Location System in order to properly calculate Performance Rate, as defined below.

City is responsible for providing any required workstations, mobile devices and internet access for the Alert Console, ShotSpotter App or Investigator Portal.

City must have and maintain access to the World Wide Web to enable a secure https connection from the City’s workstation to ShotSpotter’s hosted services, either directly or through devices that access Web-based content. City must also provide all equipment necessary to make such (and maintain such) connection.

City will not permit any alteration, modification, substitution or supplementation of the ShotSpotter Service or web portal, or the combining, connection, merging, bundling, or integration of the ShotSpotter Service or web portal into or with any other system, equipment, hardware, software, technology, function or capability, without ShotSpotter’s prior written consent.
ShotSpotter – Definition of Key Terms

The ShotSpotter Gunshot Location System will provide data for correct detection and accurate location for ninety percent (90%) of detectable (outdoor, unsuppressed) community gunfire which occurs within a coverage area, the “Coverage Area”, provided the measurement is Statistically Significant, as defined below. This performance rate shall be calculated as a percentage as follows:

\[
\text{Performance Rate} = \frac{\text{Number Accurately Located}}{\text{Number Accurately Located} + \text{Number Not Detected} + \text{Number Mislocated}}
\]

where the “Performance Rate” is a number expressed as a percentage, “Number Accurately Located” is the number of “Gunfire Incidents” occurring within the Coverage Area during the specified period for which the ShotSpotter produced an Accurate Location, “Number Mislocated” is the number of Verified Incidents (a “Verified Incident” is an incident where City has physical or other credible evidence that gunfire took place) for which the ShotSpotter produced an inaccurate location (i.e., a Mislocated Incident), and “Number Not Detected” is the number of Verified Incidents for which the ShotSpotter failed to report a location at all (i.e., Missed Incidents).

An “Accurate Location” shall mean an incident located by the ShotSpotter to a latitude/longitude coordinate that lies within a 25-meter radius of the confirmed shooters location (25 meters = approximately 82 feet). “Detectable Gunfire” incidents are unsuppressed discharges of ballistic firearms which occur fully outdoors in free space (i.e. not in doorways, vestibules, windows, vehicles, etc.) using standard commercially available rounds of caliber greater than .25.

ShotSpotter Review Period is measured as the period commencing when the Incident Review Center (IRC) receives the alert and the first audio download to the time it is published to the City.

ShotSpotter performance is guaranteed after a “Statistically Significant” set of incidents has been detected in accordance with timeframes set forth herein and following DQV and commercial system acceptance. Because the ShotSpotter is designed to cover the indigenously occurring, community-generated gunfire (which is typically well distributed throughout the Coverage Area), performance should not be construed to mean that 90% of gunfire fired at any given location within the Coverage Area will be detected and located within the guaranteed accuracy.

The ShotSpotter Gunshot Location system is not a “point protection” system and is therefore not designed to consistently detect gunfire at every single location within the Coverage Area, but rather to Accurately Locate 90% of the Detectable Incidents in aggregate throughout the entire Coverage Area. There may be certain locations within the Coverage Area where obstacles and ambient noise impede and/or overshadow the propagation of acoustic energy such that locating the origin at those positions is inconsistent or impossible. The Performance Rate calculation is thus specifically tied to the Community Gunfire across the entire Coverage Area.

Statistically Significant shall be defined as measurements and calculations which shall be performed as follows: (a) Across an entire Coverage Area; (b) Aggregating over a period of at least 30 days under weather conditions seasonally normal for the area; and (c) Provided that the total number of gunfire incidents being counted is equal to or greater than: (i) thirty (30) incidents for systems of up to three (3) square miles of Coverage Area, or (ii) ten (10) incidents multiplied by the number of square miles of Coverage Area for systems where one or more Coverage Areas are three (3) square miles or larger.
City Manager’s Report

From
3470 - Water/Environmental Protection
Supplier, Vendor, Company, Individual
Name
Wood Environment & Infrastructure Solutions, Inc.
Address
521 Byers Road, Suite 204
Miamisburg, OH 45342

Date July 17, 2019
Expense Type Service Agreement
Total Amount $560,000.00 (thru 7/31/2021)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019 Source Water Protection Fund</td>
<td>53997-3470-1159-55</td>
<td>$280,000.00</td>
</tr>
<tr>
<td>2020 Source Water Protection Fund</td>
<td>53997-3470-1159-55</td>
<td>$280,000.00</td>
</tr>
</tbody>
</table>

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

Description
GROUNDWATER MONITORING WELL NETWORK EXPANSION AND INVESTIGATIONS
SECOND AMENDMENT

The Department of Water requests permission to enter into a Second Amendment with Wood Environment & Infrastructure Solutions, Inc. in the amount of $560,000.00 for the ongoing protection of the City’s drinking water supply. In response to existing aquifer contamination as well as potential spills and releases, services will include identification, delineation, remediation and monitoring of impacted groundwater prior to migration within the well fields. The Agreement specifies that services including necessary equipment such as drilling rigs and remediation and sampling instrumentation will be provided by qualified technical personnel within forty-eight (48) hours of notification.

The original Agreement was approved on August 17, 2016 in the amount of $960,000.00. Amendment No. 1 was approved on July 16, 2018 extending the term to July 31, 2019, and changed all instances of Amec Foster Wheeler Environment & Infrastructure, Inc. to Wood Environment & Infrastructure Solutions. This Amendment No. 2 will increase the contract amount to $1,520,000.00 and extend the term to July 31, 2021.

The project is being fully funded using 2019 and 2020 Source Water Protection Funds.

The Second Amendment has been reviewed by the Law Department as to form and correctness.

A Certificate of Funds, and a copy of the Agreement are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016
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>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Start Date</td>
<td>08/10/16</td>
<td></td>
</tr>
<tr>
<td>Expiration Date</td>
<td>07/31/21</td>
<td></td>
</tr>
<tr>
<td>Original Commission Approval</td>
<td>$ 960,000.00</td>
<td></td>
</tr>
<tr>
<td>Initial Encumbrance</td>
<td>$ 960,000.00</td>
<td></td>
</tr>
<tr>
<td>Remaining Commission Approval</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Required Documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>X Initial City Manager's Report</td>
</tr>
<tr>
<td>X Initial Certificate of Funds</td>
</tr>
<tr>
<td>X Initial Agreement/Contract</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Original CT/CF</th>
<th>Increase Encumbrance</th>
<th>Decrease Encumbrance</th>
<th>Remaining Commission Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT16-1488, CT17-1488, CT18-1488, CT19-1488</td>
<td>$ 280,000.00</td>
<td>$ -</td>
<td>$ 280,000.00</td>
</tr>
</tbody>
</table>

Amount: $ 280,000.00

<table>
<thead>
<tr>
<th>Fund Code</th>
<th>Fund</th>
<th>Org</th>
<th>Acct</th>
<th>Prog</th>
<th>Act</th>
<th>Loc</th>
</tr>
</thead>
<tbody>
<tr>
<td>53997 - 3470 - 1159 - 55</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Amount: 

<table>
<thead>
<tr>
<th>Fund Code</th>
<th>Fund</th>
<th>Org</th>
<th>Acct</th>
<th>Prog</th>
<th>Act</th>
<th>Loc</th>
</tr>
</thead>
</table>

Attach additional pages for more FOAPALs

Vendor Name: Wood Environment & Infrastructure Solutions, Inc.

Vendor Address: 521 Byers Road, Suite 204, Miamisburg, OH 45342
Street | City | State | Zipcode + 4 |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>91-1641772</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Commodity Code: 90793

Purpose: Second Amendment to the Professional Services Agreement to add additional funds and change the expiration date to 7/31/2021.

Contact Person: Lisa Burton-Yates
Water | Water Engineering

Department/Division | Date |
|-------------------|------|

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's Signature: [Signature]

Date: 7-9-19

CF Prepared by: [Signature]

Date: 7/18/19

CT19-1488

Date: 7-5-19

October 18, 2011
SECOND AMENDMENT OF THE PROFESSIONAL SERVICES AGREEMENT FOR
THE TRIAD GROUNDWATER INVESTIGATIONS SERVICES PROJECT

This Second Amendment of the Professional Services Agreement for the Triad
Groundwater Investigation Services Project is made this ____ day of __________, 2019, between
the City of Dayton, Ohio, ("City"), and Wood Environment & Infrastructure Solutions, Inc.,
("Consultant"), 521 Byers Rd, Suite 204, Miamisburg, OH 45342, who previously conducted
business as Amec Foster Wheeler Environment & Infrastructure, Inc.

WITNESSETH THAT:

WHEREAS, Consultant changed its name from Amec Foster Wheeler Environment &
Infrastructure, Inc. to Wood Environment and Infrastructure Solutions, Inc. as an administrative
change in nature, effective on April 16, 2018; and,

WHEREAS, On August 17, 2016, the Commission of the city of Dayton approved a
Professional Services Agreement for Consulting Service on the Triad Groundwater Investigations
Project (CT16-1488) between the City and Consultant ("Agreement"), and,

WHEREAS, On July 16, 2018, the parties executed a First Amendment to extend the
term of the Agreement; and,

WHEREAS, The Contractor agrees to provide additional services requested by the City
and the City agrees to pay Contractor for such services.

NOW, THEREFORE, The City and the Contractor agree to amend their Agreement as
follows:

1. Article 1. Term, is deleted in its entirety and replaced with the following:

ARTICLE 1. TERM
The Agreement shall commence upon September 2, 2016 and it shall expire upon expenditure of
all funds provided herein or on July 31, 2021, whichever date is earlier. The City, however,
reserves the right to extend the term of this Agreement to a later date by mutual written
agreement, as described in Article 10.J.

2. Article 3. Compensation, is deleted in its entirety and replaced with the following:

ARTICLE 3. COMPENSATION.
Total remuneration shall not exceed One Million Five Hundred Twenty Thousand Dollars and
Zero Cents ($1,520,000.00) for Services provided at the cost as presented in Attachment B-1,
which is attached hereto and incorporated herein. Consultant shall submit invoices, not more
frequently than monthly, for payment of the Services actually provided. Such invoices shall state
the invoice period, total amount requested, Services provided during the invoice period and
associated receipts. The City will, unless disputed, remit payment of all undisputed amounts of
invoices within thirty (30) days from receipt thereof.
City’s standard Terms for Payment are Net 30 days from date of invoice once the project is complete, unless otherwise negotiated.

3. Except as amended by this Second Amendment, all terms, covenants and conditions contained within the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and Consultant, each by a duly authorized representative, have executed this Second Amendment as of the date set forth above.

CITY OF DAYTON, OHIO

____________________________
City Manager

WOOD ENVIRONMENT & INFRASTRUCTURE, INC.

By: ______________________

Its: ______________________

APPROVED AS TO FORM AND CORRECTNESS:

___________________________
City Attorney

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

___________________________, 2019

Min./Bk. _________ Pg. _______

___________________________
Clerk of Commission
ATTACHMENT B-1
AGREEMENT FOR CONSULTING SERVICES

City: City of Dayton, Ohio
Project: Triad Groundwater Investigations
Consultant: Wood Environment and Infrastructure, Inc.

COMPENSATION

1. The total “Not-To-Exceed” fee for performance of the Scope of Services, as outlined in Attachment A to this Agreement, is $280,000.00 for 2019-2020 and $280,000.00 for 2020-2021. This amount includes all direct and indirect labor charges, material cost, overheads, and profits plus all other fees and charges including expenses.

The Fee Schedule for personnel is as follows:

WOOD Environment and Infrastructure, Inc. FEE SCHEDULE

Wood’s labor fee schedule for services provided on a time and materials basis is provided below. This rate schedule will remain in effect for the term of the contract, but the categorization of personnel may be adjusted if so warranted by increases in qualifications and experience. Court appearances, depositions, and other similar litigation support will be charged at 1.5 times the standard rate.

Principal Scientist/Principal Engineer $150.00/hr.
Senior Project Manager/Senior Scientist II $135.00/hr.
Assistant Project Manager/Senior Scientist I $110.00/hr.
Project Scientist $90.00/hr.
Senior Technician II $85.00/hr.
Staff II Scientist $80.00/hr.
Senior Technician I $75.00/hr.
Staff I Scientist $70.00/hr.
CADD/Draftsperson $65.00/hr.
Technician II $60.00/hr.
Project Administrator $60.00/hr.
Technician I $50.00/hr.
The “Not-To-Exceed” fee of $280,000.00 for 2019 and $280,000.00 for 2020 is broken down as follows:

| Shallow and Deep Groundwater Investigations | $180,000.00 |
| Water Quality and Water Level Monitoring   | $20,000.00  |
| Site Assessments and Risk Screening        | $60,000.00  |
| Contingency/Miscellaneous                  | $20,000.00  |
| TOTAL                                       | $280,000.00 |

2. The total “billing limits” shall not exceed $280,000.00 for 2019-2020 and $280,000.00 for 2020-2021 without further written authorization from the City.

3. The City shall remit payment to Consultant within thirty (30) days from receipt of a monthly invoice detailing the Services rendered and the percent complete of the scope of services described in Attachment A. All invoices for non-lump sum, reimbursable type payments shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other accounting documents pertaining in who or in part to the performance of the Services and shall be clearly identified and readily accessible to City. However, Consultant does not have to furnish such supporting documentation with its invoice, unless requested by the City.

4. Consultant shall keep its records related to the matters covered by this Agreement in compliance and conformity with generally accepted accounting practices. At any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to the City all of its records with respect to all matters covered herein, and will permit the City, at its expense, to audit, examine, and make excepts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, records of personnel, conditions or employment and other data pertaining in whole or part to matters covered within this Agreement. In performing any independent audit, Consultant shall require the auditor to reasonably comply with all applicable City rules and regulations governing such procedures.
City Manager’s Report

From 3470 - Water/Environmental Protection

Supplier, Vendor, Company, Individual

Name Amec Foster Wheeler Environment & Infrastructure, Inc.
Address 521 Byers Road, Suite 204
Miamisburg, OH 45342

Date August 17, 2016
Expense Type Service Agreement
Total Amount $960,000.00 (through 08/2018)

<table>
<thead>
<tr>
<th>Fund Source(s)</th>
<th>Fund Code(s)</th>
<th>Fund Amount(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Source Water Protection Fund</td>
<td>53997-3470-1159-55</td>
<td>$300,000.00</td>
</tr>
<tr>
<td>2017 Source Water Protection Fund</td>
<td>53997-3470-1159-55</td>
<td>$420,000.00</td>
</tr>
<tr>
<td>2018 Source Water Protection Fund</td>
<td>53997-3470-1159-55</td>
<td>$240,000.00</td>
</tr>
</tbody>
</table>

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

Description

TRIAD GROUNDWATER INVESTIGATIONS

The Department of Water requests permission to enter into an Agreement with Amec Foster Wheeler Environment & Infrastructure, Inc. in the amount of $960,000 for the ongoing protection of the City’s drinking water supply. In response to existing aquifer contamination as well as potential spills and releases, services will include identification, delineation, remediation and monitoring of impacted groundwater prior to migration within the well fields. The Agreement specifies that services including necessary equipment such as drilling rigs and remediation and sampling instrumentation will be provided by qualified technical personnel within forty-eight (48) hours of notification.

In response to RFP No. 16010D, one proposal was received on April 29, 2016. A selection committee evaluated the proposal. Amec Foster Wheeler Environment & Infrastructure, Inc. was accepted and selected for services associated with Triad Groundwater Investigations.

This is a two-year contract with a third-year option.

The Agreement shall commence upon execution by the City and it shall expire upon expenditure of all funds provided herein or on August 10, 2018.

The Agreement has been reviewed by the Law Department as to form and correctness.

A Certificate of Funds is attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 06/2016
CERTIFICATE OF FUNDS

SECTION I - to be completed by User Department

X New Contract

Renewal Contract

Change Order:

Contract Start Date 08/10/16
Expiration Date 08/10/18
Original Commission Approval $ 980,000.00
Initial Encumbrance $ 300,000.00
Remaining Commission Approval $ 680,000.00

Required Documentation

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

Original CT/CF
Increase Encumbrance
Decrease Encumbrance
Remaining Commission Approval

Amount: $ 300,000.00

Fund Code 53997 - 3470 - 1159 - 55 - Act - Loc

Fund Code

Amount:

Fund Code

Fund Code

Fund Code

Fund Code

Fund Code

Vendor Name: Amec Foster Wheeler
Vendor Address: 521 Byers Road, Suite 204, Miamisburg, OH 45342
Federal ID: 91-1641772

Commodity Code: 90793

To provide Professional Services for the ongoing protection of the City's drinking water supply through identification, characterization, remediation and monitoring of groundwater contamination in and around the

Source Water Protection and Water Resources Areas. Activities will also include risk assessment inspections.

Contact Person: Jim Shoemaker
Water/Environmental Management 7/27/2016
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 8-9-16
Date

CF Prepared By 8/18/16
Date

CF/CT Number CT 161488

October 18, 2011
PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made this ___ day of ________________, 2016, between the City of Dayton, Ohio, a municipal corporation existing under and by virtue of the constitution and laws of the State of Ohio (hereinafter referred to as the "City"), and Amec Foster Wheeler Environment & Infrastructure, Inc. 521 Byers Rd, Suite 204, Miamisburg, Ohio 45342 (hereinafter referred to as the "Consultant").

WITNESSETH THAT:

WHEREAS, The City desires the capabilities to perform comprehensive groundwater investigations, emergency response, water quality monitoring and interim remedial measures in response to potential adverse impacts to the groundwater and the City’s drinking water supply; and,

WHEREAS, Consultant is willing to perform such professional services and represents that its staff is fully qualified to perform such services and will provide the necessary equipment within forty-eight (48) hours of notification; and,

WHEREAS, The professional services to be provided under this Agreement are necessary to achieve the purposes of the City.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and benefit to be derived by the parties from the execution of this Agreement, the City and Consultant hereby agree as follows:

ARTICLE 1. TERM.

The Agreement shall commence upon execution by the City and shall terminate upon expenditure of all funds provided herein or on July 31, 2018, whichever date is earlier. At the City's discretion, an option may be exercised to extend the Agreement for a third year at the established rates.

ARTICLE 2. SERVICES TO BE PERFORMED BY CONSULTANT.

Consultant shall provide all professional services ("Services") necessary to complete the work described in an Attachment A, Scope of Services, which is attached hereto and incorporated herein.

ARTICLE 3. COMPENSATION.

Total remuneration shall not exceed Nine Hundred Sixty Thousand Dollars and Zero Cents ($960,000.00) for the Services provided at the cost as presented in Attachment B, which is attached hereto and incorporated herein. Consultant shall submit invoices, not more frequently than monthly, for payment of the Services actually provided. Such invoices shall state the invoice period, total amount requested, Services provided during the invoice period and
associated receipts. The City will, unless disputed, remit payment of all undisputed amounts of invoices within thirty (30) days from receipt thereof.

City's standard Terms for Payment are 30 days from date of invoice once the project is complete, unless otherwise negotiated.

ARTICLE 4. CITY'S RESPONSIBILITIES.

The City will furnish Consultant, at no cost or expense, all reports, records, data that might be necessary or useful to complete the Services required under this Agreement as presented in Attachment C, which is attached hereto and incorporated herein.

ARTICLE 5. STANDARD OF CARE.

Consultant shall exercise the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional under similar circumstances. Consultant shall have no liability for defects in the Services attributable to Consultant's reliance upon or use of data or other information furnished by the City or third parties retained by the City.

If, during the one year period following completion of the Services, it is shown there is an error in the Services caused by Consultant's failure to meet such standards and City has notified Consultant in writing of any such error within that period, Consultant shall perform, at no additional cost to City, such Services within the original Project as may be necessary to remedy such error.

ARTICLE 6. INDEMNIFICATION.

Consultant shall indemnify and defend the City and its elected officials, officers, employees and agents from and against all claims, losses, damages, and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions, or conduct of Consultant and its agents, employees, Consultants, subcontractors and representatives in undertaking and performing the Services.

Consultant shall defend, indemnify, and hold harmless the City and its elected officials, officers, employees, and agents from and against all claims, judgments, losses, damages, and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or non-performance of this Agreement and/or the acts, omissions, or conduct of Consultant and its agents, employees, contractors, sub-contractors and representatives in undertaking and performing the Services.

The parties hereto specifically agree, notwithstanding any other provision in this Agreement to the contrary, that the City will not, under any circumstances, be liable or responsible for any negligent acts, errors, or omissions of Consultant, nor will the City, under any circumstances as a result of meetings and consultations and decisions resulting therefrom, be liable or responsible
for any damages or additional costs incurred by the failure of Consultant to perform its duties as set forth in this Agreement; nor will the City, by participating in meetings and consultations with Consultant and the decisions resulting therefrom be, in any degree or to any extent, liable for technical decisions of any kind or nature, or be liable for decisions relative to design, environmental remediation, assessments, or specifications, such responsibility remains that of Consultant.

Regardless of completion of the Services, obligations, and duties provided for in this Agreement, or if this Agreement is terminated for any reason, the terms and conditions of this Article will survive.

ARTICLE 7. INSURANCE.

During the term of this Agreement, Consultant shall maintain, at its sole cost and expense, no less than the following insurance issued by an insurance company authorized to conduct business in the State of Ohio and having an “A” rating or better by A.M. Best:

(1) General Liability Insurance, having a combined single limit of One Million Dollars ($1,000,000) for each occurrence and One Million Dollars ($1,000,000) in the aggregate.
(2) Automobile Liability Insurance, having a combined single limit of One Million Dollars ($1,000,000) for each person and One Million Dollars ($1,000,000) for each accident.
(3) Employers’ Liability Insurance, having a limit of Five Hundred Thousand Dollars ($500,000) for each occurrence.
(4) Professional Liability Insurance, having a limit of One Million Dollars ($1,000,000) annual aggregate.
(5) Consultant shall maintain errors and omissions insurance in the amount of One Million Dollars ($1,000,000).
(6) Environmental Impairment Liability Insurance, having a minimum amount of One Million Dollars ($1,000,000) per occurrence and Five Million Dollars ($5,000,000) aggregate.

Current certificates of insurance for all policies and concurrent policies required to be maintained by Consultant pursuant to this Article shall be furnished to the City. All such insurance policies, excluding Professional Liability Insurance, shall name the City, its elected officials, officers, agents, employees, and volunteers as additional insureds, but only to the extent of the extent of the policy limits stated herein. All policies of insurance required hereunder shall contain a provision requiring a minimum of thirty (30) days advance written notice to the City in the event of cancellation or diminution of coverage and ten (10) days’ notice of cancellation for failure to pay premiums. The City’s examination of, or failure to request or demand, any evidence of insurance hereunder will not constitute a waiver of any requirement of this Article, and the existence of any insurance will not limit Consultant’s obligations under provisions hereof.

Consultant also shall maintain Workers’ Compensation Insurance in such amounts as required by law for all employees, and shall furnish to the City evidence of same.
ARTICLE 8. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY.

Except as otherwise provided in this Agreement, documents and reports prepared by Consultant as part of the Services shall become the sole and exclusive property of the City upon payment. However, Consultant shall have the unrestricted right to their use.

Consultant shall retain its rights in pre-existing and standard scripts, databases, computer software, and other proprietary property. Rights to intellectual property that is not specifically designed or created exclusively for the City in the performance of this Agreement shall also remain the property of Consultant.

ARTICLE 9. TERMINATION.

This Agreement may be terminated in the event of or under any of the following circumstances:

1. A receiver for Consultant’s assets is appointed by a court of competent jurisdiction.
2. Consultant is divested of its rights, powers, and privileges under this Agreement by operation of law.
3. Consultant’s failure to comply with any term, covenant or condition of this Agreement to be kept, performed and observed by it, and the failure of Consultant to remedy such failure within thirty (30) days from the date of written notice from City.
4. Consultant’s violation of any applicable federal, state, or local law applicable to the Project and construction thereof or Services required by this Agreement.
5. If, prior to the receipt of any funding from City hereunder and upon giving thirty (30) days prior written notice, Consultant desires to terminate this Agreement.
6. The City may terminate this contract at any time upon thirty (30) days written notice to the Consultant.

Any such termination shall not relieve the Consultant of any liability to the City for damages sustained by virtue of any breach by the Consultant. The City will be under no further monetary obligation or commitment to the Consultant. In the event of termination, the City may, at its option, exercise any remedy available to it, including the Uniform Commercial Code, according to Ohio law.

ARTICLE 10. STANDARD TERMS.

A. DELAY IN PERFORMANCE

Neither the City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war, riots, and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage; judicial restraint; and inability to procure permits, licenses, or authorizations from any local, state, or federal agency for any of the supplies, materials, accesses, or services required to be provided by either the City or Consultant under this Agreement, provided the aforementioned circumstances are not due to the negligence or fault of the asserting party or any of its agents, employees, contractors, sub-contractors and/or representatives.
Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

B. GOVERNING LAW AND VENUE
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 or choice of laws. Any arbitration, litigation or other legal matter regarding this Agreement or performance by either party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.

C. COMMUNICATIONS
Any written communication or notice required or permitted by this Agreement shall be made in writing and shall be delivered personally, sent by express delivery, certified mail or first class U.S. mail, postage pre-paid to the address specified below:

Consultant: Amec Foster Wheeler Environment & Infrastructure, Inc.
            521 Byers Rd., Suite 204
            Miamisburg, OH 45342
            Attention: Paul Stork, Office Manager

City: City of Dayton, Department of Water
      320 West Monument Avenue
      Dayton, Ohio 45402
      Attention: Jim Shoemaker, Division of Environmental Management

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of Consultant and the City.

D. EQUAL EMPLOYMENT OPPORTUNITY
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 and may bar Consultant from receiving future City contracts.

E. WAIVER
A waiver by the City or Consultant of any breach of this Agreement shall be in writing. Such a waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the waiving party's rights with respect to any other or further breach.

F. SEVERABILITY
The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision.

G. INDEPENDENT CONTRACTOR
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 Article. 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 persons retained or hired by Consultant to perform 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 of Dayton. Further, Consultant shall be responsible to withhold and pay, or cause such agents, contractors and subcontractors to withhold and pay, all applicable local, state and federal taxes.

Consultant acknowledges its employees are not public employees for the purposes of Ohio Public Employee Retirement System (“OPERS”) membership.

H. ASSIGNMENT
Consultant shall not assign any rights or duties under this Agreement without the prior written consent of the City. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Consultant from employing independent consultants, associates, and subcontractors to assist in the performance of the Services.

I. THIRD PARTY RIGHTS
Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and Consultant.

J. AMENDMENT
The parties may mutually agree to amend this Agreement. However, no such amendment shall be effective unless it is reduced to a writing, which references this Agreement, executed by a duly authorized representative of each party and, if applicable or required, approved by the Commission of the City of Dayton, Ohio.
K. **POLITICAL CONTRIBUTIONS**  
Consultant affirms and certifies that it complies with Ohio Revised Code § 3517.13 limiting political contributions.

L. **INTEGRATION**  
This Agreement represents the entire and integrated agreement between the City and Consultant. This Agreement supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement.

[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 set forth above.

CITY OF DAYTON, OHIO

________________________________________
City Manager

Date:____________________________________

APPROVED AS TO FORM
AND CORRECTNESS:

________________________________________
City Attorney

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

_____________________________________, 2016

Min/Bk. _________ Pg. _________

________________________________________
Clerk of Commission

Amec Foster Wheeler Environmental &
Infrastructure, Inc.

By: ____________________________________

Its:  ____________________________________
ATTACHMENT A
TO
AGREEMENT FOR CONSULTING SERVICES
Scope of Services

City: City of Dayton, Ohio
Project: Triad Groundwater Investigations
Consultant: Amec Foster Wheeler Environment and Infrastructure, Inc.

Scope of Work / Project Requirements. Emergency response and time-critical groundwater investigations are initiated in response to spills and releases which have impacted or have the potential to impact groundwater and the City's drinking water supply. Other investigations are performed to enhance our understanding of the groundwater quality and underlying deposits by defining the lateral and vertical distribution of existing groundwater contamination and to determine the appropriate mitigation remedy.

The City's Consultant must be able to respond to episodes of groundwater contamination, under the direction of the Division of Environmental Management (DEM), within forty-eight (48) hours of notification. The Consultant must be able to interpret geological and groundwater quality issues based on available information and make sound turn-key decisions that are in the best interest of the Water Department and consistent with the Triad Approach. The Consultant and drilling crew must be familiar with the buried valley deposits that underlie the Miami Valley and Southwest Ohio and have extensive experience in delineating groundwater contaminant plumes by vertically profiling water quality via slotted hollow stem auger (preferred in the upper aquifer) or rotosonic drilling techniques.

The Consultant will also submit memorandums summarizing the investigations, perform soil and groundwater sampling, monitoring water levels through "snapshot" events, collect soil samples, and drilling and installing monitoring wells via conventional methods (standard hollow stem auger drilling). Additionally, the Consultant will provide comprehensive review of remediation sites in the Source Water Protection Area, Phase 1 and 2 Environmental Site Assessments (ESA), Brownfield sites, and reports associated with the Ohio Voluntary Action Program. The Consultant will also perform water quality and water level monitoring to over 300 existing monitoring wells. Lastly, the Consultant will perform risk assessment inspections of selected businesses and industrial sites in the SWPA.

A. Locations
Locations will include, but are not limited to the City's Multi-Jurisdictional Source Water Protection Areas. Information regarding Dayton's Source Water Protection Program (SWPP) and Source Water Protection Areas (SWPA) can be viewed at http://www.daytonwater.org/index.php?page=SWPAMap. All Triad groundwater investigations are anticipated to occur within the Great Miami Buried Valley Aquifer System (GMBVA) or the limestone and shale formations which make up the valley walls surrounding the GMBVA.

B. Utility Clearance
The Consultant will be required to field locate all existing utilities prior to set-up at each location. Upon initial notification of an emergency response groundwater investigation, the Consultant will contact the Ohio Utilities Protection Service (OUPS). All other entities that may have underground utilities in the area and are non-members of OUPS shall be notified by the Consultant.
C. Health and Safety
Due to the potential to encounter groundwater contamination, the Consultant shall have a complete health and safety plan for all onsite personnel including subcontractors. At a minimum, this plan will address onsite monitoring, personal protective equipment and action levels to be utilized by all onsite personnel. The Consultant will provide the City with a Health and Safety Plan prior to the start of each investigation.

D. Borehole Advancement
For conventional auger: “Screen” which is welded to a conventional auger will not be acceptable.
All borings shall be advanced for the primary purpose of vertical characterization of groundwater contamination and monitoring well installation. The drilling method employed must be slotted hollow stem auger (SHSA) or rotosonic. The drilling method must be compatible with the collection of representative groundwater samples at discreet intervals (see Groundwater Sampling).
The SHSA is the preferred method and must be capable of drilling and performing vertical aquifer sampling to depths of up to 100 feet. The lower five feet of auger must be laser or machine slotted. SHSAs must have new O-ring seals separating five-foot auger sections. Augers found to be in poor condition will be rejected. To promote discreet and representative interval samples, the lead slotted auger must have a Teflon plug. As a result no split spoon samples will be required during vertical sampling under this method.
However, SHSA borings may be gamma logged to confirm lithology.
Rotosonic drilling is required for all borings greater than 100 feet and will include continuous core sampling. The introduction of water into the borehole during rotosonic drilling will not be acceptable except as a result of extreme drilling conditions and must be approved by DEM. Any water added to the borehole must be accurately measured and evacuated prior to interval development.
NOTE: Non-vertical profiling borings will be drilled via a conventional hollow stem auger. Continuous split spoon (two-foot spoons) sampling will be performed until the desired depth is drilled. Soil samples will be collected at two depths during borehole advancement based on results of headspace readings; and one at the groundwater interface. If the subsurface is known to contain old foundations, the rotosonic drilling method may be employed.

E. Drilling Fluids
If the rotosonic drilling method is used, it must be dry-drilled unless extreme drilling conditions are encountered which necessitates the introduction of water to the borehole. Any water added to the borehole must be pre-approved by DEM. A totalizer, or similar measuring instrument, will be used to record the amount of water added. Any water added to the hole must be evacuated prior to collecting vertical profile samples. Drilling water shall be obtained directly from a designated City production well or a pre-tested water source.

F. Vertical Aquifer Sampling
Groundwater samples shall be collected during borehole advancement of all borings. This method of subsurface exploration is intended to provide a qualitative vertical characterization of groundwater contamination. Onsite laboratory results will supplement the lithologic information to determine appropriate screen length and depth.
Groundwater samples will be collected at “first water” (approximately five feet into the saturated deposits), above all low-permeability layers/lenses and at 10-foot intervals in permeable deposits. Sampling intervals must be no more than five feet in length.
To promote discreet interval samples, the submersible pump must have an inflatable packer above the pump to eliminate water from above the selected interval from entering the intended sampling zone. (Note that new O-ring seals should prevent any water from entering the zone and are required for screened hollow stem auger drilling—see Borehole Advancement.) Each sampling interval shall be developed by slight overpumping from a submersible pump until water is less than 25 NTUs. Temperature, pH and specific conductivity will be measured on a groundwater fraction from each sampling interval to assure proper development. Development water shall be containerized and transported by the Consultant to a site designated by the City.

The Consultant shall sample each interval using a low flow-purge submersible pump. The Consultant shall collect two sets of VOA vials for onsite analysis and one set for the City. The Consultant shall properly label each sample container (including those set aside for the City) and store them on ice. The Consultant shall arrange a schedule with the City’s commercial laboratory for pick-up/delivery at the drilling site or will arrange for the samples to be dropped off at the laboratory before 5 pm each day.

G. Onsite Laboratory Analyses
All vertical samples shall be analyzed onsite for volatile organic compounds via a mobile laboratory. The mobile laboratory shall be self-contained and equipped with a gas chromatograph (GC), a generator and associated support equipment. The GC shall employ a photoionization detector and flame ionization detector. The GC shall be calibrated, at least one hour prior to the first analysis, using mixtures or standard mixtures applicable to the compounds to be quantified for the day. Periodic checks will be performed each day to demonstrate consistency in instrument calibration. Results for key petroleum and chlorinated ethene hydrocarbons must be available within 45 minutes from the time the sample was collected.

The following chlorinated ethene and petroleum hydrocarbon compounds require detection limits of two micrograms per liter (µg/l) or less: tetrachloroethylene (PCE), trichloroethylene (TCE), trans 1,2 dichloroethylene (trans 1,2 DCE), cis 1,2 dichloroethylene (cis 1,2 DCE), 1,1 dichloroethylene (1,1 DCE), vinyl chloride, benzene, toluene, ethylbenzene and xylenes. The City may require the Consultant to identify the presence of chlorinated ethene compounds such as 1,1,1 trichloroethane (1,1,1 TCA), 1,1 dichloroethane (1,1 DCA) and 1,2 dichloroethane (1,2 DCA).

H. Soil Sampling and Analysis
All non-vertical profile drilling will include the collection of soil samples during borehole advancement. Soil samples will be collected at two depths during borehole advancement based on results of headspace readings; and one at the groundwater interface. The Consultant will submit the soil samples to an Ohio Voluntary Action Program certified laboratory. The analytical parameters will be site specific.

I. Holes Abandoned for Cause
If the City determines that, for reasons beyond the control of the Consultant, it is necessary to stop drilling, or the hole is lost before the objective or desired depth is reached and further attempts to save or complete the hole are not practical, the hole will be ordered abandoned for cause. The Consultant shall abandon the hole as described under Borehole/Well Abandonment. The Consultant will be paid for work completed including the footage drilled.
J. Defective Holes
If the City determines that the hole is lost due to, negligence, incompetence or malpractice on
the part of the Consultant or his subcontractors, or to the use of defective or unsuitable
equipment, the City will notify the Consultant and order the hole abandoned. The
Consultant, at his own expense, will abandon the hole as described under Borehole/Well
Abandonment. The Consultant will not be paid for any footage in any hole abandoned
because of defects caused by the Consultant or his subcontractors. The Consultant shall drill
a new hole at an alternate site in the immediate area as approved by the City.

K. Soil Containment
With the exception of drilling activities along City right-of-ways, a temporary catchment pit
shall be excavated and double lined with polypropylene prior to the commencement of
drilling. The pit shall be located downslope of the borehole and will be of suitable size to
contain all auger cuttings and development and decon water. Where access prohibits, a
double lined (temporary) above ground catchment may be constructed and used in lieu of
catchment pits. Following site completion, all liquids shall be pumped from the pit,
containerized and transported to a site designated by the City. The Consultant shall collect a
composite sample of the pit soils to be analyzed for VOCs (Method 8260). If analytical
results indicate levels below Ohio Voluntary Action Program (OVAP) Single Chemical
Generic standards (dependent on the existing use of the property, i.e. residential or
commercial/industrial), the Consultant will remove the polypropylene liner and backfill the
pit level with the surface. If analytical results indicate contamination above OVAP standards,
the contractor will be responsible for proper transportation and disposal costs. The Consultant
will first transport the drums to a temporary staging area located at Ottawa Yards.
For wells drilled along City right-of-ways or on private property where catchment pits are
prohibited, all auger cuttings and/or bailer material shall be contained in 55-gallon drums.
Upon site completion, the Consultant shall provide proper transport to a temporary staging
area as designated by the City. When the investigation has been completed, the Consultant
will collect an appropriate number of drum samples for proper disposal. Any excavated areas
left open or obstacles which may be potentially dangerous to the public will be adequately
fenced, taped and/or barricaded to clearly identify any physical hazards. This may include the
use of caution lights.

L. Decontamination
This item covers the work, materials and equipment necessary for cleaning all drilling,
logging and sampling equipment.
All equipment shall be washed and cleaned prior to going onsite. All equipment to be
introduced to the borehole must be cleaned prior to introduction. Equipment to be cleaned
will include (but not necessarily be limited to) well casings, well screens, rods, drill bits,
pumps, samplers, logging tools, drive casings and augers. The decontamination process
consists of hosing the drilling equipment with a high-pressure hot water rinse.
All sampling tools shall be cleaned prior to use including at a minimum, rods, bits, pumps,
samplers, hand tools, and logging tools. Any tools that come in contact with the soil or
groundwater during the drilling process shall be cleaned.
The Consultant must provide all equipment necessary for this cleaning process, including
clean water and a mobile hot water high-pressure washer, as necessary. All water used in the
decontamination process shall be containerized and transported by the Consultant to a site
designated by the City. Equipment and procedures used by the Consultant for the cleaning of
drilling and sampling equipment must be approved by the City.
M. Well Construction

All borings shall be completed using 2-inch, schedule 40, flush joint threaded PVC casing and screen. It is anticipated that screen slot size will be 0.010 inch and screen length will be 10 feet. However, screen lengths of five (5) feet should be on hand during the project. Centralizers will be used to center casing and screen in the borehole and to ensure an even distribution of filter pack and seals around the casing and screen for wells greater than 80 feet. Centralizers shall be placed at the bottom and near the top of the screen with one centralizer placed at every 25 feet of casing. No centralizer will be placed just below land surface.

N. Well Completion

For all wells, and depending on the percentage of fines in the proposed interval, either sand or gravel pack or naturally caved-in formation shall be installed or allowed to collapse around the well screen to a depth of three to five feet above the top of the screen. One foot of fine sand shall be placed immediately above the sand or natural pack. Each well shall have a two to four foot bentonite seal (bentonite pellets) above the fine sand and a bentonite/cement slurry tremie-grouted from the top of the bentonite seal to the frost line.

After the slurry has settled, 4,000 psi air-entrained concrete (4%-6% air) shall be used to fill the annular space above the slurry, to secure a 4-inch or 8-inch square protective casing and to construct a 54-inch square concrete pad. (Note: Concrete pads securing flush mount vaults shall be 36” by 36”.) The pad shall slope away from the casing in all directions. For stick-up wells, three 6-inch steel guard posts will be installed near the edge of the pad and will be secured in concrete poured separately from the “pour” used to construct the pad.

Wells installed along City right-of-ways and on private property will be completed in a flush mount vault level with the surface. Flush mount vaults must offer a high security locking system requiring a key and specialized opening tool.

The Consultant will cut a V-shaped notch into the top of the casing to represent the measuring point for each well installed.

O. Well Development

The well shall be developed until the water is free from sand, silt, and turbidity. The Consultant shall develop the well by first extracting sediment via a submersible or centrifugal pump and vacuum hose, then pumping at rates no greater than eight gallons per minute. If this method does not allow for timely development, the Consultant may adopt a mechanical surging (surge block) method. Air lift pumps or any other pumping method where air comes in contact with the water will not be an acceptable method of development unless authorized by DEM.

The Consultant shall furnish a pump, generator, and any other necessary appurtenances. Development water shall be containerized and transported by the Consultant to a site designated by the City.

The Consultant will provide a non-potable water tank of at least 500 gallons to containerize development water. Physical and chemical parameters including temperature, pH, specific conductance and turbidity of the water shall be measured during well development.

Development will be considered complete when the pH, temperature, and specific conductance of the discharge water have stabilized or until a maximum of ten well volumes are removed, and the turbidity of the water is less than 25 nephelometric turbidity units (NTUs) as verified by a nephelometer.
Once the well is completely and properly developed, a sample shall be collected and analyzed on site for VOCs and priority pollutant metals (filtered). Additional samples will be collected for the City and properly stored on site.

P. Downhole Gamma Logging
SHSA borings may be gamma logged prior to well installation to provide supplemental stratigraphic information. Qualified personnel must perform the gamma ray logging. The equipment must meet the DEM's approval. Documentation must be provided to show the equipment has been calibrated immediately prior to use on this project and recalibrated on a monthly basis or as needed (whichever is more frequent) throughout the project.

Q. Restoration
The area surrounding the monitoring wells, abandoned holes and any other work sites shall be returned to the original condition and to the satisfaction of the City. This includes removal or replacement of trees, large rocks or metal, the placement of topsoil, seeding or the placement of sod. This also includes the leveling and grading of dirt or gravel roads.

R. Survey
A complete survey will be required on all wells. This will include both a horizontal and a vertical (NAVD 88) survey. The City will provide information regarding existing USGS benchmarks and the City's GPS monuments.

Each well will require an X and Y coordinate (State Plane) and two Z coordinates. The vertical survey will include top-of-well-casing (TOWC) elevation, taken at the “measuring point”, and a surface elevation.

S. Well Sampling Events
The Consultant will sample 30 investigation wells on a quarterly basis. The Consultant will properly purge at least three well volumes from each well prior to sampling. Purge water will be contained via a water tank or drums. If drums are used, a representative number of samples will be collected and analyzed for non-hazardous waste disposal. The Consultant will deliver the well samples and associated chain of custodies to a local commercial laboratory under a City purchase order. If a water tank is used to contain purge water, the Consultant will transport the tank to a designated sanitary pump station for disposal. The well samples will be analyzed for VOCs (Method 8260).

T. Memorandums
After the completion of field activities, the following information will be submitted to the City in the form of a Draft Memorandum (for each investigation):
1. Project location map.
2. Executive Summary.
3. Summary of activities.
4. Findings, conclusions, and supporting conceptual maps (potentiometric and iso-concentration), cross-sections, summary tables and laboratory reports.
5. Boring/well logs.
6. Well construction diagrams including well depth, screen location, screen length, slot size, vertical distribution and amount of sand or gravel pack, and vertical distribution and amount of cement/bentonite.
7. Well development logs and sampling procedures.

Following DEM review, the Consultant will submit a final memorandum.

U. Meetings and Report Preparation
The Consultant shall attend monthly meetings and weekly conference calls with the City to facilitate rapid and efficient project execution. In addition, the Consultant shall keep the City informed regarding activities and findings on a daily basis during investigations. Following the completion of each investigation, the Consultant will submit to the City a draft memorandum summarizing site activities and findings, maps, cross-sections, pictures, and tables for review. The Consultant will submit three copies of the final memorandum to the City.

ADDITIONAL REQUIREMENTS
A. The Consultant will apply for and obtain all necessary permits, manifest, and file any other necessary paperwork.
B. The Consultant will be responsible for erosion control requirements relative to drainage ditches, waterways and the City's Municipal Separate Storm Sewer System (MS4) including but not limited to silt fencing and catch basin protection.
C. To ensure compliance with the regulations pertaining to all work necessary, a representative of the Consultant will be onsite at all times when subcontractors are working.
D. The Consultant and subcontractor(s) are required to comply with all applicable regulations including, but not limited to Occupational Safety and Health Administration (OSHA), American National Standard Institute (ANSI), American Petroleum Institute (API), Environmental Protection Agency (EPA), National Fire Protection Association (NFPA), and the Ohio Department of Natural Resources (ODNR), pertaining to all work associated with this project. The Consultant is responsible for ensuring that all personnel including all onsite subcontractors comply with all health and safety requirements.
E. All samples, to be analyzed by the City's commercial laboratory, will be taken in accordance with US EPA and Ohio EPA guidelines and regulations. A chain of custody is to be completed for each non-mobile laboratory sample taken.
F. In the event that 55-gallon drums or roll-off boxes are used to contain auger cuttings, roto sonic cores, or “catchment pit” material, the Consultant will be responsible for appropriate packaging, labeling, transportation, and proper disposal. The Consultant may be asked to transport material to a temporary staging area located at Ottawa Yards. (The Consultant will be escorted by DEM personnel to gain entry into Ottawa Yards.) The Consultant will conform to all applicable transportation regulations. Additionally, the Consultant will be responsible for spill clean-up associated with these activities.
G. All memorandums will be submitted to the City in draft form. The City reserves the right to request changes and/or modifications of the draft memorandums prior to the acceptance of any final memorandums.
H. All work which does not conform to the specifications will not be accepted. Unacceptable work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause found to exist prior to final acceptance of the work will be corrected or removed immediately and completed or replaced in an acceptable manner at the Consultant's expense.
I. All equipment proposed for use during the project shall be of appropriate design and properly maintained to conduct the work and to produce a satisfactory result. Equipment used on any portion of the project shall be utilized such that no damage to public roadways or adjacent property will result from its use.
J. The result of all services under this contract will be “exclusive property” of the City of Dayton and all documents (including without limitation, all writings, drawings, blueprints, pictures, recordings, notes, data reports, computer or machine-readable data (including groundwater modeling information) and all copies or reproductions thereof, or other information received or generated in the performance of this agreement) shall be delivered to the City, and shall be maintained as strictly confidential and not disclosed to others, including individuals, corporations, or government agencies, either before or after the termination of this agreement, except as expressly authorized in writing by the City of Dayton, Ohio.

K. All work will be charged to the City based on time and materials not to exceed the total amount specified in the proposal and Purchase Order. The City reserves the right to delete and/or modify the work required as deemed necessary within the scope of the total money available.
ATTACHMENT B
TO
AGREEMENT FOR CONSULTING SERVICES

City: City of Dayton, Ohio
Project: Triad Groundwater Investigations and Groundwater – Surface Water Interaction Studies
Consultant: Amec Foster Wheeler Environment and Infrastructure, Inc.

COMPENSATION

1. The total "Not-To-Exceed" fee for performance of the Scope of Services, as outlined in Attachment A to this Agreement, is FOUR HUNDRED EIGHTY THOUSAND DOLLARS AND ZERO CENTS ($480,000.00) for 2016 and FOUR HUNDRED EIGHTY THOUSAND DOLLARS AND ZERO CENTS ($480,000.00) for 2017. This amount includes all direct and indirect labor charges, material cost, overheads, and profits plus all other fees and charges including expenses.

The Fee Schedule for personnel is as follows:

AMEC FOSTER WHEELER FEE SCHEDULE

Amec Foster Wheeler’s labor fee schedule for services provided on a time and materials basis is provided below. This rate schedule will remain in effect for the term of the contract (including option year three), but the categorization of personnel may be adjusted if so warranted by increases in qualifications and experience. Court appearances, depositions, and other similar litigation support will be charged at 1.5 times the standard rate.

Principal Scientist/Principal Engineer $150.00/hr.
Senior Project Manager/Senior Scientist II $135.00/hr.
Assistant Project Manager/Senior Scientist I $110.00/hr.
Project Scientist $90.00/hr.
Senior Technician II $85.00/hr.
Staff II Scientist $80.00/hr.
Senior Technician I $75.00/hr.
Staff I Scientist $70.00/hr.
CADD/Draftsperson $65.00/hr.
Technician II  $60.00/hr.
Project Administrator  $60.00/hr.
Technician I  $50.00/hr.

The “Not-To-Exceed” fee for the term of this Agreement, and any option year, is subdivided into the following categories:

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shallow and Deep Groundwater Investigations</td>
<td>$378,000.00</td>
</tr>
<tr>
<td>Water Quality and Water Level Monitoring</td>
<td>$19,000.00</td>
</tr>
<tr>
<td>Risk Assessment Inspections</td>
<td>$63,000.00</td>
</tr>
<tr>
<td>Contingency/Miscellaneous</td>
<td>$20,000.00</td>
</tr>
</tbody>
</table>

**TOTAL**  $480,000.00

2. The City shall remit payment to Consultant within thirty (30) days from receipt of a monthly invoice detailing the Services rendered and the percent complete of the scope of services described in Attachment A. All invoices for non-lump sum, reimbursable type payments shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other accounting documents pertaining in who or in part to the performance of the Services and shall be clearly identified and readily accessible to City. However, Consultant does not have to furnish such supporting documentation with its invoice, unless requested by the City.

3. Consultant shall keep its records related to the matters covered by this Agreement in compliance and conformity with generally accepted accounting practices. At any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to the City all of its records with respect to all matters covered herein, and will permit the City, at its expense, to audit, examine, and make excerpts or transcripts from such records and to have audits made of all contracts, invoices, materials, payrolls, records of personnel, conditions or employment and other data pertaining in whole or part to matters covered within this Agreement. In performing any independent audit, Consultant shall require the auditor to reasonably comply with all applicable City rules and regulations governing such procedures.
ATTACHMENT C
TO
AGREEMENT FOR CONSULTING SERVICES

City: City of Dayton, Ohio
Project: Triad Groundwater Investigations
Consultant: Amec Foster Wheeler Environment and Infrastructure, Inc.

CITY'S RESPONSIBILITIES

The city will furnish, as required by the work and not at the expense of Consultant, the following item:

1. The services of at least one of the City's employees or staff.
FIRST AMENDMENT OF THE PROFESSIONAL SERVICES AGREEMENT FOR THE TRIAD GROUNDWATER INVESTIGATIONS SERVICES PROJECT

This FIRST AMENDMENT OF THE PROFESSIONAL SERVICES AGREEMENT FOR THE TRIAD GROUNDWATER INVESTIGATION SERVICES PROJECT ("First Amendment") is dated this 14th day of August, 2018 between the City of Dayton, Ohio ("City") and Wood Environment & Infrastructure Solutions, Inc., ("Consultant"); who previously conducted business as Amec Foster Wheeler Environment & Infrastructure, Inc. ("Amec, Foster Wheeler").

WHEREAS, Consultant changed its name from Amec Foster Wheeler Environment & Infrastructure, Inc. to Wood Environment & Infrastructure Solutions, Inc. as an administrative change in nature, effective on April 16, 2018; and,

WHEREAS, On August 17, 2016, the Commission of the City of Dayton approved an Professional Services Agreement for Consulting Services on the Triad Groundwater Investigations Project (CT16-1488) between the City and Consultant ("Agreement"); and,

WHEREAS, the City and Consultant desires to renew the Agreement for an additional 12-month period and agree to amend the Agreement to facilitate the renewal; and,

NOW THEREFORE, the City and Consultant mutually agree to renew and amend the Agreement as follows:

1. Article 1, Term, is deleted in its entirety and replaced with the following:

   The Agreement shall commence upon execution by the City and shall terminate upon expenditure of all funds or July 31, 2019, which ever date is earlier.

2. The City and the Consultant agree to amend the Agreement as follows:

   A. All instances of Amec Foster Wheeler Environment & Infrastructure, Inc. within the Agreement, shall be deleted in their entirety and replaced with Wood Environment & Infrastructure Solutions, Inc.

3. Except as amended herein, all terms, covenants and conditions contained within the Agreement remain in full force and effect and shall remain unchanged.

IN WITNESS WHEREOF, the City and Consultant, each by a duly authorized representative, have executed this First Amendment as of the date set forth above.

CITY OF DAYTON, OHIO

[Signature]

City Manager

WOOD ENVIRONMENT & INFRASTRUCTURE, INC.

By [Signature]

Title Sr. Ecologist/Project Manager

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]

City Attorney

"No Commission Action Required"
PEBBLE LIME RECLAMATION- PURCHASE-PRODUCTION
INTERGOVERNMENTAL AGREEMENT

The Department of Water requests permission to enter into a 5-year Intergovernmental Agreement with the City of Troy, Ohio for the reclaiming/purchase of pebble lime, in which the City shall receive a total amount of $1,043,520.00. The payments will be billed monthly based on the actual monthly load weight. The City is expected to receive the disbursed amount over five years as follows:

2019 - $116,000.00
2020 - $231,880.00
2021 - $231,880.00
2022 - $231,880.00
2023 - $231,880.00

The Agreement has two requirements, which include: (1) Troy will supply Dayton with lime softening residuals from their respective water treatment operations; (2) Troy will purchase the pebble lime that Dayton produces.

The Agreement shall begin upon execution and will terminate on January 1, 2024. The Parties may extend the Term of this Agreement for three (3) additional period(s) of five (5) years each upon mutual agreement regarding terms and conditions, including prices and recognizing debt retirement costs, at the time of each extension.

The Agreement has been reviewed by the Law Department as to form and correctness.

A Certificate of Revenue and a copy of the Intergovernmental Agreement are attached.

Signatures/Approval

Approved by City Commission

Clerk

Date

Updated 8/2016
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name City of Troy

Address

100 South Market St.

City Troy State OH Zip+4 45371 -

Customer # @00006253 Address Location # 300 E. Staunton, Rd

Federal ID# 31-6000549

Revenue Information: Fund 53000 Organization 3430 Revenue 24810 Program 54

Contract Information: Contract Start Date 07/17/2019 Contract Expiration Date 01/01/2024

Billing Information: Rate: Based on actual Arrears X Pre-bill
monthly load weight

Monthly (1st month of billing) July 2019

Quarterly (1st month of quarter)

Semi-annual (1st month of half)

Annual (1st month of billing)

Other (explain)

Rate Change Date Rate Change Amount

Description of Services (wording on invoice): Residual removal and Lime sales. Expect to receive
$116,000.00 in 2019 and $231,880.00 in each year 2020-2024. Will be billed monthly based on the actual
monthly load weight.

Departmental Approval

TO BE COMPLETED BY FINANCE

City Reference Number 4-60253 Auditor Satenna Jones Date 7/8/19

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
(Rev 4/30/2008)
INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into this __________ day of __________, 2019 (the "Effective Date"), by and between the City of Dayton, Ohio ("Dayton"), the City of Troy, Ohio ("Troy"). For purposes of this Agreement, Dayton and Troy are collectively hereinafter referred to as the "Parties" and individually as a "Party".

WITNESSETH:

WHEREAS, Dayton desires to supply bulk pebble lime ("Product") to Troy from its Lime Reclamation Facility ("Facility"); and,

WHEREAS, Troy desires to supply lime softening Residuals ("Residuals") to Dayton and to procure the Product from Dayton.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and in accordance with Section 715.02 of the Ohio Revised Code, Dayton and Troy agree as follows:

ARTICLE I. SCOPE OF SERVICES

Dayton shall provide and supply Troy with Product from its Facility. Product shall meet NSF60 and NSF61 and American Water Works Association ("AWWA") Specifications B202-93 and B202a-97. Dayton shall include analytical results for all Product shipped. All analysis submittals will be based on AWWA testing procedures for Quick Lime. Product shall be supplied in lump form diameter ¼” – ½”. The Product shall be of the best quality freshly burned and shall be substantially free of core, ash, dirt, hard, or unburned stone or other foreign matter. Product shall contain a minimum of 90% available calcium oxide and less than 5% magnesium oxide. Dayton, at its sole cost and expense, shall provide the trucking/hauling of Product from Dayton to Troy and the trucking/hauling of Residuals from Troy to Dayton. All testing shall be performed by Dayton, at its sole cost and expense.

Dayton and Troy shall coordinate delivery dates and times for Product and the loading dates and terms for Residuals. Dayton shall pick up Residuals at Troy’s lime lagoons located at 300 E. Staunton Road, Troy, Ohio (the "Lagoon Site"). Dayton shall deliver Product to Troy’s facility located at 300 E. Staunton Road, Troy, Ohio (the "Receiving Site").

Dayton shall invoice Troy on a monthly basis based on weight tickets for Product delivered to the Receiving Site. Nothing in this Agreement will prevent Dayton from contracting, at its sole cost and expense, with private companies for hauling and/or trucking of Product and/or Residuals.

Dayton shall provide its own method of removing the Residuals from the Lagoon Site in a manner that is acceptable to Troy and in a manner which will not damage the lagoons or related improvements. No work will be permitted on Sundays and holidays except upon specific authorization of the Troy. Dayton shall take all necessary precautions to assure that there will be no spillage of Residuals or Product at the Lagoon Site or the Receiving Site or while they are in transit. Dayton, at its sole cost and expense, shall clean up spillage resulting from the loading.
unloading or transport of Residuals and Product. In addition, Dayton must comply with Troy’s Wellhead Protection Ordinance #OR98-10-102 and OR98-10-103 as they may apply to the work being performed to protect the sensitive drinking water supply located at the site.

ARTICLE II. PROVISION OF RESIDUAL

Troy shall provide, and Dayton shall take, a minimum amount of Residuals (the “Residuals Minimum”) in accordance with the schedule outlined in Exhibit A, attached hereto and incorporated herein by reference. Residuals shall be received at a rate of 2.5 times the Product purchased (based on the previous year), in accordance with the schedule in Exhibit A. Dayton, at its sole cost and expense, shall remove the Residual from the Lagoon Site and transport the Residuals to the Facility at 1048 Ottawa Street, Dayton, Ohio. Troy may request Dayton to remove additional residuals not to exceed the “Maximum Dry Ton” totals in Exhibit A. The removal of residuals in excess of the rate of 2.5 times the Product purchase will be at Troy’s expense, at a rate of $39.50 per dry ton with a minimal yearly increase of 3%. The City of Troy shall be billed for the additional removal within 30 days of the completion of the removal. Nothing in the Agreement shall prohibit Troy from contracting with other entities for the removal of Residuals in excess of the Residuals Minimum.

Title to the Residuals and risk of loss with respect to the Residuals shall pass to Dayton when the Residuals are loaded onto the transport at the Lagoon Site. Dayton shall not dispose of Residuals except as provided for in this Agreement.

ARTICLE III. PURCHASE OF PRODUCT

Troy shall purchase minimum amounts (the “Product Minimum”) of the Product in accordance with the schedule in Exhibit B attached hereto and incorporated herein by reference. Troy shall pay One Hundred Seventy Dollars and Zero Cents ($170.00) per ton of the Product (“Purchase Price”). Nothing in this Agreement shall prohibit Troy from purchasing Product in excess of the Product Minimum from other sources. The Purchase Price includes the cost to transport the Product to the Receiving Site. Title to the Product and risk of loss with respect to the Product shall pass to Troy when the Product is unloaded at the Receiving Site.

The Parties acknowledge that operation of the Facility and production of the Product is subject to cost inflation over time. There are two circumstances under which Dayton may increase the Purchase Price to Troy under this Agreement:

(1) Beginning on January 1, 2019, the Purchase Price may be increased annually based on an increase the Producer’s Price Index for Lime Manufacturing, Product Code 327410-O (the “Index”), as published by the United States Department of Labor, Bureau of Labor Statistics. The Purchase Price adjustment will be calculated on the simple percentage method as follows:

Escalation Factor = (latest Index at time of calculation) / (Index 12 months prior to latest Index).
By way of example, assume the following:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Index (October, 2018)</td>
<td>105</td>
</tr>
<tr>
<td>Prior Year’s Index (October, 2017)</td>
<td>100</td>
</tr>
<tr>
<td>Escalation Factor = (105/100)</td>
<td>1.05</td>
</tr>
</tbody>
</table>

This calculation indicates that the Purchase Price could increase by 5% beginning January 1, 2019.

(2) In the event the spot price of natural gas, as reflected in the NYMEX Henry Hub Natural Gas index, remains at or above the price range per million British thermal units as stated in Column A below for a period of three (3) consecutive months, then the Purchase Price shall be adjusted in the following month to the corresponding price in Column B below ("Adjusted Purchase Price").

<table>
<thead>
<tr>
<th>Column A Price Natural Gas/Millions BTU</th>
<th>Column B Price Product/Ton</th>
</tr>
</thead>
<tbody>
<tr>
<td>$3.00 or less</td>
<td>$170.00</td>
</tr>
<tr>
<td>$5.50 or more</td>
<td>$175.67</td>
</tr>
<tr>
<td>$6.00 or more</td>
<td>$181.33</td>
</tr>
<tr>
<td>$6.50 or more</td>
<td>$187.00</td>
</tr>
<tr>
<td>$7.00 or more</td>
<td>$192.67</td>
</tr>
</tbody>
</table>

The Purchase Price may be increased by either of the methods specifically detailed above, but not both in any given year. Dayton will provide at least fifteen (15) calendar days’ prior written notice to Troy of any change in Purchase Price and the methodology used to calculate said change. Troy shall pay the Adjusted Purchase Price, if any, in effect at the time of delivery of the Product.

ARTICLE IV. TERMD

This Agreement shall commence on the Effective Date and terminate on January 1st, 2024, unless terminated earlier pursuant to Article V herein. The Parties may extend the term of this Agreement for three (3) additional periods of five (5) years each upon mutual agreement regarding terms and conditions, including prices. Any extension shall be by written amendment to this Agreement pursuant to Article XIV herein.

ARTICLE V. TERMINATION

Troy may terminate this Agreement upon written notice given to Dayton in the event of Dayton’s substantial failure to perform its duties and responsibilities as set forth herein. Dayton shall have thirty (30) calendar days from the date of the notice of termination in which to cure any breach or to submit a plan to cure acceptable to Troy.
Dayton may terminate this Agreement in the event of substantial failure by Troy to perform its duties and responsibilities as set forth herein. Troy shall have thirty (30) calendar days from the date of notice of termination which has been given to Troy in which to cure any breach or to submit a plan to cure acceptable to Dayton.

Notwithstanding any other provision contained in this Agreement, Troy may terminate this Agreement, without cause and without liability, on at least ninety (90) calendar days’ prior written notice given to Dayton.

ARTICLE VI. DELAYS

No Party shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing Party. For purposes of this Agreement, such circumstances include, but are not limited to, abnormal weather conditions; flood; earthquake; fire; epidemic; war, riot, or other civil disturbance; strike, lockout, work slowdown, or other labor disturbance; sabotage; judicial restraint; and inability to procure any permit, license, or authorization from any local, state, or federal agency for any required supplies, materials, accesses, or services.

In the event any of the circumstances in the preceding paragraph occurs, the non-performing Party shall, within a reasonable time of being prevented from performing, give written notice to the other Party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement. In the event such delay continues unabated for thirty (30) calendar days, then the Party whose performance has not been affected by the delay shall have the right to terminate this Agreement on the date set forth in the written notice of termination given to the other Party.

ARTICLE VII. EQUAL EMPLOYMENT OPPORTUNITY

Neither Party shall 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 either Party to terminate this Agreement at its option.

ARTICLE VIII. GOVERNING LAW AND VENUE

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 or choice of laws. Any litigation or other legal matter regarding this Agreement or performance by either Party must be brought in a court of competent jurisdiction in Montgomery County, Ohio.
ARTICLE IX. COMMUNICATIONS

Any written communication or notice required or permitted by this Agreement shall be made in writing and shall be delivered personally or sent by overnight delivery service or certified mail, postage prepaid, to the appropriate address below:

Dayton:  City of Dayton, Department of Water
         320 West Monument Avenue
         Dayton, Ohio 45402
         Attention: Mr. Michael Powell
         Director, Department of Water

Troy:    City of Troy,
         100 South Market Street
         Troy, Ohio 45371
         Attention: Mr. Patrick Titterington

Such notice, if delivered personally or by overnight courier service, shall be deemed given and delivered at the time of delivery or refusal of delivery; or, if sent by certified mail, shall be deemed given and delivered three (3) calendar days after the time of mailing with appropriate postage attached thereto.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Parties.

ARTICLE X. WAIVER

A waiver by any of the Parties of any breach of this Agreement shall be in writing. Such a waiver shall be effective only in the specific instance and for the specific purpose for which it is given and shall not affect the waiving Party’s rights with respect to any other or further breach.

ARTICLE XI. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void, unenforceable, invalid or illegal provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision. The Parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision, which is of the essence of this Agreement, be determined void.
ARTICLE XII. ASSIGNMENT

Neither Party shall assign any rights or duties under this Agreement without the prior written consent of the other Party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement. Nothing contained in this Article shall prevent Dayton from employing independent contractors to assist in the performance of its duties and responsibilities hereunder.

ARTICLE XIII. THIRD-PARTY RIGHTS

Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Parties.

ARTICLE XIV. AMENDMENT

The Parties may mutually agree to amend this Agreement. However, no such amendment shall be effective unless it is reduced to a writing which references this Agreement and which is executed by a duly authorized representative of each of the Parties and, if applicable or required, approved by the legislative authority of any of the Parties.

ARTICLE XV. INTEGRATION

This Agreement, together with the Exhibits and Purchase Order attached to it, represent the entire and integrated agreement the Parties and supersede all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. For purposes of this Agreement, the term "Effective Date" shall be the date that this Agreement is signed by Troy, which date shall be set forth in the first paragraph of this Agreement.

ARTICLE XVI. POLITICAL CONTRIBUTIONS

The Parties affirm and certify that they comply with Ohio Revised Code § 3517.13 limiting political contributions.

ARTICLE XVII. COMPLIANCE WITH LAWS

The activities taken by Dayton in connection with the performance of its duties under this Agreement shall comply with all applicable laws, rules and regulations.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, the Parties, each by a duly authorized representative, have executed this Agreement on the date first written above.

CITY OF DAYTON, OHIO

By: ___________________________

Title: __________________________

APPROVED:

Director, Department of Water

CITY OF TROY, OHIO

By: ___________________________

Title: Director of Public Service and Safety

APPROVAL AS TO FORM:

Troy Law Director

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

APPROVED BY THE COMMISSION OF THE CITY OF DAYTON, OHIO

_____________________________________________, 2019

Min./Bk. _____ Pg. _____

Clerk of Commission
EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT

PROVISION OF MINIMUM AMOUNTS OF RESIDUALS

This table defines the amount of Residuals that Dayton may remove from the Lagoon Site. The quantity of the Residuals Minimum to be removed from the Lagoon Site shall be at a rate of 2.5 times the Product purchased (based on the previous year), in accordance with the schedule in Exhibit A. Any proposed deviation from this table will require advanced written approval signed by Dayton and Troy.

<table>
<thead>
<tr>
<th>Annual Minimum, Dry Tons Sludge</th>
<th>2.5 Times Purchased Product</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Dry Tons Residuals Maximum, Dry Tons Sludge</td>
<td>5,000</td>
</tr>
</tbody>
</table>
EXHIBIT B
TO
INTERGOVERNMENTAL AGREEMENT

PURCHASE OF MINIMUM AMOUNTS OF PRODUCT

This table defines the anticipated quantities of Product to be purchased by Troy from Dayton. All parties will endeavor to schedule purchases and deliveries in a manner that promotes Troy purchasing 100% of their pebble lime needs from Dayton. Should circumstances prohibit this from being possible, Troy will purchase pebble lime from a third party provider.

| Annual Quantity, Tons | 1,364 |
FIRST RENEWAL – TERMINAL ADVERTISING CONCESSION AGREEMENT

The Department of Aviation (Aviation) requests permission to approve the First Renewal of Terminal Advertising Concession Agreement (Agreement) with Departure Media (DM).

This First Renewal will extend the Agreement for a period of five (5) years, and enable DM to continue its advertising concession services at the Dayton International Airport, and install three (3) new digital advertising displays and replace all concourse back-lit displays into flex graphics with lighting. This may also include additional digital and or other graphics near the completion of the Airport Terminal Modernization Program, Phase 1.

The original Agreement was approved September 24, 2014 for a period of five (5) years commencing January 1, 2015 and terminating on December 31, 2019. The Agreement includes a renewal extension of the term for up to five (5) additional years. In exercising this First Renewal for a period of five (5) years, the Agreement will now terminate on December 31, 2024.

Each year, DM will pay the City the greater of a Minimum Annual Guarantee (MAG) or 50% of Gross Revenue collected from Advertising. The total revenue for the new term of this First Renewal is a minimum of $288,000.00 per year, or $1,440,000.00 for the additional five (5) year term.

The Department of Law has reviewed and approved the First Renewal as to form and correctness. Two (2) Certificates of Revenue are attached.
CERTIFICATE OF REVENUE

TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name  Departure Media, Inc.
Address  180 Meeting Street, Suite 310
City  Charleston  State  SC  Zip+4  29401  -  
Customer #  @00009937  Address Location #  A1
Federal ID#  56-1935486

Revenue Information: Fund  51000  Organization  3212  Revenue  23365  Program  43

Contract Information: Contract Start Date  1/1/15  Contract Expiration Date  12/31/24

Billing Information: Rate:  $23,980.19  Arrears  Pre-bill  X
Monthly (1st month of billing)  January
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)
Rate Change Date  1/1/20  Rate Change Amount  TBD

Description of Services (wording on invoice):
Monthly Minimum Guarantee for Terminal Advertising Concession

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number  1-9937  Auditor  Katherine Jones  Date  7/8/19

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
CERTIFICATE OF REVENUE
TO BE COMPLETED BY THE DEPARTMENT

Customer Information: Name Departure Media, Inc.
Address 180 Meeting Street, Suite 310
City Charleston State SC Zip+4 29401
Customer # @00009937 Address Location # A1
Federal ID# 56-1935486

Revenue Information: Fund 51000 Organization 3212 Revenue 23365 Program 43

Contract Information: Contract Start Date 1/1/15 Contract Expiration Date 12/31/24

Billing Information: Rate: N/A Arrears X Pre-bill
Monthly (1st month of billing) January
Quarterly (1st month of quarter)
Semi-annual (1st month of half)
Annual (1st month of billing)
Other (explain)
Rate Change Date 1/1/20 Rate Change Amount TBD

Description of Services (wording on invoice):
Percentage (50%) of Gross Receipts for Terminal Advertising Concession less minimum guarantee

Departmental Approval

TO BE COMPLETED BY FINANCE

Revenue Contract Number 1-9937-1 Auditor Katrina Jones Date 7/18/19

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
FIRST RENEWAL OF
TERMINAL ADVERTISING CONCESSION AGREEMENT

THIS FIRST RENEWAL OF TERMINAL ADVERTISING CONCESSION AGREEMENT ("First Renewal") is dated this __________ day of __________________________, 2019 between the City of Dayton, Ohio ("City") and Departure Media ("Company").

WHEREAS, On September 24, 2014, the Commission of the City of Dayton approved a "Terminal Advertising Concession Agreement" ("Agreement") between the City and Company under which Company is authorized to engage in the business of operating the Advertising Concession ("Concession") services at the Airport for the benefit of users of the Airport; and,

WHEREAS, Pursuant to Article I, Subsection 1.2 of the Agreement, the Agreement term may be extended for up to five (5) additional years; and,

WHEREAS, On June 28, 2019, City provided Company with written notice of their desire to exercise the extension of the term with Company; and,

WHEREAS, Company desires to continue to provide Concession services in the Airport.

NOW THEREFORE, For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Company mutually agree to the exercise of the first renewal of the Agreement as follows:

1. As allowed under Section 1, Subsection 1.2 of the Agreement, the parties exercise the First Renewal period to extend the term of the Agreement for the five (5) year period commencing on January 1, 2020, and ending on December 31, 2024.

2. Section 5 shall be amended to add Section 5.4.3 as follows:

5.4.3 First Renewal Capital Investment. This First Renewal shall include a Capital Investment of an amount mutually agreed upon by the City and Company to add the following:

a. A dual sided hanging digital display in the baggage claim area to replace the current wall digital displays and the flex graphic displays on the baggage claim carousels.
b. The replacement of all concourse back-lit displays into flex graphics with lighting.
c. Addition of a digital monitor in the new display kiosk next to the Airport Concierge Information Desk.
d. Addition of a free-standing digital monitor in the lobby seating area in front of the new USO space.
e. May also include additional digital and or flex graphics in the pre-security baggage claim lobby as Phase 1 of the Airport Terminal Modernization Program nears completion in December, 2019.

This First Renewal Capital Investment should be completed no later than six (6) months following the Effective Date of the First Renewal, or a mutually agreed upon date by the City and Company.
3. Section 6.1.2 shall be amended to add the following paragraph:

*First Renewal Percentage Concession Fee.* Upon the City’s approval and agreement of the First Renewal Capital Investment amount, the Percentage Concession Fee for the First Renewal will adjust to fifty (50%) percent of Gross Revenue.

4. All other provisions of the Agreement, except as modified hereby, shall remain in full force and effect during the first renewal period identified in Section 1 above.

**IN WITNESS WHEREOF,** the City and the Company, each by a duly authorized representative, have executed this First Renewal as of the date first above written.

---

**CITY OF DAYTON, OHIO**

City Manager

APPROVED AS TO FORM AND CORRECTNESS:

City Attorney

**DEPARTURE MEDIA**

By: [Signature]

Its: [Signature]

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

Min/Bk.: Page:

Clerk of the Commission

---

2019
June 28, 2019

Leslie Benson  
Departure Media  
180 Meeting Street, Suite 310  
Charleston, SC 29401

RE: First Renewal of Departure Media ("Company") Terminal Advertising Concession Agreement

Dear Ms. Benson:

The term of the Terminal Advertising Concession Agreement ("Agreement") between Company and the City of Dayton, Ohio ("City") at the Dayton International Airport, expires on December 31, 2019.

The Airport wishes to exercise the First Renewal, and renew the term for the full five (5) years, as stated in Section I, Subsection 1.2 of the Agreement.

If you are in agreement, please indicate by signing below and returning this letter to me. Upon receipt of the signed letter, the First Renewal documents will be sent to you for signature.

If you have any questions, please call me at (937) 454-8207 or e-mail me at sspees@flydayton.com

Sincerely,

Sarah Spees  
Senior Airport Business Manager

On behalf of Departure Media, I agree to the exercise the First Renewal of the Terminal Advertising Concession Agreement as specified above, including all changes to the Agreement as stated in the First Renewal. All other terms and conditions will remain the same.

Signed: [Signature]  
Print Name: Leslie Benson  
Title: CEO  
Date: 6/28/19
TERMINAL ADVERTISING CONCESSION AGREEMENT

BY AND BETWEEN

THE CITY OF DAYTON, OHIO

AND

DEPARTURE MEDIA, INC.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Term and Renewal</td>
<td>1</td>
</tr>
<tr>
<td>2. Assigned Areas</td>
<td>2</td>
</tr>
<tr>
<td>3. Rights and Obligations of Company</td>
<td>2</td>
</tr>
<tr>
<td>4. Scope of Operations</td>
<td>4</td>
</tr>
<tr>
<td>5. Company's Improvements</td>
<td>6</td>
</tr>
<tr>
<td>6. Minimum Annual Guarantee, Percentage Conc. Fees and Payment Guarantee</td>
<td>7</td>
</tr>
<tr>
<td>7. Records, Reports and Audits</td>
<td>10</td>
</tr>
<tr>
<td>8. Taxes</td>
<td>10</td>
</tr>
<tr>
<td>9. Indemnity and Insurance</td>
<td>11</td>
</tr>
<tr>
<td>10. Additional Fees and Charges</td>
<td>12</td>
</tr>
<tr>
<td>11. Notices</td>
<td>12</td>
</tr>
<tr>
<td>12. Right of Entry</td>
<td>13</td>
</tr>
<tr>
<td>13. Maintenance Responsibilities of City</td>
<td>13</td>
</tr>
<tr>
<td>14. Non-Discrimination</td>
<td>13</td>
</tr>
<tr>
<td>15. Cancellation of Prior Agreements</td>
<td>14</td>
</tr>
<tr>
<td>16. Early Termination by City</td>
<td>14</td>
</tr>
<tr>
<td>17. Early Termination by Company</td>
<td>15</td>
</tr>
<tr>
<td>18. Surrender of Possession</td>
<td>16</td>
</tr>
<tr>
<td>19. Holding Over</td>
<td>16</td>
</tr>
<tr>
<td>20. Quiet Enjoyment</td>
<td>16</td>
</tr>
<tr>
<td>21. Assignment and Transfer</td>
<td>16</td>
</tr>
<tr>
<td>22. Waiver</td>
<td>16</td>
</tr>
<tr>
<td>23. General Provisions</td>
<td>17</td>
</tr>
</tbody>
</table>

Exhibit A-1: Assigned Areas
Exhibit A-2: Airport Color Scheme
Exhibit A-3: Airport Cultural Arts Sponsorship Galleries
Exhibit A-4: Airport Advertising Policy
TERMINAL ADVERTISING CONCESSION AGREEMENT

BY AND BETWEEN

THE CITY OF DAYTON, OHIO

AND

DEPARTURE MEDIA

THIS TERMINAL ADVERTISING CONCESSION AGREEMENT ("Agreement") is made and entered into this __ day of ___, 20__ by and between the City of Dayton, Ohio, a political subdivision in and of the State of Ohio, ("City") Departure Media, ("Company")

WHEREAS, City owns and operates the improved real property, known and referred to as the James M. Cox Dayton International Airport ("Airport"), which is situated in the City of Dayton, Counties of Montgomery and Miami and State of Ohio;

WHEREAS, City submitted a Request for Proposals titled "Request for Proposals for Airport Advertising Concession at the James M. Cox International Airport" dated July, 2014,

WHEREAS, Company responded to the RFP setting forth its desire and qualifications to manage and operate the Terminal Airport Advertising Concession ("Concession") as described herein;

WHEREAS, City selected Company’s response to the RFP; and

WHEREAS, The parties enter into this Agreement to set forth the terms and conditions for the Concession at the Airport.

NOW, THEREFORE, in consideration of the mutual covenants and agreements between the parties, it is agreed as follows:

1. TERM AND RENEWAL

1.1 Term. The Term of this Agreement shall be for a period of five (5) years, commencing on January 1, 2015 (the “Effective Date”) and terminating on December 31, 2019. For purposes of this Agreement, “Agreement Year” shall be each consecutive twelve (12) month period beginning January 1 and ending December 31.

1.2 Renewal Period. Upon mutual agreement, this Agreement shall allow for the option to extend the Term for one (1) additional year for up to five (5) years, which if exercised, would allow for a potential total of a ten (10) year term. Approximately ninety (90) days prior to the expiration of the then current Term and upon mutual agreement, the parties may agree to the terms of the Renewal Period. No renewal of this Agreement shall be effective unless it is reduced to writing, approved by the City’s Director of Aviation, executed by a duly authorized representative of the City and Company and if required, approved by the Commission of the City of Dayton.
2. **ASSIGNED AREAS**

2.1 City assigns to Company, as provided herein, those certain premises and improvements within the Airport’s Terminal Building as described in Exhibit A-1, which is attached hereto and incorporated herein (collectively referred to as the “Assigned Areas”) together with any additions or deletions as provided herein.

2.2 City reserves the right at any time, or times, during the term of the Agreement to withdraw any portion of such areas and facilities which City determines to be no longer appropriate for use in the Concession or which is required for any other City use. City shall give Company sixty (60) days advance notice of any such withdrawal. City may also assign additional areas and facilities to the Assigned Areas. The cost to Company of any such relocation of displays required by City shall be deducted by Company from fee payments due to the City.

2.3 Company shall have no claims against City nor shall City have any liability whatsoever as a result of the exercise of such rights to withdraw areas or facilities from the Assigned Areas, except that any and all loss of revenue or costs incurred by Company as a result of such withdrawals, long-term reductions in advertising locations or relocation of advertising areas to inferior locations shall be deducted by Company from fee payments due to the City. The amount of the deduction shall be mutually agreed to by both parties and reduced to writing.

2.4 Company accepts the Assigned Areas on an “as is” condition existing upon the Effective Date and, subject to and including all defects, whether latent or patent. City shall retain responsibility for structural repair of the Airport’s Terminal Building, which includes Company’s Assigned Areas. City shall retain responsibility for abatement of environmental situations covered by applicable environmental regulations not contributed to by Company’s operations. Company’s acceptance of the Assigned Areas shall be conclusive evidence that its condition is satisfactory to Company. City makes no representation or warranty with respect to the condition of the Assigned Areas.

2.5 If there are any obstructions to the advertising program, beyond the control of Company, due to construction, long-term reductions in advertising locations or relocations of advertising areas to inferior locations, either the Minimum Annual Guarantee or fee payments due to the City shall be reduced. The amount of the deduction shall be mutually agreed to by both parties and reduced to writing.

3. **RIGHTS AND OBLIGATIONS OF COMPANY**

3.1 Company, subject to the terms and provisions of this Agreement, shall be authorized to use the Assigned Areas to operate and maintain the Concession in the manner described in this Agreement. Company must conform to the following guidelines, including but not limited to:

3.1.1 All advertising media displays and fixtures must be new, attractive, functional and of high quality. At the City’s sole discretion and approval, Company may be authorized to use and install previously constructed advertising media displays. The designs and materials of the advertising media displays must be compatible with the Airport color scheme and updated terminal improvements. See Exhibit A-2.

3.1.2 Designs and placement of advertising media displays must be made so as not to impede, obstruct, overpower, or otherwise interfere with passenger circulation or operational efficiencies.

3.1.3 The displays should not appear cluttered or detract from the architectural and design theme of the terminal.
3.1.4 Company will work with the Airport to enhance, when necessary, the Airport Cultural Arts Sponsorship Galleries. See Exhibit A-3;

3.1.5 Company shall provide a plan and schedule for City’s approval to implement emerging technologies into the advertising media display;

3.1.6 All advertising media displays must comply with the Americans with Disabilities Act (ADA) requirements;

3.1.7 The City reserves the right to review and approve all designs, materials, and placement of all advertising media displays and fixtures, and all advertising media materials prior to installation into the advertising media displays. City of Dayton Department of Aviation Advertising Policy is attached hereto and incorporated herein as Exhibit A-4;

3.1.8 The City shall supply electrical outlets at the Assigned Areas and any additional areas City assigns and pay the monthly cost of normal utilities needed for the advertising media displays, as well as wireless Internet. Company is responsible for the installation of all power and other utilities required for the operation of the advertising media display subject to Section 5;

3.1.9 All advertising media displays must be clean, safe and in a good state of repair at all times. Company shall, at its expense, inspect and clean on a bi-weekly basis all advertising display installations. Damaged, defaced or inoperable displays shall be repaired, replaced or removed within a reasonable time. At least once each month all frames, cases and fixtures shall be washed, including glass surfaces. Displays requiring electricity for lighting or operational capabilities shall meet existing state and local electrical codes and requirements. Company will, at its' expense, provide receptacles for the storage and disposal of any debris from any construction undertaken by the Company at the Airport. Normal trash storage and disposal from day to day operations will be provided by the City.

3.1.10 Advertising media display maintenance personnel are to be available for emergency contact, twenty-four (24) hours per day, seven (7) days per week. Company shall respond to all maintenance concerns within forty-eight (48) hours and if any item or items are not repairable within forty-eight (48) hours, Company shall provide City with notice of when the item(s) shall be repaired or replaced;

3.1.11 Company shall respond to all advertising inquiries within forty-eight (48) hours;

3.1.12 Company must provide a local service manager that can be reached by phone at all times between 8:00 a.m. and 5:00 p.m. local time, Monday through Saturday;

3.1.13 Company shall provide a monthly log to City of all service and customer contacts and the response times. All such service and customer contact response times set forth in 3.1.11, 3.1.12 and 3.1.13 are subject to the fines set forth in Subsection 10.2; and

3.1.14 Company must adhere to all rules and regulations of the Airport, particularly with respect to safety and security issues.

3.2 Company shall be subject to the following general rights and restrictions under this Agreement:

3.2.7 The right to use the Assigned Areas for all purposes in connection with the conduct of its Concession at the Airport, and for no other purpose. Company’s employees shall park their vehicles only in the designated employees’ parking lot, in accordance with Airport regulations for parking of employee vehicles. City also reserves the right to charge Company’s employees for parking privileges at the Airport;
3.2.8 The right to use, in common with others authorized to do so, the common areas of the Airport and any additions to the Airport, which may be designated by City for common use, together with all facilities, equipment, improvements and services which have been or may hereafter be provided at or in connection with the Airport for common use;

3.2.9 The right of ingress and egress from the Assigned Areas for Company's employees, agents, and customers, to the extent reasonably necessary, in connection with Company's use and operation of the Assigned Areas, as provided under this Agreement;

3.2.10 City reserves the right to prohibit the display of items or services that, in the opinion of City, should not be displayed by Company on or from the Assigned Areas. City's decisions regarding these items or services shall be final;

3.2.11 Access to the non-public areas ("sterile area") and the Security Identification Display Area ("SIDA") of the Airport by Company's employees and agents is subject to Title 49 U.S. Code of Federal Regulations, Part 1542 ("Part 1542"), as may be amended or revised, the City's approved Airport Security Program and the City's right to establish rules and regulations governing access to such sterile areas at the Airport. Company shall, at its expense, arrange for and ensure that its employees, agents and contractors having access to Company's Equipment located in the sterile area and SIDA at the Airport are properly identified with the Airport access media issued by the City and that the access media is prominently displayed at all times while such persons are in the sterile area and the SIDA at the Airport. Company agrees that all persons requiring the Airport access media will be advised of and required to comply with all federal, state and local laws, rules, regulations and/or orders related to security of Airport properties and all public facilities and equipment at the Airport. Further, Company waives any claim and shall indemnify the City against any claim involving or related to the City's refusal to issue or revocation of the Airport access media pursuant to applicable laws, rules, regulations, policies and procedures, including the City's approved Airport security plan;

3.2.12 Company's use of the Assigned Areas shall be in accordance with the laws of the federal government and State of Ohio, the ordinances, rules and regulations of the City of Dayton, the rules and regulations of the Department of Aviation, the regulations of the Federal Aviation Administration (FAA), Transportation Security Administration (TSA), the U.S. Department of Transportation (DOT), and the requirements of any other duly authorized governmental agency; and

3.2.13 Company shall work with any successor to this Agreement to ensure a successful transition with no unreasonable interruption in the advertising displays.

4. **SCOPE OF OPERATIONS**

4.1 Company will develop, establish and maintain a comprehensive Concession totally integrated and coordinated as to design, quality and content for the Airport, which may include, but not be limited to: Video and Digital displays, Tension Fabric with lighting, and other dynamic forms of the latest technology in advertising. This will maximize the advertising revenues for the Airport. Company shall be successful in this by doing the following;

4.1.1 Create an innovative state-of-the-art advertising program that optimizes advertising effectiveness and minimizes visual clutter;
4.1.2 Develop an aesthetically appealing advertising program that creatively reflects the City's and region's culture, character, and quality of life, and creates a unique and positive impression on visitors to Dayton, Ohio. This should also enhance the Galleries in our Airport Cultural Arts Sponsorship Program;

4.1.3 Use the advertising visuals to create harmony with the architectural and design theme of the newly updated terminal;

4.1.4 Implement a "clean, less is more" approach to using larger formats with financially strong local and national clients so fewer advertising units are used.

4.2 The City reserves the right to prohibit the use for advertising of any area where, in its sole judgment, such use would not be in the best interest of City, the public or any tenant, subtenant or lessee of City. The City shall give reasonable written notice of its intent to exercise this right. The rights granted under the Agreement specifically exclude the following: a) airline-related advertising and displays, if in leased airline spaces; b) advertising within the leased areas of other concessionaires, provided that such advertising relates to the products and services offered by the Concessionaire; c) any advertising outside the Terminal Building on billboards or other media; d) advertising through internet services or other similar electronic media; and e) advertising in locations or on property that are reserved to other entities pursuant to other agreements to which City is a party in effect as of the Effective Date of the Agreement.

4.3 Company shall, at its expense, provide, install and maintain any and all advertising equipment and fixtures required or desired in the operation of the Concession. All equipment and fixtures so provided shall be new or refurbished to new standards and of equal or greater quality than comparable equipment and fixtures installed in the Airport as of the date of this Agreement. The specific type, location, and number of display units shall be subject to approval by City.

4.4 Company shall actively and aggressively promote, sell and license those advertising fixtures for local, regional and national advertising at all times during the term of the Agreement. Any and all such advertising contracts shall be subject to the City's right of inspection and approval. During the last six months of the term of the Agreement, or any renewal period thereeto, Company shall not enter into any advertising contract having a term in excess of twelve (12) months without City's approval.

4.5 Company shall act as an advertising consultant to the City, rendering advice and information regarding the management of advertising displays and sales of advertising. The City shall consult with Company when considering additional types of advertising to avoid direct competition with Company.

4.6 Company shall provide and operate one or more direct telephone access hotel/motel and ground transportation reservation centers or kiosks. Company shall provide space on the center at no cost for the City's parking operator or other Airport services the City deems appropriate. No other form of courtesy phone for any other type of on-Airport or off-Airport business is permitted.

4.7 The Assigned Areas shall not include any form of interactive advertising or display medium for the direct sale of, or paid access to, any product, data or service. City shall have the right to approve all advertising graphics prior to installation. City shall have the right to direct Company to remove any advertising which City finds offensive. City shall allow reasonable time for Company to remedy the offense.

4.8 City reserves the right to provide graphics for itself and its agencies and any non-commercial or non-
profit interests for insertion into the unsold advertising space with no payment to Company. City shall have the right to erect on unused or unsold space, such informational signs as it considers necessary and appropriate. City shall provide written notice of its intent to exercise this right.

4.9 Company shall develop, and update on a continuing basis, a comprehensive Advertising and Marketing Master Plan for the Concession which shall include:

4.9.1 Specific advertising design and content quality criteria appropriate to the prestige and dignity of the Airport and City;
4.9.2 A projected percentage mix of local, regional and national advertising goals and examples of said companies;
4.9.3 Detailed descriptions, design and construction standards and/or photographs or drawings of the type of advertising display fixtures furnished and installed, including production and installation procedures for all such display units;
4.9.4 A list of advertising displays indicating the type and quantity, as well as the location of the displays;
4.9.5 A statement detailing the individual unit and total cost of all the display fixtures; and
4.9.6 Advertisement space use planning to meet the needs of all advertising classifications and provide maximum revenue to City.

4.9 Company shall submit the Advertising and Marketing Master Plan to City for approval within thirty (30) days after the Agreement commencement.

5. COMPANY’S IMPROVEMENTS

5.1 Company shall, at its sole cost and expense, have the duty to construct the following improvements (collectively referred to herein as the “Project”) on the Assigned Areas:

Ensure all current (Baggage Claim Area) and new locations (Escalators on A and B Concourse, Information Booth) with LCD screens have 100% content in rotation, either paid advertisements or approved filler content;

Replace current DPASS with a new state of the art digital passenger assistance program;

Maintain existing tension fabric banner displays with updated lighting and ensure all new locations include large scale wall-to-wall displays with lighting specific to the advertising program;

Update all current and ensure all new back-lit displays have new frames which are specific to the advertising program which the City has approved.

Add appropriate and decorative lighting (to be pre-approved by the City) to any and all areas designated by City, which are specific to the advertising program which the City has approved.

5.2 Company shall complete the Project at its sole cost and expense. Company shall be responsible for securing all building permits and preparation of the plans and specifications for all renovations and improvements. All plans and specifications shall be submitted to City for review prior to submission for building permits, and final “as-built” plans and specifications shall be submitted to the City upon completion of the renovations and improvements. All costs of concept upgrade and/or replacement shall be at the sole expense of the Company, except as provided for elsewhere in the Agreement.
5.3 Except as provided in this Agreement, Company accepts full responsibility for timely completion of the Project. Company shall cause the Project to be constructed in accordance with this Agreement, and in compliance with all applicable laws, regulations and permit requirements, including those of the City. Company will adhere to a strict transition plan and time schedule to implement the Project. Company will develop a time schedule detailing specific tasks that will be completed from the Effective Date to final installation of new advertising displays. Under no circumstances shall the transition plan indicate an implementation date later than one hundred eighty (180) days following the Effective Date of the Agreement.

5.4 Capital Investment and Potential Capital Investment.

5.4.1 Phase I Capital Investment. Phase I shall include a Capital Investment of Twenty-Five Thousand Two Hundred Seventy Dollars ($25,270.00) to replace the DPASS, update lighting and initiate a digital program with existing monitors. This Phase I may also include large Flex Graphics in Baggage and Concourse areas as stated in the RFP. This Phase I should be completed no later than six (6) months following the Effective Date of the Agreement.

5.4.2 Phase II Potential Capital Investment. Phase II shall include a Potential Capital Investment of One Hundred Fourteen Thousand Nine Hundred Fifty Dollars ($114,950.00) scheduled to begin once a discounted percentage of fifty percent (50%) of gross revenues is approved by the City. Should the City be interested in installing Phase II prior to approving the discount, several options are proposed, including (a) City would purchase designs, displays and installation or (b) Annual capital costs would be deducted over time from Gross Revenue on a monthly basis until paid in full, as state in the RFP. The City must give sixty (60) days’ written notice of its intent to move forward with Phase II or one of the options stated above.

5.5 Title to Improvements. Permanent improvements made to the Assigned Areas made by Company are property of Company until the expiration of the Agreement. Upon expiration of the Agreement, the permanent improvements shall then become property of City. Both parties shall agree to the amortization schedule before improvements are constructed. Should there be an unamortized balance owed on the permanent improvements upon the expiration of the Agreement, the City shall reimburse Company for any remaining unamortized balance due. Non-permanent improvements shall remain the property of Company unless not removed within sixty (60) days after expiration of the Agreement and written notice of such is not received 30 days prior to the expiration of Agreement. All proprietary software and computers connected to all digital displays shall also remain with the Company. Company and City shall develop a listing of all personal property detailing ownership of same.

6. MINIMUM ANNUAL GUARANTEE, PERCENTAGE CONCESSION FEES AND PAYMENT GUARANTEE

6.1 The Minimum Annual Guarantee ("MAG"), Percentage Concession Fees, and all other sums payable to City pursuant to this Agreement shall be paid to City at City's address specified in Subsection 6.1.4, without any deductions or offsets whatsoever, except as otherwise provided herein.

6.1.1 Minimum Annual Guarantee. Beginning on the Effective Date of this Agreement, Company agrees to pay to City, throughout the entire term of this Agreement, the MAG specified below. Company shall pay the MAG in twelve (12) equal monthly payments, in advance, on the first day of the calendar month, without prior notice or demand. In the event of the expiration or other termination of this Agreement on a date other than an
anniversary of the Effective Date, the MAG shall be prorated. Such proration for a fractional year shall be equal to one three hundred sixty-fifth (1/365th) of the MAG multiplied by the number of days which have transpired that Agreement Year.

6.1.2 Beginning on the Effective Date, the MAG for the initial year of this Agreement shall be One Hundred Ninety One Thousand Dollars ($191,000.00). The MAG shall be subject to adjustment as soon as practicable after the start of each Agreement Year but not to exceed forty-five (45) days thereafter. Such adjustment shall be calculated as follows: each subsequent year’s MAG shall be set at eighty percent (80%) of the prior year’s actual payments due according to the terms of this Agreement. In any year during the Term, in the event the total number of passengers enplaned or deplaned declines by fifteen (15%) percent or more from the previous year, the Minimum Annual Guarantee shall be reduced by the same percentage. Notwithstanding any of the above, in no event will the MAG for any Agreement Year be lower than the then current MAG.

Percentage Concession Fee: In addition to the payment of the MAG, and other sums set forth in this Agreement, Company shall pay to City for each month this Agreement is effective, Percentage Concession Fee equal to the product of the percentage of Gross Revenue multiplied by the amount of Gross Revenue, as defined in Subsection 6.2, resulting from business conducted, less the MAG amount already remitted for the previous month’s activities. If such calculation exceeds the MAG due that month, Company shall remit the difference to City. Percentage Concession Fee shall be paid by Company to City monthly, without prior notice or demand, within twenty (20) days after the end of each month.

Phase I Percentage Concession Fee. The Percentage Concession Fee for Phase One shall be 60% of Gross Revenue.

Phase II Percentage Concession Fee. Upon the City’s approval of a reduction in the Percentage Concession Fee for Phase II to fifty (50%) percent of Gross Revenue, then the Company shall invest One Hundred Fourteen Thousand Nine Hundred Fifty Dollars ($114,950) in Phase II; provided, however, in the event City desires to proceed with Phase II prior to reducing the Percentage Concession Fee to 50%, then City and Company shall mutually agree on any amendments or modification to capitalize the Phase II equipment plan.

6.1.3 Except as provided in Subsection 6.1.4 below, all the MAG and any other rental and fees payable hereunder shall be remitted by Company to the following address or at such other address as City shall direct in writing:

City of Dayton, Ohio
Department of Aviation
Attn: Accounts Receivable
3600 Terminal Drive, Suite 300
Vandalia, OH 45377
6.1.4 All annual reports and monthly statements of Gross Revenues together with the associated payments to the City as specified in Subsection 6.1.3 above shall be sent to the City at the following address or at such other address as City shall direct in writing:

City of Dayton, Ohio
Department of Aviation
Attn: Accounts Receivable
3600 Terminal Drive, Suite 300
Vandalia, OH 45377

6.2 Definition of Gross Revenue. The term "Gross Revenue" shall include all amounts received, realized by, or accruing to Company from all sources whatsoever, whether for cash, credit or barter (with or without payment) resulting from the Concession; PROVIDED, HOWEVER, that such Gross Revenue shall exclude:

6.2.1 Advertising agency and selling commission discounts paid by Company to recognized agents and local ambassadors of the subscriber; such discounts not to exceed 15% of the rate assessed the subscriber. Company, on demand by City, shall provide sufficient data to permit verification of the propriety and the actuality of such payment. Agents, servants, employees or affiliated companies of Company shall not be deemed "recognized agents";

6.2.2 Any amounts paid by advertisers for the printing, distributing or maintaining of their brochures, provided, that such amounts be separately stated on the advertisers' contracts and represent actual costs for such items.

6.2.3 The amounts of any federal, state, or municipal sales taxes or other similar taxes separately stated and collected from subscribers;

6.2.4 Any amount paid by advertisers relating to design, fabrication, construction or installation of displays or of any new media technologies required, provided, that such amounts be separately stated on the advertisers' contracts and represent actual costs for such items;

6.2.5 The amounts of any actual telephone cost relating to any hotel telephone reservation advertising displays. Such costs shall include the original telephone installation cost and associated monthly telephone charges. The actual telephone costs may be billed separately to Company's customers and said actual telephone costs shall not be included in reportable Gross Revenue to City. No offset shall be permitted for the digital passenger assistance kiosk;

6.2.6 The cost of technical maintenance, monthly content management fees for digital display program, any new display equipment as well as the replacement cost of digital monitors

6.2.7 Any amount deemed by Company and the City to be uncollectible after diligent collection efforts.

6.3 Company shall have the right to conduct part of its business on a barter basis; PROVIDED, HOWEVER, that all advertisements contracted for on a barter basis shall be reported as income equal to comparable advertising units contracted for on a cash or credit basis.

6.4 Company shall have the right to conduct part of its business on a credit basis; PROVIDED, HOWEVER, that the risk of such operation shall be borne solely by Company.

6.5 Prior to the Effective Date, Company shall provide to the City, and shall keep in full force and
effect during the Term, and thereafter, until all financial obligations hereunder are satisfied renew annually, a letter of credit drawn on a bank with a branch within the State of Ohio, a performance bond, cash or other form of security reasonably acceptable to City, and so endorsed as to be readily negotiable by the City, for the payments required hereunder, in an amount equivalent to one half (1/2) the MAG for the first Agreement Year ("Security Deposit"). The City may draw upon the Security Deposit instrument, if Company fails to pay any moneys required hereunder within the time limits specified herein in addition to taking any other action as may be provided hereunder.

7. RECORDS, REPORTS AND AUDITS

7.1 Company shall prepare and maintain an adequate set of records, in a format and detail as agreed to by City and Company, documenting all of Company’s Gross Revenue at the Airport pursuant to this Agreement. All such reports required of Company shall be prepared in accordance with generally accepted accounting principles. Company shall maintain all records and reports required of it by this Agreement for not less than three (3) years from the time the agreement is terminated. Company will deliver records requested by City, at no cost to City, within thirty (30) calendar days after receipt of City’s written request.

7.2 Monthly Report. Concurrent with each monthly submittal of Percentage Concession Fees payments to City pursuant to Section 6, Company shall submit to City a written report, in a format and detail as required by City, of all Company’s Gross Revenue at the Airport under this Agreement during the preceding calendar month.

7.3 Annual Reconciliation. The Percentage Concession Fees, as set forth in Section 6, shall be subject to reconciliation at the end of each Agreement Year pursuant to the terms of this Agreement. If said reconciliation shows a balance due to City or an excess paid by Company, the appropriate adjustment, either payment by Company of the balance due or credit or repayment by City to Company of the excess payment, shall be made within thirty (30) days after an approved annual report is received by City. The Percentage Concession Fees and MAG shall be calculated on a pro rata basis as described in Section 6 for any period of less than one (1) full Agreement Year.

7.4 Audit. Company shall make all of its records related to this Agreement available to City at any time throughout the term of this Agreement, immediately upon request by City, for purposes of inspection, audit and copying. In the event that the results of any such audit by City shows any discrepancy in the amount of Company’s Gross Revenue at the Airport, as reported to City by Company, Company shall pay City the difference or City shall reimburse or credit Company, as the case may be, within thirty (30) calendar days following discovery of such discrepancy.

In the event that any such discrepancy exceeds the amount of such Gross Revenue reported by Company to City by more than two percent (2%), Company shall reimburse City for all of City’s costs in connection with such audit.

8. TAXES

Company covenants and agrees that it will pay, when due, all federal state and local taxes and assessments, including but not limited to, all employee/employer taxes, leasehold, use, sales and commercial activity taxes, which may be assessed against the Assigned Areas and personal property located on the Assigned Areas or against any activity or operation conducted by Company. Real taxes and assessments shall be paid by City. Any protest or contest by Company shall not relieve Company of its obligation to pay taxes and assessments while such matter is pending.
9. **INDEMNITY AND INSURANCE**

9.1 Company shall protect, defend, and hold harmless City, its elected officials, officers, agents, employees and volunteers from and against liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorneys’ fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the use or occupancy of the Assigned Areas by Company, or the acts or omissions of Company, its officers, agents, employees, contractors, subcontractors, licensees, or invitees, regardless of where the injury, death, or damage may occur, except to the extent such injury, death or damage is caused by the act or omission of City, its elected officials, officers, agents, employees and volunteers. City shall give to Company reasonable notice of any such claims or actions. The provisions of this Section shall survive the expiration or early termination of this Agreement.

9.2 Throughout the entire term of this Agreement, Company 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 or its successor, the following policy/policies of insurance covering its operations at and from the Airport, including the Assigned Areas:

9.2.1 Comprehensive General Liability — covering claims for damages because of bodily injury and personal injury, including death, and damage to property, in the amount of One Million Dollars ($1,000,000), combined single limit liability insurance. Such policy shall include coverage for Assigned Areas and Operations, Contractual Liability as applicable to the hold-harmless agreements in this Agreement; Independent Contractors; Broad Form Property Damage; and a Cross Liability Endorsement for the City, its elected officials, officers, agents, employees and volunteers as additional insureds. Such insurance shall also name City, its elected officials, officers, agents, employees and volunteers as additional insureds to the same extent as Company;

9.2.2 Automobile Liability — including owned, non-owned or hired in the amount of One Million Dollars ($1,000,000) each accident, combined single limit;

9.2.3 Worker’s Compensation — including occupational disease, other states and voluntary compensation coverage on all employees in such amounts as required by law;

9.2.4 Fire and Casualty — covering all improvements upon the Assigned Areas against loss or damage by fire and such hazards and risk as are normally covered by endorsements for extended coverage, and in such amount(s) necessary to cover the replacement value thereof. All such policies of insurance and renewals thereof shall insure Company and City, as their interests may appear. If any improvement upon the Assigned Areas shall be partially damaged or totally destroyed by fire, or other casualty covered by the fire and extended coverage insurance to be maintained by Company, the Assigned Areas shall be repaired or replaced with due diligence by Company to the condition, as near as practicable, as they were immediately prior to such casualty, and the proceeds of such insurance shall be used for the purpose of the repair or replacement of such facilities.

9.2.5 All certificates of insurance shall be deposited with City’s Director of Aviation showing such insurance to be in effect with premiums paid and showing City to be named as an additional insured as may be required above and requiring thirty (30) days’ prior written notice to City prior to the cancellation of the insurance or material change in the coverage. In addition, endorsements shall be provided to City confirming that City is actually endorsed onto the policy as an additional insured, together with copies of declaration pages of the policy, which confirm the specific types of coverage provided.
9.3 In order to effect a waiver of insurance subrogation rights, the parties hereby release each other from liability from any loss or damage to the Assigned Areas, building, personal property, fixtures, and equipment of Company, to the extent that such loss or damage is covered by insurance, even though such loss or damage may be due to the negligence or fault of either party, its agents, representatives, or employees.

9.4 From time to time City may review applicable insurance limits and coverage, and Company agrees to provide insurance in such types or amounts as may then be required by the City.

9.5 In the event Company, its agents, contractors or employees, violate any security measure at the Airport, including, but not limited to, any FAA or TSA security laws, regulations, orders and directives, Company shall assume full and complete responsibility for such violations, including payment of any penalty imposed, and shall defend, indemnify and hold the City, its elected officials, officers, agents and employees harmless therefrom.

10. ADDITIONAL FEES, CHARGES AND FINES

10.1 Company shall pay to City additional fees and charges in the event of any of the following:

10.1.1 City has paid any sum or sums, or has incurred any obligation or expense on Company’s behalf, for which Company has agreed to pay or reimburse City, or for which Company is otherwise responsible;

10.1.2 If City is required or elects to pay any sum or sums, or incur any obligation or expense, because of the failure, neglect or refusal of Company to perform or fulfill any of the promises, terms, conditions or covenants required of it herein;

10.1.3 Other reasonable fees and charges for services rendered to Company’s operation and/or the Assigned Areas, such as, but not limited to, employee parking and badges. Company’s obligations pursuant to this Section shall include all interest, damages, and penalties in conjunction with such sums so paid or expenses so incurred by City. Company shall not be liable for interest, damages or penalties paid by City if such payments are due to City’s late payment of these items. City shall charge Company for such service at rates not exceeding those which allow City to recover its actual expense of providing the services rendered; and

10.1.4 If Company is delinquent for a period of thirty (30) days or more in paying to City any rental, fee or charge due, then Company 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 Company.

10.2 Company acknowledges its obligation to provide the Concession as set forth herein. The City desires that Company provide adequate responses to maintenance items, customer contacts and availability of personnel as outlined in this Agreement.

11. NOTICES

Any notice, demand, request, consent, or approval that either party may or is required to give the other, shall be in writing, and shall be either personally delivered or sent by certified mail, postage prepaid, addressed as follows:
To City:

Department of Aviation
Attn: Director of Aviation
3600 Terminal Drive, Suite 300
Vandalia, OH 45377

To Company:

Departure Media, Inc.
Attn: Leslie Bensen, CEO
180 Meeting Street, Suite 310
Charleston, SC 29401

Either party shall have the right by giving fifteen (15) days advance written notice to the other, to change the address at which it will receive such communications. Such communications shall be deemed received upon delivery, if personally delivered, or within four (4) days following deposit in the mail if sent by mail.

12. **RIGHT OF ENTRY**

City may enter upon the Assigned Areas at any reasonable time for any purpose necessary, incidental to or connected with the performance of its obligations under this Agreement, in the exercise of its governmental functions, or in the event of any emergency.

13. **MAINTENANCE RESPONSIBILITIES OF CITY**

13.1 City shall maintain and operate the Airport in all respects in a manner at least equal to the standards or ratings issued by the FAA for airports of similar size and character, and in accordance with all rules and regulations of the FAA, TSA or DOT.

13.2 City agrees that any leases or agreements for abutting premises shall require the lessees to keep and maintain the same in good condition and repair, reasonable wear and tear excepted, and to keep the premises in a sanitary and safe condition.

13.3 City shall complete the general maintenance and upkeep of Airport’s interior common use areas and external areas, including but not limited to: structural repairs to the roof, floor and exterior walls and exterior windows. Except as specified otherwise in this Agreement, City agrees to keep and maintain in good condition all trunk water, heating and air conditioning systems, sewer mains, supply mains and electrical power to Assigned Areas. Company agrees to keep and maintain in good condition all service lines used exclusively by Company.

2.6 City shall have the right to construct or install over, in, under or through the Assigned Areas new lines, pipes, mains, wires, conduits and equipment; provided, however, that such repair, alteration, replacement or construction shall not unreasonably interfere with Company’s use of its Assigned Areas. City shall repair at its sole cost, any damage resulting from such activities and any economic impact shall be deducted by Company from fee payments due to the City. The amount of the deduction shall be mutually agreed to by both parties and reduced to writing.

13.4

13.5 City shall not be liable for, and is hereby released from any and all liability to Company, to Company’s insurance carrier or to anyone claiming under or through Company, for any loss or damage whatsoever to the property or effects of Company resulting from the discharge of water or other substance from pipes, sprinklers, conduits, containers, appurtenances thereof, or fixtures thereto, and from any damage resulting from the discharge or failure of electric current, regardless of cause or origin, except the active negligence of City, its employees or agents.

14. **NON-DiscrimINATION**

Company, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that, in the event facilities are constructed, maintained or otherwise operated on the Assigned Areas described in this Lease.
for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provisions of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation, and as said regulations may be amended, superseded or modified. Company, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, religion, sex, gender identity, ancestry, national origin, place of birth, age, marital status or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities, (2) 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, color, religion, sex, gender identity, ancestry, national origin, place of birth, age, marital status or handicap shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) Company shall use the Assigned Areas 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 as may be amended, superseded or modified.

The City encourages participation by Airport Concession Disadvantaged Business Enterprise(s) ("ACDBE"), as defined in 49 CFR part 23, in its concessions at the Airport. In accordance with 49 CFR part 23, the City established an overall goal for ACDBE participation in Airport concessions of 2.0% of the total gross revenues of all Airport concessions. Company agrees that it will use its best efforts to provide opportunities for participation by ACDBEs in the performance of this Agreement. Company shall provide all information requested by the City regarding ACDBE participation and any other matters necessary for the City to satisfy all ACDBE and nondiscrimination reporting requirements.

This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The Company 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, management contract or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23. The Company agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those business to similarly include the statements in further agreements.

That in the event of breach of any of the above non-discrimination covenants, City shall have the right to terminate this Lease and to re-enter and repossess said land and facilities thereon, and hold the same as if said Lease had never been made or issued. Notwithstanding the foregoing, it is specifically agreed that nothing herein contained shall prevent Company from exhausting all administrative and/or judicial remedies available to Company in resisting or defending against any claims or claim of breach or default or noncompliance hereunder.

15. CANCELLATION OF PRIOR AGREEMENTS
All prior leases and agreements between the parties hereto and related to the subject matter hereof are hereby canceled and shall be held null and void, effective as of the Effective Date of this Agreement.

16. EARLY TERMINATION BY CITY
16.1 City may terminate this Agreement by giving Company sixty (60) days advance written notice to be served as provided in Section 11, upon or after the happening of any one of the following events:
16.1.1 If a receiver for Company's assets is appointed by a court of competent jurisdiction or if Company shall be divested of its rights, powers and privileges under this Lease by other operation of law;

16.1.2 If Company shall default in or fail to make payments at the times and in the amounts as required of it under this Lease and said default is not cured by amounts due and owing within thirty (30) days after City notifies Company in writing of the default;

16.1.3 If Company shall fail to perform, keep and observe all of the covenants and conditions contained in this Lease to be performed, kept and observed by it, and said failure is not cured, or action taken to correct such failure, within thirty (30) days after City notifies Company in writing of said failure;

16.1.4 Violations by Company, 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 Company's receipt of written notice, which shall state in detail the violation;

16.1.5 The failure of Company to construct the Project on the Assigned Areas pursuant to this Agreement; or

16.1.6 The default by Company in the performance of any covenant or agreement herein required to be performed by Company including, but not limited to, nonpayment of the MAG or Percentage Concession Fee, and the failure of Company to remedy the default within the time provided in the notice of termination provided above. No waiver of default by City of any of the terms, covenants or conditions of this Agreement shall be construed to be a waiver of any subsequent default or of any other terms, covenants and conditions to be observed by Company.

17. EARLY TERMINATION BY COMPANY

17.1 Company may, so long as it is not in default, terminate this Agreement by giving City sixty (60) days advance written notice to be served as provided in Section 11, upon or after the happening of any one of the following events:

17.1.1 Preventing or restraining the use of the Airport or any part thereof necessary for Company's operation, and the remaining in force of such injunction for a period of at least thirty (30) days after City has exhausted or abandoned all appeals;

17.1.2 The entry into any contract or request for proposal by the City for any advertising service which directly or indirectly competes with Company; or

17.1.3 The default by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to commence remedy of the default for a period of sixty (60) days after receipt from Company of written notice to remedy the same; provided, however, that no notice of termination shall be of any force or effect if City have remedied the default prior to receipt of Company's notice of termination.

17.2 In the event the Terminal Building, of which the Assigned Areas are a portion thereof, is damaged or destroyed by no fault or other misconduct of Company, so as render the Assigned Areas untenantable, rent payable hereunder shall abate as of the date of such damage or destruction and continue until such time as the Assigned Areas are fully restored. If within twelve (12) months after the time of such Terminal Building damage or destruction which has not been repaired or reconstructed, Company may cancel this Agreement in its entirety as of the date of such damage or
destruction. City is under no obligation to repair, replace or reconstruct the Terminal Building.

18. **SURRENDER OF POSSESSION**
Upon the expiration or earlier termination of this Agreement, Company shall forthwith surrender possession to City of the Assigned Areas and permanent improvements thereon in good condition, reasonable wear and tear excepted. (See Section 5.5) On an annual basis, Company will provide City with a list of personal property and fixtures that shall remain the property of Company upon termination of the Agreement for City’s review and approval. Company will ensure any liens against the Assigned Areas and the improvements thereon have been satisfied at Company’s sole cost and expense, prior to surrender to City.

19. **HOLDING OVER**
If Company shall, with the consent of City, holdover after the expiration of the term of this Agreement, such tenancy shall be for an indefinite period of time on a month-to-month tenancy, which tenancy may be terminated as provided by law. During such tenancy, Company agrees to pay to City the required MAG and Percentage Concession Fees set forth herein, and to be bound by all the applicable terms, covenants, and conditions as herein specified.

20. **QUIET ENJOYMENT**
City agrees that, upon payment of the applicable fees and charges and performance of the covenants and agreements on the part of Company to be performed hereunder, the Company shall peaceably have and, in accordance with the terms hereof, enjoy the Assigned Areas and all rights, licenses, services and privileges of the Airport and the appurtenances granted herein.

21. **ASSIGNMENT AND TRANSFER**
21.1 Company may not assign or transfer this Agreement nor may it transfer Company’s rights, privileges and authorized use without the prior written consent of City. Such consent shall not be unreasonably withheld; however, City may refuse to grant such consent in the event it is not satisfied that the proposed assignee or transferee possesses the financial and operational resources and ability to successfully manage the Concession. City’s judgment in this respect, made in good faith, shall be conclusive.

21.2 Any assignment or transfer of this Agreement made in violation of the provisions hereof shall be void, and, at the option of City, shall be the basis for termination of this Agreement.

21.3 For purposes of this Agreement, an assignment or transfer of this Agreement includes, without limitation (a) a transfer of a majority in interest of the ownership of Company, or (b) transfer of the operational control of Company, even if no ownership interest has been transferred.

22. **WAIVER**
22.1 No waiver by either party at any time, of any of the terms, conditions, covenants or agreements of this Agreement, 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. No waiver by either party of any provisions of this Agreement shall be deemed to have been made, unless expressed in writing and signed by the City or Company, as the case may be.

22.2 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 Agreement 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.

23. GENERAL PROVISIONS

23.1 The term the City, as used in this Agreement, means the City of Dayton, Ohio, and where this Agreement speaks of approval and consent by the City, such approval is understood to be manifested by act of the City's Director of Aviation, except as otherwise expressly stated in this Agreement. Whenever in this Agreement, the approval or consent of the City is required, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

23.2 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 Agreement; provided that the validity of any such covenant, condition or provision does not materially prejudice either the City or Company in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

23.3 Company represents that it has carefully reviewed the terms and conditions of this 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 Agreement.

23.4 Any headings in this Agreement are for convenience of reference only and do not define or limit the provisions thereof. In this Agreement, unless the context otherwise requires, the terms "hereby", "herein", "hereof", "hereto", "hereunder" and any similar terms used in this manner refer to this Agreement. All section and article references, unless otherwise expressly indicated, are to sections in this Agreement. Any references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance with this Agreement.

23.5 By execution of this Agreement, Company 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 Agreement.

23.6 Company (and any person claiming by or through Company) shall look solely to legally available Airport discretionary funds for enforcement of any liability of the City under this Agreement, and not any other funds or assets of the City of Dayton, Ohio whatsoever.

23.7 Neither Company nor any contractor of Company shall be entitled to claim any exemption from sales or use taxes or similar taxes by reason of the City's ownership of fee title to the Assigned Areas.

23.8 By entering into this Agreement, the City shall in no way be deemed a partner or joint venture with Company, 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 Agreement.

23.9 The parties may amend or modify this Agreement, 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 Agreement, executed by a duly authorized representative of the City and Company and, if required, approved by the Commission of the City of Dayton, Ohio.

23.10 This Agreement represents the entire and integrated agreement between the City and Company. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements or contracts, whether oral or written, relating to the subject matter of this Agreement.

23.11 This Agreement is 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.

23.12 This Agreement shall be subordinate to the provisions and requirements of any existing or future agreement between the City and the United States, its departments and agencies, relative to the development, operation or maintenance of the Airport.

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

WITNESSED BY:

Robin Bloomton

Departure Media, Inc.
Charleston, SC

By: Leslie Bensen
Its: Chief Executive Officer

FID No 56-1935486

WITNESSED BY:

Sheila M. Croom

THE CITY OF DAYTON, OHIO

City Manager

APPROVED AS TO FORM
AND CORRECTNESS:

City Attorney

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

September 24, 2014

Min/Bk. 173 Pg.

Rachelle Parende
Clerk of the Commission
Dayton International Airport Advertising Location Map, Existing

**Concourse A**
- Southwest
- Airtvan
- US Airways

**Concourse B**
- United Airlines
- Delta
- American Airlines

- ○ Proposed Additional Locations
- ▲ Proposed Pay Phone
- ■ Sponsorships
- ○ Current Locations
- ★ Current Art Work
- "Subject to change"
Dayton International Airport Color Schemes

Dayton International Airport follows a cohesive decorative color scheme. The photos below illustrate our theme.
Dayton International Airport Cultural Arts Sponsorship

James M. Cox Dayton International Airport

*Community Sponsorship Program Fact Sheet*

Gallery Exhibits-August 2014-July 2015, Phase I

**BACKGROUND:**

About the Dayton International Airport Cultural Arts Sponsorship Program:

The mission of the Dayton International Airport Cultural Arts Sponsorship Program is to creatively showcase organizations unique to Dayton and to foster community pride. These community organizations include non-profit and for-profit arts, culture, education, history, science, and athletic organizations in the Dayton Area. The City of Dayton is renowned for its legacy of innovation. The creativity in Dayton has touched people’s lives in countless ways, including art, architecture, science and industry. The Dayton International Airport wishes to partner with these organizations and highlight these groups to the more than 1,300,000 enplaning passengers each year.

About the Concourse Galleries

The Concourse Galleries are located in the halls throughout Concourse A and Concourse B. There will be 3 locations per concourse, as well as 2 Bonus locations for signage only at the entrance of the Terminal. The attached map shows the locations. Each Gallery exhibit will include 4 items, all per Airport criteria and approval:

- A Gallery Wall Sign of their organization,
- A 3-dimensional visual display, highlighting what their organization wishes,
- A large Tension Fabric (or similar) visual, describing their program,
- Literature about the organization for passengers.

Each Sponsorship Agreement will also include signage in a collage format in the Terminal Atrium where we hold press conferences, meetings, etc… This unique wall covering will showcase all the Sponsors collectively in a very dynamic and visually appealing format.

**Goals for the Concourse Galleries**

- Provide an amenity for airport passengers and employees to celebrate the artistic, creative, cultural, historical and scientific resources of the region.
- Allow airport passengers and employees to have an in-depth experience with art, artifacts and cultural objects and provide an interesting and pleasant way for them to spend time.
• Help airport passengers and employees understand the Dayton region.

• Build a wider, stronger audience for regional arts, culture, historic, nature and science organizations throughout the region.

EXHIBITION OPPORTUNITY:

The Dayton International Airport Cultural Arts Sponsorship Program is seeking to partner with organizations interested in developing and producing an exhibit in the Concourse Galleries.

The Airport will provide:

• A Gallery Location – approx. 5ft wide, floor to ceiling, and up to 2 feet in depth;

• Display rack for literature to be displayed, and installation of such;

• Installation of Gallery wall sign (per Airport Criteria) to be put in their location;

• Appropriate lighting above Gallery Location (per Airport Criteria);

• Printing and installation for the collage sign in the Terminal Atrium;

• A spot on the Dayton Cultural Arts Sponsorship page on the Airport website, flydayton.com

Exhibitors will be responsible for:

• Developing a concept for the exhibit and provide items to be exhibited;

• Once approved, providing the Airport with a Timeline for implementation;

• Insuring transportation of items both to and from Dayton International Airport;

• Providing an itemized list of objects in the exhibit, including replacement cost, for insurance purposes;

• Providing literature about the organization to be stocked in the exhibit;

• All costs associated with the organizations exhibit pieces, including those costs for the Gallery wall sign and the Tension Fabric visual (or similar) per Airport Criteria;

• Providing a certificate evidencing general liability insurance in the amount of $1,000,000.00;

• Installation of the exhibition in the designated gallery space (with Airport collaboration);

• Providing digital files and specifications for exhibit signage;

• Signing the Cultural Arts Sponsorship Agreement, outlining responsibilities for both the exhibitor and the Airport.
TO SUBMIT A PROPOSAL:
Interested organizations should submit a proposal that includes the following:

1. *Organization Profile* (limit 2 pages)
   - Name of organization,
   - Primary contact person,
   - Phone, email and other contact information,
   - Description of organization, including recent exhibition history (past 2 years), upcoming exhibitions and capabilities,
   - Communication and outreach capabilities (i.e.: mailing list, e-blast, website, social media, etc.).

2. *Exhibition Concept* (limit 2 pages)
   - Overall idea or concept,
   - Possible artists, objects, artifacts to be on display,
   - Possible design for the tension fabric (or similar) describing their concept,

3. *Up to 6 images* that demonstrate possible objects to be included in the exhibit. Please include a description of the objects.

5. *Preferred Dates*. Please state your preference for beginning date.

6. *Copy of insurance* certificate evidencing general liability insurance in the amount of $1,000,000.00.

7. A signed *Cultural Arts Sponsorship Agreement*.

REVIEW PROCESS, AIRPORT CRITERIA and FINAL STEPS:
Proposals will be reviewed by the City of Dayton, Department of Aviation selection committee. Final approval for exhibit will be at the discretion of this committee. The proposals will be evaluated on the following criteria:

- Strength of proposal concept. The concept is compelling, unique, and accurately reflects the organization it represents.
- The concept is creative, eye-catching and forward thinking in its visual impact.
- Exhibitors are willing to collaborate with Department of Aviation on conceptual ideas.
- The Sponsor has organizational, communication and outreach capabilities. The organization and lead staff have experience creating and designing Gallery concepts, and have a communications network that can be utilized to advertise the exhibition outside the Airport.
City of Dayton Department of Aviation Advertising Policy

This policy provides advertising and signage criteria for the James M. Cox Dayton International Airport and Dayton-Wright Brothers Airport (collectively, "Airport"). This policy does not apply to activities of the City of Dayton and its Department of Aviation, to identify, inform the public, promote airport facilities, services or tenants, or otherwise market the Airport. This policy does not apply to facility way-finding, informational or tenant identification signs.

Advertising is recognized as an essential part of airport concession, information and identity programs, and must be developed to be aesthetically consistent with the Airport's design and architecture without interfering with operational efficiencies or employee and passenger safety. A balance between airport advertising and other informational systems must be maintained in order to preserve visual continuity and avoid clutter and message overload.

Advertising is defined as any commercial message displayed through auditory or visual communication systems in any form of media. All signs and other types of advertising on Airport property must be consistent with these guidelines. Existing signs that do not meet the guidelines must be removed.

1. General Rules

   Signs and other advertisements on Airport property must comply with the following general rules:

   1.1 All advertisements must comply with applicable safety standards.

   1.2 Advertisements shall not contain obscene, pornographic or violent material or market tobacco, or illegal or prohibited substances.

   1.3 Advertisements shall not contain content that demeans or disparages an individual or groups of individuals.

   1.4 Advertisements shall not promote political issues or advocate for or against political candidates, political campaigns, ballot measures, or political parties or organizations.

   1.5 Advertisements shall not promote or disparage any religion or religious issue.

   1.6 Advertisements shall not advertise services in direct competition with the Department of Aviation's business objectives, and shall not contain material that is not in the best business interest of the Department of Aviation or air transportation.

   1.7 Advertisements shall not be false, misleading or deceptive.

   1.8 Advertisements shall not contain objectionable or confrontational material such that the advertisement would detract from the mission of the Department of Aviation to provide a comfortable, safe and pleasant passenger experience.

   1.9 Advertisements may not contain flashing messages or be illuminated by strobe or laser lighting.
1.10 Advertisements shall not promote unlawful or illegal goods, services, or activities.

1.11 Advertisements shall not use the logo or designations of the City of Dayton or its Department of Aviation, or testimonials by current City or Department employees or elected officials unless the Director of Aviation, or his designee, has consented in writing to such use.

2. **Terminal Buildings**

Within the Airport terminal building, all advertising in public and common use spaces that are designated for use by the Department of Aviation’s in-terminal advertising concessionaire shall be carried out through the advertising program managed by that concessionaire, subject to this Policy. Advertising in public and common use spaces that are not designated for use by the Department of Aviation’s in-terminal advertising concessionaire shall be allowed entirely at the discretion of and subject to the judgment of the Director of Aviation, or designee. Advertising in spaces exclusively or preferentially leased by tenants shall be restricted to only goods and services offered by the tenant.

Advertising shall not be placed in any location on the exterior of the terminal buildings, including the passenger loading bridges. With the approval of the Director of Aviation, signs bearing an airline trade name or logo may be placed on passenger loading bridges.

All advertisements proposed in the terminal buildings, no matter where or how placed, are subject to the consent and approval of the Director of Aviation, or designee, prior to installation.

3. **Other Department of Aviation Buildings and Structures**

Advertising will not be allowed to be placed in any location on the exterior of or the grounds of any other building or structure on the Airport.

4. **Other Airport Property**

Advertising in shuttle bus waiting areas of public and employee parking facilities, parking garage, on Department of Aviation ground transportation shuttle buses, in areas designated by the Department of Aviation for display of banners, on automated public parking pay-stations, on electronic displays such as information kiosks, video monitors and pay-station machines, on the Internet website(s) maintained by the Department of Aviation, and in other areas as may be designated by the Department of Aviation from time to time, shall be allowed entirely at the discretion of and subject to the judgment of the Director of Aviation, or designee. All advertisements proposed, no matter where or how placed, are subject to the written consent and approval of the Director of Aviation, or designee, prior to installation.

5. **Temporary Advertising Signs**

Temporary signs that may be considered advertising in nature may be used by Department of Aviation and Airport tenant contractors during construction periods to identify projects, work sites, contractors and work in process as specified in Department of Aviation approved contract documents.

Other temporary signs that may be considered advertising in nature may be allowed subject to prior Director of Aviation, or designee, review and approval.
6. **General**

Notwithstanding any of the preceding, the Department of Aviation, through its Director of Aviation, or designee, reserves the right to refuse any advertisement in any form at any time in any location for any reason, whether or not stated.

This Policy is adopted this _____ day of _____________, 2012 pursuant to R.C.G.O. § 37.01.

CITY OF DAYTON

DEPARTMENT OF AVIATION

__________________________
Director

ses/070913
By:................................. No:.................................

AN ORDINANCE

Consenting to the Replacement of Signs Within the City of Dayton, and Agreeing to Cooperate in Matters Incidental Thereto, Including the Execution of Agreements Necessary to Implement this Ordinance.

WHEREAS, The State of Ohio Department of Transportation ("ODOT") has identified the need for sign replacement on multiple streets and expressways in the City of Dayton, identified by ODOT as D07 Signs FY20; and,

WHEREAS, The City of Dayton intends to cooperate with the State of Ohio Director of Transportation in the planning, design, and construction of said improvement; now, therefore,

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

Section 1. That the Commission hereby gives consent to the Director of Transportation to replace signs on multiple streets and expressways, said project being in the public interest and identified by ODOT as D07 Signs FY20 ("Project").

Section 2. That the City shall cooperate with the Director of Transportation in the Project as follows:

A. The City will assume and bear all costs of the Project, less the amount of Federal-Aid set aside by the Director of Transportation for financing the Project from funds allocated by the Federal Highway Administration, U.S. Department of Transportation.

B. In addition, the City also agrees to assume and bear all of the cost of any construction items requested by the City for the Project which are not necessary for the Project, as determined by the State and Federal Highway Administration.

Section 3. That the City agrees that all right-of-way required for the Project will be acquired and/or made available in accordance with current State and Federal regulations. The City also understands that right-of-way costs include eligible utility costs. The City agrees that all utility accommodation, relocation, and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.
Section 4. That upon completion of the Project, and unless otherwise agreed, the City shall: (1) provide adequate maintenance of the Project in accordance with all applicable State and Federal law, including, but not limited to, Title 23, U.S.C. Section 116; (2) provide ample financial provisions, as necessary, for such maintenance of the Project; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

Section 5. That the City Manager is hereby authorized on behalf of the City to enter into contracts with the Director of Transportation to complete the Project.

Passed by the Commission.................................................., 2019

Signed by the Mayor........................................................., 2019

Mayor of the City of Dayton, Ohio

Attest:

Clerk of the Commission

Approved as to form:

City Attorney
June 25, 2019

TO: Shelley Dickstein  
City Manager

FROM: Keith Steeber, City Engineer  
Division of Civil Engineering

SUBJECT: Sign Replacement Citywide  
D07 Signs FY20, PID 108054  
Preliminary Legislation

Attached is legislation between the City of Dayton and the Ohio Department of Transportation for a project that replaces guide signs citywide. The project will be 100% funded from ODOT funds and will be performed through ODOT’s District 7 Office. Work is expected to begin in the spring of 2020.

Please present the attached Ordinance to the City Commission at its July 10, 2019 meeting. The Department of Law has approved the document as to form, and a copy of ODOT’s request for consent legislation is attached.

If you have any questions, please contact me at 3838.

KGS

Attachments

Cc: Mr. Parlette  
Ms. Clements  
Mr. Stovall